

(1999) 03 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6006 of 1999

Janapareddy Venkateswara Rao

APPELLANT

Vs

District Collector, Eluru and others

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 5

Citation : (1999) 3 ALD 42 : (1999) 2 ALT 633

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. T. Durga Prasad Rao, for the Appellant; Govt. Pleader for Social Welfare, for the Respondent

Judgement

1. Government Pleader for Social Welfare took notice for the respondents. Writ Petition was heard finally.

2. The subject land is sought to be acquired by the State for the public purpose, to wit, for providing house sites to the weaker sections of the society like Dalits and other backward classes, by invoking urgency clause u/s 17(4) of the Land Acquisition Act. The learned Counsel appearing for the petitioner assailing the acquisition proceedings would contend that there was no urgency on the part of the State to invoke urgency clause u/s 17(4) of the Act; that the petitioner is a cultivating tenant of the land belonging to the temple and therefore without his consent the State ought not to have proposed to acquire the subject land; that there are alternate lands owned by the Government of India and certain others, and therefore, there was no justification for the State to choose the subject land for acquisition; and that the subject land would cost very heavily on the State exchequer and the State would have acquired alternative land at a lesser cost and therefore the acquisition is not in the public interest. The Judgments of the Supreme Court in Chameli Singh and others etc. Vs. State of U.P. and another, and Union of India and others Vs. Praveen Gupta and others, are the authorities

to State that when the State proceed to acquire the land for providing house sites to the weaker sections of the society, there is always an element of urgency and that urgency would subsist till the housing problem of those sections of community is solved. Added to this, the Supreme Court in *Union of India v. Praveen Gupta* (supra) opined that the decision of the Government on the question of urgency is an administrative decision and a matter of subjective satisfaction, and the Government need not record reasons in reaching the satisfaction, and that satisfaction cannot lightly be interfered with by the Court unless in a given case, it is shown that the exercise of eminent domain power is nothing short of colourable exercise of power. That is neither the pleading nor the contention in the instant case.

3. The second contention of the learned Counsel for the petitioner is required to be noticed only to be rejected. The Government Order G.O. Ms. No.776, Revenue (Endowments. II) Department, dated 29-9-1995 does not require the State authorities to obtain the consent of the tenants before acquiring the land in their possession. Alternatively, it should be said that the very concept of compulsory land acquisition pre-supposes that the State is armed with necessary power which is called "eminent domain" power to acquire the lands for public purpose compulsorily, that is to say, without consent or assent of the land owners.

4. The land is acquired for the purpose of providing house sites by the State Government. The writ petitioner has set out in the affidavit certain extents of land belonging to the S.T.V.N. High School and also Smt. Kilatnbi Seethalakshmi wife of Ramavataram. I do not think it necessary to dilate on this contention. It is well settled by the decisions of this Court in WP No.2923 of 1999, dated 16-2-1999 and WA No.223 of 1999 dated 25-2-1999, that suitability of a land is not a justiciable issue unless in a given case it is shown that the choice of the land by the State and its authorities is tainted by factual mala fide or is done wantonly by the State authorities under the garb of exercise of eminent domain power. That is not the pleading nor the proof in the instant case.

5. Adverting to the last contention, suffice it to state that when the State proceeds to acquire suitable land for the weaker sections of the society it may choose to spend some more money on the lands for the purpose of acquisition of the land. Only on that count, the land acquisition proceedings cannot be nullified. If the concern of the Government is to provide suitable house sites to the weaker sections, the relatively higher cost involved in it cannot be a vitiating factor to quash the land acquisition proceedings and undoubtedly that ground cannot be a valid ground for judicial review under Article 226.

6. No other points are urged. Writ Petition fails, and it is accordingly dismissed. No costs.