
(2016) 01 AP CK 0048
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9344 of 2012

K. Appa Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11A, Section 17(4), Section 17(5), Section 4(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -

Citation : (2016) 6 ALT 715

Hon'ble Judges : Sri C. Praveen Kumar, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Sri C. Praveen Kumar, J. - Questioning the action of respondents 2 and 3 in continuing with the land acquisition proceedings, though the same got lapsed in view of Section 11-A of Land Acquisition Act, 1894 (for short "the L.A.Act"), the present Writ Petition came to be filed. Subsequently, an amendment to the prayer is sought for by way of questioning the Award proceedings.

2. The facts in issue are as under :

The petitioner claims himself to be an absolute owner and possessor of lands admeasuring Ac.2.70 cents in Sy.No.149/1 and Ac.2.00 in Sy.No.149/2 in Unagatla village, Chagallu Mandal, West Godavari District. On 23.08.2008 the District Collector (R-2) issued a notification under Section 4(1) of the Land Acquisition Act referring to invocation of 17(4) of the Act, which was published in the Gazette on 27.08.2008. In view of invocation of urgency clause, enquiry under Section 5A was dispensed with and a declaration under Section 6 of the Act was issued on 30.01.2009, which was published in the District Gazette on 06.02.2009. Subsequently, an amendment to the said declaration was made on 20.04.2010, which was published in the District Gazette on 23.04.2010 deleting

an extent of .07 cents in Sy.No.149/2. It is stated that a notice dated 17.09.2011 was issued under Section 9(1) and 10 of the Act informing the petitioner to be present before the L.A.O., on 11.10.2011. Thereafter, a notice dated 01.03.2012 came to be issued asking the petitioner to appear before the negotiations committee on 05.03.2012. Since possession of land remained with the petitioner; compensation to the extent of 80% being not deposited and as no Award has been passed though consent was obtained in the month of November 2008, the present Writ Petition came to be filed. On 03.04.2012, this Court while issuing rule-nisi, granted interim stay as prayed for, i.e., stay of further proceedings pursuant to Section 4(1) notification.

Subsequently, on coming to know that an Award has already been passed on 22.03.2012 vide Award No.4/2012, an amendment to the prayer was sought, seeking quashing of the Award vide W.P.M.P. No.6471 of 2015, which was allowed on 24.11.2015.

3. A counter came to be filed by the Land Acquisition Officer disputing the averments made in the affidavit. As per the counter a draft declaration under Section 6 of the Act was approved by the Collector on 31.01.2009, which was published in local news papers. Thereafter, an errata draft declaration was submitted to the Collector deleting an extent of .07 cents, which was approved by the Collector on 20.04.2010, got the same published in the Gazette on 23.04.2010 and in the locality on 20.05.2010. An award enquiry was conducted and subsequently Award 4/2012 came to be passed on 22.03.2012. In para 4 of the counter it has been stated that in view of the consent given, 5-A enquiry was dispensed, Section 6 declaration was issued on 30.01.2009 and published in the District Gazette on 16.02.2009. In para 6 of the counter it has been stated that though the award was passed on 22.03.2012, no possession was taken in view of the pendency of the writ petition. Having regard to the circumstances stated above, it is contended that the award is passed within 2 years from the date of publication of errata and as such there is no illegality in continuing with the proceedings. It is further urged that since the Award is already passed nothing survives for adjudicating this Writ Petition more so in view of Section 24 of Act 2013.

4. The first ground urged by the learned counsel for the petitioner is that the Award came to be passed beyond two years of the publication made under Section 6. The same is refuted by the Government Pleader stating that if the subsequent declaration is taken into consideration, the Award would be well within the time fixed under Section 11-A of the Act. As seen from the record, the date of publication of notification under Section 4 of the Act was on 23.08.2008 and publication under Section 6 was on 31.01.2009. The same was also published in the gazette on 06.02.2009 and the Award was passed on 22.03.2012. If the above dates are taken into consideration, the Award ought to have published on or before 06.02.2011 as Section 11-A of the Act prescribes that the Collector shall make an Award under Section 11 within a period of 2

years from the date of publication of declaration and if no award is made within that period, the entire proceedings for acquisition of land shall lapse. But the learned Government Pleader for land acquisition strenuously contends that in view of corrigendum published in the month of April 2010 the Award is well within the time. Issue identical to case on hand came up for consideration before the Apex Court in *Mohan and other v. State of Maharashtra*, 2007(5) SCJ 132, wherein the Apex Court held that what has to be seen under Section 11-A of the L.A. Act is the date of last publication of declaration under Section 6 and not any subsequent corrigendum to the said declaration. The court held that the period which stands excluded under Section 11-A is the period during which any action of proceedings to be taken in pursuance of the said declaration is stayed by an order of the Court. Admittedly, it is not a case where passing of the Award got delayed due to pendency of any proceedings before the Court. The Writ Petition was filed in the year 2012, whereas Section 6 declaration was issued on 06.02.2009. Therefore, it can be said that the Award came to be passed beyond 2 years from the date of publication under Section 6 of the Act.

5. But, the learned Government Pleader would submit that since the land was acquired by invoking urgency clause under Section 17, the period of limitation prescribed under Section 11- A would not come into operation. He placed reliance on the judgment of this Court in *Vana Adamma and others v. District Collector*, 1991 (1) ALT 478, and also the judgment of the Apex Court in *Satendra Prasad Jain and others v. State of U.P.*, AIR 1993 S.C., 2517.

6. In *Satendra Prasad Jain's* case (3 supra), the Apex court held as under :

"14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession, the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration.

In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the government can revert to the owner."

7. The said judgment may not be of any help to the Government Pleader for the

reason that in the instant case the possession of property is not taken till date.

8. In Adammas? case, a Division Bench of this Court was dealing with the Land Acquisition Act 1894 and the state amendments made to Section 17 of the Act.

9. Before proceeding further, it would be appropriate to refer to the amendments which are as under :

10. Section 17 of the Act enables the authority to invoke its provision and take possession of the land before passing of the Award. By virtue of state amendment, sub-section 5 to Section 17 was added after the existing four sub-sections to section 17 of the Act, which reads as under:

"17. (5)(a): In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply the Collector shall take possession of the land within three months thereof.

(b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months the provisions of Section 5-A shall apply as if there is no such direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause (a)".

11. Later Section 17 of the principal Act has been amended by introducing four clauses to Section 17 of the principal Act, which is as under :

"13. Amendment of Section 17: In Section 17 of the principal Act (a) x x x x (b) x x x x (c) after sub-section (3), the following sub-sections shall be inserted, namely "(3-A) Before taking possession of any land under subsection (1) or sub-section (2), the Collectors shall, without prejudice to the provisions of sub-section (3) (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub-section (2) and where the Collector is so prevented the provisions of Section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section. (3-B) The amount paid or deposited under sub-section (3-A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue". (d) in sub-section (4) for the words "after the publication of the notification", the words "after the date of the publication of the notification" shall be substituted."

12. The controversy in the case was whether sub section (5) to Section 17 is repugnant to amendments made by Parliament including sub Section 3A and 3B. Dealing with the said aspect, the Division Bench of this Court held that sub-section 5 of Section 17 has become repugnant and void after central amendment

68/84 coming into force. Disagreeing with the view taken in the above said judgment, another bench of this Court in *Dandu Trinadha Raju v. District Collector, Visakhapatnam*, 2006(2)ALT 9, held that Section 17(5A and 5B) of the Act which was introduced by A.P. Amendment Act 9/1983 in its application to the State of Andhra Pradesh will continue to apply and the said provisions are not in conflict with Section 17(3A) of the Act introduced by the Central Amendment. In view of the difference of opinion expressed by two division benches of this Court, the matter was referred to full bench in *Ramdas Ramanamma and others v. Government of Andhra Pradesh*, 2014(6)ALT 676(FB). After referring to all the provisions of the Act and the judgments on the subject, the Full Bench held that the provisions of Section 17(3A and 3B) which were introduced by amending Act 68/84 and Sections 17 (5A) and 5B) which were introduced by A.P. Amendment Act 83 operate in two different situations and there is no repugnancy either express or implied between the two provisions. The court held as under :

"Both the provisions referred above, take care of different situations. Section 17(5)(a) and (b) is intended to revive inquiry under Section 5-A in cases where urgency clause is invoked but possession is not taken within the period of 90 days, whereas, Section 17(3-A) and 3-B) takes care of payment of compensation before taking possession of the notified land. By applying the principles laid down by the Hon^{ble} Supreme Court in *M. Karunanidhi's case* (1979(3) SCC 431) and in *Zameer Ahmed Latifur Rehman Sheikh's case* (2010(5) SCJ 368), we are of the view that there is no repugnancy nor any inconsistency between the above provisions. Both the provisions will operate in their respective areas without giving any scope either for repugnancy or collision."

13. From a reading of the Full Bench Judgment of this Court, it is clear that Section 17(5)(A) and (B) of the State Amendment intend to revive an enquiry under section 5A in case where an urgency clause is invoked but possession is not taken within 90 days. Section 5(a) and 5(b) of Section 17 mandates the Collector to take possession within three months from the date when the State Government directs non-application of Section 5A of the Act and in case if the Collector fails to take possession within the aforesaid period of three months, provisions of Section 5A of the Act shall apply and the period of 30 days referred to in Section 5A has to be reckoned from the date of expiry of three months specified in clause (a) of Section 17(5).

14. As seen from the record, the land which sought to be acquired was for providing houses to the weaker sections of the Society. Dealing with the aspect of invoking 5A in cases of this nature, the Apex Court in *Laxman Lal v. State of Rajasthan*, 2013(3) SCC 764, held as under :

"Section 5-A, which gives a very limited right to an owner/person interested, is not an empty formality. The substantial right under Section 5-A is the only right given to an owner/person interested to object to the acquisition proceedings. Such right ought not to be taken away by the State Government sans real urgency. The strong arm of the government is not meant to be used nor it should

be used against a citizen in appropriating the property against his consent without giving him right to file objections as incorporated under Section 5-A on any ostensible ground. The dispensation of enquiry under Section 17(4) has to be founded on considerations germane to the purpose and not in a routine manner. Unless the circumstances warrant immediate possession, there cannot be any justification in dispensing with an enquiry under Section 5-A. As has been stated by this Court in *Anand Singh 4*, elimination of enquiry under Section 5-A must only be in deserving and in the cases of real urgency. Being an exceptional power, the government must be circumspect in exercising power of urgency."

15. In *Anand Singh and another v. State of Uttar Pradesh and others*, 2010(11) SCC 242, the Apex Court after referring to various judgments on the issue held as under:

"The exceptional and extraordinary power of doing away with an enquiry under Section 5A in a case where possession of the land is required urgently or in unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5A. Exceptional the power, the more circumspect the government must be in its exercise. The government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5A.

As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5A may not be held and objections of land owners/persons interested may not be considered. In many cases on general assumption, likely delay in completion of enquiry under Section 5A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously."

16. In *Radhy Shyam (Dead) through LRs. and others v. State of Uttar Pradesh and others*, 2011(5) SCC 553, the Apex Court after referring to the various cases, summarized the issue, the relevant findings which are germane to the case on hand are as under:

"(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged, segment of the society or people suffering from

other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in subsection (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under subsection (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1)

and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition."

17. In the above case, the Apex Court while allowing the appeal made it clear that the respondents shall be free to proceed from the stage of Section 4 notification and take appropriate steps after complying with Section 5A (1) and (2) of the Act. From the judgments referred to above, it is clear that urgency clause cannot be invoked as matter of routine moreso when the land is acquired for housing schemes.

18. At this stage, it would be useful to refer to the judgment of the Apex Court in *Laxman Pandya v. State of Uttar Pradesh*, 2011(14) SCC 94, took a different view. It was a case where the state government proposed to acquire land for Habeebpura housing scheme of the Varanasi Development Authority. Declaration under section 6 was published in the official gazette dt:30.11.1991, which was challenged in CMWP Nos.1769 and 14885/1982. The first writ petition was dismissed for default whereas the second writ petition was dismissed on merits on 18.11.1997. Notwithstanding the dismissal of the writ petition the authority failed to take possession of the acquired land nor any award was passed within the period prescribed under section 11A of the Act. In the year 2000 writ petitions came to be filed on the ground that the respondents are trying to dispossess them from the land and also sought for a declaration that land acquisition proceedings have lapsed since no award was passed within two years. The court held that the proceedings get lapsed in view of Section 11 of the Act and as such the respondents cannot take possession of the land in question. In CMWP No.23043 of 2000, the High Court held that though more than three years have lapsed, the respondents failed to take possession of the land and as such held that the proceedings shall be deemed to have lapsed. The Division Bench however did not agree with the findings given by the learned Single Judge and consequently allowed the appeals. Challenging the same, the petitioner approached the Apex Court.

19. The question that fell for consideration before the Apex Court was "Whether the High Court was justified in quashing the acquisition proceedings despite the fact that the award was not made within the period prescribed under Section 11-A of the Act?"

20. In the said case the State of U.P., issued notification under section 4 (1) read with Section 17 and the declaration issued under section 6 (1) r/w Section 17 of the Act. The writ petition which was filed questioning the same was dismissed in the year 1982 for default. It has been held that once the writ petition was dismissed for default in 1982, the stay order passed by the High Court stood automatically vacated and there was no impediment in passing of the award, which the competent authority failed to do so for morethan 10 years in the first

case and for more than three years in the second case. The possession of land continued with the appellant therein till May, 2000 and attempts were made to dispossess them. Therefore, the Court found fault with the finding of the High Court that the lands still stood vested with the State Government. The Court did not agree with the finding of the High Court in applying the ratio laid down in Satyendra Prasad Jain's Case and Award Bihari Yadav's case, as in those cases, possession of land was taken within two years from the date of publication issued under section 6 (1) and as a result of which the land vested with the State Government. For the said reasons the Court allowed the appeal and set-aside the judgment holding that the land acquisition proceedings would be deemed to have been lapsed due to non-compliance of Section 11-A of the Act.

21. Even in the instant case, the notification under section 4(1) read with Section 17(4) of the Act came to be published on 27.08.2008 and later a declaration under section 6 was issued on 30.01.2009, which came to be published in the Gazette on 06.02.2009. An errata to Section 4(1) notification came to be issued on 24.10.2010 and thereafter an award was passed in the month of March 2012. Though urgency clause was invoked but neither possession of the property was taken nor any compensation was deposited till the date of the award.

22. Having invoked the urgency clause there is no reason why the Government kept quiet for nearly 4 years without taking possession of the same for providing house sites. The statutory right of hearing the aggrieved person who is losing his source of livelihood cannot be denied by invoking the urgency clause when such urgency to acquire the land is not shown by the authorities.

23. At this stage, an argument was sought to be advanced by the Government Pleader that the Award cannot be set-aside due to the above lapses in view of Section 24 of the New Act. But, a reading of the said provision would not indicate the same. Section 24 of the new Act reads as under :

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894.

(a) where no award under Section 11 of the said Land Acquisition Act, 1894 has been made, then, all provisions of this Act relating to the determination of compensation, rehabilitation and resettlement shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been

taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, 1894 shall be entitled to compensation in accordance with the provisions of this Act."

24. Section 24(1)(a) contemplates a situation of applicability of provisions of 2013 Act while determining the amount of compensation to be paid when no Award u/s11 is passed. Section 24(1)(b) states that the proceedings under 1894 Act will continue as if the said Act has not been repealed when Award has been passed under section 11 of the Act. Both the provisions are silent with regard to possession. However, Section 24(2) deals with a situation where the proceedings under Land Acquisition Act, 1894 gets lapsed if an Award has been passed 5 years or more prior to the commencement of the Act abut physical possession has not been taken and compensation has not been paid to the victims. It is to be noted that situation prescribed under Section 24(1)(b) and Section 24(2) are distinct and different. Both operate in different spheres. Section 24(2) deals with a situation where proceedings get lapsed if conditions referred to therein are not fulfilled within the time prescribed, but situation is otherwise in 24(1)(b). It contemplates continuation of proceedings under old Act after passing of the Award under section 11, when the case does not fall within the contingencies prescribed under section 24(2) of the new Act.

25. Having regard to the circumstances stated above and in view of Judgment of the Apex Court in Laxman Pandya's case it is to be deemed that Section 17 (1) of the Act has not been invoked, since possession of land was not taken within the period prescribed under Section 17 (5) of the Act (State Amendment) and no compensation was paid to the land owners in spite of invoking urgency clause.

26. Accordingly, the writ petition is allowed, the Award No.4/12 and the notification issued are set-aside giving liberty to the authorities to proceed further in accordance with law. No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.