

(1995) 10 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 915 of 1988

K. Subramanyeswara Rao and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4(1), 5A, 5A(2), 6(1), 6(2)

Citation : (1996) 1 ALT 847

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : K. Subramanyam and K.V. Subramanya Narsu, for the Appellant; Government Pleader for Land Acquisition for Respondent No. 1 and Sumalini Reddy, S.C. for HUDA, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, J.—By this petition under Article 226 of the Constitution, the petitioners, as many as 32 in number, have made a prayer for quashing the proceedings initiated by the first respondent u/s 4(1) of the Land Acquisition Act, 1894 as amended by Act No. 68 of 1984, (in short, the "Act"), in respect of their total Ac. 21.59 cents, as detailed hereafter, situate at village Kooramannapalem in Gajuwaka Mandal of Visakhapatnam as illegal:-

DETAILS OF LAND										Survey No.		
Area	Acres	Cents								68/3A		
6.63	69/1	0.69	69/3	1.21	69/4A	3.39	69/4B	1.69	69/5	4.09	69/6A	1.22
69/7	2.67			21.59								

2. The petitioners claim themselves to be the owners of the said lands, having purchased the same between 1979 to 1984 under registered sale deeds. The said lands were sought to be acquired by publication of a notification u/s 4(1) of the Act on 26-10-1984 in the Official Gazette, on 29-11-1984 in the locality and on 22-2-1985 in the two daily newspapers in circulation in the locality. It was

alleged that the notices of enquiry u/s 5-A were given on 28-11-1984 and enquiry held on 2-1-1985 and 28-1-1985. The declaration u/s 6(1) of the Act was, thereafter, made on 20-2-1986 by publication of the notification in Official Gazette, on 21-2-1986 and 22-2-1986 by publication of the notification in two daily newspapers and on 10-3-1986 by publication of the substance of the said notification u/s 6(1) in the locality. Accordingly it was asserted that the proceedings for acquisition were bad as the publication of notification u/s 4(1) of the Act in two daily newspapers was subsequent to the date of enquiry u/s 5-A of the Act, (date of publication is 22-2-1985, whereas enquiry dates are 2-1-1985 and 28-1-1985,) and further as the declaration u/s 6(1) was made beyond one year in disregard with the provisions of clause (ii) of first proviso to Section 6(1) of the Act. The respondents resisted the petition, but did not dispute the correctness of the various dates alleged by the petitioners.

3. After hearing the learned counsel for the parties and perusing the record, what I find is that although it is not necessary to issue notices u/s 5-A of the Act to land owners, calling upon them to raise objections, if any, against the proposed acquisition, the first respondent appears to have had issued such notices to the petitioners and the latter also appear to have had lodged objections, as manifested by the following allegations in paragraph 3 of the affidavit filed in support of their petition by the petitioners:

".....The Special Deputy Collector, Land Acquisition issued notices dated 28-11-1984 u/s 5(A) of the Land Acquisition Act to the petitioners herein stating inter alia that the lands specified in the appended schedule and situated in Koormannapalem village block No. 10 in the then Visakhapatnam taluk in Visakhapatnam District are needed for a public purpose to wit for sites and services and LAD scheme that we were required to lodge before him of our objections in writing to the said acquisition within 15 days from the date of service of the said notice and that the objections received within the due date would be enquired into on 2-1-1985 at 11. a.m. before him at Panchayat Samithi Elementary School, Koormannapalem. In pursuance of the said notice we filed our objections contending inter alia that we are not having any land except the lands sought to be acquired, that a layout was also formed in respect of our lands, that we purchased the said sites to construct residential houses as we have no houses or house sites either in Visakhapatnam town or in the suburban area of Visakhapatnam, that our lands cannot be acquired for the purpose of sites and services under L.A.D. Scheme, that even otherwise we are entitled for allotment of the sites under the scheme and therefore the lands may be excluded from the acquisition. We also stated that as the lands belonging to us have been formed into plots and a layout was also prepared, our layout may be adjusted in the proposed layouts of Visakhapatnam Urban Development Authority relating to S.Nos. 68 and 69 and that we are prepared to pay the developmental charges, if any, proportionately "The affidavit in support of the petition would further show that the enquiry was actually conducted and the objections were considered on 2-1-1985 and 28-1-1985. Now, therefore, the question is whether this enquiry u/

s 5-A of the Act could be said to be vitiated only because the notification u/s 4(1) of the Act was subsequently published on 22-2-1985 in daily newspapers in circulation in the locality? The argument is that it would vitiate the proceedings. According to the learned counsel, Section 4(1) of the Act provides for publication of the notification by three modes," the last of the dates of such publication and the giving of such public notice, being.....referred to as the date of the publication of the notification", which in the present case was 22-2-1985 and, therefore, any person interested in any land notified u/s 4(1), i.e., the petitioners in the present case was 22-2-1985 and, therefore, any person interested in any land notified u/s 4(1), i.e., the petitioners in the present case, could raise objection against acquisition within 30 days from the date of the publication of the notification, i.e., within 30 days from 22-2-1985 in the present case, as provided in Section 5-A(1) of the Act. However, this right could not be exercised as the enquiry u/s 5-A (2) was already over by the time the notification u/s 4(1) was published on 22-2-1985 in the daily newspapers. Accordingly it was urged that the acquisition was vitiated. Reliance was placed in a decision of this Court in *Deeptisri Co-op. H.B. Society v. L.A. Officer* (1986 (1)APLJ 171), in support of the contention.

4. At the out-set, it may be mentioned that the said decision of this Court does not deal with the point raised in this petition. It only says that publication of the notification in all the modes provided in Section 4(1) is mandatory, whereas the question posed here is about the effect of such publication after the date of enquiry u/s 5-A(2) of the Act. To me it appears that the purpose of Section 5-A of the Act is to afford an opportunity to persons interested to raise objection, if any, against the proposed acquisition and to conduct an enquiry into such objections, if raised. That purpose was fulfilled in the present case, though before the date of publication of the notification u/s 4(1) in the daily newspapers. It is nowhere alleged that after the date of publication of the notification in the daily newspapers, the petitioners wanted to raise further objections and/or they were prevented from doing so or they were denied to be accepted by the respondents. Section 5-A also does not say that any objection would not be considered, or that no enquiry could be conducted before expiry of 30 days from the date of publication of such notification. On the contrary, Section 5-A(2) specifically provides that " different reports in respect of different parcels of such land" may be made by the Collector to the appropriate Government. Again the question may also be examined from a different angle. If the petitioners were really serious about their said objection, they could have over-looked their objections and/or the enquiry u/s 5-A(2) , which were prior to the date of publication of the notification u/s 4(1) of the Act in the daily newspapers and could have raised fresh objections within 30 days from the date of such publication. If no such objections were raised, there was no need or any question of enquiry u/s 5-A(2) of the Act, because the Section contemplates enquiry only in a case where an objection in writing is made against the proposed acquisition. For all these reasons, the argument to the contrary is rejected as not tenable.

5. It was next argued that as provided in clause (ii) of the first proviso to Section 6(1) of the Act, the declaration u/s 6(1) was not made within one Year from the date of publication of the notification u/s 4(1) of the Act and, therefore, the acquisition was bad. I find no substance in the contention. As argued by the learned Counsel for the petitioners himself, Section 4(1) contemplates publication of the notification firstly in the Official Gazette, secondly in two daily newspapers circulating in the locality and thirdly by public notice of the substance of such notification at convenient places in the locality. Section 4(1) further says, "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification". As Section 6(1) follows Section 4 of the Act, the provisions contained in clause (ii) of the first proviso to Section 6(1) of the Act to the effect that "no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1), published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification" will have to be read in the context of the words, "the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification" employed in Section 4(1) of the Act. If so read, it would appear that the declaration made u/s 6(1) of the Act by publication of a notification in the Official Gazette dated 20-2-1986 was well within one year from the last date, i.e., 22-2-1985 of the publication of notification u/s 4(1) in the daily newspapers. It is interesting to note that as distinguished from Section 4(1) of the Act, Section 6(1) does not speak of publication of a notification in respect of any particular land required for a public purpose or for a Company, but only speaks of a declaration "under the signature of a Secretary" to the appropriate Government "or of some officer duly authorized to certify its orders". Sub-Section (2") of Section 6 only requires publication of such declaration in the manner prescribed, but does not say that the date of such publication shall be deemed to be the date of declaration u/s 6(1) of the Act. In other words, Section 6(2) requires publication of the declaration in the same manner as a notification u/s 4(1) of the Act and also says, "the last of the dates of such publication and the giving of sudi public notice, being hereinafter referred to as the date of the publication of the declaration", but does not say that such last of the dates of publication and the giving of public notice would be deemed to be the date of declaration u/s 6(1) of the Act. Under the circumstances, I find no force in the argument that all the dates of publication of the declaration in Official Gazette, in daily newspapers and public notice ought to have been made within one year from the date of publication of the notification u/s 4(1) of the Act.

6. For the foregoing reasons, I find no merit in this petition and accordingly it is hereby dismissed, but without any order as to costs.