

(1990) 03 AP CK 0024
In the Andhra Pradesh High Court
Case No : W. P. No. 4708 of 1984

Katari Satyanarayana and others

APPELLANT

Vs

The District Collector, Krishna at Machilipatnam

RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 3, 4(1), 5

Citation : AIR 1990 AP 326 : (1990) 2 APLJ 430

Hon'ble Judges : Syed Shah Mohammed Quadri, J;Jeevan Reddy, J

Bench : Division Bench

Judgement

Quadri, J.—The question of the locus standi of a tenant of agricultural land covered by the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, to challenge the land acquisition proceedings, gave rise to difference in judicial opinion. Upendralal Waghray, J. referred this writ petition to a Division Bench disagreeing with the view expressed by P. A. Choudary, J. in Writ Petition No.9140 of 1982 dated 21-11-1983 on this question.

2. Here are the facts in which the question arose. The Government proposed to acquire land of an extent of Ac. 2-00 in Survey No. 69 of Gudivada village, Gudivada Taluk, Krishna District. Draft notification u/s 4(I) of the Land Acquisition Act (for short "the Act") in respect of the said land was published in the Gazette on 9-11-1983. Enquiry u/s 5-A of the Act was dispensed with u/s 17(4) of the Act and declaration under Sec. 6 was also published simultaneously with the notification 4(1). The petitioners who are tenants and who had suffered an order of eviction under the Andhra Pradesh (Andhra Area) Tenancy Act (for short "Andhra Tenancy Act") from the preliminary authority (District Munsif) and whose appeal was pending before the District Court, Krishna, challenged the validity of the acquisition proceedings.

3. The contentions of the petitioners are,--

(1) that substance of the draft notification u/s 4(1) of the Act was not published

in the locality; and

(2) that publishing declaration u/s 6 simultaneously with the draft notification under Sec. 4(1) of the Act is illegal, therefore the acquisition proceedings have to be quashed.

4. The respondents have contended that the petitioners being tenants cannot challenge the acquisition proceedings when the owner of the land, Sri Kalahasteswara Swamy Devasthanam, has consented for the acquisition; that the substance of the notification was published in the locality on 17-12-1983 and that simultaneous publication of the declaration under Sec. 6 does not vitiate the acquisition proceedings.

5. First we shall consider the preliminary objection as to whether a tenant can maintain a writ petition.

6. The basis of the objection is that a tenant/ lessee has no title to or an indefeasible right in the land. But is it necessary under the provisions of the Act? The germane question is "who can object to the acquisition of the land under the Act"? A perusal of section 5-A of the Act shows that any person interested in any land which has been notified u/s 4 sub-sec. (1), as being needed or likely to be needed for a public purpose or for a company may, within 30 days after the issue of the notification, object to the acquisition of the land. What follows is that "any person interested" in the land can object to its acquisition. He is also entitled to notice under sections 9 and 10 of the Act. It is his objection to the measurement and the value of the land that will have to be enquired into by the Collector at the time of passing the award and it is he who is entitled to the notice of the award. For purposes of section 5-A the phrase "person interested" has been defined in subsection (3) to mean "a person who would be entitled to claim an interest in compensation if the land were acquired under the Act." However, the definition section also defines this phrase in section 3(b) of the Act. It is an inclusive definition and reads as follows:--

"3. (b) The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

7. From a reading of the above extracted definition it is clear that for objecting to the acquisition of any land it is enough if the objector can claim an interest in compensation for the land under acquisition, though for other purposes of the Act a person claiming an interest in an easement affecting the land would also be a "person interested"; neither title to nor indefeasible right in the land is necessary. We are of the opinion that a person who can object to acquisition of land u/s 5-A of the Act, can as well maintain a petition under Article 226 of the Constitution.

8. The next question that follows is whether a tenant covered by the Andhra

Tenancy Act is a "person interested". This can be answered on knowing whether, he is entitled to claim an interest in compensation for the land. A tenant who is governed by the Andhra Tenancy Act is a statutory tenant on whom certain rights have been conferred under the said Act -- the lease is deemed to be in perpetuity; his rights are heritable and change in the ownership of the land does not affect them. His interest in the compensation for the land in case it is acquired, is not quantified as is done under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act -- a tenant is entitled to 60% of the compensation of the land which he is holding as protected tenant--, but then the Court would have to determine the same in each case having regard to all the relevant factors. Therefore, a statutory tenant, in our view, would be a "person interested", and we see no reason why he should be denied the right to approach this Court under Art. 226 of the Constitution.

9. In *Atchi Appalareddi v. Special Tahsildar* (1978) 2 APLJ 269 a Division Bench of this Court of which one of us (Jeevan Reddy, J.) was a member, observed:

"Can it be said that the tenant has no right to or interest in the land which he has been deprived of by acquiring the land, and can it be said that he is not a person interested in the matter of acquisition and the compensation relating to such land? It, therefore, cannot be denied that where a land, which is in the occupation of a tenant, is acquired, the tenant has a right to be heard both on question of acquisition as well as compensation. His right also has a value, and he has to be compensated for that right, which he is deprived of by acquisition. The principle is that every person whose right or interest is taken away by acquisition has to be compensated."

In para 25 the Bench held:

"To conclude: A tenant is a "person interested" as defined in Cl. (b) of S. 3 of the Land Acquisition Act. He has a right to object to the acquisition and/or to the quantum of compensation. The Land Acquisition Officer of the Court, as the case may be, has to ascertain the value of his right in the property acquired and compensated him in that behalf."

We agree with the view taken by the Division Bench.

10. However, it appears that the judgment of the Division Bench referred to above was not brought to the notice of P. A. Choudary, J. who in Writ Petn. No. 9140 of 1982,D/-21-11-1983, held:

"The objection of the tenants if it is upheld, would amount to forcing continued ownership on the unwilling landlord. That cannot obviously be done. Whatever may be the other rights of the tenants, they cannot be permitted to question the acquisition proceedings in this case because the land owner is ready and willing to part with its land and it has no objection for the acquisition."

11. The learned Judge held the writ petition filed by a tenant was not maintainable on the ground that it would amount to forcing continued ownership

on the unwilling landlord. The right to object as a person interested is different from the substance of the objection. Even assuming that in a given case the objection is considered to be without any merit, his right to object cannot be denied, though more often than not an objector may be defeated on the inadequacy of his case. It is, however, necessary to bear in mind that right to object and merits of the objection are two different things. When the Act itself confers a right on a person interested to object to the acquisition proceedings, we cannot take away the right of the person interested on the ground that the owner cannot be made to continue against his will. That would frustrate the object of S. 5-A of the Act. For all these reasons we cannot agree with P. A. Choudary, J. Upendralal Wagray, J. in his order of reference has expressed his opinion that the writ petition at the instance of the tenants is maintainable. This is in accord with the view taken by us. Accordingly this contention is rejected.

12. We shall now advert to the objections relating to the merits of the case. The first objection is that substance of draft notification was not published in the locality, so Sec. 4(1) notification has to be quashed. Notification under S. 4(1) of the Act was published in the Gazette on 9-11-1983. In the counter-affidavit it is stated that the substance of the said notification was published in the locality on 17-12-1983. We have no reason to doubt the correctness of this statement. Accordingly this contention cannot be accepted.

13. The next objection to the acquisition proceedings is that as the declaration under Sec. 6 of the Act has been published simultaneously with the draft notification under S. 4(1) of the Act, the acquisition proceedings would become illegal.

14. Sub-section (4) of S. 17 of the Act as it stood before amendment, insofar as it is relevant for our purpose was in the following terms:--

"..... the appropriate Government may direct that the provisions of S. 5-A shall not apply, and if it does so direct, a declaration may be made under Sec. 6 in respect of the land at any time after the publication of the notification under S. 4, sub-section (1)."

Interpreting that section, the Supreme Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, , held thus:

"The law does not make the prior publication of notification under sub-section (1) of S. 4 a condition precedent to the publication of a notification under sub-section (1) of S. 6."

The Supreme Court observed :

"Where acquisition is being made after following the normal procedure the notification under the latter section (Sec. 6(1)) will necessarily have to be published subsequent to the notification under the former section (Sec. 4(1)), because in such a case the observance of procedure under S. 5-A is interposed between the two notifications. But where S. 5-A is not in the way there is no

irregularity in publishing those notifications on the same day."

The position, insofar as our State is concerned, changed after enactment of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 9 of 1983. After the said amendment, sub-section (4) of S. 17 was in the following terms:--

"..... the appropriate Government may direct that the provisions of S. 5-A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after pausing public notice under S. 4, subsection (1)."

15. From a perusal of sub-section (4) of S. 17 of the Act as amended by the Land Acquisition (A. P. amendment and Validation) Act, 9 of 1983 (for short "the State Amending Act"), it is clear that the declaration under sub-section (2) of S. 6 could have made only after causing public notice under S. 4, sub-section (1). Therefore, having regard to the provisions of sub-section (4) of S. 17 of the Act as amended by the State Amending Act, a declaration made under S. 6(1) of the Act could have been published in Official Gazette under S. 6(2) of the Act only after public notice under S. 4(1). A declaration published simultaneously which would naturally be before causing the public notice would, be in violation of the provisions of sub-section (4) of S. 17 and therefore illegal. This was the view taken by a learned single Judge of this Court in Smt. Komala Devi v. State of A. P., (1984) 1 APLJ 80.

15A. However, after the aforementioned State amendment the Parliament also amended the Land Acquisition Act by the Land Acquisition (Amendment) Act (Act 68 of 1984) (for short "the Central amending Act") After the said amendment sub-section (4) of S. 17 reads as follows:--

"..... the appropriate Government may direct that the provisions of S. 5-A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the date of publication of the notification under Sec. 5, sub-section (1)."

To understand the import of the phrase "after the date of publication of the notification", it would be useful to refer to S. 4(1) of the Act as it stands after amendment.

"4. Publication of preliminary notification and powers of officers thereupon.

(1) whenever it appears to the appropriate Government or the District Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, or the District Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall within forty days from the date of publication of such notification cause public notice of the substance of such notification to be given at convenient places in the said locality 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."

16. A reading of these two sub-sections makes it clear that "the date of publication of the notification" would be the last of the dates of publication of S. 4(1) notification in the Gazette, publication of the said notification in two daily newspapers circulating in the locality and the date of publication of substance of such notification in the locality. Obviously last of the dates of the publication of the notification above referred to can only be after publication of the draft notification in the Gazette. Therefore, declaration under S. 6(1) can validly be published only after the date of publication of the notification referred to in sub-section (1) of S. 4. As such, simultaneous publication of declaration under S. 6(2) and draft notification under S. 4(1) would be in violation of sub-section (1) and would, therefore, render the publication of the declaration under S. 6(2) invalid and illegal. We are supported in our view by a recent judgment of the Supreme Court in *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*, . In that case for purposes of different housing schemes, notifications were issued for acquiring lands. The draft notification under S. 4(1) and the declaration under S. 6 in question were published simultaneously on 6th May, 1985. A Division Bench of the High Court of Allahabad before which the validity of the acquisition proceedings was challenged, upheld the objection that simultaneous publication of declaration under Sec. 6 with the draft notification under S. 4(1) was illegal, and quashed the declaration under S. 6 of the Act. On appeal to the Supreme Court, the judgment of the High Court was confirmed and it was observed :

"The words have to be understood in their usual and most known signification. If that be so, then the legislature must have had some intention in choosing the expression "after" before "date of publication of the notification" in sub-section(4) of S. 17 of the Act while making amendment by Amending Act No. 68 of 1984. It is true that there were some changes giving the meaning of the date of the publication in S. 4 (1) and (2) as well as S. 6(2) of the Act. But for that, there was no need for the use of the expression "after the date". If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal."

17. From the above discussion it follows that the declaration under S. 6 of the Act published in the Gazette on 9-11-1983, is illegal and invalid and it is accordingly quashed. It would be open to the authorities to issue fresh declaration under S. 6 of the Act in accordance with law keeping in view the period of limitation mentioned in Section 6 of the Act.

18. The writ petition is allowed to the extent indicated above. No costs. Advocates' fee Rs. 250/-.

19. Petition allowed.