

(2004) 04 AP CK 0041
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5184 of 2004

Kona Venkanna

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 11, 18
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 82
Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 4(1)

Citation : (2004) 4 ALD 1 : (2004) 4 ALT 243

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Subba Reddy, for the Appellant; Govt. Pleader for Land Acquisition, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner, by this writ petition, seeks writ of Mandamus to declare the Notification dated 25-2-2004 in Ref. G2/261/2004 issued by first respondent No. 1-District Collector proposing to acquire the land of the respondent No. 3-Temple in an extent of Ac. 2-45 cents in survey No. 76/1 of Kumarapriyam village, Pedapudi Mandal, East Godavari District, as illegal, arbitrary and contrary to the instructions issued by the Government in G.O.Ms.No. 363 Revenue (Endts.II) Department, dated 26-4-1999.

2. The petitioner claims to be landless poor and a cultivating tenant of respondent No. 3 in an extent of Ac. 2-45 cents in Sy. No. 76/1, Kumarapriyam village, Pedapudi Mandal, East Godavari District, for more than three decades, and that he has a lease subsisting, which is valid up to 2005, and that he is paying the rents regularly. He is raising crops in the land, and presently there is standing crop. While so, it is the case of the petitioner that respondent No. 4-Sarpanch, who is inimical to him, got passed a resolution, and on the basis of the said resolution, respondent No. 1 issued Notification u/s 4(1) of the Land

Acquisition Act, 1894 (for short "the Act") for acquisition of the land belonging to respondent No. 3, which is under his cultivation, for providing house sites to weaker sections. According to the petitioner, no enquiry whatsoever was conducted by respondent No. 1 before issuing Notification u/s 4(1) of the Act. Though the land under his cultivation is a wet land, the Draft Declaration issued u/s 6 of the Act mentions it to be a dry land. Respondent No. 4 had misled respondent No. 1 on this aspect. Though there is no urgency, respondent No. 1 invoking the urgency clause u/s 17 of the Act, dispensed with the enquiry u/s 5-A of the Act. The land is not suitable for providing house sites for it is located in the midst of other agricultural lands and one kilometer away from the village. It is stated that the petitioner being a small farmer is entitled to the benefits under the ASP. Charitable Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act") and he should be given priority over the purchase of the land under his cultivation if respondent No. 3 intends to sell or alienate. The acquisition of land in question, according to the petitioner, runs contrary to the orders issued by the Government in G.O. Ms. No. 363, Revenue (Endts-II) Department, dated 26-4-1999. It is stated that though there are other government lands available in the village, respondent No. 1 at the instance of respondent No. 4, issued the impugned Notification, seeking to acquire the land belonging to respondent No. 3, which is under cultivation of the petitioner, which is illegal and arbitrary.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition for respondent Nos. 1 and 2 and the learned Standing Counsel for respondent No. 3-Temple.

4. The learned counsel for the petitioner submits that the petitioner is a small farmer and a cultivating tenant of respondent No. 3 in an extent of Ac. 2-45 cents in Sy. No. 76/1, Kumarapriyam village, Pedapudi Mandal, East Godavari District, for more than three decades, and while so, respondent No. 1, on the basis of a resolution got passed by respondent No. 4, who is inimical to the petitioner, issued Notification u/s 4(1) of the Act, without conducting any proper enquiry and without issuing any notice to the petitioner, seeking to acquire the land belonging to respondent No. 3, which is under cultivation of the petitioner, which is illegal and arbitrary. The learned counsel for the petitioner in support of his contention that failure to issue notice to the occupant before seeking to acquire the land, vitiates the acquisition proceedings, placed reliance on the judgement of this Court in U.K. Murthy v. Government of A.P. 1997 (5) ALD 288.

5. The learned counsel for the petitioner further submitted that respondent No. 1 issued the impugned Notification without following the guidelines issued by the Government in G.O. Ms. No. 363, Revenue (Endt.II) Department, dated 26-4-1999, in relation to selection of lands belonging to Endowment Institutions, and they being executive instructions, respondent No. 1 was bound to follow. In support of his contention that the executive instructions issued by the Government in respect of acquisition of lands belonging to Charitable and

Endowment Institutions are binding on the authorities under the Land Acquisition Act, the learned counsel for the petitioner placed reliance on the judgement of the Full Bench of this Court in *Yadaiah v. Govt. of A.P.* 1983 (1) ALT 233.

6. The learned counsel for the petitioner submits that though the land under cultivation by the petitioner is wet land, in the Declaration issued u/s 6 of the Act, it is described as dry land, and though it is situate in the midst of other agricultural fields and one kilometer away from the village, and not suitable for providing house sites to weaker sections, but respondent No. 1, at the instance of respondent No. 4, in mala fide exercise of his powers, is bent upon acquiring the land. The learned counsel submits that though there are other poramboke lands belonging to the panchayat vacant in the village, the authorities without acquiring the said lands, are seeking to acquire the land belonging to respondent No. 3, which is under cultivation of the petitioner, which is not proper.

7. The learned counsel for the petitioner submits that though there is no urgency to acquire the land in question, respondent No. 1 invoking the urgency clause u/s 17 of the Act, dispensed with the enquiry u/s 5-A of the Act. In support of his submission that enquiry u/s 5-A of the Act cannot be dispensed with as a matter of course, the learned counsel placed reliance on the judgement of a Division Bench of this Court in *Church Missionary Society Vs. Government of Andhra Pradesh and Others*, . At any rate, the learned counsel for the petitioner relying on the provisions of Section 82 of the A.P. Charitable Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act"), submitted that petitioner being a tenant of respondent No. 3, should be given preferential right in the event respondent No.3 intends to alienate or sell the land belonging to it.

8. The learned Government Pleader for Land Acquisition for respondent Nos. 1 to 2 and the learned Standing Counsel for respondent No. 3 on instructions produced the file relating to the impugned acquisition and submitted that there is no Government land available in the village for acquisition for providing house sites to weaker sections, and therefore, respondent No. 1 sought to acquire the land belonging to a Charitable or an Endowment Institution, and upon identifying the land belonging to respondent No. 3, which is under the cultivation by the petitioner, issued the impugned Notification, seeking to acquire the land. The petitioner is merely a tenant of respondent No. 3, and he cannot claim to have better rights than what respondent No. 3 has. The petitioner being a tenant of respondent No. 4 and a person interested can claim his share of compensation in respect of the land under his cultivation, and at any rate, he cannot question the acquisition proceedings. In support of this submission, they placed reliance upon the judgement of this Court in *Bammidi Jagannayakulu and others Vs. District Collector, Srikakulam and others*, . They denied respondent No. 1 having issued the impugned Notification at the instance of respondent No. 4 and submitted that as the land is required for providing house sites to weaker sections and there being no other government vacant land available, respondent No. 1 had selected the land belonging to respondent No. 3, which is under cultivation of the

petitioner, and therefore, no mala fide exercise of power can be alleged against respondent No. 1. They submitted that invocation of urgency clause being subject to the subjective satisfaction of the Government, cannot be put to scrutiny before the Courts, and in support of this contention, they placed strong reliance on the judgement of the apex Court in *First Land Acquisition Collector v. Nirodhi Prakash Gangoli*, 2002 (2) Supreme 320. They thus prayed for dismissal of the writ petition.

9. Though the petitioner contends that respondent No. 1 had issued Notification u/s 4(1) of the Act without following the guidelines issued by the Government in G.O. Ms. No. 363 Revenue (Endts.II) Department, dated 26-4-1999, it may be noticed that said G.O. has been issued by the Government in supersession of G.O. Ms. No. 776, Revenue (Endt.II) Department, dated 9-5-1984, G.O. Ms. No. 444, Revenue (Endt.II) Department, dated 19-9-1995, and G.O. Ms. No. 456, Revenue (Endts.II) Department, dated 29-9-1995, mainly to speed up the procedure involved in acquiring the lands belonging to Charitable and Endowments Institutions through land acquisition for the purpose of providing house sites to weaker sections. The guidelines issued by the Government from time to time in the aforementioned superseded G.Os. and the present G.O. are purely executive instructions, not having any statutory force, and as such, are not enforceable. The question as to whether administrative instructions issued by the Government in exercise of their executive power, not backed by any statutory power, are enforceable or not, was considered by the apex Court in *J.R. Raghupathy and Others Vs. State of A.P. and Others*, , and it was held:

Even assuming that any breach of the guidelines was justiciable, and that the Government while accepting the recommendations of the Cabinet Sub Committee directed that the Mandal Headquarters should be at place "X" rather than place "Y" as recommended by the Collector concerned in a particular case, the utmost that the High Court could have done was to quash the impugned notification in a particular case and direct the Government to reconsider the question. There was no warrant for the High Court to have gone further and directed the shifting of the Mandal Headquarters to a particular place. The High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners. 10. In view of the aforementioned judgement of the apex Court, the contention of the petitioner that the impugned Notification is liable to be set aside for the reason that the same has been issued without following the guidelines issued by the Government in G.O. Ms. No. 363, dated 26-4-1999, cannot be accepted. It is pertinent to notice that a Division Bench of this Court in W.A. No. 904 of 1999, dated 26-7-1999, while considering the question of enforceability of the guidelines issued by the Government in G.O. Ms. No. 456, dated 29-9-1995, which stood superseded by G.O. Ms. No. 363, dated 26-4-1999, held thus:

The guidelines laid down in the G.O. are meant for the internal working of the

Government, and they cannot create any enforceable rights separately in the writ petitioners. The interests of the petitioners-appellants are properly taken care of by the State and that they will be entitled to appropriate compensation in accordance with law for possessing title, if they have any. 11. In the above view of the matter, reliance placed by the learned counsel for the petitioner on the judgement of the Full Bench of this Court in Yadaiah v. Govt. of A.P. 1983 (1) ALT 233 in support of his contention that executive instructions issued by the Government being binding, the authorities are bound to follow them in letter and spirit, is of no avail to him.

12. The contention of the petitioner that the impugned Notification is liable to be set aside having regard to the fact that no enquiry whatsoever was conducted before issuing the same, and the same has been issued by respondent No. 1 in mala fide exercise of his powers at the instance of respondent No. 4, is misplaced. Burden is heavy on the person who alleges mala fides. In E.P. Royappa Vs. State of Tamil Nadu and Another, , the apex Court while dealing with the allegations of mala fides, held thus:

The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. 13. In the instant case, the record produced by the respondents discloses that proposals for acquisition of the land in question were initiated in the year 1999 itself, but for one reason or the other the proposals could not materialize, and having regard to the policy of the Government to provide house sites to weaker sections, proposals were initiated again for acquisition of land, and during the course of enquiry, it was found by the Mandal Revenue Officer that except the land in question, belonging to respondent No. 3, there is no other government land vacant in the village that is suitable for providing house sites to weaker sections, and that the land in question is classified as "government dry" in the records, and is located adjacent to the road leading to Gandredu from Kumarapriyam village and is most suitable for providing house sites. On the basis of the report of the Mandal Revenue Officer, respondent No. 1 initiated the process to acquire the land belonging to respondent No. 3, and accordingly issued Notification u/s 4(1) of the Act and the Declaration u/s 6 of the Act and having regard to the urgency, dispensed with the enquiry u/s 5-A of the Act invoking the urgency clause u/s 17(1) and (4) of the Act. Inasmuch as the impugned acquisition Notification was preceded with an elaborate enquiry by the Mandal Revenue Officer, the contention of the petitioner that no enquiry whatsoever was conducted by respondent No. 1 before seeking to acquire the land belonging to respondent No. 3, which is under his cultivation, has no merit, and it cannot be said that respondent had exercised his powers mala fide at the instance of respondent No. 4, who is alleged to be inimical to the petitioner. The petitioner except making bald allegation of mala fide exercise of power by respondent No. 1 had not placed any material to prove such an allegation. On the other hand, the file placed by the respondents in relation of the acquisition

proceedings in question before the Court, suggests that respondent No. 1 had not acted mala fide at the instance of respondent No. 4, but proceeded to act on the basis of the reports submitted to him by his subordinates. Therefore, the plea of mala fide exercise of power by respondent No. 1 at the instance of respondent No. 4, has no merit, and is accordingly rejected.

14. Insofar as the contention of the petitioners that respondent No. 1 could not have dispensed with the enquiry u/s 5-A of the Act for there was no urgency, is concerned, it may be noticed that urgency of an acquisition is subject to the subjective satisfaction of the acquisition authority, and should be left to their discretion and decision, and it would not be proper on the part of the Court to go into the veracity or otherwise of the subjective satisfaction arrived at by the authority for invoking the emergency powers to dispense with the enquiry u/s 5-A of the Act, unless it is demonstrated that the decision to dispense with the enquiry had been taken without application of mind to the relevant factors. The apex Court in *First Land Acquisition Collector v. Nirodhi Prakash Gangoli* 2002 (2) Sup 320 while considering the question as to whether the Government was justified in invoking their powers u/s 17(1) and (4) of the Act to dispense with the enquiry u/s 5-A of the Act, held thus:

The question of urgency of an acquisition u/s 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers u/s 17(1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant facts or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and the decision of the concerned authority. If an order invoking power u/s 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind.

15. The petitioners except making bald assertions that there is no urgency to dispense with the enquiry u/s 5-A of the Act and that in spite of availability of other government land, respondent No. 1 at the instance of respondent No. 4, is seeking to acquire the land belonging to respondent No. 3, which is under his cultivation, has not placed any materials to prove that there was no urgency for dispensing with the enquiry u/s 5-A of the Act or there was other government land available in the village, which was suitable for providing house sites to weaker sections, and that in spite of availability of government land, which is suitable for providing house sites to weaker sections, respondent No. 1 at the instance of respondent No. 4, was bent upon acquiring the land belonging to respondent No. 3, which is under his cultivation. On the other hand, it is the

specific case of the respondents that the land is being acquired to implement the policy of the Government, namely to provide house sites to weaker sections. In the absence of any material produced by the petitioners to show that respondent No. 1 is seeking to acquire the land under cultivation of the petitioner at the instance of respondent No. 4, and has dispensed with the enquiry u/s 5-A of the Act, in spite of there being no urgency, no exception can be taken to the action of respondent No. 1 in dispensing with the enquiry u/s 5-A of the Act for acquisition of the land in question, and more so when it is neither pleaded or demonstrated by the petitioner that the decision to dispense with the enquiry u/s 5-A of the Act had been taken by respondent No. 1 without applying his mind to the facts of the case. In that view of the matter, reliance placed by the learned counsel for the petitioner on the judgement of this Court in Church Missionary Society Vs. Government of Andhra Pradesh and Others, in support of his contention that enquiry u/s 5-A cannot be resorted to as a matter of course, is of no avail to him, and more so when the said judgement did not take into consideration the effect of the judgement of the apex Court First Land Acquisition Collector v. Nirodhi Prakash Gangoli 2002 (2) Sup 320 on that aspect.

16. The petitioner, admittedly is a tenant of respondent No. 3, and he cannot claim to have better rights than what respondent No. 3 has, and at best, he being in possession of the land belonging to respondent No. 3 as a tenant, and person interested in the land, can claim his share of compensation, which may be awarded by the Land Acquisition Officer for acquisition thereof. This aspect of the matter was considered by a learned single Judge of this Court in Bammidi Jagannayakulu and others Vs. District Collector, Srikakulam and others, , wherein he held thus:

A tenant cannot have more rights than the owner. When the question of acquisition of land comes, if the owner cannot defeat the provisions of Land Acquisition Act can a tenant defeat such provisions? u/s 11 of the Tenancy Act change of ownership in lands which are under tenants is possible. So, by issuing a notification u/s 4 of the Land Acquisition Act, the State has expressed its intention to take the lands into their own ownership. Under the Land Acquisition Act, State can become the owner of any property provided the property is taken for a public purpose and after following the procedure laid down by the Land Acquisition Act. Change of ownership is not barred under the A.P. Tenancy Act, therefore, State can become owner of the land which are owned by landlords whether they are temples or private individuals. Once the land is taken in the ownership of the State, the A.P. Tenancy Act, 1956 becomes inoperative by virtue of Section 18 of the same Act. Section 18 of the Tenancy Act lays down that, nothing in the Tenancy Act shall apply to the lands owned by the State Government or the Central Government. Acquisition, per se, is not barred under the Tenancy Act. Change of ownership, is also not barred under the Tenancy Act. There cannot be any bar to the State Government to take the lands into its possession under the provisions of Land Acquisition Act which are in the possession of tenants at a particular point of time.

17. The petitioner being a tenant of respondent No. 3 and a person interested in the land belonging to respondent No. 5 by reason of his cultivation of the said land, can well seek his share of compensation that may be awarded by the Land Acquisition Officer in lieu of acquisition thereof, but he certainly cannot question the acquisition proceedings on mere technicalities.

18. The contention of the petitioner that no enquiry was conducted before seeking to acquire the land belonging to respondent No. 3, which is under his cultivation, cannot be accepted. The record produced by the respondents discloses that before proceeding to acquire the land in question, enquiry was conducted by the Mandal Revenue Officer, and after satisfying for himself that there was no government land available, under intimation to respondent No. 3, sought to acquire the land in question, and it cannot be said that the petitioner is not aware of the enquiry. Be that as it may, as observed supra, the petitioner being a tenant, can well seek his share of compensation, and therefore, he cannot have any grievance even if no notice was issued to him, and more so when the land is acquired for public purpose, namely allotment of house sites to weaker sections.

19. Insofar as the contention of the petitioner that in the event respondent No. 3 intends to alienate or sell the land, he should be given preference over others for purchase thereof, is concerned, it may be noticed that respondent No. 1 is seeking to acquire the land belonging to respondent No. 3 for the purpose of providing house sites to weaker sections in pursuance of the policy of the Government. It is not as if respondent No. 3 is alienating or selling the land belonging to it in favour of third parties on its own accord or volition. Had respondent No. 3 alienated or sold the land belonging to it in favour of third parties on its own accord or volition, then petitioner would have been justified in contending that he should be given priority over others in the purchase of the land. But that is not the case, in the instant case, respondent No. 3 is not selling the land on their own accord or volition, but the land belonging to them, is being compulsorily acquired by respondent No. 1 for providing house sites to weaker sections, under the provisions of the Land Acquisition Act, 1894, which is a special enactment. In that view of the matter, the contention of the petitioner that he is entitled to the benefits of Section 82 of the Endowments Act, has no merit.

20. The learned counsel for respondent No. 3-Temple submitted that respondent No. 1 is not paying the market value for the acquired land. Once the land belonging to a private individual or an endowment or a charitable institution is acquired by the Government invoking the provisions of the Land Acquisition Act, 1894, it goes without saying that that individual or endowment or charitable institution whose land is acquired, is entitled to compensation as per the market rate prevailing in the area. If respondent No. 1 is not paying compensation according to the prevailing market rate, it is always open to respondent No. 3-Temple to approach respondent No. 1, for appropriate compensation as per the

prevailing market value of the land.

21. The learned counsel for the petitioner submits that there is standing crop in the acquired land and he be permitted to harvest the same. If any standing crop is in existence in the acquired land, respondent No. 1 shall permit the petitioner to harvest the same.

22. In the result, the writ petition has no merit, and the same is accordingly dismissed.