
(2010) 06 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8983 of 2007

Kothapalli Subrahmanya Sastry, Kothapalli Satyanarayana
Murthy and Kothapalli Suryanarayana Murthy

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 5A, 6

Citation : (2010) 5 ALD 259 : (2010) 6 ALT 490

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Satyanarayana, for the Appellant; G.P. for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners are owners of land in survey No. 95 of Seepudi Village, Gudivada Mandal, Krishna District. The District Collector, Krishna, the 2nd respondent herein, published a notification, dated 03.06.2006, proposing to acquire Ac. 1.48 cents of land, for providing house sites to weaker sections. Enquiry u/s 5-A of the Land Acquisition Act, 1894 (for short "the Act") was dispensed with. The petitioners filed W.P. No. 11989 of 2006, challenging the notification. The writ petition was disposed of, on 15.09.2006, directing that, enquiry u/s 5-A of the Act be held. Enquiry was conducted, on 19.08.2006. It is stated that the decision of enquiry taken by the 2nd respondent was assailed by the petitioners by filing W.P. No. 1897 of 2006. The writ petition was disposed of on 15.09.2006, directing that the objections that may be submitted by the petitioners shall be taken into account and the decision taken by the 2nd respondent u/s 5-A of the Act shall be communicated to the petitioners.

2. The petitioners submitted detailed representations, raising several objections. The Land Acquisition Officer, the 3rd respondent herein, enquired into the same and submitted a report to the 2nd respondent. The latter, in turn, passed orders,

dated 24.01.2007, rejecting the objections raised by the petitioners. The same is challenged in this writ petition. It is urged that several important contentions, such as, the availability of Government lands in the village; non-suitability of the lands of the petitioners, for house sites; and the inclusion of ineligible persons in the list of beneficiaries, were not considered by the respondents.

3. On behalf of respondents, a counter-affidavit is filed. It is stated that, each and every objection raised by the petitioners was considered in detail, and a just and proper conclusion was arrived at. It is also pleaded that the petitioners are creating hurdles for acquisition, on one pretext, or the other.

4. Heard Sri S. Satyanarayana Prasad, learned Senior Counsel for the petitioners, and learned Government Pleader for Land Acquisition.

5. This is the third time, that the petitioners had to approach this Court, in the context of the proposals initiated for acquisition of their lands. It all started with the invocation of Section 17(4) of the Act, by the 2nd respondent, without properly verifying the matter. This Court, in the first occasion, directed that the enquiry u/s 5-A of the Act, be held. The second occasion was when the petitioners were said to have not been given adequate opportunity.

6. After conducting the enquiry, in detail, the 3rd respondent submitted a report to the 2nd respondent, on 20.12.2006. In the report, the objections raised by the petitioners were noted on the left side, and against each of the objection, the 3rd respondent offered his remarks. The 2nd respondent passed order, dated 24.01.2007, accepting the report submitted by the 3rd respondent.

7. This Court cannot sit as an Appellate Authority over the conclusions arrived at by the respondents. However, it can certainly scrutinize the decision making process and verify whether the required amount of fairness and objectivity was exhibited.

8. The petitioners stated that they made a request on 21.07.2006 to the Public Information Office of the District Collector, to provide information about the number of beneficiaries for the proposed acquisition. The 3rd respondent observed, "the petitioners paid registration fee of Rs. 10/- only and they did not pay the required amount of Rs. 2/- per page". Another contention of the petitioners was that large extent of Government land is available in and around Seepudi Village and that it would not be difficult to identify Ac. 1.50 cents of land for providing house sites. In his remarks, the 3rd respondent stated that in the village an extent of 105 acres of land is classified as "Government poramboke" and he enclosed a list, showing the status of those lands.

9. The petitioners pleaded that their's is double crop wet land, and it is substantially low-lying, and thereby, not suitable for house sites. It was also mentioned that, in case the land is put to non-agricultural use, agriculture in the surrounding lands will be adversely affected. The 3rd respondent admitted that the land is very low lying and needs levelling, to a height of three feet. He did

not even visualize the costs involved in raising the height of the entire land, by three feet, and the availability of the material, to fill it. It can easily be said that the cost of levelling itself would be more than the cost of the land.

10. On important aspect of the matter is that the petitioners raised a specific plea that the so-called beneficiaries are not eligible, and that, young and unmarried persons living with their parents were also identified as beneficiaries. Specific reference is made to some of the persons mentioned in the list that was furnished to them. The record does not disclose that the respondents have bestowed their attention to the said aspect.

11. This Court is conscious of the fact that it is the third round of litigation, even before the declaration u/s 6 of the Act is published. All the same, the laxity shown by the respondents in the matter of compulsory acquisition, cannot be countenanced. The very fact that the land is low-lying and needs levelling up to three feet is a matter, which ought to have invited serious attention of the respondents. The alleged irregularities in the list of beneficiaries, is another aspect.

12. The power conferred upon the appropriate Government in the matter of compulsory acquisition, is coupled with duty. Though he is the authority, to take final decision, whether or not to proceed with the acquisition, he is under obligation to consider each and every objection that is raised by the affected citizen. Mechanical approval of the remarks offered by the authority who conducted enquiry, cannot be treated as a proper and sound exercise of such an important power.

13. For the foregoing reasons, the Writ Petition is allowed and the proceedings, dated 24.01.2007, issued by the 2nd respondent, are set aside. He is directed to pass fresh orders, duly taking into account the various aspects, referred to above.

14. There shall be no order as costs.