

**(2012) 02 AP CK 0066**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 894 of 2011**

Kunapareddy Prasad and Others

APPELLANT

Vs

The District Collector, West Godavari District, Eluru and  
Others

RESPONDENT

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**Date of Decision :** 07-02-2012

**Acts Referred:**

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 4(1), 45, 5A, 5A(2), 5A(3)

**Citation :** (2012) 3 ALT 185

**Hon'ble Judges :** Sanjay Kumar, J; Madan B. Lokur, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Sanjay Kumar, J.—Section 5A of the Land Acquisition Act, 1894 guarantees a person interested in land sought to be acquired the right to object to such acquisition and to have his objections considered in accordance with the procedure prescribed therein. The appellants allege violation of this right during acquisition of their lands. Their challenge in this regard in Writ Petition No. 825 of 2009 was negatived by the learned single Judge and the writ petition was dismissed by order dated 11.04.2011. Hence, this appeal. Appellants 1 and 2 are the owners of an extent of Ac.3.20 cents of land in Survey No. 462/2 of Rustumbada Village, Narsapur Mandal, West Godavari District. Appellants 3 and 4 own an extent of Ac.6.40 cents in Survey Nos. 462/1 and 462/3 of the said village and a part thereof is said to have been leased to Appellants 1 and 2. These lands were proposed to be acquired for a public purpose under the provisions of the Land Acquisition Act, 1894 (hereinafter, "the Act"). Notification u/s 4(1) of the Act was approved on 18.05.2007 and was published in the West Godavari District Gazette on 25.05.2007. It was published in Indian Express and Gopi Krishna daily newspapers on 23.05.2007 and 22.05.2007 respectively. Public notice of the substance of the notification was given in the locality on 26.05.2007.

2. As the appellants complain of violation of the procedure prescribed u/s 5-A of the Act, it would be apposite to extract the provisions thereof:

5-A. Hearing of objections:- (1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days of causing public notice under the said sub-section, object to the acquisition of the land or of any land in the locality as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

3. u/s 5-A of the Act, as applicable in the State of Andhra Pradesh, persons interested in the lands sought to be acquired under the notification dated 18.05.2007 could therefore object to the same within 30 days of causing public notice of the said notification.

4. It may be noted that Section 5-A (3) makes it clear that for the purposes of the provision, a person shall be deemed to be interested in the land if he is entitled to claim an interest in compensation if the land is acquired. The fact that the name of the Appellant 2 did not find mention in the Section 4(1) notification is therefore of no significance in so far as her right to file objections u/s 5-A is concerned. In the light of Section 5-A (3), despite her name not figuring in the Section 4(1) notification, it would have been well within the right of Appellant 2 to file objections. Having failed to do so, she cannot make out a grievance that she was not named in the Section 4(1) notification and cite the same as a ground for not raising objections u/s 5-A of the Act.

5. There can be no dispute that Section 5-A of the Act confers a valuable and important right and that having regard to the provisions contained in Article 300-A of the Constitution, it has been held to be akin to a fundamental right *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*,

6. Reference in this regard may also be made to the observations of the Supreme Court in *Munshi Singh and Others Vs. Union of India (UOI)*,

7. Section 5-A embodies a very just and wholesome principle that a person

whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. .... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. ....

7. The Supreme Court again reiterated this principle in *Anand Singh and Another Vs. State of Uttar Pradesh and Others*, when it said that the right conferred by Section 5-A of the Act on the owner or the person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provisions for compulsory acquisition just and in conformity with the fundamental principles of natural justice.

8. The necessity of adhering to the procedure prescribed u/s 5-A therefore cannot be undermined. Needless to state, the Act being expropriatory in nature, its provisions should be strictly construed as it deprives a person of his land without consent [ *Mahender Pal and Others Vs. State of Haryana and Others*,

9. Applying the above principles to the case on hand, it has to be seen whether there is any infraction of the procedure prescribed in the provision by the authorities in so far as the appellants are concerned.

10. Admittedly, the appellants already approached this Court by way of Writ Petition Nos. 12580 and 12591 of 2007 challenging the notification u/s 4(1) of the Act. The said writ petitions are pending consideration. It is their case that while matters stood thus, the authorities issued the declaration in respect of their lands u/s 6 of the Act in Form 5-A dated 05.01.2009, which was published in the District Gazette on 07.01.2009 and in *Vaaritha* and *Ratna Garbha* daily newspapers on 12.01.2009 and 13.01.2009 respectively. They claim to have approached the authorities to enquire as to how the declaration was made without conducting an enquiry u/s 5-A of the Act. The Sub-Collector (presently, the Revenue Divisional Officer), Narsapur, West Godavari District, is said to have informed them that the District Collector, West Godavari, had rejected the objections received u/s 5-A of the Act under Order dated 24.12.2008. Having obtained a copy thereof, the appellants approached this Court by way of Writ Petition No. 825 of 2009, from which this appeal arises, complaining that no notice whatsoever had been issued to them with regard to the conduct of the enquiry u/s 5-A of the Act on 11.06.2007 as stated in the Order dated 24.12.2008. They therefore asserted that the Order dated 24.12.2008 was contrary to Section 5-A of the Act as it was passed without affording them an opportunity of hearing.

11. The Revenue Divisional Officer-cum-Land Acquisition Officer, Narsapur, West Godavari District, filed a counter in the writ petition detailing the steps taken under the Act for acquiring the subject lands along with other lands for the purpose of providing house sites to weaker sections. He stated that after public

notice was given of the notification u/s 4(1) of the Act, notice u/s 5-A of the Act was issued in Form-3 dated 26.05.2007 calling upon the persons interested in the lands to lodge their objections and to appear in person or through an authorised representative or pleader on 11.06.2007 at the Sub-Collector's Office, Narsapur, for enquiry into such objections.

12. Appellants 1 and 2 are said to have responded to this notice through the legal notice dated 08.06.2007, but they did not choose to appear at the enquiry on the stipulated date. The Revenue Divisional Officer stated that Appellants 3 and 4 neither filed objections nor attended the enquiry on 11.06.2007. He further stated that upon considering the objections received and after hearing the persons interested who presented themselves during the enquiry on 11.06.2007, the objections were rejected by the Collector under the Order dated 24.12.2008. In so far as the Section 5-A notice dated 26.05.2007 is concerned, the Revenue Divisional Officer reiterated that the same was served on the appellants and that in response thereto, a legal notice was received from Appellants 1 and 2, which was taken into consideration in the Order dated 24.12.2008.

13. Pertinent to note, the same averments were reiterated by the Revenue Divisional Officer, Narsapur, in the counter filed in this appeal. Significantly, the appellants did not choose to rebut these averments by way of a rejoinder, be it in the writ petition or in this appeal.

14. Sri K.Chidambaram, learned counsel for the appellants, would however assert that the statutory safeguards prescribed in the provision were thrown to the winds by the authorities. He argued that the appellants were entitled to be put on notice u/s 5-A of the Act and given an opportunity of hearing as required thereunder. He contended that the holding of an enquiry within the 30 days period stipulated in the provision was violative of the statutory requirement and the so-called enquiry held on 11.06.2007 could not therefore be said to be valid.

15. These arguments however did not find favour with the learned single Judge. Considering the scheme of the Act, the learned Judge opined that the same did not envisage any personal notice to persons interested for inviting objections to the proposed acquisition. The learned Judge further opined that as the appellants failed to submit their objections, they were not entitled to any personal notice as Section 5-A (2) of the Act required such personal notice to be given only to those who lodged their objections.

16. The view expressed by the learned Judge finds foundation in the language of the provision itself. Section 5-A(1) indicates that persons interested in any land notified for acquisition u/s 4(1) of the Act can object to such acquisition within 30 days from the causing of the public notice of such notification. At this stage, no personal notice to the persons interested is envisaged. Only after objections are received the Collector, u/s 5-A (2) of the Act, is required to give the objectors an opportunity of being heard in person or through an authorized representative/

pleader. It is only at this stage that the issuance of notice to the objectors arises.

17. Reference in this regard may be made to the Judgment of the Supreme Court in *State of Gujarat Vs. Panch of Nani Hamam's Pole and Others*, wherein the Supreme Court observed that once notice was given as provided in Section 4(1) of the Act itself, personal notice need not be given separately to the persons interested.

18. Again, in *Talson Real Estate Pvt. Ltd. Vs. State of Maharashtra and Others*, the Supreme Court observed that service of notice in terms of Section 45 of the Act is not envisaged in cases where no obligation is cast upon the authorities to issue notice to the persons interested. The Court held that neither Section 4 nor Section 5-A of the Act contemplate personal notice to the persons interested other than the objectors for the purpose of conducting enquiry u/s 5-A of the Act. The Court further observed that the provisions of Section 5-A of the Act would be attracted only when a person interested in the land notified for acquisition makes his objections in writing to the Collector and pointed out that once a party did not choose to file objections u/s 5-A of the Act, he could not thereafter contend that the enquiry was bad.

19. Learned Government Pleader for Land Acquisition placed before us the original record pertaining to the subject acquisition. In so far as the Section 5-A notice dated 26.05.2007 is concerned, perusal thereof reflects that the same was not only to be duly published in the manner prescribed but was also to be served upon the land owners. Appellants 1, 3 and 4 find mention in this notice and the signatures of Appellants 1 and 3 appear on the back of this notice, in proof of their having received the same. This notice spelt out that objections were to be lodged within the time stipulated and that an enquiry would be held on 11.06.2007 at the Sub-Collector's Office, Narsapur. The objectors were given the liberty to appear in person or through an authorised representative or pleader on the said date to adduce oral or documentary evidence in support of their objections. This notice therefore went beyond the statutory requirement as the persons interested, whose names found mention in the Section 4(1) notification, were also given personal notice calling upon them to file their objections in addition to giving them the opportunity of personal hearing posited by Section 5-A (2).

20. Sri K.Chidambaram, learned counsel, would however deny the receipt of this notice by his clients. Per contra, learned Government Pleader would assert that the registered legal notice dated 08.06.2007 received from Appellants 1 and 2 was in response thereto. The legal notice received from Appellants 1 and 2 forms part of the original record but unfortunately, it does not shed light upon this controversy as no reference is made therein to the Section 5-A notice. It may however be noted that it has been the consistent stand of the respondent authorities, as is demonstrated by the counters filed in the writ petition and again in this appeal, that this Section 5-A notice dated 26.05.2007 was served upon the appellants. Significantly, the appellants chose not to rebut the same.

Their silence in this regard, coupled with the fact that the signatures of Appellants 1 and 3 on the rear of the original notice are found to be similar to those in the vakalats filed in these proceedings, clearly establishes that Appellants 1 and 3 did, in fact, receive the Section 5-A notice. Consequently, their failure in filing objections and appearing in person at the enquiry must weigh against them. In the light of the observations of the Supreme Court in TALSON REAL ESTATE (P) LTD., they cannot now be permitted, despite their studied inaction, to turn around and attack the acquisition proceedings on the ground that there was violation of the procedure prescribed u/s 5-A of the Act.

21. As regards the holding of the enquiry on 11.06.2007, it may be noticed that Section 5-A (2) does not posit any time stipulation with regard to when the opportunity should be given to the objectors for being heard in person or through Advocate. All that is required is that 30 days time should be allowed in this regard from the date of causing public notice of the notification u/s 4(1) of the Act. It is not the case of the appellants that the District Collector, West Godavari, passed orders u/s 5-A (2) of the Act within this stipulated period of 30 days. The Order of the District Collector, West Godavari, u/s 5-A (2) is dated 24.12.2008, long after the expiry of the prescribed 30 days period, and the legal notice dated 08.06.2007 of Appellants 1 and 2 was also given due consideration therein. It is not the case of the appellants that after the enquiry was held on 11.06.2007, they approached the authorities at any point of time seeking to be personally heard in the matter and were turned away. They can therefore have no genuine complaint about the Section 5-A enquiry being held by the District Collector within the 30 days period. On facts, holding of the enquiry by the District Collector, West Godavari, on 11.06.2007 does not demonstrate any violation of Section 5-A of the Act in so far as the appellants are concerned.

22. We therefore find no error in the order passed by the learned single Judge warranting interference in this appeal. The Writ Appeal is devoid of merit and is accordingly dismissed. In consequence, WAMP No. 2053 of 2011 is also dismissed. Interim Orders shall stand vacated. No costs.