
(2006) 11 AP CK 0036
In the Andhra Pradesh High Court
Case No : Writ Petition No. 10215 of 2005

M. Anjaiah

APPELLANT

Vs

The Government of A.P. and Others

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 23, 30, 31(2), 31(3), 31(4)

Citation : (2007) 1 ALD 211 : (2007) 2 ALT 697

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—The State and the respondents' denial, to allot alternative land to the petitioner and seeking a direction that the respondents 1 and 2 allot him alternative land, and a declaration that the 5th respondent's memo No. C/1669/96 dated.25-01-2003 is illegal and arbitrary, is the grievance and reliefs sought in this writ petition.

2. The petitioner's grievance, culminating in this writ petition and in the several proceedings leading to it has had a meandering course. The facts:

The petitioner was the owner of a property bearing D. No. 13/6/790 including a residential house in 400 square yards and a sawmill in 514 square yards at Sangam, Langar House, Gudimalkapur, Golkonda Mandal, Hyderabad. A draft notification u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") dated 14-11-1996 proposed acquisition of 6766 square meters, including 914 square yards (equivalent 764.10 square meters) of the petitioner's land aforementioned. The declaration u/s 6 was published on 09-12-1997. Questioning the acquisition proceedings, the petitioner filed W.P. No. 751 of 1998. Stay of dispossession was granted by an interim order of this Court

dated.12-01-1998 in W.P.M.P. No. 848 of 1998. The stay was thereafter made absolute on 09-11-1999. Pending the writ petition the 3rd respondent called upon the petitioner to submit an application for allotment of alternative land. Responding to this the petitioner submitted a representation dated. 10-02-2000 requesting provision of an alternative Government land in the same locality.

3. Pursuant to the petitioner's application, the 3rd respondent in a letter No. D-4/2939/96, dated.10-02-2000 directed the 6th respondent to identify 500 square yards of Government land in the same locality from the surplus land available and to send up proposals along with a sketch, to enable allotment of alternative Government land in the same locality to the petitioner, at an early date. The 6th respondent submitted the report in his letter No. C/337/94, dated.22-07-2002 to the 4th respondent. This report stated that an extent of 9604 square meters of patta land in T.S. No. 6/1,3,4,7 to 11, 13/1,15/1 and 16/2 of Guddimalkapur village was acquired for development of Bapughat; that at the time of acquisition the petitioner was the owner of 914 square yards, had filed a writ petition and obtained an interim stay; that an extent of Ac.2.24 gts, in Sy. No. 173 and Ac.17.25 guntas of Government poramboke land at Ibrahimbagh village was available and it was proposed to be exchanged with defence land in lieu of the land taken over in T.S. No. 3 of Guddimalkapur village. The 6th respondent sought issuance of necessary orders.

4. On receiving the report dated.22-07-2002, the 4th respondent submitted proposals in a letter No. G/13069/98 dated.07-8-2002 to the 2nd respondent, recommending that in the circumstances alternative site be allotted to the petitioner from out of Ac.20.19 guntas of vacant Government land of Ibrahimbagh village, Golkonda mandal, while retaining the remaining land for allotment to Defence authorities in lieu of the Defence land acquired for the Bapughat.

5. Noticing the above development, W.P. No. 751 of 1998 was disposed of by a learned single Judge of this Court by an order dated.02-12-2002 with the following observations:

In view of the same, when once the authorities have agreed to allot alternative site, this Court is not inclined to go into the validity or otherwise of the impugned notification issued. However, if the authorities fail honour the commitment, namely, allotting alternative site equivalent to the land acquired by the respondent, it is open for the petitioner to question the same before the appropriate forum. This Court hopes that the District Collector will consider the case of the petitioner as recommended by the Revenue Divisional Officer, Hyderabad Division, dated.07-08-2002, quietus to the litigation, within two months from the date of receipt of a copy of the Order.

6. On 25-01-2003 the 5th respondent issued the following memo:

In pursuance of the Orders of the Hon"ble High Court dated.2-12-2002 in this specific case for allotment of alternative land in lieu of land acquired to an extent

of 914 square yards in T.S. No. 6/1 of Guiddimalkapur village, Hyderabad and the application of Sri M.Anjaiah son of Mallaiah dated.19-07-2002. The Revenue Divisional Officer Hyderabad requested the Collector Hyderabad to consider the allotment of alternative land dated.7-8-2002 is verified with reference to the provisions of the LA Act,1894 and amended Act 1984 and Award proceedings No. C1/669/96 dated.1-2-20020 of LA(Ben) Hyderabad. The court in its judgment only taking the cognisance of the recommendations of the RDO has disposed the writ petition directing the respondents to consider the plea of the petitioner. On perusal of the Award proceedings, the land of the petitioner was acquired on par with 24 other awardees and matter was referred to the Civil Court u/s 30 & 31(2) of the LA Act and amount of compensation to the extent of acquired land held by them including the writ petitioner was deposited in the Civil Court u/s 31(2) of LA for adjudication.

As there is no provision in the LA Act for providing alternative land in lieu of the land acquired and this instant case can be precedent to all other LA cases to come up with the same plea therefore needs no consideration and accordingly his request for providing alternative land is rejected.

7. On 01-02-2003 as the officers from the Offices of respondents 2 to 6 inspected the petitioner's premises; had informed him that he would be dispossessed and without allotting alternative land, the petitioner filed W.P. No. 2098 of 2003 challenging the memo dated.25-01-2003 and seeking a direction to the respondents 2 to 6 not to dispossess him till alternative land is provided. On 04-12-2003 the petitioner was dispossessed and the constructions on the property were demolished. The petitioner therefore withdrew W.P. No. 2098 of 2003 (vide order of this Court dated.04-02-2003) preserving liberty to file a fresh writ petition. Thereafter, on 01-02-2003 the petitioner submitted another representation to the 2nd respondent to allot him alternative land. There was no response to this representation either. The petitioner thereupon filed this writ petition.

8. In Para.4 of the affidavit accompanying this writ petition the petitioner pleads that the 1st respondent had issued an order in G.O.Ms. No. 678 dated.17-10-2001 allotting alternative lands of a total extent of 1871 square meters in T.S. No. 2, Block-A, Ward No. 9, Shaikpet village and Mandal in favour of one Lt.Col. D.N.Sarma and Dr.Vikram Sarma (hereinafter the Sarmas)in lieu of acquisition of their plot Nos. 13-06-785/A/10 & 11 at Sangam, which also were acquired for the development of Bapughat and that the allotment was after withdrawing the amount of compensation earlier deposited in O.P. No. 9/97 (in favour of the Sarmas). The petitioner specifically alleges hostile discrimination and unequal treatment qua the Sarmas.

9. Earlier, on 31.1.2003, the petitioner submitted a representation to the 2nd respondent stating all the facts and reiterating his request for allotment of alternative land and requesting that till such allotment he be not dispossessed. In para (6) of his representation, the petitioner specifically stated that 1871

sq.mts, (equivalent to 2100 sq.yds) in T.S. No. 2/A, Ward No. 9, Shaikpet village was allotted to the Sarmas in lieu of their plot which was acquired by the Government, also for development of the Bapughat.

10. By the judgment dated 1.2.2006, this writ petition was dismissed by a learned Single Judge of this Court, noticing that by the date of disposal of the petitioner's earlier W.P. No. 751 of 1998 (on 2.12.2002) an award was passed determining the compensation payable to the petitioner. The learned Single Judge held that Section 23 of the Land Acquisition Act, 1894 (for short "the Act") does not require providing of an alternative site/land in lieu of property acquired and that when compensation was fixed in accordance with the provisions of the Act, no Mandamus could be issued to the respondents to provide an alternative site in lieu of compensation.

11. Aggrieved thereby, the petitioner preferred W.A. No. 172 of 2006. This appeal was allowed by a learned Division Bench of this Court by the judgment dated 17.2.2006. In allowing the appeal, the Division Bench concluded that the concept of providing alternative land to a person interested, in lieu of his land acquired is not alien to the Act and Section 31 (3) and (4) do provide for such an alternative to compensation. Relying on the observations of the Supreme Court in State of U.P. Vs. Smt. Pista Devi and Others, ; the provisions of the Nagarjunasagar Project (Acquisition of land) Act 1956; the Visakhapatnam Steel Project (Acquisition of land) Act, 1972 and other decisions, the Bench held that the power to grant alternative land was available not only before the passing of an award but thereafter too. The learned Division Bench also recorded a conclusion that the impugned memo of the 5th respondent (dated 25.1.2003) was passed on a misconception of law that there was no provision in the Act for granting alternative land in lieu of compensation. The Division Bench also held that the respondents having induced the disposal of W.P. No. 751 of 1998 by the order dated 2.12.2002, on the basis of proposals made for grant of alternative land to the petitioner, cannot consistent with just, legal and equitable conduct resile from that stand (to provide alternative land). Dealing with the issue of allotment of alternative land to the Sarmas and denial (of equal treatment) to the petitioner, the Division Bench observed that in respect of acquisition for the same purpose, the State had provided alternative land to some individuals even after the award of the land acquisition officer and deposit of compensation amount into the court; that the petitioner is similarly circumstanced and there was therefore no prima facie justification for a differential treatment and without any explicable or justifiable reasons for marking out such distinction. The Bench also observed that whether the doctrine of estoppel would apply against the respondents must also be considered. Accordingly, the appeal was allowed; the order dismissing this writ petition was set aside and the writ petition remanded for adjudication afresh.

12. Prior to the earlier dismissal of this writ petition (by the judgment of the learned single Judge dated.01-02-2006), a counter-affidavit was filed by the 5th

respondent. To the extent relevant and material, the 5th respondent's counter dated.30-06-2005 asserts (at para.7) that the 2nd respondent/District Collector by his letter dated.18-01-2003 declined allotment of alternate land to the writ petitioner and rejected the proposals sent by the 4th respondent in his letter dated.07-08-2002 and therefore the memo impugned in this writ petition was issued. This counter-affidavit reiterates the misconception in the impugned memo that there is no provision in the Act to allot alternative land and that the petitioner could only receive the compensation already determined. The 5th respondent denied that a promise or commitment was made to allot alternative land to the petitioner. This counter-affidavit is silent and unresponsive to the petitioner's plea of hostile discrimination and unequal treatment vis--vis the Sarmas".

13. On 06-09-2006 the Special Chief Secretary to the Government, Revenue Department has filed a counter, on behalf of the 1st respondent. This affidavit is filed in response to an order of this Court dated.24-08-2006, wherein this Court directed the respondent Nos. 1 and 2, inter alia to file an affidavit specifying the circumstances in which prima facie different parameters were adopted in the exercise of executive discretion regarding in the matter of alternative land to the Sarma's while denying similar treatment to the petitioner and clearly pointing out that the counter-affidavit of the 5th respondent was vague non-responsive and callous in the context of the allegations of discrimination pleaded by the petitioner.

14. The 1st respondent's counter-affidavit states that during the course of the award enquiry the Sarmas" (father and son) submitted a claim petition before the 5th respondent on 21-01-1995 requesting release of compensation at Rs. 3,000/- per square metre so as to purchase alternate land. The Sarmas" earlier participated in the enquiry u/s 5-A of the Act and pleaded that they purchased 2001 square yards in 1990 and claimed compensation at Rs. 3000/- per square yard while alternatively requesting allotment of an equal area of land and additional compensation for the structures and a well in existence, in the land under acquisition. An award was passed on 30-03-1996 fixing the compensation at Rs. 300/- per square yard. The 5th respondent invoked the power u/s 30 of the Act and referred the matter to the Civil Court as the Sarmas" were not declared as non-surplus holders by the Urban Land Ceiling Authorities. The counter-affidavit states that the matter is pending before the Civil Court. While so proposals emanated from the Office of the Collector, Hyderabad requesting the Government to provide alternate land instead of cash compensation vide the letter of the Collector dated.25-10-1996. The State Government considering the facts before it and in view of the services rendered by Lt.Col. D.N. Sarma as an Army Officer, issued G.O.Ms. No. 678, Revenue Department dated.17-11-2001 allotting land in an extent of 1871 square meters (2100 square yards) in T.S. No. 2, Block No. A, Ward No. 9, Shaikpet Mandal, Hyderabad in lieu of compensation payable to the Sarmas" (father and son). The Land Acquisition Officer was directed to withdraw the compensation deposited in O.P. No. 9 of 1997. The

counter-affidavit states that the case of the petitioner cannot be equated with that of the Sarmas as he had never sought alternative land during the course of the Award enquiry or at any point of time prior to the passing of the award.

15. In paragraph.7 of the 1st respondent's counter-affidavit, it is pleaded as under:

It is submitted that the Government once again issued Notification u/s 4(1) of the Act for acquiring land admeasuring 6184 sq.mtrs for the purpose of developing Bapughat Memorial situated at Langer House, Hyderabad wherein the name of the petitioner is reflected at Sl. No. 11. It is submitted that the petitioner has participated in the Award enquiry filing his claim to an extent of land admeasuring 914.00 Sq.Yards. As per the Claim Statement, he was the tenant of the said land and subsequently he entered into an agreement of sale on 10-08-1994 with Mahanth Bharat Das, Chela of Mahant Ram Ratan Das and also claimed that he paid entire sale consideration and obtained possession. It is submitted that the Endowments Department, through the Assistant Commissioner, Endowments Department, Hyderabad also submitted its claim in respect of the entire property claiming that the land belonging to the Sri Ramachandra Mutt. The Land Acquisition Officer taking into consideration of the claims and rival claims of the respective parties and also keeping in view of the interest of the Endowments Department referred the matter to the Civil Court u/s 30 of the Act. He passed Award vide proceedings No. C1/669/1996, dated.1.2.2000 fixing the market value at the rate of Rs. 450/- per square yard and determined the compensation accordingly and deposited the same to the credit of O.P. No. 20/2000 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad. It is submitted that the petitioner herein did not seek any alternative land during the course of Award enquiry nor made any specific request when the Award was passed as stated above. Further the title of the petitioner is under dispute. Therefore, the petitioner cannot equate his claim for alternative land with Lt.Col. D.N. Sharma and his son Vikran Sharma. The request of the petitioner cannot therefore be considered. Accordingly the writ petition deserves no merits and liable to be dismissed.

16. It requires to be noticed that the averment in Para.7 of the counter- affidavit (supra) that the Endowments Department had submitted its claim in respect of "entire property" claiming that the land belonged to Sri Ramachandra Mutt, does not clarify whether the claim of the Endowments Department is in respect of the entire property which was acquired for the Bapughat Memorial including the land of the Sarmas or is only in respect of the land of the petitioner, of an extent of 914 square yards.

17. The 1st respondent in paragraph No. 6 of his counter-affidavit tried to distinguish between the case of the petitioner vis--vis, the case of the Sarmas on the ground that the petitioner did not seek alternative land during the course of the Award enquiry or at any time prior to the passing of the Award. This contention is misleading in substance. Questioning the acquisition proceedings

and immediately on the publication of the draft declaration u/s 6 of the Act, the petitioner had filed W.P. No. 751 of 1998 and a stay of dispossession was granted by an interim order of this Court dated.12-01-1998. During the pendency of W.P.751 of 1998 itself the 3rd respondent called upon the petitioner to submit an application for allotment of alternative land and the petitioner submitted a representation on 10-02-2000. The 3rd respondent by his letter dated.10-02-2000 directed the 6th respondent to identify Government land in the same locality and sent up a proposal to enable allotment of alternative Government land to the petitioner and the 6th respondent submitted the report in his letter dated.22-07-2002 to the 4th respondent. The 4th respondent then submitted proposals in his letter dated.07-08-2002 to the 2nd respondent recommending allotment of alternative land to the petitioner from out of the vacant land in Ibrahimbagh village, Golkonda Mandal. It was on noticing the above developments that W.P.751 of 1998 was disposed of by this Court by the order dated.02-12-2002. The petitioner's challenge to the acquisition proceedings was therefore not adjudicated by this Court on the basis of the assurance processed by and on behalf of the State for providing an alternative site to him. Since the petitioner's request for alternative land was processed and the process initiated as early as in February-2000, either just prior to or around the time the award was passed (on 01-02-2000), the contention of the 1st respondent that the petitioner did not lodge a claim for alternative land before the Award enquiry or prior to passing of the award, is a contention that is both a non sequitor and misconceived. The State and the State authorities, were truly and clearly aware that the petitioner was insisting for allotment of alternative land in lieu of compensation and that he had challenged the very authority of the acquisition proceedings. In any event the passing of the Award during the pendency of W.P. No. 751 of 1998 was a decision pendente lite in view of the circumstance that W.P. No. 751 of 1998 which had challenged the very authority of the acquisition proceedings was pending. Moreover there is no legal requirement that a claim for alternative land should be lodged during the Award enquiry.

18. In Para.8 of the counter-affidavit dated.06-09-2006 the 1st respondent reiterates that the petitioner was not discriminated vis--vis the Sarmas; that the case of the Sarmas is different from the petitioner; and that each case was considered on its own facts.

19. Since the petitioner presents a specific case of hostile discrimination and unequal treatment (vis- -vis the decision of the State Government to allot alternative site to the Sarmas while denying similar treatment to him), this Court will now examine the context in which the Sarmas were allotted the alternative land:

1) From the several representations of the Sarmas in the note file and record of the State Government relating to the eventual allotment of land to the Sarmas, the following relevant facts emerge:

The administrative process:

a) Lt. Col. D.N. Sarma ("the father Sarma") was an Army Officer, who retired in 1990 on medical grounds. Earlier he worked as an ADC to the Governor of A.P during early 1970s. He settled down in Hyderabad after retirement. He purchased a plot of 929.03 Sq.Mts. at Sangam, Langer House, Hyderabad while his son Dr. Vikram Sarma ("the son Sarma") purchased the adjacent plot of an extent of 942.065 Sq.Mts.

b) Initiating proceedings under the Act the State acquired these properties during 1994-95 for the Bapu Ghat development (just as the State acquired the writ petitioner's land).

c) On 17.3.97 the father Sarma represented to the State that the award is being finalized for payment of compensation; they are not willing to accept the compensation; and they seek allotment of alternative land. The Sarmas also represented that the father Sarma was deriving an income of Rs. 6,000/- pm, from leasing out the land to a Gas agency which income was lost on account of the acquisition; that there are numerous instances of the Government having granted alternative land on acquisition of property; and that as the total extent of land acquired is 2100 Sq.Yds of an approximate value of Rs. 7,00,000/-, the State should allot two plots equal in size to the acquired plots and if the value of the allotted plots is more, the Sarmas are willing to pay the difference in value.

2) On 30.3.1996 Award No. C/630/1994 was passed awarding compensation (to the Sarmas) @ Rs. 300 per Sq.Yd. The LAO however referred the matter to the Civil Court since the Sarmas were having land in excess of the urban land ceiling limit. According to the affidavit of the Special Chief Secretary dated 6.9.2006, this issue is pending adjudication before the I Senior Civil Judge, CCC, Hyderabad (para-5).

3) After passing of the award (on 30.3.96), in response to a representation of the Sarmas dated 2.9.96, the 2nd respondent by the letter dated 25.10.96 addressed the Commissioner of Land Revenue seeking instructions on the representation of the Sarmas for allotment of alternative land. By the Memo No. 68453/ASSN.III(2)/96-2, dated 26.4.1997 the State Government indicated its "in principle" agreement for allotment of alternative land and called upon the 2nd respondent to send the necessary proposals regarding suitable alternative land (more than an year after the award was passed and the compensation deposited in the Civil Court).

4) On 22.4.1998 the 2nd respondent-Collector, responding to the 1st respondent's memo dated 26.4.97, sent up proposals for allotment of alternative land (in an extent of 1871 Sq.Mts. in TS No. 2, Block-A, Ward-9, Shaikpet village) in favour of the father Sarma. The Collector also stated that the award dated 30.3.96 was passed for Rs. 6,69,507/- and the market value of the land now recommended for providing to the Sarmas is valued at Rs. 46,77,500 @ Rs. 2500 per Sq.Yd.

5) Though the proposals of the District Collector were addressed only to the State Government, within three days from the date of the Collector's proposals the Sarmas submitted a representation to the Special Chief Secretary and Commissioner of Land Revenue on 25.4.1998, that the lands proposed by the Collector for allotment to them were of the same value as the acquired lands, therefore they should be allotted the same extent as was acquired. Within four days from the date of the representation dated 25.4.98 of the Sarmas, the Special Chief Secretary and Commissioner of Land Revenue addressed the District Collector on the valuation of the lands acquired vis--vis, the land proposed to be allotted. Responding to the directive of the Special Chief Secretary dated 29.4.98, the District Collector on 21.5.98 addressed the Special Chief Secretary stating that in view of the award already passed the value of the acquired land be taken as Rs. 300/- per Sq.Yd and the value of the land proposed for allotment be taken as Rs. 1050 per Sq.Yd. No copy of the District Collector's letter dated 21.5.98 is marked to the Sarmas.

6) However, within five days of the District Collector's letter dated 21.5.98 to the Special Chief Secretary, the Sarmas addressed another letter dated 26.5.1998 to the Special Chief Secretary setting out elaborate pleadings. The contents of this letter disclose a clear knowledge by the Sarmas of the entirety of the contents of the Collector's letter dated 21.5.98 addressed exclusively to the Special Chief Secretary. Suffice it to record that the Sarmas represented for allotment of an equal extent of land in the area proposed without having to pay any extra amount. The letter of the Sarmas dated 26.5.98 appears to have been referred to the District Collector for a report on the comparative values. The District Collector thereupon, after obtaining a report from the MRO, Shaikpet, addressed a letter dated 20.6.1998 to the Special Chief Secretary stating that the value of the proposed land was Rs. 500 per Sq.Yd during September 1993 to March 1995.

7) Hardly within a week from the date of the District Collector's letter dated 20.6.98 to the Special Chief Secretary, the Sarmas sent up another letter dated 4.7.98 to the Special Chief Secretary seeking equal measure of land for the land acquired, without the liability to pay any additional amount to the State and asserting that they are willing to forego the value of the structures on the land acquired. From the sequence of the correspondence above it is reasonable to infer that the Sarmas were within the information loop regarding all the discussions and consultations that took place between the District Collector, Hyderabad and the Special Chief Secretary and Commissioner of Land Revenue, clearly an exclusive privilege to which perhaps ordinary mortals like the petitioner are denied access.

8) By the letter dated 15.7.98 the Special Chief Secretary and Commissioner of Land Revenue addressed the 1st respondent to take a decision on the allotment of alternative land to the Sarmas.

9) On 8.1.1991 the Government addressed a memo directing the 2nd respondent to inform the Government as to the present status of the reference (made by the

LAO) u/s 30 of the Act to the Civil Court and also to inform whether the alternative land proposed for allotment to the Sarmas is free from encroachment and claim from private individuals. The District Collector was directed to treat the matter as "Most Important and Urgent".

10) On 22.2.1999 the 2nd respondent addressed the 1st respondent informing that as the acquired land (of the Sarmas) attracts the provisions of the Urban Land (Ceiling and Regulation) Act 1976, the LAO has passed the award under the Act and referred the matter to the Civil Court u/s 30 and that the compensation amount has also been deposited before the Civil Court u/s 31(2) in OP No. 9/97; and that the alternative land proposed is free from encroachment or claims by private individuals. On 31.5.99 the Sarmas addressed the 1st respondent on the issue of price fixation of the alternative land proposed for allotment to them. This letter discloses that the Sarmas have a continuous and uninterrupted access to all the correspondence between the Collector and the Commissioner of Land Revenue.

11) On 3.7.99 the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad ("the Special Officer") addressed a letter to the 1st respondent. This letter was in response to the representations of the Sarmas dated 17.4.99 seeking issuance of a NOC in respect of their acquired lands. The Special officer informed the 1st respondent that the final computation under the Ceiling Act is yet to be finalized and that as the land is also earmarked as a recreational use zone for park and play ground, as per the notification by the HUDA, that issue should also be considered while determining the ceiling case and that the request of the Sarmas for allotment of alternative land be considered in the above circumstances.

12) On 4.4.2000 the Sarmas represented to the Hon'ble Revenue Minister expressing gratitude for agreeing to give alternative land and requesting that final approval be accorded for the allotment.

13) On 14.7.2000 the 1st respondent in a memo bearing Reference No. 68453/ Assn.III/1/96-4 directed the 2nd respondent to take action for payment of compensation to the Sarmas in accordance with the award of the LAO, instead of giving alternative land. This decision was also conveyed to the Sarmas.

14) On 25.7.2000 the Sarmas represented to the Hon'ble Chief Minister. This letter states that the "then Revenue Minister" had accepted the proposal for allotment of alternative land; the proposal was duly processed and recommended from the Collector onwards through various departments; that the earlier Chief Secretary had objected to the proposal and only compensation should be paid; that however the later Revenue Minister had approved the proposal for alternative land allotment; and therefore the Hon'ble Chief Minister may approve the alternative land as proposed. The Sarmas alternatively sought denotification of the earlier notification for acquisition or payment of compensation at current market value instead of as an 1994.

15) The Sarmas on 5.7.2000 addressed the Governor of A.P to consider their request for allotment of alternative land. On 2.8.2000 the Principal Secretary to the Governor addressed the Chief Secretary to the Government, forwarding the representation of the Sarmas and recommending that since the father Sarma is a war victim the Government should consider his case favourably.

16) On 3.8.2000 the Chief Secretary ordered expeditious action on the letter dated 2.8.2000.

17) On 5.9.2000 a letter dated 4.9.2000 from the office of the Chief Minister was received by the 1st respondent with a noting that the Chief Minister desires that the request of the Sarmas for allotment of alternative land be processed and the file circulated.

18) On 7.12.2000 the Sarmas addressed the 1st respondent requesting that while working out the value of the acquired property the value of the structures on the land should also be considered. (contrary to their letter dated 4.7.1998)

19) Thereafter, it would appear from the record, the Council of Ministers approved the proposal for providing alternative land of an extent of 2100 square yards in TS No. 2, Block-A, Ward-9, Shaikpet village in favour of Sarmas, in relaxation of the ban orders issued in G.O.Ms. No. 634 Revenue Department, dated 2.7.1990.

20) Under G.O. Ms. No. 678 Revenue Department Dt. 17.10.2001 the 1st respondent, (rescinding the earlier orders in Government Memo dated 14.7.2000), allotted land in an extent of 1871 Sq.Mts to the Sarmas and directed the 2nd respondent to withdraw the amount of compensation deposited in OP No. 91/97 on the file of the I Additional Judge, CCC, Hyderabad, duly bringing to the notice of the court that the Government has allotted land in lieu of cash compensation. The 2nd respondent was also directed to ensure handing over of the land to the Sarmas after withdrawing the compensation deposited into the court and to credit it to the Government Account.

21) On 19.4.2002, the 2nd respondent addressed a letter to the 1st respondent stating that while the value of the Sarmas' land acquired is Rs. 6,87,201 the value of the alternative land proposed for allotment to them is Rs. 22,05,000 (as per the basic Value Register); that there is a vast difference in the land values and the 1st respondent should clarify whether the difference amount of Rs. 15,17,799 should be collected from the Sarmas. On 15.4.2002 the Sarmas represented to the Hon''ble Minister for Revenue for expeditious handing over of the alternative land. The then Hon''ble Minister for Revenue on 1.5.2002 directed expeditious implementation of the Orders in G.O. Ms. No. 678.

22) On 5.6.2002 the Sarmas represented to the 1st respondent not to charge the difference in amount from them and to hand over the land. On 27.11.2002 the Sarmas again represented to the Hon''ble Minister for Revenue complaining of the delay in handing over of the alternative land and seeking amendment to

Clause-8 of G.O. Ms. No. 678 (with regard to withdrawal of compensation amount deposited in the court, before handing over the land).

23) On 3.12.2002 the then Hon"ble Minister for Revenue directed the 1st respondent to expedite the process of considering the request of Sarmas. Eventually the 1st respondent issued G.O. Ms. No. 714 Revenue Department dated 23.6.2003, deleting Para-8 in G.O.Ms. No. 678.

The Note file:

20. On 3.5.2000 the Chief Secretary to the Government noted that the proposal recommending the grant of alternative land to the Sarmas would set up a dangerous precedent and should be rejected for that reason. The exact note by the Chief Secretary requires to be extracted:

124. The petitioner is quoting 2 precedents at para 106. if this is agreed to, this becomes a 3rd precedent. It is not desirable to add a 3rd precedent. We should take a firm decision to reject the request. We should also announce that when lands are acquired, Government do not propose to give alternate land.

125. In Hyderabad we are acquiring land for several purposes. We are not giving any person alternate land. How can we show favour to this one petitioner? This will be questioned by the others in a court and the court will direct the Government to give alternate land to all the persons whose lands are acquired. The enormity of the problem is such that Government cannot implement it. The court will pass strictures that Government cannot discriminate. The Government cannot exercise patronage in favour of one and deny it in favour of others. In another file where a property was lost in road widening, I had opposed allotment of alternate land because the policy is to give enhanced F.S.I. and not alternate land. I recommend rejection of the request for alternate land. I also request Rev. Secy. not to process such files in future.

126. The petitioner may be paid the compensation due to him. The suggestion in para 113 that the L.A.O. will be instructed to withdraw the amount of compensation deposited, is not correct. No such thing should be done. The L.A.O. should effect payment.

127. The petitioner should acquire land wherever he can with the compensation he gets.

Despite the above remarks of the Chief Secretary, the then Hon"ble Minister for Revenue on 20.5.2000 recommended grant of alternative land on payment by the Sarmas of the difference in the market value to the Government. However, the Chief Minister on 23.5.2000 overruled the decision and ordered that "compensation in cash may be paid instead of giving the alternative land".

21. After August 2000, the file discloses that administrative justifications were systematically generated towards orchestrating a positive decision in favour of Sarmas. The 1st respondent on 18.8.2000 characterized the earlier note of the

Chief Secretary (grant of alternate land is a dangerous precedent) as an error and noted that "a dangerous situation of paying huge compensation to effected people" is avoided by granting alternative land. The 1st respondent also noted that Sarma is a disciplined soldier approaching the Revenue authorities time and again without resorting to litigation and that allotting alternate land of an extent 1871 Sq.Mts meets the end of justice particularly bearing in mind "the sacrifices of Indian Army men and Officers in Kargil War".

22. The father Sarma retired in 1990 on medical grounds. His contribution to the Kargil war, a decade later is not understood by this Court. The 1st respondent's grasp of recent historical events appears to be original, as regards the nexus between the Kargil war and the allotment of land to the Sarmas. Another theory generated (para 175 of the note file) is that since the land was acquired for a monument for the Father of the Nation "it may not be correct, in sentiment, to deprive an Army Officer of his land for a National Monument".

23. To the above recommendations of the later Chief Secretary dated 30.8.2000, the Minister for Revenue on 17.9.2000 recommended allotment of alternative land. The Chief Minister on 22.9.2000 accorded his approval to the decision to allot alternative land. Thereafter a formal order in G.O.Ms. No. 678 Revenue Department dated 17.10.2001 issued allotting land to the Sarmas.

24. There is another noting in Para.175 which is significant. While generating reasons for deferring from the earlier noting of the Chief Secretary (dated 03-05-2000), in para.175 it is stated that the case of the Sarmas" is different from the other cases referred in the note of the Former Chief Secretary, as the Government had already committed in principle to the party (the Sarmas) at the time of acquisition for Bapughat, that they would be provided alternate land and this commitment was also forwarded to the applicant. There appears no factual basis for this noting. The acquisition was in 1994 (16-05-1994 is the date of the Section 4(1) notification) and as seen from the administrative record as well as the note file, the proposals for allotment of alternate land were generated pursuant to the representation of the Sarmas" during September-1996 and beginning with the letter of the Collector, dated 25-10-1996 to the Commissioner of Land Revenue, more than two years after the acquisition and in fact after the passing of the award (on 30-03-1996). For reasons not apparent to this Court, Para.175 of the note file however records as though a promise was made to the Sarmas for grant of alternative land even at the time of acquisition.

Analysis:

25. Having extracted the chronology of events and relevant aspects of the note file, this Court will now consider the petitioner's assertion that the State has subjected him to unequal and hostile treatment, vis-a-vis the Sarmas". The relevant facts have already been recorded. The land of the petitioner in an extent of 764.10 square meters (914 Sq.Yds) with a building (Rice mill thereon); land of the father Sarma in an extent of 929.038 square meters; land belonging to the

son Sarma in an extent of 942.065 square meters including a common passage of 110.30 square meters; and lands of several others, of various extents were acquired for establishment of the Bapughat memorial; all these lands were in Gudimalkapur, Golkonda Mandal, Hyderabad District. The land of the petitioner and others was acquired pursuant to a notification u/s 4(1) of the Act dated 04-11-1996 while the land of the Sarmas (father and son) and others was acquired by a notification dated.16-05-1994. On 12-01-1998 the petitioner filed W.P. No. 751 of 1998 challenging the acquisition. This Court granted interim stay of dispossession on the said date. During the pendency of the writ petition an award was passed on 01-02-2000. On 10-02-2000, during the pendency of W.P.751 of 1998 the petitioner represented to the 2nd respondent to give him alternate land in lieu of compensation. On the same date, the Joint Collector wrote to the Mandal Revenue Officer to identify Government land in the same locality to provide alternate land to the petitioner. The Sarmas" did not challenge the acquisition. Award in respect of their acquisition was passed on 30-03-1996. From September-1997 onwards the Sharmas started representing to the State and various Officers for grant of alternate land in lieu of their land acquired. Their proposals were processed. On 14-07-2000, the 1st respondent by a memo rejected the grant of alternate land to the Sarmas on the basis of a decision taken at the highest level (by the Chief Minister on 23-05-2000, on the basis of a noting by the Chief Secretary).

26. Insofar as the petitioner is concerned, W.P.751 of 1998 was disposed of on 02-12-2002 on noticing the proposals submitted by the 4th respondent to the 2nd respondent on 07-08-2002 recommending alternate site allotment to the petitioner. This Court observed that if the respondents failed to honour the commitment (on the basis of which the writ petition was being disposed of), the petitioner would be at liberty to question the rejection in an appropriate forum. In the writ petition, it was also observed that the 2nd respondent would hopefully consider the petitioner"s case as recommended by the 4th respondent and give a quietus to the litigation.

27. Coming to the case of the Sarmas, despite the rejection of their claim on 14-07- 2000 by the 1st respondent, they continued to represent to the political executive. They also represented to the Governor, from whose establishment a letter dated.02-08-2000 was issued by the Principal Secretary to the Governor addressed to the Chief Secretary to the Government forwarding the representation of the Sarmas with a recommendation that as the father Sarma is a war victim, the Government should consider his case favourably. After the letter from the Governor"s secretariat, the claim of the Sarmas" gathered momentum and positive administrative notings were conjured up and justifications for recanting the earlier decision (not to grant alternate land) were generated. Some of these justifications are certainly novel. These including "sacrifices of Indian Army men and officers in Kargil war" and " it may not be correct, in sentiment to deprive an Army Officer of his land for National Monument". During all this creative generation of administrative justifications

(post August-2000), the executive failed even to recognize that whatever the rationality of treating the father Sarma either as a war victim or an Army person who could be entitled to special treatment on account of the "sacrifices of Army personnel in Kargil War", the son Sarma was not an Army person. No where was this fact noticed. If the son Sarma (whose land of 942.065 square meters was acquired) was not an Army person, he was certainly not distinct from the petitioner unless the State felt that a medical graduate or son of an Army Officer (also a former ADC to the State Governor) was entitled to special treatment as against an ordinary citizen who were not so distinctly qualified by birth, and education, and father's position.

28. Eventually, after a raft of contrived justifications, G.O.Ms. No. 678 dated 17-10-2001 was issued providing alternate land to the Sarmas" and allotting 1871 square meters in the Jubilee Hills area. It was assessed to be approximately equal in value to the land of the Sarmas" acquired in Gudimalkapur village (equivalent in value on the date of the acquisition in 1994).

29. In contrast, the 5th respondent generated an extravagant and legally unsustainable reason for denying alternate land to the petitioner, namely that there was no provision in the Act.

30. Whether it is the Sarmas" or the petitioner, it is reasonable to infer that they did not purchase or otherwise acquire the respective properties for establishing the Bapu Ghat memorial. They acquired their lands for their respective economic comfort, as an asset.

31. When a land is acquired by the State under the provisions of the Act, the State may either pay monetary compensation for the acquisition or may allot alternate land of equal value in lieu of compensation. Persons whose lands are acquired are at liberty to represent to the State that they seek grant of alternate land in lieu of compensation. Such representation may be considered by the State within the spectrum of its rational discretion having regard to numerous facts, which cannot be put in straight-jacket formula. The nature and location of the land acquired; the purposes for which it is acquired, the availability and location of alternate land available with the State for allotment in lieu of compensation; the other requirements if any that the State may have currently or in the foreseeable future for other Governmental purposes; future developmental requirements of the State in respect of lands under its control, are among the factors which go into the decision making crucible of the State, in evolving a choice whether to grant compensation or alternate land.

32. In choosing within the spectrum of discretion, the State is not however relieved of its obligation to act in conformity with the equality injunctions of Article.14 of the Constitution. Article.14 prohibits invidious discrimination and injuncts equal treatment under the law. The doctrine of classification permits dissimilar treatment. It is a settled principle that contrived and artificial classification based on micro-distinctions will not survive the test of Article.14.

When a classification is challenged by a person, the State must satisfy that the classification rests on intelligible differentia, having a rational nexus with the object sought to be achieved.

33. In the case on hand the object sought to be achieved by the acquisition is establishing of the Bapu Ghat memorial. The object sought to be achieved by the policy decision of the State (to grant alternate land) is to provide the compensation in kind (in the form of land) to alleviate the loss suffered by the person whose land is acquired and to enable such person to continue with the normal pursuit of human dignity in and through the alternate land provided. The petitioner had a Rice Mill on the acquired land and he wanted alternate land to pick up the pieces of his life, which was disrupted on account of the acquisition. The father Sarma wanted alternate land to enable the son Sarma to start a Nursing Home. The Sarmas" were hoping to start a Nursing Home on the land at which point of time the acquisition process shattered their aspirations. The Sarmas also wanted to pick up the pieces of foiled expectations and towards this purpose they petitioned the Government for alternate land. The above relevant factors, in the considered view of this Court should have been informed the State while taking a decision to allot alternate land to the Sarmas and the petitioner. That the father Sarma was an Army Officer, is not a factor relevant to the decision to grant alternate land for the land acquired. If the petitioner could buy some other property from the compensation received, so could the Sarmas. Land was not being granted by the Government for the services rendered by the father Sarma to the Indian Republic as an Army Officer (in expectation of the Kargil war!). Land was also not being granted for the injuries suffered by the father Sarma during his Army career.

34. The son Sarma, like the petitioner did not serve the Indian Army. They were both ordinary citizens, one a medical graduate and the other a semi-literate business man.

35. On the aforesaid analysis in the considered view of this Court, the decision of the State to grant alternate land to Lt. Col. D.N.Sarma and Dr.Vikram Sarma while denying allotment of alternate land to the petitioner, constitutes invidious and hostile discrimination; the decision is wholly arbitrary, based on irrelevant considerations. The distinctions presented by the State (including in the counter-affidavit of the 1st respondent) between the Sarmas" and the petitioner are artificial and contrived distinctions having no rational nexus with the object sought to be achieved, namely providing compensation in kind instead of cash for acquired lands to enable the persons whose lands are acquired to pursue their economic expectations in life.

36. Another reason urged in the counter-affidavit is that the petitioner did not seek alternate land during the award enquiry. This is a contention that is stated to be rejected. The petitioner represented in February-2000 for alternate land during the pendency of W.P. No. 751 of 1998. This claim of the petitioner was processed and the 4th respondent had addressed the 2nd respondent,

recommending grant of alternate land. Noticing this administrative measure, W.P. No. 751 of 1998 was disposed of on 02-12-2002 granting liberty to the petitioner to challenge afresh, if the respondents reneged on the initial promise to grant alternate land.

Conclusion:

37. In the totality of the circumstances, in the considered view of this Court the principles of promissory estoppel are attracted, circumscribe the discretion of the State and direct the discretion in favour of grant of alternate land to the petitioner, in view of the promise made on the basis of which the petitioner was induced and this Court persuaded not to adjudicate the challenge to the acquisition proceedings, in W.P.751 of 1998. On principle and authority the respondents are estopped from resiling on the promise to grant alternate land to the petitioner.

38. The 1st respondent's counter-affidavit towards end of para.7 states that the petitioner cannot equate his claim for alternate land to Lt. Col. D.N.Sarma and his son Vikram Sarma. This Court fails to appreciate this ipsi-dixit of the 1st respondent.

39. The 1st respondent is a State actor and an executive agency of the Government and is bound to treat similarly situate persons alike. Artificial distinctions based on irrational assumptions may pass muster in the halls of the Secretariat but when critically examined and logically scrutinized under the judicial lens, in the context of the constitutional injunctions of equality, such contrived executive distinctions fail the constitutional test. These must perish, as must the impugned decision of the State insofar as it has denied the petitioner grant of alternate land on par with the Sarmas.

40. On the threshold of the sixtieth anniversary of the Republic it may appear platitudinous to remind the Executive of the Dharma of governance. But all too and disturbingly often Executive agencies of the State apparently fail to recognize the marked distinction between personal whim, caprice or prerogative; and exercise of lawful discretion under a constitutional order. The property of the State is the property of the State. The Executive is but a trustee. It exercises a fiduciary duty. The Constitution and the laws define the terms of the trust. Such discretion as exists in Executive agencies is intended to enable governance of our complex, plural and dynamic civil society. Executive discretion does not exist to fuel the subjective whim of the State actor. All citizens, those who have preferential, unhindered and continuous access to Executive chambers and those citizens who enjoy no such privileges; citizens who have the social and economic means to mount a blitzkrieg of representations and obtain recommendations from the stars of the Executive firmament and citizens who have no such access, reach and recognition, are alike entitled to equality of treatment and equal protection of the laws. Article 14 of the Constitution prohibits classifications based on distinctions founded on the sole criterion of access to Executive

proximity. On a critical analysis of the facts of this case, the State is seen to have contrived artificial and incoherent distinctions between the case of the petitioner and the Sarmas, distinctions that are irrational, unrelated to the object sought to be achieved and thus unsustainable.

41. The petitioner has suffered a clear legal injury. Denial of alternate land to him while granting it to the Sarmas is an extravagantly arbitrary action.

42. One of the assertions on behalf of the State is that the Endowment department had also laid a claim to the lands. From the matrix of this assertion it is not clear whether the Endowment's claim is only in respect of the acquired land of the petitioner or includes the land of the Sarmas as well, and any other person whose lands were acquired for the Bapu Ghat Monument. Even if the land eventually were to be determined as belonging to an endowment, there is no reason why alternate land should not be allotted. It is not as though the State has a privileged obligation to denude endowments of their material assets. In any event this is yet a disputed position. It does not appear to have been decided that the land belongs to endowment and not to the petitioner. In the case of the Sarmas too there is on record no final determination in the Urban Land Ceiling case, that the acquired land of the Sarmas was within the ceiling limit. No orders were issued finally determining ceiling cases on the declarations filed by the Sarmas or their predecessors-in-interest. Yet the State proceeded to grant alternate land to the Sarmas of an extent equivalent to the acquired land, which in any event is in excess of the Urban Land ceiling limit. Discriminatory State action is Writ large and clearly.

The Result:

43. For the aforesaid reasons the writ petition must be allowed. It is accordingly allowed. The 1st respondent is directed to consider allotment of alternate land to the petitioner in an extent of 914 Sq.Yd, or any other appropriate extent, of a value equivalent to the value of the petitioner's land acquired. The value of the land to be allotted must be computed as on the date of the acquisition notification of the land of the petitioner. This is how the State computed the value of the alternate land allotted to the Sarmas; and this is how the valuation of the land to be allotted to the petitioner must also be considered. Since all the proceedings under the Act were taken on the premise that the petitioner was the owner of the acquired land, the alternate land should first be allotted in his favour but subject to the eventual claim of the Endowment Department. The State must do the needful for expeditiously determining the Endowments claim if there be one still pending. In case it is eventually determined that the petitioner is not entitled to this land but the Endowment is, the alternate land shall stand allotted to the Endowment for its benefit.

44. Since the State has taken a conscious (though crudely camouflaged) consistently discriminatory stance in considering the claim of the petitioner vis--vis identical claims of the Sarmas, the State has visited the petitioner with a

legal injury. The petitioner is therefore entitled to costs, quantified at Rs. 25,000/- (Rupees Twenty Five Thousand only), payable by the 1st respondent to the petitioner, within four weeks from the date of receipt of a copy of this order.

45. The writ petition is accordingly allowed with costs.