
(1990) 11 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1063 of 1990

M. Narayana @ Narayanamurthy and Others

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

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

Citation : (1991) 1 ALT 154

Hon'ble Judges : P.L. Narasimha Sarma, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : Meherchand Nori, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Rao, J.—This is an appeal against the Judgment of the learned single Judge dismissing the writ petition.

2. The facts of the case are as follows: A notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the "Act") was published in the West Godavari District Gazette on 25-4-1987. In the said notification it was stated that the lands were required for providing house-sites to Schedule Castes and Backward Classes. According to the respondents authorities, local publication of the substance of the said notification was made on 27-4-1987. It is not in dispute that the notification was also published in the local newspapers as provided u/s 4(1) of the Act, as amended by Act 68 of 1984, on 15-6-1987. The writ petition itself was filed on 22-6-1987. It was stated that the writ petitioners (appellants) are small farmers and that there was no publication of the substance of Section 4(1) notification in the locality either by beat of tom-tom or otherwise. The appellants further averred that the President of the Panchayat had given a letter to the respondents stating that he did not receive the copy of the Gazette publication and that therefore he did not publish the substance of S. 4(1)

notification in the Village either by affixture or by tom tom.

3. A Counter-affidavit was filed before the learned single Judge stating that the petitioners-appellants are not small farmers as alleged by them, Various details of the holdings of the petitioners-appellants were given. It was also stated that the substance of the notification u/s 4(1) of the Act was published in the Village on 27-4-1987 and that the mandatory provisions of the Act, including the paper publication, were made scrupulously. It was also stated that the enquiry u/s 5-A of the Act was not dispensed with and that the appellants did not avail of the said enquiry.

4. Before the learned single Judge, the only point that appears to have been argued was that the substance of the notification u/s 4(1) of the Act was not published in the locality. The learned Judge held that the said substance was published in the locality within 40 days as prescribed by the A.P. Amendment Act 9 of 1983. Consequently, the writ petition was dismissed. It was observed that the enquiry u/s 5-A of the Act may be made after due notice.

5. Against the said Judgment, this writ appeal has been preferred. In this appeal, it is contended by the learned counsel for the appellants once again that the substance of Section 4(1) notification was not published in the locality within 40 days as provided by the A.P. Amendment Act 9 of 1983. The learned counsel also contended that the decision of a Full Bench of this Court in Shaik Khannan saheb and Ors. v. the District Collector: Khammam and Ors., 1990 Vol. 3 ALT-6 (S.N.) (Writ Petition No. 9776 of 1988 dated 21-8-1990) required reconsideration in so far as it held that the above said A.P. Amendment prescribing a limit of 40 days was repugnant to the Central Amendment Act, 1984. The learned counsel contended that on a plain reading of S. 4(1) of the Act, as amended by the Central Act of 1984, the newspaper publication must come immediately after the Gazette publication and before the local publication of the substance of Section 4(1) notification. Lastly, it was argued that there was a wide gap, on the facts of the present case, between the Gazette publication on 25-4-1987 and the newspaper publication on 15-6-1987 and that on this ground, the acquisition proceedings are to be declared invalid.

6. So far as the first submission of the appellants is concerned, it is clear from the record produced by the learned Government Pleader before us that the Sarpanch of the Village has made an endorsement that the substance of Section 4(1) notification was published in the village by affixture as well as tom tom. The said endorsement was attested by various witnesses and it was dated 27-4-1987. We have also seen the correspondence between the Collector's Office and the Sarpanch which would show that the draft notification was sent to the Sarpanch for the aforesaid purpose a few days before the actual publication in the locality. We, therefore, affirm the finding of the learned single Judge that the local publication was within 40 days of the Gazette publication even assuming that the A.P. Amendment Act 9 of 1983 is to apply. In any event, we alternatively find that, in view of the decision of the Full Bench referred to above

(1), there is no infirmity even assuming that there is no such publication of the substance of Section 4(1) notification within 40 days of the Gazette publication. In the Full Bench decision, it has been held that the A.P. Amendment Act is repugnant to the Central Act of 1984 and that therefore the substance of Section 4(1) notification need not be made within 40 days.

7. The learned counsel's contention that the Full Bench decision requires reconsideration cannot also be accepted. The Full Bench has given clear-cut reasons in coming to the conclusion and we are not persuaded to doubt the correctness of any of the reasons given there. In addition, we may point out that the Central Amendment Act of 1984 introduced the following clause towards the end of Section 4(1) of the Act. It reads :

"The last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification."

We may point out that because of the above said amendment introduced in the Central Act, it was held that the fixation of limit of 40 days under the A.P. Amendment Act was no longer valid. The reason is that if the last of the dates of either the Gazette publication or the publication in the locality or the news-paper publication was to be deemed to be the date of publication of the notification, any fixation of 40 days" time limit for local publication would interfere with such a scheme. For example, if the local publication is made on or after the 40th day after the notification is published in the Gazette and if by that time the newspaper publications had been made, the position according to the Central Amendment Act would be that the date of the local publication, even though it was after the 40th day of the Gazette publication, would have to be treated as the date of publication of the notification. But if the A.P. Amendment is to be held as still applicable, the publication of the substance of the notification in the locality after the 40th day would be invalid and thereby the deemed date of notification as per Section 4(1) of the Central Amendment would become unworkable. That is why the Full Bench has held that the A.P. Amendment is repugnant to the Central Act. We are, therefore, of the view that there are no grounds for reconsidering the correctness of the Full Bench decision.

8. The third point urged by the learned counsel is that on a plain reading of the provisions of Section 4(1) of the Act, the newspaper publications are to follow soon after the Gazette publication and that it is only thereafter that the local publication of the substance of Section 4(1) notification is to take place. The learned counsel has relied upon the sequence of the various publications as stated in Section 4(1).

9. A similar point arose before a Division Bench of this Court in *Gompa Dali Naidu v. State of Andhra Pradesh*, 1990 (2) A.L.T 363. There Jeevan Reddi, J. (as he then was) observed, following a Bench decision of Allahabad High Court in *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, . that it does not matter whether the three forms of publication mentioned in Section

4(1) are made in one order or another. The Bench observed thus :

"We agree that all the three forms of publication provided by Section 4(1) must be gone through ; but, it would not be right to infer particular order of publication from the said sub-section..... There does not appear to be any particular basis for holding that the Gazette publication must precede the other form of publication. It is not suggested that as between the publication in the newspapers and the publication in the locality, there is a particular order. There is no reason why such an order should be stipulated vis-a-vis publication in the Gazette, All the three publications are provided by law, and stand on the same footing."

10. The aforesaid observation of the Division Bench makes it clear that the three modes of publication mentioned in Section 4(1) need not be in any particular order. The reason is that the Government, after taking a decision, is supposed to take various steps to have the notification published in the three modes mentioned in the Section. It is possible that the publication under one method might precede the publication in the other modes in one case and the pattern may not be the same in every land acquisition proceeding. We therefore, reject the third contention that the paper publication should have been made, in the present case, after the local publication.

11. It is lastly contended that the paper publication in the present case has been made 51 days after the Gazette publication and that, therefore, it must be held that there is unwarranted and unnecessary delay between the date of Gazette publication and the newspaper publication and that on this ground, the notification must be held to be bad. We are unable to agree with the said contention. Section 4(1) of the Act by itself has not prescribed any particular period within which the newspaper publication should be made after the date of Section 4(1) notification. A similar question had arisen earlier in this Court when it was contended, that the local publication of the substance of the Gazette publication must be made simultaneously with the Gazette notification. That was the view taken by a Full Bench of this Court in *K. Yadayya v. Government of A.P.*, 1983(1) ALT 233.. That was also the view taken by a Division Bench of this Court earlier in *Chevuru Suryanarayana Reddy and Others Vs. Government of Andhra Pradesh and Another*, . The Supreme Court overruled the latter Division Bench decision in *C. Suryanarayana v. Government of A.P.* (5 supra). This was in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, . By implication, the decision of the Full Bench in *K. Yadayya v. Government of A.P.* (4 supra) must be deemed to be over-ruled. The relevancy of the Judgment of the Supreme Court in the present context is that the Supreme Court referred to the purpose behind the notification and also referred to the question whether the local publication should be simultaneous with the Gazette publication. Observing that in most of the cases it would be impossible to comply with such a requirement, the Supreme Court held that even if the notification and the local publication of the substance are not simultaneous, the acquisition would be valid. In that

context, they observed that the time factor is not a vital element of Section 4(1) and that there is no warrant for reading the words "simultaneously" or "immediately thereafter" into Section 4(1). It is implicit that the publication and public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally, contemporaneity may involve a gap of time and by the very nature of things, the publication in the official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bonafides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time, it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused "prejudice" to anyone. It is further observed that apart from the physical impossibility of synchronising the publication in the Gazette and the public notice in the locality, one can visualise a variety of circumstances which may bring about a time gap between the two. There may be a break down in the communications, there may be a strike or bandh as happened in one of the reported cases in *Sadar Anjuman Ahmediyya, Muslim Mission v. State of A.P.*, AIR 1980 A.P. 246. or there may be some other justifiable reason. The Court cannot lay down any general principle that an acquisition would be regarded as void if the notification published in the Gazette was not accompanied or immediately followed by public notice. The aforesaid reasoning given by the Supreme Court in connection with the delay in the publication of the substance of the notification in the locality, in our view, equally applies to the delay if any in the publication of the notification in the newspapers. The question, involved are pure questions of fact, viz., whether the two are so unlinked or whether the delay could lead to an inference of lack of bonafides. Apart from these factors, the Supreme Court also observed that the question of "prejudice" to the petitioner is also a relevant factor. In the affidavit, the petitioners-appellants have not even raised any contention that there was unreasonable delay in making the newspaper publication nor is there any allegation of lack of bona fides nor is it stated that the petitioners- appellants are otherwise "prejudiced" by any such delay. In fact, if the petitioners-appellants had raised this objection in the writ petition, the respondents would have placed before the Court the facts which lead to show that there was no such delinking of the various publications and that there was no lack of bona fides and that in any event, the petitioners- appellant did not suffer any prejudice. A Division Bench of this Court to which one of us a party (M. Jagannadha Rao, J.) in *D. Narasimha Reddy Hotels (P) Ltd. v. The Appellate Commissioners*, W.P. No. 2848 of 1988 Dt. 12-10-1990. held following *London & Clydeside Estates Ltd. v. Aberdeen District Council*, 1980(1) WLR 182. that even if mandatory precedent provisions of a statute have not been complied with, the

action may not be invalid and in such a situation, the question of prejudice becomes an important factor for consideration particularly when the Court is approached under Article 226 of the Constitution of India.

12. For all the aforesaid reasons, this writ appeal fails and is dismissed. No costs. Advocate's fee Rs. 250/-.