
(1997) 09 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5902 of 1996

M. Venkanna

APPELLANT

Vs

District Collector, (Land Acquisition), Khammam and Others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 162
Land Acquisition Act, 1894 — Section 4, 4(1), 6

Citation : (1998) 1 ALD 20 : (1997) 6 ALT 573

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mrs. N. Shobha, for the Appellant; Government Pleader for the L.A., for the Respondent

Judgement

1. In this writ petition, Proc.L.Dis."No.BI/41/96 dated 23-1-1996 issued by the first respondent refusing to reconvey the lands of the petitioner which were acquired for the purpose of construction of buildings and canals of Nagarjuna Sagar Project stating that the lands will be useful to Government for public purposes are assailed.

2. This Court while admitting the writ petition on 27-3-1996 ordered notice. After notice, the matter came up before me on 21-6-1996. Having heard the arguments on both the sides and having noticed that the Government ordered reconveyance of certain lands in its Memo No.49038/N.S.P.I(2)/91-5 dated 10-3-1995 including the lands belonging to petitioner. I directed the first respondent to be present in the Court along with the concerned files on 8-7-1996 to justify the issuance of the impugned Memo. The first respondent while coming to the Court seemed to have summoned the Superintending Engineer to his office on 7-7-1996 and seemed to have obtained a letter then and there stating that the lands are likely to be needed by the Irrigation Department. The letter is in the form of manuscript and it does not form part of either any note file or current file. In the words of the Superintending Engineer, the requirement of the

lands is as hereunder;

"The lands can be utilised by the Irrigation Department whenever needed during the maintenance of the canal system and at times of natural calamities."

3. Having noticed the adamant attitude of the District Collector (Land Acquisition), Khammam, the first respondent herein in reconveying the lands, inspite of the orders of the Government and in trying to build up a fake necessity that the lands are required for public purposes, I directed him to file a detailed counter affidavit in this case. Accordingly, on 16-7-1996, the first respondent filed a counter. The fact that the Government issued instructions and a direction was given by him to the Mandal Revenue Officer are admitted by him in the following words :

"The Government in their Memo No.17915/NSP-I(2)/93-12 I & CAD (PW) Department, dated 27-7-1994 have informed to collect the rate of interest @ 12% per annum from the original land owners from whom the lands are reconveyed."

4. The letter of Collector Rc.No.BI/ 1901/93 dated 6-8-1994 was issued while communicating the Government Memo No.17915/NSP-I(2)/93-12 I & CAD (PW) Department, dated 27-7-1994 and the Mandal Revenue Officer, Khammam (U)/ Khammam (R) in the District were requested to collect the interest from the original land owners whose lands were decided and ordered to be reconveyed and credit the amount to the Head of account as indicated in the Government memo.

5. It is the specific case of the petitioner that pursuant to the above orders, as per the directions of the Mandal Revenue Officer, he paid an amount of Rs.7,423/- including the interest of 12% vide challan No.86 in the Government Treasury on 4-5-1995 and thereafter, he went on making representations to reconvey the lands to him. But surprisingly, the first respondent on 23-1-1996 issued the impugned memo.

6. In the counter, the first respondent while admitting the fact that the Government has taken a decision to reconvey the lands that were acquired for construction of buildings and canals for Nagarjuna Sagar Project in Burhanpuram Village tried to justify his action by contending that the instructions of the Government are applicable to the lands that were already reconveyed and they are not applicable to the lands which are not yet reconveyed. It is useful to extract his own words, "This does not apply to lands which are not reconveyed." He also justifies his action by stating that the Irrigation Department itself requires the lands for excavation of earth for strengthening of canals. He further stated that the Government Memo dated 27-7-1994 wherein a decision was taken to collect interest at 12% per annum is applicable for the original land owners whose lands have been reconveyed and it does not apply to all land owners. It is not known from where he got this information. Yet in another paragraph he states that "it is a fact that in some cases, the Government have

accorded permission to reconvey the land to the original land owners. The case referred by the petitioner is totally different from other cases and each case has to be considered on its merits depending on the utility of the land for public purpose and comparison cannot be made with other cases." The first respondent has forgotten the fact that the lands that were already reconveyed to some of the land owners and the lands in question are covered by the same notification issued u/s 4(1) of the Land Acquisition Act (for short "the Act") apart from the lands in other villages which were already re-conveyed. That apart all these lands were acquired for the same purpose. Now he comes up with a plea that each case has to be treated on its own merits depending on the utility of the lands. Assuming for a moment that what is stated by the first respondent is true, in the additional counter affidavit dated 24-8-1996, it was categorically stated that the land in question was not allotted to any Department or person so far. The first respondent also denied the specific case of the petitioner that he is going to allot this land to S.C. Corporation for construction of its buildings.

7. As observed supra, having received the notice for his appearance on 8-7-1996 to justify the order passed by him, the first respondent hurriedly summoned the Superintending Engineer and obtained a letter, the relevant portion of which was already extracted. In that letter also there is no clear commitment from the Superintending Engineer that the land is required for public purpose. What all he says is that the Irrigation Department may need the land. But he never said that the land is required for maintaining the bunds of the canals. This is how the first respondent tried to justify his illegal action. Such an action on the part of the respondent official of the stature of Collector cannot be countenanced by this Court.

8. The learned Counsel for the respondents tries to justify the illegal action of the first respondent by relying on certain judgments of the Supreme Court. I have absolutely no quarrel with any of the propositions laid down by the Supreme Court. But the fact remains in this case is that some of the lands covered by the same notification were already reconveyed to the land owners and by the time the turn of the petitioners came, the first respondent has taken an unreasonable stand though the land is not required for a public purpose as on that date. That apart, it should be kept in mind that the Government having examined the issue from all angles have taken a decision to reconvey the lands to the original owners by collecting the compensation along with 12% interest per annum. The first respondent being a subordinate of the Government cannot sit over the decision of the Government and refuse to implement the orders of the Government. In fact, the learned Government Pleader filed some correspondence that took place between the Departments. Perhaps, at the instance of the first respondent, the Commissioner seemed to have addressed a letter to the Secretary to Government, Irrigation & CAD (Project Wing) Department in C.L.R.No.G 1/273/95. dated 12-4-1996 to review the decision for reconveyance of the land in question. Having considered the lengthy letter written by the Commissioner, the Government in its Memo No.39781 NSP-I(2.95-1) dated

29-1-1997 simply stated that if the lands acquired for public purpose are not required for that purpose, the concerned requisitioning Department should submit a proposal with reasons for handing over such land/portion of the lands to the Collector of the District concerned who will take further action either to use the land for some other public purpose or to restore it to the erstwhile owners as per the Government instructions in B.S.O.No.90 Clause 32. From this, it is evident that the Government is clear in its mind about the reconveyance of the land to the original owners. What all it says is that the requisitioning Departments should not reconvey the land straightaway but the proposals of the same should be sent to the District Collector for his decision, In this case, the highest policy making Body, i.e., the Government itself has taken a decision to reconvey the land and the Collector will not come into the picture at all. On this ground also, the action of the Collector cannot be justified.

9. The respondents raised another ground by stating that any application for reconveyance has to be filed within twelve years from the date of passing of the Award as per G.O.Ms.No.628 (Rev) K Department dated 10-5-1975 and he states that the petitioner has not produced any documentary evidence to show that he applied for reconveyance of the land within the stipulated period of twelve years. Forgetting the fact that the Government passed orders in this case, he states that the petitioner approached him only on 29-12-1995 which is obviously incorrect. Admittedly, the land in question was acquired by way of notification u/s 4(1) of the Act published on 18-2-1969 and the award was passed in the year 1970. It is the case of the petitioner that along with 160 others, he filed an application seeking reconveyance of the land. The applications were duly forwarded by the Executive Engineer to the Superintending Engineer who in turn forwarded the application to the District Collector on 21-8-1983. in the list annexed to the said letter, the name of the petitioner finds place at Sl.No.57. Having received the letter, perhaps at the instance of the first respondent, the Special Deputy Collector by letter dated 21-4-1984 directed the Executive Engineer to estimate the cost of the land paid as per the award with 12% interest to be collected from the original land owners. In the list enclosed to this letter, the name of the petitioner finds place at Sl .No.34. Thereafter, much correspondence has taken place between the Superintending Engineer, the Collector and the Government. Even according to the first respondent, the Government issued orders on 27-7-1994 directing him to reconvey the land by collecting the compensation paid to the individual owners along with 12% interest. Suppressing all these facts, the first respondent has chosen to swear to an affidavit stating that for the first time, the petitioner filed an application before him on 29-12-1994 which is nothing but a flagrant lie and intended to justify his illegal action. Hence, this plea of the respondent is also rejected.

10. Yet the first respondent raised another plea stating that the requisitioning Department cannot initiate the proposals for reconveyance of the land and when the requisitioning Department feels that the purpose for which the land was acquired is served, the requisitioning Department should hand over the

possession of the land to the District Collector who in turn shall examine the feasibility of using the land for any other public purpose or reconvey the land to the original owners and it is his case that the Superintending Engineer initiated the proposal for reconveying the land surpassing him. But the facts in this case are otherwise. The Government having considered the proposals in its Memo No.49038/NSP.I(2)/91/5 dated 10-3-1993 directed the Engineer-in-Chief to hand over the land to the Collector for restoring the surplus land to the original land owners. Pursuant to the said letter the Superintending Engineer in his letter No.DB/M. 16/Vol. 19/1271 M/3, dated 3-5-1993 directed the Executive Engineer, NSC, O&M Division, Tekulapalli to hand over the lands to the Mandal Revenue Officer, Khamrnam requesting the District Collector to take action as per the instructions of the Government dated 10-3-1993. From the proceedings of the first respondent Rc.No.BI/ 11809/95 dated 20-11-1995, the Mandal Revenue Officer, Khammam has taken possession of the lands from NSP authorities under panchanama on 26-8-1995. From this, it is evident that the lands were handed over to the District Collector for reconveyance to the original land owners under orders of the Government. The requisitioning Department did not on its own has taken a decision to reconvey the lands to the original land owners. Hence this ground has also no substance and it has to be rejected. Having received the communication from the Engineer-in-Chief, the first respondent in his letter Rc.No.1901/93 dated 23-3-1993 requested the Government to indicate the calculation of interest for NSP lands and heads of account under which the amount collected has to be deposited. Considering his letter, the Principal Secretary to Government, Irrigation Department in Memo No.17915/NSP.I(2)/93-12 dated 27-7-1994 informed the Collector to collect interest at the rate of 12% per annum from the land owners and the amount collected be credited to the Head of account given in the said letter.

11. Lastly, the learned Counsel for the respondents places reliance on Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, whereunder the Supreme Court has taken the view that the lands once taken possession for a public purpose and vested in the Municipality thereof under the provisions of the Land Acquisition Act, and when the lands are vested in the Government free of encumbrance restoration of surplus lands to the erstwhile owners cannot be ordered.

12. I have gone through the judgment, But I do not find that any provision is made by the Government in that case for reconveyance of the land in any of its orders issued from time to time. In this case, the Board Standing Orders which are century old and which are being scrupulously followed even today in revenue administration clearly made a provision for reconveyance of the land to the original land owners if the purpose for which the land was acquired was over. It is also well settled principle that the Government in exercise of its executive powers under Article 162 of the Constitution of India is empowered to give any instructions to its subordinates and as long as they do not contravene any statutory or constitutional provisions they have to be given effect to. Even if

Board's Standing Orders are presumed to be only executive instructions, as the Statute, i. e. Land Acquisition Act is silent on the aspect of reconveyance of the land and the BSO 90(32) in no way runs counter to the statutory provisions, it has to be necessarily given effect to. Hence, the decision relied upon by the respondents is of no use. Then the learned Counsel places strong reliance on another judgment of the Supreme Court in Meharban and others etc. etc. Vs. State of U.P. and others, . I have gone through the judgment. In that judgment, it was observed that if the land acquired cannot be used for other public purposes, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched can be better utilised for public purpose as envisaged in the directive principles of the Constitution. I have gone through the judgment carefully. The circumstances under which the matter went up to the Supreme Court could be culled out from the judgment. It is not known whether any similar provision like that of BSO 90(32) is there in the State of Kerala or not. Further, in this case, the most important point that has to be kept in mind is that several of the lands covered by the same notification in three villages namely, Burhampuram, Dhanawaigudem and Mallemadugu were already reconveyed to the original land owners and the respondents cannot refuse to reconvey the land to the petitioner only. Such an action on the part of the respondents clearly violates Article 14 of the Constitution of India which envisages "equal protection of law to all the persons similarly placed." Admittedly, in the State of Andhra Pradesh, a provision is made in BSO that reconveyance of the lands can be made to the original owners as and when the purpose for which the lands acquired is over and particularly, in this case, the Government has taken a decision to reconvey the lands to the original owners by collecting the compensation paid along with 12% interest. In fact, after this Court is seized of the matter, the first respondent apprehending that the Court is likely to take a serious view on his high handed action, got a letter written by the Commissioner of Land Revenue on 12-4-1996 which was already referred to above requesting the Government to reconsider the decision with regard to reconveyance of the land in question. What all the respondents and the Commissioner got from the Government in its letter dated 29-1-1997 is that the requisitioning Department should send a proposal for handing over the lands to the original owners to the Collector of the District concerned who will take further action either to use the land for any other public purpose or to restore it to the erstwhile owners as per the instructions. Even from this, it is seen that the Collector has to take a decision whether to use this land for any other public purpose or to restore the land to the original owners. I have already taken the view that the land is not required for any public purpose and it is only on an imaginary ground that the land is likely to be required for a public purpose, the Collector refused to reconvey the land to the petitioner. At any rate, when some of the original owners got the benefit under the orders of the Government, the Collector cannot refuse to extend the same benefit to the petitioner more so in the light of his letter No.R.C.No. 1/1901/93, dated 23-3-1993 where under he requested the Government to indicate calculation of interest and Head of account

to which the amount so collected is to be deposited. Such an action is highly arbitrary, nothing but vindictive and the same offends Article 14 of the Constitution of India. It was held by the Apex Court in various decisions that an authority cannot attack its own order in a Court of law. When the authority itself cannot attack the validity of the order, a subordinate under that authority cannot question the validity of the order. Such an action amounts to gross disobedience on the part of the subordinate. On this ground, also the action of the first respondent cannot be countenanced.

13. For all these reasons, I do not find any merit in the case of the respondents, and the petitioner has to succeed in the writ petition. Accordingly, a writ of mandamus shall issue to the respondents directing the respondents to reconvey the land to the petitioner within four weeks from the date of receipt of a copy of this judgment. In this case, the petitioner is naturally entitled for costs for the sufferance to which he was subjected to both prior to approaching this Court and after approaching this Court for the last 1 1/2 years. Hence, the respondents are directed to pay Rs.5,000/-towards costs. The writ petition is accordingly allowed. It is open to the Government to collect the said amount from the Collector who is directly held responsible for the malady.