
(2008) 10 AP CK 0045
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2647 of 2006

Malladi Laxminarayana

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 4(1), 5A, 6

Citation : (2009) 1 ALD 30(1) : (2009) 1 ALT 618

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; G.P for Land Acquisition and Rajgopal Rao, for R-3, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The petitioner is the owner of an extent of Ac.8.32 1/2 cents in Sy. No. 61 and 63 of Kanuru Village of Penamalur Mandal, Krishna District. He got the same in a family partition between himself and his brother, which took place on 27-09-1957, through a registered partition deed.

2. The A.P. Industrial Infrastructure Corporation (for short "the Corporation") intended to establish an Automobile Workshop at Kanuru Village, near Vijayawada. At the request of the Corporation, the District Collector, Krishna, the 1st respondent, published notification u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in the A.P. Gazette, on 24-04-1995, proposing to acquire about 150 acres of land in various survey numbers, including the land of the petitioner. The enquiry u/s 5-A of the Act was dispensed with, and declaration u/s 6 of the Act, was published on 28-04-1995. The notifications under Sections 4(1) and 6 of the Act were also published in the daily newspapers and in the locality, as required under the Act. Award, as regards the land of the petitioner, was passed on 05-08-2005. The petitioner challenges the award, mainly on the

ground that it is contrary to Section 11-A of the Act, and that the entire proceedings lapsed, on account of the failure of the respondents to pass the award within two years, from the date of publication of declaration u/s 6 of the Act. Certain other grounds are also urged.

3. The respondents 1 and 2 filed a counter-affidavit, opposing the claim of the petitioner. They did not dispute the fact that the land of the petitioner was included in the acquisition, and that the award was passed for the land, in the year 2004. They plead that the award in respect of about 116 acres was passed on 23-05-1996 itself, but the one, in respect of the land of the petitioner and certain others, admeasuring Ac.36.14 cents could not be passed on account of the interim orders passed in W.P. Nos. 10651, 10652 and 13970 of 1995. It is stated that the writ petitions were dismissed, and the last of the writ appeals, was dismissed only on 17-12-2003, and that the impugned award was passed within two years, from the date of dismissal of the writ appeal. In other words, they seek the benefit under the explanation to Section 11-A of the Act. Respondent No. 3, the beneficiary of acquisition, has also filed counter- affidavit on the same lines.

4. Sri P.R. Prasad, learned counsel for the petitioner, submits that the petitioner did not file any writ petition, challenging the acquisition, as regards his land, and therefore, proviso to Section 11-A of the Act operates. He contends that even in the writ petitions mentioned in the counter-affidavit, the stay was restricted to the one of taking possession, and there was no hindrance for the respondents, to pass the award. Learned counsel submits that when the respondents did not feel the interim orders passed in the writ petitions as an obstacle for passing the award, as early as in the year 1986, in respect of the lands which are not covered by the writ petitions, there is no basis for their plea vis--vis the lands of the petitioner. He submits that Section 11-A of the Act is enacted in the interest of the beneficiaries, and the benefit cannot be denied without there being proper basis.

5. Learned Government Pleader for Land Acquisition and Sri Rajgopal Rao, learned counsel for the 3rd respondent, on the other hand, submit that the notifications under Sections 4(1) and 6 of the Act were in respect of large extent, and since the three writ petitions filed by different land owners had a bearing on the validity of the notifications, the interim orders passed therein would operate, as regards the other lands also, covered by the same notifications. It is pleaded that the explanation to Section 11-A of the Act gets attracted to the facts of the case, and if the time, during which the proceedings were pending, is excluded, the Award passed, cannot be said to be in violation of Section 11-A of the Act.

6. The learned counsel for the concerned parties have relied upon certain decided cases, in support of their contentions.

7. There is no dispute that the petitioner is the owner of Ac.8.32 1/2 cents of land, which was notified for acquisition, along with certain other lands. Enquiry u/

s 5-A of the Act was dispensed with, and the notifications u/s 4(1) and 6 of the Act, were published, with a gap of less than one week. The total extent of the land acquired was Ac.152.08 cents. Award in respect of Ac.115.94 cents was passed on 23-05-1996. The land of the petitioner was not covered by that award. It was only on 05-08-2005, that an award was passed in respect of the land of the petitioner. The petitioner pleads that the award does not fit into the time frame, stipulated u/s 11-A of the Act. The provision reads as under: Section 11-A. Period within which an award shall be made:

The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation:- In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

The dates of notifications and the date of the impugned award speak for themselves, and if they are taken on their face value, they attract proviso to Section 11-A of the Act. A bare perusal of explanation would make it manifest that the time frame under the section would stand relaxed, only when the owner of the land approaches the Court and obtains an order of stay. Admittedly, the petitioner did not file any writ petition, challenging the notifications under Sections 4(1) and 6 of the Act.

The respondents try to justify their action in passing the award, as regards the lands of the petitioner, at a belated stage, by making reference to three writ petitions, namely, W.P. Nos. 10651, 10652 and 13970 of 1995. Neither the petitioner was a party to those writ petitions, nor his land was covered by them. It is also beneficial to refer to the nature of stay granted in those writ petitions. Initially, an order of stay was granted in WPMP No. 13091 of 1995 in W.P. No. 16052 of 1995, on 30-05-1995 for a period of four weeks, only to the extent of the lands held by one Mr.Malladi Krishna Mohan, the brother of the petitioner, to an extent of Ac.8.37 cents in Sy. Nos. 61 and 63 of Kanuru Village. Subsequently, the order of stay was modified on 28-06-1995, restricting it to the one of stay of dispossession only. It was made clear that the respondents are entitled to complete the other formalities according to law. The same pattern was repeated in other writ petitions.

Thus, there existed clarity from the beginning, that the petitioner, on the one hand, and his brother, Krishna Mohan, on the other hand, hold equal shares of Ac.8.37 cents each, in Sy. Nos. 61 and 63; and that writ petition No. 16051 of 1995 was only limited to the extent of the brother of the petitioner. It is also necessary to clarify that Mr.Krishna Mohan did not make any claim vis--vis the

land held by his brother, the petitioner herein. Therefore, there was no handicap for the respondents to pass award vis--vis the lands of the petitioner, and the interim orders did not even remotely cover to the land of the petitioner.

8. The petitioner filed a representation dated 26-07-2004, informing the respondents, well in advance, that no award can be passed in respect of his lands. Still, the respondents proceeded to pass the award.

9. Respondents rely upon certain judgments of the Supreme Court in support of their plea, that an order of stay vis--vis the declaration u/s 6 would operate, even in respect of the lands held by the persons, who are not parties to the proceedings before the Court. They rely upon the judgment of the Supreme Court in *Abhey Ram (dead) by LRs. and others Vs. Union of India and others*, .

10. In that case, large extent of land was notified for acquisition, by publishing a notification u/s 4(1) of the Act. Inquiry u/s 5-A was dispensed with. Some of the aggrieved persons filed writ petitions challenging the action of the respondents in dispensing with the inquiry u/s 5-A. After the writ petitions were dismissed, declaration u/s 6 of the Act was published, with a gap of about three years. The owners of the land, who did not challenge the action of the respondents in dispensing with the inquiry u/s 5-A, filed writ petitions, assailing the declaration u/s 6. It was in that context, that the Supreme Court held that the respondents could not have separated the cases of those, who challenged the invocation of urgency clause, on the one hand, and those, who did not challenge, on the other hand, in the context of ensuring time frame for publication of declaration u/s 6 of the Act. The relevant paragraph reads as under:

Para-9: ...The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry u/s 5A was put in issue and the declaration u/s 6 was questioned, necessarily unless the Court holds that enquiry u/s 5A was properly conducted and the declaration published u/s 6 to be valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5A enquiry and consideration of objections as it was not challenged by the respondent union. We express no opinion on its correctness, though it is open to doubt.

It is difficult to extend the principle underlying the said judgment, to the facts of this case. The reasons that apply to delayed publication of declaration u/s 6, when the invocation of the urgency clause was assailed, do not cover the situations of failure to pass an award, after publication of declaration u/s 6. There exists vast difference in the two situations. Further, the stay granted in that case was absolute in its purport and there was complete prohibition from issuing declaration u/s 6, which obviously, operated vis--vis the entire land

covered by Sections 4(1); whereas, in the instant case, the stay was restricted only to dispossession, that too, from the land of the respective petitioners. At any rate, the respondents themselves did not feel that the order of stay passed in the three writ petitions would not disable them from passing awards for the lands not covered by the writ petitions, and have proceeded to pass an award on 23-05-1996. There was nothing, which prevented the respondents from including the land of the petitioner also, in that award. Therefore, the respondents cannot take shelter under the broad plea, that an order of stay would operate for the entire land, covered by the notification, though writ petitions are filed by the owners of part of the land, proposed to be acquired.

11. Reliance is also placed upon the judgment of this Court in W.A. Nos. 317 of 2003 and batch dated 22-12-2006. It is difficult to apply the ratio of the said judgment to the facts of this case. The orders of stay or status quo, as the case may be, were passed in the writ petitions filed by the parties thereto. That was not a case where the person, who did not institute proceedings, claimed the benefit u/s 11-A of the Act. Certain other judgments were also cited, which are on the same lines.

12. From the above discussion, it becomes clear that the petitioner did not institute any proceedings, challenging the notifications under Sections 4(1) or 6 of the Act, and the respondents themselves passed an award on 23-05-1996, as regards the lands, which were not covered by the writ petitions, filed by some of the owners of the lands. The Hon"ble Supreme Court in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, emphasized the importance of the beneficial provision, u/s 11-A of the Act. It observed;

In order to get the benefit of the said provision what is required, is that the land-holder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired....

13. This principle squarely applies to the facts of this case. The judgment of the Supreme Court in State of Tamil Nadu v. Mahalakshmi Ammal AIR 1996 SC 866, virtually stands explained by the Supreme Court, in its judgment in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, .

For the foregoing reasons, the writ petition is allowed, and the impugned award, in so far as it relates to the land of the petitioner is set aside. There shall be no order as to costs.