
(1997) 10 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23906 of 1997

N. Anjaneyulu

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 4(1), 5
Land Acquisition Act, 1894 — Section 17(4), 4(1)

Citation : (1998) 4 ALD 377

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Mr. Ch. Laxmi Narayana, for the Appellant; Government Pleader for Social Welfare, for the Respondent

Judgement

1. The petitioner has filed the above writ petition assailing the notification u/s 4(1) of the Land Acquisition Act, 1984 (for short "the Act").
2. The case of the petitioner is that an extent of land admeasuring Ac.4.89 cts comprised in Sy.No.384 of Gundlapalli village, Maddipadu Mandal, Prakasam District said to be belonging to the petitioner is sought to be acquired under the Land Acquisition Act for the purpose of providing house-sites to backward classes. A notification u/s 4(1) of the Act was published on 15-3-1996. The same was also published in two newspapers viz., Andhra Prabha dated 20-3-1996 and Janata dated 23-3-1996. The urgency clause u/s 17(4) was invoked and enquiry u/s 5A was dispensed with. The declaration u/s 6(1) was published in the District Gazette dated 18-3-1996. The same was also published in two newspapers viz., Andhra Prabha dated 23-3-1996 and Janata dated 20-3-1996.
3. The aforesaid acquisition proceedings arc assailed mainly on the ground that even before completion of the procedure u/s 4(1) of the Land Acquisition Act, the notification u/s 6 could not have been published- Making declaration is a condition precedent for exercise of the power u/s 17(4) of the Act.

4. It is further contended that the publication of the notices in local newspapers is to be taken as the date of publication and if so taken, the last date of publication is to be reckoned from the date on which the draft notification (Section 4(1)) and the declaration (Section 6(1)) have been published in newspapers. It is the contention of the learned Counsel for the petitioner that declaration u/s 6(1) can be made only after the publication of notification u/s 4(1). In the instant case, it is submitted that the publication of the notices u/s 4(1) and 6 in newspapers are of same date and therefore the provisions of Section 17(4) have not been validly invoked.

5. It must at once be noticed that the publication in the Gazette, which is crucial and mandatory, insofar as Section 4(1) notification is concerned, the same was published in the District Gazette on 15-3-1996 and insofar as declaration u/s 6(1) of the Act is concerned, the same was published in the District Gazette dated 18-3-1996. There is thus a gap of three days between the two Gazette publications.

6. The three steps envisaged u/s 4(1) of the Act are (1) publication of the notification u/s 4(1) in the official Gazette; (2) publication of the notification in two daily newspapers having circulation in the locality of which at least one shall be in the regional language; and (3) Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

7. The publication of the said notices in local newspapers after the Central Amendment Act 68 of 1984 in State of Haryana and Another Vs. Raghubir Dayal, , the Supreme Court held that the requirement of compliance of three steps envisaged u/s 4(1) is mandatory. It was also held that the publication of the declaration in two newspapers and substance thereof at convenient places in the locality is directory. The expression "hereinafter" and "last of the dates of publication" shall be for the purpose of computation of limitation of one year u/s 6 and to determine compensation u/s 23(1).

8. In this connection, it may be useful to refer to a recent judgment of the Supreme Court in Mohan Singh and Others Vs. International Airport Authority of India and Others, wherein similar contentions as have been advanced by Sri Ch. Lakshminarayana, learned Counsel for the petitioner were raised before the Supreme Court and considered. The Supreme Court after considering various judgments of the Courts held as under :

"20. In the light of the above law, we have no hesitation to hold that though compliance of publication of three steps required u/s 4(1) is mandatory while exercising the power of eminent domain u/s 4(1), when the appropriate Government exercises the power under subsection (4) of Section 17 dispensing with the enquiry u/s 5A and directing the Collector to take possession of the land before making the award when the lands are needed urgently either under subsections (1) or (2) thereof, it is not mandatory to publish the notification u/s 4(1) in the newspapers and giving of notice of the substance thereof in the locality;

the last of the dates of publication should not be the date for the purpose exercising the power u/s 17(4). This interpretation of ours would sub-serve the public purpose and suppresses mischief of non-compliance and seeks to elongate the public purpose, namely, taking immediate possession of the land needed for the public purpose envisage in the notification."

9. In the light of the above, it has to be held that the last of the dates of publication of notice u/s 4(1) in newspapers would not be the date for the purpose of exercising the power u/s 17(4). The words "hereinafter" used in Section 4(1) seek to prescribe limitation u/s 6 for publication of declaration u/s 6(1) within one year from the date of publication of the notification u/s 4(1). The last of the dates is intended only for the purpose of computation of limitation. The contentions of the learned Counsel for the petitioner have accordingly to be rejected.

10. Next, it was contended that after having invoked the urgency clause u/s 17(4) of the Land Acquisition Act, the possession of the land has to be taken within three months from the date of notification and as respondents have not taken possession of the land within the period of three months prescribed for the said purpose, the proceedings under the Land Acquisition Act are vitiated. Learned Counsel for the petitioner relied upon sub-section (5) of Section 17 introduced by the State Amendment A.P. Act 9 of 1983 w.e.f, 12-9-1975. The said contention has also been considered and negatived by a Division Bench of this Court in Vana Adamma and others v. District Collector, Srikakitlatn and another 1991 (1) APLJ 330. The Division Bench held as under :

"..... As a result, it is held that sub-section 5 of Section 17 introduced by the State Amendment has become repugnant and void after the Central Amendment Act 68/84 and cannot be enforced.""

11. For the reasons aforesaid, there are no merits in the above writ petition and the same is accordingly dismissed at admission stage.