
(2012) 07 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No.553 of 2012

Nagarala Nirvasithula Welfare Association

APPELLANT

Vs

The Govt. of A.P. and others

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 2
Andhra Pradesh Panchayat Raj Act, 1994 — Section 58, 58(1)
Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 2, 4(1), 5A, 6

Citation : (2012) 07 AP CK 0065

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Gangarami Reddy, for the Appellant;

Judgement

L. Narasimha Reddy

1. The petitioner is an Association of persons of Nagarala Village, Pebbair Mandal, Mahaboobnagar District. The entire village of Nagarala came under submergence, as part of Bheema Irrigation Project of Rangasamudram Balancing Reservoir. Apart from the land, 264 houses were also effected. A notification u/s 4(1) of the Land Acquisition Act (for short "the Act") was published on 26.07.2008. Enquiry u/s 5A of the Act was dispensed with and declaration u/s 6 of the Act was published on 09.09.2008. An award was passed on 18.02.2009 through which compensation was awarded for the structures alone. No compensation was paid for the land on which the houses were constructed. The petitioner contends that there was no justification for the respondents in denying the compensation for the land on which houses were constructed. The respondents filed a counter affidavit. It is stated that draft notification and draft declaration under Sections 4(1) and 6 of the Act respectively were issued in respect of 264 houses of Nagarala Village, covering an area of 43,823 square meters. The fact that award was passed on 18.02.2009 in respect of the houses is also admitted. As regards the compensation for the land, it is stated that the

instructions issued by the Government in G.O.Ms.No.76, dated 13.04.2006 and Memo, dated 04.06.2007, which are to the effect that compensation in such cases shall be paid for structures only; were followed. According to the respondents, the place, where the houses were constructed, being Gramakantam, vests in the Government and the question of paying compensation for the Government land does not arise. It is also stated that the structures alone were notified in the proceedings and not the land. The respondents further state that the members of the petitioner-association constructed houses on Government land and that they are not entitled to receive compensation for the said land.

2. Sri P. Gangarami Reddy, learned counsel for the petitioner submits that except stating that the houses were constructed on Gramakantam, the respondents are not able to establish as to how the land belongs to Government. He contends that the expression "Gramakantam" connotes the use of the land viz., place, where houses can be constructed, in contrast to other uses such as agriculture, grazing, tanks etc. Learned counsel further submits that Section 2 of the A.P. Land Encroachment Act, which lists the properties that are vested in the Government clearly excludes the house sites or their backyards. He has placed reliance upon the judgment of the Madras High Court in S. Rengaraja Iyengar and Another Vs. Achikannu Ammal and Another, and the The Executive Officer, Kadathur Town Panchayat Vs. V. Swaminathan, The State of Tamil Nadu, The District Collector and The Revenue Divisional Officer,

3. Learned Government Pleader for Land Acquisition on the other hand submits that though the members of the petitioner-Association may have constructed houses and lived therein for a long time, they did not derive any right over the house sites. He submits that the members of the petitioner-Association failed to prove independent title over the sites and the inescapable conclusion is that the entire area on which the houses were constructed was held by the Government. According to him, the members of the petitioner-Association were extended fair treatment through payment of the cost of the structures.

4. As observed earlier, the entire village of Nagarala came under submergence of a Reservoir of Bheema Project. Recognizing its obligation, the Government issued notifications under Sections 4(1) and 6 of the Act. It is true that what was requisitioned by the Irrigation Department was the area and not the structures. However, the structure would include the site on which construction was made. The 3rd respondent herein passed award, dated 18.02.2009 in respect of structures alone. For this, he relied upon certain instructions issued by the Government, The basis for denying compensation for the plots of land owned by the members of the petitioner-association was that the plots are part of Gramakantam, and that the Gramakantam belongs to the State. It was opined that the persons, who constructed houses thereon, are not eligible to be paid compensation for the site. Now, it needs to be seen as to (a) whether any area, classified as Gramakantam, vests with the Government and if so, (b) whether the

persons who constructed houses thereon are not entitled to be paid compensation for the house site.

5. It is a matter of common knowledge that a revenue village comprises of area, in which villagers inhabit; the agricultural lands, water bodies, such as tanks, forest areas, hillocks etc. The revenue records reflect the nature of ownership of such properties. The water bodies, porambores, roads, pathways etc. vest in the Government. Since the land revenue is to be levied, it becomes necessary to segregate the area, which is earmarked for habitation or construction of houses, in contrast to other categories of land. While in respect of agricultural lands and vacant lands, land revenue is levied, what is payable in respect of house sites is the property tax, and it is to be paid to the concerned local authority, such as Gram Panchayat. Since the expression "Gramakantam" is not defined under any statute, assistance can be taken from the provisions of the Land Encroachment Act. Section 2 thereof reads as:

2, Right of Property in public roads, etc, waters and lands:-

(1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) of any Zamindar, poligar, mittidar, jagirdars, shrotriamdar or any person claiming through or holding under any of them, or

(b) of any, person paying shist, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, or in any way subject to the payment of land-revenue direct to Government, or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence.

And, as to lands, save also in so far as they are temple sites or owned as house site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting.

(2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government. Explanation:

- In this section "high water mark" means the highest point reached by ordinary spring tides at any session of the year.

6. It is a comprehensive definition, being both, inclusive and exclusive. It not only lists the properties that vests in the Government, but also mentions those, which are not declared to be the property of the Government. While clauses (a) to (e) of sub-section (1) are referable to specific categories of properties that are outside the ownership of Government, the last phrase "and, as to lands, save also in so far as they are temple sites or owned as house site or backyard" excludes the land on which temples and houses are constructed; including the backyards. The effect is that the house sites and their backyards cannot be treated as property of Government. Here itself, a distinction needs to be made viz., where house is constructed and the same is recognized by the local authority on the one hand; and an outright encroachment of a land, which undisputedly belongs to Government; on the other hand.

7. The Madras High Court dealt with this very question in Rengaraja Iyengar's case (1 supra), which arose under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act (for short "the Estates Act") and the Madras Land Encroachment Act 1905 (which was adopted by the State of A.P.). In Tamil, Gramakantam is known as Gramanatham. Referring to Section 2 of the Land Encroachment Act, the Madras High Court observed:

A house-site owned by a person in what is generally known as gramanatham is not, under Madras Act III of 1905, property of the Government. Section 2 of the Madras Act III 1905 says, in regard to lands which are not covered by clauses (a) to (e) of sub-section (I) of Section 2, that those lands are and are hereby declared to be the property of the Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary, be constructed. But whether sub buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905.

8. On this basis, the Court held that the land which forms part of Gramanatham does not vest in the Government by operation of Section 3(b) of the Estates Act. The relevant portion reads:

A building in a gramanatham (or village habitation) is protected from transfer of title to the Government both u/s 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905.

9. The same view was reiterated by the Madras High Court itself recently through its judgment in *The Executive Officer, Kadathur Town Panchayat's case* (2 supra).

10. On behalf of the respondents, reliance is placed upon the judgment of this Court in *Banne Gandhi and Others Vs. District Collector and Others*, which arose under the A.P. Panchayat Raj Act, 1994. Section 58(1) thereof directs that all porambores viz., grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks etc. vest in the Gram Panchayat. Sub-section (2) thereof directs that the Government may, at any time, by notification in the A.P. Gazette, direct that any porambores referred to in sub-section (1) shall cease to vest in the Grampanchayat.

11. The Government initiated steps to issue house site pattas over the land, which formed part of Gramakantam. The same was challenged stating that Gramakantam vests in the Grampanchayat and that the Government cannot grant house site pattas in it. A learned Single Judge of this Court held that there is no mention of Gramakantam in sub-section (1) and thereby, the question of such lands vesting in the Government does not arise. That judgment cannot be treated as an authority for the proposition that Gramakantam vests in the Government. The scrutiny was restricted to the question as to whether the Gramakantam vests in the Gramapanchayat. Since the expression was not utilized in sub-section (1) of Section 58, the question was answered in the negative. That however would not lead to an inference, much less a conclusion, that Gramakantam vests in the Government. At any rate, the purport of Section (2) of the Land Encroachment Act was not taken into account. Therefore, the 3rd respondent was not justified in denying compensation to the land, on which the houses were constructed by the members of the petitioner-association.

12. Assuming that the Gramakantam vests in the Government, there exists a tacit approval or assignment in favour of the members of the petitioners enabling them to construct houses. This is evident from the fact that houses constructed by the members of the petitioner-association were notified for acquisition. A house cannot exist in vacuum and invariably it has to be on land. Law does not permit recognition of rights with regard to structures excluding the land on which they were made. This approach runs contrary to the purport of the definition of immovable property under the Transfer of Property Act. The plot of land, on which the construction is made to the knowledge, can be deemed to have been assigned, particularly when the Government paid compensation for the structure.

13. A Larger Bench of this Court in *LAO-cum-Revenue Divisional Officer, Chevella Division and Others Vs. Mekala Pandu and Others*, held that even where the land of assignee is resumed to Government, ex gratia almost on par with the market value, must be paid.

14. Apart from the reasons stated above, there exists an act of discrimination on the part of the respondents. The petitioners have filed a copy of the award, dated 16.06.2011 in respect of the houses in the neighbouring village of Dadanpally,

which too were acquired, for the purpose of same project. The summary of the award reads that compensation was awarded separately for the area of 10,799 square meters at the rate of Rs.150/- per square meter and value of the structures thereon, estimated at Rs.7,81,42,492/-, was awarded. Except stating that the case of the petitioner stands on a different footing, the respondents did not justify the differential treatment. Their action is violation Article 14 of the Constitution of India.

15. For the foregoing reasons, the writ petition is allowed and the 3rd respondent is directed to pass supplementary award in respect of the land covered by the houses of the members of the petitioner-association with all statutory benefits, within a period of two months from the date of receipt of a copy of this order. The miscellaneous petition filed in this writ petition also stands disposed of. There shall be no order as to costs.