

(1978) 12 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1806 of 1978

Nakka Ammorayya

APPELLANT

Vs

The District Social Welfare Officer, Kakinada and Another

RESPONDENT

Date of Decision : 08-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Amendment) Act, 1894 — Section 17, 4
Land Acquisition Act, 1894 — Section 4

Citation : AIR 1979 AP 159

Hon'ble Judges : Raghuvir, J; Madhava Rao, J

Bench : Division Bench

Advocate : M. Ramachandra Reddy, for the Appellant; Govt. Pleader for Land Acquisition, for the Respondent

Judgement

Madhava Rao, J.—In this writ petition. the acquisition of land bearing S Nos. 26 and 30 measuring Ac. 6-16 cents in Kothapalli village, Pithapuram taluk, East Godavari District is challenged mainly on the following grounds:

(1) that there was "O proclamation of the substance of the notification under S. 4(1) of the Land Acquisition Act in the village, even though the Notification was published in the Gazatte on 11-2-1978.

(2) that there was not such urgency so as to dispense with the enquiry under S, 5-A by invoking S 17(4) of the Land Acquisition Act, and

(3) that when other suitable land is available for acquisition for the purpose of house sites to the poor the petitioner's land was deliberately acquired omitting the above land which is adjacent to Harijanwada.

2. We shall take up the second ground first. So far as invoking S. 17(4) of the Land Acquisition Act (hereinafter referred to as the Act") is concerned, it is averred in the affidavit that dispensing with the enquiry under S. 5-A of the Act is bad for the Reason that the acquisition of the petitioner's land for the purpose

of house-sites to the poor is not so urgent as to invoke the urgency clause and the Supreme Court has also accepted the view that the acquisition of lands for the purpose of providing house-sites to the poor is not so urgent as to deprive the petitioner of his valuable right under S. 5-A of the Act. The Learned counsel for the petitioner has relied on the decision of the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, .

3. In the counter-affidavit filed on behalf of the respondents it is stated that on a representation made in this regard for the provision of house-sites to the houseless poor in Kothapalli village of Pithapuram taluk, the District Social Welfare Officer (General), Kakinada, inspected the lands around the village, Kothapalli, on 29-12-1947, that the proposals for the provision of house-sites to the poor houseless backward class families have been initiated in consultation with the beneficiaries, that the village is very densely populated and was congested with groaning unhygienic conditions and that, therefore, there was urgent necessity to release congestion in the village. In view of the above facts it is stated that they wanted to take urgent measures and that, therefore urgency clause was invoked.

4. The case cited by the learned counsel for the petitioner was one dealing with acquisition of land for development of industrial areas and residential tenements for persons to live in and thus is for public purpose. An affidavit was filed in that case by the Special Land Acquisition Officer and it is relevant to quote it here:

"I deny the allegation that the urgency clause has been applied without any valid reason. I respectfully submit that whether an urgency exists or not for exercising the powers under S. 17(1) of the Act is a matter solely for the determination of the State Government or the Commissioner. Without prejudice to this, I respectfully submit that as mentioned in the impugned notification, the third respondent found the opinion that the said lands were urgently required for the public purpose mentioned there in, and accordingly he was pleased to so direct under the provisions of Section 17(4) of the Act."

The contention raised therein on behalf of the State of Maharashtra, was that the existence of the urgency is not a judicial matter at all left for determination by Courts. After that, there was a bare submission stating the alternative case that the third respondent had formed the opinion that the said lands were urgently required for the public purpose. But no facts or particulars were stated to which the Commissioner could have applied his mind in forming the opinion that the situation called for declarations cum-directions, under S. 17(4) of the Act, to dispense with inquiries under S. 5-A of the Act in those cases. The Bombay High Court taking into consideration the fact that there were no facts given whatsoever on the basis of which it could be opined that there was urgency and Section 5-A could be dispensed with, held that the acquisition proceedings were bad. The Supreme Court also confirmed the said view.

5. In the instant case it is clearly stated in the counter-affidavit that there was a lot of congestion and unhygienic conditions and for relieving the unhygienic

conditions, lands are necessary to be acquired and house-sites should be provided urgently. It cannot be said that the authorities, who wanted to invoke S. 17(4) of the Act and dispense with the enquiry under S. 5-A of the Act, have not applied their mind at all in this case and mechanically S. 17(4) of the Act. Therefore, in our view, the case relied upon by the learned counsel for the petitioner does not Support him for the reasons given above.

6. The learned counsel for the petitioner next contended on the third point that there are some adjacent lands which could have been acquired for house-sites. In the counter-affidavit it is stated that the petitioner's land was not selected due to any local influence, that it was a fact that there was another proposal for the acquisition of lands covered by S. Nos. 39/8 and 39/9A, which are adjacent to the habitation of the beneficiaries for whom it was proposed, and that the proposals in these two cases have been selected in blocks in view of the better way of expanding the village site. It is also categorically denied that the land adjacent to the other proposal was deliberately left out without being acquired and the site belonging to the petitioner was acquired. The land adjacent to the land in S. Nas. 39/8 and 39/9A i.e., the land covered by S. No. 38/1 belongs small farmers, whose livelihood will be affected if the lands are acquired. The Government as a matter of policy not acquiring the lands of small farmers and therefore in that view they have not chosen to acquire that land. Therefore, we see no substance in this point also raised by the learned counsel for the petitioner.

7. So far as the first point is concerned, it is stated in the counter-affidavit that the Notification under S. 4(1) of the Act was published in the locality on 20-2-1978 and a certificate to that effect was obtained from the village officer. The learned counsel for the petitioner disputes the correctness of the publication of the Notification in the village. This is a matter which required enquiry into the facts. While exercising our jurisdiction under Art. 226 of the Constitution of India we are not inclined to record evidence in the matter. It is open for the petitioner to agitate the points in the forum available to him on this aspect of the case. We, therefore grant ten weeks time from today to issue notice, if so advised, and take proper steps in the matter.

8. With the above direction, the writ petition is closed. There shall be no order as to costs Advocate's fee Rs. 150.

9. Order accordingly.