
(1985) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6158 of 1983

Namala Pitchaiah and Others

APPELLANT

Vs

District Collector, Guntur and Others

RESPONDENT

Date of Decision : 21-03-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 5

Citation : AIR 1986 AP 60 : (1986) 1 AnWR 246

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; Govt. Pleader for S.W., for the Respondent

Judgement

P.A. Choudary, J.—The District Collector, Guntur, had published a notification under S. 4(1) of the Land Acquisition Act in the Guntur District Gazette, Extraordinary dt. 17-6-1983 proposing to acquire Ac. 4.80 cents situated in S. Nos. 649-3B of Nandirajupalem Village, hamlet of Bellamkonda, Tajupelam Taluk Guntur District. The substance of that notification was published in the locality on 30-6-1983 and possession was taken of that land on 7-11-1983 and pattas were also distributed to the beneficiaries. The acquisition of the land was for the purpose of providing house-sites and S. 5-A inquiry under the Act had been dispensed with on the same day on which S. 4(1) had been published. Now, this writ petition has been filed by the three persons all of whom claimed to be small farmers, on the ground that the District Collector, having dispensed with the holding of S. 5-A inquiry had failed to take possession within three months from the date of the notification published under S. 4(1) and that accordingly, the possession has been taken by the land acquisition authorities on 7-11-83 must be held to be unauthorised and illegal and that they should now be directed to hold a fresh inquiry under sec. 5-A . The consequence of this argument would be to set aside the section 6 declaration also because section 6 declaration can be made only on consideration of the report submitted under s. 5-A inquiry where such inquiry was not legally dispensed with.

2. Considering this matter purely from the point of view of law, I am inclined to agree with each one of the contentions of the petitioners. The amending Land Acquisition Act No. 9 of 1983 made by the State Legislature had come into effect on 29-6-83, and according to a judgment of a Division Bench of this Court reported in *Shivlal Patel v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad* 1985 1 APLJ HC 9 the amended provisions would apply even to those Land Acquisition proceedings initiated earlier to 29-6-1983. If that were to be so, dispensing with the inquiry under S. 5-A of the Land Acquisition Act would be permissible only if possession is taken within three months from the date of dispensing with S. 5-A inquiry. The amending provision says :

"Section 17(5)(b).

If however the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of S. 5-A shall apply as if there is no such direction that S. 5-A shall not apply, and in all such cases the period of thirty days referred in S. 5-A shall be reckoned from the date of expiration of three months specified in cl. (A)".

3. This amending provisions intends to debar the land acquisition authorities to take possession after lapse of three months, except by following the procedure of holding an inquiry under S. 50A. In other words, the statute proceeds on the basis that the power to take possession created by issuing the notification dispensing with S. 5-A inquiry would lost its force by lapse of three months if possession is not taken by them. It means that, if possession is not taken during those three months, possession of the land, thereafter, can be taken only after holding S. 5-A inquiry. In this case, the possession is not taken within three months. Thereafter, the possession has been taken without holding S. 5-A inquiry. Clearly, therefore, the law should hold, taking possession of the land by the land acquisition authorities on 7-11-1983 is illegal. What is more, it should also hold that S. 6 declaration made by the authorities on 17-6-1983 along with S. 4(1) notification on the assumption that possession would be taken within three months is invalid. For those reasons I should allow this writ petition. I would have so held, if there is merely a private law litigation. But unfortunately if I allow this writ petition now. I would be making an order wholly inconsistent with an earlier order of this court made in W. P. No. 9648 of 1983, dt. 5-11-1984 regarding the same acquisition of lands under the same notification. In that Writ Petition the acquisition of these very lands was challenged by two other writ petitioners and that petition was dismissed by this court on 5-11-1984. The effect of the earlier writ proceedings resulting in the dismissal of the writ petition is not only to validate the taking of possession by the authorities on 7-11-1983, at least, so far the other petitioners are concerned, but, it would also validate S. 6 declaration. That means making inconsistent orders. In the above circumstances, I think, the proper course for me to adopt is to declare the law and to dismiss the writ petition, so that inconsistent orders may not come to be

made from this court. It must be noted that the earlier order has become final and irreversible. I know all this will be a poor solace to the petitioner.

4. For the above reasons, I dismiss this Writ Petition, but direct the respondents to pay the costs of the writ petition to the petitioners. Advocate's fee Rs. 150/-.

5. Petition dismissed.