
(2001) 12 AP CK 0077
In the Andhra Pradesh High Court
Case No : WA No. 1816 of 2001

New Bhoiguda Mosque and Grave Yard Committee	APPELLANT
Vs	
District Collector, Hyderabad and Others	RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 — Section 2(3), 23(2), 3(1), 3(2)

Citation : (2002) 1 ALD 790 : (2001) 6 ALT 794

Hon'ble Judges : Ar. Lakshmanan, C.J; V.V.S. Rao, J

Bench : Division Bench

Advocate : R. Chandrasekhara Reddy, for the Appellant; Government Pleader, G. Jyothi Kiran, SC for MCH and D. Goverdhanachari, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, C.J.—This writ appeal is directed against the order dated 18-6-2001, passed by a learned Judge of this Court, dismissing the writ petition being WP No. 4376 of 1990, filed by the appellant, impugning the notification dated 12-4-1984 issued by the Commissioner, Municipal Corporation of Hyderabad (for short "the Corporation"), in purported exercise of his power u/s 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (for short the Act"), proposing to acquire an extent of 3000 Sq.yds. of land.

2. The appellant claims to be the owner and possessor of an extent of Ac. 1-24 guntas of land in Sy. No. 887, being the Wakf property. Before the learned single Judge, it was contended on behalf of the petitioner-appellant that before issuing the impugned notification, no notice as contemplated u/s 2(3) of the Act was issued to the petitioner, and that the impugned notification is contrary to the spirit of the judgment, dated 21-4-1987, passed by a learned single Judge of this Court in WP No. 8331 of 1981.

3. The learned single Judge, on the first point held that it is clearly stated in the counter that notice calling for objections, if any, was affixed at the site proposed

to be acquired and the same was also published in the local newspapers such as "Deccan Chronicle" and "Siasat", dated 18-11-1983, and as no objections were received, the notification u/s 3(2) of the Act was issued. On the second point he held that the judgment in WP No. 8331 of 1981, dated 21-4-1987, would in no way affect the validity of the notification, which is impugned in the present writ petition.

4. Heard the learned Counsel on either side.

5. The learned Counsel for the appellant submitted that the respondents while issuing the notification, impugned in the writ petition, seeking to acquire 3000 Sq. yds of land, have not followed the procedure laid down u/s 3(2) of the Act, in letter and spirit. This is denied by the learned Standing Counsel appearing on behalf of the Corporation. It is stated in para 4 of the counter-affidavit, filed by the respondents in the writ petition, that before issuing the impugned notification u/s 3(2) of the Act, notice calling for objections, if any, was affixed at the site in question, and it was also published in local newspapers such as "Deccan Chronicle" and "Siasat", and as no objections were received, the impugned notification was issued, and since then, the acquired land in question is absolutely vested in the Government. It is further stated that the acquired land was occupied by slum dwellers for more than 50 years, and there were no graves in the said land, and it is not correct to say that the Corporation cannot acquire the land. It is further stated the Corporation was not a party to the proceedings in WP No. 8331 of 1981. No reply affidavit was filed by the appellant rebutting the averments made by the Corporation in its counter.

6. Having regard to the averments made by the Corporation in the counter filed by it, the contention of the learned Counsel for the appellant that the provisions of Section 3(2) of the Act have not been complied with by the respondents in issuing the impugned notification, cannot be accepted. Hence, the said contention is rejected.

7. We have perused the notification dated 12-4-1984, impugned in the writ petition, issued by the Commissioner of the Corporation in exercise of his power u/s 3(2) of the Act. It is stated in the notification that notices to the owners and other persons interested in the land, were issued in Roc No. 23/UCD/D/83, dated 3-11-1983 of the Special Officer/ Commissioner of Municipal Corporation of Hyderabad, and also published in local newspapers on 18-11-1983 to show-cause as to why the lands belonging to them in the notified slum areas should not be acquired with a view to undertaking the execution of work designed to improve or clean the area in the interest of public health, safety or convenience of its neighbourhood. It is also stated that no objections were received from the owners, and therefore, the persons interested in the said land declared as slum area have been duly considered. The Commissioner after satisfying himself that it is necessary to acquire the land for the purpose of cleaning or improving the said area, in exercise of the power conferred on him by Section 23(2) of the Act, decided to acquire the land declared as slum area in pursuance of Section 3(1) of

the Act.

8. In order to satisfy ourselves as regards the contentions raised by the learned Counsel for the appellant, we perused the judgment in WP No. 8331 of 1981, dated 21-4-1987. WP No. 8331 of 1987 was filed by the appellant herein seeking a writ of mandamus, declaring the action of the respondents, namely, the District Collector, Hyderabad, and the A.P. Wakf Board, in issuing pattas to tenants in respect of Ac. 1-24 guntas of land, (Wakf property), belonging to the appellant, as illegal, null and void, and grant other reliefs. By order dated 21-4-1987, a learned single Judge of this Court disposed of the said writ petition in the following terms:

A copy of the Gazette dated 8-7-1969 in which the property in question is notified as Wakf property is filed in this Court. The factual details are not available. Accordingly, the Collector is directed to enquire into and decide whether the property is a Wakf property or not. If it is so, the Collector has no authority to acquire it for public purpose under the provisions of the Land Acquisition Act. The writ petition is accordingly disposed of.

9. As rightly observed by the learned single Judge, the above judgment, absolutely has no relevance to the question at issue because WP No. 8331 of 1981 was filed by the appellant to declare the action of the respondents in issuing pattas to the tenants in respect of the Wakf property, and a learned single Judge of this Court, while disposing of the said writ petition directed the District Collector to conduct an enquiry and decide whether the property is Wakf property or not, and if it was found that the property belongs to the Wakf, then the Collector has no authority to acquire the land for public purpose under the Land Acquisition Act. This apart, by the time the impugned notification was issued by the Commissioner of the Corporation in exercise of his powers u/s 3(2) of the Act, on 12-4-2001, the above writ petition was still pending. Hence, we are of the opinion, that the impugned notification is perfectly valid and in order.

10. As noticed above, the impugned notification was issued on 12-4-1984, whereas the writ petition was filed on 26-3-1990 i.e., nearly after a lapse of six years. Therefore, on the ground of laches also, the writ petition was liable to be dismissed, and the learned single Judge has rightly dismissed the writ petition.

11. For the foregoing reasons, we hold that the order of the learned single Judge is unassailable. There is no merit in the writ appeal, and it is accordingly dismissed. No costs.