
(1981) 09 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5267 of 1980

P. Punnaiah and Others

APPELLANT

Vs

The District Collector, Kakinada and Others

RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 17(2), 17(4), 4(1), 5(A), 6

Citation : AIR 1982 AP 33

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Advocate : C. Poornaiah, for the Appellant; Govt. Pleader for Land Acquisition, for the Respondent

Judgement

1. The lands of the petitioners are sought to be acquired for providing house sites for the poor. Notification under S. 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the East Godavari District Gazette dated 4th July, 1980. Under sub-sec. (4) of S. 17 of the Act, enquiry under S. 5-a was dispensed with in view of the urgency of the case, Questioning those proceedings the petitioners have filed this writ petition.

2. First, it is submitted by the learned counsel for the petitioners that the substance of the notification u/s 4(1) was not published in the village. In the counter-affidavit it is stated that the substance of the notification was published in the village by beat of tom tom on 13th July, 1980. Therefore, this objection is overruled.

3. Next, it is submitted that there is a coconut garden and also dwelling houses belonging to the petitioners in the land and, therefore, they are not waste or arable lands and consequently, enquiry under S. 5-a of the Act could not be dispensed with under sub-section (4) of S. 17 of the Act. In the counter-affidavit filed by the respondents it is stated that the cattle shed and the residential houses in the lands belonging to the petitioner No. 3 (P. Nageswara Rao) and petitioner No. 4 (P. V. Narasimham) have been excluded from the acquisition.

Here it may be noted that 0-87 cents belonging to the 3rd petitioner and 0-84 cents belonging to the 4th petitioner are being acquired. It is admitted that there are coconut gardens in the lands. From the record I find that the lands in question were inspected by the Land Acquisition Officer and they were notified, for the form a compact block adjacent to the village, school and road and quite convenient for construction of houses without levelling. It is stated that there are no other suitable lands convenient for construction of houses.

4. The first question for consideration is whether the lands wherein there are coconut gardens are not arable lands?

5. In *Madhusudhan Reddy v. State of A. P.* (1970) 1 AnWR 43, M. Krishna Rao, J., held that the lands in which there are grape plantations are not arable lands. In this connection, the learned Judge relied upon *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, wherein it was held, that the expression

"arable land" must be construed to mean the lands which are mainly used for ploughing or which are capable of being ploughed or fit for cultivation. Applying that test, the learned Judge observed that it cannot be said that the lands in which there are grape plantations are used for ploughing or for raising crops. I am of the opinion that merely because there is a coconut garden, it does not follow that the land cannot be ploughed and crops cannot be raised. There are cases where, notwithstanding the coconut trees on the lands, they are ploughed and crops are raised regularly. There fore , it has to be decided on the facts of each case, where, notwithstanding the existence of coconut trees, the lands are still being ploughed and crops are being raised.

6. Reliance was also placed on *Saleha Bibi v. State of U. P.* 1969 ACJ 64, wherein it has been held that a piece of land which is covered by fruit bearing trees, like mango trees, cannot be used for ploughing and for raising crops and, therefore, it would not be a land capable of being ploughed or fit for cultivation. This is again a question of fact . There may be mango trees on the land, still the land might be ploughed and crops might be raised.

7. In *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, , the Supreme Court held that by arable land is meant not only land capable of cultivation, but also actually cultivated.

8. In the case on hand, there is no evidence to show whether, in fact, the land is being ploughed and the crops are being raised. But, I assume for a moment, that they are not ploughed and crops are not raised and, therefore, they are not arable lands and S. 17(1) of the act is not attracted. Still, the question for consideration is when the lands, though not arable are sought to be acquired for providing house sites to the poor, could the enquiry under S. 5-a be dispensed with or not, if it is a case of urgency? To decide this question we have to refer to sub-sec. (2) of S. 17, as amended by the Madras Act XXI. of 1948, The amended sub-sec, (2) reads as follows:

" (2) In the following cases, that is to say, (a) whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance for their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station,

(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land-

(I) for the purpose of any library or education institution, or

(ii) for the construction, extension or improvement of-

(A) any building or other structure in any village for the common use of the inhabitants of such village, or

(B) any godown for any society registered or deemed to be registered under the Madras co-operative societies act 1932, OR THE Hyderabad co-operative societies Act, 1952 (Hyderabad Act, XVI of 1952) or

(C) any dwelling house for the poor or

(D) any irrigation tank, irrigation or drainage channel or any well, or

(E) any road, the Collector may, immediately after the publication of the notice mentioned in sub-sec (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove this movable property from such building without unnecessary inconvenience."

9. Sub-section (4) provides, that in the case of any land to which, in the opinion of the appropriate Government the provisions of sub-sec (1) or sub-sec, (2) are applicable, the appropriate Government may direct that the provisions of S. 5-A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the publication of the notification under S. 4, sub-sec, (1), In view of the amended sub-sec, (2), whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the construction, extension or improvement of any dwelling house for the poor, the Collector, may, immediately after the publication of the notice mentioned in sub-sec. (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Thus, it is left to the opinion of the Collector to decide whether it was necessary

to acquire the immediate possession of any land for the construction, extension or improvement of any dwelling house for the poor. His opinion is subjective, though it should be based on some material. The very fact that the Legislature has thought it fit to treat the acquisition of the land for the construction, extension or improvement of any dwelling houses for the poor on the same footing, as the other purposes mentioned in sub-section (2) shows that the Legislature has recognised that acquisition of land for the construction, extension or improvement of the dwelling houses for the poor is also urgent, in other words urgency is implicit in the section itself.

10. Further sub-sec, (2) of S. 17 does not make any difference between arable or waste land or other land. It says "any land", It means, it applies to all lands. It is obvious because of the urgency implicit in the situation itself. For instance, under C1. (a) if there is a sudden change in the channel of any navigable river or other unforeseen emergency, and it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of the traffic or for the purpose of making thereon a river-side or ghat station or of providing convenient connection with or access to any such station, one will not expect that the Railway Administration should not take any action if the land is not waste or arable. Necessarily the Railway Administration has to acquire such a land whatever may be its character. The purposes mentioned in the other clauses are also placed on same footing. Therefore, I hold that in cases covered by sub-section (2) the question whether the land is arable or waste does not arise at all. If so, even assuming that the lands of the petitioners are not arable lands, still it makes no difference for the purpose of their acquisition for providing house sites to the poor. Consequently, we cannot fall back upon sub-sec. (1) to decide whether the acquisition is proper or not.

11. In view of sub-sec. (4) in the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (2) are applicable, the appropriate Government may direct that the provisions of S. 5-A shall not apply. Once again, it is left to the opinion of the appropriate Government. No doubt that opinion has to be based on some relevant material. It is not for the Court to substitute its opinion for the opinion of the Government. If there is some material, it is not for the Court to say that the material is not sufficient.

12. By virtue of an Andhra Pradesh Amending Act (22 of 1976) now power is given to the District Collector also to acquire house sites for the poor along with the State Government.

13. In *S. Parthasarathy v. Govt. of A. P.* (1981) 2 APLJ 106, Jeevan Reddy, J., held that the Legislature has treated the purposes mentioned in sub-sec. (2) of S. 17 as inherently and specifically urgent and the requirement of waiting for 15 days after the publication of the notice under S. 9(1) is dispensed with, and the further limitation under sub-sec. (1) of S. 17 that the land should be waste or arable is also not provided. He also observed that "where the purpose of acquisition is one of those mentioned in sub-sec. (2), the Court while scrutinising

the validity of the exercise of power under sub-sec. (4) should keep in mind the fact that the Legislature has recognised those purposes as inherently and specially urgent. To put it differently, not only has the Court to keep in mind that the satisfaction is subjective on the part of the Government, but it must also have regard to the additional circumstance that the purpose of acquisition is one recognised by the Legislature itself as inherently urgent. I agree with the reasoning of my learned brother.

14. In *Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others*, , it was argued that the enquiry under S. 5-A was being dispensed with in a mechanical fashion because of a memorandum issued by the Government in 1954 to the effect that the emergency provision should be invoked whenever land was acquired for providing house sites for Harijans. Chinnappa Reddy, J., observed (at p. 269) :-

"That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which Courts are bound to take judicial notice. History has made it urgent that among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But, I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials. As already observed by me, the grater the delay the greater the urgency."

I respectfully agree with the observations of my learned brother.

15. In *W. P. No. 5042/1978*; (AIR 1980 NOC 10) a Division Bench of this Court, consisting of Madhava Reddy, and Jeevan Reddy, JJ., held that the provision of dwelling houses for the poor has been placed in sub-sec. (2) by an amendment by the Madras Legislature (Act 21 of 1948) and this gives legislative recognition to the fact that provision of house sites for the poor is an inherently urgent one. In such a case, the only opinion that has to be formed by the appropriate authority is that, it is necessary to take immediate possession of the land, and once that opinion is formed the power under S. 17(4) could be invoked and the enquiry u/s 5-A dispensed with, It was further observed that this Court is not an appellate authority and, therefore, it cannot go into the adequacy of the material. It can interfere only in cases where there is no material whatsoever upon which the opinion could be formed or where the formation of the opinion is

vitiated by mala fides. In this connection the learned Judges also explained Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, which dealt with sub-section (2) of S. 17 as enacted by the Central Legislature, without the Madras amendment. They observed that,

"In case of acquisition of land for providing house sites to poor, the invocation of power u/s 17(4) to dispense with the enquiry under S. 5-A would, ordinarily, be unquestionable."

16. In *N. Ramanna v. The Collector, West Godavari*, (1977) 2 APLJ 289 a Division Bench of this Court, consisting of A. V. Krishna Rao, J., and Punneya, J., approved the observations of Chinnappa Reddy, J., in *Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others*, with regard to the urgency for acquisition of house sites for the Harijans. It was observed that the Government's or other appropriate authority's opinion that there was urgency was entitled to great weight, though not conclusive. They remarked :

"In actual practice, it has been found that almost in every case the notification issued for acquisition of lands for the poor Harijans for the construction of houses did not go unchallenged. All sorts of objections, tenable and untenable have been raised pursuant to the notices issued dispensing with the enquiry u/s 5-A."

They further held that if there is some material on which the authorities could form their subjective opinion, however meagre, insufficient or weak that material could be, its sufficiency could not be canvassed before a Court and the Court cannot substitute its discretion for that of the authority. The learned Judges referred to some other decisions of this Court and the Supreme Court in this regard.

17. In *W. A. No. 370/1976, Sambasiva Rao, J. (as he then was) and Punneya, J.*, held on 20th September, 1976, that when the Government stated that the poor scheduled caste people of the Villages were living in congested huts and under most unhygienic and insanitary conditions injurious to their health and welfare, and there is every urgency to provide house sites to avoid the danger of epidemics and other diseases spreading over in the Harijanawada, that certainly constitutes a grave urgency and renders fully justification for dispensing with the enquiry under S. 5-A of the Act. They further observed, that the lethargy on part of the officials in making declaration under S. 6 of the Act, or in taking possession of the land does not mean that there was no urgency for the acquisition.

18. It is also now well settled by the decisions of this Court that whether there is urgency or not is to be decided on the date when the notification was made under S. 4(1), but not in the light of the later events viewed in retrospect.

19. The learned counsel for the petitioners has relied upon the judgement of my learned brother, P. A. Choudary, J., in *K. Radhakrishna Reddy v. Dist. Collector, Nellore*, (1981) 2 APLJ 93. It was also a case where the lands were acquired for

providing house sites for construction of houses for Harijans. The petitioners therein alleged that they were small and marginal farmers, there were other lands in the village available for being used as house sites for harijans and also that enquiry u/s 5-A of the Act was dispensed with by the Collector mechanically and without applying his mind. On the facts of that case, the learned Judge held that, neither the notification nor the counter filed in the case, nor the records produced before him explained how the holding of enquiry under S. 5-A would unduly delay the construction of the houses by the Harijans. He further observed that he did not find from the record that the authorities had ever directed their mind on that question. He held that the Collector had mechanically and as a matter of administrative routine and without applying his mind dispensed with the enquiry under S. 5-A of the Act.

When it was argued by the learned counsel for the Government that the very purpose of acquisition for providing house sites for the Harijans would attract the application of the Madras Amendment and empower the Collector to dispense with S. 5-A enquiry, the learned Judge held that the formation of an opinion by the Collector was made a pre-condition by the Madras Amendment for invoking the urgency clause.

20. It is true that the Collector cannot mechanically dispense with the enquiry under S. 5-A. There must be some material before him for so doing.

21. My attention was also drawn to the observations of my learned brother Choudary, J., that the preference of the harijans to live in a particular site alone cannot be decisive. It is true, Their preference for a particular site cannot be the sole criteria. At the same time, it cannot be denied that their wishes also should be taken into consideration, for, ultimately it is they that are going to construct houses in the site and live for generations,. My learned brother Choudary, J., never said that their wishes should not be taken into consideration at all.

22. I have seen the original records in this case. The lands of the petitioners and other lands were inspected by the Revenue Inspector, the Tahsildar and the District Social Welfare Officer, and the representations made by the harijans as well as by the petitioners were considered. Finally, the authorities came to the conclusion that only the lands in question were most convenient and suitable for acquisition for providing house sites for the poor of the village. The lands notified are adjacent to the village, form a compact block, high in level and quite convenient for construction of houses and electricity was already provided to the houses which are adjacent to the proposed land. There is a earthen road through survey numbers 14/6 and 14/2. There is a proposal for formation of a metal road by the Gram Panchayat. There is a drinking water well and a school building in the existing survey numbers. In these circumstances, the Collector considered it to be a case of emergency so as to dispense with the enquiry under S. 5-A.

Thus, on the facts of this case, I cannot say that there was no material for the Collector to come to the conclusion that the lands were most suitable for

providing house sites for the poor and the matter was urgent. It is not for this Court to substitute its opinion.

23. In the result, I see no grounds to interfere with the acquisition proceedings and I dismiss this writ petition, but in the circumstances of the case, without costs.

24. Petition dismissed.