
(2002) 09 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3683 of 2002

P. Surareddy and Another

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 4(1), 5A, 6

Citation : (2002) 6 ALT 348 : (2002) 3 APLJ 219

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : C.B. Ram Mohan Reddy, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—In this writ petition the petitioners challenge the notification dated 26-03-1994 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") acquiring an extent of Ac. 0.75 cts. in R.S. No. 268/4; Ac. 0.43 cts. in R.S.No. 266/3; Ac. 0.52 cts. in R.S.No. 266/4 and Ac.1.12 cts. in R.S.No. 266/5 total Ac. 3.76 cts. situated in Kokkerapadu Village, Pedapadu Mandal, West Godavari District and interfering with the possession of the petitioners without conducting Section 5-A enquiry in accordance with the provisions of the Act as arbitrary and illegal and violative of Article 14 of the Constitution and to drop all further proceedings including taking possession pursuant to the above notification.

2. It is stated that the petitioners are owners of the said land which was acquired for the purpose of providing house-sites to the weaker sections of the society by issuing notification u/s 4(1) of the Act dated 26-03-1994 invoking urgency clause u/s 17(4) of the Act dispensing with Section 5-A enquiry.

3. The 1st respondent without depositing the compensation amount as contemplated under the Act and without issuing declaration u/s 6 of the Act tried

to interfere with the possession therefore, the petitioners filed W.P.Nos. 3571 and 3569 of 1996 which were disposed of on 20-02-1996 with a direction to conduct Section 5-A enquiry after giving an opportunity to the petitioners. The respondents without following the directions issued by the court and without conducting enquiry tried to take possession. At that time the petitioners filed W.P. No. 4388 of 2001. This court by order dated 14-03-2001 while refusing permission to withdraw the writ petition directed the Revenue Divisional Officer to receive the representation/objections filed by the petitioners pursuant to the notice issued u/s 5-A of the Act provided the petitioners filed the representation/objections within two weeks from the date of order and consider in accordance with law. Pursuant to the directions the petitioners submitted their objections on 27-03-2001 and the respondents issued notice u/s 5-A of the Act on 29-10-2001. On such receipt of notice the petitioners again submitted their objections on 15-11-2001. But till date the same were not disposed of. It is stated that without conducting Section 5-A enquiry the respondents cannot proceed further. The respondents have not issued declaration u/s 6 of the Act. Unless the said declaration is issued the respondents cannot take possession of the property. While so, the alleged beneficiaries at the behest of the respondents damaged the standing crop, which is highly arbitrary and illegal. The petitioners are small farmers. Therefore, the Section 4(1) notification issued by respondents is contrary to the policy issued by the Government that lands belonging to small and marginal farmers shall not be acquired where other alternative lands are available. The petitioners being the small farmers cannot be deprived of their property. Hence, the entire notification issued u/s 4(1) of the Act is liable to be set aside.

4. In response to Rule Nisi, the respondents filed a detailed counter and produced the records, which disclose that on obtaining consent of the land owners during the year 1994 notification u/s 4(1) was approved on 23-03-1994 and published in the Gazette on 26-03-1994. On such publication of Gazette notification, draft declaration was approved on 26-03-1994 and the same was published on 27-03-1994. The draft notification was published in the two local news papers on 01-04-1994 and in the locality on 20-04-1994, whereas draft declaration was published in the two local news papers on 05-04-1994 and in the locality on 22-04-1994. On such publication of the notification, Section 9(1) and 10 notices were published on 30-10-1994 calling objections. Pursuant to the said notice several land owners appeared and gave their consent seeking compensation at the rate of Rs. 95,000/- per acre. After completion of enquiry an award was passed in Award No. 1/96 on 17-01-1996 and the possession of the land was taken into the custody of the Government on 27-01-1996. After completion of the proceedings including passing of the award the petitioners 1 and 2 filed W.P. No. 3571 and 3569 of 1996 respectively before this court which were disposed of on 20-02-1996 wherein this court held as under:

"I am of the view that it will be sufficient to direct the respondents not to dispossess the petitioners until the completion of 5-A enquiry for which the

petitioners will be given an opportunity of being heard. This is without prejudice to the right of the petitioners to question the 4(1) Notification again after the completion of the 5-A enquiry."

5. After obtaining said orders the petitioners re-entered the land and raised the teak and sugar cane plantation in the land to prevent the authorities from distributing the land to the landless poor persons. In the counter it is also stated that an extent of Ac. 3.46 cts. in R.S. No. 266/2 was taken possession, and 67 house-site pattas were issued on 01-11-2001 to the Scheduled Caste people of Dasarigudem Village and 37 house-site pattas were issued in the remaining extent of Ac. 2.70 cts. covered by R.S. No. 268/4 etc. and as on the date of filing the counter the acquired land was delivered to the beneficiaries, they have constructed small huts and they are in possession of the said land. Once an award is passed the land vests in the Government and the petitioners' claim to set aside the notification cannot be sustainable.

6. Learned counsel for the petitioners submits that when once this court directed for conducting of Section 5-A enquiry, the authorities are under an obligation to conduct Section 5-A enquiry, and only after the objections are disposed of Section 6 declaration has to be issued. As the authorities failed to conduct Section 5-A enquiry as directed by this Court, even if such an enquiry is conducted now, declaration as such cannot be issued now as it is beyond one year period, as a necessary corollary, the whole acquisition proceedings are lapsed and Section 4(1) notification is liable to be quashed. When this court directed not to dispossess the petitioners from the lands, taking possession and distribution of pattas to beneficiaries and their constructing temporary huts etc., are in violation of the orders passed by this Court and the same will not be valid. In view of the same, the entire acquisition proceedings are liable to be set aside.

7. On the other hand, learned Government Pleader for Land Acquisition contends that the petitioners suppressed the material facts and invoked the jurisdiction of this Court wherein Section 5-A enquiry was ordered which will not have an effect of setting aside the award which has become final. On such passing of the award no writ as such can be maintainable questioning the notification issued under the Act as held by the Supreme Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, .

8. Before I proceed to consider the rival contentions of the parties, it is relevant to note that the records produced by the learned Government Pleader depict that before acquisition proceedings are initiated petitioners as well as other land owners gave their consent in writing for acquisition of the land claiming compensation at the rate of Rs. 95,000/- per acre. On issuance of the notification u/s 4(1) and draft declaration u/s 6 and when notice under Sections 9(1) and 10 was published the 1st petitioner participated before the Land Acquisition Officer and made sworn statement on 13-07-1994 (page No. 165 of ROC No.599/94(B)) stating that he has no objection for acquiring the land if he is paid a sum of Rs. 95,000/- per acre in the presence of D.V. Subba Rao, Village Administrative

Officer and Pamireddy Venkat Reddy. The petitioners have not disclosed the fact of their participation in the award enquiry and passing of award and issuance of further notice under Sections 9(3) and 10 of the Act. Ultimately the award was passed as referred to above and possession of the land was taken and kept in the custody of the Village Administrative Officer. After taking possession of the property the petitioners moved the Civil Court for injunction. When they failed to obtain injunction against the L.A.O. from interfering with their possession, they moved this court and filed writ petitions, namely W.P. No. 3569 and 3571 of 1996 suppressing the material facts which disentitles for any relief including conducting Section 5-A enquiry as ordered by this court at the admission stage for the following reasons.

9. In the affidavit filed in support of the above writ petitions it is stated that the petitioners are not aware of the acquisition proceedings and on 29-01-1996 the Mandal Revenue Officer, Pedapadu visited the said land and questioned the petitioners why they have raised the sugar cane crop stating that the land is going to be acquired by the Government and aggrieved by the highhanded action of the M.R.O., petitioners I and 2 filed O.S.Nos. 44 and 46 of 1996 respectively in the Court of Principal District Munsif, Eluru for permanent injunction in which they have filed I.A.Nos. 199 and 201 of 1996 for temporary injunction to which the respondents filed a counter on 12-2-1996. From the said counter only the petitioners came to know about the acquisition proceedings and till such proceedings they are not aware of the issuance of any notification. It is relevant to note here that in the counter filed by the M.R.O. in the above I.As. it is categorically asserted that the R.D.O., Eluru issued notice to all the owners of the land including petitioners and after completion of award enquiry passed an award on 17-01-1996 for an amount of Rs. 1,19,271/- in favour of the 1st petitioner and an amount of Rs. 84,546/- in favour of Smt. Vakkalagadda Subbamma basing upon the consent given by her and on passing such award possession was taken on 27-01-1996 and the same was handed over to the Village Administrative Officer, Kokiripadu for the safe custody.

10. It is thus obvious that had the petitioners disclosed the fact of passing the award and taking possession pursuant to the same, this court in W.P.Nos. 3569 and 3571 of 1996 definitely would not have issued any futile writ to conduct Section 5-A enquiry without restoring status quo ante by setting aside declaration u/s 6 and the consequential award in view of the law declared by the Apex Court in Babu Singh and Others Vs. Union of India (UOI) and Others, .

11. It is also relevant to note that the Subordinate Judge ultimately dismissed the said suits filed by the petitioners seeking injunction against the respondents with costs on 27-11-1999. In effect, the contention of the petitioners that they are in possession of the property and entitled for injunction to maintain their possession was negated by the Civil Court. Curiously without disclosing the said fact the petitioners filed the present writ petition alleging that without depositing compensation as contemplated under the Act and without issuing declaration the

respondent authorities tried to dispossess them.

12. The Apex Court in Babu Singh's case (supra) observed as under:

".....If the impugned notifications are valid and the declaration made u/s 6 has become final and an award u/s 12 is made, even if possession is not taken, we fail to appreciate how thereby the notification u/s 6 would become invalid."

13. It is also relevant to note that B. Sambasiva Rao and two others filed W.P. No. 17459 of 1996 and obtained stay of all further proceedings. This court by order dated 06-04-2001 vacated the interim order with a liberty to the respondents to proceed with the land for utilizing the same for which it was acquired. In the counter it is categorically stated that on dismissal of the writ petitions the entire land was taken possession on 01-11-2001 and the same was allotted to the beneficiaries who constructed small houses and they are in possession of the said land. This averment was not countered on behalf of the petitioners by any affidavit in rejoinder. Moreover, the suits filed by the petitioners for injunction claiming that they are in possession were dismissed. In view of the same, it is not possible for me to accept the submission that the petitioners continued to be in possession of the land.

14. The Apex Court in the case of Shah Hyder Beig (1 supra) after following the dicta laid down in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, held as under:

".....after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder....."

15. In view of the legal position enunciated as above and for the reasons aforementioned, it is not a fit case for exercising any discretion for issuance of Mandamus as prayed. The writ petition fails and it is accordingly dismissed. No costs.