

**(2014) 03 AP CK 0010**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 18597 of 2010**

P. Venkaiah

APPELLANT

Vs

The District Collector, Guntur and Another

RESPONDENT

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**Date of Decision :** 14-03-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226 300A  
Land Acquisition Act, 1894 — Section 4(1) 5(A) 5A 6

**Citation :** (2014) 3 ALD 635 : (2014) 6 ALT 522 : (2015) ALT(Rev) 38 : (2014) ALT(Rev) 428

**Hon'ble Judges :** A.V. Sessa Sai, J

**Bench :** Single Bench

**Advocate :** K.V. Subrahmanya Narusu, for the Appellant; G.P. for Land Acquisition for Respondent Nos. 1 and 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.V. Sessa Sai, J.—This Writ Petition, filed under Article 226 of the Constitution of India, assails the draft notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter called as "the Act"), dated 05.08.2009, proceedings R.C. No. 1182/2009-C, dated 13.11.2009 issued by the second respondent u/s 5(A) of the Act and draft declaration u/s 6 of the Act, dated 15.05.2010. Heard Sri K.V. Subrahmanya Narusu, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition for the respondents.

2. According to the petitioners, the first petitioner owns an extent of Ac. 2.95 cents, the second petitioner owns an extent of Ac. 0.70 cents and the third petitioner owns an extent of Ac. 1.02 cents in Survey Nos. 125/C, 125/C and 116/C2 of Obulesunipalli Village, Durgi Mandal, Guntur District. The first respondent-District Collector, Guntur, issued a draft notification u/s 4(1) of the Act vide proceeding Rc. No. 2373/09-G3, dated 02.08.2009 proposing to acquire a total extent of Ac. 17.77 cents, which includes the above mentioned lands of the petitioners herein, for the purpose of providing house sites to SCs, STs, BCs,

OCs etc. The said notification was published in the District Gazette on 05.08.2009. The petitioners herein filed their objections u/s 5A of the Act. The District Collector, Guntur vide endorsement Rc. No. 2373/2009-G3, dated 14.05.2010, rejected the said objections stating that the acquisition of the land is essential. Subsequently, the District Collector vide Rc. No. 2373/2009-G3 dated 14.05.2010 issued a draft declaration u/s 6 of the Act and the same was published in the District Gazette on 15.05.2010.

3. In the present writ petition, it is contended by the learned counsel for the petitioners herein that the petitioners herein are small and marginal farmers and eking out their livelihood solely depending on the subject lands. It is also contended that Government lands are available in the village in Survey No. 536/2B admeasuring Ac. 5.73 cents, Survey No. 571/B admeasuring Ac. 5.66 cents and Survey No. 682/1 admeasuring Ac. 8.38 cents and while submitting so, it is argued by the learned counsel for the petitioners that when such Government lands are available in the very same village, the respondent authorities are not justified in acquiring the lands of the small and marginal farmers.

4. In the counter-affidavit filed on behalf of the respondents herein, it is stated that the petitioners are only small and marginal farmers and that an extent of Ac. 12.66 cents of land, which is a Government poramboke, is available at Obulesunipalli Village, but it is far away from the habitation.

5. Right to Property is a constitutional right as enshrined in Article 300A of Constitution of India, which mandates that no citizen shall be deprived of his/her property except in accordance with law. Since the Land Acquisition Act is an exproprietary legislation, the object and intention of the legislature and the provisions of the said legislation are required to be adhered to scrupulously. Any deviation from the object behind the said legislation would render the entire proceedings invalid and nugatory.

6. Admittedly, in the present writ petition, even as per the respondents herein, the petitioners herein are holding small extents of land and their avocation is only agriculture.

7. It needs to be remembered that the farmers are the backbone of our Indian economy. With the process of urbanisation, the agriculture is getting crippled day by day and the number of farmers growing the food grains is also getting diminished. Therefore, to the extent of possibility, barring the inevitable situations, the acquisition of agricultural lands, thereby diminishing the food production should be averted. The indiscriminate and unreasonable acquisition may sometimes also lead to unrest in the society. This compulsory acquisition of the private properties sometimes lead to displacing the farmers from their native villages and it would lead to severance of bond with the village and it may disturb the social network also and may ultimately result in unwarranted and unhealthy excessive urbanisation. It is also imperative on the part of the State

and the authorities functioning under the State to take into account the plight of the farmers, who solely depend on agriculture and who sacrifice their blood and sweat in the process of growing food grains for the nation. It is also equally essential to note that in the process of providing house sites to the poor, the small and marginal farmers should not be rendered landless and shelterless unless such acquisition is imminently inevitable.

8. In the instant case, the only reason assigned by the District Collector, Guntur, in the endorsement dated 14.05.2010 rejecting the objections of the petitioners is that the proposed acquisition is essential and urgent. In this context, it would be apt and appropriate to refer to the order of this Court in W.P. No. 33906 of 2012 and batch dated 07.02.2013, whereunder this Court held as under:

The main objection of the petitioners is that when there are alternative lands available in vast extents, the respondents are wholly unjustified in acquiring the lands in question which are admittedly fertile double crop lands. While dealing with this objection of the petitioners, respondent No. 2-District Collector, West Godavari, has unequivocally admitted that there are many Government poramboke lands and endowment lands, but as the same are in the prohibited category in the prohibitory orders book, they are not fit for house sites.

In my prima facie opinion, this reasoning of the District Collector is untenable. A prohibitory book is maintained for the purpose of prohibiting assignments or grant of pattas to private persons in respect of the lands entered therein. When the Government itself wants house sites to be granted to the needy persons, there is no reason why it cannot make available its own lands for the said purpose. The reasoning of the District Collector suggests that since the lands are included in the prohibitory order book, they are not fit for house sites and not that the lands themselves are not useful for construction of houses. If the respondents desire, they can always change the category of the lands and delete them from the prohibitory orders book. When the lands belonging to the petitioners are fertile double crop wet lands, I do not find any justification whatsoever for the respondents to acquire such lands leaving out several Government poramboke lands. On this ground alone, the impugned notification is liable to be set-aside.

There is one other reason for setting aside the acquisition proceedings, namely, that the respondents failed to make the declaration u/s 6 of the Act within one year of publication of the notification u/s 4(1) of the Act. Admittedly, the last of the publications of the notification issued u/s 4(1) of the Act was made on 18-10-2011 and the first of the publications of the declaration u/s 6 of the Act was made in the West Godavari District Gazette on 22-10-2012, which is beyond the period of one year of the publication of the notification u/s 4(1) of the Act. This Court, by its detailed common order dated 6-2-2013 in W.P. Nos. 1616 and 5119 of 2012, held that the publication in the first instance before the expiry of the one year period from the date of issue of the notification u/s 4(1) of the Act will satisfy the requirement of Section 6 of the Act. In this case, this test is not

satisfied as none of the modes of the publication was made on or before 18-10-2011. Thus, the land acquisition proceedings themselves have lapsed.

For both the above mentioned reasons, the impugned notification is set-aside and the Writ Petitions are allowed.

The said order passed by the learned Single Judge of this Court was carried in appeal in W.A. Nos. 600 of 2013 and batch and a Division Bench of this Court by order dated 03.06.2013, while dismissing the appeals, held as under: "Since it is clear from the facts of the case that there are alternative government poramboke and endowment lands available for acquisition for providing house sites to the weaker sections of the society, as admitted by the appellant-Government, we do not wish to consider the other legal issues sought to be raised by the learned Government Pleader for Land Acquisition appearing for the appellants.

9. The above narration, in clear and unequivocal terms, manifestly shows that there is absolutely no justification on the part of the respondent authorities in acquiring the lands of the petitioners herein when alternative Government lands are available in the same village. In the considered opinion of this Court, the reason shown by the authorities that alternative lands are far away from the habitation is not sustainable and cannot be a ground to disturb the small and marginal farmers. For the aforesaid reasons, the Writ Petition is allowed setting aside the draft notification issued u/s 4(1) of the Act, dated 05.08.2009, proceedings R.C. No. 1182/2009-C, dated 13.11.2009 issued u/s 5(A) of the Act and draft declaration u/s 6 of the Act, dated 15.05.2010. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.