
(2002) 12 AP CK 0110
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9029 of 1992

Padala Dharma Rao

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 30, 6

Citation : (2003) 1 ALD 685

Hon'ble Judges : T. Meena Kumari, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

T. Meena Kumari, J.—This writ petition is filed seeking a direction to the respondents to refrain from acquiring the petitioner's land in S. Nos. 46/2 and 46/3 of Tsundur Village and Mandal, Guntur District by declaring the notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "The Act") proposing to acquire the petitioner's land of Ac. 0.60 cents in S.No.46/ 2 and Ac. 0.29 cents in S.No.46/3 of Tsundur Village and Mandal, Guntur District, published in Guntur District Gazette (Extraordinary) dated 1.2.1992 as illegal, null and void.

2. The main grievance of the petitioner is that he is the owner of the land measuring Ac. 1.20 cents in S. Nos. 46/2 and 46/3 to a total extent of being Ac. 1.10 cents of Tsundur Village. He has been using the said land for agricultural purposes. While so, the first respondent herein issued a notification dated 1.2.1992 proposing to acquire Ac.2.00 of land in S. No. 46/1, 2 and 3 of Tsunduru Village to be used for burial ground to Tsundur Harijans, belonging to the petitioner and one Padala Satyanaraya. The notification was published in a local newspaper on 8.2.1992 to the effect that an extent of Ac.0.28 cents and Ac.0.29 cents in S. No. 46/2 and in S.No.46/3 respectively, is proposed to acquire. Immediately the petitioner got issued a legal notice on 15.2.1992 to the

respondents by raising his objections. The petitioner appeared before the 2nd respondent in pursuant to the notice dated 24.2.1992 u/s 5-A of the Act issued by him and placed his objections.

3. This Court while admitting the writ petition on 21.7.1992 granted interim stay of dispossession pending further orders.

4. The respondents filed a counter denying the allegations made in the petition. It is the contention of the respondents that there was no earmarked burial ground to the Scheduled Castes of the village. The scheduled castes were using the land in Sy. No. 72/3 which is classified as Donka as burial ground. As the existing Donka Poramboke was completely used up, the Harijans represented to the Collector to provide a suitable burial place. The land of the petitioner was acquired as there was no other available land. After the approval of the draft by the Collector, the notification was published in the District Gazette extraordinary local No. VI, dated 1.2.1992 at page No. 1 to an extent of Ac.2.00 in Sy. No. 46/1, 2 and 3. The draft notification was also published in local newspapers on 8.2.1992. Notices u/s 5(1) of the Act inviting objections to the proposed acquisition was issued on 24.2.1992. The petitioner was afforded a reasonable opportunity during the enquiry under the Act. After conducting the enquiry u/s 5-A, necessary report has been submitted to the Collector and accordingly, the Collector approved the draft declaration. When the enquiry into the award was posted to 27.7.1992, meanwhile the petitioner approached the Hon"ble Court and obtained interim orders on 21.7.1992.

5. When the vacate stay petition has come up for hearing, none appeared for the vacate petitioners and hence the petition was dismissed and the matter posted for final hearing.

6. It is argued by the learned Counsel for the petitioner that the Act contemplates issuance of Section 6 declaration within one year from the date of Gazette Notification after completing 5-A enquiry. But, so far, Section 6 declaration has not been published and, as such issuance of notices under Sections 9(1) and 10 is bad and contrary to the provisions and, hence, the entire proceedings for the acquisition of land shall stand lapsed. It is also argued that after the coming into force of the amended Act of 1984, the award has to be made within a period of two years. It is also further argued that this Court has granted interim direction not to dispossess the petitioner but not stayed further proceedings under the Act and hence it cannot be construed that the respondents were prevented from proceeding to comply with other formalities under the Act. The learned Counsel further argued that as per Section 11-A of the Act, the entire proceedings have to be completed within two years.

7. The learned Government Pleader argued basing on the counter that as this Court has granted the stay of all further proceedings, the award was not passed. She also contended that stay of dispossession means stay of all further proceedings and hence the respondents did not pass the award. In support of the

above contention she relied upon a judgment of the Apex Court reported in *Municipal Corporation of Delhi v. Lichho Devi and Ors.*, 1997 (8) Supreme 254. The substance of her contention is that the stay of dispossession in writ petition tantamounts to stay of further proceedings and entire period during which stay was in operation has to be excluded while computing two years period prescribed for making an award u/s 11-A of the Act. But, however, it has to be observed that as per the amended provision viz. Section 11-A of the Act which is a mandatory one, the award has to be passed within two years and the amount payable to the landlords should be kept ready for disbursement u/s 30 of the Act, at the time of passing of award. In the absence of such compliance of the mandatory provision, and in view of the fact that this Court has granted stay of dispossession only, non-passing of the award within a period of two years as required u/s 11-A amounts to non-compliance of mandatory provision. The argument of the learned Government Pleader is that the stay of dispossession includes the stay of all further proceedings, has no force. In *Madhava Rao Gandhe and Others Vs. Land Acquisition Officer, Quili Qutubshah Urban Development Authority*, . It has been held as follows:

"Even there being no amount with the Land Acquisition Officer at his disposal to disburse the same to the awardees, the requirement u/s 11-A of the Act is satisfied. The requirement u/s 11-A of the Act is a mandatory one and not a directory and there is no meaning in passing an Award without there being money readily available with the Land Acquisition Officer for disbursement. If the money is not at the disposal of the Land Acquisition Officer at the time of passing of the Award, even if the Award is passed, it is only a paper Award and such a technical satisfaction u/s 11-A of the Act is not contemplated. Section 11-A of the Act substantively requires not only passing of the Award within two years, but also keeping the amount awarded ready with the Land Acquisition Officer at the time of passing of the Award for the purpose of disbursement or deposit as mentioned above. In the instant case, it is clear from the counter-affidavit that even as on this date the Land Acquisition Officer is not ready with the compensation awarded and he is awaiting sanction from the Government for the awarded amount. In the circumstances, I hold that the mandatory requirement u/s 11-A of the Act has not been satisfied by the respondent and Section 11-A of the Act operated and the notification issued u/s 4(1) of the Act stood extinguished.

In *State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others*, , the Apex Court held as follows:

Notification u/s 4(1) of the Land Acquisition Act, 1894 was published on 25.6.1974. Declaration u/s 6 was published on 3.7.1974 dispensing with the enquiry u/s 17(4) of the Act. It is not clear from the record that the possession of the land was taken after 15 days from the date of service of the notice u/s 9 on the appellant. The appellant has asserted that he has been in possession of the land but no counter has been filed. In support thereof, the appellant has also

placed on record the resolution dated 27.12.1977 of Gram Sabha stating that the other land has already been allotted to 30 eligible persons of the village and the land in question no longer is necessary. After the Amendment Act 68 of 1984 was brought into force with effect from 24.9.1984, Section 11-A operates in the field. It envisages that if the award u/s 11 has not been made within two years from the date of coming into force of the Amendment Act, all the proceedings under Sections 4 and 6 shall stand lapsed. In view of the fact that no steps appeared, to have been taken within time, the notification u/s 4(1) and declaration u/s 6 no longer subsist."

8. From the above judgments, it is clear that if the award u/s 11-A of the Act has not been made within two years, all further proceedings under Sections 4 and 6 shall stand lapsed. It is pertinent to note that the respondents filed vacate stay petition and the said petition was dismissed and no appeal has been preferred against the said dismissal order. Therefore, the judgment relied upon by the learned Government Pleader is not applicable to the facts of the present case.

9. Having regard to the facts and circumstances of the case, since the respondents have not passed the award within a period of two years as enshrined in the Act, it has to be held that the acquisition proceedings in this regard have been lapsed and accordingly, the Writ Petition is allowed.