
(1985) 04 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3180 of 1980

Pedda Yerrappagari Venkataramana Reddy and Another

APPELLANT

Vs

District Collector, Chittoor and Another

RESPONDENT

Date of Decision : 18-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : AIR 1986 AP 162

Hon'ble Judges : P.A. Chowdary, J

Bench : Single Bench

Advocate : K.V. Reddy, for the Appellant; Govt. Pleader for S.W., for the Respondent

Judgement

P.A. Chowdary, J.—In this Writ Petition the mother and son question the proposal made by the District Collector, Chittoor to acquire an extent of Ac. 0.56 cents of their land situated in Survey No. 467 of Bayyappagaripalla, Chittoor District. In the above Survey No. 467, the petitioners lands to an extent of Acs. 1-50 cents had been acquired once before in the year 1973 for the same purpose of providing house sites to the weaker sections. Now, once again, by the present proposals, the petitioners' land to an extent of Ac. 0-56 cents situated in the same Survey Number is sought to be acquired for providing house sites to the weaker sections. For the above purpose, the District Collector, Chittoor, had published Sec. 4(1) notification in the District Gazette on 13-10-1980 and according to the counter-affidavit filed by the Land Acquisition Officer, the substance of that notification under Sec. 4 (1) was published on 23-12-1980. Even before making of local publication and along with Sec. 4 (1) notification Sec. 5-A inquiry was dispensed with and Sec. 6 declaration was made.

2. Now the petitioners challenged the legal validity of the aforesaid S. 4(1) notification and notification dispensing with S. 5-A inquiry and making of S. 6 declaration in this Writ Petition; firstly on the ground that local publication of

substance of S. 4(1) notification was made beyond 40 days and secondly on the ground that they are small farmers and thirdly on the ground that their lands should not be allowed to be acquired because their lands in the same Survey Number were earlier acquired to an extent of Acs. 1.50 cents in the year 1978 for the same purpose and that it would be unjust for the State to acquire the lands belonging to one and the same person over and over again. They also say that adjacent to their lands acquired in the year 1978 and separating the present land from the previously acquired lands, there was equally suitable land belonging to the village Munsif and that the authorities omitting that land from acquisition are now attempting to acquire this land which is not contiguous to the earlier bit of the land acquired. They also say that dispensing with S. 5-A inquiry was mechanically done and the making of declaration of S. 6 notification simultaneously with S. 4(1) notification is bad under the A. P. Amending Act 9 of 1983.

3. In the Counter, it is admitted that the substance of S. 4(1) notification was made beyond 40 days. S. 2 of the Amending Act which declares that Act. No. 9 of 1983 should be deemed to have come into force with effect from 12-9-1975 requires the Collector to cause local publication within 40 days from the date of publication of such notification made under S. 4(1) of the Act. As S. 2 of the Amending Act makes Act 9 of 1983 applicable to all acquisitions made on or after 12-9-1975, it should be held that the local publication was not made as required by law. In this case, local publication of the substance of S. 4(1) notification having been made beyond 40 days, it must be held that there is no valid notification made under S. 4(1) of the Act. As the making of a valid notification under Sec. 4(1) of the Act is a condition precedent for initiating land acquisition proceedings and as that notification is made quite contrary to law, the acquisition of petitioners' land under the above Gazette notification dt. 13-10-1980 cannot be upheld. The Collector's notification dt. 13-10-1980 should, therefore, be set aside.

4. The assertions of the petitioners that they are "small farmers" is denied by the counter-affidavit. The contention of the respondents is that the mother had no share in this property left by her husband. It is difficult to accept this tenuous contention of an authority which is not supported by any evidence. Normally the claim of the mother to have a share in her deceased husband's property should be accepted. The respondents have not placed any material to show that the mother has no right in the property of her deceased husband. Rejecting the bard assertion of the counter-affidavit, I hold that the petitioners are small farmers and the petitioners' property cannot be acquired.

5. I also hold that the powers under the Land Acquisition Act are being used in this case arbitrarily and unreasonably. There is no justification for throwing the entire burden of providing house sites to the weaker sections on one or two selected persons alone. That burden should, as far as possible, equitably be distributed so that is shared by all citizens. The acquisition of all or a major

portion of the land belonging to one person, if allowed, would result in making a particular person to bear the entire social burden of providing the house sites to weaker sections. In law, I see no justification for adopting such a course of action. That, in my opinion, would be contrary to Art. 14 of the Constitution which prohibits imposition of social burdens on one or two individuals. For that reason also, I hold that this acquisition should be set aside.

6. I have not been shown any grounds why the adjoining land belonging to the V. M., was not chosen for acquisition. Considering the fact that the petitioners are small farmers I can only presume that the authorities had yielded to the influence of the V. M., and are taking the line of least resistance . This is clearly arbitrary and discriminative.

7. It is not denied that the previous land which was acquired from the petitioners in the year 1978 abuts the land which belongs to the village Munsif. I am told that on the land so acquired, the weaker section people had already constructed houses. The land of the V. M., abuts those houses and would be suitable to be built upon. I am not shown any reason why the abutting land belonging to the village Munsif should be left out of acquisition and the petitioners land which is a little far away should be acquired. I can only infer that the petitioners being small farmers are not able to pull enough official weight with the local officials. It is clearly a case where the District Collector and the Tahsildar acted mechanically. For that reason also, I set aside this acquisition.

8. Additionally, I also hold that the District Collector acted Mechanically in dispensing with S. 5-A enquiry. There is no such urgency that could warrant dispensation of S. 5-A inquiry in a case like this. Acquisition of lands for providing houses sites can be delayed by a short period of 30 or 40 days without causing any detriment to the public interest. Whatever may be said of theoretical urgency, I cannot hold as a fact that providing house sites to weaker sections cannot be postponed by just two months. Therefore, I hold that dispensing with S. 5-A inquiry in this case is mechanically done. I, therefore, hold that the Collector's notification dispensing with S. 5-A inquiry made on 13-10-1980 is also liable to be struck down.

9. Then remains a major question which has been raised by Mr. K. V. Reddy, the learned counsel for the petitioners, contending that publication of S. 6 declaration even before the substance of S. 4(1) notification was locally published, had rendered S. 6 declaration illegal. Before the Amending Act No. 9 of 1983, the law was that S. 6 declaration can be made along with S. 4(1) notification. But that interpretation of the law was not without its doubts. It was always though that no further step can be taken unless the two requirements of S. 4 namely the publication of notification in the Gazette and the local publication were made. But those doubts had remained academic after the declaration of law by the Supreme Court. But now the A. P. Amending Act No. 9 of 1983 had given statutory authority to the proposition that, where S. 5-A enquiry was dispensed with, declaration under S. 6 of the Land Acquisition Act can be made only after

causing public notice of S. 4(1) notification. This is a great and a major change of law brought about by the Amending Act. This change of law clearly prohibits the State from the making of S. 6 declaration without first causing of the local publication to be made of S. 4(1) notification. So much is clear beyond shadow of doubts. In view of the fact that S. 1 Cl. (3) of the Amending Act declares that the Act comes into effect from 12-9-1975 and that the acquisition in this case was initiated by the notification dt. 13-10-1980, it must be held that S. 6 declaration made in this case is contrary to the provisions of the Amending Act. For that reason, I should set aside S. 6 declaration. But the learned Govt. Pleader has relied upon a judgment of Kodandaramayya, J., reported in Smt. Kamala Devi v. State of A. P., 91984 1 APLJ (HC) 80 and contended that S. 4 of Act 9 of 1983 cannot apply to acquisitions made prior to 29th June, 1983. He said that, according to that judgment, S. 4 of Act 9 of 1983 is only prospective and not retrospective and that, therefore, simultaneous publication of S. 6 declaration along with S. 4(1) notification made before June 29, 1983 should be considered to be legally valid. In reply, the learned counsel for the petitioners, argued that what Kodandaramayya, J., in the said above judgment is directly contrary to the express declaration of law made by S. 4 read with S. 1(3) of the Amending Act 9 of 1983.

10. The above rival contentions made it unavoidable for me to examine the correctness of the views of Kodandaramayya, J., expressed in the above reported decision in Smt. Kamala Devi v. State of A. P., (supra). At the outset, I may say that a bare perusal of Act. No. 9 of 1983 makes it clear that all the provisions of the Act 9 of 1983 come into force from 12-9-1975 onwards. The learned Judge in paragraph 6 of his judgment observed to the same effect. He said.

"It is not in dispute that the Amending Act 9 of 1983 was published on 29-6-1983 and as per S. 1(3) it shall be deemed to have come into force on 12-9-1975 and hence we have to test the validity of these proceedings as per the provisions of the Amending Act."

The Amending Act itself tells the Court in so many words that it comes into force from 12th Sept., 1985. From what date a statute should come into force, is for the statute to decide for itself, and to declare and not for the Courts to speculate upon. The decision and the declaration of the statute made in that behalf is a decision of a legislative policy with the wisdom of which the Courts have neither truck with nor concerned for. In those circumstances, the very question which Kodandaramayya, J., has raised whether S. 4 shall be construed as having effect from 12-9-1975 or not appears to me to be somewhat of a non-question. If there are other contrary indications in the Act that would no doubt impel the Court to read S. 4 in such a way refusing its enforcement from 12-9-1975. But, I, for my part, can see absolutely nothing in the Amending Act even remotely suggesting that S. 4 should come into force not from 12-9-1975 but from 29-6-1983. The whole Act is enacted just in three separate and independent parts. The first part of the enactment dealing with the question of giving retrospectivity to the entire

statute declares that the Act should be deemed to have come into force from 12th Sept., 1975. The second part of the Statute contains the enacting clauses of which S. 4 forms a part. That enacting clause declares, as we have already noted, that S. 6 declaration can be made only after the local publication. The third part of the Statute contained in S. 5 deals with the saving provisions of the statute. Saving provisions seek to save acquisitions made on or after 12-9-1975, but hit by three vices (a) failure to make simultaneous publication, (b) failure to make prompt S. 6 declaration, (c) and failure to take prompt possession after S. 5-A inquiry was dispensed with. A perusal of these three provisions of the Amending Act would show that there is nothing on the basis of which S. 4 can be refused retrospectivity from 12 Sept., 1975. Normally one part of an Act cannot be read as being in conflict with any other part of the same Act, or being overdone by any other part of the Act. But Kodandaramayya, J., seems to say that the main object of the Amending Act is to sustain the notifications which have become invalid and that there was no indication in the Act that the notifications issued under the original Ss. 4 and 6 simultaneously should also be annulled by virtue of the amendment made to S. 17(4) of the Act. The object of any Act can only be found not by contemplation about its imaginary purposes but by the construction of its plain languages. Further an Act like the Amending Act can have undoubtedly more than one purpose. The Amending Act has not only the purpose of sustaining notifications which have become invalid, but it has also the additional purpose of amending the law. While the object of sustaining notifications was achieved by the Amending Act through S. 5, the object of altering the law was achieved by the Amending Act through its enacted clauses. There can hardly be any legal justification for a Court to giving effect only to one part of the Act while scuttling the objects of the clearly enacted clauses or part of them. For the above reasons, I find it difficult to agree with the reasoning or the conclusions of Kodandaramayya, J.

11. I make bold to say that the entire approach made by the learned Judge to the problem is not correct. The learned Judge first raised the question whether S. 4 of the Amending Act should be given retrospective effect or not. Instead of answering the question by reference to the plain language of S. 1, the learned Judge referred to certain British decisions on statutory interpretation which, in the opinion of the learned Judge, are relevant. The first principle referred to by him is that you should not give larger retrospective operation to an Act or section than necessary. He observed that you ought not to give an larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the legislature meant. Then he referred to another subordinate rule to the effect that a statute is not to be construed so as to have retrospective operation than its language renders necessary.

Unfortunately, the learned Judge never thought it fit to apply those British rules to the plain language of S. 1(3) read with S. 4 of the Amending Act, nor did the learned Judge notice the fact that in the place of an unambiguous declaration of S. 1(3) of the Amending Act, the question of giving greater or lesser degree of

retrospectivity can never arise. Proceeding in the same way, the learned Judge then entered into the domain of the intention of the Legislature which he called as a fundamental test. He observed :

"To ascertain the Legislative intent all the constituent parts of the statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. The title and preamble, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the Legislation itself."

He next observed that when the object of the Act is frustrated and the intention of the Legislature is defeated the Court is entitled to give a limited effect to the retrospective legislation by applying the principle of reading down. With respect I say the so-called rules and principles of interpretation are neither rules nor principles. They are merely presumptions which readily give place to the statutory language. Can any one say that S. 1(3) and S. 4 are not valid parts of the Amending Act and do not contain one of its objects ? Can any one say that by giving those parts of the Act their full meaning and effect, some other object of the Act is defeated ? Can any one say that the so-called object of an Act should not be gathered from the enacting clauses ? Are we not really arguing in a circle when we assume that by giving effect to the clear language of the enacting clauses, we are defeating the objects of the statute ? Has the constitutional principle of reading down a statute so as to save it from the vice of unconstitutionality got any relevance in ascertaining the meaning of the plain language of statute ? With great respect to the learned Judge. I express my clear inability to follow his method of reasoning or his conclusions. In my opinion, giving retrospective effect to S. 4 is made imperative and unavoidable by the unambiguous language of S. 1(3) of the Act which mandates the Courts to enforce that section also with effect from 12-9-1975. The entire discussion about the intention of the Legislature and the questions of retrospectivity and prospectively seems to be wholly out of place. I accordingly hold that S. 4 of Act 9 of 1983 would be applicable to all the notifications made on or after 12-9-1975.

12. We must remember that the provisions of Land Acquisition Act settled the rights of the private parties in relation to the powers of the State. The settlement so effected by the Legislature should not lightly be tampered with by the Courts. It is a common error to refer to the intention of the Legislature of which neither the God nor the man has any knowledge except through the language of the statute. Justice Holmes said, "Courts to not inquire what the Legislature meant; we ask only what the Statute means." We can only go by the language of the statute and not by the guesses we may be able to make about the intentions of the 300 and odd legislators. I accordingly hold that S. 4 of the Act No. 9 of 1983 would come into effect from 12-9-1975 making S. 6 declaration even before making local publication invalid. For that reason, I set aside S. 6 declaration also.

This Writ Petition is accordingly allowed. No costs. Advocate"s fees Rs. 150/.

13. Petition allowed.