

(2014) 09 AP CK 0105

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27277 of 2009

Ponnapati Balakoti Reddy

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 300-A

Land Acquisition Act, 1894 — Section 4, 4(1), 48(1), 55, 5-A

Citation : (2015) 1 ALD 530 : (2015) 3 ALT 344 : (2015) ALT(Rev) 239

Hon'ble Judges : Akula Venkata Sesha Sai, J

Bench : Single Bench

Advocate : M. Bala Naga Srinivas, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

A.V. Sesha Sai, J.—The draft notification, dated 18.07.2008 and the draft declaration dated 20.07.2009 issued by the Collector and District Magistrate, Guntur, the 1st respondent herein, under the provisions of sub section (1) of Section 4 and Section 6 of the Land Acquisition Act, 1894 (hereinafter called the Act), are under challenge in the present writ petition filed under Article 226 of the Constitution of India.

2. According to the petitioners, they are the absolute owners and possessors of small extents of agricultural wet lands situated in various subdivisions of Sy. No. 342 of Ravipadu Village, Narasaraopet Mandal, Guntur District. They are economically backward and some of them belong to Backward Castes, and exclusively dependent on agricultural income by raising paddy in the said lands. The 1st respondent-District Collector issued draft notification vide proceedings in Rc. No. 2876/08/G3, dated 18.07.2008, proposing to acquire a total extent of Ac. 54.08 cents of land situated in the above said survey number, for Urban Indiramma Housing Scheme. Thereafter, the 1st respondent-Collector issued draft declaration, vide proceedings Rc. 2876/08.G3, dated 20.07.2009.

3. Assailing the said draft notification and draft declaration, the present writ petition came to be instituted. Initially, this Court on 15.12.2009 granted status quo, and subsequently, modified the same as an interim direction as prayed for on 28.04.2010 on a vacate application filed by the respondents. In support of the said vacate petition, a counter affidavit deposed by the 3rd respondent-Revenue Divisional Officer, Narasaraopeta, has been filed on behalf of the respondents, denying the averments made in the writ affidavit and in the direction of justifying the impugned proceedings

4. Heard Sri Vedula Venkata Ramana, learned Senior Counsel representing Sri M. Bala Naga Srinivas, learned counsel for the petitioners and learned Government Pleader for Land Acquisition for the respondents, apart from perusing the material available on record.

5. Contentions of Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioners:

a) The impugned proceedings are illegal, arbitrary, violative of Articles 14 and 21 of the Constitution of India and opposed to the very spirit and object of the provisions of the Act and the Rules framed thereunder and violative of the principles of natural justice.

b) The stand taken by the 1st respondent that since the petitioners refused to receive the notices u/s 5-A of the Act, the said notices were affixed on a pole, is false and incorrect and service of notices u/s 5-A cannot be effected in a casual and mechanical manner. The lands proposed for acquisition are double crop wet lands and the action of acquiring the fertile lands for housing purpose is a mala fide and colourable exercise of power.

c) Denial of opportunity u/s 5-A of the Act causes serious civil consequences.

d) Vast extents of government lands are available in the adjoining villages of Narasaraopet Town, viz., Guntagarlapadu and Vallapa Cheruvu, which are at a distance of 5 kms., and there is absolutely no rationale in resorting to the acquisition of double crop wet lands.

e) Acquisition of land for the beneficiaries, who are the residents of other villages, is highly unreasonable.

In support of his case, the learned Senior Counsel places reliance on the judgment of the Hon"ble Apex Court in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai,.

6. Contentions of the learned Government Pleader for Land Acquisition:

a) The proceedings impugned in the present writ petition are in conformity with the Land Acquisition Act and the Rules framed thereunder.

b) There is neither illegality nor irregularity nor any violation of statutory nor constitutional rights of the petitioners and in the absence of the same, the

present writ petition is not maintainable and the petitioners are not entitled for any relief in the present writ petition.

c) Since the petitioners refused to receive the notices u/s 5-A of the Act, the 1st respondent issued the draft declaration u/s 6, and the petitioners, having failed to avail the opportunity given to them are estopped from making any complaint against the respondents.

d) Petitioners are in possession of other types of properties like terraced buildings and also doing real estate business etc., as such, they cannot be treated as economically backward and purely agriculturists.

7. In the light of the pleadings, submissions and contentions, now the issue, which this Court is called upon to answer in the present writ petition, is whether the petitioners are entitled for the relief sought in the writ petition and whether there is any infirmity in the impugned proceedings?

8. Property right is a constitutional right as enshrined under Article 300-A of the Constitution of India which, in clear and unequivocal terms, mandates that no citizen of this country shall be deprived of or divested of his/her property except in accordance with the procedure established by law. Therefore, such a valuable constitutional right cannot be dealt with in a mechanical and routine manner and in disregard of the due procedure. The Land Acquisition Act, 1894, is an exproprietary legislation, which authorises and empowers the State and its instrumentalities to acquire the private properties without reference to the consent of the owners. In view of the said reason, the provisions of this enactment are required to be followed and need to be adhered to scrupulously and meticulously and any deviation from the same would undoubtedly render the action invalid in the eye of law. Therefore, the authorities, entrusted with the statutory functions under the said legislation are required to be highly cautious and careful.

9. The issue in the present writ petition needs adjudication in the light of the above aspects.

10. The principal grievance of the petitioners in the present writ petition is that the respondent-authorities utterly disregarded the mandatory provisions of Section 5-A of the Act, thereby deprived the petitioners of their valuable right conferred under the said provision of law. The 1st respondent-District Collector issued draft notification u/s 4(1) of the Act, proposing to acquire the agricultural lands of the petitioners for Urban Indiramma Housing Scheme. Admittedly, the respondent-authorities, keeping in view the purpose of acquisition, did not dispense with the enquiry u/s 5-A of the Act. It may be appropriate to observe at this juncture that this is the only provision of law under the Act which enables the land owners to object the proposed acquisition. The same is a very valuable right and obviously a right in tune with Article 300-A of the Constitution of India and as per the law laid down by the Hon'ble Apex Court, the same is a human right and is akin to fundamental right guaranteed under Chapter-III of the

Constitution. The plea of the petitioners in the present writ petition is that the respondent-authorities neither issued any notices nor afforded any opportunity to the petitioners thereby deprived the petitioners of their valuable right.

11. On the other hand, it is the case of the respondents in their counter affidavit that since the petitioners refused to receive the notices issued u/s 5-A of the Act, the same were hanged to a pole in the land under acquisition. In fact, the same is seriously disputed by the petitioners as incorrect and false.

12. Even as per the counter affidavit of the respondents, the notices u/s 5-A were not sent directly to the petitioners by the Revenue Divisional Officer. On the other hand, it is pleaded that the notices u/s 5-A were issued vide proceedings Rc. No. 1569/2008C, dated 29.09.2008, proposing to hold enquiry on 30.10.2008 at 11 a.m. at the office of Revenue Divisional Officer and the same were sent to the Tahsildar, Narasaropet for affecting service and for submission of served copies. It is also pleaded that since the Ryots to whom the notices were attempted to be served, refused to receive the same, and hence the same were hanged to a pole in the said land.

13. The contention sought to be pressed into service by the respondents cannot be said to be a reasonable one nor can be countenanced, in view of the object behind Section 5-A of the Act and the language employed therein. It is also pertinent to note at this juncture that the endorsement in Rc. No. 2876/08-G3, dated 20.07.2009 issued by the Collector about Section 5-A enquiry, could be served by the authorities on the ryots, as such the case of the respondents that the ryots refused to receive the notices attempted to be served through Tahsildar cannot be given any credence in the absence of any material to substantiate the same.

14. The Government of A.P., obviously, keeping in view the object behind Section 5-A of the Act framed Rules in exercise of the powers conferred in Section 55 of the Act, prescribing the procedure for holding enquiry u/s 5-A. The said Rules read as under:

Rule 1: Immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof affixed up in the office of the Collector, the Tahsildar, and in the nearest police station.

Rule 2:- The statement of objections should mention how the objector is interested in the land.

Rule 3:- (a) If a statement of objections is filed by a person who is not interested in the land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The Department or company may file on or before the date fixed by the Collector a Statement by way of answer to the objections any may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any of the department or company and record any evidence that may be produced in support of the objections.

Rule 4:- On completion of his enquiry, the Collector shall submit the case for the decision of the Government through the Board of Revenue in the manner provided in Section 5-A(2) of the Land Acquisition Act.

Rule 5:- On a consideration of the objections and the Collectors report thereon, if Government decide that the land should be acquired the declaration required u/s 6 of the Act should be submitted by the Collector of the District or Collectors of the districts concerned to Government for approval and publication in the Official Gazette. If on the other hand, Government decide to give up the acquisition, a notification u/s 48(1) withdrawing from such acquisition shall be published by them.

Rule 6:- In these rules the words, Government means the Government of Andhra Pradesh.

15. At this juncture it may be appropriate to refer to the judgment in the case of S.J.S. Business Enterprises (P) Ltd., v. State of Bihar and ors., wherein the Hon"ble Apex Court at paragraph No. 17 held that the presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probablise the abuse of that power and in such event, it is for the officer concerned to explain the circumstances which are se up against him, and if there is no credible explanation is forthcoming the court can assume that the impugned action was improper.

16. In the present case except stating that the Tahsildar attempted to serve Section 5-A notice, no evidence is made available by the respondents to substantiate the same nor any material is produced, showing that the mandatory procedure as per the Act and the Rules are adhered to and followed by the authorities. It is also the case of the petitioners that they are small farmers and their principle avocation and the source of livelihood is agriculture and that the subject lands are double crop wet lands. In the considered opinion of this Court all these are vital and important aspects for consideration during the course of enquiry u/s 5-A of the Act.

17. Another significant aspect, which cannot be lost sight of, is that the farmers are the backbone of our Indian economy. In the process of urbanisation the agriculture is getting crippled day by day and the number of farmers, growing food grains is also getting diminished. So to the extent possible, barring inevitable situation, the acquisition of fertile agricultural lands and thereby diminishing the food production, should be averted. The indiscriminate and unreasonable acquisition some times also leads to unrest in the society. The compulsory acquisition of the private properties, some times result in displacing the farmers from their native villages, and it may also lead to severance of their bond from the villages and the social network. It would result in unwarranted, unhealthy and excessive urbanisation. It is also imperative and obligatory on the part of the State and its instrumentalities to take into account the plight of the farmers, who solely and principally dependent on agriculture and who sacrifice their blood and sweat in the process of growing food grains for the nation. It is also essential to note that in the process of providing shelter to the poor, the small and marginal farmers should not be rendered landless. In the considered opinion of this Court, had the petitioners been afforded opportunity u/s 5-A of the Act, the objections of the petitioners would have been brought to the notice of the authorities. Therefore this Court is inclined to give an opportunity to the petitioners to submit their objections u/s 5-A of the Act for consideration of the authorities as per law.

18. For the aforesaid reasons, this writ petition is partly allowed, setting aside the endorsement Rc. No. 2876/08-G3, dated 20.07.2009 and the draft declaration vide Rc. No. 2876/08.G3, dated 20.07.2009 issued by the Collector and District Magistrate, Guntur, the 1st respondent herein, and the respondents are at liberty to hold enquiry u/s 5-A of the Act after giving notice and affording opportunity of being heard to the petitioners and to proceed in accordance with law.