
(1994) 06 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4131 of 1993

S. Alwardas and others

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

City of Bangalore Improvement Act, 1945 — Section 76J
Constitution of India, 1950 — Article 258
Land Acquisition Act, 1894 — Section 4, 4(1), 4(2), 5(A), 6

Citation : AIR 1995 AP 71 : (1994) 2 ALT 547

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Advocate : I.A. Naidu and A. Venugopala Rao, for the Appellant; Govt. Pleader for Industries, T. Ramulu, A.S.C. for Central Govt. and V. Rajagopal Reddy, for the Respondent

Judgement

1. The petitioners are the owners of Ac. 4-00 of land situated in S. No. 100/1A in" Sanivada Village, Gajuwaka Mandal, Visakhapatnam District. A draft notification u/s 4(1) of the Land Acquisition Act -- hereinafter called "The Act", was published in the Andhra Pradesh Gazette on Nov. 4, 1992. The same was also published in two Telugu daily Newspapers on December 3, 1992 and December 6, 1992. This notification is questioned in this writ petition.

2. Sri I. A. Naidu, the learned Counsel for the petitioners mainly contended that although a notification was published in the Gazette under the signature of the Secretary, the same was published in two focal Newspapers by the Special Deputy Collector (Land Acquisition) Steel Plant, Visakhapatnam, who has no authority to publish the same, and therefore, the notification is bad and illegal.

3. The notification mentioned above shows that by virtue of the notification issued by the president entrusting Government of Andhra Pradesh the functions of the Central Government under the Land Acquisition Act, for the purpose of the Union in the State, the Government of Andhra Pradesh issued the, notification u/

s 4(1) of the Act i.e., for the steel plant and related purposes. It is also seen that the Governor of Andhra Pradesh authorised the Special Deputy Collector (LA) Steel Plant, Visakhapatnam, his staff, and workmen, to exercise the power conferred by Section 4(2) of the Act and also to perform the functions u/s 5A of the Act. The same notification is also published in two daily newspapers as stated above not by the Government, but by the Special Deputy Collector (LA) Steel Plant, Visakhapatnam.

4. In the counter-affidavit, the second respondent who is the Special Deputy Collector (LA) has stated that as the body of the notification was published correctly in two local newspapers, the same cannot be challenged although it was wrongly mentioned as Special Deputy Collector in the notification published in the newspapers by way of typographical mistake. Even otherwise, the Land Acquisition Act stipulates that the notification should be published in the gazette, newspapers, locality etc., but it does not stipulate that it should be published under the signature of any particular officer. Hence, publication of the notification in the newspapers under the signature of Special Deputy Collector might be an irregularity, but certainly not an illegality which would vitiate the notification itself.

5. There is no dispute that by virtue of the powers conferred by Clause (1) of Art. 258 of the Constitution, the President has issued a notification No. 20-1-55 Judicial (1) dated 14th May, 1955 entrusting to the Government of Andhra Pradesh the functions of the Central Government under the Land Acquisition Act in relation to acquisition of lands for the purpose of Union in the State. Therefore, it is clear that the State Government is authorised to publish the notification u/s 4(1) of the Act for acquisition of land for purpose of the Union. Accordingly, the State Government has issued G. O. Rt. No. 1070, Industries and Commerce, (IFR), 26th October, 1992 and published the same in the Andhra Pradesh Gazette on November 4, 1992. The said Government Order was signed by Sri J. Hari Narayan, Secretary to Government and was published in the gazette. The correctness and validity of this notification as published in the Gazette is not challenged by the petitioners. However, the attack of the petitioners is that the said notification was published in two local daily newspapers not in the name of the Secretary to Government who issued the Government Order, but by the Special Deputy Collector (LA). As the Special Deputy Collector has no authority to publish the same in the newspapers, the notification is invalid.

6. Sri V. Raja Gopal Reddy, the learned Counsel appearing for the second respondent contends that the Government Order as issued by the Government was published in two local daily newspapers varbatim, but the name of Mr. S. S. Jones, Special Deputy Collector is typed instead of the Secretary to Government and according to him, it does not make any difference, since the notification as published in the Gazette was published in the newspapers correctly except the name of the person who signed it. According to the learned Counsel, the substance and the particulars are important and not the person who signed it as

no prejudice would be caused to the persons interested in the land acquired. Therefore, it has to be seen whether the notification as published in the newspapers is valid or not.

7. Section 4(1) of the Land Acquisition Act reads as follows:--

"4. (1) Whenever it appears to the appropriate Government that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the the official Gasette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and (the Collector shall within forty days from the date of publication of such notification cause) public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification)".

By virtue of the amendment as inserted by the Central Act 68 of 1984 which came into force on September 24, 1984 after the words "Official Gazette" the words "and in two daily newspapers circulating in that locality of which at least one shall be in the regional language" were inserted. Therefore, publication of the notification in two daily newspapers circulating in the locality of which at least one shall be in the regional language is made part of 4 (1) notification. This requirement is made a statutory obligation.

8. No doubt, the intention of a notification u/s 4 of the Act is not more than making a public announcement of the fact that the land is needed or is likely to be needed for acquisition in any locality and to enable the competent authority u/s 4(2) of the Act to undertake survey etc.. It is equally true that the twin objects and purpose of the notification are, that interested persons should know that the land is being acquired so as to enable them to prefer objections u/s 5(A) of the Act and also authorising the officer to proceed to do certain exercise including survey to find out what are the lands that are suitable.

9. The Supreme Court in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, observed that "the law as settled by this court is that such a notice under second pan of Section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated"..... "In our opinion Section 4(1) has to be read as an integrated provision which contains two conditions; the first is that the notification in the official gazette must be published and ihe second is that the Collector has to cause public notice of the substance of such notification to be given. These two conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1)." In another decision reported in *State of Mysore v. Abdul Razak Sahib*, AIR 1973 SC 236J the Supreme Court observed as followed (at p. 2362 of AIR):

"But in the case of a notification u/s 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official

Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the-acquisi-tion proceedings and they will be deprived of the right of representatioin provided u/s 5A, which is very valuable right".

Therefore, it is clear that not only the notification must be published in the Official Gazette, but the Collector also, must give publicity of the substance of the notification in the locality. In view of the amendment stated above, there" is further requirement of publication of the notification in two local daily newspapers which is equally mandatory, In this case notification was published in the newspapers not by the Government, but by the Land Acquisition Officer. Under these circumstances, could it be said that the notification is valid ?

10. The learned Counsel for the petitioners relying on two decisions reported in Janata Recreation Centre, Gullapalli Vs. State of Andhra Pradesh and Others, and V.V. Ramachandra Rao and Others Vs. The state of Andhra Pradesh and Another, contends that the notification published other than by the State Government or the District Collector is void. In the above cases, a Bench of this Court held that the notification u/s 4(1) of the Act published by the District Revenue Officer is bad, since he has no authority under the Act to publish the same. Following those decisions, I hold that the 4(1) notification published in the local newspapers by the Land Acquisition Officer is invalid.

11. Sri. V. Raja Gopal Reddy, the learned Standing Counsel for the second respondent submits that since the main notification --vide G. O. Rt. No. 1070, Industries and Commerce (IFR), dated 26th October, 1992 was singed by the Secretary to Government and also published u/s 4(1) of the Act in the Andhra Pradesh Gazette under his signature, the defect if any in publishing the same in the newspapers is only a mere irregularity and not an illegality which would vitiate the whole acquisition proceedings. The learned Standing Counsel relied on a decision reported in Sudhansu Sekhar Maity and Others Vs. State of West Bengal and Others, . In this case, the Central Government authorised the State Government to acquire certain land for the purpose of the Union and the State Government accordingly published a notification under Sections 4 and 6 of the Act, but the fact of such delegation by the Central Government is not mentioned in those notifications. The Calcutta High Court has taken the view that mere non-recital or wrong recital of the authority would not make the notification incompetent or without jurisdiction. This case has no application to the facts of the present case. The learned Standing Counsel relied, on another decision of the Full Bench of the Assam High Court reported in T. D. Corporation Ltd. v. State of Assam, AIR 1961 Assam 133 to show that vagueness with regard to particulars of land and proper description of the area cannot vitiate the acquisition

proceedings. This decision has no application to the facts of the present case. The learned Standing Counsel has also relied on a decision reported in *Krishi Utpadan Mandi Samiti, Muzaffarnagar (U.P.) Vs. Ratan Prakash Mangal and Others*, wherein it is held that inadvertent copying of the entire plots included in the notification u/s 4(1) of the Act and mere clerical error would not be sufficient to hold that there was lack of application of mind on the part of the officers concerned. This is a case of mistake creeping in while making copies, but in the case on hand, the Land Acquisition Officer has published the notification in the local newspapers instead of requesting the State Government to do so. The learned Counsel has finally relied on a decision of the Supreme Court reported in *B.K. Srinivasan and Others Vs. State of Karnataka and Others*. In that case certain provisions of the Karnataka Town and Country Planning Act, 1961 came up for consideration. As per Section 81A(a) of the said Act, the Outline Development Plan for the Bangalore Metropolitan area prepared by the Bangalore Metropolitan Planning Board shall be deemed to be the Outline Development Plan of the planning area comprising the city of Bangalore prepared by the planning authority of the area under the Act. Rule 13(4) of the rules framed under the Act, prescribes the mode of publication of the Outline Development Plan and the Regulations. According to this rule, the Outline Development Plan and the regulations have to be published in the prescribed manner and the plan and particulars should be permanently displayed in the offices of the Director and the Planning Authority and a copy should be kept for inspection of the public at the office of the planning authority. Rule 32 prescribes publication in the Official Gazette. As per this Rule, publication of approved Outline Development Plan and Regulations should be published in the Official Gazette. As the Outline Development Plan and the Regulations are not published in the Official Gazette, an argument was advanced that due to non publication of the same in the Official Gazette, they cannot be enforced.

12. Raj Mahal Vitas Extension which is an undeveloped area in the city of Bangalore was taken up by Bangalore Improvement Trust Board to develop the same under the provisions of City of Bangalore Improvement Act, 1945. The land was acquired and the writ petitioners and some other were allotted the plots. However, contrary to the Outline Development Plan for Bangalore, the authorities granted permission to the appellants before the Supreme Court to construct houses. As the writ petition was allowed the matter was carried to the Supreme Court. It is contended before the Supreme Court that inasmuch as the Outline Development Plan was not properly published, the same cannot be acted upon. Repealing the contention, the Supreme Court observed as follows *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, :--

"The High Court was of the view that such defect as there was in regard to publication of the Plan was cured by Section 76J, the Omnibus Curative clause to which we earlier made a reference as the "Ganga" clause. Provisions similar to Section 76J are found in several modern Acts and their object is to put beyond challenge defects of constitution of statutory bodies and defects of procedure

which have not led to any substantial prejudice. We are inclined to agree with the High. Court that a defective publication which has otherwise served its purpose is not sufficient to render illegal what is published and that such defect is cured by Section 76J".

In view of the specific provisions in the Act, any defect in publication of the Plan is cured by Section 76J. No such curative clause of section can be brought in aid of this case. In the absence, of such a clause, the said decision cannot be made applicable to the facts of this case.

13. For the above reasons, I have no hesitation in holding that the draft notification u/s 4(1) as published in the local newspapers by the Land Acquisition Officer is without authority and therefore, illegal. Accordingly, 4(1) notification published on November 4, 1992 in Andhra Pradesh Gazette Part I Extraordinary is quashed. This however, does not preclude the respondents from taking steps for acquisition of this land afresh according to law.

14. The Writ Petition is accordingly allowed, but in the circumstances without costs.

15. Petition allowed.