
(2016) 06 AP CK 0049
In the Andhra Pradesh High Court
Case No : W.P. Nos.28106 of 2011

Shaik Jonny

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A(2)

Citation : (2016) 5 ALT 571 : (2016) 6 AndhLD 373

Hon'ble Judges : A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : Sri Naga Praveen Vankayalapati, Counsel, for the Petitioner in W.P. Nos.28106 of 2011; Sri G.V.S. Mehar Kumar, Counsel, for the Petitioner in W.P. Nos.4469 of 2012; Learned Government Pleader for Land Acquisition, for the Respondent Nos.1, 3 & 4; Smt. K.

Final Decision : Disposed Off

Judgement

A. Rajasheker Reddy, J.—As the issue involved in both the writ petitions is one and the same, they are being disposed of by way of this Common Order.

2. It is the case of the petitioners that they are residents of Dharanikota Village, eking out their livelihood by cultivating the lands. They are all landless poor persons and are owners of small extents of land in Sy.Nos.180B, 182A, 183 and 184 of Dharanikota village of Amaravathi Mandal, Guntur District. While so, the 3rd respondent issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity "the Act") on 28.03.2011 in Roc.No.1337/2011-G-1 identifying the houses and house sites of the petitioners for acquiring the same situated in the aforesaid survey numbers for public purpose i.e., for construction of Tourism Project, Recreation Amenities and other commercial complex in Dharanikota Village, Amaravathi Mandal, Guntur district. That some of the petitioners filed objections in pursuance to the notices issued to them under Section 5(A) of the Act. However, without considering the said objections being filed by the petitioners, the 3rd respondent issued declaration under Section 6 of the Act on

23.09.2011 rejecting the objections of the petitioners. It is the case of some of the petitioners that though they have purchased the lands, their names are not mentioned in notification issued under Section 4(1) of the Act. Aggrieved by the notification under Section 4(1) of the Act dated 28.03.2011 and impugned proceedings dated 23.09.2011 issued by the 3rd respondent, rejecting the objections of the petitioners in pursuant to the notification, present writ petitions are filed.

3. Counter affidavit is filed by the 2nd respondent on behalf of the other respondents denying the averments in the affidavits filed in support of the writ petitions stating that the subject land under acquisition has historical importance. According to Vajrayana traditional sources Buddha preached at Dharanikota/Dhanyakatakam and conducted Kalachakra ceremony in the year following his enlightenment at the great Stupa of Dhanyakataka, Dhanyakatakam (Amaravati). It was the Capital of Andhra Satavahanas. The 30th Kalachakra festival, a popular Buddhist ritual was held there in the first week of January, 2006 and that the said town is a centre of pilgrimage to both Hindus and Buddhists. The Buddhist Stupa originally built during the reign of emperor Ashoka. That the region between Krishna and Godavari rivers was an important place for Buddhism and the Dalai Lama of Tibet conducted a Kalachakra initiation at the proposed land under acquisition in the year 2006.

4. It is stated that the Vice Chairman, VGTM UDA, Vijayawada has proposed to acquire an extent of Ac.16.39 cents in R.S.Nos.182,183/1 & 184 of Dharanikota Village, Amaravathi Mandal, Guntur District vide Rc.A1/275/2011, dated 08.03.2011 for the development of Tourism Project, Recreation amenities and other commercial community activities, with an intention to develop International Buddhist learning and cultural centre. The terms tourism, recreation, commercial community activities were used on generic terms in the notification but the specific purpose is to develop International Buddhist Learning and Cultural Centre. The Collector, Guntur has approved the Draft Notification under Section 4(1) of the Act to an extent of Acs.16.39 cents on 28.03.2011. The Pattadar & Enjoyer names shown in the Draft Notification are as per the Revenue records i.e., Adangal. The Notices under Section 5-A of the Act dated 11.04.2011 are published in the locality on 16.04.2011 and also sent to the land owners, who were notified in the notification under Section 4(1) of the Act through registered post. Objections under 5(A) were filed by the petitioners and they have also attended enquiry on 25.04.2011. After considering the objections and after affording reasonable opportunity to the petitioners, the same were overruled by the Collector, Guntur in Rc.No.1337/2001-G1, dated 23.09.2011. The Orders under Section 5A(2) were served in person and also through registered post with acknowledgment due. Thereafter, the Collector, Guntur has approved the Draft Declaration under Section 6 of the Act to an extent of Acs.16.35 cents on 23.09.2011 by mentioning the names of the objectors who filed petitions in 5A enquiry. The Collector, Guntur had been delegated power by the Government to approve the Draft Notification of acquisitions for development vide

G.O.Ms.No.4288, Revenue (LA) Department dated 11.09.1980. The publication of Draft Notification and Draft Declaration is according to the procedure under the Act. There is no cultivation since 2006 and the entire land is lying vacant on ground till this day. Proposed land is exactly opposite to the Dhyana Buddha statue and that it is very essential to acquire the proposed land, as there is no alternate land for the proposed International Buddhist Learning and Cultural Center. As per the revenue records, the proposed lands in R.S.Nos.182, 183/1 and 184 of Dharanikota village, Amaravathi Mandal are agricultural lands. No authorised and approved layouts from the competent authority are existing in the proposed land and no roads are formed. Petitioners have purchased the land in an unapproved layout and not possessing building plan approvals. Acquisition of the petitioners' lands for the proposed tourism project became inevitable even though they are landless poor etc., as their lands are on the front edge of the proposed project. Petitioners and other land owners would be suitably compensated for their land and structures as per the Act.

5. While so, WPMP No.9814 of 2016 is filed by the petitioners in WP No.28106 of 2011 seeking to permit the petitioners to file additional affidavit and the same was allowed on 28.04.2016.

6. Apart from reiterating the averments in the affidavits filed in support of the writ petitions, it is stated that the respondents have not considered the objections of the petitioners in proper perspective and rejecting the same in mechanical manner is without application of mind. Draft declaration was drafted even before consideration and disposal of the objections raised during Section 5-A enquiry and the endorsement rejecting their objections is only an empty formality as already decision was taken to issue declaration under Section 6 of the Act even before issuance of the said endorsement. The entire exercise that was undertaken by the respondents is vitiated for noncompliance of well settled principles of natural justice. Purpose that was mentioned in Section 4(1) notification is entirely different from the actual purpose as evident from the contents of the counter affidavit filed by the respondent and that if purpose is not correctly mentioned in the notification, the effected persons will not be in a position to submit their objections with reference to the purpose for which the property is sought to be acquired. It is also stated that the petitioners are owners of small extents of properties and most of them have no residential tenements other than those which are sought to be acquired and that the respondent authority would be able to acquire the other extent of land by excluding the properties held by them. It is, therefore stated that the entire issuance of notification under Section 4(1) of the Act and subsequent steps taken by the respondent including conducting enquiry and declaration under Section 6 are vitiated and liable to be set aside. The action of the respondent in not excluding the property of the petitioners from the impugned notification in pursuant to their objections is arbitrary, illegal and contrary to the principles laid down by the Hon"ble Apex Court.

7. Additional counter affidavit is filed by the 2nd respondent reiterating the averments in the counter denying the averments in the additional affidavit filed by the petitioners stating that after considering the objections, the Collector, Guntur in Rc.No.1337/2001-G1 dated 23.09.2011 has overruled the objections. Generally date of approval of any orders by the apex authority will be put as the date of that particular order or letter, which will be available on the Office copy of the order or letter. On the fair copy of that particular order or letter concerned, Superintendent will make signatures putting the date when he makes signature. It may vary from the date of order approved by the apex authority on "office copy" and the date on "fair copy. But on the top of the order or letter, the date on "office copy" alone will be placed. In this case also, the District Collector approved endorsement under Section 5(A) on 23.09.2011 i.e., office copy and the Superintendent made signature on 26.09.2011 on fair copy. The orders under Section 5(A)2 were served in person and through registered post with acknowledgment due. Acquisition of the petitioners' lands for the proposed tourism project became inevitable even though they are landless poor persons.

8. Heard Sri Ghanta Rama Rao, learned Senior Counsel on behalf of the petitioners and Smt. K. Mani Deepika, learned Standing Counsel for the respondents in both writ petitions.

9. Sri Ghanta Rama Rao, learned Senior Counsel submits that the valuable right of the petitioners is deprived as the objections filed by them have not been considered by the 3rd respondent in proper perspective under Section 5A of the Act, before passing impugned order dated 23.09.2011. He would further contend that the impugned order is signed on 26.09.2011 rejecting the objections of the petitioners whereas the draft notification under Section 6 is issued on 23.09.2011, which goes to show that the 3rd respondent determined to issue declaration under Section 6(1) of the Act, without considering the objections of the petitioners. He also submits that at any rate, there is no objective consideration in respect of the objections filed by the petitioners under Section 5(A) of the Act and the order passed by the 3rd respondent is without application of mind. He also submits that when the lands of landless poor persons are sought to be acquired, more care should be taken. He would further contend that the Courts should also apply strict scrutiny test. He submits that the petitioners are having small extents of lands, as such, the same could have been excluded from the impugned notification. He would further contend that at the time of passing of interim order, an undertaking was given by the learned Standing Counsel stating that alternative site would be provided to the petitioners and even in the counter also, the respondents have stated that the petitioners would be allotted alternative sites but now, the respondents cannot rescile from the said stand. He submits that there is no report of the Land Acquisition Officer. He also submits that the purpose mentioned in the notification issued under Section 4(1) of the Act is different from the one mentioned in the counter affidavit, which will deprive the petitioners to file their objections to the purpose mentioned in the notification. He submits that objections can be filed in respect of the specified

purpose mentioned in the notification under Section 4(1) of the Act and not otherwise. In support of his contentions, he relied on the judgments reported in *Surinder Singh Brar v. Union of India*, (2013) 1 Supreme Court Cases 403, *Raghubir Singh Sehrawat v. State of Haryana*, (2012) 1 Supreme Court Cases 792, *Radhy Shyam v. State of U.P.*, (2011) 5 Supreme Court Cases 553 and *Uppalapati Brahmam and others v. State of AP*, 2011 (5) ALT 555.

10. On the other hand, Smt. K. Mani Deepika, learned Standing Counsel appearing on behalf of respondents submits that the objections of the petitioners were considered by the 3rd respondent and after rejecting the same on 23.09.2011, notification under Section 6(1) of the Act was issued. She also submits that rejection order dated 23.09.2011 was also communicated to the petitioners. She contends that the subject land is to be acquired by virtue of notification under Section 4(1) of the Act for various purposes which includes establishment of Buddhist Centre as stated in the counter affidavit. She submits that there is no alternate Government land for deleting the subject land from the purview of the notification. She submits that because of importance of the site and for the reasons mentioned in the counter affidavit, the acquisition of the petitioners' land is inevitable. She would contend that this Court cannot review the decision of the 3rd respondent as appellate authority, by exercising power of judicial review under Article 226 of the Constitution of India and it is for the 3rd respondent to decide whether the subject land is suitable or some other lands is suitable for the purpose mentioned in the notification under Section 4(1) of the Act. This Court cannot interfere with the acquisition proceedings on the ground of hardship to the petitioners. She further submits that the purpose mentioned in the notification under Section 4(1) of the Act is very clear, which includes establishment of Buddhist Centre. She also submits that providing of alternate site to the petitioners is not possible now due to establishment of Capital city for the State of Andhra Pradesh. In support of her contentions, she relied on the judgments reported in *M. Arun Subramanian v. State of Andhra Pradesh*, 2012 (2) ALD 642, *M. Rajender Kumar v. Greater Hyderabad Municipal Corporation*, Hyderabad, 2012 (1) ALD 163, *Sooraram Pratap Reddy v. District Collector, Ranga Reddy District*, (2008) 9 Supreme Court Cases 552, *Special Deputy Collector, Land Acquisition, CMDA v. J. Sivaprakasam*, (2011) 1 Supreme Court Cases 330, *State of Gujarat v. Panch of Nani Hamam's Pole*, (1986) 1 Supreme Court Cases 566, *Smt. Somawanti v. State of Punjab*, AIR 1963 Supreme Court 151 (1) and *Pratibha Nema v. State of M.P.*, (2003) 10 Supreme Court Cases 626.

11. Admittedly, the Draft Notification under Section 4(1) of the Act was issued by the 3rd respondent on 28.03.2011 for acquisition of land to an extent of Acs.16.39 cents. Notices under Section 5-A of the Act was issued to the petitioners. They filed objections and also attended enquiry under section 5-A of the Act on 25.04.2011 and 13.05.2011. Objections of the petitioners were rejected by the 3rd respondent on 23.09.2011. Though the petitioners filed a copy of rejection order dated 23.09.2011, which is impugned in these writ petitions, is signed by the Superintendent on 26.09.2011. But in the record

produced by the learned Standing Counsel, it is found that the 3rd respondent signed the impugned order on 23.09.2011 itself, as such, the contention of the learned Senior Counsel that the same was signed on 26.09.2011 by the 3rd respondent, is erroneous. Though it is submitted by the learned Senior Counsel for the petitioners that the report of the Land Acquisition Officer is not filed, but a perusal of the record shows that the Land Acquisition Officer filed report dated 21.03.2011 which is found in the record. Though in the affidavit, it is stated that the names of the petitioners were not notified in the notification under Section 4(1) of the Act, but the same was not pressed by the learned Senior Counsel. May be due to the reason, the law declared by the Courts is against the stand of the petitioners. Now, the only question that is required to be considered is whether the objections of the petitioners were considered by the 3rd respondent in proper perspective or not.

12. A perusal of the impugned proceedings goes to show that the objections of the petitioners were referred to and rejected. Whether it is proper consideration or not has to be tested by applying test laid down by the Hon"ble Apex Court in *Surinder Singh Brar v. Union of India* (supra), wherein the Hon"ble Supreme Court held as follows:

"87. The proposition laid down in the aforementioned two judgments does not support the stance of the Chandigarh Administration that even though there is breach of the mandate of Section 5A read with Section 6(1), the Court cannot, after the issue of declaration under Section 6(1), nullify the acquisition proceedings. As a matter of fact, the ratio of both the judgments is that satisfaction of the appropriate Government envisaged in Section 6(1) must be preceded by consideration of the report prepared by the Collector after considering the objections filed under Section 5A and hearing the objectors. This necessarily implies that the Government must objectively apply its mind to the report of the Collector and the objections filed by the landowners and then take a decision whether or not the land is needed for the specified public purpose. A mechanical endorsement of the report of the Collector cannot be a substitute for the requirement of application of mind by the Government which must be clearly reflected in the record."

13. In *Raghubir Singh Sehrawat v. State of Haryana* (supra), the Hon"ble Supreme Court held as follows:

"39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can

produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though, it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

14. In *Radhy Shyam v. State of U.P* (supra), the Hon''ble Supreme Court held as follows:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i)

(ii)

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of ones property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter."

15. Admittedly, objections of the petitioners were rejected by the 3rd respondent, without considering them objectively, stating that the petitioners will be paid market value plus 30% solatium and 12% additional market value as per the award enquiry basing on the documents submitted by them. In the impugned order, it is also stated that the same is required for public purpose, as such, the same cannot be deleted from the purview of notification under Section 4(1) of the Act. Excepting stating so, there is no proper reason or explanation forthcoming in the impugned order passed by the 3rd respondent. Though, reasons are given in the counter affidavit about the importance of acquisition of subject land, but the same is not reflected in the impugned order. A plain reading of the impugned order goes to show that the objections of the petitioners were referred to and rejected, but no proper reasons are given except the reasons given in the counter, which is against the principle of law laid in *Mohinder Singh Gill v. the Chief Election Commissioner, New Delhi*, (1978) 1 Supreme Court Cases 405, wherein it is held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

16. In the impugned notification, the public purpose that it is mentioned as tourism project, recreation facilities and other commercial and social activities and in the counter it is explained stating that public purpose including development of International Buddhist Learning & Cultural Centre. According to me, the tourism project includes many aspects and establishment of Buddhist centre is also one of the aspects of tourism projects. As per the law laid down by the Hon"ble Supreme Court in the above citations, the consideration of the objections of the petitioners should be objective and should be after application of mind, but in the present case, the 3rd respondent rejected the objections of the petitioners only on the ground that the petitioners would be paid compensation as per the Act and also that the said land is required for public purpose. The right conferred under Section 5-A of the Act is an important valuable right to the petitioners and is one of the procedural safeguard against the arbitrary acquisition of lands. Unless the procedure as envisaged under Section 5-A of the Act is followed in its true spirit, it cannot be said that the procedure established under law is followed, depriving the petitioners of their lands, as the same will be in violation of Article 300- A of the Constitution of India. The decision of the 3rd respondent on the objections of the petitioners by way of impugned order does not satisfy the test of application of mind and also the reasons provided in the impugned order does not inspire the confidence of this Court for upholding the action of the respondents in issuing Declaration under Section 6(1) of the Act.

16. (a) In *M. Rajender Kumar v. Greater Hyderabad Municipal Corporation*, Hyderabad (supra), this Court held as follows:

"12. In my opinion, while exercising jurisdiction under Article 226 of the Constitution of India, it is neither possible nor appropriate for this Court to sit over the decision of a statutory authority and examine the same as an appellate body. Once the Government is satisfied that the properties are needed for a "public purpose", it is not open to the owner or the person interested in the property to contend that some other property is more suitable."

(b) In *Sooraram Pratap Reddy v. District Collector, Ranga Reddy District* (supra), the Hon"ble Supreme Court held as follows:

"In deciding whether acquisition is for "public purpose" or not, prima facie, the Government is the best judge. Normally, in such matters, a writ court will not interfere by substituting its judgment for the judgment of the Government. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In purposes or the purported action is dehors the Ac, irrational or otherwise unreasonable or the so-called purpose is "no public purpose" at all and fraud on

statute is apparent, a writ court can undoubtedly interfere. But except in such other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes "public purpose".

17. In *Smt. Somawanti v. State of Punjab* (supra), the Hon"ble Supreme Court held as follows:

"36. Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the. State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose act all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final."

18. The Hon"ble Supreme Court in the above decisions held that the Court cannot sit over the decision of the executive as appellate authority by exercising the power of judicial review, but only when the power is exercised arbitrarily or in colourable exercise of power, then only the Courts are entitled to interfere with the decision making power of the Government and not otherwise. Now, the issue raised by the petitioners is that their objections were not considered in proper perspective and without application of mind, their objections were rejected. A fair reading of the impugned order also supports the assertions of the petitioners and contentions raised by the learned Senior Counsel appearing for the petitioners that the consideration of objections by the 3rd respondent is not in tune with the law laid down by the Hon"ble Apex Court in the above decisions, referred to above by the learned Senior counsel, as such, decisions cited by the learned Standing Counsel which are referred to above have no application to the facts of the case.

19. In view of above facts and circumstances, the impugned order dated 23.09.2011 rejecting the objections of the petitioners is liable to be set aside and accordingly same is set aside. Consequently, the declaration made under Section 6 of the Act is also set aside. The 3rd respondent is directed to reconsider the objections in proper perspective in terms of the law laid down by the Hon"ble Apex Court referred to above, after giving an opportunity of hearing to the petitioners and take action accordingly in pursuance thereto.

20. Accordingly, both the writ petitions are allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions,

if any, pending, shall stand disposed of.