
(2011) 12 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 29480 of 2011

Shaik Kalesha Saheb and 3 others	Vs	APPELLANT
The District Collector, SPSR Nellore District and another		RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6

Citation : (2012) 2 ALD 339

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P.Gangarami Reddy, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. This Writ Petition is filed for a Mandamus to set aside the notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act"), and declaration issued u/s 6 of the Act in respect of the petitioners' lands admeasuring Ac.0-45 cents, Ac.0-14 cents, Ac.0-18 cents, Ac.0-30 cents and Ac.0-66 cents in Survey Nos.253/3A, 253/4, 253/5, 277/2 A and 277/4 of Kogili Village, Chittamuru Mandal, SPSR Nellore District.

2. The petitioners are the owners of the above-mentioned lands, which were notified for acquisition for providing house sites to the people, belonging to Scheduled Caste, of Kogili Village. The petitioners have earlier filed W.P.No.17470 of 2007 i.e., before the stage of holding enquiry u/s 5-A of the Act. The principal ground, on which the notification was questioned in the said Writ Petition, was that without conversion of the agricultural land into house sites, acquisition thereof was contrary to the provisions of the A.P.Agricultural land (Conversion for Non-Agricultural Purposes) Act, 2006. This Court has dismissed the said Writ Petition on 14-02-2011. During the pendency of the said Writ Petition, respondent No.2 has vide Order, dated 30-08-2007, rejected the petitioners'

objections filed u/s 5-A of the Act. Following the dismissal of the previous Writ Petition, the respondents have issued declaration u/s 6 of the Act. The petitioners have questioned the said declaration by way of the present Writ Petition.

3. At the hearing, Sri P.Ganga Rami Reddy, learned Counsel for the petitioners, submitted that the order rejecting the petitioners objections is unsustainable because respondent No.2 has failed to give proper reasons therefor. The learned Counsel stated that there are several wet and dry lands belonging to the Government, which could have been utilized for providing house sites instead of acquiring the double crop wet lands of the petitioners, who are small farmers.

4. In the affidavit, filed in support of the Writ Petition, the petitioners have specifically referred to availability of alternative lands in Survey Nos.120-1, 82-4, 82-5, 82-7, 275-4, 398 and 399-1 of Kogili Village, which are stated to be waste lands and belonging to the Government.

5. In the counter-affidavit, filed by respondent No.2, it is inter alia stated that, while the lands in survey Nos.82/4, 82/5, 82/7, 275/4, 398 and 399/1 are available, most of these lands are not suitable as they are situated either on hillock or in low lying areas needing huge expenditure for levelling.

6. Even though the State has the power of eminent domain, the same needs to be exercised carefully and reasonably. When agricultural lands are sought to be acquired, the care and caution to be exercised should be much more because not only the agriculturists will be deprived of their land for cultivation but the Society at large will also be deprived of agricultural production. The State should be much more cautious in cases where wet lands are proposed to be acquired for non-agricultural purposes such as house sites. This Court in *V.Bujjamma vs. District Collector, Nellore*, Nellore District and another 2008 (2) ALD 757 has expressed concern at the indiscriminate manner in which the wet lands are proposed to be acquired for providing house sites. While emphasizing on the need to avoid acquisition of wet lands, a learned single Judge of this Court observed as under:

Acquisition of land for public purposes, is not a new phenomenon. The right of eminent domain vested in the State used to be exercised, only when acquisition of land is essential for public purposes. Guidelines were also issued, from time to time, to the effect that fertile agricultural lands held by small farmers shall be spared from acquisition. There is an underlying social object, in discouraging the acquisition of agricultural lands for non-agricultural purposes. It is a matter of common knowledge that once an agricultural land is acquired for any other use, the activity of agriculture vis-a-vis that land is gone, once for all. To that extent, the society at large is deprived of the agricultural produce. The matter cannot be viewed from the point of view of the owner alone. If, for instance, Acs.10-00 of double crop wet land in a village is acquired, for non-agricultural purposes, not only the owner, but the entire society is denied of hundreds of bags of grain. Further, in these days of heavy pressure on land, it is very difficult to imagine

that any addition would be made to the cultivable area.

The need for providing house sites is no doubt pressing, however, before any agricultural land is brought under that use, serious thought must be given by the concerned. In the name of immediate necessity for shelter to some, the long term requirement of the Society, in terms of food security cannot be ignored.

7. The fact that alternative Government lands are available is admitted in the counter-affidavit. In respect of the lands situated in each of the survey numbers, the main reason that has been put forth by the respondents is that they are situated either on the hillock or in the low level areas requiring incurring of expenditure for levelling. In the reply-affidavit filed by the petitioners, it is stated that the Government land admeasuring Ac.2-73 cents in Survey No.120/1 is a plain land and not on the hillock as stated in the counter-affidavit. Whatever may be the ground realities, the fact remains that the petitioners are small farmers having less than Ac.5-00 of lands. In the reply-affidavit, it is also stated that petitioner No.1, who has two sons, has only Ac.2-82 cents of land, out of which Ac.0-59 cents are sought to be acquired; that petitioner No.2, who has three daughters, owns Ac.3-92 cents of land, out of which Ac.0-18 cents are sought to be acquired; that petitioner No.3, who has three children, owns Ac.3-29 cents of land, out of which Ac.0-24 cents are sought to be acquired and; that petitioner No.4, who has three sons and one daughter, owns Ac.3-37 cents of land, out of which Ac.0-66 cents are sought to be acquired. The respondents have not disputed the fact that all these lands are wet lands. While the need for providing house sites to the underprivileged people in the Society need not be over-emphasized, at the same time, the interests of small farmers need to be protected to the extent possible. In recognition of this fact, even the Government has been issuing instructions from time to time to spare the lands owned by small farmers as far as possible. As noted above, the proposed acquisition is meant for house sites and, indisputably, the lands of the petitioners proposed for acquisition are double crop wet lands. This Court is, therefore, of the opinion that the respondents ought to have avoided acquisition of these lands for two reasons viz., that the petitioners are proven small farmers and that the lands proposed to be acquired are wet lands. Inasmuch as several Government lands are, admittedly, available, with some improvements thereof, they can be utilized for providing house sites to the persons belonging to the Scheduled Castes. While, ordinarily, this Court does not interfere with the acquisition proceedings in the absence of serious legal infirmities, treating this case as an exceptional one, where the interests of small farmers need to be protected and to avoid acquisition of double crop wet lands, this Court is inclined to interfere with the proposed acquisition. Accordingly, the impugned land acquisition proceedings are quashed. The respondents are directed to explore alternatives for providing house sites to the Scheduled Caste people of Kogili Village.

8. The Writ Petition is allowed accordingly.

9. As a sequel, interim order, dated 04-11-2011, is vacated and WPMP.No.36508

of 2011 is disposed of.