
(1990) 08 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition 9776 of 1988

Shaik Kannam Saheb and others

APPELLANT

Vs

The Dist. Collector, Khammam and others

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 246, 254, 254(1), 254(2)
Land Acquisition Act, 1894 — Section 4, 4(1), 5

Citation : AIR 1991 AP 43

Hon'ble Judges : Yogeswara Dayal, C.J.;Upendralal Wagharay, J;Jagannadha Rao, J

Bench : Full Bench

Advocate : Mr. T. Ramulu, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. This writ petition has been referred to a Full Bench pursuant to an order of a learned single Judge dated 7-3-1989 because of the different views taken in some cases on the questions of manner and period of publication of the notification under S. 4(1) of the Land Acquisition Act (1 of 1894) (hereinafter called the Act) in the light of the amendment made by the Andhra Pradesh Amendment Act 9 of 1983 and the Central Amendment Act 68/1984. The learned Judge has pointed out that, while in a long line of authorities of a single Judge it was held that the publication of substance of the notification beyond forty days of the gazette has to be quashed, a Bench of this Court in a decision reported in Principal Secretary to Government Housing Municipal Administration and Urban Development Department, Hyderabad and Another Vs. Chilkala Adilakshamma and Another, has held that publication of the substance within forty days of the newspaper publication is valid. It is also pointed out by him that another Bench decision in W.A. No. 175 of 1987 dated 23-2-1989 has held that the newspaper publication can be made prior to the notification published in the gazette. During the hearing it was brought to our notice that a recent Bench judgment in W.A.No. 1309 of 1987 dated 10-4-1990 has taken a view that publication of substance before the publication in the newspapers cannot be said to be invalid. In the said

judgment the decision of the Allahabad High Court reported in M/s. Garg Farms, Delhi and others Vs. State of U.P. and others, has been referred to. The judgment in W.A. No. 723 of 1988 dated 25-6-1990 by a Bench presided over by the Chief Justice has set aside the judgment of a single Judge holding that the publication in the newspapers also should be within forty days of the gazette. Thus, there are several shades of controversies on the steps and the period within which notifications contemplated by S.4(1) of the Land Acquisition Act have to be published. Coming to the facts of this case, the decision to proceed with acquisition of the land under S. 4(1) of the Act was taken on 13-4-1986 and it was published in the gazette on 2-5-1986. It was published in both the local newspapers on 13-8-1986. The substance was published in the locality on 15-9-1986. Though urgency clause under S. 17 was invoked and 5-A enquiry dispensed with in the 4(1) notification, but, because possession was not taken within ninety days thereafter as required by S. 17(5) of the Act (as introduced by Andhra Pradesh Amendment Act 9 of 1983) S.5-A enquiry was held. Notice of 5-A enquiry was also issued to persons concerned (i.e. those who had filed objections) on 23-1-1987. After the enquiry and considering the report under S. 5-A a declaration to acquire the land under S. 6 was made on 6-8-1987 which was published in the gazette dated 18-8-1987 and two local newspapers on 13-9-1987. The writ petition was filed on 1-7-1988 and interim stay of passing of award and dispossession was granted in W.P.M.P. No. 12257 of 1988 by this Court.

2. In this case the gazette publication under S. 4(1) is followed by publication in the newspapers and then the substance in the locality. But, there is a gap of more than forty days between the date of publication in the gazette and the publication in the newspapers and the publication of substance in the locality. The question is whether the acquisition proceedings have become invalid because of the publication in newspapers and the locality beyond forty days of gazette publication and have to be struck down?

3. During the hearing as a doubt has arisen about the continued validity of the State Amendment Act 9 of 1983 by which S. 4(1) is amended requiring publication of substance of the notification in the locality within forty days of the date of gazette after the amendment of S.4 by the Central Amendment Act 68 of 1984, notice was issued to the learned Advocate-General by an order dated 3-8-1990.

4. The learned Advocate-General has appeared pursuant to the notice and has made his submissions. We have heard the counsel for the petitioner and also the Government Pleader.

5. The subject "Acquisition and Requisitioning of property" figures as Item 42 in List III (Concurrent List) of the VII Schedule referred to in Art. 246 of the Constitution of India. It is useful to examine the statutory provisions for considering the effect of the Central Amendment Act 68/84. S. 4(1) of the Act prior to its amendment by the State Amendment Act 9/1983 stood as follows:--

"4. Publication of preliminary notification and powers of officers thereupon:-- (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, a notification to that effect shall be published in the official gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

(ignoring the minor amendments made by the State Amendment Act 22/1976, which are not material for this discussion). To overcome the effect of the judgment of a Full Bench of this Court reported in *C. Suryanarayana v. Govt. of A.P.* (3), requiring that the public notice of the substance of the notification in the locality should be simultaneous with the gazette publication for the validity of the acquisition, the State Legislature amended the Act by Act 9 of 1983 S.4(1) as so amended stood as follows:

"4. Publication of preliminary notification and powers of officers thereupon:-- (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 a notification to that effect shall be published in the official gazette, 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."

By the same State Amendment Act S.5-A. was amended enabling objections to be filed within thirty days of the public notice of the substance in the locality. Further sub-sec. (5) was introduced to S. 17 which reads as follows:

"5(a) In any case where the State Government have directed under sub-sec. (4) that the provisions of S.5-A shall not apply, the Collector shall take possession of the land within three months thereof. (b) If however the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of S. 5-A shall apply as if there is no such direction that S. 5-A shall not apply, and in all such cases the period of thirty days preferred in S. 5-A shall be reckoned from the date of expiration of three months specified in clause (a)."

It is useful to notice that the Supreme Court in the judgment reported in *Deepak Pahwa v.-Lt. Governor of Delhi* decided on.22-8-1984 (i.e. after the State Amendment) over-ruled the Full Bench decision of this Court in *C. Suryanarayana v. Govt. of A.P.* (3) *Supra* which had led to the amendment. However, because of the amendment, the requirement of publication of the substance in the locality within forty days of the Gazette publication continued to be applicable The Parliament by the Amending Act 68 of 1984 made several amendments to the Act. The amendments which are relevant for our discussion are to Ss.4 5-A and 6 of the Act.

6. After the Central amendment S. 4(1) of the principal Act reads as follows :

"4. Publication of preliminary notification and powers of officers thereupon:-- (1)

Whenever it appears to the appropriate Government or the District Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official gazette or the District Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the collector shall 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 to the date of the publication of the notification."

The scheme of amendment made by the Central Act 68 of 1984 to Ss. 4, 5-A and 6 is the requirement of a publication in two daily newspapers circulating in the locality in addition to the publication in the Gazette and the public notice of the substance in the locality. A similar requirement of additional publication in the newspapers is made in respect of the declaration under S. 6 also. Further, S. 4, after the amendment by Act 68 of 1984 provides that the last dates of such publications and giving of such public notice are to be treated as the date of publication of the notification. S.5-A is also amended enabling objections to be filed within thirty days from the date of publication of the notification as contemplated by S. 4. S. 6 has been amended by providing a time limit of one year from the date of publication of S. 4(1) notification for making a declaration under Sec. 6.

7. The question is whether the time limit of forty days for publication of the substance in the locality from the date of publication of notification under S.4(1) in the gazette (the underlined portion in the extract) has become repugnant to the provisions of S. 4 after its amendment by the latter Central Act 68/ 84. It is necessary to look at Art. 254 of the Constitution of India for this purpose, which reads as follows:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States- (1) If any provision of law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.

(2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State, shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

The Land Acquisition Act 1 of 1894 is an existing law in the Concurrent List. As the State Amendment 9/1983 has received the assent of the President of India, the provisions of S. 4 as amended by it became applicable in our State. However, Parliament did not lose its competence to legislate in respect of this subject in the Concurrent List which is clear by the proviso to Sub-Art. (2) of Art. 254. After the State Amendment 9/1983, the Parliament has enacted the Amendment Act 68 of 1984. Admittedly, no subsequent State legislation has been made which has received assent of the President. Therefore, according to Article 254(1), if there is any repugnancy between the amendments made to S. 4 of the Act as previously amended by the State law and now made by the Central law, the law made by the Parliament shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void.

8. A notification under S. 4 is now required to be published in the gazette, in two daily newspapers and public notice of the substance is to be given in the locality. The last of the dates of such publication and the giving of such public notice is treated as the date of publication of the notification. These amendments are to the advantage of the persons interested in the land. Prior to the Central amendment, there was no difficulty in working out the outer limit of forty days from publication in the Gazette for the publication of the notice of the substance in the locality. Now, in addition to Gazette publication, the publication is to be made in two newspapers (which may be on different dates). It is not possible to determine the starting point of period of forty days, as each is a publication of notification. The language of the present S. 4 indicates that even the public notice in the locality is treated as one of the modes of publication for determining the date of publication i.e. the last of such publications. Hence, it is no longer possible to apply the rule of forty days for public notice in the locality as contemplated by the State Act. The amendment to S. 4 made by the State amendment Act 9 of 1983 regarding period of forty days has become repugnant to the subsequent law made by the Parliament. Therefore, it is held that the amendment of S. 4(1) by the State Amendment Act 9 of 1983 is no longer valid after the Central Amendment Act 68 of 1984. It is not necessary to examine the effect of Central Amendment on the other provision introduced by State Act 9 of 1983.

9. As the period of forty days mentioned in S. 4 is no longer valid and in view of the statutory provision regarding date of publication (for the purpose mentioned in the Act) namely, the last of the dates of publication in the gazette, any of the two newspapers, the public notice of the substance in the locality, it matters little in what order the publications in Gazette and newspapers are made or within what time frame. The restriction regarding time limit for making a declaration under S. 6 of the Act will also be with reference to the date of publication as

aforesaid. The object of the publication of the notification under S. 4(1) is to enable the persons interested in filing objections for an enquiry under S. 5-A (unless it is dispensed with). The decision of the Supreme Court reported in *Deepak Pahwa v. Lt. Governor of Delhi* (supra) also makes this abundantly clear. Therefore, there is no question of any prejudice to any person interested in the land sought to be acquired by the new statutory provision. In view of the conclusion reached above, the impugned proceedings cannot be said to be invalid for the reason of violation of the forty days rule urged by the petitioners.

10. The controversy among the various decisions of our High Court has arisen because the forty days time limits was assumed to be valid even after the Central amendment Act. As it is held that the said requirement is no longer valid and there is no requirement of the order in which the Gazette and newspapers publications have to be made, the controversy in this behalf does not survive.

11. An argument was faintly urged that in other writ petitions at the instance of some other land-holders the s. 4(1) notification was held to be invalid and, therefore, the petitioners are entitled to relief, as the notification is already quashed. S. 6 of the Act makes it clear that different declarations may be made in respect of different parcels of land covered by the same notification under S. 4(1). In the facts and reasons urged in this case, it cannot be said that merely because the notification under S.4(1) in respect of some other land was held to be bad, the entire notification should be quashed. The notification under S. 4(1) relates to several parcels of land and it will not be appropriate to quash the entire notification on this ground. It is open for authorities to decide whether to proceed with the acquisition of these lands alone and/or to take any appropriate steps for the lands for which the 4(1) notification was quashed.

12. Before parting with the case, we thank the learned Advocate General for the assistance rendered by him. As a result, the writ petition is dismissed. We make no order as to costs.

Petition dismissed.