
(1986) 11 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 566 of 1986

Shairkhan Mohammed Abdullah

APPELLANT

Vs

The District Collector, Kurnool and Others

RESPONDENT

Date of Decision : 17-11-1986

Acts Referred:

Constitution of India, 1950 — Article 163, 226, 73
Land Acquisition Act, 1894 — Section 4(1)

Citation : AIR 1987 AP 199 : (1987) 1 APLJ 266

Hon'ble Judges : K. Bhaskaran, C.J.; Anjaneyulu, J

Bench : Division Bench

Advocate : K. Nagaraja Rao, for the Appellant; Govt. Pleader for Revenue and H. Harischandra Reddy, for the Respondent

Judgement

Bhaskaran, C.J.—Pursuant to a notification under S. 4(1) and a simultaneous declaration under S. 6 of the Land Acquisition Act ("the Act"), dispensing with enquiry under S. 5-A invoking S. 17(4), 4.03 acres of land belonging to the appellant-petitioner was sought to be acquired for a public purpose, to wit, for providing house-sites for the weaker sections, like the Kuruvas. The appellant's writ petition was one for the issue of a writ of mandamus declaring the notification under S. 4 and declaration under S. 6 relating to the acquisition of the said 4.03 acres as illegal and unconstitutional, and for other incidental reliefs. The learned single Judge disposed of the writ petition setting aside the declaration under S. 6 of the Act, and directing the first respondent, the District Collector, to conduct an enquiry under S. 5-A of the Act after giving due notice and opportunity of being heard to the petitioner as well as the beneficiaries, who got themselves impleaded in the writ petition. The contention that the proceedings were bad on account of the substance of the notification not having been published according to law was found against the writ petitioner, and was rejected by the learned single Judge. The two other contentions : (1) that an extent of 15 acres had already been acquired earlier for the very same purpose; and, therefore, the acquisition under the notification and declaration challenged

in the writ petition was unnecessary; and (2) that the proceedings were bad for the Land Acquisition Officer not having obtained the prior approval of the State Government, were left open without being decided on merits, with liberty for the writ petitioner to raise them before the Land Acquisition Officer in the course of S. 5-A enquiry directed to be held.

The question of law raised in the appeals -

2. In the memorandum of appeal, the appellant-petitioner is seen to have raised a ground that the points left open to be raised before the Land Acquisition Officer sought to have been decided by the learned single Judge himself. What, however, was pressed and argued at considerable length before us was Ground No. 15, which was not taken either before the Land Acquisition Officer or even in the writ petition, which reads as follows :-

"The learned Judge ought to have seen that the land acquisition proceedings have to be quashed on the ground that the list of intended allottees of house-sites has not been given as part of Sec. 4(1) notification or Sec. 6 declaration as decided by this Honourable Court".

The inspiration for raising this contention for the first time in appeal, which was filed on 10-6-1986, appears to have been derived from the observations in Sreeramachandra Raju's case (1986) 1 APLJ 250, which was decided by a learned single Judge of this Court on 16-1-1986. Objection to the appellant-petitioner urging this ground for the first time in appeal was taken by the respondents. We have, however, heard the counsel for the appellant on this point, it being the only point seriously urged before us during the course of the hearing of the appeal; and it was submitted that it was purely a question of law, inasmuch as the failure to get the list of intended allottees of house-sites as part of S. 4(1) notification or S. 6 declaration according to the appellant, vitiated the whole proceedings as it was opposed to the procedure prescribed in G.O.Ms. No. 472, Revenue, dated 22nd February, 1938, issued by the Madras Government ("the Madras G.O." for brevity), which the Land Acquisition Officer was bound to follow. The Madras G.O. reads as follows :-

"When land is required for providing house sites for members of the scheduled castes or other labouring classes or of a co-operative society, the names of the members to whom it is intended to assign the land when acquired should be given in the notice issued under Sections 4(1) and 5-A together with the extents proposed to be given to each. Information as to whether this instruction has been complied with should be furnished when submitting the draft declaration u/s 6.

In submitting proposals for acquisition Collectors should report whether the possibility of any further land being required in the near future for expansion or development of the project or scheme in question has been considered and whether the proposals made to provide for such contingencies. This report is not necessary in cases of acquisition for the Union Government or Railways."

3. The assumption of the appellant in Ground No. 15 that the list of intended allottees of house-sites had to be given as part of S. 6 declaration in accordance with the decision of this Court does not appear to be correct. A careful reading of the Madras G.O. on which the decision of this Court, rests would reveal that it does not, in terms, require a list of intended allottees of house-sites to be given as part of S. 6 declaration. What the Madras G.O. states is; "the names of the members to whom it is intended to assign the land when acquired should be given in the notice issued under Sections 4(1) and 5-A together with the extents proposed to be given to each". The further requirement is that the information as to whether the above instruction had been complied with should be furnished when submitting the draft declaration under S. 6 of the Act, not that a list of intended allottees of the house-sites should be given as part thereof.

4. At the time of hearing, a doubt was expressed as to whether the Madras G.O. was alive and operative so far as the Andhra Pradesh State was concerned. It was also submitted by the learned Government Pleader on behalf of the State and the counsel for the beneficiaries belonging to the weaker sections, that assuming that the Madras G.O. remained alive and operative in the Andhra Pradesh State in a technical sense, it was practically a forgotten G.O., as during the past several years, hardly any Land Acquisition Officer had followed this direction, or any party to the proceedings had insisted on the adherence thereto. According to them, the truth appears to be that during the last several years, most of those who were concerned with the land acquisition were not aware of the existence of the Madras G.O. It was pointed out that the conduct of the appellant himself showed that till Sreeramachandra Raju's case (1986) 1 APLJ 250 (supra) reported on 16-4-1986, which brought to light prominently the existence of the Madras G.O., he was not conscious of it; even on 3-3-1986, when the writ petition was finally heard, no contention based on the Madras G.O. was raised by the writ petitioner. The respondents vehemently contested the matter, contending that assuming that the Madras G.O., was to be held to be alive till it was withdrawn, the appellant, who never before claimed any right with reference to the Madras G.O., could not be allowed to spring a surprise at this stage, so as to unsettle what had already been settled. That the Government hastened to withdraw the Madras G.O. without much delay after the decision in Sreeramachandra Raju's case was reported also shows that it was not the intention of the Andhra Pradesh Government that the Madras G.O. was to be strictly followed, or that failure to do so would result in the invalidation of the land acquisition proceedings.

5. In view of the importance of the question of law raised, and the possible impact the decision may have on the land acquisition proceedings for providing house-sites for the people belonging to the weaker sections, we had issued notice to the learned Advocate General, Shri K. Subramania Reddy, who, with his usual fairness and a sense of detachment, enlightened us on various aspects of the matter. In essence, his submission was that the Madras G.O. ought to be presumed to have been in existence and operative in Andhra Pradesh, till it was

withdrawn by G.O.Ms. No. 752 dated 27-6-1986; however, it was only in the nature of departmental instructions for the guidance of the officers, in order to gather and furnish data relevant and necessary for planning and speeding up the land acquisition proceedings; and that it was not intended to confer any right on the land owners from whom the land was sought to be acquired so as to render the proceedings invalid on account of the non-compliance with the directions therein.

6. We find little difficulty in agreeing with the submission of the learned Advocate General that the Madras G.O. should be deemed to have been in existence in the State of Andhra Pradesh also, till it was withdrawn by G.O.Ms. No. 752 dated 27-6-1986. This is so in view of the provisions contained in S. 53 of the Andhra State Act (No. 30) of 1953, and the decisions of the Division Bench of this Court as early as in 1956 in Surya Rao's case ILR (1956) Andh Pra 448 and the Supreme Court in State of Punjab and Others Vs. Balbir Singh and Others, .

7. We have now to proceed to consider the question as to whether non-compliance with the Madras G.O. would render the entire land acquisition proceedings null and void. Administrative instructions or executive directions, as contained in the Madras G.O. could not be elevated to the status of statutory rules or constitutional mandate. It is also well-settled that the views of a Government Department as to the meaning of a statute which is administered by them are not admissible as an aid to construction; but Craies on Statute Law, Sixth Edition, P. 131, quoting Lord Macanoughten, has pointed out that in special circumstances they might be admissible. While it is true that administrative orders could not be read into the provisions of a statute so as to make it to be mandatory if it is not otherwise mandatory and administrative order confers no justiciable right, like all other general rules, this rule also was subject to exceptions. In Sant Ram Sharma Vs. State of Rajasthan and Another, the Supreme Court held that although the Government could not supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution were silent on any particular point, the Government could fill up gaps, supplement the rules, issue instructions not inconsistent with the rules already framed; and these instructions would govern the conditions of service.

8. A Division Bench of the Supreme Court in Union of India (UOI) Vs. K.P. Joseph and Others, , which was relied on by a later Division Bench of the Supreme Court in Shri Raghunandan Panda Vs. State of Orissa and Others, , had laid down the principle as follows :-

"Generally speaking, an administrative order confers no justifiable right, but this rule, like all other general rules, is subject to exceptions. To say that an administrative order can never confer any right would be too wide proposition. There are administrative orders which confer rights and impose duties."

In B.S. Minhas Vs. Indian Statistical Institute and Others, in para 23 it is stated :-

"It is a well settled rule of Administrative law that an executive authority must be

rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them", and quoted with approval the following rule enunciated by Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 LED 2 1012 :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed..... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

9. What emerges from the foregoing discussion on the question of law relating to the enforceability and justiciability of administrative directions or executive instructions is that though generally speaking, such directions or instructions do not confer statutory or justiciable rights, there are exceptions to that rule. There might be executive instructions to supplement the rules made under Art. 309 to effectuate the real intention behind the rules and to remove anomalies and practical difficulties, so long as it is not covered by the rules and does not run counter to the provisions of the Act or the rules. Such instructions might be necessary and could be deemed to form part of the rules. The breach of such rules, conferring rights on persons, would be justiciable in Courts. There may be directions which may more or less be in the nature of departmental instructions which may be binding on officers who are subordinate to the authority issuing such directions, but which may not confer any legal or justiciable right on other persons. The decision of the Supreme Court in *Lakshmi Charan Sen's case* AIR 1985 SC 1233 para 21 is an instance in point. The Supreme Court held :-

"The Election Commission is, of course, entitled to act *ex debito justitiae*, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officer. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the Election Law.... The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual."

The learned counsel for the appellant placed strong reliance on the Full Bench decision of this Court in *The Special Secretary to Government of Rajasthan and*

Others Vs. Vedakantara Venkataramana Seshaiyer and Others, . Those paragraphs read as follows :-

"7. Administrative instruments (instructions?) :- The third question that is raised in these cases is whether acting contrary to the administrative instructions issued by the State Government on the subject of acquisitions would invalidate the acquisitions. For example, the State Government had directed Memo No. 1287, dated 31st March, 1974, as amended by Memo. No. 5814/C1/77-3, dated 29th September, 1977, that "the lands belonging to poor persons with meagre land holdings (not more than 2 to 2 1/2 acres) should not be acquired unless otherwise inevitable for the purposes of maintaining proximity and vicinity to the main village and contiguity of the lands". Similarly, in Memo. No. 7342/C1/76-4, dated 27th December, 1976, the State Government directed the Collectors "to ensure that the lands belonging to Harijans are not acquired for the purpose of providing house-sites, except where it becomes otherwise inevitable". In Memo. No. 2600/C1/78-1, dated 12 June, 1978 the Government directed that the "lands belonging to small farmers, marginal farmers, Scheduled Castes and Scheduled Tribes should not be acquired unless there are no other alternative suitable lands available for the purpose of house-sites. If, however, the lands of such persons have to be acquired, alternative lands may be given to them in exchange from the lands available at the disposal of the Government". Similarly in G.O.Ms. No. 472, Revenue, dated 22nd February, 1938, the Government directed that "when land is required for providing house-sites for members of the Scheduled Castes or other labouring classes or of a co-operative society, the names of the members to whom it is intended to assign the land when acquired should be given in the notice issued under sections 4(1) and 5-A together with the extents proposed to be given to each. Information as to whether this instruction has been complied with should be furnished when submitting the draft declaration u/s 6". The petitioners argued that in a number of cases action has been taken by the land acquisition authorities contrary to the above executive instructions and such actions should be declared as invalid. On the other hand, the State said that non-compliance with the executive instructions would not invalidate the acquisitions. This is the problem of enforceability of the executive instructions."

"93.... We therefore cannot agree with the observations made by the Division Bench in Chinthalacheruvu Chenchamma and Others Vs. The District Collector, Nellore and Another, that administrative instructions issued by the State Government do not bind the land acquisition authorities. Accordingly, we overrule Chenchamma's case decision on this point also. We also declare that any acquisition of private lands found to be contrary to the applicable administrative instructions would be null and void."

Actually, what came up for consideration in that case was whether acting contrary to the administrative instructions issued by the State Government in Memo. No. 1287, dated 31-3-1974, as amended by Memo. No. 5814/C1/77-3, dated 29th September 1977, that "the lands belonging to poor persons with

meagre land holdings (not more than 2 to 2 1/2 acres) should not be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main village and contiguity of the lands" would invalidate the acquisition proceedings. The true construction to be placed on the nature of the right, if any, conferred on the land-owner in and by the Madras G.O. was not in issue in that writ petition, and in para 7 of that case the court did not consider that Government Order in its details so as to pronounce on its true legal implications. So also, the observations in para 93 have to be understood in the context of what was said in *Chinthalacheruvu Chenchamma and Others Vs. The District Collector, Nellore and Another*, where it was held that administrative instructions issued by the State Government do not bind the land acquisition authorities, which was, as we noticed, too wide a statement. There could be no doubt there are administrative orders which are not only binding on the land acquisition officer, but also conferring rights on parties. Whether a particular order binding on the land acquisition officer confers any legal right on any of the parties, however, would depend upon the purpose and nature of the administrative order.

10. Seetharam Reddy, J. (whose judgment in *Sreeramachandra Raju's* case (1986) 1 APLJ 250 was relied on by the appellant), speaking for the Division Bench in *Y. Venkannachowdary Vs. The Special Deputy Collector, Land Acquisition (General), Hyderabad District and Others*, in para 5 at P. 422 (Para 5 at P. 233 of AIR), has stated as follows :-

"....the Land Acquisition Manual contains only administrative instructions which do not confer any legal rights."

It is, therefore, clear that Seetharam Reddy, J., himself has made a distinction between administrative instructions conferring legal rights, on the one hand, and those which do not confer legal rights, on the other. In *Sreeramachandra Raju's* case (*supra*), the learned Judge took the view that the object behind issuance of notice giving the list of the names of the beneficiaries as well as the extent of the land proposed to be assigned to each of the beneficiaries in accordance with the Madras G.O. was for the reason that the "person interested" might tender objections as to whether the beneficiaries already owned a house, whether the acquisition is genuine and so forth. We are afraid that such a construction is not warranted by anything stated either expressly or by necessary implications in the Government Order. This inference does not appear to have any factual or legal basis. Paragraphs 2 and 3 of G.O.Ms. No. 752 Revenue, dated 27-6-1986 make it abundantly clear that the Government did not mean the directions contained in the Madras G.O. to be observed as mandatory, and, as a matter of fact, the Government was aware of the fact that it was more honoured in its breach than in its observance. Paras 2 and 3 read as follows :-

"2. The circumstances that were obtaining in the year 1938 are no more relevant. The acquisition of land for the purpose of providing house-sites to the landless poor has been taken up on a *passer* (Sic) scale for quite some time past. The extent of the site allotted to each eligible beneficiary depends on the location

and the pressure on the availability of land. The Government also have been acquiring lands including for future needs up to a limit, therefore it has not been found practicable to publish the lists containing the names of the beneficiaries along with the extent of land to be acquired and given to each beneficiary. This process if adopted, will also entail heavy financial commitment by way of charges of publication of the lists in the official gazette in the two local newspaper dailies, etc.

Government, therefore, hereby withdraw the Government Order No. 472, Revenue, dated 22-2-1938, which in fact has not been possible of being followed".

In this connection, the decision of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, is very pertinent.

"The purpose of the notification under S. 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adopted for the purpose for which it was sought to be acquired. It is only under S. 6 that a firm declaration has to be made by Government that land with proper description and areas so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal under S. 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under S. 4 is fatal to the validity of the proceedings."

This position is soon to have been reiterated by the Supreme Court in Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, , wherein it was held : "the initiation of the acquisition proceedings for all practical purposes begins after S. 6 notification. Satisfaction is necessary for proceedings for acquisition under S. 6 of the Act but S. 4 unlike S. 6 does not require for the issuance of the notice to be satisfied but it might act only when it appears to it that the land is needed or is likely to be needed for any public purpose. Reading the Act and the Rules and keeping in view the scheme of the Act, it is apparent that before the issuance of S. 4 notification, there is no requirement as such of compliance with the procedure contemplated by R. 4 of the Rules. It cannot be said therefore that enquiry by R. 4 must precede the issuance of notification under S. 4(1) of the Act."

11. In Babu Barkya Thakur Vs. The State of Bombay and Others, it was argued that in terms the notificaiton does not state that the land sought to be acquired was needed for a public purpose. The Supreme Court held (at P. 1208) :-

"In our opinion, it is not absolutely necessary to the validity of the land acquisition proceedings that the statement should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance it is found in investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of the Company,

which would amount to a public purpose under Part VII, as already indicated."

The Conclusion :-

12. We are clear in our minds that the Madras G.O. was in the nature of a departmental instruction, the dominant purpose of which was not to confer any legal or justiciable right on the land-owners from whom land was to be acquired for providing house-sites for the weaker sections. It would appear that the object of the instruction was for the departmental authorities to gather the necessary data for the effective implementation of the welfare schemes. These executive instructions could not, in any event, be read into the statute so as to contend that the failure to comply with the Government Order, in effect and substance, amounted to the violation of the statutory provisions contained in S. 4(1) of the Act.

13. In this case there is no justification for quashing the land acquisition proceedings ab initio on account of the appellant-petitioner raising, at this belated stage, a contention based on the alleged violation of the requirements of a Government Order, the existence of which was unknown to most people including the appellant-petitioner himself, who appears to have not been aware of its existence till the ruling in Sreeramachandra Raju's case (1986) 1 APLJ 250 was reported on 16-4-1986. The learned Judge has taken sufficient care to ensure that no prejudice whatsoever is caused to the appellant-petitioner; and has set aside the declaration under S. 6, and ordered an enquiry under S. 5-A of the Act, during the course of which he has been given the freedom to raise all contentions available to him.

14. We do not find that any ground for our interference with the judgment of the learned single Judge has been made out. In that view, confirming the judgment of the learned single Judge, we dismiss the appeal; however, without any order as to costs. Advocate's fee Rs. 300/-.

15. Appeal dismissed.