

(2009) 09 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19266 of 2006

Sri Tummalapalli Krishna Murthy Vishranthi Bhavanam @ Sri Tummalapalli rep. by its Founder Trustee Sri Tummalapalli Naga Siva Venkata Satya Krishna Murthy

APPELLANT

Vs

The District Collector and Another

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Land Acquisition Act, 1894 — Section 11, 17(4), 23(1), 4(1), 5A

Citation : (2009) 6 ALD 551

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.S. Ramachandra Rao, for the Appellant; Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This Court issued rule nisi on 30-4-2007.

2. Counter affidavit was filed.

3. Sri Tummalapalli Krishna Murthy Vishranthi Bhavanam @ Sri Tummalapalli Krishna Murthy Guest Building, Sajjapuram, Tanuku, West Godavari District - a charitable institution, filed the present Writ Petition for a writ of mandamus declaring the Notification Rc. No. F5/SW/51/92 dated 25-12-1995 issued u/s 4(1) of Land Acquisition Act 1894 and the consequent declaration in Rc. No. F5/SW/51/92 dated 25-12-1995 issued by the 1st respondent in respect of Acs. 8.26 cents in R.S. Nos. 156/1, 156/2, 162/1, 162/3, 163/6, 164/1, 157/2 of Varigedu village, Attili Mandal, West Godavari District belonging to the petitioner as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and the provisions of Land Acquisition Act 1894 and consequently to direct the respondents 1 and 2 to restore possession of the said land to the petitioner and to pass such other suitable orders.

4. Sri M.S. Ramchander Rao, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would maintain that in the light of the clear legal position since there is inordinate delay in passing the award and inasmuch as no further steps had been taken, this is a fit matter where the Writ Petition to be allowed and possession to be restored to the writ petitioner. The learned Counsel relied on certain decisions to substantiate his submissions.

5. Per contra the learned Assistant Government Pleader for Land Acquisition had taken this Court through the contents of the counter affidavit and would maintain that in the light of the reasons explained inasmuch as the same was acquired for the sake of beneficiaries, it may not be just and proper to quash the notification on that ground.

6. Heard the Counsel.

7. The case of the petitioner is that the petitioner Trust was created by late Sri Tummalapalli Krishna Murthy with the object of feeding the poor and providing for rest to travellers etc. The founder acquired a building at Sajjapuram near R.T.C. old Bus Stand, Tanuku and endowed it and about Acs. 30.00 of land situate in Varigedu village, Attili Mandal, West Godavari District to the petitioner Trust. The petitioner-Trust is registered as a charitable institution under the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 and the deponent was recognised vide proceedings Rc. No. A1/14002/96 dated 6-11-1996 as a Member of the founders family. It is also further stated that the 1st respondent had issued a notification Rc. No. F5/SW/51/92 dated 25-12-1995 u/s 4(1) of the Land Acquisition Act 1894 (hereinafter in short referred to as "Act" for the purpose of convenience) acquiring an extent of Acs. 8.26 cents in Sy. Nos. 156/1, 156/2, 162/1, 162/3, 163/6, 164/1, 157/2 of Varigedu village, Attili Mandal, West Godavari District by invoking Section 17(4) of the Act and dispensing with enquiry u/s 5-A of the Act. The possession of the aforesaid land was taken on 6-8-1996 and a declaration u/s 6 of the Act was also issued on 25-12-1995. A sum of Rs. 6,12,765/- was paid as adhoc compensation by D.D. dated 13-8-1996 by the 2nd respondent. However, till date no enquiry was conducted for passing of award u/s 11 of the Land Acquisition Act even though more than ten years had elapsed since the acquisition and taking possession of possession of the land. It is also further stated that the Executive Officer of the petitioner-Trust had given a representation to the 2nd respondent on 12-11-1997, 24-3-1998 and 12-3-2001 requesting to pass award and pay the balance compensation to the petitioner-Trust. The Assistant Commissioner of Endowments, Eluru also wrote to the 2nd respondent on 25-4-2001 requesting payment of compensation and passing of award but no action had been taken by the respondents 1 and 2 till date. The land taken from the petitioner- Trust was for the purpose of providing house sites to Scheduled Caste/Backward caste people but the acquired land is still kept vacant and unutilised. Further it is stated that the action of the respondents 1 and 2 in not passing any award u/s

11 of the Act in respect of the acquired lands belonging to the petitioner-Trust and not paying compensation as per the provisions of the Act is illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India apart from the provisions of the Act. The respondents cannot deprive a Charitable Institution of valuable assets and also the compensation payable for their acquisition under Law. The long delay in payment of the compensation for the lands acquired from the petitioner vitiates the very exercise of power under the Act. The petitioner is entitled for restoration of possession of the said land taken from it and is willing to refund the adhoc compensation of Rs. 6,12,765/- received by it with interest. In such circumstances, the present Writ Petition had been filed.

8. In the counter affidavit filed on behalf of the respondents, it is stated that the brief facts of the case are that on the representation made by the weaker sections of Varighedu village to the District Collector, West Godavari District at Eluru for providing house sites to them, the District Collector had directed the Revenue Divisional Officer, Kovvur to initiate land acquisition proceedings. In pursuance of the instructions of the District Collector, the lands in Varighedu village had been inspected by the Revenue Divisional Officer, Kovvur along with the Mandal Revenue Officer, Attili Mandal, Mandal Surveyor, Attili and Revenue Inspector, Attili and selected an extent of Acs. 8.26 cents in Sy. No. 156/1 belonging to Tummalapalli Naga Siva Venkata Satya Krishna Murthy-founder Trustee, Varighedu. Accordingly proposals of draft notification u/s 4(1) and draft declaration u/s 6 of the Act were submitted to the District Collector for approval. The District Collector had approved the draft notification u/s 4(1) of the Act on 25-12-1995. The said notification was published in West Godavari District Gazette No. 131 dated 29-12-1995. The same was also published in two daily newspapers and also in the locality as per the provisions of the Act. In view of the urgency, the enquiry u/s 5-A of the Act was dispensed with duly invoking urgency clause u/s 17(4) of the Act. Thereafter the Draft Declaration u/s 6 of the Act was got approved and published in West Godavari District Gazette on 30-12-1995. The same was also published in two daily news papers and locality as per the provisions of the Act. After publication of the notification in the manner prescribed, the land was taken advance possession on 6-8-1996. The Joint Collector, West Godavari, Eluru had fixed the market value of the land covered by acquisition at Rs. 70,000/- per acre and accordingly an amount of Rs. 6,12,765/- being the 80% of the compensation was paid to the Assistant Commissioner, Endowments, Eluru by means of Cheque No. 152666 dated 13-8-1996. The beneficiaries list and layout plan were got prepared and approved by the Land Acquisition Officer & Revenue Divisional Officer, Kovvur. The house site pattas were also distributed to the beneficiaries. As on today the beneficiaries could not occupy the sites and could not construct houses as there is no approach way to enter into the sites from the road point. Since no houses had been constructed so far by the beneficiaries, the petitioner filed the present Writ Petition before this Court praying to pass an order directing the respondents to restore the said land of Acs. 8.26 cents to Sri Tummalapalli Krishna Murthy

Vishranthi Bhavan which is a Charitable Institution. It is also further stated that it is not possible to restore the land as prayed by the petitioner as almost all the land acquisition proceedings except passing of the Award had been completed and an amount of Rs. 6,12,765/- being the 80% land value was already paid to the Endowment Department. Award will be passed shortly for the rest of 20% and the amount will be paid to the petitioner's Trust immediately. Further it is stated that an extent of Ac. 0-50 cents in Sy. No. 157/1 situate in Varighedu village belonging to Bhoosara Srilakshmi Mangatayaru and others had been proposed for acquisition under consent Award for the purpose of providing approach road to the beneficiaries who had already been given house site pattas and consent award will be passed for the said extent of Ac. 0-50 cents separately.

9. In reply to the averments made in para-2 of the affidavit filed in support of the Writ Petition it is stated that the Government had conducted special drive for provision of house sites to the weaker sections during the year 1995-96 and certain funds were kept at the disposal of the Land Acquisition Officer. During the course of special drive the land acquisition proceedings were initiated in respect of the land covered by the present Writ Petition and 80% of compensation had been paid. For the remaining 20%, award would be passed shortly and compensation would be paid. Since almost all the land acquisition proceedings including the payment of 80% compensation was completed, it is not possible to restore the land to the petitioner.

10. In reply to the averments made in para-4 of the affidavit it is stated that all statutory formalities had been observed while finalising the land acquisition proceedings in this case and this case was initiated during the period of special drive, duly invoking urgency clause u/s 17(4) of the Act by dispensing with the enquiry u/s 5-A of the Act and the land was taken advance possession on 6-8-1996 and 80% of the compensation was paid to the Endowment Department and award would be passed shortly for the rest of the 20% and the compensation would be paid immediately.

11. In reply to the averments made in paras 6 to 8 of the affidavit filed in support of the Writ Petition it is stated that it is true that the Executive Officer of Sri Tummalapalli Krishna Murthy Vishranthi Bhavan, Sajjapuram and the Assistant Commissioner of Endowments, Eluru had filed representation to the Land Acquisition Officer for passing of the award in this case. As there is no approach road for the beneficiaries to construct houses, another extent of Acs. 0-50 cents is being acquired now under consent Award under "Indiramma Programme". Award for the rest of 20% would be passed and compensation would be paid immediately. A separate consent award for Ac. 0-50 cents of land would also be passed shortly. Since 80% of the compensation was paid to the Assistant Commissioner of Endowments, Eluru it is not possible to restore the land to Sri Tummalapalli Krishna Murthy Vishranthi Bhavan, Sajjapuram.

12. It is also further stated that at present Varighedu village had been selected under "Indiramma Padhakam" for which house sites have to be provided to the

eligible beneficiaries. As there is no approach road for the beneficiaries to construct houses on the house sites already allotted to them under Crash Programme and now another Ac. 0-50 cents is being acquired for providing approach road to enable the beneficiaries to construct houses under "Indiramma Programme". Specific stand had been taken that there is no other land suitable to provide house sites to the beneficiaries available. Moreover there is no Government land or poramboke land available in the village. While finalising the beneficiaries which was approved previously will be got updated and pattas will be given along with the eligible beneficiaries now identified during "Indiramma Padhakam". Further specific stand had been taken that the petitioner after receiving 80% of the compensation long back, cannot claim for reconveyance of the land at this point of time. The pattas had already been distributed long back and for approach road also another extent of Acs.0-50 cents is being acquired under "Indiramma Programme" and award would be passed for the rest of 20% shortly and the amount of compensation would be paid immediately. The petitioner is not entitled for re-conveyance of the land.

13. It is pertinent to note that having invoked the urgency clause and having taken advance possession, for reasons best known, for sufficiently long time, as can be seen from the respective stands taken by the parties, the award is not being passed and the rest of the compensation is not being paid. No doubt, in the counter affidavit filed by the respondents, specifically it had been reiterated that the award will be passed and the rest of the compensation of 20% also would be paid at an early date. As already aforesaid, though the counter affidavit also was filed long back, as on today, no further steps in this regard had been taken.

14. This is a peculiar case where urgency clause had been invoked and advance possession had been taken but in spite of long lapse of time, no Award had been made. The unreasonable delay in making the Award after issuance of notification u/s 4(1) of the Act and the effect thereof had fallen for consideration in *Singareni Collieries Company Ltd. v. V. Satyanarayana Murthy and Ors.* 1983(2) APLJ 405 wherein the Division Bench of this Court observed:

...The inordinate delay in determining the compensation and paying the same to be claimant may be fatal to the acquisition proceedings, but such delay would not render Section 23(1) of the Act as ultra vires. However, the acquisition proceedings themselves, may, as observed by the Supreme Court in *Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others*, be rendered void on account of the inordinate delay in completing the proceedings. The Supreme Court observed therein as under:

We are not hereby to be understood as suggesting that after issue of the notification under Sections 4 and 6 of the appropriate Government would be justified in allowing the matters to drift and take in hand the proceedings for assessment of compensation whenever they think it proper to do; It is intended by the scheme of the Act that the notification u/s 6 of the Land Acquisition Act

must be followed by a proceeding for determination of compensation without any unreasonable delay.

Following the above observations and on a consideration of the scheme and intendment of the Act our learned brother Jeevan Reddy, J. in P. Appalamurthy and Others Vs. State of Andhra Pradesh and Others, held as under:

In the instant case after issuing declaration u/s 6 there was a lull for a period of three years, until the notices u/s 9(3) and 10 were issued. Then again, the Land Acquisition Officer froze the proceeding for almost five years when he passed the award. Under such circumstances in the absence of any valid explanation for this delay, and also in the absence of any statutory prohibition or restraint against the passing of the award makes the very exercise of power viz., the power to acquire the lands in accordance with the provisions of the Act unreasonable, oppressive and unfair...

The relevant paras of this decision already had been referred to above. This passage in fact had been narrated with approval by the learned Division Bench in the decision referred to supra.

15. Further reliance also was placed on the decision of the Division Bench of this Court in General Manager, South Central Railway, Rail Nilayam, Divisional Railway Manager, South Central Railway and Union of India (UOI) and Others Vs. D. Vijayalakshmi and Others, .

16. There cannot be any doubt whatsoever that normally where urgency clause had been invoked and advance possession had been taken and 80% of the compensation had been paid, this Court would not interfere. But here is a case where even after filing counter affidavit specifically reiterating the stand that the rest of the compensation is going to be paid or Award is going to be passed shortly way back in the year 2006, even after a long lapse of three years thereafter, when no further steps had been taken, it may have to be taken that the very invocation of the urgency clause, in the peculiar facts and circumstances, may not be just and proper. In the light of the same, the notification issued u/s 4(1) of the Land Acquisition Act dated 25-12- 1995 challenged in the Writ Petition is hereby quashed. It is needless to say that the respondents are entitled to the compensation amount already deposited and the petitioner is entitled to restoration of the lands in question. However, it is made clear that the respondents are at liberty to initiate fresh acquisition proceedings if the respondents are advised to do so for any public purpose whatsoever.

17. Subject to the above liberty and observation, the Writ Petition is hereby allowed. No costs.