

(1958) 06 AP CK 0011

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 879 and 880 of 1954

Sripydah Suryanarayanamurthy

APPELLANT

Vs

Collector, E. Godavari and Another

RESPONDENT

Date of Decision : 24-06-1958

Acts Referred:

Defence of India Act, 1939 — Section 19

Defence of India Rules, 1939 — Rule 75A, 75A(1)

Requisitioned Land (Continuance of Powers) Act, 1947 — Section 2, 2(1), 5(1)

Citation : AIR 1959 AP 442

Hon'ble Judges : Munikanniah, J

Bench : Single Bench

Advocate : G. Chandrasekhara Sastry and M. Suryanarayanmurthy, for the Appellant; A. Gangadhara Rao, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—The petitioners are respondents in O.P. No. 106 and O.P. No. 111 of 1950 on the file of the Arbitrator (District Judge) East Godavari, Rajabmundry, arising out of the references for arbitration in accordance with G. O. Ms. No. 3024, Revenue, dated 23-11-1950, u/s 19(1) of the Defence of India Act made by the Collector, East Godavari, Kakinada. The Special Deputy Collector, Kakinada, while requisitioning the lands of these petitioners under Rule 75-A of the Defence of India Rules in the year 1943, purported to act under the powers conferred on him by G.O. Ms. No. 3519, Public (War) Department, Government of Madras, dated 2-12-1943. The Provincial Government of Madras, as the "appropriate authority" who requisitioned the lands, thereafter acquired the same. Regarding the compensation payable to the petitioners references have been made to the Arbitrator, viz., the District Judge, East Godavari.

2. Before the learned Arbitrator, the petitioners contended that the Provincial Government had no power to acquire the lands permanently under the Requisitioned Land (Continuance of Powers) Act, 1947 (Act XVII of 1947) when

the Central Government requisitioned the property, that the "appropriate Government" in any case, is not the Provincial Government of Madras and also that the compensation should have been with reference to the market value of the land as on the date of Exhibit A-2, which is relied upon as an order of requisition of these lands. The learned Arbitrator negated all these contentions of the petitioners and held that there has been a valid acquisition of the lands and that compensation is payable at the market value of the lands at the time of the requisition under" Exhibit A-I.

3. Sri Chandrasekhara Sastry, the learned advocate for the petitioners in both the petitions, again contends before me that the requisition is only by Central Government and that the Provincial Government has no power to acquire u/s 5 of Act XVII of 1947 and that the compensation payable to the petitioners has to be fixed with reference to the market value as on the date of Exhibit A-2 only, but he did not raise the question as to the power of the Government to acquire the land.

4. It is pointed out on behalf of the petitioners that Exhibit A-I mentions that the Special Deputy Collector who issued it acted under the powers delegated to him in the Government of India, Defence Co-ordination Department Notification, No. 1336-OR/42, dated 25-4-1942, read with G.O. Ms. No. 3519 Public (War) Department, dated 2-12-1943. According to the learned advocate for the petitioners, the said Notification No. 1336-OR/42, dated 24-4-1942, constituted the authority and that as the requisition of lands is for securing the defence and for prosecution of war, it is the Central Government that requisitioned the property. Pursuing this line of argument, the learned advocate for the petitioners contends that the "appropriate authority" as defined in Section 2 (1) of Central Act XVII of 1947 is only the Central Government and not the Provincial Government which did actually acquire the properties. The acquisition of the properties is therefore questioned as being illegal and the proceedings before the Arbitrator, incompetent.

5. To meet the contentions of the petitioners, it may be enough to point out that Notification No. 1336, dated 25-4-1942, of the Defence Co-ordination Department of the Government of India directs a further amendment to the Defence of India Rules from 16th May, 1942, by adding Rule 75-A. It is therefore necessary to extract Rule 75-A (1) here-under with a view to find out what its effect is :

"If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, the Government may by order in writing requisition any property movable or immovable, and may make such further orders as appear to the Government to be necessary or expedient in connection with the requisitioning."

6. The terms of this rule enables both the Central and Provincial Governments to make orders requisitioning any property and also to make further orders. It therefore does not accord to reason to describe this notification as one enabling only the Central Government and not the Provincial Government to requisition properties for the purpose specified in that sub-section, as contended for or, behalf of the petitioners. The purposes for which a requisition can be had having been described as common to both the Governments, it is not possible to read into this sub-section any other limitation, such as that each Government cannot act for the other while requisitioning the property.

On a reference to Section 2(1) of Act XVII of 1947 it will be found that "appropriate Government" can requisition property for itself or under its authority. Reading therefore Rule 75-A (1) and Section 2(1) of Act XVII of 1947 together, it is clear that the Government which requisitions can do so for itself or by its authority for the purposes specified in Rule 75-A of the Defence of India Rules. Therefore to find out which is the Government that requisitioned the property and could therefore be considered as the "appropriate Government", one has to look into the actual authority, which has been given which in this case is G. O. Ms. No. 3519, Public (War) Department, dated 2-12-1943. issued by the Provincial Government of Madras.

Therefore the mere mention by the Special Deputy Collector, Kakinada, of Notification No. 1330-OR/42, dated 25-4-1942, in Exhibit A-I does not alter the situation especially when it is remembered when that Government Order merely introduces the new Rule 75-A while the actual authority to the Special Deputy Collector, Kakinada, is that contained in G.O. Ms. No. 3519, dated 2-12-1943, of the Government of Madras.

7. The properties requisitioned on 17-12-1943 by the Government of Madras continued to be subject to requisition till the date of acquisition. It is pointed out for the petitioners that Exhibit A-2, dated 27-12-1946, issued by the then Special Deputy Collector to extend the period of requisition alters the situation and the Exhibit A-2 should be construed as an order of fresh requisition. On a perusal of Exhibit A-2 itself it could be found that that order seeks to extend the period of requisition to continue until further orders. Such an order is, in law, unnecessary and could have no effect, nor cause any disturbance in the continuance of the requisition order which has taken effect under Exhibit A-I. It follows that in this case the provisions of Section 5 (1) of Act XVII of 1947 are not therefore violated.

8. There remains the question of compensation payable to the petitioners. As Exhibit A-2 has no legal effect, the market value on the date of the requisition which has to be fixed with reference to Exhibit A-I is the criterion. Indeed the Arbitrator has fixed the compensation with reference to that date only and therefore no interference is called for.

9. In the result, both the petitions are dismissed with costs.