
(2002) 02 AP CK 0176
In the Andhra Pradesh High Court
Case No : WA No. 1074 of 1999

S.S. Naidu

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 48

Citation : (2002) 2 ALD 741

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : Sreerama Rao, for the Appellant; M. Sumalini Reddy and Government Pleader for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This writ appeal is directed against the order of the learned Single Judge, dated 8.6.1999 in WP No. 6300 of 1999 dismissing the writ petition filed by the appellant-petitioner.

2. In the writ petition, the appellant-petitioner sought for the following relief:

"Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein, the Hon"ble High Court be pleased to issue a writ, order or direction, more particularly one in the nature of mandamus, directing the respondents to return to the petitioner's family the land of 2 acres 15582 sq. ft. in T.S. No. 83/1 of Waltair Ward of Visakhapatnam Municipal Corporation in implementation of the orders of the 1st respondent in G.O.Ms. No. 156 M.A. dated 25.2.1982 as reaffirmed in G.O.Ms. No. 121 M.A. dated 27.2.1990 by taking all steps necessary for that purpose including the publication of withdrawal notification in the official Gazette in terms of Rule 5 of the Land Acquisition Rules and pass such other order or orders as are considered just.

Without prejudice to the aforesaid prayer, the petitioner prays in the alternative

that the High Court be pleased to declare that G.O. Ms. No. 121 M.A. dated 27.2.1990 would operate as transfer by the State of its property in exercise of its executive power under Article 298 of the Constitution and issue a writ, order or direction directing the respondents to return the aforesaid land to the petitioner's family in implementation of the aforesaid G.O."

3. This case has had a long chequered history. In the early sixties, the Government wanted to acquire the land of the petitioner's family under the provisions of Land Acquisition Act. However, the petitioner's family members requested the authorities to drop the acquisition proceedings and by Resolution dated 21.9.1970 the City Improvement Trust dropped the proposal to acquire the land. Thereafter, the 3rd respondent (VUDA) had stepped into the shoes of the City Improvement Trust as the successor. While so, some time thereafter, the petitioner's mother approached the Government and submitted representations requesting it to withdraw the land in question from the land acquisition proceedings. The Government on consideration of the request of the landowner issued G.O.Ms. No. 156 M.A. dated 25.1.1982 deciding to withdraw the Land Acquisition Proceedings subject to the condition that the land owners give the required land free of cost for widening the Waltair road as agreed to by them in their representation dated 1.10.1981 and directing the Collector Visakhapatnam District to send the draft withdrawal notification to the Government for its approval. It is stated that by the date of the above G.O. possession was not taken by the Government. But, thereafter, the things again changed. The Government issued another G.O. i.e. G.O.Ms. No. 714 M.A. dated 11.11.1983 cancelling G.O. Ms. No. 156 dated 25.1.1982. Immediately thereafter i.e., on 3.12.1983, the Government took possession of the land. The petitioner's mother and brothers challenged the said G.O.Ms. No. 714 dated 11.11.1983 in this Court by filing W.P. No. 11326 of 1983. This Court admitted the said writ petition and also granted interim orders of status quo. It is alleged that subsequently, i.e., while the interim order had been in force, the Government demolished a part of the building in the petition schedule land. While so, this Court by judgment-dated 25.4.1984 quashed the G.O.Ms. No. 714 dated 11.11.1983 on the ground that the said G.O. was passed without giving notice to the petitioner's family. The appeal W.A. No. 1081/1984 filed against the said judgment by the 3rd respondent was also dismissed by a Division Bench of this Court on 1.2.1989 confirming the judgment of the single Judge. Thereafter, after due consideration of all the aspects of the matter, the 1st respondent Government issued fresh orders in G.O. Ms. No. 121 M.A. dated 27.2.1990 reiterating their earlier decision to withdraw the land from acquisition recorded in G.O.Ms. No. 156 subject, however, to slight modification. It is submitted that thereafter, the petitioner approached the District Collector, Visakhapatnam, requesting to implement the latest order of the Government issued in G.O.Ms. No. 121 and deliver possession of the land back to them. The Collector, however, passed orders directing them to approach the Government. The petitioner's family thereafter submitted a representation dated 30.11.1992 to implement the order in G.O.Ms. No. 121

dated 27.2.1990. The Government kept quiet and slept over the matter thereafter for nearly six years. While so, in the year 1998, all of a sudden the Government issued the impugned G.O., cancelling the previous G.O. Ms. No. 121 dated 27.2.1990 and re-started the acquisition proceedings.

4. After issuance of G.O.Ms. No. 121 the writ petitioner filed W.P. No. 12349 of 1992 seeking a direction to the State and VUDA to restore the land. That writ petition was disposed of a learned Single Judge of this Court on 29.9.1992 directing the writ petitioner to approach the District Collector for complying with G.O.Ms. No 121 dated 27.2.1990, but without any directions to the respondents to restore possession of the land to the writ petitioner. Therefore, the writ petitioner filed WA No. 1246 of 1992 against the said order and that Writ appeal was disposed of by a Division Bench of this Court by an order dated 23.10.1992 directing the petitioner to file representation before the District Collector within one week and directing the District Collector to consider the same. On 18.11.1992, as per the Division Bench directions, the District Collector forwarded his opinion stating that the withdrawal of the proceedings as ordered in G.O. Ms. No. 121, 27.2.1990 is not feasible. It appears that the States Government acting on the said opinion of the District Collector issued G.O.Ms. No. 222 M.A. dated 30.4.1998 cancelling G.O. Ms. No. 121 dated 27.2.1990. This order was challenged by the writ petitioner in W.P. No. 14818 of 1998 and the learned single Judge of this Court allowed that writ petition on the ground that before cancellation of G.O.Ms. No. 121 by subsequent G.O. Ms. No. 222 dated 30.4.1998 the owner of the land was not given any notice. Being aggrieved by the said order of the learned single Judge, the VUDA filed Writ Appeal No. 2312 of 1998. The Writ petitioner also filed cross-objections in the said Writ Appeal. The said Writ Appeal and the cross-objections are dismissed by us today i.e., on 27.2.2002 by a separate order.

5. The facts narrated supra, would clearly show that the subject land of the writ petitioner is not yet acquired by the State in exercise of its eminent domain power. In other words, the title to the property and attendant rights attached to ownership remain with the writ petitioner. Since G.O.Ms. No. 222 dated 30.4.1998 is quashed by this Court, the claim of the writ petitioner to seek possession of the subject property cannot be refused either by the State or by the VUDA. In fact, neither the learned Government Pleader nor the learned Standing Counsel for VUDA is in a position to establish their client's right to retain the subject land which was initially proposed to be acquired and subsequently the said proposal was withdrawn. There is no dispute between the parties that the subject land belongs to and owned by the writ petitioner and his family. Since the Land Acquisition proceedings were withdrawn by the State Government vide G.O. Ms. No. 121, dated 27.2.1990, it goes without saying that the writ petitioner is entitled to possession of the subject land which was taken over by the State and handed over to the beneficiary during the pendency of the land acquisition proceedings.

6. The learned single Judge, disposed of the writ petition by his order dated 8.6.1999 and at that time, the Writ Appeal No. 2312 of 1998 filed by VUDA against the order made by the learned Single Judge in W.P. No. 14818 of 1998 was pending before the Division Bench. Noticing that fact and also noticing the fact that the learned Single Judge in W.P. No. 14818 of 1998 did not issue any direction to the State or the beneficiary of the acquisition to restore the possession of the land, thought it not appropriate to issue any direction to the State and the beneficiary to restore possession of the land particularly having regard to the pendency of the writ appeal. The reasons which weighed with the learned single Judge not to grant the relief sought in the writ petition do not exist today, having regard to the change in circumstances and also having regard to the dismissal of W.A.No. 2312 of 1998 and Cross-Objections.

7. In the result and for the foregoing reasons, we allow this Writ Appeal and set-aside the order of the learned single Judge dated 8.6.1999 made in WP No 6300 of 1999 and allow WP No. 6300 of 1999 and direct the respondents to deliver possession of the land admeasuring 2 acres 15582 sq. ft. in T.S. No. 83/1 of Waltair Ward of Visakhapatnam Municipal Corporation to the petitioner forthwith after conforming to the legal formalities. No costs.