

(2011) 02 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17249 of 2009

S.S. Naidu

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 48, 48(1), 5A, 6

Citation : (2011) 8 RCR(Civil) 1682

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Manohar, for the Appellant; G.P. for Municipal Administration and SC for VUDA, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—33 years have elapsed, ever since the litigation between the Petitioner and the Respondents started, in the context of acquisition of about two acres of land in T.S. No. 83/1, Waltair, owned by the Petitioner. The pendulum swung on both the directions, and is yet to come to rest.

2. A notification u/s 4(1) of the Land Acquisition Act (for short "the Act") was issued by the District Collector, Visakhapatnam, on 20-03-1978, proposing to acquire the said land for establishing a Zonal Centre for the then Town Planning Trust, Visakhapatnam. Enquiry u/s 5-A of the Act was conducted, and declaration u/s 6 of the Act was published on 06-05-1980.

3. The Petitioner filed W.P. No. 3535 of 1988, challenging the acquisition proceedings. The writ petition was dismissed and the order of dismissal was affirmed by a Division Bench of this Court, and thereafter, by the Supreme Court. Petitioner has chosen to address the conscience of the Government and to impress upon it, to withdraw the notification. Even while the representation made by the Petitioner was pending, an award was passed on 20-02-1982, determining the compensation at Rs. 7,82,612.56 ps., and the amount was

deposited in a Civil Court. The 1st Respondent issued G.O. Ms. No. 156, dated 25-02-1982, directing that the notification u/s 4(1) of the Act, dated 20-03-1978 be withdrawn.

4. By that time, Visakhapatnam Urban Development Authority, the 3rd Respondent herein, was constituted under the A.P. Urban Areas Development Act, and the activities of the Town Planning Trust, for whose benefit the land was acquired; were brought under its control.

5. At the instance of the 3rd Respondent, the 1st Respondent issued G.O. Ms. No. 714, dated 11-11-1983, withdrawing the notification in G.O. Ms. No. 156, dated 25-02-1982. It is stated that possession of the land was taken on 03-12-1983. Feeling aggrieved by the G.O. Ms. No. 714, dated 11-11-1983, the Petitioner filed W.P. No. 11326 of 1983 before this Court. The writ petition was allowed on 25-04-1984, mainly on the ground that the impugned order is violative of principles of natural justice. The same was affirmed in Division Bench, in W.A. No. 1081 of 1984. The result was that the Government was directed to reconsider the matter after hearing the Petitioner. This time, the Government leaned in favour of the Petitioner and issued G.O. Ms. No. 121, dated 27-02-1990, directing withdrawal of acquisition.

6. The third somersault took place on 30-04-1998, when the Government issued G.O. Ms. No. 222, cancelling its order in G.O. Ms. No. 121, dated 27-02-1990. For the third time, the Petitioner approached this Court by filing W.P. No. 14818 of 1998. The writ petition was allowed. Simultaneously, the Petitioner filed W.P. No. 6300 of 1999, seeking restoration of possession of the land. Both the writ petitions are allowed. The 3rd Respondent filed two Writ Appeals, being W.A. Nos. 2312 of 1998 and 1074 of 1999. The writ appeals were dismissed on 27-02-2002. The 3rd Respondent carried the matter to the Supreme Court, in C.A. Nos. 1665 and 1666 of 2004. The Hon'ble Supreme Court has allowed the civil appeals; set aside the judgments rendered by this Court in the writ petitions and writ appeals, and directed the Government to take a decision, whether or not to cancel G.O. Ms. No. 121, dated 27-02-1990. Almost as a logical extension of its past conduct, the Government issued G.O. Ms. No. 314, Municipal Administration, dated 18-05-2009, directing that the notification issued u/s 4(1) of the Act be withdrawn, in exercise of power u/s 48 of the Act. Going a step further, it directed the 3rd Respondent to handover the possession of the property to the Petitioner. As a ministerial act, the District Collector, Visakhapatnam, the 2nd Respondent initiated steps for withdrawal.

7. The Petitioner states that, when the formal notification u/s 48(1) of the Act was about to be issued, in compliance with the orders in G.O. Ms. No. 314, dated 18-05-2009, a telephonic message was received from the Secretary to the then Chief Minister of the 1st Respondent, by the 3rd Respondent, directing that all further steps be stopped. The 4th Respondent i.e., Special Tahsildar of the Visakhapatnam Urban Development Authority, addressed a letter dated 26-06-2009, requesting the 2nd Respondent, to return the proposals for

withdrawal of the acquisition proceedings. For the fourth time, the Petitioner approached this Court by filing W.P. No. 17049 of 2009. When the writ petition was taken up for admission, a representation was made to the effect that the 1st Respondent issued G.O. Ms. No. 515, dated 18-08-2009, cancelling G.O. Ms. No. 314, dated 18-05-2009. This writ petition, fifth in the series, is filed, challenging the said notification.

8. The Petitioner contends that he has been subjected to undue hardship, untold agony by the Respondents herein. He contends that the change of stand by the Government is totally unjustified, and each time, when he was about to reap the benefits of withdrawal, orders to the contrary were passed, absolutely without any basis.

9. On behalf of the Respondents, a counter-affidavit is filed. It is stated that the orders in G.O. Ms. No. 314, dated 18-05-2009 were issued, contrary to the letter and spirit of the order of the Supreme Court, in C.A. Nos. 1665 and 1666 of 2004, and the impugned G.O. was issued to rectify the mistakes.

10. Sri E. Manohar, learned Senior Counsel for the Petitioner submits that for the past several decades, the Petitioner has been subjected to hardship and harassment of some kind or the other. He contends that the matter assumed finality, with the issuance of G.O. Ms. No. 515, dated 18-08-2009, on a consideration of the matter; as directed by the Hon"ble Supreme Court, and there was absolutely no basis for the 1st Respondent to issue the impugned G.O. He submits that the impugned G.O., amounts to reviewing the order passed by the Government, in exercise of power u/s 48 of the Act, and such a power is not conferred on the 1st Respondent, at all.

11. Learned Government Pleader for Municipal Administration, and learned Standing Counsel for the Visakhapatnam Urban Development Authority, on the other hand, submit that, while passing the orders in G.O. Ms. No. 314, dated 18-05-2009, certain aspects were not taken into account, and accordingly, the impugned G.O was issued. They state that the Petitioner does not have any vested right to insist that the acquisition be withdrawn, particularly when the award was passed.

12. The facts pertaining to this matter, in brief, have been stated in the preceding paragraphs. The Petitioner owns about two acres of land in an important location of Visakhapatnam. Much before the Visakhapatnam Urban Development Authority came into existence, the land was proposed to be acquired. The notifications were issued by the 2nd Respondent, as the delegate of the 1st Respondent. Section 48 of the Act confers power on the Government, to withdraw a notification issued u/s 4(1) of the Act. The only requirement is that, the possession of the land must not have been taken.

13. The Petitioner, no doubt, failed in his challenge, to the notification, dated 20-03-1978, issued u/s 4(1) of the Act, and the subsequent proceedings. He, however, approached the 1st Respondent with a request to withdraw the

notification. Obviously because the reasons pleaded by the Petitioner weighed with the 1st Respondent, G.O. Ms. No. 156 dated 25-02-1982 was issued, directing withdrawal of the notification. About 9 months later, that decision was reversed. Proceedings before this Court ensued, and the Government was directed to consider the matter, afresh G.O. Ms. No. 121, dated 27-02-1990 was issued, withdrawing the land acquisition proceedings. The Petitioner had a sigh of relief. 8 years thereafter, the 1st Respondent reversed his decision and resurrected the land acquisition proceedings; spate of proceedings up to the Supreme Court ensued. The Hon'ble Supreme Court directed that the 1st Respondent shall consider the matter, afresh. The relevant portion of the judgment of the Supreme Court was extracted in the G.O., itself, and it reads, "...We are of the view that the ends of justice will be met if both the impugned judgments and orders are set aside with a direction to the State Government of Andhra Pradesh to consider the representation of the Respondents (owners of the lands sought to be acquired) as well as the Appellate Authority, namely, the Visakhapatnam Urban Development Authority, and thereafter to take a decision as to whether it should or should not be cancelled the G.O. No. 121, dated 27-02-1990. We, accordingly, allow both the appeals and set aside the impugned judgments and orders of the High Court with a direction to the State Government of Andhra Pradesh to consider the representation of the parties concerned, namely, land owners and the Development Authority and thereafter to pass appropriate orders as indicated hereinabove. We permit the parties before us to file a fresh representation, if so advised, within a period of ten days from today. The State Government will consider the aforesaid representations as also all other relevant material on record and pass appropriate order in accordance with law within a period of two months from the date of receipt of the representations by it. It will be open to the State Government to give a personal hearing to the parties if they seek such hearing."

14. The Petitioner as well as the 3rd Respondent were heard, and their representations were considered. The decision taken by the Government is reflected from the following paragraphs of G.O. Ms. No. 314, dated 18-05-2009:

7. Government, therefore have decided to withdraw the acquisition of land to an extent of 2 Acres 15582 Sq. Ft. in T.S. No. 83/1 of Waltair Ward in exercise of the powers conferred u/s 48(1) of the Land Acquisition Act, 1894.

8. The Vice-Chairman, Visakhapatnam Urban Development Authority is therefore, directed to hand over possession of the property to the land owners. Further, they are not entitled to claim any damages etc., for their dispossession.

15. No prudent person would expect that the controversy would still exist, unless the G.O., was challenged by any aggrieved party, before any competent Court of law. No one challenged G.O. Ms. No. 314, dated 18-05-2009. However, being true to their ambivalent practice, the 1st Respondent issued G.O. Ms. No. 515, dated 18-08-2009. The whole text of the G.O., is this:

"The orders issued in the reference read above withdrawing the land to an extent of Ac.2.15582 Sq. Ft. in T.S. No. 83/1 of Waltair Ward, Visakhapatnam from acquisition u/s 48(1) of L.A. Act, are hereby cancelled.

2. The Vice Chairman, Visakhapatnam Urban Development Authority, shall take necessary further action accordingly in the matter.

16. This G.O., presents a textbook case of arbitrariness, unreasonableness, capriciousness, if not, vindictiveness, on the part of the 1st Respondent. It is not an occasional shift of the stand by the Government. On as many as three occasions G. Os were issued, in exercise of power u/s 48 of the Act, and such notifications were cancelled, hardly with any basis. Interference by this Court and the Supreme Court, twice, did not result any dawning of wisdom on the 1st Respondent. The attitude exhibited by the 3rd Respondent and its prevailing upon the Government, to reverse the decisions is despicable, and deserves to be condemned. If its intention was only to have a piece of land to construct a zonal centre, it is not as if the land is not available for it. Right at a time when the impugned G.O., was issued, the 3rd Respondent went in an auction spree of hundreds of acres, within the urban agglomeration. It behaved like a real estate agency, forgetting all its priorities. There appears to be extraneous factors, that are prompting either the 3rd Respondent herein, or Respondent No. 1, in their haunting the Petitioner, to snatch away the valuable property owned by him, by resorting to all illegal means.

17. The Government exercises statutory powers, when it issues notifications u/s 48 of the Act. The decision taken under that provision can be reviewed, if only there exists a provision, which confers such power. Admittedly, the Act does not confer such power upon the Government to review its own decisions, taken u/s 48 of the Act. It is time-tested principle, that no statutory authority can exercise power, unless it is specifically conferred, under the relevant provisions of law.

18. Secondly, even where power is conferred upon an authority, it can be exercised only by putting the person concerned, on notice. An order, cancelling or reviewing the earlier one, without issuing notice, would not only be contrary to the provision, that confers power of review, but also violative of principles of natural justice.

19. An Administrative Authority is under obligation to furnish reasons, in support of its conclusions. If an occasion arises for a Constitutional Court to undertake judicial review of an order passed by an administrative authority, the reasons become relevant. Though the Court would not sit as an Appellate Forum, over what is decided by the Authority, the existence of reasons would help the Court, in analyzing the decision making process.

20. If the reasons justify the decision, the mere fact that another alternative conclusion is possible, would not be a ground for the Court to interfere. However, absence of reasons, in support of conclusions, would render the proceedings capricious and liable to be set aside.

21. Any order that is passed without issuing notice, cannot be sustained in law. Instances of violations on some aspect or the other, enlisted above, may occur now and then, particularly when the orders are passed by authorities, not so conversant with the procedure. One just cannot expect all the vices listed above, taking place in the hands of an authority like, Secretary to the Municipal Administration of a State Government, who heads the entire department.

22. This Court totally disapproves the manner in which, the 1st Respondent had acted, over the past decades. It has not only subjected the Petitioner to untold harassment, but has also become responsible for institution of numerous proceedings before this Court and the Supreme Court. The counter-affidavit is virtually silent, as to the circumstances, that warrant the issuance of the impugned order. Up to paragraph 5 of the counter-affidavit is only narration of events, and the gist of the judgment of the Supreme Court was extracted in paragraph 5. The only reason pleaded in paragraph 6, for issuance of the impugned G.O., is, "to plug the omissions by rehearing the case afresh". No other reasons are stated.

23. The 1st Respondent did not mention as to what are the omissions it has chosen to plug. Such a lame excuse does not augur well for the head of an important department of the Government.

24. The writ petition is allowed, and it is held that the matter pertaining to the withdrawal of the notification issued u/s 4(1) of the Act, pertaining to the land of the Petitioner, had assumed finality, and that none of the Respondents shall be entitled to re-open the same, under any circumstances.

There shall be no order as to costs.