
(2011) 12 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No.14290 of 2008

Topara Rajender and Others

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 54, 54A
Land Acquisition Act, 1894 — Section 11, 16, 18, 4, 48

Citation : (2012) 2 ALD 222 : (2012) 4 ALT 698

Hon'ble Judges : Sanjay Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : N. Sreedhar Reddy, for the Appellant; G.P. For Irrigation For R1, Government Pleader For Land Acquisition for R2 and Sri M. Balashivudu for R3, for the Respondent

Judgement

Hon"ble The Chief Justice Shri Madan B. Lokur

1. In this writ petition the prayer is that the proceedings dated 20.4.2008 and 2.5.2008 be declared as illegal. By the aforesaid proceedings, the land belonging to the husband of respondent No.3, which was acquired in 1965 under the provisions of the Land Acquisition Act, 1894 was re-conveyed to her.
2. According to learned counsel for respondent No.3, the writ petition is said to have been filed in public interest, but it is intended to subserve only a private interest and, therefore, it should be dismissed on this ground alone.
3. In our opinion, the contention of learned counsel ought to be rejected for two reasons. Firstly, it seems to us that the description of the petition as having been "filed in public interest and in good faith" does not make it a public interest litigation, even though respondent No. 3 and the Registry of this Court may have understood it as such. To describe the writ petition as a public interest litigation is nothing but a misnomer - the writ petition is nothing more and nothing less than any other writ petition. The averment made by the petitioners, on which

reliance has been placed by learned counsel for respondent No. 3 is as follows:

2. I submit that the present writ petition is being filed in public interest and in good faith. Myself and other petitioners are residents of Metpalli Town in Karimnagar District. We have lost our ancestral properties in Sriramsagar Project to an extent of Ac.1.00 in Sy.No.388/B, way back in the year 1965. Presently many people who have lost lands under Sriramsagar Project are residing in Metpalli village. Though many people have been paid the compensation, the land acquired was not returned to any of them, even though the land is lying vacant and in some cases, it is of no use to the Government.

4. In subsequent paragraphs of the writ petition, the petitioners have set out their grievance and have stated in paragraph 5 thereof as follows:

The act of the Respondents is malafide and is for extraneous considerations. Having left with no other remedy to expose the above injustice, the petitioners are approaching this Hon"ble Court by filing the present writ petition.

The petitioners have made no bones about the fact that they have filed this petition in their personal interest. They have not filed it to subserve the interest of any body else. There is no hidden agenda in this case. Merely stating that a petition has been "filed in public interest and in good faith" does not convert it into a public interest litigation. In the case of a public interest litigation, it is sometimes necessary to lift the veil (so to speak) and if in the garb of a private interest, a public interest litigation is filed, then that litigation must certainly be discouraged through an order of dismissal. But that is not the situation in the present petition. The petitioners have clearly made out a private grievance, and have not styled their grievance as a public interest issue. We are of the opinion that there is insufficient ground for non-suiting the petitioners.

5. Secondly, and interestingly, the writ petition does raise an issue of public interest, namely, whether acquired land can be re-conveyed to the erstwhile owner at any point of time, on the mere asking. If this question is answered in the affirmative, large chunks of acquired land may be re-conveyed to the erstwhile owners of the land. Although the petitioners have not specifically made out such a case, the effect of dismissing this writ petition on merits, will have that effect. However, we need not go into that aspect of the matter since it has not been raised before us, but we are mentioning this only because we believe that whichever way the issue is looked at, the contents of the writ petition deserve consideration.

6. The facts of the case, as apparent from the paper-book, are that the District Collector, Karimnagar District issued a notification u/s 4 of the Land Acquisition Act proposing to acquire some land for the purpose of construction of a sub-divisional camp building and staff quarters at Sriramsagar Project, Kakatiya Main Canal at Metpally village. Thereafter, steps were taken to issue a declaration u/s 6 of the Land Acquisition Act on 08.12.1964. An award dated 28.3.1965 was also passed and possession of the land was taken by the District Collector.

7. After a lapse of about 40 years, on 14.12.2004 the 3rd respondent (whose husband [since deceased] was the owner of the land) made a representation to the Minister for Major Irrigation that she would like to have her land, having an extent of Ac.2.02 guntas in Survey No.1293 situated at Metpalli in Karimnagar District re-conveyed to her. The reason that she gave was that the land was not required by the government for any public purpose now or in future and that she had not received any compensation for the acquisition. At this stage, we may mention that even though the husband of respondent No.3 was the owner of Ac.1.01 guntas of land, she had applied for re-conveyance of Ac.2.02 guntas of land. It is not clear, why she asked for re-conveyance of land more than what was owned by her or her husband.

8. Be that as it may, the application submitted by the 3rd respondent was considered and a preliminary decision taken on 28.3.2008 to the effect that as per the opinion of the project authorities and the Chief Engineer, the land was not required for the said project. We have gone through the original file of the State and find that it was also noted in the official noting sheet that respondent No.3 had not received any compensation, although this is not very clear. We say this because it appears from the noting sheet that her advocate received the "enhanced" compensation. According to respondent No.3 she did not receive any compensation and it may be that her advocate received the compensation which was not handed over to her. We cannot be sure about this at all.

9. As mentioned above, a preliminary decision was taken to re-convey the land to respondent No.3 and the final decision in this regard was communicated to the concerned Special Collector by the letter dated 20.4.2008 (impugned). By this letter the Special Collector was authorized to re-convey the acquired land of Ac.1.01 guntas in Survey No. 1293 to respondent No.3 and to recover compensation already paid with interest @15% from the date of receipt of the amount. By another letter dated 2.5.2008 (impugned) respondent No.3 was communicated the decision and was required to comply with the necessary formalities and remit an amount of Rs. 13,820/- received by her so that the land could be re-conveyed to her.

10. We are told that the land has since been re-conveyed to respondent No.3 and that she is in possession thereof.

11. The grievance of the petitioners is that if respondent No.3 is entitled to re-conveyance of her land, then they too are so entitled. However, it seems, as contended by learned counsel for the petitioners that because of the influence wielded by respondent No.3 whose son is a Member of the Legislative Assembly, only her land has been re-conveyed while no positive decision has been taken so far as the petitioners are concerned. Alternatively, the petitioners are of the view that re-conveyance of land in favour of respondent No.3 is illegal and arbitrary and deserves to be set aside.

12. It has been brought to our notice that the re-conveyance was under the

provisions of Section 54-A of The Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 fasli (for short the Telangana Act). This section reads as follows:

54-A. Procedure in respect of land acquired for purpose of public and no more required: When agricultural or pasturage land acquired for public benefit is no longer required the patta thereof shall be made in the name of the person or his successor from whom, such land was acquired provided he consents to refund the compensation originally paid to him. If such person or his successor does not take the land, it may be given on patta u/s 54.

A perusal of the above section shows that if agricultural land, such as the land we are concerned with, is no longer required, the patta thereof shall be made in favour of the person from whom the land was acquired provided that that person consents to refund the compensation originally paid to him.

13. There is no dispute in the present case that the land in question is agricultural land. There is also no dispute that according to the project authorities and the Chief Engineer, the said land was "no longer required" for the project. We also find from the order dated 2.5.2008 that respondent No.3 was required to return an amount of Rs.13,820/-, which appears to be the compensation given to her. Otherwise, there was no occasion to ask respondent No.3 to return this amount. At this stage, we may mention that the husband of respondent No.3, in O.P.No.41 of 1965 before the District Judge, Karimnagar, which pertains to a reference u/s 18 of the Land Acquisition Act, had stated that compensation was not received by him on his own volition. However, in the view that we are taking, it is not necessary to get into the issue whether compensation was received by respondent No.3 (or her husband) or not.

14. At this stage, it is necessary for us to take note of Sections 16 and 48 of the Land Acquisition Act. Section 16 provides that where the Collector has made an award u/s 11 of the Land Acquisition Act, he may take possession of the land, which shall thereupon vest absolutely in the government free from all encumbrances. As noted above, there is no dispute that possession of the land in question has been taken. As such, the acquired land has vested in the government free of all encumbrances.

15. Section 48 of the Land Acquisition Act provides that where possession of the land has not been taken, the government is at liberty to withdraw from the acquisition. From this, it follows that if possession has been taken, the government cannot ordinarily withdraw from the acquisition.

16. Section 54-A of the Telangana Act however, permits re-conveyance of the land, if compensation is repaid by the landowner to the State. There is no reference to possession of the land having been taken. In our opinion, on a harmonious reading of Sections 16 and 48 of the Land Acquisition Act and Section 54-A of the Telangana Act after possession of the acquired land is taken, ordinarily, the government cannot re-convey it to the owner.

17. In Govt. of A.P. and Another Vs. Syed Akbar, , the interplay between Section 54-A of the Telangana Act and Sections 16 and 48 of the Land Acquisition Act was considered. With reference to the provisions of the Land Acquisition Act, the Supreme Court surveyed the law and held as follows:

13. From the position of law made clear in the aforementioned decisions, it follows that (1) u/s 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.

It is significant that the Supreme Court held that re-conveyance of acquired land is not permissible on the basis of an executive order. Insofar as the present case is concerned, re-conveyance has been effected on the basis of executive orders viz., the impugned orders dated 20.04.2008 and 02.05.2008. This is clearly impermissible and contrary to the law laid down by the Supreme Court.

18. In so far as the application of Section 54-A of the Telangana Act is concerned, the Supreme Court held that:

15. the land is no more required is a decision required to be made by the competent authority. As in the present case, mere letter of Resident Engineer that the unused land is no more required is not enough. When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the question of re-conveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of this Court aforementioned.

19. We find from the original record produced before us that the decision to re-convey the land was taken on the basis of an opinion rendered by the project authorities and the Chief Engineer of the project. As held by the Supreme Court, this is not enough to justify re-conveyance of the land.

20. Following the view laid down by the Supreme Court, we find that the actions of the official respondents suffer from two vices: First of all, there is a defect in re-conveyance of the acquired land inasmuch as it has been achieved through an executive order, which is not permissible and the basis for re-conveyance is the opinion rendered by the project authorities and the Chief Engineer which is also not permissible. Secondly, since possession of the land has been taken by the District Collector and the acquired land has vested absolutely in the government free from all encumbrances, re-conveyance cannot be made as a matter of course, as has been done in the present case.

21. For the reasons given above, we hold that re-conveyance of the land in favour of respondent No.3 by the impugned letters is vitiated and is illegal and arbitrary.

22. Under the circumstances, we allow this writ petition and set-aside the two impugned orders dated 20.04.2008 and 02.05.2008. WPMP.No.18458 of 2008 also stands disposed of.