

(1997) 07 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13844 of 1990

Uppalapati Krishna Murthy

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5(2), 5A(1), 5A(2), 6

Citation : (1997) 5 ALT 35

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : G. Krishna Murthy, for the Appellant; Govt. Pleader for L.A. for Respondent Nos. 1 to 3, G. Venkateswara Rao and C.V. Ramulu, SC, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The question that arises for consideration in the Writ Petition is (a) whether a person interested is entitled for opportunity under Sub-section (2) of Section 5-A of Land Acquisition Act without filing objections within 30 days of the publication of notice u/s 4(1) of Land Acquisition Act and (b) whether the notice to the occupier u/s 9(3) of Land Acquisition Act is mandatory?

2. The Writ Petition is filed challenging the Award NO. 2/90 dated 21-7-1990 passed by the 3rd respondent to the extent of 780 sq. yards covered by R.S. No. 88/2A/1A (N.T.S. No. 49/1), Ward No. B, Block No. 22 of Gudivada town.

3. The petitioner is the Lessee of an extent of 780 sq. yards situate in Gudivada town referred to above from the original owner Sri Choppara Radha Krishnaiah in the year 1968 for the purpose of establishing a Petrol Bunk. Initially, the lease was for 10 years and it was being renewed from time to time and even today the petitioner is holding the valid lease. While the matter stood thus, the petitioner came to know that through paper publication in Andhra Jyothi dated: 20-6-1987 the 1st respondent proposed to acquire an extent of 20,767 sq. feet, equivalent

to 2307,4 sq. yards covered by R.S. No. 88/2A/1A and 91/1 (N.T.S. Nos. 50,49/1 and 55), Ward No. B, Block NO. 22 of Gudivada town for the purpose of extension of A.P.S.R.T.C. Bus Station. In this case, we are only concerned with the extent of 780 sq. yards covered by R.S. No. 88/2A/1A(N.T.S. No. 49/1) of Ward NO. B, Block No. 22 of Gudivada town. After coming to know through notification, the petitioner submitted objections to the 3rd respondent not to acquire the same giving various reasons. There was no enquiry u/s 5-A and the petitioner came to know in August, 1990 that the respondents were taking steps to dispossess the petitioner on the ground that the Award was passed. On enquiry the petitioner came to know that the 3rd respondent passed Award NO. 2/90 on 21-7-1990 and therefore the present Writ Petition has been filed challenging the said Award as far as the land occupied by the petitioner is concerned. The petitioner submits that he being a Lessee is an interested person and he is entitled for opportunity u/s 5-A. The same was not afforded even though he submitted a representation. He also submits that declaration u/s 6 of the Act was not published within one year and therefore the notification u/s 6 is illegal. The petitioner also submits that u/s 9(3) he is entitled for a notice and no notice has been served on the petitioner. Therefore, the proceedings are illegal and invalid. It is also submitted that the Award was passed after a lapse of two years from the date of the declaration u/s 6 and therefore it is contrary to Section 11-A of the Act. Further, the award was also not served on the petitioner. For all the reasons stated above, the petitioner submits that the impugned award is illegal and without jurisdiction and the same is liable to be quashed.

4. The Government in the counter had accepted that in the Notification issued u/s 4(1), the land occupied and covered by N.T.S. NO. 49/1 also formed part of the land proposed for acquisition. They did not dispute that the petitioner was running a Petrol Bunk in the said place. The action was taken in accordance with the provisions of the Land Acquisition Act and appropriate notices were issued to the pattedars and also to the enjoyer and hence, there was no illegality or irregularity in the process. It is also stated that the amount awarded in the Award has already been deposited in the Sub-Court, Gudivada and it is open for the petitioners to claim the same in accordance with the provisions of the Act.

5. The issue that arises for consideration is whether the land acquisition proceedings culminated in the Award are legal and valid?

6. The learned Counsel for the petitioner submits that u/s 5-A he is entitled for an opportunity by the Collector and the same was not done more especially when he has filed objections. Section 5-A stipulates opportunity to be given to the parties and it is extracted below:

"5-A. Hearing of objections:- (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may (within thirty days from the date of the publication of the notification), object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard (in person or by any person authorised by him in this behalf) or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, (either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government). The decision of the (appropriate Government) on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act".

A bare reading of the above provision mandates that opportunity shall be given only to those who file objections within 30 days from the date of the publication of the notification u/s 4(1) of the Act. Even as per the objection submitted by the petitioner, it is dated: 19-9-1987 which is beyond 30 days stipulated in Sub-section (1) of Section 5-A. It is also recorded in the Award that the petitioner in pursuance of the notice issued u/s 5-A, participated in 5-A enquiry on 6-10-1987 and they were considered.

7. Let us consider the caselaw on the subject cited by the learned Counsel for the Petitioner. He relies on the judgment of the Supreme Court reported in *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, wherein the Supreme Court observed as follows:

"Affording of opportunity of being heard to the objector is a must. The provision embodies a just and wholesome principle that a person whose property is being, or is intended to be, acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of Section 17 of the Act. But, once Section 5-A is kept applicable, there is no cause to treat its provisions lightly or casually.

The proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause. That at the time of the enquiry, for which prior notice shall be essential, the objector has the right to appear in person or through pleader and substantiate his objection by evidence and argument. And lastly, since the decision of the Collector may turn out to be final, unless interfered with by the Government, suo motu or on application, the

Collector's decision is that of a quasi-judicial authority, arrived at by quasi-judicial methods".

In that case the land acquisition law in Bihar at the relevant time i.e. prior to Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) was considered. Section 4 of the Land Acquisition Act as applicable to Bihar provided service of 4(1) notification, apart from publication at various places, shall also be caused to be served on all persons known or believed to be interested in the land. No such provision exists after Act 68 of 1984. He also relies on the Division Bench judgment of this Court reported in Syed Hussain and Others Vs. The Joint Secretary, P.W.D. (R and B), Government of Andhra Pradesh and Others, , wherein the Division Bench while interpreting Rule 3(b) in the context of Section 5-A and its implications summed-up as follows:

"If objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A of the Act, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as the Department or Company requiring the land, where such Department is not the Revenue Department. Here, the requiring Department is the third respondent and the purpose of, acquisition is to establish a Telephone Exchange. Copies of the objections shall also be forwarded to the requiring Department. So that the requiring Department may file on or before the date fixed by the Collector, a statement by way of answer to the objections and may also depute a representative to attend the enquiry".

Thus, it is only after process as contemplated u/s 5-A of the Act read with Rule 3 of the Rules are complied with, further steps towards the acquisition will be proceeded. In that case, the complaint of the owners was that the Collector did not go through the process contemplated under Rule 3(b) of the Rules and it was also accepted by the learned Government Pleader that the objections of the petitioners were not forwarded to the Requisitioning Department for the purpose of getting its remarks for being considered during the course of further enquiry under Rule 3-A(b) of the Rules. The Division Bench basing on the judgment of the Apex Court in State of Mysore and Others Vs. V.K. Kangan and Others, and other judgments of the High Courts held that Rule 3(b) is mandatory and failure to observe the rule vitiates the land acquisition proceedings. This case stands on a different footing inasmuch as the petitioner who is the Lessee even though he is an interested person, u/s 5-A did not submit the objections within 30 days from the date of the publication of 4(1) notification. But he only submitted subsequent to the said date. In such circumstances, whether he should be given opportunity is a question falls for consideration. While I need to go into this aspect I observe from the Award itself which states that during Section 5-A enquiry on 6-10-1987, 6 persons filed objections including the petitioner and also the owner of the land. What Sub-section (1) of Section 5-A contemplates is that the objections shall be filed within 30 days from the date of Section 4(1) notification and under Sub-section (2) of Section 5-A, it is only incumbent on the

part of the Collector to give opportunity to those who file the objections within the time stipulated. The opportunity which is contemplated u/s 5-A(2) is confined to those who fulfil the criteria u/s 5-A of the Act viz. filing objections within 30 days from the date of publication. Though the petitioner falls under the category of persons interested, but yet when he did not file objections within stipulated period, he is not entitled to claim opportunity. Therefore, I am of the considered opinion, that while it is mandatory to afford opportunity of personal hearing to those persons who responded to Section 4(1) Notification by filing objections within 30 days, it is not incumbent on the part of the authorities to give any such opportunity as contemplated under Sub-section (2) of Section 5-A to the petitioner. Even then, as per the record, the petitioner did participate in Section 5-A enquiry as can be seen from the impugned award. In the counter it is stated that the petitioner did not file any objections as per the records available in the file. The statement in the counter cannot be relied on as the Award itself speaks that the petitioner did participate in the enquiry on 6-10-1989. Therefore, obviously, the counter appears to have been filed without reference to the award records. Under these circumstances, I have to necessarily hold that the contention of the petitioner that there was no opportunity to him during the enquiry u/s 5-A is not sustainable.

8. It is contended that Section 6 notification is bad as it was barred by time having been published after one year of the publication of 4(1) notification. It is an admitted case that notification u/s 4(1) of the Act was published in the Gazette on 4-6-1987 and it was published in the local newspapers on 20-6-1987. It was also published in the locality on 28-6-1987. Enquiry u/s 5-A was conducted on 6-10-1987. The Draft declaration u/s 6 was published on 20-6-1988 and it was published in the local news papers on 20-7-1988. The substance of the draft declaration was published in the locality on 25-7-1988. Notices u/s 9(3) were issued on 5-8-1988 and the Award was passed on 21-7-1990. The learned Counsel submits that Section 6 declaration was not issued within one year as stipulated in 1st proviso to Section 6 of the Act. He submits that for reckoning one year period, the last date of publication under Sections 4 and 6 have to be reckoned. He submits that the Section 4(1) notification was published in the locality on 28-6-1986 (sic. 1987) and therefore the declaration u/s 6 ought to have been published on or before 28-6-1987 (sic. 1988), but on the other hand, the declaration was published in the locality which is last of its kind on 25-7-1988. Therefore, he submits that the said notification is illegal and contrary to Section 6. On the other hand the learned Government Pleader submits that the date has to be reckoned from the last of the dates of the publications of Section 4(1) to any of the dates on which Section 6 declaration was published. If that is reckoned, Section 6 declaration was published on 20-6-1988. Therefore, it is well within time. Even otherwise, he submits that mere delay in publishing the declaration is not fatal to the land acquisition proceedings as held by the Supreme Court. I am in agreement with the submission of the learned Government Pleader. The last of the notifications u/

s 4 was published in the locality (was made) on 28-6-1987 and draft declaration u/s 6 was published on 20-6-1988 and it need not be reckoned as on the last of the publications. Moreover the petitioner having filed objections though belatedly did not challenge the notification u/s 6 and only approached after the award was passed and no reasons are forthcoming as to why he did not assail Section 6 notification. Hence I reject the contention of the petitioner on this issue.

9. Nextly, the learned Counsel for the petitioner submits that u/s 9(3) the petitioner is entitled for a notice and it is incumbent on the Collector to serve the notice on the petitioner qua the occupier so as to allow him to participate in award proceedings. The requirement of Section 9(3) is mandatory and failure to give notice to the petitioner infracts mandatory provisions and therefore the award passed without giving proper notice is liable to be set aside.

10. The learned Government Pleader submits that the notices were issued to the petitioner and he failed to participate in the award enquiry. Even otherwise, he submits that failure to issue notice is not fatal to the proceedings and it is always open for him to approach the Court u/s 18 of the Act for claiming the enhanced compensation.

11. For proper appreciation of the case, it is necessary to extract Section 9(3) of the Act, which reads thus:

"The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate".

12. The learned Counsel for the petitioner relies on the judgment of the Division Bench of this Court reported in the Class IV Employees House Building Society" v. T. Venkatappa Reddy, 1980 (1) APLJ 437 = 1980 (1) ALT 58 (NRC). In the said case, the Division Bench surveyed the case law on the subject and held at para 13 as follows:

"In a case where it is positively known and believed that a person is an occupier of the land and so interested in the land the obligation to serve a notice u/s 9(3) is absolute. Failure to serve a notice on such person will amount to wilful perversity and the subsequent proceedings cannot be considered bona fide and should be held to be colourable and therefore in-operative. On the other hand as far as persons interested in the land are concerned, an obligation is cast if the Collector knows or believes that there are such persons. If non-service of the notice is due to mere ignorance of the fact of his having so known or believed than to wilful perversity, then the award would be bona fide and the possession of the land cannot be disturbed. Where the award is not bona fide and no opportunity to make his claim for compensation was given to an occupier of the land for want of notice u/s 9(3) of the Act, it is not desirable to drive such person from pillar to post and in endless litigation".

He also relied on the decision of the Punjab and Haryana High Court reported in *Rajinderjit and Others Vs. State of Punjab and Others*, wherein M. M. Punchhi-J (as he then was) while considering the scope of Section 9 held that Section 9(3) is mandatory and failure to observe the said provision is a sufficient ground to quash the award.

13. On the other hand the learned Government Pleader relied on the judgment of the Supreme Court reported in *State of Haryana and others Vs. Dewan Singh and others*, , wherein the Supreme Court held that after the award was made, the Court would not be justified to quash the notification u/s 4(1) and declaration u/s 6 for dispensing with the enquiry u/s 5-A. The facts in the said case were that the notification u/s 4(1) was made in April 1984 and the declarations were not challenged till 30-5-1985 while the award came to be passed on April 13, 1984 (sic). The respondents in this case had received the amount under protest, but the same fact was not brought to the notice of the High Court. The Respondents also filed an application u/s 18 within the limitation, but however, it was withdrawn after the Writ Petition was allowed. The Writ Petition was filed challenging the notification u/s 4(1) of the notification on the ground that the dispensing with the enquiry u/s 5-A exercising the power u/s 17(4) of the Act was bad in law as there was no urgency and the Award was on the face of the case valid in law. The said Writ Petition was allowed and thereafter the Respondents withdrew the application for reference. But, this case stands on a different footing. It is not the case of the petitioner that the dispensation of the petitioner u/s 5-A is illegal, but it is only the case of the petitioner that he was not given any opportunity during Section 5-A enquiry and notice as required u/s 9(3) of the Act was not given.

14. The learned Government Pleader also relied on the judgment of the Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , wherein the bench consisting of K. Ramaswamy and S.B. Majmudar, JJ. held different views. While Justice K. Ramaswamy observed that a Tenant cannot challenge the notification u/s 4A (sic. 4(1)) and declaration u/s 6 when the Land-lord himself accepted the Award and received the compensation. Justice S.B. Majmudar did not subscribe to the general observations that a sitting Tenant of the land which comes to be subjected to acquisition proceedings under Sections 4 and 6 of the Act in no case can challenge the said acquisition proceedings, any such challenge can be by a Tenant having a substantial interest in the land. I need not enter into these observations as we are on the issue whether Section 9(3) notice was issued to the petitioner

15. It is not in dispute that the petitioner is an interested person and it is held that Section 9(3) is mandatory. The Division Bench also held that there is a statutory obligation to serve notice on the occupier as required u/s 9(3) and the said obligation is absolute. But, however, the Division Bench was of the opinion that an obligation is cast to issue notice u/s 9(3) if the Collector feels that there

are such persons. If non-service of the notice is due to mere ignorance of the fact of his having so known or believed than to wilful perversity then the award would be bona fide and possession of land cannot be disturbed.

Considering the mandatory character of notice and keeping in view the observation of the Division Bench of this Court in the Class IV Employees House Building Society having its Office in Amaravathi road, Guntur's case (third cited supra), it has to be seen whether the authorities had knowledge of the petitioner or not. I have perused the file produced by the learned Government Pleader. It is seen that notices u/s 5-A were issued to various parties. It is worthwhile to note that in the notification issued u/s 6 the name of the pattadar and also the name of the enjoyer were mentioned. In respect of the land covered in this writ petition, it was clearly mentioned that the name of the pattadar as Choppara Venkata Prasad and enjoyers as Indian Oil Petrol Bunk. Even in the notice constituting the Revenue Divisional Officer by the Collector for the purpose of land acquisition proceedings, the enjoyer's name was also mentioned as Indian Oil Petrol Bunk. The G.O. issued by the Government in G.O.Rt. No. 388 dated 11-5-1988 approving the draft declaration u/s 6 of the Land Acquisition Act under column "name of the enjoyer" it is clearly stated as "Indian Oil Petrol Bunk". In the award also it is stated that the petitioner participated in the enquiry u/s 5-A on 6-10-1987. Further in the award the valuation of the Petrol Bunk was also made. Therefore it cannot be said that the land acquisition authorities have no knowledge of existence of the petrol bunk belonging to the petitioner. It is stated in the counter that Section 9(3) notice were issued to the pattadars and enjoyers and as it was clearly stated in the counter that Section 9(3) notices were got served on the pattadar and enjoyers of the land on 5-4-1990 and 6-4-1990 but as the petitioner was neither pattadar nor enjoyer the notice need not be served. It is clearly stated in Para 13 of the counter thus:

"Further notices u/s 4(1) and u/s 6, 9(3) were issued to the pattadars and enjoyers of the land in order to enable them to file objections if any in passing the award".

Having admitted that the petitioner is enjoyer in various notifications it is incumbent on the part of the authorities to issue notice u/s 9(3) of the Act. Therefore, it is clear that the authorities having knowledge of the petitioner as occupier/enjoyer of the land, it is not their case of bona fide ignorance or mistake. The contention of the learned Government Pleader that Section 9(3) is only directory (and it) cannot be countenanced in view of the judgment of the Division Bench of this Court and of Punjab and Haryana High Court. Hence, failure to issue notice u/s 9(3) of the Act to the petitioner vitiates the award to the extent of land occupied by him and I find accordingly.

16. The learned Counsel for the petitioner yet has another contention to press-forth and urge before this Court namely that the award was not passed within two years from the date of notification u/s 6(1) and that the same is bad on this ground also. Since I have upheld the contention, the guilt of violation of Section

9(3) of the Act, I find it unnecessary to go into the other contentions.

17. The learned Counsel also submits that there is other land available for acquisition and it would be hard and harsh to acquire the land of the petitioner who has been eking out his livelihood by operating I.O.C. Petrol Bunk. It is also the case of the learned Counsel for the petitioner that the other persons covered by the same notification had filed Writ Petition No. 5597/90 challenging the notification and the same was allowed on the ground that the award was passed beyond two years. Therefore the present writ petition should be allowed. He also submits that when the land which is covered by W.P.5597/90 was deleted from the land acquisition proceedings by virtue of order of this Court and which forms contiguous part of the land acquired under this writ petition, it is but fair that the land in which the petitioner is conducting the business should also be deleted from the land acquisition proceedings. I am afraid, I cannot record any finding on this aspect. Moreover the impugned award was not the subject matter in W.P.5597/90. It is for the authorities to consider the feasibility of acquiring the land.

18. Under these circumstances I hold that the award passed by the Land Acquisition Officer without giving proper notice u/s 9(3) is illegal and not sustainable in law.

The end result is that the petitioner succeeds and the impugned award is quashed so far it relates to the petitioner. However, it is open for the authorities to issue fresh notice in terms of the Section 9(3) of the Act to the petitioner enabling the petitioner to claim and then decide the matter in accordance with law.

While admitting the writ petition, this Court granted stay of dispossession of the petitioner and he continued to be in possession during the writ proceedings. Under these circumstances, the petitioner shall continue to be in possession of the land in question till the completion of the award proceedings. No costs.