
(1996) 03 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18833 of 1987

Vanga Narsaiah and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11A, 17, 23(1A), 4, 4(1)

Citation : (1996) 2 ALT 281

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

**Advocate : V. Mohan Reddy and K.M. Mahender Reddy, for the Appellant;
Government Pleader for Land Revenue, for the Respondent**

Judgement

V. Rajagopala Reddy, J.—The petitioners moved this Court under Article 226 of the Constitution of India for a Writ declaring the award dated 22-9-1986 passed by the Land Acquisition Officer, 2nd respondent herein, as illegal and void and for a direction to initiate fresh notification u/s 4(1) of the Land Acquisition Act (for short, "the Act").

2. Originally the writ petition was filed by 68 persons. Since some of the petitioners subsequently died, their LRs have been added as petitioners 69 to 91. The petitioners are illiterate, poor and small farmers, including Harijans. Each of the petitioners owns a small piece of land, in Muthyampet and Domakonda villages. Their lands of an extent of Ac. 22 have been acquired for the purpose of formation of percolation tank across Pochamma vagu. The Land Acquisition Officer has taken possession of the lands in 1981 as per his counter, but as per the petitioners, during 1978 itself, much prior to Section 4(1) Notification, in any event, forcibly and commenced construction of the percolation tank unauthorisedly and completed in November, 1981. Section 4(1) Notification was published on 8-11-1982, thus illegally depriving the petitioners of their meagre and only source of livelihood. After conducting enquiry the above award has been

passed on 22-9-1986 and the petitioners have also withdrawn the compensation awarded. However, the petitioners were not furnished with the copy of the award proceedings, which forced them to file W.P.No. 15057/86 for necessary direction and as per the Court's direction dt. 23-10-1986, the copy of the award and other information were furnished. The petitioners though filed a petition for reference u/s 18 of the Act to the Civil Court, it has not been referred so far, inspite of a direction to refer in W.P.No. 17256/93.

3. The petitioners assail the notification and award on various grounds:

(i) The taking possession of the lands without initiation of proceedings under the Act was wholly illegal, unauthorised and high handed which would vitiate all the proceedings taken subsequent thereto, including notification u/s 4(1) of the Act and the award passed;

(ii) Since the award came to be passed after several years from the date of Section 4(1) notification, the Court should hold that there was no urgency to invoke Section 17 of the Act and dispense with enquiry u/s 5A of the Act;

(iii) Since 80% of the compensation was not tendered as required u/s 17(3-A), the notification was vitiated;

(iv) They were not served with the statutory notices provided Under Sections 8 and 9 of the Act during the award enquiry and the provisions of Sections 9, 10 and 11 of the Act have not been complied with in the conduct of enquiry;

(v) The substance of the notification has not been published in the locality;

(vi) In any event the entire acquisition proceedings lapsed u/s 11A of the Act, since the award was not passed within two years from the date of declaration u/s 6 of the Act;

(vii) Lastly it was vehemently contended that Section 4(1) notification was published only with motive to "peg-down" the compensation that is payable to the petitioners and hence it shall be held that the notification should be deemed to have been published on the date of the judgment and compensation should be directed to be paid accordingly.

4. I will take up the first ground later, for the sake of convenience. The 2nd and 3rd contentions relate to the validity of invoking urgency provision to take possession of the property dispensing enquiry u/s 5A of the Act and tendering 80% of compensation immediately thereof. This objection is untenable. It should not be forgotten that the possession of the lands was taken, award has been passed, the compensation was taken and Section 18 application was also filed by the petitioners. The percolation tank has been constructed in 1981 itself. The petitioners have not chosen to question the notification, though it was published in 1982. At this stage the petitioners cannot be permitted to raise any objection with regard to the validity of Section 4(1) notification. I am supported in my view, by the decisions of the Apex Court in Shri Kishan Das and others Vs. State

of U.P. and others, and State of Haryana v. Dexvan Singh, 1996 LACC 83. Further, it has been held by the Supreme Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, that

"In the instant case even that 80% of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the 1st respondent."

The decision cited by the learned Counsel for the petitioners in Yeredla Narayan Reddy and Others Vs. Government of A.P. and Others, has no application to the facts of the case. In that case the declaration u/s 6 of the Act has also not been published. The acquisition was in its initial stage. Hence it was directed to pay 80% of the compensation. There is no dispute with that proposition. In the instant case the entire compensation has been taken by the petitioners; then where is the question of tendering 80% of it? The contention is therefore negated, holding that the acquisition proceedings cannot be held as vitiated on this ground.

5. The 4th contention of the petitioners that the award enquiry has not been properly conducted and was not in accordance with the provisions of the Act has been denied in the counter-affidavit filed on behalf of R-2, the L. A.O. It has to be borne in mind that the lands under acquisition belonged to several farmers, each owning a few cents of land. I have gone through the award which forms a bulky volume. Pains have been taken to give notice and hear all the interested persons. It was not a haphazard enquiry or a farce of it. The allegation regarding the defects in the enquiry is general in nature. Specifically it was alleged that there was no 15 days notice for hearing the petitioners. To illustrate this defect the notice dt. 22-1-1986 was shown to me fixing the date of enquiry to 27-1-1986 (only 6 days notice). It is now well settled that notice Under Sections 9 and 10 of the Act should be given 15 days prior to the date of enquiry. In para 4 of the counter affidavit it has been stated that a notice dt. 18-12-1985 has been given giving the date of enquiry as 12-1-1986 by giving clear 15 days time. It was stated that notices have been served on the landholders and interested persons. In the context it has to be taken that earlier notice dt. 18-12-85 for the enquiry on 12-1-86, as referable to the enquiry on 27-1-86 also. The case must have been adjourned from 12-1-86 to 27-1-86. In any event it is necessary in the context to emphasise that the petitioners have not suffered any prejudice since they had participated in the enquiry resulting in the passing of the award. It is significant that they did not question the award immediately after passing of the award. They have received the compensation and also filed a claim petition u/s 18 of the Act for reference to the civil Court. They approached this Court only in December, 1987 after expiry of 11 /2 years from the date of passing of award. The fact remains that the lands have been taken possession and percolation tank has been constructed in 1981 and more than a decade and a half had expired

and more over the petitioners have also approached the Civil Court accepting the award. At this juncture it is not legally pragmatic to enter into minute details of the award enquiry. However, as I have noticed supra, as per the counter affidavit it cannot be said that the enquiry was not in accordance with the provisions of law.

6. The 5th allegation, that the substance of the notification was not published in the locality, was denied in the counter-affidavit. The petitioners did not produce any material to substantiate their allegation. This objection has therefore, no force.

7. It is next contended by the learned Counsel for the petitioners that u/s 11A of the Act an award has to be passed within two years from the date of declaration u/s 6 of the Act failing which the entire proceedings would lapse. He cited the decision in Madhava Rao Gandhe and Others Vs. Land Acquisition Officer, Quili Qutubshah Urban Development Authority, in support of his contention. This objection has no basis; it is factually incorrect. The date of declaration u/s 6 of the Act is 8-11-82. Prior to Land Acquisition Amendment Act in 1984 incorporating Section 11A, there was no period prescribed for passing of the award. The proviso to Section 11A of the Act makes it clear that the award shall be passed within two years of the Land Acquisition Amendment Act. The Act came into force on 24-9-1984. Hence the award has to be passed on or before 23-9-1986. In fact it was passed on 23-9-1986. Hence, Section 11A of the Act has been complied with. In any event in S.P. Jain's case (3 supra) it was ruled that

"Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisition u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner".

To the same effect is the decision in Awadh Bihari and Other Vs. State of Bihar and others, : where it was held that once the lands were taken possession u/s 17(1) of the Act, even if the award is not made within the period prescribed u/s

11A of the Act, the proceedings would not lapse, since the Government could not withdraw from acquisition in view of Section 48 of the Act. Bound as I am by the above 2 decisions, I hold that the land acquisition proceedings in the instant case, in any event, did not lapse.

8. It was argued that there was unreasonable delay in passing the award which entails quashing of the award. This argument cannot be accepted in the context of the facts of the case. There were several claimants each owning a small bit of land. All of them have to be issued notices and heard before passing award. The whole process would take a long time. In any event the petitioners cannot be permitted to question Section 4(1) notification since the Government has taken possession of the land more than a decade and half ago and constructed percolation tank. At this stage, as I held supra, such an argument cannot be entertained. The decision in *P. Appalamurthy and Others Vs. State of Andhra Pradesh and Others*, has no application to the facts of the case. It must be remembered that in the said case possession of the land has not been taken, which made all the difference in arriving at the conclusion by the learned Judge in quashing the notification. The same ratio cannot be applied to the facts of the case on hand.

9. It is lastly argued that even if the notification was not quashed, this Court has got power to direct that the notification issued u/s 4(1) of the Act, in 1982 shall be deemed to be one issued on the date of passing the order and the market value of the land for the acquisition shall be determined with reference to that date. In support of this argument the learned Counsel has relied upon the decisions in *Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others*, , *Bihar State Housing Board, State of Bihar and Others Vs. Ban Bihari Mahato and Others*, and *Radhey Sham v. State of Haryana AIR 1982 P & H 59*. In those decisions the Courts came to the conclusion that the notification was illegal and that in view of the peculiar circumstances prevailing, without quashing the notification, the Courts held as stated supra. In *Redhey Sham's case* (10 supra), the Court held on the basis of long procrastination, coupled with other facts, which disclosed lack of bona fides in the exercise of the power of acquisition and that the real motivation behind the acquisition was not any specific public purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification u/s 4 of the Act and thus holding the citizens to ransom for years at the whim and caprice of the State to finalise the proceedings. The conceptus of the facts in the instant case does not lead to such a conclusion. Immediately after taking possession of the land percolation tank had been constructed. There was thus a clear case of urgency in acquisition. It cannot be said that the publication of the notification was "as a mere ruse to peg down the prices". However, it is unfortunate that long delay has been occurred in passing the award. But I am not prepared to hold that there was gross and deliberate delay on the part of the State in the completion of the acquisition proceedings. Hence, the fiction applied in the cases cited can have no application to the facts of the instant case.

10. The first contention remains to be dealt with. It is disturbing to note that the small bits of lands of the petitioners, the only source of their livelihood, have been taken possession, forcibly; without initiating proceedings under the Act, This trend is noticed lately. The petitioners, however, did not question the action of the respondents in depriving of their possession unauthorisedly. But the fact remains that the petitioners have incurred loss during that period and they are entitled to compensation from the respondents upto the date of notification u/s 4(1) of the Act. u/s 23(1-A) of the Act, the petitioners are entitled, in addition to the market value of the land, an amount calculated @ 12% p.a. on such market value for the period commencing from the date of publication of notification u/s 4(1) of the Act to the date of the award or to the date of taking possession of the land, whichever is earlier. Curiously the award is silent with respect to payment of the additional amount as provided u/s 23(1-A) of the Act. I do not find any justifiable reason for depriving the petitioners of the additional amount at 12% p.a. on the compensation from the date of taking possession till the date of passing of the award even though the possession was taken prior to Section 4(1) Notification. The respondents' illegal action should not affect the benefit provided u/s 23(1-A) of the Act, for loss of enjoyment of their property.

11. The next question is from what date the said amount has to be calculated and paid to the petitioners. This is a case where, as already stated, the possession was taken before the notification was published. As per the counter affidavit the possession was taken on 1-6-1981 and the notification was published u/s 4(1) of the Act on 8-11-1982. Section 23(1-A) of the Act was introduced to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him because of the delay in making the award and offering payment therefor. To obviate such hardship Section 23(1-A) was introduced, giving the benefit of 12% p.a. additional amount on the market value for the period commencing from the date of the publication of Section 4(1) notification upto the date of the award or the date of taking possession of the land, whichever is earlier. But how to obviate the hardship of a person whose lands have been deprived of possession before the date of notification? In similar circumstances in Assistant Commissioner, Gadag SUB-Division, Gadag Vs. Mathapathi Basavannevva and others, the Apex Court has considered the said question. In the context of interpretation of the expression "whichever is earlier" in Section 23(1-A) of the Act, which was inserted in 1982 by way of amendment, with reference to the object of the new provision, it has been held that,

"But strict construction leads to unjust result, hardship to the owner and defeats legislative object. Take a case like the one in hand. Possession was taken long before publication of the notification. In the meanwhile the owner was deprived of enjoyment of his property. In other words, if the possession is taken earlier and notification is issued later but the award is subsequently made, the owner or the claimant is entitled to the compensation from the date of taking possession till date of the award, though possession was taken before the notification u/s

4(1) was published. The expression "whichever is earlier" has to be construed in that backdrop and the claimant would be entitled to additional amount from the date of taking possession.

In this case, since advance possession was taken before the publication of notification u/s 4(1), which was never questioned by the owners in a Court of law, the claimants, by necessary implication are entitled to the payment of the additional amount by way of compensation from the date of taking over the possession for loss of enjoyment of the land. A different situation may arise where the claimants themselves may question the notification and its invalidity is upheld by the Court. There under, the claimants may not be entitled to the additional compensation since they are not willing to surrender the possession under the notification and the State did not in law come into possession under the notification referred in Section 23(1-A).

Therefore, we are of the considered view that though the notification u/s 4(1) was issued after taking possession of the acquired land from the owners of the land, the owners of the land would be entitled, in the case at hand, to additional amount at 12 percent per annum of market value from the date of taking possession though notification u/s 4(1) was published later".

The ratio in the above case is squarely applicable to the facts of the case. The petitioners are therefore entitled for the additional amount u/s 23(1-A) of the Act from the date of taking possession i.e., 1-6-1981 till the date of the passing of ward, for loss of enjoyment of land. The respondents are accordingly directed to calculate compensation, including the additional amount of 12% per annum from 1-6-1981 till the date of passing of the award.

12. No other question has been raised before me. The writ petition is accordingly disposed of with the above direction. In the circumstances I award no costs.