
(2000) 3 ALD 299 : (2000) 1 ALT 346

Andhra Pradesh High Court

Case No: Writ Petition No. 11574 of 1999 and CC No. 1123 of 1999

Sudarsanam
Venkatacharyulu and
others

APPELLANT

Vs

Government of Andhra
Pradesh and others

RESPONDENT

Date of Decision: Oct. 28, 1999

Acts Referred:

- Land Acquisition Act, 1894 - Section 4(1), 5

Citation: (2000) 3 ALD 299 : (2000) 1 ALT 346

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. A. Gopalakrishnamacharyulu, for the Appellant; Government Pleader, for Social Welfare, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This writ petition is filed questioning the action of the second respondent in informing the public by beating of tom-tom on 4-6-1999 that the lands belonging to the petitioners-Archakas of Sri Lakshminarayanawamy Vari Temple, Kunduru village in Sy.No.130 were taken over by the Village Assistant, and trespassers will be punished and to declare the same as illegal, without jurisdiction and invalid and sought for such other order or orders to meet the ends of justice.

2. This case is having previous history. Initially the second respondent with a view to provide house-sites to weaker sections acquired Ac.8.43 cents of land in Sy.Nos.130/2 and 130/4 of Kunduru village, Kotipalli Gangavaram Mandal, East Godavari District including an extent of Ac.3.56 cents of land which is being enjoyed by the petitioners-Archakas as remuneration for the services rendered to the deity by issuance of draft notification u/s 4(1) of the Land Acquisition Act (for short "the Act") on 21-2-1996

and declaration u/s 6(1) of the Act on 22-3-1996 invoking the urgency clause u/s 17(4) of the Act and dispensing with the statutory enquiry contemplated u/s 5-A of the Act. Questioning the said action of the second respondent, while some persons claiming to be the tenants over an extent of Ac.6.31 cents of land filed WP No.1652 of 1996, and the same seemed to have been disposed of at the admission stage, after hearing the Government Pleader by directing the Land Acquisition Officer to conduct the statutory enquiry and take a decision. The petitioner-Archakas also filed WP No.4791 of 1996 questioning the land acquisition proceedings. This Court by an order dated 7-3-1996 disposed of the writ petition directing the respondents not to dispossess the petitioners from the petition schedule land till the statutory enquiry u/s 5-A of the Act is completed. I understand that one of the beneficiaries seemed to have filed WA No.912 of 1997 before a Division Bench of this Court against the order in WP No.1652 of 1996, and a Division Bench of this Court allowed the writ appeal by an order dated 5-2-1998 on a concession made by the Counsel appearing for the tenants-respondents in the appeal stating that they have no enforceable legal right. Thereafter, the second respondent seemed to have conducted an enquiry on 19-1-1998. The petitioners initially appeared before the Land Acquisition Officer and contended that the lands in their possession cannot be acquired as the temple is classified as "C" class temple u/s 6 of the A.P. Charitable, Religious and Endowments Act as the income of the temple is less than Rs.50,000/-. It is also their case that these lands were given to them in lieu of remuneration for the services rendered by them to the deity and if the lands are acquired their livelihood will be effected. In fact, in those lines written objections were also filed. Thereafter, according to the Government Pleader for Social Welfare, the objections raised by the petitioners were rejected on 5-6-1998 and the lands were taken possession by the Village Assistant by conducting panchanama on 4-6-1999 and the same was informed to the public by way of tom-tom on the same date. Questioning the said action, the petitioners filed the present writ petition and while admitting the writ petition by order dated 15-6-1999, I directed interim stay of dispossession. The petitioners filed CC No.1 123 of 1999 slating that inspite of the orders of this Court the respondents are not allowing them to cultivate the lands. Then the contempt case was admitted on 3-8-1999 and I directed the contemnor to appear in the Court on 24-8-1999. The contemnor having appeared in the Court also filed his counter on 24-8-1999. As the counter is silent on what date objections were rejected and whether fresh declaration as required u/s 6 of the Act issued or not, I directed the respondents to produce the records relating to the acquisition of the land as well as the file relating to taking possession of the land. It was also the case of the respondent that though the possession of the lands were taken over on 4-6-1999, by virtue of interim orders of this Court dated 15-6-1999, the petitioners re-entered upon the lands. In those circumstances, I directed both the parties to maintain status quo as on that date with regard to possession of the property and posted the contempt case along with the writ petition on 8-9-1999 for hearing.

3. Having heard the arguments in both the writ petition well as the contempt case, the following order is passed.

4. Firstly, the Government Pleader placed strong reliance on the order of the WA No.912 of 1997 filed by one of the beneficiaries against the order of this Court in WP No. 16552 of 1996 said to have been filed by the tenants wherein the order of the learned single Judge was set aside. I perused the order of the Division Bench and the said order was passed on the concession made by the Counsel appearing for the tenants stating that his clients have no enforceable legal right, I have my own reservations on the concessions made by the Counsel, but I need not go into that controversy in this writ petition for the simple reason that the order passed by this Court in WP No.4791 of 1996 dated 7-3-1996 filed by the petitioner herein still hold the filed and as such the respondents should conduct the statutory enquiry as contemplated u/s 5-A of the Act and in fact such an enquiry was also conducted by the respondents. The only question to be decided in this writ petition is whether the procedure followed by the respondents after conducting enquiry in taking over the possession of the land is in accordance with law or not and the procedure contemplated under the Land Acquisition Act has been followed or not. The learned Government Pleader tried to justify the action of the respondents in taking possession of the lands without issuing formal declaration as required u/s 6(1) of the Act on the ground that while allowing the writ petition filed by the writ petitioners this Court did not strike down the declaration which was already given u/s 6(1) of the Act on 2-3-1996. I have no hesitation in rejecting the contention of the learned Government Pleader for the simple reason that though the declaration said to have been given u/s 6(1) of the Act was not struck down, the very fact that this Court directed the Land Acquisition Officer to hold the Statutory enquiry u/s 5-A and the procedure contemplated under the section clearly envisages that declaration u/s 6(1) of the Act has to be given only after completion of the enquiry, but not prior to that. Hence, even if the declaration u/s 6(1) dated 23-2-1996 was not set aside by this Court, by virtue of the order of this Court dated 7-3-1996 directing the respondents to conduct enquiry u/s 5-A, the declaration said to have been given on 23-2-1996 became nonest in law and it cannot be acted upon. Hence, the action of the respondents in taking possession of the land without issuing declaration u/s 6(1) of the Act itself vitiates the entire proceedings and on that ground itself the action of the respondents is liable to be set aside. Secondly, in this case the procedure followed by the respondents 2 and 3 in conducting enquiry and taking possession of the land is unknown to law. It is not in dispute that the Land Acquisition Officer gave notice to the petitioners with regard to the enquiry u/s 5-A of the Act and in fact heard the petitioners on 19-1-1998. But, from the file it is seen that the second respondent directed the MRO, to submit a report on the objections filed by the petitioner by his proceedings dated 20-1-1998 and the third respondent therein in his proceedings Ref.A402 dated 5-6-1998 sent the report to the second respondent stating that the petitioners are big ryots and the objections raised by them can be rejected. The RDO, seemed to have not applied his mind and came to the conclusion whether the objections raised by the petitioners can be sustained or not in the light of the report submitted by the MRO, on 5-6-1998. Further even a copy of the report of the MRO, was not furnished to the petitioner. A reading of the provisions of the Land Acquisition Act make it abundantly clear that the Land Acquisition Officer will be discharging quasi judicial functions while exercising the powers as Land

Acquisition Officer and as such he is expected to come to a decision on the objections raised by the land holders without being influenced by the report of the departmental officer. But, unfortunately in this case except calling for the reports of the MRO, the RDO, did nothing in discharge of his functions as LAO, u/s 5-A of the Act. Accordingly, I hold that the enquiry as contemplated u/s 5-A of the Act was not conducted by the second respondent and the report of the MRO, cannot be given any credence. On this ground also the action of the respondents is vitiated.

5. Coming to the aspect of taking possession of the land by the Village Assistant on 4-6-1999, from the record it is seen that the VAO, has taken possession of the lands on 4-6-1999 by conducting a panchanama and the file does not disclose that any notice was given to the petitioner to hand over the possession of the lands as the objections raised by him were rejected. Such an action on the part of the respondent is unknown to law. For all these reasons, I have no hesitation to hold that there is complete abdication of the functions under the Act by the second respondent which resulted in allowing this writ petition. Accordingly, the writ petition is allowed and the action of the respondents in taking possession of the lands belonging to the petitioner on 4-6-1999 is declared as invalid and the matter is remitted back for fresh consideration. It is needless to observe that the LAO, and LAO, alone has to consider the objections raised by the petitioners and pass orders and he shall also not only pass orders, but also in fact inform the same to the petitioners in a manner known to law. While adverting to the contentions of the petitioners the LAO shall advert to the contentions of the petitioner that the lands given to them in lieu of remuneration for the services rendered to the deity which is categorised as Section 6(c) institution and as the Government has also not fixed the salaries payable to them for the service rendered in the light of the judgment of the Supreme Court whether the department is justified in taking possession of the lands of the petitioners and deprive their livelihood at this length of time. He shall also verify whether the beneficiaries left out are genuine beneficiaries or whether they are trying to get the house sites by adopting dubious means. The petitioners are also given opportunity to prove whether the left out beneficiaries are genuine or not.

6. As the acquisition proceedings are pending for over three years, I direct the second respondent to complete 5-A enquiry and pass appropriate orders under intimation to the petitioners within two months from the date of receipt of a copy of this order.

7. Writ petition is accordingly allowed and the action of the respondents in trying to take possession of the lands in question without issuance of a declaration as contemplated u/s 6(1) of the Land Acquisition Act, and without serving the order passed rejecting the objections raised by the petitioners and the action of the respondents in taking possession of the property under panchanama without giving notice to the petitioner are declared to be illegal. In the circumstances, without costs.