Koppula Narasaiah and another Vs Government of A.P. and others

Court: Andhra Pradesh High Court

Date of Decision: Sept. 14, 2000

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100
Constitution of India, 1950 â€" Article 226
Land Acquisition Act, 1894 â€" Section 11, 16, 48
Nagarjunasagar Project (Acquisition of Land) Act, 1956 â€" Section 18

Citation: (2000) 6 ALD 299 : (2000) 6 ALT 337

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: M/s. R. Kameswara Rao, K. Chinna Baba, S. Satyam Reddyfor M. Raja Malla Reddy, Kowturu Vinay Kumar, P. Prabhakar Reddy, Mrs. N. Shobha and Government Pleader for Land Acquisition, for the Appellant;

Judgement

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1. All these writ petitions involve same question of law and the facts are also the same. It is, therefore, convenient to dispose all of them by this

common order. Accordingly, common order shall dispose of all these ten writ petitions. The facts are in a very narrow compass and indeed, but

for giving a clarification wherever necessary, the respondents have not disputed the facts.

2. The necessary facts are as follows. The land owned by the petitioners was acquired under the provisions of the Land Acquisition Act, 1894

("the Act" for brevity) as amended by the Nagarjunasagar Project (Acquisition of Land) Act, 1960. Awards were duly passed and the amount

was disbursed to the owners. In some cases, the owners sought reference to the civil Court u/s 18 of the Act and after the award of the civil Court,

enhanced compensation was also paid. In all the cases, awards were passed long age, that is to say, about 20-25 years age. The particulars are as

follows:

Sl. No. W.P. No. Particulars of the land Date of Award

1. 4693 of 1994 Ac.1.13 1/4 gts. in Sy.No.275, kanapuram Haveli 4-3-1969

2. 18156 of 1994 Ac.0.02 gts. in Sy.No.11112(111/A/. Somavaram 31-3-1978

3. 21539 of 1994 Ac.0.19 gts. in Sy.No.503, Mallemadugu 11-3-1970

Ac.9.25 gts. in Sy. No.504, Mallemadugu

4. 8471 of 1995 Ac.1.13 1/2 gts. in Sy. No.275, Kanapuram Haveli 4-3-1969

5. 15558 of 1996 Ac.8.31 gts. in Sy.No.98, Tekulpalli 17-10-1970

6. 21792 of 1996 Ac.0.13 gts. in Sy.No.275, Kanaputam Haveli 4-3-1969

7. 21935 of 1996 Ac.8.29 gts in Sy.No.872, Miryalaguda 26-2-1958

8. 21936 of 1996 Ac.4.01 gts. in Sy. No.871, Miryalaguda 26-2-1958

9. 21937 of 1996 At.2.31 gts. in Sy. No.883, Mirualaguda 26-2-1958

10. 22383 of 1996 Ac.7.30 gts. in Sy. No.96, Burhampuram 4-3-1969

3. In WP Nos.21935, 21936 and 21937 of 1996 the petitioners approached the District Collector requesting to re-convey the un-utilised surplus

land from out of the land acquired from them. Their request was rejected on 7-8-1996. In all other cases, however, the petitioners did not

approach the authorities for re-conveying the land. However, as there is a dispute as to whether the petitioners approached the authorities for re-

conveying the land or not, for the sake of convenience, we may proceed on the premise that all the petitioners initially approached the authorities

seeking re-conveyance of the surplus un-utilised land which was initially acquired for the purpose of Nagarjuna Sagar Project (NSP).

4. As the lands of the petitioners acquired for NSP were allegedly not utilised, as stated above, the petitioners approached the authorities for re-

conveying the lands. In the meanwhile, some other landowners approached this Court by filing various writ petitions and this Court, it is stated,

directed the authorities to re-convey the land to the owners, as the same was not utilised for the purpose for which it was acquired. At that stage,

all the petitioners approached this Court praying for a writ of mandamus directing the respondents to re-convey the land to each of the petitioners.

The Government of Andhra Pradesh represented by its Secretary to Government, Irrigation and CAD Department and the concerned District

Collector are added as necessary parties. The petitioners alleged that the inaction on the part of the respondents in not re-conveying the land in

accordance with the Memo No.49038/NSP.I(2)91-5, dated 10-3-1993 is arbitrary and contrary to the orders of the Government.

5. The respondents filed a counter and an additional counter. The sum and substance of the counter affidavit is that when once the land acquired

vests with the Government, it is for the Government to use the excess surplus land and the owners have no claim over the land. The land acquired

for the NSP was totally utilised and there is no vacant land and hence the question of re-conveyance does not arise. It is stated that in the present

cases, the Government has not taken a decision to the effect that the "land is no longer required" and, therefore, the petitioners have no

enforceable right or legal entitlement for claiming re-delivery.

6. Before noticing and considering the rival contentions of the learned Counsel, it is necessary to notice the relevant executive instructions, statutory

provisions as well as the relevant case law relating to ''re-conveyance of land'', which was acquired by the Government for a public purpose.

7. The erstwhile Board of Revenue was initially a statutory body constituted under the Andhra Pradesh (Andhra Area) Board of Revenue Act,

1894 (hereinafter called ''Act No.1 of 1894''). The Board of Revenue laid down various procedures to be followed by a number of departments.

These proceedings of Board of Revenue otherwise known as Board Standing Orders acquired prominence to the extent that they were considered

as Revenue Department''s Code. The Board Standing Orders left nothing uncovered insofar as Revenue administration is concerned. Board

Standing Order, 90 (hereafter called ''BSO, 90'') deals with re-conveyance of the land acquired under the Act. Paragraph 32 of B.S.S. 90

provided that no acquired land, which is not required for public purpose, shall be reconveyed or disposed of without previous permission of the

State Government. Even when the land acquired for public purpose is relinquished as no longer required, it is subject to conditions mentioned in

sub-para (2) of Para 32. Sub-para (5) of Para 32 further says that the grant of acquired land under Para 32 of BSO 90 is made as a matter of

grace and the State Government shall have discretion to allow or refuse the concession of re-conveying the land. The important conditions to be

kept in mind by the Board of Revenue or competent authority for re-conveying the land are that if the land is again required for public purpose it

shall not be re-conveyed. If the land is situated at a distance of half a mile from a Railway station it shall not be re-conveyed under BSO 90. If the

land is originally building site or town site, it shall be sold only by way of public auction.

8. It is not denied that after the reorganisation of States, the Board Standing Orders were applied mutatis mutandis to all the districts including the

districts which are known as Telangana area. Nevertheless, the application of various Board Standing Orders is circumscribed by the condition

that in the event of conflict with Andhra Pradesh (Telangana Area) Land Revenue Act, 1317-Fasli, the statutory provisions will take precedence

over the Board Standing Orders, for, the latter are no more than executive instructions.

9. Be that as it may, after the Land Acquisition (Amendment) Act, 1984, there has been a spurt of litigation relating to re-conveyance of the excess

acquired land on the ground that the land once acquired for a public purpose cannot be put to use for other public purpose. The law declared by

the Supreme Court to which a reference shall be made later necessitated the amendment to paragraph 32 of BSO 90. Accordingly, the

Government vide G.O. Ms. No.783, Revenue (LA) Department, dated 9-10-1998 substituted Paragraph 32 of BSO, 1990 with the following:

The land acquired for a public purpose under the Land Acquisition Act, 1894 shall be utilised for the same purpose for which it was acquired as

far as possible. In case, the land is not required for the purpose for which it is acquired due to any reason, the land shall be utilised for any other

public purpose, as deemed fit, including afforestation.

10. The Telangana Act is a consolidating and amending Act and by the said Act, the orders and regulations relating to land revenue in the whole of

Telangana area were enacted as provisions of the Act. After the States Reorganisation Act, the same was extended to whole of Telangana area in

the State of Andhra Pradesh. Chapter V of the Telangana Act deals with occupation of khalsa land and rights of the occupants. Section 54 of the

Telangana Act provides that the Tahsildar may give permission in writing to a person desirous of taking unoccupied land in accordance with the

rules made by the Government.

11. In exercise of powers u/s 172 of the Telangana Act, the Government made Rules in G.O. Ms. No.1406, Revenue, dated 25-7-1958 known

as Assignment Rules. Rules II, III and IV deal with the permission for occupation of the land at the disposal of the Government. The conspectus of

these Rules is that the land at the disposal of the Government should be assigned only to landless persons who directly engage themselves in

cultivation including Harijans, ex-toddy tappers, backward communities and weavers. In 1324-Fasli, Telangana Act was amended inserting

Section 54-A by Act III of 1324-Fasli, which reads as under:

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.

12. As already mentioned, after the Land Acquisition (Amendment) Act, 1984 there has been a spurt of litigation relating to re-conveyance of

acquired land. Ultimately, in various cases, the Supreme Court held that there is no right to claim re-conveyance of the acquired land. In State of

Kerala and others Vs. M. Bhaskaran Pillai and another, , C. Padma v. Deputy Secretary to Govt. of T.N., 1997 LACC 4 :(1997) SCC 627,

State of Punjab and Others Vs. Sadhu Ram, and Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, , the

Supreme Court dealt with the issue of re-conveyance.

13. In Chandragauda Patil"s case (supra), when the land acquired for the purpose of a town planning scheme of Kolhapur Municipality under

Maharashtra Regional and Town Planning Act, 1966, was sought to be used for allotment to some of the Councillors and employees of Kolhapur

Municipality, the land was owners questioned the same claiming right of re-conveyance. They relied on a policy resolution of the Government of

the State dated 10-10-1973 by which it was ordered that surplus land was to be utilised first for any public purpose and in the alternative it was to

be given back to the owners of the land. The Supreme Court, while holding that the policy itself is unsustainable, observed as under:

It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the

original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate

compensation was paid according to the market value as on the date of the notification.

14. In Bhaskaran Pillai"s case (supra), relying on the provisions of Section 16 of the Act, the Supreme Court affirmed the judgment of a Division

Bench of Kerala High Court M. Bhaskaran Pillai Vs. State of Kerala and Others, interdicting the action of the Government of Kerala in seeking to

sell the land acquired in 1952 at the same rate at which compensation was awarded u/s 11 of the Act. The following observations of the Supreme

Court are apt.

In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the

L.A. Act, it stood vested in the State free from all encumbrances. The question emerges, whether the Government can assign the land to the

erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could

be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale

to the erstwhile owner, the land should be put to auction and the amount fetched in the public auction can be better utilised for the public purpose

envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order not inconsonance with the

provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified and declaring the executive order as

invalid. Whatever assignment is made should be for a public purpose. Otherwise, the laud of Government should be sold only through public

auction so that the public also gets benefited by getting higher value.

15. In Padma''s case (supra), the Supreme Court held that the public purpose for which the land was acquired can be substituted for another

public purpose and, therefore, a claim after the period of 32 years for re-conveyance of the land cannot be entertained on the ground that either

original purpose was not public purpose or the land cannot be used for any other public purpose.

16. In Sadhu Ram''s case (supra), the Supreme Court reiterated that when once the land vests free from encumbrances with the Government u/s

16 of the Act, the same cannot be returned to the erstwhile owner without following the procedure provided u/s 48(1) of the Act.

17. Some of the relevant authorities of this Court may also, be noticed. The earliest judgment is a Division Bench judgment in State of A.P. v.

Venkayya, 1965 (1) AWR 74. In this judgment, after referring to various sub-paragraphs of paragraph 32 BSO, 90, the Division Bench held that

no right is created in any of the heirs from the original owners to claim the lands which were acquired earlier and that it is only a matter of grace that

assignment of land is made in favour of the person to whom the proprietary rights or the right of occupancy belongs or to their heirs. This judgment

is authority for the proposition that when something is given as a matter of grace the same cannot be enforced as a right under Article 226 of the

Constitution.

18. The matter was considered by a Division Bench of this Court in WA No.953 of 1999, dated 15-7-1999. Following the judgments of the

Supreme Court in Bhaskaran Pillai''s case and Padma''s case (supra), this Court negatived the claim of the erstwhile owners of the land for re-

conveyance.

19. A learned single Judge of this Court noticing the law laid down by this Court in the above referred cases referred the matter to a Bench to

consider the question whether the State Government can exercise the power of re-conveying the land to the original owner or the legal heirs of the

original owner in the teeth of the judgments of the Supreme Court in Bhaskaran Pillai ''s case and Chandragauda Patil''s case (supra) and the Full

Bench in Edupalli Dasarada Rama Rao and Others Vs. Ongole Municipality and Others, , having regard to the amendment of paragraph 32 of

BSO 90, dismissed the writ petitions claiming re-conveyance of the land leaving it open to the claimants to challenge the Government Order

amending BSO 90 (32). The Full Bench also relied on Bhaskaran Pillai''s case and Chandragauda Patel''s case (supra).

20. In Indian Vegetarian Congress and Others Vs. State of West Bengal and Others, , a Division Bench of the Calcutta High Court relied on

various judgments of the Supreme Court and held that if the acquired land is not fully utilised for the public purpose or part of it becomes surplus,

the heirs of the erstwhile owner from whom the land was acquired cannot claim any right, title and interest in the surplus land and the surplus land

cannot be given back or reverted to them. The surplus land has to be sold only in public auction and that the State can utilise the land by leasing out

the same in favour of a company provided such action is not mala fide.

21. The conspectus of various judgments of this Court and the Supreme Court is as follows:

(a) The land acquired under the provisions of the Act for one public purpose, after putting it to the said public purpose partly or fully, if surplus land

remains, can be utilised either partly or fully for any other public purpose;

(b) When the land absolutely vests free from encumbrances, the same shall be treated as Government land subject to all Legislations, rules and

executive instructions touching upon the assignment of land for other purpose and for landless poor;

(c) The owners of the land whose land is acquired have no right, legal entitlement or legitimate expectation in seeking re-conveyance of the land at

the price at which compensation was paid under the award u/s 11 of the Act;

(d) If the Government, as a policy decides that the land acquired is not partly or fully utilised for the public purpose for which it was acquired, is no

more required for any public purpose, either because it is not suitable or because it has become waste land, the Government is bound to deal the

property like any other Government property and dispose of the same in the manner which subserves public interest. The sale of Government land

by public auction or by calling for tenders and disposing of the same to the highest bidder is the most transparent and best method of subserving

public interest;

(e) The power of the Government to dispose of the surplus land acquired by public auction also enables to permit original land owners to

participate in the public auction and offer appropriate highest bid;

(f) In any event, any claim by the original land owners or their legal heirs for re-conveying cannot be entertained after a long lapse of time, say, !0

years, 20 years or 30 years;

(g) If the Government decides to assign the surplus acquired land to landless poor persons as a measure of poverty amelioration, the method of

public auction need not be adopted;

22. The learned Counsel for the petitioners, S/Sri R. Kameswara Rao, Chinna Baba, Rajamalla Reddy and Ms. Sobha, however, submit that in

view of Section 54-A of the Telangana Act and in view of the conduct of the respondents in the past in allowing re-conveyance of the land

acquired for Nagarjunasagar Project, the petitioners in all these cases have an enforceable right to claim re-conveyance of the land. As the claim is

made after a lapse of two and half decades, this submission is liable to be rejected. Nonetheless, the learned Counsel brought to the notice of this

Court the judgment of a learned single Judge of this Court in Syed Mohammad Yahya Quadri (died) per L.Rs. Vs. The District Collector and

Another, and a Division Bench judgment of this Court in Government of Andhra Pradesh and another Vs. Syed Akbar, and submit that in the

districts falling in Telangana area to which the Telangana Act is made applicable, the land owners of surplus acquired land have been given right.

Therefore, it is proposed to deal with this argument separately.

23. S.M. Yahya Quadri case (supra) arose out of a second appeal u/s 100 CPC. The question there was whether the property, which was

acquired, is required to be re-conveyed by the District Collector. The learned single Judge adverted to Section 54-A of the Telangana Act and

considered the scope of the expression "no longer required" for public benefit used in Section 54-A. The learned Judge held that the expression

"no longer required" can only mean that when once the public benefit for which the land acquired ceases after a reasonable time, the Government

or the authority acquiring the land has to transfer the patta to the person from whom it was acquired. Therefore, the crucial test for the purpose of

Section 54-A is whether the public purpose for which the land was acquired is ceased or not. The fulfilment of this depends on various

circumstances depending on the public purpose for which the land is acquired. For instance, if the land is acquired for construction of a school

building, after completion of the school building it cannot be said that public purpose has ceased. The land may have been acquired for the school

building keeping in view the future requirements as well as for providing a playground or a park etc. Therefore, as long as the school is continued it

can never be said that public purpose has ceased. Likewise, if the land is acquired for irrigation canal, the public purpose is perpetual as there is no

element of public purpose coming to an end after digging a canal. Logically, the same applies in respect of the land acquired for a multipurpose

river project. The Nagarjunasagar Project is intended to be permanent and perpetual. Therefore, it can never be said that after completion of the

main dam, its irrigation system, construction of colonies, offices etc., public purpose has ceased. Applying the test in Syed Yahya Quadri"s case

(supra) it can never be said that after a period of 30 years, the public purpose, to wit, construction of Nagarjunasagar Project, has ceased. Putting

the land to use or not to use for the present or in future cannot be a relevant consideration for the purpose of Section 54-A of the Telangana Act.

24. The learned Counsel for the petitioners placed strong reliance on the judgment of Division Bench in Syed Akbar''s case (supra). It is however

brought to the notice of the Court by the learned Government Pleader Sri P. Raja Gopala Rao that the Government preferred a SLP against the

judgment of the Division Bench. Be that as it may, the principle applied by the Division Bench is one laid down by the learned single Judge in

Yahya Quadri''s case (supra). Indeed, the Division Bench also held that the action of the District Collector in not re-conveying the surplus land is

contrary to BSO 90(32) and Section 54-A of the Telangana Act, as interpreted by the learned single Judge in Yahya Quadri''s case, is illegal.

Therefore, the crucial test as already mentioned is whether the public purpose for which the land is acquired ceased. In view of the finding

recorded by me that when the land is acquired for multipurpose river project the question of public purpose ceasing does not arise it has to be held

that land may be required for various other purposes relating to NSP or other purposes.

25. In WA No.1626 of 1999 dated 18-11-1999 a Division Bench of this Court considered the scope of Section 54-A of the Telangana Act. The

following observations of the Division Bench are apposite :

The question of preferential right of the land owners to have pattas over the acquired land arises (1) If the acquired land is an agricultural or

pasture land; (2) If the acquired land is no longer required for any public purpose and (3) If the State has taken a decision to give the acquired land

on patta.

Since the State has taken a stand that they have not taken any decision to give the acquired land on patta to any person, and that they have not

taken any decision that the acquired land is no longer required for public benefit, the question of the appellants having preferential right for

consideration for allotment of the land in their favour in terms of Section 54-A of the Land Revenue Act, does not arises. Nothing has been pointed

out or placed on record for this Court to infer that the acquired land is no longer required for public benefit or that the State has taken a decision to

give the acquired land on patta to any other person.

26. In view of the Division Bench judgment of this Court in WA No.1626 of 1999 the interpretation of the expression ''no more required for public

benefit'' in the judgment of the learned single Judge in Yahya Quadri''s case cannot be considered to be correct law. It may be noticed that in

Yahya Quadri''s case (supra), B.K. Somasekhara, J., held that if the land after reasonable time is not used, the public benefit ceases whereas the

Division Bench held that the discretion to decide whether the land is no longer required for public benefit or not ultimately rests with the

Government. In any event, in view of my holding that the public benefit shall never cease to exist in case of acquisition for a river project, Section

54-A of the Telangana Act has no application.

27. Sri Satyam Reddy, representing Sri Rajammalla Reddy, learned Counsel for the petitioner in WP No.21539 of 1994 relied on Memo

No.49038/NSP/I(2)/91-5, dated 10-3-1993 and submits that the Government have taken a decision to re-convey the balance of surplus lands in

Burhanpuram, Danavaigudem and Mallemadugu villages and, therefore, the petitioners are entitled for re-conveyance of the lands. Refuting the

same, the learned Government Pleader relied on G.O. Ms. No.189, Irrigation and CAD (Projects Wing - NSP) Department dated 14-10-1997

and submits that all the Government decisions communicated in Memos dated 10-3-1993 and 29-1-1997 were reconsidered in the said

Government orders and they were withdrawn. A copy of the Government order is placed before this Court which shows that the Government

withdrew the Memos dated 10-3-1993 and 29-1-1997 by which the Government had ordered to hand over balance surplus lands to original land

owners. Hence, it should be held that there is no decision of the Government that the lands are no more required for any public benefit.

28. The other aspect of the matter is that Section 54-A of the Telangana Act is applicable only in respect of agricultural and pasture lands acquired

for public purpose. The petitioner does not explain it as to how the land acquired in 1969 and 1970 for the purpose of NSP continued to be

agricultural and pasture lands. Indeed, in some of these cases the petitioner"s land was acquired in Khammam District. Those lands are within

urban limits of the town. In my considered opinion, when once the agricultural land is acquired for any non-agricultural purpose for being used to

any public benefit the same by law shall be deemed to have lost its character of being agricultural or pasture land and Section 54-A of the

Telangana Act is not applicable to such land. For instance, if the land is acquired for construction of school building or industry or for providing

housing colony and if any part of the land is not utilised for the said purpose, can it be said that still the surplus land continues to be agricultural

land? Such interpretation of treating unutilised agricultural land as agricultural land would be contrary to the very spirit of Chapter-V, especially

Sections 54 and 54-A of the Telangana Act as well as the Land Acquisition Act.

29. The learned Counsel for the petitioners lastly submitted that all the petitioners own small extents of lands, which were acquired for NSP or for

project related works. As per the Rules they are also landless poor persons and they are entitled for assignment of the lands. Sri Kameswara Rao

has relied on Rules III and IV of the Rules. These Rules provide that the lands at the disposal of the Government may be assigned only to landless

poor persons owning less than one acre of wetland or less than five acres of dry land. However, a finding cannot be recorded on this issue, for the

material placed before this Court is not sufficient to record a finding that the petitioners are landless poor persons for the purpose of the Rules

issued in G.O. Ms No. 1406, dated 25-7-1958.

30. In all these cases the lands were acquired pursuant Notification issued u/s 4(1) of the Act in 1957, 1958, 1968 and awards were passed in

1969 and 1970. In some of the cases the petitioners approached the authorities claiming reconveyance of the lands after long lapse of time. As

held by the Supreme Court in Padma''s case after a long lapse of 32 years writ petitions seeking direction for reconveyance of the acquired lands

cannot be entertained. It would be grossly public interest to issue any mandamus as claimed by the petitioners.

31. In the result, the writ petitions fail and are accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.