
Gonguluri Srinivasa Sharma and Another Vs The Government of A.P. and Others

Writ Petition No. 28883 of 2011

Court: Andhra Pradesh High Court

Date of Decision: July 30, 2012

Acts Referred:

Land Acquisition Act, 1894 & Section 4(1) Urban Land (Ceiling and Regulation) Act, 1976 & Section 10, 10(1), 10(3), 10(5), 10(6)

Citation: (2013) 1 ALT 432

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: P. Sri Raghuram, for the Appellant; Y. Ravindra Counsel for the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Honourable Sri Justice L. Narasimha Reddy

1. The land admeasuring about Acs.25.00 in different Survey Numbers of Bhagyath Village, Uppal Mandal, Ranga Reddy District was owned by

one Mr. Gonguluri Ramakishtaiah, the grand father of the petitioners herein. He filed a declaration u/s 6 of the Urban Land (Ceiling and Regulation)

Act, 1976 (for short "the Act"). When the declaration was under process, Ramakishtaiah died on 08.01.1991. Obviously not being aware of the

death of the declarant, the Special Officer and Competent Authority, 2nd respondent herein passed an order dated 25.02.1991 holding that the

declarant possesses the land in excess of ceiling limits. The petitioners state that they succeeded to the estate of Ramakishtaiah. The Government

issued notification u/s 4(1) of the Land Acquisition Act on 05.07.2006 proposing to acquire the land admeasuring Ac.4.25 guntas in Survey Nos.

326 and 329. Declaration u/s 6 of that Act was also issued. The petitioners participated in the award of enquiry and made claim for payment of

compensation. At that stage, the 2nd respondent issued proceedings dated 05.02.2008 u/s 10(6) of the Act directing that the land to an extent of

90,647.35 square meters situated in various survey numbers including the one in Survey Nos. 326 and 329 admeasuring Ac.4.25 guntas vested in

the Government, on the ground that no representation was received in reply to the notice dated 03.01.2008 issued u/s 10(5) of the Act. The result

thereof is that the petitioners were denied compensation for the land. Hence, this writ petition.

2. The petitioners contend that all the orders passed by the 2nd respondent be it u/s 8(4) of the Act or under different sub-sections of Section 10

of the Act are subsequent to the death of the declarant and that proceedings are void abinitio. It is also stated that the 2nd respondent was aware

of the death of the declarant and still he proceeded to pass the impugned order only with a view to deprive the petitioners of their right to receive

the compensation.

3. The 2nd respondent filed a counter affidavit. He has narrated the stages, which the declaration submitted by Ramakishtaiah has undergone. It is

stated that when steps were taken in January 2008, for service and publication of notices under different sub-sections of Section 10 of the Act, the

enquiry officer reported on 05.02.2008 that the declarant viz., Mr. Rama Kistaiah died. It is also stated that the impugned order was passed on

the same day, authorizing the enquiry officer to take possession of the land.

4. Heard learned counsel for the petitioners and learned counsel for the respondents.

5. The petitioners feel aggrieved by the order, dated 05.02.2008 passed by the 2nd respondent u/s 10(6) of the Act. The said order happens to

be, almost the final step in the context of vesting of surplus land under the Act, in the Government.

6. The basis for issuance of the order u/s 10(6) of the Act is the order, dated 25.02.1991 passed u/s 8(4) of the Act. 17 years after that, the 2nd

respondent has resumed the proceedings. In between, the Government initiated steps for acquisition of Ac.4.25 guntas, which constitutes part of

land, declared as excess.

7. The Act was repealed in the year 2008. The repealed Act provided for abatement of the proceedings initiated under the Act, except in cases,

where the land vested in the Government u/s 10(6) of the Act. Efforts were made by the Special Officers obviously under the instructions of the

Government, to ensure that the orders u/s 10(6) of the Act are passed, wherever it is possible, before the repealing Act came into force.

8. It has already been mentioned that Rama Kishtaiah died on 08.01.1991 but the order u/s 8(4) of the Act was passed on 25.02.1991 in his

name. Therefore, the said order itself is a nullity. Assuming that the order dated 25.02.1991 passed u/s 8(4) of the Act remained unchallenged, the

2nd respondent could have taken further steps only after the legal representatives of the deceased declarant are brought on record. Further, it is

not as if the 2nd respondent was not aware of the death of the declarant, by the time he passed the impugned order. It is relevant to take note of

the averments in the counter affidavit filed by the 2nd respondent, which read:

I submit that Subsequently Notices u/s 10(1), 10(3) and also notice u/s 10(5) were issued on 03.01.2008. The Enquiry Officer has reported on

05.02.08 that the declarant Sri M. Rama Kistaiah was said to have died and the where abouts of the LRs are not known. The order u/s 10(6) of

the act was passed on 05.02.08, authorizing the Enquiry Officer to take over possession of the surplus land and hand over the same to the MRO,

concerned. It is not correct to say that the orders u/s 10(6) of the act was passed without notice to the declarants.

9. From this, it is clear that the 2nd respondent was aware of the death of the declarant on 05.02.2008 itself. Still, he has chosen to pass the

impugned order on the same day, without making any effort to bring the legal representatives of the declarant on record. The entire proceedings

under the Act vis-à-vis the land of the petitioners lapsed by operation of law.

10. Therefore, the writ petition is allowed and the impugned order is set aside. The miscellaneous petition filed in this writ petition also stands

disposed of. There shall be no order as to costs.