

(2012) 2 ALD 23 : (2012) 2 ALT 1

Andhra Pradesh High Court

Case No: Writ Petition No. 31652 of 2011

Uttam Chand Jain and
others

APPELLANT

Vs

Government of Andhra
Pradesh and others

RESPONDENT

Date of Decision: Dec. 15, 2011

Acts Referred:

Constitution of India, 1950 – Article 258(1), 258(2), 298, 73(1) # Land Acquisition Act, 1894 – Section 11, 2, 3, 4, 4(1)

Citation: (2012) 2 ALD 23 : (2012) 2 ALT 1

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: C. Raghu, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Hon'ble Mr Justice C.V. Nagarjuna Reddy

1. By notification, dated 16.09.2011, issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act"), the Principal Secretary to the

Government, Revenue (LA) Department, Government of Andhra Pradesh, notified certain lands for acquisition in connection with SVP National

Police Academy. An extent of Acs.11.03 guntas in Survey No.22(P) is also included in the said notification. The petitioners, who are the owners

of the said land, filed the present writ petition questioning this notification on the ground that the State Government has no power or authority to

issue the said notification in purported delegated power made by respondent No.3.

2. At the hearing, Sri C.Raghu, learned counsel for the petitioners, submitted that the State Government has traced the source of its power to

SO.782(E), dated 25.10.1985, of the Union of India, issued in exercise of its power under Article 258(1) of the Constitution of India, where

under it has delegated its power of acquisition of the lands needed for the Union of India to the Government of Andhra Pradesh. The learned

counsel submitted that Article 258(1) of the Constitution of India empowers the President with the consent of the Governor of a State to entrust

either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the

Union extends. The learned counsel contended that this power of delegation cannot be exercised in relation to the statutory power and that as the

acquisition of the land can be made only through exercise of statutory power, the same is not comprehended by the provisions of Article 258(1) of

the Constitution of India.

3. Opposing the above submissions, the learned Government Pleader for Land Acquisition submitted that the above contention of the learned

counsel for the petitioners is no longer res integra. He has placed reliance on the Constitution Bench Judgment of the Supreme Court in Jayantilal

Amrit Lal Shodhan Vs. F.N. Rana and Others,

4. I have carefully considered the above submissions of the learned counsel for the parties.

5. The same issue which is raised in this writ petition fell for consideration of the Supreme Court in the above cited Constitution Bench Judgment.

In the case before the Supreme Court, the power of the Union Government for acquisition of the lands was delegated to the Commissioners of

Divisions of the State of Bombay. The said action of the Government of India was questioned on the same plea as raised in the present writ

petition. While repelling this plea, the Supreme Court in paragraphs-15 and 16 of the judgment held as under:

We are in this appeal not concerned to ascertain whether the exercise of powers entrusted to the State or its officers has the force of law. We are

directly concerned with the nature of the power exercised by the President under Article 258(1) entrusting functions to the State or its officers. The

President is indisputably the executive head of the Union, but it cannot be assumed on that account that the exercise of power by him under Article

258(1) cannot have the effect of law within the meaning of Section 87 of the Bombay Reorganisation Act. By the notification dated July 24, 1959,

issued by the President, power was entrusted to the Commissioner, Baroda Division, in respect of matters relating to acquisition of land under the

Land Acquisition Act, 1894. By item 42 List III, the subject of acquisition of property falls within the Concurrent List and the Union Parliament has

power to legislate in respect of acquisition of property for the purpose of the Union, and by virtue of Article 73(1)(a) the executive power of the

Union extends to the acquisition of property for the Union. By Article 298 of the Constitution the executive power of the Union extends to the

carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The

expression ""acquisition, holding and disposal of property"" would, in our judgment, include compulsory acquisition of property. That is a provision in

the Constitution which within the meaning of the proviso to Article 73(1) expressly provides that the Parliament may acquire property for the Union

and consequently executive power of the Union in relation to compulsory acquisition of property is saved thereby, power of the State to acquire

land notwithstanding.

In this background we may consider the effect of the Presidential notification. It cannot be and has not been denied that it was open to the

Legislature by making an express provision in the Act to entrust the functions of the Central Government that is to confer powers and impose

duties under Article 258(2) in relation to matters under Sections. 4, 5A, 7, 9 and 11 and related sections to Commissioners of Divisions in the

State. Such entrustment of power would not be open to challenge on the ground that it was unauthorised. If entrusted by enactment, it would have

the force of law. It was open to the Parliament by appropriate legislation incorporated in the Land Acquisition Act or otherwise to provide that the

power to issue notifications u/s 4 and 6 of the Land Acquisition Act, and to appoint the Collector, be exercised by an officer to be named by the

appropriate Government. Issue of a notification by the appropriate Government designating the officer to exercise the powers would

unquestionably have the force of law, within the meaning of Section 2(d) . Instead of making detailed provisions and cataloguing the entrustment of

functions in the different statutes which may be entrusted to the authorities of the State by the exercise of legislative power, the Constitution has

invested the President with authority to entrust the functions to the Government of the State or their officers. The effect of Article 258(1) is merely

to make a blanket provision enabling the President by notification to exercise the power which the Legislature could exercise by legislation, to

entrust functions to the officers to be specified in that behalf by the President and subject to the conditions prescribed thereby. By the entrustment

of powers under the statute, the notification merely authorises the State or an officer of the State in the circumstances and within the limits

prescribed to exercise the specified functions. Effect of the Presidential notification is that, wherever the expression ""appropriate Government

occurs in the Act in relation to provisions for acquisition of land for the purposes of the Union, the words ""appropriate Government or the

Commissioner of the Division having territorial jurisdiction over the area in which the land is situate"", were deemed to be substituted. In other

words, by the issue of the Presidential notification, the Land Acquisition Act must be deemed pro tanto amended. It would be difficult to regard

such an amendment as not having the force of law.

(Emphasis supplied)

6. The learned counsel for the petitioner sought to make a distinction between the case before the Supreme Court and the present one by stating

that in the former case, the Government of India has delegated its power to the individual functionaries of the State Government, while in the

present case the power appears to have been delegated to the State Government itself. The learned counsel submitted that since Section 3(ee) of

the Act defined the appropriate government as the State or the Central Government, as the case may be, if the Central Government intends to

delegate its power, it can only do so by the individual functionaries of the State Government, but not the State Government. I do not find any merit

in this submission. The Supreme Court has not drawn any distinction between an individual functionary and the State Government in the matter of

delegation. Article 258(1) of the Constitution of India empowers the President to delegate the executive power of the Union either to the State

Government or to its Officers. Therefore, the distinction sought to be made by the learned counsel for the petitioner has no basis at all. As the

discretion is vested by the Constitution for delegating the power of the Union, such discretion cannot be scuttled by a narrow interpretation of the

provision of Constitution or that of the Act.

7. For the above-mentioned reasons, I do not find any merit in this writ petition and the same is accordingly dismissed.

8. As a sequel to dismissal of the writ petition, W.P.M.P.No.39280 of 2011 is disposed of as infructuous.