

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

+ WRIT PETITION No.17984 OF 2017

% 25.07.2017

Between:

Bala Balaji Srinivasa Estates Private Limited
Rep. by its Director, Mallina Seshagiri Rao

...Petitioner

AND

Union of India, Ministry of Petroleum
And Natural Gas rep.by its Secretary,
New Delhi and others

... Respondents

!Counsel for the petitioners
In both the cases

: Sri G.Venkateswara Rao,

Counsel for Respondents

: G.P.for Land Acquisition,
Sri Kakara Venkata Rao,
Sri Ch.Samson Babu,
Sri B.Narayana Reddy,

< Gist :

> Head Note:

? Cases referred:

1. (2017) 1 ALD 96 (SC)
2. (2013) 1 SCC 403
3. (2016) 7 SCC 499
4. (2013) 8 SCC 99



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.17984 of 2017

ORDER:

Heard Sri G.Venkateswara Rao, the learned counsel for the petitioner and also the learned Asst. Solicitor General for Respondent No.1 and Sri Kakara Venkat Rao, learned Standing Counsel for Respondents 2 to 5 and Sri Ch.Samson Babu, learned counsel for Respondent No.6 and perused the counter affidavit filed by R.6 adopted by Respondents 2 to 5 and rejoinder to the counter and reply filed by them and also the documents placed reliance by the parties and the provisions and propositions and the Writ Petition with supporting affidavit and the application to amend the prayer in the writ petition.

2. The prayer in the original Writ Petition reads as follows:-

“To issue an order, direction or writ, more particularly one in the nature of Writ of Mandamus, declaring the impugned notification S.O.416(E), dated 16.012.2016 published in the Gazette of India No.3045 dated 23.12.2016, for acquiring the petitioner's property in an extent of 0.146 hectares in Sy.No.208 and 0.138 hectares in Sy.Nos.207 (Ac.0.36 in Sy.No.208 and Ac.0.34cents in Sy.No.207 as per the notice dated 11.01.2017) situated at M.Nagulapalli village, Dwaraka Tirumala Mandal, West Godavari District, issued by the official respondent authorities, as arbitrary, illegal, null and void and against norms of public policy and principles of natural justice, and in violation of fundamental rights guaranteed under Article 300 A of Constitution of India and to quash the same and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

The amended prayed as per the CrI.P.M.P.No.27655 of 2017 reads as follows:-

“ to issue an order, direction or writ, more particularly one in the nature of Writ of Mandamus declaring the impugned notification S.O.4161(E),dated 16.12.2016 published in the Gazette of India No.3045 dated 23.12.2016, for acquiring the petitioner's property in an extent of 0.146 hectares in Sy.No.208 and 0.138 hectares in Sy.Nos.207(Ac.0.36 in Sy.No.208 and Ac.0.34 cents in Sy.No.207 as per the notice dated

11.01.2017) situated at M.Nagulapalli village, Dwaraka Tirumala Mandal, West Godavari District, issued by the official respondent authorities and the notification S.O.1137(E), dated 29.03.2017 issued under Section 6 of the Petroleum and Minerals Pipeline(Acquisition of Right of User in Land) Act, 1962(for short, the Act') and the order dated 21.02.2017 passed by the 5th respondent authority, as arbitrary, illegal, null and void and against norms of public policy and principles of natural justice and in violation of fundamental rights guaranteed under Article 300-A of Constitution of India and to quash the same and to pass such other order or orders as this Hon'ble Court deem fit and proper in the inters of justice."

3. Despite opposed by the respective respondents to the writ petition, the amendment is allowed to subserve the ends of justice.

4. The issues involved in the Writ Petition are:-

1. Whether public interest is different to public purpose?

2. Whether there is compliance with the statutory requirement of Section 5 and 6 of the Act, including by personal hearing pursuant to Section 3 of Publication of the notification for the acquisition intended?

3. Whether there is any change of alignment, as raised in the reply affidavit of the petitioner as additional ground though not originally covered in the Writ Petition averments?

4. Whether the laying of the pipeline is redundant, unnecessary from nearby existing pipeline from which gas can be drawn to meet the purpose by R.3 to R.6?

Coming to the first aspect as to impugment of the very notification, Section 3 of the Act, reads as follows:-

3. Publication of notification for acquisition.

(1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum² or any mineral] from one locality to another locality pipelines may be laid by that Government or by any State Government or a corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.

(2) Every notification under sub- section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

5. The learned counsel for the petitioner, in support of the contention of the proposed acquisition is not for public purpose, placed reliance on the expression of the Apex Court in *Kedarnath Yadav Vs. State of West Bengal*¹ where at para-50, in answering, considered the points covering the first point as to acquisition covered is for a public purpose or its company TML (Tata Motors Limited). In fact Section 3 of the Land Acquisition Act, 1894 (for short, 'the L.A. Act') used the word 'public purpose' more particularly from Section 3(f) of the L.A. Act, it is in that context held with reference to the right of the land owner pursuant to Section 4(1) of notification, before Section 6 declaration, to file objections under Section 5(A)(2) of the L.A. Act, and observed that the enquiry contemplated by Section 5(A)(2) of the L.A. Act, is not an empty formality apart from the purpose to a company recorded as public purpose.

6. Even from the expression of the Apex Court placed reliance in *Surinder Singh Brar Vs. Union of India*² particularly from para-76, it is also laid down the same analogy with reference to the requirement of the compliance of Section 5(A) of the L.A. Act, 1894. Here as referred supra from Section 3(1) of the Act, 1962, the acquisition is not for a public purpose meant by the provisions of the Act. What is worded is whether it appears to the Central Government that is the necessary in the public

¹ (2017) 1 ALD 96 (SC)

² 2013(1) SCC 403

interest declare its intention to acquire the right of user therein. 'Public interest' is entirely different from 'public purpose' and a combined reading of the two expressions supra and other recent expressions of the Apex Court in *Laljiibhai Kadvabhai Savaliya Vs. State of Gujarat*³ the Act, 1962 is crystal clear.

7. Keeping this in mind, coming to the very notification impugned concerned, to consider whether it is in the 'public interest' or not, the very distribution of the gas by the 3rd respondent (GAIL (India) Limited on behalf of the 2nd respondent (Andhra Pradesh Gas Distribution Corporation Ltd.), throughout the State is in the 'public interest' not only to serve the gas to the Domestic consumers so far as LPG concerned. Here it is the natural gas particularly to meet the interest and other purpose in general. Apart from the gas in particular in relation to the supply to the 6th respondent (M/s Sentini Sanitaryware Private Ltd.), such purpose cannot be considered as not at all in public interest. Thus, there is nothing to interfere with the proposed notification concerned.

8. Now coming to consideration of the objections to Section 3(1) notification contemplated by hearing of objections under Section 5, though it is not para-materia but for a little bit change in the phraseology to Section 5(A) of the Act, 1894, from the very wording of Section 5 of the Act, 1962, it is necessary to reproduce the same which reads as follows:-

5. Hearing of objections.

³ 2016 7 SCC 499

(1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-section (1) of section 3, object to the laying of the pipelines under the land.

(2) Every objection under sub- section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

(3) Any order made by the competent authority under sub- section (2) shall be final.

9. From the above Section 5(2) of supra, it contemplates that the competent authority in writing shall set out the grounds thereof and shall give objector an opportunity of being heard either in person or by legal practitioner and may, after hearing all such objections and after making such further inquiry if any, thinks necessary, by order either allow or disallow the objections.

10. Coming to the present case, the objections raised are regarding the alignment in particular. Apart from the other contention of the land purchased by the petitioner as mentioned in the petition mainly meant to shift the poultry farm of him existing somewhere into the land in question. The existing poultry farm is shown in Sy.No.202 or part of it and the land from which the pipeline is running is in Sy.Nos.205 and 208. In fact, the authority competent to hear the objections, issued notice to appear in person and or through an advocate and the petitioner filed objections and had he appeared in person and not heard and even no further date of hearing given, there is something in

saying no proper opportunity given. Here he did not appear even on the date fixed but for sending his objections. No doubt, enquiry contemplated in Section 5(A) of the Act, 1894 or the enquiry contemplated in Section 5(2) of the Act, 1962 are not the empty formalities. It is with some purpose or object when taking away the constitutional right of the ownership of the land in question to consider whether the public interest or public purpose outweigh individual right, as the case may be.

11. Keeping this object in mind, coming to the objections in question, the competent authority for acquisition in fact, called for a report of ground reality and the Tahasildar in question submitted the report. The contention of the petitioner by placing reliance on the expression of the Apex Court in *Women's Education Trust Vs. State of Haryana*⁴ is that the acquisition authority has no right to delegate the power of the inquiry contemplated by Section 5 from the analogy of the expression concerned. Here calling for a report is different from considering the objections and the acquisition authority did not delegate the power of hearing of objections and decide the matter in question thereby the principle laid down in the judgment has no application to the facts in question.

12. So far as the purpose sought for poultry farm concerned, undisputedly there is no any application for conversion of the agricultural land into non-agricultural purpose. It is not a case of very recently purchased but long back

⁴ 2013 8 SCC 99

undisputedly from the very writ petition affidavit averments and objections filed in the inquiry contemplated u/ Sec.5(2) to Section 2(1) notification.

13. Having regard to the above, there is nothing even to show but for set up as a ruse to prevent acquisition of the so called poultry purpose that was thereby rightly rejected with reference to the report speaking on ground reality.

14. Coming to the change of alignment, the record shows the objections are rejected and the rejection order in fact is a brief one, dated 21.02.2017, speaks by informing to the petitioner that the APGDCL(R.3) verified the request or objection regarding the alignment and the officers conducted inspection on 07.02.2017 and decided that change of alignment of the pipeline is not possible, hence the request is rejected. It clearly speaks the overruling of the objection and counter affidavit of the R.3 for R.2 to 5 also speaks that there is a expert's detailed report which is called for as a policy decision as non-viability of change of alignment as the decision taken in rejecting the objections. Once such is the case, it cannot be said that the rejection of objection is made as empty formality without application of mind and without reasons that are supposed to be given. Further so far as other objections concerned to the subsequent notification u/ Sec.6 of the Act, 1962 impugned herein, Section 6(1) of the Act, speaks as follows:-

6. Declaration of acquisition of right of user.— (1) Where no objections under subsection (1) of section 5 have been made to the

competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, 1*[either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government] and upon receipt of such report the Central Government shall 2*[, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral,] declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired 2*[and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section].

15. From this, no doubt it speaks about the report to the Central Government recommending the proposed acquisition before the declaration in question of the intended acquisition. The Section 6 of the L.A. Act, 1984 also para-materia to Section 6 of the Act, 1962 and if not similar to Section 3(d) of the Act, 48 of 1956 with reference to Section 3(f) of the L.A. Act. Here, on perusal of the record shows there a report also submitted to the Central Government from which the decision taken and a draft declaration is given.

16. Once such is the case, there is nothing to interfere with the Section 6 declaration. Apart from it, the G.O.Ms. No.2 dated 28.02.2001 speaks that laying of the pipeline is not confined to one person but to serve the purpose of the entire district in question, it is only for the purpose of the district in public interest and not only to the local gas distribution agency said pipeline proposed to be laid and it is the submission by R.3 that the license is given by the Petroleum and Natural Gas Regulatory

Board for the purpose of distribution of gas to the East and West Godavari districts through pipelines and it is the submission therefrom with reference to the G.O.Ms. No.2 that it is not only confined to the present purpose, but also to meet future requirements of the distribution meant for, to say as part of the public interest.

17. No doubt, there is a Central Government order S.O. 2368(E) of the Ministry of Rural Development dated 28.08.2015 which speaks with reference to Section 105(3) of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'RFCTLARR Act') Act 30 of 2013 and Schedule 4 of the State Act 30 of 2013 of the 13 enactments covered in the Schedule-4 for any of those to include the Central Government shall issue notification to apply some of the provisions of the Act, 30 of 2013. The notification issued is by extending benefits of the Act 30 of 2013 in relation to determination of compensation in accordance with the Schedule-1 of Act 30 of 2017. This aspect is no doubt not considered in fixing the compensation including from the pleadings of the respondents covered by their counter affidavits or the additional counter affidavits, as the case may be, that is required to be taken into consideration, if necessary by passing supplementary award/ order fixing compensation in the form of an award. Subject to that and with any further right, if at all aggrieved, from the statutory provision covered by the Act 50 of 1962 of right to approach the District Judge by the petitioner against the quantum of

compensation fixed if not willing to accept under Section 10(2) of the Act, the writ petition can be disposed of.

18. Accordingly and in the result, the Writ Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 25.07.2017

Note: L.R copy to be marked.
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