

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
For the State of Telangana and the State of Andhra Pradesh

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 7491 OF 2017

Between:

Pamidi Naga Raju.

...Petitioner

And

The State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue Department,
Secretariat Buildings, Hyderabad.

... Respondents

Date of Judgment pronounced: 03.04.2017

Submitted for Approval:

The Hon'ble Sri Justice A.Rajasheker Reddy

1. Whether Reporters of Local newspapers
May be allowed to see the Judgments?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals

Yes/No

3. Whether His Lordship wish to see the fair
Copy of the Judgment?

Yes/No

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ WRIT PETITION No.7491 of 2017

% Dated 03.04.2017

Pamidi Naga Raju

... PETITIONER

VERSUS

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue Department,
Secretariat Buildings, Hyderabad.

...RESPONDENTS

! Counsel for the Petitioner: Sri P.V.N.Kiran Kumar

**^ Counsel for the Respondents: learned Government
Pleader for Revenue for R1
& R2, R4 and R5.**

**Learned Government
Pleader for Home for R3.**

> HEAD NOTE:

? Cases referred

¹ 2016 (1) ALT 550 (F.B)

² (2016) 11 Supreme Court Cases 31

³ 2013 (1) SCC 353

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**WRIT PETITION No.7491 OF 2017****ORDER:**

It is an unfortunate case where petitioner was made to run from pillar to post for protecting his property to an extent of Ac.0.70 cents in Survey No.83/2 of Pedanandipadu Village and Mandal, Guntur District, which he purchased through registered sale deed dated 10.03.1998. Originally, the subject land was allotted to Sri Sanka Seetharamaiah under freedom fighters quota on 25.03.1952, and he was in possession of the subject land till his demise. After his demise the petitioner purchased the subject land from his son and has been in possession and enjoyment of the same without any interference. While so, in the year 1998, when the 3rd respondent illegally encroached into the subject land, the petitioner filed OS.No.129 of 1998 on the file of Prl.Junior Civil Judge, Bapatla, Guntur Distict seeking permanent injunction against the respondents 1 to 3 and 5 and also the A.P.State Housing Corporation from interfering with the petitioner's possession over the subject land. Though injunction was granted in favour of petitioner restraining the respondents from interfering with his possession and enjoyment over the subject land, the respondents completed the construction of police station in 4 ½ cents of the subject land. When the petitioner resisted the highhanded action of the respondents, they implicated the

petitioner in false criminal cases and remanded the petitioner into judicial custody. As the 3rd respondent has started construction by violating the order of temporary injunction, the petitioner was constrained to amend the plaint and sought relief of declaration of title as well as recovery of possession and the respondents 2 and 3 have contested the said suit and after full fledged trial the suit in OS.No.129 of 1998 was decreed in favour of petitioner vide Judgment and Decree dated 23.02.2004. Challenging the same, the respondents 1 to 3 and 5 filed appeal in AS.No.17/2004 and the same was dismissed vide Judgment and Decree dated 04.04.2009. Against the same the respondents filed Second Appeal No.80/2010 before this Court and the same was also dismissed vide Judgment and Decree dated 07.07.2010. while dismissing the second appeal this Court was pleased to suspend the execution proceedings for six months and given liberty to the respondents to initiate land acquisition proceedings for the subject land. Basing on the said Judgment in the second appeal, the 2nd respondent issued Land Acquisition Notification in RC.No.4778/2010/G1, dated 01.01.2011, under Section 4(1) of the Land Acquisition Act, 1894. In pursuance of the notice issued under Section 5 A of the Act, the petitioner submitted objection under Section 5 A of the Act to the 2nd respondent. But, the 2nd respondent without considering the said objections published draft declaration under Section 6 of the Act. Aggrieved by the same,

the petitioner filed WP.No.5672/2012 seeking to set aside the notification issued under Section 4(1) of the Act, 1894 and the same was allowed vide order dated 21.03.2012. Aggrieved by the same, the 2nd respondent filed WA.No.914/2013 and the same was also dismissed vide order dated 21.06.2013. Thereafter, the 2nd respondent filed Review Petition in Writ Appeal SR.No.101496/2013 and the same was dismissed by this Court vide order dated 03.07.2013. While dismissing the same, this Court granted liberty to the 2nd respondent to file Review petition in WP.No.5975/2012. Thereafter, the 2nd respondent has filed Review WP.MP.No.2292/2014 in WP.No.5975/2012 and this Court dismissed the same vide order dated 09.11.2016. During pendency of the writ petition referred to supra, when the police, Pedanandipadu tried to raise further construction in the subject land, the petitioner filed WP.No.6514/2013 and this Court vide order dated 05.03.2013 granted interim order directing the 2nd respondent not to raise any further constructions and also not to interfere in the balance extent of land i.e. 65 ½ cents and also not to meddle with the subject land. While the things stood thus, the 2nd respondent has started dumping the construction material in the subject land and was taking steps for construction of buildings. Aggrieved by the same, the petitioner was constrained to issue contempt notice dated 29.01.2017 to the 3rd respondent and two others. In spite of the petitioner succeeding in Second Appeal and writ petitions

stated supra and also interim order in another writ petition, the respondents have included the subject property in the list of prohibited properties made under Section 22 A (1) (b) of the Registration Act, 1908. Aggrieved by the same, present writ petition is filed.

2. The 4th respondent filed counter affidavit stating that as per RSR of 1919, the land in Survey No.83/2 of Pedanandipadu Village, admeasuring Ac.0.70 cents was classified as Vagu (Vogeru Vagu), that due to frequent floods the land was covered with silt (clay); and that potter community had been using the clay in the land for manufacturing of the pots. Subsequently, the aforesaid land was classified as Assessed Waste Dry and popularly known as 'Kummarikunta' and that the Tahasildar, Ponnur vide his proceedings in R.Dis.No.3118/79/A3, dated 07.05.1983 had allotted the said land to the Police Department and the possession of the land was delivered to Inspector of Police, Ponnur on 08.05.1983. Later, the A.P.State Police Housing Corporation Limited had constructed police station in the said land. It is admitted that petitioner has filed OS.No.129/1998 for declaration of title and for mandatory injunction for removal of the constructions made in the subject land which was decreed in favour of petitioner and confirmed in Second Appeal No.80/2010. It is also admitted that the land acquisition proceedings initiated in respect of the subject land

were quashed. It is further stated in the counter that in view of the orders passed in Second Appeal No.80/2010, steps will be taken to delete the subject land in Survey No.83/2 admeasuring an extent of Ac.0.70, from the list of prohibited properties prepared under Section 22-A (1) (b) of the Registration Act.

3. Heard learned counsel for the petitioner.

4. Learned Assistant Government Pleader for Revenue reiterated the contentions raised in the counter affidavit.

The facts narrated above go to show that the highhandedness of the respondents and classic example of harassment of citizens by the authorities and depriving the citizens of property rights guaranteed under Article 300-A of the Constitution of India. The petitioner was made to file civil suit in OS No.129 of 1998 for declaration of title and inspite of injunction in his favour, the respondents who are the protectors of people's property, violated injunction orders passed by this Court and constructed the police station. Though the petitioner succeeded up to this Court in S.A.No.80 of 2010, liberty was granted to the respondents by this Court for acquisition of lands in respect of land where construction of police station is made, but when respondents sought to acquire the entire subject land, when challenged by the petitioner, the same was quashed in WP.No.5672/2012.

Aggrieved by the same, the 2nd respondent preferred writ appeal in WA.No.914/2013 and the same was dismissed on 21.06.2013. Thereafter the 2nd respondent filed Review Petition in Writ Appeal and the same was also dismissed by this Court and later review in writ petition was also dismissed. Though, petitioner succeeded in civil suit and writ petitions, the respondents once again sought to interfere with the property rights of the petitioner, as such, petitioner filed one more writ petition in WP.No.514/2013 seeking interim direction and this Court vide order dated 05.03.2013 directed the 2nd respondent not to raise any further constructions and also not to interfere in the balance extent of land i.e. 65 ½ cents. In spite of the same, the respondents included the subject properties in the list of properties prohibited under Section 22-A (1) (b) of the Act. The above mentioned facts makes it crystal clear that the subject land is neither acquired nor any compensation is paid and the concurrent findings of competent Civil Courts as well as this Court proves that the petitioner is the owner and possessor of the subject land is not disturbed by any Court of law. The subject land is included in the list of prohibited properties restraining transfer of immovable properties under the A.P.Assigned Lands (Prevention of Transfer) Act, 1976, but in the counter affidavit nowhere, it is stated to whom the subject land was assigned and how it became assigned land attracting the provisions of the said Act. The Full Bench of

this Court in **Vinjamuri Rajagopala Chary v. State of Andhra Pradesh**¹ it is held as follows:

“36....

(xi) Apart from the redressal mechanism, it is also open to an aggrieved person to approach appropriate forum including Civil Court for either seeking appropriate declaration or deletion of his property/land from the list of prohibited properties or for any other appropriate relief.”

In this case, petitioner has already succeeded in Civil litigation against respondents. Under these circumstances, inclusion of subject land in the list of prohibited properties under Section 22-A (1)(b) of the Registration Act, 1908 is illegal, arbitrary and without application of mind and opposed to all canons of law. This shows that the properties of the petitioner were included in the list of prohibited properties, deliberately without reference to the litigation in which he succeeded to which the respondents are parties. This shows the highhanded attitude of the respondents. The respondents on one pretext or the other want to see the petitioner does not enjoy the property rights guaranteed under the Constitution of India. Unless respondents follow due procedure, they cannot resort to this kind of tactics. The subject property was included in the prohibitory list in the impugned proceedings stating it as police quarters, even though the respondents lost the litigation upto this court in S.A.No.80 of 2010. This is a classic example how the respondents want to harass the petitioner by filing criminal cases when petitioner want to

¹ 2016 (1) ALT 550 (F.B)

protect his properties. This kind of action of respondents is highly condemnable. Even, after filing of writ petition also the respondents have not deleted the subject property from the list of prohibited properties. Only an averment is made in the counter that steps will be taken to delete the subject land in Survey No.83/2 admeasuring an extent of Ac.0.70 from the list of prohibited properties prepared under Section 22-A (1) (b) of the Registration Act, 1908.

5. Even in respect of construction of police station and police quarters in respect of subject land, no compensation is paid. While allowing the WP No.5975 of 2012, this Court held as follows:

It is no doubt true that the notification under Section 4(1) of the Act was published within the time stipulated by this Court. Though Section 4(1) of the Act, by itself, does not require service of individual notice to the concerned persons, enabling them to participate in the enquiry under Section 5-A, the practice in vogue, the Rules framed, and the orders issued by the Government from time to time mandate that the notices, proposing enquiry under Section 5-A of the Act must be served. This is so, at least when there is no dispute, as to the identity of the person interested in the land. The respondents are aware that it was the petitioner alone, that has been fighting the litigation for more than a decade.

Even otherwise, once the 1st respondent and the Land Acquisition Officer received the representation dated 06-06-2011, submitted by the petitioner, before the declaration was published under Section 6 of the Act, they were under obligation to conduct enquiry and deal with the objections raised by the petitioner. Failure to refer to that, and to conduct enquiry under Section 5-A of the Act is fatal to the declaration published under Section 6 of the Act.

Hence, the writ petition is partly allowed, and the declaration under Section 6 of the Act, published on 07-01-2012 is set aside. The 1st respondent as well as the Land Acquisition Officer are directed to take into account, the objections raised by the petitioner through his representation dated 06-06-2011, before the declaration under Section 6 of the Act is published. They shall also be given an opportunity of being heard.”

But the respondents have not acquired the subject land till today and no steps were taken for acquisition of the said land.

6. It is pertinent to note that even after the Right to Property ceased to be a fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamount to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in [Article 300A](#) of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. It is well settled law that the right to property is not a fundamental right but still it is a constitutional right and apart from constitutional right, it is also elevated to a human right.

7. In **Lalaram v. Jaipur Development Authority**², the Hon'ble Supreme Court held as follows:

"124. The right to property though no longer a fundamental right is otherwise a zealous possession of which one cannot be divested save by the authority of law as is enjoined by [Article 300A](#) of the Constitution of India. Any callous inaction or apathy of the State and its instrumentalities, in securing just compensation would amount to dereliction of a constitutional duty, justifying issuance of writ of mandamus for appropriate remedial directions.

125. This Court in *Indore Vikas Pradhikaran* (supra) had an occasion to refer to the Declaration of the Rights of Man and the Citizen (dated 26.8.1789) to expound that though earlier, human rights existed to the claim of individuals' right to health, livelihood, shelter and employment etc., these have started gaining a multifaceted approach, so much so that property rights have become integrated within the definition of human rights.

² (2016) 11 Supreme Court Cases 31

126. The right of the owner of a land to receive just compensation, in the context of his claim to access to justice as declared by the International Covenant on Economic, Social and Cultural Rights, had been underlined by this Court in Steel Authority of India Limited (supra).

127. While recognising the power of the State to acquire the land of its citizens, it has been proclaimed in Dev Sharan (supra) that even though the right to property is no longer a fundamental right and was never a natural right, it has to be accepted that without the right to property, other rights become illusory.

129. In summa, the right to property having been elevated to the status of human rights, it is inherent in every individual, and thus has to be venerably acknowledged and can, by no means, be belittled or trivialized by adopting an unconcerned and nonchalant disposition by anyone, far less the State, after compulsorily acquiring his land by invoking an expropriatory legislative mechanism. The judicial mandate of human rights dimension, thus, makes it incumbent on the State to solemnly respond to its constitutional obligation to guarantee that a land looser is adequately compensated. The proposition does not admit of any compromise or laxity.”

8. In **Tukaram Kanna Joshi & others through the Power of Attorney Holder vs. M.I.D.C & others**³, wherein it is held as follows:

6. The appellants were deprived of their immovable property in 1964, when [Article 31](#) of the Constitution was still intact and the right to property was a part of fundamental rights under [Article 19](#) of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in [Article 300-A](#) of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat & Anr.*, AIR 1995 SC 142, it has been held as follows: -

"In other words, [Article 300-A](#) only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under [Article 300-A](#). In other words, if there is no law, there is no deprivation."

7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a

³ 2013 (1) SCC 353

fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension.

In view of the aforesaid facts and circumstances, the writ petition is allowed to the extent of Ac 0.65 ½ cents with exemplary costs of Rs.50,000/- and the Government has to make an enquiry and fix the responsibility on the officer, who has included the subject property in the list of prohibited properties under Section 22-A (1) (b) of the Registration Act. After paying costs to the petitioner the same shall be recovered from the salary of the concerned Officer who included the subject property in the list of prohibited properties under Section 22-A (1)(b) of the Act. If the respondents failed to acquire land to an extent of Ac.0.4 ½ cents out of 70 cents where police station is constructed, within a period of six months, it is open for the petitioner to seek execution of decree dated 07.07.2010 in S.A.No.80 of 2010.

Accordingly, the writ petition is allowed to the extent indicated above, with costs.

As a sequel thereto, miscellaneous applications, if any, pending, shall stand closed.

A.RAJASHEKER REDDY, J

03.04.2017

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