

* THE HONOURABLE SRI JUSTICE M. SEETHARAMA MURTI

+W.P. No.26381 of 2007

%10-10-2018

Kunapureddi Nookamani and others

...petitioner

Vs.

\$ The District Collector, East Godavari District, Kakinada & another

... Respondents

! Counsel for the petitioners: Sri Badana Bhaskara Rao

Counsel for the Respondents: Government Pleader for Land Acquisition

<Gist:

>Head Note:

? Cases referred:

2005 (7) SCC 297
(1980) 2 SCC 471



THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.26381 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ of mandamus declaring the notification, dated 23.05.2006, in Ref.no.G2/ 2452/ 2006, issued by the 1st respondent-District Collector and the consequential proceedings, dated 19.11.2006, in the said reference number, as highly illegal, arbitrary, unjust, improper and against the provisions of the Land Acquisition Act, 1894, & the administrative instructions issued under the said Act and consequently set aside the same.

2. I have heard the submissions of *Sri Badana Bhaskara Rao*, learned counsel appearing for the petitioners; and of the learned Government Pleader for Land Acquisition (AP) appearing for the respondents 1 & 2. I have perused the material record.

3. The case of the petitioners is this: 'They are residents of C.Rayavaram Colony. They are having lands respectively of the extents, viz., Ac.2.00 cents, Ac.1.50 cents and Ac.1.00 cents in Sy.no.51/ 1 of the said village of Eleswaram Mandal. A notification under Section 4(1) of the Land Acquisition Act, 1894, ('the Act', for brevity) was issued by the 1st respondent for the proposed acquisition of the lands of the petitioners. The said notification was published, on 24.05.2006, in the District Extraordinary Gazette no.257/ 2006. The 1st respondent, having invoked Section 17-A of the Act dispensed with the enquiry under Section 5-A of the Act, appointed the 2nd respondent/ Revenue Divisional Officer to perform his functions. Later on, an errata/ correction *vide* reference no.G2/ 2452/ 06, dated 19.11.2006, was issued clarifying the names of the owners and the extents insofar as the land in Sy.no.51/ 1 and the extent insofar the land in Sy.no.51/ 2. Though an enquiry under Section 5-A was dispensed

with, a notice in Form 3 was issued calling the petitioners to attend an enquiry to be held under Section 5-A of the Act. The petitioners filed their objections, on 18.12.2006, requesting to drop the acquisition proceedings and stating that they are small farmers; they solely depend on the income derived from their lands; there are other alternative lands of rich landlords available for acquisition. Thereafter, the 1st respondent passed orders, dated 21.01.2007, rejecting the objections and stating that the acquisition of the lands is inevitable as there are no other lands available for being provided as house sites to the beneficiaries. There is an adjacent land of an extent of Ac.3.50 cents of Palivela Surya Rao in Sy.no.44/ 1. There are also lands of rich landlords and Government Poramboke lands. The said aspects were not considered. The objections were not considered in true spirit and the above said orders were passed mechanically. No land of a small farmer, who possessed land of an extent less than Ac.2.00 cents and who has no other land for the livelihood of his family shall be acquired. Each of the petitioners is having a small extent of land; and, the petitioners are having large families consisting of unmarried daughters; and, they are solely depending upon cultivation of their respective small extents of lands. If the lands of the petitioners are acquired, they will become destitute. The acquisition of lands of the petitioners by the respondents is an unreasonable exercise of statutory power. Lands of small farmers cannot be acquired as per the instructions in the Government Memo no.1287/ C1/ 74-2, dated 31.05.1974, as the Government instructed the Collectors not to acquire the lands of small farmers. The said instructions, which have force of law, are binding on the 1st respondent. The proceedings which were issued contrary to the Government instructions are liable to be quashed. The adjacent lands of rich landlords remained untouched as they are having political affiliations. The substance of the publication under Section 4(1) of the Act is not published in the locality as envisaged under law. Government having noticed that the lands are being acquired even in cases,

where Government land is available for provision as house sites, issued Memo no.1243/ C1/ 77-4, dated 06.04.1977, stating that the acquisition of private lands should be discouraged when Government land, by spending some amount on levelling, can be made available for use as house sites, after making it fit for such use. The Collectors were instructed to first make use of the Government lands before acquisition of private sites for allotment as house sites. As per Government Memo no.7343/ C1-76-4, dated 27.12.1976, the Collectors are requested not to acquire lands of Harizans for the purpose of providing house sites unless, it is inevitable; and, even in such cases, the Collectors are required to seek permission of the Government. The respondents neglected to follow the instructions of the Government, which are binding. No prior permission of the Government was obtained by the respondents. Hence, the impugned proceedings being illegal, arbitrary, unjust, improper & against law are vitiated. Hence, the writ petition is filed.'

4. The case of the respondents, in brief, is this: 'Land of an extent of Ac.4.21 cents in Sy.nos.51/ 1B and 51/ 2A of C.Rayavaram village was proposed for acquisition for providing the said land as house sites to eligible beneficiaries under the 'Indiramma Housing First Phase Programme'. Draft notification under Section 4(1) of the Act was approved by the 1st respondent, on 23.05.2006. Enquiry under Section 5-A was conducted, on 16.12.2006. Objections received were enquired into and remarks were sent to the Collector. The Collector, *vide* his proceedings, dated 21.01.2007, rejected the objections filed by the land holders. The order was communicated to the land owners, on 25.01.2007. The draft declaration was published in the District Gazette, on 09.11.2007. Award enquiry was held, on 03.03.2008. The land owners attended for the said enquiry. Draft award was approved, on 12.03.2008. Award *vide* Award no.1/ 2008, was passed, on 20.06.2008. The amount payable to the owners was kept in revenue deposit *vide* challan

no.10514, dated 18.09.2008. The awardees refused to take notice under Section 12(2) of the Act. The notice was alternatively served. The land acquisition process was completed and compensation amount was kept in revenue deposit, on 21.07.2008. In the meanwhile, land owners filed this writ petition. In the first notification, the land of Palivela Vamana Murthy and of the 2nd and 3rd petitioners was proposed for acquisition. The field enquiry revealed that Palivela Vamana Murthy transferred his land to his daughter, Kunpaureddi Nookamani, the 1st writ petitioner. Hence, an errata draft notification, which was approved, on 19.11.2006, was issued including the land of the 1st petitioner and excluding the name of Palivela Vamana Murthy. The errata notification was published at prominent places in the locality on 27.11.2006. The allegation that the 1st petitioner is not aware of the acquisition of the land is not correct as she is the daughter of the said Vamana Murthy and he transferred his land to her. Even though the petitioners are small farmers, their lands can be acquired for public purpose, as per the decisions of this Court. The respondents have ample power under the Act to invoke urgency clause, when needed. Even though the petitioners belong to SC (Madiga) or other caste, yet, there is no bar to acquire their lands. Hence, the writ petition may be dismissed.

5. On 11.12.2007, this Court *vide* orders in W.P.M.P.no.34404 of 2007, granted interim stay of dispossession of the petitioners from their lands.

6. Learned counsel for the petitioners and the learned Government Pleader for the respondents made submissions in line with the pleadings. I have perused the material record.

7. Admittedly, there is a mistake in the original 4(1) notification published in the Gazette, on 24.05.2006, as regards the mentioning of the name of the 1st petitioner and the extents of the lands in Sy.nos.51/ 1 and 51/ 2. In the original

notification, the name of Palivela Vamana Murthy was mentioned though he alienated the land to his daughter, the 1st writ petitioner. Further, in the original notification, extents of lands in the two Survey Numbers, that is, Sy. nos.51/ 1 & 51/ 2 were wrongly mentioned. According to the respondents, the field enquiry revealed that Palivela Vamana Murthy transferred his land to his daughter, Kunpaureddi Nookamani, the 1st writ petitioner. Hence, an errata draft notification, which was approved, on 19.11.2006, was issued including the name of the 1st petitioner and excluding the name of Palivela Vamana Murthy insofar as the land in Sy.no.51/ 1; and further, by the errata notification, the extents in two survey numbers 51/ 1 & 51/ 2 are corrected respectively from Ac.2.51 cents to Ac.2.74 cents and from Ac.1.71 cents to Ac.1.48 cents. Learned counsel for the petitioners contended that mere issuance of errata notification is not sufficient and that whenever there is a mistake in the original notification, the original notification shall be withdrawn and fresh notification under Section 4(1) of the Act has to be issued and that mere issuance of an errata notification will not cure the defect and that in the case on hand, as a fresh notification under Section 4(1) of the Act was not issued, the acquisition proceedings are vitiated. Per contra, the learned Government Pleader contended that since the errata notification relates back to the date of the original notification, the mere issuance of errata notification to rectify the mistake in the original notification does not affect the acquisition proceedings, and that the errata notification, which clarified the mistakes in the original notification, is sufficient compliance of the provisions of the Act. Though it is possible to accept the contention of the respondents that the errata/ corrigendum notification relates back to the date of original notification, mere issuing a corrigendum is enough or not requires examination. Any notification, be it original or corrigendum, in the considered view of this Court, shall be published through a public notice, which may be affixed at convenient places in the locality; and, it shall also be publicised and made

known by beat of drums and through the local panchayats and patwaries. Further, the original notification and the corrigendum as well, if any, in a given case, shall be published in two daily newspapers having largest circulation in the locality, and, one of such newspapers shall be one being published in the regional language. According to the respondents, errata/corrigendum was publicised in the locality at prominent places, on 27.11.2006. It is not the case of the respondents that the corrigendum or errata notification was published in the newspapers as required under Section 4(1) of the Act. In the decision in J and K Housing Board and Another v. Kunwar Sanjay Krishan Kaul and others [(2011) 10 SCC 714], the Supreme Court, having noted that in that case the corrigendum though was issued on 11.06.2003 for enlarging the area of acquisition, was not published in any newspapers, held that all requirements under Section 4(1) (a), (b) and (c) are mandatory and that the said requirements have to be strictly adhered to and that the conditions as prescribed under Section 4(1) of the Act have not been fully complied with and that the requirements of the said provision of law are mandatory and that all the terms provided therein are to be complied with very strictly. The Supreme Court also held that as by virtue of the provisions of the Act, the valuable right/ ownership of the landowners will be taken away, the provisions of Section 4(1) and 5-A have to be strictly construed. In the light of the admitted facts and the legal position obtaining, it follows that the provision of Section 4(1) of the Act has not been adhered to in the instant case and hence, the notification has to be quashed for non-compliance of Section 4(1), particularly, Section 4(1)(c) of the Act.

8. Dealing now with the next contention of the petitioners, it is to be noted that though it is not specifically urged in the writ petition, it is contended on behalf of the petitioners that the District Collector is alone the competent authority to issue the notification for acquisition of lands under Section 4(1) of the Act and to conduct an enquiry under Section 5-A of the Act, but, in the

case on hand, the RDO, who is not enjoined with the said duty and who is not authorised to discharge the functions of the Collector by a duly issued notification of the State Government, conducted the enquiry under Section 5-A of the Act and that, therefore, the said enquiry is vitiated and has no validity in the eye of law. Learned Government Pleader for Land Acquisition submitted that the said contention which is not urged is not available to the petitioners. However, learned counsel for the petitioners submitted that the said contention, which is a pure question of law, based on the admitted facts, can be permitted to be urged.

8.1 It is undisputed that the notice under Form 3 requiring the petitioners to file their objections and attend an enquiry under Section 5-A of the Act was issued by the Revenue Divisional Officer, Peddapuram, and that after enquiry, he submitted his remarks to the Collector for passing orders. It is not the case of the respondents that the Government have issued a Notification and delegated to the said RDO, the functions of the Collector. In this backdrop, it is necessary to refer to the relevant provisions of law.

Section 3(c) of the Act reads as under:

‘the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act.’

Further, Section 3(a) of the Act, as amended by the State of A.P. [Act 22 of 1976], which deals with delegation of functions, reads as under:

‘Delegation of functions: The State Government may, by notification in the Andhra Pradesh Gazette, direct that any power conferred or any duty imposed on them by this Act, shall in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged by the District Collector.’

In view of the above provisions of law, it is undisputed that the power of delegation is not with the Collector; that the State Government have to discharge the function of delegation by issuing a notification in the Gazette; and, that on such delegation by a notification, the delegated authority can exercise and discharge the functions, which are to be discharged by the District Collector. In the case on hand, admittedly, there is no notification issued by the Government delegating the powers of the Collector to the RDO. Despite the said fact, the RDO had issued Form 3 Notice under Section 5-A of the Act proposing to conduct the 5-A enquiry and conducted an enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. Therefore, the contention of the petitioners that on this ground alone, the acquisition proceedings, which are illegal, are liable to be set aside merits consideration.

9. Further, as per the settled law, 'any person interested in any land, which has been notified under Section 4(1) of the Act can file objections under Section 5-A (1) of the Act and show that the purpose specified in the notification is really not a public purpose or that his land is not suitable for the particular purpose and that other more suitable parcels of land are available and that the said available lands can be utilised for execution of the project or scheme. The specific case of the petitioners is that they have filed detailed objections. In their objections, they stated that they are owners and possessors of small extents of lands and that there are big landlords owning large extents of lands and that the acquisition of small extents of lands of the petitioners is against the object & intendment of the Act and also the administrative instructions in the memos of the Government. In the writ petition, the petitioners have also stated that there are other vast extents of Government lands in the village, which are suited for use as house sites and that therefore, there is no need to acquire their lands. Reverting to the importance of the enquiry under Section 5-A of the Act to be conducted by the

Collector, it is pertinent to note that Sub-Section (2) of Section 5A of the Act makes it obligatory on the Collector to give an objector or the land owner an opportunity of being heard and that after the hearing of the objections and making further inquiry, he has to make a report to the appropriate Government containing his recommendations on the objections. The hearing contemplated under the said provision of law is necessary to enable the Collector to effectively deal with the objections raised against the proposed acquisition and to make a report. The enquiry and the report of the Collector are not empty formalities, as the Collector is required, by his report, to notify the appropriate Government his recommendations. It is only upon receipt of the said report that the Government can take a final decision on the objections and make a declaration under Section 6 of the Act. At the hearing before the Collector, the objector can make an effort to convince the Land Acquisition Officer to make recommendations against the acquisition; and, the objector can produce evidence to show that his land is either not suited or is liable for acquisition and that a suitable piece of Government land is available in the village or in the vicinity and that the same can be utilized for the desired project or scheme. Therefore, the Collector is required to give the notice in Form 3 under Section 5-A of the Act and also an opportunity of hearing to the objectors and objectively consider their pleas against the acquisition of their lands. Only thereafter, the Collector should make necessary recommendations supported by brief reasons as to whether the land proposed should be acquired or not and whether or not the pleas put forward by the objectors merits acceptance or not. Thus, the right to file objections is an important right; and, the hearing contemplated under the provision of law must be effective; and, it is not an empty formality. Any recommendation made by the Collector, without duly providing an opportunity to file objections and without providing an opportunity of effective hearing will denude the decision of the appropriate Government of statutory finality, is the settled legal position. The settled

legal position emphasises the importance of the enquiry under Section 5-A which is to be conducted by the Collector unless such function is delegated by a notification of the State Government to the RDO. In the case on hand since the Collector has not conducted the enquiry and as the RDO, who conducted the enquiry, is not enjoined with such function by a necessary notification of the State Government, it can be said that the enquiry conducted by the RDO has no statutory sanction.

10. It is necessary to next deal with the following set of contentions: - Learned counsel for the petitioners first contended that no effective opportunity of hearing was afforded to the petitioners to substantiate their objections. Learned Government Pleader stated that admittedly an opportunity of hearing was provided and, therefore, the contention of the petitioners is not correct. Learned counsel for the petitioners in reply submissions having reiterated that the petitioners are small farmers and that each one of them possessed land of an extent less than Ac.2.00 cents and that they belong to SC community is not in dispute, had stated as follows: 'In the counter affidavit, it is not specifically denied that the petitioners are owners of small extents of land and that their only sources of livelihoods are their respective small extents of lands, which are proposed for acquisition. The respondents only stated that even though the petitioners belong to SC (Madiga) community and that they are small farmers, yet, their lands can be acquired as it is inevitable to acquire their lands. The State Government had directed in memo no.1287, dated 31.03.1974, as amended by memo no.5814/ C1/ 77-3, dated 29.09.1977, that 'the lands belonging to poor persons with meagre land holdings (not more than Ac.2.00 – Ac.2.50 cents) should not be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main village and contiguity of the lands. Similarly, in Memo no.7342/ C1/ 76-4, dated 27.12.1976, the State Government directed the Collectors to ensure that the lands belonging to Harizans were not acquired for

the purpose of providing house sites, except where it becomes otherwise inevitable. Further, in Memo no.2600/C1-78-1, dated 12.06.1978, the Government directed that the lands belonging to small farmers, marginal farmers, scheduled castes & scheduled tribes should not be acquired unless there are no other suitable lands available for the purpose of house sites and that if, however, the lands of such persons have to be acquired, alternative lands may be given to them in exchange from the lands available at the disposal of the Government. The administrative instructions of the Government in the above memos, though conditional are binding on the Collector & the RDO. In the case on hand, the said administrative instructions are violated, and, therefore, the land acquisition proceedings are vitiated since the said instructions regulate the policy decisions and give rights to the petitioners for whose benefit those instructions are intended.' He placed reliance on the decision in *State of Punjab v. Gurdial Singh*¹, of the Supreme Court. At paragraph 16 of the cited decision, it was held as follows:

“16. ...it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.”

Further, the petitioners categorically stated in their objections that there are large extents of rich landlords and the lands of the Government suited for acquisition and that the same are also adjacent to the lands of the petitioners and that the said lands can be acquired instead of the lands of the petitioners, who are small farmers of weaker sections and that the exercise of power by the respondents in acquiring the petitioners' lands and by omitting to acquire the lands of rich landlords is an arbitrary and illegal exercise of power. However, these objections are not considered and are simply brushed aside by

¹ (1980) 2 SCC 471

stating that acquisition of the lands of the petitioners is inevitable. No reasons are forthcoming as to why the administrative instructions in the Government Orders are not followed, though the 1st respondent-Collector, who is acting as a delegate under the powers of the Government, is bound to follow the said instructions, which partake the character of *quasi* legislation, which the Government are entitled to issue. The said instructions confer important rights on the petitioners protecting their properties and prohibiting the authorities from acquiring their lands, unless inevitable and the conditions are fulfilled. Therefore, this Court finds that for not following the Government instructions, which are binding, and for not considering the objections of the petitioners in an effective and objective manner by the 1st respondent-Collector, the acquisition proceedings are vitiated.

11. In the decision in *Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai and others*² the main question which fell for its consideration was whether the objections raised by the appellant objecting to the acquisition of land on various grounds have been considered by the Government. The Supreme Court while emphasising the importance of hearing under section 5 A of the Act held as follows:

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right.

Even assuming for a moment that the RDO is competent to conduct an enquiry, it is borne out by record that no effective opportunity of hearing was provided

² 2005 (7) SCC 297

to the petitioners to substantiate their objections and the RDO eventually failed to effectively deal with the objections and, therefore, the enquiry held by him is vitiated.

12. Before parting, it is to be noted that a perusal of the counter affidavit shows that certain dates are mentioned in the counter affidavit. However, among the said dates, the date of publication of the notification under Section 4(1) of the Act in the District Gazette, which was mentioned as 09.11.2007, and the other dates of its publication in newspapers, which are mentioned as 18.09.2007 & 16.11.2007 and finally, the date of publication of its substance in the locality, which was mentioned as 24.11.2007, are admittedly not correct. The copies of material documents filed with the counter affidavit show that 4(1) notification was published in the District Gazette on 24.5.2006, and that it was publicised in the locality on 29.06.2006. Further, the copy of the award proceeding, which is filed along with the counter affidavit, does not disclose as to on what dates notification under Section 4(1) was published in the two newspapers including a regional newspaper. The Government are not in a position to furnish the correct dates of publication of Section 4(1) notification in newspapers as required under the statute. Further, under Section 6 of the Act, declaration of intended acquisition of the land covered by Notification under Section 4(1) of the Act shall not be made after the expiry of one year from the date of the publication of the Notification. In the case on hand, the 4(1) notification was published in the Gazette of East Godavari District on 24.05.2006, is not in dispute. The respondents fairly stated that the declaration under Section 6 of the Act was published in the Gazette, on 09.11.2007, and it was published in two newspapers on 18.09.2007 & 16.11.2007 and its substance was publicised in the locality on 05.12.2007. Therefore, the declaration under Section 6 of the Act was not published within the statutory time frame is also borne out by record. Further, the learned counsel for the petitioners submits that the Government are now not continuing with the Indiramma Housing

Programme and that new housing schemes for members of weaker sections of society are in place, and that since a long time has elapsed from the date of the notification under section 4 (1) of the Act, the Government are required to re-consider as to whether the property in question is required at present for acquisition or not, and hence, the writ petition may be allowed leaving it open to the Government to initiate fresh proceedings for acquisition, if the Government are still desirous of acquiring the subject land for providing house sites or for any other public purpose. Learned Government for Land Acquisition submitted that as orders of stay of dispossession are granted by this Court, possession of the subject land was not taken from the petitioners and no further steps were taken in the matter and that in the event, this Court grants the reliefs to the writ petitioners, liberty may be reserved to the Government to acquire afresh, the subject lands, if necessary, by following the procedure established by law.

13. On the above analysis and for the reasons afore-stated, this Court finds that the petitioners made out valid and sufficient grounds for granting the reliefs prayed for in the writ petition and that the writ petition deserves to be allowed.

14. In the result, the Writ Petition is allowed. It is needless to state that this order shall not preclude the Government to proceed with the acquisition proceedings in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), if the Government are desirous of acquiring the subject land or any part of the subject land of the petitioners for the desired purpose or any other purpose, in future.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

10th October, 2018

M. SEETHARAMA MURTI, J

Note:- L. R copy to be marked
(B/ o)
RAR

