

Nutakki Sesharatanam

Vs

Sub-Collector, Land Acquisition, Vijayawada and Others

Civil Appeal No. 1720 of 1986

(R. M. Sahai, M. H. Kania JJ)

31.10.1991

JUDGMENT

KANIA, J. –

1. This is an appeal by special leave from the judgment of a Division Bench of the Andhra Pradesh High Court dismissing the Writ Appeal No. 577 of 1985 filed in that Court.
2. Very few facts are necessary for the disposal of this appeal.
3. The appellant is the owner of a plot comprising roughly 2 acres of land in Ramavarappadu village, Vijayawada Taluk, in the Krishna District in Andhra Pradesh. The Government of Andhra Pradesh sought to acquire about 1 acre and 89 cents out of the aforesaid land for a public purpose. A Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereafter referred to as "the said Act") was published in the government gazette on February 9, 1976. The substance of the said notification was published in the locality where the land proposed to be acquired is situated, on April 2, 1978, long after the period of 40 days within which it was required to be published as per the provisions of Section 4(1) of the said Act as amended by the Andhra Pradesh (Amendment) Act 1983, (Act 9 of 1983). Enquiry under Section 5-A of the said Act was dispensed with invoking the urgency clause as per Section 17(4) of the said Act. Notification under Section 6 was published on the same day as the publication of the notification under Section 4(1) of the said Act. An inquiry was conducted regarding the fixation of compensation to be awarded to the appellant and others whose land were acquired under the said notification. It appears that during the course of the said inquiry the appellant stated to the Land Acquisition Officer concerned that he was willing to agree to the land being acquired provided he was given compensation in a lump sum. Probably, the reason was that if the compensation in a lump sum without delay, the appellant might have been able to purchase some other land, as his holding was under the ceiling limit. The aforesaid facts have been found by the trial court and accepted by the High Court. On November 9, 1979, before any award was made, the consent to the acquisition of the land given by the appellant, as aforesaid, was withdrawn by him and on May 14, 1981, the appellant filed a writ petition in the High Court questioning the validity of the land acquisition proceedings. The learned Single Judge before whom the said writ petition along with another writ petition came up for hearing held that the appellant had agreed to the acquisition of the said land on compensation being paid as aforesaid, and hence it was not open to the appellant to challenge the validity of the said notifications issued under Section 4(1) and Section 6 of the said Act. It was held by him that the withdrawal of the said representation or consent by the appellant did not in any manner assist him. The learned Judge dismissed the writ petition filed by the appellant without going into the merits of the aforesaid petition on the aforesaid basis. This judgment was upheld by the Division Bench of the High Court

which dismissed the aforesaid writ appeal. It is the correctness of these decisions which is impugned before us.

4. In our view, the learned Single Judge and the Division Bench of the High Court of Andhra Pradesh were, with respect, clearly in error in dismissing the respective writ petition and the appeal filed by the appellant on the ground that the appellant had stated that he was willing to accept the acquisition provided a lump sum compensation was awarded to him. The statement of the appellant amounted in law to no more than an offer in terms of the Contract Act. The said offer was never accepted by the Land Acquisition Officer to whom it was made. Leave alone, making the award of lump sum compensation, no award at all was made by the said officer awarding compensation to the appellant till November 9, 1979, when the aforesaid offer was withdrawn by the appellant or even till the writ petition was filed. Till the offer was accepted there was no contract between the parties and the appellant was entitled to withdraw his offer. There was nothing inequitable or improper in withdrawing the offer, as the appellant was in no way bound to keep the offer open indefinitely. The writ petition, therefore, ought not to have been dismissed on the ground of the appellant having made a statement or consented (sic contended) as aforesaid before the Land Acquisition Officer.

5. On the merits, it is clear that the acquisition of the land is bad in law because the substance of the notification under Section 4(1) of the said Act was not published in the locality within forty days of the publication of the notification in the government gazette. The time limit of forty days for such publication in the locality has been made mandatory by Section 4(1) of the said Act as amended by the Andhra Pradesh (Amendment) Act. It is well settled that such non-compliance renders acquisition bad in law.

6. In the result, the appeal succeeds and rule in the writ petition is made absolute. It is declared that the acquisition of the aforesaid land of the appellant is bad in law. If the possession has been taken, the same must be returned to the appellant.

7. The appeal is allowed as aforesaid with costs throughout.

Order in Civil Appeal No. 1714 of 1986 : B. Kamamma v. Sub-Collector, Land Acquisition, Vijayawada (From the Judgment and Order dated July 5, 1985 of the Andhra Pradesh High Court in Writ Appeal No. 576 of 1985)

The Order of the Court was delivered by

KANIA, J. –

In this appeal, it is common ground that in view of our judgment in Civil Appeal No. 1720 of 1986 entitled Nutakki Seshratanam v. Sub-Collector, Land Acquisition, Vijayawada ((1992) 1 SCC 114) which is delivered today, this appeal also must be allowed. Rule in writ petition is made absolute. It is declared that the acquisition of the land of the appellant is bad in law. If the possession has been taken, the same must be returned to the appellant.

2. However, there will be no order as to costs in this appeal.

</html