

P. Chinnanna and Others

Vs

State of A. P. and Others

Civil Appeal Nos. 1503 and 1504 of 1994

(N. Venkatachala, K. Ramaswamy JJ)

08.08.1994

JUDGMENT

VENKATACHALA, J.

1. These are the appeals in which special leave is granted under Article 136 of the Constitution. They are directed against the common judgment dated 3-8-1993 of a Division Bench of the High Court of Andhra Pradesh by which Writ Appeal Nos. 1389 of 1991 and 608 of 1993 filed against the orders dated 10-3-1989 and 30-3-1989 of a learned Single Judge of the same court in Writ Petition Nos. 13439 of 1986 and 7689 of 1989 respectively refusing to quash acquisition of certain land acquired for a public purpose under the Land Acquisition Act, 1894 (the L.A. Act), are dismissed.

2. That on 23-4-1976 Bhainsa Regulated Market Samiti made a request to the State Government to acquire a compact block of 6 acres and 29 guntas of land in Survey Nos. 342/1A, 342/1B and 343 of Bhainsa Village needed for extension of its existing Cotton Market Yard. That on 6-7-1977 the State Government which regarded the said request to acquire land, to be a case involving urgency, invoked its power under sub-section (4) of Section 17 of the L.A. Act and made an order directing that the provisions of Section 5-A of the L.A. Act shall not apply. Further, that on 21-7-1977, it got published in the State Gazette a notification under Section 4(1) of the L.A. Act and a declaration under Section 6(1) thereof, in respect of the said land, as was required under sub-section (4) of Section 17 of the L.A. Act. Thereafter, the District Collector who got published the notice mentioned in Section 9(1) of the L.A. Act took possession of the said acquired land on 10-7-1978 as provided for in sub-section (1) of Section 17 of the L.A. Act. Such taking of possession made the said land vest absolutely in the State Government free from all encumbrances as provided for in the said sub-section itself. Thereupon, the District Collector gave possession of the said acquired land to the Bhainsa Regulated Market Samiti for whom it had been acquired. When the said 6 acres and 29 guntas of land, had been so acquired and its possession was taken by the Collector resulting in its vesting in the State, the appellants in the present appeals filed WP Nos. 8433 of 1978 and 3416 of 1978 in the High Court of Andhra Pradesh and sought the quashing of Section 4(1) notification and 6(1) declaration insofar as they related to 1 acre 29 guntas of land claimed to have been purchased by them in April 1977. WP No. 3416 of 1978 was disposed of by the High Court by a judgment dated 23-8-1982 which read thus :

"In this writ petition the acquisition of Ac. 1-29 guntas in S. No. 342/1A of Bhainsa Village is challenged by the writ petitioners. This land is sought to be acquired for the purpose of extension of agriculture market year of that place. The gazette notification was made under Section 4(1) of the Land Acquisition Act on 21-1-1977

and in view of the alleged urgency, Section 5-A enquiry has been dispensed with. That is to say, possession has been taken nearly a year after Section 4(1) notification was published. This circumstances is alone sufficient to show that the invoking of the emergency clauses to dispense with Section 5-A enquiry is done mechanically.

In these circumstances, the order made on 21-7-1977 dispensing with Section 5-A enquiry is set aside and there will be a direction to the Revenue Divisional Officer, Nirmal, Respondent 3 to give notice to the petitioners and hold Section 5-A enquiry and the proceedings will commence from that point.

The writ petition is allowed as indicated above, but in the circumstances without costs."

Again Writ Petition No. 8433 of 1978 was disposed of on the same date by the High Court by a judgment which read thus :

"No orders are necessary."

3. An enquiry under Section 5-A of the L.A. Act appears to have been held pursuant to the said judgment of the High Court in Writ Petition No. 3416 of 1978 and a decision taken by the State Government, on the basis of the report of the enquiry to the effect that the land concerned shall be acquired. Thereafter, on 29-11-1984, a declaration has come to be made under Section 6(1) of the L.A. Act in respect of the said 1 acre 29 guntas of land and the notification of declaration is got published on the same date in the State Gazette.

4. One of the appellants who had, as other appellants, purchased a building plot out of the said land respecting which the declaration dated 29-11-1984 was made, filed Writ Petition No. 13439 of 1986 in the High Court challenging the validity of the said declaration made on the basis of the opinion of the Government, formed on consideration of Section 5-A enquiry report. That writ petition was dismissed by a learned Single Judge of the High Court on 10-3-1989. Despite the dismissal of that writ petition, all other appellants appear to have joined and filed Writ Petition No. 7689 of 1989 on the very grounds on which dismissed writ petition had been filed. But that writ petition also has come to be dismissed subsequently. Both the writ petitions had been dismissed by the learned Single Judge concerned finding that the grounds raised in support of those petitions lacked in merit. Since the appellants who were the petitions in the said writ petitions had filed Writ Appeal Nos. 1389 of 1991 and 608 of 1993 against the orders dated 10-3-1989 and 30-3-1989 by which their writ petitions were dismissed, a Division Bench of the High Court heard those appeals on 3-8-1993. At the hearing of the appeals, a fresh ground is said to have been raised in support of the appeals. The fresh ground was that Section 6(1) declaration made on 29-11-1984 and under challenge, had not been made within the period allowed by the first proviso to Section 6(1) thereof, inserted into the L.A. Act by the L.A. (Amendment) Act, 1984, and hence was liable to be quashed. However, the Division bench of the High Court, by its judgment delivered on the same day, dismissed the appeals, rejecting, inter alia, the fresh ground urged in support of the appeals at the hearing thus :

"The learned counsel for the appellants also submits that in any view of the matter, the declaration under Section 6 published on 24-11-1984 is beyond three years. In fact, this plea has not been taken in the writ petitions. As already stated, when Writ Petition No. 3416 of 1978 was filed, stay of further proceedings was granted. Finally,

the writ petition was allowed on 23-8-1982. The respondents must know about the said order and after receipt of a copy of the judgments they have convicted enquiry and also published the draft declaration. Under these circumstances, it cannot be said that the declaration was published beyond the time allowed under law."

5. The appellants in the said writ appeals, who are the appellants in the present appeals by special leave have questioned the correctness of the judgment of the division Bench of the High Court made in the writ appeals. The grievance of the appellants in the present appeals, as ventilated before us by their learned counsel, is confined to non-acceptance by the Division Bench of the High Court, the fresh ground argued before it against declaration made on 24-11-1984 under Section 6(1) of the L.A. Act as that was made beyond the time allowed under the first proviso to Section 6(1) inserted by the L.A. (Amendment) Act, 1984. The ground urged in support of the present appeals by the learned counsel for the appellants, to be precise, is that when Section 6(1) declaration impugned by them was made on 24-11-1984 while notification under Section 4(1) concerned was published on 21-7-1977, the declaration had been made beyond the period envisaged in the proviso and hence it was void and liable to be quashed. We may say, at once, that the ground so urged in support of the present appeals would merit acceptance, if the judgment dated 23-8-1982 of the High Court in Writ petition No. 3416 of 1978 had the effect of restoring ownership of 1 acre 29 guntas of land to the appellants and reviving Section 4(1) notification which had been published on 21-7-1977 in respect of that land also, as is assumed on behalf of the appellants, for the reasons, which we shall presently, state.

6. Section 6(1) of the L.A. Act and the first proviso inserted under the L.A. (Amendment) Act, 1984 on which reliance is placed in support of the ground urged by learned counsel for the appellants in support of their appeal reads :

"..... when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2) :

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification :

provided

Explanation I. - In computing any of the periods referred to in the first proviso, the period during which any action or proceedings to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a court shall be excluded."

7. As becomes clear from a reading of the said proviso, there is a prohibition imposed in the matter of making a declaration under Section 6(1) in respect of any particular land governed by the notification under Section 4 sub-section (1), beyond the respective periods mentioned in clauses (i) and (ii) thereof. However, from the Explanation 1 to the said proviso it becomes clear that either of the periods referred to in clauses (i) and (ii) of the proviso could be computed by excluding the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 sub-section (1) was stayed by an order of court.

8. When we come to the facts of the present case which had given rise to Writ Petition Nos. 3416 of 1978 and 8433 of 1978 in the High Court there was no order made by court which stayed the taking of any action or proceeding pursuant to Section 4(1) notification concerned, in that Section 6(1) declaration of the land concerned was made, possession of such land was taken under Section 17(1) resulting in the vesting of the land in the Government and possession of that land in turn had been handed over to the Bhainsa Regulated Market Samiti for whom the same had been acquired, even prior to the filing of the Writ petitions. Insofar as clause (ii) of the proviso is concerned, that cannot apply since the notification under Section 4 sub-section (1) concerned published on 21-7-1977 could not be regarded as that made after coming into force of the Land Acquisition (amendment) Act, 1984. Then, as is assumed on behalf of the appellants in the present appeals, Section 6(1) declaration made on 21-7-1977 in respect of the appellants' land, taking the possession of that land under Section 17(1) and its vesting in the State Government and the handing over of possession of that land to the Bhainsa Agricultural Market Committee, of which had taken place before the filing of WP Nos. 3416 of 1978 and 8433 of 1978, are regarded as set aside by the judgment of the High Court dated 23-8-1982 in WP No. 3416 of 1978 and Section 4 sub-section (1) notification published on 21-7-1977 of the appellants' land is regarded as having been revived by that judgment, the ground urged on behalf of the appellants that Section 6(1) declaration dated 24-11-1984 made in respect of the appellants' land was prohibited under clause (1) of the proviso, is well founded and merits acceptance. It would be so for the reason that making of a declaration under Section 6(1) in respect of any particular land covered by a notification published under Section 4(1) after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 after the expiry of 3 years is clearly prohibited under clause (i) of the first proviso to Section 6(1) of the L.A. Act and the impugned declaration dated 24-11-1984 has been in fact made long after the expiry of 3 years' time referred to in clause (1) of the first proviso, after the publication of Section 4 Section 4 sub-section (1) notification on 21-7-1977.

9. But, when Section 5-A enquiry is made and Section 6(1) declaration is made, only on the assumption that the judgment dated 23-8-1982 of the High Court in WP No. 3416 of 1978 had set aside the earlier Section 6(1) declaration made in respect of the same land and restored the ownership of the said land which had vested absolutely in the State Government under Section 17(1), to the appellants, and revived Section 4(1) notification published on 21-7-1977, while in fact the said judgment had not done so, there arises no need to void the impugned declaration which had not brought about any legal consequence. The reasons as to how and why Section 6(1) declaration and the steps taken for taking possession of the land under Section 17(1) and its vesting in the State and giving possession of the land to the Samiti for which it was acquired stood unaffected by the judgment dated 3-8-1982 in WP No. 3416 of 1978 are not far to seek. Section 17(1) of the L.A. Act

contains a provision which confers on the appropriate Government, special powers in relation to the acquisition of land in case of urgency. Further, sub-section (4) of Section 17 empowers the appropriate Government to direct that the provisions of Section 5-A shall not apply. This sub-section says - when such direction is given, a declaration may be made under Section 6 in respect of the land concerned at any time after the date of publication of the notification under Section 4 sub-section (1). However, when Section 5-A is made not to apply to acquisition of a land, the section (1) if not already published and then make a declaration under Section 6(1). When once Section 6(1) declaration is made, by operation of sub-section (3) of Section 6, such declaration becomes conclusive evidence that the land is needed for a public purpose of a company, as the case may be, and after making such declaration appropriate Government may acquire the land in the manner appearing in the subsequent provisions of the L.A. Act. Insofar as the land to be acquired pursuant to the direction of the appropriate Government under sub-section (4) of Section 17 which makes Section 5-A inapplicable, sub-section (1) of Section 17 is required to be followed for the purpose of acquisition of the land concerned. That provision reads thus :

"17. (1) In cases of urgency, whenever the appropriate government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.'

10. The said provision enables the appropriate Government to take possession of the land concerned on the expiration of 15 days from the publication of the notice mentioned in Section 9 sub-section (1) notwithstanding the fact that no award has been made in respect of it. When the possession of the land concerned is once taken as provided for thereunder such land is made to vest absolutely in the Government free from all encumbrances. It must be noticed here that taking possession of the land concerned and its vesting absolutely in the government free from all encumbrances does not depend upon an award to be made under Section 11, making of which award alone in the case of ordinary acquisition of land could have empowered the Collector to take possession of the land under Section 16 and the taking of which possession would have made the land vest absolutely in the Government free from all encumbrances. As seen from the judgment dated 23-8-1982 of the High Court in WP No. 3416 of 1978, taking possession of the appellants' land along with land of others by the Collector on 10-7-1978 under Section 17(1) is, in fact, made the basis for its holding that invoking of urgency clause to dispense with Section 5-A enquiry was made by the government mechanically. No doubt, when the High Court took the view that acquisition of the land concerned under Section 17 of the Act was made pursuant to an order of the government without application of its mind in the matter of making Section 5-A not to apply, it was open to it to set aside or quash the subsequent acquisition proceedings except Section 4(1) notification which had followed and restore the ownership of the land to the appellants' land if it had to order fresh enquiry on the basis of Section 4(1) notification. Such a setting aside or quashing was inevitable because the acquisition proceedings had been completed under Section 17 and the land had vested in the State Government, inasmuch as, without setting aside that vesting of the land in the State Government and restoring the land to the appellant-owners, that land was unavailable for subsequent acquisition by following the procedure under Section 5-A, Section 6, Section 11 and Section 16. Thus in the circumstances of the case in respect of the land of the appellants, when publication of Section 4(1) notification was made on 21-7-1977, when declaration under Section 6 was published on 21-7-1977, and taking possession of that land under Section 17(1) by the Collector was made on 10-7-1978 and the vesting in the State Government of that land had occurred on that day, setting aside by the judgment of the High court in WP No. 3416 of 1978 of merely the direction given by the Government relating to non-

applicability of Section 5-A to the land, given on 7-7-1977, in our view, did not enable to Court to order the starting of fresh proceedings for acquisition of the land concerned under Section 5-A, inasmuch as, that land concerned on Section 4(1) notification had already become the land of the government. In this state of facts, then the previous acquisition of the land of the appellants made under Section 17 of the Act did never stood affected. Section 5-A enquiry held and subsequent declaration made were superfluous proceedings which were inconsequential. Hence, we feel that there is no need to set aside the impugned declaration inasmuch as the earlier acquisition was complete and had resulted in vesting of the land in the State Government and there was no land available for acquisition in the subsequent proceedings which have been carried pursuant to the judgment of the High Court made in WP No. 3416 of 1978. Therefore, in the stated facts, although we find that no need arises to declare the impugned declaration as void we clarify that the earlier proceedings which had taken place in respect of the appellants' land, resulting in its vesting in the State Government free from encumbrances, has stood unaffected and any award made by the Collector or be made by him under the L.A. Act shall be regarded as that based on earlier acquisition proceedings.

11. We may, however, state that though we have examined the fresh ground of challenge in respect of Section 6(1) declaration raised on behalf of the appellants nearly seven years after it had become available to them, the same had been done solely to decide on the scope and applicability of the first proviso to Section 6(1) and its explanation, inserted into the L.A. Act by the L.A. (amendment) Act, 1984. Such examination cannot, therefore, be understood as laying down that notwithstanding the lapse of time or laches in raising a legal ground in a proceeding under Article 226 of the Constitution or a proceeding under Article 136 of the Constitution there is an obligation on the part of the court concerned to examine such fresh ground. In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involved enormous loss of public money but also cause undue delay in carrying out projects meant for general public good. When a fresh ground of attack to acquisition proceedings, even if it involves purely a question of law, its entertainment cannot be governed by principle different from that which governs entertainment of writ petitions before the High Court or proceedings arising therefrom before this Court under Article 136 of the Constitution.

12. In the result, these civil appeals are dismissed, however without costs.

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