

Collector, Ongole and Another

Vs

Narra Venkateswarlu and Others

Civil Appeals Nos. 1135-36 of 1986

(K. Ramaswamy, S. B. Majmudar JJ)

28.11.1995

### ORDER

1. These appeals by special leave arise from the judgment and order of the Division Bench of the High Court of Andhra Pradesh, dated 8-8-1985, made in Writ Appeals Nos. 302-303 of 1985. A notification under Section 4(1) of the Land Acquisition Act was initially published on 15-4-1983. The same was subsequently withdrawn and fresh notification was published on 9-6-1983. The respondents challenged the validity of the notification in two writ petitions. The learned Single Judge by his order dated 1-2-1985 quashed the notification on the ground of colourable exercise of power by the authorities. On appeal before the Division Bench, one of the learned Judges upheld the order of the learned Single Judge on the ground of non-application of mind by the Collector himself, since the acquisition was made by the Collector on the recommendation made by the Government. The second ground was that the administrative instructions for obtaining prior permission from the Government for making the award when the value exceeds Rs 20,000 per acre were not obtained. Another learned Judge has affirmed the order on the ground that the prior permission of the Government was not obtained for making the award. Thus these appeals by special leave.

2. Shri G. Prabhakar, learned counsel for the appellant, contended that the notification validity issued by the Collector who is the competent authority to issue notification under Section 4(1) of the Act, cannot be whittled down by the non-consideration of the administrative instructions issued by the Government nor absence of prior approval is a ground to declare the valid notification as an invalid one. Shri R.N. Keshwani, learned counsel for the respondents, strenuously contended that attempts were made by the Sarpanch to get the property in Survey No. 25/10 by successive litigations. There was no proposal for acquiring the land for the weaker sections. The Collector in a cryptic order has mentioned that the land could be acquired for weaker sections without any proposal for acquiring the land for weaker sections. Exercise of power under Section 4(1) is a colourable exercise of power vested in the Collector. The learned Single Judge, therefore, rightly has gone into that question. Accordingly, be made valiant efforts to convince us to agree with the learned Single Judge on the colourable exercise of power and to uphold the order quashing the notification under Section 4(1) of the Act.

3. Having given careful consideration, we are of the opinion that the argument of Shri Prabhakar, learned counsel for the appellant is acceptable. It is seen that admittedly the notification under Section 4(1) was published by the Collector for acquiring the land for the weaker sections. The Collector had been empowered to acquire the land for the weaker sections, Scheduled Castes and Scheduled Tribes. It is true that initially there was an attempt by the Sarpanch to have the land acquired for Housing Cooperative Society. Since the members of the Cooperative Society belonged

to the forward sections of society, the land could not be acquired. The Collector also did not accede to that request. The Tahsildar suggested to acquire some other land but that was not accepted by the Joint Collector. The file had gone to the Collector and ultimately the Government had accepted the proposal to acquire the land in question for the weaker sections. It may be true that some of the persons to whom the allotment was to be made belonged to the forward sections of society but that does not take away the initial exercise of the power by the Collector. As stated earlier, the Collector is the competent authority to exercise power under Section 4(1) of the Act. The notification does indicate that the land was acquired for public purpose, namely, providing houses to the weaker sections of society. Even the recommendations made by the Government after the protracted litigation were for acquiring the land for weaker sections. Thus the acquisition being only for the weaker sections of society, it constitutes a "public purpose" as defined under the Act by virtue of the local amendment made in Section 17(1) of the Act.

4. The next question is whether the learned Judges of the Division Bench were justified in upholding the quashing of the notification on different grounds. It is seen that the Collector had formed the opinion that the land was required for public purpose, namely, providing houses to the weaker sections of society. The question of non-application of mind does not arise. It is obvious that after consideration of the material before the Collector, the Collector formed the opinion that the land was required for public purpose. The direction of the Government was after protracted litigation and to avoid further litigation, Government had directed to acquire the land. It would not mean that the Collector had abdicated his power under Section 4(1). It is true that the Government had issued instructions for obtaining prior permission of the Government, if the value of the land was more than Rs 20,000 per acre, the prior permission of the Government in that behalf is necessary. The administrative instructions, no doubt, bind the subordinates but the violation thereof does not constitute an infirmity in the acquisition of the land itself. It is true that the Government could take appropriate disciplinary action against the officials but it does not constitute infirmity in the valid exercise of power under Section 4(1) and declaration under Section 6 of the Act.

5. It is not disputed that one of the learned Judges has recorded the findings that no colourable exercise of power by the Collector was established from record. Though the learned Single Judge has held that the acquisition amounts to colourable exercise of power, since one of the learned Judges has held that there was no colourable exercise of power and there is no disagreement by another Judge, it must be inferred that the Division Bench has not accepted the finding of the learned Single Judge that the acquisition was vitiated by a colourable exercise of power. Even otherwise when we have seen that the Government had directed the Collector to consider the acquisition for weaker sections and the Collector had validly exercised the power under Section 4(1) of the Act, by no stretch of imagination it could be said that it is a colourable exercise of the power. The appeals are allowed. The orders of the High Court are set aside and the writ petition stands dismissed but in the circumstances, without costs.

6. It is made clear that if any allotment is made to any person other than those belonging to the weaker sections, the Collector should take immediate action against persons and cancel the allotments. In other words, allotments should be made only to the persons belonging to the weaker sections in terms of the notification and Government instructions in that behalf.