

H. M. Kelogirao & Ors. etc.

Vs

Government of A. P. & Ors.

(A. S. Anand, K.Venkataswami JJ)

24.09.1997

ORDER

1. These two Civil Appeals by special leave are directed against the common judgment of the High Court of Judicature at Andhra Pradesh dated 28th April, 1989.
2. The relevant facts for disposal of these appeals are:- That land measuring 9.87 cents comprising in various survey numbers of Anantapur Town were sought to be acquired by the Government at the request of the Andhra Pradesh State Road Transport Corporation (hereinafter 'the Corporation') for purposes of constructing a bus stand at Anantapur. The Notification under Section 4(1) of the Land Acquisition Act (hereinafter 'the Act') was published on 31st May, 1979. Simultaneously, declaration under Section 6 of the Act was also published and emergency provisions under Section 17(4) of the Act were invoked and the enquiry under Section 5A of the Act was dispensed with. It appears, that some of the land owners challenged the acquisition proceedings through Writ Petition Nos.9801 of 1983 and 8133 of 1985 in respect of Survey Nos.2067/4A, 2071/1A and 151/1B. The thrust of the challenge was that the substance of the Notification which was required to be published at a public place as required by law had not been published. Writ Petition No.9801 of 1983 was allowed on 18th October, 1985 while Writ Petition No.8133 of 1985 was allowed by the learned Single Judge on 12th March, 1986.
3. The Notification which was the subject matter of challenge in the two writ petitions was quashed in respect of survey numbers detailed in each one of the two writ petitions. In so far as the appellants herein are concerned, they were not parties to either of the writ petitions. A notice under Section 9 of the Act was issued on 17th March, 1987 and was served on the appellants on 23rd March, 1987. All the appellants filed objections to the notice on 3rd April, 1987 before the Land Acquisition officer claiming enhanced compensation at the rate of Rs.250/- per sq. feet. Award enquiry was held in which admittedly all the appellants participated. The Award enquiry was completed on 5th April, 1987 and on 10th April, 1987 the Land Acquisition Collector made his Award fixing the market value of the land in question at the rate of Rs.33,000/- per acre. Aggrieved, the appellants filed writ petitions in the High Court on 14th April, 1987. In the writ petitions the main submission was that since the Notification issued under Section 4 of the Act had been quashed in Writ Petition Nos.9801 of 1983 and 8133 of 1985, the notice issued under Section 9 of the Act was invalid and as such all further proceedings were also void. Counter was filed in the High Court by the Corporation wherein it was stated that the Corporation had taken possession of the land soon after the Notification under Section 4(1) and the declaration under Section 6 of the Act had been published and that it had since constructed buildings and structures on the land and that the bus stand was already functioning. It was also averred that the bus stand in question was the only bus stand in the area and that its construction was for public purpose. The Corporation submitted that it had spent huge amount for the construction of the bus stand which was being used by hundreds of buses every day.

4. The Division Bench of the High Court which heard the writ petitions alongwith some pending writ appeals non-suited the appellants on the ground that they never protested either when the construction was taken up nor even after the judgment in Writ Petition Nos. 9801 of 1983 and 8133 of 1985 was given and waited till the Award was made in their case to question the validity of the acquisition proceedings. The Division Bench found that there was delay and laches on the part of the appellants and the conduct of the appellants in the established facts and circumstances of the case disentitled them to any relief in proceedings under Article 226 of the Constitution of India. The Bench, however, opined that notwithstanding the dismissal of the writ petitions, the appellants shall not be precluded from seeking or pursuing a reference under Section 18 of the Act.

5. Aggrieved by the said order the appellants are before us.

6. We have heard learned counsel for the parties and examined the record.

7. The fact that the possession of the land was taken over soon after the Notification under Section 4(1) of the Act and declaration under Section 6 of the Act was published because of invoking of the provisions of Section 17(4) of the Act is not in dispute. That would show that the possession of the land was taken over from the appellants as early as in 1979, almost two decades ago. It is also not disputed that bus stand has since been constructed at a huge expense and since 1982-1983 that bus stand is functional and that is the only bus stand to cater to the residents of Anantapur and the neighbouring areas. It is also not denied that all the appellants had filed their objections to the notice under Section 9 of the Act and in those objections they had only claimed enhanced compensation at the rate of Rs.250/- per sq. feet and no grievance was made about the invalidity of the notice under Section 9 of the Act or of the earlier proceedings. All the appellants had participated in the Award enquiry and after the Award was made on 10th April, 1987, the appellants approached the High Court through writ petitions under Article 226 of the Constitution of India. It is also not disputed that majority of the land owners have already received the compensation after the Award was made and some of them have also taken recourse to proceedings under Section 18 of the Act. Should in this fact situation the acquisition proceedings be quashed and the land on which the bus stand exists be directed to be returned to the appellants and the general public made to suffer ? The answer, in our opinion, has to be in the negative.

8. In a somewhat similar situation, a three Judge Bench of this Court in, State of Rajasthan and others Vs. D.R. Laxmi and others (1996) 6 SCC 445 opined :-

"Under the scheme of the Act, after the possession. Of the land was taken either under Section 17(2) or Section 16, the land stands vested in the State free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State. Under Section 48(1) before possession is taken, the State Government is empowered to withdraw from the acquisition by its publication in the Gazette."

9. In taking the aforesaid view the Bench relied upon an earlier judgment of the Court in Senjeevanagar Medical & Health Employees' Coop. Society Vs. Mohd. Abdul Wahab : (1996) 3 SCC 600 which again was a judgment rendered by a three Judge Bench. We are in respectful agreement with the view of the Benches noticed above.

10. Thus, we have no hesitation to hold that in the established facts and circumstances of this case there is no scope for now direction the land, which had vested in the State and of which possession

had been taken by the State almost two decades ago to be now returned to the appellants.

11. The fact, however, remains that the appellants had approached the High Court through writ petitions as early as on 14th April, 1987 and have filed these appeals in this Court in 1989-1990. The appellants had not accepted the Award as the same was put in issue by them in the writ petitions. They have not taken recourse to the proceedings under Section 18 of the Act either. The only relief which, therefore, appears appropriate to us in this case is to grant time to the appellants to seek a reference under Section 18 of the Act, if so advised, as that course, in our opinion, would be both equitable and in the interest of justice. We, therefore, while dismissing the appeals grant six weeks' time to the appellants from the date of this order to take proceedings under Section 18 of the Act, if so advised. In case the appellants file an application under Section 18 of the Act, no objection with regard to the period of limitation in moving the same shall be raised against them. The reference Court shall decide the application in accordance with law on its own merits expeditiously and nothing said hereinabove shall be construed as any expression of opinion on the merits as regards the quantum of compensation. Appeals are dismissed. There shall be no order as to costs.