ANDRA PRADESH HIGH COURT

Sree Raja Kandregula Srinivasa Jagannadha Rao

Vs.

State of A.P

Writ Petn. No. 944 of 1953

(Chendra Reddy, J.)

20.07.1955

ORDER

Chendra Reddy, J.

1. This is a petition, for the issue of a writ of mandamus under Article 226 of the Constitution declaring that the notification No. 752 dated 25-8-1952 followed by notification No. 780 dated 24-9-1952 are ultra vires and illegal and for restraining the respondents from doing anything in pursuance of the same. It is filed in the following circumstances. The petitioner owns a plot of Ac. 25-00 of wet land in Valivartipadu village, a suburb of Gudivada. He was making efforts to dispose of this land by plotting it out as house sites for some years. In 1939 the Commissioner, Gudivada Municipality served a notice on him directing him to furnish plans in triplicate in case he wanted to sell the lands as house sites. Two years later, the municipality prepared a lay out plan for this area and seems to have required him to submit plans necessary for the purpose. As this does not seem to have been complied with for a long time, he was called upon by a notice In July 1949 to show cause why he should not be prosecuted for contravening the terms of previous notice regarding the plans and also to stop the sale of the land till the plans were submitted and approved. Plans were accordingly submitted in January 1952. While the matter of approving of the plans and giving sanction to the petitioner for the lay out was pending consideration before the authorities concerned, the 2nd respondent co-operative society was formed for the purpose of building houses. This society approached the Government with a request to acquire the land in question for them. In compliance with this request, the Government issued a notification under Section 4 (1) of the Land Acquisition Act, dated 25-8-1952 but published on 24-9-1952. The declaration under Section 6(1) of the Act was published in the gazette dated 8-10-1952. A year thereafter i.e. on 16-11-1953, the present petition invoking the jurisdiction of this court under Article 226 for the purposes mentioned above was filed.

2. The petition was originally grounded upon allegations of mala fides against the members of the Co-operative Society. In January 1955, a supplemental affidavit was filed by the petitioner setting out another ground of attack, against the acquisition proceedings namely, the infringement of the provisions of Section 6 (1) of the Land Acquisition Act and also filed a petition for permission to amend the pleadings. Thus the validity of the proceedings is questioned on grounds

of mala fides and the contravention of the provision of law mentioned above.

3. I will first dispose of the case relating to the mala fides. A reading of the petition shows that there is no basis for this charge. Assuming the allegations there to be correct, it is difficult to see how the petitioner would succeed in the petition. No want of *bona fides* is attributed to Government which is the acquiring authority. The motives of the persons who urge the Government to start proceedings under the Land Acquisition Act are not quite relevant. We are only concerned with the conduct of the Government. The existence of mala fides cannot be a matter of inference but must be established affirmatively. That apart, the only question for consideration is, whether it is required for a public purpose. When once declaration is made by the Government to that effect, that shall be conclusive evidence under Section 6 (3) of the Act. This declaration cannot be challenged in a civil court. This is now well settled and it is unnecessary to refer to any of the decided cases.

4. On the second point, what is urged by Mr. Ramachandrarao is that as no deposit was made by the Government, as required by the proviso to section 6(1) or even the intention of the Government to pay a portion of the compensation out of public revenues was not declared prior to the issue of the notification under Section 6(1), the notification was null and void and anything done in pursuance thereof is illegal. But a look at the supplemental affidavit will show that the alternative contention regarding the intention was not put forward, even there :

> "As submitted above, the land of the petitioner is sought to be compulsorily acquired by the 1st respondent for the use and benefit of the 2nd respondent society. It is learnt however that the 1st respondent has not contributed any portion of the compensation amount and that the 2nd respondent society alone is paying the entire compensation. Under the proviso to Section 6 (1) of the Land Acquisition Act, no declaration under Section 6 shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

The 2nd respondent society being neither a company nor a local authority, any acquisition sought to be made by Government for the benefit of the society can be valid only if the compensation amount comes either wholly or partly from the public revenues. As this elementary requirement is wanting in this case, the declaration under Section 6 (1) of the Land Acquisition Act in this case is void as it does not fulfill the conditions laid down in the proviso to Section 6(1), "

5. It is manifest that the notification was questioned only on the ground that the Government had not contributed any portion of the compensation amount as required by the proviso. The answer to this was furnished by the documents produced on behalf of the respondents, viz., receipt evidencing payment of Rs. 0-1-0 towards the compensation payable to the petitioner in respect of the property on 11-11-1952. That this payment of Rs. 0-1-0 towards compensation is sufficient compliance with the proviso is clear from a ruling of the Full Bench of the Madras High Court in *Suryanarayana v. Province of Madras*[1], The proviso does not contemplate the deposit of a substantial portion of the compensation.

6. The further question is whether this should be done prior to the issue of the notification as suggested for the petitioner. In my opinion, there is no warrant for this contention on the language of the proviso. All that is envisaged in the proviso is that the compensation to be awarded is to be paid either wholly or partly out of public revenues. To accept the contention of Mr. Ramachandrarao would be enlarging the scone of the proviso. The authority in ***Syed Dilwar Hussain v. Collector of Madras, 1955-1 Mad LJ 306*** , relied on for the petitioner does not really support him. What Mr. Rajagopalan has stated in that case is that it should be shown that the intention of the Government to pay a part of the compensation out of the public revenues must be made manifest before the publication of the declaration under Section 6 and not that such a payment must be made before the notification. Therefore the submission of Mr. Ramachandrarao is without any force and has to be rejected.

7. Although the further point relating to the announcement of the intention beforehand was not raised in the supplemental affidavit, I propose to deal with it as it was argued at some length. This argument is based on 1955-1 Mad LJ 306 already referred to.

8. The learned Government Pleader questions the correctness of this ruling contending that there is nothing in the proviso which indicates that the Government should manifest its intention to pay a portion of the compensation anterior to the issue of the notification and all that is needed to be established is that the compensation wholly or partly would come out of public revenues or some fund controlled or managed by public authority. This submission of his is in consonance with the view taken by Mr. Justice Krishnan in ***Ramamurty v. Special Deputy Collector, 1926 Mad WN 968 at p. 969 : (AIR 1927 Madras 114 at p. 115)***, continues, learned counsel for the 1st respondent. I do not think I can give effect to this argument. It does not seem that there is really any conflict between the two rulings. What was laid down by Krishnan J. was 'it is not necessary that the declaration should on its face show that it is to be made out of public revenue.' In other words, the declaration need not ex facie show the intention of the Government as envisaged in the proviso. That is not the same thing as saying that the intention need not be made manifest prior to the publication of the declaration. If I have to accept the interpretation sought to be placed by the learned Government pleader on the proviso, the earlier part of the proviso would be meaningless. The words "no such declaration shall be made unless the compensation to be awarded for such property etc.," seem to me to clearly indicate that the declaration of intention should precede the notification under Section 6.

Otherwise the language used would have been that such acquisition shall not be made unless such compensation etc. I am of the opinion that a plain reading of the proviso supports the conclusion of Mr. Justice Rajagopalan in 1955-1 Mad LJ 306 , and I express my respectful accord with this decision.

9. But this does not dispose of the matter. On 5th July 1948, the Government issued a

[1] ILR (1946) Mad 153

G. O. in the following terms :

> "His Excellency the Governor of Madras permits the Registrar of Co-operative Societies to sanction a nominal contribution of one anna from the Public Revenues in respect of each case of land acquisition for co-operative housing schemes approved by the

> Government. The expenditure on this account should be debited to a new detailed head "cost of land" under the head "42.b. Co-operation - Superintendence-a General-1. Ordinary areas - 4 Contingencies."

It is to be mentioned at the outset that this G. O. followed the ruling of the Full Bench in ILR (1946) Mad 153 (FB). While the learned Government Pleader calls in aid this G. O. to support the notification issued under Section 6 (1) as a valid one, Mr. Ramachandrarao for the petitioner maintains that this does not save the notification from the invalidity. According to him, what is contemplated by the proviso is the declaration of intention in respect of each property and not a general one like the present G. O. Support is sought for this argument from the words "for such property".
It looks to me that this contention is not substantial. The expression "for such property" has reference only to the compensation to be awarded and that does not govern the intention to be declared by the Government regarding the payment. In my judgment, a general declaration as embodied in the Government Order would meet the requirements of the proviso.

10. It was alternatively argued by Mr. Ramachandrarao that the G. O. does not sanction or direct the contribution of Rs. 0-1-0 from the public revenues but it only permits the Registrar of Co-operative Societies to sanction it and this does not satisfy the requirements of the proviso. The learned counsel added that to comply with this proviso the order itself should make a provision for the contribution and authorising a subordinate authority to sanction such a contribution does not amount to obeying the mandatory provision. There does not seem to be much substance in this either. Though the language of the G. O. speaks of permitting the Registrar to do it, it appears to be obligatory on the part of the Registrar to sanction a contribution of Rs. 0-1-0 from the public revenue in respect of each case for land acquisition of co-operative housing schemes approved by the Government.

11. When an order of a Government or a statute confers a power on an authority in discharge of a public duty, and though such power appears to be permissive, it is imperative that the authority should exercise that power in the discharge of its duties. I am fortified in this view by some of the passages in Maxwell on "The Interpretation of Statutes" (9th edition "page 246) :

> "In an early case, where it was contended that the Poor Relief Act, 1662 (14 Car. II. c. 12), Section 18 (f) in enacting that the churchwardens and overseers "shall have power and authority" to make a rate to reimburse parish constables certain expenses, left it optional with them to make it or not, the Court held that it was obligatory on them to make it whenever disbursements had been made and not been paid. "May be done." it was observed, is always understood, in such cases of public or private right, as "must be done."

At page 248, the learned author says :

> "An Act which made it "lawful" for a Court to stay proceedings in actions against companies under liquidation until proof of the plaintiff's debt, and a bankruptcy rule which provided that where the Court has given no directions as to the disallowance of the

costs of improper or unnecessary proceedings, the taxing-master "may" look into the question, were held equally imperative."

It is not necessary to refer to other pasages in the same book which bear out this proposition. It follows that the G. O. cited above meets the situation created by the proviso. Further, this point was taken very late at the time of the arguments. It may be due to this that the Government Pleader could not ascertain whether there was any order of the Registrar of Co-operative Societies pertaining to this acquisition. What follows from this discussion is that the proviso to section 6(1) was not violated by the acquiring authority when the declaration under section 6 was published and so the Land Acquisition Proceedings are in no way vitiated.

12. There is another ground on which this petition has to be dismissed. The facts related above shows that the notification was published on 8-10-1952, the award was made on 18-12-1952 and the compensation was deposited on 10-11-1952. The amount seems to have been withdrawn by the petitioner. It also appears that a reference was made by the Collector under Section 18 of the Act at the instance of the petitioner. Moreover, it is stated in the counter-affidavit that a large sum of Rs. 1,31,452-8-0 has been spent after taking possession of the property and before the interim order was issued by this court. In these circumstances, this court will be very reluctant to exercise the jurisdiction conferred by Article 226 and issue the prerogative Writ. The petitioner is certainly guilty of laches in invoking the jurisdiction of this court and it is needless to say that it would work great hardship to the 2nd respondent to quash the land acquisition proceedings. A person who invokes the jurisdiction of this court under that Article should be diligent and when the delay is calculated to put the other parties to the proceedings to a great loss and prejudice the relief asked for will ordinarily be refused. In these circumstances this petition should be dismissed with costs, one set, which I fix at Rs. 200/.-.
Petition dismissed.