

# ANDHRA PRADESH HIGH COURT

Guntur Ramalakshamma

Vs.

Government of Andhra Pradesh

Writ Petn. No. 1368 of 1964

(Gopalrao Ekbote, J.)

17.06.1966

## ORDER

### **Gopalrao Ekbote, J.**

1. This is an application under Article 226 of the Constitution of India seeking the issue of a writ of certiorari to quash G. P. Rt. No. 372 Public Works, dated 9th March 1964.

2. The relevant facts are that the Government, intending to acquire the land, T. S. No. 357 of an extent of 3,406 sq. feet, for construction of Telephone Exchange Office in Chirala town issued a notice in G. O. Rt. No. 372, Public Works, dated 9th March 1964 under Section 4(1) of the Land Acquisition Act, 1894., Government also, acting under Section 17(4) of the Act, directed that in view of the urgency of the case, the provisions of Section 5-A of the Act be dispensed with. It is to challenge this direction dispensing with Section 5-A of the Act that the present writ petition is filed.

3. The principal contention of Mr. E. Ayyapureddy, the learned counsel for the petitioner is that under Section 17(4), the application of Section 5-A can be dispensed with only in a case where the land sought to be acquired is either a waste land or an arable land. His contention is that in the case, it is neither a waste land nor an arable land but a building plot situated in the local limits of Chirala Municipality and whereon temporary structures are erected and the land is very costly. He therefore argues that since the Government have not applied their mind and determined that the land sought to be acquired is an arable land, the notification dispensing with Section 5A-suffers from that infirmity and it ought to be quashed. I find sufficient force in this contention.

4. Section 17(4) is in the following terms: -

"In the case of any land to which, in the opinion of the appropriate Government, the

provisions of Sub-section (1) or Sub-section (2) are applicable the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 indication of the notification under Section 4, Sub-respect of the land at any time after the public-section (1)....."

An explanation to this sub-section is added by Madras Act 21 of 1948. The explanation in so far as it is relevant, is as follows :

". . . . This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of scattered trees or temporary structures such as butts, pendals, or sheds."

What was contended by the learned Government Pleader is that the Government relying upon a report of the inspection, assumed that it is an arable land and that is why the application of Section 5-A was dispensed with. The inspector's report however, is only to the extent that there are some temporary superstructures on the land. The explanation extracted above merely states that the existence of the superstructure on any waste or arable land does not take out the case out of Sub-section 4 of Section 17. But even in such a case, the Government has to form the opinion basing it on relevant material, whether the land sought to be acquired is an arable land. The inspector's report admittedly does not claim that it is an arable land, nor is there any specific determination of the Government that the land sought to be acquired is an arable land.

5. It is not disputed that there is no specific definition of 'arable land' in this or any other relevant Act. Arable land, however, in common parlance means a land which is fit for cultivation and the said expression is usually used to mean lands which are actually cultivating or lands which can be put for the purpose of cultivation. This land is admittedly situated within the municipal limits of Chirala a business town. Even according to the counter, the land is worth Rs. 250/- per square yard and the extent of the land is only, 3,406 square feet. It is also not in dispute that the land is not cultivated. In these circumstances, it is difficult to hold that the said land is arable land. That it is not waste land is conceded. The land, which is a building site within the municipal limits and is situated in the developed part of a place like Chirala town can hardly be regarded as arable land.

6. It must be remembered that whether the land sought to be acquired is an arable land has to be determined by the Government before they exercise the jurisdiction under Section 17(4) and direct the dispensing with of the application of Section 5-A of the Act. In other words, in order to assume that jurisdiction the Government has to determine certain preliminary facts, which are jurisdictional facts. The Government by wrongly deciding that question, cannot assume jurisdiction and dispense with Section 5-A. Whether a particular land is arable land or not thus becomes a matter amenable to judicial review being a jurisdictional fact. The said question has to be decided objectively by the Government. The Government is bound to take into consideration

factors which are relevant and cannot omit from consideration factors which are mentioned above. It is true that if the Government, after taking into account all relevant facts, determine that it is arable land correctly, it may not be open to judicial review. But if the Government either does not apply its mind or determines wrongly that it is arable land, then it is always open to this Court to examine whether that determination is correct, and if it reaches the conclusion that the conclusion is perverse, this Court has jurisdiction to issue the necessary writ and quash the order. If the Government, as stated earlier, forms such opinion, the correctness of the opinion cannot be challenged on the ground that there are not sufficient reasons on the basis of which such an opinion can be formed. But if the Government fails to form any opinion or the opinion formed is based on reasons which are not relevant to the determination of the real question, this Court can certainly interfere. It is true that there was some urgency in this case. But that does not mean that the Government can dispense with the application of Section 5-A in a case in which the Government is not authorized to so dispense with.

7. I am satisfied that in view of the fact that the land is situated within the municipal limits of Chirala, a prominent and busy business town, and as the land measures only 3,406 sq. feet and admittedly it is a very valuable piece of land and is not actually cultivated and would not normally be put to cultivation by any sensible person, it cannot by any stretch of argument be called an arable land. The Government therefore was not competent under Section 17(4) to dispense with the application of Section 5-A.

Consequently, the G. O. suffers from a serious infirmity and it requires to be quashed.

8. It is always open to the Government to acquire the land, if they still desire to do so, by following the procedure under the Land Acquisition Act.

9. I would therefore allow this writ petition and direct the issue of a writ of certiorari quashing G. O. No. 372, Public Works, dated 9-3-1964. In view of the circumstances of the case, I make no order as to costs. Government Pleader's fee Rs. 100/-.

Petition allowed.