ANDHRA PRADESH HIGH COURT

Kasireddy Papaiah

Vs

The Government of Andhra Pradesh

(Chinnappa Reddy,J.)

25.11.1974

ORDER

Chinnappa Reddy, J.

1. The petitioners own small extents of land altogether of the extent of 3 acres and 17 cents in Reddi-palli Village, Bheemunipatnam Taluk, Visakhapatnam District. A notification under Section 4 (1) of the Land Acquisition Act proposing to acquire the lands of the petitioners for the purpose of providing house sites for Harijans was published in the Andhra Pradesh Gazette on 24-9-1970. The notification itself bore the date 15-5-1970. By the same notification the power under Section 17 (4) of the Act was invoked and the enquiry contemplated by Section 5-A was dispensed with. Thereafter, the draft declaration under Section 6 of the Act was approved by the Government in G. O. Rt. No 2283 Education (S.W.) Department dated 22-12-1970 and was published in the Andhra Pradesh Gazette on 25-2-1971. No steps were, however, taken to take possession of the lands. On 16-9-1971 the petitioners filed the present application for the issue of a writ to Quash the notification dated 19-5-1970.

2. The learned counsel for the petitioners submitted that the very fact that the Government took the decision to acquire the lands on 19-5-1970 but did not publish the notification in the gazette till 24-9-1970, the further fact that the notification under Section 6 was only published on 25-2-1971 and the circumstances that no steps have so far been taken to take possession of the land clearly demonstrated that there was no urgency whatever and that the invocation of the power under Section 17 (4) of the Act to dispense with the enquiry under Section 5-A was made in a mechanical fashion because of a memorandum issued by the Government in 1954 to the effect that the emergency provision should be invoked whenever land was acquired for providing house sites for Harijans. I am not prepared to agree with the submission that delay on the part of tardy officials to take the further action in the matter is sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency. It may be a relevant circumstance to be taken into consideration in deciding whether there was any urgency at all or whether the emergency provision was invoked without the Government applying its

mind to the circumstances of the case. That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not try ing to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials. As already observed by me, the greater the delay the greater the urgency. Of course, there may be cases where the very acquisition is mala fide and so too the invocation of the urgency provisions. We are not concerned with such a situation here as there are no allegations of mala fides. The learned counsel for the petitioners stated that the land of the petitioners was low lying land, that the Harijans themselves did not want this land and that there was other land on a higher level which the Harijans wanted and which could be acquired instead of the land of the petitioners. That is not a matter about which I am competent to express an opinion. But a perusal of the counter-affidavit shows that all these matters were considered both before and after the notification under Section 4 (1) was published. The learned counsel for the petitioners relied on the decision of Ramachandra Rao, J. in W. P. 61/73* where the learned Judge observed:--

> "It has been held by this Court in *Madhusudan Reddy v. State of Andhra Pradesh*[1], and *K. Yenandi Reddy v. State of Andhra Pradesh*[2], that when there is a long delay in taking possession of the lands proposed to be acquired it demonstrates that there was no real urgency for the acquisition and that the order dispensing with the enquiry under Section 5-A by exercising the power under Sec-tion 17 (4) was passed mechanically and that the exercise of power under Section 17 (4) dispensing with the enquiry under Section 5-A is not proper or valid."

In my view, the question whether the power under Section 17 (4) was exercised mechanically or otherwise is a question of fact which can be decided on a consideration of all the relevant circumstances and no universal proposition can be laid down that long delay by itself is sufficient to prove that the power was exercised mechanically. I do not think that my brother Ramachandra Rao, J. laid down any such proposition. All that he appeared to decide was that it is a strong circumstance to be taken into consideration. In every case, apart from the delay, there are several other circumstances, such as the very object of the acquisition, the rasons for the delay, etc. which must necessarily be considered be fore the Court can decide the question of fact. I do not

agree with the first submission of the learned counsel.

3. The learned counsel next submitted that the mandatory requirements of Section 4 (1) of the Land Acquisition Act had not been observed in that, the Collector did not cause public notice of the substance of the notification to be given at convenient places in the locality and, therefore, the entire proceedings were void. He relied on the decision of the Supreme Court in Khubchand v. State of Rajasthan, where it was observed :

> "The object underlying the said direction in Section 4 is obvious. Under Sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry..... The non-compli ance with the said condition makes the entry of the officer or his servants unlawful on the express terms of Sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied, he or his servants cannot exercise the power of entry under Section 4 (2) with the result that if the expression 'shall' is construed as 'may', the object of the sub-section itself will be defeated. The statutory intention is, therefore, clear, namely, that the giving of public notice is mandatory. If so, the notification issued under Section 4 without com with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void."

4. It is clear from the above ob-servations that the requirement regardingl public notice contemplated by Section 4 (1) was considered by the Supreme Court to be mandatory. I am bound by what the Supreme Court has said, though I would like to say that if the public notice contemplated by Section 4 (1) was intended to appraise owners of the land of the proposed acquisition, there does not appear to be sufficient reason why the failure to comply with the requirement regarding public notice should vitiate the entire proceedings if the persons for whose benefit the public notice is required to be given have full knowledge of the notification published in the gazette under Section 4 (1). In the present case, the petitioners stated that there was no pub lie notice as contemplated by Section 4 (1). That statement was not denied in the counter-affidavit. But the affidavit filed on behalf of the petitioner shows that despite the fact that there was no public notice the petitioners had full knowledge of the notification under Section 4 (1) of the Act. On that ground I would have rejected the submission of the learned counsel for the petitioners. But in view of the judgment of the Supreme Court |bv which I am bound I hold that the proceedings are bad. The Writ Petition is, therefore, allowed, in the circumstances, without costs. Advocate's fee Rs. 100.

Cases Referred.

1(1970-1 Andh WR 43)
2(1973-2 APLJ 408)