

# ANDHRA PRADESH HIGH COURT

Sadar Anjuman Ahmediyya Muslim Mission

Vs

State of Andhra Pradesh

(Alladi Kuppuswamy, J.)

10.04.1980

## JUDGEMENT

### **Alladi Kuppuswamy, J.**

( 1. ) THE petitioner is a president of a Society Sadar Anjuma Ahmediyya, Hyderabad. Ahmadiyya is a sect or the denomination of Islam religion and is a minority community which maintains its own religious institutions.

( 2. ) THE case of the petitioner is that the Society entered into an agreement to purchase S. Nos. 294 to 302 of the extent of Ac. 76-00 in Attapur village, Rangareddy District at the rate of Rs. 2,500.00 per acre and paid Rs. 1,60,000.00 to the vendors from time to time towards the sale price. THE Society was put in possession of the land and also constructed a building at a cost of Rs. 50,000.00 in the year 1967 for the purpose of carrying on religious activities. Out of this land, the land bearing S. Nos. 294 to 300 was notified for acquisition under the Land Acquisition Act and the notification under S. 4 of the Land Acquisition Act dated 10-3-1971 was published in the Gazette on 25-3-1971. On the same day, a notification under Section 6 of the Land Acquisition Act was also published. Representations were made to the State Government not to acquire the land as it belongs to a minority sect and was used for religious purposes. In view of this representation, the case of the petitioner is that the acquisition proceedings were dropped in the year 1974 and a memorandum to that effect dated 20-10-1974 was issued by the Government the 1st respondent herein. THE petitioner however was surprised that proceedings under the land Acquisition Act were started again on 26-3-1979. THE Society gave a representation to the Special Deputy Collector, Land Acquisition (General), Hyderabad that he had no jurisdiction to continue the land acquisition proceedings. It was contended inter alia before him that as the land formed part of Ranga Reddy District, he had no jurisdiction to continue the land acquisition proceedings. This contention was rejected by the 2nd respondent by his order dated 23-4-1979. THE petitioner thereupon filed this Writ Petition praying for the issue of an appropriate direction directing the 2nd respondent to forbear from proceeding under the Land Acquisition Act with regard to the acquisition of S. Nos. 294 to 300 in Attapur Village measuring Ac. 64-15 guntas. Sri A. Venkata Ramana, the learned counsel for the petitioner has urged the following contentions before us: (i) THE land acquisition proceedings were dropped in 1974 and the respondents had no jurisdiction proceedings. THE Land could not be acquired without fresh

notifications under Section 4 and 6 of the Land Acquisition Act. (ii) THE land acquisition proceedings are violative of the fundamental rights of the petitioner Society granted under Article 26 of the Constitution of India. (iii) THERE was no public notice of the substance of the notification under Section 4 of the Land Acquisition Act at a convenient place in the locality as required by Section 4 (1) of the Land Acquisition Act and hence the acquisition proceedings are illegal. (iv) Even though the notification under Section 4 of the Land Acquisition Act was published on 25-3-1971 no proceedings under the Land Acquisition Act were taken until 1979 and in view of this enormous delay the proceedings are illegal and are liable to be quashed. (v) THE Special Deputy Collector, Hyderabad who is the 2nd respondent herein has no jurisdiction to continue the land acquisition proceedings as the land is situated in Ranga Reddy District.

CONTENTION I : - THE first and main contention is that the land acquisition proceedings were dropped even in 1974 and hence proceedings cannot be taken in pursuance of the earlier notifications of 1971 without issuing fresh notifications. THE respondents deny that the land acquisition proceedings were dropped. In any event, it is contended that until and unless there is a notification cancelling the earlier notification or withdrawing the land from the acquisition proceedings, the original, notification continues to be in force and proceedings can be continued at any time in pursuance of the said notification. In order to appreciate this contention it is necessary to state a few facts. The acquisition was made for the construction of the National Police Academy. After the notification was published, it was challenged by a party who claimed to be interested in the land as a perpetual lessee in Writ Petition No. 3299 of 1971. He contended that notice of the acquisition proceedings must be given to him and in his absence, the proceedings cannot go on. He also applied for stay of further proceedings and passing of the award in Writ Petition Miscellaneous Petition No. 5078 of 1971. Consequently, this petition was dismissed on 2-2-1972 on the ground that his request that he should be impleaded in the land acquisition proceedings was granted by the authorities concerned. Another Writ Petition No. 3667 of 1971 filed by another person in regard to the land acquisition proceedings was withdrawn on 24-2-1972. It appears from the records produced before us that the Director, National Police Academy addressed a letter to the Government on 16-10-1974 that the proposal for acquiring additional land for the Academy was initiated to find additional accommodation for the National Police Academy. Since then the requirements were met by the land made available by the Osmania University. In the circumstances, the Government of India intimated the Academy not to go ahead with the acquisition of additional land and therefore the academy requested that the acquisition proceedings may be dropped for the present. Accordingly the government addressed a letter to the Collector, Hyderabad enclosing a copy of the letter received from the National Police Academy and requested him to drop further proceedings in the matter in view of the circumstances explained by the Director, National Police Academy. The Collector in his turn addressed a letter to the Special Deputy Collector (Land Acquisition) Hyderabad dated 29-11-1974 enclosing a copy of the Government Memorandum and requesting the Special Deputy Collector to submit the withdrawal proposal in this regard. The Special Deputy Collector, accordingly sent a withdrawal notification purporting to be under Section 48 (1) of the Land Acquisition Act to the Collector with a request to approve the same and forward it to the Government for the approval of the Government and for publication in the Government Gazette. The Collector accordingly sent the withdrawal notification under Section 48 (1) of the Land Acquisition Act for approval of the Government and causing its publication in the Gazette. It however appears that before the withdrawal notification was published, a letter was received

from the Director of the National Police Academy dated 18-2-1976 stating that the Government of India had now conveyed sanction of the President to incur an expenditure not exceeding Rs. 11,50,000.00 on the acquisition of Ac. 75-40 guntas of land in S. Nos. 294 to 300 and S. No. 29. He therefore requested that the Land Acquisition Officer may be directed to place the land contained in S. Nos. 294 to 300 at the disposal of the National Police Academy. Accordingly, proceedings under the Land Acquisition Act were sought to be continued. The petitioner who entered into an agreement of sale with the purchaser in 1967 addressed a letter on 6-8-1977 stating that the entire compensation has to be paid to him. Thereafter, as has already been stated he objected in 1979 to the jurisdiction of the Special Deputy Collector to continue the land acquisition proceedings as the land was situated in Ranga Reddy District and his representation having been rejected, he filed this present Writ Petition. Under Section 4 of the Land Acquisition Act, whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette. After hearing the objections under Sec. A the Government is satisfied that the land is needed for a public purpose, a declaration is made under Section 6 of the Land Acquisition Act and this declaration has also to be published in the official Gazette. Thereafter, the land is marked out and measured and notices are issued to persons interested under Section 9 of the Land Acquisition Act. This is followed by an enquiry and award by the Collector. Section 48 of the Land Acquisition Act provides that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of land of which possession has not been taken. Sec. 36 of the Land Acquisition Act provides that on payment of compensation as provided in the award, the Collector may enter upon and take possession of the land. It is thus clear from Section 48 of the land Acquisition Act that it is open to the Government except in a case governed by Section 36, to withdraw from the acquisition of the land of which possession has not been taken. In this case, from the facts stated above, it is clear that there was a proposal to withdraw from the acquisition in 1974 and a draft notification under Section 48 (1) of the Land Acquisition Act was also forwarded by the Collector to the Government. But no notification withdrawing from the acquisition of any land was approved by the Government. Though Section 48 of the Land Acquisition Act provides that the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken, it does not provide for the manner in which such withdrawal from acquisition can be made. But Section 55 of the Land Acquisition Act empowers the Government to make rules in matters connected with the enforcement of the provisions of the Act. In exercise of these powers under Section 55 of the Act, the Governor of Andhra Pradesh made certain rules in G. O. Ms. No. 2110 Revenue (I. L. I.) dated 14-10-1959. Rule 5 is in the following terms: "On a consideration of the objections and the Collectors report thereon, if Government decide that the land should be acquired the declaration required under Section 6 of the Act should be submitted by the Collector of the District or Collectors of the Districts concerned to Government for approval and publication in the official Gazette. If, on the other hand, Government decide to give up the acquisition, a notification under Section 48 (1) withdrawing from such acquisition shall be published by them" . It is clear from this rule that if the Government decides to withdraw from such acquisition, it must be by means of a notification published by the Government. In this case, there is no such notification published by the Government. As matter of fact the record discloses that though a notification for withdrawal was sent to the Government for approval, it was not even approved by the Government. In the circumstances, it is clear that there was no withdrawal

of the land from acquisition within the meaning of Section 48 (1) of the Land Acquisition Act read with Rule 5. It is no doubt true that the Government requested that the acquisition may be dropped but no notification as required by Rule 5 was made withdrawing the land from acquisition under Section 48 (1) of the Land Acquisition Act. Hence, we agree with the contention of the learned Government Pleader that there was no withdrawal of the land from acquisition. In *Mammad Koyi v. Province of Madras*, AIR 1946 Mad 450 it was held that under Rule 5 of the Rule framed under the Land Acquisition Act (which corresponds to Rule 5 of the Rules framed by the Andhra Pradesh Government) it is compulsory for the Government to publish a notification of the decision of the Government under Section 48 (1) withdrawing from an acquisition. In that case also, the Government decided to withdraw from the acquisition proceedings and directed the Collector to submit the necessary notification for publication but before it was published, it again decided to go on with the acquisition. It was held that it was entitled to do so and no re-notification under Section 4 and 6 was necessary.

( 3. ) THE learned counsel for the petitioner further contended that even apart from the power contained under Section 48 (1) of the Land Acquisition Act, it was open to the Government to cancel any notification made under Section 4 or 6 of the Land Acquisition Act and in this case, it must be deemed that such a notification was cancelled by reason of the memo of the Government dated 16-10-1974 directing the Collector to drop further acquisition proceedings. He drew our attention to the decision of the Supreme Court in *State of M. P. v. Vishnu Prasad*, AIR 1966 Sc 1593 where in it was held that the argument that Section 48 (1) is the only method in which the Government can withdraw from the acquisition has no force because the Government can always cancel the notifications under Sections 4 and 6 by virtue of its power under Section 21 of the General Clauses Act. It is however submitted by the learned Government Pleader that even if in view of the decision of the Supreme Court, the Government has a power to cancel the notification decors, the power contained under Sec. 48 (1) of the Land Acquisition Act, in exercise of the powers conferred under Section 21 of the General Clauses Act, even then, it cannot be done without a notification cancelling the previous notifications duly published in the Gazette. This contention in our view deserves acceptance. Section 21 of the General Clauses Act provides that whereby any Central Act or Regulation, a power to issue notifications is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to amend, vary or rescind any notifications. While this section empowers the Government to rescind a notification made by it under any Act or Regulation, it provides that the power to rescind must be exercised in the like manner and subject to the like sanction and condition as in the case of making a notification. It therefore follows that if the power to acquire the land is to be exercised by means of notification under Sections 4 and 6 of the Land Acquisition Act which are to be published in the Gazette, the power to cancel or rescind that notification should also be exercised by the issue of a notification duly published in the Gazette. In this case, there is neither such a notification nor was there any publication in the Gazette. In *K. P. Khetan v. Union of India*, AIR 1957 SC 676 the Supreme Court had to consider an order under Section 18-A of the Industries (Development and Regulation) Act of 1951 which authorises the taking over the management of an undertaking in certain events which was later cancelled by another order. Dealing with the power of the Government under Section 21 to cancel the previous notification, it was observed that under Section 18-A, the power to authorise a person to take over the management can be exercised only by a notified order that is to say, by

an order notified in the official Gazette. This is the manner of the exercise of the power. THE amending order had been made in the same manner and this requirement of Section 21 was therefore fulfilled. Sri A. Venkata Ramana, the learned counsel for the petitioner, however drew our attention to certain observations of Justice Sarkar in the judgment in which it is stated thus: "When Section 21 of the General Clauses Act makes the power to emendations as in the main Act, it does not contemplate those conditions upon the fulfilment of which the right to issue the order arises under the main Act. If this were so, the power of amendment conferred by Section 21 would have been wholly redundant and unnecessary. If the conditions upon the fulfilment of which the right to exercise the power arose under the main Act existed then the Government could instead of amending the order make a fresh order under Section 14, General Clauses Act, if necessary, rescinding the earlier order. THEREfore, it seems that the provision in Section 21, General Clauses Act, that the power of amendment shall be exercisable subject to like conditions does not refer to conditions upon the existence of which the right to exercise the power arises under the main Act but refers to the conditions to which the order issued under the main Act must be made subject" . THESE observations do not render any assistance to the petitioner in this case. We are not concerned here with the complying with conditions upon the fulfilment of which the right to exercise powers under the main Act depended. We are here concerned with the manner of the power to be exercised namely by issue of notification published in the official Gazette. Section 21 of the General Clauses Act is clear that the subsequent notification cancelling the previous one should be made in a like manner. Justice Sarkar himself gives an illustration saying that under Section 18-A "any notified order issued under sub section (1) s shall have effect of such period not exceeding five years as may be specified in the order" and therefore, if an order is sought to be amended with the aid derived from Section 21, General Clauses Act, the amendment must observe the condition laid down in Sec. 18-A and such amendment cannot, therefore, extend the operation of the order beyond the period of five years mentioned in the main Act, Justice Sarkar himself has stated in para 28 that the power to take over the management of an undertaking under Section 18-A could be exercised only by a notified order and that is the manner of the exercise of the power and as the amending order had been made in the same manner, the requirement of Section 21 of the General Clauses Act, therefore, was fulfilled. THEREfore, far from being of any assistance to the learned counsel for the petitioner we are of the view that this decision clearly supports the contention that the subsequent notification cancelling the previous notification cancelling the previous notification in the official Gazette if that is the manner in which the first notification has to be made. Venkata Ramana relied upon a decision in C. A. T. A., Sales Co op Society v. A. P. Government, AIR 1977 SC 2313. He drew our attention to the observations in paragraph 24 in which the Supreme Court negated the submission that there was no direction in the order of the Government as required under Section 77 of the A. P. Co Operative Societies Act as the Government had only made a request in its communication. The Supreme Court pointed out that "any requests of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same" . We have no doubt that the request by the Government contained in its memorandum to the Collector and the further request by the Collector to the Special Deputy Collector to drop the acquisition proceedings and to submit proposals for withdrawal must be construed as directions, but, in the view we have taken viz., whether the previous notification has to be withdrawn under Section 48 (1) of the Land Acquisition Act or cancelled under Sec. 21 of the General Clauses Act, it has to be done only by

means of another notification published in the Gazette, this argument is not of any assistance to the petitioner. For the above reasons, we are unable to agree with the contention of the petitioner that the acquisition proposals must be taken to have been dropped and cannot be continued without the recourse to a fresh notification under Sections 4 and 6 of the Land Acquisition Act. CONTENTION No. 2: - This contention has to be rejected in view of the decision of this Court in Ashurkhana Nalsahabgadda v. District Collector, (1979) 2 Andh WR 329: (AIR 1980 Andh Pra 205) in which it was held by a Division Bench of this Court that compulsory acquisition of property belonging to a religious denomination does not violate either Article 25 or Article 26 of the Constitution of India. CONTENTION No. 3: - It was sought to be contended that there was no publication of the notice or the substance of the notification in the locality as required under Section 4 (1) of the Land Acquisition Act. It has however been substantiated by the Government that there was such a publication on 11-6-1971. Hence this contention fails. ;