

K. Sai Reddy and Others Vs. Deputy Executive Engineer, Irrigation and Command Area Development, Nampally, Hyderabad and Others

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Court : Andhra Pradesh

Decided On : Mar-20-1995

Reported in : AIR1995AP208; 1995(1)ALT673

Judge : S.R. Nayak, J.

Acts : [Constitution of India](#) - Articles 19, 19(1), 21, 31, 31A and A(1), 226 and 300A; [Land Acquisition Act, 1894](#) - Sections 4 and 4(1)

Appeal No. : Writ Petn. No. 11215 of 1992

Appellant : K. Sai Reddy and Others

Respondent : Deputy Executive Engineer, Irrigation and Command Area Development, Nampally, Hyderabad and Others

Advocate for Def. : Govt. Pleader for Land Acquisition

Advocate for Pet/Ap. : C.V. Narayana Rao, Adv.

Judgement :

ORDER

1. When this case was heard, the caution noted by Lord Hewart in his book 'The New Despotism' (1929) that bureaucracy had become true rulers, of the country

and which caution led to several reforms in the Administrative Law of England, loomed large in the mind of the Court. With the advent of the Indian Constitution, the Indian people thought that (heir person and property are protected and they can be deprived only in accordance with law. That constitutional belief has been belied by the bureaucrats in this case. This case highlights how irresponsible bureaucrats who are meant to respect and implement the law do something in utter violation of the law and the Constitution and sit quite comfortably without least botheration to introspect their illegal actions and undo the thing which ought not to have been done.

2. The petitioners 9 in number are joint pattedars of 15 acres 13 guntas of wet agricultural land comprised in Survey Nos. 630, 631, 632, 633, 646 and 647 of Rampally Diara (Kalinguda) village of Keesara Mandat of Ranga Reddy district. The petitioners are agriculturists and the land was under their personal cultivation before the same was taken over forcibly and without authority of law by the respondent No. 1 the Deputy Executive Engineer, Irrigation and Command Area Development, I.E. Sub-Division, Hyderabad on 20-1-1989.

3. It is averred in the affidavit filed in support of the writ petition that after the first respondent forcibly and without authority of law took over the possession of the land on 20-1-1989, the petitioners received notices dated 4-3-1989 from the third respondent-Mandal Revenue Officer, Keesara Mandal, Ranga Reddy district stating that the lands in question were under acquisition for carrying out the work for formation of a percolation tank and directing the petitioners to appear before him on 10-3-1989 and submit their claims. On 10-3-1989 the petitioners met the third respondent to enquire about the alleged acquisition of their lands, but the third respondent did not give them any hearing and the petitioners were forced to go out of the office without being informed about the particulars of the alleged land acquisition. When the construction activity was started in the second week of March, .1989 under the supervision of the Governmental authorities, the petitioners protested to the officials presented at the construction site and their attempt to stop the construction went in vain. Thereafterwards the petitioners filed O.S. No. 22/89 in the court of the learned District Munsif, Medchal, Ranga Reddy district. In the said suit they filed LA. No. 112/89 and the learned District Munsif

granted an interim injunction against the Secretary to the Government, Department of Revenue and the District Collector, Ranga Reddy district. Later on, the petitioners were advised that the suit filed by them was not maintainable and in pursuance of that advice they withdrew the suit on 19-7-1990. During the fag end of 1991 the petitioners came to know that the respondent No. 1 had forcibly and without authority of law took over possession of the lands and he was the officer incharge for the construction of percolation tank. Therefore the petitioners immediately contacted the respondent No. 1 and made enquiries about the taking over possession of the land. But, the respondent No. 1 did not give them any correct information about the acquisition of the land. Under those circumstances, the petitioners got issued a legal notice dated 30-5-1992 to the first respondent calling upon the latter to inform them whether any land acquisition proceedings were initiated or not and asking him to deliver back the possession of the lands to the petitioners if no proceedings are initiated to acquire the land. Since the first respondent and other Governmental authorities failed to respond to the requests of the petitioners, they were constrained to file the writ petition in this court on 2-9-1992 seeking a declaration that the action of the respondents in taking over the possession of the lands without any authority of law and without paying compensation as illegal and void and to issue a consequential direction to the respondents to re-deliver the possession of the lands to the petitioners.

4. On service of notice a counter-affidavit is filed on behalf of the respondents. This counter-affidavit filed on behalf of the respondents is sworn to by Sri J. Venkatram Reddy, Deputy Executive Engineer who is arrayed as the respondent No. 1 in the writ petition. In the counter-affidavit it is stated that the possession of the land was taken over on 20-1-1989 with the consent of the petitioners and the entire work was completed and an additional area of 112 acres was brought under irrigation. The first respondent has denied the protests alleged to have been made by the petitioners at the time of construction of the percolation tank. As regards the allegations made by the petitioners in paras 7 to 9 are concerned, the first respondent in the affidavit has stated that those allegations may be true but he is not aware about the same. Further, it is admitted in the counter-affidavit that no land acquisition proceedings are initiated. However, it is stated that the proposals for acquisition of the lands are submitted to the Government and after obtaining

necessary approval from the Government, proceedings under the provisions of the Land Acquisition Act would be initiated and compensation would be paid to the petitioners.

5. When this petition was heard on earlier occasion and the aforementioned startling facts were revealed, I directed the learned Advocate General to appear in the case. Accordingly the learned Advocate General appeared before me and with his usual fairness submitted that he could not approve the action of the Governmental authorities in taking over the possession of the lands of the petitioners on 20-1-1989 without recourse to the provisions of the Land Acquisition Act. I place my appreciation for the stand taken by the learned Advocate General in a matter like this.

6. The facts narrated supra make it very clear that the possession of the lands of the petitioners was taken over by the first respondent on 20-1-1989 without recourse to law and in utter violation of the provisions of Art. 300A and the provisions of the second Proviso to Art. 31A(1) of the Constitution of India and the provisions of the Land Acquisition Act.

7. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law, whereas the second Proviso to Article 31A(1) of the Constitution provides that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

8. Article 300A has been inserted by the Constitution (44th Amendment) Act, 1978: Prior to this amendment the right to property was guaranteed by Article 31. While clause (1) of that Article has been shifted from Part III to Article 300A, clause (2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Further sub-clause(f) of clause(1) of Article 19 which guaranteed

the right to acquire and hold property, has also been omitted by the same, 44th Amendment Act, 1978. The result of these changes, in short, is that the right to hold property has ceased to be a fundamental right under the Constitution of India and it has been left to the Legislature to deprive a person of his property by the authority of law. The Madras High Court in the case of *Shanthalakshmi v. State of Tamil Nadu*, : AIR1983 Mad232 has held that a law covered by Art. 300A can still be challenged on the ground that the restrictions imposed by it are unreasonable within the meaning of Art. 19. The Court, however, did not consider what would be the effect of repealing the relevant fundamental right to property under sub-clause (f) of Art. 19(1) but rested its judgment on the observations, generally made, by the Supreme Court in the case of *Maneka Gandhi v. Union of India*, : [1978]2SCR621 . The question whether the view taken by the Madras High Court is correct or need not be gone into for the purpose of deciding the present case because the Court, in this case, finds that the property of the petitioners was taken away by the executive action on 20-1-1989 supported by and in excess of the authority conferred by the Land Acquisition Act and Article 300A of the Constitution and therefore it is permissible for the petitioners to seek appropriate remedy from this Court under Article 226 of the Constitution.

9. The say of the first respondent, as stated in the counter-affidavit, that the petitioners gave consent to take over the possession of the land on 20-1-1989 is in no way helpful to the respondents to sustain the impugned action. No material is placed before the Court except the self-serving Statement to show that the petitioners gave their consent to take over the possession of the lands on 20-1-1989. Secondly, assuming that such a consent was given by the petitioners to take over the possession of the land, that itself will not be a valid ground for the respondents to take over the possession of the land without initiating the land acquisition proceedings as provided under the Land Acquisition Act. Looking from any angle the action of the respondents in depriving the property of the petitioners cannot be supported and is liable to be condemned as unconstitutional and violative of provisions of the Land Acquisition Act.

10. Now let me consider the kinds of reliefs that may be granted to the petitioners in such facts-situation. Admittedly, the possession of the lands of the petitioners

was taken over by the first respondent as far back as on 20-1-1989. So far no land acquisition proceedings are initiated and no compensation is paid to the petitioners. The Court has already found that the action is violative of Article 300A, second Proviso to Article 31A(1) of the Constitution and the provisions of the Land Acquisition Act. In order to render justice to the petitioners, in order to vindicate the majesty of law and to impress upon the bureaucracy that citizens are ruled by Law and not by the bureaucrats, it is absolutely necessary that the respondents should be saddled with exemplary costs as well as liability to pay reasonable compensation for the unlawful deprivation of the property for more than six years. The petitioners are agriculturists and they solely depend upon agriculture for their livelihood and sustenance. From 20-1-1989 they have been deprived of their only source of livelihood without authority of law and without paying any compensation though they are entitled to the compensation at a rate which shall not be less than the market value as provided under second Proviso to Article 31A(1) of the Constitution. Therefore, it is clear that the petitioner's fundamental right under Article 21 of the Constitution is violated by the executive action of the State. The lands in question are stated to be wet agricultural lands and this claim made by the petitioners is not denied by the respondents in their counter-affidavit. Therefore, having regard to the nature and productivity of the lands, it can be said that the petitioners would have approximately derived a net income of Rs. 5000/- by cultivation per acre and per year, had they been in actual possession of the lands. The petitioners have been dispossessed from the lands for the past more than six years. It will take six more months to initiate and complete the land acquisition proceedings notionally as directed by this order. Therefore, taking into account all the facts and circumstances of the case, I think that Rs. 30,000/- per acre will be just and reason-able compensation for the unlawful deprivation of the property of the petitioners. There is no scope for this Court to direct the respondents to redeliver the possession of the lands to the petitioners because it is stated that the lands of the petitioners are already submerged. Therefore the respondents should be directed to initiate and complete the land acquisition proceedings as per the provisions of the Land Acquisition Act notionally. The petitioners are entitled to claim compensation at the rate that may be prevailing on the date on which the respondents may issue notification under Section 4(1) of the Land Acquisition Act.

11, In the result and for the foregoing reasons I make the following order :

(i) Writ Petition is allowed in part;

(ii) The respondents are directed to pay the petitioners at the rate of Rs. 30,000/- per acre in respect of Acs. 15-13 guntas of land towards compensation for having deprived the petitioners their properties without recourse to law, within a period of four weeks from today. It is made clear that this sum of money is required to be paid to the petitioners besides the compensation to which they are entitled under the provisions, of the Land Acquisition Act.

(iii) The respondents are directed to notionally initiate the land acquisition proceedings under the provisions of the Land Acquisition Act and complete the same within a period of six months from today. It is made clear that the petitioners will be entitled to compensation at the rate prevailing on the day on which the respondents will issue notification under Section 4(1) of the Land Acquisition Act as directed by this order.

(iv) The Govt. of Andhra Pradesh is directed to initiate necessary disciplinary proceedings against the officer/officers who are responsible for taking over the possession of the lands of the petitioners on 20-1-1989 in flagrant violation of Article 300A and second Proviso to Article 31A(1) of the [Constitution of India](#) and the provisions of the Land Acquisition Act, as per the service rules applicable to such officer/officers.

(v) The petitioners are entitled to the cost of this writ petition which is quantified at Rs. 3000/-. Advocate fee is fixed at Rs. 1500/-. It is permissible for the State Government to recover the costs and the advocate's fee paid to the petitioners from the salaries of the officer or officers who are responsible for the unlawful taking over possession of the lands of the petitioners.

(vi) The Registry is directed to send copy of this order to the Chief Secretary, Government of Andhra Pradesh for necessary action.

12. Order accordingly.

