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Court : Andhra Pradesh

Decided On : Sep-08-1997

Reported in : 1998(2)ALD642

Judge : M.H.S. Ansari, J.

Acts : Land Acquisition Act, 1894 - Sections 4, 4(1) and 173(3-A)

Appeal No. : W.P. No. 6912 of 1996

Appellant : T. Krishna and ors.

Respondent : Govt. of Andhra Pradesh and ors.

Advocate for Def. : Government Pleader for Cooperation and ;Smt. Nanda Ramachander Rao, Adv.

Advocate for Pet/Ap. : M/s. A. Satya Prasad, ;G.V. Shivaji Tagore and ;T. Srinivas, Advs.

Judgement :

1. Heard Sri A. Satya Prasad, learned Counsel for the petitioner, learned Government Pleader for Cooperation for Respondents 1 to 4 and Smt. Nanda Ramachander Rao, learned Counsel for Respondents 5 and 6.

2. The matter was listed before this Court for vacating the interim orders dated 4-4-1996 in WPMP No.8475 of 1996.Counters have been filed on behalf of the

respondents. As the arguments in the Miscellaneous Petitions are same as in the main writ petition, with the consent of learned counsel for either parties, arguments were heard in the main writ petition.

3. The above writ petition is filed questioning the Resolution passed by the 5th Respondent Market Committee dated 9-11-1995 declining to acquire the land belonging to the petitioners covered by Sy.Nos.784/785 admeasuring AC.3.04.

4. It is the case of the petitioners that the 5th respondent - Marketing Committee sought the willingness of the petitioners for taking over the land for establishing cattle yard. The petitioners on 25-9-1992 gave their willingness on a stamp paper whereby they agreed inter alia that the petitioners shall have no objection for acquisition of their land as per the market value. The 5th respondent submitted a report dated 9-1-1992 for acquisition of the land to the 4th respondent and in that report, the suitability of the petitioners lands was also discussed. The Joint Director of Marketing in his Proceedings dated 2-3-1993 addressed to the 4th respondent, sought permission of the Agricultural Market Committee for acquisition of the lands of the petitioners either on mutual basis or through land acquisition. Thereafter the 4th respondent requested the State Government (2nd respondent herein) for issuing necessary orders for acquiring the land of the petitioners. It is not in dispute that the Government of Andhra Pradesh through its Proceedings Memo No.44442/Markeling dated 7-3-1994 accorded permission to the Agricultural Market Committee, Suryapet to acquire the land as alternative site in Sy.No.784/785 to an extent of AC.3.04 cts for establishment of Cattle Market Yard. The 5th Respondent - Market Committee by their letter dated 28-6-1994 addressed to the Revenue Divisional Officer requested for submitting acquisition proposals in respect of the land of the petitioners and for dropping the proposal with respect to the land selected earlier by them. The 5th respondent alsoissued form of requisition for acquisition on 26-8-1994 proposing to acquire the land of the petitioners. While the matter stood thus, the impugned resolution has been passed declining to acquire the land of the petitioners. The said Resolution, it is contended by the petitioners is illegal and mala fide.

5. It is not in dispute that the land of the petitioners is in the possession of the 5th respondent - Market Committee. The Respondent - Market Committee is paying a sum of Rs.300/- per month as rental to the petitioners. This Court by interim order dated 14.7.1997 directed the respondents to pay 80% of the compensation to the petitioners under the provisions of sub-Section 3A of Section 17 of the Land Acquisition Act.

6. In the counter filed on behalf of the respondents, it is stated that the petitioners are not entitled to payment of 80% compensation as the land has not been taken possession of in pursuance of land acquisition proceedings, but the same is on rental basis. The Marketing Committee in its counter stated that although they proposed to acquire the land of the petitioners, but subsequently found the same to be unsuitable and not in the interest of the Market Committee and therefore passed the impugned resolution. The Government - 2nd respondent herein in its counter has more or less supported the stand of the Market Committee - 5th respondent herein.

7. Learned Counsel for the petitioner submitted that the various proceedings referred to supra would disclose that the respondents have taken all appropriate steps and proceedings for acquisition of the petitioners lands and that the Government have also accorded permission by proceedings dated 7-3-1994 to acquire the petitioners lands. Requisitions have been submitted, it was contended, to the appropriate authority for initiating proceedings.

8. It was further submitted that requisite amount has also been deposited for acquisition purposes. All that remains, it wascontended by Sri A. Satya Prasad, learned Counsel for the petitioners is to initiate proceedings under the Land Acquisition Act by publication of a notification under Section 4(1). The respondents should be directed to initiate such proceedings, it was submitted.

9. The controversy in the above writ petition lies in a narrow compass. In can be seen from the Memo No.44442/MKT/C/II(2)/90 dated 7-3-1994 of the Government that Government have accorded permission to acquire the land of the petitioners for establishment of cattle market yard. It is subsequent to the said permission accorded by the Government that the respondent -Marketing Committee passed

the impugned resolution.

10. Whether the land of the petitioners has to be acquired or not and whether a writ can be issued to compel the authorities to acquire the land of the petitioners are the only points for consideration .

11. In so far as the possession of the land is concerned, it is not in dispute that the same is with the 5th respondent - marketing Committee since 1992. The same, however, is on rental basis for which the petitioner is. being paid a rent of Rs. 300/- per month by the Respondent - Marketing Committee. The possession thus is relatable to the lease and not one under the land acquisition proceedings. The possession of the Marketing Committee over the land of the petitioners cannot be construed to be one as possession under Land Acquisition Act. It cannot also be construed that the land of the petitioners has vested in the Respondent - Market Committee to warrant a Mandamus to be issued to compel the respondents to initiate land acquisition proceedings and to pay the compensation for the same. The petitioners contention to that extent has to be rejected and is accordingly rejected.

12. At the same time, it is not in dispute that various steps and proceedings ascontemplated have been initiated for acquisition of the petitioners lands. Government have also accorded permission for acquiring the petitioners lands as per the proceedings dated 7-3-1994. What effect the impugned resolution has is a matter for consideration by the Government. It is needless to reiterate that it is the Government that is vested with the power of forming an opinion as to whether any property is to be acquired for any public purpose. It cannot also be denied that the Marketing Committee is empowered to pass appropriate resolutions and what effect the said resolutions would have is a matter for consideration by the Government with regard to acquisition of the property of the petitioners. The Government can take into consideration all relevant material in forming an opinion in the matter including the suitability of the land as also change in the stand of the respondent - Marketing Committee in that behalf. No notifications as contemplated under the Land Acquisition Act has so far been issued pursuant to the permission accorded by the Government by its proceedings dated 7-3-1994. The requisition

by the Marketing Committee for acquiring the petitioners lands is before the appropriate authority.

13. In view of these facts, this Court is of the view that this Writ Petition can be disposed of with certain appropriate directions to the Government as under:

14. The 2nd respondent is directed to consider the relevant material available with it and based on which proceedings in Memo No.44442/MKT/C/II(2)/90 dated 7-3-1994 were issued and also the resolution impugned in the above writ petition and to pass appropriate orders thereon with regard thereto within a period of three months from the date of receipt of a copy of this order. If in the opinion of the Government - 2nd respondent herein, the petitioners lands has to be acquired, then appropriate steps as contemplated under the Land Acquisition Act shall be taken by the respondents in accordance with law expeditiously.

15. With the direction as above, the Writ Petition is accordingly disposed of. But, in the circumstances without costs. Advocate fee fixed at Rs. 1,200/-.

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