

Mohd. Ishaq and Another Vs. State of A.P. and Others

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Court : Andhra Pradesh

Decided On : Aug-02-2001

Reported in : 2001(5)ALD623

Judge : Bilal Nazki and ;Elipe Dharma Rao, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), (2) and 5A

Appeal No. : WP No. 13885 of 1988, CCCA No. 55 of 1995 and CRP No. 971 of 1999

Appellant : Mohd. Ishaq and Another

Respondent : State of A.P. and Others

Advocate for Pet/Ap. : M/s M.V. Suresh Kumar, ;Vilas V. Afzal Purkar, ;R. Subhash Reddy, ;C. Poornaiah, ;L. Ravichandra, Advs., ;C. Subba Rao, ;Government Pleader for Land Acquisition, ;Government Pleader for Revenue

Judgement :

ORDER

Bilal Nazki, J.

1. These are three matters which were heard together. They pertain to the same subject-matter therefore they are decided by this common judgment.

2. The appeal was filed against the judgment in OS No. 230 of 1993. The suit was for specific performance. It was alleged by the plaintiffs that the defendants in the suit had executed an agreement on 21st August, 1991 for sale of a plot of land. By judgment and decree dated 26-4-1994 the suit was decreed and the defendants therein filed this appeal. During the course of the appeal the successful plaintiffs who are the respondents have filed a Memo stating that during the pendency of the proceedings the schedule property has been taken over under the provisions of Land Acquisition Act and the property is now under the use and occupation of the beneficiaries as such the defendants i.e., appellants cannot deliver the property to the plaintiffs-respondents, therefore the decree of the Court below has become ineffective and inoperative.

3. In view of this development the decree of the trial Court having become inoperative, the appeal is accordingly disposed of, but liberty is granted to the parties to workout their remedies, if any available, under the Land Acquisition Act.

WP No. 13885 of 1988.

4. This is a writ petition challenging the notification No. D3/3433/1988, dated 15-7-1988 issued under Section 5A of the Land Acquisition Act. The petitioners contend that they are the owners of building bearing Municipal No. 5-9-7/1/3, Saifabad, Hyderabad named as Roshan Manzil. This property was purchased by the mother of the petitioners in an auction held by the competent Officer. Before purchase the property was an evacuee property. There was a dispute in respect of area belonging to Roshan Manzil. The petitioners' mother filed suit OS No. 75 of 1965 on the file of III Additional Judge, City Civil Court, Hyderabad which was decreed in favour of the petitioners' mother. Against the said decree, respondent Nos. 1 and 2 filed appeal being CCCA No. 27 of 1969 in the High Court. The High Court modified the decree and upheld that the petitioners' mother Smt. Sofia Begum was entitled to 6300 Sq. yards of the land and the same should be demarcated. The High Court also directed that, if there was any encroachment with respect to the land measuring 6300 Sq. yards by respondents 1 and 2 plaintiff i.e., Smt. Sofia Begum would be entitled to possession of said encroached area. Thereafter Sofia

Begum filed EP No. 4 of 1983 before the Chief Judge, City Civil Court, Hyderabad. During the pendency of the EP Sofia Begum died and the writ petitioners were brought on record as legal representatives of said Sofia Begum. In the said EP the learned Chief Judge, City Civil Court, Hyderabad appointed a Commissioner-Engineer to demarcate the area of 6300 sq. yards. Several reports were filed by the Commissioner-Engineer and objections were raised by the respondents. On 25-2-1987 Sri M. Venkateswarlu, retired Deputy Chief-Engineer filed a report stating that respondents 1 and 2 have encroached on an area of 2,235-83 Sq. yards. This was objected by the respondents. While this executive petition was pending, according to the petitioners, the respondents tried to make further encroachments and entered into main building portion of the petitioners and laid road unauthorisedly. The petitioners filed a petition EA No. 31 of 1987 in EP. No. 4 of 1983. The Court thereafter on 2nd April, 1987 directed the Commissioner to demarcate the said 6300 Sq. yards and the road unauthorisedly laid by the 2nd respondent. The Commissioner-Engineer demarcated the area and found that the area which was encroached by the respondents 1, 2 and 5 was to the extent of 3,092-38 Sq. yards and the petitioners were in possession of 3,031-0 Sq. yards out of the total of 6300 Sq. yards. It appears that, when the Government had no other option to hold the land which was in their possession they issued G.O. Ms. No. 84, M.A, dated 14-2-1986 through which they handed overpossession to the 5th respondent. This is the land which is claimed by the petitioners and for which EP No. 4 of 1983 was pending. The 5th respondent constructed a multi-storeyed building. The petitioners filed WP No. 2169 of 1987 challenging the said G.O. The Court while disposing of the writ petition held:

'I am of the view that since the matter is now pending before the civil Court in EP No. 4 of 1983 in OS 75 of 1965 on the file of the Chief Judge, city Civil Court, Hyderabad, instead of quashing the said G.O. Ms. No. 84, MA, dated 14-2-1986, a direction on the following lines will serve the ends of justice. The Court below may proceed with EP No. 4 of 1983 disregarding the effect and operation of G.O. Ms. No. 84, MA, dated 14-2-1986 insofar as an area of 2235-83 Sq. yards is concerned. If after enquiry and on the basis of evidence available on record it comes to the conclusion that the land to an extent of 2235-3 Sq. yards for part and parcel of the land claimed by the petitioners in both the writ petitions, the said G.O.

Ms. No. 84, MA, dated 14-2-1986 will cease to operate insofar as that area in EP No. 4 of 1983 is concerned.'

So, all the efforts by the State to deprive the petitioners of their property without a just cause failed with the orders of the High Court referred to above. Thereafter, the State came up with a notification for acquisition.

5. It is contended that the acquisition cannot be permitted because admittedly the State was an encroacher and they tried to deprive the petitioners of their property by encroaching it, inspite of a decree having been passed they tried to deprive by issuing a G.O., that GO was virtually quashed by the High Court in WP No. 2169 of 1987, therefore exercise of power under Land Acquisition Act is mala fide. It is also contended by the learned Counsel for the petitioners that admittedly in this case land had been encroached by the State and handed over to a third party (beneficiaries) before issuing notification under Section 4(1) of the land Acquisition Act. It is also contended that the State has no power to take possession of the land except through due process of law and if it is a case of acquisition there is no way out for the State to take the land into its possession except by proceeding in terms of Land Acquisition Act. He submits that, under Section 4(1) of the Land Acquisition Act the process of acquisition can be initiated. Section 4(1) and (2) of the Land Acquisition Act lays down:

'4. Publication of preliminary notification and powers of the officers thereupon :--(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of publication of the notification.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adaptable for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work if any proposed to be made thereon;

to make such levels, boundaries and line by placing marks and cutting trenches;
and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle : Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.'

6. From bare perusal of subsections (1) and (2) of Section 4(1) it becomes clear that it is only after a notification under Section 4(1) is notified it becomes lawful for any officer to enter into the property so notified. Unless there is a notification under Section 4(1), any entry by any officer of the Government into somebody's property would be an encroachment. By issuing a notification now in this case, the Government concedes that the property belongs to the petitioners. The property had finally been concluded to be belonging to the petitioners and even the High Court had directed eviction. Therefore, in our view, issuing of notification under Section 4(1) at this stage is not only mala fide but also illegal. Section 4(1) notification could not be issued after the encroachment had been established, perhaps such a notification could be issued after restoring the property to the petitioner in terms of the decree.

7. For all these reasons, the normal course would be to quash the notification, but subsequent events which have happened in the matter restrain us from taking such a course. The lands have been put to use by the beneficiaries and we are told that multi-storeyed buildings have been constructed which have been given to

pavement dwellers. If eviction is ordered at this stage number of under-privileged people would suffer. Therefore, while holding that the notification was bad, we do not direct eviction and we permit the respondents to finalise the acquisition by passing the award, keeping in view the peculiar circumstances of the case. However, as the respondents have been manifestly wrong, we direct costs of Rs. 25,000/- to be paid to the petitioners.

CRP No. 971 of 1999

8. This revision petition is filed against an order passed by the Chief Judge, City Civil Court, Hyderabad in EP No. 4 of 1983 on 26th October, 1998. He closed by the execution petition on the ground that writ petition was pending in this Court. Now that the writ petition has been disposed of and part of the land is under acquisition which has already been taken possession of by respondent No. 5, the Executive Court will have to proceed with respect to the balance of the land. The notification has been issued for 2235-83 Sq. yards. For rest of the laird out of 6300 sq. yards the Executing Court would be at liberty to proceed and restore the possession of the balance land, if any, to the petitioners-plaintiffs.

9. The appeal, writ petition and the revision are accordingly disposed of.

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