

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.17109 of 2008

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Date: November 30, 2009.
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Between:

K. Gangadhara Rao.

... Petitioner

And

1. State of Andhra Pradesh,
rep. by its Principal Secretary,
Revenue & Land Acquisition
Department, Secretariat Buildings,
Hyderabad and 3 others. ... Respondents

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ORDER:

This Court issued *Rule Nisi* on 07.8.2008 and granted interim stay in W.P.M.P.No.22214 of 2008. W.V.M.P.No.3526 of 2009 is filed by respondents 1 to 4 to vacate the interim order.

2. When the vacate application came up for hearing, the counsel on record made a request for final disposal of the writ petition itself and, hence, the writ petition is being disposed of finally.

3. The writ petition is filed for a writ of *Mandamus* declaring the action of the second respondent in issuing impugned notification under Section 4 (1) of the Land Acquisition Act, vide Ref.G4/2768/05, dated 18.3.2006, published in New Indian Express, dated 23.3.2006, and also consequential declaration under Section 6 of Land Acquisition Act for acquisition of the land of the petitioner, an extent of Ac.1-06 cents in R.S.No.438/14B of Venkayammampeta village, Kadium Mandal, East Godavari District, as illegal, arbitrary and violative of principles of natural justice and for a consequential order directing the respondents to drop all further proceedings including dispossession of

the petitioner from the above said land and to pass such other suitable orders.

4. Sri Challa Dhanamjaya, learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and the stand taken in the counter-affidavit and also pointed out to the proceedings of the Collector and District Magistrate, East Godavari in Ref. G4/2768/2005, dated 16.5.2008, and specifically pointed out to the objections and remarks as well and would maintain that having recorded that there are certain encroachments on the Government land and the said land is available, without taking further steps in seeing that such encroachers are being evicted and such land be used for this purpose, under the guise of the public purpose resorting to the issuance of the notification under Section 4 (1) of the Land Acquisition Act, cannot be sustained. The learned counsel specifically pointed out to the relevant portions.

5. *Per contra*, the learned Assistant Government Pleader for Land Acquisition had taken this Court through the contents of the counter-affidavit and also would maintain that advance possession had been taken and 80% of the compensation, in fact, had been deposited and when that being so, subsequent to these steps, the mere ordering of the further inquiry under Section 5 A of the Land Acquisition Act may not serve any purpose. Even otherwise, if the conduct of the petitioner if carefully examined, the petitioner is not entitled to any relief at all. The learned Assistant Government Pleader for Land Acquisition also had demonstrated relevant dates and further would specifically pointed out that it may be that in the proceeding Ref. G4/2768/2005, dated 16.5.2008, the Collector and District Magistrate, East Godavari, might have made certain observations while recording on remarks and objections, but however, it was also specifically observed that Government puntha is not convenient to the villagers to utilize as path

way and when that being so it being predominantly a question of fact, such finding cannot be disturbed by the Writ Court while exercising the power under Article 226 of the Constitution of India. At any rate, the reasons recorded being sustainable reasons in the case of this nature, such findings cannot be re-scrutinized by the Writ Court under Article 226 of the Constitution of India.

6. Heard the counsel.

7. The reliefs prayed for already had been specified supra. It is the case of the petitioner that the petitioner is the absolute owner and possessor of the land to an extent of Ac.1-06 cents in R.S.No.438/14B of Venkayammampeta village, Kadiam Manndal, East Godavari District, purchased under registered sale deed dated 13.11.1995 and had been in peaceful possession and enjoyment of the same in his own right, title and interest. The petitioner had been cultivating the land by paying taxes to various authorities and his name was also mutated in revenue records as lawful owner and possessor of the schedule property. The petitioner spent huge amounts to bring the land under cultivation and to enhance the fertility of the land. The petitioner had been raising paddy crops every year and the land is bounded by 26 Palmyra trees, 4 Tumma trees and 2 Mango trees and he is getting income out of these trees besides agricultural crop. The petitioner is eking out his livelihood by doing cultivation and except this land the petitioner had no other land. Two punthas were situated on either side of the land which was in occupation of ryots.

8. While so, respondent No.2 issued impugned notification under Section 4 (1) of the Land Acquisition Act (hereinafter in short referred to as "Act" for the purpose of convenience) vide Ref.G4/2768/05, dated 18.3.2006, published in New Indian Express, dated 23.3.2006, stating that the land, an extent of Ac.0-30 cents, is required for public purpose i.e., for approach road for S.C. and Backward Class houses from

National High Way in Venkayammamet village. Respondent No.2, while issuing the impugned notification, dispensed with the inquiry under Section 5 A of the Act by invoking the provisions under Section 17 (4) of the Act. In fact, the notification was issued in the name of Kummariipudi Umamaheswari, who had nothing to do with the said land. The land in question exclusively belongs to the petitioner. Thereafter, a declaration under Section 6 of the Act was published in Praja Sakthi newspaper on 29.3.2006 showing K. Umamaheswari as the owner of the said land. In fact, there is no colony belongs to B.C. or S.Cs. adjacent to petitioner's land.

9. Further it is averred that the petitioner filed writ petition W.P.No.10159 of 2007 questioning the notification dated 18.3.2006 whereunder inquiry under Section 5 A of the Act was dispensed with. This Court disposed of W.P.No.10159 of 2007 and batch and in pursuance of the said order, respondent No.3 sent a notice to the petitioner and his sister under Section 5 A of the Act in Ref.A/1724/2005, dated 04.02.2008, calling for objections to submit on or before 29.02.2008 and on such submission of objections, inquiry will be conducted on 11.3.2008 at 11.00 a.m. at his office. The petitioner received the said notice on 23.02.2008 and accordingly submitted his objections. No notice was sent except the notice sent by registered post.

10. The petitioner specifically raised objection that there was no land with Sy.No.438/14-B2, and the notification was issued in respect of Sy.No.438/14-B2 with a view to acquire his land in Sy.No.438/14-B. It is stated that no sub-division or mutation taken place for the land under acquisition as alleged by respondent No.3 and still the revenue records show that the land sought to be acquired is in Sy.No.438/14B, but not 438/14-B2 as stated in the notification.

11. It is also stated that in the proceedings issued by the respondent

in point No.3 it is stated that the land is classified as dry land and paddy crop is being cultivated, since the village does not have direct access to N.H.5 Road, whereas in Point No.7, it is stated that a gravel road was already formed long back since 15 years and the proposed road is more convenience to the villagers. Hence, there is inconsistency in the remarks of the respondents.

12. It is further stated that petitioner's land in Sy.No.438/14B is a low level land and the same is surrounded by up level lands on three sides and one side i.e., on north side and if the road is formed, the rain water will flow into petitioner's land and thereby all the petitioner's crop will be destroyed.

13. It is also averred that his name was reflected in the pattedar passbook and other relevant revenue records, but the name of the petitioner's sister Umamaheswari was shown in the notice. It is also stated that there are government punthas and poramboke lands in Sy.Nos.443, 402/1, 440 and 438/6 and road can be formed through those punthas. Those government punthas were occupied by 11 encroachers and the same is under cultivation and accordingly eviction notices were issued by the M.R.O on 26.02.2006. Respondent No.3 should have taken necessary steps to evict those encroachers from those lands, as two years time was elapsed from the date of issuance of eviction notices. No personal hearing was given to the petitioner at any point of time except taking his objections. Respondents 2 and 3 had not followed the procedure contemplated under the statute.

14. It is further stated that the petitioner has no other land except the land in Sy.No.438/14B, an extent of Ac.1-06 cents, and he has no other land even in the surrounding villages and, hence, falls within the purview of landless poor person and his family members are depending on the meagre income deriving on the said land. It is also

stated that the topographic sketch showing the land under acquisition in support of his objections to show that there are two punthas in existence in government poramboke as such there is no need to authorities to acquire his land also had been placed and the same had not been appreciated. It is stated that there is no reference of filing that sketch as well as the other relevant documents such as tax receipts etc. Respondent No.3, in routine and mechanical manner rejected petitioner's objections and appears to have sent his remarks to respondent No.2. The second respondent in turn issued proceedings in Ref.No.G4/2768/2005, dated 16.5.2008, stating that he accepted the remarks sent by respondent No.3 and requested the 3rd respondent to take steps to submit proposals for declaration under Section 6 of the Act. If the second respondent bestowed his mind on the remarks sent by respondent No.3, he would have negated the remarks of respondent No.3 for the reason that admittedly government poramboke punthas are available under the occupation of 11 encroachers in Sy.No.438/6, 440, 443 and 402.

15. It is also stated that pursuant to the proceedings of respondent No.2, declaration under Section 6 was published in Hindu daily English newspaper dated 30.6.2008. The declaration is also liable to be quashed for the reason that the declaration was given in the name of a person who has nothing to do with the said lands and the survey number shown in the declaration was also not correct for the reason that there is no land in Sy.No.438/14-B2, as published. In fact, the land under acquisition is situated in Sy.No.438/14B which exclusively belongs to the petitioner but not K. Umamaheswari.

16. It is further stated that pursuant to the declaration under Section 6 of the Act, the respondents are trying to take possession of the land by giving notices under Section 9 (1) of the Act. It appears that the respondents create a record to the effect that a notice was sent to a

person by name Umamaheswari who is unconnected to this land to complete the formality. In such circumstances, the writ petitioner approached this Court by filing the present writ petition.

17. In the counter-affidavit filed, which was sworn to by the Revenue Divisional Officer, Rajahmundry, almost all the averments had been denied. The brief facts of the case had been narrated as hereunder.

Venkayampeta is a hamlet of Kadiyapulanka Gram Panchayat of Kadiyam Mandal adjacent to the National High Way No.5 and since the hamlet does not have direct access to N.H.5, some villagers had voluntarily offered land to an extent of Ac.0-30 cents to form a direct approach road from N.H.5 to the village and a gravel road was made by the villagers to that extent voluntarily. The proposed road has to pass through the land of Kummaripudi Umamaheswari, d/o late Venkateswara Rao, whose land was already being used as footpath. On the request of the villagers for formation of the said approach road to N.H.5 Road, the authorities submitted proposals for acquisition of land for an extent of Ac.0-30 cents in R.S.No.438/14B2 of Kadiyapulanka village for the said approach road to the Collector invoking urgency provisions under Section 17 (4) of the Act. The District Collector, East Godavari, Kakinada, approved the notification under Section 4 (1) and Declaration under Section 6 of the Act on 18.3.2006 and 23.3.2006 respectively and the same were published as contemplated in the Act. Notices under Sections 9 (1) and 10 and 9 (3) and 10 were issued and published in the locality and served on the land owners on 29.4.2006.

18. It is also stated that the notified land owner made representations that she is unmarried and she is having only Ac.0-44 cents in S.No.438/14B and, hence, not to acquire her land for formation of road. Thereupon, the then Sub-Collector and Land Acquisition Officer once again inspected the land proposed for

acquisition and opined that road to a width of 15 links is sufficient and, hence, submitted errata proposals reducing the extent from Ac.0-30 cents to Ac.0-15 cents. 80% land compensation of Rs.28,392/- was tendered to the notified land owner vide proceedings Ref.A/1724/05, dated 16.4.2007, and the same was served on the land owner concerned personally. But, the land owner had rejected to take the proceedings of 80% compensation and the same proceedings were sent through registered post, but it was also returned. However, the 80% compensation was deposited in State Bank of India on 22.6.2007 under challan No.3225.

19. Further it is stated that the land admeasuring Ac.0-15 cents was taken possession on 05.5.2007 in the presence of mediators and handed over the same to the Panchayat Secretary, Kadiyapulanka for safe custody. As the matter stood thus,

K. Gandhara Rao, s/o late Venkateswara Rao of Venkayammampeta village of Kadiyam Mandal had filed W.P.No.10159 of 2007 against acquisition of the subject land and this Court granted stay. Subsequently, this Court partly allowed the said writ petition setting aside the declaration dated 29.3.2006 and directed the respondents to conduct inquiry under Section 5 A of the Act by giving an opportunity of personal hearing to the petitioner.

20. Further it is stated that in pursuance of the aforesaid order, notices under Section 5 A of the Act were issued on 04.02.2008 inviting objections, if any, from all the persons interested. Kum. Kummarapudi Umamaheswari, d/o Venkateswara Rao (notified land owner) and Kummarapudi Gangadhara Rao, s/o Venkateswara Rao (writ petitioner) refused to acknowledge the notices and, hence, they were served by affixture on the door of their residence. The notices were also sent to the notified land owner and the writ petitioner by registered post and the writ petitioner acknowledged the same on 23.02.2008. The writ petitioner filed his objections through registered

post which was received on 24.3.2008. Neither the notified land owner nor the writ petitioner attended the inquiry on 11.3.2008 to avail the opportunity of personal hearing. The objections filed by the petitioner were enquired into and remarks on the same were submitted to the Collector, East Godavari, Kakinada. The District Collector, East Godavari, after considering the objections filed by the writ petitioner and also the remarks thereon, passed orders under Section 5 A (2) of the Act on 16.5.2008. The notified land owner and the writ petitioner refused to acknowledge these orders also and, hence, they were served by affixture on the door of their residence in the presence of mediators and also by sending the same by registered post. Both the notified land owner and the writ petitioner refused to receive the orders sent through registered post and, hence, they were returned by the Postal Department with the remarks not claimed hence returned to sender.

21. It is also stated that after communication of 5 A (2) orders, Draft Declaration proposals were submitted to the Collector and the declaration was approved by the Collector and published in the manner prescribed. After publication of declaration under Section 6 of the Act, notices under Sections 9 (1) & 10 and 9 (3) & 10 of the Act were issued on 17.7.2008 fixing the award inquiry on 11.8.2008. The notice under Section 9 (1) and 10 was published in the manner prescribed and the notice under Section 9 (3) and 10 was served on the notified land owner by affixture on the wall of her house in the presence of mediators, as she refused to acknowledge the same. A copy of the notice was also sent through registered post and it was also not acknowledged by the notified land owner and returned to sender by Postal Authorities as not claimed. At this juncture, Kummarapudi Gangadhara Rao, s/o Venkateswara Rao again filed another writ petition W.P.No.17109 of 2008 and this Court granted interim stay in W.P.M.P.No.22214 of 2008.

22. It is also stated that it is a fact that the petitioner is having an extent of Ac.1-06 cents in S.No.438/14, but this land is not proposed for acquisition. An extent of Ac.0-30 cents in S.No.438/14B2 was originally notified for acquisition and on representation made by the land owner, the land proposed for acquisition was once again inspected by the then Sub-Collector and Land Acquisition Officer and the extent proposed for acquisition had been reduced to Ac.0-15 cents, as it would be sufficient to serve the purpose. The land proposed for acquisition belongs to Kum. Kummarapudi Umamaheswari, d/o late Venkateswara Rao which devolved on her as an ancestral property from her grandmother. The writ petitioner also is having Ac.1-06 cents in the same survey number, but his land was not covered by the present acquisition. This approach road facilitates the residents SC, BC colony and also the villagers by providing direct access to the National High Way No.5. The existing puntha land is low lying and has to be levelled to form approach to National High Way. Moreover, the zero tyti land between the existing puntha and National High Way was levelled to the height of National High Way and, hence, the puntha is subjected inundation during rainy season.

23. It is further stated that as per the directions of this Court in W.P.No.10159 of 2007 notices under Section 5 A of the Act were issued on 04.02.2008 in the names of the notified land owner and also the writ petitioner and they were served by way of affixture of notice to the door of their residence, who are residing in the same house. In fact, the petitioner and Kummarapudi Uma Maheswari are brother and sister. Copies of notices were also sent to them through registered post. The writ petitioner acknowledged the notice sent through registered post on 23.02.2008 and filed his objections, which was received on 24.02.2008. It is not correct to state that there is no land with survey No.438/14B2. The land under acquisition was surveyed and sub-division record was prepared and scrutinized by the Deputy

Inspector of Survey, Sub-Collector's Office, Rajahmundry, and the notation as per the sub-division record i.e., 438/14B2 is adopted in the notification under Section 4 (1) and Declaration under Section 6 of the Act.

24. It is also stated that the land proposed for acquisition is classified as Dry and paddy crop is being cultivated on both sides of the land under acquisition, which is a private land, but a gravel road is existing and is being used by the villagers for the last 15 years. Due to the present acquisition, there will not be loss to the crop in the remaining lands belonging to the family of the writ petitioner. The proposed road to N.H.5 is only ½ kilometre.

25. It is further stated that the petitioner and his family members are having land, an extent of Ac.3-71 cents covered by R.S.No.438/14B, out of which the land to an extent of Ac.1-06 cents belongs to the writ petitioner. Kum. Kummaripudi Umamaheswari, the notified owner, is having land admeasuring Ac.0-44 cents in the same survey number and she had represented before and after the issuance of notification under Section 4 (1) of the Act that the Sarpanch and the villagers of Venkayammampeta are trying to lay a road forcibly through her land covered by R.S.No.438/14B of Venkayammampeta village and requested not to take her land for the road. The notified owner is none other than the sister of the petitioner. Keeping in view the convenience of the villagers and also the approach road was already formed in an extent of Ac.0-30 cents, which was voluntarily given by the land owners, the present acquisition is initiated to provide direct access to National High Way No.5 from Venkayammampeta village through a shorter distance. There will not be any damage to the lands on both sides of the proposed road.

26. It is also stated that the family members of the petitioner are having undivided landed properties in other villages to an extent of

Ac.10-00 cents and fish tank to an extent of Ac.0-50 cents in Dowlaiswaram village of Rajahmundry Rural Mandal and three shops in Dowlaiswaram village and the family members are enjoying the property jointly.

27. Further it is stated that after communication of orders passed by the District Collector under Section 5 A(2) of the Act, Declaration under Section 6 of the Act was approved by the District Collector and published in the manner prescribed showing Kum. Kummarapudi Umamaheswari, d/o late Venkateswara Rao as the reputed owner for an extent of Ac.0-15 cents in S.No.438/14B2. The notice under Section 9 (1) and 10 is a public notice to all the persons interested in the land. If at all the petitioner is having interest in the land, he is at liberty to attend the award inquiry on the date fixed and put forth his claim on the notified land with documentary evidence. In stead of attending award inquiry and furnishing documentary evidence to show his interest on the land in question, the petitioner filed this writ petition with a view to stall the acquisition proceedings.

28. Specific stand had been taken that all the land acquisition proceedings were followed properly and the possession of the land was also taken on 05.5.2007 through panchanama prior to the orders of this Court by depositing 80% of compensation, as the land owner did not accept the compensation. Now, the matter is at award inquiry stage.

29. These are the respective stands taken by the parties.

30. Much comment had been made that reasonable opportunity had not been given at 5 A inquiry stage. Certain submissions had been made relating to the scope and ambit of Section 17 of the Land Acquisition Act and also Section 5 A of the Land Acquisition Act as well. The relevant portion of the objections and the remarks recorded

in Ref. G4/2768/2005, dated 16.5.2008, which had been relied on reads as hereunder.

“Objection:- That there is puntha poramboke land leads from Venkayammapeta village to NH-5 Road. This puntha way is very near to the village. The survey number of this puntha way is 440, 438/6. This route is adjoining to NH-5 road from Venkayammapeta village. The land to an extent of Ac.0.44 cts. was acquired while widening of NH-5. Hence it was very nearer to Venkayammapeta (V). This way is utilizing as foot path way. Some landlords have encroached this puntha land. Approached road can be formed duly evicting these encroachments. The objector has requested not to acquire his land and not to take his land other wise his livelihood would be lost. He is a small farmer.

Remarks:- That in Sy.No.440, 438/6 etc., are the govt. puntha poramboke lands which is length of 411 mts. Whereas the length of proposed road is 103 mts. only. The Govt. puntha is a low lying land which can be levelled and developed into 10 mts. motorable road. The Govt. puntha is not convenient to the villagers to utilize as pathway. There are 11 encroachments in the Govt. puntha by way of cultivating paddy and nursery for nearly ten years back. Eviction notices were also issued by the Mandal Revenue Officer, Kadiam on 26.02.2006. Further submit that gravel road was also formed through the proposed site by the villagers voluntarily 10 years back. More over the villagers of the Kadiyapulanka have given their willingness to purchase the proposed land on market value basis. The present acquisition would not affect the livelihood of the proposed land owner or petitioner or his family members. Appropriate land compensation would be paid as per the due procedure laid down in the L.A. Act. The family members of the petitioner are having undivided landed properties in other villages to an extent of Ac.10.00 cts and fish tank to an extent of Ac.0-50 cts. In Dowlaiswaram (V) of Rajahmundry Rural Mandal and three shops in Dowlaiswaram (V). The family members are enjoying the property jointly. Hence, the objections are not

tenable.”

31. On a *prima facie* reading, it is no doubt true that the availability of poramboke land and the encroachers thereon had been referred to. It may be just and proper on the part of the Revenue Authorities to initiate appropriate proceedings to see that the encroachers are duly evicted. When such alternative property of the Government is available, the specific stand taken by the writ petitioner is that resorting to the present acquisition especially when the petitioner is a small farmer and a landless poor person, cannot be resorted to.

32. *Prima facie*, though this submission appears to be attractive, in the light of the reasons recorded in the remarks since predominantly this is a question of fact, the writ Court cannot re-appreciate the same and cannot record a different finding in deviation of the view expressed by the Collector and District Magistrate, East Godavari. The reasons for not taking further steps in seeing that encroachers are duly evicted from the said land being unknown to this Court, especially in the absence of those parties in the present writ petition, no further findings can be recorded in this regard except observing that the Revenue Authorities are at liberty to take appropriate steps if they are so advised. But however, on that ground alone, especially, in the light of the clear stand taken in the counter-affidavit of the respondents, the acquisition proceedings cannot be held to be as invalid.

33. Subject to the aforesaid observation, the writ petition being devoid of merit, the same is liable to be dismissed and accordingly, the writ petition is hereby dismissed. No order as to costs.

(P.S. NARAYANA, J)

Date: November 30, 2009.
BSB