

Andhra High Court

Chandrabhangiriji And Ors. vs The State Of Andhra Pradesh Rep. By ... on 12 November, 1993

Equivalent citations: 1994 (1) ALT 173

Author: B S Reddy

Bench: B S Reddy

ORDER B. Subhashan Reddy, J.

1. This writ petition arises under the Land Acquisition Act, 1894. A writ of Mandamus is sought for, for passing the Award in respect of the lands admeasuring Ac. 9-34 guntas in S.Nos. 28/1 and 28/2 of Bomrukunddowla village of Rajendranagar Mandal, Ranga Reddy District. This land was hitherto situated in Hyderabad West Taluq of Hyderabad District. Later, on formation of Ranga Reddy District, the said land was located firstly in Rajendranagar Taluq and later on formation of Mandals, in Rajendranagar Mandal of Ranga Reddy District. In the said land, were situated the trees, wells and also structures. Along with the above lands of the petitioners which are hereinafter referred to as "the acquired land", huge extents of more than hundred acres comprised in adjoining survey numbers were also acquired by invoking the provisions contained under the Land Acquisition Act, 1894 (hereinafter referred to as "the Land Acquisition Act") A draft notification under Section 4(1) of the Land Acquisition Act was published on 25-3-1971 and draft declaration under Section 6 was published on 23-11-1972. While the respondents proceeded with the acquisition of other adjoining lands, for the acquired lands of the petitioners no award was passed and there was lot of delay. But the petitioners were very eager to have the compensation paid like the similarly situated whose lands were acquired under the Land Acquisition Act, award was passed and compensation was also paid, but that was delayed in so far as the petitioners, are concerned. No reason is forthcoming for such a delay.

2. But, strangely even while the proceedings under the Land Acquisition Act were subsisting, the respondents have invoked the provision contained under Section 3(1) of Requisition and Acquisition of Immovable Property Act, 1952 which is hereinafter referred to as RAIP Act. In exercise of the above provision, a notification was issued on 5-3-1978. Later, on 15-5-1978, possession of the acquired lands was taken over. A panchanama was prepared to that effect, but that does not disclose under which provision, the possession was taken over. While, it is the contention of the petitioner that possession was taken over under the provisions of the Land Acquisition Act, the contention of the respondents is to the contra and their plea is that the possession was taken over under RAIP Act pursuant to Section 3(1) notification. But, the fact remains that the recitals of panchanama do not disclose that the petitioners were informed that the possession of the acquired lands was taken over under any particular statutory provision. However, petitioners assert that the possession was taken over under the Land Acquisition Act. Regardless of the rival contentions with regard to factual aspect as to whether the possession was taken over under the Land Acquisition Act or RAIP Act, the legal impact of taking over the possession of the acquired lands and the correct statutory provision traceable thereto will be discussed later. Purporting to be in exercise of the powers contained under Section 48(1) of the Land Acquisition Act, a notification dated 4-1-1979 was issued seeking to withdraw the acquired lands from acquisition. Then a notification under Section 7 of RAIP Act was issued on 10-5-1979. It is admitted that no works, developmental or otherwise were undertaken by the 3rd respondent, who was the requisitioning authority after taking possession. Even the

determination of the compensation was not made either for requisition under Section 3(1) or acquisition under Section 7 of RAIP Act. Later, the respondents on their own thought fit to give a go-bye to RAIP Act proceedings and then invoke and the Land Acquisition Act and again draft notification under Section 4(1) was published on 29-3-1984, while Section 6 declaration was published on 19-5-1986. Notices calling upon the petitioners to file claim petition was issued on 17-6-1986 pursuant to which claim petition was filed by the petitioners. Then it was incumbent upon the 2nd respondent to make an award enquiry, pass the award, pay the compensation therefor. But, that was not done and meanwhile, the mandatory period of two years contemplated under Section 11-A of the Land Acquisition Act, which was incorporated by Amending Act 68 of 1984 was coming closure and as such, because of the inaction of the 2nd respondent in not passing the award, this writ petition was filed seeking a direction for passing the award. By order dated 7-4-1988 in WPMP 2104/88, a learned single Judge of this Court taking note of these factors and also time lapse under Section 11-A of the Land Acquisition Act, directed the 2nd respondent to pass the Award by 19-5-1988. The same was not complied with by the 2nd respondent and later an application in WPMP 10285/88 was filed seeking extension of time for passing the award, but the same was not granted. WVMP No. 1446/88 was filed to vacate the interim directions granted in WPMP No. 2104/88, but the same was made absolute, aggrieved by which, Writ Appeal No. 1801/88 was preferred. But, in the aid Writ Appeal, the interim directions which were granted in WPMP No. 2104/88 were maintained as they were not disturbed and instead, an extension of six months time was granted for passing the award. While disposing of the writ appeal with the said order extending time for passing the award, the Division Bench directed the writ petition to be heard expeditiously. I do not know what is the reason for the delay caused in disposal of the writ petition. But, the fact remains that it came up for hearing before me on 7th April, 1993. Then, Mr. Ramachandra Reddy, the learned Counsel, in the course of arguments has expressed that if the respondents concede to the writ prayer, his clients i.e. the petitioner were agreeable to freeze the date 29-3-1984 (the date of Section 4 (1) notification) as the date for computation of market value. On this suggestion, Mr. R. Venugopal Reddy took time to seek instructions from his client and then report to this Court. When the matter came-up for hearing finally before me on 12-11-1993, Mr. R. Venugopal Reddy, appearing for Respondent No. 3 has reported to the Court that his client is not agreeable for any compromise and the respondents will take the order on merits. Then the matter was heard.

3. Mr. P. Ramchandra Reddy, the learned Counsel appearing for the petitioners contends that the lands of the petitioners were acquired under the Land Acquisition Act along with the lands of others and when the lands of others were subjected to acquisition under the Land Acquisition Act, and compensation was also paid, there was no reason or justification for the respondent to turn back and to contend that the compensation will not be paid under the Land Acquisition Act and that the same will be paid under RAIP Act. His contention is that inspite of the interim directions granted by this Court and not being disturbed in the Writ appeal, with impugntiy the respondents have violated the same and now that two years lapsed, a fresh notification has to be issued under land acquisition Act so that the petitioners can get the compensation which will be prevalent as on the date of such notification under Section 4(1) of the Act.

4. Mr. R. Venugopal Reddy, the learned Counsel appearing for respondent No. 3 contends that even though the acquired lands were initially notified under the provisions of the Land Acquisition Act,

later the respondents thought fit to withdraw the same and instead requisitioned the same under RAIP Act and then issued notification under Section 7 for acquisition under RAIP Act and that later again Land Acquisition proceedings were initiated by issuance of Section 4(1) notification on 29-3-1984 under mistake and there is no obligation on the part of the respondents to comply the provisions of the Land Acquisition Act. His further contention is that as the land vested in the Central Government free of all encumbrances pursuant to notification issued under Section 7 of RAIP Act, the question of subjecting the same again under Land Acquisition Act did not arise and as such, the later land acquisition proceedings which were initiated under mistake cannot be given any credence and are not legal and that in any event, as even two years period lapsed in view of operation of Section 11-A of Land Acquisition Act, the acquisition proceedings initiated pursuant to Section 4(1) notification dated 29-3-1984 under Land Acquisition Act extinguished and the respondents cannot be compelled to pass award and pay compensation under the Land Acquisition Act. It is his further argument that the 3rd respondent being a part of the Central Government and as the lands were acquired for the purpose of Central Government, the acquisition can be made under RAIP Act and this Court cannot compel the respondents to pass the Award and pay compensation under the Land Acquisition Act. The learned Government Pleader adopts the said arguments advanced by Mr. R. Venugopal Reddy.

5. The Land Acquisition Act is general enactment governing the country being an Act of Parliament empowering the State and its authorities to acquire any land for public purpose. The said public purpose may be for State or Central and for other purposes enumerated and contemplated under the Land Acquisition Act. In so far as the RAIP Act is concerned, the same can be invoked only for, the purpose of Central Government. RAIP Act can be pressed into service only when the requisition is to be made first under Section 3 of the Act followed by taking over of possession of the said requisitioned lands under Section 4. After this process of requisitioning and taking over possession, the lands can be restored back to the owners thereof. If any construction works are made after requisition and taking over possession and if the authority feels that taking out of those structures and improvement made will be detrimental to the interests of the Central Government or if the owners are not willing to compensate the same, the land can be acquired by invoking Section 7 of the Act. Then compensation is determined in accordance with the other provisions of the said Act. Thus, one basic difference between the Land Acquisition Act and the RAIP Act is that while the Land Acquisition Act empowers the acquisition of the land and the structures, wells, trees standing thereon straightaway for any public purpose, RAIP Act does not empower the authorities for acquiring the land unless the requisitioning process is over under Section 3, possession is taken over thereafter and developments as mentioned above have been made and the circumstances stated above exist. The pre-requisite for invocation of RAIP Act is that on the date of requisition under Section 3 of RAIP Act, it should not be in the mind of the authorities to acquire the land and such a necessity should be felt by them only after requisition and after taking over possession and making construction works on the requisitioned lands and if the circumstances mentioned under Sub-sections (1) and (2) of Section 7 of RAIP Act exist. In the instant case, admittedly, the lands of the petitioners were subjected for acquisition under Land Acquisition Act and they were subsisting as on the date of invocation of Section 3 of RAIP Act. As the acquired lands were already subjected to the Land Acquisition Act by issuance of notifications under Sections 4(1) and 6 thereof, requisition of the said lands under RAIP Act cannot arise. The reason for this is that when the

Central Government and the authorities felt that the lands of the petitioners were needed for acquisition and the same was acted upon by issuance of necessary notifications, it is impermissible to invoke RAIP Act. In fact, in the instant case, the fundamental right which was guaranteed under Article 31 of Indian Constitution is applicable, as at the relevant point of time when land acquisition proceedings were initiated, Article 31 was there existing in the book of Constitution, until it was repealed by 44th Constitution amendment which came into force somewhere in the month of May, 1979. The authority of law which could divest the petitioners of their lands could be only the Land Acquisition Act which was rightly invoked and not RAIP Act. There is absolutely no explanation offered by the respondents as to why a vast extent of land adjoining the petitioners' lands were acquired under the Land Acquisition Act and compensation was paid thereunder, and as to why only for these lands of the petitioners, RAIP Act was invoked even after invocation of the Land Acquisition Act and its subsistence. This infracts Article 14 of Constitution of India as two similarly situated persons are dissimilarly treated. That apart, as the 3rd respondent did not raise any structures or made improvements, in between the date of taking over possession on 15-5-1978 and 24-1-1979 or 10-5-1979, when notifications under Sections 7(1) and 7(2) of RAIP Act were issued, Section 7 of RAIP Act was totally inapplicable as in the absence of such improvements on the part of the 3rd respondent, there was no power at all to invoke Section 7 for acquisition. For this reason also, the RAIP Act could not be made applicable for acquisition. It is not out of place to mention that the requisition under Section 3 of RAIP Act is a ruse to harass the petitioners and deprive them of their due compensation. As the authorities rightly felt that RAIP Act was not applicable, Justifiably, land acquisition proceedings were initiated again by issuing draft notification on 29-3-1984 followed by draft declaration on 19-5-1984 and the consequential steps. It is not a mistake as pleaded by the respondents, it was the right step in right direction. But, strangely, the respondents did not proceed with the same inspite of the interim directions being granted by this Court and were even confirmed in Writ Appeal. This kind of approach, attitude and conduct on the part of the respondents should be deprecated. The State should be fair to its subjects. The acquisition is compulsory in nature and is a disabling statute in so far as the citizens are concerned in the context of resistance for acquisition. But, they have got to be compensated justly in accordance with the law of the land so as to be in conformity with the Constitutional guarantee under Article 300-A of the Constitution of India. In this case, that constitutional guarantee can be discharged only by paying compensation under the Land Acquisition Act and not otherwise. The respondents would raise another dispute stating that the acquired land is not Ac. 9-34 guntas, but is less than that as some extent of land was taken over for road widening of National Highway No. 7. But, it is not disputed that the extent was Ac. 9-34 guntas at the time of acquisition and when the possession was taken over on 15-5-1978. As the invocation of RAIP Act was totally wrong and as the land acquisition proceedings were subsisting as on 15-5-1978, the lands of the petitioners admeasuring Ac. 9-34 guntas comprised in S.No. 28/1 and 28/2 of Bomrukunddowla village, vested absolutely in the Central Government free of all encumbrances and it is the look-out of the Central Government or the 3rd respondent as the case may be, to claim compensation for taking over of a part of the said land for road widening under National Highway No. 7. But the petitioners are entitled for compensation for the entire extent of Ac. 9-34 guntas from the respondents.

6. Be it as it may, now the position is; as on this date, the draft notification under Section 4(1) dated 29-3-1984 lapsed in view of Section 11-A of the Land Acquisition Act. The land has vested in the

Central Government free of all encumbrances under the provisions of the Land Acquisition Act and not under RAIP Act, as pleaded by the respondents, as the taking over of possession on 15-5-1978 is only traceable to the provisions of the Land Acquisition Act and as the said proceedings were subsisting and as the RAIP Act was inapplicable and the respondents were not empowered to issue withdrawal notification under Section 48(1) of the Land Acquisition Act in view of taking over of possession on 15-5-1978. Now, a fresh draft notification has got to be issued. But, having regard to the conduct of the respondents, it is futile to direct the issuance of fresh notification. Instead, I deem the issuance of notification under Section 4(1) of the Land Acquisition Act as 12-11-1993 (the date of disposal of this writ petition) as a notification under Section 4(1) basing on the judgment of the Supreme Court in Ujjain Vikas Pradhikaran v. Raj Kumar Johri, . The respondents shall pay the compensation to the petitioners on the market value as is prevalent on this day i.e., 12-11-1993, together with 30% solatium thereon and 9% interest per annum for the period from 15-5-1978 to 14-5-1979 and 15% per annum from 15-5-1979 till payment. As there was inordinate and unexplained delay for not taking possession for the period from 25-3-1971 (the date of the first Section 4(1) notification) and 15-5-1978 (the date of taking over possession) the respondents shall also pay the petitioners the equitable interest for the above period 25-3-71 to 15-5-78 at the rate of 7 1/2% per annum on the market value prevalent as on 12-11-1993. I am fortified in my approach to award equitable compensation by the judgment of the Supreme Court in Chandra Basni Singh v. State of Bihar, AIR 1984 SC 1768. The respondents shall pass the award in accordance with the above directions and pay the compensation to the petitioners as mentioned above within the outer limit of four months from the date of the receipt of this order.

7. The Writ petition is disposed of accordingly. No costs.