

VISAKHAPATNAM URBAN DEVELOPMENT AUTHORITY A

v.

S.S. NAIDU & ORS.

(Civil Appeal No. 5377 of 2016)

JUNE 29, 2016 B

[ANIL R. DAVE AND ADARSH KUMAR GOEL, JJ.]

*Land Acquisition Act, 1894 – s.48(1) – Land acquired – Possession taken – Compensation amount also deposited with the Court – Thereafter, acquisition was withdrawn thrice at the behest of the land-owner on the direction of the court – But each time withdrawal of acquisition was cancelled – By impugned order High Court quashed the acquisition proceedings – On appeal, held: s.48(1) does not permit withdrawal of acquisition proceedings of any land after possession of the land is taken – Therefore, acquisition proceedings could not have been quashed by High Court, as the Government had not acted in accordance with law while withdrawing the land from acquisition proceedings.* C D

Allowing the appeals, the Court

**HELD: 1.** An effort to withdraw the land in question from the acquisition proceedings was initiated only after possession of the land in question was taken from the land-owners and Section 48(1) of the Land Acquisition Act, 1894 does not permit withdrawal of acquisition proceedings of any land after possession of the land is taken. [Para 11] [5-B] E

**2.** The Court was having some sympathy for the land-owners and therefore, some recommendations were made by the Court with regard to making representation to the Government authorities about withdrawal of the acquisition proceedings in respect of the land in question, but every time withdrawal of the land from the acquisition proceedings were followed by cancellation of the withdrawal. It was not just and proper for the Court to show undue sympathy towards the land-owners by asking them to make a representation when it was against the legal provisions to withdraw the land from the acquisition in view of the provisions of Section 48 of the Act. Such undue sympathy has relegated the land-owners to this long F G H

A drawn litigation which has not helped them at all. [Paras 12 and 13] [5-C-D, E-F]

B 3. The land in question is required for a public purpose i.e. for widening of a road. The State has power to acquire land for a public purpose and widening of a public road is definitely a public purpose for which the land can be acquired. [Para 14] [5-F-G]

C 4. In view of the aforestated facts of the case, the acquisition proceedings could not have been quashed by the High Court, especially when the Government had not acted in accordance with law while withdrawing the land in question from the acquisition proceedings. [Para 15] [5-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5377 of 2016.

D From the Judgment and Order dated 24.01.2012 of the High Court of Andhra Pradesh at Hyderabad in W. A. No. 475 of 2011

WITH

C. A. Nos. 5378-5379 of 2016

Conmt. Pet. (C) No. 233 of 2013 in C. A. No. 5377 of 2016.

E Mukul Rohatgi, A. G., Dushyant A. Dave, Adinarayana Rao, Sr. Advs., S. S. Reddy, Mrs. S. Usha Reddy, Guntur Prabhakar, S. Udaya Kumar Sagar, Ms. Bina Madhavan, Ms. Praseena E. Joseph, M/s. Lawyer S. Knit & Co., C. S. N. Mohan Rao, Advs. for the appearing parties.

F The Judgment of the Court was delivered by

**ANIL R. DAVE, J.** 1. Leave granted.

2. At the request of the learned counsel for the parties, the appeals have been finally heard today.

G 3. Chequered history of these appeals started with issuance of notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on 20<sup>th</sup> March, 1978. The respondents are the land-owners of the land forming part of TS No.83/1 of Waltair Ward of Visakhapatnam, which is the subject matter of these appeals. Necessary notification under Section 6 of the Act was

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also issued. The award was made and ultimately compensation in respect of the land in question was also determined at Rs.7,82,612.56. The said amount was deposited in the Court. The land in question was required for the purpose of widening of a road. A

4. After the Award was made, the respondents/land-owners of the land in question made a request to the authorities concerned for withdrawal of the acquisition, though possession of the land in question was, in fact, taken on 20<sup>th</sup> February, 1982. The matter ought to have ended there because the land was acquired, possession was taken and the amount of compensation was also deposited with the Court, but in pursuance of the request made by the land-owners, the acquisition proceedings initiated under Section 4 of the Act was ordered to be withdrawn under G.O.M. No.156 dated 25<sup>th</sup> February, 1982. Thus, by virtue of the said Government Order, acquisition of the land in question was withdrawn. Subsequently, Government Order dated 25<sup>th</sup> February, 1982, whereby the acquisition proceedings was withdrawn, was cancelled under G.O.M. No.714 dated 11<sup>th</sup> November, 1983. B  
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5. Effect of the proceedings which had taken place upto now was that the land was acquired, possession was taken, Award was made and compensation was deposited with the Court and yet G.O.M. No.156 dated 25<sup>th</sup> February, 1982 was issued, whereby the acquisition proceedings was withdrawn, but subsequently withdrawal of the acquisition proceedings was cancelled and thus the notification dated 20<sup>th</sup> March, 1978, which was initially issued, remained in force. E

6. At this stage, the owners of the land in question filed Writ Petition No.11326 of 1983 praying for quashing of G.O.M. No.714 dated 11<sup>th</sup> November, 1983, whereby withdrawal of the land acquisition proceedings was cancelled. The said Petition was disposed of on 25<sup>th</sup> April, 1984 by giving a direction to the authorities to reconsider the issue with regard to acquisition of the land in question. The said order dated 25<sup>th</sup> April, 1984 was challenged by filing Writ Appeal No.1081 of 1984 and the said Writ Appeal was dismissed on 1<sup>st</sup> February, 1989. F

7. In pursuance of a representation made as per order dated 25<sup>th</sup> April, 1984, vide G.O.M. No.121 of 27<sup>th</sup> February, 1990, the Government requested the Collector to return the land in question to the land-owners, but the said G.O.M. No.121 was cancelled by another G.O.M. No.222 dated 30<sup>th</sup> April, 1998. The said G.O.M. No.222 gave rise to another Writ Petition No.14818 of 1998 filed by the land-owners which was G  
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A disposed of on 13<sup>th</sup> November, 1998, whereby the Government was directed to reconsider the issue. The aforesaid order passed in the Writ Petition was challenged by filing Writ Appeal No.2312 of 1998, but the said Writ Appeal was dismissed on 27<sup>th</sup> February, 2002. The Respondents also filed Writ Appeal No.1074 of 1999 for return of the land in question, which was allowed by the High Court and the authorities were directed to deliver possession of the land in question to the land-owners. Being aggrieved, the appellants herein approached this Court. This Court vide order dated 22<sup>nd</sup> February, 2006 disposed of Civil Appeal Nos.1665 and 1666 of 2004 by directing the State Government to reconsider the representation made by the land-owners.

C 8. In pursuance of the order passed by this Court, by an order dated 18<sup>th</sup> May, 2009, by virtue of G.O.M. No.314, the State Government decided to withdraw the acquisition proceedings in respect of the land in question but, once again, on 18<sup>th</sup> August, 2009, by virtue of G.O.M. No.515, the Government authorities cancelled the decision with regard to withdrawal of the acquisition proceedings. Again, Writ Petition No.17249 of 2009 was filed challenging the said decision dated 18<sup>th</sup> August, 2009. The said Writ Petition was allowed on 7<sup>th</sup> February, 2011. Against the said decision rendered in the said Writ Petition, Writ Appeal No.475 of 2011 and Writ Appeal No.1455 of 2011 were filed by Visakhapatnam Urban Development Authority and the State of Andhra Pradesh respectively. Both the Appeals were dismissed by a common judgment dated 24<sup>th</sup> January, 2012 and the said judgment has been challenged by the aforesaid both parties.

F 9. Upon perusal of the aforesaid undisputed facts, it is very clear that though possession of the land in question was taken on 20<sup>th</sup> February, 1982, the Government wanted the acquisition to be cancelled and, in our opinion, it could not have been done in view of the provisions of Section 48 of the Act. Relevant portion of Section 48 of the Act is reproduced hereinbelow :-

G **“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -**  
 (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.”

H 10. Every time, when the authorities decided to withdraw the

acquisition proceedings, power given under Section 48 of the Act was exercised. In our opinion, after taking possession of the land in question from the land-owners, power under Section 48 of the Act could not have been exercised. A

11. Though this is the third round of the litigation, it is an admitted fact that an effort to withdraw the land in question from the acquisition proceedings was initiated only after possession of the land in question was taken from the land-owners and Section 48(1) of the Act does not permit withdrawal of acquisition proceedings of any land after possession of the land is taken. B

12. Possibly, the Court was having some sympathy for the land-owners and therefore, some recommendations were made by the Court with regard to making representation to the Government authorities about withdrawal of the acquisition proceedings in respect of the land in question, but every time withdrawal of the land from the acquisition proceedings were followed by cancellation of the withdrawal. C

13. Be that as it may, the Courts were quite sympathetic towards the land-owners and therefore, every time the land-owners were asked to make a representation to the Government and therefore, these three rounds of litigation have taken place, which, in our opinion, is not fair or justifiable. In our opinion, it was also not just and proper for the Court to show undue sympathy towards the land-owners by asking them to make a representation when it was against the legal provisions to withdraw the land from the acquisition in view of the provisions of Section 48 of the Act. Such undue sympathy has relegated the land-owners to this long drawn litigation which has not helped them at all. D

14. The fact remains that the land in question is required for a public purpose i.e. for widening of a road. There is no need to say that under the Act, the State has power to acquire land for a public purpose and widening of a public road is definitely a public purpose for which the land can be acquired. E

15. We have considered the submissions made by the learned counsel appearing for both the sides. In view of the aforesaid facts, we are of the view that the acquisition proceedings could not have been quashed by the High Court, especially when the Government had not acted in accordance with law while withdrawing the land in question from the acquisition proceedings. F

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A 16. In the circumstances, we quash and set aside the impugned judgment dated 24<sup>th</sup> January, 2012 delivered by the Andhra Pradesh High Court in Writ Appeal Nos.475 and 1455 of 2011. The Appeals are allowed with no order as to costs.

B 17. In view of the fact that Civil Appeal No. 5377 of 2016 (@ SLP (C) No.19642 of 2012) has been allowed, the contempt proceedings would not survive and are, accordingly, disposed of.

Kalpana K. Tripathy

Appeals allowed and Contempt proceedings disposed of.