

PETITIONER:
THE COLLECTOR, ONGOLE & ANR.

Vs.

RESPONDENT:
NARRA VENKATESWARLU & ORS.

DATE OF JUDGMENT 28/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (7) 150 JT 1995 (9) 63
1995 SCALE (7) 246

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

These appeals by special leave arise from the judgment and order of the Division Bench of the High Court of Andhra Pradesh, dated August 8, 1985, made in Writ Appeal Nos.302-03 of 1985. A notification under s.4(1) of the Land Acquisition Act was initially published on April 15, 1983. The same was subsequently withdrawn and fresh notification was published on June 9, 1983. The respondents challenged the validity of the notification in two writ petitions. The learned single Judge by his order dated February 1, 1985 quashed the notification on the ground of colourable exercise of power by the authorities. On appeal before the Division Bench, one of the learned Judges upheld the order of the learned single Judge on the ground of non-application of mind by the Collector himself, since the acquisition was made by the Collector on the recommendation made by the Government. The second ground was that the administrative instructions for obtaining Prior permission from the Government for making the award when the value exceeds Rs.20,000/- per acre were not obtained. Another learned Judge has affirmed the order on the ground that the Prior permission of the Government was not obtained for making the award. Thus these appeals by special leave.

Shri G. Prabhakar, learned counsel for the appellant contended that the notification validly issued by the Collector who is the competent authority to issue notification under s.4(1) of the Act, cannot be whittled down by the non-consideration of the administrative instructions issued by the Government nor absence of Prior approval is a ground to declare the valid notification as invalid one. Shri R.N. Keshwani, learned counsel for the respondents strenuously contended that attempts were made by the Sarpanch to get the Property in Survey No.25/10 by successive litigations. There was no Proposal for acquiring the land for the weaker sections. The Collector in a cryptic

order has mentioned that the land could be acquired for weaker sections without any Proposal for acquiring the land for weaker sections. Exercise of the Power under s.4(1) is a colorable exercise of Power vested in the Collector. The learned single Judge, therefore, rightly has gone into that question. Accordingly, he made his valient efforts to convince us to agree with the learned single Judge on the colorable exercise of the Power and to uphold the order quashing the notification under s.4(1) of the Act.

Having given careful consideration, we are of the opinion that the argument of Shri Prabhakar, learned counsel for the appellant is acceptable. It is seen that admittedly the notification under s.4(1) was Published by the Collector for acquiring the land for the weaker sections, The Collector had been empowered to acquire the land for the weaker sections, Scheduled Castes and Scheduled Tribes. It is true that initially there was an attempt by the Sarpanch to have the land acquired for Housing Cooperative Society. Since the members of the Cooperative Society belonged to the forward sections of the society, the land could not be acquired. The Collector also did not accede to that request. The Tehsildar suggested to acquire some another land but that was not accepted by the Joint Collector. The file had gone to the Collector and ultimately the Government had accepted the Proposal to acquire the land in question for the weaker sections. It may be true that some of the persons to whom the allotment was to be made belonged to the forward sections of the society but that does not take away the initial exercise of the Power by the Collector. As stated earlier, the Collector is the competent authority to exercise the Power under s.4(1) of the Act. The notification does indicate that the land was acquired for Public purpose, namely, providing houses to the weaker sections of the society. Even the recommendations made by the Government after the protracted litigation were for acquiring the land for weaker sections. Thus the acquisition being only for the weaker sections of the society, it constitutes a "Public purpose" as defined under the Act by virtue of the local amendment made to s.17(1) of the Act.

The next question is whether the learned Judges of the Division Bench were justified in upholding the quashing of the notification on different grounds. It is seen that the Collector had formed the opinion that the land was required for public purpose, namely, providing houses to the weaker sections of the society. The question of non-application of mind does not arise. It is obvious that after consideration of the material before the Collector, the Collector formed the opinion that the land was required for public purpose. The direction of the Government was after protracted litigation and to avoid further litigation, Government had directed to acquire the land. It would not mean that the Collector had abdicated his Power under s.4(1). It is true that the Government had issued instructions for obtaining Prior permission of the Government, if the value of the land was more than Rs.20,000/- per acre, the Prior permission of the Government in that behalf is necessary. The administrative instructions, no doubt, bind the subordinates but the violation thereof does not constitute an infirmity in the acquisition of the land itself. It is true that the Government could take appropriate disciplinary action against the officials but it does not constitute infirmity in the valid exercise of the Power under s.4(1) and declaration under s.6 of the Act.

It is not disputed that the one of the learned Judges has recorded the findings that no colorable exercise of the

Power by the Collector was established from record. Though the learned single Judge has held that the acquisition amounts to colorable exercise of the Power since one of the learned Judges has held that there was no colorable exercise of Power and there is no disagreement by the another Judge, it must be inferred that the Division Bench has not accepted the finding of the learned single Judge that the acquisition was vitiated by a colorable exercise of Power. Even otherwise when we have seen that the Government had directed the Collector to consider the acquisition for weaker sections and the Collector had validly exercised the Power under s.4(1) of the Act by no stretch of imagination, it could be said that it is a colorable exercise of the Power. The appeals are allowed. The orders of the High Court are set aside and the writ Petition stands dismissed but in the circumstances, without costs.

It is made clear that if any allotment is made to any person other than those belonging to the weaker sections, the Collector should take immediate action against these persons and cancel the allotments. In other words, allotments should be made only to the persons belonging to the weaker sections in terms of the notification and Government instructions in that behalf.