
(1974) 07 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 1426 of 1973

Acchanaik

APPELLANT

Vs

The State of Mysore and Another

RESPONDENT

Date of Decision : 10-07-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17 (4), 4, 5 A, 9 (1)

Citation : AIR 1975 Kar 140 : (1974) ILR (Kar) 1361 : (1974) 2 KarLJ 453

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : B. Tilak Hegde, for the Appellant; K.S. Puttaswamy, 1st Addl. High Court Advocate, for the Respondent

Judgement

1. In this petition under Article 226, the validity of the notification dated 26th April, 1973 issued by the State Government u/s 4 read with Sub-section (4) of Section 17 of the Land Acquisition Act, 1894, hereinafter called "the Act", falls for decision.

2. By the said notification, Survey No. 9/7 belonging to the petitioner has been acquired for a public purpose to wit for village extension of I. D. Halli Village. It is stated therein that in view of the urgency of the case, the provisions of Section 5-A of the Act shall not apply to the acquisition of the land. It is the contention of the petitioner that the purpose for which his land was sought to be acquired was not so urgent as to dispense with the enquiry u/s 5-A and the decision of the Government that it was an urgent matter was not based on relevant facts. The said notification is sought to be defended on behalf of the State by contending that this Court cannot go behind the notification as the opinion expressed by the Government regarding the urgency of the matter was based on their subjective satisfaction. In support of the contention, counsel for the State relied upon the decision of this Court in Babu Devendrappa Yernal v. State of Mysore (1971) 1 Kar LJ 354 : (AIR 1974 Kar 121) and the decision of the Supreme Court in Raja

Anand Brahma Shah Vs. State of Uttar Pradesh and Others,

3. The decision on the question turns on the scope and content of Sub-sections (1) and (4) of Section 17. They read:

"(1) In cases of urgency, whenever the appropriate Government so directs, the Deputy Commissioner though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Explanation.-- This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of scattered trees or temporary structures, such as huts, pandals or sheds."

"(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or

Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)."

4. These provisions confer special powers on the Government to acquire land in case of urgency. If the State Government form an opinion that the public purpose is of urgent importance, they may dispense with the enquiry contemplated u/s 5-A and take possession of the land. The opinion of the Government is undoubtedly the result of subjective satisfaction; a proposition on which I do not think that there can be two opinions. But to state further that the opinion of the Government is above judicial review may not be correct. In *Kashappa v. Chief Secy. Mysore Govt.* AIR 1963 Mys 318, Somnath Iyer, J. (as he then was) speaking for the Bench observed:

"..... The opinion formed by the Government in their mind of the existence of urgency may be above judicial review, but there may be a case in which High Court may yet find it possible to say that that opinion is an impossible opinion either by reason of the fact that it rests upon no ground at all or rests on grounds which are demonstrated to be totally irrelevant."

In *Thimme Gowda v. State of Mysore* W. P. No. 684 of 1973, D/- 1-3-1974 = (reported in AIR 1974 Kar 158) this Court observed.

"It is absolutely not necessary for the State to specify the circumstances which formed the foundation for their opinion to dispense the enquiry u/s 5-A of the Act. The requirements of the law should, however, be specified, on the scrutiny and investigation of the proceedings culminating in the direction made u/s 17(4)".

This Court, in *Thimme Gowda's* case, after scrutiny of the relevant materials produced by the parties, held that there was no basis before the Government for

forming an opinion that the case was so urgent as to invoke the power conferred under Sub-section (4) of Section 17 of the Act. In both the above cases this Court proceeded on the ground that it is competent for this Court to examine the relevancy of materials on which the Government formed their opinion regarding the existence of urgency for acquisition.

5. Counsel for the State, however, strongly relied upon the decision of the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, in support of his contention. In that case, two principal questions were decided by the Supreme Court. It was held that the declaration made by the State Government in the notification u/s 6(1) of the Act, that the land was acquired for a public purpose is not open to a Court to go behind it, unless it is shown that the action of the Government is a colourable exercise of power. The other question decided by the Supreme Court related to the scope of enquiry by the court when the Government issued a notification u/s 17(4) directing that the provisions of Section 5-A were not applicable to the land. Dealing with this question, Ramaswami, J. speaking for the Court observed thus at page 1085:

"But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms, the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide."

By the above decisions, the following principles are clearly established. The Court is entitled to enquire, when a challenge is made against the notification issued u/s 17(4) of the Act, whether the Government have applied their mind; and if so, whether their opinion regarding the urgency of the matter, was founded on relevant facts and circumstances. It is also open to the court to scrutinize whether the Government have exercised the power on mala fide grounds. If the opinion of the Government was honestly formed on relevant facts, this court will not substitute its own views on the matter. If on the other hand, the opinion was formed without materials, or on irrelevant matters, or on mala fide grounds, or is ex facie arbitrary, this court will not hesitate to strike down the impugned notification. I may hasten to add that this court is not interested in extending its jurisdiction over matters where it ought not to extend, but it would be failing in its duty and abusing the confidence reposed by the public, if it does not exercise its jurisdiction where it ought to. So far I can see, the decision of this Court in *Babu Devendrappa Yarnal's case* (1974) 1 Kar LJ 354 : (AIR 1974 Kar 121) has not laid down any different principle. In that case, the land was acquired for a public purpose, i.e., to provide house sites to landless and houseless rural workers. This Court felt that no scrutiny of materials was necessary to find out the urgency of the matter except to have a look at the impugned notification therein; because the intendment of the Government was patent, i. e. to give immediate relief to the landless and houseless rural workers. None would say that that was not an urgent matter. This court has not stated nor intended to

observe that the notification issued u/s 17(4) itself is conclusive evidence on the existence of urgency of the matter.

6. Similar view was taken by the Punjab and Haryana High Court in a Full Bench decision in *The Printers House Private Ltd. Vs. Misri Lal Dalip Singh and Others*, wherein at paragraph 13, it was observed:

"We think, therefore, that if the question of urgency has been decided on grounds which are non-existent or irrelevant, or on material on which it would be an impossible conclusion to reach, it could legitimately be inferred that the mind has not been applied at all It seems manifest to us that the question must be examined by Court before it could be found that the decision was reasonable. In other words, the question is not such which could be declared non justiciable outright."

It is therefore futile to contend that the opinion expressed by the Government on the existence of urgency in given case is beyond the judicial review.

7. Let me now consider whether the impugned notification is ultra vires of the Act as contended for the petitioner. The notification simply states that the land of the petitioner is needed for village extension. There is no doubt that the said purpose is a public purpose, but what is the urgency in the matter so as to dispense the enquiry u/s 5-A of the Act, is required to be considered. It may be relevant to state that the "Village extension" is one of the obligatory functions of the concerned: Village Panchayat u/s 42 (o) of the Karnataka Village Panchayats and Local Boards Act, 1959. The Village Panchayat in the instant case, has not requested the Government to take an urgent acquisition proceeding. The opinion of the Government, however, was founded on some report of the Block Development Officer, to which a reference has been made in the State Government of objections filed on behalf of the State, stating thus:

"The Government has issued the impugned notification after considering all the relevant materials available and has come to the conclusion that the land is required for the public purpose, namely, for providing sites to landless and houseless persons of I. D. Halli Village. In this context it may be relevant to state that the Government had the reports of the Block Development Officer and the Assistant Commissioner who inspected the land in question and opined that a number of families in the village were residing in small sheds within the vicinity of manure pits and that the entire area in which they were living was very unhygienic and that with a view to avoid any sort of epidemic and such other natural calamities, it was found necessary to provide sites to those villagers after forming proper layout. The above mentioned circumstances reported by the authorities was considered by the Government and the Government thought it proper to invoke Section 17 of the Land Acquisition Act to acquire the land in question."

Normally, I would have accepted these allegations to sustain the opinion formed by the Government on the existence of urgency for acquiring the land. But there

is one peculiar feature in this case. The petitioner is a Lambani belonging to Scheduled Caste.

He has no other land except the one sought to be acquired. He purchased the said land under a registered sale deed dated 29-8-1972, He has to depend entirely on the income of that food. It is further stated that there is a Government Circular G. O. No. DPC. 15/DHH/72 Bangalore dated 13-5-1972 in which it is provided that the lands of Scheduled Castes or Tribes or denotified tribes should not be acquired" for the purpose of building sites under the programme of providing house-sites to landless agricultural labourers. A copy of the Circular has also been produced by the petitioner. The said Circular is at any rate binding: on the Government, though breach of it cannot give rise to a cause of action to an aggrieved person, to enforce the terms thereof a court of law. But the petitioner is entitled to submit that if the said relevant Circular had been considered by the Government, their opinion would have been different. It is not the case of the respondents that the said Circular was considered by them before issuing the impugned notification. In these circumstances, I cannot but conclude that the impugned notification was the result of an arbitrary opinion of the Government.

8. In the result, I allow the petition, quash the impugned notification so far as it pertains to the land of the petitioner. The petitioner is entitled to his costs. Advocate's fee Rs. 100/-.

9. Petition allowed.