

(1967) 09 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 974 of 1965

Adveppa Irappa Morabad and Others	APPELLANT
Vs	
State of Mysore and Others	RESPONDENT

Date of Decision : 27-09-1967

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5 A, 5 A (2), 6

Citation : AIR 1968 Kar 205 : (1968) ILR (Kar) 91 : (1967) 2 MysLJ 521

Hon'ble Judges : T.K. Tukol, J; M. Sadanandaswamy, J

Bench : Division Bench

Judgement

Tukol, J.

(1) The short question on which this writ petition can be disposed of relates to the effect of non-compliance with the requirements of section 5-A of the Land Acquisition Act (Act I of 1894) on the validity of the notification issued u/s 6 of the said Act.

(2) The first petitioner is the owner of the property in dispute which bears survey No. 33 and measures 5 acres 4 guntas, situated in Kilabnur Village near Ramdurg. The State Government issued notification No. EDH 162 LPD 60, dated 15th April, 1960 u/s 4 of the Act, notifying that it had been proposed to acquire the aforesaid land as it was needed for a public purpose. The first petitioner filed his objections contending that he had divided two acres of the said land already into 12 plots and sold the same to petitioners 2 to 9 and 5 others for prices ranging from Rs. 800 to Rs. 1200. He therefore prayed that the acquisition should be dropped. After receipt of his objections, the petitioner says, that no enquiry was held u/s 5-A of the Act and that a final notification u/s 6 was issued on 10th November 1960, and published in the Mysore Gazette of January 5, 1961. Thereafter, the petitioner was called upon to file his claim regarding the market value of the land to be acquired and an Award was passed.

(3) Mr. Reddy, appearing for the petitioners, not only attacked the acquisition on

the aforesaid ground, but also contended that the acquisition for the Housing Society for Harijans was an acquisition for a company and in the absence of the proper procedure, the entire acquisition would be bad in law. Since we are quashing the notification u/s 6 and the subsequent proceedings on the short ground of non-compliance with Section 5-A, we have thought it unnecessary to go into the other questions as it would be open to the petitioner to urge the same when he will be given an opportunity by the Land Acquisition Officer u/s 5-A.

(4) The acquisition proceedings were started under the Central Act 1 of 1894, which was applicable at the material date to the Belgaum District. Section 5-A the contravention of which is made a ground of attack by the petitioner, reads as follows:--

"(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by Pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for decision of the appropriate Government together with the record of the proceedings held by him. The decision of the appropriate Government on the objections shall be final."

It is common ground that sub-section (1) of Section 5-A has been complied with as the petitioner, on receipt of the notice, filed his objections. What is complained of is that no opportunity of being heard was given to him even though a specific prayer had been made on his behalf by his lawyer. In the affidavit accompanying the writ petition, the petitioner stated in paragraph 12 that in the report sent by the Deputy Commissioner, Belgaum, on 28-2-1963, this is what had been stated:

"Point No. 1 Notices u/s 4(1) of the Land Acquisition Act were issued to the applicant land owner fixing the date of putting in the objections on 15-6-1960. The Pleader on behalf of the land-owner Sri A. I. Morabad requested to grant time to put in his written objections for acquisition of land in question. But as it was not felt necessary to hear the objections put forth by the applicant, the then Asst. Commissioner had recommended to Government for issue final notification u/s 6 of the said Act."

No counter has been filed on behalf of the State denying these averments. In fact, on verification with the records shown to us by the learned High Court Government Pleader, we find such recitals in the report made by the Land Acquisition Officer. It can be therefore taken as an established fact that no opportunity was given to the petitioner of being heard as required by sub-section (2) of Section 5-A.

(5) So, the simple question for our decision is as to the effect of failure to comply with Section 5-A on the notification issued u/s 6 of the Act. The section, as already stated, indicates that the provisions is mandatory. It is consistent with the basic principle that no man's property shall be acquired unless he has been given an opportunity of being hear. This court had occassion to consider an identical question in V. K. Kangan v. State of Mysore 1966 (2) Mys LJ 739 : AIR 1967 Mys 133 and therein it is laid down that the declaration u/s 6 made without obedience to the requirements of S. 5-A has to be pronounced invalid. The notification was accordingly quashed in that case. In arriving at that decision, their Lordships referred to the fact that the provisions of law is mandatory and that its transgression resulting in the deprivation of a statutory opportunity to which the objector was entitled renders the declaration u/s 6 invalid. The same view has been taken by the Kerala High Court in Lonappan Vs. Sub-Collector, Palghat, . Therein, their Lordships held that where declaration made by the State Government u/s 7 in violation of the mandatory provisions of Section 5-A, the declaration is without jurisdiction and the High Court has power to interfere under Article 226 of the Constitution. This view also finds support from the decision of the High Court of Allahabad in Ram Charan Lal Vs. The State of Uttar Pradesh, .

(6) For these reasons, we allow the writ petition, quash the notification u/s 6 of the Act and the subsequent proceedings, and direct the Land Acquisition Officer to proceed according to law after giving a opportunity of being heard to the petitioner with regard to the objections already filed, as required by Section 5-A of the Act. The land Acquisition Officer shall complete the proceedings expeditiously not later than six months from today. The petitioner shall get his costs from Respondent 1 Advocate's fee Rs. 100.

(7) Petition allowed