
(1996) 04 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 9225 of 1988

Allisa Modinsa Mulla and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 6 (1)

Citation : (1996) ILR (Kar) 3641 : (1996) 7 KarLJ 705

Hon'ble Judges : J. Eswar Prasad, J

Bench : Single Bench

Advocate : C.S. Kothvale, for the Appellant; A.B. Patil, for R-4 and K.P. Ashok Kumar, AGA for R-1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

J. Eswar Prasad, J.—The petitioners challenge the preliminary notification u/s 4(1) of the Land Acquisition Act dated 12.3.1987 and the final notification u/s 6(1) dated 19.4.1988 by which the lands of the petitioners to an extent of 2 acres 16 guntas in R.S.No. 608 of Almel Village in Sindgi Taluk of Bijapur District were sought to be acquired for the purpose of providing play ground for a School, which is being run by the 4th respondent Education Society.

2. The petitioners attack the acquisition proceedings on various grounds:

Learned Counsel for the petitioners submit that the Special Deputy Commissioner who issued the notification u/s 4(1) of the Act was not authorised to do so, and that he was competent to delegate the powers to the Assistant Commissioner for receiving objections. It was next contended that the purpose for which the acquisition is made is not a public purpose and that the government has not followed the procedure required to be followed while acquiring for the purpose of the Company, though such an order was passed. The second submission is that the petitioner did not have notice as required u/s 4(1) as the notice was served on 22.4.1987 requiring the petitioners to file their objections and hence the

proceedings are vitiated. The further submission of the Learned Counsel is that the substance of the notification u/s 4(1) was not published as required by law.

3. The Learned Additional Government Advocate submitted that the procedure as required by law was duly followed and the Deputy Commissioner was authorised to make the publication and that no prejudice is caused to the petitioners as a fresh notice was issued on 11.7.1987 requiring the petitioners to file their objections by 21.7.1987 and that the petitioners have not sought for any extension of time nor did the Land Acquisition Officer refused to grant such an extension of time.

4. In support of his first submission, the Learned Counsel for the petitioners relied on the decisions of this Court reported in the case of R.B. PATIL v. STATE OF MYSORE 1967(2) Mys.L.J. 528 and PATEL MADEGOWDA v. STATE OF MYSORE 1970(2) Mys. L.J. 102 wherein it was held that the authorised officer can issue the notification and none else.

5. Under the Land Acquisition (Karnataka Extension and Amendment) Act, 1961, in Karnataka Act No. 17 of 1961, Clause (c) of Section 3 of the Land Acquisition Act, 1894 was amended by Section 4. In Clause (c) for the words "Deputy Commissioner", the words "An Assistant Commissioner in charge of a sub-division of a District" shall be substituted. Under the main Clause (c) of Section 3, the expression "Collector" means the Collector of a District and includes a Deputy Commissioner and any Officer specially appointed by the appropriate Government to perform the functions of a Collector, it was made dear that Deputy Commissioner can perform the functions of a Collector. The Learned Government Advocate referred to the counter and submitted that the Special Deputy Commissioner is empowered to perform the functions of the Deputy Commissioner. It is therefore to be held that the Deputy Commissioner was empowered to issue the notification u/s 4(1) of the Act by virtue of the Karnataka Act No. 17 1961 and the Assistant Commissioner in-charge of the sub-division of a District can perform the functions of a Deputy Commissioner. Therefore, the authorisation of the Special Deputy Commissioner empowering the Assistant Commissioner to receive the objections was proper and cannot be found fault with.

6. The next submission of the Learned Counsel is in relation to "public purpose" within the meaning of Section 3 Clause (f) of the Land Acquisition Act. It is to be noted that the definition of the public purpose is inclusive definition and is not exhaustive. It is further to be noted that Sub-clause (vi) of Clause (f) includes the provisions of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme. The contention of the Learned Counsel for the petitioners is that unless it is sponsored by Government while carrying out any such scheme, it cannot be for a public purpose. It is to be noted that so far as educational, housing or health schemes are concerned, they need not be sponsored by the Government. It is only confined to the schemes relating

to slum clearance board. Any scheme which is not sponsored by the Government or any authority established by the Government can also be a public purpose. In this context, the decision of this Court in the case of Mrs. Behroze Ramyar Batha Vs. Special Land Acquisition Officer, has to be usefully referred to which is to the effect "Any matter benefiting the member of a public would be a public purpose". It has to be noted that the School which is run by the 4th respondent is meant for the public and therefore, it caters to the needs of the public in general, and therefore, it has to be held that the purpose for which it is made is a public purpose.

7. The next contention that the procedure required for acquisition for the purpose of Company was not followed though Government directed such a procedure to be followed has to be considered. Learned Government Advocate submits that it was not necessary to follow the procedure required for acquisition for a Company, in as much as the 4th respondent is not a Company but is a Society registered under the Bombay Public Trusts Act and therefore, the procedure laid down for acquisition for a Company was not necessary. The contention of the Learned Government Advocate is correct and the respondents were justified in not pursuing the procedure any further as the acquisition is not for a Company.

8. So far as the contention relating to non-publication of the substance of the notification u/s 4(1) of the Act is concerned, the Learned Counsel for the petitioners relied on the decisions reported in the case of Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, and Balagouda Nijagouda Patil Vs. State of Karnataka, . The law is well settled on this aspect and there can be no dispute about it. But the fact remains that the substance of the notification was published in the Chawadi. It has to be borne in mind that the lands in question were situated in the village. There is no possibility of affixing the substance of the notice on the lands themselves. The Chawadi is the place which will be near the lands and affixing the notice on the Village Chawadi will be sufficient for the requirement of law.

9. The submission made by the Learned Counsel that there was no sufficient notice for filing the objections as the notice was served on 22.4.1987, requiring the objections to be filed by 12.4.1987, requires consideration. The Learned Government Advocate pointed out that the concerned authority immediately realised the mistake and served a fresh notice dated 22.4.1987 calling for objections to be filed and accordingly, the petitioner filed their objection and have not sought for any further time. In these circumstances, it cannot be said that there was any prejudice caused to the petitioners. The contention of the Learned Counsel that the respondents did not consider the objections cannot be accepted, in as much as, they did not seek extension of further time. It is not as if the Land Acquisition Officer refused to accede to their request when no such request was made. The objections of the petitioners were considered and the notification u/s 6 was published.

10. The last contention of the Learned Counsel that Section 6(1) notification has to be quashed for the reason that it was made beyond one year of the paper publication of the notification u/s 4(1) of the Act has to be rejected for the reason that paper publication u/s 4(1) was made on 8.5.1988 and the notification u/s 6(1) was dated 19.4.1988 which was within one year from the last date of publication u/s 4(1).

11. For all the aforesaid reasons, the contentions of the Learned Counsel for the petitioners are rejected and the Writ Petition is dismissed.