

(1985) 01 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 8303 of 1978

Andanoor Shivalingappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 3, 3 (1), 50, 50 (1) (c)

Citation : (1985) ILR (Kar) 936 : (1985) 1 KarLJ 336

Hon'ble Judges : Malimath, C.J.;Mahendra, J

Bench : Division Bench

Advocate : Minajigi, for the Appellant; Chandan Gowdar, Government Advocate for R-1, S.R. Ramanathan, for N.Y. Hanumanthappa, for R-2 and Kusuma R. Muniraju, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Malimath, C. J.

1. A Notification was issued u/s 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 (hereinafter referred to as the "Act") declaring land survey No. 119 situated at Davangere as slum area under the Act. That Notification was challenged by the Petitioner in Writ Petition No. 7108 of 1975. That Writ Petition was allowed on 31-5-1976 following the decision of this Court in P.K. Thipperudrappa Vs. The State of Karnataka, reserving liberty to the authorities to issue fresh notification in accordance with law. The principal ground on which that Writ Petition was allowed, was that the Notification under Sub-section (2) of Section 3, could not have been issued under the Act, without giving a notice and an opportunity to the owner of the land of showing cause in the matter. After the Writ Petition was disposed of, a notice dated 20th October, 1976 appears to have been published in the Karnataka Gazette of the 4th November, 1976 proposing to declare the land in question survey No. 119 and some other lands as slum area and inviting persons concerned to submit their

representations within fifteen days from the date of publication of the said notice. Thereafter, a notification was issued u/s 3(1) of the Act dated 10th of December, 1976 published in the Gazette dated 10th January, 1977 declaring survey No. 119 and other lands as slum area under the Act.

2. The Petitioner has challenged the said notification Exhibit "B" in this Writ Petition.

3. The Petitioner has asserted in paragraph 5 of Writ Petition that he has not been given any show cause notice before the land was declared as slum area. He has stated that as far reaching consequences affecting his rights will take place consequent upon the declaration made by the impugned notification, the authorities were required to issue a show cause notice as held by this Court in *Thipperudrappa -v.-State*. Our attention was drawn by Sri Minajigi, Learned Counsel for the Petitioner, that it has been ruled in the afore-said decision that though Section 3 does not, in express terms, contemplate notice and opportunity being given to the persons likely to be affected, such a requirement has to be read into the statutory provision, having regard to the principles of natural justice. There cannot, therefore, be any doubt having regard to the ruling of this Court that before issuing a notification-under Section 3(1) of the Act, the authorities are required to issue to notice to the persons-likely to be affected and to give him an opportunity of showing cause in the matter. Sri Chandan Gowdar, however, takes the stand that the notification published in the Gazette on the 4th November, 1976 as per Exhibit "A", is sufficient compliance with this requirement of principles of natural justice as notice has been published in the Gazette proposing to issue a notification in respect of the lands noticed therein as slum area and inviting representations from persons likely to be affected by such notification. Sri Minajigi, Learned Counsel for the Petitioner, submitted that the notice of the type issued in this case by publication in the Official Gazette, is not final and sufficient notice contemplated by law. He invited our attention to Section 50 of the Act, which reads as follows :

"50. Service of notices and orders.....

(1) Save as otherwise provided in this Act and subject to the provisions of this Section and of any rules made in this behalf, every notice issued or order made under this Act shall. -

(a) in the case of any notice or order of a general nature or affecting a class of persons, be published in the Official Gazette ;

(b) in the case of any notice or order affecting an individual, corporation or firm be served in the manner provided for the service of summons in Rule 2 of Order XXIX or rule 3 of Order XXX,. as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V. of 1908), and

(c) in the case of any notice or order affecting an individual person not being a corporation or firm be served on such person.

(i) by delivering or tendering it to that person ; or

[ii] if it cannot be so delivered or tendered by delivering or tendering to the Head of the office in which such person is employed, or to any adult male servant of such person, or to any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or

[iii] failing service by any of the means aforesaid, by post or by affixing a copy of the said notice or order on some conspicuous part of the land or building to which it relates.

(2) Where the notice or order cannot be served without undue delay, due to any dispute in the ownership of the land or building or due to the person to whom the notice or order is intended being not readily traceable, the notice or order may be served by publishing it in the Official Gazette, and where possible by affixing a copy thereof on some conspicuous part of the land or building to which it relates."

It is clear from these statutory provisions of Section 50 of the Act that the notice to the individual person has to be issued by following the procedure prescribed by Section 50(1)(c) of the Act. It is not the case of the Respondent that the notice as contemplated by this provision was issued. It is no doubt true that Sub-section (2) of Section 50 contemplates notice being issued by publishing the same in the Official Gazette. But this can be done if the conditions specified in Sub-section (2) of Section 50 are satisfied. The conditions to be satisfied are :

that notice or order cannot be served without undue delay ;

1. due to any dispute in the ownership of the land or buildings or
2. due to the person to whom the notice or order is intended being not readily traceable.

It is only if either of these conditions is satisfied that the authorities can resort to publication of notice in the Gazette and not otherwise. It is not pleaded that the conditions specified in Sub-section (2) of Section 50 are satisfied in this case. Hence, it is clear that notice as required u/s 50(1)(c) of the Act, was required to be issued. As that has not been done, this Writ Petition is entitled to succeed.

For the reasons stated above, this Writ Petition is allowed and the impugned notification Exhibit "B" dated 10-12-1976 published in the Gazette on the 10th of January, 1977, is quashed in so far as it pertains to serial No.6 in respect of Survey No. 119 belonging to the appellant, without prejudice to the rights of the authorities, to take appropriate action in accordance with law.