
(1979) 10 KAR CK 0013
In the Karnataka High Court
Case No : WP. 12744/78

Arun Kashinath

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-10-1979

Acts Referred:

Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3(2)
Karnataka Land Revenue Act, 1964 — Section 30
Land Acquisition Act, 1894 — Section 45

Citation : (1980) 1 KarLJ 146

Hon'ble Judges : Malimath, J

Judgement

1. The petitioner is the owner of land Sy. No. 82/4 situate in Nadi Ingalagaon village, Athani Taluk in Belgaum district. A notification under sub-sec. (1) of S. 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (hereinafter referred to as the "Act") was issued on 19-8-1976 as per Ext. C, notifying the intention of the Government to acquire the said land. Thereafter, according to the petitioner, a final notification was issued on 29-11-1976 in the Karnataka Gazette Extraordinary dated 15-12-1976 under sub-sec. (1) of S. 3 of the Act by the Deputy Commissioner, Belgaum declarlaring that the land in question should be acquired for the purpose specified in the said notification. Subsequently an award came to be made on 5-8-1970 as per Ext. A. It is only after the petitioner was served with a copy of that award that he came to know of the acquisition of his land, whereupon he filed his objections on 11-9-1978. He then realised that the stage for filing his objection is over, and that the only remedy for the petitioner is to approach this court for relief under Art. 226 of the Constitution. It is in this background that the petitioner has approached this court for appropriate relief.

2. Sri G.D. Shirgurkar, learned counsel for the petitioner maintained that the acquisition of the land of the petitioner is illegal and invalid, the petitioner not having been given an opportunity of showing cause in the matter. Sub-Sec. (1) of S. 3 of the Act provides that the State Government may, when the land is

required for the purpose of providing house sites to the weaker sections of the people who are houseless, notify its intention to acquire the, land. Once such notification is issued under sub-sec. (1) of S. 3 of the Act, a further notice is required to be given under sub-sec. (2) of S. 3 of the Act to the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause within 30 days from the date atservice of notice, why the land should not be acquired. After considering the cause that may be shown by the owner or any other person interested in the land and after giving such persons an opportunity of being heard, appropriate order is required to be passed as contemplated by sub-sec. (3) of S. 3 of the Act. It is thereafter that a declaration can be made under sub-sec. (4) of S. 3 of the Act, on the publication of which the land shall vest in the State Government as provided in sub-sec. (5) of S. 3 of the Act. It is the case of the petitioner that he is the owner as well as occupier of the land in question. He has asserted that he has not been served with any notice as required by sub-sec. (2) of Sec. 3 of the Act. In the statement of objections filed on behalf of the respondents, it is asserted that the petitioner could not be served as he was not residing in the village where the land is situate and that therefore steps were taken to effect service in accordance with the provisions of S. 30 of the Karnataka Land Revenue Act, 1964. It is asserted that the notice was served by affixing on the land in question in the presence of panchas on 27-9-1976. This procedure was followed, on the ground that they were entitled to effect service in accordance with the provisions of S. 30 of the Karnataka Land Revenue Act, 1964.

3. The question for consideration therefore is, as to whether the service of the type said to have been made by the respondents can be regarded as proper service of notice contemplated by sub-sec. (2) of S. 3 of the Act. The Act does not contain any express provision prescribing the mode of service of notice contemplated by sub-sec. (2) of S. 3 of the Act. S. 5 of the Act however provides that the provisions of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 shall, mutatis mutandis, apply, in respect of enquiry and award by the Deputy Commissioner, the reference to court, the apportionment of amount and the payment of amount in respect of lands acquired under this Act. It is clear from this provision that the provisions of the Land Acquisition Act, as amended by Karnataka Extension and Amendment Act, 1961 will apply in respect of the enquiry to be made under the Act. It is for the purpose of making enquiry contemplated by sub-sec. (3) of S. 3 of the Act that notice is required to be served on the persons specified in sub-sec. (2) of S. 3 of the Act. As there is no specific provision in the Act prescribing the mode of service of notice, it follows that the provisions of the Land Acquisition Act, 1894, as amended by the Karnataka Extension and Amendment Act, 1961 pertaining to the mode of service of notice have to be followed for the purpose of effecting service of notice contemplated by sub-sec. (2) of S. 3 of the Act. I fail to see how the authorities invoked the provisions of" S. 30 of the

Karnataka Land Revenue Act, 1964. It is no doubt true that the said provision pertains to mode of service of notice. It is clear from sub-sec. (1) of S. 30 of the said Act that every notice under that Act, unless it is otherwise expressly provided, shall be served by tendering or delivering a copy thereof, to the person on whom it has to be served or his agent, if he has any, or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers. The notice to be given under sub-sec. (2) of S. 3 of the Act is not a notice under the Karnataka Land Revenue Act, 1964 to justify the respondents in invoking the provisions of S. 30 of the Karnataka Land Revenue Act 1964. There is also no provision under the Act or the rules made thereunder attracting the provisions of S. 30 of the Karnataka Land Revenue Act, 1964 or in regard to the mode of service of notice contemplated by sub-sec. (2) of S. 3 of the Act. I have, therefore, no hesitation in taking the view that the service of notice contemplated by sub-sec. (2) of S. 3 of the Act is required to be made in accordance with the relevant provisions of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka, Extension, and Amendment) Act, 1961.

4. S. 45 of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 prescribes the mode of service of notice. Clauses (a) and (b) of sub-sec. (1) of S. 45 of that Act are not applicable to the service of notice contemplated by sub-sec. (2) of S. 3 of the Act, Clause (c) of sub-sec. (1) of S. 45 which is applicable, provides as follows:

"A, notice affecting an individual person (not being a corporation or firm) shall be served in the manner provided for the service of summons in the Code of Civil Procedure, 1908. or by sending it by registered post under a letter addressed to the person named therein at his last known residence, address or, place of business, and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee."

It is clear from this provision that notice under sub-section (2) of Sec. 3 of the Act should have been served in the manner prescribed for service of summons in the Code of Civil Procedure or by sending it by registered post. The relevant provisions of the Code of Civil Procedure in this behalf are contained in Order-V of the Code. It is not the case of the respondents that service has been effected in the manner contained in the Code of Civil Procedure or by registered post, as contemplated by clause (c) of sub-section (1) of S. 45 of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961. Sub-section (2) of S. 45 of the said Act further provides that where the ownership of the land in dispute or where the persons interested in the land are not readily traceable and the notice cannot be served without undue delay the notice may be served by publishing it in the Official Gazette, where possible, by affixing a copy thereof at any conspicuous part of the land to which it relates. The respondents have not pleaded that the conditions specified

in sub-section (2) of S. 45 are satisfied or that notice has been effected in accordance with the provisions of sub-section (2) of S. 45. As the respondents have not effected service of notice on the petitioner as required by S. 45 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961, it has to be held that the petitioner who was the owner and the occupier of the land in question was not served with notice as required by sub-section (2) of S. 3 of the Act. The acquisition of the land in question without serving notice on the petitioner and without giving him an opportunity to show cause, is clearly illegal and invalid and hence this writ petition is entitled to succeed.

5. For the reasons stated above, this writ petition is allowed. Ext. B the final notification dated 29-11-1976, published in the Official Gazette dated 15.12.1976 and the consequent award Ext. A are hereby quashed. No costs.