
(1980) 11 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No. 128 of 1976

Balagouda Nijagouda Patil

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-11-1980

Acts Referred:

Karnataka Land Acquisition Rules, 1965 — Rule 17, 19
Land Acquisition Act, 1894 — Section 4 (1), 45 (1) (c), 5 A

Citation : AIR 1981 Kar 111

Hon'ble Judges : N.R. Kudoor, J; M.N. Venkatachaliah, J

Bench : Division Bench

Advocate : V.C. Narasimha, for the Appellant; N.Y. Hanumanthappa, Addl. Govt. Advocate, for the Respondent

Judgement

1. This appeal by the unsuccessful petitioners in W. P. No. 5521/ 1975 is directed against the order dated 18-11-1975 of the learned single Judge rejecting the writ petition at the preliminary hearing stage.

2. Appellants claim to be owners of Sy. Nos. 400/4, 400/5, 398/ID+2A and 398/IA measuring 39 guntas 1 acre, 2! guntas, 6 acres, 6 guntas and 12 guntas respectively of Sankeswar village in Belgaum District. These lands, amongst others, were proposed to be acquired for purposes of locating the "Sugarcane Research Centre." pursuant to the Preliminary Notification dated 5-11-1972 published u/s 4(1) of the Land Acquisition Act (for short the "Act"). Appellants did not file any objections u/s 5A of the Act. However, when notices u/s 9 were sought to be served on them, appellants approached this Court challenging the proceedings of acquisition on grounds, inter alia, that no public notice of the substance of the notification was given and that a copy of the notification was not also served on the appellants. It is relevant, to State that the preliminary notification refers to and concerns lands other than those in which the appellants are interested and the challenge to the proceedings is to the extent they relate to the lands of the appellants.

3. Learned single Judge, by his order dated 18-11-1975, was of the view that the records of the proceedings of acquisition disclosed that while the "Sanadi" tried to serve a notice on the appellants, they refused and declined to receive the notice and that thereafter the "Sanadi" affixed, a copy of the notice on the door of appellants' house. Learned single Judge also took note "of the circumstance that earlier proceedings for acquisition of the same lands for the same purpose had been challenged by the appellants themselves. In view of these circumstances. the learned single Judge took the view that the grievance of the appellants was neither bona fide nor justified and, accordingly, rejected the writ petition.

4. We have heard Shri V. C. Narasimha. learned counsel for the appellants and Sri N. Y. Hanumanthappa, learned Government Advocate. Records of the proceedings before the Land Acquisition Officer were made available at the hearing.

5. Shri V. C. Narasimha, learned counsel for the appellants urged that the view of the learned single Judge that service of the notice on the appellants should be held to be sufficient erroneous.

From the submission of counsel on this point, two aspects emerge for consideration. The first is whether service of a copy of the preliminary notification on appellants was sufficient; the second is as to the effect of non-service if service is not good and sufficient on the proceedings. The notice we are now concerned with is the one contemplated by the provisions introduced into the body of Section 4(1) by the Land Acquisition (Mysore Extension and Amendment) Act, 1961 (Act 17 of 1961). The provision so added reads:

" The Deputy Commissioner may also cause a copy of such notification to be served on the owneror the occupant of the land."

In this case, the Land Acquisition Officer directed a copy of the Notification to be served on the appellants. it was urged before the learned single Judge for the respondents that when the village Sanadi sought to serve a copy of the notification on the appellants, the latter refused to receive them. This version has been accepted by the learned single Judge.

Section 45 of the Act prescribes the mode of service of notices issued under the Act. Section 45(1)(c) provides, inter alia, that a notice affecting an individual person be served in the manner provided for the service of summonses in the Civil P. C., 1908, Rule 17 of O. V of the Civil P. C. speaks of the procedure when a party refuses to accept service and Rule 19 provides that where a summons is returned under Rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath and may make such further enquiry in the matter as it thinks fit and shall either declare that the summons has been duly served or order such service as it thinks fit

In the present case, there is no verification by affidavit of the serving officer. The Land Acquisition Officer has, admittedly, not examined the serving officer nor has he made any declaration as to the sufficiency of service as required by Rule N of Order V. If personal service is sought to be effected in terms of the first part of S. 45(1)(c) -as indeed was apparently done in the present case - the provisions of Rr. 17 and 19 of Order V of the Civil P. C. are attracted and have to be complied with. Otherwise, the purported service cannot be considered proper and acceptable. (See *Irabasayya Gadigeyya Mathad v. State of Mysore*, W. P. No. 3278/1971 disposed of on 31-10-1972). Accordingly, we must hold that the service of the copy of the notification cannot be held to have been properly made in the present case. With great respect, the conclusion reached by the learned single Judge on this point appears to us to be insupportable.

But the effect of this non-service on the validity of the proceedings depends upon the question whether the requirements of Section 4 (1) in this behalf introduced by Act 17 of 1961 are mandatory. Learned Government Advocate says two learned single Judges of this Court have taken the view that this provision is mandatory and the said matters are pending in appeal. We do not feel called upon to decide this controversy in this case as in our view, the appeal could be disposed of on a much shorter point.

6. This Point concerns the non-publication of the substance of the notification in the locality as required by Section 4 (1). The Land Acquisition Officer has addressed a communication to the Tahsildar of Hukkeri asking him to cause publication of the public notice on the notice board of the Taluka Office: the notice board of the village Chavadi and at convenient place in the locality where the lands are situate. Pursuant to this, the Tahsildar" of Hukkeri has made an endorsement on the back of this letter stating that these things have been carried out.

We have seen the report of the Talati dated 30-10-1972, on the basis of which the Tahsildar has made this endorsement, So far as the publication in the locality is concerned, the said report says:

(Matter being in regional language, not printed - Ed.)

Though Talati"s report says that the public notice was, affixed on the village Chavadi on 28-10-1972. it is not; however, clear as to when the publication in the locality said to have been made by affixing the notice to the land was made. S. 4, inter alia, provide that the Land Acquisition Officer shall cause public notice of the substance of the preliminary notification to be given at convenient place in the locality where the lands are situate. Rule 3 of the Karnataka Land Acquisition Rules 1965 prescribes the mode of such publication. Assuming that the requirements of publications on the notice boards of the Deputy Commissioner"s Office, Tahsildar"s Office and of the village Chavadi are duly made, it cannot be said that the requirement of publication at convenient place in the locality where the land proposed for acquisition is situate has been complied with in the present

case.

The statement that the notice was affixed to the land is understandable and conveys no meaning. What the law requires is that it should be published at convenient place in the locality where the land proposed for acquisition is situate. The requirement of the section as to the publication of the substance of the notification at convenient place in the locality where the land is situate connotes a definite idea and is intended to serve an important purpose. One can understand the claim that a notice containing substance of the notification was affixed to some identifiable landmark in the locality. The report of the officer effecting the publication must specify the place of such publication. In the present case, the report does not even say as to which precise part of the land the notice came to be affixed.

That apart, it is seen from the records that public notice in question was despatched from the L. A. O.'s office at Belgaum on 27-10-1972. The Tahsildar's Office at Hukkeri has received the communication on 28-10-1972. All the requirements of publication including the affixture to the land are claimed to have been attended to on 28-10-1972 itself. From the report of the Talati it is difficult to say whether publication by affixture to the land was done on 28-10-72 or on 30-10-72. On a perusal of the records, we are satisfied that the public notice has not been published in the locality in accordance with-law. The proceedings, in our opinion, stand vitiated on this account

7. Accordingly, this appeal is allowed and in reversal of the order of the learned single Judge, the writ petition is allowed in part and the entire proceeding in so far as they relate to the acquisition of the appellants' lands pursuant to the preliminary notification dated 27-10-1972 in No. LAQ/SR-813 up to the stage of issue of notices u/s 9 require to be and are hereby quashed.

8. In the circumstances of the case, the parties are left to bear their own costs in this appeal.

9. Appeal allowed.