
(1980) 08 KAR CK 0010
In the Karnataka High Court
Case No : WP. 16686/79

Basavaraj Malleshappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-08-1980

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1981) 1 KarLJ 481

Hon'ble Judges : N. R. Kudoor, J

Judgement

1. The petitioner Basavaraj Malleshappa Tippakkalawar was the tenant of S. No. 236/A/1B measuring 2 acres 19 guntas situate in Hirekerur of Dharwar District, of which certain Krishna Govind Dixit and his brother Ramesh Govind Dixit were the joint owners. The petitioner was conferred with occupancy right in respect of the said land by the Land Tribunal, Hirekerur as per its order dated 23-4-76 under the provisions of the Karnataka Land Reforms Act, 1961. In the meanwhile, the State of Karnataka intended to acquire the said land for the purpose of constructing office building and staff quarters for the Taluk Development Board, Hirekerur. Action was taken in that connection to acquire the land under the provisions of the Land Acquisition Act, 1894 as amended by Karnataka Act No. 17/1961 (hereinafter referred to as the "Act") and a preliminary notification dated 17-1-75 under S. 4(1) of the Act was published in the official Gazette. Thereafter the Assistant Commissioner caused a copy of the Preliminary Notifications served upon the petitioner calling for objections if any, to the proposed acquisition of the land. The petitioner, in response to the notice, filed his objections within the stipulated time opposing the proposed acquisition. The State Government, rejecting the objections raised by the petitioner, made a declaration dated 29-9-76 that the land was needed for the public purpose and caused that declaration published in the official gazette dated 23-10-1976 as required under sub-section (2) of S. 6 of the Act. According to the petitioner, he was afforded no opportunity to substantiate his objections as required under law. It is also his case that the acquisition proceedings are wholly illegal and contrary

to law. Hence he filed this writ petition under Arts 226 and 227 of the Constitution to quash the entire acquisition proceedings.

2. The respondents filed their statement of objections denying the various allegations made in the petition and supporting the validity of the acquisition proceedings.

3. Sri R.H. Chandanagoudar, learned Counsel for the petitioner, adduced four main contentions in the course of his arguments to assail the validity of the impugned proceedings.

4. The first contention of Sri Chandanagoudar is that the very basis of the acquisition proceedings which rested on the preliminary notification was illegal and contrary to law for want of a second preliminary notification as, according to him, the first preliminary notification dated 17-1-75 was defective. This argument is based on the ground that the survey number of the land proposed to be acquired as notified in the preliminary notification dated 17-1-75 was incorrect, that showing the correct survey number in the final declaration published under sub-section (2) of S. 6 of the Act was no answer to a defective preliminary notification and so a second preliminary notification with the correct survey number of the land proposed to be acquired is a legal necessity.

5. Now coming to the factual state of affairs, the land proposed to be acquired under the preliminary notification dated 17-1-75 was described as S. No. 2361/1B whereas the correct survey number was Survey No. 236/A/1B. This mistake in the preliminary notification was found out during the course of the enquiry. So the Assistant Commissioner in his report to the Government suggested to rectify the mistake in the survey number of the land to be acquired in the final declaration to be published under S. 6(2) of the Act. Accordingly, in the final declaration dated 29-9-76 published in the official Gazette the land needed for the public purpose and required to be acquired was described by its correct survey number 236/A/1B.

6. Now the question that arises for consideration is whether, in the above circumstances, a second preliminary notification is required under law as contended by Sri Chandanagoudar, learned Counsel for the petitioner.

7. The scheme of the Act contained in Part II under the heading "Acquisition" and the language employed in the matter of publication of the Preliminary Notification under sub-section (1) of S. 4 and the final declaration under sub-section (2) of S. 6 contained therein would not, in my view, lend support to this argument.

Sub-section (1) of S. 4 lays down that whenever it appears to the appropriate Government or the Deputy Commissioner that land in any locality is needed or is likely to be needed for any public purpose a notification stating the purpose for which the land is needed or likely to be needed and describing the land by its survey number, if any, and also by its boundaries and its approximate area shall be published in the official gazette, (underlining italics supplied) Sub-section (2)

of S. 6 under which the final declaration shall be, published, reads thus:

"Every declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, the precise boundaries and survey number, if any, of the land and its approximate area, and, the place where a plan of the land may be inspected." (underlining italics supplied)

From a comparative reading of the above provisions, it is clear that a duty is enjoined upon the State Government to state, among other things the precise boundaries and survey number, if any, of the land and its approximate area in the final declaration to be published in the official Gazette under S. 6(2) of the Act, whereas in the preliminary notification to be published under S. 4(1) of the Act, the land proposed to be acquired shall be described by its survey number, if any, and also its boundaries and its approximate area. In between the publication of the preliminary notification and the final declaration, provisions have been made both under sub-section (2) of S. 4 and sub-section (1A) of S. 6 for making measuring and preparing a plan of the land needed for the purpose for which acquisition proceedings have been initiated by publishing a preliminary notification under S. 4(1) of the Act. Having followed the above provisions and also after hearing the objections, if any against the proposed acquisition, the State Government shall take a decision regarding the land needed for a public purpose or for a company, as the case may be, and publish a final declaration as required under S. 6(2) of the Act stating among other things, the precise boundaries and survey number, if any of the land, its approximate area and the place where a plan of the land may be inspected. The need to mention the precise boundaries and Survey number, if any, of the land needed for the public purpose in the final declaration to be published under S. 6(2) of the Act, would clearly indicate that any mistake as to the boundaries and survey number of the land stated in the preliminary notification could be corrected in the course of the enquiry and the correct survey number of the land and its boundaries shall be mentioned in the final declaration under S. 6(2) of the Act. If this was done, certainly the requirement of the law would be met and I see no need for issuing a fresh preliminary notification under Section 4(1) of the Act with the correct survey number and its boundaries. Further, no provision in the Act or the Rules framed thereunder was brought to my notice to sustain the argument that in such a case, a second preliminary notification was required to be published. Hence, I see no force in the first contention urged by Sri Chandangoudar on behalf of the petitioner.

8. The second contention of Sri Chandangoudar is that the acquisition is bad as the possession of the land was taken from the petitioner in contravention of S. 16 of the Act. S. 16 reads thus:

"16(1): When the Deputy Commissioner has made an award under S. 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

(2): The fact of such taking possession may be notified by the Deputy Commissioner in the Official Gazette and such notification shall be evidence of such fact."

In this case, the petitioner who was the holder of occupancy right and the erstwhile owners of the land voluntarily handed over possession of the land to the Block Development Officer who took possession of the land on behalf of the Taluk Development Board on 23-4-76. This was after the publication of the preliminary notification and before the publication of the declaration under S. 6(2) of the Act. Undoubtedly the award under S. 11 was not made by then. S. 16 provides that the Deputy Commissioner may take possession of the land when an award is made under S. 11 and after taking such possession, the land shall vest absolutely in the Government free from all encumbrances. In this case, the records would go to show that the award was finalised by the, Assistant Commissioner on 7-5-79 and the Special Deputy Commissioner accorded his approval to the said award on 19-7-79. In that view, it may be held that possession of the land was not taken in accordance with the provisions of S. 16 of the Act.

S. 16 empowers the Deputy Commissioner to take possession of the land after an award is made under S. 11 of the Act. In the instant case, as I said before, possession of the land was not taken in enforcement of the provisions of S. 16 or against the will of the petitioner. On the other hand, possession of the land was given to the Block Development Officer on behalf of the Taluk Development Board. voluntarily by the petitioner and the erstwhile owners of the land. I see no impediment or prohibition in law for taking possession of the land before the award is made under S. 11 of the Act if possession is given voluntarily. Thus, I see no force in the second contention also.

9. The third contention urged by Sri Chandanagoudar is that the petitioner was not informed the fact of having submitted a report to the State Government by the Assistant Commissioner under S. 5A of the Act. S. 5A contemplates the submission of a report by the Deputy Commissioner after considering the objections raised by the objectors, containing his recommendations on the objections together with the records of the proceedings held by him for the decision of the State Government within the time stipulated therein and the communication of the fact of having submitted a report, to the objectors. As regards this infirmity, this is what the petitioner has averred in the writ petition:

"It is submitted that respondents 2 and 3 even did not communicate the report made by them to the petitioner and the said report was also made long after the expiry of six months from the last date of filing objection and the State Government on the basis of the report of respondents 2 and 3 made declaration in the Gazette that the land in question is needed for public purposes and further directed the Deputy Commissioner to produce (proceed) further with acquisition of land."

From the averments excerpted above, it is clear that the grievance of the petitioner is two-fold. Firstly respondents 2 and 3 did not communicate to the petitioner the report made by them to the State Government and secondly the said report was made long after the expiry of six months from the last date of filing objections.

10. As regards the first grievance, S. 5A on which reliance was placed by Sri Chandanagoudar would not support it. What is required to be communicated under sub-sec. (2) of S. 5A to the objectors is not the report made by the Assistant Commissioner to the State Government but the fact of having submitted the report. Nowhere it is stated by the petitioner in his writ petition that he was not informed the fact of having submitted the report by the Assistant Commissioner to the State Government. On the other hand, his grievance, as could be seen from the averments made in the writ petition, is that the report made by respondents 2 and 3 to the State Government was not communicated to him. The petitioner was not entitled to a communication of the report made by the Assistant Commissioner to the State Government under section 5A but he was entitled only to the communication of the fact of having submitted such a report.

11. Now turning to the question as to whether the petitioner was intimated the fact of having submitted a report by the Assistant Commissioner to the State Government, the records would go to show that the Assistant Commissioner, after holding an enquiry and considering the objections filed by the petitioner, submitted a report under S. 5A(2) to the State Government on 3-12-75 along with a check-memo with his recommendation to the Government to overrule the objections filed by the petitioner and to issue direction to take further steps regarding the acquisition of the land. An office-copy of the letter addressed to the petitioner intimating him that a report under S. 5A has been submitted to the Government on 3-12-75 is also found in the records. A note is made on the said office-copy of the letter that a copy of the said letter was again sent to the addressee by registered post acknowledgement due under the initial of the Assistant Commissioner, Haveri dated 17-1-1976. It is true that we do not find any acknowledgement of the petitioner, for having received the original of the letter addressed to him. However, the petitioner has stated in his writ petition that the report was made to the State Government by respondents 2 and 3 long after the expiry of six months from the date of filing objections. This would probabalise that the petitioner was intimated the fact of having submitted a report by the Assistant Commissioner to the State Government. In fact, on the perusal of the records, I found that the report was made to the State Government by the Assistant Commissioner beyond the time allowed under sub-section (2) of S. 5A and the delay in submitting the report was condoned by the State Government. The fact that the petitioner was aware that the report was submitted by the Assistant Commissioner beyond the time prescribed under sub-section (2) of S. 5A is a significant factor to hold that the petitioner was aware of the fact of the submission of the report by the Assistant Commissioner to the

State Government. It appears to me that is why the petitioner in his writ petition only took exception for the noncommunication of the report made by the Assistant Commissioner to the State Government and not for non-communication of the fact of having submitted the report.

12. As regards the second grievance of the petitioner that the report was made long after the time prescribed under sub-section (2) of S. 5A, the same will not be available for the petitioner to assail the acquisition proceedings since the State Government has condoned the delay in the submission of the report exercising its powers under the proviso to sub-section (2) of S. 5A. Thus I see no merit in the third contention also.

13. The fourth and the last contention of Sri Chandanagoudar is that the copy of the final declaration published under sub-section (2) of S. 6 was not served upon the petitioner. This submission, in my opinion, has no legs to stand, since I see no provision in the Act for service of a copy of the final declaration published in the official Gazette upon the owner or the occupier, unlike a copy of the preliminary notification which should be served upon them under sub-sec. (1) of S. 4 of the Act. S. 6(2) of the Act merely states that every declaration shall be published in the official Gazette and shall state the District or other territorial division in which the land is situate, the purpose for which it is intended, the precise boundaries and survey number, if any, of the land and its approximate area and the place where a plan of the land may be inspected. The notice, after the publication of the final declaration in the Gazette under S. 6(2), contemplated to be served upon the persons interested, is a notice under sub-section (1) of S. 9. In the instant case, the petitioner was served with such a notice and he did take part in the subsequent proceedings of acquiring the land. In that view of the matter, I see no force in this contention also.

14. Apart from the merits of the petition, I would like to point out that the petition should fail on account of the laches on the part of the petitioner in bringing the action. The preliminary notification in this case was published in the official Gazette dated 20-2-75. The final declaration dated 29-9-76 was published in the official Gazette dated 23-10-76 as required under Section 6(2) of the Act. The petitioner has filed the writ petition challenging the validity of the acquisition proceedings only on 23-10-79 i.e. exactly three years after the publication of the final declaration under Sec. 6(2). The petitioner had associated himself effectively at all stages of the acquisition proceedings. He filed his objections opposing the proposed acquisition of his land. He was represented by an Advocate before the Assistant Commissioner. He was aware of the fact of submission of the report by the Assistant Commissioner to the State Government recommending the acquisition of the land in question. It cannot be said that he was not aware of the publication of the final declaration in the official Gazette because in pursuance of the notice issued to him under S. 9(1) of the Act, he took part in the proceedings of determination of compensation by filing his claim statement seeking compensation at the rate of Rs. 22,000 per acre. He had also

made an application to the Block Development Officer stating that in spite of the possession of the land being taken, he was neither given compensation nor was allowed to cultivate the land and further seeking for the payment of compensation at an early date. The Special Deputy Commissioner accorded his approval to the award dt. 7-5-79 finalised by the Assistant Commissioner, as per his order dated 19-7-79. Having waited so long, the petitioner came forward with the present writ petition on 23-10-79 to assail the very acquisition proceedings, which, in my opinion, the petitioner is not entitled to by invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution.

15. In the result, for the reasons stated above, the rule is discharged. The writ petition is dismissed with costs. Advocate's fee is fixed at Rs. 100. No separate order is required on I.A.I in view of the order made in the main writ petition.