

(1984) 07 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 8241 of 1980

Bhavasara Kshatriya Samaj

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 17, 17 (1), 3 (1), 5 (1)

Citation : (1985) ILR (Kar) 1997 : (1985) 2 KarLJ 250

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy and R. Suryanarayanawamy, for the Appellant; Santosh Hedge, General and S. Udaya Shankar, HGCP for Respondent-1, H.B. Datar and K.R. Maniraju for R-2, for the Respondent

Final Decision : Allowed

Judgement

K. A. Swami, J.

1. In this Petition under Article 226 of the Constitution, the petitioner has sought for quashing the notification dated 30th December, 1977 published in the Karnataka Gazette of the same date, issued u/s 17 of the Karnataka Slum Area (Improvement and Clearance) Act, 1973 (herein-after referred to as the "Act"), produced as Annexure-F. The petitioner has also challenged the notification issued under sub-section (1) of Section 5 of the Act, dated 25-7-1978 (Annexure-E) and also another notification dated 18-1-1978 Annexure-G) and the Government Order dated 21/23-8-1979 (Annexure-H).

2. The subject - matter of the Writ Petition is 14 guntas of vacant land forming part of the total area of 1 acre 7 guntas of land comprised in Survey No. 691, situated at St. John's Road, Bangalore, the boundaries of which are as follows : East-the land and building known as "Thoppa Mudaliar's Chatram" ; West - St. John's Road ; South - passage from St. John's Road to Thoppa Mudaliar Chatram ; North-the plot of land purchased by V.D. Viswanatha Mudaliar. The

first Respondent, in exercise of the power u/s 3(1) of the Act, has declared the aforesaid plot of land along with the other plots as slum area under the notification dated 28th March, 1977 published in the Karnataka Gazette of the same date. Thereafter, again in exercise of the power under sub-section (1) of Section 11 of the Act, the 1st Respondent has further declared the very area by the notification published in the Karnataka Gazette dated 28th September 1977 as slum clearance area. It is pertinent to notice at this stage itself that these two notifications have not been challenged in this Writ Petition. Pursuant to the declaration made to the effect that the area in question along with the other area is slum clearance area, the State Government has issued the impugned notification dated 30th December, 1977 published in the Gazette of the same date u/s 17(1) of the Act.

3.Two contentions are put forth by the petitioner: (1) That the area cannot be declared as slum clearance area and the area is not required to be acquired for the purpose of slum clearance; (2) that the petitioner being the owner of the land in question, is a person interested in it and as such, it was entitled to have a notice of the proposed acquisition and as no notice was issued to the petitioner and no opportunity to resist the acquisition was afforded even though such right is guaranteed to the petitioner under the Act, the acquisition is bad in law.

4.Respondents 1 and 2 have filed their statement of objections. Before dealing with the objections, it is necessary to state as to how the petitioner came to be granted the land in question. An extent of 1 acre 7 guntas of land comprised in Survey No. 691 situated to the west of Ulster tank was granted to Arcot Ramaswamy Cheluvarya Mudaliar for the purpose of utilising it as charity. This grant was made on 20-12-1895. As the terms of the grant were not adhered to, the said grant came to be resumed. The order granting the land is produced as Annexure-A and the order resuming it is produced as Annexure-B. It was resumed on 25th September 1941. On 23rd April, 1954, after, holding due enquiry into the matter, the land in question came to be granted to the petitioner-society by the first respondent. This order of grant is also produced as Annexure-C. Subsequent to the grant in favour of the petitioner, the family of Arcot Mudaliars tried to have the grant made in favour of the petitioner set aside. An application was made before the State Government for reviewing the grant, but the State Government, by the order dated 13th September 1956 bearing No.R.7843-44/L.R. 18-55-384 rejected the application. There after, it is stated that a suit was filed by the Arcot Mudaliar Family against the petitioner-society in O.S.No. 223 of 1956 in the Court of the Munsiff, Civil Station, Bangalore for a permanent injunction. That suit was dismissed on 18-4-1958. An appeal bearing R. A. No. 207 of 1958 filed by the Arcot Mudaliar family was also dismissed on 23-2-1962. Thereafter, it is also further submitted by the respondents that curiously enough, the petitioner-society has filed the suit O.S.No. 29/60 (now numbered as O.S.No. 152 of 1980) against the Arcot Mudaliar Family, for possession of the land in question and that suit is still pending. In this background, the respondents contend in their statement of

objections that the petitioner has not been in possession of the land in question and its name has not been entered in the relevant corporation records and that the acquiring authority is required to look into only the entries in the relevant records of the corporation and as the name of the petitioner does not find place in those records and it is only the Arcot Mudaliar Family that is entitled to the notice that the notice of acquisition has been issued to the Mudaliar family and the petitioner was not entitled to any notice. Learned Advocate General appearing for the State, argues that the petitioner has not cared to have its name entered in the relevant corporation records; that the State simply looks into the relevant corporation records and issues notice to such person/s whose name/s is/ are entered in the relevant records of the corporation and that is what is done in the case ; therefore, there is no procedural illegality committed ; that there is no violation of the rights of the petitioner ; that the petitioner is guilty of laches. Learned Advocate General wants the Court to consider this question on the basis that the grant was made in the year 1954 ; but the petitioner having failed to have its name entered in the relevant records of the Corporation, it must be considered to be guilty of laches.

5. On the contrary, Sri H.B. Datar, Learned Counsel appearing for the 2nd respondent, submits that even considering the laches from the date of the notification issued u/s 17(1) of the Act, there is a long delay in approaching this Court, in as much as the notification was issued on 30-12-1977 whereas the Writ Petition is filed on 6-6-1980. Thus, there is a delay of 2 1/2 years in approaching this Court. It is also further submitted that in the meanwhile, the 2nd respondent has put up the construction in the major portion of the area acquired and the area which is the subject-matter of this Writ Petition is at the very entrance of the site and without this area, there will not be any access to the rear portion of the area acquired and the building put up thereon. Therefore, Sri Datar submits that the petitioner being guilty of laches and equity being in favour of the respondents as they have spent huge sum in putting up the construction ; this is not a fit case to exercise the jurisdiction under Article 226 of the Constitution.

6. Before considering the respective contentions of the parties, one more fact may be noticed. The petitioner has filed a memo dated 28-6-1984, which reads thus:

"The petitioner begs to state as follows :

1. In this Writ Petition, the petitioner has challenged the notification Annexure-F dated 30-12-1977 purporting to acquire a plot of land, belonging to the petitioner.

2. Without prejudice to the petitioner's right to the said land the petitioner submits that in view of the difficulty expressed by the 2nd Respondent regarding access to the buildings constructed at the rear side of the petitioner's land, the petitioner agrees to the acquisition of an area 30 in width East to West along the northern extremity of the land sought to be acquired for the purpose of laying the road therein. Compensation payable therefore may be paid to the petitioner."

Thus, by filing the aforesaid memo, the petitioner has agreed to set apart and withdraw its challenge to the notification to the extent of 30 in width East to West along the northern extremity of the land for the purpose of laying the road thereon. Of course, it has reserved its right to receive the compensation. Thus, by this memo, the petitioner has tried to remove the hardship pleaded by the respondents that in the absence of the acquisition of the land in question, they will not have any access to the rear portion of the property and the building put up thereon.

7. Having regard to the aforesaid contentions, the points that arise for consideration are as follows :

(1) Whether the petitioner was entitled to have notice u/s 17(1) of the Act?

(2) Whether the petitioner is guilty of laches and if so, whether it is entitled to the relief as prayed for in the Petition ?

8.1) POINT NO.(1): Section 17 of the Act, reads as follows :

"Power to acquire land.- Where the Government is satisfied that, for the purpose of executing any work of improvement in relation to any slum area or any building in such area or for the purpose of redeveloping any slum clearance area, or for the purpose of rehabilitating slum dwellers, it is necessary to acquire any land within, adjoining or surrounded, by any such area, it may acquire the land by publishing in the official gazette, a notice to the effect that it has been decided to acquire the land in pursuance of this Section :

Provided that before publishing such notice, the Government shall call upon the owner or any other person who, in the opinion of the Government, may be interested in such land, to show cause why it should not be acquired and after considering the cause, if any, shown by the owner or any other person interested in the land, the Government may pass such orders as it deems fit."

The above provision specifically provides that the Government shall call upon the owner or any other person who, in the opinion of the Government, may be interested in such land to show cause as to why it should not be acquired. It also further provides that after considering the cause if any shown by the owner or any other person interested in the land, the Government may pass such order as it deems fit. Though there is no admission on the part of the Respondents admitting the title of the petitioner, but they have not denied the grant made by the Government to the petitioner-society. A copy of the grant is produced as Annexure-C and the title deed executed in favour of the petitioner-society is produced as Annexure-K. The possession of the land was delivered to the petitioner-society on 8-6-1954 as per Annexure-D. These documents are not disputed by the Respondents. By reason of Annexure-C, K and D which are not denied by the Respondents, there is no doubt that the title stood vested in the petitioner-society long prior to the commencement of the proceeding in question. If that be so, the petitioner-society has established that it is the owner of the

property.

8.2) The contention of Learned Advocate-General is that whether the petitioner is the owner of the property or not, is not so much material for the purpose of judging the validity of the notification issued u/s 17 of the Act, and what is material is as to whether the name of the petitioner-society appears in the relevant records of the Corporation; that it is only such person or the party whose name appears in the relevant corporation records or the revenue records as the case may be, is entitled to the notice, and to whom the Government is liable to issue notice to acquire u/s 17 of the Act. In support of this submission, acquired and after considering the cause, if any, shown by the owner of any other person interested in the land, the Government may pass such orders as it deems fit."

The above provision specifically provides that the Government shall call upon the owner or any other person who, in the opinion of the Government, may be interested in such land to show cause as to why it should not be acquired. It also further provides that after considering the cause if any shown by the owner or any other person interested in the land, the Government may pass such order as it deems fit. Though there is no admission on the part of the Respondents admitting the title of the petitioner, but they have not denied the grant made by the Government to the petitioner-society. A copy of the grant is produced as Annexure-C and the title deed executed in favour of the petitioner-society is produced as Annexure-K. The possession of the land was delivered to the petitioner-society on 8-6-1954 as per Annexure-D. These documents are not disputed by the Respondents. By reason of Annexure-C, K and D which are not denied by the Respondents, there is no doubt that the title stood vested in the petitioner-society long prior to the commencement of the proceeding in question. If that be so, the petitioner-society has established that it is the owner of the property.

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Improvement Act, 1903 (Act III of 1903). Section 16(2) thereof, specifically provides that during the 30 days next following the day on which such notification is published in the Mysore Gazette, the Board shall serve a notice on every person whose name appears in the assessment list of the Municipality or local body concerned or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme. On the basis of the aforesaid provision, it is held by the Learned Single Judge that as the name of the petitioners therein were not found in the relevant records mentioned in sub-section (2) thereof, failure to issue notice to them did not affect the acquisition. Same is not the position in the instant case, which I will advert to a little later. As far as the Writ Appeal No. 790/803 is concerned, it has affirmed the decision of the Learned Single Judge quashing the acquisition on the ground of no notice, after relying on a decision of this Court in B. Chandrashekhar Reddy vs state of Mysore and others. Of course, in the earlier portion of the judgment, the import and the scope of the words "shall" and "may" occurring in sub-sec.(1) of Section 4 of the Land Acquisition Act, are considered. The 1. Bhola Shanker Vs. The Distt. Land Acquisition Officer, Aligarh and Others, 2. M.S. Jaffer Sheriff -v.- CITB ; 3. State of Karnataka -v.- Kempaiah 4. W.P. No. 1566 of 1969 dated 15-7-1971 interpretation placed on the words "shall" and "may" occurring in sub-section (1) of Section 4 of the Act, is not relevant for our purpose in the instant case.

8.3) The decision of the Supreme Court in Bhola Shanker's case relates to the case wherein the acquisition was challenged by a person who purchased the property which was the subject-matter of the acquisition subsequent to the issuance of the notification u/s 4 of the Land Acquisition Act. Therefore, the Supreme Court held that admittedly, the purchase was subsequent to the issuance of the notification u/s 4 of the Land Acquisition Act and thereafter, the purchaser did not get his name mentioned and as such, at the time of issue of notice u/s 9 of the Land Acquisition Act, the names of the vendors were still shown in the official records as the tenure holders of the plot in question and the individual notice required u/s 9(3) of the Land Acquisition Act, was therefore issued to them and not to the purchaser Bhola Shanker; therefore, consequently it was held that the acquisition proceeding was not vitiated. In B. Chandrashekhar Reddy's case on the basis of which Writ Appeal No.790/803 was decided, there was no notice whatsoever issued to the persons whose names appeared in the record of rights. The petitioner in that case approached this Court on 14-4-1969 after the award was passed. The notification u/s 6 of the Land Acquisition Act was issued on 2-3-1967. Thus, nearly two years after the final notification, the petitioner therein approached this Court. On being found that no notice was issued to the petitioner even though his name was entered in the record of rights, this Court interfered with the acquisition proceedings and quashed the notifications issued under Sections 4 and 6 of the Land Acquisition Act.

8.4) Now, in the instant case, though the name of the petitioner did not appear in the relevant records of the Corporation, whether the first Respondent was required to issue notice to the petitioner. I have already held that the petitioner is the owner of the property. It has become the owner by reason of the grant made by the first Respondent. It is not the case of the Respondents that subsequent to the grant, some other person or party has acquired title to it; therefore, the absence of the entries in the relevant corporation records was not sufficient for not issuing notice to the petitioner. The wordings in the proviso to Section 17(1) of the Act, are to the effect that the Government shall call upon the owner or any other person who, in the opinion of the Government, may be interested in such land. In the context, the word "may" appears in the Section, it is not possible to hold that it is left to the discretion of the State Government to issue or not to issue notice to the owner or any other person who, in the opinion of the Government, may be interested in such land. Issuance of notice to the owner as well to the person, if any, interested in such land is necessary. The person interested in such land may not be the owner of it but nevertheless he is also entitled to the notice. In such a situation, notice shall have to be issued to both the owner as well as the person interested in the land. The context in which the expression "OR" occurs in Section 17(1) of the Acts in case there is a person interested in the land proposed to be acquired shall have to be read as "and" only, as otherwise it defeats the very object with which the notice is required to be issued. Even otherwise in the instant case, the petitioner fulfils both the requirements that it is the owner as well as the person interested inasmuch as title is vested in it. In the instant case, it cannot be held that the Government was unaware of the right, title and interest held by the petitioner in the land in question. The Government being the grantor of land for public purpose, to the petitioner and further it having turned out the request of Mudaliar Family to revoke the grant made in favour of the petitioner, it is not possible to hold that the petitioner is neither the owner nor the person interested in the property and the Government was unaware of the interest held by the petitioner in the land in question; therefore, it was not entitled to any notice u/s 17 of the Act. Acceptance of such a position would not only be opposed to the established facts of the case, but would also be opposed to sense of justice and fair play and it would also result in enabling State Government to ignore the grant made by it in favour of the petitioner, which is not permissible in law. Therefore, the State Government could not have proceeded with the acquisition without issuing notice to the petitioner.

8.5) The Supreme Court, while considering a similar provision contained in the Mysore Slum Areas (Improvement and Clearance) Act, 1958 (Mysore Act 8 of 1959), in the case of The Government of Mysore and others - vs - J. V Bhat, has upheld the validity of the provision on the ground that the Section itself provides for calling upon the owner or any other person interested in the land to show cause why it should not be acquired, and it corresponds to Section 5 of the Land Acquisition Act; therefore, it is held that the Section does not suffer from any

defect. In the said case, no notice was issued; therefore, the acquisition proceeding was quashed. Similarly, in the instant case also, the petitioner was entitled to the notice and failure to issue notice to it, has vitiated the acquisition proceeding.

8.6) For the reasons stated above, Point No. (1) is answered in the affirmative.

9. POINT No. (2) : The case of the petitioner is that it came to know a few days prior to the filing of the Writ 5. The Government of Mysore and Others Vs. J.V. Bhat and Others, Petition on noticing a big hoarding put up in front of the land in question stating that the land belonged to the Karnataka Slum Clearance Board and the hoarding also displayed a plan for construction of a building for slum dwellers and it also disclosed the estimated cost of the same. It is further stated that the office bearers of the petitioner were shocked to see this as the petitioner was totally un-aware of any proceeding taken by the Respondents for acquisition of the land for slum clearance purposes. It is also stated that no notice of any sort was issued to the office bearers of the petitioner-society either u/s 3 or Section 11 of the Act. It is not stated by the 2nd Respondent as to from what date the construction on the rear portion of the acquired land was commenced. No details regarding the activities which went on, on the rear portion of the plot are stated so as to infer that the petitioner had come to know the acquisition proceeding earlier to the time it has pleaded in the Petition. In the absence of any such particulars, it is not possible to hold that the petitioner was aware of the acquisition proceeding anterior to the time pleaded in the Petition. In addition to this, it is not disputed that no construction whatsoever is done on the plot of land in question. Under these circumstances, it is not possible to hold that the petitioner was aware of acquisition proceedings pertaining to the land in question much earlier and without any justification failed to challenge the same; therefore, it is guilty of laches.

9.2 The contention of Learned Advocate General is that the failure of the petitioner to have its name entered in the relevant corporation records must be taken as a starting point for laches. It is not possible to accept this contention. It is only the proceeding under the Act that threatens or affects the interest of the petitioner in the property in question. Therefore, the period prior to that will not be relevant for our purpose. The period lapsed from the date of issuance of the impugned notification is material for judging as to whether the petitioner is guilty of laches or not. As it is already pointed out, in the absence of material particulars to impute knowledge to the petitioner about the acquisition proceeding in question as no notice had been served on the petitioner, it is not possible to hold that the petitioner was aware of the acquisition proceeding prior to the date it has pleaded in the Petition. In view of this conclusion reached by me, some of the decisions relied upon by Sri H.B. Datar, Learned Counsel for the 2nd Respondent, on the point of laches are not of any assistance as I have come to the conclusion that as a matter of fact, the petitioner is not guilty of laches. Therefore, it is not necessary to consider them in detail. Learned Counsel has

placed reliance on a decision of this Court, reported in 1968 (1) Kar. L.J. 70 and two other decisions of the Supreme Court reported in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, and 1979 (2) S.C.W.R. 360. In the last referred case, it has been held that the question of laches depends upon the facts and circumstances of each case. That being so, I have already pointed out that no material is placed on record to show that the petitioner was aware of the acquisition proceeding and being aware of it, did not move in the matter and allowed the Respondents to proceed with the matter on the understanding or on giving an impression that the petitioner was not, opposing the acquisition. Moreover, on the plot in question, - as it is already pointed out - nothing is done by the Respondents and no improvement as such has been made. In addition to this, to remove the inconvenience and the hardship pleaded by the Respondents to have access to the rear portion of the property acquired under the impugned notification, and having regard to the fact that during the pendency of the Writ Petition, Respondent 2 has 6. State of Mysore -v.- Dasappa Naidu 7. Aflatoon -v.- Lt. Governor 8. Pt. Giridharan -v.- State of Bihar completed the construction of the buildings on the rear portion of the property, the petitioner - as it is already referred to - has filed a memo dated 28- 6-1984 giving up its challenge to the notification in question to the extent it relates to the 30" in width East to West along the northern extremity of the land sought to be acquired for the purpose of laying the road therein, subject to its right to claim compensation The memo is placed on record. Accordingly, Point No. (2) is answered as follows :

The petitioner is not guilty of laches. It is entitled to the relief to the extent it is granted subject to the memo dated 28-6-1984, filed by it.

9.3) The contentions relating to the validity of the Notification issued under Sections 3 and 4 of the Act, and the contention that the plot of land in question cannot at all be and is not liable and required to be acquired for the purpose of slum area or slum clearance area or for the purposes of the Act, are left open.

10. For the reasons stated above, this Writ Petition is allowed subject to the memo dated 28-6-1984 filed by the petitioner. The impugned notification bearing No. HUD 359 MCS 77, dated 30-12-1977 published in the Gazette dated 30-12-1977 (Annexure-F), in so far it relates to 14 guntas of land comprised in Old Survey No. 691 ; and new Survey No. 359, situated in St. John's Road, Civil Station, Bangalore, and all further proceedings and actions taken pursuant thereto, except 30 in width East to West along the northern extremity of the land sought to be acquired for the purpose of laying the road therein, are hereby quashed. The right of the petitioner to seek compensation in respect of the aforesaid 30 area is reserved.