

(1987) 05 KAR CK 0002

In the Karnataka High Court

Case No : W.P. No. 37943 and 37944/82

Bhoje Gowda @ Shivananjegowda and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-05-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1987) 2 KarLJ 133

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In these two writ petitions, the petitioners have questioned the legality of the acquisition of two items of land of Kikkeri village, Krishnarajapet Taluk, Mandya District.

2. The facts of the case, in brief, are as follow:

A notification under section 4 of the Land Acquisition Act (for short "the Act") was issued on 27th February 1981, proposing to acquire 1 acre of land in S.No. 8/1A belonging to the mother of the 2nd petitioner and 1 acre 34 guntas of land in S.No. 10/1 belonging to the 1st petitioner, both of Kikkeri village, Krishnarajapet Taluk, Mandya District. After holding proceedings in accordance with Section 5A of the Act, a final notification was issued in September 1982 under Section 6 of the Act. Questioning the legality of the notification the petitioners have presented these writ petitions.

3. Learned Counsel for the petitioners urged the following contentions:

(i) No individual notice had been issued to the first petitioner as required under Section 4 of the Act and therefore the acquisition proceedings were illegal;

(ii) No communication for having submitted the report of enquiry under Section 5A of the Act had been issued to the petitioners and therefore the final notification was invalid.

4. As far as the first contention is concerned, it should be observed that Section

4 of the Act requires publication of the notification in the official gazette and also in the village chavadi of the locality where the land is situated. In the present case, the preliminary notification had been published in the official gazette and also in the locality as required. Therefore, the mandatory requirements of the provisions have been complied with. As far as the requirement to give individual notice under the last part of Section 4(1) of the Act is concerned, the provision only provides that the Deputy Commissioner may also serve a copy of the preliminary notification on the owner or any other person interested in the land. Though this requirement had been held to be mandatory by a learned Judge of this Court in the case reported in *Kempaiah v State of Karnataka* (1980(1) K.L.J. 362), the said decision had been over-ruled by a Division Bench of this Court in *State of Karnataka v Kempaiah* (1984(1) K.L.J. 521). Therefore, even on the basis that no individual notice had been served on the first petitioner, it does not constitute a ground to hold that acquisition proceedings were illegal.

4. In this behalf, it is also necessary to point out that, though the first petitioner had become the owner of the land by inheritance he had not taken steps to get his name entered in the revenue records as the owner of the land. He had got his name entered only during the year 1981-82, as evidenced by Annexure-D produced by the petitioner himself. As the preliminary notification was issued prior to the said date, the name of Thammaiah whose name was shown as the owner or Anubhavadar in the Record of Rights, was shown as the owner in the preliminary notification. Obviously, for this reason, notice was not served on the first petitioner and Revenue Officer could not be expected to know that the petitioner had become the owner of the land.

5. Learned Counsel for the petitioner however submitted that even as stated in the statement of objection when the notice was served on Thammaiah he had informed the authorities that he was no longer in possession of the property and thereafter atleast the authorities should have served the notice on the first petitioner. As pointed out earlier, the requirement to serve notice on the owner is not mandatory. Therefore the non-service of the notice on the first petitioner cannot be made a ground to annul the notification.

6. The second contention urged for the petitioner was that there had been no communication as to the submission of the report by the Deputy Commissioner to the Government as required under Section 5A(2) of the Act. The requirement of giving communication to the objector about the submission of the report to the Government is undoubtedly mandatory. But the question for consideration is whether the petitioners are right in contending that they had not been communicated of the fact of the submission of the report to the Government. The records relating to acquisition have been produced. In the said records, the entire order sheet which culminated in the overruling of the objection of the petitioners and a decision of the Asst. Commissioner to report to Government for issue of final notification under Section 6 of the Act is found. The order sheet discloses that the second petitioner and his mother have been appearing before

the Asst. Commissioner on all the dates of hearing right from July 1981 and they were also present on 8-3-1982 on which date the parties were heard and a final decision was taken by the Asst. Commissioner, Pandavapura sub division. The last paragraph of the report reads:

"Hence due to all these reasons objections of the objector are overruled. Refer to Government for 6(1)

(a) approval."

The second petitioner as well as his mother Sannadevamma have affixed their signatures. As far as the first petitioner is concerned, as pointed out earlier he was not at all an objector and therefore there was no requirement to send any communication to him.

7. Learned Counsel for the petitioners however submitted that the requirement of the section was that after the submission of the report to the Government, a communication for having sent such a report must be given to the objectors concerned and as there was no separate communication, the provision of section 5A(2) were not complied with.

I find no substance in the contention. The requirement of the Section is, that the objectors must be made known about the submission of the report by the enquiring authority under Section 5A of the Act, to the Government. Whether such communication is given, by way of giving a separate letter or the parties were shown the report itself and they were asked to affix their signatures in token of their having been made known of the submission of the report, it makes no difference. The latter is also a communication in terms of S. 5A(2) of the Act. The very fact that the second petitioner and his mother who were the objectors affixed their signature on the report proves that the fact of submission of the report had been communicated to them. Therefore, I find no substance in the second contention urged for the petitioner also.

8. In the result, I make the following Order: Writ petitions are dismissed.

No costs.

Writ petitions dismissed.