

(1997) 02 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 30274/94

Grama Vikasa Vedike

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 5 A, 6 (1)

Citation : (1997) ILR (Kar) 1881

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : K. Channabasappa, for the Appellant; K.P. Ashok Kumar, H.C.G.P. for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.—This is a public interest petition filed by one Grama Vikasa Vedike, represented by its President. The petitioner in this Writ Petition has challenged several notifications issued by the State Government u/s 4(1) and 6(1) of the Land Acquisition Act, 1894 (for short "the Act"), for the purpose of construction of the Harinala Irrigation Project, in Bailhongal taluk, Belgaum District.

2. The Government with a view to construct an Irrigation Project proposed to acquire certain lands for the benefit of the general public in exercise of the power of eminent domain after obtaining the technical opinion and the Report. It appears, in the year 1963 the Government initiated proceedings for acquisition for the purpose of the construction of the above said project. Ultimately, the same was dropped by the State Government and the reasons for the dropping of the said acquisition are not known. Again the State Government initiated the proceedings for acquisition for the above said purpose in the year 1980. That was also dropped by the State Government. Thereafter, the Ministers from that area moved the Government to take steps to implement the above said Harinala Project as it is for the public good. Thereafter, the Government after obtaining

the technical opinion again initiated the proceedings for acquisition with a view to implement the project by issuing the notifications u/s 4(1) of the Act. This was followed by a final notification u/s 6(1) of the Act. These notifications are called in question by the petitioners in this Writ Petition.

3. In the case on hand the Land Acquisition Officer after hearing the land owners has submitted his Report recommending to drop the proceedings u/s 5-A of the Act. The State Government after considering the Report and that of the proceedings submitted by the L.A.O., has taken a decision to proceed with the acquisition by declaring that the lands which were proposed for acquisition are required for a public purpose. On these facts, it is contended by Sri Channabasappa, learned Counsel for the petitioner that when the Government has not accepted the recommendations made by the L.A.O., it ought to have afforded an opportunity of hearing to the land owners before taking a decision contrary to the recommendations made by the L.A.O. As the Government has not afforded an opportunity of hearing to the land owners, it is submitted that the declaration made u/s 6(1) of the Act, is invalid as it is opposed to the principles of natural justice. In order to consider this contention it is useful to refer to the scheme of the Act, under which the proceedings of acquisition have been initiated. When the Government is of the opinion that certain lands are required for a public purpose, it may issue a notification proposing to acquire the lands u/s 4(1) of the Act. Thereafter, the L.A.O., who has been appointed as a Deputy Commissioner u/s 3(c) of the Act, has to issue individual and public notices calling upon the persons interested to file their objections, if any, to the proposed acquisition. In reply to the said notice any person interested in the land may file objections objecting the proposed acquisition. The LAO in the event if there are any objections shall hear the objectors and thereafter he is required to submit his recommendations along with the proceedings to the State Government u/s 5A of the Act. The Government after considering the recommendations, if it is, satisfied that the land proposed for acquisition is required for a public purpose may proceed to issue the declaration declaring the said lands are required for a public purpose u/s 6(1) of the Act. The declaration so issued u/s 6(1) of the Act, is a conclusive proof of the fact that the said land is required for a public purpose as provided u/s 6(3) of the Act.

4. In the instant case, as submitted by the learned Counsel for the petitioner, the LAO submitted his recommendation along with the proceedings to the State Government, to drop the proceedings and also suggesting an alternative proposal to the State Government to provide lift irrigation for the purpose of providing water to irrigate the lands instead of constructing the proposed irrigation project. A reading of this Report, it is clear that the lands are required to be irrigated either by constructing a new irrigation project or by providing a lift irrigation facility. The State Government after considering the technical opinion, as a policy measure has taken the decision to implement the project. When such being the case, it is not known how the L.A.O., could suggest an alternative scheme on his own, who is not an expert on technical matter. The L.A.O., himself

is of the opinion that the lands are required to be irrigated. If that is so, the duty of the LAO. is to submit his report or recommendation considering the objections whether the proposed lands are required for the purpose notified or not. But, in the case on hand he suggested an alternative project to provide water to irrigate the lands, which, in my opinion is unwarranted.

Under the scheme of the Act, the recommendations submitted by the LAO are not binding on the State Government. The State Government may after considering the recommendations, whether it is for or against the proposed acquisition, if it is satisfied, may proceed to issue the declaration u/s 6(1) of the Act. u/s 5A of the Act, it is only the LAO who is conferred with the power to hear the objectors and submit his Report. When once the Report is submitted after hearing the objectors, it is for the State Government to take appropriate decision either to proceed with the acquisition or to drop the same. Further, u/s 5A of the Act, the State Government need not afford an opportunity of hearing to the objectors as the opportunity has already been afforded by the L.A.O. before submitting the report.

5. Therefore, there is no substance in the contention of the learned Counsel for the petitioner, that the State Government is required to afford an opportunity of hearing to the objectors before taking any decision on the recommendations made by the L.A.O. whenever the recommendations of the L.A.O. is to drop the proceedings.

6. The petitioner in this writ petition has made certain allegations against the then Minister for Irrigation and further submitted that the Government has not applied its mind while taking the decision contrary to the recommendations made by the L.A.O. in his report u/s 5A of the Act. The then Irrigation Minister has been impleaded as respondent-3 in this writ petition. The allegations against the said Minister is that at his instance the Government has taken a decision to implement the Irrigation Project though the said project was dropped earlier twice. The reasons to drop the, said proceedings on earlier occasions are not made known to this Court. The Irrigation Minister is the executive head of the Irrigation Department and whose duty is to look after the interest of the general public. In this case, the technical opinion is that the irrigation project is to be constructed for the purpose of supplying water to irrigate 10,800 acres of dry land. In order to implement the said project 1000 acres of land, which consists of 500 acres of wet land and 500 acres of dry land, are required. Therefore, the Government after considering all aspects of the matter initiated the proceedings for acquisition of 1000 acres with a view to provide water to irrigate 10,800 acres of land. When such being the case, there is no substance in the contention of the learned Counsel for the petitioner that the proposed acquisition is not for public good. Under any stretch of imagination it cannot be said that any irrigation project in the country like India, where large number of persons are fully depending upon agriculture is not for public good. It is also not the case of the petitioner that the proposed acquisition is with any oblique motive or with a view

to deprive the right of the persons from holding the lands, who belong to rival group or rival political party. Therefore, I am of the view that there is no mala fide intention on the part of the State Government in initiating the proceedings for acquisition.

7. Insofar as the contention of the petitioner that the Government has not applied its mind while taking decision to proceed with the acquisition with reference to the recommendations made by the L.A.O., I called upon the learned Government Advocate to produce the records. Accordingly, the learned Government Advocate made available the records to the Court. From the records, it is seen that after the receipt of the Report by the L.A.O., the Government after going through all facts and materials available before it and after due deliberations has come to the conclusion that the proposed project is required to be executed as it is for the benefit of the public. Therefore, there is no substance even in this contention.

8. Apart from the above said points, one other aspect that is required to be considered by this Court is whether the petitioner has got any right to institute a public interest litigation challenging the acquisition which are initiated for the public purpose. The impugned acquisition proceedings for the purpose of implementation of the irrigation project cannot under any stretch of imagination be said to be not for a public purpose. The petitioner has mainly challenged the acquisition proceedings on the ground of not affording an opportunity of hearing by the State Government to the land owners. The object of providing an opportunity to the objectors is to see, that after hearing, whether the land proposed for acquisition is really required for a public purpose or not. If the said procedure is not followed by the L.A.O., it is open to the objector to challenge the acquisition proceedings on the ground that he is deprived of his right of hearing as provided u/s 5A of the Act. If the land owner has not objected the acquisition proceedings he cannot challenge the proceedings on the ground that he was not heard. When such being the case, a person who is neither an owner nor an objector has no right to challenge the acquisition by way of instituting public interest litigation. The petitioner being not a person interested in the land which is proposed for acquisition has no right to institute a public interest litigation, if the acquisition is for the public good. The petitioner in this writ petition is not able to show that the proposed project is in any way causes any loss to the State revenue or the said acquisition proceedings have been initiated without any authority of law or it is not for the benefit of the public or in any way interferes either with his private right or with the public right. Therefore, I am of the view, that the petitioner in this petition intends to scuttle the project with a view to help the land owners.

Under these circumstances, it is not known how the petitioner under the guise of the public interest litigation is seeking for quashing of the acquisition proceedings.

10. As the petitioner is attempting to scuttle the project which is meant for the public good in this Writ Petition, it is a fit case, where heavy cost should be

imposed on the petitioner. This writ petition has virtually come in the way of implementation of the project and has resulted in causing injury to the public. Further, the pendency of this Writ Petition has resulted in postponing the implementation of the project, which ultimately resulted in making the Government to spend more money to construct the project due to increase in the cost of construction. This petition is by Grama Vikasa Vedike, represented by its President. It is not known whether the said Vedike is a registered association or not. Further the President who filed this petition representing the Vedike also without knowing the implication has lent his name to file this Writ Petition to scuttle the irrigation project. Therefore, it is appropriate to direct the President Sri V.V. Mokashi, to pay the cost from out of his purse.

11. Accordingly, for the reasons" stated above, Writ Petition is rejected with costs of Rs. 10,000/-. Sri V.V. Mokashi, President of the petitioner Vedike, is directed to pay the above said costs to the Karnataka State Legal-Aid Board; Bangalore, within three months from today. In the event if Sri V.V. Mokashi fails to pay the said amount, the State Government is directed to take appropriate steps immediately after the expiry of three months to recover the said amount and pay the same to the Karnataka State Legal Aid Board, Bangalore.