

(1979) 06 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 9201 of 1976

Jammada Aivappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4 (1), 5 A, 6

Citation : AIR 1980 Kar 22

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

Bench : Single Bench

Advocate : Mohandas N. Hegde, for the Appellant; Annadanayya Puranik, Government Advocate, for the Respondent

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner who is the owner of the lands bearing S Nos. 71/5, 71/4 and 73/7 of Kaikere village, Virajpet Taluk, has challenged the validity of the notifications issued under Ss. 4(1) and 6 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), (as amended by Karnataka Act 17 of 1961) (hereinafter referred to as the "Act").

2. By the preliminary notification dated 6-8-1975, the lands bearing S. Nos. 71/1, 71/3, 73/1 and 73/6 belong- to the petitioner were, proposed to be acquired for the purpose of opening a road from Gonikoppal Virajpet Main Road deviating near Cauvery College and leading to Vokkaligar Gadde. The petitioner has filed his objections and after enquiring into the objections, and after hearing the petitioner, the Asstt. Commissioner, Mercara Sub-Division made a report under S. 5-A of the Act. Thereafter the final notification dated Nil, under S. 6 of the Act came to be published in" the Official Gazette containing. Nos.71/5, 71/4 and 73/1.

3. One of the contentions urged by Sri Mohandas Hegde, the learned counsel for the petitioner, is that the acquisition proceedings are vitiated because of the mala fides alleged in the petition. It is alleged that the then Minister for Revenue was

responsible for the acquisition in question and as a result of the acquisition the proposed road passes through the Coffee Estate thereby causing irreparable loss and damage of the Coffee Estate. The other contention is that the lands proposed to be acquired under the preliminary notification were quite different from those notified in the final notification issued under S. 6 of the Act. Lastly, it is contended that if the final notification were to go, the preliminary notification also cannot be retained because of the fact that from the date of preliminary notification more than 3 years have elapsed; therefore no final notification can be issued on the basis of such preliminary notification in view of the provisions contained in S. 6(I-A) of the Act.

4. It is not necessary to examine the truth or otherwise of the allegations of mala fides made in this petition since the petitioner succeeds on the other two grounds. A perusal of the schedule to the two notifications issued under Ss. 4(1) and 5 of the Act makes it clear that the lands proposed to be acquired under the notification issued under S. 4(1) of the Act are quite different from the lands notified in the final notification issued under S. 6 of the Act. The boundaries differ and the extent proposed to be acquired differs and it is not the case of the State Government in the statement of objections filed in this writ petition that though the survey numbers differ, the area proposed to be acquired under the preliminary notification covers the area notified under the final differ, The only contention put forth by Sri Puranik, the learned High Court Government Advocate, appearing for the respondent is that a mere slight variation in the survey numbers in the final notification when the lands notified under the final notification also belong to the petitioner, cannot vitiate the acquisition proceeding. It is of importance, to note that the enquiry under S. 5-A of the Act was held with reference to the lands notified in the under S. 5-A notification. With reference to those lands only the objector, namely, the petitioner filed his objections and the enquiry was held only with reference to the lands mentioned in the preliminary notification. That being so, it is not at all open for the State Government to include the lands in the final notification which were not included in the preliminary notification. Though it is open for the State Government to propose a larger area for acquisition and reduce the area in the final notification, but it is not open to the State Government to notify a different land in the final notification not covered by the preliminary notification. That will be contravening the provisions of Sections 4 and 6 of the Act. Thus it is clear that the notification under S. 6 of the Act notifying certain lands, which were not included in the preliminary notification, is not legal and as such it cannot at all be sustained. But, for the provisions contained in the Act the State Government could not have compulsorily acquired the lands belonging to the petitioner; therefore, it is all the more necessary that there should, be a strict compliance with the provisions of the Act. In the instant case, as pointed out, the provisions of Ss. 4 and 6 of the Act have not been complied with, in as much as the lands notified in the final notification are quite different from those proposed to be acquired under the preliminary notification. Accordingly, the final notification dated Nil, bearing No.

RD/63/A/4076 is hereby quashed.

5. The last contention of Sri Hegde, the learned counsel for the petitioner is that the preliminary notification also cannot be sustained in view of the fact that there will be a lapse of more than 3 years from the date of publication of the preliminary notification and to the date on which the final notification will be issued. His submission was that there was no interim order of injunction or stay issued during the period from the date of preliminary notification issued under S. 4 of the Act till the publication of the final notification under S. 6 of the Act. This submission of Sri Hegde also deserves to be accepted. The relevant portion of S. 6(1-A) of the Act reads as follows:

"6. (1 -A): -

(a) to (c) X X X Provided that no declaration in respect of any particular land covered by a notification under sub-s. (1) of S. 4, published after the commencement of the Land Acquisition (Karnataka Amendment and Validation) Act, 1967 shall be made after the expiry of three years from the date of such publication.

Explanation: - In computing the period of 3 years specified in this subsection, any period during which any action or proceeding to be taken in pursuance of the notification by order of a Court shall be excluded"

As per S A (1-A) of the Act. No declaration under S 6 of the Act in respect of any land included in the preliminary notification issued under S. 4(1) of the Act be published after the commencement of the Karnataka "Act No. 17 of 1961 after the expiry of 3 years from the date of preliminary notification. The Explanation to the said sub-section provides as to how the period of 3 years is to be computed. As per the aforesaid Explanation, the period during which an action or proceeding to be taken in pursuance of the notification issued under S. 4(1) of the Act is held up on account of stay or injunction -by an order of the Court, shall have to be excluded in computing the period of 3 years. In the instant case, there was no such interim order subsequent to the publication of the preliminary notification. Thus it is clear that if the acquisition proceeding is continue on the basis of the preliminary notification issued on 6-8-1975, the final notification to be issued will be beyond the period of 3 years- Thus, it will hit by S. 6(1-A) of the Act. Consequently the preliminary notification in the instant case consequent on the quashing of the final notification cannot be sustained. Sri Puranik, the learned additional High Court Government Advocate submitted that this point was not at all raised in the writ petition and it was urged only at the time of hearing therefore, it should not be allowed. It is to be noted in this connection that the petitioner has prayed for quashing the preliminary notification as well as the final notification. Whether the preliminary notification is to be retained or not having regard to the aforesaid facts of this case, a mere reading of S. 6 of the Act will make it clear that the preliminary notification cannot be sustained, therefore, it cannot be said that any prejudice is caused to the State Government by allowing

the petitioner to urge the aforesaid ground and also by quashing the preliminary notification on that ground.

6. Accordingly the writ petition succeeds and the impugned notifications issued under Ss. 4(1) and 6 of the Act are hereby quashed. The rule is made absolute.

7. No order as to costs.

8. Rule made absolute.