

(1998) 05 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 24930 of 1994

Jotiba Ningappa Patil

APPELLANT

Vs

The Competent Authority, Belgaum Urban Agglomeration and
Deputy Commissioner, Belgaum and Another

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 33, 4, 42, 6, 8
Urban Land (Ceiling and Regulation) Rules, 1976 — Rule 5, 5 (2)

Citation : (1999) 1 KarLJ 485

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Smt. Latha Prasad for Sri Anant Mandagi, for the Appellant; Sri C. Ramakrishna, High Court Govt. Pleader, for the Respondent

Judgement

1. Heard Smt. Latha Prasad holding brief for Sri Ananta Mandagi, Counsel for the petitioner and Sri C. Ramakrishna, learned High Court Government Pleader.
2. The petitioner has challenged by this petition the order of acquisition of his land viz,, the order dated 19-8-1980 (Annexure-E) to the writ petition as well as the order dated 20-1-1994 (Annexure-G) passed by the Divisional Commissioner, Belgaum Division in Appeal u/s 33 of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act", for short).
3. The petitioner's case is that respondent 1 declared the petitioner's land as excess and passed the order impugned without giving any notice or opportunity of hearing to the petitioner in the matter and passed the order impugned viz., order dated 19-8-1980 in case No. RB/ULC/D/SR/2560 and the order is illegal being breach of Section 42 of the Act and Rule 5 thereto.
4. Learned Counsel contended that in accordance with these provisions service of personal notice is mandatory and necessary and no notice was issued to the petitioner. Learned Counsel contended that this point was raised before the

Appellate Authority and has been rejected with the observation as under:

"The argument of the appellant that he was not given an opportunity of being heard is frivolous because in the impugned notification, objections to the acquisition of excess vacant land by Government were called for from interested persons. Therefore, the appellant had an opportunity to file objections to the C.A.".

5. Learned Counsel contended that if the very intention of the Act and the Rules has been that the only notification issued u/s 4 or Section 6 was sufficient and there was no necessity to issue individual notice, the legislature would not have made any provisions. Learned Counsel contended that the Appellate Authority had committed an error of law in not giving due "weight to this failure to issue notice. In spite of the notice of petition being served on the respondents, they have not filed any counter affidavit to this petition. Time had been granted to the Government to file counter. No counter has been filed for reasons best known to respondents and Government Pleader and it might not have been filed because of the no instructions were sent. It is one of the settled principles of law that when the allegations made in the petition by affidavit required to be controverted by the other side but the said allegations are not controverted by filing the counter or the rejoinder affidavit as the case may be, the said allegations have to be deemed and are to be taken to be correct.

6. A perusal of the writ petition reveals that petitioner was not served with notice and he was not been given opportunity of filing objections and hearing as stated in paras 8 and 14 of the writ petition. Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 provides for preparation of draft statement as regards vacant land held in excess of ceiling limit by a person. Sub-sections (1) and (2) of Section 8 deal with the contents of statement to be prepared. Sub-section (3) of Section 8 reads as under:

"8(3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof".

A reading of Section 8(3) reveals that service of draft, statement, has to be made on the person concerned individually. This is indicated by the expression used of the section "serve the draft statement on the person concerned." The expression serve. on person concerned means that it shall be served on the person concerned in his individual capacity. No doubt it shall provide that the objection shall be filed by him within 30 days. Language of sub-section (3) of Section 8 is very clear. Now in what manner the notice shall be served is to be prescribed by the Rules. Rule 5(1) provides particulars to be contained in draft statement as regards vacant lands and manner of service of the same. Sub-rule (2) of Rule 5 reads as under:

"5(2)(a) The draft statement shall be served together with the notice referred to in sub-section (3) of Section 8 on-

(i) the holder of the vacant land,

(ii) all other persons, so far as may be known, who have or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands

by sending the same by registered post addressed to the person concerned-

(i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of Section 6, and

(ii) in the case of other persons at their last known address."

Rule 5(2)(a) per se reveals that it has to be served individually to the holders of the vacant lands as well as all other persons who may have interest in the ownership in the land. That service of individual notice on the persons holding the vacant land or excess vacant land or the persons interested in those lands is mandatory and unless this has been done, i.e., unless the individual notice has been served as required u/s 8(3) of the Act and the Rule 5(2). Service of notice cannot be said to be sufficient service, even though the Gazette notification u/s 4 or 6 of the Act has been published, as purpose of that notification is distinct from service of individual notice u/s 8(2) and 8(3) of the Act and the Rule 5(2)(a) of the Rules. The Appellate Authority committed an error of law apparent on the record in rejecting this contention of the petitioner and in dismissing the appeal. Thus considered as above and in view of uncontroverted allegations that no individual notice was served on the petitioners and that this contention they raised before the Appellate Authority has been rejected, in my opinion the orders impugned passed by respondents 1 and 2 suffers from jurisdictional error and it is well settled principle of law when power is given under the Act and that Act conferring that power prescribes the mode and procedure for the exercise thereof then that power of jurisdiction has to be exercised only in accordance with that manner and procedure as prescribed by the Act and Rules thereunder.

7. In this view of the matter, I am of the view that the orders impugned deserve to be quashed and as such the writ petition is allowed. The impugned order dated 19-9-1990 passed by the Competent Authority and the order dated 21-1-1994 passed by the Appellate Authority are hereby quashed. Let a writ of mandamus be issued to the 1st respondent to decide the matter afresh. The petitioner may be allowed to file objections with respect to the excess land as indicated in Section 8 of the Act. They may file objections within four months from today.