

(1992) 03 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 20380 of 1986

K. Rangaswamy

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4 (1), 45, 5 A, 9

Citation : AIR 1992 Kar 337 : (1992) ILR (Kar) 1483 : (1992) 3 KarLJ 89

Hon'ble Judges : S.P. Bharucha, C.J.;Shivaraj Patil, J;K. Shivashankar Bhat, J

Bench : Full Bench

Advocate : R.B. Sadashivappa, for the Appellant; Govt. Advocate, for the Respondent

Judgement

Shivaraj Patil, J.—The order of reference dated 8-8-1991 made by the Division Bench reads thus :

"The two important questions of law arise are :

(1) Whether individual notice under S. 5A of the Land Acquisition Act, 1894 read with Karnataka Act No. 17/61 is mandatory or directory?

(2) Even if held to be directory, can the procedure adumbrated under S. 45 of the Land Acquisition Act be rendered nugatory?"

On this point there are three rulings :

(1) State of Karnataka Vs. Kempaiah and Another,

(2) (1987) 2 Kar LJ 133 and

(3) (1988) Kar LJ 263.

Prima facie we are unable to accept, with great respect, the law laid down therein because the effect of these decisions renders sub-sec. (1A) ineffective. Sub-section (1-A) as amended by the Karnataka Act No. 17/61 u/s 7 of that Act. That reads as follows :

"Act XVII of 1961, S. 7:

In Section 4 of the Act:--

(1) in sub-section (1) :

(a) after the words "appropriate Government" the words "or the Deputy Commissioner" shall be inserted;

(b) for the words "notification to that effect," the words, "notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number if any, and also by its boundaries and its approximate area" shall be substituted;

(c) after the words "the said locality", the following sentence and explanation shall be added, namely :

"The Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier on the occupier of the land.

Explanation : The expression "convenient places" includes, in the case of land situated in a village, the office of the Panchayat within whose jurisdiction the land lies",

(2) After sub-section (1), the following sub-section shall be inserted namely, "(1-A) The notification under sub-section (1) shall also specify the date (such date not being less than thirty days from the date of publication of the notification) on or before which, and the manner in which, objection to the proposed acquisition may be made, under S. 5A".

If individual notice is not necessary, this provision cannot be worked out. We are of the view that service of notice is the only procedural safeguard where the owner of the land is sought to be deprived of his valuable property.

In all these decisions the effect of Section 45 has not been considered. We are of the view that the said section will have a great bearing in deciding whether the service of individual notice is directory or mandatory. Therefore, for an authoritative pronouncement, we direct the papers be placed for proper orders for reference to a larger Bench".

2. By reading the order of reference, in substance, we construe the question referred for the consideration of the Full Bench as :

Whether service of individual notice u/s 4(1) of the Land Acquisition Act, 1894 as amended by the Karnataka Act No. 17/61 is directory or mandatory?

3. The Division Bench as indicated in the order of reference itself, felt difficulty in accepting the law laid down as to the service of individual notice u/s 4(1) of the Land Acquisition Act, 1894/- (for short the Act) referring to State of Karnataka Vs. Kempaiah and Another, ; Bhoje Gowda alias Shivananjegowda v. State of

Karnataka) and (Gangamma v. State of Karnataka) observing that those decisions render Section 4(1-A) as amended by Karnataka Act No. 17/61 ineffective and that the effect of Section 45 has not been considered in those decisions. The Division Bench was also of the view that service of notice is the only procedural safeguard where the owner of the land is sought to be deprived of his valuable property. Hence, to have an authoritative pronouncement on the question as to service of individual notice is directory or mandatory the matter was referred to the Full Bench.

4. Section 4(1) as amended by the Karnataka Act No. 17/61 reads thus :

"Whenever it appears to the appropriate Government or the Deputy Commissioner that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier on the occupier of the land, (the last, of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

Explanation : The expression "convenient places" includes, in the case of land situated in a village, the office of the Panchayat within whose jurisdiction the land lies".

5. In the case of State of Karnataka Vs. Kempaiah and Another, the Division Bench of this Court was of the opinion that the requirement of Section 4(1) of the Act providing for service of a copy of the preliminary notification is not mandatory and the word "may" occurring in that Section has to be construed as "may" only and the requirement of service of a copy of the preliminary notification was permissive and directive only.

In the case of Bhoje Gowda (1987 (2) Kar LJ 133) the learned single Judge of this Court referred and followed the Division Bench decision of this Court in the case of State of Karnataka Vs. Kempaiah and Another, and held that the requirement to serve a copy of the preliminary notification on the owner or any other person interested in the land was not mandatory when the first two requirements of S. 4(1), which were mandatory, namely; (1) the publication of the notification in the official gazette and (2) in the concerned locality where the land is situated were complied with.

In the case of Gangamma Vs. State of Karnataka, the main contention was that service of individual notice on the owner of the land was mandatory and as no individual notice was served on the appellants the entire acquisition proceedings

were contrary to law. The Division Bench of this Court agreed with the view taken in the case of Kempaiah and rejected the said contention.

6. Smt. Manjula Devi, learned Counsel for the petitioner, contended that service of individual notice under S. 4(1) of the Act is mandatory and unless it is done, it shall not be lawful for any officer authorised by Government in this behalf and for his servants and workmen to enter upon the land for the purposes mentioned under S. 4(2) of the Act; individual notice ought to be served as stated in S. 45 of the Act and that such a service of notice is mandatory. In support of her contention she placed reliance on the following decisions :

(1) Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others,

(2) (1980) 1 Kar. LJ 362 (Kempaiah v. State of Karnataka).

(3) Balagouda Nijagouda Patil Vs. State of Karnataka, and

(4) P.C. Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras and Another,

7. Sri Shivaram, learned Government Advocate, submitted that the service of individual notice under S. 4(1) of the Act is not mandatory. He cited State of Gujarat Vs. Panch of Nani Hamam's Pole and Others, in support of his submission.

8. In Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, the Supreme Court considered the effect of failure to cause public notice of the substance of the notification at convenient places in the locality where the land sought to be acquired was situated and held that such failure of publication of the substance of the notification in the concerned locality vitiated the whole acquisition proceedings. This decision did not deal with the question with which we are concerned.

In 1980) 1 Kar LJ 362 it was held that when a notification under S. 4(I) of the Act is published in the official gazette, it is necessary for the Deputy Commissioner to serve a copy of the notification on the owner or occupier of the land proposed for acquisition under the notification and that the requirement of service of copy of the notification is mandatory. The Division Bench of this Court on appeal by the State against this very decision did not agree with the view expressed by the learned single Judge and held that service of copy of such notification was not mandatory.

In Balagouda Nijagouda Patil Vs. State of Karnataka, the Division Bench of this Court did not decide as to whether the requirement of S. 4(1) in this regard introduced by Act No. 17/61 is mandatory. It only stated that S. 45 of the Act prescribes the mode of service of notices issued under the Act and S. 45(1)(c) provides, inter alia, that a notice affecting an individual person be served in the manner provided for the service of summons in the Civil Procedure Code.

In P.C. Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras and Another, the Full Bench of Madras High Court held that service of individual notice on interested person was mandatory. The said decision was based on the Land Acquisition Manual, which contained executive instructions to the following effect :

"Besides publishing the notice as prescribed in R. 1 of the Appendix, the Collector should see that the individual notices are served as far as possible on every person believed to be interested in the land to be acquired in the manner prescribed by sub-secs. (3) and (4) of S. 9 of the Act".

Hence, the ratio of the said decision does not help the contention of the petitioner in the absence of such Land Acquisition Manual containing executive instructions in the State of Karnataka.

9. In State of Gujarat Vs. Panch of Nani Hamam's Pole and Others, it is held that non-service of personal notice under S. 4(1) of the Act did not render the acquisition proceedings invalid.

10. There is a long line of decisions taking the view that sub-section (1) of S. 4 of the Act prescribes two mandatory requirements regarding publication of the preliminary notification, namely, (1) publication of the preliminary notification in the official gazette and (2) publication of the substance of the preliminary notification in the locality concerned.

11. In State of Mysore Vs. Abdul Razak Sahib, the Supreme Court in para 4 has stated thus :

"With the above background we have to consider the scope of S. 4(1). Under certain circumstances publications in the Official Gazettes are presumed to be notice to all concerned. But in the case of a notification under S. 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, S. 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under S. 5A, which is very valuable right."

The purpose of causing a public notice of the substance of such notification at convenient place in the concerned locality is to intimate the persons affected by the acquisition and to enable them to file objections, if any, for the acquisition. In the case of a notification under S. 4, the law has prescribed that in addition to publication of a notification in the official gazette the Collector must also give publicity of the substance of the notification in the concerned locality. The object behind the publication of the substance of the notification in the concerned

locality is that the interested person should know that the land is being acquired so as to enable him to prefer any objections, if any.

12. The service of notice with which we are now concerned in this case is the one contemplated by the provisions introduced in Section 4 (1) by the Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961. The provision so introduced reads:

".....The Deputy Commissioner may also cause a copy of such notification to be served on the owner.....or the occupant of the land".

Looking to the use of the word "may" also in the above provision the service of individual notice appears to be directory. The two Division Bench judgments of this Court in the case of State of Karnataka Vs. Kempaiah and Another, and Gangamma Vs. State of Karnataka, after referring to various decisions have taken the view that the service of individual notice is only directory. In view of the publication of the notification in the official gazette and in addition to the publication of the substance of the notification in the concerned locality the persons who are affected by the acquisition are informed and such persons could raise objections to the acquisition. Hence, it cannot be said that in the absence of service of individual notice any prejudice would be caused to such persons.

13. In the case of Hari Singh and Others Vs. State of U.P. and Others, the Supreme Court in para 4 has observed :

"At the out set we are of the view that the writ petition filed in July, 1982 questioning the notification issued in January, 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under S. 9(3) of the Act but they have not pleaded that there was no publication in the locality of the Public notice of the substance of the notification as required by S. 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings are challenged in Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheregah where these plots are situate, the acquisition of these lands would be the talk of the town in a shortwhile and it is difficult to believe that the appellants who are residents of that place would not have known till July, 1982 that the impugned notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone".

In the recent judgment, Allahabad High Court in the case of Sarfaraz Husain and others Vs. State of Uttar Pradesh and others, has stated that giving of personal

notice is not the requirement of S. 4 of the Act and that S. 45 talks of the manner of service of the notice. The Court rejected the contention made on behalf of the petitioners that personal notice should have been given to them of the notification under S. 4(1) of the Act.

14. In S. 4(1-A) there is nothing to show that service of individual notice is mandatory. It only states that notification under sub-section (1) of S. 4 shall also specify the date on or before which and the manner in which the objection to the proposed acquisition may be made. In the case on hand such a specification is made is evident from the notification issued under S. 4(1) (Annexure-E). In view of the publication of the notification in the official gazette and publication of the substance of the notification in the concerned locality, the petitioner could have filed objections on or before the date specified in the said notification. We do not think that in the absence of service of individual notice, S. 4(1A) cannot be worked out and that the service of individual notice is the only procedural safeguard. Publication of notification under S. 4(1) in the official gazette and publication of the substance of the notification in the concerned locality constitute sufficient procedural safeguards for the owner whose land is sought to be acquired. Once we have reached the conclusion that service of individual notice is not mandatory non-consideration of the effect of Section 45 in the decisions mentioned in the order of reference do not have bearing on the question whether the service of individual notice is directory or mandatory, inasmuch as if at all service of individual notice is a must then how such notice is to be served is prescribed under S. 45 of the Act. In sub-section (1) of Section 4 of the Act with reference to the publication of the notification in the official gazette and the publication of the substance of the notification in the concerned locality the word "shall" is used and in the latter part of it the word "may" is used as to causing of a copy of such a notification to be served on the owner or the occupier of the land. This aspect also supports the view that the service of individual notice on the land owner or occupier is only directory.

15. What made the Division Bench to doubt the correctness of the law laid down in the aforesaid three judgments as to the service of the individual notice was the non-consideration of the effect of S. 4(1-A) and S. 45 of the Act.

16. In view of the discussion made above referring to S. 4(1A) and Section 45 it is clear that S. 4(1A) only requires that the notification under sub-section (1) of Section 4 shall also specify the date (such date not being less than thirty days from the date of publication of the notification) on or before which, and the manner in which, objection to the proposed acquisition may be made, under S. 5A. In the case on hand, the preliminary notification-Annexure-E shows the requirement of subsection (1A) of Section 4 is complied with. That apart, sub-section (1A) of S. 4 has no bearing on the question with which we are concerned as it does not speak of service of individual notice. The landowner or the person in interested could file objections to the proposed acquisition within the date specified in the notification issued under S. 4(1) in view of the publication of

notification under S. 4(1) in the official gazette and the publication of the substance of the notification in the concerned locality. S. 45 only deals with the mode of service of notices under the Act. The said Section as in force in Karnataka reads :

"45. Service of notices : (1) Subject to the provision of this section and any rules that may be made under this Act, the mode of service of notices issued under this Act shall be as follows :

XXX XXX XXX".

Wherever notices are required to be served under the Act the mode of such service of notice is indicated in S. 45(l)(a), (b) and (c). This Section again does not make the requirement of service of individual notice of the notification issued under S. 4(1) mandatory. We have reached the firm conclusion that service of such individual notice is only directory. In cases where the service of individual notice is mandatory, it has to be done in the manner mentioned in S. 45.

17. In some States, either under the relevant Rules or the Manuals, service of individual notice is made imperative. It is only considering such requirements certain decisions are rendered by the High Courts and the Supreme Court holding that the service of individual notice is mandatory. But, in the State of Karnataka neither there is any Rule nor Manual containing instructions to make the service of individual notice of the notification issued under S. 4(1) imperative or mandatory.

18. Thus, we do not find any good reason to take a view contrary to the view expressed in the decisions of the Division Benches of this Court mentioned in the order of reference. Hence, we opine and hold that the service of individual notice of the notification issued under S. 4(1) of the Act is not mandatory. The question is answered accordingly.

19. Reference answered accordingly.