

(1991) 09 KAR CK 0059
In the Karnataka High Court
Case No : Writ Petition No. 5737 of 1991

Kashinath

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 17-09-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 17 (1), 4 (1), 5 A

Citation : (1991) ILR (Kar) 3817 : (1992) 1 KarLJ 22

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; H.H. Kaladgi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Shivaraj Patil, J.—An area of 20 acres of land in Sy. No. 29 totally measuring 30 acres 24 guntas, situate at village yernahalli (D), Janavada Hobli, Bidar Taluk, was proposed for acquisition for rehabilitation of villagers of Bampally village. The notification-Annexure-A dated 2-2-1991 issued u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (for short "the Act") was published in the Karnataka Gazette dated 21-2-1991, The petitioner in this Writ Petition has questioned the said notification-Annexure-A and has prayed for quashing it contending that there was a land dispute between himself and one Sidramappa Anna of the same village; they both belong to two different political groups; the said Sidramappa Anna had challenged to see that the only land of the petitioner would be deprived by acquisition, purporting to exercise powers u/s 17 of the Act respondent No. 1 has issued the impugned combined notification; in response to the notice-Annexure-8 received, the petitioner filed detailed objections to the second respondent contending that there is no public policy involved and that there are number of other suitable lands available, which have hard soil and rock foundation and whereas the land in question is not at all suitable for the purpose. Hence, the petitioner has filed the present Writ Petition challenging the

acquisition proceedings.

2. The respondents have filed detailed statement of objections denying the contentions raised by the petitioner. It is useful to extract the following portions from the statement of objections filed by the respondents in order to appreciate the respective contentions:

"it is submitted that there is a great urgency for acquiring this land in order to complete the shifting work of Bompalii village before the rainy season. Otherwise the whole village will be submerged as could be seen from the photo copies of the situation.

It is respectfully submitted that Sy. No. 29 was requisitioned to be acquired by the Minor Irrigation Department after considering the suitability of the land for the rehabilitation purpose. It is not correct to say that the dexterous quality of the soil persists upto the depth of 30 feet. As such it is incapable of taking any construction on it.

It is submitted that the Land Acquisition Officer has nothing to do with the personal disputes between Sri Sidramappa Anna and the petitioner and the said person is unknown to the Land Acquisition Officer. It is true that the 4(1) Notification was published invoking the provisions of Section 17(1) of the Land Acquisition Act to acquire 20 acres of land out of 30 acres 24 guntas in Sy. No. 29. The notice was given to the petitioner and in response to that he filed his objections and the same was considered during the enquiry by the Land Acquisition Officer on 1-3-1991. The petitioner and his Counsel were present. Due opportunity was given to the petitioner for being heard.

The contents of the para-4 of the petition are not admitted and the same are false.

It is submitted that the acquisition of land is for a public purpose. The village Bompalli was marooned for a week from 15th to 23rd of August, 1989 and also residents were provided with food packets by air dropping from Indian Airforce Helicopters and further they were shifted to Relief Camps at Yernahalli when the Level of the river rose alarmingly by deploying the Army Force and the rehabilitation of the village Bompalli is quite essential and it is desired to be completed before the rainy season starts this year.

It is submitted that the contention of the petitioner to the effect that other suitable lands are available in Sy. No. 17, 18 and 19 and 20 which have hard soil and rocky foundation is not correct. In fact the Deputy Commissioner, Bidar has inspected these alternate proposals along with the District Health Officer, Bidar, Executive Engineer, P.W.D., Bidar and Executive Engineer, Minor Irrigation, Bidar and Executive Engineer, Z.P. Engineering Division, Bidar and came to the conclusion that the present site is most suitable for rehabilitation purpose. All the residents of Bompalli village consisting of 110 families have to be provided with sites along with all the other civic amenities. For that at least 20 acres of land at

a stretch is essential for this purpose and the Sy. No. 29 is the only suitable land for all the purpose."

3. Although several grounds are raised in the Writ Petition Sri S.P. Shankar, learned Counsel for the petitioner, urged only one ground before me, which is not raised in the Writ Petition. His submission was that in the impugned combined notification-Annexure-A it is not spelt out that the land in question is an arable or waste land. That being so, the impugned combined notification issued u/s 4(1) read with Section 17(1) of the Act cannot be sustained so as to invoke urgency clause for the acquisition and to dispense with the enquiry u/s 5A of the Act. In support of his submission the learned Counsel strongly relied on the Decisions in the case of Dora Phalauli Vs. State of Punjab and Others, ; Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, and SHANKAR PUNDALIK GIRAP AND ORS. v. STATE OF KARNATAKA AND ORS. 1988 (1) KarLJ 585.

4. In opposition, Sri H.H. Kaladgi, learned High Court Government Pleader, would urge that in view of the amendment brought to Section 17(1) by Act No. 68 of 1984 in case of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances. Prior to amendment power u/s 17(1) of taking possession could be exercised only in respect of any waste or arable land needed for public purpose. As such non-mentioning of the land in question as arable or waste land in the impugned notification is of no consequence. Further in the impugned notification-Annexure-A urgency is spelt out and even reference is made to the Government Order No. 108/Acquisition/90 dated 17th December, 1990, a copy of which is placed on record clearly shows the urgency for acquisition of the land and application of mind of the concerned authorities. In support of his submission he strongly relies on the Decision of this Court in the case of ABDUL MAJEEDH AND ORS. v. STATE OF KARNATAKA AND ORS. 1987 (2) KarLJ 198 and in particular drew my attention to para-9 of the said Judgment. In view of these submissions he urged that the Writ Petition is devoid of merits and it may be dismissed.

5. I have carefully considered the submissions made by the learned Counsel for the parties. The Decision of Dora Phalauli v. State of Punjab and Ors. does not help the petitioner for two reasons:

(1) The said Decision was rendered on 24-7-1979 that is prior to the amendment brought to Section 17(1) of the Act in respect of the character of the land. Prior to the amendment the possession of only waste or arable land could be taken exercising the power u/s 17(1), but after the amendment the possession of any land could be taken. The impugned notification-Annexure-A is issued on 2-2-1991. Non-mentioning of the character of land as arable or waste land in the notification is of no consequence.

(2). The notification in the case of Dora Phalauli also did not mention that in the opinion of the Government there was any urgency to take recourse to the provisions of Section 17 of the Act. But in the instant case not only the urgency is spelt out in the impugned notification, but also reference is made to the Government Order dated 17-12-1990, which makes it very clear that there has been application of the mind of the Government to invoke the provisions of Section 17(1) of the Act.

The case of Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, also does not advance the case of the petitioner, inasmuch as in that case it was held that the question whether the land is arable or waste being a preliminary finding of fact on which jurisdiction of State Government depends High Court is entitled in proceeding of Writ, of Certiorari to determine upon its independent judgment, whether or not that finding of fact is correct. It was further held that the opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that State Government never applied its mind to the matter or that action of State Government is mala fide.

After the amendment to Section 17 of the Act, reference to which is already made above, determination of character of land in the present case does not arise. In view of what is stated in the statement of objections filed by the respondents read with the Government Order dated 17-12-1990 and keeping in view the contents of the impugned notification-Annexure-A it cannot be said that the State Government did not apply its mind to the matter. In the instant case no mala fide is attributed to the Government. A feeble attempt is made in stating that because of feud between the petitioner and Sidramappa Anna the impugned notification is issued. In the first place said Sidramappa Anna is not a party to the Writ Petition. In the second place acquiring authorities are respondents 1 and 2 and the said Sidramappa Anna has nothing to do in the matter. It is thus the Decision in Raja Anand Brahma Shah's case does not advance the cause of the petitioner.

The Decision in Shankar Pundalik Girap and Ors. v. State of Karnataka and Ors. 1988 (1) KarLJ 585 in my opinion has no application to the facts of the case on hand. That was a case in which records nowhere mentioned of the urgent requirement except a casual reference made by the Special Deputy Commissioner, Karwar and the notification did not indicate urgency so as to invoke Section 17 of the Act. Para-5 of the said Decision reads thus:

"Court had called for the records and has perused the same. Nowhere in the records is there any mention of the urgent requirement except a casual reference made by the Special Deputy Commissioner, Karwar, to invoke the power u/s 17 of the Act in respect of the proposed acquisition in the aforementioned two villages. That does not fall in line with the law laid down by the Supreme Court in regard to the exercise of the power by the Government u/s 17 of the Act."

In the said Decision reference is made to the case of Narayan Govind Gavate and

Others Vs. State of Maharashtra and Others, in which it was held that the purpose did not disclose any urgency as it was part of the normal development activity. In the present case the notification itself spells out the urgency. It also refers to the Government Order dated 17-12-1990. The said Government Order clearly states the purpose and the need for the acquisition of the land invoking Section 17 of the Act. Added to this, in the case of Abdul Majeedh and Ors. v. State of Karnataka and Ors. 1987(2) KarLJ 198 in almost similar circumstances this Court having referred to the Decisions in (1) Dora Phalauli v. State of Punjab and (2) Narayan v. State of Maharashtra has stated thus in paras 9 and 10, of the said Decision:

"In the present case, as stated earlier, it is the Deputy Commissioner who issued the notification u/s 4(1) of the Act after the receipt of Government direction dated 24-8-1982 under Sub-section (4) of Section 17 of the Act. In the notification the Deputy Commissioner has expressly stated that the requirement of Section 5A has been dispensed with by the direction issued by the Government on 24-8-1982. The direction issued by the Government is extracted earlier. Unlike in the case of DORA PHALAULI, in which the direction issued by the Government did not mention any particular urgency for the exercise of power u/s 17(4), the direction issued by the Government in the present case expressly refers to the urgency namely the requirement to provide sites to the persons affected by the floods. The contention of the petitioners would have been unexceptionable if the Government had only directed with the dispensing of the hearing u/s 5A without referring to any urgency, for, in that event the ratio laid down in the said decision would have been attracted.

Sri Krishna Bhat, learned Counsel appearing for one of the petitioners, contended that acquisition of the lands for grant of house-sites or formation of lay-outs cannot be considered as a valid urgency for purposes of invoking the power under Sub-section (4) of Section 17 of the Act and dispensing with the valuable right of hearing. In support of this, learned Counsel relied on the decision in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, . But, in the present case, the acquisition is not for formation of lay-outs and distribution of sites in the normal course which could be done leisurely and which occupies considerable time. This is a case in which large number of families were uprooted consequent on the washings away of their dwellings by floods and there was an immediate necessity of providing house-sites to the displaced persons. Therefore, there is no analogy between the said case in which the land was acquired for forming of layouts and distribution of sites in the usual course."

Under the circumstances, the case of Shankar Pundalik Girap also does not help the petitioner.

6. Sri S.P. Shankar, learned Counsel for the petitioner, tried to construct some argument on the basis of Explanation added to Section 17(1) by Karnataka Act No. 17 of 1961 in support of his submission that powers u/s 17(1) and (4) could be invoked only in case of arable or waste land. It is now well settled that ah

Explanation added to a statutory provision is not a substantive provision in any sense of the term as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

Sarathi in "Interpretation of Statutes" in regard to an Explanation has observed thus:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

Swarup in "Legislation and Interpretation" states that the proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it.

Bindra in "Interpretation of Statutes" (5th Edition) at page 67 states thus:

"It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section....The purpose of an explanation is however not to limit the scope of the main provision..."

Thus, looking to the true intention of the Parliament when it brought amendment to Section 17(1) by Act No. 68 of 1984 so as to enable the Collector on the direction of the appropriate Government to take possession of any land in cases of urgency, needed for public purpose instead of confining it only to arable or waste land as it was prior to the amendment the Explanation added to Section 17(1) by Karnataka Act 17 of 1961 cannot and does not restrict the scope of Section 17(1) as to the character of land of which possession could be taken. Hence, I have no hesitation in rejecting the argument advanced by the learned Counsel for the petitioner in this regard.

7. As can be seen from the stand taken by the respondents in the statement of objections as to under what circumstances Section 17 of the Act is invoked, the Government Order dated 17-12-1990 and the contents of the impugned notification-Annexure-A, I do not find any merit in the submission made by the learned Counsel for the petitioner.

8. In view of the facts and circumstances of the case and for the reasons stated above this Writ Petition is liable to be dismissed. Hence, I make the following order:

The Writ Petition is dismissed. No costs.