
(1979) 11 KAR CK 0014
In the Karnataka High Court
Case No : WP. 6594/75

Kempaiah and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 02-11-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1980) 1 KarLJ 362

Hon'ble Judges : Venkatachala, J

Judgement

The two short, but important questions which arise for my consideration and decision in this writ petition are:

(1) When a notification under S. 4(1) of the Land Acquisition Act as it stands amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1861, (to be referred to as "the Act") is published in the official Gazette, is it necessary for the Deputy Commissioner to serve a copy of such notification on the owner or where the owner is not the occupier, on the occupier of the land proposed for acquisition under the notification, proceeding on the basis that it is a mandatory requirement under S. 4(1) of the Act itself? and (2) If the requirement of service of copy of the notification is held to be mandatory, whether non-service of such notification on the owner or, where the owner is not the occupier, on the occupier of the land vitiates the notification issued and published under S. 4(1) of the Act,

The facts, which have given rise to the aforesaid questions are, in brief, the following:

One acre and 29 guntas of agricultural land comprised in Sy. No 169/1 of Ramanagaram village, Bangalore Dt., was formerly in the ownership and occupation of one Channamma's son Sidda. On the death of the said person in the year 1967, entries in the revenue records pertaining to the land are mutated, as per the order of the tahsildar of the taluk rendered in Case No. IWH 38/68-69. The mutated entries disclose that petitioner-1 being the eldest son of deceased

Channamma's son Sidda, has become the owner (khathedar) on the latter's death. Further, the entries in the records of rights and pahanies pertaining to the aforesaid land relating to the agricultural years 1972-73, 1973-74 and 1974-75 disclose that petitioner-1 as also his younger brother, petitioner-2, had cultivated the land in those years and they were on the land as its occupiers. S. 4(1) notification under the Act, by which the said land has been proposed for acquisition, has been published in the Karnataka, Gazette dated February 13, 1975. In this notification, Channamma's son Sidda is shown as the owner and occupier of the land proposed for acquisition, even though the said, person had died in the year 1967 and it was clearly disclosed from the entries in the revenue records and pahanies relating to the land, that petitioner-1 had become; the owner (khathedar) of the land and petitioners-1 and 2 were occupiers at the same. Again, in the notification under S. 6 of the Act published in the official Gazette dated July 31, 1975, the very particulars relating to the owner/occupier as contained in the earlier notification are found repeated, making it obvious that even on the date of publication of the latter notification, the persons concerned with the acquisition had not bothered to look into the entries in the revenue records and pahanies for coming to know or realise that petitioner-1 had become the owner (khathedar) and petitioners-1 and 2 had become the occupiers of the land proposed for acquisition. In this state of admitted facts, while the learned counsel appearing for the petitioners contended that the petitioners were not served with the copy of the notification published under S. 4(1) of the Act, the learned Government Advocate appearing for the State and the Land Acquisition Officer, relying upon a mahazar and report of the revenue inspector wherein a mention is made that the owners/occupiers have been served with the copy of S. 4(1) notification, submitted that the contention advanced on behalf of the petitioners that they were not served with the copy of the notification under S. 4(1) should not be accepted.

The submission of the learned Government Advocate, in my view, does not commend acceptance for more reasons than one. Firstly, when, as I have stated earlier, the persons concerned with the acquisition proceedings were unaware that the petitioners were owners or occupiers of the land even on the date of publication of S. 6 notification, it will be hard to believe that petitioners must have been served with the copy of the notification published under S. 4(1) of the Act; secondly, when "he acknowledgement contained in the acquisition records shows that service of final notification on the petitioners was effected by means of obtaining their signatures to the acknowledgement, the possibility of service of copy of notification under S. 4(1) being effected on them without obtaining similar acknowledgement, is most improbable; thirdly, there is nothing in the land acquisition records to show that service is effected on the petitioners in the mode provided for in S. 45(1)(c) of the Act; and fourthly, the submission of the learned Government Advocate put forward in the course of his arguments is not based, on any averment made in the objection statement filed on behalf of respondents inasmuch as no such statement is filed. In the said view of the

matters, the petitioners' statement that they have not been served with the copy of the notification published under S. 4(1) of the Act contained in their petition which is supported by an affidavit, deserves acceptance as a true statement as contended for by the learned counsel for the petitioners. Accordingly, I find as a matter of fact that the petitioners have not been served with a copy of notification published under S. 4(1) of the Act.

The question which now arises for consideration is as to whether service of copy of S. 4(1) notification published in the official Gazette, on the owners/occupiers of the land proposed for acquisition is a mandatory requirement. As the answer to this question has to necessarily depend on the construction to be placed on the material portion of the provision in S. 4(1) itself, the same is extracted hereunder:

"4. Publication of preliminary notification and powers of officers thereupon.(1) *
* 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."

While it is urged on behalf of the petitioners that the provision requiring service of copy of notification on the owner/occupier is a mandatory requirement, it is urged on behalf of the respondents (State and the Land Acquisition Officer) that the requirement of service of notification under the provision is only directory. This is how it has become necessary to find whether the requirement of service of copy of S. 4(1) notification on the owner/occupier under the said material portion of the provision is either mandatory or merely directory.

It was not disputed by the learned counsel appearing for the contesting parties, and rightly, that as to whether the said material portion of the provision is mandatory in nature or merely directory has to depend on the meaning to be given to the expression "may" used in the provision. As the expression "may" in its ordinary significance is merely directory, the Court has to ordinarily construe the expression as one which has only such significance unless such construction is likely to go against the intent of the legislature as ascertainable from the relevant provisions of the statute or lead to an absurd or inconvenient result. At the same time, the Court cannot ignore the object sought to be achieved by the direction contained in the provision and the consequences which are likely to follow by violation of such direction. Again, the Court has to remember that the provision requiring construction, if is found in an expropriatory Act, it must be construed, not only strictly but also in such a way as would throw the least burden on the expropriated owner.

As to what is the Legislative intent which is sought to be achieved by the Legislature in enacting the material portion of the provision adverted to above, cannot be gathered without a proper understanding of the scope of the provisions in the Act which may have a bearing in ascertainment of such intent, let me refer to them:

"Publication of preliminary notification and powers of officers thereupon-(1) 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, a notification stating the, purpose for which the land is needed, or is 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 the Deputy Commissioner 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.

Explanation- (1A) 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, objections, to the proposed acquisition may be made under Sec. 5A(Emphasis supplied)

(2) (3) (4)

5A. Hearing of objections-(1) Any person interested in any land which has been notified under Sec. 4, sub-sec. (1) as being needed or likely to be needed for a public purpose or for a Company may on or before the date specified in the notification under sub-section (1) of Section 4, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-sec. (1) shall be made to the Deputy Commissioner in writing setting out the grounds thereof and the Deputy Commissioner shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further enquiry it any, as he thinks necessary, either make a report in respect of the land which has been notified under Sec. 4, sub-section (1), or make different reports in respect of different parcel of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government ... The decision of the appropriate Government on the objections shall be final (Emphasis supplied)

(3) For the purposes of this section a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

6. Declaration that land is required for a public purpose-(1) when the appropriate Government is satisfied, after considering the report if any made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, such Government shall direct the Deputy Commissioner to proceed under sub-section (1A).

The appropriate Government shall then make a declaration that the land is needed for a public purpose or for a company, and different declarations may be

made from time to time in respect of different parcels of any land, covered by the same notification under sub-section (1) of section 4: Provided that no declaration in respect of any particular land covered by a notification under sub-section (1) of section 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:

(2) Every declaration shall be published in the official Gazette,.

(3) The said declaration-shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing."

Let me now analyse the said provisions for ascertaining Legislative intent sought to be achieved by them.

Section 4(1) while enables the Government or the Deputy Commissioner to initiate proceedings for acquisition of a land needed or likely to be needed for a public purpose, requires compliance of the following:

- (i) publication in the official Gazette a notification (preliminary notification) disclosing the details of the land proposed for acquisition;
- (ii) causing public notice of the substance of preliminary notification at convenient places in the locality of the land proposed for acquisition;
- (iii) causing service of copy of preliminary notification on the owner, or where the owner of the land is not the occupier, on the occupier of the land.

S. 4(1) requires that the persons responsible for issue of preliminary notification shall specify in such notification (a) the date on or before which objections to the acquisition proposed in the notification can be filed, such date not being less than thirty days from the date of publication of preliminary notification and (b) the manner in which objections to the proposed acquisition may be made. This provision, in effect, declares that specification of the said matters in the preliminary notification becomes necessary with a view to enable persons interested in the land proposed for acquisition to file their objections as provided for in Section 5A.

The said requirements contained in S. 4(1) and (1A), the compliance of which is desired by the Legislature, in my view, portrays in clear terms its intention that persons interested in the land proposed to be acquired in the proceeding for acquisition initiated by the State Government or the Deputy Commissioner must receive due notice of the same so as to enable them to file objections to the proposed acquisition.

Then comes S. 5A(1) which in express terms declares that it is open to any

person interested in the land proposed for acquisition under preliminary notification to file objections either to the, acquisition of the land or of any land in the locality but within the time specified under the preliminary notification. This provision, as seen from what is expressed in it, is meant to make every person interested, in the land not only to know clearly that the Legislature has conferred on him a statutory right to file objections to the acquisition of land or land in the locality, proposed for acquisition, under the preliminary notification but also enables him to file objections for the same, if any, within the date, specified in the preliminary notification. Requirement in the provision relating to insistence on filing of objections within the date specified in the preliminary notification is, in my view, based on the assumption on the part of the Legislature that every person interested in the land proposed for acquisition is bound to have become aware of the preliminary notification well before the time fixed for filing objections having regard to the steps required to be taken under Section 4(1) towards this end by the officers of the State concerned with acquisition.

In turn, S. 5A(2) not only requires the Deputy Commissioner to afford to persons interested who will have filed objections under S. 5A(1) a further opportunity of being heard in person or through a pleader, but also empowers him to make such further enquiry, if any, as he thinks necessary before sending his report to Government containing his recommendations on the objections. This provision shows that the opportunity afforded to the interested person to object to the proposed acquisition is not an empty formality but an opportunity intended to enable the interested person, to dissuade the Government, if he has valid objections, from proceeding further with the proposed acquisition.

Ultimately, S. 6 imposes a duty on the Government to consider the report received by it from the Deputy Commissioner and satisfy itself about the need before making a declaration that the land is needed for a public purpose. It is only such a declaration made by the Government by satisfying itself on consideration of the report of the Deputy Commissioner which becomes conclusive evidence that the land is required for a public purpose enabling the Government to acquire the land. Thus, Section 6 also, in my view, portrays the intention of the Legislature that a firm, decision by the Government in the matter of acquisition cannot be taken unless the report based on the enquiry under Section 5A sent by the Deputy Commissioner to it is considered and satisfaction got to the effect the land is required for the public purpose.

From the said analysis of the provisions of Ss. 4(1), 4(1A), 5A and 6 of the Act, it will be clearly seen that the dominant purpose, which is sought to be achieved by them under the Legislative scheme envisaged therein is to enable the State to reach a just decision in the matter of acquisition keeping in view, on the one hand, the public interest compelling the acquisition, and on the other, deprivation of the land of a citizen without his consent.

As the material provision the construction of which is under consideration is a

link in the chain formed by the aforesaid Legislative Scheme, its meaning has to be ascertained having regard to its setting in the . provisions constituting the scheme and the object of the scheme. In this context, if it is recalled that the provision in S. 4(1) extracted above has been inserted by the State Legislature under the land Acquisition (Karnataka Extension and Amendment) Act, 1961 (to be referred to as "the Karnataka Act), unless superfluity could be attributed to the Legislature which is ordinarily impermissible, it is not possible to say that the said provision is inserted by the Karnataka Act without any purpose, for, such would be the result if the submission of the learned Government Advocate that the provision is merely directory, is accepted.

When the material provision is examined in the light of the discussion heretofore made, it becomes obvious that it is inserted by the State Legislature to safeguard the interests of the wrier or occupier of the land proposed for acquisition.

This apart, if the requirement relating to service of copy of preliminary notification is not complied with the consequence of it may invariably be that the owner or occupier of the land may not come to know of the proposed acquisition at all, and consequently, he may not have the opportunity of objecting to such proposed acquisition. If this could be the consequence, the provisions contained in S. 4(1A) and 5A providing for filing of objections to the proposed acquisition and of affording an opportunity of hearing to the person interested in the land proposed for acquisition may serve no purpose to the persons interested in the land. On the other hand, if the requirement of service of copy of pre-liminary notification on the owner or occupier contained in the material provision is construed, as a mandatory requirement, there will be no scope for arbitrary decisions in the matter of acquisition being reached by the officers or the State without affording an opportunity of hearing to the person, who is bound to be affected by the acquisition.

Moreover, if the purpose intended to be achieved by the provision under construction has to be achieved having regard to the object of the Legislative scheme envisaged under Ss. 4, 4(1A), 5A and 6 of the Act and the inconvenient result that may follow by noncompliance with the said provision, has to be avoided, there arises the need to construe the provision strictly and as would throw the least burden on the person whose land is going to be expropriated.

Thus, if the material provision under construction has to serve its purpose, the expression "may" in the material provision has to be, in my view, given the meaning "shall", When such a meaning is given to the expression "may" in the material provision, the material provision itself has to be necessarily construed as a mandatory provision and it is construed accordingly.

The construction which I have placed on the material provision, also commends acceptance, for it is only then due effect would be given to the provision in S. 45(1)(c) of the Act which lays down thus:

"45. Service of notices-(1) Subject to the provisions 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:

* * * * *

(c) A notice affecting an individual person (not being a corporation or firm) shall be served in the manner provided for the service of summons in the Code of Civil Procedure, 1908, or by sending by registered post under a letter addressed to the person, named therein at his last known residence, address or, place of business, and the notice shall be deemed to be served on such person on the date on which the notice sent by registered post will, in the usual course of post, be received by the addressee."

As it has to be held that service of copy of the preliminary notification required to be served on the owner or occupier under S. 4(1) of the Act is a notice which affects an individual person (owner/occupier), its service on the owner/occupier as provided for in S. 45(1)(c) becomes inescapable. It follows therefrom that the notification under S. 4(1) shall also be served in the manner provided for service of summons in the Code of Civil Procedure, 1908, or by sending it by registered post in the manner prescribed. But service of copy of notification under S. 45(1)(c) on the owner or occupier, need not be carried out if service of notification under the material provision with which I am concerned is held to be merely directory. I do not consider that such a result could be brought about ignoring the rule of harmonious construction of provisions in a statute which requires that a court should construe the various provisions of an Act as would give effect to all of them, if it is so possible. Thus the construction I have placed on the material provision becomes unavoidable if notice on the affected person has to be served as required under S. 45(1)(c) of the Act.

For the foregoing reasons, I am clearly of the view that the requirement under the material provision of S. 4(1) relating to service of copy of preliminary notification on the owner or, where the owner is not the occupier, on the occupier of the land is mandatory and not merely directory.

The next question is as to whether the preliminary notification itself gets vitiated on account of non-compliance with the mandatory requirement relating to service of copy of preliminary notification. A perusal of the material portions of Ss. 4(1A) and 5A, would make it clear that objections in writing have to be filed by the person interested in the land proposed to be acquired within the date specified, in the preliminary notification published under S. 4 (1) implying thereby that the interested person cannot as a matter of right, file objections after the expiry of the date specified in the notification. This apart, Ss. 4(1), 4(1A), 5A and 6 contain provisions which constitute an integral scheme in matters relating to initiation of proceeding for acquisition, inviting the filing of objections for acquisition from persons interested in the land and hearing them and making a firm decision on acquisition by the Government. Again, a perusal of S. 6(1A) in the Act inserted by the Karnataka Amendment Act would also indicate

that the Legislature has taken care to see that if between the date of publication of the preliminary notification and the date of publication of the final notification thereon, three years' time were to elapse, publication of preliminary notification cannot be made use of for publication of the final notification. This has been done obviously taking into consideration the fact that since the market value of the land concerned in the acquisition will be determined with reference to the date of publication of the preliminary notification, undue delay in the publication of the final notification may affect the interests of either the State interested in the acquisition or the parties interested in receiving the compensation for the acquisition of the land either due to depreciation or appreciation in value of the property. Further, when such a provision is made by the Legislature terminating the efficacy of preliminary notification already issued and published, it cannot be said that it had not in mind the obvious right of the State or its officers in the matter of issue and publication of a fresh preliminary notification without prejudicing the interests of the State. Thus, if regard is given to the integral scheme of the provisions in S. 4(1), 4(1A), 5A and 6 of the Act and if due effect has to be given to such scheme, I have to necessarily hold that non-service of copy of preliminary notification on owner/occupier causing vitiation of final notification causes also vitiation of preliminary notification. I have held accordingly.

In fact, in *B. Chandrashekhara Reddy v. State of Karnataka*, WP 1566 of 1966 dt. 15-7-1971, a Division Bench of this Court, where it found the necessity of quashing the final notification when the copy of the preliminary notification was not served on the owners or occupiers, has quashed all the acquisition proceedings including the preliminary notification. This decision, therefore, lends support to the view that when the final notification is published without service of copy of preliminary notification on the owners/occupiers of the land proposed for acquisition, the preliminary notification itself gets vitiated. Coming to the facts of the present case, as I have found that the final notification has been issued without serving the copy of the preliminary notification published in the official Gazette on the owner or occupiers, the preliminary notification, the final notification and all subsequent proceedings have to be quashed.

In the result, the preliminary notification published in the Karnataka Gazette dated February 13, 1975, and the final notification (Exhibit-D) published in the Karnataka Gazette dated July 31, 1975 and subsequent proceedings held in respect of the acquisition of one acre and 29 guntas of land comprised in Survey Number 169/1 of Ramanagaram village, Bangalore district, are quashed. The Rule is made absolute. The respondents shall pay the costs of this petition to the petitioners. Advocate's fee is fixed at Rs. 100/-.