
(1997) 01 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 30157 of 1996

K.M. Hussain Saheb and Co.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 5 A, 6 (1)

Citation : (1997) ILR (Kar) 956

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Advocate : K. Prabhakar, for the Appellant; K.P. Ashok Kumar, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Shivaprakash, J

1. The petitioner is a partnership firm. As stated in the petition, it is owning urban property bearing MCC No. 2938 L 31 & 32 situated on Bangalore - Nilgiri Road. The said property was notified for acquisition under the preliminary notification in terms of Section 4(1) of the Land Acquisition Act, 1894. The said notification is dated 24.1.1989 gazetted on 13.4.1989. After holding of enquiry in terms of Section 5A of the Act, the declaration dated 21.6.1990 u/s 6(1) of the Act was made, and was gazetted on 5.7.1990. Copy of the preliminary notification is marked as Annexure-B and copy of the final notification is marked as Annexure-F.

2. The petitioner-firm had questioned the legality and validity of the preliminary notification in W.P.No. 361/90. The said Writ Petition was dismissed by this Court on 18.9.1996 as withdrawn "reserving liberty to the petitioner to file a fresh petition."

3. Sri K. Prabhakar, learned Counsel for the petitioner formulated the following points for consideration :

(i) That there was discrepancy in the description of the property as indicated in the preliminary notification and the public notice, dated 13.5.1989, copy of which is marked as Annexure-C.

(ii) that the petitioner was not heard in the enquiry u/s 5(A).

(iii) that the declaration gazetted on 5.7.1990 was beyond the time prescribed under - Clause (1) of the first proviso to Subsection (1) of Section 6.

(iv) that there was one more enquiry conducted by the Deputy Commissioner in response to the direction issued by the Government in which the petitioner was not heard and there was no reference to the said enquiry in Section 5(A) statutory report.

In so far as the point regarding discrepancy in the description of the property as described in the preliminary notification and public notice is concerned, I see no substance. In the preliminary notification, Annexure-B, the boundaries of the property to be acquired are given and the katha numbers are given as L-31 and L-32. In fact these are the numbers the petitioner itself has given in this Writ Petition in the first paragraph with new No. MCC No. 2938. In the public notice the boundaries are not given. But in the public notice, it is clearly stated that the acquisition is for a public purpose for road formation , "in accordance with the notification u/s 4(1) of the Land Acquisition Act published by the Deputy Commissioner at page 807 of Part I-A of Karnataka Gazette dated 13.4.1989". I therefore see no merit in this contention also.

4. From the original records, it is seen that in Section 5(A) enquiry the petitioners had participated and they were represented by a Counsel. In the report submitted by the LAO, it is indicated that the petitioners were represented by a Counsel and he filed his objections on 15.6.1989 and appeared again on 21.7.1989 and submitted his arguments. There is detailed reference to the arguments submitted by the learned Counsel before the LAO. Therefore, the submission of the learned Counsel that the petitioners were not heard by the LAO before submitting 5-A enquiry is not factually correct.

5. In so far as the intervening period between the last date of publication of 4(1) notification and 6(1) declaration is concerned, the learned Counsel appearing for the petitioner invited my attention to the decision reported in *Krishi Utpadan Mandi Samiti and Another Vs. Makrand Singh and Others*, where a Bench of two Judges of the Supreme Court while considering the decision rendered by the Allahabad High Court has ruled as hereunder :

"4. The question, therefore, is that which date of the publications in three steps i.e., publication in the Gazette, two newspapers and local publication to be the last date for the purpose of computing three years" limitation prescribed in Clause (i) of the proviso to Section 6(1) of the Act. Prima facie, it gives an impression that the last of any of the three steps puts in motion, the running of limitation of three years. But on deeper probe, it does not appear to be so and

such a construction would easily defeat the public purpose and deflects the course of justice."

6. In the instant case there is no dispute that the publication of the declaration in the gazette was on 5.7.1990. The intervening period between 23.6.1989 i.e., the last publication of the 4(1) notification in the local newspaper "Mysore News" and the gazette publication dated 5.7.1990 of the declaration is certainly more than one year.

7. In this regard, Sri K.P. Ashok Kumar, learned HCGA submitted that the decision of the Supreme Court in the aforesaid case was in an appeal against the judgment dated 22.1.1991 of the Allahabad High Court and it is not clear whether the provisions in the Land Acquisition Act as amended by the State there contained identical provisions as in the Karnataka Amendment.

8. Besides, the learned HCGA relied on a decision rendered by a larger bench of the Supreme Court reported in Khadim Hussain Vs. State of U.P. and Others, wherein the Court has ruled thus :

"A look at the amendment introduced by the Section 4(2) of the Land Acquisition (Amendment and Validation) Act, 1967, shows that it is the declaration which has to take place within two years of the expiry of the commencement of the ordinance which came into force on January 20, 1967. In fact, Section 4(2) of the Amendment Act of 1967, set out above, itself makes a distinction between a "declaration" u/s 6 and its "notification" u/s 4 of the principal Act. It does not say that no notification u/s 6 of the principal Act can take place beyond the time fixed. The prohibition is confined to declaration made beyond the specified period. If the case of the appellant could be that no declaration was made within the prescribed time, it was his duty to prove it. He has not discharged that onus."

9. The learned HCGA therefore contended that the relevant date for computing the intervening period, is the last date of publication of the 4(1) notification in terms of Sub-section (1) of Section 4 of the Act and the date of the declaration, and not the publication in the gazette.

10. The learned HCGA also contended that this petition deserves to be dismissed in limine on the ground of delay and laches and on the ground that the petitioner had made a false statement in the Writ Petition saying that it was not heard in Section 5(A) enquiry held by the LAO.

11. As noticed above, the petitioner had presented W.P.No.361/ 90 disposed of on 18.9.1996, copy of which is marked as Annexure-G. The said petition assailing the validity of Section 4(1) notification was permitted to be withdrawn at the instance of the petitioner "reserving liberty to the petitioner to file a fresh petition". The final declaration is dated 21.6.1990 gazetted on 5.7.1990. The learned Counsel for the petitioner submitted that in the said petition, an application was filed seeking amendment of the prayer questioning the validity of the final notification and the same was allowed by the Court.

12. In the circumstances, no explanation is forthcoming from the petitioner why they withdrew the petition on 18.9.1996. It was at the instance of the petitioner, the petition was dismissed as withdrawn. Merely because the Court has reserved liberty to the petitioner to present a fresh petition, it does not mean that it could present a fresh petition without explaining the inordinate delay in assailing the legality/validity of the acquisition. Besides, the petitioner has ventured to make a false statement in the petition stating that it was not heard in Section 5(A) enquiry. As noticed, it was represented by a Counsel and he had been heard at length by the Land Acquisition Officer. This petition has to be dismissed on this ground as well.

13. The learned Counsel, no doubt has done his best by taking considerable time of the Court in emphasising all the points considered above.

14. This petition is dismissed on the ground of delay and laches and also on the ground of making a false statement in the petition, with costs quantified at Rs. 5.000/-.