

(1979) 06 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 9331 of 1978

K.M. Ramalingaiah Setty

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226 (1) (b), 226 (1) (c)
Land Acquisition Act, 1894 — Section 9, 9 (3)

Citation : AIR 1980 Kar 20 : (1980) 1 KarLJ 42

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; Armadanayya Puranik, Government Advocate, for the Respondent

Judgement

1. This petition was posted in "B" group. By consent of parties, it was taken up for final hearing.
2. Though the petitioner has not produced a copy of the Award impugned in this writ petition, he has filed an application 1, A. No. II to dispense with the production of a certified copy of the award which has been allowed on 25-12-1978.
3. In this petition under Art. 226(1)(b) and (c) of the Constitution, the Petitioner has challenged the validity of the preliminary and the final notification issued under the provisions of the Land Acquisition Act, 1894 as amended by the Karnataka Act 17 of 1961 (here- referred to as "the Act"). The Petitioner is the owner of the land bearing Survey No. 66 of Ijjur village in Ramanagaram taluk. This land along with the other lands was proposed to be acquired under the aforesaid impugned notifications for the purpose of formation of Market Yard for the Agricultural Produce Market Committee Channapatna. In this petition, by way of subsequent amendment, the petitioner has also challenged the correctness of the Award dated 17-8-1978, passed by the 3rd respondent in so far as it pertains to the land in question belonging to the petitioner.

4. Though, in the petition, several grounds have been raised challenging the validity of the preliminary and the final notification but, at the time of final hearing, Sri M. Papanna, the learned counsel appearing for the petitioner, submitted that he will confine his argument only with regard to the validity of the Award passed by the Land Acquisition Officer. Therefore, I proceed to deal with this contention only.

5. Sri Papanna contended that the notice as required by S. 9 of the Act, was not served upon the petitioner in as much as a peon of the Revenue Inspector took the signature of the petitioner on some notice without delivering a copy of the same and thereafter no intimation was sent to darkness; hence the petitioner could not prefer the claim petition and could not participate in the Award proceedings and as a result of this, his right to claim higher compensation has, been affected. In this connection, the allegations made in pars 4 of the petition, are as follows:-

"The petitioner had not received any communication from the Asstt. Commissioner as to what had happened to his objections, viz., as to whether his objections were sustained or waived. He had also not received any intimation as to whether any final notification had been issued, acquiring his land, and no final notification has been communicated to him. The petitioner was not also notified of the proceedings for the determination of the compensation payable to his land, and he had no opportunity of putting forward his claim for the amount of compensation payable for the same. It has happened in this case that the peon of the Revenue Inspector had come to the petitioner once or twice and has obtained the signature of the petitioner and others, informing them that they were required to go to the Office of the Asstt. Commissioner in connection with the acquisition of their lands. But, no copy of any notice or notification has been served on the petitioner, except the one dated 22-8-1975 as per Exhibit-B. When the petitioner and the others went to the Office of the Asstt. Commissioner accordingly, he would not be available and they would be asked to come next day or some other day. The petitioner has thus been kept in ignorance of the entire proceedings from 1-9-1975 onwards. When he came to know that the Asstt. Commissioner, Ramanagaram, had prepared an award in respect of the compensation payable for his land, and had submitted the same to the Special Deputy Commissioner, Bangalore, for approval, the petitioner filed a petition before the Special Deputy Commissioner on 3-8-1978, bringing to the notice the fact that he (petitioner) had been kept in ignorance of the entire acquisition proceedings from 1-9-1975 onwards and requesting him to direct the Asstt. Commissioner to afford him an opportunity of putting forward his case and of being heard with regard to the amount of compensation payable for the above land. A true copy of this petition is herewith produced and the same is marked as Exhibit-C."

Thus, it is clear that the petitioner has brought to the notice of the Special Deputy Commissioner even before the award was approved, that he was not

afforded an opportunity to participate in the award proceedings and he could not file his claim petition as he was not served with a copy of the notice under S. 9 of the Act. The State Government has filed the statement of objections and in that also, there is no denial of the allegations made by the petitioner that a peon of the Revenue Inspector took the signature of the petitioner on some notice, a copy of which was not delivered to him. In view of this, this Court can very well proceed on the basis of the allegations made by the petitioner as the same have not been denied by the State Government

6. Under S. 9(3) of the Act, it is necessary that a copy of the notice should be served on the occupier of any of the land under acquisition and on all such persons known or believed to be interested therein or -their agents or on such persons, who are entitled to, act for persons so interested in the land. Without serving a copy of the notice containing all the particulars as mentioned in sub-s. (2) Of S. 9 of the Act, the person interested cannot be expected to prefer his claim. The notice issued under S. 9 of the Act, is required to contain several particulars as mentioned in sub-s. (2) Of S. 9, which reads as follows:

"Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Deputy Commissioner at a (line and place therein mentioned. (such time riot being earlier than 15 days after the date of publication of the notice), and to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for such interests, the basis "on which the compensation so claimed is computed, their objections, if any, to the area as specified in the declaration, and such other matters as may be prescribed. Such statement shall be made in writing in the prescribed form and shall be signed by the party or his agent."

Thus, it is clear that it is only when a copy of the notice under S. 9 of the Act is given to the person interested, he can prefer his claim for compensation within time before the concerned authority, failing which, it will not at all be possible to prefer a claim within time before the proper authority. The service of notice under S. 9 of the Act is complete only when a copy of the notice is delivered to a person interested in the manner provided under sub-s. (3) Of S. 9 of the Act. In the instant case, as already pointed out, a peon of the Revenue Inspector took the signature of the petitioner on some notice and he did not deliver a copy of the said notice to the petitioner. Consequently, the petitioner could not come to know the contents of the said notice and he could not prefer his claim within the required time. Thus, there was no service of notice, on the petitioner as required by sub-sec (3) of S. 9 of the Act, as a copy of the notice issued under S. 9 of the Act, Was not delivered to the petitioner or his authorised agent. This had not only deprived the petitioner of his right to prefer his claim for compensation and participate in the award proceedings, but also if has also affected his right to claim the compensation exceeding the amount awarded by the Land Acquisition Officer, in view of the provisions contained in sub-sec (2) of S. 25 of the Act.

Therefore, the noncompliance with the provisions of S. 9 of the Act, by, not-delivering a copy of the notice on the petitioner has vitiated the award proceedings and has resulted in the substantial failure of justice in view of the fact that the right of the petitioner to prefer his claim for compensation and to participate in the award proceedings and further, their claim for higher compensation, has been affected. Hence, the award proceedings in so far as they relate to the land in question are vitiated. Consequently, the award passed by the 3rd respondent in No. LAC.12/76-77, dated 17-8-1978, in respect of the land Survey No. 66 of Ijjur, is hereby quashed. The third respondent is directed to serve a fresh notice on the petitioner under S. 9 of the Act, and to proceed with the Award proceedings in accordance with law.

7. Order accordingly.