
(1988) 09 KAR CK 0012
In the Karnataka High Court
Case No : W.P. Nos. 1970 & 1971 of 1988

M. Shankara Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 3 KarLJ 25

Hon'ble Judges : P. P. Bopanna, J

Judgement

P.P. Bopanna, J.-These petitions are disposed of by a common order since a common point arises for consideration in these petitions.

2. These petitions are filed on 4-2-1988 challenging the preliminary notification made on 29-5-1979 and the final declaration dated 19-11-1987 published in the Karnataka Gazette dated 10-12-1987. The point for consideration is whether the petitioners had approached this Court in time for invoking the jurisdiction of this Court under Article 226 of the Constitution.

3. The 1st petitioner is the owner of the land bearing Survey No. 58 measuring 18 acres and 23 guntas and the 2nd petitioner is the owner of Survey No. 69 measuring 11 acres. The said lands are situate in the same village, viz., Kallahalli village, Shimoga District. The 2nd petitioner had purchased an extent of 6 acres from the sons of the original owner Kariyappa under a registered Sale Deed dated 3-6-1967. He also acquired another 5 acres from one Ningamma under a Registered sale deed dated 12-6-1967. It is not in dispute that the 1st petitioner made an attempt to form a private layout on the land in Survey No. 58 and with that object he approached the authorities concerned for sanction of the layout on 20-6-1983. He was informed in that connection that a notification had been made in the Official Gazette under Section 15 of the Karnataka Improvement Boards Act, 1976 (in short the Act), His case is that he was not informed about the notification and that the scheme was also not sent to the Government for their approval. His application to obtain sanction for the private layout was made

on 20-6-1983 and his request was refused by the resolution of the 2nd respondent on 18-11-1983. The 1st petitioner challenged the said resolution on the ground that the same was not communicated within a period of 6 months from the date of request and, accordingly, he informed the 2nd respondent that he was going ahead with the formation of the layout. It transpires that the Chairman of the City Improvement Board, i.e., the 2nd respondent herein, had called the petitioner for negotiations several times; but, the negotiations failed and the 1st petitioner put an end to his negotiations by his letter dated 9-7-1984. Thereafter, the 1st petitioner had entered into several agreements with third parties assuring them that he would allot sites to them and collected advances from them also. But on 18-11-1986 he was served with a notice by the 2nd respondent not to take up any development work on the land in question. That notice was challenged in Writ Petition No. 20655 of 1986 before this Court and the order allowing the said petition is challenged in Writ Appeal No. 389 of 1987 which is pending consideration before the Division Bench. The 2nd respondent has obtained an interim order of stay of the judgment of the learned single Judge in the said writ petition.

4. In the meanwhile, the 1st petitioner filed an application before the Town Planning Authority, Shimoga-Bhadravathi, under Section 17(1) of the Karnataka Town & Country Planning Act seeking permission for subdividing the land as per the layout prepared by him for residential purposes. He appears to have obtained the sanction from the Planning Authority in the meeting held on 12-2-1987. The 2nd petitioner also made similar efforts as made by the 1st petitioner for obtaining sanction for the private layout. But his request was refused by the 2nd respondent. Thereafter, negotiations took place between the 2nd petitioner and the Board and the terms and conditions were also agreed upon and finalised. But, after some time, the Chairman of the Board was changed and therefore nothing came out from the said agreement between the 2nd petitioner and the Board.

5. The controversial part of the case starts now. According to the 1st petitioner he received a notice under Section 9 and 10 of the Land Acquisition Act calling upon him to be present on 29-7-1988 for the determination of the compensation due to him. Only in that notice it was stated that his land bearing Survey No. 58 was sought to be acquired and the notification had been published in the Gazette as well as in the newspaper. The 1st petitioner was surprised when he received the said notice and on enquiry he came to know that the notification had been published under Section 18 of the Act. Then he appears to have obtained the necessary documents which are produced as Annexure A, B and C including the copy of the resolution dated 18-11-1983 produced as Annexure D in the writ petition and approached this Court contending inter alia that the entire proceedings are violative of the principles of natural justice since he was not served with any notice of the preliminary notification under Section 15 of the Act and the final declaration under Section 17 of the Act. He contended that the Board having not followed the requirements of Sections 15 and 17 of the Act, the

entire proceedings are illegal, void and not binding on him and, therefore, the impugned notifications are liable to be quashed. He has also alleged mala fides against the Chairman of the Board. The plea of mala fides is on the premises that the Board in order to overcome the decision of this Court in Writ Petition No. 20655 of 1986 has resorted to the provisions of the Act and to defeat the petitioners' intention of preparing a private layout. The Board is acquiring the land on the ostensible ground that the same is required for a public purpose, i.e., the requirement of the 2nd respondent/Board. The 2nd petitioner has also taken similar contentions and hence there is no need to make a separate reference to those contentions.

6. The 2nd Respondent/Board has filed its return. They admit the negotiations between the parties and also the provisional settlement arrived at. But, at that stage they submit there was a change in the constitution of the Board and later the 2nd petitioner did not evince any interest and thus the matter rested there. The Board has denied the allegation that no notices as required under Section 15(3) of the Act were issued. The Board has contended that, even assuming that there was no personal service, that deficiency was made good by publication in the local Kannada Newspaper which is in circulation in the locality in question. The Board has also contended that the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution at this distance of time having admittedly come to know that the impugned acquisition proceedings were initiated in the year 1983 when the first petitioner was served with a copy of the resolution rejecting his request for sanction of the private layout.

7. The contention of the Board is that there was service of notices on both the petitioners under Section 15(3) of the Act but the records produced by the learned counsel for the Board do not disclose any material in proof of the fact that there was such service of notices on the petitioners. But the publication in the newspaper is very much evident from the copy of Annexure R-1, i.e., an issue of the Kannada daily newspaper "Samyukta Karnataka" dated 22-9-1979. But, the petitioners have alleged that this notice in "Samyukta Karnataka" is wanting in particulars such as survey numbers of the lands. That apart, neither the names of the petitioner nor the boundaries of the lands sought to be acquired were mentioned in the public notice and, therefore, it does not meet the requirement of law. Even then, the point for consideration is whether it could be said that the petitioners were not aware of the impugned acquisition proceedings in the year 1979 or at any rate in the year 1983. It is common ground that this development scheme is not confined only to these survey numbers in question, but to lands in other survey numbers in Kasba Hobli in Shimoga District. The total extent of the lands acquired in all these survey numbers would aggregate to about 60 to 65 acres. The owners of the lands in the other survey numbers mentioned in the public notice have not challenged the validity of the acquisition proceedings. But a large number of owners of other lands in the same village in W.Ps. Nos. 5371 to 5377 and 6540 and 6541 of 1987 had challenged the validity of the acquisition proceedings initiated by the 2nd respondent/Board (which was

the 3rd respondent in those writ petitions) under the very same provisions of the Act and under the very same preliminary notifications relating to the very same village, i.e., Kallahally village. Those writ petitions were dismissed by this Court following the decision reported in *Rukmini P. Kalburgi v State of Karnataka* (I.L.R. 1986 Karnataka, 154). This Court observed in those cases:

"In the circumstances, the petitioners who are a few in number cannot complain about the acquisition proceedings on the ground that they are going to be deprived of their source of livelihood. That is a sacrifice by the petitioners for the larger interest of a larger number in the Society who belong to the weaker section."

In para 8 of the judgment it was observed.

"Though it was contended by Sri. Manjappa learned counsel for the petitioners that some of the petitioners had no notice of the proceedings, it could be seen from the records that it is only petitioner No. 3 who was not served with the notice and others have been served with the notice. Assuming that petitioner No. 3 was not served with the notice of the proceedings, he has filed his objections and his objections have been fully considered by the authorities before the Scheme was sanctioned."

Again it was observed:

"Even assuming that some of the petitioners have not been served with the notice, a large extent of lands, measuring about 33 hectares have been acquired for the purpose of forming a layout for the weaker section of the society and therefore, it may not be proper for this Court to interfere with the validity of the acquisition proceedings solely on the ground that some of the petitioners had not been properly served."

The decision in *Rukmini P. Kalburgi* (ILR 1986 Kar. 154) was challenged in writ appeal and the same was dismissed. The Civil appeal preferred by the aggrieved party by special leave was also dismissed by the Supreme Court.

8. However, in these cases, learned counsel Mr. Jayaprakash strongly maintained that the facts in those petitions are distinguishable from the facts in the cases on band since he has approached this Court immediately after the declaration was made under Section 17 of the Act in the year 1987 and, therefore, this Court should not throw out the petitions on the ground of laches.

9. I have given my anxious consideration to this aspect of the case. The learned counsel has relied on the decision of the Supreme Court in *The State of Madhya Pradesh and Others v Vishnu Prasad Sharma and Others* (A.I.R. 1966 S.C. 1593) in which it is observed:

"Sections 4, 5-A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed. Section 5-A provides for

hearing of objections to the acquisition and after these objections are decided the government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a declaration as to the particular land out of the locality notified in Section 4(1) which it will acquire. It is clear from this intimate connection between Sections 4, 5-A and 6 that as soon as the government has made up its mind what particular land out of the locality it requires, it has to issue a declaration under Section 6 to that effect. The purpose of the notification under Section 4(1) is at this stage over and it may be said that it is exhausted after the notification under Section 6. If the government requires more land in that locality besides that notified under Section 6, there is nothing to prevent it from issuing another notification under Section 4(1) making a further survey if necessary, hearing objections and then making another declaration under Section 6."

Therefore, he submits that the declaration made by the Board under Section 18 of the Act is liable to be quashed as the Board has exercised a power similar to the power under Section 4(1) of the Act and when that power is exhausted, the authorities cannot exercise the said power for acquiring more land under the very same notification.

10. Here we are concerned with the development plan for a public purpose and the draft development plan was prepared by the authorities and the same was sent to the State Government for approval. It was published in the Deputy Commissioner's office and wide publicity was given before the declaration was made by the Government under Section 18 of the Act. The Scheme of Sections 4, 5A and 6 is not as elaborate as the scheme under the Act. Under the Land Acquisition Act the person gets only a right to participate in the enquiry under Section 5A of the Act and award proceedings under Section 10 of the Act. Otherwise he is completely shut out of from the acquisition proceedings under the scheme of the Land Acquisition Act. In the circumstances, the ruling of the Supreme Court in the above case in my view, would not be strictly applicable to the facts of this case. Even assuming that public notice given in Samyukta Karnataka did not indicate the petitioners' names and the boundaries of the lands held by them, the point for consideration is whether such public notice was bad in law. Mr. Jayakumar S. Patil submitted that the addresses of some of the owners including the petitioners were not available in the revenue records and, therefore, the Board was compelled to take out public notice by publication in the local news paper and that is the reason the petitioners' names were not mentioned in the public notice as they names were not available in the Revenue records. The Board would have definitely included in the public notice their names, while implementing a vast scheme costing a huge sum of Rs. 62 lakhs and odd. The Board would not have omitted their names deliberately either with a view to avoid the extra cost of publication or to deprive the petitioners an opportunity of filing their objections. Therefore, as observed by the Supreme Court in *Hari Singh and Others v State of U.P. and Others* (A.I.R. 1984 S.C. 1020), when a large extent of land is sought to be acquired for a public purpose

as in these cases, it is difficult to believe that the petitioners who are the residents of the same village would not have known till November, 1983, that the impugned preliminary notification was published in the year 1979. This is what the Supreme Court in Hari Singh case (AIR 1984 SC 1020) 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 Section 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 Section 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 Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a short while 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."

11. Mr. Jayaprakash however contended that he had a right to approach this Court when the final declaration was made in the year 1987 and, therefore, these petitions should not be thrown out on the ground of laches and it should be disposed of on the merits of the contentions raised by him. But, as noticed earlier, assuming for the sake of argument that the petitioners were not personally served as required under Section 15 of the Act, they themselves admit that they were aware of the notification in the year 1983. They should have challenged the preliminary notification immediately thereafter on the ground that the notification was bad in law since the same was not served on them in person. It should be noticed that the petitioners did not file their objections in 1983 when they were aware of the notification under Section 15 as they did not choose to file their objections. But they approached the authorities concerned for regularising the private layout which they had formed in anticipation of the sanction by the appropriate authorities. But the learned counsel for the petitions submitted that there was always a chance that a scheme would not be implemented and therefore they were awaiting the final declaration made in the year 1987. No doubt in the ordinary course there is a chance for the authorities to take a different view when the scheme reaches the stage of final declaration under Section 18 of the Act. But, here, on the facts of these cases those chances were very slim or non-existent. This scheme was

prepared by the 2nd respondent with a view to form sites for distribution among the poorer sections of the community in Shimoga Municipality and it cannot be said that the petitioners were not aware of the fact that the other owners had challenged the acquisition proceedings in this Court in the Year 1987 and that those petitions had been dismissed. In my view, the petitioners were sitting on the fence waiting for the final outcome expecting that they would succeed in their efforts to avoid the final declaration under Section 18 of the Act. The proper time for the petitioners on the facts and circumstances of the case to approach this Court was either in the year 1979 when the preliminary notification was made or at least in the year 1983 when they came to know that the scheme would be implemented in terms of the draft scheme prepared by the Board under the relevant provisions of the Act. This Court has consistently taken the view that in proceedings under the Land Acquisition Act which affect the interest of public, when the parties are not vigilant and do not approach this Court in time, they should not be permitted to invoke the extra ordinary jurisdiction since interference with such proceedings at a later stage would cause considerable prejudice to public interest and public money and time. That apart, from the records produced by the 2nd respondent/Board it may be seen that the petitioners were aware that the authorities would implement the scheme without any reference to their objections or without any reference to the other proceedings pending in this Court. Pages 10,11,15,16,17,19 and 21 of the records marked in red ink show that the 2nd respondent/Board had taken a definite stand that it was going to implement the scheme in question. Those documents came into existence some time in the year 1984 and in 1986. These are all communications from the 2nd respondent/Board in unmistakable terms informing the petitioners that no permission would be granted to form a private layout and they should desist forthwith from forming the private layout and should not take developmental work in the lands in questions. In one of the documents dated 6-12-1984 the Board has resolved not to entertain the plea of the petitioners for obtaining sanction for the private layout and expressed the view that it would establish its own layout as per the preliminary notification made in the year 1979.

12. For these reasons, I am of the view that the petitioners have not satisfactorily explained the delay in approaching this Court. Accordingly, following the decision of the Supreme Court in Hari Singh's case (AIR 1984 SC 1020), the petitions should be dismissed on the ground of laches. However, as observed in the connected writ petitions challenging the very same scheme, it is open to the petitioners, if they are eligible, to apply for allotment of a site for each of them within the municipal area. The Board shall consider their applications on merits if they apply for such allotment within a period of 4 weeks from the date of receipt of this order.

With these observations, these petitions are dismissed

No costs.