
(1987) 05 KAR CK 0008
In the Karnataka High Court
Case No : W.P. Nos. 451 and 452/1982

Madappa and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-05-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 5a

Citation : (1987) 2 KarLJ 191

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In these two writ petitions, the petitioners have prayed for quashing the notification issued by the State Government under Section 6 of the Land Acquisition Act (for short the "Act") notifying the acquisition of 13 guntas of land in Survey No. 105/1 A, 1 Acre and 13 guntas of [and in the same survey number and 36 guntas of land in Survey No. 105/5 for a public purpose namely the extension of the village of Chokanahalli.

2. The preliminary notification proposing to acquire the 3 items of land was issued on 17th April, 1980 and was published in the Official Gazette on 26th June, 1980. The last date for receiving the objection was 2nd August, 1980. Individual notice about the publication of the preliminary notification has been served on the owners and they were given opportunity to object to the acquisition before the Assistant Commissioner Of Pandavapura Sub-division. Written objections were filed by the owners. They were also represented by an advocate. After hearing the objections raised by the owners, the Assistant Commissioner found no substance in the objection to the acquisition. Accordingly he prepared his report and sent it to the Government. Thereafter the government approved the acquisition of the lands in question. Accordingly declaration under Section 6 of the Act was issued by notification dated 31st August, 1981 and was published in the official Gazette dated 5th November, 1981. Questioning the legality of the said acquisition, the petitioners presented these petitions. After issuing notice regarding issue of rule to the respondent, an interim order of stay was granted, staying further steps pursuant to the

impugned notification. These petitions have now come up for preliminary hearing after service of notice to the respondents.

3. The learned Counsel for the petitioner urged the following two contentions:

(1) In view of sub-section 2 of Section 5A of the Act it was obligatory on the part of the Officer hearing the objection under Section 5A(2) to inform the objectors about the submission of the report to the government and as this mandatory provision had not been complied with the acquisition proceedings were liable to be quashed.

(2) The report under Section 5A(2) of the act was required to be submitted, within six weeks from the last date fixed for filing the objections and as the same was not submitted within the said time, the government could have condoned the delay if only it was satisfied that there was sufficient cause for the delay in submitting the report and in this case neither sufficient cause was shown for the delay nor the delay was condoned by the government after the required satisfaction, and therefore the final notification was illegal and invalid.

4. The two sub-Sections of Section 5A read:

"5A. Hearing of objections (1) Any person interested in any land which has been notified under Section 4, sub-Section (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 in this behalf, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-Section (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 inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government containing his recommendation on the objections, together with the record of the proceedings held by him, for the decisions of that Govt."Before the expiry of six weeks from the last date for filing objections or before the expiry of two weeks from the date on which he received the report under sub-Section (4) of Section 4 whichever is later and the fact of having submitted the report shall be communicated to the objectors.

Provided that the appropriate Government may, if it is satisfied that there was sufficient cause for the delay, condone any delay in the submission of the report by a period not exceeding one year. The decision of the appropriate Government on the objections shall be final."

The language of the section is very clear. The Deputy Commissioner is required to receive the written objection and hear objectors. According to the definition of the word "Deputy Commissioner" given in section 3(c) of the Act, the expression

includes an Assistant Commissioner in charge of a Revenue sub-division. In the present case the Assistant Commissioner Pandavapura sub-division, who is "Deputy Commissioner" as defined, has received the objection of the objectors and he heard them with reference to their objections. According to the language of the provision it is obligatory for the Deputy Commissioner to inform the objectors about his sending of the report to the government. The contention of the petitioners is that this mandatory provision was not complied with. The petitioners have stated on oath that there was no such communication. But the records disclose that on 23-2-1981 a copy of the report was furnished to the learned Counsel who appeared for the objectors before the Assistant Commissioner and the learned Counsel has affixed his signature in token of having received a copy of the report. In fact the petitioners themselves have produced a copy of the report vide Annexure-E to the writ petition. The petitioners are therefore guilty of suppression of material information and making a false statement in the writ petition and on that basis securing an interim order from this Court. The first contention based upon such averments is devoid of any merit.

5. Elaborating the second contention the learned counsel for the petitioners submitted as follows: The last date for the receipt of the objection was 2-8-1980. The report of the Assistant Commissioner (the Deputy Commissioner) was prepared on 12-1-1981. The report was submitted along with the letter dated 23-2-1981. The report was clearly beyond six weeks from the last date fixed for the receipt of the objection. In the report the Assistant Commissioner did not give any reason as to why there had been a delay beyond six weeks in submitting the report. Further the requirement of the proviso viz., recording of the satisfaction of the government, as to the sufficiency of the cause for the delay, had not been complied with. Therefore the final notification is liable to be set aside.

As can be seen from letter addressed by the Assistant Commissioner to the Government, along with the report dated 12-2-1981 he had sent the entire order sheet. The order sheet reads:

"In the Court of the Asst. Commissioner, Pandavapura.

LAQ. 8/79-80

V.P.

Bannenahalli,

Bokinakere Hobli

K.R. Pet Taluk. v. 1) Doddamadappa

2) Madappa

3) Shivaramappa of Chokanahalli village.

Ref: Acquisition of Land in Sy. No. 105/1, 105/4 & 105/5 of Chokanahalli Village, Bukinakere Hobli, K.R. Pet Taluk for Village Extn.

Land Acquisition of 2.00 acres of land in Sy. No. 105/1, 105/4 and 105/5 of Chokanahalli under Section 4(1) is approved by the Deputy Commissioner Mandya in No. LAQ 12/78-79 dated 17-4-1980 Notification published in Gazette dt. 26-6-80. Last date for filing objection is dt. 2-8-80.

25-8-80 Case called, Appellant and Respondent both absent-P.O. is out of H.Q. Hence adjourned to 4-9-80.

4-9-80 Case called petitioners present. Objections heard. Keep it for special inspection. V.P. Chairman absent.

20-11-80 Case called and adjourned to 29-11-80

27-11-80 Case called. GVN filed schedule properties belonging to objections along with geneology for arguments by 11-12-80

11-12-80 Case called. Objectors present GVK for GVN (the Counsel for the objector) present. GVK prays for short adjournments by 18-12-80

18-12-80 Case called. P.O. is engaged other work. Adjourned to 8-1-81.

8-1-81 Case called. The Counsel for the objectors absent. Objectors present (Doddamadappa, Marappa, Shivaramu) As a final chance by 29-1-81.

19-1-81 Case called. Objectors present. Counsel for the objectors filed a memo stating that a portion of the land proposed to be acquired have been sold by the objectors prior to the 4(1) Notification. The purchasers are stated to be Lingappa s/o Siddalingappa, and Ningappa s/o Puttesiddappa R/o Chokanahalli. Please Issue the 4(1) notification for their objections if any and proof that they are interested. By 12-2-81.

12-2-81 Case called. All the objections and their Counsel present. The Counsel for the objectors had filed a memo on 29-1-81 that two persons by name Lingappa s/o Siddalingappa and Ningappa s/o Patel Siddappa are to be included as necessary parties as according to him they have bought a portion of land included in the land proposed for acquisition. The village accountant has furnished the RTCs for 105/4B and 105/1B and these stand in the name of these two persons respectively. The land proposed for acquisition is only in Sy. Nos. 105/1A 105/4A and 105/5 and the lands of the above two persons are not included for acquisition. Hence they are not necessary parties.

The learned Counsel for the objectors submits that the same land were proposed for acquisition but dropped vide order of the Asst. Commissioner Pandavapura dt. 11-9-74. On perusal of this order it is seen that it has not been dropped because of reason of health etc. If a land is once proposed & then dropped, is no bar for acquiring the same land again. The objection No. 3 states that land in Sy. No. 1 is just by the side of the village. True but as observed during the spot inspection

Sy. No. 1 is a low lying area and it is better to acquire Sy. No. 105/ 1A, 105/4A are adjacent to the village and are at a higher level and more convenient and fit for construction of houses. Objection 4 attacks the proposal for acquisition on the land that the Harijans will be excluded and secluded. But the Land Acquisition Act is not violated. And in fact the declared policy of the State is to provide houses and house sites to the weaker and oppressed Sections of society. The contention of the objector's Counsel that there is sufficient gramtana available in the village is not come out by my observation during my spot inspection. The site proposed now is quite fit for construction of houses. Hence due to the above reasons, I overrule the objection of the objectors. Another objection that the objections are insufficient holders is not true since the land which each one of them gets is

1) Madappa 11 Ha. and 35 acres

2) Shivaramappa 3 Ha. and 36 acres and

3) Madappa 3 Ha. and 36 acres. They are therefore not sufficient holders. This has been evaluated on the basis of the family tree. The objector's Counsel says that the other members of the family have a share and therefore he contends that the objectors become insufficient holders. This is not acceptable, as they will fit their share only after the objectors death. As it stands today the objectors' share is more than 5 acres each and as things stand, they are not insufficient holders. Hence all objections of the objector's Counsel are overruled. Report to government for 6(1)(a).

Sd/-

12-2-81.

Copy issued to G.V.N.

sd/- 23-2-81."

The order sheet discloses that notice had been served on the parties and they were made known of the last date for filing the objection and that it was 2-8-80 and the case was posted for hearing on 25-8-80.

6. The order sheet also discloses the time occupied in completing the 5-A inquiry. The government in its letter dated 22-4-1981 conveyed its approval to the acquisition of the land in question. The said communication which is found at page 94 of the record reads:

"Sub: Acquisition of 2-00 acres of lands in Sy.No. 105/1, 105/4 & 105/5 of Chokanahalli village for village Extension purposes.

Ref: Your Lr.No. LAQ. 8/79-80 dt. 21-2-81.

The delay in submitting the report to Government under Section 5-A of the Land Acquisition Act is condoned.

The objections put forth are overruled.

You are hereby directed to proceed under sub-section (1A) of Section 6 of the Land Acquisition Act (Karnataka Estn & Amdt) Act, 1961.

The connected records are returned herewith.

No. LAQ 8/79-80 Pandavapura,

dt. 30-4-81.

Copy of the letter together with the sketch and the Acquisition notification forwarded to the Assistant Director, of Land Records Pandavapura for information and to take measurements work as per rules (U/s. 6(1A) of L.A. Act and report early.

Sd/-

Asst. Commissioner,

Pandavapura."

As can be seen from the above letter the State Government condoned the delay in the submission of the report. There is no dispute that the delay was within one year which is the maximum period fixed to the extent to which the Government could exercise its power of condonation of delay beyond six weeks.

7. The learned Counsel for the petitioner however strenuously contended that there were two serious infirmities in the proceedings. Firstly there was no reason at all assigned by the Assistant Commissioner in his letter addressed to the government and secondly there has been no order of the government by the application of its mind and recording its satisfaction that there was sufficient ground for condoning the delay in the submission of the report.

8. As stated earlier the Assistant Commissioner along with his letter, had sent the entire order sheet which culminated in his report. The entries made in the order sheet clearly indicate that the delay was on account of the time occupied in holdings 5-A inquiry and giving opportunity of hearing to the petitioners. The government has expressly recorded that it condoned the delay in submitting the report. Having regard to the nature of the proceedings, a recording of the decision of the government condoning the delay would be a sufficient compliance with the requirement of the statute. The requirement to submit a report within a specified time is intended to ensure that the acquisition proceedings are speeded up and therefore that the report should be submitted within six weeks. Further the section itself provides that if the delay in submission of the report, is only less than one year, the delay can be condoned and not beyond that. Therefore when the delay is within one year and the government is given the power to condone the delay, once the said power is exercised by the government and the delay is condoned, it means that the government was satisfied that there was sufficient cause for condonation of the delay in the submission of report. The section also does not require that reasons should be recorded. Having regard to the nature of the power, there is no justification to hold that non-recording of the

reasons for the satisfaction regarding the existence of sufficient reasons for the condonation of delay in writing, renders the decision condoning the delay invalid. The matter might be different if the government had not at all noticed the delay and had not made any order condoning the delay.

9. Relying on the decision in *Taylor v. Taylor* 1876(1) Chancery Division 426, learned counsel contended that a statutory authority must exercise the power only in the manner indicated in the statute, and if not it would be no exercise of the power at all and therefore as in this case the government had not acted in the manner indicated in Section 5-A the action of the government was null and void. There can be no doubt about the proposition. But as indicated above the requirements of Section 5-A are complied with by the government, in that it noticed the delay and condoned the delay by an express order, before directing the issue of final notification.

10. Before concluding I consider it appropriate to invite the attention of the government regarding inordinate delay in filing returns in writ petitions in which Land Acquisitions are challenged and further proceedings are stayed. This case as also other similar cases show that even though the Acquisition proceedings are stayed in view of the averments made in the petition and notice is given to the respondents, the respondents do not come forward with any application for vacating the stay and to produce the records before this Court at the earliest opportunity, as a result the stay of the acquisition proceedings continue for a long time. For instance in this case though the writ petition was presented in February, 1982 and notice was given to the government advocate, statement of objection and the application for vacating stay were filed only in February, 1986. Had the correct facts been disclosed before this Court shortly after the receipt of notice the writ petition would have been decided long back or the stay would have been vacated and the the government could have proceeded to take further steps pursuant to the impugned notification. The delay in filing returns has delayed the further action which was in public interest. Similar is the situation in large number of writ petitions in which Land Acquisition is challenged and interim stay is granted by this Court. Therefore, the government would do well to make special arrangements for producing the records, and filing of statement of objections, in all such writ petitions at the time of the matter comes up for further orders on interim prayer.

In the result I make the following order:

(1) The Writ Petitions are dismissed with Costs.

Prepare a carbon copy of this order and furnish it to the Learned Counsel for the State.