

(1983) 07 KAR CK 0032
In the Karnataka High Court
Case No : W.P. 10408 & 10409/83

Mahadevaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-07-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 5a (2)

Citation : (1983) 2 KarLJ 240

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

The two petitioners in the above petitions were owners of land bearing By. Nos. 53/4, 70/3B, 75/1 and 75/2B in Byrasandra village, Tumkur Tlk. and District. They were notified for acquisition for construction of a tank for Byrasandra village under the Karnataka Land Acquisition Act (hereinafter referred to as "the Act") at the instance of the Public Works Department. The notification dt. 12th March, 1981, bearing No LAQ/-SR 51/80-81 was published in the Karnataka Gazette of March 26, 1981. As many as 18 persons were affected: by the proposed acquisition as evidenced by the gazette notification, a copy of which is at Annexure-A to the petition. That notification was issued under sub-sec. (1) of S. 4 of the Act. The 3rd respondent herein was appointed the Land Acquisition Officer and from the certified copy of the order sheet produced by the petitioner, it is clear that on 13.4.1981 individual and public notices were issued to the parties concerned to prefer their objections on or before 21.5.1981 and that the same will be heard on 30.5.1981. Again on 10.7.1981 the case was called after issue of notice and parties were absent. The case came to be adjourned to 25.7.1981. Fresh notice to the objectors were also ordered of that date. On 25.7.1981 the case was again called and one KNR appeared for objectors represented by S.R.L. Government Pleader also filed his memo of appearance for the Department. On that date the case was adjourned; to 1.8.1981 and from 1.8.81. to 19.12.1981 several adjournments took place as evidenced by the order sheet on the request of one or other party or on account of pre-occupation of the Land Acquisition Officer with other work. The order sheet of 19.12.1981

reads as follows:

"19.12.81. Case called, S.R.L. present for K.N.R.S.R.L. prayed that the spot should be inspected in the absence of the comparative statement. Spot inspection is not necessary as the spot has been selected technically and thereafter only P.W.D. recommended for acquisition. Case put for report."

2. Thereafter, the 3rd respondent appears to have submitted his report as per annexure-D which is said to be a true copy of the report (how the petitioners obtained this true copy is not made known to the Court). The report recommended acquisition overruling the objections. Later, in the course of this order, the relevant portion of the report will be extracted to meet the arguments of the learned Counsel for the petitioners. Thereafter, declaration under S. 6 of the Act was made by the 2nd respondent-Deputy Commissioner declaring that the lands are required for the public purpose mentioned therein. Respondents 4 and 5 are the Executive Engineer and the Assistant Executive Engineer with whom we are not really concerned with in these proceedings.

3. The main ground of attack by the learned Counsel for the petitioners as well as the statement of facts urged on behalf of the petitioners is that the notification issued under S. 6 of the Act, which is at annexure-E, should be struck down as it is violative of the mandatory requirement of the procedure provided for in S. 5-A (2) of the Act and Rule 5 of the Rules made under the Act. The thrust of the argument is that the order sheet does not anywhere disclose that the case was set-down for hearing arguments. In other words, from that it is sought to be made out that the respondent-Land Acquisition Officer never gave a oral hearing to the petitioners.

4. No doubt, this Court in the case of Patel Munireddy v. Deputy Commissioner, Bangalore, (1976) 2 Kar.L.J. 168 has emphasised the need of oral hearing by the Land Acquisition Officer under S. 5-A (2) of the Act with which ruling one cannot have any quarrel. When the words "hearing of objections" are used in the section, then oral hearing is implied. But, on the facts of this case. it cannot be said that there was no oral hearing. The parties were represented by Counsel who remained absent on various dates to which the enquiry was adjourned. However, on 19.12.1981 the Counsel was present as well as the Government Pleader for the acquiring Department. On that date a prayer was made for spot inspection which was rejected. Nothing in the order sheet is indicative that the Counsel addressed any arguments. However, the learned Counsel appearing for the petitioners in these proceedings has stressed that after the spot inspection, the Land Acquisition Officer should have set-down a date for hearing. I do not think such a procedure is contemplated under S. 5-A (2) of the Act. After receiving objections and notifying the contentions to the acquiring Department and obtaining remarks of the acquiring Department and furnishing the same to the petitioners, every date should be meant for hearing arguments or receiving evidence as the case may be. One cannot expect the Land Acquisition Officer to function like a Civil Court setting down a date for appearance of parties, filing

written statement, framing of issues, for recording of evidence, closure of evidence and to set-down a date for hearing arguments by Counsel and then either by pronouncement of order in the open Court after arguments or reserve the same for judgment. The procedure for hearing under S. 5-A (2) of the Act is governed by the Rules framed by the State Government known as the Karnataka Land Acquisition Rules, 1965. Rule-3 contemplates issue of notice to affected persons and the manner in which the notice should be served. Rule 4 provides for filing Of objections by the affected persons. Rule-5 provides for hearing objections. Sub-rule (3) of rule 5 which fell for consideration in Patel Munireddy"s case (1) referred to above reads as follows:

"On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Deputy Commissioner, the Deputy Commr. shall hear the objector or his Advocate or Pleader and the representative, if any, of the Department, Company or other public body and record any evidence that may be produced in support of the objections."

Rule-6 provides for appearance of pleaders in the proceedings before the Land Acquisition Officer. Nothing in the language of sub-rule (3) of rule 5 extracted above is suggestive that at any stage of the enquiry after statement of objections has been filed; and the requirement of sub-rule (2) of rule 5 regarding the remarks to be furnished by the acquiring Department has been complied with, another specific date for hearing arguments should be set-down by the officer. Every date after compliance with sub-rule (2) of the rule 5 of the Rules should be understood to be the date meant for hearing arguments as is clear from the language of sub-rule (3) of rule 5.

4. The order-sheet discloses that the statement of objections and the remarks thereon from the Department were received and served on the petitioners and other objectors long before 19.12.1981 and the case was thereafterwards adjourned at the request of one or other party or on account of preoccupation of the officer who was conducting the enquiry. It is at this stage useful to extract a para from the report said to have been submitted by the 3rd respondent-Land Acquisition Officer, a true copy of which is to be found to be at Annexure-D to the petition. The petitioners have relied upon the document themselves and therefore, they cannot now contend contrary to the contents of that document. The paragraph relevant is follows:

"A copy of the statement filed by the objector was sent to the acquiring body to file their statement. The acquiring body has stated that sanction has been accorded technically. To the objection that the) lands are valued high, the acquiring body has presented that fair rent could be fixed by the Land Acquisition Officer. The Counsel for the objectors had during the proceedings prayed for time to produce documents. Though many adjournment were given they have not produced the same. They also had requested for calling for the comparative statement about the relative merits of the now proposed site and another site which is alleged to have been earlier selected by the P.W.D. This it was felt was

not necessary as the site has been selected technically by the P.W.D. and estimate also been prepared."

5. From the above it can be easily seen that the reference to what was felt not necessary was with reference to the spot inspection rejected in the order sheet itself of the date 19.12.1981. Nothing in the portion of the report extracted above is indicative that the Counsel prayed for time to address arguments. Nor does it indicate that he did not address arguments. When parties engage Advocates to represent them, the matter is in the hands of trained personnel who know the procedure to be followed and their duties and responsibilities to their clients. If on the various dates they took adjournments to produce, documents and failed to do so and did not press any oral arguments on 19.12.1981 specifically, I do not see any violation of the provisions under sub-rule (2) of rule 5 of the Rules read with S. 5-A (2) of the Act on, account of the Land Acquisition Officer not fixing a specific date for hearing. Therefore, the contention of the learned Counsel must fail.

6. In the result, I do not see any infirmity in the procedure followed by the Land Acquisition Officer which calls for interference. Therefore, this Writ Petition is rejected without issuing rule.