

(1990) 07 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 15553 of 1987

Mahalakshmi Kesava Rao

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 6 (1-A), 6 (2)

Citation : (1990) ILR (Kar) 3693

Hon'ble Judges : Shivaprakash, J; Rama Jois, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy, for K.N. Chandrashekar, for the Appellant; S. Srinivasa Murthy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J

1. In this Writ Petition in which the petitioner has questioned the legality of the Notification issued u/s 6 of the Land Acquisition Act, the following question of law arises for consideration:-

"Whether a declaration made u/s 6 of the Land Acquisition Act ("the Act" for short) that a land is needed for a public purpose made within a period of three years from the date of publication of Preliminary Notification u/s 4 of the Act becomes invalid if it is published in the Official Gazette after the expiry of three years from the date of publication of the Preliminary Notification?"

2. The brief facts of the case are these:- A preliminary notification u/s 4 of the Act was issued on 19th May 1984 stating that the land specified therein was needed for a public purpose, to wit for the purpose of Income Tax Department of the Central Government. It was published in the Official Gazette on 7-6-1984. After the necessary enquiry u/s 5A of the Act, a report was sent to the Government and the Government acting on the report directed the Deputy Commissioner to complete the steps prescribed after which a declaration u/s 6

has to be made. After the receipt of the report from the Deputy Commissioner, a declaration was made by the Government on 29-4-1987 that the land was needed for the public purpose which was set out in the preliminary notification. It was, however, published in the Official Gazette on 10th September 1987.

3. The contention of the learned Counsel for the petitioner is that in view of the condition imposed in Section 6(1A) of the Act, the declaration was to be made within three years from the date of publication of the preliminary notification in the Official Gazette and a declaration as contemplated u/s 6(1A) of the Act can be said to have been made only on the date on which such declaration is published in the Official Gazette and as there is no dispute that the declaration in relation to the property belonging to the petitioner was published in the Official Gazette on 10th September 1987 and it was beyond three years from the date of publication of the preliminary notification, the same was illegal and therefore it is liable to be declared invalid.

3A. A similar question had come up for consideration in the case of SAYYAD SAHEB JADA AND ORS. v. STATE OF KARNATAKA AND ORS. 1987 (2) KarLJ 108 in which a similar contention was advanced. The contention was negated by one of us (Rama Jois, J). The relevant portion of the Judgment reads:-

"6. The petitioner, however, have raised a contention to the effect that final notification is liable to be quashed on the ground that it was issued after three years from the date of the preliminary notification and therefore, it is beyond the competence of Government, The relevant portion of Section 6 of the Act on which the learned Counsel for the petitioner relies reads thus:

Section 6. Declaration that land is required for a public purpose:-

(1) XXX XXX XXX

(A) The Deputy Commissioner shall, there upon within two months from the date on which he receives such direction -

(a) cause the land (unless it has been already marked out u/s 4 to be made out;

(b) also cause it to be measured, and if no plan has been made therefore, a plan to be made of the same; and

(c) report to the appropriate Government the result of the operations under this subsection.

The appropriate Government shall then make a declaration that the land is needed for a public purpose or for a company and different declaration may be made from time to time in respect different parcels of any land covered by the same notification under Sub-section (1) of Section 4: provided that no declaration in respect of any particular land covered by a notification under Sub-section (1) of Section 4, published after commencement of the Land Acquisition (Karnataka Amendment and Validation) Act 1967 shall be made after the expiry of three years from the date of such publication.

EXPLANATION: In computing the period of three years specified in this sub-section, any period during which any action or proceeding to be taken in pursuance of the notification issued under Sub-section (1) of Section 4 is held up on account of stay or injustice by order of a Court shall be excluded.

There is no dispute that preliminary notification dated 17th June 1978 was published in the Official Gazette on 6th July, 1978. The starting date for purpose of finding out as to whether the final notification is within the time permitted by the Section is the date of publication of the Preliminary Notification in the Official Gazette as expressly stated in the Section and not the date of the issue of the notification. Further, as far as final notification is concerned, it is that date of the declaration in that the date of notification u/s 6 which should be looked into and not its publication in the Official Gazette, in view of the wording of the provision.

7. In the present case though the preliminary notification was dated 17th June 1978, it was published in the "Official Gazette only on 6th July 1978. Further, though the publication of final notification/declaration in the Official Gazette was on 27th August, 1981, the date of notification/declaration was 2-7-1981. Thus it may be seen that the final notification/declaration was made within three years from the date of publication of preliminary notification. Therefore, the contention of the petitioner that the final notification was invalid as barred by time is untenable."

4. Sri S.G. Sundaraswamy, learned Senior Counsel, submitted that the view taken as above requires reconsideration. Elaborating his submission he has stated as follows:- When Section 6(1-A) of the Act speaks of making of a declaration, having regard to the language of Sub-section (2) of Section 6, it means a declaration published in the Official Gazette. Therefore, when a period of limitation of three years is fixed for making a declaration it must necessarily be understood to be a reference to the declaration published in the Official Gazette. The learned Counsel also relied on Section 30 of the Karnataka General Clauses Act, which reads:-

"30. PUBLICATION OF ORDERS AND NOTIFICATION IN THE OFFICIAL GAZETTE:- Where in any Mysore Act or Karnataka Act or in any Rule made under any Mysore Act or Karnataka Act it is directed that any order, notification or other matter, shall be notified or published, such notification or publication shall unless the Act otherwise provides, be deemed to be duly made if it is published in the Official Gazette."

He submitted that in view of the above Section, a declaration shall be deemed to be duly made if it is published in the Official Gazette and therefore the date of publication of the declaration in the Official Gazette should be taken as the date of declaration duly made as required u/s 6(1-A) of the Act and the impugned notification is liable to be struck down for having been made after the expiry of three years. Learned Counsel referred to Sub-section (2) of Section 6 of the Act, which reads:-

"6(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

The learned Counsel pointed out that the above subsection makes it mandatory for publication of every declaration in the Official Gazette and from this it follows that the making of a declaration u/s 6(1-A) means not only making of a declaration but also its publication in the Official Gazette.

5. We proceed to re-consider the question giving due weight to the submissions made by the learned Counsel. If we analyse the provisions of Sections 4 to 6, they incorporate the following events:-

- (1) Issue of a Preliminary Notification by the Government;
- (2) Publication of the Preliminary Notification in the Official Gazette and in the locality;
- (3) Holding of an enquiry u/s 5A of the Act;
- (4) Acting on the report of the enquiry by the Government and issuing a direction that the land is needed for a public purpose;
- (5) Enquiry by the Deputy Commissioner regarding matters provided u/s 6(1-A) of the Act and submission of the report to the Government;
- (6) Making of a declaration by the Government;
- (7) Publication of the declaration in the Official Gazette.

Thus, it may be seen after publication of Preliminary Notification and the holding of statutory enquiry u/s 5A of the Act and receipt of the report of the Enquiry Authority by the Government, in the first instance it has to consider the whole matter and take decision as to whether the acquisition should proceed. If it decides in favour of completing the acquisition as proposed, it has to issue a direction to the Deputy Commissioner to make a report in terms of Section 6(1) and after the report is received the Government is required to make a declaration that the land is needed for a public purpose. It is, at this stage, the Legislature prescribes the period of limitation of three years. The Section provides that the declaration has to be made! within a period of three years from the date of publication of the Preliminary Notification. It is only after a declaration is made within a period of three years, then the taking of the next step of publishing the said declaration in the Official Gazette and newspapers asj provided under Sub-

section (2) of Section 6 of the Act arises. The period of three years as limitation prescribed makes it clear that it is for making a declaration and the question of publication of the declaration arises only after a valid declaration is made. In other words, if a declaration is made within a period of three years from the date of publication of the Preliminary Notification, thereafter step has to be taken to publish the same in the Official Gazette. If the declaration is not made within the period of three years from the date of publication of the Preliminary Notification, the Government has no power to make a declaration at all and even if it makes and causes it to be published in the Official Gazette u/s 6(2), it will not be of any consequence. Therefore, when Sub-section (2) speaks of publication of declaration, it speaks of a valid declaration made within a period of three years. Therefore, it cannot be said that the period of limitation of three years prescribed for making a declaration would also mean that the publication also should be made within a period of three years. If the Legislature intended to impose any such condition it would have been incorporated in Sub-section (2) by stating that the declaration shall be published in the Official Gazette within a period of three years from the date of publication of the Preliminary Notification. No such condition is imposed in Sub-section (2). The reason given in the Judgment of the Supreme Court in Kaliyappan Vs. State of Kerala and Others, interpreting Section 11A of the Act, in our opinion, is apposite to the interpretation of Section 6(1) also. By 1984 Amendment to the Act Section 11A was introduced into the Act. It reads:-

"11-A. Period within which an award shall be made - The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the Award shall be made within a period of two years from such commencement.

EXPLANATION:- In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

According to the above provision, an award is required to be made u/s 11 of the Act within a period of 2 years from the date of publication of the declaration and it further provides that if no award is made within that period the entire acquisition proceedings shall lapse. The first thing to be noticed in the above provision is, that the Legislature has expressly stated that the period of two years given for making an award has to be counted from the date of publication of the declaration and not from the date of declaration. Thus, the Legislature itself has made a clear distinction between the date of declaration and the date of publication of the declaration. The question which was raised before the Supreme Court was as to whether the period of Limitation of two years prescribed u/s 11A should be computed from the date of publication of the declaration upto

the date of actual communication of the award to the party concerned or upto the date of signing of the award by the Land Acquisition Officer/Collector? It was contended in that case that even if the award was made and signed within a period of two years from the date of publication of the declaration, if it was actually communicated after the expiry of two years from the date of publication of the declaration the entire acquisition proceedings should be declared as having lapsed by the force of Section 11A of the Act. This contention was negated by the Supreme Court, holding that the period of two years must be computed from the date of publication of the declaration upto the date of actual signing of the award of the Collector and that if the signing of the award is within a period of two years the fact that it was communicated after the expiry of two years would not result in the lapsing of the acquisition proceedings. Further, it may be seen, the Supreme Court held that acceptance of the contention advanced by the appellant therein would result in the reducing of the period of two years given for making the award to the extent of the time required for the communication of the award and therefore such an interpretation was untenable. Similar would be the result if we accept the contention advanced by the learned Counsel, in that the period of three years given under Sub-section (1) of Section 6 for making the declaration after the date of publication of the Preliminary Notification in the Official Gazette, would get reduced to the extent of the time required or taken for publication of the declaration. Even after reconsideration of the matter, we are unable to persuade ourselves to accept the interpretation placed by the learned Counsel for the petitioner. Section 30 of the General Clauses Act, in our opinion, has no relevance to the interpretation of Section 3(1) of the Act, as it is only meant to raise a presumption that a notification shall be deemed to have been duly published on the date on which it is published in the Official Gazette, and it has no bearing as to the date of making the declaration.

6. As far as the factual question as to whether the declaration was made within a period of three years is concerned, the learned Government Advocate produced the records and we find in the records that actually the declaration was signed by the Competent Authority on 29-4-1907. For the aforesaid reasons, we answer the question set out in Paragraph-1 as follows:-

"A declaration made u/s 6 of the Land Acquisition Act that a land is needed for a public purpose made within a period of three years from the date of publication of Preliminary Notification u/s 4 of the Act is valid and it does not become invalid even if it is published in the Official Gazette after the expiry of three years from the date of publication of the Preliminary Notification."

7. In the result, we make the following order:-

The Writ Petition is dismissed.