
(1984) 08 KAR CK 0038
In the Karnataka High Court
Case No : Writ Appeal No. 2746 of 1982

M.N. Laxminathaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (2), 28 (4), 28 (5)

Citation : (1984) ILR (Kar) 943 : (1984) 2 KarLJ 272

Hon'ble Judges : Malimath, C.J.;Mahendra, J

Bench : Division Bench

Advocate : T.S. Ramachandra, for the Appellant; S.V. Jagannath, Government Advocate for R-1 and R-3 and R. Sridhar Hiremath, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Malimath, C.J.—This appeal is by the Petitioners in Writ Petition No. 15636/81 challenging the order of the Learned Single Judge only to the extent the Learned Single Judge has declined to quash the preliminary notification.

2. The relevant facts necessary for the disposal of this appeal may briefly be stated as follows :-

The Government of Karnataka issued a preliminary notification dated 28-2-1981 u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (herein after referred to as "the Act"), to the effect that the six lands mentioned therein are required for the purpose of development of industries by the Karnataka Industrial Area Development Board, and that it intends to acquire the said lands. Narasegouda who was admittedly the owner of the said lands was presumed to be the owner and his name was mentioned in the said notification published in the Karnataka Gazette dated 12-3-1981. But the said Narasegouda died on 7-3-1981 a few days before the actual publication of the notification in the Gazette. Notice as required by Section 28(2) of the Act was also sought to be

served on Narasegouda on the assumption that he is the owner of the lands. But the records indicate that the notice was actually served on one Kambaiah the Chairman of the Village Panchayat though admittedly he had no interest whatsoever in any one of the said lands. The authorities proceeded to issue the final notification u/s 28(4) of the Act and the same was published in the Gazette dated 25-6-1981. The appellants who have succeeded to the estate of Narasegouda came to know of the acquisition of these lands when they were served with notice by the authorities on 17-7-1981 calling upon them to hand over possession of the lands in pursuance of the acquisition proceedings taken u/s 28 of the Act.

Immediately thereafter, the appellants challenged the entire acquisition proceedings by presenting Writ Petition No. 15638/81 on 3-8-1981. The Learned Single Judge has, by his order dated 15-9-1982, partly allowed the Writ Petition and quashed the final notification. The Learned Single Judge declined to quash the preliminary notification and gave liberty to the authorities to proceed with the acquisition from the stage at which the infirmity pointed out in the order had occurred. Hence this appeal.

3. Sri T. S. Ramachandra, Learned Counsel for the appellants, contended that the Learned Single Judge was not justified in declining to quash the preliminary notification issued u/s 28(1) of the Act. He submitted that having regard to the relevant provisions of the Act and the admitted facts, law does not permit the authorities to proceed to take further action on the basis of the preliminary notification issued u/s 28(1) of the Act in this case. It is his contention that Sub-section (2) of Section 28 of the Act requires that notice should be issued among others to the owner of the lands or where the owner is not the occupier on the occupier of the lands requiring them to show cause within thirty days from the date of service of notice as to why the lands should not be acquired. He submitted that the notice contemplated by Sub-section (2) of Section 28 is required to be served simultaneously with the publication of the preliminary notification contemplated by Sub-section (1). He further submitted that it is impossible now for the authorities to comply with the mandatory requirement of serving notice on the appellants simultaneously with the publication of the preliminary notification as the publication has been effected long back i.e. on 12-3-1981, and that therefore no useful purpose would be served by reserving liberty to the authorities to issue a fresh notice under Sub-section (2) of Section 28 of the Act and to proceed with the acquisition proceedings. In other words, his contention is that what is really permitted by the Learned Single Judge is an impossibility and that therefore we should interfere in this case and quash the preliminary notification as well.

4. Let us first examine as to whether Sri Ramachandra is right in contending that the notice contemplated by Sub-section (2) of Section 28 of the Act is required to be served simultaneously with the publication of the preliminary notification under Sub-section (1) of Section 28. For the sake of convenience, we propose to

extract Section 28 of the Act and it reads as follows :

"28. ACQUISITION OF LAND :

(1) If at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification give notice of its intention to acquire such land.

(2) On publication of a notification under Sub-section (1) the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

(4) After orders are passed under Sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section(1), a declaration shall by notification in the official Gazette, be made to that effect.

(5) On the publication in the official" Gazette of the declaration under Sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

(6) Where any land is vested in the State Government under Sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with an order made under Sub-section (5), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary.

(8) Where the land has been acquired for the Board, the State Government, after it has taken possession of the land, may transfer the land to the Board for the purpose for which the land has been acquired"

Sri Ramachandra contended that the expression "on publication of a notification under Sub-section (1)" in Sub-section (2) of Section 28 suggests that the service of notice contemplated by Sub-section (2) of Section 28 is required to be effected simultaneously with the publication of the preliminary notification. We find it difficult to accede to this contention. Sri Ramachandra called in aid the provisions of Sub-section (5) of Section 28 wherein a similar expression "on the

publication" is used. What is provided by Sub-section (5) is that on the publication in the official Gazette of the declaration under Sub-section (4) the land shall vest absolutely in the, State Government free from all encumbrances. The context in which the expression "on the publication" is used in Sub-section (5) makes it impossible for anyone to contend that the consequences of vesting contemplated therein can take place on any day other than the day on which the declaration is published in the official Gazette. But the context in Sub-section (2) is otherwise. As Sub-section (2) contemplates service of notice on the owner or where the owner is not the occupier on the occupier of the land and on all such persons known or believed to be interested therein, such notice is required to be served on publication of a notification under Sub-section (1) of Section 28. The context makes it clear that the expression "on publication of a notification"" conveys the meaning that the service of notice contemplated is to be effected after the publication of the notification under Sub-section (1). No imperative language has been used to justify an inference that simultaneous service of notice is contemplated. Sri Ramachandra tried to derive sustenance to his argument from the decision of the Supreme Court reported in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, . That was a case in which the provisions of Section 4(I) of the Land Acquisition Act, 1894, came up for consideration. Section 4(1) of the said Act contemplates publication of a preliminary notification in the Gazette. It further, requires the Collector to cause public notice of the substance of the notification to be published at convenient places in the locality. The question that came up for consideration in that case was as to whether the publication at convenient places in the locality is required to be effected simultaneously with the publication of the preliminary notification u/s 4(1). The Supreme Court pointed out that it has to be simultaneous having regard to the fact that the persons who have been given a right to file their objections are required to file their objections within thirty days from the date of the publication of the preliminary notification u/s (1) in the Gazette and not from the date on which the substance of the" notification is published in the locality. But under the Act with which we are concerned the period of thirty days for filing objections commences from the date of service of notice under Sub-section (2) of Section 28 of the Act and not from the date of the publication of, the preliminary notification under sub-section (1) of Section 28. As the provisions of the Land Acquisition Act, 1894, are not in perimeter with the provisions of the Act with which we are 1. *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, concerned, the principle laid down by the Supreme Court cannot come to the aid of Sri Ramachandra. Hence it follows that if the service of notice u/s 28(2) is not simultaneous with the publication of the preliminary notification u/s 28(1) of the Act, the persons likely to be affected will not be prejudiced in the matter of filing their objections as they can always file their objections within thirty days from the date on which the notice u/s 28(2) of the Act is served on them. We therefore find no good reason for holding that the service of notice contemplated by Sec 28(2) of the Act must be effected simultaneously with the publication of the preliminary notification u/s 28(1) of

the Act.

5. Though we do not accede to the argument of Sri Ramachandra that the service of notice u/s 28(2) of the Act should be simultaneous with the publication of the preliminary notification, we must add that the service of notice contemplated by Section 28(2) should be effected as expeditiously as possible from the date of the publication of the preliminary notification u/s 28(1) of the Act. If there is inordinate delay in the service of notice u/s 28(2) and such delay causes considerable prejudice to the party concerned, the said factor can be taken into consideration having regard to the relevant facts and circum-stances of the case for giving appropriate relief to the party complaining of such inordinate delay. Sri Ramachandra, however, contended that by permitting the authorities now to serve notice u/s 28(2) of the Act we will be enabling the authorities to effect such service more than three years after the publication of the preliminary notification and that therefore great prejudice would be caused to the appellants. His argument that the improvements made from the date of publication of the preliminary notification cannot be taken into account for the purpose of determining the compensation payable to the appellants need not detain us as it is not the case of the appellants that any improvement as such have been made by them from the date of the publication of the preliminary notification.

6. It was next contended by Sri Ramachandra that prejudice would be caused to the appellants as the market value for the purpose of payment of compensation is required to be determined with reference to the date of the publication of the preliminary notification viz. 12-3-1981 even though proper service of notice contemplated by Section 28(2) of the Act would take place nearly three years after the publication of the preliminary notification. He submitted that the rise in prices from 1981 onwards can be taken judicial notice of, and if the preliminary notification is also quashed and a fresh preliminary notification is permitted to be published the appellants would be entitled to the benefit of the rise in prices between 12-3-1981 and the publication of the fresh preliminary notification. He submitted that the order of the Learned Single Judge has denied the appellants the benefit of the rise in prices and that therefore the facts of this case justify interference with the preliminary notification as well. But, it has to be pointed out that though the preliminary notification was published on 12-3-1981 the final notification came to be published within a short period namely on 25-6-1981. The Writ Petition itself was presented on 3-8-1981. Substantial time no doubt has been spent having regard to the pendency of the Writ Petition and this appeal from 3-8-1981 till this date. So far as this period is concerned, Sri Sridhar Hiremath appearing for the second respondent submitted that the same should not be taken into account. In support of this submission he relied upon the observations of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*,

He invited our attention in particular to paragraph-13 which reads :-

"13. As regards the second contention that there was inordinate delay in finalizing the acquisition proceedings and that the Appellants and Writ Petitioners were deprived of the appreciation in value of the land in which they were interested, it may be noted that about 6,000 objections were filed u/s 5A by persons interested in the property. Several Writ Petitions were also filed in 1966 and 1967 challenging the validity of the acquisition proceedings. The Government had necessarily to wait for the disposal of the objections and Petitions before proceeding further in the matter. Both the Learned Single Judge as well as the Division Bench of the High Court were of the view that there was no inordinate delay on the part of the Government in completing the acquitting proceedings. We are not persuaded to come to a different conclusion ".

In that case the preliminary notification was published on 13-11-1959 and the objections were filed between 1959 and 1961 and the final notification was published on 18-3-1966. It therefore clear that the final notification was issued more than six years after the preliminary notification, was published. Their Lordships came to the conclusion that having regard to the fact that there were 6000 objections to be considered and that several Writ Petitions challenging the acquisition proceedings were pending, the said period cannot be regarded as indicating considerable delay in completing the acquisition proceedings. In other words, Their Lordships did not consider having regard to the facts of that case the period of nearly six years as justifying interference with the entire acquisition proceeding including the preliminary notification on the ground of prejudice. The period during which the Writ Petition challenging the acquisition proceedings was pending ought not to be taken into consideration as is clear from the observations of the Supreme Court in *Aflatoon's* case. Hence it follows that the period from the presentation of the Writ Petition on 3-8-1981 till the disposal of this case cannot be taken into account for the purpose of finding out as to whether the appellants can be regarded as having suffered prejudice on account of delay. If this period is excluded from consideration there would not be considerable delay justifying an inference of prejudice as contended by Sri Ramachandra. The question as to whether the entire acquisition proceedings including the preliminary notification should be quashed under Article 226 of the Constitution on the ground of delay in serving notice u/s 28(2) of the Act, has to be examined with reference to the facts of the particular case, and no hard and fast rule can be laid down in this behalf. The Court has to take into consideration all relevant factors for the purpose of assessing if any prejudice is caused, the extent of the prejudice and the reasons or justification for the delay. It is only after considering all relevant factors that the Court has to decide as to whether having regard to the delay in the matter of service of notice great prejudice has been caused to the party justifying interference with the preliminary notification as well. As on the facts of this case we are not satisfied that the delay is considerable, it is not possible to take the view that the appellants can be regarded as having suffered great prejudice. That being the position we are in agreement with the view taken by the Learned Single Judge that the preliminary

notification issued in this case did not call for interference. If the authorities do not serve notice contemplated by subsection(2) of Section 2 of the Act expeditiously it would however be open to the appellant to make a grievance about the same and to call in question the preliminary notification if prejudice is caused to them on account of such delay. It is therefore in the interest of the respondents themselves to take immediate steps for serving the appellants with the notice contemplated by Section 28(2) of the Act.

7. For the reasons stated above, this appeal fails and is dismissed. In the circumstances of the case, parties shall bear their respective costs.