

(1991) 03 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No"s. 9596, 9597, 9598, 19937 to 19939 of 1986

Mohammed Quadri Bagadad Devara

APPELLANT

Vs

Special Deputy Commissioner

RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 5 A, 9
Waqf Act, 1954 — Section 58, 58 (1)

Citation : (1991) ILR (Kar) 1526 : (1991) 1 KarLJ 506

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : R.L. Goulay, for the Appellant; Bharathi Nagesh, HCGP for R-1 and R2, D.L.N. Rao, for R-3 and B.G. Sridharan, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In all those petitions under Articles 226 and 227 of the Constitution, the petitioners have sought for quashing the Notification dated 18-7-1981 bearing No. LAQ/I/CR.74/80-81 published in the Gazette dated 13-8-1981 issued under Sub-section (1) of Section 4 of the Land Acquisition Act as amended by Karnataka Act No. 17/61 (hereinafter referred to as the Act) and also the Notification bearing No. RD 339 AQD 84 dated 27-3-1984 published in the Official Gazette dated 19-4-1984 issued under Sub-section (1) of Section 6 of the Act. The lands in question are acquired for formation of New Market Yard II Stage between Amargof and Bhairidevarkoppa by the Hubli Agricultural Produce Market Committee. The petitioners claim to be the persons interested in the land in question which are as follows:

1. Block 257/1 of Bhairidevarkoppa which is described by the petitioner in W.P.9597/1986 as Plot No. 1; Block 257/1 A;
2. Block 257/1 which is described by the petitioner in W.P.9598/1986 as Plot No. 3 Block 257/1A of Bhairidevarkoppa;

3. Block No. 257/1, measuring 1 acre 18 guntas of Bhairidevarkoppa is concerned in W.P.No. 9596/1986;

4. Block No. 267 measuring 2 acres 37 guntas; Block No. 275 measuring 1 acre 25 guntas and Block No. 276 measuring 1 acre 21 guntas, of Bhairidevarkoppa village are concerned in W.P.No. 19937 to 19939 of 1986.

2. It is contended on behalf of the petitioners that the Notification issued under Sub-section (1) of Section 4 of the Act has not been published as required by Sub-section (1) of Section 4 of the Act; that no individual notice is served upon the petitioners; therefore, they could not file the objections and as such the acquisition proceeding is vitiated.

It is also contended on their behalf that no notice was issued before the Award was passed nor any notice was served upon them after the Award is passed; that the lands in question are not required for the purpose for which they are acquired; that there are other lands available which have been left out as those lands belonged to influential persons and the other lands are acquired.

3. The learned Government Pleader appearing for the State and the Special Deputy Commissioner has filed the statement of objections and has also produced the records,

4. We may point out at the outset, that the contention of the petitioners that individual notices ought to have been served after the publication of the Notification under Sub-section (1) of Section 4 of the Act is not tenable.

5. Sub-section (1) of Section 4 of the Act in so far it relates to service of individual notices is concerned, it has been held by the Supreme Court and also by a Division Bench of this Court that it is not mandatory that individual notices should be served. Therefore the fact that individual notices are not served upon the petitioners pursuant to the publication of the Notification u/s 4(1) of the Act in the Official Gazette cannot be held to vitiate the proceeding in question. (See: State of Gujarat Vs. Panch of Nani Hamam's Pole and Others, and Gangamma Vs. State of Karnataka,

6. Regarding public notice of the substance of the Notification issued under Sub-section (1) of Section 4 of the Act, in the statement of objections, it is stated thus:

"2. The main contention of the petitioners is that they have not been served with notices and hence, they did not file their objections and accordingly, they were not heard and they did not participate in the enquiry. It is submitted, notification u/s 4(1) was issued and their names were also shown in the notification. Preliminary notification is dated 18-7-1981 and was published in the Gazette on 13-8-1981. Thereafter, notices have been served to all petitioners calling for their objections within 30 days and also to all interested persons. It is pertinent to state at this stage, that petitioner in W.P.No. 9597/1986 has refused to take notice and the petitioners in W.P.Nos. 9596 and 9598 were not found in the

village. Hence notices were affixed on a conspicuous place in the land and thereafter a panchanama was also drawn on 31-8-1981. As far as notice to petitioners in W.P.19937 to 39/1986 is concerned, the notices were served to them. Apart from this, notice was also published on the Village Chavadi on 30-8-1981 as required under the Land Acquisition Act. Thus, notice according to law has been served. Petitioners have failed to give their objections in the prescribed time. Hence, it was presumed that they do not have any objections whatsoever over the land acquisition. Thus, contention of petitioners that they have not been served with notices is not correct and on this ground itself the petitions are liable to be dismissed, for suppressing the vital facts."

7. In addition to this, the learned Government Pleader has also made available the records.

The records reveal that the public notice of the substance of the Notification was caused to be made in the village at Bhairidevarkoppa and Amargol. A Mahazar is also drawn to that effect. The records also further show that individual notices also have been served either personally or affixing the same to the doors of the persons interested.

8. It is not the case of the petitioners that the public notice of the Notification issued under Sub-section (1) of Section 4 of the Act was not otherwise caused to be published as required by Sub-section (1-A) of Section 4 read with Rule 3 of the Rules. No specific contention in this regard has been taken. Therefore on looking into the records of the case and in the light of the statement of objections filed by the respondents 1 and 2 viz., the State and the Special Deputy Commissioner, the contention raised by the petitioners has to be rejected. It is accordingly rejected.

9. The public notice of the substance of the Notification was caused to be published as per Sub-sections (1) and (1-A) of Section 4 of the Act, as it stood prior to the coming into force of Central Act 58/1984. As such the petitioners were required to file their objections. It is not the case of the petitioners that they filed objections within the period allowed by the notice. Thus, the petitioners have not filed any objections to the acquisition.

10. The contention of the petitioners that the notice has not been issued as required by Section 9 of the Act cannot be entertained in these petitions because in none of the petitions, the petitioners have challenged the validity of the Award passed in the case. Therefore, the contention is left open for consideration as we are not required to go into the validity of the Award.

11. The acquisition is for formation of the Market Yard as already pointed out. There is no individual interest involved. It is not the case of the petitioners that the area acquired does not form a compact area and in between the area acquired private lands have been left out and the area acquired does not form a compact block.

The contention of the petitioner that some lands belonging to the other persons have been left out because those persons are influential does not gain ground. It would have been considered as tenable provided the area acquired did not form a compact block. Therefore, the contention that the acquisition is vitiated because some of the lands are left out is rejected as untenable.

12. It is contended by Sri D.L.N. Rao, learned Counsel appearing for the Wakf Board that it is necessary to issue individual notice as provided by Section 58 of the Wakf Act. Section 58 of the Wakf Act reads thus:

"58. Proceedings under the Land Acquisition Act, 1984 - (1) If in the course of proceedings under the Land Acquisition Act, 1894, (1 of 1894), it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by the Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice."

The provisions of Sub-section (1) of Section 58 of the Wakf Act and the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act deal with the same topic. Therefore they are to be read and construed harmoniously in such a way that one does not conflict with the other. The object of Section 58 of the Wakf Act is to ensure that in the case of acquisition of Wakf property, a notice of such acquisition is served by the Collector on the Wakf Board. It does not state that such notice should be served before the Enquiry u/s 5A of the Act is held. The wordings of Sub-section (1) of Section 58 of the Act make it clear that if it appears to the Collector before an Award is made that the property under acquisition is Wakf property a notice of such acquisition shall be served by the Collector on the Wakf Board and further proceedings are to be stayed to enable the Wakf Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice. Therefore, it is not possible to read Sub-section (1) of Section 58 of the Wakf Act as providing that a personal notice u/s 4(1) of the Act shall be served on the Wakf Board. The scope of Sub-section (1) of Section 4 of the Act, as already pointed out, has been interpreted by the Supreme Court in *Panch of Nani Hamam's Pole's* case that the provisions as to issuing of individual notices contained in Sub-section (1) of Section 4 of the Act are not mandatory and non-compliance with that provision does not invalidate the acquisition. The object of Section 58(1) of the Act is to ensure that the Wakf Board is served with the notice before the Award is passed. Therefore it intends to enable the Wakf Board to put forth the claim for compensation. It does not mean that the Wakf Board cannot file the objections to the acquisition as a person interested in the land proposed to be acquired. It is open to it to file such objections just as any other person interested in the land files his objections. Therefore, we are of the view that Section 58(1) of the Wakf Act, as it stands today, without the amendment introduced by Central Act 69/1984 which had not yet come into force, cannot be

interpreted to mean that in the case of Wakf property individual notice should be served on the Wakf Board u/s 4(1) of the Act. If the interpretation placed by Sri D.L.N. Rao, learned Counsel for the Wakf Board is accepted, it leads to an anomalous as well as to an incongruous situation, inasmuch as, if the property proposed to be acquired is a private property of a citizen, issuing of personal notice is not mandatory and whereas if it is a Wakf property issuing of individual notice is mandatory. It is not possible to hold that the Parliament when it enacted Section 58 of the Wakf Act intended such a consequence to ensue. Therefore, we have already pointed out that Section 58(1) of the Wakf Act and Section 4(1) of the Act are to be read and construed harmoniously. However, we make it clear that as per the provisions contained in Section 58(1) of the Wakf Act, if it appears to the Collector or the Deputy Commissioner or the Assistant Commissioner, as the case may be, exercising the power under the Act before an Award is passed that the property under acquisition is a Wakf property it shall have to issue notice to the Wakf Board, and stay the proceedings to enable the Wakf Board to appear and plead as a party to the proceedings at any time within three months from the date of receipt of such notice. This obviously has a reference to the notice to be issued u/s 9 of the Act.

13. In the instant case whether notice u/s 9 of the Act was issued to the Wakf Board or not is not relevant for deciding these Writ Petitions. Hence, we do not go into that question. Consequently, the contention raised by Sri D.L.N. Rao, learned Counsel for the Wakf Board is rejected. No other contention is urged.

14. For the reasons stated above, the Writ Petitions fail and the same are dismissed.