

(1985) 11 KAR CK 0025

In the Karnataka High Court

Case No : W.A. No's. 902 to 911, 1124 and 1125 of 1984

M.S. Jaffer Sheriff

APPELLANT

Vs

City Improvement Trust Board

RESPONDENT

Date of Decision : 08-11-1985

Acts Referred:

City of Mysore Improvement Act, 1903 — Section 15, 15 (1), 16, 16 (1), 16 (2)
Land Acquisition Act, 1894 — Section 4, 4 (1)

Citation : (1990) ILR (Kar) 3746

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

Bench : Division Bench

Advocate : R.J. Babu and Shivaraj Patil, for the Appellant; Manjunath, for B.T. Hedge, for the Respondent

Judgement

Rama Jois, J.—These 12 Writ Appeals are presented against the Common Order rendered by a Single Judge in Writ Petition No. 2545A of 1973 and connected 11 Writ Petitions dismissing the Writ Petitions in which the petitioners had challenged the acquisition of a building, situate in the City of Mysore Under the provisions of the City of Mysore Improvement Act 1903 ("the Act" for short).

2. Briefly stated the facts of the case are these: Building property bearing Municipal numbers 1590 to 1603 situate near Devaraja Market in the City of Mysore originally belonged to one Sowcar Channaiah. The property was sold in execution of a decree at the instance of the Syndicate Bank which was the decree-holder. The said property was purchased in Court auction by the petitioners in the name of one of the petitioners, and, thereafter he executed separate sale deeds in favour of other petitioners. A Preliminary Notification under Sub-section (1) of Section 16 of the Act was issued by the Board on 17-9-1975. It was published in the Official Gazette on 6-11-1975. In the Notification the name of Sowcar Channaiah was shown as the owner of the property sought to be acquired, though the petitioners had purchased the property about 2 years earlier to the Preliminary Notification. Final Notification

acquiring the property was issued u/s 18 of the Act on 16th July 1977. Thereafter, notices were served on the petitioners on 6-9-1977 in connection with the making of the Award. According to the petitioners, they became aware of the acquisition only when the abovesaid notices were served. Thereafter, they presented the Writ Petitions before this Court questioning the legality of the acquisition. The Writ Petitions were dismissed by the learned single Judge by Common Order dated 6th March, 1984. Aggrieved by the said Order, the appellants have presented these Writ Appeals.

3. Three questions arise for consideration in these appeals:

I. Whether the petitioners were entitled to the issue of notice under Sub-section (2) of Section 16 of the Act and the non-issue of notice renders the acquisition invalid?

II. Whether service of notice on the person whose name was shown in the revenue records as the owner of the property was mandatory and if so whether notice had been issued to the person whose name was shown in the revenue record and if not whether the Final Notification becomes invalid for non-compliance with the requirements of Section 16(2) and 16(3) of the Act?

III. Whether even if the mandatory provisions of Sub-sections (2) and (3) of Section 16 was not complied with, the preliminary Notification is also liable to be set aside?

4. The first question was considered by the learned Single Judge and the contention of the petitioners on the said question was negatived. The view taken by the learned Single Judge is based on language of Sub-section (2) of Section 16. Sub-section (2) of Section 16 of the Act reads:

2. During the thirty days next following the day on which such notification is published in the Mysore Gazette, the Board shall serve a notice on every person whose name appears in the assessment list of the Municipality or local body concerned or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme, or in regard to which the Board proposes to recover a betterment fee, stating that the Board proposes to acquire such building or land or to recover such betterment fee for the purpose of carrying out an improvement scheme and requiring an answer within thirty days from the date of service of the notice, stating whether the person so served dissents or not, to such acquisition of the building or land or to the recovery of such betterment fee, and if the person dissents, the reasons for such dissent."

The above provision makes it obligatory for the Board to issue individual notice to the person whose name appears in the assessment list of the Municipality or local body , concerned or in the land revenue records, as the case may be, in respect of the lands for the acquisition of which the Preliminary Notification was issued. In the present case, admittedly, the name of Sowcar Channaiah

continued to be entered in the Municipal Assessment List though he died some time in the year 1971 and the petitioners had purchased the property in the year 1973, for the reason the petitioners had not got their names entered in the revenue records of the Municipal Council. Therefore, as rightly held by the learned Single Judge, the Board was under no obligation under Sub-section (2) to issue notice to the appellants. Therefore, the first point has to be answered against the appellant agreeing with the view taken by the learned single Judge.

5. The second question arises in view of the contention urged by the learned Counsel for the appellants that it was obligatory for the Board to have served the notice on the person whose name was entered in the Municipal Records and even if that person was not available for service of notice, it was obligatory for the Board to comply with the provisions of Sub-section (3) of Section 16. The grievance of the appellants is that this contention was urged before the learned single Judge, but was not considered. Counsel for the respondent also does not dispute that the point was urged before the learned single Judge. Hence, it has got to be considered by us.

Sub-section (3) of Section 16 reads:-

"(3) Such notice shall be signed by, or by the order of, the Chairman and shall be served-

(a) by delivery of the same personally to the person required to be served, or if such person is absent or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the land or building; or

(b) by leaving the same at the usual or last known place of abode or business of such person as aforesaid; or

(c) by post addressed to the usual or last known place of abode or business of such person."

A combined reading of Sub-sections (2) and (3) gives no room for doubt that it was obligatory for the Board to serve the notice on the person whose name was shown as the owner in the Municipal Record and if for any reason the said person was not available, the service must be effected in any manner provided in clause (a) or (b) or (c) of Sub-section (3) of Section 16 of the Act. The only record available as regards service of notice, which is said to have been produced at the time of hearing of the Writ Petitions, is produced along with the records of the Writ Appeals. It reads:

It may be seen from the contents of the above notice that it was addressed to Sowcar Channaiah who was no longer alive. The shara made below the said notice, however, is that the person to whom notice was addressed refused to receive notice and therefore it was affixed to the door. Firstly the "shara" made is factually incorrect because admittedly Channaiah to whom the notice was addressed was not alive. He died five years before the date of the said notice. Further it is not clear as to on which door the notice was affixed. If the shara was

to the effect that when the notice was sought to be served on the members of the family of late Sowcar Channaiah at their residence they refused to receive the notice and therefore the notice was affixed on their residential house, it would have been possible for the Board to contend that notice had been served as provided in clause (b) of Section 16(3) of the Act.

6. The next point for consideration is: Whether the appellants can contend that the acquisition is invalid for non-compliance with Sub-sections (2) and (3) of Section 15 of the Act? As the petitioners had failed to get their names entered in the revenue records, as pointed out earlier, they could not complain that notice had not been served on them. But, as purchasers of the property, they are entitled to say that unless the notice had been served on their Vendors the further proceedings in the acquisition are invalid. If the Board had served the notice on the vendors, it is reasonable to presume that the Vendors would send the notice to the petitioners who have purchased the property and/or would have informed the appellants-petitioners, about it. Therefore, the Board in view of the mandatory provisions of Sub-sections (2) and (3) of Section 16 could not have proceeded further with the acquisition without serving notice on the owner in terms of Sub-sections (2) and (3) of Section 16 of the Act. The petitioners being purchasers of the said property with or without their Vendor joining as a petitioner, are entitled to challenge the acquisition on the ground of non-compliance of Sub-sections (2) and (3) of Section 16 of the Act.

7. Learned Counsel for the Board, however, submitted that the Judgment of the Supreme Court in *M. Maniklal Vs. The State of Mysore and Others*, supports the contention of the Board, that the non-service of notice on vendors is no ground to invalidate the acquisition. The said decision far from supporting the contention of the Board supports the contention urged for the appellants. In the said case neither the names of persons who had become owners of the property acquired nor even the names of their Vendors had been shown in the Preliminary Notification, as owners, for, their names had also not been entered in the revenue records. But this Court found that name of vendor of the vendor who sold the property to the petitioners therein had been shown in the revenue records and their names had been shown in the Preliminary Notification and therefore, the provisions of the Land Acquisition Act were complied with. The very basis on which it is said in the said Case that the provisions of law was complied with constitute the basis to say that the same has not been complied with in the present case for the reason the names of the vendors of the petitioners had been entered in the Municipal Records and notices were not served on them as required under the Special provision incorporated in Sub-sections (2) and (5) of Section 16 of the Act. Therefore, the second question has to be answered in favour of the appellants.

3. The third question for consideration is whether on account of non-compliance with the provisions of Sub-sections (2) and (3) of Section 16 of the Act, the Final Notification alone should be quashed or the Preliminary Notification is also liable

to be quashed? In support of the contention that the Preliminary Notification is also liable to be quashed, learned Counsel for the appellants relied on the following decisions:

Khub Chand and Others Vs. State of Rajasthan and Others,

Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others,

State of Karnataka Vs. Kempaiah and Another,

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In all these decisions, it has been held that non-publication of the Preliminary Notification u/s 4(1) of the Land Acquisition Act in the locality, which is a mandatory requirement, renders the Preliminary Notification invalid. Relying on the above decisions, learned Counsel contended that in the present case also, as the provisions of Sub-section (2) of Section 16 of the Act had not been complied with the Preliminary Notification is liable to be quashed.

9. In order to appreciate the contention, it is necessary to consider the different sub-sections of Section 16 of the Act. Sub-section (3) of Section 16 has already been extracted earlier. Section 15(1) of the Act reads:

"16(1) Upon the completion of an improvement scheme, the Board shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein and naming a place where particulars of the scheme, a map of the area comprised therein and a statement specifying the land which it proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee may be seen at all reasonable hours; and shall -

(a) Communicate a copy of such notification to the President of the Municipal Council who shall within thirty days from the date of receipt thereof, forward to the Board, for transmission to Government as hereinafter provided, any representation which the Municipal Councillors may think fit to make with regard to the scheme;

(b) Cause a copy of the said notification to be published during three consecutive weeks in the Mysore Gazette and posted up in some conspicuous part of their own office, the Deputy Commissioner's office the office of the Municipal Council and in such other places as the Board may consider necessary."

(Underlining by us)

Section 16(1) of the Act corresponds to Section 4(1) of the Land Acquisition Act. In particular, the substance of clause (b) of Section 16(1) is similar to Sub-section (1) of Section 4 of the Land Acquisition Act. Sub-section (1) of Section 4 of the L.A. Act requires not only the publication of the Preliminary Notification in the Official Gazette but also the issue of public notice about it in the locality. Clause (b) of Section 16(1) of the Act requires the publication of the Preliminary Notification in the Official Gazette during three consecutive weeks and further

provides that it shall also be notified in some conspicuous part of the office of the Trust Board, office of the Deputy Commissioner and the office of the Municipal Council and in such other places as the Board may consider necessary. The requirement of publishing the Notification in the Official Gazette is common to both Sub-section (1) of Section 4 of the L.A. Act and clause (b) of Section 13(1) of the Act. As far as the additional requirement of publication is concerned, Section 4(1) of the L.A. Act provides for publication in the locality whereas clause (b) of Section 13(1) of the Act provides for publication in the locality, namely, office of the Trust Board, Office of the Deputy Commissioner, the office of the Municipal Council and in such other places as the Board may consider necessary.

10. In the present case, there is no dispute that Section 16(1)(b) has been complied with. It is not even the case of the petitioners that the provisions of Section 16(1)(b) had not been complied with. Therefore, the crucial question that arises for consideration is whether non-issuing of individual notice as required under Sub-section (2) of Section 16 of the Act renders the Preliminary Notification invalid.

11. Learned Counsel for the appellants submitted that the requirement of publication u/s 4(1) of the L.A. Act is equivalent to the publication required under clause (b) of Section 16(1) of the Act and also the individual notice required to be given under subsection (2) of Section 16 of the Act, and if any one of them had not been complied with, the Preliminary Notification is liable to be set aside having regard to the principles laid down in the aforesaid decisions.

12. The argument, though attractive at first sight, on a careful scrutiny, is devoid of merit. The publication of the Preliminary Notification as required u/s 4(1) of the L.A. Act or as required under clause (b) of Section 16(1) of the Act is mandatory. The publication of the Notification as provided therein gives the jurisdiction to the acquiring authorities to proceed further with the acquisition of the land. As pointed out by the Supreme Court in the case of Khoob Chand and other cases, if such a mandatory requirement is not complied with, the acquisition proceedings would be void ab initio. Therefore, no further steps could be taken pursuant to such Notification. A careful reading of the provisions of Section 16 of the Act would indicate that clause (b) of Sub-section (1) of Section 13 of the Act prescribes the mandatory requirement of publishing the Preliminary Notification which corresponds to Sub-section (1) of Section 4 of the L.A. Act and what is provided in Sub-section (2) of Section 16 of the Act is a procedural requirement which requires the issue of notice to an individual within 30 days from the date of publication of the Notification u/s 13(1)(b). The said provision gives 30 days time to the concerned person to file his objection from the date on which the notice is served. If for any reason, in a given case, after the publication of Notifications in terms of clause (b) of Sub-section (1) of Section 16 of the Act, on account of practical difficulties, like not being able to trace the owner, the notice is not served on the individual within 30 days from the date of publication under clause (b) of Sub-section (1) of Section 16 of the Act and the

notice is served sometime after 30 days, then if the contention of the petitioners is correct the Preliminary Notification would have to be regarded as invalid. We do not think that that is the result which would be brought about by non-compliance with the provisions of Sub-section (2) of Section 16 of the Act. The object of individual notice required to be given u/s 16(2) is to give the party concerned 30 days time to file his objection. If the notice is served after thirty days from the date of publication of Preliminary Notification, still the party concerned would have 30 days time to file his objection. Therefore, while the service of notice is mandatory its service within 30 days cannot be regarded as mandatory. In this behalf the ratio of the decision in *The Remington Rand of India Ltd. Vs. The Workmen*, in which the Supreme Court held that publication of an award within thirty days as provided in Section 17(1) of the Industrial Dispute Act is not mandatory and that an award published after thirty days is valid and enforceable after thirty days after its publication.

13. Later service of notice u/s 16(2) causes no injury to the party because he will be entitled to file his objections within 30 days from the date of receipt of notice by him. For these reasons, in our view Sub-section (2) of Section 16 of the Act is a matter of procedure and non-compliance with that provision only renders the further proceedings, invalid and would have no effect on the Notification which is validly issued and published u/s 16(1)(b) of the Act, after preparing a scheme in terms of Sections 14 and 15 of the Act. For these reasons we are unable to agree that the Preliminary Notification is also liable to be quashed.

14. Learned Counsel for the appellants submitted that if Preliminary Notification is allowed to remain the compensation payable would be calculated on the basis of the market value as on that date, and therefore, it should be regarded as invalid. In our view that position in law is no ground to strike down the Preliminary Notification which is valid. In this behalf it is also pertinent to point out, that it is on account of the failure on the part of the Board to serve notice in term of Section 16(2) acquisition has been delayed, and on account of the same the appellants have not been put to any inconvenience as they have been in possession of the property and are doing their business.

15. Learned Counsel for the Board submitted that the learned Single Judge had also dismissed the Writ Petitions on the ground of delay and that we should confirm his order atleast on the said ground.

16. It is seen from paragraph 30 of the order of the learned Judge that the appellants-petitioners came to know of the acquisition proceedings only in September 1977. The Writ Petitions have been filed in February and March 1978, which means Writ Petitions have been filed within 5 or 6 months from the date of knowledge of the Final Notification which cannot be regarded as inordinate delay warranting the dismissal of the petitions in limine. The learned Judge however, proceeded to state that there was delay of more than two years in presenting the Writ Petitions and the same was not explained. It is true that the Preliminary Notification was issued on 25-9-1975 but the Final Notification was issued only

on 16-7-1977. The delay between that date and September 1977 has been explained by the petitioners by stating on oath that they came to know of the acquisition proceedings only when notice were served in September 1977 in connection with the making of the Award. It is not the case of the Board that the petitioners were aware of the acquisition proceedings even prior to the said date. No averment is made and no material is produced on behalf of the Board to show that the appellants-petitioners were aware of the acquisition proceedings any time earlier to September 1977. In the absence of any material to show that the petitioners had the knowledge of the acquisition proceedings prior to September 1977, it cannot be said that the petitioners have not explained the delay in presenting the petitions. From the date of knowledge of the acquisition proceedings by the petitioners, they have presented the Writ Petitions within a reasonable time. Further, the fact remains that the petitioners continued to be in possession of the property till the filing of the Petitions and thereafter also, in which they are doing their business. In these circumstances we do not agree that there was any justification to dismiss the Writ Petitions on the ground of delay.

17. The last question for consideration is as to whether the Board should issue a notice either to the petitioners or to the original owners in terms of Subsection (2) of Section 18 of the Act. Having regard to the fact that the petitioners are now fully aware of the acquisition proceedings, we consider that it is inexpedient that the Board should be directed to issue a notice to the petitioners-appellants once again. It is sufficient to direct the Board to consider the objections if any filed by the petitioners within 30 days from today.

In the result, we make the following order:

(i) The Writ Appeals are allowed.

(ii) In reversal of the order made by the learned Single Judge, the Writ Petitions are allowed.

(iii) The impugned Final Notification dated 16-7-1977 in so far it relate to the building of which the appellants (petitioners) are the owners, is set aside. The Preliminary Notification dated 25-9-1975 (Exhibit-H) shall remain undisturbed.

The Board shall be at liberty to proceed further from the stage at which the illegality was committed, after considering objections to the acquisition, of the appellants, if filed within thirty days from today.

ORDER ON ORAL APPLICATION:

After the pronouncement of the Judgment, though the appeals have been allowed, learned Counsel for the appellants made an oral application under Article 134A of the Constitution. Learned Counsel submitted that the appellants are aggrieved by the view taken by us that the Preliminary Notification is not liable to be quashed in view of the difference in language between Section 16 of the Act and Section 4 of the L.A. Act. In our opinion, no substantial question of law arises from our Judgment which requires to be considered by the Supreme

Court. The Certificate prayed for is refused.