

(1979) 09 KAR CK 0007
In the Karnataka High Court
Case No : WP 6041/75

Muninanjappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 14-09-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 48(1)

Citation : (1980) 1 KarLJ 191

Hon'ble Judges : Malimath, J

Judgement

1. The Notification under S. 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) as amended by the Karnataka Act No 17 of 1961 (hereinafter referred to as "the Act"), was issued on 31-12-1970, notifying the acquisition of the land comprised in sy. No. 52/12 of Kethamaranahalli, Yeshavanthapura Hobli, Bangalore North Taluk. The final Notification in that behalf came to be issued on 30-6-1971. Thereafter, by a Notification dated 11-10-1973, published in the Karnataka Gazette dated 1-11-1973 as per Ext. "D", under sub-sec (1) of S. 48 of the Act, the State Government withdrew from acquisition of the land in respect of which a final Notification was issued on 30-6-1971, under sub-section (1) of S. 6 of the Act. The petitioner, who claims to be the owner of the land in question, wants the respondents to take further steps under the Act to make an award, pay compensation amount, and to take all necessary steps for vesting the land in question in the State in accordance with law. The petitioner's case is that the possession was taken by the second respondent even before the final Notification was issued in this case. The contention of the petitioner is that the State Government is not competent to withdraw from acquisition of the land under sub-section (1) of S. 48 of the Act, as possession of the land has already been taken by the State Government.

2. Sub-section (1) of section 48 of the Act reads thus:

"Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been

taken."

It is not disputed by the respondents that they have already made use of the land in question for the purpose of laying road. It is in view of this stand taken by the respondents, that it was contended by Sri. K.V. Narayanappa, learned counsel for the petitioner, that the respondents are not entitled to withdraw from acquisition of the land in question under sub-section (1) of S. 48 of the Act. S. 36 of the Act is admittedly not relevant for the purpose of disposal of this case. Under sub-section (1) of S. 48 of the Act, the State Government is at liberty to withdraw from acquisition of any land, of which possession has not been taken. As the possession of the land in question, is already taken by the State Government, it was maintained by Sri. Narayanappa, that the State Government cannot invoke the provisions of sub-section (1) of S. 48 of the Act to withdraw from the acquisition of the land in question.

3. Sri. A. Jagannatha Shetty, learned counsel appearing for the second respondent, however, maintained that taking of the possession contemplated by sub-section (1) of S. 48 of the Act is taking of the possession in accordance with the provisions of the Act i.e., in accordance with S. 16 or S. 17 of the Act, which are the relevant provisions in this connection. The sub-title of these two sections is "Taking Possession". Sub-section (1) of S. 16 of the Act provides that when the Deputy Commissioner has made an award under S. 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. S. 17 of the Act deals with special powers in cases of urgency. Sub section (1) of S. 17 of the Act contemplates that in cases of urgency whenever the State Government so directs, the Deputy Commissioner, though no such award has been made, may, on the expiration of 15 days from the publication of the notice under S. 9(1) of the Act, take possession of any waste or arable land needed for public purposes or for a company. The land so acquired shall thereupon vest in the Government free from all encumbrances. As sub-section (1) of S. 48 of the Act provides that the power to withdraw from acquisition of the land can be exercised by the State Government in respect of the land of which possession has not been taken, it is reasonable to draw an inference that taking possession of the land contemplated by sub-section (1) of S. 48 of the Act is taking possession either under S. 16 or S. 17 of the Act. The contention of Sri Jagannatha Shetty, in this behalf, is fully supported by the decision of the Supreme Court in the case of *Jethmul Bhojrao v. State of Bihar*, (1972) 1 SCC 714. The Supreme Court in that case has clearly held that possession referred to in S. 48 necessarily is the possession taken under S. 16 or under S. 17 of the Act. It, therefore, follows that if possession was taken otherwise than in accordance with S. 16 or S. 17 of the Act, taking of such possession does not preclude the State Government from withdrawing from the acquisition under Sub-section (1) of S. 48 of the Act. In that view of the matter, this Writ Petition is liable to be dismissed.

4. Sri Jagannatha Shetty, however, fairly submitted that the second respondent is

not interested in retaining the possession of the land in question, and that it is agreeable to hand over the possession of the land to who-so-ever is entitled to the same, in accordance with law.

5. For the reasons stated above, this writ petition fails and is dismissed. No costs.