

(1980) 02 KAR CK 0021
In the Karnataka High Court
Case No : WP 20417/79

N. Shivanna

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-02-1980

Acts Referred:

Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3(2)
Karnataka Land Revenue Act, 1964 — Section 128

Citation : (1980) 1 KarLJ 419

Hon'ble Judges : Swami, J

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner has challenged the validity of the notification dated 2-1-1978 published in the official gazette dated 12th January 1978 issued under sub-sec. (4) of S. 3 of the Karnataka Acquisition of land for Grant of House Sites Act, 1972 (hereinafter referred to as "the Act") acquiring an extent of 2 acres of land out of Sy. No. 125 of Prabhuvanahalli, Gubbi Taluk, Tumkur District, belonging to the petitioner.

2. The contention of the petitioner is that he has purchased the land in question to an extent of one acre 20 guntas under two registered sale deeds dated 8-10-1971 and 16.8.1972 and inspite of this neither his name was shown in the notifications issued under sub-sections (1) and (4) of S. 3 of the Act, nor he was served with any notice, as such, he was not aware of the acquisition proceeding in question. It was also contended that the petitioner being the owner in occupation of the land in question, was entitled to be afforded an opportunity in the matter of acquisition of the same. Sub-section (2) of Sec. 3 of the Act, provides for service of 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 notice. The petitioner having acquired the title to the land in question under the aforesaid registered deeds long prior to the commencement of the acquisition proceeding in question, even though his name was not entered in the record of rights he was entitled for a notice and was entitled to be afforded an opportunity

of oral hearing. However, it was contended on behalf of the respondents that as the name of the petitioner was not entered in the record of rights, therefore, the respondents could not show the name of the petitioner in the notifications issued under sub-sections (1) and (4) of S. 3 of the Act. Consequently, they could not also issue notice to the petitioner. It was also contended that the names in the notifications have been shown as found in the record of rights and the notices also have been issued to the persons named in the notifications. Hence it was contended that the acquisition proceeding in question is not vitiated.

3. The aforesaid contention of the respondents cannot be accepted. Chapter XI of the Karnataka Land Revenue Act, 1964 (Kar. Act 12 of 1964) consisting of Ss. 127 to 136, deals with record of rights. S. 128 thereof, provides for reporting of the rights acquired. Sub-section (1) of Section 128 provides that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition, of such right to the prescribed officer of the village within three months from the date of such acquisition and the said officer shall at once give a written acknowledgment of the receipt of the report to the person making it.

4. The second proviso to sub-section (1) of Sec. 128 further provides that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer. Thus, it is clear that any person acquiring a right under a registered document, need not report to the prescribed officer of the Village about the acquisition of right under the registered deed.

5. Sub-Section (4) of Sec. 128 further provides that no document by virtue of which any person acquires a right in any land as holder, occupant, owner, mortgagee, landlord or tenant or assignee of the rent or revenue thereunder, shall be registered under the Indian Registration Act, 1908, unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in S. 129 and on the registration of such a document, the registering authority shall make a report of the acquisition of the right to the prescribed officer.

6. Thus, it is clear that at the time of registration of the document itself, the necessary fees for making entries in the record of rights is collected by the registering authority. Further, a statutory duty is cast upon the registering authority to make a report of the acquisition of right to the prescribed officer. S. 129(1) thereof further provides that the prescribed officer shall enter in the register of mutations every report made to him under sub-sec. (1) of Sec. 128 or received by him under sub-section (2) or sub-section (4) of the said section. Thus, it is clear that in the case of acquisition of right under a registered document required to be entered in the record of rights and the Register of

mutations the person acquiring the right under such document need not make a report as per sub-sec. (i) of Sec. 128 of the Karnataka Land Revenue Act, and it is incumbent upon the registering authority to make a report of the acquisition of right to the prescribed officer who shall, on receipt of such report, enter in the register of mutations every report made to him. That being so, the failure on the part of the prescribed officer to make entries in pursuance of the report made by the registering authority of the acquisition of rights, cannot jeopardise the right acquired by the petitioner under a registered deed. The entries in the Register of Mutations are reflected in the Record of Rights. As sub-sec. (2) of Sec. 3 of the Act, specifically provides for service of notice upon the owner or the occupier where the owner is not the occupier of the land and on all such persons known or interested therein to show cause against the acquisition it was all the more necessary for the respondents, before issuing the notification under sub-sec. (1) of Sec. 3 of the Act, to collect the necessary information about the ownership and possession of the land proposed to be acquired and the persons interested therein and to include the name of the owner and the occupier of the land in the notifications issued under sub-secs. (1) and (4) of Sec. 3 of the Act, and also to issue notice to them to show cause against the acquisition and afford an opportunity of being heard. In the matter of acquisition of land under the Act, the authorities must strictly comply with the provisions of the Act and the Rules framed thereunder. From the impugned notifications it is clear that the name of the previous owners of the land in question, have been shown. From this, it is clear that the authorities have proceeded to issue notifications without ascertaining as to who are the owners and who are in occupation of the land in question. The result is that the petitioner, who is the real owner and occupier of the land in question, has been deprived of his right to hold the land in question without affording an opportunity to object to the acquisition and without being heard. That being so, the entire acquisition proceeding starting from the notification published under sub-section (1) of Sec. 3 of the Act culminating in the notification issued under sub-sec. (4) of Sec. 3 of the Act, is vitiated.

7. For the reasons stated above, this writ petition is allowed. The entire acquisition proceeding in question, starting from the notification issued under Sec. 3(1) of the Act culminating in the notification issued under sub-section (4) of Sec. 3 thereof, in so far as it relates to an extent of 1 acre 20 guntas. In Sy. No. 125 of Prabhuvanahalli, Gubbi Taluk, belonging to the petitioner, is hereby quashed. However, it is made clear that it is open for the authorities to initiate the acquisition of the land in question, in accordance with law, if need be.