

(1979) 06 KAR CK 0025
In the Karnataka High Court
Case No : WP. 6768/78

Nanjunda Shastry

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-06-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 3(F)

Citation : (1979) 2 KarLJ 117

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. In this writ petition, the petitioner was the owner of dry land measuring approximately 24 guntas comprised in S. No. 157/1-A and S. No. 162/2 of Bangarpet village, Kasaba Hobli, Bangarpet Taluk, Kolar District. The said land came to be acquired by the Government as per its final notification under Sec. 6-A of the Land Acquisition Act (hereinafter referred to as the Act). It is not in dispute that preceding this final notification that a preliminary notification under Sec. 4 of the Act was issued on 24th June, 1976. The petitioner has challenged the validity of these notifications in these proceedings, on a number of grounds to which I will refer hereinafter. Before doing so, it is necessary to set out some facts which are peculiar to this case.

2. The petitioner has averred that he wanted to divert this land for non-agricultural purpose and in that connection approached respondent-4 who was at the relevant time President of the Town Municipal Council, Bangarpet. The said 4th respondent assured the petitioner that needful would be done and took the signature of the plaintiff on a blank paper. It is alleged that the petitioner was performing puja in the house of the 4th respondent and therefore the petitioner had full confidence in the 4th respondent.

3. It is further alleged that to the surprise of the petitioner on 18-9-1969 he found that somebody had started construction of a building on the land of the petitioner in the area which is now acquired. He later learnt that the construction was by the Public Works Department. He approached and complained to the

Assistant Engineer about the unauthorised construction on his land. As nothing transpired by such complaint, he filed O.S. No. 293/1977 on the file of the Munsiff, Kolar Gold Fields, for grant of perpetual injunction against the Government and the Municipality. That suit in any event was withdrawn as Government being a party and the statutory notice required to be issued under Sec. 80 CPC. not having been given to it. Thereafter wards, the suit OS. No. 17/1970 on the file of the Munsiff, Kolar Gold Fields, praying for a mandatory injunction for demolition of the building constructed on his land by the Government was filed. The latter suit came to be decreed. The appeal arising out of that decision is said to be pending before the Court of the Civil Judge, Kolar.

4. What emerges from the above narration which is peculiar to this case is that even before acquisition proceedings were instituted or commenced, the State Government had already encroached upon the land of the petitioner without the authority of law and had managed to complete the construction of some building and the suit was decreed on 1-10-1975 granting the petitioner a mandatory injunction to demolish and remove the unauthorised construction. How this transpired has not been explained by the learned Government Pleader nor has any return been filed in this case, though several opportunities were given to the respondent-State. However, the Town Municipal Council of Kolar Gold Fields has filed its statement of objections and has asserted that certain allegations made against it were false.

5. The learned Counsel for the petitioner has strenuously argued that the acquisition in question suffers from incurable infirmities in law and therefore deserves to be quashed.

6. First of the contentions advanced by the learned Counsel was that the acquisition on behalf of a local authority for the construction of a Travellers Bungalow is not one of the events or needs which would constitute public purpose within the meaning of that term as defined under sub-clause (vii) of Clause (f) of Sec. 3 of the Act. It is true that construction of a Travellers Bungalow has not been specifically defined as constituting public purpose under the said provisions of the Act. But, Sec. 3 begins in the following manner:

"3. Definitions.-In this Act, unless there is something repugnant in the subject or context- and sub-clause (vii) of Clause (f) reads as follows:

(f) the expression "public purpose" includes- (vii) the provision of land for any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development."

The Legislative intention clear from the above language is that the definition is inclusive and not exhaustive. The language does not suggest that what is included in the definition excludes other purposes which in their very nature constitute public purpose.

7. In the instant case, from the perusal of the records produced before me by the

learned Government Pleader concerning the acquisition, it is clear that the acquisition was commenced at the instance of the Town Municipal Council-4th respondent to build a Travellers Bungalow. In its statement of objections the Municipal Council has stated that the need for building a Travellers Bungalow arose as at the old Travellers Bungalow a school is being run. The construction of the Travellers Bungalow in the Town of Bangarpet which is close to the well known Kolar Gold Fields, Gold Mines, cannot be said by any means, to be not a public purpose. The Supreme Court in the case of *Somawati v. State of Punjab*, AIR 1963 SC 151, were dealing with the meaning of the words "public purpose" in the Act and in the said case, by majority, the Supreme Court held;

"The inclusive definition of "public purpose" in S. 3(f) of Land Acquisition Act not being compendious is not useful in ascertaining the ambit of that expression. Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individual is directly and vitally concerned."

8. Therefore, it is not possible to accept the learned Counsel's contention that the acquisition is not for a public purpose.

9. The next ground urged in support of the petitioner's case was that the petitioner was entitled to a copy of the reply filed by the Town Municipal Council in response to the objections filed under S. 5-A of the Act and communicated to it as mandatorily required under R. 5(2) of the Karnataka Land Acquisition Rules, 1965. It is however stated by respondents 3 and 4 in their statement of objections that a copy of such a reply had indeed been served on the petitioner. In the re-joinder filed by the petitioner, he has not denied this averment of respondents 3 and 4. Therefore, it is difficult to accede to the contention of the learned Counsel. This apart there is no indication either in the scheme of the Act or the Rules framed thereunder that a copy of the reply to the objections of the land owner should be supplied in the course of the proceedings under S. 5-A of the Act.

10. It is significant to note that in the statement of objections filed by respondents 3 and 4, the Town Municipal Council in question and its Chairman, they have made specific averments stating that the Municipal Council resolved as far back as 15-10-1966 that the lands in question should be acquired for the purpose of construction of a Pravasi Mandir; and that on 6-12-1966 the petitioner gave in writing his willingness to hand over the lands with a request to pay him compensation at Rs. 3,000 per acre. The lands in question were in the possession of Shri Muniswamy Gowda, the tenant and he agreed to hand over the possession to the Municipal Council without raising any objection. It is also alleged that Shri H.S. Muni Bhatta owner of adjoining piece of land handed over the possession of the land to the Municipal Council as well as the petitioner. The Public Works Department took up the construction work of Pravasi Mandir. It started the construction of two quarters for the employees on the lands in question. It is further alleged that it was at that stage that the petitioner filed the

suit against the State in the Court of the Munsiff, Kolar Gold Fields, which as already stated was decreed in favour of the petitioner and is pending in appeal. It was in these circumstances, that the Town Municipal had to commence acquisition proceedings since the consent said to have been given by the petitioner was withdrawn in the circumstances and manner stated above.

11. No doubt in the rejoinder filed by the petitioner he has denied having given consent as alleged by respondents 3 and 4. That appears to be the subject matter of litigation pending in the Court of the Civil Judge, Kolar, and I do not wish to express any opinion on this aspect of the matter. But what emerges from the allegation and counter-allegation is that the Town Municipal Council had taken up the question of constructing a Pravasi Mandir or Musafirkhana as one of the discretionary functions of the Municipality under S. 91(b) of the Municipalities Act, 1964. This statement has not been denied by the petitioner. This lends support to the records produced by the Government Pleader pertaining to the acquisition in question. The records have been built up for acquisition at the instance of the Town Municipal Council. I have perused the records and I do not find that many of the grounds urged by the petitioner are supported by the records. I have already held that the acquisition was for a public purpose following the decision of the Supreme Court in Somawati's case, AIR 1963 SC 151 and in that view of the matter the attack on the Town Municipal Council and the State that acquisition is for collateral purposes and not for public purpose cannot be sustained.

12. Yet another contention advanced by the learned Counsel for the petitioner was that the final notification was published under S. 6-A of the Act even while the revision petition under S. 15 of the Act was pending before the Government. In my opinion, nothing turns on this argument as it is possible that different sections of the revenue department were handling the papers and the revision petition may have come to be disposed of subsequent to the notification, because the matter was still pending before the Government. This would not vitiate the acquisition and will not be a sufficient ground to strike down the acquisition of land required for public purpose by the State which is otherwise lawful.

13. Yet another contention urged on behalf of the petitioner was that there are better and more suitable lands for purposes of locating the Travellers Bungalow and that the Town Municipal Council acted mala fide in choosing the petitioner's land alone for locating the said Travellers Bungalow. Nothing in the record discloses that there is any reason for the Town Municipal Council to act mala fide against the petitioner. Location of Travellers Bungalow and other public utilities are in the exclusive discretion of the authorities which are required to perform those functions. The Court cannot on the plea of the petitioner substitute its opinion in regard to the decision taken by the local authority in the matter of suitability of location of the travellers Bungalow. In fact, specific averment has been made by respondents 3 and 4 in the statement of objections that it was

after careful consideration and inspection of land by the Public Works Department and the Assistant Engineer of the Town Municipal Council that the land was selected. This also has not been denied by the petitioner in his rejoinder. Having regard to this, I do not find any substance in this argument advanced on behalf of the petitioner.

14. For the reasons stated above, it is unnecessary to issue rule in this petition, Hence, it is dismissed. But in the circumstances of the case, there will be no order as to costs.

15. It is further made clear that whatever rights the parties may have acquired under any other litigation, will not be affected by dismissal of this writ petition.