

(1997) 05 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal No. 65 of 1996

Narasimhalu and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4 (1), 5 A, 6 (1)

Citation : (1999) 4 KarLJ 134

Hon'ble Judges : R.P. Sethi, C.J;G. Patri Basavana Goud, J

Bench : Division Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri K. Vishwanath, High Court Government Advocate, Sri Ramadas and Sri Anand, for the Respondent

Judgement

G. Patri Basavana Goud, J.—Appellants are brothers. They are joint owners of Survey No. 72/1/2 of Gangavathi in Raichur District measuring 3 acres 12 guntas. The said land was proposed to be acquired for the purpose of 4th respondent, namely the Agricultural Produce Market Committee, Gangavathi. Preliminary notification u/s 4(1) of the Land Acquisition Act, 1894 was published in the Gazette dated 24-1-1985. Declaration u/s 6(1) of the Act was made on 28-8-1986. Appellants questioned the preliminary notification u/s 4(1) and the declaration u/s 6(1) of the Act under Article 226 of the Constitution of India in Writ Petition No. 18532 of 1986. Learned Single Judge, by his order dated 28-11-1995 having dismissed the said petition, appellants have preferred this appeal u/s 4 of the Karnataka High Court Act, 1961.

2. Appellants questioned the acquisition on the ground of mala fides. They further questioned the validity of declaration u/s 6(1) on the ground that it is made beyond one year period contemplated by clause (ii) of the first proviso to sub-section (1) of Section 6 of the Act. Learned Single Judge has negated the contentions of the appellants on both the grounds.

3. So far as the mala fide aspect is concerned, it is true that for several years,

the fourth respondent-the Agricultural Produce Market Committee of Gangavathi and the appellants" father fought out the litigation right upto this Court culminating in a decision of this Court in Writ Petition No. 5458 of 1974 disposed of on 31-10-1975. It so happened that after the land had been granted in favour of the appellants" father Venkatappa in respect of Survey No. 72/1, some more portion of the same survey number was granted in favour of the APMC. To protect the grant in his favour, appellants" father had thus to fight out the earlier litigation. There is no dispute that after the earlier litigation culminated in his favour, lands so granted had been got converted into non-agricultural use and even a layout has been formed by the appellants. It is at this stage that the appellants" lands once again came to be notified for acquisition for the purpose of the fourth respondent-APMC. It is in this background that the appellants attributed mala fides in the matter of acquisition of the land. As rightly pointed out by the learned Single Judge, no mala fides are attributed against the Acquiring Authorities-respondents 1 to 3. Fourth respondent is a statutory authority. Large extent of land has been formed as layout for the market use of the fourth respondent. Appellants" land is adjacent to the market yard. In the circumstances, therefore, there is hardly any scope to attribute mala fides to respondents 1 to 3 in the matter of acquisition of the appellants" land for the purpose of market yard of the fourth respondent-APMC.

4. As to the next contention, learned Single Judge refers to the fact that he secured the acquisition records from the High Court Government Advocate and perused the same. It is on that basis that relevant dates are set out. Preliminary notification is published in the Gazette dated 24-1-1985. Notice is served on the appellants on 13-2-1985. Public notice containing the contents of preliminary notification is published in the Chavadi of the village on 13-2-1985. Publication in the newspapers is effected on two dates - in Samyukta Karnataka - Kannada Daily - on 26-6-1985 and in Nada Nudi on 23-9-1985. Even prior to publication of notification in the daily newspapers, appellants had filed their objections. Declaration u/s 6(1) of the Act has been made on 28-8-1986. Taking the publication in Nada Nudi on 23-9-1985 as the date of publication of the notification, making of declaration on 28-8-1986 would be within the statutory period of one year. Appellants however urged thus:

"1. That the preliminary notification u/s 4 is dated 5-12-1984 and is published in the Gazette dated 24-1-1985. The individual notice on the petitioner is served on 13-2-1985 and the public notice with the gist of the notification was published in the chavadi, etc., on 13-2-1985. The petitioners have filed the objections on 18-3-1985 itself. The enquiry u/s 5-A has also been held long prior to 23-9-1985 itself. The preliminary notification is again published in the newspaper of regional language on 26-6-1985. Thereafter on 23-9-1985 another publication has been made in another notification. It may be seen that for all practical purposes the last of the public notice given is on 13-2-1985 itself. That even taking publication in the newspaper is held a mandatory requirement, even that has been done on 26-6-1985. Therefore the final notification u/s 6 which is issued on 28-8-1986 is

issued after the expiry of one year and therefore entire acquisition proceedings are vitiated".

Sri Jayakumar S. Patil, learned Counsel for the appellants urges that the preliminary notification having been published on 24-1-1985 and its substance having been published in the locality on 13-2-1985 together with the individual notices, and the appellants having filed their objections even prior to the publication of the notifications in the newspapers, for all practical purposes the date 13-2-1985 is to be taken as the date of publication of the notification u/s 4(1), and the declaration u/s 6(1) not having been made within one year from 13-2-1985, the same is vitiated. Alternatively, he urges that even if the publication in the newspaper is found to be necessary, such publication in Samyukta Karnataka on 26-6-1985 should suffice, and that making of declaration u/s 6(1) not having been made within one year from 26-6-1985, Section 4(1) notification is bad. Sri Jayakumar S. Patil urges that there was no necessity of causing as much as three months delay for causing publication of notice in the second newspaper, and that this delay has been unexplained and that therefore the second publication in the newspaper should not be taken into consideration at all.

5. The question of delay is one thing. The necessity of three modes of publication is altogether a different thing. Preliminary notification u/s 4(1) is required to be published in the Official Gazette and in two daily newspapers circulating in the locality concerned, of which at least one shall be in the regional language. Section 4(1) further requires causing of public notice of the substance of such notification at convenient places in the locality. Last of the dates of such publication and giving of such public notice, as provided u/s 4(1) of the Act, is referred to as the date of publication of the notification. Clause (ii) of the first proviso to sub-section (1) of Section 6 mandates that no declaration u/s 6(1) shall be made after expiry of one year from the date of the said publication of the notification u/s 4(1).

6. Coming to the aspect of the alleged delay in effecting three modes of publication as required by Section 4(1), it is to be stated that since prior to the amendment of Section 4(1) of the Act by the Amending Act 68 of 1984, it is a settled position that the publication in the Gazette and the public notice in the locality as required by Section 4(1) prior to the said amendment and publication by three modes after its amendment by the Amending Act 68 of 1984, was neither meant to be simultaneous nor was it practicable to do so. Certain time gap was always inevitable: in the sense that several modes of publication as required by Section 4(1) should be taken as contemporaneous though not simultaneous. Where the gap of time is so large, it becomes necessary to probe further to discover if there was an acceptable cause for the delay, whether the delay betrayed lack of bona fides on the part of the Acquisition Authorities, whether it was a colourable exercise of power, or whether it was to cause prejudice to someone.

7. In *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, , prior to Amending Act 68 of 1984, the Supreme Court observed thus:

"3. It may be noticed at once that Section 4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the Official Gazette or immediately thereafter. Publication in the Official Gazette and public notice in the locality are two vital steps required to be taken u/s 4(1) before proceeding to take the next step of entering upon the land u/s 4(2). The time factor is not a vital element of Section 4(1) and there is no warrant for reading the words "simultaneously" or "immediately thereafter" into Section 4(1). Publication in the Official Gazette and public notice in the locality are the essential elements of Section 4(1) and not the simultaneity or immediacy of the publication and the public notice. But since the steps contemplated by Section 4(2) cannot be undertaken unless publication is made and public notice given as contemplated by Section 4(1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the Official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to anyone".

8. In *State of Haryana and Another Vs. Raghubir Dayal*, , the Supreme Court was mainly considering whether the requirements under Sections 4(1) and 6(2) were mandatory or directory. In the case concerned therein 4(1) notification had been published in the Gazette on 25-10-1988, in the newspaper on 28-7-1989. Holding that the requirement u/s 4(1) is mandatory, the Supreme Court observed at the end of paragraph 7 that though there was a time gap of more than six months between the date of notification u/s 4(1) in the State Gazette and the date of publication of the substance of the notification in the locality, delay by itself does not render the notification u/s 4(1) published in the State Gazette invalid.

9. In *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, , the Supreme Court was considering the provisions of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 prescribing with retrospective effect that the substance of Section 4(1) notification be published in the locality within 40 days from the date of its

publication in the Official Gazette. The Supreme Court examined this rigour of 40 days contemplated by the said Validation Act after the Parliament enacted the Amending Act 68 of 1984. The Supreme Court then observed:

"10. The Parliament enacted Amendment Act 68 of 1984 prescribing the procedural steps in publication of the notification u/s 4(1) and declaration u/s 6 without prescribed time limit with consequences of non-compliance thereof and in Section 11-A declaring that if the steps respectively prescribed therein are not taken, the acquisition entails lapse. In other words, the Parliament evinces that neither simultaneous nor immediate local publication of substances is insisted upon. But compliance thereof and publication in two newspapers are required to be done. The object is to put the owner or interested person on notice of acquisition of the land for public purpose. In case of enquiry u/s 5-A it should also be done and all the steps should be taken within one year from the last of the dates of the publication of notification u/s 4(1). Otherwise the acquisition stands lapsed. Even thereafter award should be made within two years from the date of publication of Section 6 declaration. Publication of Section 4(1) notification in the Official Gazette, its substance in the locality and also publication of the notification in two local newspapers is envisaged but no time limit for their compliance has been prescribed thereunder. If urgency power u/s 17(4) is not invoked, notice u/s 5-A is required to be given to the owner and then enquiry is conducted after giving opportunity to the owner or interested person. Thereafter, declaration should be published within one year from last of the dates of the publication u/s 4(1). In other words, from September 24, 1984, all the prescribed procedural steps should be done but without time schedule".

In the light of the said salient features of the Amendment Act 68 of 1984, the Supreme Court held that the rigour of 40 days under the Validation Act got diffused with effect from September 24, 1984 since it was inconsistent with the Amendment Act 68 of 1984.

Lastly, in respect of three modes of publication u/s 6(2) of the Act, identical to those u/s 4(1), a Division Bench of this Court in Ramachandrappa and Others Vs. State of Karnataka and Others, , held thus:

"14. The modes of publication contemplated under this section are simultaneous. It may however be mentioned that simultaneous publication cannot be said to mean publication on the one and the same day. It means publication within a reasonable time after the declaration is made under sub-section (1) of Section 6 of the Act. The publication by means of the three modes noted herein above is mandatory. Last date of such publication shall therefore be deemed to be the last date of publication of notice in any of the aforesaid 3 manners. However, if there is an unexplained or uncalled for or mala fide delay in publication of the notice in any of the manners prescribed, the period of limitation may be deemed to commence from the date of admittedly earlier valid publication. The delay in mala fide publication of a notice may also render the whole of acquisition liable to be quashed. The provisions of Section 6(2) are almost identical as are

prescribed for the publication of the notification u/s 4(1) of the Act".

10. The emphasis thus throughout has been the publication of Section 4(1) notification by three modes of publication as required thereunder within a reasonable time. If the time gap is too large and has remained unexplained, it may be necessary, as observed by the Supreme Court in Deepak Pahwa's case, *supra*, to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to any one. As observed by a Division Bench of this Court in Ramachandrappa's case, *supra*, if there is any unexplained or uncalled for or mala fide delay in publication of the notice in any of the manners prescribed, the period of limitation may be deemed to commence from the date of admittedly earlier valid publication.

11. Coming to the facts of the present case, preliminary notification having been published in the Gazette on 24-1-1985 and the last of three modes of publication - namely the publication in Nada Nudi, local daily -having been effected on 23-9-1985, the entire process of publication thus has taken eight months. It is true, this much of delay was unnecessary. When publication in one newspaper has been effected on 26-6-1985, no explanation is forthcoming as to why three more months' time thereafter was required to effect publication in the local daily. The question is whether this could be attributed to any mala fides on the part of the authorities concerned or whether it was intended to cause prejudice to the appellants. No prejudice was being caused to the appellants by the delay of just three months. Taking the last of the dates, namely 23-9-1985, as the date of publication of Section 4(1) notification, the appellants still had 30 days time therefrom to file objections u/s 5-A, though, as the perusal of records by the learned Single Judge has shown that they (appellants) had already filed objections by then. There was no colourable exercise of power because a large extent of land having been acquired for the purpose of market yard of the fourth respondent-APMC and the appellants' land being situated adjacent to the said market yard, the appellants' land was very much needed for the public purpose. It was not as though the publication of Section 4(1) notification was done earlier with an intention of pegging the prices to a particular date that the authorities were leisurely going about in completing the remaining two modes of publication of Section 4(1) notification. Altogether the delay is only a couple of months, and, as we have noticed earlier, in Raghbir Dayal's case, *supra*, the Supreme Court overlooked the gap of nine months between the date of publication of Section 4(1) notification in the Gazette on 25-10-1988 and its publication in the newspaper on 28-7-1989. If the couple of months' delay in the present case, between the date of publication of Section 4(1) notification in the Gazette and its publication in the second newspaper, is to be held fatal, it would only amount to defeat the public cause on account of what the learned Single Judge has termed as "the casual approach" of the authorities concerned in performing the statutory functions. Notwithstanding the said casual approach, no prejudice having been caused to the appellants, we are of the opinion that the same should not be held against the respondents. We are also of the opinion that the last of the dates of

three modes of publication, namely the date of publication in the local daily Nada Nudi on 23-9-1985, must be taken as publication of Section 4(1) notification, and, as such, making of declaration u/s 6(1) of the Act on 28-8-1986 being within one year from the said date of 23-9-1985, the same is not vitiated.

12. There is no merit in the appeal and the same is dismissed with costs.