

(1982) 01 KAR CK 0005
In the Karnataka High Court
Case No : W.A. 1910/81

Narayana Gowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:

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

Citation : (1982) 1 KarLJ 430

Hon'ble Judges : D. M. Chandrashekhar, C.J.;N. Venkatachala, J

Judgement

Venkatachala, J.-This appeal is from the order of Doddakalegowda, J., dismissing W.P. No. 25459 of 1981. The petitioners therein have presented this appeal. For the sake of convenience, the parties will hereinafter be referred to according to their positions in the writ petition.

2. The material facts are briefly these: The Deputy Commissioner, Mysore District (hereinafter referred to as "the Deputy Commissioner") by notification dated 19-10-1975 (produced as Annexure-C in the writ petition) issued under sub-section (1) of S. 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (hereinafter referred to as "the Act") published in the Karnataka Gazette 11-2-1978, gave notice of his intention to acquire 5 acres 16 guntas of dry land in Survey No. 88/1 of Hebbalu Village in Mysore Taluk for the purpose of providing house-sites to weaker sections of the people who are houseless. The Khatedar/Anubhavadar of that land, as mentioned in that notification, was "Thimmaiah bin Dappathale Cheluvegowda/Govindegowda". The Assistant Commissioner, Mysore Sub-Division (hereinafter referred to as "the Assistant Commissioner"), who was exercising the powers of the State Government under sub-sec. (2) of S. 3 of the Act, got served the notice of that notification only on Govindegowda since his father, Thimmaiah, whose name was also shown as Anubhavadar/Khatedar/in that notification had died even before it came into existence. Even Govindegowda (respondent-3) did not raise any objection to the acquisition proposed in the Deputy Commissioner's notification. Thereafter, the notification dated 23-9-1979 declaring that the land notified under sub-sec. (1)

of S. 3 of the Act was required for the purpose specified therein, was issued by the Deputy Commissioner and got published in the Karnataka Gazette dated 2-11-1979 Subsequently, steps were taken by the Block Development Officer, Mysore (respondent-4 in the Writ Petition) to form a lay-out of sites on the acquired land.

3. Petitioners 1 to 4 and petitioner-5 who are the sons and the widow respectively of deceased Thimmaiah, the original khatedar and Anubhavadar of the acquired land, presented the writ petition impugning the said acquisition proceedings. The learned single Judge, who heard that writ petition, dismissed it. Feeling aggrieved therefrom, the petitioners have presented this appeal, as already stated.

4. In this appeal, Sri C.B. Sreenivasan, learned Counsel for the appellant-petitioners, contended that the acquisition proceedings impugned in the writ petition were vitiated since show cause notices of the notification of the proposed acquisition of land, required to be served under sub-sec. (2) of S. 3 of the Act, on the persons interested in such land, had not been so served. According to him, petitioners 1 to 4 and petitioner-5, the sons and widow respectively of deceased Thimmaiah, were persons jointly interested in the land proposed for acquisition, as that land belonged to their joint Hindu family and since sub-section (2) of S. 3 of the Act required service of show cause notices on all such persons known or believed to be interested in the land, the petitioners should have been considered as persons interested in that land within the meaning of that sub-section and served with show cause notices instead of proceeding on the basis that service of show cause notice on the senior member of the Joint Hindu Family to which the land belonged, was sufficient compliance with the requirement of sub-sec. (2) of S. 3 of the Act.

5. From the contention urged before us on behalf of the petitioners, the following question arises for our determination:

Whether the service of notice on the senior member of the joint Hindu family will be sufficient compliance with the requirement of sub-sec. (2) of S. 3, where the land proposed to be acquired under sub-sec. (1) of S. 3 of the Act, belongs to such joint family?

6. We shall now proceed to examine the said question.

7. Sub-sec. (2) of S. 3 of the Act reads:

"(2) On the publication of a notification under sub-sec. (1), the State Government shall serve 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 the notice, why the land should not be acquired."

8. According to Sri Sreenivasan, as has been pointed out earlier, the requirement of sub-sec. (2) of S. 3 of the Act, that show cause notices shall be served on all

such persons known or believed to be interested in the, land, implies that such show cause notices shall be served on all the members of a joint Hindu Family wherever the land in question belonged to such family. The contention of Sri Sreenivasan, in our view, ignores the legal position of a "Kartha" of a joint family, which has been stated thus in Mulla's Hindu Law (14th Edn.) at para 236:

"Property belonging to a joint family is ordinarily managed by the father and/or other senior member for the time-being of the family. The manager of a joint family is the Kartha. The father is in all the cases naturally and in the cases of minor sons necessarily, the manager of a joint family property."

9. It is well settled that so long as a member of a family remained undivided, the seniormost member of the family is entitled to manage the family properties and is presumed to be the manager until the contrary is shown. The Kartha represents the entire undivided family. A notice to show cause concerning a joint family land served on the Kartha should, therefore, be regarded as notice to all members of the, undivided family. Hence, in the context of proceedings proposing acquisition of a land of a joint Hindu family, we are unable to comprehend that sub-sec. (2) of S. 3 of the Act, besides requiring service of show cause notice on the Kartha of such joint family, contemplates serving of show cause notice on all the other members of a joint Hindu family. Moreover, the meaning given to "person interested" in clause (b) of S. 3 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Karnataka Extension) (Amendment) Act, 1961, which stands incorporated into the Act by sub-sec. (4) of S. 2 thereof, as including all persons claiming interest in compensation to be made on account of the acquisition of land, indicates that in respect of a joint Hindu family property to be acquired, the person, who becomes so interested, would be its Kartha. Hence, in our view, it is such Kartha of the joint Hindu family, who should be served with show cause notice of the proposed acquisition of the property belonging to such family. We, therefore, hold that service of show cause notice on the seniormost member of the joint Hindu family would be sufficient compliance within the requirement of sub-sec. (2) of S. 3 of the Act, where the property proposed to be acquired is that of such joint family. Consequently, the contention of Sri Sreenivasan fails.

10. It was next contended by Sri Sreenivasan that the land in question could not have been so acquired since it was designated as land meant for industrial purpose in the Outline Development Plan prepared under the Mysore Town and Country Planning Act, 1965. In this regard he sought to place reliance on sub-sec. (2) of S. 14 of that Act, which provides that no change in land use or development as is referred to in sub-sec. (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed. In our view, the contention of Sri Sreenivasan cannot be permitted to be urged in this appeal when neither in the writ petition nor in the memorandum of writ appeal any particulars of the alleged Outline Development Plan has been

given. Moreover, when it was not shown that there was any provision in that Act which prohibits acquisition of land once designated for a particular purpose in the Outline Development Plan, for any other purpose subsequently, no useful purpose would be served by permitting him to urge such contention.

11. In the result, we do not admit this appeal, but dismiss it.