

(1976) 03 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 2350 of 1975

P.K. Thipperudrappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 30-03-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Slum Areas (Improvement and Clearance) Act, 1973 — Section 3 (1)

Citation : AIR 1976 Kar 196 : (1976) ILR (Kar) 972 : (1976) 1 KarLJ 417

Hon'ble Judges : B. Venkataswami, J

Bench : Single Bench

Advocate : Minajagi, for R.R. Indrakumar, for the Appellant; P.G. Gowri, Government Pleader, for the Respondent

Judgement

1. In this petition under Article 226 of the Constitution, the petitioner has challenged the notification issued u/s 3(1) of the Karnataka Slum Areas (Improvements and Clearance) Act, 1973 (Slum Act) whereby certain land belonging to him had been notified as a slum area.

2. On behalf of the petitioner, Minajagi, learned counsel, submitted that before promulgation of the said notification, which affected his civil rights to property, it was the duty of the authority concerned to have afforded him an opportunity to show cause against such declaration. In support of this submission, he relied on certain enunciations of the Supreme Court in the case of The Government of Mysore and Others Vs. J.V. Bhat and Others, , which was a case arising under the Mysore Slum Areas (Improvements and Clearance) Act, 1958, wherein also a similar notification had been issued u/s 3 thereof, the provisions of which are in pari materia with the provisions of the Act concerned herewith. It seems to me that this contention is well founded and must be accepted as correct.

3. The petitioner has alleged that before the issuance of the impugned notification u/s 3 of the Slum Act, he had not been served with any notice calling upon him to show cause why the land in question should not be declared as a

slum area for the purpose of that Act. This fact is not denied on behalf of the respondents.

4. In the case relied on behalf of the petitioner, the Supreme Court was concerned with the constitutional validity of certain provisions of the Mysore Slum Areas (Improvements and Clearance) Act, 1958. The respondents therein had also challenged the legality of certain notifications issued under Sections 3, 9, 12 (1) (a) and (b) of that Act on the ground that the said notifications were violative of the principles of natural justice in that they had not been afforded an opportunity of making representations against them. The Court while un holding the validity of Sections 3, 9, 12 (1) (a) and (b) of that Act, which had been challenged as unconstitutional had struck down the three notifications, upholding the contention relative to absence of opportunity to the affected persons. In doing so, it is enunciated thus:

"... ... Policies and schemes, framed under statutory provisions, which affected rights of individuals could impose the obligations upon the authorities taking what were essentially administrative decisions at points at which they begin to impinge on specific individual rights. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audio alteram partem" rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what its just and fair exercise require in the context of rights affected".

Again at page 601

"There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area u/s 3, or an area as a clearance area u/s 9 or before taking action u/s 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed".

Viewed in the light of the above principles, it is clear that the notification impugned herein cannot be sustained.

5. In the result, this petition succeeds and is accordingly allowed. Consequently, the Notification No. NMA 93 MNI 75 dated 15th April 1975 and gazetted on 24th April 1975 (Exhibit A) is hereby quashed in so far as it concerns the petitioner's land. It is needless to point out that it is open to the authority concerned to take further action in accordance with the Slum Act, after providing for a reasonable opportunity to petitioner to make a representation against any such declaration and after considering such a representation on its merits. In the circumstances, the parties will bear their own costs.

6. Petition allowed.