

(1987) 06 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No. 3045/1980

Rachappa Settappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-06-1987

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1987) 2 KarLJ 105

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-On an earlier date of hearing I had recorded the facts of the case and the question at issue, it is as follows:

"This is a very old matter remaining unattended to in "B" Group for preliminary hearing. Petitioners are members belonging to schedule castes or scheduled tribes who have been issued with "Hakku Patras" for certain sites formed or directed to be formed by the Block Development Officer of Jamkhandi, Bijapur District. Certain lands proposed for acquisition earlier was given-up by reason of the Deputy Commissioner not confirming the preliminary Notification under Sec. 3(2) of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972. Thereafter, acquisition proceedings were commenced as admitted by the respondent-State in respect of Sy. No. 82/1 of Chikkapadasalagi, Jamkhandi Taluk, Bijapur District. Possession of that land was also taken and handed over to the B.D.O. Thereafter, there appears to have been some bickerings in the Government itself resulting in the then Revenue Minister interfering with the process of forming of that lay-out and distribution among the siteless people for whom it had been acquired. It is admitted that Draft Resolution for the cancellation of the acquisition in Sy. No. 82/1 was put up by the concerned Assistant Commissioner. Whether that draft notification had been approved and published as final notification is not made known to this Court so far.

But it is obvious that under the Karnataka Acquisition of Lands for Grant of House

Sites Act, 1972, there is no provision for cancellation. But if a provision is not made in that Act, then the provision contained in the Land Acquisition Act, it is argued, are attracted, by virtue of Sec. 5 of the Act. Even under Sec. 48 of the Land Acquisition Act, 1894, the Government is at liberty to withdraw from the acquisition of land, except in the case provided for in Sec. 36, if it so desires. Section 48 is not attracted to lands possession of which has been taken. In this case, the possession was taken. Therefore, prima facie, assuming that Sec. 48 of L.A. Act is attracted, the power is not available to the Government much less to cancel the acquisition completed in respect of Sy.No. 82/1 of the aforementioned village.

However, the learned High Court Government Pleader seeks time to ascertain the latest position and submit to the Court.

Call this writ petition during the next week treating it as part-heard."

Now, the learned Government Pleader submits that the draft notification to which a reference has been made, the acquisition in Sy. No. 82/1 has since been withdrawn and duly published on 3-1-1980. To me it appears to be a totally illegal act. The Karnataka Acquisition of Lands for Grant of House Sites Act, 1972, (hereinafter referred to as the Act) is a self-contained enactment providing for speedy acquisition of lands for creation of sites to be distributed to people who have no sites in the villages and who belong to the weaker sections of the society. Sec. 3 of the Act provides for acquisition of land. Sub-sec. (6) of Sec. 3 of the Act provides for the manner in which the possession has to be taken. That possession was taken, as already noticed, is not in dispute. The question now is whether withdrawal can be recognised as legal. Assuming that Sec. 48 of the Land Acquisition Act is attracted the lands possession of which was taken cannot be withdrawn from acquisition.

2. Sec. 5 of the Act provides for provisions of the Land Acquisition Act being applied mutatis mutandis in respect of enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of amount and the payment of amount in respect of lands acquired under this Act. In other words, when Sec. 5 of the Act speaks of enquiry and award by the Deputy Commissioner, it does not speak of possession or the manner in which possession should be taken. It may be presumed that an award has been made because without an award possession cannot be taken in terms of the provisions contained in the Land Acquisition Act. But in terms of the provisions of the Act, it is not implicit that award shall be made first before taking possession. Sub-sec. (6) and (7) of Sec. 3 of the Act makes that abundantly clear. It is only under Sec. 4 of the Act that compensation to the land owner whose land has been acquired is required to be paid. It again means, in accordance with Sec. 5 of the Act, procedure to be followed is that under the Land Acquisition Act for enquiry, passing of award etc. but that does not include the provisions relating to taking of possession of land as contemplated under the Land Acquisition Act. Therefore, reliance placed by the learned Government Pleader on the decision of this Court

in *Muninanjappa v State of Karnataka and another* (1980(1) Karnataka Law Journal, 191) really does not assist to support the contention that withdrawal notification now published in 1981 should be upheld by this Court.

3. In any event, this Court cannot make any declaration or set aside that notification as the same is not challenged in this proceeding.

4. What this Court must however observe is that in the political wrangle that apparently has resulted in the area in question, the people who are required to be benefited are denied sites. Social-welfare measures contemplated under the Act cannot be whittled down to be play things of politicians who want to favour one land owner or the other without regard to the merits of selection for the formation of the lay-out for the weaker sections of the society. Beyond this, the Court is helpless because Hakku Patras given more as political publicity than as actual need met of the deserving siteless people confers no right on the recipients as at the time of giving the Hakku Patras there were neither sites formed in the area acquired nor the layout prepared in accordance with which the distribution of sites was made. Hakku Patras distributed without identifying properly the sites is no conferment of title to the property in question. In that circumstance, it is open to the Government to do what is just and proper in the circumstances of this case and leave the petitioners to seek redress of their plight with the concerned authorities. This observation, it is hoped will receive due consideration by the State.

5. Subject to the above observation, this petition is dismissed as this Court is unable to give any relief, as no legal right is established for a mandamus.

6. Smt. Pramila contended that the Hakku Patras clearly determined the measurements of the sites and the boundaries in respect of each site, the very prayer in the writ petition is for a mandamus to form the lay-out and give the site as per the Hakku Patras. In other words, Hakku patras were given, as already observed, without an actual lay-out being formed and sites created. The whole thing appears to have been an exercise for political publicity and gain. On such facts, this Court should not venture to issue a mandamus. If the petitioners have a legal right on the basis of the Hakku Patras to the possession of the land, they are free to pursue the remedy for possession on the basis of the Hakku Patras in the appropriate civil Court having jurisdiction.