
(1986) 09 KAR CK 0015
In the Karnataka High Court
Case No : W. P. No. 4856 of 1985

Ramegowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-09-1986

Acts Referred:

Citation : (1987) ILR (Kar) 1358

Hon'ble Judges : Murlidher Rao, J

Bench : Single Bench

Advocate : C. Shivappa, for the Appellant; S. Lakshminarayana, HCGP for R-1 to 3, S.K. Kulkarni, for R-4 and 5 and T.R. Subbanna, for R-6 to 27, for the Respondent

Final Decision : Allowed

Judgement

Murlidher Rao, J.—Petitioner is the owner of wet land S.No. 7/1 ; he claims to be a farmer, with two sons and three daughters. He asserts that in his land there are two mango trees, sixteen fruit bearing coconut trees ; tamarind and other trees. Obviously nothing can be more dearer to him than the land, which is the source of his survival.

2. On 6-2-1976, the land was notified for acquisition under the Karnataka Acquisition of Land for Grant of House Sites Act. Petitioner, rightly and justly objected as his life, belt was being cut off. On 29-3-1976, final notification was issued. Since the petitioner had not been heard, he questioned the same in W.P. 5890 of 1977. W.P. was allowed on 23-6-1980, after quashing the final notification, directions were issued to proceed in accordance with law. The relief, though temporary, was a postponement of the evil day. Respondents, who were in authority and had force mightier than the petitioner, once again issued a final notification ; that was challenged in W.P. 21530 of 1982 ; that Petition was also allowed on 17/19th July 1984. The respondents with a desire to frustrate the petitioner and make his attempts infructuous, appear to have forcibly taken possession. The so-called allottees got themselves impleaded in the Writ petition,

asserting that they are in possession of sites in this land. Para 23 of the said Judgment reads thus :

"On an examination of the pleadings, the records, the orders made by this Court and the Supreme Court, the assertion of the petitioner that he was in possession of the land on the day he approached this Court appears to be more probable and true than the contrary plea of the respondents. Without any doubt the orders made by this Court including the one made by the appellate Bench in Writ appeal No. 139 of 1983 and the ultimate order made by the Supreme Court, which is still in force, protect the possession of the petitioner. On the above conclusion, it necessarily follows that the plea of the respondents to the contrary and their submissions to decline to exercise my jurisdiction cannot be accepted."

3. The Court directed the 2nd respondent-Deputy Commissioner to complete the acquisition in two months from the date of the receipt of Assistant Commissioner's report. Once again on 13-12-1984, final notification is issued and on 18-1-1985, Form "D" notification is issued declaring that the land has vested in the State Government and therefore it should be surrendered to the Government. These are the subject matters of this Petition. On 16-5-1985, interim order of stay was granted which was continued on 22-8-1985. In this order, the Court observed :

"Having regard to the fact that the petitioner is approaching this Court for the third time and on the earlier two occasions the petitions have been allowed and the grievance of the petitioner continues to be the same and there are allegations of mala fides, it is just and necessary to give time to the respondents to file statement of objections if any. Accordingly, the interim order passed in the petition is continued. The respondents are granted four weeks to file the statement of objections if any."

Application for vacating was rejected on 20-1-1986, while doing so, the Court observed "there appears to be serious infirmities in procedure ; even after the remand by this Court".

4. In this Petition, the petitioner has alleged that the acquisition was at the instance of Chakrapani and Y.G. Ramegowda, landlords, who are inimically disposed towards him. Twenty two persons, claiming to be allottees have got themselves impleaded. They assert that they are put in possession and they have been given possession certificate. I.A.I. was allowed on 9-10-1985. They have filed statement of objections. Since they are allottees, they derive their right only through the Government. They can have no say in the acquisition proceedings, which precede the vesting of land in Government.

5. Respondents 1 to 3 who alone can contest the acquisition, have not filed the statement of objections in spite of the Court's direction on 22-8-1985. Indeed, they had not filed their return in W.P. 21530 of 1982. They prefer to watch the proceedings and allow the parties to contest. This attitude is unfair, unjust and if it is deliberate, needs to be condemned. Respondents 4 and 5 have denied the

allegation.

6. Before dealing with the procedure adopted after remand, it is necessary to know the legal position. The Karnataka Acquisition of Land for Grant of House Sites Act is a social legislation, its object being to allot house sites to weaker sections of the people. Section 3 deals with the procedure for acquisition. It reads thus :

"3. Acquisition of land : (1) If at any time, in the opinion of the State Government any land is required for the purpose of providing house sites to the weaker sections of people who are houseless, the State Government may, by notification, give notice of its intention to acquire such land.

(2) On the publication of a notification under Sub-section (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.

(3) After considering the cause, if any shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

(4) After orders are passed under Sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under Sub-section (1) a declaration shall, by notification be made to the effect.

(5) On the publication in the Official Gazette of the declaration under Sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

(6) Where any land is vested in the State Government under Sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with an order made under Sub-section (6), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary."

7. Rule 3 of Grant of House Sites Rules provides for initiation of these proceedings. Rule 6 contemplates hearing of objections. Rule 9 deals with consideration of objections.

By Section 5, the provisions of Land Acquisition Act are made applicable only in respect of Enquiry and Award of compensation and reference to Civil Court.

8. Two significant departures, from that of Land Acquisition Act, are the absence of urgency clause (Section 17) and vesting of land after award (Section 16). Instead "vesting " u/s 3(5) takes place only on the publication of the final declaration under Sub-section (4) of Section 3 in the Official Gazette. Section 6 enables the Government to take possession, after its vesting and not before.

9. Since what is challenged in the petition is the final notification and that has been stayed, there is no "vesting" in the eye of law. Consequently the question of taking possession does not arise at all and if impleaded respondents assert that they are in possession, that is illegal possession and they have no right to be in possession. Moreover, in W.P. 21530 of 1982, the Court has quashed the order of the Deputy Commissioner u/s 3(3), final notification u/s 3(4) and the report of the Assistant Commissioner, as also the delivery notice issued by him (Annexure "D" in that case).

10. After the matter is so remanded, on the second occasion, the case was taken up on 6-9-1984, The case was adjourned from time to time. Petitioner was present on all dates. No enquiry was held. On 24-11-1984, the case was called and was adjourned to 27-11-1984. On that day, petitioner's Counsel was absent, but petitioner was present. The Assistant Commissioner closed the case, without enquiry. Though the order states that a separate report is enclosed: there is no such report in the records.

11. On 22-10-1984, petitioner filed an application for restoration of land; on this application the Assistant Commissioner sought instructions from the Deputy Commissioner vide his letter dated 24-10-1984. No orders were passed on this application by the Assistant Commissioner. On 12-12-84, the Deputy Commissioner passed the order ; the relevant portion of which reads thus :

12. It is manifest that the following reasons have weighed with the Deputy Commissioner :-

- i) The opinion of Taluka Samiti to the effect that the land is suitable ;
- ii) Ramegowda (Petitioner) and Ms wife own another land measuring 5 acres 7 guntas ; and
- iii) 42 allottees were in occupation of the land sought to be acquired.

The last two reasons were clearly irrelevant. In his first objection to which reference is made by Deputy Commissioner dated 29-3 1976, Petitioner has urged the following contentions :-

After mentioning that he and his family members (7 per sons) are solely dependent on this land for their survival ; barring this land, he has no other land. Land belonging to Chennamma S.No. 6/1, was acquired but it was dropped. The leaders of the village namely Chakrapani S/o Srinivasgowda, Y.G. Ramu son of Govindegowda. Ningappa son of Kempegowda, Y.R. Chandrasekharaiah son of Ramachandrayya, purchased that land. These persons wanted the petitioner to

part with his land ; he denied During the regime of Sri Kadidal Manjappa, the then Chief Minister, it was decided that it would be in the interest of the nation not to allot irrigated land. He recommended acquisition of dry land. In addition the Health Department has opined that there should not be residential areas below the canal area.

13. One more aspect which needs a mention is that the land of the petitioner was sought to be acquired along with S.No. 9 of Govindrajegowda. Initially the proposal was to acquire 1 acre 4 guntas in petitioners land and 1 area 9 guntas in Govindrajegowda's land. Govindrajegowda filed W.P.2854/ 1977, which was allowed on 7-4-1980; the proceedings from the stage of preliminary notification were quashed and authorities were directed to initiate fresh proceedings from that stage. Thereafter, the authorities considering the fact that Govindrajegowda has planted coconut trees in an area of 20 guntas and they have grown to the fruit yielding stage, dropped the acquisition of 20 guntas. Consequently the acquisition was restricted to 29 guntas.

14. In the notification issued on 19-2-1982, published in Karnataka Gazette dated 4th March 1982, the Government directed the cancellation of notification to an extent of 20 guntas. It is not known why similar treatment was not given to petitioner. In the records there are two mahazars dated 8-6-1982, pertaining to details of trees, which show there were as many as 17 trees including 8 coconut trees, which were 40 year old. In the notification produced at Annexure "H" only petitioner's land is mentioned; it is not known what happened to Govindrajegowda's land, for 29 guntas. The discriminatory treatment is writ large.

15. Petitioner has averred in his petition that lands for house sites are available in the lands acquired under notification dated 25-11-1975, 20-3-1962 and 11-9-1976. This fact is not controverted by respondents 1 to 3, hence it has to be accepted as true. He has also asserted that dry lands are available and there is no justification to acquire wet land, which has fruit bearing trees. This is not denied by the authorities, possibly could not have keep denied.

16. Having gone through the record, I have no doubt in | my mind that this is a clear case of abuse of power. The authorities have invoked the provisions of the Act, where it is not warranted. In trying to provide house sites to the siteless, a poor farmer is deprived of his livelihood. The Act is not intended to build a castle on another's grave. It is not made out that this is absolutely essential to achieve the object of the Act. It is not made out that this could not be avoided and that it was inevitable. The fact that in spite of quashing the final notifications, on two occasions, the authorities have maintained the possession of allottees demonstrates the arbitrary and motivated attitude. The Assistant Commissioner did not even consider the petitioner's petition for restoration, when the final notification was quashed. After all land vests in the State Government, after the final notification and not before. Possession follows vesting ; therefore if (here is no vesting, possession must be with the true owner He cannot be deprived of it

except by process known to law. By threat and police force his rights cannot be taken away.

17. Mr. T.R. Subbanna submitted that in spite of quashing the allottees' possession is lawful and they cannot be dispossessed. I am not persuaded to accept this contention. To me, the whole proceedings appear to be arbitrary and motivated. Mr. Subbanna placed reliance on *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, *P.G. Joshi and Others Vs. The Director General, Posts and Telegraphs, New Delhi and Others*, and *Balwant Narayan Bhagde v. Bhagwat*. In both the cases possession was taken u/s 16 or 17(1) of the Land Acquisition Act and attempt was made to withdraw the acquisition u/s 48 of the Land Acquisition Act. In the House Sites Act, there are no provisions corresponding to Sections 16, 17(1) and 48. Possession under the House Sites Act can only be taken after vesting and once acquisition is completed, it cannot be withdrawn. In this view of the matter, these rulings are of no assistance. An illegal and unlawful possession cannot be protected against a true owner.

18. The authorities have failed to notice that under Article 300A of the Constitution, no person can be deprived of his property save by authority of law. Forcible dispossession, is unconstitutional and is an act of tyranny.

19. I am not inclined to remand the matter on a third occasion. The earlier orders of remand have proved futile. By repeating the erroneous procedure and shielding the unlawful allottees, the authorities have demonstrated their attitude, which in the circumstances amounts to malice in law. As observed by Supreme Court in *Smt. S.R. Venkataraman Vs. Union of India (UOI)* and *Another*, malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause. The Court relied upon the following observation of Viscount Haldane in *Shearer -v.-Shields 1914 SC 808* :-

"....A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind ; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently....."

20. The further fact that on every occasion, whenever the matter has come to this Court, they have not filed their return to defend their action lends support to the above conclusion.

For the aforesaid reasons, I make the following order :-

1. Rule made absolute. Writ Petition allowed. The entire acquisition proceedings commencing from the preliminary notification dated 6-2-1976, are quashed.

2. If the respondents are put in possession as asserted, respondents 1 to 3 shall restore the land to the petitioner forthwith.

3. Respondents shall not dispossess the petitioner of his land S. No. 7/1, save by process known to law.

4. Petitioner is entitled to costs. Advocate's fee Rs. 500/- payable by respondents 1 to 3