

(2016) 11 SC CK 0019
In the Supreme Court Of India
Case No : Civil Appeal No. 10607 of 2014.

Sannarangappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Karnataka Highways Act, 1964 — Section 15, 17, 7, 3, 2, 28, 17(2), 17(1)
Land Acquisition Act, 1894 — Section 23, 24

Citation : (2016) 12 Scale 483

Hon'ble Judges : Ranjan Gogoi and Abhay Manohar Sapre, JJ.

Bench : Division Bench

Advocate : Mr. Basavaprabhu S. Patil, Senior Advocate Mr. Abdul Azeem Kalebudde, Mr. Chinmay Deshpande, Mr. Anirudh Sanganeria, and Mr. Amjad Maqbool, Advocates, for the Appellant; Mr. Devadatt Kamat, A.A.G. Mr. V. N. Raghupathy, Mr. Rajesh Inamdar, Mr. Javedur Rahman and Mr. Parikshit P. Angadi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The challenge in the present appeal arises out of an order of the High Court of Karnataka by which the provisions of Section 15 of the Karnataka Highways Act, 1964 (hereinafter referred to as "the State Act") have been held to be valid. The challenge in the writ petition was, inter alia, on the ground that prior to resorting to acquisition under Section 15 of the State Act no opportunity of hearing was contemplated/afforded to the landowner which necessarily made the aforesaid provision of the State Act constitutionally fragile.
2. The High Court answered the said question against the landowner. Aggrieved the present appeal has been filed.
3. Reading the order of the High Court we are of the view that the canvas on which the High Court had decided the issue needs to be further unfolded by a fuller consideration of the relevant provisions of the State Act.

Reading the provisions contained in Section 2(c), Section 2(e), Section 2(k), Section 3, Section 7, Section 15 and Section 17 of the State Act we find that a declaration in the official Gazette declaring any road, way or land to be a highway is to be followed by another Notification under Section 7(1)(ii) of the State Act fixing the highway boundary, the building line and the control line as defined under Section 2(c) and Section 2(e) and Section 2(k) of the State Act. Section 7(2) of the State Act, which is extracted below, contemplates publication of the notification in question in the official Gazette, to which objections can be filed by a person affected. Such objections may result in abandonment of the proposal or modification thereof under sub-section (4) of Section 7.

"7. Power to fix boundary of building and control lines of Highways.-

(1) In any area in which the provisions of this Act have been brought into force; and

(i) where any road, way or land has been declared to be a highway under Section 3, or

(ii) where the construction or development of a highway is undertaken, the State Government may, by notification in the official Gazette, fix, as respects such highway, the highway boundary, the building line and the control line:

Provided that having regard to the situation or the requirements of a highway or the condition of the local area through which the highway passes, it shall be lawful for the State Government-

(i) to fix different building or control lines, or

(ii) not to fix building or control lines, in respect of any highway or portion thereof;

(2) Not less than sixty days before issuing a notification under sub-section (1), the State Government shall cause to be published in the official Gazette and in the prescribed manner in the village and at the headquarters of the taluk in which the highway is situated, a notification stating that it proposes to issue a notification in terms of sub-section (1), and specifying therein all the lands situated between the highway boundary and the control line proposed to be fixed under such notification and in case of new works, also lands benefiting by the construction or development of the highway, as the case may be, together with a notice requiring all persons affected by such notification, who wish to make any objections or suggestions with respect to the issue of such a notification, to submit their objections or suggestions in writing to the Highway Authority or appear before such Authority, within two months of the publication of the notification in the official Gazette or within one month from the date of publication of the notification in the village, whichever period expires later.

(4) If, before the expiry of the time allowed by sub-section (2) for filing or hearing of objections or suggestions, no objection or suggestion has been made

the State Government shall proceed at once to issue the notification under sub-section (1) If any such objection or suggestion has been made, the State Government shall consider the record and the report referred to in sub-section (3) and may either,-

(a) abandon the proposal to issue the notification under sub-section (1), or

(b) issue the notification under sub-section (1) with such modification, if any, as it thinks fit.

(5) In considering the objections or suggestions the decision of the State Government on the question of issuing the notification under sub-section (1) shall be final and conclusive."

4. Thereafter under Section 8 of the State Act a map is to be prepared in conformity with the notification under Section 7 which is also to be published and made available for inspection at prominent places. Under Section 15 of the State Act acquisition of land is contemplated at which stage again a notice is required to be given under Section 17(1) to the affected persons to establish their rights to the lands in question for the purposes of compensation. Section 17(2) of the State Act which contemplates such notice also gives an opportunity to the affected persons to object to the quantum of compensation and to the measurements taken.

5. From the above narration of the relevant provisions of the Act it clearly transpires that Section 15 of the State Act is a midway provision that the statute contemplates. What is of significance and which impacts the right of the landowners is the notification under Section 7 of the State Act fixing the highway boundaries, the building lines and the control lines. In respect of such an exercise notice under Section 7(2) of the State Act is contemplated whereby opportunity is given to the landowners to file their respective objections upon consideration of which the proposal can be modified or even abandoned. If at the stage of issuing notification under Section 7 such an opportunity is to be given, once the aforesaid stage is over and the map under Section 8 is published acquisition of land as and when necessary under Section 15 is a consequential effect. At that stage, really a second opportunity to object to the acquisition need not be afforded in view of the opportunity already granted under Section 7(2). We, therefore, cannot find any error in the ultimate conclusion recorded by the High Court though our concurrence with the said conclusion is on slightly different grounds, as indicated above.

6. A further issue has been raised before us with regard to the validity of Section 28 of the State Act which contemplates grant of compensation in accordance with/having due regard to the provisions of Section 23 and 24 of the Land Acquisition Act, 1894. It is contended that the quantum of compensation contemplated under the State Act is inadequate and no additional compensation or solatium is provided for under the State Act.

7. Though the said issue was not raised before the High Court, yet, in view of the significance thereof we have heard the parties on the said issue. In this regard, we have taken note of the affidavit and written submissions filed on behalf of the State of Karnataka dated 15th November, 2016 wherein it has been categorically stated that compensation for acquisition of land under the State Act will be at par with the provisions of the erstwhile Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, wherever applicable. It is further stated at the bar by Shri Devadatt Kamat, learned AAG for the State of Karnataka that the appellant has been given/awarded compensation as per the provisions of the Land Acquisition Act, 1894 which includes additional compensation under Section 23(1A) of the Land Acquisition Act, 1894 as well as solatium and interest thereon.

8. In view of the above and the categorical stand taken on behalf of the State Government we will have no occasion to go into the validity of Section 28 of the State Act. The aforesaid aspect of the matter, therefore, need not detain the Court any further.

9. Consequently and for the reasons aforesaid, we find no merit in the present appeal and it is accordingly dismissed. However, in the facts and circumstances of the case we make no order as to costs.