
(1973) 10 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 815 of 1970

Saraswathi Printing Works

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 19-10-1973

Acts Referred:

Citation : AIR 1974 Kar 125

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; H.K. Narayan, Govt. Pleader for Respondents 1, 2 and 4, for the Respondent

Judgement

Venkataswami, J.—This Writ petition is directed against an award made by the Special Land Acquisition Officer, Mangalore Municipality in L.A.C., 43 of 1963. The petitioner is a tenant in a portion of the building which was also acquired at the instance of the owner, but had not been duly notified under the Land Acquisition Act. The material facts are as follows: The Government by a Notification u/s 6 of the Land Acquisition Act, bearing No. RD 65 LML 63 dated 17-1-1967, acquired portions measuring 11 cents and 1 cent of land out of site Nos. 108/2 and 107/1B respectively. The lands are situate within the limits of Mangalore Municipality. There were buildings on these lands. The petitioner was a tenant in a portion of the said buildings. It would appear that a small portion of the said buildings was also projecting on the portions of the lands proposed to be acquired. After service of notices under Sections 9 and 10 of the Acquisition Act, the owner expressed a desire that the whole of the building might be acquired, presumably pursuant to the provisions of Section 49 of the Act. The Land Acquisition Officer, accepted this view of the owner and proceeded to acquire the remaining portion of the building, without reference to any further notification u/s 4 or 6 of the Act or consent or sanction of the Government. On behalf of the petitioner, the acquisition as such was not questioned, but a claim for the value of the improvements had been advanced. Consequently, the Land Acquisition

Officer made the impugned award.

2. On behalf of the petitioner, it has been urged that the award was invalid in that the Land Acquisition Officer had no jurisdiction to proceed with the acquisition in the absence of a decision by the Government to acquire by the issue of appropriate Notification in that behalf under the relevant provisions of the Acquisition Act, notwithstanding the provisions of Section 49 of that Act. Alternatively, it is contended that having regard to the provisions of sub-sections (2) and (3) of Section 49 and the definition of the expression "land" in the Acquisition Act, the sanction of Government would still be necessary for such an acquisition. It was also argued that to hold that Section 49(1) would enable such acquisition to be made by a Land Acquisition Officer on his own, although at the express desire of the owner, might lead to great abuse as in conceivable cases, of which the present case is one, it might lead to the incurring of a commitment, financial and otherwise, by the Government far beyond what was in its contemplation at the time the acquisition was actually proposed.

3. On behalf of the respondents, particularly Mr. Holla, the learned counsel appearing on behalf of the owner, contended that on a fair reading of Section 49(1) with all its provisos it would be clear that such a power to acquire has been vested in a Land Acquisition Officer. He also contended that the petitioner had no locus standi to maintain the petition as he had acquiesced in the acquisition and confined his claim only to the value of the improvements effected by him. On behalf of the State, it was also contended that the possibility of the abuse of such power, as envisaged on behalf of the petitioner, was reduced in a considerable measure by the supervisory powers exercisable by the Government and other superior authorities by virtue of Section 15A of the Act and a Notification issued by the Government prescribing the financial limits of the jurisdiction exercisable by such Land Acquisition Officers.

4. For the purpose of appreciating the contentions urged, it is necessary to set out the relevant provisions of the Acquisition Act.

49. Acquisition of part of house or building,--

(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before (Deputy Commissioner) has made his award u/s 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the (Deputy Commissioner) shall refer the determination of such question to the Court and shall not take

possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim u/s 23, sub-section (1) thirdly, by a person interested, on account of the severing of the land to be acquired from his other land the (appropriate Government) is of opinion that the claim is unreasonable or excessive, it may, at any time before the (Deputy Commissioner) had made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under Sections 6 to 10, both inclusive, shall be necessary; but the (Deputy Commissioner) shall without delay furnish a copy of the order of the (appropriate Government) to the person interested, and shall- thereafter proceed to make his award u/s 11.

5. The above provisions have been analysed by the Supreme Court in a decision, I shall presently refer to. Indeed that decision has been relied on on behalf of both the parties.

6. In support of the contention of the petitioner, a Division Bench decision of the Bombay High Court in Bhagwandas Nagindas Vs. The Special Land Acquisition Officer, has been relied on. The facts of that decision are almost on all fours with those in the present case, except for the circumstance that no building was involved therein. The owners therein had taken advantage of the provisions of Section 49(1) in respect of the acquisition of a portion of the land, and expressed a desire that the whole of the land might be acquired. The Acquisition Officer accepted the view of the owner and proceeded to acquire the whole of the land. But the owners objected that in the absence of fresh steps taken pursuant to the provisions of Section 4 and Section 6 of the Acquisition Act, the award would be illegal. The Court has observed thus:

.....I think the proceedings are invalid and briefly for this reason. The Government have no right whatever and no power against the wishes of the owner to take this land except as provided by the Land Acquisition Act. Here they have taken the claimants' land without the declaration required. That seems to me to be fundamentally and absolutely wrong. An argument was advanced as to whether Section 49 did not, by its terms, imply that the Notification of the whole might be dispensed with although the whole was to be acquired, provided that there had been a declaration regarding the part. I will not spend time in discussing the phraseology of this section, but will content myself with expressing the opinion at which I have arrived after carefully reading it. My opinion is that Section 49 confirms the view that in a case of this kind acquisition or rather the taking up of land without a declaration relating to the land taken is absolutely illegal. I feel no doubt, therefore, that the acquisition was contrary to

law and that the whole of the proceedings beginning with the Collector's award are bad, and must be set aside.

7. The above enunciation, in my view, clearly supports the contention of the petitioner. But this decision is sought to be distinguished by Sri Holla on the ground that what was involved therein was land only and not a building. It seems to me that this distinction makes no difference to the principal enunciation therein. I say so because of two reasons: First, there is no other provision barring Section 49(1), which would enable an owner to express a desire for the acquisition of the whole of the land of which the portion proposed for acquisition forms a part and having regard to the intendment of the second proviso to Sec. 49(1) it would be clear that Sec. 49(1) is equally applicable to land. And in the absence of any specific provision in the Act, expressly providing for the acquisition of only the building de hors the land, Section 49(1) would be equally applicable to cases of lands with buildings. But, in view of the enunciation of the Supreme Court in the decision to be referred to hereafter. I am unable to accept and follow the decision of the the Bombay High Court in Bhagwandas' case.

8. I now turn to the decision of the Supreme Court in State of Bihar and Another Vs. Kundan Singh and Another, On behalf of the petitioner, reliance was placed on the following enunciation occurring in paragraph 10 of the said report. It reads thus:

The provisions of Section 49(1) prescribe, inter alia, a definite prohibition against putting in force of any of the provisions of the Act for purpose of acquiring a part only of any house, if the owner desires that the whole of such house shall be acquired. This prohibition unambiguously indicates that if the owner expresses his desire that the whole of the house should be acquired, no action can be taken in respect of a part of the house under any provision of the Act, and this suggests that where a part of the house is proposed to be acquired and a notification is issued in that behalf, the owner must make up his mind as to whether he wants to allow the acquisition of a part of his house or not. If he wants to allow the partial acquisition, proceedings would be taken under the relevant provisions of the Act and an award directing the payment of adequate compensation would be made and would be followed by the taking of possession of the property acquired. If, on the other hand, the owner desires that the whole of the house should be acquired, he should indicate his desire to the Land Acquisition Officer and all further proceedings under the relevant provisions of the Act must stop.....

(Emphasis italics supplied).

9. But the above enunciation will not be of much help to the petitioner. When one has regard to a later enunciation in the same case, to which attention was invited on behalf of the respondent (owner) by Sri Holla. It occurs in paragraph 12 of the same report and reads thus:

It would be noticed that if an objection is made by the owner u/s 49(1), the

Collector may decide to accept the objection and accede to the desire of the owner to acquire the whole of the house. In that case, further proceedings will be taken on the basis that the whole of the house is being acquired. In some cases, the Collector may decide to withdraw acquisition proceedings altogether, because it may be thought not worthwhile to acquire the whole of the house; in that case again, nothing further remains to be done and the notification issued has merely to be withdrawn or cancelled. But cases may arise where the Collector may not accept the claim of the owner that what is being acquired is a part of the house; in that case, the matter in dispute has to be judicially determined, and that as provided for by the second proviso to S. 49(1).....

(Emphasis (*italics*) supplied).

10. It seems to me that the latter enunciation clearly suggests that the Land Acquisition Officer could proceed with the acquisition, if he agreed with the desire of the owner that the whole of the building ought to be acquired, as if the whole of such building had been proposed to be acquired. In the instant case, the position is such as would clearly attract the principle underlying the latter enunciation. I am not therefore, in agreement with the main contention of the petitioner.

11. But it was sought to be argued that the facts of the case are such as would attract the provisions of sub-sections (2) and (3) of S. 49 of the Acquisition Act. This argument clearly is without force. The provisions contained in those sub-clauses relate to an option reserved to Government to acquire the whole of the land in any case where compensation for severance of the acquired land claimed under clause "thirdly" of S. 23 is either excessive or unreasonable. In the instant case, we are not faced with any such contingency.

12. In concluding as above, I wish to observe that no argument has been addressed from the Bar, regarding a case where the building only, that is the superstructure excluding the land on which it is standing, is sought to be acquired and if any such case, the provisions of Section 49(1) would be attracted in the absence of any statutory provision providing for such an acquisition. It is needless to observe that in such a case an anomaly might arise in regard to the manner in which such a building could be taken possession of by the Government, pursuant to the Acquisition Act. I should, therefore, not be understood as expressing any concluded opinion on such a question. I say so because in the instant case, in my opinion, the impugned award is unclear as to the subject-matter of the acquisition u/s 49(1) of the Act, that is, whether what is acquired is only the building or the land and the building together.

13. In the light of the above discussion, I do not consider it necessary to examine the contention relative to locus standi urged on behalf of the respondent. In the result, the petition is dismissed. No costs.