
(1987) 06 KAR CK 0002

In the Karnataka High Court

Case No : W.P. Nos. 2444/1983 C/w W.P. No. 4278 & 5910/1982

Sayyad Saheb Jada and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-06-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (1987) 2 KarLJ 108

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In all these petitions, the petitioners have questioned the acquisition of their lands under the provisions of the Land Acquisition Act ("the Act" in short) for public purpose, to wit for Grain Market and Weekly Bazar at Belgaum Corporation.

2. Preliminary Notification dated 17th June 1978 proposing to acquire the lands belonging to the petitioners was issued by Government under Section 4(1) of the Act. It was published in the Official Gazette on 6th July 1978. Thereafter final notification dated 2nd July 1981 was issued under Section 6 of the Act and the said Notification was published in the Official Gazette on 27th August 1981. Questioning the legality of the above Notifications, the petitioners have presented these writ petitions.

3. The contention of the petitioners is that they were all small Holders and therefore, there was no justification for acquisition of their lands which would result in depriving them of the opportunity of carrying on their business in the lands in question.

4. The purpose for which the land was acquired is undoubtedly a public purpose. Any hardship that might be caused to the petitioner cannot be helped and would not constitute a ground for this court to interfere with the acquisition. It is a matter to be considered by the Acquiring Authority.

5. In the present case after considering the objections filed by the petitioners,

the Acquiring Authority has sent its report to the Government and the Government has considered the objections and was of the view that they should be over-ruled and the land should be acquired. This court cannot go into the correctness of the decision of the Government in this regard.

6. The petitioners, however, have raised a contention to the effect that final notification is liable to be quashed on the ground that it was issued after three years from the date of the preliminary notification and therefore, it is beyond the competence of Government. The relevant portion of Section 6 of the Act on which the learned Counsel for the petitioner relies reads thus:

6. Declaration that land is required for a public purpose:

(1) xx xx

(A) The Deputy Commissioner shall, thereupon within two months from the date on which he receives such direction-

(a) cause the land (unless it has been already marked out under Section 4 to be made out;

(b) also cause it to be measured, and if no plan has been made therefore, a plan to be made of the same; and

(c) report to the appropriate Government the result of the operations under this sub-section.

The appropriate Government shall then make a declaration that the land is needed for a public purpose or for a company and different declaration may be made from time to time in respect different parcels of any land covered by the same notification under sub-section (1) of Section 4: Provided that no declaration in respect of any particular land covered by a notification under Sub-section (1) of Sec. 4. published after commencement of the Land Acquisition (Karnataka Amendment and Validation) Act 1967 shall be made after the expiry of three years from the date of such publication.

EXPLANATION: In computing the period of three years specified in this sub-section, any period during which any action or proceeding to be taken in pursuance of the notification is sued under sub-section (1) of Section 4 is held up on account of stay or injunction by order of a Court shall be excluded."

There is no dispute that preliminary notification dated 17th June 1978 was published in the Official Gazette on 6th July, 1978. The starting date for purpose of finding out as to whether the final notification is within the time permitted by the Section is the date of publication of the Preliminary Notification in the Official Gazette as expressly stated in the section and not the date of the issue of the notification. Further, as far as final notification is concerned, it is that date of the declaration in that the date of notification under Section 6 which should be looked into and not its publication in the Official Gazette, in view of the wording of the provision.

7. In the present case though the preliminary Notification was dated 17th June 1978, it was. published in the Official Gazette only on 6th July 1978. Further, though the publication of final notification/declaration in the Official Gazette was on 27th August, 1981, the date of notification/declaration was 2-7-1981. Thus it may be seen that the final notification/declaration was made within three years from the date of publication of preliminary notification. Therefore, the contention of the petitioner that the final notification was invalid as barred by time is untenable.

8. The learned counsel next contended that there was non-compliance with the mandatory requirement of sub-section (2) of Section 5-A of the Act, in that the intimation regarding sending of the report to Government was not given to the petitioner, though no such averment is made in the petition. In this regard, there is a check report submitted by the Assistant Commissioner after enquiry under Section 5-A of the Act. In the said report, the Assistant Commissioner has expressly stated that he submitted the report to the Government on 18th July, 1978 and on the same day, he also sent the intimation to the parties regarding submission of the report to the Government. In the absence of a specific averment in the petition as to non-communication about the submission of the report, the presumption flowing from the report of the Assistant Commissioner that the communication had been sent to the petitioner on 18-7-1979 itself, should prevail.

9. In the result, I make the following-

ORDER

Writ Petition are dismissed.