

(1980) 08 KAR CK 0044
In the Karnataka High Court
Case No : WP 14500 to 14502/79

S.C. Kempaiah

APPELLANT

Vs

Kar. Indus. Area Dev. Board

RESPONDENT

Date of Decision : 26-08-1980

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28

Citation : (1980) 2 KarLJ 403

Hon'ble Judges : N. R. Kudoor, J

Judgement

1. By consent of the learned Advocates appearing on either side, these three combined writ petitions are taken up for final hearing.

2. In these combined writ petitions the three petitioners S.C. Kempaiah, S. Kempaiah and Kenchegowda alias Sub-banna have sought for a writ in the nature of certiorari quashing the impugned notifications Ex. A issued under subsection (1) of S. 28 and Ex. B under subsection (4) of S. 28 of the Karnataka Industrial Areas Development Act, 1966 (for short "the Act") in respect of the acquisition of the lands, the details of which are more fully described in paras 1, 2 and 3 of the writ petition, belonging to the petitioners respectively.

3. The contentions advanced by Sri C. Shivappa, the learned Advocate for petitioners, assailing the validity and the legality of the impugned notifications are manifold, I propose to state them in the order in which they were formulated as under:

(1) No notice under sub-section (2) of S. 28 of the Act was served upon the petitioner;

(2) No enquiry was held as contemplated before passing an order under subsection (3) of S. 28 of the Act;

(3) No order under sub-section (3) of S. 28 of the Act was passed by the State Government which was a condition precedent to issue a final notification under sub-section (4) of S. 28 of the Act; and (4) The acquisition was motivated by

mala fides.

4. It will be useful to refer to the relevant portion of S. 28 of the Act in order to appreciate the contentions urged in the case. S. 28 deals with the acquisition of land for the objects mentioned in the Act. Sub-section (1) of S. 28 stipulates that if at any time, in the opinion of the State Government any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of the Act, the State Government may by notification, give notice of its intention to acquire such land.

Sub-section (2) provides that on 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 30 days from the date of service of the notice, why the land should not be acquired.

Sub-section (3) contemplates that 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.

Then follows sub-section (4) which stipulates that 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 in the official gazette, be made to that effect.

The effect of the publication of the notice as provided under sub-section (4) is stated in sub-section (5), that the land shall vest absolutely in the State Government free from all encumbrances on the publication in the official gazette of a declaration under sub-section (4).

On complying with the procedure laid down in sub-sections (1) to (5), the 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 that behalf within 30 days of the service of the notice as provided under sub-section (6).

If any person as directed in sub-section (6) fails to deliver possession of the land, then the State Government shall proceed to take possession of the land as provided under sub-section (7) of S. 28.

5. Keeping in view the above provisions, let me now consider the facts of the case.

6. The State Government initiated proceedings to acquire the lands belonging to the petitioners by issue of a notification under sub-section (1) of S. 28 as per Ex. A dated 1-3-1976. There is no dispute that Ex. A was published in the official Gazette. Thereafter, the State Government also issued a declaration dated

16-5-1978 published in the official Gazette on 22-6-1978 as per Ex. B as required under sub-section (4) of S. 28. However, I do not find from the records which are made available by the learned High Court Government Pleader, any notice served upon the petitioners as required under sub-section (2) and any order made by the State Government as required under subsection (3) before issuing the notification under sub-section (4) of S. 28.

It is the grievance of the petitioners that they were not served with a notice as required under sub-section (2) and that they were not given any opportunity of being heard or making representations as provided under sub-section (3) and as such they were denied the principles of natural justice in the matter of acquiring their lands.

7. It seems to me that there is very much force in this submission. The State Government by the publication of the notice under sub-section (1) of S. 28 only manifests its intention to acquire the lands stated in the notification. Sub-section (2) provides for a notice to be served upon the owner and the other interested persons to show cause within the stipulated time from the date of service of the notice why the land should not be acquired. In other words, the purpose of the notice to be served upon the owner and the other interested persons of the land proposed to be acquired is to afford them an opportunity to register their objections against the proposed acquisition of their lands. After they are provided with an opportunity of filing their objections, sub-section (3) contemplates of giving them an opportunity of being heard. In other words, an opportunity of personal hearing in the matter-should be given to them before the Government could take a decision to pass an order as contemplated under subsection (3). If the owners or the other persons interested in the land proposed to be acquired, are denied such opportunities by the concerned authorities without adhering to the mandatory provisions of sub-sections (2) and (3), it must be held that the proceedings conducted by them are illegal and invalid, because of the contravention of the provisions of the Act and also the well recognised principles of natural justice. There is little difficulty in holding so in respect of the proceedings initiated by the State Government in the case on hand on the perusal of the records, since the records do not bear out that the State Government has adhered to the provisions of sub-sections (2) and (3) of S. 28 of the Act. Hence, I hold that the entire proceedings conducted by the State Government subsequent to the issue of the notification Ex-A including the final notification Ex-B and the notices served upon the petitioners under sub-section (6) of S. 28 of the Act to deliver possession of the suit lands, are invalid and vitiated, liable to be quashed. In the view that I take regarding the validity of the proceedings held in the case, I do not propose to traverse the other contentions raised by the petitioners.

8. In the result, for the reasons stated above, a rule is issued and made absolute. The entire proceedings of the State Government subsequent to the issue of the notification Ex-A so far as they relate to the petitioners' lands are

quashed. However, it is open to the State Government to take appropriate steps in accordance with law in pursuance of the notification Ex-A if they deem fit. In the circumstances of the case, I direct each party to bear his own costs.