

(1991) 02 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 13319 of 1986

Shantappa

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 21, 226, 227, 39
Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3 (1)

Citation : (1991) ILR (Kar) 3354 : (1991) 2 KarLJ 342

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : Annadanayya Puranik, for the Appellant; Bharathi Nagesh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this Petition under Articles 226 and 227 of the Constitution, the petitioner who claims to be the owner of an extent of 1 acre 12 guntas comprised in S.No. 53/2 of Telkuni village, Aland Taluk has sought for quashing the Notification bearing No. DEV/LAQ/HS/412/83-84 dated 25-2-1984 - Annexure-A issued under Sub-section (1) of Section 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (hereinafter referred to as "the Act"). He has also sought for quashing the Notification bearing No. LAQ.HS/34-86-87 dated 19-5-1986 published in the Official Gazette of 22-5-1986 issued under Sub-section (4) of Section 3 of the Act.

2. The land in question in all measures 1 acre 24 guntas. Out of that, petitioner claims to be the owner of 1 acre 12 guntas. The land is acquired for the purpose of grant of house sites to weaker sections of the people. The petitioner filed his objections on 25-6-1984.

3. It is contended on behalf of the petitioner that the objections filed by the petitioner were not enquired into; that the petitioner was not heard; that the land in question is the only land owned and possessed by the petitioner and if it

is taken away he will be deprived of his livelihood and as such the acquisition of the land in question is opposed to the very provisions of Articles 19(1)(g), 39 and 21 of the Constitution.

4. The learned Government Pleader has produced the records. It is contended by her that the objections filed by the petitioner were enquired into, he was afforded an opportunity of hearing; that the petitioner appeared and he was heard; that there was no other land available except the land in question; that the land in question is suitable for house sites; that there is no breach of Fundamental Rights or any provisions of the Constitution in acquiring the land in question; that even if it is accepted that the land in question is the only land held and possessed by the petitioner, as long as the acquisition is in accordance with law and there is no breach of the provisions of the Act and the Constitution, it is not liable to be interfered with.

5. In the light of these contentions, the following points arise for consideration:

1. Whether the acquisition proceedings acquiring the land in question are vitiated by reason of non-compliance with the provisions of the Act and the Rules framed thereunder?

2. Whether the acquisition of land if it is the only piece of land possessed by an agriculturist, is violative of Article 19(1)(g), Article 21 and Article 39 of the Constitution?

POINT NO. 1

6. The records produced by the learned Government Pleader clearly indicate that the objections filed by the petitioner were enquired into and the petitioner was also heard. The Order Sheet maintained by the Assistant Commissioner for the dates 28-10-1985 and 21-11-1985 are as follows:-

"28-10-1985: Case called. Objection petitioner Sri Shantappa is present. He says that he is not having any land other than the land which is now intended for acquisition and that he will become landless if acquired. Alternatively some other land may be acquired. He also states that he is cultivating personally. The case is reserved for Spot Inspection.

Sd/- Sd/- 28-10-1985. 21-11-1985:- Inspected spot along with Tahasildar and R.I. today. The objection petitioner is absent. On enquiry it is learnt that he is an absented owner. He has already disposed of some portion in the same S.No. The land is suitable for forming house sites. No Government land for formation of House Sites is available in the vicinity. Hence, his objection is over ruled.

Sd/-

21-11-1985 Assistant Commissioner."

Thereafter, the Assistant Commissioner has made a Report dated 2-12-1985 which reads thus:

"No. LAQ/HS/132/83-84 Despatched on 2-12-1985 To The Deputy Commissioner, Gulbarga.

Sir,

Sub:- Telakuni Village, Aland taluk, L.A. for House Sites in-Sy.No. 53 for 1=22.

Ref:- Notification No. LAQ/HS/412/83-84 dated 25-2-1984 published in the Gazette dated 8-3-1984.

The notification published in the Gazette together with the notice under Rule 4 was served on the land owner and also affixed on the village Chowdi on 4-6-1984. In response to the notice one Sri Shantappa s/o. Dharmanna Anubhavidar has filed an objection petition on 25-6-1984. The matter has been enquired and the case was posted for hearing the objections. The objection petitioner was heard on 28-10-1985. He stated that he was not having any land other than the land under acquisition and requested to acquire the alternative land. The case was kept for spot inspection.

The land was inspected along with the Tahsildar and R.I. on 21-11-1985. The objection petitioner was absent. On enquiring it is learnt that he is an absentee land owner and he has already disposed of some portion of the same Sy.No. The land is suitable for forming house sites. There is no Government land fit for formation of house sites available in the vicinity. Hence his objection is over ruled.

I request you kindly to accord permission to proceed with the case u/s 3(4) of the Act.

Yours faithfully,

Sd/- Assistant Commissioner."

Thus, it is clear that the Assistant Commissioner has followed the procedure laid down in the Act and the Rules framed under the Act known as the Karnataka Acquisition of Land for Grant of House Sites Rules, 1973 (hereinafter referred to as the "Rules"). After the receipt of the Report and the records, the Deputy Commissioner has considered the objections and the Report of the Assistant Commissioner and has passed an order on 16-4-1986 u/s 3(3) of the Act Thereafter, the impugned Notification u/s 3(4) of the Act has been issued. Thus, it is not possible to hold that the petitioner was not heard and the objections filed by the petitioner were not enquired into. No provision of the Act and the Rules has been violated. Accordingly, Point No. 1 is answered in the negative.

POINT NO. 2

7. In support of the contention that the acquisition in question is opposed to Articles 19(1)(g), 21 and 39 of the Constitution as it is the only piece of land owned and possessed by the petitioner who is an agriculturist, Sri Puranik, learned Counsel for the petitioner has placed reliance on a Decision of this Court in Gadigeppa Mahadevappa Vs. State of Karnataka, .

8. However, it is relevant to notice that the order passed by the Deputy Commissioner, Gulbarga u/s 3(3) of the Act states that the petitioner is an absentee-land owner and he has already disposed of some portion which formed part of the survey number of the land in question.

9. In the aforesaid Gadigeppa Mahadevappa's case our learned Brother Balakrishna, J after referring to Articles 39, 21 and 19(1)(g) of the Constitution, has held thus:

"The impugned action deprived the petitioner of his sole means of livelihood as an agriculturist since it renders him landless. His fundamental right to pursue his avocation is usurped. His right to live is seriously jeopardised. His right to carry on his occupation assured under Article 19(1)(g) of the Constitution is taken away. Acquisition in liberating the petitioner from his inalienable right to avocation is unconstitutional. The impugned action tantamounts to mutation of body from the soul when law is reduced to a fossil."

Accordingly, the learned Judge has quashed the acquisition proceeding.

10. With great respect to learned Judge, we find it very difficult to agree with the aforesaid view. It is not possible to lay down as a proposition of law that if an agriculturist or an individual owns one piece of land and that land is required by the State for a public purpose, it cannot be acquired and such acquisition will be violative of Article 19(1)(g), Article 21 and Article 39 of the Constitution. The right to property after the Constitution (Forty-Fourth Amendment) Act, 1978 has ceased to be one of the Fundamental Rights. It has lost its protection as a Fundamental Right. Clause (f) of Article 19(1) was omitted by the Constitution (Forty-Fourth Amendment) Act, 1978. The very same Act along with omitting Article 19(1)(f), omitted Article 31 of the Constitution and inserted Article 300A under a separate Chapter IV - Right to Property - in Part XII of the Constitution. Article 300A states: "No person shall be deprived of his property save by authority of law". With the result of omitting Article 19(1)(f) and Article 31 of the Constitution and inserting Article 300A it is evident that right to property is no more a Fundamental Right. However, there is no doubt that though the right to property has ceased to be a Fundamental Right falling under Part III of the Constitution, nevertheless, "Right to Property" is a right guaranteed under Article 300A of the Constitution. Therefore, the acquisition of property can be made only under the authority of valid law. The Act under which the acquisition is made is a valid piece of legislation. The Act lies within legislative competence of the State Legislature. It is not violative of Article 14 of the Constitution. It provides for determination and payment of compensation for the land acquired. Thus it does not take away private property or deprive a person of his property without the authority of law and without compensation. The procedure for acquisition provided under the Act is fair, reasonable and does not give scope for arbitrary acquisition of property. In fact, in Mohammed Sab Vs. State of Karnataka, we have considered the following points:

"1) Whether the Karnataka Acquisition of Land for grant of Houses Sites Act, 1972 is beyond the legislative power of the State Legislature?

2) Whether the provisions contained in Sub-sections (5) and (6) of Section 6 of the aforesaid Act are violative of Articles 14 and 300A of the Constitution?

Both these points have been answered in the negative. It is not possible to hold that if an agriculturist possesses only one piece of land and that land is required for public purpose, the same cannot at all be acquired. An individual or private interest must yield to public interest. It is also not possible to hold that the acquisition will deprive of his means of livelihood and his right to pursue his avocation is usurped. He is not prevented from following any avocation including agriculture. Compensation is paid for the land acquired. He is not prevented from purchasing another land or seeking grant of another land or pursuing any other avocation. The aforesaid view of the learned Judge imposes an embargo on the power of Eminent Domain of the State. This power of the State is based on the principle that the State is regarded not only as having a power of disposition over the whole of the National Territory, but also as the representative owner of both the National Territory and all other property found within its limits. This power of the State has to be exercised subject to the provisions of the Constitution and the laws made.

11. In Gadigeppa Mahadevappa's case, the effect of Constitution (Forty-Fourth Amendment) Act, 1978 had not been brought to the notice of the learned Judge. Article 39 falls under Part IV of the Constitution pertaining to "Directive Principles of State Policy". The purpose of the Directive Principles is to fix certain social and economic goals to fulfil the basic needs of the common man and to change the structure of our society. No doubt the Directive Principles of State Policy are not in any way less important; but still there is a difference between the Fundamental Rights and the Directive Principles of State Policy. In this regard, it is appropriate to quote the observation of the Supreme Court in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, :

"It is now universally recognised that the difference between the Fundamental Rights and Directive Principles lies in this that Fundamental Rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the Directive Principles are aimed at securing social and economic freedoms by appropriate State action, The Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to Courts. So they are made justiciable. But it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a Court of Law. It is unimaginable that any Court can compel a legislature to make a law. If the Court can compel Parliament to make laws then Parliamentary democracy would soon be reduced to an oligarchy of judges. It is in that sense that the Constitution says that the

Directive Principles shall not be enforceable by Courts. It does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State."

Therefore, it is not possible to agree with the view expressed in Gadigeppa Mahadevappa's case that the acquisition of the land of a person who possesses only one piece of land is opposed to and is violative of Article 39 of the Constitution.

12. The view of the learned Judge that such acquisition will be violative of Article 21 of the Constitution is too spacious a view to approve. Therefore, we are of the view that the Decision in Gadigeppa Mahadevappa's case does not lay down the law correctly. What is necessary under the Constitution is that there should be a valid law providing for acquisition of the land or the other Immovable property. The acquisition in question is made under a valid law viz., the Act and the Rules framed thereunder. There are no mala fides alleged against the Acquiring Authority. Therefore, we answer Point No. 2 in the affirmative and over-rule the Decision in Gadigeppa Mahadevappa's case.

13. For the reasons stated above, the Writ Petition fails and the same is dismissed.