

(1963) 02 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 526 of 1961

Siddalingappa

APPELLANT

Vs

Special Land Acquisition Officer, Mandya and Another

RESPONDENT

Date of Decision : 04-02-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 5 A, 6, 6 (1)

Citation : AIR 1964 Kar 22

Hon'ble Judges : G.K. Govinda Bhat, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : Mohandas M. Hegde, for the Appellant; E. Venkataswamy, H.C. Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The petitioner who is the owner of a land bearing Survey No. 228 in the village of Siramalli, in the district of Mandya, challenges in this case the proceedings commenced under the provisions of the Land Acquisition Act for the acquisition of an area of 2 acres and 15 guntas of land out of that survey number. The notification u/s 4 of the Act was published on June 20, 1960, and, after the consideration of the objections produced by the petitioner to the proposed acquisition, and, after affording him the bearing enjoined by Section 5-A of the Act, the final notification declaring that the acquisition is for a public purpose was made u/s 6 of the Act on April 27, 1961. Before that final notification was made, by an order made by the Deputy Commissioner sanctioning under the Act on March 11, 1961, the objection preferred by the petitioner to the acquisition was overruled. It is seen thereafter and even before the notification u/s 6 was made, that this writ petition was presented to this Court calling in question the acquisition proceedings and their continuance.

2. The first criticism made of the acquisition proceedings is that the land which was proposed to be acquired was by no means suitable for the purpose for which it was proposed to be acquired, namely, the extension of a Harijan colony. It was said that there were other lands which were enjoying a better elevation and

situation which were more suitable for the extension of the Harijan colony and that survey No. 228 which was at a lower level and which was malicious was not fit for the occupation of Harijans. It was said that even when proceedings were commenced in the year 1946 for the acquisition of a portion of survey No. 228, the investigation into the suitability of the land revealed that that land was not suitable for the Harijans and that accordingly the acquisition had been dropped in the year 1955.

Even on the second occasion when the acquisition was commenced, for the same reason it was said that the acquisition proceedings were discontinued in May 1958. It was, therefore, asked why once again on the third occasion in June 1960, so soon after the acquisition had been dropped on the second occasion, further proceedings should have been commenced for the acquisition of the same land which was found unsuitable at least twice.

3. The answer to this submission made is that it is not for us to say whether the land which was proposed to be acquired was or was not suitable for the Harijans and that it was entirely within the power of the Deputy Commissioner hearing an objection u/s 5-A to record his own opinion about it and if he recorded an opinion that the land was suitable for the purpose for which it was proposed to be acquired, his finding to that effect which is a finding essentially on a question of fact is not open to discussion in this Court.

4. But it was argued by Mr. Hegde that the matter does not end here since the opinion recorded by the Deputy Commissioner in this case on March 11, 1961, was completely coloured and influenced by a record made by the Minister for Excise and Social Welfare on August 19, 1958, consequent upon his inspection of survey No. 228, to the effect that the land which has now been proposed to be acquired was excellent for the extension of the Harijan colony. Mr. Hegde has contended before us that the opinion recorded by the Deputy Commissioner u/s 5-A is therefore not really his own opinion but an opinion which had been prepared for him by the Minister from whose opinion the Deputy Commissioner could not have the courage to dissent.

5. I am not prepared to accede to the general proposition which was propounded by Mr. Hegde that persons in civil service are generally weak-kneed in that way and do not have the courage of conviction to reach their own conclusions, especially when they have to perform a quasi-judicial function like that which is prescribed by Section 5-A of the Act. But it is clear that when an acquisition is to be commenced under the provisions of the Land Acquisition Act and when the question whether the acquisition is or is not for a public purpose has to be decided in the exercise of a quasi-judicial function to be exercised by the Deputy Commissioner u/s 5-A, no one should embarrass the Deputy Commissioner by preparing for him an opinion which he has to form himself.

It is desirable and very proper that when a proceeding is commenced under the Land Acquisition Act for the acquisition of property belonging to another person

the opportunity which the owner of the property has to be afforded u/s 5-A of the Land Acquisition Act must be real and complete. The Deputy Commissioner who has to afford that opportunity must take into consideration all the objections which may properly be urged against the acquisition. One of the objections which could be so urged is that the purpose for which the acquisition is proposed is not a public purpose. It can also be contended that the purpose for which the property is proposed to be acquired cannot be accomplished or fulfilled by the acquisition of the particular property which is proposed to be acquired or that the extent of the property which is proposed to be acquired is far in excess of the need.

6. That being so, if the petitioner contended before the Deputy Commissioner that survey No. 228 was not suitable for the occupation of Harijans, that objection was one which was quite relevant for the purpose of Section 5-A and therefore required adjudication by the Deputy Commissioner which has to be made by him quite uninfluenced by the opinion of anyone else. On that question his judgment and his own judgment is what has to be bestowed for the determination of the real issue.

7. In a situation like that, it would not be right for him to receive on that question guidance from anyone and not even at governmental level. The inspection by the Minister for Excise and Social Welfare, according to the Deputy Commissioner, was made on August 16, 1958, within a few months after the discontinuance of the acquisition proceedings on the second occasion. Not unnaturally. Mr. Hegde lays much stress upon the fact that proceedings for the acquisition of the petitioner's property were commenced too soon after the discontinuance of the acquisition proceedings on the second occasion, and, that what provoked the acquisition proceedings on the third occasion was the opinion expressed by the Minister that the petitioner's property was most suitable for the extension of the Harijan Colony.

8. If the matter had rested there and if nothing else could be said about it, it might have been possible for Mr. Hegde to succeed in his contention that the opinion recorded by the Deputy Commissioner on March 11, 1961, was not his own but was really the opinion of the Minister whose opinion was assimilated by the Deputy Commissioner without the application of his own independent judgment. If he had done so, this case would have been a clear case of abdication of the power confided to the Deputy Commissioner by Section 5-A, vitiating the entire proceedings. But what is revealed by the long and elaborate order which the Deputy Commissioner prepared on March 11, 1961, is that he was not swayed or influenced to any extent by the opinion expressed by the Minister to which the Deputy Commissioner very strangely adverted in the course of his order. The Deputy Commissioner would have been wiser if he had not made any reference to the opinion of the Minister, but the fact that he did allude to the inspection made by the Minister does not necessarily lead to the conclusion that the opinion reached by the Minister when he inspected the land

was mechanically adopted by the Deputy Commissioner without any reflection or without his own mind being brought to bear on the question.

9. On the contrary, in a long paragraph of his order which is Sub-paragraph 2 of paragraph 3, there is a thorough and exhaustive discussion by the Deputy Commissioner of the question whether survey No. 228 was or was not suitable for the purpose for which it was proposed to be acquired. He gave at least three reasons in support of his own view that that land was more suitable than the other three lands which according to the petitioner were more suitable. He pointed out that the three lands which according to the petitioner were more suitable for the Harijan colony were lands whose elevation made it impossible for the Harijans to have any drinking water there. He referred to the fact that all endeavours which had been made to sink a drinking water well on those three survey numbers had met with failure. In the opinion of the Deputy Commissioner since one of the most elementary amenities which the Harijans should provide themselves with is the drinking water facility and since survey No. 228 was a land in whose vicinity there was already a drinking water well, the acquisition of survey No. 228 was far more desirable than the acquisition of the other three lands.

10. The second reason assigned by the Deputy Commissioner was that since survey No. 228 was neither too low nor too high, it was ideally suited for the extension of the Harijan colony. The third reason was that on survey No. 228 only drop crops were being raised and that since there was no irrigation channel running in the vicinity of the village, there was no prospect as assumed by the Director of Malariology on the previous occasion of the place becoming malarial.

11. If these are the three reasons given by the Deputy Commissioner for the postulate made by him that the petitioner's land could not be considered by any reasonable person as of no use for the extension of the Harijan colony, surely, we cannot be asked by Mr. Kegde in this Court to displace that finding. If that finding is a finding as it is on a pure question of fact and not a finding which was rounded entirely upon the opinion of the Minister, the petitioner cannot complain that there has been a disposal of the objections, of the petitioner to the dictation of the Minister.

12. In my opinion, the petitioner cannot succeed in displacing the acquisition proceedings on the ground that there has been no proper adjudication u/s 5-A of the Act.

13. The next endeavour made by Mr. Kegde is to ask us to say that the acquisition proceedings were vitiated by reason of no part of the public revenues having been constituted as a source of the payment of the compensation for the acquisition. This challenge made to the acquisition is, it is clear, entirely misconceived. When this writ petition was presented to this Court, the publication of the notification u/s 4 and the adjudication u/s 5-A were all that had been done. No final notification u/s 6 had yet been made, it is only at the

stage when a notification u/s 6 has to be made that the source for the payment of compensation for the acquisition should be indicated, and, that source should be one of those stated in the proviso to Subsection (1) of Section 6. Although the notification u/s 6(1) declaring that the acquisition was for a public purpose was made during the pendency of this writ petition, the petitioner has not challenged the validity of that declaration which he should have done if there was any truth in his complaint that the source for the payment of compensation was not any one of those sources indicated in the proviso to Sub-section (1) of Section 6.

Mr. Hegde's submission to us was that even in the notification which was subsequently made under Sub-section (1) of Section 6 there is no indication of any part of the public revenues having been constituted as the source for the payment of compensation. But the answer to this submission is that the petitioner does not himself challenge the notification u/s 6(1) and if he had made any challenge to that notification it was for him to state that it was the intention of the Government to pay compensation out of a source other than that specified in the proviso to Section 6(1). If the petitioner does not challenge the notification u/s 6(1) in that way, the presumption is that that notification was made according to law and after it was arranged that the compensation should be paid from one of those sources.

14. This is, therefore, not a case in which the petitioner can resist the acquisition proceedings. This writ petition is accordingly dismissed.

No costs.

Govinda Bhat, J.

15. I agree.

16. Petition dismissed.