
(2013) 12 KAR CK 0464
In the Karnataka High Court
Case No : Writ Petition No. 24439 of 2012

Smt. P. Nirmala

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Karnataka Land Acquisition Act, 1894 — Section 4(1), 5A, 6(1)

Citation : (2013) 12 KAR CK 0464

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; R.B. Satyanarayana Singh, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Government Pleader. The petitioner claims as the absolute owner of land bearing survey No. 259, measuring 36 guntas of Hiremagalur, village, Chikmagalur Taluk. The petitioner claims to be in possession of the same. The said land was proposed for acquisition by issuance of a notification u/s 4(1) of the Karnataka Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act", for brevity) dated 8.5.2011, for the purpose of construction of a Pravasi Soudha. The petitioner's claim is that a public notice dated 4.10.2011 is said to have been published in the Official Gazette on 18.8.2011, inviting objections, which was served on the petitioner only as on 26.10.2011. The endorsement is made on a copy of the public notice, which is at Annexure-C. Immediately thereafter, the petitioner had filed objections through her counsel on the ground that the acquisition proceedings are mala fide and there is no provision to acquire a single parcel of land without sufficient and alternative land being available and that the petitioner was entitled to a personal hearing to produce the documents and to establish that the acquisition proceedings proposed as against the petitioner's land could be dropped. This was filed within 30 days as

directed by the respondent.

2. The petitioner has also obtained material under the provisions of the Right to Information Act, 2005. The list of villages also included Hiremagalur Village where the petitioner's land is situated and unless there was a change of land use obtained from the planning authority, the petitioner's lands could not be utilised for the purposes as aforesaid and without considering the objections so raised by the petitioner and without affording an opportunity of personal hearing, final declaration u/s 6(1) of the LA Act has been issued.

3. The petitioner having been informed by an endorsement dated 14.5.2012 that the objection cannot be considered because the same is not filed within 30 days from the date of publication, is pointed out to be factually incorrect. As already stated, the said notice was served on the petitioner only on 26.10.2011 and objections have been filed as on 11.11.2011. Therefore, the endorsement, on the face of it is erroneous. Though the petitioner had made a further request, insofar as the hearing is concerned, that has not been considered. Therefore, the proceedings are vitiated as there was no opportunity and there was no inquiry conducted u/s 5-A, which is mandatory. It is on these glaring grounds that the petitioner has approached this court.

4. Shri V. Lakshminarayana, the learned Counsel appearing for the petitioner would reiterate these contentions and would point out that this court, at the very first instance, Jihad granted an interim order, wherein it was held that the proceedings can proceed further, but it shall not be implemented and the matter has been at that stage.

5. The learned Government Advocate, who has entered appearance, would in support of the statement of objections seek to justify the action of the respondents. However, on the face of it, it is noticed that the notice issued u/s 5-A of the LA Act was actually served on the petitioner only on 26.10.2011 and therefore, the objections filed on 10.11.2011 were well within time and the Assistant Commissioner having refused to consider the same, on the ground that it was beyond 30 days from the date of issuance of the notification may not be the correct position. It is the date of service of notice on the petitioner, which would be relevant to compute the period of 30 days. Therefore, on the face of it, the petitioner has not been afforded an opportunity of hearing and hence, all further proceedings pursuant to the notice would have to be set at naught.

Accordingly, the petition is allowed. The proceedings pursuant to the notice u/s 5-A of the LA Act are set at naught and the respondents are directed to afford an opportunity of hearing to the petitioner and take further steps in accordance with law.