

(1990) 01 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 2171 of 1984

S.P. Subramanya Shetty

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 17-01-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 5 A, 5 A (2), 6

Citation : (1990) ILR (Kar) 477 : (1990) 1 KarLJ 185

Hon'ble Judges : Mohan, C.J.;Ramakrishna, J

Bench : Division Bench

Advocate : S.G. Bhagwan, for the Appellant; N.K. Gupta, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—The short facts leading to the Writ Petition are as follows:

The petitioners constitute a Hindu Joint Family. They own inter alia properties in Sy.Nos. 93/1 and 93/2 of Kushal nagar Town, Kodagu District and therefore, all of them have joined together and filed this Writ Petition. These two Survey Numbers measure 4 and 7 cents respectively.

2. By a Notification made in No. LAQ.AC.9/81-82, dated July 6th, 1981 issued by the Deputy Commissioner u/s 4(1) of the Land Acquisition Act, 1894 as amended by Karnataka Act 17 of 1961, it was proposed to acquire these lands for a public purpose, namely, for formation of Karnataka State Road Transport Corporation bus-stand at Kushal nagar.

3. In and by that Notification, objections were invited to be preferred on or before 30th October, 1981. The Deputy Commissioner authorised the Assistant Commissioner, Mercara Sub-Division, to perform his functions. The Notice u/s 5-A(2) was served on 21-9-1981 on the first petitioner. Similar Notices were served on the other petitioners as well. The petitioners filed their objections on 30-10-1981.

4. There was an hearing u/s 5-A(2). Thereupon the declaration u/s 6 was issued on 16-11-1983. The Gazette publication was made on 12-1-1984. Under these circumstances, the present Writ Petition has come to be preferred challenging the Land Acquisition Proceedings.

5. The only argument levelled in attacking this acquisition by Mr. S.G. Bhagavan, learned Counsel for the petitioners, is that there has been a violation of Section 5-A(2) of the Act in so far as the Assistant Commissioner while forwarding his report to the Government had not intimated the fact of having submitted the report to the petitioners, who were the objectors for the acquisition. Such violation of the Act has been held to be fatal to the acquisition proceedings in V.K. KANGAN v. STATE OF MYSORE wherein it has been held that transgression of a mandatory provision like this, would vitiate the acquisition. Therefore, according to the learned Counsel for the petitioners, the acquisition must be held to be bad for non-compliance with this statutory provision.

6. The learned Government Advocate (N.K. Gupta) would meet this point, on the factual ground that as per Muddam Register Extract, dated 7-9-1982 the Counsel Mr. N.G. Vasudev and Mr. Ponnappa were intimated about the submission of the report to the Government on 8-9-1982 and therefore it is incorrect to contend that there is a statutory violation. Even otherwise, in so far as what is required to be done u/s 5-A(2) is nothing more than an intimation and not forwarding a copy of the report to the objectors, it should be held that failure to do so does not cause any prejudice to the objectors. From this point of view, it should be held that this is not a mandatory requirement. Further, in the decision cited by the opposite side, namely 1966(2) Mys.L.J. 739 : 1966(2) Mys.L.J. 739, it has been held that "the omission to impart such information is thus a transgression of a mandatory provision, which results in the deprivation of a statutory opportunity to which the objectors are entitled to make a representation against a proposed Declaration u/s 6 and so must lead to the nullification of the Declaration subsequently made. There is no statutory opportunity of making a representation, which is contemplated u/s 5-A(2). From this point of view, it must be held that the decision cannot be said to lay down a correct law.

7. In order to appreciate this point, we will now extract Section 5-A(2) of the Land Acquisition Act, as amended by Karnataka Act 17 of 1961:

"(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by Pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final."

It is true the word "shall" is used in this particular sub-section requiring the Enquiring Authority to communicate the fact of having submitted the report to the objectors. Factually in this case, we accept, what the learned Government Advocate states that the two Advocates were intimated of the same on 8-9-1982. Normally, this is sufficient for the purpose of the disposal of the Writ Petition.

8. But since we find some substance in the argument of the learned Government Advocate as to the position of law, which requires to be settled, we would now make a reference to 1966(2) Mys.L.J. 739.

9. The Division Bench in dealing with a similar contention observed as follows:

"So, we must now proceed straight to the investigation of the argument founded on Section 5A of the Act as it stands after its amendment which came into force on August 24, 1961. That Section requires the Deputy Commissioner to make an enquiry into the objections and send a report to the Government containing his recommendations on the objections. What that Section, in addition, requires him to do is to communicate to the objectors the fact that he had submitted that report to the Government. It is only thereafter that the Government could make a declaration u/s 6 if they are satisfied on a consideration of the report, that the property was required for any of the purposes enumerated in that Section.

The requirement of Section 5A that after the despatch of the report by the Deputy Commissioner, intimation should be imparted to the objectors about such despatch is imperative. It is so, because the purpose of that requirement is that the objectors should have an opportunity to make suitable representations to the Government if the recommendation of the Deputy Commissioner is adverse to them. The omission to impart such information is, thus a transgression of a mandatory provision which results in the deprivation of a statutory opportunity to which the objectors are entitled to make a representation against a proposed declaration u/s 6 and so, must lead to the nullification of the declaration subsequently made. That is the enunciation made by this Court in W.P. 1933 of 1963 and, in our opinion, that enunciation is a correct statement of law."

As a matter of fact, there cannot be any quarrel with regard to what is stated in the first paragraph extracted above.

However, we are unable to subscribe to the proposition of law laid down in the second paragraph. According to the Division Bench, the omission to impart the information relating to the submission of the report to the Government, is a transgression of mandatory provision. May be, this conclusion came to be arrived at because of the word "shall". As is well-known that alone is not conclusive as rightly contended by Mr. Gupta, it has to be looked at from the point of view of prejudice. While saying so, one must be alive to the situation that what the Deputy Commissioner is required to furnish is not the copy of the report, but only an intimation of having submitted the report or an information in relation to the submission of the report to the Government. Such a report as is settled in

law is nothing more than an inter-departmental communication. It is one thing to say that if the copy of the report itself has to be forwarded to the objector, it would be helpful to them for any further representations by way of memorials to the Government; that is not so.

Whatever it may be, we find it difficult to accept this statement of law that the omission to impart such an information results in the deprivation of a statutory opportunity to make representation against the proposed Declaration u/s 6. Section 5-A nowhere contemplates or even suggests that the objectors have a statutory opportunity to put forth objections before the Government while making Declaration u/s 6. It is one thing to say that de hors the statute, the representations could be put forth, it is another thing to say that there is a deprivation of statutory opportunity. With great respect, we are unable to agree. It must also be added here at this stage that none of the Counsel has brought any Rule to our attention where the statutory opportunity is provided and therefore, it may require our consideration. Certainly having regard to the factual aspect which is brought to our attention by the learned Counsel with which we have agreed, we do not propose to do so in this case. However, we thought it was necessary on our part to indicate our mind and that is what we have done.

10. In the result, the Writ Petition fails and is hereby dismissed. However, there shall be no order as to costs.