

(1992) 07 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 20380 of 1986

Sri K. Rangaswamy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Karnataka Land Acquisition Rules, 1965 — Rule 3
Land Acquisition Act, 1894 — Section 4, 45, 5 A, 6

Citation : AIR 1993 Kar 51

Hon'ble Judges : S.A. Hakeem, J;Kedambady Jagannatha Shetty, J

Bench : Division Bench

Advocate : Smt. Manjula Devi, for Sri R.B. Sadashivappa, for the Appellant;
Smt. Bharathi Nagesh, Government Advocate, for the Respondent

Judgement

1. The Petitioner has sought quashing the notifications dated 28-7-1984 and 30-6-1986, issued under Sections 4 and 6 respectively of the Land Acquisition Act (the "Act").
2. Certain extent of land in Sy. Nos. 60/1 and 62/1B in Ramadevanahalli was acquired for forming a Public Road. A notification under S. 4(1) of the Act was published in the gazette on 28-7-1984, stating the extent and the public purpose for which the land is required. It is not disputed that this notification was also published in the locality. Thereafter, since there was no objection by the Petitioner, final notification under S. 6 of the Act came to be published. At that stage, the Petitioner seems to have filed his objection to the proposed acquisition, which came to be rejected.
3. The main grounds on which the acquisition is challenged by the Petitioner are that the action of the authorities in acquiring his land is mala fide, as it is done at the instance of some persons who are inimically disposed towards him; and secondly, that no individual notice had been served upon him, and hence there was no opportunity of filing his objections in time.

4. In so far as the first ground is concerned, apart from the allegations of mala fides, no official is made a party to this petition, and as such, this ground has to fail.

5. In so far as the second ground is concerned, it is contended that it is mandatory upon the authorities to issue individual notices both under S. 4(1A) and S. 5A of the Act. The question is covered by the Full Bench decision of this Court reported in K. Rangaswamy Vs. State of Karnataka and others, , K. Rangaswamy v. State of Karnataka, in which it is held that there is nothing in Section 4(1A) to show that service of individual notice is mandatory. It only states that notification under sub-s. (I) of Section 4 should specify the date on or before which and the manner in which the objection to the proposed acquisition may be made. Publication of notification under S. 4(1) in the official gazette and publication of the substance of the notification in the concerned locality constitutes sufficient procedural safeguards of the owner, whose land is sought to be acquired. As such, the first part of the ground taken by the learned counsel does not survive for consideration. The second part of the ground pertains to notice under S. 5A of the Act. In our opinion, this question is also settled by the Full Bench in the very same decision.

6. In this connection, reliance is sought to be placed upon Rule 3 of the Karnataka Land Acquisition Rules, 1965, which reads as follows :

"3. Issue of Notice:-- Immediately after the publication of the notification under sub-s.(1) of Sec. 4, the Deputy Commissioner shall as required by the said sub-section cause a notice stating that the land is needed, or is likely to be needed for a public purpose, specifying the purpose and requiring all persons interested in that land to lodge before the Deputy Commissioner, before the date specified in the notification (mentioning the said date) a statement in writing, of their objections, if any, to the proposed acquisition of the land or any land in the locality, to be published at convenient place in the locality where the land proposed for acquisition is situated and copies thereof affixed in the offices of the Deputy Commissioner of the District, Tahsildar of the Taluk and the Village Chavadi, if any of the Village in which the land is situated. A copy of the notice may also be caused to be served individually, on every person known or believed to be interested in the land to be acquired."

This Rule is nothing but incorporation of the amended provisions of S. 4(1) read with S. 45 of the Act. This is apparent from the amended provisions of Sec. 4(1A), under the Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961. Under sub-clause (c) of the amended provisions, the following sentence is added :

"The Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, on the occupier of the land."

As such, in the view taken by the Full Bench (supra) it cannot be said that the

said rule lays down a different requirement making issue of notice under R. 3 mandatory for the purpose of S. 5A of the Act. The decision referred to above also makes it clear that Section 45 is procedural in nature and does not govern the provisions of S. 4(1) or 5A of the of S.(1) or 5A of the Act, which is clear from the following observation of the Court:

"In view of the publication of the notification in the official gazette and publication of the substance of the notification in the concerned locality, the Petitioner could have filed objections on or before the date specified in the said notification. We do not think that in the absence of service of individual notice, S. 4(1A) cannot be worked out and that the service of individual notice is the only procedural safeguard. Publication of notification under S. 4(1) in the official gazette and publication of the substance of the notification in the concerned locality constitute sufficient procedural safeguards for the owner whose land is sought to be acquired."

Considering the effect of S. 45 of the Act, it is held that wherever notices are required to be served under the Act the mode of such service of notice is indicated in S. 45(1)(a), (b) and (c). That section 45 does not make the requirement of service of individual notice of the publication issued u/s 4(1) mandatory. The learned Counsel for the Petitioner sought to rely upon a decision of a learned single Judge of the Madras High Court in Muthu Vs. Government of Tamil Nadu, (Muthu v. Govt. of Tamil Nadu). The said decision also refers to the mode of service as provided under S. 45 of the Act.

7. Yet another contention urged by Smt. Munjula Devi is that the notice was not served upon the petitioner as he was not in the village. Hence it was incumbent upon the authorities to issue a fresh notice. In the view we have taken regarding the requirement of issuance of individual notice, there is no merit in this contention either. The learned Counsel further contended that in the facts and circumstances, no public purpose is served by the publication. The statutory authority having been satisfied regarding the existence of a public purpose, it is open for the Court at this stage to investigate into that question of fact.

8. In the result, this petition fails, and it is accordingly dismissed.

9. Petition dismissed.