

**(2013) 07 KAR CK 0055**

**In the Karnataka High Court**

**Case No : Writ Appeal No. 2580 of 2013 (LA-RES)**

Sri Sannarangappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

**Date of Decision : 24-07-2013**

**Acts Referred:**

Karnataka Highways Act, 1964 — Section 15, 17(1), 17(2)

**Citation :** (2013) 4 AKR 516 : (2013) ILR (Kar) 4903 : (2013) 6 KarLJ 142 :  
(2013) 4 KCCR 2972

**Hon'ble Judges :** D.H. Waghela, C.J.;A.S. Bopanna, J

**Bench :** Division Bench

**Advocate :** K.N. Nitish for Sri K.V. Narasimhan, for the Appellant; B. Veerappa, A.G.A., for the Respondent

## Judgement

D.H. Waghela, C.J.—The appellant has called into question the elaborate order dated 4.3.2013 of learned Single Judge in Writ Petition No. 5251/2012 whereby the appellant's petition has been dismissed. The undisputed facts of the case of the appellant are that, he is holding land bearing Sy. No. 54/2 of Agrahara Koratagere Taluk, Tumkur District, which he had purchased on 1.1.1979 and trees were stated to have been grown thereon. When a road was formed by the Karnataka State Highways Improvement Project ("KSHIP" for short) in the year 2008, surveys were made and the State Government had issued on 19.10.2011 a notification u/s 15 of the Karnataka Highways Act, 1964 (for short "the Act"), whereby the petitioner stood to lose 1 acre 20 guntas of the land belonging to him. Thereafter, a notification under Sections 17(1) and 17(2) of the Act was published on 21.1.2012 and a notice u/s 17(3) of the Act was also issued on 18.1.2012, calling upon the petitioner to produce documents to substantiate his claim over the property for the purpose of awarding compensation. The appellant herein approached this court under Articles 226 and 227 of the Constitution mainly on the grounds that he was denied an opportunity of being heard before his land being acquired for the purpose of public road and the provisions of Sections 15 and 17 of the Act were unconstitutional for violation of Article 300A

of the Constitution because of lack of provision for an opportunity of being heard to the persons standing to lose their lands on account of the acquisition.

2. Both the contentions as well as the factual controversy sought to be raised by the appellant have been elaborately dealt with in the impugned judgment. It is noted that the primary contention of the appellant that the provisions of the Act did not provide for an opportunity of hearing is not wholly correct, insofar as notice u/s 15 of the Act was issued to all the owners of the lands which were proposed to be acquired for upgradation of the highway between Tumkur and Koratagere. Similarly, a notice u/s 17(3) was issued to the petitioner and subsequently, a further notice dated 23.5.2012 was also issued indicating that a spot inspection would be conducted on 30.5.2012 and his participation was sought. The petitioner has not responded to the notice and the inspection of the property was conducted without his participation. As for the legal submission about constitutional validity of the provisions of Section 15 of the Act, the impugned order relied upon the settled legal position laid down in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, and in *Public Services Tribunal Bar Association Vs. State of U.P. and Another*,

3. It was, however, vehemently argued and reiterated by learned counsel for the appellant that even in the absence of an express provision for an opportunity of hearing, the court was required to read such provision in view of the fact that the right to property was protected by another constitutional provision contained in Article 300A and the appellant stood to suffer adverse consequences on account of compulsory acquisition of a part of his land.

4. The statutory scheme of the Act and the express provisions of Section 15 have to be reviewed for appreciating the issue sought to be raised in this appeal. The Karnataka Highways Act, 1964 is, according to its preamble, made to provide for restriction of ribbon development along highways, for the prevention and removal of encroachment thereon, for the construction, maintenance and development of highways, for the levy of betterment charges and for certain other matters. By Section 2(i), "highway" is defined to mean any road or way over which the public have a right of way or are granted access and which is declared to be a highway u/s 3; and the expression includes any land acquired or demarcated with a view to construct a highway along it. The provisions of Section 15 may be reproduced as under:

15. Acquisition of land or right or interest in land: If at any time on the application of the Highway Authority, the State Government is satisfied that any land required for the purposes of a highway or any right or interest of any person in any land required for the said purposes should be compulsorily acquired or extinguished, as the case may be, it shall be lawful for the State Government to publish a notification to that effect in the official Gazette. Such notification shall also be published in such other manner as may be prescribed. A notification so published shall be deemed to be the declaration that the land is needed or, as the case may be, the right or interest is required to be extinguished for the purposes

of the highway; and such declaration shall be conclusive that the land is so needed, or the right or interest is so required to be extinguished.

The above provision clearly marks a departure from the scheme of the Land Acquisition Act, 1894 insofar as the provisions analogous to the provisions of Sections 4, 5, 5A and 6 of the Land Acquisition Act are not incorporated in the Act, and the opportunity of hearing is excluded by necessary implication.

5. In view of the law settled by the Apex Court in *State of Andhra Pradesh Vs. McDowell*, supra, a law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone viz., (i) lack of legislative competence and (ii) violation of fundamental rights guaranteed in Part-III of the Constitution or any other constitutional provision. There is no third ground.

6. Earlier in *Union of India and Another Vs. Tulsiram Patel and Others*, the observations in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, were quoted with the following relevant observations: "It is true that if a statutory provision can be read consistently with the principles of natural justice, the court should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

After reference to the above observations, the Constitution Bench went on to observe in paragraph-101 as under:

101. ....So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in *Maneka Gandhi* case at page 681. ....

7. Having regard to the scheme of the Act where the Highways Authority is constituted with statutory powers and duties and, on its application and satisfaction of the State Government the requirement of any land for the purposes of a highway is deemed to be conclusive, the action of acquisition of lands appears to have been placed on a higher pedestal, and importing therein

the rule of audi alteram partem would have the effect of paralyzing the construction and maintenance of public roads and of defeating the purpose of the Act. Therefore, both literal and purposive interpretation of Section 15 of the Act require that the provision is not subjected to reading down and the principles of natural justice are not required to be read as a part of fair procedure, as urged on behalf of the appellant. Since no other issue is raised in the appeal and the appellant has failed to make out any ground to interfere with the, impugned order, the appeal is not required to be entertained and accordingly it is summarily dismissed along with the applications made therein, with no order as to costs.