

(2013) 03 KAR CK 0139

In the Karnataka High Court

Case No : Writ Petition No. 5251 of 2012 (LA-Res)

Sri. Sannarangappa

APPELLANT

Vs

The State of Karnataka, The Chief Executive Engineer and
Project Director and Assistant Executive Engineer

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 19(1)(b), 19(1)(g), 300A
Karnataka Highways Act, 1964 — Section 15, 17(1), 17(2), 17(3)

Citation : AIR 2013 Kar 112 : (2013) 5 KarLJ 605 : (2013) 3 KCCR 1986

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K.N. Nitesh, for Shri. K.V. Narasimhan, for the Appellant; Sajan Poovayya, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the parties. The brief facts as narrated in the petition are as follows:-

The land bearing Survey No. 54/2 of Agrahara Koratagere Taluk, Tumkur District measuring about 4 acres 22 guntas is said to belong to the petitioner. He claims to have purchased it under a sale deed dated 1.1.1979 and further claims that there are several varieties of trees numbering over a thousand. There is also a shrine existing on the property where the family of the petitioner offers regular pooja. On the western side of the said land, there is a road measuring about 20 metres wide running between Tumkur and Madhugiri. The land is near Jampenahally cross. There is said to be a hillock on the eastern side of the property. On account of this, according to the petitioner there was a bend in the road to avoid a vertical curve that would be created if the road went over the hill.

2. It is stated that in the year 2008, there was a proposal by the Karnataka State Highways Improvement Project (Hereinafter referred to as the "KSHIP", for brevity), to form a road running through the middle of the petitioner's land. The

petitioner therefore had requested a spot inspection by the Chief Administrative Officer and the Tahsildar, who did conduct an inspection on 2.8.2008 and opined that instead of going through the petitioner's land, it was possible to improve the existing road by a super alleviation system. A copy of that report is at Annexure-C to the writ petition. Subsequently on 25.5.2009, the team leader of M/s. Scott Wilson Kirk Patrick and Company Limited, United Kingdom, which had a joint venture with M/s Scott Wilson India Kirk Patrick Private Limited, had expressed thus:-

It is decided to follow the existing alignment at the subject location with minimum curve improvement and lowered designed speed (to 80kph) to reduce the land acquisition in survey no. 54/2.

3. It is therefore the case of the petitioner that inspite of such an opinion having been formed, the KSHIP, by its letter dated 19.4.2011, had called upon the petitioner to stop renovation work carried out in the shrine existing on the land, as already stated, on the premise that a road is intended to be formed over the petitioner's property. Therefore, the petitioner was constrained to file a civil suit for permanent injunction restraining the respondents from interfering with his property in O.S. No. 140/2011, on the file of the City Civil Judge (Junior Division), Koratagere.

4. However, on 19.10.2011, the State Government had issued a notification u/s 15 of the Karnataka State Highways Act, 1964 (Hereinafter referred to as the "KSH Act", for brevity), wherein the land of the petitioner to an extent of 1 acre 34 guntas was notified for acquisition. Thereafter, a notification u/s 17(1) and 17(2) of the KSH Act was published on 21.1.2012. With the publication of the notifications, the petitioner is said to have withdrawn the suit in O.S. No. 140/2011. The petitioner having been issued a further notice u/s 17(3) of the KSH Act, dated 18.1.2012 calling upon him to produce the documents to substantiate his claim over the property for the purpose of awarding the compensation, the petitioner claims that the notifications are not valid and therefore, questions the same in this writ petition.

5. The learned Counsel for the petitioner contends that the notifications above referred to are opposed to material on record and therefore, are unsustainable. It is also contended that Sections 15 to 19 of the KSH Act are unconstitutional and violative of the constitutional right of the petitioner guaranteed under Article 300A of the Constitution of India. Elaborating the same, it is contended that the KSH Act has, for its object, the restriction of ribbon development along the highways and for prevention and removal of encroachment and for construction, maintenance and development of highways, for the levy of betterment charges and certain other matters. Acquisition is only an incident of the aforesaid objects. The learned Counsel draws attention to the text of Sections 15 and 17 of the KSH Act, which read as follows:-

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.

x x x

17. Public notice and other notices of such retirements for acquisition.--(1) The Highway Authority shall then cause a public notice to be given at convenient places on or near such land stating that the State Government intends to take possession of the land, or as the case may be, to extinguish any right or interest in the land and that claims to compensation for all interest in such land, or any right or interest in land to be extinguished may be made to such officer as the Highway Authority may designate. (2) Such notice shall state particulars of the land so needed or right or interest in land to be extinguished and shall require all persons interested in the land or in the right or interest to be extinguished to appear personally or by agent before such officer as may be designated at the time therein mentioned (such time not being earlier than fifteen days after the date of the publication of the notice) and to state the nature of their respective right or interest in the land or, as the case may be, in the right or interest to be extinguished and the amount and the particulars of their claims to compensation for such right or interest or both and their objections, if any, to the measurements made u/s 16. The Highway Authority may in any case, require such statements to be made in writing and signed by the party or his agent. (3) The Highway Authority shall also serve notice to the same effect on the occupier of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf within the district in which the land is situate. (4) In case any person so interested resides elsewhere, a notice shall be served in the manner provided in section 71.

The learned Counsel draws particular attention to the highlighted portion of the above Sections.

It is pointed out that there is no provision in the enactment to call for objections from persons whose land is sought to be acquired. The affected persons have no say in the land acquisition process. The arbitrary action of the respondents throws the proprietary rights of the petitioner into grave jeopardy. Therefore, the entire process is vitiated as it would not stand the test of Article 300A of the Constitution of India.

It is also contended that the notifications under Sections 15 and 17(1) and (2) of the KSH Act at Annexure-G to the writ petition, is highly arbitrary and does not serve any public purpose. This is borne out from the opinion expressed at Annexure -C. It is also pointed out with reference to the village map annexed to the petition at Annexure-L that even with the formation of the road over the petitioner's land, the bend or the curve that exists on the road towards the edge of the petitioner's property is only shifted to a new bend and curve that would be created and it would be even more sharper than the existing one. The width of the road as it exists, and the proposed road, continue to remain the same and since the earlier road connects the road running from Nelahal village joining it at an intersection, the acquisition of the petitioner's land is entirely unnecessary. On the other hand, the formation of the new road running through the petitioner's property will not only destroy the valuable trees and vegetation, on the land but it would divide the petitioner's land, creating hardship and difficulty in carrying out the agricultural and horticultural activities on his lands. It is in this fashion that the learned Counsel would highlight the circumstances of the case and the grounds urged to question the constitutional validity of the aforesaid provisions.

The learned Counsel for the petitioner would rely on a decision of the apex court in *Raghubir Singh Sehrawat Vs. State of Haryana and Others*, for the proposition that any person, who is deprived of his land by compulsory acquisition, must be given an opportunity to oppose the decision to acquire his land. Reliance is also placed on *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*,

6. The petition is resisted by the State. The learned Additional Advocate General Shri Sajan Poovayya, on the other hand, would contend that the State Government had taken an informed decision to approve the proposal of improvement of the road length of 3411 Kilometres of the State Highways under a project in the year 2005 and 2006. There is a proposal for up gradation to a minimum of 2 lane carriage way with geometrical improvements and has come in for a detailed study by the Government And duly approved by the Government and in implementation of Stage I of the project, involving about 831 Km of the State Highway for improvement, with financial assistance of US\$ 300,000,000 of the World Bank, the State Highway SH-33 from Tumkur to Koratagere was taken up for upgradation. The Project Co-ordination Consultant namely, M/s Scott Wilson Kirk Patrick and company Limited, United Kingdom in joint venture with M/s Scot Wilson India Kirk Patrick Limited, have prepared a detailed project report conforming to the norms of the KSH Act and on instructions issued by the World Bank and the Government of Karnataka. Insofar as the subject property is concerned, due to the curvature of the existing road from chainage 19+500 to 20+400, had modified the proposal of a new alignment passing through the above land in Survey No. 54/2 of Jatti Agrahara village of the petitioner. Therefore, it was proposed to acquire an extent of 1 acre 20 guntas of land forming an approximate length of 280 metres of the proposed road in the

petitioner's land. The petitioner is entitled to just compensation according to the matrix approved by the Government of Karnataka in the year 2010. Before any construction activity is taken up on the land, the petitioner would be paid the compensation. There are about 72 trees and other plants which would have to be removed as they come within the range of the proposed alignment and a detailed study has been made of the number of trees and the kind of trees, for which the petitioner would have to be compensated. According to the respondents, there is no ancient temple existing on the land, but the petitioner has recently started construction of a shrine in the proposed alignment, in order to avoid acquisition of his land for the road. It is on account of this construction activity—that was noticed, that the petitioner was directed to stop such construction activity. Insofar as the proposed geometric improvement of alignment which was warranted, was on account of the curvature of the existing road as per highways standards. It is claimed that as per the police records, the existing stretch of the road between Jattiagrahara to Jampenahally village is an accident-prone zone and innumerable accidents had occurred in the past. It is true that the Chief Administrative Officer, Assistant Director, Local Tahsildar, and the Social Development Officer had inspected the site on 2.8.2008 at the request of the petitioner and had expressed a view to the Project Consultative Committee to review the possibility of alignment modification of the subject location. The representatives of the Consultants have undertaken a second joint inspection along with the Assistant Executive Engineer, KSHIP Sub-Division, Hiriya on 19.5.2009 and he was of the opinion to follow the existing alignment at the subject location with minimum curve improvement and lower design speed (80kph) to reduce the land acquisition in land bearing survey No. 54/2. This was without any inkling of the final outcome of the Project Consultative Committee's decision. The Project Consultants, on a closer examination, had by their letter dated 24.9.2009, in so far as the possibility of a change in alignment, have opined that as the project road is designed for a specific level of services with provision of paved shoulder for the traffic, it would not be possible to follow the existing alignment in view of the design speed criteria and road safety aspects. It was opined that to follow the existing alignment, it would be necessary to introduce a series of reverse curves with less sight distance and lesser design speed, which would not be acceptable to the World Bank and therefore, had recommended the proposed realignment. The said Consultants had surveyed the road and fixed the "corridor of impact". The road margin was marked by fixing stones at 100 metre intervals on both sides of the road. When the petitioner commenced construction of the shrine or a temple within the corridor of impact of the road, a notice as already stated, was issued to the petitioner. It is pointed out that there are 126 curves on the existing road between Tumkur and Pavagada. All the 126 curves have been redesigned taking all the design parameters into consideration in the implementation of the project. The entire project has been designed by expert designers. This has required the State to acquire approximately 25.33 acres of private land, excluding the land required for the proposed bypass in Koratagere and Madhugiri and therefore the claim

that the petitioners land is being targeted, is an unfair and unjust contention.

The primary contention of the petitioner that the provisions of the KSH Act did not provide for an opportunity of hearing to the land owner, such as the petitioner in the acquisition process is not wholly correct. A notice u/s 15 of the KSH 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. So also was the notice u/s 17(3) issued to the petitioner which is admitted. Subsequently on 23.5.2012, a further notice was issued indicating that a spot inspection would be conducted on 30.5.2012 and his presence was sought. The petitioner did not respond to the notice and inspection of the property was conducted, at which the petitioner did not participate and a mahazar was drawn up in the presence of local witnesses. A joint measurement was also taken on 30.5.2012. Thereafter, a notification u/s 19 of the KSH Act was issued on 9.11.2012. The sketch denoting the previous and proposed alignment of the road and the vertical profile drawing indicating the alleviation level of the previous and proposed road are all produced as annexures to the statement of objections.

It is contended that unless a statutory provision, either specifically or by necessary implication, excludes the application of principles of natural justice, the requirement of giving reasonable opportunity of being heard is generally read into the provisions of the statute, particularly when the order has adverse civil consequence for the party affected. The principle will hold irrespective of whether the power conferred is administrative or quasi-judicial. Therefore, the petitioner being kept informed of the proposed acquisition and the petitioner having raised his objections, which have been considered, it cannot be said that there was no opportunity of hearing as the possible objections that could be raised at the hearing had, in fact, been urged by the petitioner.

The further contention that the provisions of the Act are unconstitutional as no opportunity of hearing is provided to the land owners whose lands are sought to be acquired is not a valid contention since the acquisition is certainly for a public purpose and is part of a time-bound project. The need for expedition is apparent and the legislature in its wisdom having intended a departure from the scheme, as is contemplated under the Land Acquisition Act, 1894 or such other similar statutes, cannot by itself be a ground for striking down the legislation, when the object is apparently not mala fide and is justified on the face of it. The petitioner being placed on notice at several stages of the process of acquisition, would provide ample scope for pointing out any glaring circumstances that are overlooked, which the authority are bound to take into consideration. This, in fact, has occasioned in this very instance even according to the petitioner, when there were opinions expressed of a possible reorientation, though for reasons already stated, it was held to be unviable, at the instance of the petitioner.

Insofar as the contention of the petitioner that the existing road would continue to be retained around the petitioner's land and since there is a further bend created at the edge of the petitioner's property, even with the formation of the

new road, and hence no purpose would be served, is an opinion of the petitioner. The design has been approved by world renowned experts and cannot be questioned by the petitioner on the basis of his imagination or opinion.

The learned Additional Advocate General places reliance on the following authorities:-

1. State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.,
2. Public Services Tribunal Bar Association Vs. State of U.P. and Another,
3. Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,
4. People's Union for Civil Liberties and Another Vs. Union of India (UOI) and Others,
5. Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another,
6. Bhikhan Bobla and Others Vs. The Punjab State and Others,
7. Insofar as the challenge to the constitutional validity of the provisions of the KSH Act are concerned, the learned Additional Advocate General would contend that an Act of Legislature can be struck down only on two grounds namely,

(i) lack of legislative competence and (ii) violation of fundamental rights or any other provision of the Constitution. There is no third ground which exists. This is the consistent view of the apex court and is the settled position, as laid down in McDowell, supra.

He would further submit that there is always a presumption as to a statute being constitutional unless proved otherwise. It should also be presumed that the statutory authority would not exercise powers arbitrarily. In this regard, the petitioner is hardly in a position to demonstrate that any ground whatsoever is made out to challenge the constitutional validity of the Act.

Given the above facts and circumstances, the proposed acquisition is certainly in furtherance of the objects of the Act. The further claim that there are opinions expressed by the Tahsildar as well as the engineer of the second respondent KSHIP is not denied by the State. However, it is pointed out that those opinions are not the final word and the Consultant having expressed that such a measure would not be feasible, as it would not conform to standards, which had been adopted, and a final decision having been taken negating those opinions expressed, cannot be faulted. The loss and hardship caused to the petitioner is certainly compensated.

Insofar as the decisions cited by the learned Counsel for the petitioner, in Raghbir Singh Sehrawat and in Basantibai Fakirchand Khetan, supra are concerned, in Raghbir Singh's case, there were two issues involved; namely, whether physical possession of the land of the appellant had been taken and whether the mandate

u/s 5A of the Land Acquisition Act, 1894 had been complied with. The apex court held both in favour of the appellant therein. Hence the said decision would not aid the petitioner in any manner.

In so far as Basantibai's case is concerned, the main issue urged in that case was whether sub-section (3) of Section 44 of the Maharashtra Housing and Area Development Act, 1976 which provides the basis for determination of the amount of compensation of lands of all Municipal areas, was ultra vires Article 14 of the Constitution of India. The ground of challenge to the constitutional validity of that legislation is not the same as in the present case on land and hence would not be relevant.

Insofar as the authority-cited by the learned Additional Advocate General in *Mc Dowells*" case supra, is concerned, the apex court has observed thus:-

In the United Kingdom, the Parliament is supreme. There are no limitations upon the power of the Parliament. No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness-concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses struck down by just saying that it is arbitrary** or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and

the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom.

In Public Service Tribunal, *supra*, the apex court has held as follows:-

26. The constitutional validity of an Act can be challenged only on two grounds, viz., (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds.

In *Bhikhan Bobla and Others Vs. The Punjab State and Others*, it is laid down as follows:-

40. The rules of natural justice require that a person or a body exercising judicial or quasi-judicial functions must act in good faith, listen fairly to both sides, give fair opportunity to the parties litigating to present their case. *Earl of Selborne in Spackman v. Plumstead Board of Works*, (1885) 10 AC 229, used the phrases "the substantial requirements of justice" and at another place "the essence of justice" to mean natural justice, when he observed-

No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice

The following observations of Lord Wright in *General Council of Medical Education v. Spackman*, 1943-2 All ER 337 (344), may be quoted with advantage -

In *Aldridge's case*, 1915 AC 120, Hamilton, L. J., is quoted, at p. 130, as describing the phrase "contrary to natural justice" as "an expression sadly lacking in precision". So it may be and perhaps it is not desirable to attempt to force it into any Procrustean bed. But the statements which I have quoted may at least be taken to emphasise the essential requirements that the tribunal should be impartial and that the medical practitioner who is impugned should be given a full and fair opportunity of being heard. These are conditions of the validity of any decision enunciated by the council.

In the light of the settled legal position as laid down in *Mc-Dowell*, and *Public*

Service Tribunal, supra, as well as in Bhikhan Bobla., on the aspect of rule of audi alteram partem being violated, there is no merit in this petition and is dismissed.