

(2010) 03 KAR CK 0238

In the Karnataka High Court

Case No : Writ Petition No's. 15130-15133 of 2009

Sri S.H. Manjunath, Sri B. Hucharayappa, Sri B. Shivamurthy
Banther and Sri Umapathy

APPELLANT

Vs

State of Karnataka, The Principal Secretary Housing
Department Government of Karnataka, The Karnataka
Housing Board and The Special Land Acquisition Officer
Karnataka Housing Board

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

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

Citation : (2010) 6 KarLJ 101 : (2010) 4 KCCR 2631

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R.S. Hedge, for the Appellant; K.M. Nataraj, A.A.G. for M. Keshava Reddy, AGA for R1 and R2 and Basavaraj V. Sabarad, for R-3 and R-4, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The subject matter of these writ petitions are the lands bearing Sy. No. 116/3 measuring 1 acre 31 guntas, Sy. No. 116/1 measuring 4 acres. Sy. No. 110/2 measuring 2 acres guntas and Sy. No. 110/3 measuring 2 acres 1 guntas of Gabbur village, Kasaba Hobli, Shikaripur Taluk. Shimoga District. The petitioners are the owners of the said lands. The Commissioner, Karnataka Housing Board, Bangalore issued Annexure "J" notification dated 31.5.2007 u/s 4(1) of the Land Acquisition Act (for short "the Act") proposing to acquire the aforesaid lands along with certain other adjacent lands for the establishment of underground drainage system and sewage treatment plant for Shikaripura town. The petitioners filed objections to the said notification. The Land Acquisition Officer has rejected the said objections. Thereafter, the State government has issued a declaration u/s 6(1) of the Act in respect of the petition schedule lands including another item of land measuring 2 guntas in Sy. No. 1/1

of Gabbur village, Kasaba hobli. Shikaripur Taluk. Shimoga District. The petitioners have challenged the aforesaid notifications on different grounds. The respondents have sought to justify the acquisition proceedings in their statement of objections.

2. Sri. R.S. Hegde, learned Counsel for the petitioners would contend that the lands have been acquired for the benefit of the Karnataka Urban Water Supply and Drainage Board (for short "the Board"). The beneficiary of the acquisition proceeding is not the Housing Board. The Commissioner, Karnataka Housing Board has not been appointed to perform the functions of the Deputy Commissioner for acquiring the said lands. Therefore, the Commissioner of the Karnataka Housing Board could not have issued preliminary notification u/s 4(1) of the Act. Secondly, it is contended that the Land Acquisition Officer has not considered the objections filed by the petitioner objectively and the enquiry held u/s 5-A of the Act is bad in law.

3. On the other hand, Sri. K.M. Nataraj learned Additional Advocate General appearing for respondent Nos. 1 and 2 has sought to justify the acquisition proceedings. It is argued that u/s 3(c) of the Act dated 7.2.1987, a notification has been issued authorising the Commissioner, Karnataka Housing Board, Bangalore, to perform the functions of the Deputy Commissioner u/s 4(1) of the Act. It is further argued that the objections filed by the petitioners have been considered in accordance with law. The lands are required for a public purpose, namely, for the establishment of underground drainage system and sewage treatment plant for Shikaripur town. After being satisfied that the lands are required for the said purpose, the State Government has issued a final notification u/s 6(1) of the Act. Sri Basavaraj V. Sabarad, learned Counsel for respondent Nos. 3 and 4 has also sought to justify the acquisition proceedings.

4. Having heard the learned Counsel for the parties, the first question to be considered in these writ petitions is whether the Commissioner for the Karnataka Housing Board is competent to issue preliminary notification dated 31.5.2007 (Annexure "J") u/s 4(1) of the Act? The second question for consideration is whether the declaration is preceded by a valid enquiry u/s 5-A of the Act?

5. It is not in dispute that the notification u/s 4(1) of the Act has been issued by the Commissioner, the Karnataka Housing Board, for acquisition of the lands in question for the purpose of establishment of underground drainage system and sewerage treatment plant for Shikaripur town. Section 4(1) of the Act as amended by Karnataka Act No. 17/1% I states that whenever it appears to the appropriate Government or the Deputy Commissioner that the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification stating the purpose for which the land is needed or is likely to be needed and describing the land by its survey number, if any, and its approximate area shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Deputy Commissioner shall cause public notice of the

substance of such notification to be given at convenient places in the said locality. 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.

6. Section 3(c) of the Act defines the expression "Deputy Commissioner" means the Deputy Commissioner of a district, and includes an Assistant Commissioner in charge of a sub-division of a district and any officer specially appointed by the appropriate Government to perform the functions of a Deputy Commissioner under this Act. Thus, the Deputy Commissioner for the purpose of the Act means the Deputy Commissioner of the District and also made to include an Assistant Commissioner in charge of a subdivision. Other officers are required to be specially appointed by the Government to perform the functions of the Deputy Commissioner.

7. Learned Counsel for the respondents rely on the notification dated 7.2.1987 issued u/s 3(c) of the Act by the State Government appointing the Commissioner of the Karnataka Housing Board as the Deputy Commissioner for the purpose of Section 4(1) of the Act. The said notification is as under:

Government of Karnataka

RD:282 AQW 86

Karnataka Government Secretariat M.S. Building Bangalore, dated: 7.2.1987

NOTIFICATION -1

In exercise of the powers conferred by Clause (c) of Section 3 of the Land Acquisition Act, 1894 (Central Act I of 1894) as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Karnataka Act No. 17/1961), the Government of Karnataka hereby specially appoint (be Commissioner, Karnataka Housing Board to perform the functions of the Deputy Commissioner u/s 4 of the said Act in respect of lands to be acquired in favour of the Karnataka Housing Board in the Bangalore Division comprising the Districts of Bangalore. Bangalore Rural. Tumkur. Kolar, Chitradurga and Shimoga.

By order and in the name of the Governor of Karnataka

(Metri Hussain) Under Secretary to Government Revenue Department.

8. A perusal of the aforesaid notification clearly shows that the Commissioner of Karnataka Housing Board has been appointed to perform the functions of the Deputy Commissioner u/s 4(1) of the Act in respect of the lands to be acquired in favour of the Karnataka Housing Board in Bangalore Division comprising the Districts of Bangalore, Bangalore Rural, Tumkur, Kolar, Chitradurga and Shimoga. It is not the case of the respondents that the State Government has issued a separate notification appointing the Commissioner of Karnataka Housing Board to perform the functions of the Deputy Commissioner u/s 4(1) of the Act for acquisition of the lands for the benefit of the Karnataka Urban Water Supply and

Drainage Board for Shimoga District. Thus, the notification issued by the Commissioner of Karnataka Housing Board u/s 4(1) of the, Act proposing to acquire the lands in question is without jurisdiction because he has not been appointed as the Deputy Commissioner for the purpose of acquiring the lands u/s 3(c) of the Act, for the benefit of the Karnataka Water Supply and Drainage Board at Shimoga District.

9. The Apex Court has repeatedly held that a valid notification u/s 4(1) is a condition precedent for acquisition of the lands. In *Khub Chand and Others Vs. State of Rajasthan and Others*, , the Apex Court has held that the provisions of statute conferring power on Government to compulsorily acquire lands shall be strictly construed. In *Tharoo Mal Vs. Puran Chand Pandey and Others*, , the Apex Court was considering the validity of the notifications issued under the provisions of the Land Acquisition Act. It has been held that the issuance of notification under Sub-section (1) of Section 4 of the Act is a condition precedent to the exercise of any further power under the Act. It has been further held that any notification, which is the first step towards depriving a man of his property must be strictly construed and Courts ought not to tolerate any lapse on the part of the acquiring authority in the issue of such notification. It has been further held that the defect in the notification u/s 4(1) cannot be cured in the notification u/s 6(1).

10. It is thus clear that proceedings for acquisition of the land starts with the publication of the notification u/s 4(1) of the Act. The said notification is the very foundation for such proceedings. It is only on publication of the notification, the State Government can take steps enumerated in Sub-section (2) of Section 4 of the Act followed by an enquiry u/s 5-A of the Act. Thus, a valid notification u/s 4(1) of the Act is a condition precedent to the exercise of any further powers under the Act. The statute conferring power on the Government to compulsorily acquire the lands has to be strictly construed.

11. In the present case, the notification u/s 4(1) of the Act issued by the Commissioner of Karnataka Housing Board is totally without jurisdiction because he has not been appointed as the Deputy Commissioner for the said purpose u/s 3(c) of the Act for Shimoga District. If that is so, all subsequent proceedings pursuant to the issuance of notification at Annexure T are also invalid.

12. Since I have held die first question framed by me in the negative and in favour of the petitioners, it is unnecessary to consider the second question.

13. In the result, writ petitions succeed and they are accordingly allowed. The notification at Annexure-J dated 31.5.2007 and the declaration at Annexure "N" dated 9.3.2009 only in so far as petition schedule lands are concerned, are hereby quashed. It is hereby clarified that this order will not preclude the respondents from acquiring the lands in question in accordance with law. No. costs.