

(1984) 03 KAR CK 0012
In the Karnataka High Court
Case No : Writ Appeal No. 790 of 1980

State of Karnataka

APPELLANT

Vs

Kempaiah and Another

RESPONDENT

Date of Decision : 05-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4 (1), 6, 9

Citation : AIR 1984 Kar 208 : (1984) 1 KarLJ 521

Hon'ble Judges : R.S. Mahendra, J; K.S. Puttaswamy, J

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; M. Papanna, for the Respondent

Judgement

K.S. Puttaswamy, J.—This is an appeal by the appellants who were the respondents and is directed against the order dt. 2-11-1979 of out learned brother Venkatachala, J., allowing Writ Petition No. 65N of 1975: (since reported in (1980) 1 Kar LJ 362), filed by the respondents who were the petitioners.

2. Land hearing Sy. No. 169/1 of Ramanagaram village/town measuring 1 acre 20 guntas originally stood in the name of one Sidda son of Channamma in the record of rights (hereinafter referred to as the RTC) maintained by the Revenue Department of Government. Sidda is stated to have died some time in 1967 and on his death respondent-I petitioner who is one of his sons has been recognised as the owner of the said land in the RTC" in the place of Sidda. In an authenticated extract of" the RTC furnished by the Tahsildar, Ramanagaram, the relevant entry of the same reads thus:-

"1. Survey number, Sircar of Inam and local name of the Field if any 169

2. Sub-Division Number 1

3. Description of Land, Total area deduct phut Kharab, balance, dry wet or garden. 1 - 20

4. Area. 1 - 20

5. Assessment. 115 - 0

6. Jodi or Special non-agricultural Assessment.

7. Name Person in Possession of Govt. land or alienated land. | *(.....)

8. Nature of right. |

9. Number in Record of Rights. 226"

Prior to 4-2-1975 and on that day, the entries in the RTC of the aforesaid land stood as above and there was no change in the same.

3-4. On a requisition from the Town Municipal Council, Ramanagaram, Government in exercise of the powers conferred on it by Section 4(I) of the Land Acquisition Act, 1894 (Central Act I of 1894) as amended by the Karnataka Act 17 of 1961 (hereinafter referred to as the Act) issued preliminary notification No. RD 43 AQB 75 dt. 4-2-1975 published in Karnataka Gazette dt. 13-2-1975 in Part IX proposing to acquire the aforesaid land for establishing a sweepers colony at Ramanagaram. In that notification, the name of the owner and person in possession (Khatedar and anubhavadar) was shown in "Channamma maga Sidda, or "Sidda son of Channamma. The said notification appointed the Assistant Commissioner, Ramanagaram (hereinafter referred to as the AQ to perform the functions of the Deputy Commissioner under the Act. Without notifying the respondents, the AC held an inquiry under the Act and submitted his report to Government recommending for the acquisition of the said land. On an examination of the report of the AC, Government being satisfied with the necessity and public purpose, by its notification No. RD 250 AQB 75 dt. 18-7-1975 (published in the Karnataka Gazette), dt. 31-7-1975) issued the necessary declaration or final notification u/s 6 of the Act, on the basis of which the AC issued a notice on 29-9-1975 to respondent-I u/s 9 of the Act. In response to the same, respondent-1 and his brother one Ramachandra who is respondent-2 filed objections to the acquisition as also a claim statement before the AC.

5. On 3-12-1975 the respondents presented Writ Petition No. 6594 of 1975 before this Court under Art. 226 of the Constitution, challenging the final notification issued by Government u/s 6 of the Act. On the same day, this Court stayed the proceedings which continued to be in force till the disposal of the writ petition.

6. While asserting that they had not been served with a copy of the preliminary notification, the respondents urged that they were entitled for service of that notification u/s 4(I) of the Act as of right and that failure, without anything more, vitiated the acquisition proceedings, which was resisted by the appellants. On 2-11-1979 Venkatachala, J. has allowed the writ petition of the respondents accepting their plea and has quashed the preliminary and final notifications

issued by Government. Hence, this appeal by the appellants.

7. Sri M. R. Achar, teamed Government Advocate appearing for the appellants has urged that the construction placed by the teamed Judge on Section 4(1) of the Act was not sound.

8. Sri M. Papanna, learned counsel appearing for the respondents sought to support the order of the learned Judge.

9. On an examination, of the pleadings and the records, the learned Judge on a question of fact has found that a copy of the notification issued u/s 4(1) of the Act had not been served on the respondents. On this finding, the learned Judge held that the word "may" should be read as shall, and mandatory for" which reason the acquisition was vitiated and incurable. Sri Achar, in our opinion, did not rightly dispute this finding of fact recorded by the learned Judge. Even otherwise, we are of the opinion that the finding of fact on non-service of the preliminary notification is based on a proper examination of the pleadings and records and there are no grounds to take a different view. We, therefore, affirm this finding and proceed to examine the contentions urged before us on that basis.

10. As on 1-11-1956 on which day the new State of Mysore, now called as Karnataka, comprising the areas referred to in Section 7 of the States Reorganisation Act, 1956 came into being, the Central Land Acquisition Act of 1894 was in force in the Bombay, Madras areas and the District of Coorg and the Hyderabad Land Acquisition Act and the Mysore Land Acquisition Act were in force in the erstwhile areas of Hyderabad and Mysore. The scheme and object of all these Acts and the material provisions were one and the same.

11. The Karnataka Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Karnataka Act 17 of 1961) which was enacted by the Karnataka Legislature while extending the Central Act to the State, replacing the earlier enactments that were in force in the several integrating areas of the State, made various amendments to the said Act. In *Chanundamma v. State of Mysore* (1968) 1 Mys LJ 470 a Division Bench of this Court has ruled that this Act was an independent Act and is not an Act that merely extended the Central Act to the new State. This Act that came into force on 24-8-1961 has repealed the earlier enactments that were in force in the several integrating areas of the State.

12. Section 4(1) of the Act, the true scope and ambit of which calls for examination and determination reads thus;-

"4. Publication of preliminary notification and powers of officers thereupon :

(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that land in any locality is needed or is likely to be needed for any public purpose, a notification stating the purpose for which the land is needed, or likely to be needed and describing the land by its boundaries and its approximate area; shall be published in the Official Gazette, and the Deputy Commissioner

shall cause public notice of the substance of such notification 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."

The Act while retaining Section 4(1) of the Act in its very form has added one more independent sentence to the effect "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 the very last sentence of that section. Before the teamed Judge, it was urged that in the context the word "may", should be construed as "shall, and mandatory, which has found favour with his Lordship. But, as to how these terms should be construed by the Court, does not appear to have been urged before the learned Judge, for which reason his Lordship has not expressed his opinion. We, therefore, first propose to examine this aspect without the benefit of the views of our learned brother.

13. On the two requirements of S. 4(1) of the Act, viz., publication in the official Gazette and public notice of the substance of the notification in the locality, which has been consistently held to be imperative by Courts in the country, the Act did not make any change and retained them in that very form. But, in adding the last sentence, the legislature deliberately did not follow that pattern and used the term "may" only.

14. When the legislature in its wisdom very deliberately uses the word "shall, at two places and "may" at another place in the very enacting provision " enacted on the very same day, normally, the Court cannot read the word "may" as "shall". With respect, any such attempt by a Court would be plainly usurping the power of legislature in the guise of interpretation, which is impermissible (vide Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, On this short ground, we find it difficult to subscribe to the views] of our learned brother that the word may should be read as shall.

15. Maxwell on the Interpretation of Statutes (Eleventh Edition) sets out the very first principle of construction of statutes in these words:

"A Statute is the will of the legislature, and the fundamental rules of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it". If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature."

On the application of this very first and other Rules of Construction of statutes, two separate and different expressions found in one and the same provision enacted at the same time, cannot be read as one and the same and that no difference and distinction was contemplated in using those terms. In this view also, we find it difficult to subscribe to the views of our learned brother and hold that "may" has to be construed as "shall".

16. In *Lal Singh and Others Vs. Ghansham Singh*, a Full Bench of five Judges, presided over by Sir John Edge, Kt., Chief Justice of the Allahabad High Court who later became a member of the Judicial Committee of the Privy Council, was considering the effect of non-filling the vacancy of a puisne Judge of that High Court constituted under the relevant Charter and all the learned Judges held that the same did not affect the working of that Court. But, in construing two different terms occurring in one and the same statute, with which we are primarily concerned, Mahmood, J., considered to be one of the greatest Indian Judges and even said to belong to the "galaxy of Augustan age of the Indian Judiciary" (vide speech delivered by Sri K. Subba Rao, Chief Justice of India appearing in Allahabad High Court Centenary at page 103) expressed thus:-

"Now it is very important to note that whilst in connection with the appointment of Chief Justice the statute employs the expression "shall appoint" the same section, in connection with the appointment of puisne Judges, uses the phrase it shall be lawful, for the Government to fill up the vacancy. The change in the language is remarkable, and I understand it to be a well known rule of construing statutes that when in one and the same section which relates to any special purpose two expressions of such different meanings are employed, the Legislature must be taken to have intended a distinction."

With respect, we are in complete agreement with these view. On the application of this principle, as also in the context, there is no warrant for holding the word "may" as "shall".

17. The word "may" does not mean, "must"; "may" always means "may". "May" is a permissive or enabling expression (vide "Chapter 11 "Effect of Statutes creating duties" at pages 229-230 - Craies on Statute Law Sixth Edition). When this is so, the word "may" cannot normally be construed as "shall". But, this does not mean that the use of these words, as pointed out by the Supreme Court in *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, is decisive to hold one way or the other. At the highest the word "may" had to be construed as "must, or as compulsive and cannot be construed as "shall, which would plainly amount to the court legislating in the guise of interpretation that is impermissible. When so examined also, it is difficult to hold that the word "may, should be read as shall".

18. On an examination of the provisions of the Act, but without reference to any of the decided cases of the Supreme Court, this Court or other High Courts, but taking the view that the legislation was expropriatory, the learned Judge has construed the word may, as "shall" and has held it as mandatory. We will now examine whether this is correct or not.

19. We first consider it useful to notice the principles which are no longer in dispute, though in the application of those principles, as it generally happens difficulties always arise.

20. In an oft-quoted passage Lord Campbell in *Liverpool Borough Bank v. Turner*

(1860) 30 LJ Ch 379 at pages 380 and 381 that being one of the earliest cases, explained the principles that should be borne a Court in determining whether a provision is mandatory or directory in these words:-

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered."

In *State of U.P. Vs. Manbodhan Lal Srivastava*, our Supreme Court approved a passage in "The Construction of Statutes, by Earl T. Crawford, that sets out the principle and that passage reads thus:-

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision: but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

In *Haridwar Singh Vs. Bagun Sumbrui and Others*, Mathew, J. speaking for the Bench expressed thus on the test to be applied in determining whether a provision is mandatory or directory.

" 13. Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No Universal rule can be laid down on this matter. In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory (See Earl T. Crawford. The Construction of Statutes, pp. 523-4).

"14. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed (See *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, "

On the second principles stated in *Haridwar Singh*'s case at para 14, the Judicial Committee of the Privy Council in *Montreal Street Railway v. Normandin* AIR 1917 PC 142 : (1917) AC 170 expressed thus:--

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void would work acts in neglect of this duty serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote

the main object of the legislature, it has been the practice to hold such provisions to be directory only".

Bearing these principles we, propose to examine whether the last sentence of Section 4(1) of the Act is mandatory or not.

21. Acquisition of property for purpose of the State or for a public is as old as "Romans. The classic treatise On the law of Eminent Domain by Nichols (Third Edition) referring to a pronouncement of the Supreme -Court of Connecticut states on the character and necessity for acquisition thus 4 "The right to take property, for purpose use or eminent domain is a reserved right attached to every man's land and paramount to his right of, ownership. He holds his land subject to that right, and cannot complain of injustice when it is lawfully exercised."

The Act regulates the manner and method of acquisition, providing for payment of even Just compensation" a term on which "great constitutional controversies from the very commencement of our Constitution arose and ultimately led to the deletion of the right to property as a fundamental right from Part-III of the Constitution.

22. When there is acquisition or taking for a larger public purpose, the person from whom property is taken is paid just compensation and in such a case it would be some what odd to hold that there is expropriation in a mere the oritical sense. We cannot approach the matter on dogmatic or doctrinaire principles and make the working of the Act almost impossible. When large areas of lands for huge irrigation project or a modern steel plant have to be acquired, can the court insist that there should be service of the preliminary notification on every person recognised in the RTC or the municipal assessment -register or person who claims to be the owner of such property. Any such insistence will make the acquisition for a public purpose almost impossible to achieve.

23. The preliminary notification u/s 4 of the Act is a proposal to which it is open to the owners, occupiers and all persons interested in the land and other as to object and the requirement of that Section should be published in the Official gazette and notice thereof should be given in the locality where the land is situated or the land owners are residing, are mandatory is concluded by the several rulings of the Supreme Court (Vide State of Mysore Vs. Abdul Razak Sahib, But, that is not the position on the other requirement of Section 4(1) of the Act and the same, therefore, calls for a closer examination.

24. The Object of Section 4(1) of the Act requiring service of a copy of the preliminary notification on the owner or the occupier is very laudable and desirable cannot be doubted. But, by that we cannot conclude that the same is mandatory and any deviation necessarily results in the nullification of the acquisition proceedings. If we are to hold that the said requirement of Section 4(1) of the Act as mandatory, then probably no acquisition, in particular of large scale areas, can be completed and all acquisitions have to be nullified on that

ground. We must also remember that the service of preliminary notification has to be done by a public "officer of a minor rank in the performance of his public duties, in the present case, we regretfully find deviations either deliberately or inadvertently. In these circumstances" it is unlikely that "the legislature intended the service of preliminary notification as mandatory.

25. Sections 4, 5 and 6 deal with the procedure for acquisition. Sections 9 to 16 deal with the determination of compensation, payment of -compensation and taking possession thereof. "On the issue of a final notification, u/s 6 and a consequential order thereon u/s 7 of the Act, the authority is again required to give public notice to all persons that -are interested -in the land to lodge their claims for compensation. While Section 9, uses an all embracing term "persons interested", Section 4(1) refers to the owner or where the owner is not the occupier, the occupier. The terms "owner" and "occupier" cannot be equated to the terms "persons interested" occurring in Section 9 of the Act. So far as compensation, every person that claims an interest can lodge his claim before the DC and the civil court. But, Section 4 for very good reasons has not conferred -such a right on all persons interested to object to the acquisition. Even these provisions do not justify us to hold that the word "may" should be read as "shall" and mandatory.

26. In reaching his conclusion, the learned Judge has also relied on Section 45 of the Act. We have carefully examined the provisions of S. 45 of the Act. S. 45 provides for mode of service of notice under the Act. We are of the view that Section 45(1)(c) in particular, on which reliance has been placed by the learned Judge, has no relevance to decide the true scope and ambit of Section 40) of the Act on the other hand Section 45(1)(a)(i) far from supporting the case of the respondents supports the case of file appellants. Section 45(1)(a)(i) and (ii) declares a publication in the official gazette or a newspaper as a general notice.

27. For these very reasons, with respect, we find it difficult to subscribe to the views expressed by a Division Bench of Bombay High Court (Nagpur Bench) in *Ajitsingh Vs. The State of Maharashtra and Others*, wherein their Lordships held that a rule framed by Government of Bombay under the Central Land Acquisition Act providing for service of the preliminary notification was mandatory.

28. On the above discussion, we respect to our learned brother, we are of the opinion that the requirement of Section 4(1) of the Act providing for service of. a copy of the preliminary notification is not mandatory and cannot be construed as "shall" and the word "may, has to be construed as "may only or permissive and directory only.

29. We have of course found that the last sentence of Section 4(1) of the Act was not mandatory and was directory only. But, this should not be understood by Government and the authorities administering the Act that they can disobey the same with impunity, taking shelter under our judgment. Acquisition of property of a person on payment of compensation also will undoubtedly result in serious

civil consequences to him, if not anything else. The object with which -the Karnataka legislature has added the last sentence to Section 4(1) of the Act is a very salutary one and the administration should make a genuine and serious attempt to comply with the same, whenever that is possible. We have no doubt that if the concerned Tahsildar and the Revenue Inspector had reflected for a while and had not dealt mechanically, they could have undoubtedly effected service of a copy of the preliminary notification on respondent-I at least. But, alas, that they did not do and only gave rise to this proceedings. We earnestly hope that every attempt will be made to comply with the requirement of S. 4(1) of the Act where it is practice and possible.

30. Sri Achar has urged that the decision in B. Chandrashekhara Reddy v. State of Mysore (Writ Petn. No. 1566 of 1969 decided on 15-7-1971) relied on by the learned Judge to invalidate the preliminary and final notifications was not sound.

31. Sri Papanna has urged that the decision in Chandrashekhara Reddy's case applied on all fours to the present case.

32. In Chandrashekhara Reddy's case on which reliance has been placed by the learned Judge to invalidate the preliminary and final notifications, the facts were very similar to the facts found in the present case. In that case, Chandrashekhara Reddy challenged the preliminary and the final notifications issued by Government on the ground that there was no notice to him and not on the precise ground urged in the present case, which plea was accepted by this court, and the preliminary and final notifications in that case were annulled.

33. On the requirement of service of a copy of the preliminary notification, there was neither a contention urged nor a decision rendered by the Division Bench in Chandrashekhara Reddy's case. As we apprehend, the decision in Chandrashekhara Reddy's case is only a decision on the facts of that case and - does not lay down a binding principle to be followed in other cases. Even assuming that in Chandrashekhara Reddy's case a firm legal principle had been enunciated, then that principle was that a land owner whose name was entered in the RTC or Municipal records before issue of the preliminary notification was entitled for a notice of acquisition and nothing more than that.

34. We have earlier stated that the facts of this case are similar to the facts in Chandrashekhara Reddy's case and, therefore, the reliance placed by the learned Judge to invalidate "the preliminary and the final notifications was correct. We are of the opinion that on the principles stated in Chandrashekhara Reddy's case the learned Judge should have given relief to respondent-1 if not to respondent-2 and invalidated the notifications without deciding the larger question that has been decided by him with which we have disagreed. From this it follows that the ultimate decision rendered in the case for the reasons stated by us, though not for the very reasons on which the learned Judge accepted the case of the respondents, requires to be affirmed.

35. In the light of our above discussion, we hold that this appeal is liable to be

dismissed. We, therefore dismiss this appeal. But, in the circumstances of the case, we direct the parties to bear their own costs throughout.

36. Appeal dismissed.