

(1987) 08 KAR CK 0022
In the Karnataka High Court
Case No : W.P. No. 3269/1978

Surendra Chintaman Hansmshet and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-08-1987

Acts Referred:

Citation : (1987) 3 KarLJ 199

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-The petitioners claim to be the members of a Joint Hindu Family. They also assert that they are the owners of C.T.S.Nos. 2031/IA, IB, IC, ID, IA IF and 2A and 2B in Belgaum City. They also assert that some time after 24-8-1977 they were served with a copy of the notification dated 17th January 1977 stating that by notification dated 17th January, 1977, the area in which C.T.S. No. 2031 was situated had been declared as slum area under Section 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, (hereinafter referred to as the Act) and therefore it was proposed to clear that area in terms of Sub-section (1) of Section 11 of the Act and the owners if they had any objections should state the same in writing as C.T.S. No. 2031/1 measuring 4800 square yards fell within the area declared to be slum area. Pursuant to that notice, the petitioners filed their objections, it is asserted, as at Annexure-B to the petition. In Annexure-B, a true copy of which is produced along with the objection, the representation made by the first two petitioners clearly refers to representation given by them earlier in response to the notification published on or about 9-9-1976 purported to be notification under Section 3 of the Act. It also states that they were not heard in regard to that representation before the proposal now made under the proviso to Sub-section (1) of Section 11 of the Act.

2. There are a number of grounds urged against a declaration to be made. They contend that it is not a slum area at all. They contend that they cannot offer proper objection as the report of the Municipal Council, Belgaum, had not been made available to the petitioners. They assert in the representation that the area

is not over-crowded. They have also stated that the said area was not a low lying area and that there were no objections which lead to insanitation. They also stated that no inconvenience was caused to the public due to the existing structures.

3. They enclosed the building plan showing the location.

4. In any event by notification dated 24th January, 1978, notification under Sub-section (1) of Section 11 of the Act was issued declaring the area in question as slum area designated for clearance and demolition. Pursuant to that notification, the Corporation of the City of Belgaum, Public Works Department, as evidenced by Annexure-D, issued a tender notification inviting contractors to carry out the demolition work. Aggrieved by the same, the petitioners have approached this Court inter alia contending that the entire exercise by the 3rd respondent-Karnataka Slum Clearance Board is illegal and the notifications in question issued by the 1st respondent, the State of Karnataka at Annexures A and C are liable to be quashed.

5. No statement of objections as such has been filed by the respondents. Shri U. Abdul Khader, learned Counsel appearing for the 1st respondent has produced the records and relied upon the same to sustain the impugned notification and the proposed action of the 2nd respondent-Corporation of the City of Belgaum.

6. The scheme of the Act is such that once a notification under Section 3 of the Act is issued declaring an area to be slum area, certain legal consequences follow and the owners of the land and a building are affected. Similarly, when Section 11(1) notification is issued, certain other legal consequences follow which saddle the owners of the properties covered by such declaration with onerous, physical and financial liabilities. Having regard to these in the case of GOVERNMENT OF MYSORE v J.V. BHAT AND OTHERS (AIR 1975 SC 596), the Supreme Court had occasion to consider the need to hear the affected persons particularly with reference to Section 3 notification. In this Court, validity of Sections 3, 9, 12 and 15 of the Act had been questioned and it was held by this Court that it was not constitutionally valid as it was violative of Art. 14 of the Constitution. Consequently, notification issued under Sections 3, 9 and 12 of the Act had come to be quashed by this Court. On appeal, the Supreme Court after considering number of cases in regard to right to be heard or in regard to observance of the rules of natural justice, while upholding the sections as constitutionally valid, nevertheless observed, that declaration made under Sections 3, 9 and 12 had far reaching consequences and while acting under Section 3 of the Act, possibilities of arbitrary decisions could not be ruled out. Most of the owners of the properties in the slum areas were likely to be poor persons with slender means. It was possible that the whole area was owned by one rich man. Once the area was declared as a slum area, the owners were required to register themselves as the owners could not erect new buildings or make any addition or alteration to any existing building even with previous permission. Such owners were also required to carry out the works of improvement if they were called upon to do so by the

concerned authorities. Therefore, it was held that the lack of opportunity for the affected persons to make a representation rendered the notifications invalid.

7. In other words, in the very nature of things that follow the publication of the notification the owners of slum areas or the buildings thereon are persons who are affected and therefore have a right to make representation against such declaration on account of the consequences that flow from such declaration made under Section 3 of the Act. The records do not disclose that there has been any consideration of the representation made by the petitioners to the notification published in exercise of its power under Section 3 of the Act by the 1st respondent, nor is there a copy of the representation to be found. Therefore, Section 3 notification which was followed by Annexure-A, a notification, in the nature of show cause notice as contemplated by the proviso to Sub-section (1) of Section 11 of the Act, came to be published on 24th August, 1977 in the Gazette as at Annexure-A. It does invite objections to be filed by the affected persons within 15 days from the date of publication. The area notified or proposed to be notified for clearance under Section 11(1) of the Act is set out as S.No. 2438/2 measuring 8349 square yards, bounded by certain properties and slum area in STS. 2031/1 measuring 4800 square yards, as well as revenue S.No. 2375/2 measuring 1-10 guntas with specified boundaries. Who the owners of these properties are is not indicated in the notification. This is pointed out only in order to appreciate the argument of the learned Government Pleader that the objections filed as at Annexure-B was not considered as the same was filed beyond 15 days specified in the Gazette notification, as the State Government was not bound to consider the belated representation. It is also contended for the Government that even though it was not required to consider the objections or representations filed by the petitioners, as is evident from Annexure-C, it was considered by the authorities is is evident from the notification under Section (1) of the Act as at Annexure-C to the petition.

8. It may appear to be academic in the light of the assertions that the objections were indeed considered, to examine the validity of Annexure-A in the light of the provisions contained in the Act Section 11(1) of the Act is as follows:

"11. Power to declare any slum area to be slum clearance area.-(1) Where the Government, on a report from the Board or the prescribed authority or the local authority concerned or the State Housing Board or an officer authorised by the Government for this purpose is satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the clearance of such area and the demolition of the buildings in the area, it may, by notification, declare the area to be a slum clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act:

Provided that before issuing such notification the Government shall call upon the owners of the lands and building in such slum area to show cause why such declaration should not be made and after considering the cause, if any, shown by such owners, it may pass such orders as it may deem fit."

Sub-section, (3) of Section 11 of the Act, as is apparent, enjoins that such a notification contemplated under Sub-section (1) of Section 11 of the Act should specify each of the buildings to be demolished and the area to be cleared. The petitioner has asserted that he is the owner of the building situate in CTS.No. 2031; that there is a shop and bakery as well as sweet mart; that there are other tenements in the occupation of the tenants. These assertions are not denied by the respondents. Therefore, not specifying the buildings as required by Sub-section(3) notification at Annexure-C is ex facie contrary to law and on that ground alone it is liable to be quashed.

9. Shri U. Abdul Khader argued that whether the objections were made in time or belated, they had been considered and therefore the Court need not go into that aspect of the matter i.e., whether the objections of the petitioners was in time. I do not think this Court should acceded to that contention.

10. In the rules made to give effect to the provisions of the Act in exercise of powers conferred on the Government by Section 71 of the Act, no rule is made for service of notice as contemplated in the proviso to Sub-section (1) of Section 11 of the Act. Section 50 of the Act is a) follows:

"50. Service of notices and orders.-(1) Save as otherwise provided in this Act and subject to the provisions of this section and of any rules made in this behalf, every notice issued or order made under this Act shall,- (a) in the case of any notice or order of a general nature or affecting a class of persons, be published in the Official Gazette;

(b) in the case of any notice or order affecting an individual, corporation or firm be served in the manner provided for the service of summons in rule 2 of order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908, (Central Act V of 1908); and (C) in the case of any notice or order affecting an individual person (not being a corporation or firm), be served on such person,- (i) by delivering or tendering it to that person; or (ii) if it cannot be so delivered or tendered by delivering or tendering it to the head of the office in which such person is employed, or to any adult male servant of such person, or to any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or (iii) failing service by any of the means aforesaid, by post or by affixing a copy of the said notice or order on some conspicuous part of the land or building to which it relates."

That petitioners fall into the category of individuals mentioned in Sub-clause (c) of Sub-section (1) of Section 50 of the Act cannot be doubted. Therefore, mere publication in the Gazette does not act as notice to affected parties. If it affects individuals, it is required to be served in the manner provided in clause (c) of Sub-section (1) of Section 50 of the Act.

11. Similarly clause (b) of Sub-Section (1) of Section 50 of the Act is attracted as

the affected persons-holder being the individual members of the Corporation or a firm. Mere Gazette notification as in the case of an order of general nature, affect a class of persons falling under clause (a) of Sub-section (1) of Section 50 of the Act would be sufficient. Therefore, the assertion made by the petitioners that they had filed objections both the declaration under Section 3 Of the Act as well as declaration or proposed declaration under the proviso to Sub-section (1) of Section 11 of the Act soon after the service of notice has to be believed having regard to the date of publication in the Gazette namely, 24-8-1977. The objections filed on 13-9-1977 cannot be said to be beyond 15 days from the date of service of notice in the absence of any evidence in the records as to the date on which the notice was personally served on the petitioners as required by clause (c) or clause (b) of Sub-section (1) of Section 50 of the Act.

12. It must be stated that it is not sufficient for the notification under Sub-section (1) of Section 11 of the Act to state that there must be evidence that representations have been considered. Such consideration of the grounds of objections raised by the affected persons must be found in the records of the Government. In the records made available to the Court, no such consideration is demonstrable.

13. The learned Government Pleader submits that some of the records have been misplaced due to the shifting of the office from one place to another. This petition was filed as far back as 1978 and once the matter was pending in this Court, it is not open to the Government to say that they have lost the records in the process of shifting the office. They should have exercised such care and precaution so as not to lose the records in respect of cases pending in the Courts.

14. This Court must come to the conclusion that there is no due application of mind by the Government-1st respondent in publishing the final notification under Sub-section (1) of Section 11 of the Act. In the result, the petitioners must succeed. The notifications at Annexures A and C are quashed. With the quashing of those notifications, the tenders invited by the Corporation need not be acted upon and therefore no specific order in relation to Annexure-D is called for.

15. However, liberty is reserved to the 3rd respondent-Board to afford an opportunity to the petitioners to make representation in regard to Section 3 notification issued and proceed to take appropriate action after considering the objections which is said to have been filed in the years 1976 itself by the petitioners, in the light of the observations made in the course of this order.

16. Rule will accordingly issue and be made absolute.

17. I am fortified in the conclusion I have reached by the decision of a learned single Judge of this Court in the case of THE THIPPERUDRAPPA v STATE OF KARNATAKA (1976(1) Kar.L.J. 417)

Writ Petition allowed.