
(1974) 03 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 684 of 1973

Thimme Gowda

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Citation : AIR 1974 Kar 158

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : Thilaka Hegde, for the Appellant; G.V. Shantharaju, for the Respondent

Judgement

K. Jagannatha Shetty, J.—The only question raised in this petition under Article 256 is whether the public purpose to provide sites to siteless people can be said to be so urgent as to dispense the requirement of enquiry u/s 5-A of the Land Acquisition Act, 1894 ("The Act"). The petitioner is the owner of S. No. 121/1 situate at Madenahalli village of Maddur taluk. An extent of 1 acre 24 guntas of land in the said survey number, was sought to be acquired for the public purpose, to wit to provide sites to siteless people. The Government issued a notification dated 9-1-1973 u/s 4 of the Act. The Government further directed that in view of the urgency of the case, the provisions of Section 5-A shall not apply to the acquisition. The Government exercised their power u/s 17(4) of the Act. The petitioner challenges the validity of the said notification.

2. The main grievance of the petitioner, is that there was no urgency in the matter so as to dispense the enquiry u/s 5-A of the Act and therefore the notification was invalid. In support of that contention, counsel for the petitioner has referred to me some proceedings of the Group Panchayat, Madenahalli. The said Panchayat, by its resolution dated 14th June, 1972, resolved to recommend to the Government to acquire lands in S. Nos. 118, 119, 156 and 123 for the purpose of extension of the village. On receipt of the said recommendation the Government after about 7 months, issued the impugned notification. By the

impugned notification, the Government have not proposed to acquire any of the lands recommended by the Group Panchayat. It is not known how the Government came to the conclusion that the petitioner's land is more suitable for providing sites to the siteless.

3. In the statement of objections filed on behalf of the State, it is simply stated that it became necessary for the Government to invoke Section 17(4) of the Act. It is further stated that the petitioner is not entitled to question the wisdom of the Government in this proceedings particularly when he has not made allegations of mala fide against the State.

4. It is absolutely not necessary for the State to specify the circumstances which formed the foundation for their opinion to dispense the enquiry u/s 5-A of the Act. The requirements of the law should however, be satisfied on the scrutiny and investigation of the proceedings culminating in the direction made u/s 17(4).

In *Kashappa Shivappa Vs. Chief Secretary to the Govt. of Mysore and Others*, this Court observed, that the establishment of the formation of opinion created in the mind of the Government as to the applicability of sub-section (1) or subsection (2) of Section 17 to the land can be made out not only by what is contained in the direction made u/s 17(4), but also by other processes such as by the scrutiny of the proceedings culminating in the direction made u/s 17(4).

5. On a perusal of the records, I find that there was absolutely no material before the Government for the formation of their opinion that the matter was so urgent as to invoke the power conferred u/s 17(4). The statement of objections does not give the basis or the circumstances justifying the dispensing of the enquiry. It is now well settled that the Government could dispense the enquiry u/s 5-A only in exceptional cases when the case is so urgent that the time that is likely to be spent over the hearing directed by Section 5-A, would produce great harm or public mischief. The acquisition proposed is only to provide sites to siteless people, and that purpose ordinarily cannot be regarded as an urgent purpose so as to invoke the provisions of Section 17(4) of the Act and the present case cannot be an exception to that rule. In the result, the petition is allowed and the impugned notification in so far as it relates to the acquisition of the petitioner's land, is quashed. No costs in the circumstances.