
(1962) 11 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 533 of 1961

Thirumalaiah

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 20-11-1962

Acts Referred:

Land Acquisition Act, 1894 — Section 17 (4), 4 (1), 5 A

Citation : AIR 1963 Kar 255 : AIR 1962 Kar 255

Hon'ble Judges : Mir Iqbal Husain, J; A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.J. Srinivasan, for the Appellant; D.M. Chandrasekhar, High Court Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.—In the issue of the Mysore Gazette of May 4, 1961 certain lands claimed by the petitioner were proposed to be acquired for the purpose of a tank whose construction was considered to be imperative by the Government, on the basis of a report of the Public Works Department through the concerned Divisional Commissioner. By that Notification the Government also directed that the provisions of Section 5-A or the Land Acquisition Act shall not apply.

2. In this Writ Petition in which this notification is challenged by the petitioner, two submissions have been made by Mr. Sreenivasan, his learned Advocate. The first of them is that the provisions of Section 4(1) of the Act have been transgressed inasmuch as in addition to the notice published in the official Gazette, the public notice which the Deputy Commissioner, should have published giving notices of the substance of the notification published in the Gazette,, was not published. The second submission is that this was not a case in which it was within the competence of Government to dispense with the requirements of Section 5-A since the case did not fall within sub-Section (1) of Section 17. It seems to us that both these submissions made by Mr. Sreenivasan are substantial.

3. While there is an allegation in the affidavit of the petitioner that the Deputy

Commissioner did not cause public notice to be given as required by the second part of Section 4(1) at convenient places in the locality at which the lands proposed to be acquired were situate, there is no repudiation of this allegation in the counter-affidavit produced on behalf of the State. Nor did Mr. Government Pleader show us any material on the basis of which we could say that this public notice was given. We must, therefore, take it that the public notice required by the second part of Section 4(1) of the Act was not given in this case by the Deputy Commissioner which means, that there was a serious infirmity even at the commencement of the proposed acquisition proceedings.

4. When, we consider the next submission made by Mr. Sreenivasan it is found that in the notification published dispensing with the provisions of Section 5-A of the Act it was not stated in that notification whether the lands proposed to be acquired were waste or arable lands. Now it is clear from sub-Section (4) of Section 17 that the power to dispense with the requirements of Section 5-A would be available only in the case of a land to which in the opinion of the Government the provisions of sub-Section (1) or sub-Section (2) are applicable. This being a case in which no one contends that the provisions of sub-Section (2) are applicable, the only question is whether the provisions of sub-Section (1) of Section 17 were, in the opinion of the Government, applicable to the lands proposed to be acquired.

5. In the impugned notification all that was said by the Government was that "in view of the urgency of the case" the provisions of Section 5-A of the Act shall not apply to the proposed acquisition. The petitioner in his affidavit states that the provisions of sub-Section (1) of Section 17 of the Act were not in fact, applicable to the present case since some of the lands proposed to be acquired were garden lands and therefore could not be brought into the category of waste or arable lands. This allegation in the affidavit of the petitioner has not again been expressly repudiated in the counter-affidavit produced on behalf of the State.

6. Now, the power under Sub-section (4) of Section 17 becomes available to the Government only in cases in which it forms the opinion that the provisions of Sub-section (1) or Sub-section (2) of Section 17 are applicable to the land proposed to be acquired. If Sub-section (2) is inapplicable, sub-section (1) becomes applicable only if the case is one of urgency and the land proposed to be acquired is a waste or arable land needed for a public purpose or for a Company. In other words, Sub-section (1) becomes applicable only if by the application of its own mind the Government comes to the conclusion that the case is an urgent case and that the land proposed to be acquired is a waste or arable land needed for public purposes or for a Company. It is, in my opinion, clear, that power which may be exercised under Sub-section (4) of Section 17 should be exercised in exceptional cases where it would be reasonable for the Government to dispense with the hearing enjoined by Section 5-A. Such would be cases where some great prejudice or inconvenience would be caused by adherence to the requirements of Section 5-A compliance with which might

defeat the very purpose of the acquisition which has become emergent It would not be right to invoke the provisions of Section 17(4) in all cases in which an acquisition is proposed to be made without the Government considering the question whether the case is a fit one for the exercise of the power conferred by that sub-section.

7. Now the real reason which authorises the exercise of power under that sub-section would be the urgency of the case although the power cannot be exercised unless the land proposed to be acquired is also an arable or waste land. Although it is true that the question whether the case is or is not an urgent one is what the Government has to decide before it exercises power under Sub-section (4) of Section 17, it is nevertheless clear that if that power has been exercised without there being any real urgency, the notification issued under that sub-section dispensing with the requirements of Section 5-A would be open to the criticism that it was made without the authority of law.

8. So tested, all that we find in the impugned notification made under Sub-section (4) of Section 17 is that the Government employed in its notification the usual formula and said that power under that sub-section was exercised "in view of the urgency of the case". The only urgency which was demonstrated before us was that the Public Works Department suggested the construction of a tank which the Government considered to be very necessary. I am unwilling to subscribe to the proposition that in all cases in which the Public Works Department suggests the acquisition of property for the construction of a tank, the case must necessarily be regarded as a case of urgency. Unless the construction of the tank has to be made immediately without loss of time so that some emergent situation which has arisen demands its construction without compliance with the requirements of Section 5-A it would be obvious that the case is not one of urgency. But to say that the acquisition for the construction of tanks is always a case of urgency would, in my opinion, be stating the proposition too broadly. It would be in each case for the Government to consider whether notwithstanding the fact that the land is needed for the construction of a tank adherence to the requirements of Section 5-A would occupy such a long time as to be productive of such great harm or prejudice as would defeat the very purpose of the acquisition.

9. Now, as this case has demonstrated, there does not appear to have been any real urgency for the acquisition in this case. Although the notification was published u/s 17(4) as long ago as on May 4, 1961, by reason of the order of stay which was Issued stopping the acquisition proceedings, no progress has been made in the acquisition. The result has been that an acquisition which might have now become complete without any one being in a position to make any criticism on the validity of the acquisition proceedings, has been made impossible by reason of resort to Section 17(4) in a case to which its provisions are really inapplicable.

10. I should not, however, be understood as stating that in all cases in which

power is exercised u/s 17(4), the notification issued under that Section should always contain the materials demonstrating the urgency of the case. That urgency may be established by other materials which can be produced before us, such as may be contained in the proceedings resulting in the publication of the notification u/s 17(4). But this being a case in which there is no material of any description justifying resort to Section. 17(4), we must, in my opinion, come to the conclusion that this was not a case of any urgency and therefore not one falling within the orbit of Sub-section (4) of Section 17. This writ petition must, therefore, succeed, although not in its entirety.

11. Normally, we would have quashed the entire notification which incorporates not only the publication of the notice u/s 4(1) but also the direction made under Sub-section (4) of Section 17. But Mr. Government Pleader asks us not to quash that part of the notification which was made u/s 4(1) since he says that although public notices were not caused to be given by the Deputy Commissioner, we may now direct the Deputy Commissioner to cause those public notices to be given. Mr. Sreenivasan had no objection to that being done by the Deputy Commissioner now.

12. What in my opinion, we, therefore, should do would be to direct the Deputy Commissioner to cause those public notices to be given now u/s 4(1) of the Act so that the petitioner may prefer his objections to the acquisition within a period of thirty days from the date on which such public notice is given. Mr. Government Pleader says that although more than thirty days have elapsed from the date of the notification in the Gazette the Deputy Commissioner will have no objection to receive the objections of the petitioner if they are submitted within thirty days from the date of the Public notice and Mr. Sreenivasan has no objection to that course being adopted.

13. In my opinion, we should issue a direction that if the Deputy Commissioner causes the issue of public notices and if the petitioner submits his objections to the acquisition within thirty days from the date of those notices, the Deputy Commissioner should receive those objections and give a hearing to the petitioner such as is enjoined by Section 5-A and then proceed to deal with the matter according to law. The direction given u/s 17, it follows, has to be and is quashed.

14. In the circumstances, there will be no order as to costs.

Mir Iqbal Husain, J.

15. I agree.