

Amareshappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-18-1985

Reported in : AIR1987Kant34

Judge : Malimath, C.J. and ;Mahendra, J.

Acts : [Karnataka Irrigation Act, 1965](#) - Sections 1 and 15(2)

Appeal No. : Writ Appeal No. 392 of 1979

Appellant : Amareshappa

Respondent : State of Karnataka

Advocate for Def. : S.V. Jagannath, Govt. Adv.

Advocate for Pet/Ap. : Mallikarjuna, Adv.

Judgement :

Malimath, C.J.

1. The authorities issued a notification under S. 15(l) of the [Karnataka Irrigation Act, 1965](#) dt. the 17th of August, 1978 proposing to acquire a portion of the petitioner's land in survey No. 10 of San Hosur Village of Manvi Taluk for the purpose of laying the channel to reach water to the land of the third respondent. This was followed by a notification under S. 15(2) of the said Act dt. 17-10-1978. The petitioner filed his objections, which were considered by the Assistant

Commissioner after giving a hearing to the petitioner. Thereafter an order came to be made under S. 16(l) of the Karnataka Irrigation Act on the 2nd of Jan., 1979 Exhibit 'C' proposing to acquire the notified portion of the land. It is the acquisition in so far it pertains to land of the petitioner that is challenged in the Writ Petition.

2. When the matter came up for consideration, the learned single Judge felt that it is difficult for him to follow the Division Bench ruling of this Court reported in (1972) 2 Mys U 265: (AIR 1973 Mys 32). It is therefore that the learned single Judge to the Division Bench has referred this case.

3. We would like to point out at the outset that the learned single Judges are bound by the decision of the larger Benches such as the Division Benches and Full Benches. The learned single Judge has to follow the decision of the larger Bench. That is the position even if the learned single Judge is inclined to take a view different from the one taken by the Division Bench. That is the discipline which all of us are subject to. If the learned single Judge renders the decision the parties are entitled to take up the matter before the Appellate Bench and then canvas before the Division Bench about correctness of the view taken by another Division Bench. It would be for the Division Bench, if it is persuaded, to doubt the correctness of the view taken by another Division Bench. In that event it has to formulate the necessary points of law and refer the same to the Full Bench for consideration. We are therefore, clearly of the opinion that reference to the Division Bench was not justified on the ground that the learned single Judge is not inclined to agree with the view taken by the Division Bench.

4. It appears to us that there is a mistake committed in preparing the head-note of the case in (1972) 2 Mys U 265: (AIR 1973 Mys 32). The last paragraph of the head-note indicates that the principle enunciated therein is with reference to sub-sec. (1) of S. 15 of the Karnataka Irrigation Act 1965. But on a careful reading of the Judgment and particularly paragraph 7 of the said Judgment, it becomes clear that the said enunciation is with reference to sub-sec. (2) of S. 15 of the Karnataka Irrigation Act. The Division Bench pointed out that the Notification issued under' S. 15(2) should contain particulars about the: extent of the land in the survey number that is required for construction of field channels, the boundaries and the

measurements thereof. It has been pointed out that the said requirement is mandatory and serves a very good purpose of informing the persons likely to be affected as to what is the precise lap4 that is sought to be acquired, with a view to enable them to submit their objections. Therefore, we do not find any good ground to take a view different from the, one taken by the Division Bench in Kalappa's - case referred to above.

5. So far as the merits of the case are concerned, we must point out that the question of applying the law laid down in Kalappa's case (AIR 1973 Mys 32), does not at all arise. Not a single ground has been taken in the Writ Petition bearing on S. 15(2) of the Karnataka Irrigation Act. Hence, the question of relying upon the decision of Kalappa's case does not at all arise for consideration. The participle grievance, as can be seen from the Writ Petition is that the irrigation channel is being laid solely for the purpose of benefiting the third respondent and only to irrigate his land. The purpose of the Irrigation Act is to provide water to all the lands within the achkut area of the project. If the field channel is required to be laid for reaching water to a particular land of a particular person, we fail to see how an objection can be raised on the ground that you cannot lay a channel for the purpose of reaching water for a particular individual. There is, therefore, no substance in this part of the case. There is absolutely no substance in the case put forward that the action taken in this behalf is to support the third respondent and is therefore not bona fide. As there is no other infirmity pointed out in this case, this writ has to fail.

For the reasons stated above, this Writ Petition fails and is dismissed. No costs.

6. Petition dismissed.

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