

Madappa and ors. Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Dec-03-1975

Reported in : AIR1976Kant51; ILR1976KAR652; 1976(1)KarLJ138

Judge : E.S. Venkataramiah, J.

Acts : Karnataka Acquisition of Land for Grant of House Sites Act, 1972 - Sections 3(3); Karnataka Acquisition of Land for Grant of House Sites (Amendment) Act, 1973 - Sections 6; Karnataka Acquisition of Land for Grant of House Sifts Rules, 1973 - Rule 6(3)

Appeal No. : Writ Petn. Nos. 2965 to 2968 of 1975

Appellant : Madappa and ors.

Respondent : The State of Karnataka and ors.

Advocate for Def. : K.S. Puttaswamy, 1st Addl. Government Adv. and ;M. Ramakrishna Government Pleader

Advocate for Pet/Ap. : H.K. Vasudeva Reddy, Adv.

Judgement :

ORDER

1. The petitioners in these writ petitions have challenged the validity of the proceedings initiated under sub-section (1) of S. 3 of the Karnataka Acquisition of

Land for Grant of House Sites Act, 1972 (Karnataka Act No. 18 of 1973) (herein after referred to as the 'Act') to acquire a piece of land in Belur village, of Mandya Taluk bearing Survey No. 5 and measuring two acres.

2. The proceedings were initiated by the publication of a notification under subsection (1) of S. 3 of the Act by the State Government in the Karnataka Gazette Extraordinary, dated July 24th, 1974. Under that notification the Government proposed to acquire an extent of 3 acres and 20 guntas of land in the said Survey number. After the publication of the said notification the Assistant Commissioner issued notices under sub-section (2) of Section 3 of the Act to the Petitioners, who were found to be the owners of the land, to show cause within 30 days from the date of service of the notice, why the land should not be acquired. The petitioners lodged objections before him protesting against the acquisition proceedings. Thereafter the Assistant Commissioner heard the counsel for the petitioners in the presence of the Block Development Officer. On receipt of the report of the Assistant Commissioner, the Divisional Commissioner published a notification under sub-section (4) of S. 3 of the Act declaring that an extent of two acres of the land out of three acres and twenty guntas notified earlier, was required for the purpose of providing house sites for the weaker sections of the Society.

3. The contentions urged by Sri H. K. Vasudeva Reddy, learned Counsel for the petitioners in support of these petitions are:

(i) that since the Assistant Commissioner was not competent to hear the petitioners under sub-section (3) of S. 3 of the Act, the acquisition proceedings are liable to be quashed,

(ii) that since the Block Development Officer was not notified by the Assistant Commissioner to be present at the time of the hearing before the Assistant Commissioner, Rule 6 of the Karnataka Acquisition of Land for Grant of House Sites Rules 1973 had been violated and

(iii) that the description of the land given in the notification issued under subsection (4) of S. 3 is insufficient to identify the land that has been acquired.

4. Under Section 3 of the Act all the powers are exercisable by the State Government. Under Section 6 of the Act, the State Government is authorised by notification to delegate subject to such conditions and restrictions as may be specified in such notification, any of its powers under the Act, except the power to make rules under Section 7, to any of its Officers.

5. In exercise of the power under Section 6, the State Government published a notification dated 10th, October, 1973, in the Karnataka Gazette (Extraordinary) October 10th, 1973 delegating some of the powers vested in it under Section 3 to the Assistant Commissioner having jurisdiction over the area in question. It reads as follows: -

'Notification:

Bangalore, dated 10th, October, 1973 S. O. 1803 - In exercise of the powers conferred by Section 6 of the Mysore Acquisition of Land for Grant of House Sites Act, 1972 (Mysore Act No. 18 of 1973) the Government of Mysore hereby delegates the following powers of the State Government under the said Act to the Assistant Commissioners in-charge of Revenue Sub-Divisions, namely:

1. Sub-section (2) of S. 3 - (power to serve show cause notice on the owner or the occupier of the land and on all persons known or believed to be interested therein).
2. Sub-section (3) of S. 3: (only the power of giving an opportunity to the owner and other persons of being heard).
3. Sub-section (6) of S. 3: (Power to serve notice in writing ordering any person in possession of the land to surrender or deliver possession thereof).
4. Sub-section (7) of S. 3: (Power to take possession of the land or to authorise any officer to take possession of the land, by using force, if necessary).
5. Sub-section (1) of S. 4: (Power to pay for acquisition an amount in accordance with the provisions of the section).

6. Sub-section (2) of S. 4: (Power to determine by agreement the amount payable for the acquisition of land).'

It is seen from clause 1 of the above notification that the power to serve show cause notice on the owner or the occupier of the land and on all persons known or believed to be interested under sub-section (2) of S. 3 has been delegated to the Assistant Commissioner. Similarly under clause 2, the power of giving an opportunity to the owner and other persons of being heard under sub-section (3) of S. 3, has been delegated to the Assistant Commissioner.

6. The validity of the above notification has not been challenged by the petitioners. It is, therefore, clear that the Assistant Commissioner who had issued notices to the petitioners and heard them under sub-section (3) of S. 3, was competent to do so. Under a notification dated 10th January, 1975 published in the Karnataka Gazette dated January 15, 1975, the State Government has delegated the power to pass orders under sub-section (3) of S. 3 and the power under sub-section (4) of Section 3, to the Deputy Commissioner of the District in cases where no cause has been shown by the owner of the land or any other person to the notice issued under sub-section (2) of S. 3, and to the Divisional Commissioner in cases where cause has been shown by the owner of the land or any other person, to the notice issued under sub-section (2) of S. 3. In the instant case, the notification under sub-section (4) of S. 3, has been issued by the Divisional Commissioner because the owners had filed objections to the acquisition. Hence the first contention fails.

7. It was next argued by the learned Counsel for the petitioners that the Block Development Officer was not heard as required by sub-rule (3) of R. 6 of the Karnataka Acquisition of Land for Grant of House Sites Rules, 1973. In the statement of objections filed on behalf of the respondents, it is stated that the Block Development Officer was present when the learned Counsel for the petitioners argued the case on their behalf under sub-section (3) of S. 3 before the Assistant Commissioner. The correctness of this statement is not questioned by the Petitioners Sub-rule (3) of R. 6, has, therefore, been complied with.

8. The last contention relates to the identity of the land that is acquired. It is seen from the notification issued that the boundaries of the land which has been

acquired have been furnished. On looking into the sketch, which is available in the records produced by the Government Pleader, I am of the opinion that it is possible to identify the extent of two acres of land acquired in these cases. Hence, this contention also fails.

9. In the result, these petitions are dismissed. No costs.

10. Petitions dismissed.

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