

MoinuddIn Vs. State of Karnataka and anr.

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Court : Karnataka

Decided On : Jun-13-1983

Reported in : AIR1984Kant137

Judge : M.P. Chandrakantaraj URS, J.

Acts : Karnataka Acquisition of Land for Grant of House Sites Act, 1973 - Sections 3(1) and 3(4); [Land Acquisition Act, 1894](#) - Sections 5-A; [Constitution of India](#) - Article 226; Land Acquisition (Amendment) Act, 1984 - Sections 4

Appeal No. : Writ Petn. No. 7595 of 1983

Appellant : Moinuddin

Respondent : State of Karnataka and anr.

Advocate for Def. : S. Laxminarayana, Govt. Pleader

Advocate for Pet/Ap. : K. Channabasappa, Adv.

Judgement :

ORDER

1. This Writ Petition is disposed of at the stage of preliminary hearing after notice to respondents and after hearing Counsel for the petitioner as well as learned Government Pleader for respondents. The records produced by the learned Government Pleader, also perused.

2. The petitioner is the registered owner of the land bearing Survey No. 221/13 measuring 7 acres 4 guntas in Ainoli village in Chincholi Taluk of Gulbarga District. He is aggrieved by the final notification dated 21st March, 1934 published in the Karnataka Gazette dated 24th March, 1983 under sub-section (4) of, Section 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (herein after referred to as 'the Act'). That denotes that the land in Survey No. 221 to the extent of 5 acres is required for the purpose specified in notification issued under sub-section of Section 3 of those Act earlier on 3rd May, 1977 and published in the dated June 16, 1977. A perusal of the earlier notification clearly is indicative that the acquisition was proposed in the said Survey number for the public purpose of granting house sites to the weaker section of the people who are site less.

3. The petitioner has challenged the notification essentially on four grounds:

(1) That both the preliminary and final notifications under Section 3(1) and Section 3(4) of the Act are defective in as much as the said survey number has been divided between himself and his brother and they have been assigned sub-survey numbers and his portion of the land is covered by the new number given, namely, Sy. No. 227/B.

(2) That he was not notified as required under sub-section (2) of Section 3 of the Act and a copy of the notification was no), served on him said sub-section.

(3) That the Assistant Commissioner who is required to give a hearing in accordance with the provisions contained under sub-section (3) of Section 3 of the Act has not considered each of the objections filed while recommending acquisition of the land in question.

(4) That the order of declaration by the Deputy Commissioner is without proper application of mind and therefore, bad in law.

4. Some of the facts are not in dispute as evidenced by the gazette publication of June 16, 1977, The preliminary notification issued bears the date 31st May, 1977. In other words, the proceedings for acquisition factually commenced some time prior to 31st May, 1977 resulting in the preliminary notification tinder Section 3(1)

of the Act. At that point of time admittedly, there was no partition between the petitioner and his brother in respect of the properties owned by them in that village. According to the submission made by the learned Counsel for the petitioner, mutation was effected in July, 1977. In otherwise the Revenue records could not have disclosed mutation prior to 31st May, 1977. Therefore, the publication both in the preliminary notification under sub-section (1) of Section 3 of the Act and the declaration under sub-section (4) of Section 3 of the Act, not mentioning the sub-survey number and the name of the petitioner, in my opinion, does not render the notifications defective in law so as to render them invalid. The defects in the notification in regard to details must be such that the owner or occupant is prejudiced by such defects and not otherwise. In the instant case, it is not disputed that Jaleel Sab, brother of the petitioner, was served with a notice of the preliminary notification. Records also disclose that it was not Jaleel Sab who filed objections before the 2nd respondent Land Acquisition Officer, but the petitioner himself. That shows that the defect pointed out by the petitioner is not such which prejudiced the petitioner from filing appropriate objections to the proposed acquisition. Therefore, I do not see merit in the first of the contentions.

5. In that view of the matter the second contention of the petitioner that he was not notified and was not served with a copy of the notification as required under sub-section (2) of Section 3 of the Act is untenable and is rejected.

6. In so far as the third contention that the Assistant Commissioner (Land Acquisition Officer) has not considered all his objections, a true copy of which is produced at annexure-C to the petition is undoubtedly, literally correct. But from the records, it is seen that when the case was called by the 2nd respondent (Land Acquisition Officer) on 30-10-1982 the petitioner appeared before him. The case was adjourned for hearing arguments on 18-2-1983. On that date, the order sheet discloses that the petitioner's objection was that if the acquisition is proceeded with he would be left landless and therefore, the acquisition should be dropped. Having regard to the submission made, the 2nd respondent and Acquisition Officer adjourned the hearing of the case for gathering information about the landholdings of the petitioner. The order-sheet further discloses that he made a local enquiry and found that the petitioner and his brother held between them more than 35

acres of land within the ceiling limit and therefore, he proceeded to overrule the objection. What really emanates from the order sheet is that at the time of actual hearing, the petitioner had only pressed the objection about his becoming land lord and not the other objections which he had raised in his written objections. The first objection in annexure-C is regarding the extent of lands owned by him which is stated to be only five acres. The second is only a statement regarding the purpose of acquisition. In para-2, he has made a detailed recital as to how everybody, in the village, about 67 of them had been given sites and they had acquired sites and sold them and left the village. He has pointed that in Survey No. 212, 104 plots have been allotted, out of which 35 allottees have sold their plots and returned to their native places and some of those persons have again got plots allotted. Similarly, he has pointed out that Survey Nos. 220 and 310 are adjacent to his land and their owners are having much more lands than him, and those lands were more suitable for making house sites for the weaker section than his land. Paragraph 3 is important. In that he has emphasized though in slight contradiction of paragraph-1 that his only irrigable land is in Survey No. 211 of Ainoli village and that land is the only source of livelihood for his family. The rest of the objections are really no objections at all. If paras 1 and 3 are taken to mean more or less the same, that objection is considered by the Land Acquisition Officer and after enquiry overruled. If paragraph-2 is treated as objection, then it would require consideration notwithstanding that it was not pressed by the petitioner at the oral hearing as contended by the learned Counsel for the petitioner. In my opinion, the fact of mere statement that all the people in the village who had on earlier occasions applied for sites were granted sites cannot be considered to be a tenable objection. The Government, in order to promote social welfare of the weaker section does provide house sites to those who do not have sites in rural areas. If that facility is abused it cannot be said that future acquisitions for public purpose would be bad. However, Mr. K. Channabasappa's argument was that the very same people who had been given sites on earlier occasions in Survey No. 212 and who had sold away the sites were the ones on whose behalf the acquisition has been initiated. That is not borne out by the records. The records, on the other hand, disclose that the Assistant Commissioner initiated the proceedings on the recommendation of the Block Development Officer to acquire those lands

for the above object of promoting welfare of the weaker section by granting house sites to the members belonging to that section having no sites. It is not for specifically persons by number or name. I, therefore, do not see that the Assistant Commissioner was required to consider what the learned Counsel terms as relevant objection filed before the Land Acquisition Officer. It is very doubtful whether the Assistant Commissioner-Land Acquisition Officer has jurisdiction to enquire into that type of objection. Therefore, I do not find any error in the proceedings or report of the Assistant Commissioner who ultimately recommended for acquisition.

7. The 4th contention that the Deputy Commissioner has not applied his mind does not appear to be correct. No doubt, the order of the Deputy Commissioner is in a cyclostyled form with blanks filled up. But the fact remains that the pre amble indicates that he has read the preliminary notification and the entire records were before him. He has done no more than accept the recommendation of the Assistant Commissioner. It is only

when he differs from the Assistant Commissioner before making the declaration to be made under sub-section (4) of Sec. 3 of the Act, he has to give reasons as to why he was not accepting the report of the Assistant Commissioner. I do not see by the failure to give reasons by the Deputy Commissioner the order of the Deputy Commissioner dated 31-5-1977 is vitiated. Therefore, the 4th contention is also rejected as being without merit.

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8. Lastly, Mr. Channabasappa has contended that the final declaration under

sub-section (4) of Section 3 of the Act is defective because the final notification does not give the date of preliminary notification. I have already pointed out that such omissions do not render the notification defective unless the defect is going to prejudice the affected person. The final notification does not affect anybody except the owner. In the result the final notification by which the proceedings are completed and objections are overruled and nothing more is required to be done.

Such a formal defect does not render the final notification defective initially view. Therefore, the last contention is also rejected.⁹ Learned Counsel for the particular raised yet another ground for striking down the notifications impugned and that is, that there was no need for acquiring the petitioner's land for converting it into sites for distributing them to the siteless. This argument to some extent has already been covered when I have dealt with the third contention. This Court is not in a position to know whether in a particular village there are people without sites or not, It is entirely the task of the Executive to ascertain. I have already, pointed out that the Block Development Officer recommended the acquisition and the Assistant Commissioner accepted the recommendation and proceeded with the acquisition. Therefore, mere assertion by the petitioner that need did not exist will not convince this Court, Even if the Court is convinced, it is not within the powers of the Court to examine whether the Public purpose indicated in the notification results exists or not. We have to give good faith and credit to the actions of the Government. Therefore, this, Court will not investigate existence or non-existence of public purpose unless some material other than mere assertion is placed before this Court.

10. For the above reasons, this Writ, Petition is rejected without issuing rule.

11. Sri. S. Lakshminarayana, Government Pleader is permitted to file his memo of appearance in two weeks.

12. Petition dismissed.