

Siddappa Alias Siddanna Vs. Executive Engineer

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Court : Karnataka

Decided On : Sep-11-1986

Reported in : ILR1987KAR953

Judge : Murlidher Rao, J.

Acts : [Karnataka Irrigation Act, 1965](#) - Sections 15(1), 15(2) and 16(1)

Appeal No. : W.P. Nos. 12685 and 12686 of 1985

Appellant : Siddappa Alias Siddanna

Respondent : Executive Engineer

Advocate for Def. : S. Lakshminarayana, HCGP for R-1 and ;Shivaraj Patil, Adv. for R-2

Advocate for Pet/Ap. : V.T. Rayaraddy, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Murlidher Rao, J.

1. At the hearing, I have heard Mr. N.K. Patil who appears for the applicants in I.A.No. I. I.A.I. is allowed and permission is granted to implead the applicants as

respondents.

2. The petitioners are the owners of survey No. III/A and survey No. 109/B situate at Hatti, Shindhanoor Taluk, Raichur District. They are challenging the validity of Annexure-A, the Notification issued under Section 15(1) of the [Karnataka Irrigation Act, 1965](#) ('Act' for short) and Annexure-B, the Notification issued under Section 15(2) of the said Act.

3. The main ground urged by the petitioners is that, the Notification Annexure-B, mentions the name of Basappa s/o Siddappa, who it is stated had expired in 1981 and the Notification is issued on 30-5-1985. It is also asserted by the petitioners that they were not aware of the publication of the Notification and the acquisition proceedings. Both the petitioners contend that they had not been issued with any notice of acquisition.

4. In appreciating the contention of the petitioners it is necessary to understand the relevant provisions of the [Karnataka Irrigation Act, 1965](#). Section 15(1) of the Act, requires the Irrigation Officer, to satisfy himself that the construction of the field channel in any area is necessary in the public interest. On such satisfaction, he is required to declare by Notification that such field channel may be constructed after a date specified in the Notification not being earlier than thirty days from the date of Notification. A copy of such Notification shall be sent to the Tahsildar of the area for publication in the village concerned. In this Notification the names of the owners or the occupants is not required to be mentioned. Precisely, for this reason, Annexure-A, which is a copy of the Notification mentions the survey number, the boundaries and the area likely to be irrigated. It also mentions that the construction of a field channel is necessary in the public interest for supply of water from the sub-distributor No. 36/1/1 for purposes of cultivation through field channel at Ch.O.L./s under P.O.Ch.20/L/s of B.S.D.36/J/1 of D/36.

5. In view of the test laid down by this Court in *Kallappa v. Deputy Commissioner, Mandya*, 1972(2) KLJ 265 the Notification fully answers the requirement of Section 15(1) of the Act and, it is not necessary that a notice should be given either to the owner or the occupant of the land.

6. After the publication of the Notification under Section 15(1) of the Act, the Irrigation Officer, is required to determine the suitable allotment for the field channel and he has to make out the land which in his opinion is necessary to occupy for the construction thereof. He shall forthwith publish a Notification by affixture on the Notice Board in his office that so much of such a land of such village has been so marked out and shall send a copy of the Said Notification to the Tahsildar for publication in every village through which the field channel is taken on such lands. He is also required to send a copy of such Notification to the Deputy Commissioner of every District in which the land is situated. The Notification under Section 15(2) of the Act, also does not require to mention all the names of the owners. What is required by this notification is that the Irrigation Officer shall determine a suitable place and he has to mark out the lands which is to be occupied for the construction of the field channel. It is only after these two Notifications are issued by the Irrigation Officer, the Deputy Commissioner is required to issue Notice to the owner of such land and other persons interested in it to show cause why such land should not be acquired and after giving reasonable opportunity of being heard, he shall proceed to acquire and take possession of the land as if a declaration is made by the State Government under Section 6 of the Land Acquisition Act. Therefore, at this stage of issue of the Notifications, under Sections 15(1) and 15(2) of the Act, neither the owners nor the persons interested come into the picture. Their names are not required to be mentioned in either of these Notifications nor they are required to be notified. It is only when acquisition proceedings are commenced by the Deputy Commissioner under Section 16(1) of the Act, that the persons are required to be notified regarding the acquisition. The petitioners have neither challenged the Notification issued by the Deputy Commissioner under Section 16(1) of the Act, nor they have impleaded the Deputy Commissioner as a party. Indeed there is no averment in the Writ Petition that proceedings are initiated under Section 16(1) of the Act. After examining Annexure-B, the Notification issued under Section 15(2) of the Act, I am satisfied that the tests laid down in the Judgment of this Court in Kallappa v. Deputy Commissioner, Mandya, 1972(2) KLJ 265 are satisfied. The requirement as laid down by this Court is that particular extent of land in survey number which is required for construction of field channels along with the boundaries and

measurements have to be given in the Notification. These requirements are found at Annexure-B.

7. It is not the case of the petitioners in the Writ Petitions that, either of these Notifications do not answer the requirement of Sub-section (1) of Section 15 or Sub-section (2) of the Act. The only ground of attack is that the petitioners have not been served with the notice and secondly Annexure-B mentions the name of a deceased person. As mentioned above, in the Notification under Section 15(2) it is not necessary to mention the name of the owner or the occupant of the land. Therefore, the mention of the name of deceased Basappa is redundant and such a mentioning does not vitiate the Notifications which in all other respects are valid.

8. For the foregoing reasons, I do not see any justification to quash Annexures 'A' and 'B'. I find no merit in these Writ Petitions. Accordingly they are dismissed. No costs.