

Gangamma Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-05-1988

Reported in : ILR1988KAR998; 1988(1)KarLJ263

Judge : Rama Jois and ;Balakrishna, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1)

Appeal No. : W.A. Nos. 3437, 3477 to 3479 of 1986

Appellant : Gangamma

Respondent : State of Karnataka

Advocate for Def. : S.V. Jagannath, Govt. Adv., for R-1, 2 and ;L. Govindaraj, Adv., for R-3

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

Disposition : Writ appeal dismissed

Judgement :

Rama Jois, J.

1. These appeals are presented by the appellants against the commonorder of the learned Single Judge made in the Writ Petitions in whichthe acquisition of land for the purpose of construction of a Bus Standby the Karnataka State Road Transport

Corporation was challenged.

2. The facts of the case, in brief, are as follows; A notification under Sub-section (1) of Section 4 of the [Land Acquisition Act, 1894](#) (in short 'the Act') was issued proposing to acquire the land belonging to the appellants situate at Sindhanoor Town, Raichur District, for a public purpose, viz., for construction of a Bus Stand, by the K.S.R.T.C. The Preliminary Notification was published in the Official Gazette on 10-3-1977. After following the prescribed procedure under Section 6 of the Act, the final notification was issued. Questioning the legality of the said acquisition, the appellants preferred the Writ Petitions. The Writ Petitions were dismissed, by a common order made by the learned Single Judge on 24-10-1986. Aggrieved by the said order, the appellants have presented these appeals.

3. The main contention of the appellant in W.A. No. 3437 of 1986 is that service of individual notice on the owner of the land was mandatory and as no individual notice was served on the appellant, the entire acquisition proceedings were contrary to law.

4. Sub-section (1) of Section 4 of the Act prescribes two mandatory conditions regarding publication of the preliminary notification. They are:

(i) Publication of the preliminary notification in the Official Gazette; and

(ii) Publication of the substance of the preliminary notification in the locality concerned.

Section 4(1) of the Act also provides that the Deputy Commissioner may also cause the copy of such notification to be served on the owner, or where the owner is not the occupier on the occupier of the land. The question as to whether the service of individual notice is also mandatory or not, was the subject matter for consideration, by a Division Bench of this Court in *STATE OF KARNATAKA & OTHERS v. KEMPAIAH & OTHERS*, 1984(1) KLJ 521. The Division Bench, disagreeing with the view taken in an earlier case, by a learned Single Judge, held that the requirement was not mandatory. The conclusion is found at paragraph-28 of the Judgment. It reads:

'On the above discussion, with respect to our learned Brother, we are of the opinion that the requirement of Section 4(1) of the Act providing for service of a copy of the preliminary notification is not mandatory and cannot be construed as 'shall' and the word 'may' has to be construed as 'may' only or permissible and directory only.'

5. Sri V.T. Rayareddi, learned Counsel for the appellants submitted that the said view has to yield to the ratio of the decision of the Supreme Court in *STATE OF MYSORE & OTHERS v. V.K. KANGAN & OTHERS*, : [1976]1SCR369 . The learned Counsel pointed out that Rule 3(b) of the Land Acquisition Rules framed by the Former State of Madras which had continued in the concerned area of the new State after the reorganisation of the State, was held to be mandatory and therefore, the provisions of the third requirement of Section 4(1) should also be held to be mandatory.

6. In our view, the ratio of the said decision is not at all apposite to this case. In that case, the question for consideration was whether non-compliance of Rule 3(b) of the Madras Land Acquisition Rules which made obligatory for the Inquiring Authority to issue notice to the acquiring body, rendered the acquisition invalid. The Supreme Court held that the provisions of the said Rule made it obligatory for the Officer holding enquiry under Section 5(A) of the Act to issue notice to the body at whose instance, the land was proposed to be acquired and therefore, non-compliance of the said rule rendered the acquisition invalid. Section 4(1) of the Act has not been interpreted in that case, and therefore the said decision does not in any way affect the ruling of this Court in *Kempaiah's case* 1984(1) KLJ521.

7. In *Kempaiah's case*, 1984(1) KLJ 521, the Division Bench pointed out that whereas the earlier part of Section 4(1) provided that the preliminary notification shall be published in the Official Gazette and shall also be published in the locality concerned the latter part of the same section only provided that the Deputy Commissioner may also cause the copy of such notification to be served on the owner or where the owner is not the occupier on the occupier of the land concerned. After applying the relevant principles required to be applied to find out as to whether a statutory provision is mandatory or directory, the Division Bench concluded that the requirement of issuing individual notice was not

mandatory. We are in respectful agreement with the view taken by the Division Bench.

8. The learned Counsel relied on the Judgment of the Bombay High Court in *AJIT SINGH v. STATE OF MAHARASHTRA*, AIR 1972 Bombay 1977 in which the Bombay High Court had held that the service of individual notice was mandatory. As can be seen from the said decision, the Government of Maharashtra had framed Rules in exercise of the power under Section 55 of the Land Acquisition Act and the Rule made it obligatory for the Inquiring Authority to serve individual notice. There is no such rule framed by the Government. On the other hand, Rule 3 of the Rules, framed by the Government is also similarly worded as Sub-section (1) of Section 4. Therefore, the said decision is of no assistance to the appellants. Further it should be pointed out that this decision was considered by the Division Bench before coming to the conclusion that the requirement of individual notice was not mandatory. For the same reason the decision of the Gujarat High Court in *MEGANBHAJI VANASHIBHAIPATEL v. STATE OF GUJARAT & OTHERS*, : AIR 1976 Guj 84 is also of no assistance for, the rule interpreted in that decision is the same which was interpreted by the Bombay High Court. In the circumstances, we are of the view that the acquisition in question cannot be set aside on the ground that no individual notice had been served on the appellants.

9. The learned Counsel for the appellants next contended that there was a difference in the description of the land acquired in the final notification and the preliminary notification. He submitted that in the preliminary notification Sy. No. was given correctly and in the final notification a wrong Sy. No. had been given. We have looked into the final notification, a photostat copy of which was produced by the learned Counsel. There is no such misdescription. According to the final notification the plot belonging to the appellant was acquired. The northern, southern, eastern and western boundaries of the plot acquired are specified. It is not the case of the appellant that the land belonging to the petitioner does not fall within the four boundaries specified therein. The learned Counsel submitted that actually an award had been made for an area of 60 x 220' whereas the area mentioned in the final notification was East to West - 40' and North to South - 200'. Even on the basis that in specifying area there has been a mistake, i.e., instead of

mentioning 60' x 220' it was mentioned as 40' x 200', that mistake cannot constitute a ground for setting aside the acquisition for the reason the entire plot belonging to the appellant with the four boundaries mentioned in the notification has been acquired. It is also well settled position in law that wherever there is inconsistency between the area and the boundary the latter prevails. If we look into the boundaries specified in the final notification, the plot belonging to the appellant has been acquired. Hence there is no substance in the objection.

10. In the other appeals, the learned Counsel for the appellants urged two grounds:

(i) No opportunity of hearing was given; and (ii) There was no communication to the appellants as to the submission of the report of enquiry under Section 5A of the Act to the Government as required under the provisions of the Act. As far as the first ground is concerned, as can be seen from the order of the learned Single Judge on a perusal of the record, it was found that everyone of them had engaged Advocate, who had appeared before the Inquiring Authority and the Advocate had been heard. Therefore, the said contention is untenable.

11. As far as the second ground is concerned, no such ground was urged before the learned Single Judge. Even in the petitions it appears that no such ground has been raised. The question as to whether there had been a communication about the Submission of the report to the Government, is a question of fact and it cannot be permitted to be raised in the appeals as the same was not raised in the Writ Petitions.

12. In the result, we make the following order :

Writ Appeals are dismissed.