

State of Mysore and Others

Vs

V. K. Kangan and Others

and

State of Mysore and Others

Vs

Narasimha Ram Naik

Civil Appeals Nos. 1700 and 1827 and 1021 of 1973

(CJI A.N. Ray, V.V. Chandrachud, K.K. Mathew JJ)

21.08.1975

JUDGMENT

MATHEW, J. -

1. I Civil Appeals Nos. 1700 & 1827 of 1973

1. We take up for consideration Civil Appeal No. 1827 of 1973. The respondents are the owners of the lands in question. They were sought to be acquired for the Regional engineering College at the instance of the Education Department of the State of Mysore. In a notification under Section 4 of the Land Acquisition Act (hereinafter called the 'Act') dated January 5, 1960 and published in the Mysore Gazette dated May 5, 1960, it was stated that in view of the urgency of the case, the provisions of Section 5A of the Act shall not apply to the case. The respondents challenged the notification in a writ petition (No. 768 of 1960). When the writ petition came up for final disposal, a memo was produced on behalf of the State Government and the Court, on the basis of the memo, dismissed the writ petition. The memo was to this effect :

The respondent agrees to modify the impugned notification issued under Section 4(1) read with Section 17 of the Land Acquisition Act and to give an opportunity to the petitioner of being heard under Section 5A of the Act. Hence the relief sought for by the petitioner becomes unnecessary.

The Special Land Acquisition Officer, Mangalore, issued notices to the respondents stating that the respondents will be given opportunity to file objections under Section 5A of the Act pursuant to the order in Writ Petition No. 768 of 1960. The respondents filed their objections and, after an inquiry, the Land Acquisition Officer sent his report to the Government. The Government considered the report and overruled the objections. This was followed by a notification under Section 6 of the Act. The respondents challenged the above notification as well as the notification under Section 4 by a writ petition in the High Court.

2. The respondents attacked the validity of the notifications on the ground that the Education Department at whose instance the land was sought to be acquired was not given notice as required

under Rule 3(b) of the Madras Land Acquisition Rules as in force in the Madras area of the State of Mysore at the time of inquiry under Section 5A and that since the requirement of notice as enjoined by Rule 3(b) was mandatory, the failure to comply with that requirement rendered the notifications under Sections 4 and 6 of the Act invalid.

3. The High Court by its order upheld the contention of the respondents and quashed the notifications issued under Section 4 and Section 6 of the Act. It is against this order that the appeal has been filed by special leave by the State of Karnataka and the Special Land Acquisition Officer, Mangalore.

4. The only point which arises for consideration is whether the provisions of Rule 3(b) were mandatory and therefore the failure to issue the notice to the department concerned as enjoined by the rule was fatal to the validity of the notifications under Sections 4 and 6 of the Act.

5. The reasons which impelled the High Court to come to that conclusion were, if the department to which a notice is issued files any reply by way of answer to the objections, the objector will know what the department has stated by way of reply and, at the stage of hearing of objections, he (the objector) may adduce evidence or address arguments to meet what has been stated in such reply, and that the objectors will have an opportunity of urging before the Government that the reasons given by the department in the reply to the objections should not be accepted.

6. Rule 3 reads :

R. 3. Hearing of objection. - (a) If a statement of objections (is?) filed after the due date or by a person who is not interested in the land it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department; copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

7. The learned Solicitor General, appearing on behalf of the appellants, submitted that Rule 3(b) is inconsistent with Section 5A(2) for the reason that Section 5A(2) itself provides for making further inquiry which the Collector thinks necessary after considering the objections filed by the owner or the person interested in the land and to read Rule 3(b) as casting a mandatory duty upon him to give notice of the objection to the department requiring the land and to consider the answer to the objection if any, filed by the department would be contrary to the section. The argument was that when sub-section (2) of Section 5A provides for further inquiry in the discretion of the Collector, a rule making it mandatory that the Deputy Commissioner (the Collector) should give notice of the objection to the department concerned and consider its answer to the objection would be to convert a discretionary power into a mandatory duty and is therefore ultra vires the section.

8. We do not think that the contention is right. What the material provision of Section 5A(2) says is that

the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall after hearing all such objections and after making such further enquiry if any as he thinks

necessary.

This does not mean that a rule cannot be framed by the rule-making authority for the guidance of the Deputy Commissioner (the Collector) which would enable the department concerned to place its viewpoint before him when considering the objection under Section 5A. The proceedings of the Collector are quasi-judicial and it is only proper that he should be apprised of the attitude of the department requiring the land in the light of the objections filed. If the department requiring the land thinks, in the light of the objection, that the land sought to be acquired is not necessary for the purpose for which it was required to be acquired or that more suitable land is available in the vicinity, it is only fair that the Deputy Commissioner (Collector) is informed about it. The answer of the department to the objection filed by the objector, even if adverse to the objector, would, at any rate, enable the Collector to bring a more informed and rational approach to the controversy before him. The Collector has to send his recommendation to Government on the basis of his finding together with the record of the proceedings for the ultimate decision by the Government. It would be helpful to the Government in making the decision to have before it the answer to the objection by the department in order to appreciate the rival viewpoints. We do not think that Rule 3(b) was ultra vires the section.

9. We also think that the Government when it framed the rule had in mind that the Deputy Commissioner (Collector) should follow it while functioning under Section 5A(2) and so the requirement of the rule was mandatory.

10. In determining the question whether a provision is mandatory or directory, one must look into the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. We see no reason why the rule should receive a permissible interpretation instead of a pre-emptory construction. As we said, the rule was enacted for the purpose of enabling the Deputy Commissioner (Land Acquisition Collector) to have all the relevant materials before him for coming to a conclusion to be incorporated in the report to be sent to the Government in order to enable the Government to make the proper decision. In *Lonappan v. Sub-Collector of Palghat* (AIR 1959 Ker 343 : ILR 1959 Ker 604 : 1959 Ker LT 481) the Kerala High Court took the view that the requirement of the rule regarding the giving of notice to the department concerned was mandatory. The view of the Madras High Court in *K. V. Krishna Iyer v. State of Madras* ((1967) 2 MLJ 422) is also much the same.

11. We think that the High Court was right in its conclusion that the requirement of the rule was mandatory. We quash the proceedings of the Collector (Special Land Acquisition Officer, second appellant) under Section 5A(2) as also the decision of the Government on the basis of the report of the Collector under the sub-section. The result is that the notification under Section 6 has to be quashed and we do so. But we see no reason to quash the notification under Section 4.

12. We direct the Collector (second appellant) to proceed with the inquiry on the basis of the objections already filed under Section 5A after giving notice to the department concerned viz., the Education Department and after allowing it an opportunity to file an answer to the objection. We

dismiss the appeal subject to the modification indicated. No costs.

13. The facts and circumstances in Civil Appeal No. 1700 of 1973 are similar to these in Civil Appeal No. 1827 of 1973, the only difference being that the rule which falls to be considered is Rule 5(2) framed by the Government of Mysore under Section 55 of the Act. That rule is similar to Rule 3(b) of the Madras rule. For the reasons given in the judgment in Civil Appeal No. 1827 of 1973, we dismiss Civil Appeal No. 1700 of 1973 also with the modification indicated therein and without any order as to costs.

II Civil Appeal No. 1021 of 1973

14. The facts in this appeal are similar to those in the two civil appeals referred to above and the decision there will govern the decision here.

15. But counsel for the respondent in this appeal said that the notification under Section 4 should be quashed in respect of properties involved in this appeal for the reasons that public notice had not been given as required in Section 4 of the Act, that the report under Section 5A was not sent to the Government within the prescribed period, that the High Court failed to pass upon these questions and that the case must therefore be remitted to the High Court.

16. The notification under Section 4 was published on April 13, 1967. Objections were filed by the respondent under Section 5A of the Act. The Deputy Commissioner submitted his report to the Government. The Government overruled the objections. The notification under Section 6 was published in the gazette on October 19, 1968. The writ petition challenging the validity of the notifications was filed sometime in July or August, 1969. We do not think that the respondent was entitled to challenge the validity of the notification under Section 4 of the Act as the writ petition challenging the notification was filed after an unreasonable lapse of time. If public notice as required by Section 4 of the Act was not given and that would per se vitiate the notification under Section 4, the appellant should have challenged its validity within a reasonable time of the publication of the notification. The respondent knew of the notification and filed objection under Section 5A of the Act. In these circumstances we see no reason to accept the submission of Counsel. We also see no substance in the argument of the Counsel that the report drawn up under Section 5A(2) was not sent to the Government within the time prescribed and therefore the proceedings were invalid. We have directed a fresh inquiry by the Deputy Commissioner (Collector) under Section 5A and therefore, the Deputy Commissioner will in any event have to send a fresh report to the Government.

17. In this view we do not think that there is any ground for remitting the case to the High Court, simply because the High Court failed to consider these points. The appeal is dismissed with the modification indicated in the two appeals referred to above. No costs.

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