State Of Mysore & Ors vs V. K. Kangan & Ors on 21 August, 1975

Equivalent citations: 1975 AIR 2190, 1976 SCR (1) 369, AIR 1975 SUPREME COURT 2190, 1976 2 SCC 895, 1975 UJ (SC) 719, 1976 (1) SCWR 15, 1976 (1) SCR 369, ILR 1976 KANT 10

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew, A.N. Ray, Y.V. Chandrachud

PETITIONER:
STATE OF MYSORE & ORS.

Vs.

RESPONDENT:
V. K. KANGAN & ORS

DATE OF JUDGMENT21/08/1975

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 2190 1976 SCR (1) 369
1976 SCC (2) 895

ACT:
Land Acquisition Act-Section 4, Sec. 5-A and Section 6.
Madras Land Acquisition Rules 3(b).
Mandatory or directory-Validity of notification Whether can be challenged after unreasonable lapse of time.

HEADNOTE:
The respondents are the owners of the land in question. the land was sought to be acquired for an Engineering College at the instance of the Education Department of the State of Mysore. Section 4 notification was issued in the year 1960. After an enquiry into the objections filed under section 5A the land Acquisition officer sent his report to the Government. Government over-ruled the objection and

issued a notification under section 6. The Education Department at whose instance the land was sought to be acquired was not given notice as required by rule (b) of Madras Land Acquisition rules. The respondents field a Writ Petition in the High Court challenging the validity or both the notifications on the ground that the Education Department was not consulted. The High Court upheld the contention of' the respondents and quashed the notifications issued under sections 4 and 6 of the Act on the ground that if the Department concerned filed any reply pursuant to the notice issued the objector would know what the Department has stated by way of reply and at the stage of hearing of objection. tile objector might adduce evidence or address arguments to meet what is stated in such reply. The objector. could further urge before the Government that the reasons given by the department in reply to the objections should not be accepted:

On appeal by Special Leave it was contended by the appellant.

1. Rule 3 (b) is inconsistent With section 5A (2) for the reasons that sub section (2) of section 5A provides for further enquiry in the discretion of the Collector and rule 3(b) if treated as mandatory would be to convert the discretionary power into a mandatory duty and is therefore, ultra vires the section. 2. The provisions of rule 3(b) were not mandatory and that therefore, failure to issue the notice to the department concerned was not fatal to the validity of the notification.

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HELD: 1. Section 5A requires the Collector to make a report after hearing the objections. It does not mean that a rule cannot be framed which would enable the department concerned to place its view point before the Collector when considering the objection under section 5A. The proceeding 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. 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 riv view point. Rule 3(b) is not Ultra vires Section SA. [372F-H 373 A-C]

2. 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. One has to consider the nature the design and the consequence which will follow from construing a provision in one way or the other. Rule 3(b) was enacted for the purpose of enabling the Collector to have all the

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relevant materials before him for coming to a conclusion to be incorporated A in the report to be sent to

the Government in order to enable the Government to make proper decision. The High Court was right in holding that the provision WAS mandatory. [373C-F]

The notification under Section 6 was quashed but the notification under section 4 was upheld. [373-G]

CIVIL APPEAL No. 1021 or 1973

The respondents raised further contention in the above appeal to the effect that notification under section 4 should be quashed since the public notice as required by section 4 is not given and the report under section 5A was not sent to the Government within the prescribed period.

HELD: The notification under section 4 was published on 13-4- 1967. Objections were filed by the respondent under section 5A of the Act. The notification under section 6 was published in October 1968. The Writ Petition was filed in July 1969. The respondent was not entitled to challenge the validity of the notification under section 4 of the Act as Writ Petition challenging the notification was filed after an unreasonable lapse of time. The respondent should have challenged the validity of the notification under section 4 within a reasonable time of' the publication of the notification. The respondent knew of the notification and file(l objections under section 5A of the Act. There is no substance in the argument that the report under section 5A was not sent to the Government within the prescribed period. In any event since a fresh enquiry is directed under section 5A the Collector will in any event have to send a fresh report to the Government. [374D-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1700 & 1827 and 1021 of 1973.

Appeals by special leave from the judgment and orders dated the 17-7-1972, S 6 1972 and 8-8-1972 of the Mysore High Court in W.P.S NOS. 1921/1969/,2869/1967 & 3815/69 respectively.

L. N. Sinha, Solicitor General of India, M. Veerappa, Altaf Ahmad, for the appellants (in Civil Appeal No. 1700/73).

A. K. Sen, K. N. Bhat, for respondents (1-6 & 8-10) M. Veerappa & Altaf Ahmad, for the appellant. K. N. Bhat, for respondents 1-7 M. Veerappa, for the appellants.

R. B. Datar, Jayashree Wad and Rajen Yashpaul, for the respondent.

The Judgment of the Court was delivered by Civil Appeals Nos. 1700 & 1827 of 1973 MATHEW J.-We take up for consideration Civil Appeal No. 1827 f 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 s. 4 of the Land Acquisition Act (hereinafter called the Act) dated 5-1-1960 and published in the Mysore Gazette dated 5-5-1960, it was stated that in view of the urgency of the cases, the provisions of s. SA 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 5-A 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 s. 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 over ruled the objections. This was followed by a notification under s. 6 of the Act. The respondents challenged the above notification as well as the notification under s. 4 by a writ petition in the High Court.

The respondents attacked the validity of the notification 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 s. 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.

The High Court by its order upheld the contention of the respondents and quashed the notifications issued under s. 4 and s. 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.

The only point which arises for consideration is whether the pro visions 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.

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 A 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.

Rule 3 reads:

"R. 3 Hearing of objection: (a) If a statement of 13 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 s 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." l) The learned Solicitor General, appearing on behalf of the appellants submitted that rule 3(b) is inconsistent with s. 5A(2) or tilt: reason that s. 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 s. 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 1 the section.

We do not think that the contention is right. What the material provision of s 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 view- point before him when considering the objection under s. 5A. The proceedings of the Collector are quasi-judicial and it is only proper that he should be apprise 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 view points. We do not think that rule 3(b) was ultra vires. the section.

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 s. 5A(2) and so the requirement of the rule was mandatory.

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 he 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(1) 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. The State of Madras(2)is also much the same.

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, 2nd appellant) under s. SA(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 s. 6 has to be quashed and we do so. But We sec no reason to quash the notification under s. 4.

We direct the Collector (2nd appellant) to proceed with the inquiry on the basis of the objection already filed under s. 5A after (1) A.I.R. 1959 Kerala 343. (2) (1967) 2 Madras law Journal 422.

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.

The facts and circumstances in Civil Appeal No. 1700 of 1973 are similar to those 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 s. 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, dismiss Civil Appeal No. 1700 of 1973 also with the modification indicated therein and without any order as to costs.

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.

But counsel for the respondent in this appeal said that the notification under s. 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 s. 4 of the Act, that the report under s. 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.

The notification under s. 4 was published on 13- 4.1967. Objections were filed by the respondent under s. 5A of the Act. The Deputy I I Commissioner submitted his report to the Government. The Government over ruled the objections. The notification under s. 6 was published in the gazette on 19-10-1968. The Writ Petition challenging the validity of the notification was filed some time in July or August, 1969. We do not think that the respondent was entitled to challenge the validity of the notification under s. 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 s. 4 of the Act was not given and that would per se vitiate the notification under s. 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 s. 5 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 s. SA(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 s. SA and therefore, the Deputy Commissioner will in any event have to send a fresh report to the Government.

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.

P.H.P. Appeals dismissed.