

State Of Mysore vs Abdul Razak Sahib on 11 August, 1972

Equivalent citations: 1973 AIR 2361, 1973 SCR (1) 856, AIR 1973 SUPREME COURT 2361, 1973 3 SCC 196 1974 (1) SCJ 492, 1974 (1) SCJ 492, 1974 (1) SCJ 492 1973 3 SCC 196, 1973 3 SCC 196

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover, D.G. Palekar

PETITIONER:
STATE OF MYSORE

Vs.

RESPONDENT:
ABDUL RAZAK SAHIB

DATE OF JUDGMENT 11/08/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.
PALEKAR, D.G.

CITATION:
1973 AIR 2361 1973 SCR (1) 856
1973 SCC (3) 196
CITATOR INFO :
E 1984 SC1721 (1,6)
F 1985 SC1622 (13)
RF 1991 SC1676 (43)

ACT:
Land Acquisition Act 1894, s. 4 (1)-Requirements of-
Publication of notice in official gazette whether must be
mandatorily accompanied by or immediately followed by public
notice in locality.

HEADNOTE:
A notification under section 4 of the Land Acquisition Act,
1894 in respect of land belonging to the respondent was
published in the official gazette of the Government of
Mysore on August 17, 1961. But no notice as required by
that section were published in the locality till November 1

and 19 of 1961. Under s. 5A of the Act the time limited for filing objections is thirty days from the issue of the notification. The respondent filed his objections only on December 4, 1961. In his writ petition under Article 226 of the Constitution the respondent contended that the notice under s. 4 was invalid.. The High Court upheld the contention and quashed the impugned notification. The State of Mysore appealed to this Court with certificate.

HELD: Under certain circumstances publication in the official gazette is presumed to be notice to all concerned. But in the case of a notification under. 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the official gazette the Collector must also give publicity to the substance of the notification in the concerned locality. Unless both these conditions are satisfied section 4 of the Land Acquisition Act cannot be said to have been complied with. no publication of the notices in the locality is a mandatory requirement. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under s. 5A which is a valuable right. Under s. 4 it is only when the notification is published in the official gazette and it is accompanied by or immediately followed by Public notice that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed notification.[857H-858D]

The impugned notification did not comply with the requirement of the law since it was not accompanied by or immediately followed by public notice. The High Court was, therefore, justified in quashing the proceedings taken. [858E]

The appeal must accordingly fail.

Gangadharaih v. State of Mysore & Ors., (1961) Mys. L.J. 883, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2461 of 1968. Appeal by certificate from the judgment and order dated June 6, 1968 of the Mysore High Court in W.P. No. 769 of 1966. S. V. Gupte, for the appellant.

Respondent did not appear.

The Judgment of the Court was delivered by Hegde, J. This appeal arises from certain land acquisition Proceedings. The Government of Mysore notified the lands belonging to the respondent for acquisition. The notification under s. 4 of the Land Acquisition Act, 1894, was published in the official gazette on August 17, 1961, but no notices as required by that section were published in the

locality till November 1 and 9, 1961. The respondent filed his objections only on December 4, 1961. The question for consideration is whether the notification issued under s. 4 is a valid notification. The respondent challenged the validity of the notification before the High Court of Mysore by means of a writ petition under Art. 226 of the Constitution. The High Court came to the conclusion that the impugned notification was invalid and consequently quashed the same. As against that decision this appeal has been brought after obtaining certificate under Art. 133 (1) (b) of the Constitution.

We shall now read s. 4(1) of the Land Acquisition Act, 1894. It says :

"4. (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

The section prescribes two requirements, namely, (1) a notification to be published in the Official Gazette, and (2) the Collector causing to give public notice of the substance of that notification at convenient places in the concerned locality.

Now, we may turn to s. 5A(1) of the Act which says "5A. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be."

Section 5A empowers the interested person to object to the acquisition of any land but his objection should be filed within thirty days from the date of the issue of the notification. Any objection filed thereafter need not be considered as the same is filed after the time stipulated in s. 5A(1).

With the above background we have to consider the scope of s. 4(1). Under certain circumstances publication in the Official Gazettes are presumed to be notice to all concerned.

But in the case of a notification under s. 4 of the Land Acquisition Act the law has prescribed that in addition to the publication of the notification in the Official Gazette the Collector must also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, s. 4 of the Land Acquisition Act cannot be said to have been complied. The publication of the notice in the locality is a mandatory requirement. It has an important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under s. 5A, which is very valuable right. This very question came up for consideration before the High Court of Mysore in Gangadharaiah v. State of Mysore and Ors.(1), and the High Court ruled that s. 4(1) requires that there should both be a notification in the gazette as also a public notice in the locality in which the property proposed to be acquired is situate. It is only when the notification is published in the Official Gazette and it is accompanied by or immediately followed by the public notice, that a person interested in the property proposed to be acquired can be regarded to have had

notice of the proposed acquisition. We are entirely in agreement with the rate laid down by that decision.

The impugned notification has not complied with the requirement of the law.' Hence the High Court was justified in quashing the proceedings taken.

In the view that we have taken, it is not necessary for us to consider either the applicability or the scope of the Mysore Act 17 of 1961 to the present proceedings. In the result the appeal fails-and the same is dismissed. 'Me respondent is not represented before this Court. Hence there will be no order as to costs.

G.C.
dismissed.

Appeal

(1) [1916] Mys. L.J. 833