

CASE NO.:
Appeal (civil) 8328 of 2001

PETITIONER:
M/s Ahuja Industries Ltd.

RESPONDENT:
State of Karnataka & Ors.

DATE OF JUDGMENT: 03/04/2003

BENCH:
Doraiswamy Raju & Ashok Bhan

JUDGMENT:

J U D G M E N T

BHAN, J.

The instant appeal seeks to assail the judgment and order dated 1st February, 2001 passed by the Division Bench of the Karnataka High Court in Writ Appeal No. 570 of 2001, (hereinafter referred to as 'the impugned order') upholding the order of the Single Judge in dismissing the writ petition filed by the appellant challenging the acquisition proceedings initiated under the The Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act") including Survey No. 6 (with which the appellant is concerned) measuring 1 acre 30 guntas. The appellant is aggrieved not only with the acquisition proceedings but also with the manner in which the acquisition proceedings have been commenced and proceeded with under the Act. According to him the mandatory requirements for the declaration of the industrial area as well as issuance of a show cause notice to the appellant to file objections have not been complied with.

Before advertng to the points raised in this appeal it would be necessary to enumerate the basic facts, which are as under:

On 10th February, 1993 appellant purchased land ad-measuring 1 acre 30 guntas bearing Survey No.6 by registered sale deed located at Krishna Sagar village, Attibele Hobli, Anekal Taluk, Bangalore Urban District from Khujam and Rahmath Shariff. According to the appellant he was put in possession of the said land from the date of sale. However, his name was not shown in the revenue record as the land had not been mutated in his name in the record. The name of one Jacob who had sold the land to the Vendor of the appellant is shown in the revenue record.

The said land and surrounding lands were acquired for the purpose of industrial development under preliminary notification dated 3rd October, 1997 (Gazetted on 30th October, 1997) issued under Section 28 (1) of the Act and final declaration dated 21st April, 1998 (Gazetted on 23rd April, 1998) issued under Section 28 (4) of the Act.

Appellant being aggrieved by the acquisition proceedings filed the writ petition in the High Court which was dismissed by the Single Judge by his order dated 21st November, 2000. The writ appeal against the said order has been dismissed by the impugned order.

Section 1 of the Act gives the short title, extent and commencement of the provisions of the Act. Sub-Section (3) of Section 1 stipulates that the Act shall come into force at once, except Chapter VII, which shall come into force in such areas and from such date as the State Government may by notification specify in that behalf. Section 27 of Chapter VII literally

reproduces the said provisions and states that the provisions of the said Chapter shall apply to such areas and from such dates as may be notified by the State Government under sub-section (3) of Section 1. Section 3 relates to declaration of industrial areas and empowers the State Government to declare any area in the State to be an industrial area for purposes of the Act. Section 28 (1) empowers the State Government to give notice of its intention to acquire such land as may in its opinion be required for the purposes of development by the Board or for any other purpose in furtherance of the objects of the Act. Section 28 (2) requires on publication of a notification in subsection (1), that the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired. Sub-clause (3) provides that after considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit. Section 28 (4) provides that after passing of the orders under sub-section (3) where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section (1), can issue a declaration by issuing a notification in the official Gazettee made to that effect. Sub-section (5) provides that on the publication in the Official Gazettee of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances. Under sub-section (6) the State Government can call upon by issuing a notice in writing requiring the person in possession of the land to surrender or deliver the possession within 30 days of the service of the notice. Sub-section (7) provides that if any person refuses or fails to comply with the order then the State Government or any other officer in this behalf may take possession of the land and may for that purpose use such force as may be necessary. Section 29 provides for payment of compensation and Section 30 makes the provisions of the Land Acquisition Act, 1894 applicable mutatis mutandis in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation in respect of the land acquired under Chapter VII.

Counsel for the appellant raised two points in this appeal. Firstly, that Chapter VII under which the acquisition proceedings have been initiated apply to such areas from such date as may be notified by the State Government under Sub-section (3) of Section 1. In view of the mandate of Section 27, the acquisition proceedings under Section 28 could only be initiated after "Chapter VII comes into force" which can only be by way of a notification under Section 1 (3) of the act. In this case the notification Under Section 1 (3) being subsequent to the date of the notification under Section 28 (1) of the Act, namely, that while the preliminary notification under Section 28 (1) of the Act was prepared on 3rd October, 1997 (published in the Gazette on 30th October, 1997), the notification under Section 1(3) bringing into force Chapter VII of the Act was issued on 20th October, 1997 (published in the Gazette on 30th October, 1997) was post facto to the date of preliminary notification and therefore, the entire proceedings emanating from Section 28 (1) of the Act were without any authority of law, void ab initio and non-est. Secondly, it was submitted that no notice as mandatorily required under Section 28 (2) and thereafter under Section 28 (6) of the Act were either issued or served on either the owner of the land or the occupier thereof and if that be so the proceedings for acquisition of the land stood vitiated for non-compliance with the mandatory provisions of the Act and the principles of natural justice. According to him the want of service of notice to the appellant goes to the very root of the maintainability of the acquisition proceedings and therefore the proceedings of acquisition of land in so far as it concerns the appellant ought to have been quashed by the High Court. He also referred to the provisions of Sections 127, 128 and 129 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Land Revenue Act") which provides for the preparation of the record of rights. Section 128 (1) of this Act provides that a person on acquisition of rights by any mode is required to report orally or

in writing of acquisition of proprietary rights to the prescribed officer of the village within three months of the acquisition of the said right and the said officer is required to give a written acknowledgement of the receipt of the report to the person making it. Under a proviso to this Section the person acquiring a right by virtue of a registered document is exempted from the obligation to report to the prescribed officer for making the necessary entries in his favour in the record of rights because sub-Section 4 provides that no document shall be registered under the Indian Registration Act, 1908, unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in Section 129. On the registration of such a document, the registering authority is required to make a report of the acquisition of the rights to the prescribed officer. The prescribed officer under Section 129 is required to enter in the register of mutations every report made to him under sub-Section (1) of Section 128 or received by him under sub-section (2) or sub-Section (4) of the said Section. Relying upon these provisions of the Land Revenue Act it is contended that an obligation was cast on the registering officer to make a report to the revenue authority to enter his name in the record of rights and their failure to do so resulting in non-service of the notice on the appellant depriving him of the opportunity to file his objections should not act to his detriment or disadvantage.

Counsel appearing for the respondents countered the arguments with reference to the record and the findings recorded by the High Court, contended that there was no illegality attached to the acquisition proceedings.

We do not find substance in either of the points raised by the counsel for the appellants. The term 'notification' is defined in Section 2(8) as meaning a notification published in the official Gazette. According to Section 28 (1) if at any time in the opinion of the State Government any land is required for the purpose of development by the Board or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land. In view of the definition of the term notification; the notification referred to in Section 28 (1) is the notification published in the Official Gazette. Unless and until the notification is published in the Official Gazette there is no notification in the eye of law having regard to section 2 (8). In the present case the notification under Section 28 (1) was published in the Gazette on 30th October, 1997. For all intents and purposes that would be the relevant date. The date 3rd October, 1997 mentioned in the notification is of no relevance or consequence at all. It is seen that the notification dated 20th October, 1997 under Section 1 (3) of the Act applying the provisions of Chapter VII of the land in question and the notification under Section 3 (1) of the Act declaring the area as an industrial area for the purpose of the Act and the preliminary notification under Section 28 (1) of the Act giving notice of its intention to acquire the land for the purpose of development are all gazetted on 30th October, 1997. The validity of acquisition proceedings in regard to the notification under Sections 1 (3), 3(1) and 28 (1) would be the date of their publication in the Official Gazette for the purpose of considering the validity of the acquisition proceedings. The notification under Section 28 (1) is not vitiated only on the ground that it bears a date earlier to the date of notification under Section 1(3) or it is published simultaneous with the notification under Sections 1 (3) and 3 (1) of the Act. While it is true that an occasion for the Government to exercise powers under Section 28(1) may generally arise after an area has been notified as an industrial area, yet the Scheme underlying the Act does not exclude a situation in which the Government may perform all the three functions simultaneously. If the Government, on the basis of material, survey and study conducted by its agencies is of the opinion that a given area is suitable for acquisition, then, for purpose of furtherance of the objects of the Act, it can extend the provisions of the Act to the said area, constituting the same as an industrial area under Section 3(1) and notify its intention to acquire under Section 28 simultaneously as well.

Reading of Section 28 (1) indicates that if at any time the State Government is of the opinion that the land in question is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of the Act, the State Government may by notification give notice of its intention to acquire fresh land. The question of exercise of power under Section 28 (1) of the Act, arise at the stage when it chooses to give notice of its intention to acquire such land and not before. The mere opinion formed without there being the further expression of intention to acquire is of no significance or purpose. Hence, the relevant point of time when alone the power under Section 28 (1) can be said to have been invoked is the point of time when the intention to acquire the same is to be exercised by issuing the notification for publication. By this point of time indisputably in the present case Chapter VII had been brought into force.

In the circumstances, there can be no legal objection in all the three processes provided under Sections 1(3), 3(1) and 28 (1) of the Act being accomplished together by publication, on which only the exercise of power could be said to have been made. The simultaneous issue of the three notifications therefore does not constitute a flaw much less one which can render the acquisition proceedings legally bad or void. We have, therefore, no hesitation in rejecting the first contention raised by the counsel for the appellant.

Admittedly, the appellant's name is not reflected as owner or occupier of the land in the revenue record. It is also not in dispute that no notice was issued to the appellant under Section 28 (3) of the Act. Appellant did not get his name entered in the revenue records in pursuance to the sale in his favour, the question of serving of any notice on him under the circumstances did not arise. Respondents have produced RTC extracts for the year 1995-96 as Annexure R-1 and the notice issued to the notified Kathedar under Section 28 (2) of the Act as Annexure R2. The persons named therein as owners/occupants of Survey No. 6 have been shown as owners/occupants in the preliminary notification as well. Notices were issued/served on the owners/occupants as per the revenue records or their representatives.

This Court in *Winky Dilawari (Smt) & Anr. Vs. Amritsar Improvement Trust, Amritsar, 1996 (11) SCC 644*, has taken the view that failure to serve personal notices on the persons whose names have not been mutated in the official record of rights in pursuance to any sale in their favour does not vitiate the proceedings for acquisition. Similar view was taken in *W.B. Housing Board and Ors. Vs. Brijendra Prasad Gupta & Ors., 1997 (6) SCC 207*, wherein this Court observed:

" It is no part of the duty of the Collector to make a roving inquiry into ownership of the persons. We are of the opinion that the requirements of the law were met when notices were served upon the recorded owners as per the Record of Rights. Again we do not think in a case like the present one, it is for the Collector to make enquiries from the registration office to find out if the land had since been sold by the recorded owners. In *Winky Dilawari v. Amritsar Improvement Trust, (1996) 11 SC 644*, this Court observed that the public authorities were not expected to go on making enquiries in the Sub-Registrar's office as to who would be the owner of the property. The Collector in the present case was thus justified in relying on the official record being the Record of Rights as to who were the owners of the land sought to be requisitioned and prudence did not require any further enquiry to be made. We are therefore of the view that notices were

properly served under Section 3 (2) of the Act on the owners of the land."

It could be seen from the above order that service of notice on a person shown as owner or occupier in the record of rights is sufficient even though the said person had already sold the land prior to the said notification unless it is substantiated otherwise that the authorities concerned had the knowledge of the rights or interest of any person other than those found recorded as owner/occupier in the Revenue Records. It is further held that the Collector is not obliged to make a roving enquiry about the ownership of the land. If the name of the purchaser is not yet entered in the record of rights then non-service on such a person does not vitiate the acquisition proceedings. Admittedly, the appellant had not got his name entered in the revenue records as owner or occupant of the said land and therefore he could not complain about non-service of notice on him nor about the failure to grant a hearing to him. Contention that as per provision of Land Revenue Act there was no obligation on his part to either inform the revenue authorities about the sale in his favour or to request them to transfer the katha in his name cannot stand as it has not been brought on record with reference to any pleadings with supporting documents that in fact the appellant had made payment for making the necessary entries in the record of rights and the register in his name at the time of registration of the sale deed in his favour. This apart failure to make entries on the part of the revenue authorities by itself would not cast any obligation on the authorities under the Act to make a roving enquiry and try to locate an owner who may have subsequently purchased the land from the previous owner. Failure on the part of the revenue authority to make entry in the register of mutation in favour of the subsequent owner would not render the acquisition proceedings bad in law on account of non-issuance of notice inviting objections to the acquisition proceedings or service thereof.

For the reasons stated above, we do not find any merit in this appeal and the same is dismissed with no order as to costs.