

(1988) 12 KAR CK 0023

Karnataka High Court

Case No: Writ Petition No. 3317 of 1987

Gadigeppa Mahadevappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Dec. 1, 1988

Acts Referred:

- Constitution of India, 1950 - Article 19 (1) (g), 21

Citation: (1989) ILR (Kar) 53

Hon'ble Judges: Balakrishna, J

Bench: Single Bench

Advocate: Vigneswara S. Sastry, for the Appellant; A. Nimmiswamy, HCGP, for the Respondent

Judgement

Balakrishna, J

1. "But as system of case-law develops, the sordid controversies litigants are the stuff out of which great and shining truths will ultimately be shaped. The accidental and the transitory will yield the essential and permanent".

Benjamin Cardozo

This Writ Petitioner has a chequered career, in as much as on two prior occasions, he had entered the portals of this Court in quest for justice, the cases being, W.P.No. 24491/1982 and W.P.No. 2843/1976. On both the occasions, the Court had allowed the Writ Petitions remitting the cases back for enquiry with a reasonable opportunity to the petitioner for the fair hearing of his objections to the acquisition of what was left out of his original holding devoted to agriculture.

2. What is material for deciding the fate of this case is whether the petitioner himself would be rendered a landless destitute if the acquisition of land is upheld. The sad part of the story of this forlorn agriculturist is that he has already been relieved of agricultural holding to the extent of 2 acres and 30 guntas by virtue of an earlier

acquisition for similar purpose of grant of vacant sites to the rural house-less among the weaker sections. As is apparent from the award of the Assistant Commissioner, Savanur, dated 11-11-1969 in regard to Survey number 237/2 of Kadapatti village, Kundagol Taluk, Dharwad District, what remains of the agricultural holding of the petitioner who is a bonafide agriculturist is hardly 1 acre and 2 guntas of wet land. The petitioner has a family to support. The purpose of acquisition is distribute sites to the house-less among weaker section but obviously not to deprive an agriculturist of all his lands making him a destitute bereft of the means of livelihood. If the second acquisition is given effect to, the consequences befalling the petitioner would be infernal and the position anomalous. The petitioner will have to set out on a voyage of misery with a begging bowl in his hands clamouring for succour seeking fresh grant of land for sheer survival. In the rudderless boat are crammed the dependants of the helpless petitioner resigned to fate with an uncertain future in an unkind world.

I cannot believe that the Act intends such an inverted process of total deprivation, followed by subsequent rehabilitation for the purpose of granting land to the poor and the house-less. One man's meat is another's poison. Such a paradox compounding the spirit of man with ludicrous sadism, annihilating the concept of human rights is hardly reconcilable with the object of the Legislature. I refuse to believe that "rob Peter and pay Paul" is the underlying policy of the benevolent legislation. The dreaded consequence is not a result of schematic postulation but only a fallacy stemming from misconceived application of the statute. The material consideration is lost sight of by the respondent's-2 and 3.

3. The question is, even if human dignity cannot be assured, can the "right to live" be taken away from

the ordinary citizen?

4. We are in a new area of human rights as property rights. Does it need conceptual re-thinking in order to make the concept of property consistent with a democratic society and if so, are such changes incapable of attainment in the era of human rights?

5. The meaning of the word "property" cannot be imprisoned within the confine of the lexicographer or the ordinary dictionary but it goes deeper than it appears on the face of it.

6. As late as the 17th century, it was not unusual for the writers to use the word in what seems to be an extraordinarily wide sense. . John Locke repeatedly expounded men's properties as their lives, liberties and estates. For Hobbes, the things in which man had property included "his own life and limbs; and in the next degree, (in most men), those that concerned conjugal affection, and after them riches and means of living". One's rights and liberties were regarded as individual property. They were perceived as even more cardinal than individual property in material things and

revenues, partly because they were seen as the source and justification of individual material property, though the meaning has been diluted in modern society which has landed to become market society. The human right in question has a special meaning to a developing society in which the predominant majority lives in villages below the poverty line. The debris of antiquity needs to be cleared. I strongly disapprove of the acquisition which is under challenge in this Writ Petition in view of the doom which spells on the petitioner. To say the least, the acquisition is draconian and suffers from depravity and ruthlessness th(sic)ing legislative intendment. To the tiller of the (sic), fundamental political rights are irrelevant if all that they mean is a mere status without means. Perhaps, more fundamental to him are the socio-economic rights which are the palliatives held out to him in the glorious Chapter of Directive Principles of State Policy in the Constitution of India with the added embellishment of "dignity of the individual", Justice - social and economic, in the Preamble. The Constitution assures to the common man not only the means of livelihood but also adequate means of livelihood which in essence is one of the basic aspirations of the ordinary citizen. Article 39(a) provides :

"39. The state shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equally, have the right to on adequate means of livelihood."

7. Does the impugned action subserve the constitutional guarantees? I am afraid, not. On the other hand, it violates the fundamental right of the petitioner guaranteed under the Article 21 of the Constitution which read :

"21. No person shall be deprived of his life for personal liberty except according to procedure established by Law."

8. The impugned action deprives the petitioner of his, sole means of livelihood as an agriculturist since it renders him land-less. His fundamental right to pursue his avocation is usurped. His right to live is seriously, jeopardised. His right to carry on his occupation assured under Article 19(1)(g) of the Constitution is taken away. Acquisition in liberating the petitioner from his inalienable right to avocation is un-constitutional. The impugned action tantamounts to mutation of body from the soul when law is reduced to a fossil.

9. For the reasons stated above, the impugned action deserves to be quashed.

Nothing is nearer to truth than the noble sentiments:

" A Judgment is not a product of cold facts, remorseless logic and pitiless conclusions".

It was submitted by the learned Counsel for the petitioner that out of the eleven proposed allottees, ten have demised and only one has survived. Submission was made at the Bar with full, sense of responsibility and, therefore, it would be less

than reasonable for this Court to reject the submission and instead refer the contentions to the 3rd Respondent for verification so that the rule of equity and fair-play ultimately prevail without truth being the Casualty. Should the submission prove to be false, the petitioner will suffer the consequences of prevarification.

10. For the reasons stated above, I consider it unnecessary to go into the rest of the contentions urged in this Writ. Petition. In the light of the discussion made above, I hold that both on reason and authority, the petitioner should succeed.

I allow this Writ Petition and quash the impugned proceedings and direct enquiry into the allegations of fact made by the petitioner by the Assistant Commissioner, Savanur Sub-Division, Savanur, without detriment to the preliminary notification of acquisition, if ultimately it is found that the allegations made by the petitioner are true and that the petitioner would become landless person and further that ten out of eleven proposed allottees have demised, then the acquisition proceedings would become null and void. The 3rd respondent shall afford a reasonable opportunity of hearing to the petitioner and after consideration of the case on merits dispose of the case in accordance with law and on merits within ninety days from the date of receipt of a copy of this order.

The petitioner shall appear before the 3rd respondent on 19.1.1989 without further notice from the 3rd respondent in order to facilitate the conduct of the enquiry in regard to the allegations made by the petitioner in this Writ Petition. The learned counsel for the petitioner shall inform the petitioner accordingly.

In the circumstance of case, there will be no order as to costs.