

STATE OF KARNATAKA AND ORS.

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v.

NARASIMHA MURTHY AND ORS.

AUGUST 11, 1995.

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

*Karnataka Acquisition of Land for Grant of House Sites Act, 1972 :*

*S.3—Notification issued under Sub-section (1) of S.3—Omission to mention the name of party—Whether vitiates the validity of the notification—Held : No.*

C

Subsequent to the issue of notification under S.3(1) of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972, when measurement of the land was being taken the second respondent represented that the first respondent, his minor son, had purchased the property. Final notification under S.3(4) of the Act was recommended. The first respondent, through his father, filed a writ petition challenging the notification. The Single Judge quashed the notification on the ground that the name of the first respondent was not mentioned in the notification and therefore, the notification was vitiated by an error apparent on the face of the record. On appeal, the Division Bench confirmed the order of the Single Judge. Hence this appeal.

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On the question whether the omission to mention the name of the first respondent in the notification under S.3(1) vitiated its validity;

Allowing the appeal, this Court

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**HELD : 1. Right to shelter is a shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build houses. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor. [653-A-B]**

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2. Admittedly the recorded owner was given notice and she did not appear. The mutation proceedings did not contain the name of the first respondent nor was it effected in the record. Consequently, notice could not

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A be issued to the first respondent. However, the final notification under sub-section (4) of S.3 did contain the name of the first respondent. Under these circumstances, the High Court was clearly in error in holding that the notification published under sub-section 3(1) of the Act was vitiated by error of law on account of omission to have the name of the owner, viz., the first respondent, published in the notification under Section 3(1).

B [652-F; 653-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7401 of 1995.

C From the Judgment and Order dated 19.2.86 of the Karnataka High Court in W.A. No. 332 of 1986.

M. Veerappa for the Appellant.

The following Order of the Court was delivered :

D Leave granted.

E By our order dated July 27, 1995 we had noted that the 1st respondent after becoming major was duly served and was not represented by any counsel nor did he appear in person. We adjourned the matter to enable the State to remove the defect of having discharged the second respondent-father from guardianship of the first respondent. To-day, we have passed an order discharging the second respondent as guardian of the first respondent.

F The notification under Section 3(1) of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (for short, 'the Act') was published in the Gazette on February 3, 1975. When measurement of the land was being taken, Venktappa, the second respondent, appeared before the authorities concerned and represented that the first respondent, his minor son had purchased the property from its owner, viz., Houlabi, wife of Khaja Sab. Subsequently, he recommended to the Government to issue final notification under Section 3(4) of the Act. The first respondent, through G his father, challenged the notification in Writ Petition No. 12705/84. Learned Single Judge and the Division Bench of the High Court quashed the notification on the ground that the name of the first respondent was not mentioned in the notification as required by Section 3(1) and that, therefore, the notification is vitiated by an error apparent on the face of H record. Thus, this appeal by special leave against the Division Bench order

dated February 19, 1986 passed in Writ Appeal No. 332 of 1986.

The question is whether the omission to mention the name of the 1st respondent in the notification under Section 3(1) vitiates its validity. Section 3 of the Act reads as follows :

"3. Acquisition of land. - (1) If at any time, in the opinion of the State Government any land is required for the purpose of providing house sites to the weaker sections of people who are houseless, the State Government may, by notification, give notice of its intention to acquire such land.

(2) On the publication of a notification under sub-section (1), 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.

(3) 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.

(4) After orders are passed 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) a declaration shall, by notification, be made to that effect.

(5) On the publication in the Official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

(6) Where any land is vested in the State Government under sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with any order made

A under sub-section (6), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary."

B A reading of Section 3 (1) clearly indicates that if at any time State Government has the intention to acquire any land for the purpose of providing house sites to the weaker sections of the people who are houseless, the State Government may, by notification, give notice of its intention to acquire such land. The notice as contemplated under sub-section (1) per se does not envisage to include the name of the owner in the notification published under sub-section (1) of Section 3 of the Act. What Section 3 (1) envisages is that the notification should specify the Government's intention to acquire the land which is mandatory. Sub-section (2) of the Act postulates that on publication of a notification under sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the occupier, upon the occupier of the land and all such persons known or believed to be interested therein, to show cause within thirty days from the date of service of notice as to why the land should not be acquired. Therefore, when the follow up action is being taken under sub-section (2) of Section 3, notice shall be served upon the owner or where the owner is not the occupier, on the occupier of the land and all persons known or believed to be interested therein to show cause as to why the acquisition should not be proceeded with for the public purpose. In other words, the opportunity shall be given to the owner who is known by the entries in the mutation proceedings or the occupier of the land or person/persons known or believed to be interested in the land. Admittedly, Houlabi (the recorded owner) was given notice and she did not appear. F The mutation proceedings did not contain the name of the first respondent nor was it effected in the record. Consequently, notice could not be issued to the 1st respondent.

G It is stated in the Special Leave Petition that at the time when the measurement was being taken, obviously, after the publication of the notification under sub-section (1) of Section 3 of the Act, the second respondent had represented to the competent authority that the first respondent was the owner. Thereafter, it is also stated that he had not objected to the acquisition. No action had been taken to have the name H mutated in the revenue records except filing of the writ petition challenging

the validity of the notification.

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Right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor. Admittedly, final notification under sub-section (4) of Section 3 did contain the name of the first respondent.

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Under these circumstances, the High Court was clearly in error in holding that the notification published under sub-section 3(1) of the Act was vitiated by error of law on account of omission to have the name of the owner, viz., the first respondent, published in the notification under Section 3(1).

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The appeal is accordingly allowed and the writ petition stands dismissed but, in the circumstances, without costs.

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G.N.

Appeal allowed.