
(1998) 02 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No"s. 10603, 10604, 23480, 28114, 28116 to 28118, 28119 to 28123 and 28125 of 1997

Ameer Khan and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 15 (1) (a), 17 (1), 18 (1), 19 (1)

Citation : AIR 1998 Kar 347 : (1998) ILR (Kar) 2762 : (1998) 4 KarLJ 129

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : M/s. Kumar and Kumar, Sri K. Giridhar and Mr. Jayant M. Pattanashetti, for the Appellant; Sri A.S. Mahesh, Government Advocate and Sri P.S. Manjunath, for the Respondent

Judgement

1. Since the questions involved in these petitions are identical, all these petitions are taken up and heard together and disposed of by this common order.
2. The petitioners, in these petitions, are the owners of various items of lands, which are sought to be acquired for the purpose of formation of a Truck Terminal at a place known as Kyathasandra on the National Highway near Tumkur Town.
3. In these petitions, the petitioners have challenged the notification dated 26th of October, 1996 published in the Karnataka Gazette dated 30th of October, 1996, a copy of which has been produced as Annexure-A to Writ Petition Nos. 10603 and 10604 of 1997, issued u/s 17(1) of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "the Act"), and the notification dated 1st of February, 1997 published in the Karnataka Gazette dated 20th of February, 1997, a copy of which has been produced as Annexure-D to Writ Petition Nos. 10603 and 10604 of 1997, issued u/s 19(1) of the Act.
4. A few facts, which are not in dispute and which may be relevant for the disposal of these writ petitions, may be set out as hereunder:

(a) In the impugned notifications, the lands in all measuring 23 acres 13 guntas situated at Kyathasandra, belonging to the petitioners and a few others, are sought to be acquired for the purpose of formation of Truck Terminal. It is not in dispute that the lands in question are located very close to the National Highway. Since the second respondent desired that the lands are required for the purpose of erection of a Truck Terminal, the second respondent drew up a detailed scheme for the development of the lands in question for the said purpose, as provided for under clause (a) of sub-section (1) of Section 15 of the Act. Thereafter, a notification Annexure-A dated 26th of October 1996, as provided under sub-section (1) of Section 17 of the Act came to be issued. Pursuant to the said notification, the persons, who are interested in the lands, were called upon to file their objections. Pursuant thereto, the petitioners and others filed their objections and the said objections were considered by the Commissioner of the second respondent. He heard the petitioners and their Counsel on several dates and thereafter, passed a final order on 10th of January, 1997, a copy of which has been produced as Annexure-R1 along with the statement of objections filed by the second respondent. Subsequently, the report submitted by the Commissioner of the second respondent was considered by the second respondent-authority in its meeting held on 10th of January, 1997 itself i.e., the date on which the report was submitted by the Commissioner. The second respondent, after considering the report of the Commissioner, approved the report of the Commissioner and submitted the Scheme to the Government for its sanction as contemplated under sub-section (3) of Section 18 of the Act. The Government, by means of the notification Annexure-D, declared that the lands in question are required for the public purpose. As stated earlier, the said notifications have been called in question in these petitions.

(b) The second respondent has filed its common statement of objections in all these petitions resisting the challenge made to the impugned notifications. The third respondent filed its statement of objections in Writ Petition Nos. 10603 and 10604 of 1997 and at the hearing of the petitions, Sri Mahesh, learned Government Advocate, submitted that the statement of objections filed in the said writ petitions may be treated as common statement of objections in all these petitions.

5. I have heard Sri T.S. Ramachandra, Sri N. Kumar and Sri Jayanth M. Pattanashetti, learned Counsel appearing for the petitioners, and Sri A.S. Mahesh, learned Government Advocate and Sri P.S. Manjunath, learned Counsel, for the respondents.

6. Sri T.S. Ramachandra appearing along with other learned Counsel, for the petitioners, challenged the impugned notifications on four grounds. Firstly, he submitted that the proceedings initiated under the provisions of the Act, for the acquisition of the lands in question, is not permitted under the scheme of the Act; and, therefore, the entire acquisition proceedings are liable to be declared as null and void. According to him, the Truck Terminal, even if it is to be treated

as an amenity, could be established as a part of the development of a larger scheme and not in isolation by itself. Secondly, he submitted with reference to the provisions contained in clauses (a) and (b) of sub-section (1) of Section 15 of the Act, that since there was no previous approval of the State Government as required under clause (b) of sub-section (1) of Section 15 of the Act, the notification Annexure-A issued under sub-section (1) of Section 17 of the Act is illegal and without the authority of law. In other words, it is his submission that the notification under sub-section (1) of Section 17 of the Act could be issued only after the previous approval of the Scheme drawn up by the second respondent, by the State Government as provided under clause (b) of sub-section (1) of Section 15 of the Act. Thirdly, he submitted that there is no consideration of the objections filed by the petitioners and other land owners, by the second respondent-authority as required under sub-section (1) of Section 18 of the Act; and therefore, the notification Annexure-D issued under sub-section (1) of Section 19 of the Act is also illegal and one without the authority of law. In this connection, he pointed out that Annexure-R1 produced by the second respondent clearly establishes that the objections filed by the petitioners were considered and the learned Counsel for the petitioners were heard by the Commissioner of the second respondent-authority; and only the report submitted by the said Commissioner was only considered by the second respondent-authority; and, therefore, there is no consideration of the objections of the petitioners by the authority. According to the learned Counsel, since the valuable property right of the parties is sought to be taken away, sub-section (1) of Section 18 of the Act has provided for consideration of the objections by the authority; and thereafter, the authority, after considering the objections, is required to forward the scheme to the Government for its sanction as required under sub-section (3) of Section 18 of the Act; and in the instant case, since the objections were considered only by the Commissioner and only the report of the Commissioner, and not the objections filed by the petitioners, was considered by the authority, the scheme, if any, forwarded by the authority to the Government is vitiated on account of the breach of the mandatory provisions contained in sub-section (1) of Section 18 of the Act. Finally, he submitted that the notification Annexure-D has been issued without there being any sanction accorded by the Government as provided under sub-section (3) of Section 18 of the Act to the scheme forwarded by the second respondent- authority. He points out that the sanctioning of the scheme by the Government was a condition precedent for issue of the notification Annexure-D as provided under sub-section (1) of Section 19 of the Act. In this connection, he also drew my attention to the provisions contained in sub-section (1) of Section 19 of the Act wherein it provides that the Government is required to state in the notification issued under sub-section (1) of Section 19 of the Act, with regard to the factum of grant of sanction to the scheme under sub-section (3) of Section 19 of the Act. He further submitted that in the statement of objections filed by the respondents, it is not denied that the scheme forwarded by the second respondent for the establishment of the Truck Terminal has not been sanctioned by the Government.

7. Sri A.S. Mahesh, learned Government advocate appearing for respondents 1 and 3, and Sri P.S. Manjunath, learned Counsel appearing for respondent 2, while trying to support the impugned notifications, submitted that there is no infirmity in the procedure followed by the respondents while issuing the impugned notifications. In so far as the first contention of the learned Counsel for the petitioners is concerned, they submitted that the contention of the petitioners that the acquisition of the land for Truck Terminal is not permitted under the scheme of the Act, is totally misconceived. However, in so far as the second submission of the learned Counsel for the petitioners that in the absence of previous approval of the State as required under clause (b) of sub-section (1) of Section 15 of the Act, the notification Annexure-A is liable to be quashed, is concerned, they pointed out with reference to the language employed in sub-section (1) of Section 17 of the Act, that the second respondent-authority was entitled to issue the notification Annexure-A immediately after the scheme is drawn up as provided under clause (a) of sub-section (1) of Section 15 of the Act. They submitted that for issue of the notification Annexure-A under sub-section (1) of Section 17 of the Act, previous approval of the Government to undertake the work as contemplated under clause (b) of sub-section (1) of Section 15 is not required. In this connection, they brought to my notice a circular dated 15th of February, 1997 in No. 644 of 1996 issued by the State Government, a copy of which has been produced as Annexure-R-2, wherein it is clarified that in respect of the scheme sponsored by Asian Development Bank being approved, separate prior approval of the Government in each case is not required. They pointed out that the establishment of the Truck Terminal is one of the works sponsored by the Asian Development Bank; and, therefore, previous approval of the Government as contemplated under clause (b) of sub-section (1) of Section 15 of the Act is not required.

(a) In so far as the third contention of the learned Counsel for the petitioners that the State Government has not sanctioned the scheme sponsored by the second respondent is concerned, the learned Government Advocate and Sri Manjunath, made three submissions. Firstly, they submitted that the provisions contained under sub-section (3) of Section 18 of the Act is directory in nature and, therefore, even if there is no sanction accorded by the Government with regard to the scheme sponsored by the second respondent, the notification issued under subsection (1) of Section 19 will not be vitiated. Secondly, they submitted that in view of the fact that the notification has been issued under sub-section (1) of Section 19 of the Act, it must be held, that the Scheme has been impliedly sanctioned by the Government as provided under sub-section (3) of Section 18 of the Act.

(b) Thirdly, they submitted that since the establishment of the Truck Terminal is a part of the project initiated under the Asian Development Bank Assisted Project and since the said Project had already been approved by the Cabinet, the respondents felt that it was not necessary to pass a separate order approving the Scheme forwarded by the second respondent as provided under sub-section (3)

of Section 18 of the Act. In this connection, they drew my attention to Paragraph 5 of the statement of objections filed on behalf of the first respondent, which reads as hereunder:

"It is submitted that the contention of the petitioners that the approval of the scheme has not been taken, is denied as this project comes under the Asian Development Bank assisted project, the Government of Karnataka in its Order No. HUD/33/BMR/95/dated 8th November, 1995 has accorded for implementation of the project with the financial assistance of the Asian Development Bank in four Cities, viz., Mysore, Tumkur, Ramanagar and Channapatna at the cost of U.S. Dollar 131.98 million (Rs. 414.41 Crores) and to provide necessary budgetary support for the project for 5 years commencing from 1996-97. These projects mentioned above in four cities are being implemented with the approval of the Cabinet and accordingly, a Circular was issued vide Circular No. UDD 644 apravi 96, dated 15-2-1997. According to this Circular, the projects taken up in the 4 cities mentioned above are being implemented by the assistance of Asian Development Bank. These projects have been approved on the recommendation of the State Level Co-ordination Committee, therefore, it was felt that no sanction of this scheme is required separately as provided u/s 18(3) of the Karnataka Urban Development Act".

8. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the question that would emerge for consideration in these petitions, is as to whether the impugned proceedings are liable to be quashed by this Court.

9. In so far as the first contention of the learned Counsel for the petitioners that it is not permissible for the respondents to acquire the lands in question for isolated purpose of erecting a Truck Terminal without there being a developmental scheme covering a larger area is concerned, I must state that I am not persuaded myself to agree with the said contention.

10. Clause (a) of sub-section (1) of Section 15 of the Act empowers the second respondent-authority to draw up a detailed scheme for the development of an Urban Area. Section 2(j) of the Act states that "development" with its grammatical variations means the carrying out of building, engineering or other operation in or over or under land or the making of any material change in any building or land and includes planning and redevelopment. The definition of "engineering operations" means formation or laying out of means of access to road. The development of an area, in my view, can be made either by drawing up a detailed scheme for the development of an urban area, which has remained undeveloped, or by drawing up a detailed scheme for the development of an urban area, which is either partly developed or where there is some scope for making further development. In an urban area, which has already been developed or in the process of development, where certain amenities, like, Truck Terminal, are not provided and on account of that, if the members of the public are likely to be put to inconvenience, if an authority, who is entrusted with the

duty of drawing up of schemes for the development of an urban area, considers that a provision for a Truck Terminal has to be made for better enjoyment or for providing better facilities in an urban area, it is not possible to take the view that the scheme drawn up only for the purpose of providing a Truck Terminal, cannot be treated as a development of the urban area on the ground that the scheme drawn up is in isolation. The object of the Act and the purpose of the development of an urban area has to be kept in mind when a challenge made to the scheme drawn up, is considered. Therefore, I am of the view that there is no merit in the first contention advanced by the learned Counsel for the petitioners.

11. In so far as the second submission of the learned Counsel for the petitioners that the previous approval for the scheme as provided for under clause (b) of sub-section (1) of Section 15 of the Act was required to be obtained before issue of the notification under sub-section (1) of Section 17 of the Act is concerned, in my view, the said submission is also without any merit. Sub-section (1) of Section 17 of the Act empowers the authority to draw up a notification stating the fact of a scheme having been made when a development scheme has been prepared. Clause (a) of sub-section (1) of Section 15 of the Act provides for drawing up of detailed scheme for the development of the urban area. Therefore, the combined reading of clause (a) of sub-section (1) of Section 15 and sub-section (1) of Section 17, of the Act, makes it clear that the authority is empowered to draw up a notification stating the fact of the scheme having been made as soon as a developmental scheme has been prepared as provided under clause (a) of sub-section (1) of Section 15 of the Act. Clause (b) of sub-section (1) of Section 15 of the Act strongly relied upon by the learned Counsel appearing for the petitioners, wherein it is provided that with the previous approval of the Government, the authority shall undertake from time to time any works for the development of the urban area and incur expenditure therefore and also for the framing and execution of development schemes, is concerned, in my view, it is of no assistance to the petitioners to contend that without the previous approval for execution of the work undertaken, it is not permissible for the authority to draw up a notification as provided under sub-section (1) of Section 17 of the Act. What Section 15(1)(b) of the Act contemplates is that after drawing up of the scheme u/s 15(1)(a) of the Act scheme, before the authority proceeds to execute the work, the previous approval of the Government is required to be taken for the development of the urban area and to incur expenditure for the purpose of execution of the developmental scheme undertaken. I am unable to persuade myself to agree with the submission of the learned Counsel for the petitioners that the previous approval of the Government for framing and execution of the developmental scheme/schemes is required to be obtained before issue of notification under sub-section (1) of Section 17 of the Act. The words employed "execution of the development scheme", refer to the scheme which has been drawn up, as provided for under clause (a) of sub-section (1) of Section 15 of the Act. Therefore, in the light of the view I have taken above, the second submission made by the learned Counsel for the

petitioners is also liable to be rejected.

12. I find considerable force in the third submission of the learned Counsel for the petitioners that the representations/petitions filed by the petitioners have not been considered by the authority in terms of subsection (1) of Section 18 of the Act. Annexure-R1 produced by the second respondent shows that the Commissioner of the second respondent-authority had considered the objections filed by the petitioners and other land owners and he had also heard the learned Counsel appearing for some of the objectors. Sub-section (1) of Section 18 of the Act, in my view, mandates the "Authority" to consider the representations of the objectors and submit the scheme in the light of the objections furnished, with such modifications as the authority may deem fit, to the State Government for its sanction. There cannot be any doubt that the Commissioner is not the authority. As observed by me earlier, sub-section (1) of Section 18 of the Act provides that representations of the objectors are required to be considered by the authority. In the instant case, the representations/objections filed were considered only by the Commissioner.

(a) However, the learned Counsel appearing for the respondents relying upon the resolution dated 10th of January, 1997 of the second respondent-authority submitted that since the report of the Commissioner was considered by the authority, it must be held that the objections/representations filed by the objectors were also considered by the authority. I am unable to accede to this submission of the learned Counsel for the respondents. It is useful to extract the resolution of the authority, which has been placed before me, which reads as hereunder:

From the resolution of the authority extracted above, it is manifest that the authority has accepted the report of the Commissioner. The acceptance of the report of the Commissioner, in my view, cannot be equated to the consideration of the objections of the objectors by the authority itself as required under sub-section (1) of Section 18 of the Act. It is relevant to point out that in the resolution, it is not even stated that the authority, after considering the objections of the objectors, has approved the report of the Commissioner. Therefore, what was before the authority was only the report of the Commissioner. Mere approval of the report without consideration of the objections of the objectors cannot, in my opinion be held as consideration of the objections as required u/s 18(1) of the Act. Whether the report of the Commissioner, as a matter of fact, was a true reflection of the objections filed by the objectors and whether there was proper application of mind by the Commissioner with reference to the objections of the objectors or not, is a matter to which the authority was required to apply its mind after considering the objections filed by the objectors. The authority, in my view, solely on the basis of the report of the Commissioner, cannot proceed to submit the scheme to the Government for sanction. When the valuable property right of the parties is sought to be taken away and when the Act does not provide for even a personal

hearing, the minimum that is required by an authority is to consider the objections and comply with the mandate of the law. The power to consider the objections filed objecting to the acquisition of the lands, has been conferred on the authority by the Act. The constitution of the authority itself speaks for the safeguard provided to the people, whose property rights are sought to be taken away. Therefore, in my view, since the material on record discloses that the representations/objections filed by the petitioners and other objectors were not considered by the authority, the recommendation of the scheme made by the authority to the State Government for sanction, is vitiated.

13. There is also considerable merit in the submission of the learned Counsel for the petitioners that the scheme has not been sanctioned by the Government as required under sub-section (3) of Section 18 of the Act. As noticed by me earlier, it is not disputed by the respondents that there is no specific order passed by the Government sanctioning the scheme, after considering the proposal submitted by the authority. I am unable to accept the submission of the learned Government Advocate Sri Mahesh and Sri Manjunath appearing for the respondents that the establishment of the Truck Terminal is a project of the Asian Development Bank Assisted Project, in respect of which the Cabinet has given its approval; and, therefore, the absence of a specific order sanctioning the scheme as required under sub-section (3) of Section 18 of the Act will not vitiate the acquisition proceedings.

14. The Circular relied upon by the learned Counsel for the respondents also, in my view, is of no assistance to them as the said Circular relates to the previous approval, which the State Government is required to grant to comply with the provisions contained in clause (b) of sub-section (1) of Section 15 of the Act. It is necessary to point out that sub-section (3) of Section 18 has to be read along with sub-section (1) of Section 18 of the Act. What sub-section (3) of Section 18 contemplates is that the scheme forwarded by the authority as provided for under subsection (1) of Section 18 of the Act, is required to be considered by the Government and on such consideration, the Government is either required to sanction the scheme or reject the same. From the language employed in sub-section (3) of Section 18 of the Act, it is seen that the Government is required to apply its mind on the basis of the scheme forwarded by the authority and take a decision in the matter. Therefore, each scheme forwarded by the authority under sub-section (1) of Section 18 of the Act is required to be independently examined by the Government and the Government should take a decision either sanctioning the scheme or rejecting it. This is also clear from the language employed in sub-section (1) of Section 19 of the Act wherein it is provided that in the declaration to be issued under sub-section (1) of Section 19 of the Act, upon sanctioning of the scheme by the Government, such declaration shall state the fact of such sanction having been accorded by the Government. The provision contained in sub-section (3) of Section 18 of the Act must be understood as a safeguard provided to protect the property rights of the land owners, whose lands are sought to be acquired for public purpose, especially in the background

of the absence of a provision similar to Section 5A of the Land Acquisition Act, which provides for an enquiry before issue of the final notification. If it is so understood, it admits of no doubt that sub-section (3) of Section 18 of the Act is mandatory. Therefore, in my view, since it is not in dispute that there is no specific order made sanctioning the scheme, the declaration made under sub-section (1) of Section 19 of the Act by means of the notification Annexure-D, is liable to be quashed.

15. Since I have rejected the first two contentions advanced by the learned Counsel appearing for the petitioners and in the light of the infirmities I have pointed out in the acquisition proceedings, the notification Annexure-D alone is liable to be quashed in so far as the lands of the petitioners are concerned, and the matter is required to be remitted to the second respondent-authority for fresh consideration of the objections filed by the petitioners and to take appropriate decision in the matter in accordance with law and submit the scheme, if it so desires, with such modifications or not, as it may deem fit in terms of sub-section (1) of Section 18 of the Act, to the Government. If the authority forwards the scheme after considering the objections, the first respondent-State is required to consider the scheme and pass appropriate orders either approving the scheme or rejecting the same as provided for under sub-section (3) of Section 18 of the Act.

16. Since it is pointed out by Sri Manjunath, learned Counsel appearing for the second respondent, that the scheme was drawn up in the year 1996 and possession of the lands in question was required to be taken in the year 1997 and the contract for execution of the work was required to be given in January, 1998 as per the programme sponsored by the Asian Development Bank, I am of the view that it would be in the interest of justice to direct the second respondent to consider the objections filed by the petitioners as expeditiously as possible and at any event of the matter, not later than six weeks from the date of receipt of a copy of this order and take appropriate decision as provided for under sub-section (1) of Section 18 of the Act. In the event the second respondent forwarding the scheme to the State Government, the State Government is directed to take a decision as provided for under sub-section (3) of Section 18 of the Act within six weeks from the date of receipt of the scheme forwarded by the second respondent.

17. In the light of the discussion made above, I make the following:

ORDER

(i) The notification dated 1st of February, 1997 issued under subsection (1) of Section 19 of the Act and published in the Karnataka Gazette dated 20th of February, 1997 impugned in all these petitions, in so far as the lands of the petitioners are concerned, is hereby quashed. The respondents are directed to comply with the directions given in paragraphs 15 and 16 above. Rule issued in each of these petitions, is made absolute.

18. These petitions are allowed and disposed of in terms stated above. However, no order is made as to costs.

19. Sri Mahesh, learned Government Advocate, is permitted to file his memo of appearance within four weeks.