

(1997) 12 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No"s. 31949 and 31950 of 1997 (LA)

Arasaiah and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Constitution of India, 1950 — Article 254
Indian Medical Council Act, 1956 — Section 10 A
Land Acquisition Act, 1894 — Section 5 A, 6

Citation : (1998) 5 KarLJ 145

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri K. Subba rao, for the Appellant; Sri A.S. Mahesh, A.G.A., for the Respondent

Judgement

1. A certain extent of land situate in Archakarahalli village of Ramanagaram Taluk, was notified for acquisition in connection with the construction of a Bus stand. The notified area included land in Sy. No. 136/3 and 136/4, claimed by the petitioners herein. Objections were filed to the proposed acquisition which were rejected culminating in the issue of a final notification u/s 6 of the Land Acquisition Act published in the Government Gazette on 11th of June, 1997. Aggrieved the petitioners have filed the present writ petition challenging the validity of the acquisition proceedings.

2. Mr. Subbarao, learned Counsel appearing for the petitioners argued that the petitioners were small land holders dependent entirely upon agriculture for their survival. He submitted that the land in question was not ideally suited for being used as a Bus stand and that the final notification was vitiated by reason of the failure of the authorities to serve a notice upon the petitioners in terms of Section 5-A of the Act informing them about the submission of the Report by the Land Acquisition Officer. Reliance in support was placed by him upon a Single Bench decision of this Court in Bhoje Gowda alias Shivananjegowda and Another v State of Karnataka and Others.

3. The question whether a given parcel of land sought to be acquired is suitable for the purpose for which it is being acquired is one that more appropriately falls for consideration of the authorities concerned. This Court while examining the validity of the acquisition proceedings does not sit in appeal over the decision of the authorities as regards the suitability of the land nor does judicial review of the action taken by the competent authorities imply substitution of the view taken by them, by that of the Court in regard to all such questions. This Court would be concerned only with the limited question whether the purpose for which the land is being acquired is a public purpose and if so whether the acquisition proceedings are being conducted in accordance with the procedure prescribed by law. That construction of a Bus stand is a public purpose was not disputed by Mr. Subba Rao. If that be so, questions relating to suitability of the land, the wisdom behind the decision for locating the Bus stand at a particular place and even the fact that the petitioner is a small landholder must pale into insignificance, at least for purposes of Judicial review by this Court.

4. Coming then to the question whether the procedure prescribed by law has been followed, the only challenge mounted by Mr. Subbarao was based on the alleged violation of Section 5-A as amended by Land Acquisition (Mysore Extension and Amendment) Act XVII of 1961. Section 5-A of the Central Act, which is applicable to the State of Karnataka, does not prescribe any requirement of communicating to the owner-objector the fact of submission of the report to the Government. The requirement is found in the Mysore Land Acquisition Amendment Act, 1961, which reads as under:--

"Section 5-A(c).--For words "and a report containing his recommendations on the objections" the words "and a report containing his recommendations on the objections, and the fact of having submitted the report shall be communicated to the objectors; provided that the appropriate Government may, if it is satisfied that there was sufficient cause for the delay, condone any delay in the submission of the report by a period not exceeding one year" shall be substituted".

5. The above provision is however no longer applicable having been impliedly repealed with the extension of the Central Act to the State of Karnataka. A Division Bench of this Court has in Kanaka Gruha Nirmana Sahakara Sangha Vs. Kota Srinivasa Murthy (Since Deceased) by L.Rs. and Others, , held that the extension of the Central Act, to the State of Karnataka impliedly repeals the provisions of the State Act dealing with the land acquisition. To the same effect is the decision of the Supreme Court in Kanthimathy Plantations Private Limited v State of Kerala and Others , where the Supreme Court was considering the effect of extension of the Central Land Acquisition Act to the State of Kerala. The Court held that the provisions contained in the Kerala Act were different from those contained in the Central Act and therefore stood repealed even though there was no provision in the amending Act, extending the Central Legislation to the State of Kerala, to indicate that the State Law was repealed. The application of Article

254 to such situation declared the Court was automatic and wherever it was so applicable the State Act would stand repealed no sooner the Central Act became applicable. It is also fairly well-settled that if a superior legislature like the Parliament evinces interest on a legislative subject contained in the concurrent list and makes an exhaustive provision to cover the entire field, any pre-existing legislation made by the State Legislature on the subject would stand repealed. Repugnancy can arise even without there being any contradiction between the two legislations. See *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , where the Court observed as under:

"It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country".

6. The provisions of the Central Land Acquisition Act, are comprehensive and a complete Code in themselves dealing with the subject of Land Acquisition. There is therefore no question of the State legislation on the subject surviving the extension of the Central Law. Reliance upon the provisions of Mysore Amending Act, 1961 is in these circumstances futile. So also is reliance upon the decision of this Court in *Bhoje Gowda's case*, *supra*, where the above aspect of the controversy was neither argued nor dealt with. In the totality of the above circumstances therefore there is no merit in this writ petition which fails and is accordingly dismissed in limine.