

(1987) 07 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 1179 of 1987

B. K. Nanjundaiah and Others

APPELLANT

Vs

The B.D.A., Bangalore and Another

RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17, 17 (5), 17 (6), 19, 6
Land Acquisition Act, 1894 — Section 23, 23 (1A)

Citation : AIR 1988 Kar 227 : (1987) ILR (Kar) 2977

Hon'ble Judges : Murlidhar Rao, J

Bench : Single Bench

Advocate : S.K.V. Chalapathy, for the Appellant; Shivaraj Patil and S. Lakshminarayana, Govt. Pleader, for the Respondent

Judgement

1. Petitioners to be the owners of S. No. 16 of Malagalu village, Yeswanthapur Hobli, Bangalore North Taluk, The said land measures 5 acres 20 guntas. Petitioner-1 is the uncle of petitioners 2 and 3. It is state⁴ that the original owner of this land was B. Kamaiah, the father of the first petitioner who died on 20-12-1978, Thereafter a suit, for partition was filed in O. S. No. 222 of 1980, on the file of the Civil Judge, Bangalore. A compromise decree was passed on 12-6-1980. Under the said decree, 2 acres 30 guntas fell to the share of the first petitioner and the remaining 2 acres 30 guntas fell to the share of petitioners 2 and 3. This land along with several other lands was sought to be acquired by B. D. A. for the formation of Nagarabhavi II stage layout. Preliminary notification date 15-7-1982 was published in the Karnataka Gazette date 26-8-1982. For S. No., 16, the following entry is found: -

"Dyavaiah bin Devagaiah, A. Ramiahsetty, Siddappa, bin Puttarangappa, . B. K.amaiah bin Bammappa!".

A similar entry is found in the final declaration date 5-8-1986. These notifications are challenged on the ground that they are issued in the name of a dead person and secondly on the ground that at the time of the final declaration, the names

of petitioners were found is the revenue records. In support of the latter contentions Annexures "B" and "C" are filed. It is also contended that apart from the notices under S. 17(5), a personal notice is required to be served in terms of sub section. 17(6).

2. The petitioners along with the writ petition have filed the final declaration date 8-8-1986 published in the Karnataka Gazette date 4-9-1986. In the additional grounds, it is stated by the petitioners that on 16-8-1985, the Government has published a final declaration in respect of Nagarabhavi I stage layout, which is published in the Karnataka Gazette date 7-9-1985. This document is marked as Anx. V. As per this declaration, an extent of 357 acres 2 guntas in Nagarabhavi village and 163 acres 14 guntas in Malagalu village is acquired. In the final declaration date 5-8-1986 (Anx. 7), an extent of 292 acres 5 guntas in Nagarabhavi village and 312 acres 18- guntas in Malagalu village has been acquired. The argument constructed by the learned counsel for the petitioners in this aspect is that since only one preliminary notification is issued on 15-7-1982, the State Government had no competence to issue two declarations under S. 19 of the Act. It was maintained that since S. No. 16 has not been included in Annexure "G1, the first of these declarations, the State Government must be deemed to have abandoned the scheme and it has become functus officio. Annexure "G" is a declaration for what is known as Nagarabhavi I stage layout whereas Annexure 7 is -a declaration for what is known as Nagarabhavi II stage layout. Therefore two contentions are urged for the petitioners; firstly, the acquisition is bad since the name of the dead person is mentioned in the preliminary notification and final declarations and secondly the State Government had no competence to issue a second declaration on the basis of the only preliminary notification in exercise of powers under S. 19, as it has become functus officio.

3. In the statement of objection filed by the B. D. A., it is contended that notice under S. 17(5) was served on the khatedars namely Dyavaiah bin Devagaiah, Ramiahshetty, Siddappa bin Puttarangappa and B. Kamaiah bin Bamappa. It is stated that award has been passed on 19-12-1986, and the amount has been deposited in the civil court and possession of the land has been taken. It is further stated that the scheme has been sanctioned by the Government Order date 9-1-1986 and a sum of rupees twenty five, lakhs has already been spent for sinking bore wells" formation of roads etc. It is also averred that notice under S. 12(2) of the Land Acquisition Act has been served on the petitioners.

4. It is averred by the petitioners that B. Kamaiah died on 20-12-1978 and to evidence this, a death certificate is produced at Annexure "A".

5. In the records produced by Mr. N. K. Patil, it is seen that the notice addressed to Kamaiah bin Bamappa in respect of this land has been served on one Ramappa who claimed him self to be the son-in-law of Kamaiah. The endorsement on the notice reads thus:

(Matter in vernacular omitted (Ed.))

6. We are not concerned with the other notices which have been addressed to the other owners who are mentioned in the notification. Under S. 17(5) notices are required to be served on the person whose name is found in the revenue records as a person primarily responsible for the payment of land assessment (See *Chamundamma v. State of Mysore* (1968) 1 Mys LJ 470. The only fact which requires to be examined is whether on the death of Kamaiah on 20-12-1978 and on the date of the preliminary notification date 15-7-1982, petitioners' names had appeared or were shown in the record of rights as persons primarily responsible for the payment of land assessment.

7. The petitioners have produced record of rights (Annexure "B"). It is seen therefrom that in S. No. 16 there are several extents. For 2 acres 24 guntas the name of Byrappa bin Muddappa is entered as per entry No. 992; for an extent of 6 acres 20 guntas, the name of Siddappa bin Puttarangappa is entered as per entry No. 181; for 5 acres 20 guntas in this survey number, the name of B. Kamaiah bin Bamappa is mentioned and for 2 acres 30 guntas, there is an entry reflecting the compromise decree as mentioned above. The two other entries 993 and 994, reflect the shares as per the compromise decree in O. S. No. 222 of 1980. It is seen that the decree is passed on 12-6-1980. The mutation for these entries bears the number MR 49/82-83. What is of relevance is that, as on 15-7-1982 the date on which the preliminary notification was issued, the record of rights should have reflected the names of persons who are primarily liable to pay the land assessment. Annexure "D" produced by the petitioners indicates the shares of the parties as per the compromise decree, while mentioning the name of the deceased Kamaiah. No accurate information is forthcoming as to whether the petitioners' names were mentioned in the record of rights as persons primarily liable for the payment of land assessment on the date of the preliminary notification. The burden is on the petitioners as held by this Court in (1968) 1 Mys LJ 470.

8. Therefore, in the absence of cogent evidence, to establish beyond doubt, that the petitioners were shown as persons primarily liable for the payment of land assessment and as such entitled to notice under S. 17(5), it is not possible to hold that the notification is bad on that score.

9. Regarding the death of B. Kamaiah, though it is asserted by the petitioners that he died on 20-1-1978, no attempt is made to show that such an information was given either, to the revenue authorities who maintain the record of rights or to the BDA who published the notification on 15-7-1982; the B. D. A. could not know the death of Kamaiah as the relevant records did not reflect the said position. It is not the part of the function of the BDA to keep track of the owners' rights in the property and find out as to the date of death. The heirs or the legal representatives as the case may be who received the notice on behalf of Kamaiah did not reveal that Kamaiah had expired on the date the notice was served on the son-in-law of Kamaiah. Therefore, on facts, it is difficult to

hold that the acquisition is bad and that there is a failure to comply with the provisions of S. 17(5) of the B. D. A. Act.

10. The contention that in addition to the service of notice under S. 17(5), notice is required to be served under S. 17(6), deserves to be rejected. Personal delivery that is contemplated is obviously on the person who is entitled to notice under S. 17(5), it cannot be any other person. Since in this case, the petitioners have failed to establish that the revenue authorities or the B. D. A. could have known the death of Kamaiah on the date the preliminary notification was issued and further, that the persons other than B. Kamaiah were liable to pay the land assessment, it is not possible to successfully assail the notification of acquisition. Therefore this contention has to fail and is accordingly rejected.

11. The next question on which arguments at length were advanced by the learned advocates is that it is not permissible for the Government to issue more than one notification under S. 19 of the B. D. A. Act. In support of this contention, petitioners have relied upon a judgment in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, wherein it is stated thus :

".....At the stage of S. 4 the land is not particularised but only the locality is mentioned; at the stage of S. 6 the land in the locality is particularised and thereafter it seems that the notification under S. 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire S. 4(1) to the declaration under S. 6 unmistakably leads one to the reasonable conclusion that when once a declaration under S. 6 particularising the area out of the area in the locality specified in the notification under S. 4(1) is issued, the remaining non-particularized area stands automatically released."

(underlining is mine)

12. In para 13, two reasons are assigned, for this elucidation. They are -

".....Firstly, the market value of land to be acquired has to be determined on the date of the notification under S. 4(1) Secondly, any outlay or improvements on or disposal of the land acquired commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under S. 4(1) cannot be taken into consideration at all in determining compensation ..."

13. To appreciate this contention, it is necessary to deal with certain provisions of the B. D. A. Act. Since the above ruling is with reference to the provisions of the Land Acquisition Act, how far it is applicable to" the land acquired under the B. D. A. Act, is a matter which needs consideration.

14. The B. D. A. Act is intended to constitute development authority for the development of the City of Bangalore Section 15 deals with the power of the authority to undertake works and incur expenditure for the development. For this purpose, the authority has to draw up detailed schemes which are referred to as development schemes. Cl. (b) of S. 15 provides-

"(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefore and also for the framing and execution of development schemes".

(Underlining is mine)

Sub-sec. (2) of this section provides that "(2)" The authority may also from time to time make and take tip any new or additional development schemes"

(Underlining is mine).

15. Section 16 provides the details of the, scheme which includes the acquisition of land which would be necessary for or affected by the execution of the scheme; laying and relaying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity. After the scheme is so-completed the authorities are required to draw up a notification stating the, area comprised therein. It is under this section that the authority is required to publish a notification containing the name of place where the particulars of the scheme, statement specifying the land which is proposed to be acquired and the land in regard to which betterment tax is to be levied. This notification that is contemplated under S. 17 should reflect the entire scheme as approved by the Government under S. 16. Section 18 lays down a procedure to be followed by the authority after the publication of the notification.

16. The objections which are received in response to the said notification are required to be sent to the Government for sanction of the scheme. Section 19, on which the argument is constructed. reads thus:

"19. Upon, sanction, declaration to be published giving particulars of land to be acquired (1) Upon sanction of the scheme, the Government shall publish in the official Gazette declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose."

17. It is seen from sub-sec. (1) of this section that the declaration to be published in the official gazette has to mention the land proposed to be acquired by the authority for the purpose of the scheme and such declaration shall state the limits, for which it is needed and its approximate area and the place where a plan of the land may be inspected. There is nothing, in the Act from, which it can be culled out that acquisition of part of the area comprised in the scheme; would, render the entire scheme to lapse" though the remaining area which is already contemplated in this scheme under the Act is not acquired at that stage; the scheme lapses if there is no substantial compliance with the scheme within five years as contemplated by S. 27. No other provision in the Act mentions about the lapsing of the scheme. Therefore it is difficult to appreciate that by acquiring some portions of the lands in the scheme, the entire scheme lapses. It has to be

remembered that the B. D. A. is required to undertake development work from time to time since it has to incur expenditure and has to execute the developmental schemes. This takes me to the definition of the words "development and engineering operations" provided in Cl. (2)(j) and (k), which reads thus:

"(j) "development" with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and include's redevelopment;

(k) "engineering operations" means formation or laying out of means of access to road".

18. The above scheme is framed for achieving the objects for which the authority is constituted as per S 14 of the Act.. This object, obviously cannot be achieved at one stretch and requires to be achieved by stages.

19. In the instant case, by declaration date 16-8-1985 and 7-9-1985, an extent of 357 acres and 2 guntas in Nagarbhavi village and 163 acres 14 guntas in Malagalu village was sought to be acquired for Nagarbhavi I stage and by notification dt. 5-8-1986, an extent of 292 acres 5 guntas in Nagarbhavi village and 312 acres 5 guntas in Malagalu was sought to be acquired This has to be resorted to because without completing the 1 stage, the authorities could not have undertaken the developmental work as defined, for the IIstage.

20. Mr. Shivaraj Patil for the B. D. A. contended that the Government has always the competence to issue as many notifications as possible keeping in view the development activity and its completion. In this context, he relied upon the judgment of the Supreme Court in State of Gujarat Vs. Musamigan Imam Haider Bux Razvi and Another, , wherein it is stated thus;

"The second contention raised on behalf of the contesting respondents "that the cancellation -of - -the first S.- 6 notification amounts to withdrawal from acquisition and no subsequent notification under S. 6 of the Act can thereafter be issued without a fresh notification under S. 4 of the Act cannot be countenanced in view of the decision of this Court in Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others, where it was categorically held that when a notification under S. 6 of the Act is invalid, the Government may treat it as ineffective and issue in its place a fresh notification under S. 6 and that nothing in S. 48 of the Act precludes the Government from- doing so and that the cancellation of the earlier notification is only a recognition of the invalidity of that notification."

21. It was contended that if the Government can issue a Fresh notification on the ground that the earlier notification is, invalid, it is implicit that the -Government can issue successive notifications. The Government having issued a notification which turned out to be invalid if it becomes functus officio, the invalidity found later would not, in the circumstances suggested by the petitioners" counsel,

revive the power which had been exhausted earlier. Therefore it follows that the Government's power to issue declarations under S. 19 cannot be confined to only one declaration, particularly because what is covered by the first declaration is a different area than the one comprised in the second declaration. That this should be so is clear from the scheme mentioned above. While the notification under S. 17 is required to mention the scheme comprehensively as framed, what is required under the declaration is the acquisition of the area covered by such a scheme which can take place at different stages from time to time.

22. Further, in view of Ss. 23 and 23(IA) of the Land Acquisition Act, as it now stands, the compensation apart from including the market value on the date of the publication of the notification, has to include the damage sustained by the person at the time of taking possession thereof and the damage sustained by the person of acquisition injuriously affecting other property moveable or immovable, in any other manner, or his earnings. In addition to enhanced solatium and interest 12 1/2% is paid, under S. 23A of the Land Acquisition Act.

23. In view of these provisions, it appears to me that the criticism levelled regarding the second declaration cannot be sustained. The time taken by the authorities to acquire the land and take possession would indeed enure to the owner the benefit of enjoying the usufruct of the land till he is dispossessed or till the award is passed. Successive notification or notification at different stages will not cause any prejudice to the petitioners as they continue to be in possession till the passing of the award or taking of actual possession.

24. For the aforesaid reasons, the second contention also fails. Hence I make the following order: -

Writ petition fails and is accordingly dismissed. No costs.

25. Mr. S. Lakshminarayan a, learned HCGP is permitted to file his memo of appearance.

26. Petition dismissed.