

(1988) 10 KAR CK 0009
In the Karnataka High Court
Case No : W.P. No. 12119/1988

Bangalore Dist. Co-op. Central Bank Employees" Co-op.
Society Ltd.

APPELLANT

Vs

Bangalore Development Authority and Another

RESPONDENT

Date of Decision : 13-10-1988

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 15
Constitution of India, 1950 — Article 14

Citation : (1989) 1 KarLJ 111

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In this writ petition presented by The Bangalore District Co-operative Central Bank Employees" Co-operative Society Limited in which the petitioner has prayed for the issue of a writ of mandamus directing the Bangalore Development Authority to consider its application for allotment of 9 acres of land acquired by the Bangalore Development Authority under the provisions of the Bangalore Development Authority Act, 1976 ("the Act" for short) pursuant to a Development Scheme sanctioned by the Government, the following question of law arises for consideration:

Whether the Bangalore Development Authority has the power to make bulk allotment of lands acquired under the provisions of the Act for the purposes of a development scheme in favour of a co-operative society?

2. The brief facts of the case, are these: The petitioner is a society registered under the Karnataka Co-operative Societies Act. Its members are the employees of Bangalore District Co-operative Central Bank. According to the petitioners, they entered into an agreement for purchase of lands in Sy. No. 78 (six acres) and 50/4 (3 acres) in all 9 acres, at Nagarbhavi village, Yeshwantpur Taluk, Bangalore North Taluk, with the owners of the land on 26th August 1981. But these very lands were subject matter of acquisition under the Act as per the preliminary notification dated 15-7-1982 published in the official gazette dated

26-8-1982 for the purpose of formation of layout under a development scheme prepared by the Bangalore Development Authority and approved by the Government. A final notification dated 16-8-1985 was also issued acquiring the land and was published in the official gazette. Thereafter, the petitioner-Society made a representation dated 21st April 1986 (Annexure-G) in which all the facts of the case are set out. The relevant portion of the representation reads:

"To:

The Special Land Acquisition Officer,

Bangalore Development Authority,

BDA Buildings, Bangalore-20.

Dear Sir,

Sub: Acquisition of lands comprised in. Sy. Nos. 78, 50/2, 50/4 of Nagara Bhavi village, Yeshwantpur Hobii, Bangalore North Taluk, Bangalore, measuring 9 acres of land as per final notification No. HUD/249/MSK/85 dt. 16-8-85 published in Karnataka Gazette dt. 7-11-85-objection of our Society.

We would like to file our objection to the proposed acquisition of 9 acres of land composed in the above survey numbers by Bangalore Development Authority and request you kindly to consider the same favourably and drop the acquisition proceedings.

Our society has been organised for the benefit of the employees of the Bangalore District Co-op Central Bank Ltd., Chamarajpet, Bangalore-18. It has been duly registered in the year 1961 under the provisions of the Karnataka Co-op Societies Act, 1959 and the Rules framed thereunder.

Our present membership exceeds 200, most of these persons are without any site or residential house in Bangalore. Most of these members come under categories of socially and economically backward section of the community. With the object of providing residential sites and houses to our members at economically low cost, our society entered into agreement to buy above survey numbers from the original owners mentioned below.

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We therefore request you to reconsider the desirability of denotifying these lands and permitting our society to form a layout and allot sites to our members without further delay.

We further require you to drop award proceedings in respect of these survey numbers."

The request was not complied with. Thereafter an award has also been made on 20-6-1988, copy of which is produced as Annexure O. It is in these circumstances, the petitioner has represented this petition. The contention of the

petitioner is that the Bangalore Development Authority is under a duty to consider its request of bulk allotment of the aforesaid nine acres of land in its favour. The petitioner relies on the Government Order dated 18th June 1985. Relevant portion of the same reads:

"Proceedings of the Government of Karnataka.

Sub: Acquisition of lands for Housing Co-operative Societies in Bangalore Metropolitan Area.

Preamble:

These are a large number of House building Co-operative Societies in Bangalore Metropolitan Area. They purchase lands either directly from the land owners or in accordance with the law providing for acquisition of land and form layouts. This apart from resulting in uncontrolled, unplanned and hap-hazard growth of the City of Bangalore has created acute problems with regard to provision of water, transport facilities and other civic amenities. With a view to regulating development of the City of Bangalore and surrounding areas on proper lines, it is felt that there is an urgent need for placing some restrictions on the activities of the House Building Co-operative Societies.

Order No. HUD 113 MNX 85. Bangalore Dated the 18th June 1985.

After examing the matter, Government of Karnataka issues the following order:

(a) The Revenue Department shall not acquire any more land in Bangalore Metropolitan Area for Housing Co-operative Societies. The Housing Co-operative Societies shall have to approach the Bangalore Development Authority for their requirements of land. Hereafter, the Bangalore Development Authority shall be the only agency to acquire land for housing purposes in the Bangalore Metropolitan Area."

The petitioner contends that in view of the above order, the petitioner has to approach the Bangalore Development Authority for its requirement of land and from that it follows the Bangalore Development Authority is in duty bound to consider the request It is in these circumstances, the question set out first arises for consideration:

3. During the pendency of this petition, at the state of preliminary hearing, a similar question came up for consideration before this Court in W.P. No. 11976 of 1984 (B. Venkataswamy Reddy v. The State of Karnataka and two others DD: 14-9-1988) and a connected writ petition. In those petitions, the petitioners therein had sought for the issue of a writ of mandamus Directing the Bangalore Development Authority to reconvey the lands acquired Under the Act. On a detailed consideration of the provisions of Sections 35, 36, 37 and 38 of the Act. Bopanna, J, held that the Bangalore Development Authority had no power to reconvey or otherwise dispose of the lands acquired for a development scheme and vested in it, under the provisions of the Act. The relevant portions of the

judgment reads:

"9. Section 38 comes under Chapter V of the Act. Chapter V deals with Property and Finance of the Board. Section 38 of the Act reads as:

"Power of Authority to lease sell or transfer property.-

Subject to such restrictions, conditions and limitations as may be prescribed, the Authority shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme."

On a plain terms of Section 38, it consists of 2 parts. The first part deals with the power of the B.D.A. to lease, sell or otherwise transfer any movable or immovable property which belongs to it. The second part deals with the power of the B.D.A. to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. The comma after the first part of Section 38 makes it clear that these 2 parts should be read disjunctively and not conjunctively. So, there is a distinction between the power of the B.D.A in regard to movable and immovable properties which belong to it and the power of the B.D.A. to appropriate or apply any land vested in it or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. The legislature having used 2 different expressions to indicate the powers of the B.D.A. as regards movable and immovable properties belonging to it and property vested in it or acquired by it, this court has to go into the intendment of legislature by giving proper meaning to the words "belongs to it" and the words "vested in or acquired by it". The B.D.A. can independently of the proceedings under the Land Acquisition Act acquire land as is evident from Section 3 read with Section 35 of the Act."

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In my view, for a proper construction of Section 38 of the Act, provisions of Sections 35, 36 and 37 of the Act should be taken into consideration, since these are the provisions which come under Chapters IV and V of the Act and have a bearing on the power of the BDA to acquire land otherwise than by private agreement. Under Section 35 of the Act, the power of the BDA to enter into an agreement with the owner of any land cannot be disputed. In these cases the land in question was not purchased by entering into private agreements. Under Section 36(1), the acquisition of land under the Act otherwise than by agreement is regulated by the provisions, so far as they are applicable, to the Land Acquisition Act. That means to say, as in these case, is the authority to acquire the land. That is also clear from sub-sec. (3) of Section 36 of the Act which lays down that "After the land vests in the Government under Section 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the costs of the acquisition and upon the Authority agreeing to pay any further costs which

may be incurred on account of the acquisition, transfer the land to the Authority and the land shall thereupon vest in the Authority". This is further clear from Section 19(1) of the Act since the Government shall publish in the official gazette the 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. Under Section 37 of the Act the Government has got additional power to transfer to B.D.A. or to vest in B.D.A. any land belonging to it or to the Corporation or to a local authority. That is in addition to the power under Section 36 to acquire the land under the Land Acquisition Act and vest the same in B.D.A. on payment of costs of acquisition and further costs under Section 36(3) of the Act. Under Section 37(3) of the Act, the Government by notification in the Gazette has the power to revest in itself or transfer to itself or the Corporation or the local authority concerned the land in question if the same is not required by the B.D.A. for the purpose of the Act or any other land vesting in the B.D.A. is required by the Government or Corporation or a local authority. So, if Sections 36, 37 and 38 of the Act are read together it is clear that a distinction is made between the power of the B.D.A. to sell or otherwise transfer any movable or immovable property belonging to it and the power of the B.D.A. to appropriate or apply the land vested in or acquired by it for the formation of open spaces or building purpose or for any other development schemes.

10. Now the point for consideration is whether the land in question comes under the first part of Section 38 or under the second part of Section 38 of the Act. Admittedly, the land did not belong to the B.D.A. since the same was not purchased under the provisions of Section 35 of the Act, i.e., by agreement between the parties. The lands were acquired by the Government under the provisions of Section 36(1) and they vested in the B.D.A. under the provisions of Section 36(3). If that be so, these lands come under the second part of Section 38 of the Act, i.e., the B.D.A. has power to appropriate or apply any land vested in it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. That is to say, the resolutions in question passed by the B.D.A. could have been within its powers if they had related to lands belonging to it and not the lands which had vested in under the provisions of Section 36 of the Act. That should be the proper construction as is evident from the entire scheme of the Act. The Scheme is for the development of the City of Bangalore and the area adjacent thereto and for matters connected therewith and with that object the B.D.A. was constituted. The legislature created this authority with that object in view and it has also empowered the State Government to lend a helping hand to it by invoking the provisions of the Land Acquisition Act. So the B.D.A. is freed from the various legal procedures that will have to be complied with for acquiring the land for its development schemes. The same pattern of legislation is found in similar other acts, viz., K.I.D. Act, Karnataka Area Development Boards Act, etc. If the B.D.A. were to be given the power to reconvey the land vested in it by exercising the power under Section 13 of the Act, that would be self-defeating and destructive

of the purpose of constituting a special authority for the development of the City of Bangalore."

I am in respectful agreement with the views expressed by Bopanna, J. Further, it should be pointed out that while Section 15 of the Act confers power on the Bangalore Development Authority to prepare a development scheme; Section 16 requires the particulars to be specified in a development scheme. It reads:

"16. PARTICULARS TO BE PROVIDED FOR IN A DEVELOPMENT SCHEME: Every development scheme under Section 15- (1) shall, within the limits of the area comprised in the scheme, provide for- (a) the acquisition of any land which in the opinion of the Authority, will be necessary for or affected by the execution of the scheme;

(b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;

(c) drainage, water supply and electricity;

(d) the reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civic amenities.

(2) may, within the limits aforesaid, provide for- (a) raising any land which the Authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required;

(3) may, within and without the limits aforesaid provide for the construction of houses."

From the clauses of the section, it is clear, that the land can be acquired only for the purposes of a development scheme and the scheme should be for formation of layouts. Section 17 of the Act prescribes the procedure on completion of the scheme and provides for inviting objections from the owners of the land affected by the scheme and the members of the public. Section 18 confers powers on the Government to sanction. Section 19 provides for the final publication of the scheme. Sub-sections (3) and (4) of Section 19 read:

"19. UPON SANCTION, DECLARATION TO BE PUBLISHED GIVING PARTICULARS OF LAND TO BE ACQUIRED- xxx xxx xxx (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose and the Authority shall, upon the publication of the said declaration proceed to execute the scheme.

(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme. the authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6) forthwith

proceed to execute the scheme as altered."

In view of these provisions, the duty of the Board is to execute the scheme. The only power conferred under sub-section (4) of Section 19 of the Act is to make an improvement in the scheme and for that purpose to alter a scheme to the extent necessary. The word "improvement" used in Section 19(4) is significant. This means alterations in the layouts such as formation of sites, roads or providing of civic amenities to be made, must result in improving the scheme. There is no power in the Board to dispose of the land which would have the effect of nullifying the scheme. The duty of the Board is to fully form and develop the land and allot the sites or buildings in accordance with the rules framed under the Act, namely, The Bangalore Development Authority (Allotment of Sites) Rules 1982 and The Bangalore Development Authority (Allotment of Buildings under self financing housing Scheme) Rules 1982. The Act does not envisage the bulk disposal of the land acquired for a scheme in favour of any one. Bulk allotment of land in an undeveloped State clearly amounts to the violation of the scheme and abdication of its duty by the Bangalore Development Authority. Under the Act it is the power and duty of the Bangalore Development Authority itself to execute a development scheme with improvement if any, considered necessary, and then to invite applications for allotment of sites and to make allotments in accordance with the rules, and thereby ensure that allotments are made without violating Article 14 of the Constitution. The effect of bulk allotment would be to divert the sites available to the general public to a limited number of members of society, to be distributed by its managing committee uncontrolled by Article 14 and the rules of allotment. The object and intent of the Act is that in the area in which the Bangalore Development Authority operates, it is its duty to prepare the schemes and implement the scheme and no other agency, for formation and allotment of sites. The lands acquired under the Act, is envisaged by the provisions of the Act. Therefore, the Government Order or resolution of the Bangalore Development Authority which contemplate such bulk allotment, are ultra vires the provisions of the Act.

4. For these reasons, I am entirely in agreement with the views expressed by Bopanna, J, in W.P. No. 11976/1984 and also similar views expressed by Swami, J., in B.N. Satyanarayana Rao v State of Karnataka (ILR 1987 Kar. P. 790), and hold that there is no scope at all for bulk disposal of land acquired for the purposes of a scheme, and answer the question set out first as follows:

The Bangalore Development Authority has no power to make bulk allotment of lands acquired under the provisions of the Act for the purposes of a development scheme in favour of a co-operative society.

5. In the result, I make the following order:

(i) The writ petition is dismissed.

(ii) No Costs.

Writ Petition Dismissed.