

(2001) 08 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 17959 and 17960 of 1998

Bellam Thimmappa alias Guntige Thimmappa and Another	APPELLANT
Vs	
Karnataka Slum Clearance Board and Others	RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 KCCR 198

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K. Raghavendra Rao, for the Appellant; B. Ramaswamy Iyengar, for Respondent 1, T.A. Ramachandraiah, High Court Government Pleader for Respondents 2 and 3 and B.R.G.K. Achar, for Respondent 4, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—In these petitions, the Petitioners, claiming as owners of land in Town Survey No. 8 of Bellary Town measuring an extent of 2 acres 53 cents, have called in question the validity of a communication dated 18.5.1998 (copy at Annexure-G) in No. REV/DC/8/PS/98-99/slum which is in the form of a notice issued by the third Respondent-Deputy Commissioner indicating the further action proposed in respect of the above referred land which was subject matter of a Notification issued u/s 3(1) of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 (hereinafter referred to as "the Act" for short) as also the validity of another communication in No. DC/Ps/64 of 1998-99 which is undated (copy at Annexure-J) which again has been issued by the third Respondent-Deputy Commissioner to one Aeruva Thippaiah, who it is claimed, is the power of attorney holder of Petitioners 1 and 2. Under these communications while the Petitioners were apprised that their challenge to the Notification dated 5.9.1992 issued u/s 3 of the Act through Writ Petition Nos. 28065 and 28066 of 1992 had filed as per the order dated 24.7.1996 passed by this Court in these writ petitions and further action under the Act was being pursued, the Petitioner's oral request for compensation in respect of the land was being under consideration by issuing directions to the first Respondent-Slum Clearance Board

to negotiate and settle the matter with the Petitioners in respect of payment of compensation in consonance with the provisions of the Act and Rules.

2. The grievance of the Petitioners is that the action proposed by the 1st and 3rd Respondents for effecting improvement in the slum area declared under the Notification issued u/s 3 of the Act having been in consonance with the procedure required to be followed by the authorities under the Act and further that though the Act contemplates an opportunity to be accorded to the owners of the land to effect the improvements by themselves and only on their failure to effect such improvements, the authorities were required to step in and effect improvements at the cost of owners, only after an opportunity to the owners to effect such improvement and further that though the communication at Annexure-J issued by the Deputy Commissioner apprised them that directions had been issued to the first Respondent Board to negotiate with them and pay compensation in respect of the land and for taking further action for notifying the lands and effecting improvements and for handing over certain extents in favour of various occupants, there being no response or action on the part of the first Respondent-Board, such action of the Deputy Commissioner, as also of the Board, which could be given effect to or carried out only after the land in question is acquired, could not be given effect to without resorting to such acquisition as contemplated u/s 17 of the Act.

3. Sri K. Raghavendra Rao, learned Counsel appearing for the Petitioners points out that though the Petitioners had failed in their earlier efforts to get over the Notification issued u/s 3 of the Act, it does not absolve, the authorities from following or conforming to the provisions of the Act and even assuming for argument sake, the Notification as issued u/s 3 of the Act holds the field as on date in respect of the disputed land. Nevertheless, if the parties take any further action as contemplated under Sections 6, 7, 11 and 14 of the Act, then such action becomes bad in law and the Petitioners are entitled to challenge such illegal action as being not supported by the authority of law and as being in violation of the contemplated procedure under the Act and the Petitioners are not estopped from questioning such action before this Court.

4. Though the prayer in the writ petition is for quashing of the communications at Annexures "G" and "J", the learned Counsel submits that it is always open to the Court to grant such relief as is available in law to the Petitioners and which relief as justified in the circumstances of the case. Accordingly, the learned Counsel prays that while this Court can issue directions to the Respondents not to give effect to the proposed action either under Annexure-G or under Annexure-J, in so far as they are inconsistent with the provisions of the Act, the authorities can always be directed to take positive action as is contemplated under the provisions of the Act.

5. Statement of objections have been filed on behalf of the second Respondent-State Government and the third Respondent-Deputy Commissioner, contending that the petition is not tenable in the eye of law and that the claim of the

Petitioners that they are the owners of the land in question is not admitted by them and that the Petitioners are put to strict proof of such claim and though as per the earlier Notification dated 3.8.1991 declaration u/s 3 in respect of land in Town Survey No. 8 had been withdrawn, the same was re-notified as per a subsequent Notification dated 5.9.1992 again u/s 3 of the Act and the challenge to this Notification in the earlier writ petition having failed and the action proposed by the third Respondent being only in consonance with the provisions of the Act and law, no exception can be taken to the communication at Annexure-J as also the notice at Annexure "G" and further that the endorsement at Annexure-J not containing any action adverse to the interest of the Petitioners, there is no occasion for this Court to quash the notice at Annexure-G and the endorsement at Annexure-J and the writ petition has to be dismissed with costs.

6. An elaborate statement of objections has also been filed on behalf of the fourth Respondent who claims to be the president of an Association of Slum Dwellers known by the name "Mahanandikottan" at Bellary Town. This Respondent has inter alia taken the stand that there being civil disputes concerning the title to the property in question which is the subject matter of this writ petition namely the extent of 2 acres 53 cents in Town Survey No. 8 of Bellary Town and prima facie the records not indicating that the Petitioners are the owners of this land and further that the Petitioners still making efforts by filing civil suits to acquire title to the said land, the question of Petitioners claiming any interest or compensation, does not arise and further, the Petitioners cannot come in the way of the authorities taking such action as they deem fit under the provisions of the Act for the purpose of rehabilitating the poor slum dwellers who are in occupation of the land and for redressing their grievance by making improvements and also by so re-aligning the land and the plots in the said land in such a manner that some sort of uniformity is achieved in the matter of allotment/occupation of the extent of lands by the various slum dwellers and further that the Petitioners having failed to get over the Notification issued u/s 3 of the Act in the earlier round of writ petitions, he should not be permitted to have any say in the further developments by filing a second round of writ petition nor in any other civil proceedings.

7. Sri B.R.G.K. Achar, learned Counsel appearing on behalf of fourth Respondent submitted that having regard to the adverse decision that the Petitioners themselves have invited at the hands of the Courts as well as the authorities, it can be safely held that the Petitioners have no locus at all to maintain the writ petition of the present nature and at any rate, the Petitioners do not deserve any indulgence at the hands of this Court in the exercise of writ jurisdiction and the petitions are liable to be dismissed.

8. Sri B. Ramaswamy Iyengar, learned Counsel appearing for the first Respondent-Board has submitted that the actions of the Board are always in conformity with the requirements of the Act and assures the Court that the Board will not take any action either in contravention of or such action which is not

permitted under the provisions of the Act. However, the learned Counsel fairly submits that the Board has not been able to take any further action nor has he been instructed of any such further developments from his client in respect of the communication under Annexure-J issued by the Deputy Commissioner with regard to the question of compensating the Petitioners. It is however submitted by the learned Counsel that the third Respondent had issued a communication on this aspect to the Board but there was no development in this matter and the matter remains as it is. It is also the submission of the learned Counsel that it is not incumbent upon the Board to embark upon acquiring the lands though such power has been conferred by the Government u/s 17 of the Act and the Board will carry out such directions issued by the Government which is required to carry out improvements as per the provisions of the Act.

9. On a perusal of the scheme of the Act, it becomes clear that the Act is brought into effect with the object of eradicating slum areas, to improve the conditions and provide hygienic facilities wherever it is possible, lacking due to haphazard or unchecked development of structures in an area resulting in congestion and causing health hazards, provide adequate facilities to the persons who are already in occupation of such areas, if need be, to evacuate all the occupants in an area declared as a "slum area", clear the area and redevelop the area and either they allow the owner to so redevelop with such conditions and stipulations or to take over the land by the Government itself and develop on its own and rehabilitate the uprooted person in any manner found fit and proper by the Government and having regard to the circumstances and if such improvements, developments etc. which are required to be carried out under the provisions of Sections 6, 7, 11 and 13 of the Act cannot be achieved, without taking over the ownership of the land, to acquire such land u/s 17 of the Act and to carry out all such incidental and supporting activities to achieve this object.

10. While so effecting the improvements and ensuring that the area becomes a habitable area and free from unhealthy and dangerous atmosphere, and being a source of nuisance to the surrounding areas, the Act contemplates affording sufficient opportunity to all concerned and interested persons like the persons who are already in occupation of such areas, persons who have any interest in either the land or building situated in such areas or owners of the land declared by the Government as a "slum area".

11. The scheme of the Act and Rules indicates that the function and the role of the Board which is constituted u/s 33 of the Act is to oversee the implementation of the provisions of the Act and actions contemplated under Sections 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15 and 16 of the Act. The scheme of the Act also indicates that all major decisions regarding the manner of implementation of the provisions of the Act, while is taken by the Government, the Board acts as an agency to implement such decisions and policies of the Government. The Board helps the Government in taking such decisions as are necessary under the Act by collecting the requisite material information and supervising the implementation

and providing the necessary feed back to the Government. Decisions of the Government are binding on the Board and the Board cannot act independent of the decisions taken by the Government under the provisions of the Act. The Board cannot act as an autonomous body or authority in the matter of implementation of the provisions of the Act. If the Government, which is the authority conferred with the power to declare the land as a "slum area" takes such steps as are required for the improvement of the said land, also declared any such area to be "slum clearance area" and take further steps for the clearance of the occupants and also has the power to acquire the land in question or the lands in the vicinity of such declared lands for the purpose of rehabilitating slum dwellers, such decisions of the Government are binding on the Board and the Board has no choice in respect of such decisions except to follow the same.

12. In the instant case, it is not in dispute that the land in Town S. No. 8 of Bellary Town measuring an extent of 2 acres 53 cents was the subject matter of a Notification u/s 3(1) of the Act. When once a Notification has been so issued, it is the duty of the Government to pursue follow-up action to ensure that the declared land is made habitable and for such purpose, take all such actions as is necessary under the provisions of the Act. If the Government is required to effect such improvements and any scheme is proposed in this regard, such scheme should also be carried out only in consonance with the provisions of the Act and as permitted and mandated under the provisions of the Act. On a perusal of the developments in the instant case, it becomes very obvious that both the Government and the Board has been quite lethargic in the matter of improvement and have been dragging their feet. The area had been notified as a "slum area" way back in the year 1989. Even after a period of twelve years, it appears no remedial actions as contemplated under the provisions of the Act have been taken or implemented. Such delay and lethargy virtually defeats the purpose of enacting the legislation of the type of the Act. There has neither been any improvement nor any clearance in the area concerned. Parties have approached Civil Courts and this Court time and again but without any positive action on the part of the Respondents 1 to 3. It is high time the authorities woke up from their slumber and pursue their functions and duties enjoined upon them under the Act and Rules in a more professional manner and with a little more diligence. A copy of notice dated 18.5.1998 produced as Annexure-G to the petition which was issued by the third Respondent-Deputy Commissioner, clearly indicates that there are certain proposals for the developments of the area and such development will be in consonance with the object of achieving the purpose of the Act. It is unfortunate that there appears to be no further developments in this regard. But what is of importance and relevance for the purpose of the present writ petition from the angle of the Petitioners is that the learned Counsel for the Petitioners points out that the action proposed under the said notice is such that it can be resorted to only after following certain other formalities under the Act and particularly if as indicated in Annexure-G, Government proposed to

rehabilitate the slum dwellers in the area by re-adjusting to or conferring rights in their favour to any extent of land to make it uniform and also to make it as a permanent solution to the problems of such slum dwellers which can be achieved only after the Government acquires such rights in the land as is open to it under the provisions of the Act. In this regard, the learned Counsel submits that the first option to make improvements in the area should be given to the owner of the land and it is only on the owner's failure that the Government can take such action. However, it is not necessary that in all situations owners should be called upon to effect improvement and then only the Government should resort to such action. If the authorities/Government find it not feasible to issue notice in all situations but on the other hand find that the improvements as contemplated under a proposed scheme could be achieved only after the Government acquires the land, it is open to the Government to so acquire the land by following the procedure. In such an event, it is but necessary for the Government to compensate the owners as provided under the law. The action proposed under Annexure-G cannot be characterised as one not in consonance with the object of the Act nor does it indicate that the authorities are inclined to violate any of the provisions contained under the Act or Rules. However, it is made abundantly clear that having regard to the nature of action enacted in the scheme suggested as under this notice, it is obvious that such action could be pursued only after the Government acquires the necessary rights in this regard to carry out the proposed action and implement the scheme.

13. The authorities are hereby directed to give effect to the provisions of the Act and the actions proposed by them, strictly in consonance with the requirements of the Act and after following the due procedure contemplated therein. If a proposal is not capable of being implemented when the Government has not acquired the right or title to the land, then such action cannot be implemented without doing so. It is always open to the Government to exercise its power under the provisions of the Act for such purpose and then only implement the scheme.

14. The endorsement at Annexure-J also indicates that the very authority who had issued the notice at Annexure-G dated 18.5.1998 is aware of the requirements that are to be observed by the Government for implementing the scheme and for giving effect to the object of the action proposed by the Government. The communication at Annexure-J also indicates that the first Respondent-Board has also been apprised by the third Respondent-Deputy Commissioner to take action for the purpose of ascertaining the views of the owner. It is needless to observe that the first Respondent-Board is bound to carry out such directions so that the object of the scheme is achieved. It is for the Government to take such further steps in the matter for pursuing the object of the Act and to implement the scheme proposed in the light of the report to be submitted by the first Respondent-Board.

15. With regard to the submissions made on behalf of the Respondent-State and

fourth Respondent contesting the claim of ownership by the Petitioners to the lands in question, it is made clear that it is not the scope of a petition under Article 226 of the Constitution to go into the question of title wherever ownership is disputed. In a petition of this nature, where what is looked into in the exercise of the power of judicial review of administrative action, this Court neither confers title on any person nor declares a person to be the owner of any land. What all is looked into is the action of public authorities coming within the definition of "State" and whether as to such actions are in consonance with the statutory provisions and whether they conform to the test of fairness and non-arbitrariness expected in all the administrative functions. This Court does not scrutinise beyond this aspect. It is not for this Court to look into or give a finding as to whether the Petitioners are owners or otherwise of the notified lands. Prima facie, the very Notification indicates that the Petitioners are the owners and various proceedings have taken place subsequent to the issue of Notification u/s 3 on such premise. This is sufficient material for the Petitioners to maintain a petition before this Court and it is to be held that the Petitioners have locus to maintain a petition of this nature before this Court and a petition of this nature cannot be dismissed in limine on the ground of want of sufficient locus standi. In this connection, the submissions made on behalf of the fourth Respondent by its learned Counsel Sri Achar, cannot be accepted and it is hereby rejected. This Court can definitely look into the grievance of the Petitioners and can issue appropriate directions or reliefs as is open and available in law and to which the Petitioners are entitled to.

16. Petitioners have sought for the relief of quashing the notice at Annexure-G and the endorsement at Annexure-J. In the light of the above discussion and the conclusion reached by this Court, it is not necessary to quash either the notice at Annexure-G or the endorsement at Annexure-J. However, it is made clear that the Respondents are hereby directed that for the purpose of implementation of the scheme proposed as under Annexure-G, the authorities can proceed only as contemplated under the provisions of the Act and not de hors the provisions of the Act. If the implementation of the scheme necessitates the Government to exercise its powers u/s 17 of the Act, it can be done only after doing so and not otherwise. It is necessary for the Respondents to bear this aspect in mind before pursuing further action. The endorsement at Annexure-J, which, if at all, can be characterised as a communication in favour of the Petitioner and not adverse to the interest of the Petitioners. However, Petitioners can legitimately make a grievance that even after a lapse of more than about three years, the Petitioners have not been apprised of any further action in pursuance of the same and it definitely indicates inaction on the part of the first Respondent-Board as well as on the part of the second and third Respondents.

17. The Respondents are hereby directed to take action in consonance with the provisions of the Act for purpose of implementing the object under Annexure-G and the assurance expressed as per Annexure-J and for such purpose, concerned persons may be afforded an opportunity including the Petitioners and having

regard to the lethargic manner in which the Respondents have gone about in implementing the provisions of the Act, the scheme contemplated and achieving the objects under the Act, the Respondents are directed to conclude the proceedings initiated as per the Notification u/s 3 of the Act within a period of one year from today. With regard to other disputed questions as to title, ownership etc., it is open to the Respondents to work out their remedies before the Civil Courts and for which purpose, it is brought to the notice of the Court that certain civil suits have already been instituted.

18. A writ in the nature of mandamus is issued to the Respondents 1, 2 and 3 to complete the proceedings initiated as per the Notification dated 5.9.1992 issued u/s 3 of the Act within a period of one year from this day.

19. Rule made absolute to the extent indicated above. No costs.