(2013) 04 KAR CK 0027

In the Karnataka High Court

Case No : W.A. No''s. 16513 of 2011 and 638-654 of 2012 (LA-KIADB)

B.N. Gopinath and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 3 AKR 671 : (2013) 3 KCCR 2466

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Dhyan Chinnappa, for Crestlaw Partners in W.A. Nos. 16513 of 2011 and 638-654 of 2012 LA-KIADB and Sri Nanjunda Reddy, for Anup S. Shah Law Firm in W.A. Nos. 16026-16027 of 2011 LA-KIADB, for the Appellant; Keshava Reddy, AGA for R1 and 6, Sri P.V. Chandrashekar for R2 and 3, Sri M.S. Narayan for R4, Sri I.G. Gachchinamath for R5 in W.A. Nos. 16513 of 2011 and 638-654 of 2012 (LA-KIADB), Sri D. Nagaraj for R7 and Sri Basavaraj V. Sabarad for R5 in W.A. Nos. 16026-16027 of 2011 (LA-KIADB), for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the learned Single Judge in W.P. Nos. 6326-6343/2009 C/w W.P. No. 5650/2008 dated 29.7.11 is called in question in these appeals. The appellants were writ petitioners (W.P. No. 5650/2008) before the learned Single Judge. Writ petitions were filed by the appellants challenging the Preliminary Notification dated 6.2.2006 published in the Karnataka Gazette on 8.2.06 as per Annexure-A to the writ petition and Final Notification dated 17.12.2007 published in the Karnataka Gazette on 18.12.2007 as per Annexure-B and also to issue a writ of mandamus directing the respondents to denotify their lands which were notified for acquisition. The Notifications referred to above were issued by the State of Karnataka at the instance of the Karnataka Industrial Areas Development Board (for short ''KIADB'') for the benefit of Bangalore Water Supply and Sewerage Board (for short ''BWSSB'') to establish a Sewerage Treatment Plant (for short ''STP'') at Amani Bellandur Kane village, Varthur Hobli, Bangalore East Taluk.

2. According to the petitioners, they are the owners of different extent of lands situated in different survey numbers of Amani Bellanduru Khane village. According to them, their lands situated in Sy.Nos.368-398 of Amani Bellandur Khane village has been demarcated as residential zone as per CDP of the year 1995, which CDP was replaced by the Master Plan of 2015 wherein it is demarcated as Valley Zone and the establishment of STP by BWSSB is contrary to the CDP of 1995 and Revised Master Plan (for short ''RMP'') of 2015. According to them, CDP of 1995 and the RMP of 2015, does not allow the respondents to utilize the lands of the appellants for establishment of STP near Amani Bellandur Khane lake since it would cause harm and injury to the flora and fauna and disturb ecological balance and that a Committee was set up at the instance of local MLA, which Committee inspected the area and submitted its report on 21.2.2007. As per the report of the Committee, it was not advisable or feasible for the BWSSB or KIADB to set up STP in the area notified for acquisition and that the Committee also suggested the other areas situated in adjoining villages of Kurudu Sonenahalli, Veerenahalli, Doddabannahalli and Sadarahalli villages. The appellants contend that without considering the report submitted by the Committee, the respondents have wrongly notified their lands. As the acquisition of the lands is contrary to the provisions of CDP of 1995 and RMP of 2015, the acquisition proceedings are to be dropped.

3. The BWSSB filed a detailed counter to the writ petitions contending that initially about 70 MLD of sewerage water was being produced in and around Mahadevapura and K.R. Puram areas and the same was allowed to flow into the Varthur Lake, as a result of which, the entire Bellandur tank which was once upon a time was an irrigated tank was completely polluted. Therefore, in order to protect the lake, the BWSSB proposed to set up a STP in the vicinity with a prime purpose of treating the sewerage water in order to curb the alarming levels of foul smell and considering the need for supply of potable water and to augment the natural resources and water bodies. Accordingly, a requisition was made to KIADB to acquire the land in order to set up STP for the benefit of the entire area. In the circumstances, KIADB initiated action to acquire the land under the provisions of KIADB Act, 1966 and the acquisition of the land cannot be held to be contrary to the provisions of CDP of 1995 or RMP of 2015. It is also contended that at the instance of the petitioners, local MLA made an inspection in the presence of the Officers and a report was prepared. Though such a report was prepared, it is not for the Board to accept the said report, prepared at the instance of the MLA and it is also contended that the Board notified the land for acquisition and survey was conducted. Based on the survey conducted, the area was notified for acquisition. In the circumstances, the BWSSB requested the Court to dismiss the petition. The BDA, which is the planning authority for the Bangalore has also filed a detailed objections.

4. According to B.D.A, the Bangalore City is one of the fast developing cities in India and has grown in a huge manner and planning authorities are facing a greater challenge and it has become a Herculean task for the BDA to make the

City as a well planned city. It is also known as IT capital of India. Consequent upon the rapid growth of city and industries, the small lakes, valleys, tanks etc., have been disappeared and in order to maintain the ecological balance, it is the duty of the BDA to preserve the existing tanks by maintaining them. In furtherance of the same, an expert body called Indian Resource Information and Management Technology Ltd., (IRIMT) was requested to conduct a satellite survey and to submit a report. Accordingly, the valleys were identified with an intention to protect and preserve them and to maintain proper flow of water to these valleys. It is also contended by the BDA that the lands in question were notified as Valley Zone'' as per RMP of 2015 and also as Residential (Sensitive) and Valley drains with buffers. They have no objections for setting up STP. In the circumstances, the BDA also requested to dismiss the petition.

5. The learned Single Judge having heard learned counsel for the parties formulated the following points for its consideration:

i) Whether the establishment of sewerage treatment plant is an industry as defined u/s 2 of KIAD Act?

ii) Whether there is deviation in the purpose of acquiring the lands in question from preliminary notification u/s 28(1) and final notification u/s 29(4) of KIAD Act?

iii) Whether the acquisition proceedings are in contravention of zoning regulations in revised CDP 2015?

iv) Whether the inspection report dated 2.2.2007 by the official of respondents will nullify the acquisition proceedings?

6. After considering the arguments advanced by the learned counsel appearing for the parties held all the points against the petitioners. Accordingly, he dismissed the writ petitions. Challenging the legality and the correctness of the order passed by the learned Single Judge, the present appeals are filed by the writ petitioners.

7. We have heard Sri Dyan Chinnappa, learned counsel for the appellants in the first set of appeals and Mr. Nanjunda Reddy, learned Senior counsel appearing for the appellants in the second set of appeals and so also Mr. Keshava Reddy, learned AGA for respondents-1 and 6, Mr. Basavaraj V. Sabarad, learned counsel and so also Mr. Gachchinmath, learned counsel appearing for respondent No. 5 (BDA) in the first set of appeal. Mr. Chandrashekar, learned counsel for respondents-2 and 3 (KIADB and Special Land Acquisition Officer) and Mr. Narayan, learned counsel for respondent No. 4 (BWSSB).

8. Having heard learned counsel for the parties, the following points are not in dispute in this appeal:

The appellants do not dispute that their lands have been notified for acquisition in order to set up a STP near Amani Bellandur Khane Lake. It is also not in dispute that the establishment of a STP is for public purpose.

The points canvassed by learned counsel for the appellants are that considering the RMP of 2015, since their property is coming under Valley and Residential Zone, the STP cannot be set up and that there being a change of land used as required under the Karnataka Town and Country Planning Act issued under the provisions of the Karnataka Industrial Areas Development Act, 1966 (for short ''KIAD'' Act) is invalid. It is also contended that when the area is notified as Valley and Residential Zone, the same could not be notified for development of industrial area. Lastly, they contend when the Committee in its report has held that STP has to be set up in Kurudu Sonenahalli, Veerenahalli, Doddabannahalli and Sadarahalli villages and surrounding villages, the acquisition proceedings initiated by the KIADB at the instance of BWSSB or BDA are to be held as null and void. Therefore, they request to allow the appeals. To support their arguments, learned counsel for the appellants relied upon the judgment of this Court reported in H.N. Nanje Gowda Vs. State of Karnataka and Others, H.G. Sheela Vs. State of Karnataka and Others, Relying upon these three judgments and also contending that the setting up of STP does not come under the definition of ''Amenity'', STP cannot be permitted to be constructed or established in a Residential Zone.

9. Per contra, learned counsel appearing for the respondents submits that the ''Amenity'' defined u/s 2(1) of the KIAD Act, clearly includes the setting up of a STP pursuant to the Notification issued by the State of Karnataka dated 13.3.91 wherein the definition of Amenity has been extended even for disposal of solid wastes and setting up of effluent treatment plant. They contend that in view of the judgment of the Hon''ble Supreme Court in Bhagat Singh Vs. State of U.P. and Others, there is no need for the Court to rule whether that land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the master plan applicable to that locality and the acquisition of the land will be invalid if it is for the public purpose even if it is not for the type of user permitted by the Master plan or Zonal plan in force at the time the acquisition is made and it is for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master plan so as to permit the use of the land for the public purpose for which the land is acquired. Therefore, they request the Court to dismiss the appeals.

10. Having heard learned counsel for the parties, what is to be considered by us in these appeals are:

i. Whether the acquisition of the lands of the appellants by KIADB for establishment of STP is contrary to the provisions of CDP of 1995 or RMP of 2015? and

ii Whether the respondents can set up a STP in a ''Valley and Residential Zone''?

11. The learned counsel appearing for the appellants taking us through the

definition of ''Amenity'' as defined u/s 2(1) of the KIAD Act contend that what is permissible for the respondents, to utilize any particular piece of land as amenity, is only for construction of road, supply of water, electricity, street lighting, drainage, sewerage, conservancy and such other convenience. Relying upon the aforesaid definition, they contend that construction of STP will not come under the definition of Amenity and it is also contended that even the purpose for which the land is acquired will not attract the definition of Industrial Infrastructural facilities as defined u/s 2(7-a) of the KIAD Act.

12. Per contra, learned counsel appearing for the respondents contend that in terms of Section 2(1) of KIAD Act, the Government has power to issue Notification specifying any purpose as an Amenity.

13. Amenity u/s 2(1) is defined as here under:

"Amenity" includes road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience, as the State Government may, by notification specify to be an amenity for the purposes of this Act.

14. Mere reading of the aforesaid provisions, it is clear that the Government has discretion to notify, any purpose, as an Amenity, by issuing Notification. In this case, the Notification has been issued on 13.3.1991 by the Government wherein a provision is made for disposal of solid waste and setting up of an effluent treatment plants under the definition of sub-section 1 of Section 2 of the KIAD Act. The Notification reads as follows:

NOTIFICATION

No.CI86 SPQ 90, Bangalore, dated 13th March 1991

In exercise of the powers conferred by Subsection (1) of Section 2 of the Karnataka Industrial Areas Development Act, (Karnataka Act 18 of 1966) the Government of Karnataka, hereby specified the following as amenities for the purpose of the said Act:

They shall come into force from the date of their publication in the official gazette.

Banks, Post Offices, Telephone and Telex Exchanges, Canteens, Fire Brigade and other service facilities including Zerox facilities. Disposal of Solid wastes and setting up effluent treatment plants.

Xxxxx

Xxxxx

Xxxxx

Xxxxx

Xxxxx

By order and in the name of the Governor of Kamataka,

T.R. Renuka Aradhya, Under Secretary to Government (ID) Commerce & Industries Department

In view of the Notification relied upon by the respondents'' counsel, we are of the view that the establishment of an effluent treatment plants comes under the definition of ''Amenity'' as defined u/s 2(1) of the KIAD Act.

15. It will be useful for us to refer to sub-section 7-a of Section 2 of the KIAD Act for better understanding of definition of Industrial Infrastructural Facilities.

Section 2(7-a) - "Industrial Infrastructural facilities" means facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, Marketing, Technology parks and Townships for the purpose of establishing trade and tourism centres or any other purpose which the Government may specify by a notification. The scope of "Industrial Area" has been extended to industrial infrastructural facilities and other facilities as may be specified by a notification.

16. On perusal of the aforesaid provision, it is clear that for the development of Industrial establishment in an Industrial Area, the Government can provide other facilities as Industrial Infrastructural Facilities. As a matter of fact, this Court had an occasion to consider the said provision in the case of H.N. Nanje Gowda''s case (supra) though Sub-Section 7a of Section 2 of the KIAD Act was not incorporated. Their Lordships while considering the provisions to Section 28 of KIAD Act, have ruled what are the developments that can be considered by the Government while considering the definition of Industry.

We shall next take up the contention that the acquisition is ultravires the Karnataka Industrial Areas Development Act, 1966. The argument advanced is that the said Act provides for securing the establishment of the industrial area and industrial area would mean an area declared to be an industrial area by the State Government which is to be developed and where industries are accommodated and includes an industrial estate. It is contended that an airport cannot be an industry for the purpose of the Act and therefore the order acquiring land for the purpose of such an airport is not within the scope of the Act, u/s 28, what could be acquired is only for the purpose of the Act and the purpose of the Act being only to secure the establishment of industrial areas or develop industries thereto where the industries are accommodated, location of an airport would not be one such purpose. Specific attention of the Court is drawn to the preamble, definition clauses and the functions of the Board under the Act. It is contended that we should not understand the expression ''industry'' as is sought to be expansively dealt with in the context of Industrial Disputes Act. We should give a restricted meaning in the context of the Act and we should only apply the same where industries produce goods, not services. In order to appreciate this contention, it may be necessary to refer to a decision of the Supreme Court in B. Viswanathiah & Company and Ors. v. State of Karnataka and Ors. In that decision, the Supreme Court was examining the validity of Karnataka Silkworm Seeds, Cocoons (Regulation of Production, Supply and Distribution) (Amendment) Act, 1979 (Act 33/79). In that context, considering the legislative competence of the State vis-a-vis Entry 52 of List I and Section 2 of the Central Silk Board Act, it was held therein that an industry comprises of three important aspects-

(i) Raw Materials

(ii) The process of manufacture or production, and

(iii) Distribution of the products of the industry,

The legislation in regard to raw materials were permissible under Entry 27 of List II and therefore, it was held that the same fell within the scope of Entry 24 of List II. So far as the third aspect - distribution of the products of the industry was concerned, the State Legislature would be quite competent to legislate in regard thereto under Entry 27 of List II. However, when an industry is also controlled industry, legislation in regard to products of the industry would be permissible by both the central and state legislature by virtue of Entry 33 of List III. In analysing the concept of ''industry'', we should note an important aspect namely, distribution of the products of industry. It is not merely the production that matters. Marketing thereto is an important feature. Therefore, it cannot be said that the distribution or marketing of the goods would not form part of the industry and not benefit the industry. Even viewed from the narrow angle propounded by the learned Counsel for the petitioners, we may have to hold that an airport which will facilitate the landing and taking off of air crafts which could be utilised for the purpose of distribution, marketing of goods and also provide for air traffic otherwise, is also an industry. Thus, we do not think the contention advanced on behalf of the petitioners in this regard is neither correct nor tenable in the light of the decision of the Supreme Court.

17. Learned counsel appearing for the appellants does not dispute that the establishment of a STP is not for public purpose and they also cannot dispute that it cannot be considered as an industrial infrastructural facility because in the counter filed by the BWSSB, it is clearly mentioned that initially about 70 MLD of sewerage water was being produced in and around Mahadevapura and K.R. Puram areas and the same was allowed to flow into the Varthur Lake. As a result of which, the entire Bellandur tank which was once upon a time was an irrigated tank is completely polluted affecting the flora and fauna. We have also seen the planning Districts of Bangalore, relied upon by the appellants, which was Revised Comprehensive Development Plan of 2011 A.D. which was approved on 25.6.07. On perusal of Annexure-C, there are several industries set up in and around White Field and other places and the sewerage produced by these industries has been let out into Bellandur/Varthur Tank. It is not disputed by the learned counsel for the appellants with regard to the statement made by the BWSSB about the production of 70 MLD of sewerage water from K.R.Puram and

Mahadevapura industrial area and also from other residential areas including the area of the petitioners. When 70 MLD of sewerage water has been produced per day and the same is increasing day by day, it is the duty of the BWSSB and the planning authorities to make adequate provisions for treating the said water and to maintain the water bodies. Therefore, they cannot contend that the establishment of STP cannot be for a public purpose and mainly because the area is situated in Valley and Residential Zone they cannot be permitted to contend that the land acquired are contrary to the RMP of 2015 because in Bhagat Singh''s case (supra) the Hon''ble Supreme Court has clearly ruled in para-22, which reads as under:

As pointed out in the above Judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zeal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master plan or Zonal plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, it is clear that acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependent upon the latter.

18. The learned Single Judge has also considered all the points raised by the learned counsel for the appellants. It is contended by the appellants that an inspection report was submitted on 2.2.2007 under the chairmanship of K.R. Puram MLA, a request was made to relocate the proposed STP but the said report has not been accepted either by the KIADB or BDA or BWSSB or Town & Country Planning Authority. Merely because the report was submitted at the instance of local MLA, cannot be a ground for this Court to direct the authorities to accept the report because the KIADB initiated the acquisition proceedings. A satellite survey was conducted since the area is in a Valley Zone. The authorities have noticed that the lands in question are more suitable for establishment of a STP. Therefore, this Court cannot substitute the report or the views of an expert body like BWSSB or the planning authority. In the circumstances, we are of the opinion that the contention of the appellants that the report submitted at the instance of local MLA has to be accepted or acquisition proceedings to be dropped, cannot be accepted.

19. Planning Authority for Bangalore is the Bangalore Development Authority. It is the specific contention of the BDA that BDA has no objection for construction of STP. When the Planning Authority has no objection for setting up of a treatment plant, it cannot be contended by the appellants that setting up of STP on the land of the appellants would be contrary to the CDP or Revised Master Plan. In the circumstances, we are of the view that no error is committed by the learned Single Judge in dismissing the petitions. On the contrary, if the notifications are quashed, it will certainly cause irreparable damage to the public as it is the duty of the respondents to maintain the water body and treat the sewerage water in a proper manner to provide better civic amenities to the people residing in and around the area, which is also a benefit for the appellants herein. Accordingly, these appeals are dismissed.