

(2003) 02 KAR CK 0066

In the Karnataka High Court

Case No : Writ Appeal No's. 4662, 4673, 4674, 4698, 4699 4681, 4682, 4687, 4688, 4700 to 4705, 4720, 4789 and 5288 of 2002

Chandramma and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Constitution of India, 1950 — Article 31 (3)

Citation : (2002) ILR (Kar) 5182 : (2003) 2 KarLJ 490 : (2003) 2 KCCR 1057

Hon'ble Judges : N.K. Jain, C.J;C.G. Sabhahit, J

Bench : Division Bench

Advocate : T.S. Amar Kumar, in W.A. Nos. 4662, 4681, 4682, 4700 to 4705 and 4720 of 2002; T.A. Karumbaiah, in W.A. Nos. 4673, 4674, 4687, 4688 and 5288 of 2002, D.L.N. Rao, in W.A. Nos. 4698 and 4699 of 2002 and M. Erappa Reddy and G. Narasa Reddy, in W.A. No. 4789 of 2002, for the Appellant; Satish M. Doddamani, A.G.A. for Respondent-1 in all the writ appeals, S.A. Nazeer, for Respondents-2 and 3 in W.A. Nos. 4662, 4700 to 4705, 4720, 4673, 4674 and 5288 of 2002 and S.A. Nazeer and Abdul Khader for Respondents-2 and 3 in W.A. Nos. 4681, 4682, 4687, 4688, 4698, 4699 and 4789 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals are directed against the order dated 2-7-2002 passed by the learned Single Judge in Chandramma and Another Vs. State of Karnataka and Others, Some other appeals have also been filed against the order of the learned Single Judge passed in the said writ petition. These appeals involve common questions of law and fact. As agreed, they are taken up together and disposed of by this common order.

2. The controversy in the present appeals is that the Bangalore Development Authority (for short "the BDA") had prepared various schemes for the purpose of development and formation of several layouts, namely, Nagadevanahalli Layout, Valagerahally Layout, Gnana Bharathi Layout and Sri Venkateshwara Layout and

issued notifications to acquire the said lands. For the purpose of convenience, the necessary facts in W.A. Nos. 4681 and 4682 of 2002, filed against the main order passed in W.P. Nos. 1179 and 1180 of 2000 are narrated. It is alleged that the first appellant is the owner of 32 guntas of land and the second appellant is the owner of 1 acre 11 guntas of land in Sy. No. 31/1A of Valagerahally Village. As stated the BDA prepared the schemes "Gnana Bharathi Layout and Sri Venkateshwara Layout" by passing a resolution on 23-9-1987 and the same was submitted to the Government for administrative approval and the Government by order dated 29-6-1988 granted administrative approval for the formation of the said Gnana Bharathi Layout and Sri Venkateshwara Layout at the estimated cost of Rs. 8,251.79 lakhs subject to the conditions mentioned in the order (Annexure-A) to the writ petition. Thereafter, a preliminary notification was issued u/s 17(1) and (3) of the Bangalore Development Authority Act (for short "the Act") on 26-1-1989. The petitioners filed objections and thereafter final notification was issued u/s 19(1) of the Act on 19-1-1994. Being aggrieved by the same, the petitioners who are the owners of the land comprised in Sy. No. 31/1A measuring 1 acre 11 guntas and 32 guntas in the same survey number of Valagerahally Village and other owners filed W.P. Nos. 16827 to 16834 of 1994 before this Court. This Court, by common order dated 7-10-1996 held that objections have not been properly considered by the BDA and that final notifications passed on different dates in respect of the petitioners u/s 19(1) of the Act insofar as they relate to the petitioners' lands, were liable to be quashed and accordingly notifications insofar as they relate to the petitioners' lands were quashed, leaving liberty to the BDA to issue fresh notification if they are so advised only after considering the representations of the petitioners in accordance with Section 18(1) of the Act. It was made clear that in view of the sanction having been granted by the Government in accordance with Section 18(3) of the Act on 3-10-1997, the order of sanction shall remain undisturbed. Fresh final notification was made by the Government on 6-10-1997. That was challenged in the case of D. Hemachandra Sagar and Another Vs. The State of Karnataka and Others, They were allowed.

3. Being aggrieved by the said order passed by the learned Single Judge of this Court, some of the petitioners preferred W.A. No. 4764 of 2002 and connected appeals contending that the learned Single Judge ought to have set aside the preliminary notification also and that the respondents ought to have been directed to take fresh sanction and the sanction already granted ought to have been quashed by the learned Single Judge. The Division Bench of this Court by order dated 24-3-1999 held that there was no merit in the contention of the learned Counsel appearing for the appellants and observed that after objections are considered, if there is any requirement for modification of the scheme, BDA can send the scheme to the Government and after Government approval it can issue final notification, there was already a direction to consider the objections and representations, it was just and proper that BDA after considering the objections and representations comes to the conclusion that it has to send any

modified scheme to the Government other than the earlier scheme, then it is open to the BDA to forward the same and it will not bar the Government to consider the same merely because the Government has passed final notification u/s 19 of the Act. Thereafter, a final notification was issued on 7-10-1999 and published in the Gazette on 11-10-1999. Being aggrieved by the said final notification issued u/s 19(1) of the Act, W.P. Nos. 1179 to 1180 of 2000 and other connected writ petitions were filed. The learned Single Judge by his order dated 2-7-2002 held that the provisions of the Act are enacted in exercise of the legislative power under Entry 5, List II of the Seventh Schedule and therefore, it was not required to be reserved for assent of the President and the provisions of the Act did not fall within the ambit of Article 31(3) of the Constitution of India and that fresh sanction of the Government u/s 18(3) was unnecessary as this Court has observed in the earlier writ petitions, wherein the final notification had been challenged, that the sanction granted by the Government u/s 18(3) shall remain undisturbed and further held that the objections have been considered by the BDA and none of the petitioners contended that the acquisition was not for public purpose and accordingly held that there is no merit in the writ petitions. Accordingly, the learned Single Judge dismissed the writ petitions, W.P. Nos. 1179 and 1180 of 2000 on 2-7-2002. Thereafter, following the said decision, the other writ petitions were also dismissed for the reasons mentioned in W.P. Nos. 1179 and 1180 of 2000. Being aggrieved by the said orders, the writ petitioners have preferred these appeals as stated.

4. Sri D.L.N. Rao, learned Senior Counsel appearing for the appellants in W.A. Nos. 4698 and 4699 of 2000 submitted that this Court has set aside the final notification issued u/s 19 of the Act on the ground that the objections filed by the petitioners had not been considered and question of granting of the sanction u/s 18(3) of the Act would arise only after objections were considered and the same is forwarded to the Government for issuing final notification and wherefore, it was necessary to obtain sanction as required u/s 18(3) of the Act afresh notwithstanding the earlier sanction granted on 3-10-1996. He further submits that the objections were filed by the petitioners but they were not considered, and that a mechanical order has been passed stating that the objections have been considered and since there was no necessity of introducing modification to the scheme already sanctioned, the BDA has proceeded to pass the final notification impugned in the writ petitions and therefore, the learned Single Judge has ought to have set aside the final notification passed u/s 19 of the Act and ought to have allowed the writ petitions.

5. Sri T.S. Amar Kumar, learned Counsel appearing for the appellants in W.A. Nos. 4681 and 4682 of 2002 reiterated the arguments of Sri D.L.N. Rao and submitted that the BDA Act makes provision for acquisition and therefore would fall within the ambit of Article 31(3) of the Constitution of India (before it was repealed) and since when the Act was introduced it was not reserved for assent of the President, the entire Act is unconstitutional and is liable to be quashed as such. Therefore, the learned Single Judge ought to have declared that the

provisions of the BDA Act are unconstitutional and the acquisition is bad and ought to have allowed the writ petitions.

6. Sri Nazeer, learned Counsel appearing for the BDA submitted that in view of the earlier orders passed by this Court in W.P. Nos. 33717 and 33718 of 1997 and connected matters dated 31-8-1998 and W.A. Nos. 4928 to 4950 of 1998, dated 24-3-1999 the sanction granted by the Government u/s 18(3) had remained undisturbed and the original scheme already sanctioned has not been modified. It is stated that as per the order of this Court objections in respect of the disputed lands in Sy. Nos. 68/1, 68/2, 71/1, 72, 31/1A along with the objection in respect of other lands were considered and on the basis of the Planning Committee's Inspection Report, dated 21-1-1999, those objections were overruled and it was directed to renotify the lands in Sy. Nos. 68/1, 68/2, 31/1A. However, it was found that the lands in Sy. Nos. 71/1 and 72 were not feasible to form the layout and it was decided to drop the acquisition proceedings so far as these lands are concerned and in this way some of the built up house has been left out and so far as the petitioners' lands are concerned, there is no question of modification of the scheme. As such fresh sanction u/s 18(3) of the Act was not necessary the same remained intact. He further submits that the learned Counsel for the appellants never took the objection that the provisions of the Act are not valid for it was not reserved for assent of the President nor filed any objection to that effect in the initial stage itself. Learned Counsel submits that the Apex Court in *Munithimmaiah Vs. State of Karnataka and Others*, has approved the decision of this Court in *Khoday Distilleries Ltd. and Others Vs. The State of Karnataka and Others*, wherein, it was held that Section 11A of the Land Acquisition Act has no application insofar as the lands which are declared to be required for a public purpose stated in the notification and that Section 27 of the Act was similar to Section 11A of the Land Acquisition Act, and therefore, the BDA Act was a self-contained Code itself, the learned Single Judge held that the BDA Act enacted by the State by virtue of Entry 5, List II of the Seventh Schedule is not required to be reserved for assent of the President. Therefore, the learned Single Judge has rightly dismissed the writ petition, which does not call for any interference.

7. The learned Government Advocate Sri Satheesh M. Doddamani, submitted that the Government had already sanctioned the scheme prepared by the BDA for forming Gnanabharathi Layout on 29-6-1988 itself and thereafter a specific sanction has been granted u/s 18(3) of the Act on 3-10-1996 and the BDA has considered the objections filed by the petitioners and since there was no modification of the scheme already sanctioned by the Government, final notification has been passed by the Government in accordance with law. He also submitted that so far as the other lands are concerned they have acquired the same except these petitioners who are in the habit of coming to Court for one or the other reason, the petitions are devoid of merit and they are not entitled to any relief, and the learned Single Judge has rightly dismissed the petitions, which does not call for any interference.

8. In reply to the argument, learned Counsel for the appellants stated that for challenging the validity of the Act, there is no question of delay and laches or question of res judicata or constructive res judicata. It is stated that the delay will not come in the way in setting aside the entire proceedings on the ground that Article 31 of Constitution has not been followed. The learned Counsel submits that as per Explanation IV of Section 11 of CPC the words "might" and "ought" can only be applied if the point was raised but had been left out, and only then the appellants can agitate the same. He relied on the decisions of the Supreme Court in P.G. Eshwarappa Vs. M. Rudrappa and Others, ; Motor General Traders and Another Vs. State of Andhra Pradesh and Others, and in K. Thimmappa and Ors. v. Chairman, Central Board of Directors, State Bank of India and Anr. AIR 2001 SC 467 : (2001)2 SCC 259 : 2001 SC (L & S) 374.

9. In reply to this, learned Counsel Sri Nazeer submits that the BDA Act falls under Entry 5, List II of the Seventh Schedule, which does not require the assent of the President for acquisition of the land, and when Sections 6 and 11A of the Land Acquisition Act are not applicable and would not come into play, the cases relied on are not applicable.

10. We have considered the respective contentions of the parties and perused the material on record and the case-laws. We have also perused the original records produced by the learned Counsel appearing for the BDA.

11. The points for consideration in the facts and circumstances of the case are whether fresh sanction was necessary and whether the authorities have considered the objections independently and whether the entire proceedings are liable to be quashed as the provisions of the BDA Act, 1976 are unconstitutional in the absence of assent by the President as required under Article 31(3) of the Constitution of India.

12. Now, we take up the arguments of the learned Counsel. As regards the argument that assent from the President is required, no doubt to challenge the validity of Act, the question of delay and laches will not come in the way and so also to challenge the validity of law res judicata will not apply and it is also settled if there is violation of fundamental right, the delay part will not come in the way and each case depends on the facts and circumstances of its own. In the present case, the fact remains that earlier the appellants had occasion to file objections, but they never filed. The appellants and others approached this Court against the earlier preliminary notification issued in the year 1989, and also challenged the final notifications dated 9-4-1994 and 6-10-1997, and at that time also they never raised this point. It is also not disputed that this point was never raised by him at any point of time. It is also settled that this Court will not unsettle the settled position, which have been made as per the provisions of law. The lands under the same notifications, other than those of the appellants, have already been acquired and taken into possession, and a layout has been formed. Under the circumstances, we could have stopped the appellant's Counsel from arguing this point, but since the learned Single Judge has also considered the

argument and found no merit, we have proceeded. It is also seen that earlier to 1976, the City Improvement Trust Board Act was in existence, and in the year 1976 the BDA Act came into force. A bare perusal of the BDA Act shows that it has been enacted by the State in exercise of legislative power under Entry 5, List II, Seventh Schedule to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith, but not for acquisition of lands. Under the circumstances, assent of the President is not required. It is not necessary to discuss on the cases viz., P.G. Eshwarappa's case, supra, Motor General Traders case, supra and K. Thimmappa's case, supra, relied on by the learned Counsel for the appellants as the principles enunciated are not in dispute and they are not helpful and applicable to the facts of present case. It is pertinent to note that the Division Bench of this Court in W.A. Nos. 2308 to 2336 of 1994 decided on 8-11-1994, wherein, the acquisition was challenged on the same grounds, while considering Section 11A of the Land Acquisition Act and rejecting the contention that the Act had not received the assent of the President and as such it is ultra vires and beyond the legislative competence of the State Legislature, it was observed as follows.-

"It is therefore not quite correct to say that under the Act, BDA acquires the land. The correct position is that at the instance of the BDA, which is regarded as local Authority, the land is acquired by the Government. It is, therefore, not possible for us to agree that any provision of the Act is repugnant to the provisions of the Land Acquisition Act and therefore, the said Act did not require prior assent of the President".

The above decision of this Court has not been differentiated. The learned Single Judge has also considered this aspect and considering the observation of the Apex Court in Munithimmaiah's case, supra, found it is not a law for acquisition of land like the Land Acquisition Act, 1884 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution. As such the argument was not accepted but repelled.

13, A reference to the decision of the Apex Court in Munithimmaiah's case, supra, is relevant. In this case the BDA had issued a notification u/s 19(1) of the BDA Act regarding sanctioning of the scheme for formation of layout referring to the earlier preliminary notification of the year 1974, also issued the required declaration u/s 19 of the BDA Act and passed the awards. The said awards were challenged by the appellant in the above case on the ground that the same had been passed after the expiry of the period stipulated u/s 11A of the Land Acquisition Act. Their Lordships, in the facts and circumstances of that case, held that in the case of schemes covered by the BDA Act, the Authority has to execute the schemes within the period of five years from the date of issue of notification u/s 19; otherwise the scheme will lapse. Their Lordships while considering the above case observed that:

"15. So far as the BDA Act was concerned, it was not an Act for mere acquisition

of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India..... The procedure for acquisition under the BDA Act vis-a-vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self-contained Code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or pan materia legislations".

Their Lordships while approving the Division Bench decision of this Court in Khoday Distilleries Limited's case, supra, observed as follows:-

"Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in Khoday Distilleries Limited's case, supra, to exclude the applicability of Sections 6 and 11A as amended and inserted by the Central Amendment Act of 1984 to the proceedings under the BDA Act".

14. So far as the argument that fresh sanction was necessary is concerned, no doubt on earlier occasions this Court directed the Government to reconsider the matter. However, it was made clear that sanction having been granted by the Government in accordance with Section 18(3) of the Act, the same shall remain "undisturbed". The argument that the sanction remained undisturbed should have been considered only in cases, which were dismissed or where the validity of the sanction was not challenged, but in the appellants' case they have to take a fresh sanction, is not acceptable for the reason the Court remanded the matter for considering the objections afresh. A perusal of the order of the Division Bench reveals that it has left this fact within the discretion of the BDA either to obtain sanction or not. The sanction was to be obtained if there was any change. But, if the BDA was of the opinion that there was no change or modification in the scheme, fresh sanction was not necessary. While considering the objections afresh, once it is found that there is no change or modification in the scheme, it is not necessary to get fresh sanction. As per the facts culled out, so far as the appellants' land is concerned, there is no change in the scheme except for leaving out the constructed part. Therefore, the argument that this notification is liable to be set aside for want of fresh sanction, is not tenable and is rejected. The finding of the learned Single Judge that no fresh sanction was necessary is justified having regard to the above material on record.

15. As far as the argument that the authorities have not considered the objections, rather repeated the orders once again, is concerned, the argument of the petitioners that initially 900 acres 30 guntas of land, which was notified has been reduced to 729 acres and 31 guntas under the proposed scheme. The appellant's dispute is to the extent of lands situated in Sy. Nos. 31/1A in (W.P.

No. 4681 and 4682 of 2002), 68/1 and 68/2 (in W.P. Nos. 4698 and 4699 of 2002), and 71/1, 72 under joint ownership. As stated by the learned Counsel for the BDA on remand by this Court on 31-8-1998 (D. Hemachandra Sagar's case, supra), the objections were considered. As per Annexure-A to the writ petition, in respect of land in Sy. No. 68/1, it is objected that the land was fully built up and surrounding area notified by BDA and a request was made to delete the land from the acquisition. Similar objections were made in respect of lands in Sy. Ncs. 68/2, 71/1, 31/1A and 72 though they were not subject-matter. All the objections were considered and as per the report of the Additional Land Acquisition Officer, approved by the Planning Committee by its inspection report, dated 21-1-1999, it was decided to renotify all the lands in question except those situated in Sy. Nos. 71/1 and 72 as they were not feasible to form a layout and to drop the same from acquisition proceedings. Under the circumstances, it cannot be said that the objections were not considered independently and the acquisition so made cannot be set aside on this ground.

16. We have also perused the original records placed before us and found that as per the earlier directions of this Court dated 31-8-1998, the objections of the appellants and others were considered as discussed before filing of this appeal on 6-12-1999. The argument that the area all round the appellants' land has been left out from acquisition by deletion and the appellants' land was in a corner, cannot be a ground to quash the impugned notification. So also the argument that after acquiring the land the same was sold to the BWSSB for execution of treatment plant, cannot be a ground to interfere. The learned Single Judge has considered and repelled the arguments in this behalf. The learned Counsel for the appellants submitted that in other cases, before the expiry of time for filing the objection, sanction was granted. To this learned Counsel for the respondent submitted that in those cases objections were not considered and the appellant cannot take advantage of the argument in the facts of the present case. As already discussed, in the instant case, objections have been considered, so this argument is not available and helpful for the appellants to seek setting aside the notification in their cases.

17. Considering the other case viz., The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, the Apex Court on the question of compliance of Rule 27 of Order 41 of the CPC, observed:

"The Karnataka High Court had, however, not complied with provisions of Order 41, Rule 27 of the CPC, which require that an Appellate Court should be satisfied that the additional evidence is required to enable them either to pronounce judgment or for any other substantial cause. It has recorded no reasons to show that it had considered the requirements of Rule 27, Order 41 of the CPC. We are of the opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading

other evidence".

18. In Motor General Traders case, supra, the validity of Section 32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), which exempted all buildings constructed on and after 26-8-1975 from the operation of the Act was challenged. Their Lordships, on consideration held that above provision was violative of Article 14 of the Constitution and observed as follows:-

"30. After giving our anxious consideration to the learned arguments addressed before us, we are of the view that Clause (b) of Section 32 of the Act should be declared as violative of Article 14 of the Constitution because the continuance of that provision on the statute book will imply the creation of a privileged class of landlords without any rational basis as the incentive to build which provided a nexus for a reasonable classification of such class of landlords no longer exists by lapse of time in the case of the majority of such landlords. There is no reason why after all these years they should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents".

The appellants-petitioners cannot take advantage of the above mentioned cases and the cases referred to in para 8, in the facts and circumstances of the present case, as discussed above.

19. It is also seen that the acquisition of the proposed lands under different notifications other than those of appellant's have already acquired and taken into possession, and layout has been formed. The learned Counsel for the appellants has not been able to show as to how the acquisition of disputed lands is not in public interest and, therefore, they are not entitled for any relief as prayed for.

20. The learned Single Judge after considering the respective arguments of the learned Counsel, the statement of objections, materials on record and the case-law has repelled the contentions of the appellants, by an elaborate order and has not interfered with the impugned notifications to acquire the disputed lands under the scheme. We find no error or illegality in the order of the learned Single Judge and the same does not call for any interference.

21. In view of what we have discussed above, we hold that the orders of the learned Single Judge passed in W.P. Nos. 1179 and 1180 of 2000, dated 2-3-2002 and other writ petitions following the said impugned order in these appeals do not suffer from any infirmity so as to call for any interference. Interim order granted in W.A. Nos. 4681 and 4682 of 2002 and other connected appeals staying dispossession of the property, if not already dispossessed, stands discharged.

22. No other point was pressed.

Accordingly, these appeals are dismissed. In the circumstances of the case, costs made easy.