

(2002) 07 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 1179 and 1180 of 2000

Chandramma and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17, 19
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2003) 2 KarLJ 600

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; H.B. Mahesh, High Court Government Pleader for Respondent-1, S. Vijayashankar, U. Abdul Khader and S.A. Nazeer for Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

1. These writ petitions are of the third round litigation by the landowners challenging the notifications issued under the Bangalore Development Authority Act (hereinafter referred to as the "Act").

2. The Bangalore Development Authority (hereinafter referred to as "BDA"), has issued a preliminary notification u/s 17(1) of the Act proposing to acquire certain lands for the purpose of implementation of the schemes called "Gnanabharathi Layout, Banashankari V and VII Stages and J.P. Nagar". In the first round of litigation, this Court quashed the final declaration issued u/s 19(1) of the BDA Act on the ground that no sanction was obtained u/s 18(3) of the Act before issuing final notification. However, liberty was reserved to the Authorities to proceed with the acquisition from the stage of preliminary notification. In the said judgment this Court has also permitted the landowners, who have not filed any objections, to file objections within 30 days from the date of the order. Pursuant to this, the BDA proceeded with the acquisition proceedings and again issued notification u/s 19(1) of the Act, after obtaining necessary sanction from

the Government as required u/s 18(3) of the Act. This notification was also the subject-matter before this Court. This Court in the case of D. Hemachandra Sagar and Another Vs. State of Karnataka and Others, again quashed the final notification on the ground that there is no proper consideration of the representations given by the landowners, reserving liberty to BDA to reconsider the matter afresh without disturbing the sanction given by the State Government u/s 18(3) of the Act. Thereafter, the Authorities again considered the representation, if any, filed by the landowners and issued final notification u/s 19(1) declaring the said lands are required for public purpose.

3. These notifications are subject-matter of these writ petitions.

4. Learned Counsel appearing for the petitioners contended that the acquisition of land under the BDA Act is illegal since the very Act itself has not been reserved for the assent of the President. In reply to this submission learned Counsel appearing for the BDA submitted that, the BDA Act has been enacted by the State under Entry 5 of List II of VII Schedule of the Constitution and therefore there is no need to reserve this enactment for the assent of the President. According to the learned Counsel appearing for the petitioners, the lands in question are acquired by the BDA under the BDA Act, therefore, the said enactment should have received the assent of the President as required under Article 31(3) of the Constitution which was in the Statute Book as on the day when the BDA Act came into force. No doubt under Article 31(3) of the Constitution, any law providing for acquisition is required to be reserved for the assent of the President.

5. Now the question is whether the BDA Act provides for any acquisition requiring assent of the President as provided under Article 31(3) of the Constitution?

6. From the preamble of the BDA Act it is seen the object of this enactment is to provide for the development of the city of Bangalore and areas adjacent thereto and for matters connected therewith. Section 16 of the Act provides that particulars to be provided for in a development scheme. u/s 17, if the Authority is of the view that any land is required for the purpose of execution of the scheme, the said land may be proposed for acquisition by issuing a notification. u/s 19, the State Government may issue a declaration declaring the lands proposed are required for a public purpose. Sections 17 and 19 of the BDA Act are similar to Sections 4 and 6 of the Land Acquisition Act. Mere declaration by a notification either u/s 17 and 19 of the Act is not acquisition by itself. Section 36 of the BDA Act provides for application of the Land Acquisition Act in respect of land to be acquired pursuant to notifications issued under the BDA Act. That is to say that the acquisition of the land is regulated by the provisions of the Land Acquisition Act. Therefore, the BDA Act has been enacted by the State for the purpose and object referred to in the preamble of the Act.

7. It is in the submission of the learned Counsel appearing for the petitioners

that, in view of the law laid down by the Supreme Court in *Munithimmaiah Vs. State of Karnataka and Others*, , the BDA Act does provide for acquisition and therefore, it should have been reserved for the assent of the President. The Supreme Court in the case of *Chamundi Hotel (P) Ltd. and Others Vs. State and Others*, , has held that, Section 11-A of the Land Acquisition Act has no application insofar as the lands which are declared to be required for a public purpose in the notification issued under the BDA Act. Section 27 of the BDA Act is similar to Section 11-A of the Land Acquisition Act and therefore in the above said case it is held that the BDA Act is a self contained Code itself. These decisions have no application to hold that the lands which are now declared as lands required for public purpose under the BDA Act amounts to acquisition of the land. Therefore, I hold that the BDA Act enacted by the State by virtue of Entry 5, List II of the VII Schedule is not required to be reserved for assent of the President.

8. Sri Amar Kumar and Sri D.L.N. Rao, learned Counsels appearing for the petitioners submit that as there is a considerable reduction of the area proposed for acquisition in the final notifications issued u/s 19(1) of the Act, which are now impugned in these writ petitions, the scheme framed earlier stood modified and therefore the BDA should have submitted this modified scheme along with other particulars to the State Government for sanction as required u/s 18(3) of the Act. In the instant case according to the petitioners as there is no such submission of the scheme to the State Government and there is no sanction to the modified scheme, the State Government is not right in issuing the notifications u/s 19 of the Act and therefore, the impugned notifications are liable to be quashed.

9. It is further submitted when this Court in the decision referred to supra has quashed the final notification on the ground that there is no proper consideration of the representation given by the landowners and pursuant to this order, the BDA having deleted certain lands accepting the objections if any filed by the landowners and rejecting the objections of some of the landowners, there is substantial change in the very scheme itself and therefore the BDA ought to have obtained a fresh sanction u/s 18(3) of the Act before submitting the papers to the State Government to issue a final notification u/s 19 of the Act. In reply to this submission learned Senior Counsel appearing for the respondents submitted that, framing of the scheme is in the discretion of the BDA and if the BDA in its discretion is of the opinion that there is no change in the scheme framed earlier, no further sanction is needed. It is further submitted in the decision referred to above, it is held as follows:

"It is made clear and in view of the sanction having been granted by the Government in accordance with Section 18(3) of the Act, the orders of the sanction have remained undisturbed".

In view of the specific declaration by this Court, BDA need not obtain any further sanction if it is of the opinion that there is no need to obtain any sanction as

there is no change or modification of the scheme. The Division Bench in the writ appeal preferred as against the order referred to above no doubt has observed that, the BDA if necessary may obtain the sanction. From this observation it is clear that, the Division Bench also has left this fact to the discretion of the BDA either to obtain the sanction or not.

10. u/s 15 of the BDA Act, the Authority may undertake certain works and incur expenditure for development. u/s 16 the BDA may frame a development scheme. u/s 17 the Authority may issue a notification after obtaining approval of the State Government proposing to acquire the land for the purpose of implementation of the scheme. u/s 18 the Authority in its discretion, after consideration of representation if any, shall submit the scheme, making such modification as it may think fit, to the Government for sanction furnishing the particulars provided for. Under Sub-section (3) of Section 18, the Government by order may give sanction to the scheme considering the proposal submitted by the Authority. Thereafter, u/s 19 the State Government is required to issue a notification declaring the land referred to in the notification as required for a public purpose.

11. From the scheme of the Act with reference to the provisions referred to above, framing of the scheme is by the BDA. Any modification of the scheme is also within the discretion of the BDA. The modification to be made only if necessary after considering the representations if any by the landowners. If that is so, in my opinion when once sanction is granted and thereafter if the BDA is of the opinion that there is no need for any modification, no fresh sanction is required to be obtained. This Court in D. Hemachandra Sagar's case, supra, has held that the sanction already granted is kept undisturbed. If that is so, in my view, no further sanction is necessary for the purpose of issuing notification u/s 19(1) of the Act.

12. This Court has directed the State Government to reconsider the matter afresh on the ground that there is no proper consideration of the representations given by the landowners. The consideration of each of the representations given by the landowners will not automatically amount to change or modification of the scheme. Certain extent of land may be proposed for acquisition in the preliminary notification. But not necessarily there shall be a final notification in respect of all the extent of land which was proposed for acquisition in the preliminary notification. The scheme referred to above is only for the purpose of implementation keeping in view the object of enactment. If that is so, there is no need to obtain the sanction again from the State Government when in fact sanction of the scheme is kept undisturbed by this Court in the decision referred to supra.

13. It is nextly contended that, there is no consideration of the representation given by the landowners and therefore in view of the law declared by this Court in D. Hemachandra Sagar's case, supra, these final notifications are liable to be quashed. According to Sri D.L.N. Rao, the consideration in this case is similar to the consideration by this Court in D. Hemachandra Sagar's case, supra, and

therefore in view of the law declared by this Court in the said decision, the entire acquisition proceedings are to be quashed. No doubt this Court in *D. Hemachandra Sagar's* case, *supra*, has held that there is no proper consideration referring to the report of the Land Acquisition Officer and other documents produced before the Court. Under the scheme of the Act, Land Acquisition Officer is not the authority which is required to consider the objection or representation if any of the landowner. The report, if any, by the Land Acquisition Officer is for the benefit of the Board to consider whether there is any tenable objections by the landowner. In the instant cases in the report of the Land Acquisition Officer there are some remarks. The Committee constituted to look into the report and representation by the landowner has held that the lands proposed for acquisition are required for a public purpose. The Board with reference to the report of the Land Acquisition Officer and the Committee has accepted certain objections as tenable and certain objections as not tenable and ultimately formed the opinion that the lands are required for public purpose of implementation of the scheme. It is not the case of the petitioners that all these materials including the representations were not before the Board when it has taken a decision to move the State Government to issue final notification. The objections or representations by the landowners is to the effect that certain lands are garden lands, certain lands are developed, certain lands are required for their own purpose and so on. But no landowner has stated that the lands proposed for acquisition in the preliminary notification are not required for a public purpose. The object of acquisition is for implementation of the scheme. The implementation of the scheme is for the public benefit, that is, for the public purpose. If that is so, in the absence of any material to show that the said lands are not required for public purpose, I am of the view that the objections if any raised by the landowner are not tenable and the Board after looking into all the materials placed and available before it, is of the opinion that the land is required for a public purpose. The Government also after looking into all these materials while sanctioning the scheme as required u/s 18(3), is of the opinion that this land is required for a public purpose. The decision by the Board and the Government, since supported by materials and evidence available on record, I find no reason to interfere with the said decision of the Government in issuing a final notification u/s 19(1) of the Act.

14. In the instant case the preliminary notifications are from the year 1987 and onwards. Whereas, we are in the year 2002. If the requirement of land for the public purpose were to be interfered with after more than 10 years, that too in the third round of litigation, it would result in coming in the way of public good.

15. Therefore, I find no substance in any one of the contentions raised by the petitioners in these writ petitions.

16. Learned Counsel appearing for the petitioners submits that the Government has issued an order exempting the garden land and nursery from acquisition and therefore, the acquisition of some of the lands which are garden lands by the

Board is illegal. The development and implementation of the scheme are governed by the BDA Act. If the garden land and nursery are not to be acquired, that is no reasons to include these lands in the preliminary notification. Assuming the said lands are included in the preliminary notification, and the said lands were not required for public purpose, the same could have been omitted in the final notification. When once the lands are notified as required for public purpose, there is no reason to quash the notification in respect of those lands as the Government has the power to acquire any land provided it is required for public purpose. The Government Order issued in exercise of executive power shall yield to the sovereign power of the State to acquire any land for public purpose. Therefore, there is no substance in the argument of the learned Counsel for the petitioners.

17. Sri D.L.N. Rao, learned Counsel appearing for some of the petitioners submits that most of the lands, which were acquired by the BDA for the execution of the scheme have been given to Water Supply and Sewerage Board clearly shows that the lands are not required for execution or implementation of the scheme. If the BDA were to allot this land to the Water Supply and Sewerage Board contrary to the scheme, the said allotment may be bad. But this will not invalidate the very notifications. If the petitioners are of the opinion that allotment is bad, it is still open for them to challenge the said allotment. Further, time and again, this Court and the Supreme Court have held that, even though the acquisition of land is for a particular purpose and ultimately after acquisition if that purpose has to come to an end, it is still open for the authorities to utilise the said land for any other public purpose.

18. Since all these writ petitions are disposed of on merits, no order is necessary on the applications if any filed in these writ petitions. Accordingly, the applications filed in these writ petitions, which are pending consideration, are disposed of.

19. For the reasons stated above, I pass the following:

ORDER

These writ petitions are dismissed. Rule is discharge.