

(2000) 11 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 25795 of 2000 (LA-RES)

D.V. Lakshmana Rao

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3 (1), 3 (7), 5
Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4), 30
Land Acquisition Act, 1894 — Section 11 A

Citation : (2001) ILR (Kar) 2689 : (2001) 4 KarLJ 185 : (2001) 1 KCCR 325

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri M.S. Gopal, for the Appellant; Sri Ashok N. Naik, High Court Government Pleader and Sri Ashok B. Hinchigeri, for the Respondent

Judgement

R.V. Raveendran, J.—Petitioner claims to be the owner of the following lands situated in Udayagiri and Bhuvanahalli Villages, Devanahalli Taluk, Bangalore Rural District.-

Sy. No.

Extent A.G.

Village

Sy. No. 1

9.33

Udayagiri

Sy. No. 2

5.33

Udayagiri

Sy. No. 3

4.39

Udayagiri

Sy. No. 4

6-08

Udayagiri

Sy. No. 5

7.03

Udayagiri

Sy. No. 6

6.11

Udayagiri

Sy. No. 76

5.12

Udayagiri

Sy. No. 40

7.04

Bhuvanahalli

52A.23G

2. According to petitioner, the said lands along with the surrounding land were declared as an industrial area u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 ("KIAD Act" for short). Thereafter, the State Government issued a preliminary notification dated 7-7-1994 (gazetted on 7-7-1994) u/s 28(1) of the KIAD Act giving notice of its intention to acquire such lands, as they were required for the purpose of an industrial establishment by the Karnataka Industrial Areas Development Board ("Board" for short). In pursuance of it, a show-cause notice dated 6-1-1995 was issued to the petitioner u/s 28(2) of the KIAD Act fixing the hearing on 23-2-1995 and calling upon him to show cause why the said lands should not be acquired. The petitioner filed objections dated 21-2-1995. After enquiry and appropriate orders u/s 28(3), a final declaration dated 8-8-1996 (gazetted on 8-8-1996) was made u/s 28(4) of the KIAD Act stating that the State Government was satisfied that the lands stated therein should be acquired for the purpose specified in the Notification u/s 28(1). This was followed by a notice dated 28-8-1996 issued u/s 28(6) of the KIAD Act by the 4th respondent calling upon the petitioner to deliver possession of the

acquired lands.

3. Petitioner claims that he continues in possession of the acquired lands. Petitioner claims that no award has been made even though nearly four years have elapsed after the final notification. The petitioner has therefore filed this petition on 24-7-2000 for a declaration that the entire acquisition proceedings relating to his aforesaid lands have lapsed on account of no award being made on or before 8-8-1998, that is before the expiry of two years from the date of final declaration dated 8-8-1996. He has also sought a consequential direction to respondents 1 to 4 not to proceed with or take any step in pursuance of the notification dated 7-7-1994 and final declaration dated 8-8-1996.

4. The following two contentions are urged by the petitioner in support of the petition.-

(i) That no hearing was given as required by Section 28(3) of the KIAD Act and therefore the final declaration u/s 28(4) (that is final Notification dated 8-8-1996) is vitiated and is liable to be set aside.

(ii) Section 11-A of the Land Acquisition Act, 1894 ("LA Act" for short) provides that where the award is not made within two years from the date of publication of the final declaration, the entire proceedings for the acquisition of the land shall lapse. Having regard to Section 30 of the KIAD Act, the provisions of Section 11-A of LA Act apply to acquisitions under KIAD Act. As no award was made in regard to the petitioner's lands within two years from the date of the final declaration dated 8-8-1996, that is on or before 8-8-1998 (or even thereafter), the entire acquisition proceedings have lapsed.

5. The respondents contend that due hearing was given as required u/s 28(3). They also contend that Section 11-A of LA Act is inapplicable to acquisitions under KIAD Act; that they are making necessary arrangements for an early award; and that therefore there is no merit in this petition. In view of the above, the following points arise for consideration.-

(i) Whether petitioner was given adequate opportunity of hearing before reaching a decision that the lands are required for establishing an industrial layout by the Board.

(ii) Whether Section 11-A of LA Act applies to acquisition under KIAD Act.

(in) If Section 11-A of LA Act is not applicable, whether the petitioner is entitled to any other relief.

Re: Point (i).-

6. The petitioner does not dispute that after publication of the preliminary notification dated 7-7-1994, a show-cause notice dated 6-1-1995, as required u/s 28(2) of the KIAD Act was served on him. The said notice fixed the date of hearing as 23-2-1995 at 11 a.m. and called upon the petitioner to show cause why the lands should not be acquired. In response to the said notice, the

petitioner filed his detailed objections on 21-2-1995 itself. The original file relating to the acquisition proceedings made available by the learned Counsel for the Board shows that the case was called before the Special Land Acquisition Officer on 23-2-1995; that, on that date the petitioner was absent and as he had already made a request for time, the matter was adjourned to 17-3-1995; that however, the matter was subsequently advanced to 6-3-1995 at the request of the petitioner; that on 6-3-1995, the petitioner was heard and a brief note of the submissions made by the petitioner was recorded in the order sheet and the petitioner signed the order sheet; and that thereafter, the Special Land Acquisition Officer, as a delegate of the State Government, in exercise of the power u/s 28(3) passed an order that the lands of petitioner be acquired. It is thus seen that there is no substance in the petitioner's contention that he was not heard as required u/s 28(3) before passing the order u/s 28(3) of the Act. Thus, there is no merit in the first contention and it is rejected.

Re: Point (ii).-

7. The second contention is based on the decisions of the Supreme Court in *Mariyappa and Others Vs. State of Karnataka and Others*, wherein it is held that Section 11-A of LA Act was applicable to acquisitions under the Karnataka Acquisition of Land for House Sites Act, 1972 ("House Sites Act" for short). Section 5 of the House Sites Act provides that the provisions of the LA Act, as amended by Land Acquisition (Karnataka Extension and Amendment) Act, 1961, shall mutatis mutandis, apply in respect of enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of the amount and the payment of amount in respect of lands acquired under the House Sites Act. Learned Counsel for the petitioner contended that Section 5 of the House Sites Act is similar to Section 30 of the KIAD Act. It is also pointed out that sub-sections (1) to (7) of Section 3 of the House Sites Act are similar to sub-sections (1) to (7) of Section 28 of the KIAD Act and in particular, both Section 3(5) of the House Sites Act and Section 28(5) of the KIAD Act provide that on publication of the final declaration in the Official Gazette, the land shall vest absolutely in the State Government, free from all encumbrances. It is therefore contended that the law laid down by the Supreme Court in *Mariyappa's* case, *supra*, with reference to House Sites Act will apply to acquisitions under KIAD Act and therefore Section 11-A of the LA Act should be read into KIAD Act, as was done by Supreme Court in the case of House Sites Act.

8. On the other hand, learned Counsel for KIADB contended that the decision in *Mariyappa's* case, *supra*, is of no assistance for the following reasons.-

(a) *Mariyappa's* case, *supra*, related to House Sites Act and not KIAD Act. While House Sites Act is in *peri materia* with Land Acquisition Act insofar as it did not deal with any subject other than land acquisition, KIAD Act was not an enactment in *pari materia*, as it deals not only with acquisition of land but several other subjects. Therefore a decision rendered with reference to House Sites Act cannot be applied to KIAD Act.

(b) In Mariyappa's case, supra, the effect of the provision for vesting of absolute title on publication of final declaration (even before taking possession) was not considered. While the decision in Mariyappa's case, supra, is a binding law insofar as it lays down that LA Act with subsequent amendments should be read into the provisions of House Sites Act, the further decision that Section 11-A of LA Act should be read into House Sites Act is contrary to earlier decisions of the Supreme Court which hold that Section 11-A will not apply where the land has already vested in the Government. The decision in Mariyappa's case, supra, was rendered by two Judges of the Supreme Court; and it is contrary to two earlier decisions of the Supreme Court rendered by larger Benches in Satendra Prasad Jain and Others Vs. State of U.P. and Others, and Pratap and Others Vs. State of Rajasthan and Others, . These decisions have held that Section 11-A will have no application where the land vests in the Government absolutely in pursuance of an acquisition, and where there is no provision in the Act for divesting the title which has so vested in the Government. As Section 28(5) of KIAD Act provides for such absolute vesting of title in the Government, on publication of the final declaration u/s 28(4) of KIAD Act, Section 11-A of LA Act has no application.

9. In Satendra Prasad's case, supra, the Supreme Court observed as follows.-

"14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land-owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner".

(emphasis supplied)

10. The decision in Satendra Prasad's case, supra, was followed in Awadh Bihari Yadav and Others Vs. State of Bihar and Others, , U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, and. Allahabad Development Authority Vs. Nasiruzzaman and Others, . It was reiterated that Section 11-A does not apply to cases where the land was vested in the State. The decision in Satendra Prasad's case, supra, and the three other decisions examined the applicability of Section 11-A with reference to

Section 17 of LA Act which provides for vesting of the land in the Government on taking possession, even before award is made.

11. The decision in Pratap's case, *supra*, related to Section 52 of the Rajasthan Urban Improvement Act, 1959. Section 52(1) of the Rajasthan Act corresponds to Section 28(4) of the KIAD Act and Section 52(4), (5) and (6) of the Rajasthan Act corresponds to Section 28(5), (6) and (7) of KIAD Act. What is relevant to note is that Section 52(4) of the Rajasthan Act provided that where a final notice u/s 52(1) is published in the Official Gazette the land shall, on or from the date of publication absolutely vest in the State Government free from all encumbrances and sub-sections (5) and (6) provide for the State Government taking possession subsequent to such vesting. The same is the position u/s 28(5), (6) and (7) of the KIAD Act. Dealing with Section 52(4) of the Rajasthan Act, the Supreme Court held as follows.-

"The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, 1894. Just as publication of a notification u/s 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52(4), similarly when possession of land is taken u/s 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 11-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In Satendra Prasad Jain's case, *supra*, this Court held that once possession had been taken u/s 17(1) and the land vested in the Government, then the Government could not withdraw from acquisition u/s 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in P. Chinnanna and Others Vs. State of A.P. and Others, , and Awadh Bihari Yadva's case, *supra*. In view of the aforesaid ratio it follows that the provisions of Section 11-A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end".

(emphasis supplied)

12. It is thus clear that Section 11-A is inapplicable where the land has already vested absolutely in the State Government free from all encumbrances and where the enactment which provides for such vesting, does not contain any provisions for reversion of the vested land to the owner. Under the Land Acquisition Act, except in cases covered by Section 17(1) and (2), vesting follows only after passing of award and taking of possession. But under KIAD Act and the Rajasthan Act (considered in Pratap's case, *supra*), the land vests absolutely in the State Government on publication of the final declaration, and neither passing

of award, nor taking of possession is necessary or is a condition precedent for vesting, in the State Government. In Pratap's case, supra, the Supreme Court held that Section 11-A of LA Act will not apply once the land vests in the State Government, absolutely, free from encumbrances, even if award is not passed or possession is not taken, and by applying the principle laid down in Satendra Prasad Jain's case, supra, which dealt with Section 17 of the LA Act, it held that Section 11-A will not apply to cases where the land vested on publication of declaration, even before possession was taken. Section 28(5) of KIAD Act being similar or identical to Section 52(4) of the Rajasthan Act, it has to be held that insofar as KIAD Act is concerned, the provisions of Section 11-A will be inapplicable, as the land vests in the State Government on publication of Final Declaration u/s 28(4) of the Act.

13. The learned Counsel for the petitioner contended that the decision in Mariyappa's case, supra, being a later decision, it should be followed. It is pointed out that even Section 3(5) of the House Sites Act provided for absolute vesting of the land in the State Government free from encumbrances on publication of the declaration u/s 3(4), even before taking possession and that Section 3(5) was therefore identical to Section 28(5) of the KIAD Act; that as Supreme Court has held in Mariyappa's case, supra, that Section 11-A will be applicable to acquisition to House Sites Act, it follows that Section 11-A is applicable to acquisitions under KIAD Act also, following Mariyappa's case, supra. It was contended that the decisions rendered by the Supreme Court with reference to Section 17 of the LA Act and 52(4) of the Rajasthan Act should be ignored as the decision in Mariyappa's case, supra, is a subsequent decision.

14. It is now well-settled that if there are two conflicting judgments of the Supreme Court, of Benches with equal number of Judges, then the latter will prevail over the earlier. But where the earlier judgment is of a larger Bench and the latter judgment is of a smaller Bench, then the decision of the larger Bench will be binding. In *The State of U.P. Vs. Ram Chandra Trivedi*, , the Supreme Court held that where the High Court finds a conflict between the views expressed by a larger Bench and a smaller Bench, the proper course for the High Court is to find out the ratio decidendi of the decision of the larger Bench and follow the same in preference to the opinion expressed by the smaller Bench. Hence I am bound to follow the decisions in Satendra Prasad Jain's case, supra and Pratap's case, supra, which are of larger Benches, instead of following the decision in Mariyappa's case, supra, which is of a smaller Bench.

15. There is yet another reason for following the decision in Satendra Prasad Jain's and Pratap's case, supra. Those decisions have specifically considered the effect of provision for vesting, on applicability of Section 11-A. On the other hand the smaller bench in Mariyappa did not consider the effect of provision for vesting, while holding that Section 11-A was applicable to acquisition under House Sites Act. The decision in Mariyappa's case, supra, was rendered by considering the question whether LA Act, 1894 (as amended by Karnataka

Extension Act, 1961) as it stood in 1972 when the House Sites Act was enacted would apply, or whether LA Act, 1894 as subsequently amended (including the amendment in 1894 introducing Section 11-A) would, apply, in regard to acquisitions under the House Sites Act. The Supreme Court on an analysis of the provisions of the two Acts, found that there is no detailed machinery whatsoever in the House Sites Act and therefore the said Act cannot be treated as a self-contained or complete Code; the House Sites Act and LA Act are supplemental to each other, as unless the LA Act supplements the House Sites Act, the House Sites Act cannot function; and the two Acts are in pari materia because the House Sites Act does not deal with any other subject but deals with the same subject of land acquisition, which otherwise would have fallen under the ambit of LA Act. Consequently, following the principles laid down in *The State of Madhya Pradesh Vs. M.V. Narasimhan*, the Supreme Court held that the provisions of LA Act as amended from time to time (including the 1984 amendment inserting Section 11-A) will have to be read into the House Sites Act. As Section 5 of House Sites Act makes LA Act applicable mutatis mutandis in respect of enquiry and award, reference to Court, appointment and payment in respect of lands acquired it was held that Section 11-A should also be read into the House Sites Act. But *Mariyappa's case*, supra, did not consider the point that was specifically considered in the earlier decisions (in *Satendra Prasad and Pratap*), of Larger Benches, that is, effect of provision for vesting on the applicability of Section 11-A. Therefore, having regard to the decisions in *Satendra Jain's case*, supra and *Pratap's case*, supra, it has to be held that the provisions of Section 11-A are not applicable to the acquisitions under KIAD Act. The decision in *Mariyappa's case*, supra, which is contrary to the decisions of earlier larger Benches insofar as applicability of Section 11-A, has to be held as applicable only to the enactment considered therein, that is acquisitions under the House Sites Act.

16. It has to be clarified that even if the decisions in *Satendra Prasad Jain's case*, supra and *Pratap's case*, supra, had been of Co-ordinate Benches and not of larger Benches, those decisions and not the decision in *Mariyappa's case*, supra, will apply. This is so in view of another well-recognized principle relating to precedents, which is an exception to the normal rule that when there is divergence between decisions of two co-ordinate Benches of the Supreme Court, the latter decision should prevail. The exception arises where the first decision specifically considers a particular question and lays down the principles relating to the question; and the subsequent decision, without noticing the earlier decision or the principles laid down therein, and without examining the question, renders an assumptive decision. In such a situation, the earlier decision which considered the question and lays down the principle will apply. This principle may be elaborated with reference to the situation on hand. The decision in *Pratap's case*, supra, specifically considered the applicability of a specific provision of law (Section 11-A of LA Act) to acquisitions under an enactment (*Rajasthan Urban Improvement Act*) in a given set of circumstances (that is, where the acquired land had already vested in the State Government). The latter decision in

Mariyappa's case, supra, also considered the applicability of that provision (Section 11-A of LA Act) to acquisitions under another enactment (House Sites Act) in the same set of circumstances (where the acquired land had already vested in the State Government). But the second decision neither noticed the earlier decision, nor the principles laid down therein; nor did it examine the question as to whether Section 11-A would apply, where the land had already vested in the State Government u/s 3(5) of House Sites Act, but held that provision (Section 11-A of LA Act) would apply as the provisions of LA Act are made applicable by virtue of Section 5 of the House Sites Act. When the same question, that is, whether Section 11-A applied to acquisitions under KIAD Act (or any other Act which provides for absolute vesting before passing of the award, without containing any provision for reversion to the land-owner), it is necessary to follow the earlier decisions in Satendra Prasad Jain's case, supra and Pratap's case, supra and hold that Section 11-A does not apply. But as for as the acquisition under House Sites Act is concerned, until otherwise held by the Supreme Court or the House Sites Act is modified, it has to be held that Section 11-A is applicable in view of the decision in Mariyappa's case.

17. In view of the above discussion, it is held that Section 11-A of the LA Act does not apply to acquisitions under KIAD Act.

Re. Point (iii).-

18. Even if Section 11-A of LA Act is not applicable, it does not follow that the passing of the award can be unduly delayed. In Ram Chand and Others Vs. Union of India (UOI) and Others, , the Supreme Court held that even when Section 11-A is not applicable, if there is inordinate delay in making the award and such delay is not satisfactorily explained, the Court may either quash the acquisition proceedings or postpone the relevant date for fixing market value to a suitable later date or award some additional compensation.

19. The learned Counsel for the Board stated that most of the landowners have already entered into agreements with KIADB u/s 29(2) of the KIAD Act and only in a few cases like that of petition, there is no agreement and that action is being taken in such cases for passing the award expeditiously. He submitted that if the acquisition proceedings are quashed on the ground of delay in passing the award, public interest will suffer as the lands in question are part of a huge area acquired for international airport project. But the delay is not on account of any act or omission attributable to the petitioner.

20. Having regard to the facts and circumstances this is not a fit case for quashing the acquisition on the ground of delay in passing the award or postponing the relevant date for fixation of market value of the acquired lands. Interests of justice would be served if the fourth respondent is directed to pass an award in the case of the petitioner's lands, within three months from the date of receipt of this order. As possession is not yet taken it will be appropriate if the petitioner is awarded an additional amount of compensation for the delay in

passing the award to be calculated at the rate of 6% p.a. from 8-8-1998 (that is from the date of expiry of two years from the date of final declaration) to date of making the award. It is made clear that this additional amount has to be granted under a separate head, on account of unexplained delay in making the award in the case of petitioner, and is not to be considered as an increase in market value for purpose of Section 28-A of LA Act.

21. In view of the above the prayer for declaration that the acquisition proceedings have lapsed u/s 11-A of LA Act is rejected. The petition is disposed of subject to the observations in the preceding para in-regard to the passing of the award within three months of receipt of the order with additional relief. Parties to bear their respective costs.