

(1996) 06 KAR CK 0059
In the Karnataka High Court
Case No : W.Ps. 29632 of 1995 and Ors.

Dyamappa B. Talawar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-06-1996

Acts Referred:

Karnataka Housing Board Act, 1962 — Section 18, 33 (2)
Karnataka Urban Development Authorities Act, 1987 — Section 70
Land Acquisition Act, 1894 — Section 4 (1), 6 (1)

Citation : (1997) ILR (Kar) 480

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sriyuths S.P. Kulkarni, N.S. Deshpande, Jayakumar S. Patil, D.C. Jagadish, H. Rangavittalachar and R.U. Goulary, for the Appellant; R.S. Hegde and H.B. Narayan for KHB and K.P. Ashok Kumar, HCGP for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.—In these petitions the petitioners have challenged notifications dated 20.3.89 and 9.4.1990 issued u/s 4(1) and 6(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act 1894").

2. The lands belonging to the petitioners in these Writ Petitions were proposed for acquisition by notification issued u/s 4(1) of the Act, 1894, The Deputy Commissioner after holding enquiry submitted the Report as contemplated u/s 5A of the Act 1994 to the Government. On the basis of the said Report the Government issued a final notification dated 9.4.1990 u/s 6(1) of the Act, 1894. The said notifications are called in question in these Writ Petitions by the petitioners.

3. This Court on an earlier occasion allowed some of the Writ Petitions holding that the notification issued u/s 6(1) of the Act is beyond the period of one year from the date of preliminary notification issued u/s 4(1) of the Act, 1894.

Aggrieved by the said order the Housing Board preferred Writ appeals to the Divisions Bench of this Court. The Division Bench set aside the order of the Learned Single Judge and held that the final notification issued u/s 6(1) is within the period specified in proviso to Section 6(1) and remitted the matter to the Single Judge to consider other grounds urged by the petitioners. Therefore, these petitions are now listed for hearing to consider the grounds other than the ground one decided earlier in the Writ Petitions.

4. Sri. Jayakumar S. Patil, the Learned Counsel appearing for some of the petitioners in these petitions contended that in view of Section 70 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as the Act 1987), the State Government has no power to acquire the land for the Karnataka Housing Board, under the provisions of the Act 1894, since it is one of functions of the Authority constituted under Act 1987 as the proposed Lands come within the area of Urban agglomeration of Hubli and Dharwar City. Further, it is contended by Sri. Jayakumar S. Patil that Section 70 of the Act 1987 is an absolute bar for taking up any housing scheme by the Housing Board. In reply to the said contention the Government Advocate and Sri Hegde submitted that Section 70 of the Act 1987 cannot be a bar to initiate proceedings under the land acquisition Act for acquisition of land for the public purpose in order to implement the scheme either framed by the Housing Board or to do any other work entrusted to it. In order to consider the above said contention it would be better to refer to some of the provisions of the Karnataka Housing Board Act 1962 (hereinafter referred to as the Act 1962), Act 1962 has been enacted for the purpose of framing schemes and to carryout such works as are necessary for the purpose of dealing with and specifying the need of housing accommodation. The object of enacting Act 1987 is to provide for the establishment of Urban Development Authorities for the planned development of major and important urban areas in the State and the areas adjacent thereto and for matters connected therewith. Section 70 of the Act 1987 reads as follows:

The Housing Board established under the Karnataka Housing Board Act, 1962 (Karnataka Act 10 of 1963) shall not undertake any Housing Scheme in any area within the urban area except in conformity with the layout plan of the Urban Development Authority; Provided that any Housing Scheme undertaken by the Karnataka Housing Board before the commencement of this Act shall be executed by the Board in accordance with the said scheme.

The reading of the above said section shows that there is no prohibition for acquisition of land under the provisions of the Act 1894 for the execution of the developmental scheme. Section 70 of the Act 97 prohibits implementation of any scheme by the Housing Board, if the scheme is not in conformity with the layout plan of the urban development authority. Section 70 of the Act 87 only prohibits execution of the scheme if it is not in conformity with the layout plan of the urban development Authority and not the acquisition of land by the Government for the Housing Board.

5. Section 18 of the Act 1962 provides that notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely: (a) the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme. Section 33(2) of the Act, 1962 reads as follows:

The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme (or land development scheme) in the manner provided in the Land Acquisition Act, 1894, as modified by this Act and the acquisition of any land or any interest therein for the purposes of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894.

Reading of Section 18 and that of Section 33(2) of the Act 1962, makes it clear that notwithstanding anything contained in any other law, the Board may acquire a land by purchase, exchange or otherwise for the purpose of executing the scheme framed by it. Section 33(2) provides for the Board, to take steps for compulsory acquisition of any land under the provisions of the Land Acquisition Act and any such acquisition is deemed to be for a public purpose within the meaning of the Land Acquisition Act, 1894. Section 32 of the Act 1962 reads as follows:

(1) The provisions of Sections 18 to 24 (both inclusive) shall not be applicable to any (housing scheme, land development scheme or labour housing scheme) entrusted to the Board by the State Government except to such extent and subject to such modifications as may be specified in any general or special order made by the State Government.

Under the above mentioned provision, the Housing Board is required to do the work entrusted to it by the Government in addition to the work of implementation of the scheme framed by it.

6. Next, it was contended by Sri. Jayakumar S. Patil that without there being a scheme framed by Housing Board the Government shall not acquire any land for the Housing Board. There is no plea in any one of the petitions raising this contention. In the absence of such a plea it is not open to the petitioners to contend that this acquisition of land is not for implementation of scheme as on the ground no scheme is framed by the Board. However, this contention also is liable to be rejected in view of the decision cited by Mr. Hegde in the case of State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., . The Supreme Court in this decision considered Sections 18, 32 and 33(2) of the Act 1962 and has held as follows:

These provisions make it abundantly clear that the duty of the Housing Board is not merely the execution of the housing or improvement schemes prepared and published by it under the Act but extends to executing other schemes as well as are made over to it or agreed to be undertaken by it. Now, when Section 35(2) speaks of transfer to the Board the execution of any housing or improvement

scheme not provided for by this Act, it certainly cannot mean a scheme prepared in accordance with the provisions of the Housing Board Act. Moreover, while transferring the scheme to the Board, the Government is empowered to impose such conditions as they may think fit to impose. Such terms and conditions are not specified in the Act but lies within the discretion of the Government. Similarly, when Sub-section (3) of Section 35 speaks of a scheme undertaken by a local authority to be made over to the Housing Board for execution, it cannot again mean a housing or improvement scheme prepared in accordance with the Housing Board Act. Here again, the taking over the scheme by the Housing Board is subject to such terms and conditions as may be agreed upon by both. Section 36 indeed discloses that what is entrusted to the Housing Board is the job of clearance or improvement of any slum area. The Government while directing the Board to undertake the clearance or improvement of a particular area can also direct the Board to frame and execute "such housing or improvement scheme under this act as the Government may specify" and the Board is obliged to execute such scheme as if such scheme is prepared by the Act.

For all the above reasons, we find it difficult to read the holding in Mohammed Yousuf as saving that in no event can land be acquired for the purpose of the Act/ Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56. The said limitation applies only where the land is sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter-VII of the Tamil Nadu Housing Board Act. In other words, unless the notification u/s 4 of the Land Acquisition Act expressly states that land proposed to be acquired is required for executing a housing or improvement scheme (i.e., a final and effective scheme) framed by the Housing Board under the provisions of the Tamil Nadu Housing Board Act, the principle and ratio of Mohammed Yousuf is not attracted. Mere statement in the notification that land is required for the purpose of the Housing Board would not by itself attract the said principle and ratio.

In view of the above said decision by the Supreme Court there is no substance in the contention of the petitioners that the Government has no power to acquire land for Housing Board on the ground that no scheme is framed by it under the provisions of Act 1962. The lands of the petitioners are acquired is for the purpose of executing the World Bank Scheme. Therefore, it is for a public purpose. The contention that the State shall not acquire the land under the provision of 1894 Act, as it is one of the functions of the Urban Development Authority under the Act 1987 is also liable to be rejected for the following reasons. The Act 1894 provides for acquisition of land for the public purpose. Section 33(2) of the Act 1962 provides that any acquisition of land for the execution of scheme framed by the Board is deemed to be for public purpose. The Act, 1987 is not a bar for the acquisition of land under the provisions of the Act 1894 if the acquisition is for the public purpose. Therefore I am of the view that even though an Authority is constituted under the Act 1987 for the purpose of planned development of major and important urban areas in the State, it is

open to the State to acquire land under the Act 1894 for the purpose of execution of the scheme to provide housing accommodation.

7. Sri Jaykumar S Patil next contended that in the C.D.P., land in survey No. 65 is earmarked for Government buildings, post office, KSRTC. workshop etc. As these lands are reserved for a particular purpose in the CDP., the said land shall not be acquired for the residential purpose without getting the land use changed under the provisions of the Karnataka Country and Town Planning Act. The said contention also is liable to be rejected in view of the decision of the Supreme Court in the case of S.S. Darshan Vs. State of Karnataka and others, it is held as follows:

"The last submission of Learned Counsel for the appellant is that the user of acquired land shown in the master plan being different, there cannot be a conversion of the user except in accordance with the provisions for making the change in the land use. It is not a case of change of user by the owner of the land but one of acquisition by the land but one of acquisition by the State under the provisions of the Land Acquisition Act, 1894. This argument also had no merit."

In the case on hand, the land are acquired by the State under the provision of the Act 1894. Therefore following the said decision, I hold that the permission to use the land for the purpose other than the purpose for which it is ear-marked in the C.D.P. is not required since this acquisition is by the State for a public purpose.

8. It is in the submission of Sri. Jayakumar S. Patil that the land measuring 6A 25 G in Sy.No. 65 was proposed to be acquired in the notification issued u/s 4(1) of the Land Acquisition Act, whereas what has been acquired is only the land measuring 4 acres 35 guntas without specifying by giving separate boundaries. There is no substance in this contention because the boundaries given in the final notification is not the same as that of the boundaries given in 4(1) notification. Further, it is also stated in the 6(1) notification that there is a map prepared showing the exact location of the land acquired. When such being the case that even assuming that there is any mistake in giving the boundaries it will not invalidate the acquisition as the complaint is so trivial.

9. Mr. Kulkarni submitted that some of the lands were given up in the final notification whereas the petitioners land has been acquired without any reason whatsoever. The suitability or otherwise of the lands and the requirement of the land is for the State Government to decide while issuing the notification u/s 6(1) of the Act 1894. In the notification issued u/s 6(1) of the Act "it is stated that the Government is satisfied regarding the acquisition of the land for the purpose of Housing Board both regarding suitability and that of the extent. The said finding cannot be interfered by this Court under Article 226 of the Constitution of India, unless it is shown to be malafide or otherwise illegal.

10. W.P.No. 13076/90 is the Writ Petition filed by the Society and that of the

owner of the land. Apart from the grounds urged by Sri. Jayakumar S. Patil, Sri. Goulay appearing for the petitioner submitted that this land is agreed to be sold by the second petitioner in favour of the first petitioner, and the said agreement is with the permission granted by the Authority constituted under the Urban Ceiling Authority. Therefore, it is submitted that when the said Authority permitted the sale of land, the State ought not to have resorted to acquire the land of petitioner. The request of the petitioners to drop the proceedings solely on the ground that the 2nd petitioner agreed to sell the land in favour of the petitioner cannot be considered as it is no ground to drop the proceedings. Further, there is no prohibition of the Government to acquire the land even though the 2nd petitioner is permitted to sell the land in favour of the 1st petitioner. The Learned Advocate appearing for the Housing Board contended that the land owner in this Writ Petition has made a claim and therefore he cannot question or challenge the validity of the notification issued under the Land Acquisition Act in view of the Division Bench Judgment of this Court. The Division Bench of this Court has held that the land owner cannot maintain a Writ Petition if he, has filed a claim petition claiming compensation in respect of the land acquired. Following the said Judgment I hold that Writ Petition No. 1307/90 challenging the acquisition under Article 226 of the Constitution is liable to be rejected.

11. The petitioner in WP. 18952/90 has also raised the contention that as he is permitted to sell the property under the Urban Ceiling Authorities Act, the Acquisition to the extent of the property belonging to him is liable to be quashed. As stated earlier, in WP. 13076/90 there is no substance in this contention. Accordingly it is rejected.

12. WP. 14703/90 has been filed challenging the acquisition on the same grounds though the date of notification is different. Since the grounds urged in this petition are identical to the grounds raised in the Writ Petitions referred to above, this Writ Petition is also liable to be rejected.

For the reasons stated above, without issuing rule these Writ Petitions are rejected.