

(2010) 03 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 926 to 935 of 2010

Gregory Patrao and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (2), 28 (4)

Citation : (2010) ILR (Kar) 3980

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : T.S. Amar Kumar, for Lawyers Inc, for the Appellant; M. Keshava Reddy, AGA for Respondent No. 1, Basavaraj V. Sabarad, for Respondent Nos. 2 and 3, A.G. Holla, for P.D. Vishwanath, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The subject matter of these writ petitions are lands bearing Sy. Nos. 58/1 measuring 1 acre 30 cents, 92/1 measuring 1 acre 18 cents and 92/2 measuring 42 cents of Kalavaru village, Mangalore Taluk, Dakshina Kannada District. Thomas Patrao, the father of Petitioner Nos. 1, 3 to 10 and husband of Petitioner No. 2 was the owner of the said lands. The 2nd Respondent had issued a Notification at Annexure "B" dated 2.12.1996 u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (for short "the Act") proposing to acquire the lands bearing Sy. Nos. 58/1 measuring 3 acres 50 cents, 92/1 measuring 51 cents, 92/2 measuring 30 cents and 58/3 measuring 7 cents of Kalavaru village, Mangalore Taluk, Dakshina Kannada District along with certain other lands in the same village. Notice was issued to Thomas Patrao u/s 28(2) of the Act. Thomas Patrao had filed objections opposing the proposal for acquisition of the lands. The objections were over ruled and the declaration u/s 28(4) was issued on 7.12.1998. Thereafter, the 2nd Respondent issued an endorsement as per Annexure-D dated 12.7.2000 informing him that a resolution has been passed dropping the lands from acquisition. Along with the said endorsement, a

copy of the resolution passed by the Karnataka Industrial Area Development Board (for short "the Board") dated 18.5.2000 resolving to re-grant the land in his favour was also enclosed.

2. Thomas Patrao challenged the said endorsement and the resolution in W.P. No. 9146/2001. He died on 18.10.2004. Therefore, his son, the 1st Petitioner herein was brought on record as his legal representative. The said writ petition was disposed of on 27.6.2005 holding that though possession of the lands was not taken, title vested with the State Government absolutely on publication of the declaration dated 7.12.1998. The land owner is not entitled for compensation on publication of declaration. He is entitled for compensation only after taking possession of the land as provided under Sections 28(6) and (7) of the Act. The 1st Petitioner filed a writ appeal challenging the said order in W.A. No. 3097/2005 and the same has been withdrawn on 4.11.2009.

3. The 2nd Respondent again issued a Notification u/s 28(1) of the Act as per Annexure "G" dated 3.3.2006 proposing to acquire large extent of lands in Permude and Kalavaru villages of Mangalore Taluk, Dakshina Kannada District for the purpose of the Act in furtherance of its objects. Sy. Nos. 58/1 measuring 4.80 acres, 92/1 measuring 1.69 acres, 92/2 measuring 0.72 acres (the subject matter of these writ petitions and W.P. No. 9146/2001) was also included in the said Notification. This was followed by a notice u/s 28(2) of the Act. The Petitioners filed objections to the notice opposing the acquisition. It is the case of the Petitioners that the 2nd Respondent has favourably considered the objections. Therefore, the aforesaid lands were not included in the final Notification at Annexure-H dated 18.12.2006. In respect of the subject matter of W.P. No. 9146/2001, the Petitioners received notices dated 24.8.2009 under Sections 9 and 10 of the LA Act. The Petitioners challenged the said notices before this Court in W.P. Nos. 35148-35157/2009. This Court has dismissed the said writ petitions on 9.3.2010 holding that in W.P. No. 9146/2001 disposed of on 27.6.2005, this Court has held that the lands were vested with the State Government on publication of the declaration dated 7.12.1998. The State Government has not withdrawn the lands from acquisition u/s 21 of the General Clauses Act. Therefore, they were justified in issuing notices under Sections 9 and 10 of the LA Act.

4. The subject matter of these writ petitions was also not included in the final Notification at Annexure "H"; dated 18.12.2006. However, the Petitioners again received notices dated 17.8.2009 as per Annexure "J" u/s 28(2) of the Act. The Petitioners filed objections to the said notices as per Annexure "K" dated 11.9.2009. The State Government has again issued final Notification at Annexure "P" dated 30.11.2009 in respect of the lands in question. They have also received notices under Sections 9 and 10 of the LA Act as per Annexure "N" dated 11.12.2009. It is contended that after considering their objections to the notices issued pursuant to the preliminary Notification at Annexure "G" dated 3.3.2006, the acquisition proceedings have been dropped. That is why the lands

have not been included in the final Notification at Annexure "FT" dated 18.12.2006. Therefore, they have filed these writ petitions seeking the following reliefs:

(a) Issue a Writ of Certiorari or any other writ, order or direction quashing the Notification dated 30.11.2009 issued Under Secretary 28(4) of the Act bearing No. CI 496 SPQ 2009, gazetted on the same day as per Annexure-P, in so far as the Petitioners are concerned;

(b) Declare the impugned Notification at Annexure-P as vitiated by malafides;

(c) Pass such other order/s as this Hon"ble Court deems fit to grant, in the interest of justice and equity.

5. Respondent Nos. 2 and 3 have filed their statement of objections contending that the Board proposed to acquire various extent of lands in Permude and Kalavaru villages of Mangalore Taluk, Dakshina Kannada District. The Notification u/s 28(1) of the Act dated 2.12.1996 was issued by the State Government for the purpose of the development of an industrial area. The said Notification included the lands, which are the subject matter of W.P. No. 9146/2001. After enquiry, the lands were ordered to be acquired and final Notification dated 7.12.1998 came to be issued. But, before the possession of the land was taken, it decided to give the lands back to the kathedars/owners. An endorsement dated 12.7.2000 was accordingly issued. Thomas Patrao challenged the said endorsement in W.P. No. 9146/2001 contending that his lands were acquired without payment of compensation. He had sought for quashing of the decision of the Board to drop the lands from acquisition. The writ petition was disposed of on 27.6.2005 sustaining the acquisition but reserving liberty to the State Government to issue suitable Notification u/s 21 of the General Clauses Act. The resolution of the Board to re-grant the land was quashed. The writ appeal challenging the said order in W.A. No. 3097/2009 was unconditionally withdrawn on 4.11.2009. The Board once again issued a Notification u/s 28(1) of the Act dated 6.3.2006 for acquisition of vast extent of lands at Permude and Kalavaru villages of Mangalore Taluk, Dakshina Kannada District. On publication of the Notification, notice was issued to the notified kathedars and anubhavadars. The Petitioners have filed objections to the notice on 7.4.2006. In the hearing conducted on 15.4.2006, the second Petitioner appeared for enquiry on behalf of all the Petitioners. The objections were over ruled. While doing so, the second Respondent has taken note of the fact that the lands are proposed for allotment to Oil and Natural Gas Commission and that they have evolved rehabilitation scheme for providing rehabilitation package to project displaced families. The second Respondent has also noted that appropriate compensation is payable for acquired lands. The lands in question are situated in the middle of the lands proposed for SEZ (Special Economic Zone). Thereafter, final Notification was issued u/s 28(4) of the Act dated 30.11.2009 (Annexure "P"). The final Notification dated 18.12.2006 was issued by the first Respondent in respect of other lands except Sy. Nos. 58/1, 92/1 and 92/2. Annexure "P" is the second

final Notification issued pursuant to the preliminary Notification dated 6.3.2006. They have denied that the lands in question have been dropped from acquisition.

6. The Respondent Nos. 4 and 5 have filed their statement of objections supporting the acquisition proceedings. They have contended that Mangalore SEZ Limited is a public limited company registered under the provisions of the Companies Act, 1956. Its main object is to establish and develop special economic zones, economic trading zones, trading zones and industrial estates and other infrastructural facilities and other objects as mentioned in the Memorandum of Association of the company. The Special Economic Zones Act, 2005, has enabled the Governments to establish special economic zones under the provisions of the Act. The Government of Karnataka, decided to form special economic zone at Mangalore and the necessary land was acquired through the machinery of the Karnataka Industrial Areas Development Board for the said purpose. The 4th Respondent was requested for acquisition of 4000 acres of land. The Board has already acquired about 2268 acres of land and possession was given to Mangalore Special Economic Zone Limited. About 260 acres out of the above land was acquired for Phase III Refinery Expansion Project of M/s Mangalore Refinery and Petrochemicals Limited (5th Respondent herein). The lands involved in the above petitions fall in the above 260 acres, which have been acquired for the purpose of Phase III Refinery Expansion Project of Mangalore Refinery and Petrochemicals Limited. The expansion of Project III is a super mega project of about Rs. 16,000/- crores triggering an investment of around Rs. 5000 crores to follow with a spin off benefit of about a total of 4000 direct and indirect employment in the State. The implementation of the project is under progress and the above litigation for the portion of the land will hamper the project causing huge loss to the 5th Respondent as well as to the Government exchequer. More than 100 other project displaced families on the said 260 acres have willingly handed over their land after accepting the package notified by the Government. Since the land involved in the above petitions are in the midst of the project, there is no way that the project can be implemented without the said lands.

7. I have heard Sri T.S. Amarkumar, Learned Counsel appearing for the Petitioners, Sri Keshava Reddy, Learned AGA appearing for the first Respondent, Sri Basavaraj V. Sabarad, Learned Counsel appearing for Respondent Nos. 2 and 3 and Sri A.G. Holla, Learned Senior Counsel appearing for Sri P.D. Vishwanath, Learned Counsel for Respondent Nos. 4 and 5.

8. Learned Counsel for the Petitioners submit that the lands in question were notified for acquisition as per Annexure "G" Notification dated 3.3.2006 u/s 28(1) of the Act. Thereafter, the second Respondent issued notice to the Petitioners u/s 28(2) of the Act. The Petitioners have filed objections to the said notice. Considering the objections, the second Respondent dropped the lands from acquisition. That is why the lands in question have not been included in the final Notification at Annexure "H" dated 18.12.2006. Again, the second

Respondent issued notice as per Annexure "J" u/s 28(2) of the Act to the Petitioners. The Petitioners have filed detailed objections to the said notice contending that the objections filed in response to the notice issued u/s 28(2) of the Act pursuant to Annexure "G" Notification dated 3.3.2006 have been favourably considered by the second I Respondent. That is how the lands in question have not been included in Annexure "H" Notification dated 18.12.2006. The Respondents cannot issue notice u/s 28(2) of the Act as per Annexure "J" without issuing a fresh preliminary Notification u/s 28(1) of the Act. Thus, the notice at Annexure "J" and the final Notification at Annexure "P" are invalid.

9. On the other hand, Learned Counsel appearing for Respondent Nos. 2 and 3 contends that in response to the notice issued u/s 28(2) of the Act pursuant to the preliminary Notification dated 3.3.2006 (Annexure "G"), the Petitioners have filed objections. The said objections have been over ruled by the second Respondent. The final Notification dated 18.12.2006 was issued without including the lands in question. There is no bar for the State Government to issue a second final Notification particularly when what is covered in the first final Notification is a different area than the one comprised in the second final Notification. Therefore, it was unnecessary for the second Respondent to again issue a notice u/s 28(2) of the Act as per Annexure "J". The final Notification at Annexure "P" is perfectly valid.

10. Sri A.G. Holla, Learned Senior Counsel appearing for Respondent Nos. 4 and 5 submits that the lands are acquired for the public purpose, namely, for Phase III Refinery Expansion Project of M/s Mangalore Refinery and Petrochemicals Limited, the 5th Respondent herein. The 4th Respondent has to provide 260 acres of land, which includes the lands in question. The lands in question are situated in the middle of the lands proposed for Special Economic Zone (for short "SEZ"). Even if there are certain irregularities in acquisition of the lands, having regard to the fact that they are meant for a public purpose, in the larger public interest the acquisition proceedings should not be interfered with.

11. Having regard to the contentions urged, the question for consideration is whether the final Notification at Annexure "P" is valid and sustainable in law?

12. It is not in dispute that the second Respondent had issued a Notification u/s 28(1) of the Act dated 3.3.2006 (Annexure "G") proposing to acquire vast extent of lands at Perumude and Kalavaru villages of Mangalore Taluk, Dakshina Kannada District including the lands in question. Thereafter, notices have been issued to the Petitioners u/s 28(2) of the Act. The Petitioners have filed objections to the notices on 7.4.2006. The second Petitioner had appeared for the enquiry on behalf of the Petitioners before the second Respondent. It is clear from the materials on record that the said objections have been over ruled by the second Respondent. While doing so, the second Respondent has taken note of the fact that the lands are proposed for allotment to ONGC and that they have evolved rehabilitation scheme for providing rehabilitation package to project displaced persons. He has further noted that appropriate compensation is

payable for the acquired lands. The lands are situated in the middle of the lands proposed for SEZ. It is true that in the first final Notification at Annexure "H" dated 18.12.2006, the lands in question were not included. However, a second final Notification was issued u/s 28(4) of the Act dated 30.11.2009 (Annexure "P") in respect of the said lands. The Petitioners have not produced any materials to show that the second Respondent has dropped the lands from acquisition after considering their objections. Merely because the lands in question were not included in the first final Notification at Annexure "H" dated 18.12.2006, it does not mean that the lands have been dropped from acquisition. It was not necessary for the second Respondent to again issue a notice u/s 28(2) of the Act when the objections filed to a similar notice issued earlier has been over ruled. There is no bar for the State Government to issue a second declaration in respect of a different area than the one comprised in the first declaration.

13. In *B. K. Nanjundaiah and Others Vs. The B.D.A., Bangalore and Another*, This Court was considering the Government's power to issue a successive declaration u/s 19 of the BDA Act. It has been held that the Government's power to issue a Notification u/s 19 cannot be confined to only one declaration, particularly because what is covered by the 1st declaration is a different area than the one comprised in the 2nd declaration. The Notification u/s 17 of the BDA Act is required to mention the scheme comprehensively as framed. What is required under the declaration is acquisition of the area covered by such a scheme, which can take place at different stages from time to time. This Court in *Smt. Sakamma and Ors. v. State of Karnataka and Ors.* W.P. Nos. 32881-882/1996- after examining the scheme and object of the Act, has held that it may be necessary for the authorities to issue more than one declaration in respect of the lands covered by one preliminary Notification. In *Roy Rodrigues v. The Government of Karnataka and Ors.* W.P. No. 4537/2009 disposed of on 1-7-2009- this Court has taken a similar view.

14. The Apex Court has repeatedly held that while considering the validity of the Notifications for acquisition of the lands for public purposes, the Courts should keep the large public interest in mind. The Courts should weigh the public interest vis-a-vis the private interest while exercising the power under Article 226. In *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, the Apex Court has taken note of the fact that in order to attain the pace of progress achieved by some of the Asian Countries, it is necessary to have infrastructure, which calls for acquisition of lands without delay. It has been held thus:

Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to "Asian tigers", eg. South Korea, Taiwan and Singapore. It is, however, recognised on all hands that

the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the large public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers.

15. In *Om Prakash and Another Vs. State of U.P. and Others*, the Apex Court was considering the validity of a Notification issued under the provisions of the Land Acquisition Act wherein the right of the landowner was 1/10th of lands was sought to be acquired. It has been held as under:

It was not the Appellant's contention that the proposed acquisition was not for public purpose nor any mala fides were alleged to be behind such acquisition. In the circumstances of the case it is neither advisable nor feasible to interfere with the acquisition of such large tracts of lands when the occupants of 9/10th of the acquired lands have not thought it fit to challenge these acquisition proceedings and the occupants of only 1/10th of lands are agitating their grievance since more than six years firstly before the High Court and then before the Supreme Court..... If on this point, the Notifications are quashed for non compliance of Section 5A, that would open a Pandora's box and those occupants who are uptill now sitting on the fence may also get a hint to file further proceedings on the ground of discriminatory treatment by the State Authorities.

16. In *State of Karnataka and Another Vs. All India Manufacturers Organisation and Others*, and in *Girias Investment Pvt. Ltd. and Another Vs. State of Karnataka and Others*, - the Apex Court has held that though the rights of individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of public at large is not be lightly quashed and extraordinary reasons must exist for doing so.

17. In *Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others*, - the Apex Court was considering the acquisition for integrated and indivisible joint venture mechanism to tap the resources of private sector for

infrastructural development for fulfillment of public purpose. It has been held thus:

In case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose. The joint venture mechanism for implementing the policy, executing the project and achieving lawful public purpose for realising the goal of larger public good would neither destroy the object nor vitiate the exercise of power of public purpose for development of infrastructure. The concept of joint venture to tap resources of private sector for infrastructural development for fulfillment of public purpose has been recognised in foreign countries as also in India in several decision of the Supreme Court and in such integrated infrastructure development projects acquisition of land and giving it to the company are legal and lawful and does not suffer from mala fides.

18. From the above discussion, it is clear that though the rights of an individual whose property is sought to be acquired must be scrupulously respected, and acquisition for the benefit of public at large is not to be lightly quashed and extraordinary reasons must exist for doing so. The Courts should keep the large public interest in mind while exercising their power under Article 226. In the case of an integrated indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters.

19. The lands in question are acquired for the public purpose, namely, for Phase III Refinery Expansion Project of M/s Mangalore Refinery and Petrochemicals Limited, the 5th Respondent herein. The 4th Respondent has to provide 260 acres of land, which includes the lands in question. The lands in question are situated in the middle of the lands proposed for Special Economic Zone. The expansion of Project III is a super mega project of about Rs. 16,000/- crores with Rs. 5,000/- crores investment to follow. This will generate 4000 direct and indirect employment. More than 100 other project displaced families on the said 260 acres have handed over the land. The lands involved in these writ petitions are situated in the middle of the project. The implementation of the project is in progress. It cannot be implemented fully without taking possession of the lands in question. In the circumstances, it is not proper to interfere with the impugned Notifications.

20. There is no merit in these writ petitions. They are accordingly dismissed. No costs.