

(1996) 03 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 27735 of 1995

H.N. Nanje Gowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 18
Constitution of India, 1950 — Article 19 (1), 19 (1) (a), 21
Karnataka Industrial Area Development Act, 1966 — Section 28 (1)

Citation : (1996) ILR (Kar) 1649 : (1996) 3 KarLJ 39

Hon'ble Judges : S. Rajendra Babu, J;R.V. Raveendran, J

Bench : Division Bench

Advocate : K. Channabasappa, for the Appellant; M.R. Janardhan, AG. with K.H. Jagadeesh, GA for R-1-2, Altaf Ahmed, Addl. Solicitor General and H.B. Datar, with Ashok B. Henchingeri, for R-3, H.B. Datar, with E.A.K. Pankaj Savant, Savitha Krishnamurthy and S.R. Arun and M.H. Datar for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—This Petition is a public interest petition stating that it affects the people of State of Karnataka and especially the innumerable number of small land holders, agricultural labourers, household workers and small cultivators who have been granted occupancy rights under the Land Reforms Act in Bangalore North Taluk and Devanahalli Taluk of Bangalore Rural District. The background leading to this petition is issue of a Notification dated 9.6.1994 u/s 28(1) of the Karnataka Industrial Area Development Act, 1966 ("Act" for short) extending Chapter VII of the Act and another Notification issued on 7.7.1994 proposing to acquire 5033 acres 36 guntas of land in Bangalore North Taluk and Devanahalli Taluk which are spread over in ten villages of Devanahalli Taluk and four villages in Bangalore North Taluk.

2. The allegation made in the petition is that the first respondent has decided constructing an international airport near Devanahalli North of Bangalore North Taluk. For that purpose, it wanted to acquire land roughly measuring 8848.30

acres with provision for providing infrastructure connected with the construction of international airport. It is alleged that the first respondent has signed a Memorandum of Understanding (MOU) with the fourth respondent - M/s Tata Consultants for the construction of the international airport. A letter was addressed by the petitioner to the Chief Minister on 2.6.1995 to furnish him a copy of the MOU between the first and fourth respondents. After the petition was filed, it is stated that a reply has been sent to the petitioners on 17th August, 1995 stating that the MOU between the Karnataka Industrial Area Development Board and the consortium is yet to be finalised. It is claimed in the petition, in the absence of a copy of the MOU, the petitioners have gathered the necessary information from the proceedings of the third respondent - Board and the correspondence that has ensued between the Department and the first and second respondent.

3. The Board of Directors of the third respondent in the meeting held on 25.4.1994 took a decision to establish an international airport near Devanahalli North of Yelahanka and the first respondent was approached to make available about 5,062 acres of land there. It is also stated that the Government had appointed a Department to monitor the implementation of the international airport scheme and the KIADB - third respondent had been authorised to acquire the required land under the Act for the establishment of the international airport. It is further alleged that the third respondent had been requested to transfer and also to acquire the necessary land out of which it is stated that 2,787.14 acres were government land and the balance is private land. In addition to these lands, further land is also sought to be acquired. It is next averred that with reference to certain proceedings of the Board of Directors on the basis of a report made by S. Ramanathan Committee indicating the extent of land that is needed for the purpose of acquisition and the location of the airport, it is stated that a minimum space of 6.5 k.m. long and 2.5. k.m. width would be required for the purpose. Based on this information the land required had been determined. The third point made out is that the Executive Member was authorised to cause issue of notification under the Act for acquisition after determination of the exact extent of land required for the purpose. Thus, it is contended, on 25.4.1994, the exact extent of land required for the purpose of locating the airport was not yet determined. What was made known at that time was that 4,186 acres were available in ten villages of Devanahalli Taluk and four villages in Bangalore North Taluk. Thus it is contended that there is total non-application of mind both as regards the location of the airport and the extent of land needed for the purpose.

4. It is alleged that on 9.6.1994, the first respondent had issued a Notification u/s 3(1) of the Act declaring the area consisting of the aforesaid extent of land as Industrial Area. Another additional extent of land is sought to be acquired for getting the infrastructural facilities and other projects connected with the international airport. On 25.4.1995, the Board recommended for the acquisition of further extent of land - in all, a total extent of 8,848 acres. A notification u/s 28 of the Act has been issued in respect of recommendation for acquisition of

additional lands to the extent of 3962.03 but is not yet authorised. A copy of the letter addressed thereto is produced as annexure G. It is claimed that the MOU signed by the first respondent with the fourth respondent is not published nor furnished to the first petitioner. From a newspaper item that occurred in Economic Times it was learnt that the Fourth respondent was seeking guarantees with regard to airport construction. It is on this basis it is alleged that the proposed act of the respondents involves violation of Entry 29 List I of Schedule VII of the Constitution and the provisions of KIADB Act and also results in depletion of water resources and cause pollution in Arkavathi Valley and Dakshina Pinakini Valley and would also result in effluent discharge. It is also contended in the petition that the acquisition of land for location of an airport would deprive large number of people their livelihood, particularly those who are small holders of these lands. Even if compensation is paid to them they will not be in a position to rehabilitate themselves to seek out their livelihood. It is also pointed out that certain extents of land belonging to the Government are forest land and therefore would affect the ecology of the area. We will advert to the detail averments as and when needed.

5. We shall first take up the contention advanced on behalf of the petitioners that the acquisition in question is ultravires the Constitution. The argument advanced on behalf of the petitioners is that, certain powers are reserved in favour of the Union Government and certain others in favour of the State Government and still other powers could be exercised both by the Union and State Governments and they occur in List I, II and III of the Constitution. In regard to matters arising under List I, there can be no acquisition of land by exercise of power of the State. It falls under Entry 42 of List III. When it is the power of the Union Government under Entry 29 of List I to make provisions for aerodromes, regulation and organisation of air traffic and of aerodromes, it is not the function of the State to provide for aerodromes and therefore, it is not open to the State to acquire the land at all. What we are concerned in this case is the acquisition of land for the purpose of locating an airport. Where the aerodrome should be located and whether the aerodrome should be located or not is another aspect of the matter. We shall advert to it at a later stage. At this stage, it is enough to notice that the power of acquisition of land for the purpose of locating an airport is altogether different from the power of regulation and organisation of air traffic and of aerodromes or merely making provisions for aerodromes. By acquiring land and making it available for providing an aerodrome will not in any way be infringement of the power of the Central Government at all. Therefore, by no stretch of imagination we can say that the acquisition in this case would affect the right of the State Government. (sic. Central Government) . However, we may look at this matter from another angle. Prior to Constitution 7th amendment, Entry 33 of List I and Entry 36 of List II provided for acquisition or requisition of land. There was a separate Entry 42 of List III which referred to compensation. By Constitution 7th amendment, under Entry 42 List III, acquisition and requisition of property was provided, for the original entry had referred only to

the principles on which compensation for the property acquired and requisitioned for the purpose of Union or the State Government was provided. Thus the amendment was made deleting the other provisions and retaining only Entry 42 in the changed form. The object of that amendment could be best explained by referring to the objections and reasons of the bill relating to it:

"The existence of three entries in the legislative lists (83 of List I, 86 of List II and 42 of List III) relating to the essentially single subject of acquisition and requisitioning of property by the government gives rise to necessary technical difficulties in legislation. In order to avoid these difficulties and simplifying the constitutional position, it is proposed to omit the entries in the Union & State list and replace the entry in the concurrent list by a comprehensive entry covering the whole subject."

Somewhat identical arguments were raised in *The State of Bombay Vs. Ali Gulshan*, . The question for consideration in that case was whether a certain premises for housing a member of the staff of foreign consulate could be provided by the State Government. The High Court held that though it was a public purpose to provide a house for the staff of a foreign consulate, the requisition was invalid as the public purpose must be either a purpose of the Union or a purpose of the State and in this particular case, the accommodation required for housing a member of foreign consulate staff was a Union purpose which was outside the scope of powers of the State. That decision was upset by the Supreme Court in the said decision. Though every State purpose or Union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for building a hospital or educational institution by private benefactors would be a public purpose though it will not strictly be a State or Union purpose. When we speak of the State purpose or Union purpose, we think of duties and obligations cast on the State or Union to do a particular thing for the benefit of the public or a section of the public. The cases where the State acquires or requisitions properties to facilitate coming into existence the utilitarian institutions or schemes for having put welfare at heart would fall within the third category referred to earlier. Thus, we do not think the learned Counsel for the petitioners is justified in raising this contention in the light of this decision. We are fortified in our view by the decision of the Assam High Court in *TINSUKIA DEVELOPMENT CORPORATION LTD v. STATE OF ASSAM AND ANR*. AIR 1961 Gau 133. A full bench of the Assam High Court considered the question relating to acquisition by the State Government of certain lands for enabling the Central Government to effect a food grains godown. It is stated therein that it did not necessarily mean that the acquisition was for Union purpose and that the purpose ceases to a State purpose and by amendment of the Constitution in 1956, the distinction between the Union purpose and state purpose has been in effect effaced and the power has been given to the State Government to acquire land for any purpose which may be regarded as public purpose so long as the property is within its territorial jurisdiction and the State Government will in such

cases also be the appropriate Government within the meaning of Section 3(ee) of the Land Acquisition Act

6. We shall next take up the contention that the acquisition is ultravires the Karnataka Industrial Areas Development Act, 1966. The argument advanced is that the said Act provides for securing the establishment of the industrial area and industrial area would mean an area declared to be an industrial area by the State Government which is to be developed and where industries are accommodated and includes an industrial estate. It is contended that an airport cannot be an industry for the purpose of the Act and therefore the order acquiring land for the purpose of such an airport is not within the scope of the Act, u/s 28, what could be acquired is only for the purpose of the Act and the purpose of the Act being only to secure the establishment of industrial areas or develop industries thereto where the industries are accommodated, location of an airport would not be one such purpose. Specific attention of the Court is drawn to the preamble, definition clauses and the functions of the Board under the Act It is contended that we should not understand the expression "industry" as is sought to be expansively dealt with in the context of Industrial Disputes Act. We should give a restricted meaning in the context of the Act and we should only apply the same where industries produce goods, not services. In order to appreciate this contention, it may be necessary to refer to a decision of the Supreme Court in *B. Viswanathiah and Company and Others Vs. State of Karnataka and Others*, . In that decision, the Supreme Court was examining the validity of Karnataka Silkworm Seeds, Cocoons (Regulation of Production, Supply and Distribution) (Amendment) Act, 1979 (Act 33/79). In that context, considering the legislative competence of the State vis-a-vis Entry 52 of List I and Section 2 of the Central Silk Board Act, it was held therein that an industry comprises of three important aspects -

(i) Raw Materials

(ii) The process of manufacture or production, and

(iii) Distribution of the products of the industry,

The legislation in regard to raw materials were permissible under Entry 27 of List II and therefore, it was held that the same fell within the scope of Entry 24 of List II. So far as the third aspect - distribution of the products of the industry was concerned, the State Legislature would be quite competent to legislate in regard thereto under Entry 27 of List II. However, when an industry is also controlled industry, legislation in regard to products of the industry would be permissible by both the central and state legislature by virtue of Entry 33 of List III. In analysing the concept of "industry", we should note an important aspect namely, distribution of the products of industry. It is not merely the production that matters. Marketing thereto is an important feature. Therefore, it cannot be said that the distribution or marketing of the goods would not form part of the industry and not benefit the industry. Even viewed from the narrow angle

propounded by the learned Counsel for the petitioners, we may have to hold that an airport which will facilitate the landing and taking off of air crafts which could be utilised for the purpose of distribution, marketing of goods and also provide for air traffic otherwise, is also an industry. Thus, we do not think the contention advanced on behalf of the petitioners in this regard is neither correct nor tenable in the light of the decision of the Supreme Court.

7. We shall now deal with the contention raised on behalf of the petitioners as to the non-application of mind in the matter of issue of notification for acquisition. This aspect is focused from three angles. Firstly in regard to extent of land that is sought to be acquired, secondly location of the airport and thirdly, the environmental safe guards requisite thereto having not been provided. So far as the first aspect is concerned, we may at once refer to the proceedings of the Board wherein the question of requesting the Government for locating the airport and permission for acquisition of land was sought for. The matter is considered by the Board along with the report of Ramanathan Committee wherein it was made clear that the airport was to be located at any of the following sites.

1. North of Malur
2. Kengeri I
3. Kengeri II
4. Vijayapura
5. Yelahanka Airport base
6. South of Devanahalli

and south of Devanahalli was considered to be best suited after considering several alternative. On examination of the land, location, economic and technical viability, underground water resources, the committee recommended the location south of Devanahalli which is the land now under acquisition. It is also indicated therein that a minimum space of 6.5. k.m. long in length and 2.5. k.m. in width would be required for the purpose which broadly comes to about 4,050 acres. Now what is sought to be acquired is 5,062 acres. Therefore, we cannot say that there is no application of mind by the State or of concerned persons in regard to the extent of land that is sought to be acquired. Though several decisions are cited before us as to whether there is any vagueness in the Notification in regard to the extent of land and even when large tracks of land are sought to be granted, whether there is need to give the exact measurement of the land, there is no need to refer to them in the light of the conclusion we have arrived at on the facts of this case.

8. We shall now take up the next contention that whether the said airport could have been located south of Devanahalli. As stated earlier, Ramanathan Committee was entrusted with the purpose of locating the airport in any of the areas close to Bangalore City. The committee considered six points of location

and ultimately arrived at the conclusion that Devanahalli South was the best suited for the purpose. Therefore, when the committee is constituted consisting of experts in the field and they examine the matter and recommend - to the concerned authorities that a particular place would be best suited for the purpose, we do not think we can re-examine the matter and substitute our opinion. The argument advanced on behalf of the petitioners that there is no application of mind in this regard does not have any force.

9. The next aspect raised is one relating to environmental needs. On that aspect also we may state that the Central Government and the National Airport Authority while allowing the State to go ahead with its project for locating the airport has indicated that the Government of Karnataka will obtain all such permissions or sanctions as required to be obtained from various agencies including the Ministry of Environment. The question of arguments being addressed before the Court whenever development programmes are taken by the State or other agencies have often arisen before the Court. In such cases, as to what would constitute a proper need has been considered by the Bombay High Court in *The Goa Foundation and another Vs. The Konkan Railway Corporation and others*, . In that case, the Konkan Railway Corporation wanted to provide a broad gauge railway line from Bombay to Mangalore and thereafter extend to the State of Kerala. There were several lands which were needed to be acquired for purpose of laying railway line where there were certain old churches, temples and forest as well as agricultural land. In such a case, whether there could be acquisition of such land or not was examined and the Court held that when providing public utility, it would not at all be appropriate to examine such questions as sentiments religious or political or even questions relating to ecology or environment as those considerations may impede or hamper the development. For the purpose of development, it may be necessary to cut down certain trees or take away agricultural land but that would not necessarily mean that ecology or environmental link is upset as to cause any danger to the species of flora or fauna. Unless such exercise has been done or survey has been done to point out in what manner ecology or environment is affected, we cannot go by vague arguments. Indeed the State has provided several agencies and the laws are enacted to protect such environment and ecology. We have the Water Pollution Control Act, Conservation of Forest Act and necessary sanctions and permissions will have to be obtained from the concerned authorities before the Board or any Agency to which such work may be entrusted can proceed further. Therefore, at this stage it would be premature to state whether ecology or environment is affected in any manner. Therefore, we do not think there is any substance in the contention at this stage to be examined and it is rejected. We cannot therefore say that there is no application of mind by the State on this aspect either. The State has necessarily taken care to see that all the provisions of law in regard thereto and the permission from the concerned departments have to be obtained before proceeding with the acquisition. The State was very much alive to the problems even at that stage.

10. The next contention put forth before the Court is that, even if the land is acquired by the Board for its purpose, the same cannot be handed over to a private party. The Act provides that it can carry on its functions u/s 13 of the Act. It enables the Board to develop industrial area declared by the State and make them available for undertakings, establish them or to undertake such scheme or programme of work either jointly with other corporate bodies or institutions or with the Government or local or statutory authorities, or on an agency basis as it considers necessary or desirable for the furtherance of the purposes for which the Board is established. Therefore, if the Board thinks that there could be location of an airport and that such airport should be constructed, maintained and managed by a private agency and the law allows to take such a course, we do not think this Court can substitute its view to that of the Board or of the Government if, as a matter of policy, the Government has decided to allow a private agency to do so. We may usefully refer to the decision of the Supreme Court in *Delhi Science Forum and others Vs. Union of India and another*, . The Supreme Court examines this question in very great detail and stated in categorical terms that privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the goals fixed shall be attained? what are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest ? All these questions have to be answered by a vigilant Parliament. Court has their limitations - because these issues rest with the policy makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the Constitution or statutory provision.

11. However, learned Counsel for the petitioners sought to point out that in that case, the new telecom policy was placed before the Parliament and it was deemed that Parliament had approved the same and therefore, the Court did not interfere with it. That is not the thrust of the decision. The decision makes it clear, in matters relating to economic policies there are good reasons for judicial restraint and it will not be proper for the Courts to interfere with the legislative judgment. Even when a policy has been formulated by the executive wing of the Government still the matter could only be agitated only in a legislature and not before the Court as neither the Court is equipped to decide the wisdom of such policy nor substitute its view on enquiry. Even in the absence of the legislative approval of the policy, the Court cannot judge the merits of the same. In that view of the matter, we do not think there is much merit in the contention advanced on behalf of the petitioner to call upon the Court to examine this question.

12. Learned Counsel for the petitioners next urged that the State had enacted the Bangalore Metropolitan Region Development Authority Act and the region covered by the Act would be that area comprised in Bangalore District, Malur Taluk of Kolar District and such other areas as the State Government may from

time to time by notification specify. It is argued that the area with which we are concerned now forms part of the Bangalore Metropolitan Region and therefore, necessary permission of the Authority as provided u/s 10 of the Act was not taken and therefore, the action proposed now is invalid in law, A reference to Section 10 of the Act would make it clear at once that the restriction placed under the Section is only to the extent of the authority permitting undertaking any development only in respect of such matters from time to time which are specified in the notification published in the official gazette. We have persistently asked Sri Channabassappa, learned Counsel for the petitioner to make available any such notification and as to what has been provided therein which has been violated by the Board or other authorities in acquiring the land or developing that land to an airport. No such material is forthcoming. In the absence of such material, there is no question of examining the same further.

13. We may look at this aspect from another angle namely, when there are several enactments governing a particular area, those enactments will have to be read as complimentary to the other and not in conflict with one another. Unless a particular action is shown to be strictly not complied with any of the provisions of any of the enactments, the Court cannot interfere with the same. No such material is forthcoming in this case. In that view of the matter, we do not think the contention advanced on behalf of the petitioners can be taken.

14. The next contention advanced on behalf of the petitioners is that, by reason of the action taken by the respondents in declaring an area as an industrial area and acquiring lands for purpose of location of airport, livelihood of large number of people would be deprived. There are neither averments nor material is forthcoming in regard to how by mere declaration of an area as an industrial area will deprive the livelihood of any person. The argument advanced on behalf of the petitioners is only in relation to the acquisition of land. On that matter, there are two decisions covering directly the question raised in this petition. In *Chameli Singh and others etc. Vs. State of U.P.* and another, the Supreme Court has considered this question. It is stated therein, for compulsory acquisition, the enactments provides for solatium to the owner who declines to voluntary part with the possession of land and the State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. It would not, therefore, amount to deprivation of right to livelihood. Section 28 clearly provides compensation to acquire land as provided under the Land Acquisition Act. For dispensation or dislocation of interest also certain additional amounts could be paid as provided under the Land Acquisition Act. Also there are provisions to recompensed the loss of right to enjoyment of the property. Therefore, it is clear that the plea of deprivation of livelihood under Article 21 is unsustainable. To the same effect is another decision of the Supreme Court in *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, . It was noticed therein that Article 21 essentially deals with personal liberty. It has little to do with the right to own property as such. On that basis, it

was held that Article 21 should not be attracted in a case of this nature. Therefore, this contention is also liable to be rejected.

15. Now, we shall advert to the last contention advanced on behalf of the petitioners namely, the petitioners are entitled to copy of the MOU reached between the fourth respondent and this State. In this context, our attention was drawn to the observations made by the Supreme Court in *S.P. Gupta Vs. President of India and Others*, that the concept of an open government is the direct emanation from the right to know which is implicit in the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest the approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that the disclosure also serves an important aspect of public interest. It is also noticed therein, there is a heavy burden of proof on any authority which makes a claim for immunity from production of documents. The claim for class immunity is an extraordinary claim because it is not based on the contents of the document in question but upon its membership of class, whatever may be its contents. Therefore, courts must be very slow in upholding such a broad claim which is contradictory or destructive of the concept of open government. Secondly classes and documents to which the immunity may be accorded are not closed in the life of a fast changing society rapidly growing and developing under the impact of vast scientific and technological advances, new class of documents may come into existence to which the immunity may have to be granted in public interest but that should only be as a highly exceptional measure. In the present case, the learned Counsel for the respondents did not claim any immunity from production of the documents in question. On the other hand, learned Additional Solicitor General argued, before any enquiry could be made in that regard, we should bear in mind that not every document will be relevant or necessary for production before the Court and a document which throws light on the case, and the documents which may be required to be looked into, are examined. In this context, learned Additional Solicitor General relied upon a decision in *AIR CANADA AND ORS v. SECRETARY OF STATE FOR TRADE AND ANR. 1983 (1) All ELR 161* only to emphasise the fact that the Courts will not insist upon production of every document but only such documents as are relevant and necessary for the disposal of the same. In this context, we may notice that the principle enunciated in the aforesaid decision are also embodied even under the CPC under Order 11 Rule 18. It is well settled that unless a document is relevant, the party will not be called upon to produce the same. The document becomes relevant if it is required to advance his own case or to damage the case of the adversary or in a case where it may lead to a train of enquiry. But the documents in respect of which the claim is made is the disclosure of MOU. We do not know at what stage the MOU is and whether it has fructified into an agreement. Unless

one can say it has reached a fairly ripened stage, we cannot insist upon the disclosure of the document at every stage of the transaction. Then the functioning of the Government itself will become difficult. May be in the interest of the Government, disclosure at this stage may not be of public interest at all. Therefore, in that view of the matter, we cannot say that the petitioners are entitled to copy thereof of such a document at this stage of the proceedings. If the petitioners approach the Government at an appropriate stage, Government will consider disclosing it or make it available or otherwise it may give appropriate reasons why it cannot comply with the request. Thereafter, it is certainly open to the petitioners to pursue such remedy as is available to them. We do not think there is any justification to grant this request either. Thus, we find no merit in this petition. Petition is, therefore, dismissed. Rule discharged.