

(1997) 06 KAR CK 0024
In the Karnataka High Court
Case No : Writ Appeal No. 1821 of 1995

Iswarappa and Another

APPELLANT

Vs

The Deputy Commissioner, Dharwar District, Dharwar and
Others

RESPONDENT

Date of Decision : 10-06-1997

Acts Referred:

Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3 (5), 4, 5
Land Acquisition Act, 1894 — Section 11 A

Citation : (1999) 4 KarLJ 109

Hon'ble Judges : R.P. Sethi, C.J.; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : Sri M. Sajan Poovappa for M/s. Vijayashankar Associates, for the Appellant; Sri K. Vishwanath, High Court Govt. Pleader, for the Respondent

Judgement

R.P. Sethi, C.J.—Referring to the provisions of Section 5 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (hereinafter referred to as "the Act"), the learned Counsel for the appellants has vehemently argued that the acquisition proceedings, the subject-matter of the litigation, were deemed to have lapsed in terms of Section 11-A of the Land Acquisition Act, 1894, as amended vide Act No. 68 of 1984. It is submitted that as admittedly the acquisition proceedings had not been concluded by way of passing of an award within the statutory period of two years, the learned Single Judge was not justified in dismissing the writ petition filed by the appellants. The argument of the learned Counsel appears to be very attractive at first sight but when critically examined it has no legs to stand.

2. Section 3 of the Act deals with the acquisition of the land and prescribes that on the date of notice under sub-section (1), the State Government is required to serve notice upon the owner or where the owner is not the occupier of the land, on all such persons known or believed to be interested therein, requiring them to show cause as to why the land should not be acquired within the time specified. Under sub-section (3), the State Government can pass appropriate orders for

consideration of the cause and affording the opportunity of being heard to the person concerned. Under sub-section (4) of Section 3 a provision has been made to the effect that after orders are made under sub-section (3) a declaration shall, by notification be made regarding the acquisition of the land. Sub-section (5) of Section 3 provides that upon publication in the Official Gazette under sub-section (4), the land would vest absolutely in the State Government free from all encumbrances. Section 4 deals with the payment of the amounts for the lands acquired. The provisions of Sections 3 and 4 appear to be self-contained so far as the procedure for acquisition of the land is concerned. The provisions of the Central Act No. 1 of 1894 have been made applicable apparently for the purpose of determination of the amount payable in respect of the lands acquired under the provisions of the Act and for making reference to the Court.

3. A perusal of Section 5 of the Act would also indicate that Central Act No. 1 of 1894 was made applicable, "as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961" in respect of enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of amount and the payment of amount in respect of lands acquired under the Act. Such an adoption in the legal sense of the term is known as Legislation by referential incorporation. It is settled position of law, that where a statute by specific reference incorporates the provision of another statute as at the time of adoption, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. The learned Counsel for the appellant has vehemently submitted that the adoption of the Central Act was not an adoption by reference but it was incorporation of the Central Act by general reference with respect to a particular subject as a genus. Perusal of Section 5 however does not show that the Central Act was adopted generally with respect to a subject as genus. As already held the said Act was adopted by reference to the statute as it existed at the time of incorporation. The Central Act was adopted, as noted earlier, as amended upto 1961 and not onwards. Section 11-A of the Act was admittedly incorporated vide Act No. 68 of 1984, much after the adoption of the Central Act No. 1 of 1894.

4. This Court has already examined this aspect of the matter in A. Krishnamurthy (since deceased) by L.Rs v Bangalore Development Authority and Others and held that provisions of Section 11-A of the Central Act unless specifically made applicable would not be deemed to have applied in proceedings to which they are sought to be made applicable.

5. A reference to sub-section (5) of Section 3 of the Act and Section 16 of the Land Acquisition Act, 1894, would also show that both the Acts were enacted for different purposes and to deal with different situations, by providing different modes of vesting of the lands in the State. Under sub-section (5) to Section 3 of the State Act, the land acquired for the purposes of providing house sites to the weaker section of the people, vests absolutely in the State on the publication in the Official Gazette of the declaration under sub-section (4) of Section 3 of the

Act, whereas the land vests in the Government under the Land Acquisition Act only when the Collector has made an award u/s 11 and not otherwise. This is settled position of law, that the provisions of special statute would prevail upon the provisions of a statute generally dealing with a subject.

6. In view of the reasons stated above we do not find any illegality or error of jurisdiction requiring our interference in the order of the learned Single Judge. There is no merit in the appeal, which is accordingly dismissed but without any order as to costs.