

(2002) 03 KAR CK 0073
In the Karnataka High Court
Case No : Writ Petition No. 29686 of 1998

K. Balakrishna and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4), 28 (5), 28 (6), 28 (7)
Land Acquisition Act, 1894 — Section 11 A, 30

Citation : (2002) 2 KCCR 1322

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : F.V. Patil, for the Appellant; K.N. Puttegowda, A.G.A. for Respondent 1, Ashok B. Hinchigeri, for Respondents 2 and 4 and Jayakumar S. Patil, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The Petitioners herein have questioned the validity of Notifications dated 11.4.1995 and 11.9.1997 (Annexures-A and C) issued under Sub-sections (1) and (4) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (Karnataka Act No. 18 of 1966) (in short, the Act) by which the lands of the Petitioners have been acquired for the purpose of "Development" within the meaning of Clause (5) of Section 2 of the Act.

2. The Petitioners herein are the joint owners of land bearing No. 458/2, measuring 3 acres 4 guntas of Bhyridevarakoppa, Hubli Taluk, District Dharwad. The State Government had issued the preliminary notification dated 11.4.1995 (Annexure-A) u/s 28(1) of the Act declaring its intention to acquire certain extents of land including those of the Petitioners. Subsequent to publication of the Notification, the 2nd Respondent-Special Land Acquisition Officer served notice upon the Petitioners, who are the owners of the land sought to be acquired. The Petitioners were admittedly served with the notice as contemplated

under Sub-section (2) of Section 28 for filing their objections and for being heard at 11 a.m. on 15.5.1995. Pursuant to the said notice, the Petitioners filed their objections through their Counsel which is placed at Annexure-B. Thereafter, upon the request of the Petitioners and other land owners and their Advocates, a spot inspection of the lands in question was also held by the 2nd Respondent. Spl. L.A.O on 24.4.1997. After consideration of such objections and conducting spot inspection, orders for acquiring the lands was passed and final notification to that effect was published. Therefore, the plea of the Petitioners that they were not granted an opportunity of hearing as per Sub-section (2) of Section 28 of the Act is unmerited and accordingly rejected.

3. The other ground taken for assailing the acquisition proceedings is that though the declaration u/s 28(5) of the Act was published in the official gazette on 11.9.1997, no award has been made within two years thereof. Therefore, in view of Section 11A of the Land Acquisition Act, 1894 (in short, the L.A. Act) read with Section 30 of the Act, acquisition proceedings have lapsed.

4. Section 11A of the L.A. Act reads as under:

11A. Period within which an Award shall be made.-The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.-In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

5. Section 30 of the Act makes provision for applying certain provisions of the L.A. Act mutatis mutandis in respect of certain steps which are to be taken in the proceedings for acquisition of lands under the provisions of the Act. This section reads as under:

30. Application of Central Act 1 of 1894.-The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under this Chapter.

6. A reading of Section 30 of the Act makes it clear that the provisions contained in the L.A. Act has to form part of the acquisition proceedings under the Act only in respect of the enquiry and award by the Deputy Commissioner, reference to the Court, apportionment of compensation and payment of compensation in respect of the land acquired under Chapter VII of the Act which deals with acquisition and disposal of land. The State Act has neither expressly nor

impliedly incorporated by reference other provisions including Section 11A of the L.A. Act.

7. Apart from the above aspect, it has to be borne in mind that Sub-section (5) of Section 28 of the Act specifically declares that on publication in the official gazette of the declaration under Sub-section (4), the land sought to be acquired shall vest absolutely in the State Government free from all encumbrances.

8. In the case of Satendra Prasad Jain and Others Vs. State of U.P. and Others, and Pratap and Others Vs. State of Rajasthan and Others, which are the judgments of the Bench of Three Judges of the Supreme Court, it has been specifically held that Section 11A of the L.A. Act will have no application where the lands vest in the Government absolutely in pursuance of acquisition and where there is no provision in the Act for divesting the title which has so vested in the Government. In Satendra Prasad's case, it has been held:

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 11A 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 7 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 Sections 11A, 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 the unmistakable terms. Clearly, Section 11A 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)

9. The decision in Satendra Prasad was followed in Awadh Bihari and Other 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 11A does not apply to cases where the land has vested in the State. The decision in Satendra Prasad and the three other decisions examined the applicability of Section 11A with reference to Section 17 of the LA Act which provides for vesting of the land in the Government on taking possession, even before the award is made.

10. The decision in Pratap's case 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 Karnataka Industrial Areas Development Act and Section 52(4)(5) and (6) of the Rajasthan Act corresponds to Section 28(5)(6) and (7) of Karnataka Industrial Areas Development 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 Karnataka Industrial Areas Development Act. Dealing with Section 52(4) of the Rajasthan Act, the Supreme Court held as under:

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 11A and an award is not made in respect of the land so acquired, would the acquisition proceedings lapse. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, 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 11A 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(3A), 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 Yadav and Others Vs. State of Bihar and Others*, . In view of the aforesaid ratio it follows that the provisions of Section 11A are not attracted to 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)

11. It is thus clear that Section 11A 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 Karnataka Industrial Areas Development Act and the Rajasthan Act (considered in *Pratap's* case), 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, the Supreme Court held that Section 11A of the L.A. 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 which dealt with Section 17 of the L.A. Act, it held that Section 11A will not apply to cases where the land vested on publication of declaration, even before possession was taken. Section 28(5) of Karnataka Industrial Areas Development Act being similar or identical to Section 52(4) of the Rajasthan Act, it has to be held that in so far as Karnataka Industrial Areas Development Act is concerned, the provisions of Section 11A will be inapplicable, as the land vests in the State Government on publication of Final Declaration u/s 28(4) of the Act.

12. The learned Counsel for the Petitioners contended that the decision in Mariyappa and Others Vs. State of Karnataka and Others, 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 Karnataka Industrial Areas Development Act; that as Supreme Court has held in Mariyappa's case that Section 11A will be applicable to acquisition of House Sites Act, it follows that Section 11A is applicable to acquisitions under Karnataka Industrial Areas Development Act also, following Mariyappa's case. It was contended that the decisions rendered by the Supreme Court with reference to Section 17 of the L.A. Act and 52(4) of the Rajasthan Act should be ignored as the decision in Mariyappa's case is a subsequent decision.

13. 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 State of U.P. v. Ramchandra (AIR 1976 SC 2574) 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 a Larger Bench and follow the same in preference to the opinion expressed by the smaller Bench. Hence, we are bound to follow the decisions in Satendra Prasad Jain and Pratap's case which are of Larger Benches, instead of following the decision in Mariyappa, which is of a smaller Bench.

14. Similar view has been taken by a learned Single Judge (R.V. Raveendran, J) in the case of D.V. Lakshmana Rao v. State of Karnataka and Ors. (ILR 2001 Kar 638), with which we entirely agree.

15. For the aforesaid reasons, the second contention is also liable to be rejected being devoid of merit. Accordingly, writ petition is dismissed.