

(2001) 08 KAR CK 0025

In the Karnataka High Court

Case No : Writ Appeal No's. 8797 and 9619 to 9625 of 1996

Karnataka Gruha Nirmana Sahakara Sangha Limited

APPELLANT

Vs

Karithimmaiah and Others

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 4 (1)

Citation : (2002) 1 KarLJ 469

Hon'ble Judges : P.V. Reddi, C.J.;N.K. Patil, J

Bench : Division Bench

Advocate : T.S. Ramachandra, for the Appellant; Y.V. Parthasarthy, Government Advocate, K.V. Jayachandrappa, G.K. Bhat, P. Subbarao and N. Devadas, for the Respondent

Final Decision : Allowed

Judgement

P.V. Reddi, C.J.—These appeals are filed by a Housing Co-operative Society which was one of the respondents in the writ petitions decided by the learned Single Judge by a judgment dated 6-9-1996. The learned Judge quashed the notification issued u/s 4(1) of the Land Acquisition Act published on 1-12-1988 on the ground that the requirement of Section 3(f)(vi) of the Act has not been fulfilled. The learned Judge observed that the Counsel appearing for the Government did not produce any record to show that there was a scheme submitted by the appellant-Society and the same was approved by the Government.

2. Relevant portion of Section 3(f) reads as follows: "The expression "public purpose" includes:

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society

registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State".

3. In this appeal it is contended on behalf of the appellants that after thorough scrutiny, the Government gave approval to the scheme and cleared the acquisition by its order dated 13-11-1987. The communication dated 13-11-1987 which is addressed to the Special Deputy Commissioner, Bangalore, reads as follows:

"I am directed to convey the approval of Government for initiating the acquisition proceedings for an extent of 97.00 acres of land in Laggere-11-00, J.B. Kaval-8-23, Nelakadoranahalli-12-17 and Jakkur 65-00 village in favour of Karnataka Gruha Nirmana Sahakara Sangh as recommended by the 3 men Committee and the S.L.C.C. subject to the following conditions:

(1) Out of total extent of 97-00 acres, the land in S. Nos. 2, 3, 8 Jakkur village which is coming under the park zone as per the DCP may be excluded while issuing notification u/s 4(1) of the Land Acquisition Act for the present. Subsequently, separate notification u/s 4(1) be issued for this extent after the Housing and Urban Development Department issues necessary orders changing the use of land from non-residential purpose to residential purpose.

(2) The proceeding pending under the U.L.C. Act and the Land Reforms Act shall be finalised before issue of notification u/s 6(1) of the Land Acquisition Act. The matter should be perused with the concerned authorities and see that the orders are issued within the time-limit mentioned above.

(3) The extent of land to be notified u/s 4(1) may be selected out of the list of Sy. Nos. furnished by the 3 men Committee".

The same is signed by the Under Secretary to Government, Revenue Department, This communication has been filed by the Counsel for the appellants along with LA. We have also verified the record produced by the Government Advocate. The said communication finds a place in the file. But, it was not produced before the learned Single Judge.

4. The Counsel for the 1st respondent contends that the order dated 13-11-1987 cannot be construed to be prior approval of the Government to the housing scheme sponsored by the appellant-Co-operative Society.

The approval, according to the learned Counsel, is only for initiation of the acquisition proceedings u/s 4(1). It is contended that no housing scheme was sponsored by the appellant-Society nor was it approved by the Government. We find it difficult to accept this contention. On a perusal of the relevant record produced by the learned Government Advocate, it transpires that the appellant-Society submitted the application on 13-11-1984 requesting for acquisition of land under the Land Acquisition Act for the purpose of providing house sites to its

members. All the relevant details relating to the Society, its members, the land required, size of plots, financial position of the Society were furnished together with the recommendation of the Deputy Registrar of Co-operative Societies. The application was referred to three-men Committee of the officials. On perusal of all the records and on getting the necessary information, the Committee resolved on 13-11-1986 to recommend the acquisition of 97 acres of land as against 135 acres sought for by the Society. The matter was then referred to State Level Co-ordination Committee, which in its meeting dated 13-8-1987 gave clearance for acquisition of 97 acres of land subject to certain conditions mentioned therein. It is only then that the approval was communicated on 13-11-1987. Though the terminology "Housing Scheme" has not been employed, the approval communicated on 13-11-1987 by the Secretary to Government, Revenue Department to the Special Deputy Commissioner, Bangalore, is in effect and in substance the approval of the housing scheme sponsored by the appellant-Society. The approval of the housing scheme and the clearance for initiation of acquisition proceedings are, in our view, two sides of the same coin. The approval of the Government has been conveyed only after thorough verification and acceptance of the housing layout scheme submitted by the appellant. A similar Setter couched in the same language was construed to be approval of the Government for the scheme sponsored by other Housing Co-operative Society. The Supreme Court distinguished the decision in H.M.T. House Building Co-operative Society Vs. Syed Khader and others, , on the ground that no separate order was issued therein granting approval. We cannot, therefore, confirm the finding of the learned Single Judge. Had the relevant material been placed before the learned Single Judge by the Government, the finding that there was no approval within the meaning of Section 3(1) would not have been recorded by the learned Single Judge. That deficiency has now been made good by placing the relevant record before us.

5. The learned Counsel for the appellant contended that the definition of "public purpose" u/s 3(f) is an inclusive definition and even without (sic) to Section 3(1), the acquisition for the purpose of providing house sites to the members of Co-operative Society is a "public purpose". Reliance was placed on the decision of the Division Bench of this Court in Narayana Raju Vs. State of Karnataka, and the decision of the Supreme Court in Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others, . The judgment of the Division Bench of this Court in Narayan Raju's case, supra, was confirmed by the Supreme Court. The brief order of the Supreme Court is set out in Narayan Raju v. State of Karnataka, we quoted paragraph 2:

"After hearing Counsel we are satisfied that no question of law of any substantial importance arises in these appeals which requires to be determined by us. The facts found show that the acquisition was for the purpose of carrying out a housing scheme by a Co-operative Society within the meaning of the law relating to the Cooperative Societies in force in the State of Karnataka. That purpose was a public purpose under the Land Acquisition Act, 1894 before its amendment in

1984 as well as after that amendment. Hence, the question whether the purpose of acquisition in this case was a public purpose is a simple question answer to which is quite clear and it must be in the affirmative. This question therefore, cannot be said to be a substantial question of law at all. There is no substance in the other contentions urged by Mr. Nesargi".

There is considerable force in the argument of the learned Counsel. However, we need not dilate on that aspect as we have found, on a perusal of the record, that the acquisition is for a "public purpose" as contemplated by Section 3(f)(vi).

6. The Counsel for the 1st respondent then argued that in Section 4(1) notification, the words "public purpose" has not been used. The acquisition is expressly stated to be for the benefit of the members of the appellant-Society. According to the learned Counsel, it only shows that the appropriate authority never deemed it as acquisition for "public purpose", but it was meant to be acquisition for the benefit of the company in accordance with Part VII. It is therefore submitted that Section 4(1) notification should not have been confirmed by issuing a declaration u/s 6 of the L. A, Act. We do not think that the omission of the words "public purpose" is by itself material and vitiates the notification. The purpose is clearly conveyed in Section 4(1) notification and when once the conclusion is reached that such purpose is a "public purpose", the notification will not be open to attack. There was active application of mind by the Government to the aspect of "public purpose" in terms of Section 3(f)(vi). It is only thereafter the final notification was issued. The notification u/s 4(1) ought not to be read in a pedantic or hyper-technical manner. We therefore reject the contention of the learned Counsel for the 1st respondent.

The next point urged by the learned Counsel for the appellant is that no part of the money -- not even a single rupee has come out of public revenues as there is nothing on record to show that such contribution has been made by the State Government or its agencies. The learned Counsel for the respondent meets this point by referring to the Division Bench decision of this Court in *Rajendrababu v. State of Karnataka*. The Division Bench, after having referred to the State amendment brought about by Act 10 of 1968 by which the second proviso to Section 6(1) was omitted, observed that -- "the effect of amendment to Section 6 of the Central Act by the Amendment Act is that the State Act expressly omitted the compensation to be paid wholly or partly out of public revenue or other agencies controlled or managed by the legal authority. Thus reading the above provisions, it is clear that there can be acquisition of land for a company also. There need not be any contribution from the public revenue. All that is required is that the purpose shall be a public purpose".

It is not necessary for us to dilate further on this aspect for the reason that this contention has not been raised in the writ petition or in the memorandum of writ appeal and it being partly a question of fact, it is not proper to consider this question for the first time in these writ appeals.

7. In the result, the order of the learned Single Judge is set aside and the writ appeals are allowed. We make no order as to costs.