

(2005) 03 KAR CK 0065
In the Karnataka High Court
Case No : Writ Appeal No. 2161 of 2001

K.B. Gurumurthy Reddy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17 (1), 19 (1), 4 (1), 6 (1)

Citation : (2005) 5 KarLJ 341 : (2005) 2 KCCR 1100

Hon'ble Judges : S.R. Nayak, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : Taresh, for Chennaraya Reddy, for the Appellant; Deshraj, Government Advocate for Respondents 1, 2 and 5, K. Krishna, for Respondents 3 and 4 and Lawyers Inc. for Respondent 6, for the Respondent

Judgement

S.R. Nayak, J.—The dispute brought before this Court in this writ appeal relates to the acquisition of 3 acres 4 guntas of land comprised in Sy. No. 172/3 situate in Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk (for short, "the Schedule land") under the provisions of the Bangalore Development Authority Act, 1976 (for short, "the Act"). Earlier, the Schedule land was acquired under the provisions of the Land Acquisition Act, 1894 (for short, the "L.A. Act") by issuing Section 4(1) Notification dated 3-12-1986 and Section 6(1) declaration dated 8-1-1988. Ultimately, that acquisition was annulled by the Apex Court by virtue of its order dated 21-2-1995 made in SLP (C) Nos. 13114 and 13339 of 1991 (Amarjyothi House Building Co-operative Society Limited v State of Karnataka) following its own decision in Civil Appeal Nos. 3011 to 3019 of 1995 arising out of SLP (C) Nos. 11482 to 11490 of 1991 (H.M.T. House Building Co-operative Society Vs. Syed Khader and others, filed by the HMT House Building Co-operative Society, and in pursuance of the direction issued by the Apex Court in the above cases, the Schedule land was restored to the appellants herein on 6-8-1998. That event was not to be an end of the litigation but it turned out to be a beginning of an end, because, in the interregnum between 3-12-1986 and

6-8-1998, the proceedings were initiated to acquire the Schedule land under the provisions of the Act by issuing the preliminary notification under Sub-section (1) of Section 17 of the Act on 23-3-1988 which was followed by final notification under Sub-section (1) of Section 19 of the Act. What is challenged by the appellants in the present writ proceedings is the validity of the acquisition proceedings initiated by the Bangalore Development Authority (BDA) under the Act.

2. Let us first refer to the background facts leading to the filing of Writ Petition No. 26693 of 1999 out of which the present writ appeal has arisen. The appellants are the sons of late Buddappa alias Budda Reddy and late Obakka of Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk. They, along with their parents constituted an undivided Hindu Mithakshara joint family. The said joint family consists of the appellants. Buddappa Reddy passed away on 21-8-1988. Obakka died somewhere in the year 1996. The joint family of the appellants owned several lands including the Schedule land. The Schedule land was acquired under the L.A. Act for the benefit of M/s. Amarjyothi Co-operative House Building Society Limited, Bangalore. The award was also passed and the compensation determined was also paid to Buddappa Reddy during his lifetime. However, the validity of the very acquisition of the Schedule land under the L.A. Act was challenged before this Court in Writ Petition Nos. 7060 to 7063 of 1988 and this Court, by its order dated 8-6-1991 quashed the acquisition proceedings. SLP (C) Nos. 13114 and 13339 of 1991 were preferred to the Supreme Court against the above order of this Court. The Supreme Court dismissed the above S.L.Ps. vide its order dated 21-2-1995 following the decision in C.A. Nos. 3011 to 3019 of 1995 arising out of SLP (C) Nos. 11482 to 11490 of 1991 filed by the HMT House Building Co-operative Society, thereby upholding the judgment of this Court. The Supreme Court, while dismissing the S.L.Ps. also directed that the possession of the Schedule land should be restored to the appellants subject to their refunding the compensation received by them. Accordingly, the appellants refunded the compensation money of Rs. 2,69,125/- and they were put in possession of the Schedule land on 6-8-1998 and since then the appellants have been in actual possession and enjoyment of the Schedule land.

3. In the meanwhile, Budda Reddy had filed declaration under a wrong advice and mistake of fact u/s 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the "ULC Act") and in pursuance of that declaration, the Competent Authority passed the order on 30-4-1985 holding that the land comprised in Sy. Nos. 167/4 and 172/1 of Kothanur Village and the Schedule land held by Budda Reddy is in excess of the ceiling limit. It is the case of the appellants that Budda Reddy was an illiterate and gullible man and, therefore, he had heavily depended upon the 5th appellant herein viz., KB. Krishna Reddy to prosecute the proceedings before the Competent Authority under the ULC Act and due to certain serious differences between Budda Reddy and K.B. Krishna Reddy, Krishna Reddy did not conduct the proceedings in the way expected of him and that lead to a wrong order being made by the Competent Authority on

30-4-1985. According to the Competent Authority under the ULC Act, in pursuance of the order made on 30-4-1985 possession of the Schedule land was taken over on 28-4-1989. When the matter stood thus, the Government of Karnataka vide Order No. Kam.e.57/97, dated 9-7-1999 granted 12,547.29 sq. mts. of land comprised in Sy. Nos. 172/1 and 172/3 of Kothanur Village to the 6th respondent, M/s. B.T.L. Education Trust for Rural Development. At that stage, the appellants herein filed Writ Petition No. 35965 of 1999 praying for quashing of the order dated 30-4-1985 passed by the Competent Authority who is the 4th respondent herein and order dated 9-7-1999 passed by the State Government, 1st respondent. The said writ petition was allowed by a learned Single Judge of this Court vide Order dated 23-2-2001 quashing both the impugned orders and remanded the proceedings to the 4th respondent with a direction to give finding whether the appellants are in lawful possession of the excess land after hearing them. At the time of hearing, we were told that after the remand of the proceedings, by order dated 28-2-2002 the 4th respondent-Competent Authority passed an order holding that the proceedings initiated under the ULC Act stood abated in view of the repealing Act and against the said order of the Competent Authority, the 6th respondent herein preferred Writ Petition No. 19739 of 2002 and the same was dismissed by the learned Single Judge of this Court on 26-7-2004. We were told that the BDA is not a party to Writ Petition No. 19739 of 2002. It is the case of the appellants that after the land was restored to them in pursuance of the orders of the Supreme Court, they have developed the Schedule land, put up constructions on major portions and those constructions have been assessed for municipal tax and they have been paying the tax regularly.

4. In the interregnum, the respondents 2 and 3 initiated proceedings for acquisition of the Schedule land for formation of J.P. Nagar VIII Phase and issued preliminary notification bearing No. BDA.SALAO/A6/PR/229/1987-88, dated 23-3-1988 u/s 17(1) of the Act and final notification bearing No. UDD 457 MNX 98, dated 5-4-1999 u/s 19(1) of the Act. The appellants being aggrieved by the steps taken by the respondents 2 and 3 to acquire the Schedule land again under the Act, preferred Writ Petition No. 26693 of 1999 urging several contentions such as (i) that the acquisition is not in accordance with law in that the preliminary and final notifications do not disclose the name of the appellants as khatedars; (ii) that the acquiring authority has failed to take into account the developments already made in the Schedule land; (iii) that the Schedule land had already been acquired for M/s. Amarjyothi House Building Co-operative Society even as on the date of preliminary notification and therefore, the very initiation of the acquisition proceedings under the Act is nullity in the eye of law; (iv) that there was enormous delay between the preliminary and final notifications; (v) that the acquisition is arbitrary, not bona fide and violative of principles of natural justice etc.

5. Opposing the writ petition, respondents 3 and 4 jointly filed statement of objections. In the statement of objections filed by respondents 3 and 4, it was

contended that the writ petition is liable to be dismissed solely on the ground of delay and laches inasmuch as the appellants have not assigned any reasons for the delay in approaching this Court. The respondents 3 and 4 also contended that on an earlier occasion Writ Petition No. 4810 of 1995 was filed by the successor-in-interest of the appellants herein viz., M/s. Amarjyothi House Building Co-operative Society questioning the preliminary notification dated 23-3-1988 as well as final notification dated 19-10-1994 and in that writ petition, this Court quashed only final notification reserving liberty to the BDA to issue final notification after complying with the legal formalities and, accordingly, final notification was again issued on 5-4-1999 and in that view of the matter, the present writ petition is not maintainable.

6. The 6th respondent too filed statement of objections opposing the writ petition. In the statement of objections, the 6th respondent-Society contended that after the Schedule land vested in the State Government in pursuance of the order made by the Competent Authority dated 30-4-1985 and after having taken over possession of the; same in pursuance of the notification issued under Sub-section (1) of Section 10 of the ULC Act on 17-1-1988 allotted the Schedule land to the 6th respondent vide its order dated 9-7-1999 produced as Annexure-R4. The possession of the Schedule land was given to the 6th respondent on 24-7-1999 in pursuance of the order at Annexure-R4. The 6th respondent, in para 4 of the statement of objections, however, contended that the preliminary and final notifications issued by the BDA for acquiring the Schedule land are without authority of law.

7. The learned Single Judge notwithstanding several contentions raised by the parties in their pleadings, but, resting his opinion only on the order made by this Court in Writ Petition No. 4810 of 1995 dismissed the writ petition observing that in Writ Petition No. 4810 of 1995 though preliminary as well as final notifications issued by the BDA were challenged, this Court had quashed only the final notification and left it open to the BDA to take further steps in accordance with law, the appellants are bound by the said judgment and they are not entitled to make any grievance against the preliminary notification issued u/s 17(1) of the Act. Hence, this writ appeal by the aggrieved writ petitioners.

8. Sri Taresh, learned Counsel appearing for the appellants while reiterating and highlighting the same contentions raised in the writ petition, would contend that the very initiation of the proceedings by the BDA under the Act by issuing preliminary notification dated 23-3-1988 under Sub-section (1) of Section 17 of the Act is ex facie illegal and liable to be quashed inasmuch as on 23-3-1988 the Schedule land was in actual possession of Amarjyothi House Building Co-operative Society in pursuance of the acquisition of the Schedule land under the L.A. Act. In other words, according to Sri Taresh that as on 23-3-1988 when preliminary notification u/s 17(1) of the Act was issued, the appellants were not the owners of the Schedule land nor that land was available for acquisition. Sri Taresh would also contend that the "public purpose" envisaged under the L.A. Act

and the Act would not be different and since acquisition of the Schedule land in exercise of the eminent domain power under the L.A. Act is held not for public purpose by the Apex Court, acquisition of the same Schedule land under the Act for public purpose would not arise. In other words, learned Counsel would contend that since the State Government had acquired the Schedule land for a public purpose, to wit, for forming house-sites for the benefit of the members of the Amarjyothi House Building Co-operative Society, destruction of that purpose and substituting another public purpose in its place would not arise. Sri Taresh would contend that the learned Single Judge while placing reliance on the judgment of a learned Single Judge of this Court dated 22-9-1997 in Writ Petition No. 4810 of 1995, has failed to appreciate the purport of the observations made by the learned Single Judge in para 3 of the order and if those observations are read carefully, it can be seen that the learned Judge has not expressed any opinion about the legality of the parallel acquisition proceedings, thus leaving it open to be decided when a situation arises. The learned Single Judge, it is highlighted, did not decide in Writ Petition No. 4810 of 1995, the question whether if the Government issues a notification to acquire a land for a public purpose under the L.A. Act and during the subsistence of that notification, whether another notification for acquiring the same land can be issued under the Act. Sri Taresh would also contend that the learned Single Judge has failed to appreciate the constructions and developments made in the Schedule land after the Schedule land was restored to the appellants in pursuance of the order made by the Apex Court dated 21-2-1995 in SLP Nos. 13114 to 13339 of 1991. Sri Taresh would conclude the arguments by contending that the action of the BDA in acquiring the Schedule land notwithstanding the fact that the attempt made by the State Government to acquire the same Schedule land under the provisions of the L.A. Act was frustrated by the Apex Court, is totally arbitrary, irrational and borders on mala fide exercise of the power of eminent domain.

9. Sri K Krishna, learned Counsel appearing for respondents 3 and 4 as well as Sri Deshraj, learned Government Advocate who appeared for respondents 1, 2 and 5 would support the order of the learned Single Judge.

10. Having heard the learned Counsels for the parties, the only question that arises for decision is: Whether the acquisition proceedings impugned in the present writ proceedings suffer from any legal flaw on the basis of which we could step in under Article 226 of the Constitution of India and quash the same?

11. Having carefully perused the orders made by this Court and the Apex Court where the attempt of the State Government to acquire the Schedule land for the benefit of Amarjyothi House Building Co-operative Society by issuing preliminary notification u/s 4(1) of the L.A. Act on 3-12-1986 and final declaration u/s 6(1) of the L.A. Act on 8-1-1988 failed, we are of the considered opinion that there was a calculated move on the part of the BDA to frustrate the benefit of the order of the Apex Court dated 21-2-1995 made in SLP (C) Nos. 13114 to 13339 of 1991 following the decision made by it in Civil Appeal Nos. 3011 to 3019 of

1995 (arising out of SLP Nos. 11482 to 11490 of 1991) filed by the HMT House Building Co-operative Society to the appellants/ petitioners. The operative portion of the order made by the Apex Court in C.A. Nos. 3011 to 3019 of 1995 reads as follows.--

"We direct that as a result of quashing of the land acquisition proceedings including the notifications as aforesaid, the possession of the lands shall be restored to the respective landowners irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of the possession to the landowners they shall refund the amounts received by them as compensation or otherwise in respect of their lands. The appellant, the respondents and the State Government including all concerned authorities/ persons shall implement the aforesaid directions".

12. Although the above direction was issued by the Apex Court on 21-2-1995, admittedly, the actual possession of the land was restored to the appellants only on 6-8-1998. We find force in the contention of Sri Taresh that the very initiation of the acquisition proceedings under the Act by issuing Notification u/s 17(1), dated 23-3-1988 was totally misconceived and illegal. The facts stated supra and materials placed before the Court would undeniably show that well-before 23-3-1988 the Schedule land stood vested in the State Government in pursuance of the acquisition proceedings initiated under the L.A. Act by issuing preliminary notification u/s 4(1) on 3-12-1986 and final declaration made u/s 6(1) of the said Act on 8-1-1988. If the Schedule land was not the land of the appellants as on 23-3-1988 but the same was the land of the State Government, acquiring the same land under the provisions of the Act by issuing preliminary notification u/s 17(1) of the Act on 23-3-1988 would not arise. Further, it needs to be noticed that the order of the Apex Court made on 21-2-1995 setting at naught the acquisition proceedings initiated by the State Government under the L.A. Act would not enure to the benefit of the BDA to legalise an apparently illegal action taken by it on 23-3-1988 by issuing preliminary notification u/s 17(1) of the Act. The BDA ought not to have initiated the proceedings to acquire the land under the Act when the proceedings initiated under the L.A. Act for acquiring the same land by the State Government were concluded and the challenge made to the acquisition under that Act was in pipeline before this Court and the Supreme Court.

13. It was contended by Sri Taresh that the "public purpose" for which the land could be acquired both under the L.A. Act and the Act could not be different and since the Apex Court has opined that the land sought to be acquired under the L.A. Act is not for "public purpose", acquisition of the same land under the Act for the alleged public purpose would not arise. In that regard, the judgment of the Madras High Court in the case of *Saroja Sethu v State of Tamil Nadu and Ors.* 1993 LACC 490 was cited before us to support the hypothesis of the above argument. In that case, a question arose whether any land allotted, assigned or marked for a public purpose and utilized for such public purpose can be

subjected to acquisition proceedings in the name of any of the public purposes that could/can be spelt out from the definition of the explanation of the "public purpose" under the L.A. Act. This question arose in the premise of the following facts. That certain land allotted to a house building co-operative society and further allotment made by that society to its member for construction on residential house was sought to be acquired under the L.A. Act by issuing notification for a public purpose to wit for construction of Staff quarters of some Government Department. The Madras High Court quashed the notification issued under the L.A. Act holding that there can be no public purpose which would interfere with another public purpose. If the above rule is applied to the facts of the present case, initiation of acquisition proceedings of the land under the Act by issuing preliminary notification u/s 17(1) of the Act on 23-3-1988 could be faulted. Simply because the acquisition made under the L.A. Act was subsequently set at naught by the Apex Court on 21-2-1995, that circumstance would not legalise the serious flaw which crept into the preliminary notification u/s 17(1) of the Act.

14. This takes us to the next question whether the appellants could be non-suited on the basis of the order made by a learned Single Judge of this Court dated 22-9-1997 in Writ Petition No. 4810 of 1995? At the threshold, it needs to be noticed that writ petition was not filed by the appellants, but by M/s. Amarjyothi House Building Co-operative Society. At this stage itself, it needs to be noticed that by virtue of the order made by the Apex Court on 21-2-1995 in SLP (C) Nos. 13114 and 13339 of 1991 whatever right or interest that the said society had acquired in the Schedule land by virtue of the acquisition proceedings initiated under the L.A. Act they stood obliterated on 21-2-1995. In other words, Amarjyothi House Building Co-operative Society had no right or interest or locus standi against the acquisition sought to be made by the BDA under the Act. The said society in ordinary parlance became a total stranger to the Schedule land by virtue of the order made by the Apex Court on 21-2-1995. Simply because in the writ petition filed by the society it had questioned the notifications issued by the BDA for acquisition of the Schedule land and this Court had quashed only the final notification and not the preliminary notification, it would not come in the way of the owner of the Schedule land viz., the appellants herein, assailing the legality and validity of the notifications. The learned Single Judge, if we may say so with respect, lost sight of this important aspect of the case. Alternatively, it needs to be noticed that even the learned Single Judge who decided Writ Petition No. 4810 of 1995 in his order dated 22-9-1997, observed thus:

"In view of there being a parallel acquisition proceedings, without expressing any opinion in relation to the acquisition of lands for the petitioner-Society this petition is disposed of following the decision of this Court in W.P. Nos. 32881 of 1994 and connected petitions decided on September 26, 1996, for the very reasons recorded therein".

In the context in which the learned Single Judge made the above observation, it

is reasonable to hold that no opinion is expressed by the learned Single Judge about the parallel acquisition proceedings thereby leaving it open to be decided when a situation arises. Looking from that angle also, it cannot be said that in the present writ petition filed by the appellants the validity of preliminary notification issued by the BDA cannot be considered.

15. Lastly, it needs to be noticed that the appellants have developed the Schedule land after its restoration to them on 6-8-1998 and they have put up constructions also in part of the land. This aspect has also escaped the attention of the learned Single Judge in the decision making.

16. In the result and for the foregoing reasons, with respect, we cannot fall in line with the view taken by the learned Single Judge. Accordingly, we allow the writ appeal and set aside the order of the learned Single Judge dated 18th April, 2001 passed in Writ Petition No. 26693 of 1999 and quash the impugned notifications -- preliminary notification dated 23-3-1988 marked as Annexure-H and the final notification dated 5-4-1999 marked as Annexure-J with regard to the Schedule land i.e., 3 acres 4 guntas of land comprised in Sy. No. 172/3 situate in Kothanur Village, Uttarahalli Hobli, Bangalore South Taluk. In the facts and circumstances of the case, the parties are directed to bear their respective costs.

17. Sri Deshraj, learned Government Advocate is permitted to file memo of appearance on behalf of respondents 1, 2 and 5 within a period of four weeks from today.