

(2003) 08 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No's. 4503-4508 of 2000 etc.

Khaza Munsoor Ahmed Khan and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17, 18, 19, 36
Land Acquisition Act, 1894 — Section 4, 5 A, 6

Citation : (2003) ILR (Kar) 4026 : (2003) 6 KarLJ 145 : (2003) 4 KCCR 3193

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; H.B. Narayan, HCGP for R1 and 3 and P.S. Manjunath, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J .

1. In all these Writ Petitions the petitioners have sought for a declaration that Sections 17, 18 and 19 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as 'the Act') are repugnant to the Land Acquisition Act of 1894 and therefore they are ab initio void, nonest and unenforceable and have also sought for quashing of the notifications issued u/s 17(1) and 19(1)(a) of the above said Act.

2. The petitioners claiming to be the owners of certain land have filed these Writ Petitions challenging the notifications referred to above.

3. The learned Counsel for the petitioners in all these petitions submit that Sections 17, 18 and 19 of the Act, are liable to be struck down as they are repugnant to the provisions of the L.A. Act, on the ground that no opportunity of hearing as provided u/s 5-A of the L.A., Act has been provided, under this Act. Under the provisions of the L.A. Act, if any land owner objects acquisition on the ground that the acquisition is not for a public purpose, Section 5-A provides for

hearing the objector before submitting the report to the State Government. Under the scheme of the provisions of the Urban Development Authority Act, pursuant to the preliminary notification issued u/s 17(1) of the Act, all the land owners whose names are found in the revenue records will be served with notice. After the receipt of the said notice, it is open for the land owners to file objections objecting the proposed acquisition. Thereafter, the Board is required to consider the objections and submit the Scheme to the State Government for sanction of the State Government. The Government after considering the report may accord sanction as required u/s 18 of the Act. Upon such sanction the State Government is required to issue a final notification u/s 19(1) of the Act, declaring the land proposed for acquisition are required for public purpose. Sections 17 and 19 of the Act are similar to Sections 4 and 6 of the Land Acquisition Act. Under the L.A. Act, the objector is entitled for hearing as required u/s 5A of the Act, but under the provisions of the Urban Development Authority act, the land owner may object the acquisition if he is of the view that the others for execution of the scheme called Rajeev Gandhinagar. This land is not required for a public purpose, but he is not entitled for was followed by a final notification dated 1.2.1996. an opportunity of hearing. But the Board is conferred with the power to consider the said objections and submit the report to the State Government for sanction. From this it is seen except an opportunity of hearing the land owner is provided with an opportunity to file objections and said objections are required to be considered by the Board.

4. This Court in the case of Shri Ganesha Beshaja Ashram Vs. State of Karnataka, , while interpreting similar provisions under the Karnataka Improvement Boards Act, 1966, has held as follows:-

"The fact that there is no provision for personal hearing cannot by itself a ground for holding that the procedure provided is unreasonable as long as there is a provision for objecting to the acquisition and consideration of those objections by the State Government."

In view of this decision only because there is no similar provision affording opportunity of hearing as provided u/s 5A of the LA Act, it cannot be said that the provisions of the Act are ab initio void and unenforceable.

5. The Land Acquisition Act is a complete code providing for declaration whether the land is required for a public purpose and also for acquisition. Whereas the Urban Development Authority Act, does not provide for an acquisition but only provide for declaration whether the land is required for public purpose or not. The issuance of notification u/s 19(1) of the Act, is to the effect that the land is required for a public purpose. After this declaration, the acquisition will take place under the L.A., Act by virtue of Section 36 of the Act. Therefore, there is no substance in the contention of the petitioners in all these petitions in so far as it relates to striking down Sections 17, 18 and 19 of the Act.

6. The Authority has issued a preliminary notification dated 9.10.1992 proposing

to acquire the land of the petitioners and others for execution of the scheme called Rajeev Gandhinagar. This was followed by a final notification dated 1.2.1996.

7. The learned Counsel for the petitioner submits that the for declaration are bad only because certain lands have been omitted in the final notification. As stated earlier under the scheme of the Act, after considering the objections, if the Board or the State Government are of the view that certain lands are not required, it is open for the State Government to omit such of those lands from acquisition. Mere deleting certain lands from the acquisition proceedings itself does not in any way invalidate the acquisition proceedings. Therefore, the acquisition proceedings for execution of the scheme is valid and it cannot be invalidated on that ground alone. At the time of arguments, learned Counsel for the petitioners submits that the Government has also issued notifications in respect of two survey numbers withdrawing the acquisition proceedings. This withdrawal of acquisition proceedings in so far as two survey numbers are concerned do not in any way affect the acquisition proceedings if the State Government is of the view that the said lands are not required for the execution of the scheme.

8. There are no other grounds urged by the learned Counsel for the petitioners in all these cases.

9. Accordingly, Writ Petitions are rejected.