

(1997) 03 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 21423 of 1992 and Ors.

Khoday Distilleries Ltd. and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 15, 17 (2), 19 (1), 35, 36
Constitution of India, 1950 — Article 254
Land Acquisition Act, 1894 — Section 10, 4, 5, 9

Citation : AIR 1998 Kar 1 : (1997) ILR (Kar) 1419

Hon'ble Judges : R.P. Sethi, C.J.; S. Rajendra Babu, J

Bench : Division Bench

Advocate : Mohammed Saifulla, in W.P. 21423/92, H.K. Vasudeva Reddy, for Kesvy and Co. in W.P. No. 34660/94, R. Vijaykumar and M. Rangarao and Associates in W.P. No. 39926/93 and S.G. Bhat, in W.P. No. 1916/92, for the Appellant; R.N. Narasimhan Murthy H.B. Datar for S.A. Nazeer, for R-3 and 4, H. Rangavittalachar, G.A. for R-1 and 2 in W.P. Nos. 21423/92 and 38660/64, H. Rangavittalachar, G.A. for R-2, K. Sreedhar, for R-3 and 4 in W.P. 39926/93, H. Rangavittalachar, G.A. for R-2, H.B. Datar for K. Lakshminarayana Rao, for R-3 in W.P. No. 1916/1992, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajendra Babu, J.—The petitioners in these cases are owners of lands situate in Bangalore South Taluk. The Bangalore Development Authority (for short, Authority) formulated a scheme for improvement u/s 15 of the Bangalore Development Authority Act, 1976 (hereinafter, for short, referred to as the BDA Act) for formation of a residential lay-out known as "JAYAPRAKASH NARAYAN NAGAR" 9th stage lay-out. A notification was issued on 17.11.1988 proposing a scheme for the said purpose. In the said notification, several lands including that of the petitioners were notified for acquisition. Thereafter, individual notices were issued to them as contemplated u/s 17(5) of the BDA Act. The petitioners filed detailed objections thereto. A notification was thereafter issued on 22.7.1991 u/s 19(1) of the B.D.A. Act declaring the lands mentioned in the schedule thereto are

needed for public purpose for formation of a lay-out referred to earlier. The lands of the petitioners were also included in the said schedule. The 4th respondent herein (Spl.LAO) was appointed to perform the functions of the Deputy Commissioner under the Land Acquisition Act, 1894 (hereinafter, for short, referred to as the LA Act) and take steps for purpose of acquisition of the said lands. The Special Land Acquisition Officer issued notices under Sections 9 and 10 of the L.A. Act asking the petitioners to put forth their claims in question. Petitioners being aggrieved by the action of the respondents have filed these petitions for quashing the proceedings initiated under the BDA Act and for certain other incidental reliefs.

2. Before we advert to the contentions raised by the parties, it is necessary to briefly notice the development of law regarding acquisition of land. Entry 33 of List I and Entry 36 of List II of VII Schedule to the Constitution provided for acquisition and requisition of land prior to Constitution (Seventh) Amendment. There was a separate Entry 42 of List III which referred to Compensation. By the Constitution (Seventh) Amendment, under Entry 42 List III, acquisition and requisition of property is provided, for the original entry had referred only to the principles on which compensation for the property acquired and requisitioned for the purpose of Union or the State Government was provided. Thus the amendment was made deleting Entry 33 of List I and Entry 36 of List II and retaining only Entry 42 in the changed form. The object of that amendment has been explained in the objects and reasons of the Bill relating to it and it is useful to set out the same as hereunder:

"The existence of three entries in the legislative lists (83 of List I, 86 of List II and 42 of List III) relating to essentially single subject of acquisition and requisitioning of property by the Government gives rise to necessary technical difficulties in legislation. In order to avoid these difficulties and simplifying the constitutional position, it is proposed to omit the entries in the Union & State List and replace the entry in the Concurrent list by a comprehensive entry covering the whole subject."

3. Under Chapter III of the BDA Act, the Authority is authorised to draft a detailed scheme for the Bangalore Metropolitan Area. u/s 16 of the BDA Act, the Development scheme shall provide for acquisition of any land which will be necessary for or affected by the execution of the scheme amongst other things referred to in Sub-section (1) thereof. Section 17 of the BDA Act provides for procedure of completion of scheme. When a development scheme has been prepared, the authority will have to draw up a notification indicating the fact of a scheme having been made, the limits of the area comprised therein with other details including that of the land which is proposed to be acquired which may be open for inspection at all reasonable hours. Section 17(5) of the BDA Act mandates that the Authority shall serve notice on every person whose name appears in the assessment list of the Local Authority or in the Land Revenue Register as being primarily liable to pay the property tax or land revenue to show-

cause as to why such acquisition of the land should not be made. Section 18 provided for sanction of the scheme after the formalities u/s 17 have been complied with such as publication of the scheme, service of notices as provided u/s 17 of the BDA Act and after consideration of the representations, if any, received in respect thereof. When the Authority submits the scheme making such modifications therein as it may think fit to the Government for sanction, such proposal shall consist of (i) a description with full particulars of the scheme including the reasons for any modifications therein; (ii) complete plans and estimates of the cost of executing the scheme; (iii) a statement specifying the land proposed to be acquired; (iv) any representation received under Sub-section (2) of Section 17; (v) a schedule showing the rateable value, as entered in the Municipal assessment registers or the assessment in the land revenue registers; and (vi) other particulars, if any, as may be prescribed. After considering the proposal submitted to it, the Government, may, by order, give sanction to the scheme.

4. Chapter IV of the B.D.A. Act empowers the Authority to acquire lands by agreement u/s 35 of the BDA Act. Section 36 thereof provides for acquisition of land otherwise than by agreement. The acquisition of land under the Act otherwise than by agreement shall be regulated by the provisions, so far as they are applicable, of the LA. Act, 1894.

5. By Mysore Act XVII of 1961, the Law for acquisition of land for public purposes and for companies was amended and was applied in the State of Karnataka as indicated in the Act. By this Act the Central Land Acquisition Act was extended to the State of Karnataka. Under Sub-section (2) of Section 1 of Act 1 of 1894, the Act was applicable to the whole of India except the territories which immediately before the 1st November, 1956 were comprised in Part-B States other than those mentioned, in Clauses (a) and (c) of Sub-section (1) of Section 7 of the States Re-organization Act, 1956. Therefore, it became necessary for the Karnataka Legislature to enact Mysore Act XVII of 1961 extending the applicability of the LA. Act 1894 to the State of Karnataka. By Act No. 68 of 1984, the Parliament amended Section 1(2) of the L.A. Act thereby extending the Act to the whole of India except the State of Jammu and Kashmir. Thus the Act is applicable in the entire State of Karnataka. The said Act received the assent of the President on 24th September, 1984 and has come into force thereafter.

6. In this background, Learned Counsel for the petitioners contend that in view of Article 254 of the Constitution of India, the Land Acquisition Act as amended by Mysore Act 17/1961 is no longer in force in view of Act No. 68 of 1984 amending the provisions of the L.A. Act. For the entire country there is only one L.A. Act and that Act alone is applicable. It is therefore contended that in the present case a preliminary notification having been published on 17.11.1988 notifying the intention to acquire the lands within the period prescribed under proviso to Section 6(1) of the L.A. Act, and the same not having been done, the entire proceedings have lapsed. It is contended that the preliminary notification having

been, published in the Gazette on 12.1.1989 and Notification u/s 19 having been published on 27.7.1991 in the Gazette, it is far beyond the period of one year provided under proviso (2) to Section 6(1) of the L.A. Act. The Learned Counsel draw out attention to Article 254 of the Constitution of India to impress upon us that if there is any inconsistency between the laws made by Parliament and laws made by the State Legislature in any matter enumerated in the concurrent List, the law made by the Parliament would prevail over that of the State unless it be that the Act of the State Legislature is a subsequent enactment which has received the assent of the President, and, this is not the position in the present case.

7. Sri H.B. Datar, Learned Senior Advocate, leading the arguments for the respondents and Sri H. Rangavittalachar, Learned Government Advocate, submitted that this argument is wholly devoid of merit, they submit that the B.D.A. Act is only an enactment for the purpose of planned development of the City of Bangalore and areas chosen thereto and for all matters connected thereunder; that the acquisition of land for purpose of the scheme is only for the purpose of development and therefore falls entirely within the scope of Entry 5 of List II of the Seventh Schedule to the Constitution; that Entry 5 of List II provides for Local Government; that is to say, the Constitution and powers of Improvement Trusts among other authorities, mining settlement authorities and other authorities for the purpose of local self-government or village administration; that, necessarily the provisions of the B.D.A. Act are not enacted for the purpose of acquisition as such and in the course of enforcement of its developmental schemes it may become necessary to acquire lands and therefore acquisition of land is part of the developmental scheme and thus in pith and substance is an enactment made under Entry 5 of List II of the Seventh Schedule to the Constitution; that the purpose of the BDA Act is not acquisition of land simpliciter. It is only to constitute or incorporate an Authority to regulate planned development of the Bangalore Metropolitan Area. The Authority is enabled under the Act to frame any scheme and, if necessary, to acquire the land by agreement with the persons having interest in the land by exchange or otherwise. Thus, the compulsory acquisition of land is only incidental to the main purpose. In *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, and *The Special Land Acquisition Officer, City Improvement Trust Board, Mysore Vs. P. Govindan*, - the Supreme Court made it clear with reference to the Improvement Act of the Bangalore Urban Area that it provided for special procedure for improvement thereto. There was no express provision in that Act incorporating the provisions of the L.A. Act. Therefore, by reference, they were made applicable. In the decision in *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, It was held that it is only by incorporation that L.A. Act was applied and purpose of acquisition of the land was incidental. When there is a legislation by incorporation, subsequent amendment made to such an enactment will not affect the original incorporation and the enactment as originally incorporated into the

Act would be applicable. This position becomes clear for there are several provisions of the L.A. Act and the provisions of the B.D.A. Act which are comparable, and hence the contentions of the petitioners are untenable.

8. We shall now examine the provisions of BDA Act and L.A. Act with reference to contentions raised on either side. Chapter III of the BDA Act provides for developmental schemes. Section 15 empowers the Authority to undertake a development scheme. Section 16 requires the particulars, to be provided in such a scheme. Sub-section (1)(a) thereof refers to stating the land which is required for acquisition for the purpose of the scheme or which may be affected by the scheme. After preparation of a scheme, u/s 17, the authority will have to draw up a notification stating the fact of a scheme having been made which shall also contain specifications of the land proposed to be acquired and on such a notification being published and a notice thereto is served upon the owners of the land, they may file objections to the same. Those objections are processed and reference is made to the Government which is thereafter sanctioned u/s 18 by the Government with such modification as it may deem fit. u/s 4 of the L.A. Act, a preliminary notification is issued setting out the lands required for acquisition for a public purpose and objections thereto can be filed and there is a provision for hearing the objections and the same may be referred to the Government and ultimately, the Government makes a final notification u/s 6 of the L.A. Act. The two sets of provisions under Sections 4, 5A and 6 of the L.A. Act are comparable with the provisions of Sections 17 and 18 of the B.D.A. Act. Under the provisions of the L.A. Act, if the final notification is not issued within the period mentioned therein and if any award is not made within the time prescribed u/s 11-A of the Act, the acquisition proceedings would lapse. In the case of schemes covered by the B.D.A. Act, the authority has to execute the schemes within a period of 5 years and if the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative. Thus in substance there are provisions under the B.D.A. Act to indicate the proposals for acquisition, considering the objections thereto, sanctioning the proposal for acquisition on consideration of such objections and if such acts do not take place within a period of 5 years the proceedings would lapse. The Supreme Court in several decisions where questions of delay in the implementation of the proposals made under the L.A. Act for purpose of completion of the acquisition proceedings occurs, has taken the view that if the same is unreasonable, the acquisition proceedings could be quashed, prior to the introduction of Section 6 and 11-A of the L.A. Act prescribing limitation on the powers and the time within which such action should be taken. It would be a matter of policy for the Legislature to indicate the time within which such acts should be taken. In the case of B.D.A. Act, considering the nature and complexity of the implementation of the scheme, a period of 5 years has been fixed for purpose of completion of the scheme from the date of issue of the notification u/s 19 of the B.D.A. Act on sanction of the scheme. Therefore, when the Legislature itself has taken note of within what period the

schemes have to be implemented and prescribes an authority thereto and also provides for as to what consequence would follow on non-implementation of the scheme within that period, we do not think this Court can take a view that such implementation of the scheme is in any way discriminatory when compared to the provisions of the L.A. Act. In substance, both the provisions provided for identical situation - may be in case of L.A. Act more details are set forth such as the period within which final notification has to be issued and the period within which award has to be passed. But in case of the B.D.A. Act implementation of the scheme has been limited to a period of 5 years as provided in Section 27 of the B.D.A. Act.

9. Section 27 of the B.D.A. Act provides that where within a period of 5 years from the date of the publication in the official gazette of the declaration u/s 19(1), the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative. In the L.A. Act certain period has been fixed which is considered to be reasonable within which the final notification will have to be issued and award has to be passed and if such acts are done beyond the time prescribed therein, the acquisition of land will lapse. To the same effect is Section 27 of the B.D.A. Act. If the B.D.A. Act provides for 5 years to be reasonable period for substantial compliance with the scheme, We cannot state that the said provision is unreasonable or not proper. Thus the scheme of the L.A. Act as modified by the B.D.A. Act would be applicable by reason of the provisions of Sections 17, 18, 27 and 36 of the B.D.A. Act.

10. The City of Bangalore Improvement Act, 1945 (herein-after referred to as the Improvement Act) was applicable to the Bangalore area prior to coming into force of the B.D.A. Act. The Supreme Court in THE LAND ACQUISITION OFFICER, CITB, BANGALORE vs. H. NARAYANAIAH AND OTHERS. examined the various provisions of the Improvement Act and observed thus:-

"4. The Bangalore Act, as its preamble states, is really concerned with the "improvement and future expansion of the City of Bangalore, and for the appointment of a Board of Trustees with special powers to carry out the aforesaid purposes". As an incident of this improvement and expansion it provides for acquisition of land also. It does not, however, contain a separate code of its own for such acquisitions. But, Section 27 of the Bangalore Act lay down:

27. Provisions applicable by the acquisition of land otherwise than by agreement. The acquisition other than by agreement of land within or without the City under this Act shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act, 1894, and by the following further provisions....."

In that decision, the words "so far as they are applicable" appearing in Section 27 of the Improvement Act were examined. It was stated that the intention was to exclude only those provisions of the acquisition Act which became inapplicable because of any special procedure prescribed by the Improvement Act

corresponding with that found in the Acquisition Act u/s 4(1). These words bring in or make applicable, so far as this is reasonably possible, general provisions such as Section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by necessary implication, excluded must be applied.

11. It is only for purpose of determining the compensation, the provisions of the L.A. Act can be looked into and not for other purposes. The application of the L.A. Act is only in so far as it is applicable that is, wherever there are provisions made in the Act itself, in other cases the provisions of the L.A. Act would not be applicable. Therefore, when the Act provides that if the scheme is not implemented substantially within a period of 5 years, the same would lapse, the other provisions in the L.A. Act would not be attracted to the present case at all because L.A. Act is made applicable to schemes under the Act as modified by the Act. The L.A. Act is not independently applicable to the schemes framed under the B.D.A. Act. Otherwise, it would become impossible for the authority to implement the schemes in terms of the L.A. Act. Thus, we find no substance in the first contention advanced on behalf of the petitioners nor do we find any substance in the contention that the procedures prescribed under the two enactments are so different as to result in discrimination.

12. We shall now consider the contention as to whether there are no provisions akin to L.A. Act regarding acquisition. In THE SPECIAL LAO, CITB, MYSORE v. P. GOVINDAN it was noticed that although the procedure laid down in Section 16 of the Mysore Act (i.e., Improvement Act) is more elaborate than the procedure prescribed u/s 4(1) of the Acquisition Act, yet, the purpose of Section 16 of the Mysore Act is same as that of Section 4(1) of the L.A. Act. We have also now drawn similar comparison between the provisions of the B.D.A. Act and the L.A. Act. Therefore, We must hold that the provisions of Section 36(1) of the BDA Act provides an identical situation in so far as they are applicable. In view of the decisions in Narayanaiah's case and Govindan's case by the Supreme Court in identical context, it must be held that the provisions of LA Act to the extent as are made applicable in BDA Act are attracted. Separate provisions are made regarding the issue of preliminary notification and the final notification as well as the period within which the proceedings under the B.D.A. Act would lapse when notified for acquisition as is dear from Chapter III of the B.D.A. Act r/w Section 36 thereof. What is therefore either expressly provided or necessarily excluded must be taken out of consideration. We hold therefore that the provisions of the Section 6 and Section 11-A of the Land Acquisition Act which provide for the period of limitation within which final notification can be made and award could be passed are excluded from application to acquisition made under B.D.A. Act by necessary implication. The rest of the provisions other than those relating to the issue of preliminary notification, final notification or period within which the award should be passed and lapsing of proceedings under the B.D.A. Act, of the L.A. Act would certainly be applicable.

13. The argument that the L.A. Act would be applicable as amended, is advanced only with reference to the applicability of the provisions of Section 6 of the L.A. Act where the period of limitation is prescribed for issue of the final notification and Section 11A of the L.A. Act the period within which the award is to be passed. We have just now held that these two provisions are not applicable on the basis of interpretation adopted by us. In that view of the matter the general question whether reference to the L.A. Act in the BDA Act amounts to legislation by reference or incorporation or the effect thereof is not necessary to be examined or decided in this case.

14. The Learned Counsel for the petitioners urged that if there are different procedures available in the two enactments and the object of declaring an acquisition to have lapsed being to enable the parties to get appropriate market value by way of compensation, and considering the objects and reasons of the Act No. 68/1984 being that pendency of acquisition proceedings affects the scale of compensation, the same results in discrimination. Reliance is placed on the decision of the Supreme Court in *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, . We have compared the two procedures and held that substantially they are identical. May be, if acquisition had taken place under the L.A. Act, the owner of the land may get a little more compensation, but it is too hazardous to enter upon that discussion because the purpose of the Act is to implement certain development schemes and acquisition of land as such is not the main purpose. It is one of the incidental aspects of the scheme. If this aspect is borne in mind, discrimination, if any, would not arise at all and the observations made in *Gauri Shankar's* case (*supra*) cannot be taken advantage of by the petitioners.

15. The Learned Counsel for the petitioners urged that the acquisition proceedings could commence only after sanction of the scheme and in this context relied upon the decision in *STATE OF TAMILNADU vs. A. MOHAMMED YOUSUF* AIR 1992 1827. Those observations were made in the context of the interpretation of the proceedings for land acquisition under the L.A. Act read with Section 70 of the Madras State Housing Board Act. There in that enactment the provisions of the Act provided that the scheme itself would commence only on the acquisition of land. In the present case, sanction of the scheme is absolutely essential for the purpose of acquisition proceedings as such. The intention to acquire the lands are indicated for which objections are received and they are considered by the Government before sanctioning of the scheme. The scheme of provisions of the B.D.A. Act being entirely different from the Madras State Housing Board Act, we do not think there is any reason to rely upon the said decision.

16. An argument is advanced that Sections 17 and 19 of the B.D.A. Act are not equivalent to Sections 4 and 6 of the L.A. Act as it stands now after the amendment by 1984 Act. We have explained the scope of the two provisions earlier with reference to the amended L.A. Act. Therefore, we do not find any

substance in this argument.

17. One of the basic arguments advanced on behalf of the petitioners is that B.D.A. Act is a composite legislation consisting of both improvement and acquisition falling under Entry 5 of List II and Entry 42 of List III; that the provisions which are contained in the B.D.A. Act which relate to land acquisition are those explicitly covered by the L.A. Act and by reason of the subsequent amendment to L.A. Act which prevails over BDA Act which is an earlier enactment there could be no acquisition of the land pursuant to B.D.A. Act at all; that acquisition of land, according to the Learned Counsel, is not incidental to any other power and for this proposition, reliance was placed upon the decision rendered in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, . We have examined the scheme of the Act and held that the provisions of the Act is in pith and substance for improvement of the Bangalore Metropolitan Area and acquisition of land is only part of such activity and not the main activity. The argument sought to be projected on the basis of the decision in *RUSTOM CAVASJEE COOPER'S CASE*, may be analysed if provisions are for mere acquisition and is made for the purpose of improvement of Bangalore Metropolitan Area, perhaps such an argument may be attracted. It is plain and clear that the provisions of the B.D.A. Act are meant only for the purpose of improvement of the Bangalore Metropolitan Area and acquisition of land is part of that power and not incidental thereto. Such power is conferred on B.D.A, as part of the improvement itself. For purpose of improvement of the City of Bangalore if necessarily land has to be acquired this contention has no substance.

18. Sri Vasudeva Reddy, Learned Senior Advocate, appearing for some of the petitioners and intervening applicants, while reiterating the other arguments submitted that acquisition takes place from stage to stage and land could be acquired under the L.A. Act only for a public purpose which includes planned development of an area and therefore the notification u/s 19 of the BDA Act for acquisition must precede the scheme also. We have explained in detail various steps needed to be taken for acquisition of land after close examination of the various provisions of the Act. The argument advanced on behalf of the petitioners is not tenable on the scheme of the Act.

19. Our attention was drawn to the decision of this Court in Writ Appeal (Writ Appeal Nos. 2336/1994) and connected matters. But, in the view we have taken, it may not be necessary to examine the applicability of the said decision to the facts of this case.

20. Learned Counsel for petitioner in Writ Petition No. 1916/92 urged that issue of individual notice under the provisions of the Act is mandatory and objections, if any, filed should be considered though Section 18 of the Act does not contemplate hearing, oral hearing should be given in the light of the nature of the powers that are exercised under the Act. Such contentions advanced earlier had been considered by the Supreme Court in *NARAYANAIAH'S* case itself to which we have adverted to and it has been held that oral hearing in the matter is

not at all contemplated. The requirement of the provisions of the Act would be satisfied, if opportunity for filing objections had been given.

21. In Writ Petition No. 1916/1992, the petitioner therein had filed objections which have been considered by the Government before sanctioning the scheme. Therefore, non-issue of the notice as such has not affected the right of the party at all. Hence, the contentions advanced on behalf of the petitioner in this petition also have got to be rejected.

22. Though large number of decisions have been referred to by the Learned Counsel on either side to explain the scope of the provisions of the Constitution, the Land Acquisition Act and the Bangalore Development Authority Act, we have not adverted to all of them as in our view there are some direct decisions of the Supreme Court on the points raised and it would be sufficient to examine the case with reference to those decision.

23. As we have rejected the various contentions advanced on behalf of the petitioners, these petitions are liable to and are dismissed. Rule discharged.