

(1988) 11 KAR CK 0029
In the Karnataka High Court
Case No : W.P. Nos. 18582 and 18788 of 1987

Krishnappa Reddi S.A.

APPELLANT

Vs

Government of Karnataka and Another

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 36
Land Acquisition Act, 1894 — Section 11a

Citation : (1989) 1 KarLJ 158

Hon'ble Judges : S. G. Doddakale Gowda, J

Judgement

Doddakale Gowda, J.-Petitioners in both these cases have challenged the validity of acquisition under Sections 17 and 19 of the Bangalore Development Act, 1976 (hereinafter referred to as the "Act") and/or in the alternative sought for an issue of a writ in the nature of mandamus directing the Bangalore Development Authority (hereinafter referred to as the "BDA") to regulate their unauthorised occupation to the extent permissible under Government Order, dated 12-10-1987.

2. Sri M. Ranga Rao, learned counsel for petitioners rightly and fairly submitted in the inception itself that points which he intends to canvass, though purport to cover by a decision of this Court in Hanumanthappa v State of Karnataka (ILR 1987 Karnataka 3024), In fact, have not been touched or considered and even if considered require reconsideration.

Points formulated are:

(i) Hanumanthappa's case has not considered the effect of Section 36 of the Act read with Sec. 11A of Land Acquisition Act; and (ii) Overlooked the ratio enunciated by the Supreme Court in Land Acquisition Officer, CITB v. Narayanaiah, (1976(2) Kar. L.J. 189).

3. As there is very little controversy on procedural aspect. Court can straightaway proceed to consider the effect of salient provisions and for this purpose it is necessary to extract Section 36 of the Act and Section 11A of the

Land Acquisition Act. They read thus:

Sec. 36 Provision applicable to the acquisition of land otherwise than by agreement:

(1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provision so far as they are applicable of the Land Acquisition Act, 1894.

Section 11A of Land Acquisition Act, reads thus:

11-A. Period within which an award shall be made-The collector shall make an award under Section 11 within a period of two years from the date 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, 1964, 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. (Emphasis supplied)

The act is silent regarding the mode of determination of compensation and passing of an award. Submission of Sri Ranga Rao, learned counsel for the petitioners, was that in the absence of those provisions in the Act, provisions of the Land Acquisition Act fully govern determination of compensation and passing of award. In that process, if B.D.A has not adhered to Section 11-A extracted above, acquisition automatically lapses.

4. The object of the Act is to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. The legislative competency is traceable to item 5 of list II of II Schedule. The Act while providing for development of the Metropolitan area incidentally provides for acquisition.

The Land Acquisition Act provides for acquisition of land for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition and it falls under Item 42 of List III of VII Schedule.

5. The doctrine of "Pith and substance" is that when an enactment substantially falls within the powers expressly conferred by the constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. The declaration under the Act to the effect that a particular land or lands is/are needed for a public purpose is by virtue of the substantial provision in the Act. The State Legislature instead of providing a detailed machinery for determination of compensation and mode of payment, has, by incorporation adopted the procedure prescribed in the Land Acquisition Act, such as passing of an award

after notice to interested parties vide Sections 11 and 12; and the criteria required to be taken into consideration for determining the compensation vide Section 23; and for seeking reference if dissatisfied with the award vide Section 18. It is for this purpose, the legislature has specifically used the words "so far as they are applicable" in Section 36 of the Act. The substantial declaration made under the Act cannot be annulled by a provision contained in an Act enacted by virtue of power conferred under other items of different lists of Seventh Schedule. Can a declaration made for acquisition under the Karnataka Housing Board Act, Industrial Area Development Act, Corporation Act and the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 be lapsed if no award is passed within two years? In all these Acts, there is no machinery for determination of compensation in the form of an award and/or to make reference, except adopting the provisions contained in the Land Acquisition Act referred to above. Will a declaration under the Acquisition and Requisition of Immovable Property Act, 1952 (Central Act) lapse, if no award is made within two years as prescribed under Section 11A of the Land Acquisition Act, as that also involves acquisition and payment of compensation? Applying the doctrine of "pith and substance" it must be held that incorporation of procedural aspects provided in the Land Acquisition Act as far as possible will not vitiate the substantial declaration under the Act.

6. The enunciation made by the Supreme Court in *Narayanaiah's* case, cited *supra*, which reads thus:

"It is true that S. 23 is not specifically mentioned in the Bangalore Act. But, the obvious purpose of the opening words of S. 27 of the Bangalore Act seems to us to be that award of compensation, which is a necessary part of any law providing for acquisition, must be governed by S. 23 of the Acquisition Act"

not merely lend support to the above view, but also makes the second contention devoid of merit. Same conclusion as in *Hanumanthappa's* case is reached but for different reasons.

7. Regarding alternative relief, a similar order as in *M.A. Narayana Murthy and others v The State of Karnataka and others* (Writ Petition Nos. 15206 of 1985 and other connected cases, decided on 31-5-1988) is made in these cases also.

As observed therein, it is open to the petitioner to take advantage of the Government Order dated 12-10-1987 and to make suitable representation to the Screening Committee set up by the State Government in terms of the said Government Order within eight weeks from this date. The Screening Committee shall consider the same strictly without relaxing the terms of the Government Order. This order shall not enable the petitioner to put up fresh construction and at the same time respondents shall not demolish the existing building nor dispossess the petitioner till the Screening Committee disposes of his representation in accordance with law.

8. Writ petitions stand disposed of with the above observation.