

(2009) 08 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 12626-31 of 2003 and 7287 of 2005

Meenakshi Thimmaiah and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17, 17 (1), 18, 18 (1), 18 (3)

Citation : (2010) ILR (Kar) 62

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : R.S. Ravi and Narendra Gowda, in WP Nos. 12626-31/2003 and R.S. Ravi, in WP No. 7287/2005, for the Appellant; Shashidhar S. Karamadi, GP and HCGP for R1, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—These writ petitions are filed by the petitioners seeking to quash the preliminary and final acquisition Notifications dated 23.12.1991 and 10.12.1992 respectively issued by the Mysore Urban Development Authority (hereinafter called as "MUDA") and the State Government represented by its Secretary to the Department of Urban Development respectively by urging various facts and legal contentions and prayed to allow the writ petitions by granting the reliefs as prayed therein.

2. The prayer in the above writ petitions are heard together and disposed of the same by passing common order as the acquisition Notifications are same and grounds urged also are same but the lands of the petitioners which are acquired by the State Government in favour of MUDA for the purpose of forming a residential layout by implementing the town planning scheme under the Karnataka Town and Country Planning Act, 1961, (hereinafter called as KT & CP Act) are different.

3. Certain relevant brief facts are stated for the purpose of appreciating the rival

legal contentions urged on behalf of the parties. In W.P. Nos. 12626-31/2003, the petitioners are claiming that they are the owners of the land bearing Sy. Nos. 122/1 and 123/2, measuring 2 acres 34 guntas, 1 acre 16 guntas respectively, Sy. No. 22/2A, measuring 38 guntas, Sy. Nos. 4/3 and 22/1, measuring 1 acre 13 guntas and 2 acres 33 guntas respectively, Sy. No. 4/2A, measuring 2 acres 12 guntas and Sy. No. 54 measuring 21 guntas of land. The petitioner in the connected writ petition in W.P. No. 7287/2005 claims that he is the owner of the land bearing Sy. No. 122/2 measuring 1 acre 10 guntas situate at Bassavanahalli Village, Kasaba Hobli, Mysore Taluk and District.

4. The MUDA had proposed to acquire 1075 acres 10 guntas comprising various lands including the lands referred to supra for formation of Vijayanagar IV Stage Layout, under a scheme formed u/s 17 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as the "Act" for short).

5. The case of the petitioners is that MUDA issued the preliminary Notification u/s 17(1) of the Act on 23.12.1991 calling upon the land owners to file objections within 30 days from the date of publication of the said Notification in the Official Gazette which was Gazetted on 02.01.1992. It is the further case of the petitioners that they have filed objection statements stating that the lands proposed to be acquired have been developed into garden lands and the same are not feasible to form a residential layout. It is their case that the MUDA without considering the objections filed by them, got issued the final Notification u/s 19(1) of the Act, and acquired their lands without obtaining prior sanction from the first respondent as required u/s 18(3) of the Act. It is their case that the said Notifications were challenged by some of the land owners by filing writ petitions before this Court in W.P. No. 39705/92, 1564/93, 32283/93, 7948/94 and 29211/94 urging various grounds. The said writ petitions were allowed by this Court vide its order dated 24.08.1998 and quashed the Final Notification holding that it was issued by the first respondent without sanction as provided u/s 18(3) of the Act and with a direction to the owners therein to file objections if any within 30 days from that date. If such objections are filed, the authorities shall consider the same as provided u/s 18 of the Act and submitted the same to the Government for sanction of the housing scheme. It is stated by the Learned Counsel for the petitioners that the said order has become final.

6. It is the further case of the petitioners that the lands in question are garden lands. The State Government issued circular dated 29.01.1998 with reference to Sections 17 and 15 of the Act for implementation of the plans by the Development Authorities in the Karnataka State. The Development authorities have to take prior approval as required u/s 15(1)(b) of the Act before publishing the preliminary Notification. The same is not followed by the Development Authorities. Even as per the Government Circular bearing No. Na Aa E 531 MIB 97 dated 06.01.1998. Further, it is stated that before issuing the preliminary Notification, the Development Authorities should conduct a spot inspection regarding existence of garden lands, constructions, hillocks etc. Even though

such instructions are given to the Development Authorities, the State Government has noticed that representations were submitted by the land owners to denotify such lands from acquisition. Therefore, Development Authority Committee, during 1997-98 has issued Circular instructions to all the Development Authorities in the State of Karnataka informing them not to acquire the garden and fertile lands for urban development. Further they all informed that, the Development Authorities before issuing preliminary Notification u/s 17(1) of the Act for implementation of the intended housing plan, full details shall be submitted to the State Government for obtaining its prior permission as required in law if such procedure is not followed by the Urban Development Authorities disciplinary action would be initiated against the Commissioners of the Authorities.

7. It is stated that the names of the petitioners- owners continued in the revenue records in respect of the lands declared to be acquired, which fact is evidenced from the copies of the RTCs extracts produced by them and further it is stated that they have been paying land revenue tax to the revenue department.

8. It is their further case that the scheme formulated for formation of a residential layout should be implemented within five years, otherwise the scheme would lapsed u/s 27 of the Act. In the instant case, the scheme is already lapsed, for the reason that the petitioners have been continued in possession of the lands, on this ground also it is prayed by them to quash the proceedings. To substantiate the said legal contention, the petitioner in the connected writ petition No. 7287/05, has stated that u/s 16 of the Land Acquisition Act, the first respondent has to take possession of the lands and hand over the same to MUDA. It is their case that the first respondent has not taken possession as provided under Sections 16(1) and (2) of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (hereinafter called as the LA Act).

9. The petitioners in the first writ batch of petitions in W.P. No. 12626-31/2003 have stated that they have grown coconut trees, mango trees and other fruit yielding trees which are 50 years old.

10. The common legal grounds urged in these petitions by the petitioners are that before expiry of 30 days from the date of preliminary Notification issued and served upon them and after considering the objection statement to the proposed acquisition of lands the first respondent has given prior sanction to the housing scheme by its order. The above contention urged by the similarly placed owners in the earlier batch of writ petition No. 29211/94 and connected cases is accepted by this Court by order dated 24.08.1998 challenged by some of the land. The said order in respect of these lands of those land owner/petitioners has attained the finality. The correctness of the same is not questioned by the respondents herein.

11. Another ground of attack is that the issuance of the Notification in the name

of the vendor of the fifth petitioner in the first batch of writ petition Nos. 12626-31/2003 and that she herself has got the khata and RTCs changed in her name without hearing and affording opportunity, results in violation of the principles of natural justice.

12. The further case of the petitioners is that the State Government and the MUDA have dropped acquisition proceedings in respect of garden lands acquired for the aforesaid layout on the ground that the said garden lands are required to prevent air pollution and that the owners of such lands have spent huge amount for development and non-extending of same benefit to these petitioners, whose lands also garden lands and therefore they are similarly placed as that of the owners, whose lands are denotified would be in violation of Article 14 of the Constitution of India, it is a clear of discrimination.

13. The last ground urged is that the acquisition proceedings are liable to be quashed as the petitioners are in possession of the land and the housing scheme of the MUDA lapsed by operation of law as contemplated u/s 27 of the Act as the lands of these petitioners possession is not taken.

14. The 2nd respondent MUDA filed statement of objections in W.P. No. 7287/2005 traversing the petition averments. It is stated that the grounds urged in these writ petitions have been considered by this Court in W.P. No. 16054/2004 and upheld the validity of the Notifications and dismissed the writ petition by order dated 11-1-2005. Copy of the same is produced as Annexure-R1. That decision holds good to these writ petitions. It is stated that the writ petitions are liable to be dismissed solely on the ground of delay and laches as the writ petitions are filed after a lapse of 12 years and reasons for the delay is not explained properly. In support of this, the decisions reported in AIR 1994 SC 1020 and AIR 1998 SC 1608 are relied upon. It is asserted that notices u/s 12(2) of L.A. Act have been issued to the petitioners but they refused to receive the same and affixed on their residential houses. It is stated that possession of the land was taken under a mahazar dated 19-7-2001 and Notification u/s 16(2) of the Act was issued on 13-2-2002 and the same was Gazetted on 2-5-2002. In the RTC the name of MUDA is entered. In paragraphs 4 and 5 of the objections statement it is stated that MUDA acquired vast extent of 1001 acres of land for the layout in question and formed 12255 sites of various dimensions and liakku Patras have been issued to several allottees. It is stated that the allottees have constructed houses and in proof of the same some photographs are also produced. Thus the scheme has been substantially implemented and there is no lapse of the scheme. In the circumstances, the 2nd respondent has prayed to dismiss the writ petitions.

15. Similar statement of objections is filed in the first batch of writ petitions also. It is stated that since the petitioners have not filed objections to the preliminary Notification, the benefit of the order passed in similar writ petition in W.P. No. 29211/1994 and other connected petitions quashing the impugned Notification in so far as the writ petitioners therein will not enure to the petitioners. In support

of this contention, reliance is placed on the decision of the Apex Court reported in Delhi Administration Vs. Gurdip Singh Uban and Others etc., . Therefore, it is contended that the petitioners cannot claim equity. In the additional statement of objections filed, the stand regarding maintainability of the writ petitions is reiterated.

16. Petitioners have filed rejoinder producing Annexures-M & N. Annexure-M is the list of persons who have filed objections to the preliminary Notification. Annexure-N is the decision taken by MUDA rejecting the objections and to issue Final Notification.

17. Learned Counsel for MUDA relied upon various decisions in support of substantial compliance of the scheme and submitted that the same are applicable with all fours to these matters and therefore requested to dismiss the writ petitions.

18. On the basis of the pleadings and the grounds urged and legal contentions advanced by the Learned Counsel for the parties, the following points would arise for consideration:

- i) Whether the sanction of scheme by the State Government without considering the statement of objections to the proposed acquisition of lands of the petitioners and not furnishing is legal and valid?
- ii) Whether the acquisition proceedings are liable to be quashed for not conducting enquiry and considering the objections as contemplated u/s 5-A of the Act?
- iii) Whether possession of the lands were taken over as contemplated u/s 16(2) of L.A. Act read with Section 36(3) of KUDA Act?
- iv) Whether the decision rendered by this Court under Annexure-R1 has to be applied to these cases?
- v) Whether the writ petitions are liable to be dismissed on the ground of delay and laches?

Points (i & ii): Legality of sanction of scheme and consideration of objections:

19. The scheme is approved by the State Government on 27-1-1992, copy of which is produced as Annexure-R 1 along with statement of objections in W.P. No. 12626/2003. The preliminary Notification is dated 23-12-1991. Final Notification is dated 10-12-1992, award is dated 18-7-1994 and possession is claimed to have been taken on 19-7-2001.

20. Section 17 of Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "the Act") contemplates the procedure to be followed regarding the schemes. Sub-section (5) thereof mandates service of notice on the land owners to enable them to file objections. Section 18 of the Act stipulates consideration of the representations. For that purpose. Section 5-A of L.A. Act

provides for conducting enquiry.

21. In the instant cases, the categorical stand of 2nd respondent-MUDA is that none of the petitioners filed objections. The said stand of MUDA is contrary to Annexure-M produced along with the rejoinder. Annexure-M is the list of persons who have filed objections. The names of the petitioners are found in the said list. It is the document of MUDA itself. Contrary to their own document, it is pleaded that none of the petitioners filed objections. This clearly shows that their objections are not at all considered by the MUDA.

22. The next crucial document is Annexure-N. How the objections are considered is reflected in it. The same is extracted hereunder:

From the above it is clear that no enquiry is conducted and the objections are not considered properly and in the required manner. Regarding consideration of objections, in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , it is held as under:

6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain " may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in "law". It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

10. In State of Punjab v. Gurdial Singh it was held: (SCC P. 477, para 16)

Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.

23. In the decision in Ameer Khan and Others Vs. State of Karnataka and Others, this Court has held that objections must be considered and disposed of by the authority. In that case, even the objections considered by the Commissioner was held to be not proper. The relevant para is extracted as under:

12. I find considerable force in the third submission of the Learned Counsel for the petitioners that the representations/petitions filed by the petitioners have not been considered by the authority in terms of Sub-section (1) of Section 18 of the Act. Annexure-R1 produced by the second respondent shows that the

Commissioner of the second respondent authority had considered the objections filed by the petitioners and other land owners and he had also heard the learned Counsel appearing for some of the objectors. Sub-section (1) of Section 18 of the Act, in my view, mandates the "Authority" to consider the representations of the objectors and submit the scheme in the light of the objections furnished, with such modifications as the authority may deem fit, to the State Government for its sanction. There cannot be any doubt that the Commissioner is not the authority. As observed by me earlier, Sub-section (1) of Section 18 of the Act provides that representations of the objectors are required to be considered by the authority. In the instant case, the representations/objections filed were considered only by the Commissioner.

a) However, the Learned Counsel appearing for the respondents relying upon the resolution dated 10th of January, 1997 of the second respondent-authority submitted that since the report of the Commissioner was considered by the authority. It must be held that the objections/representations filed by the objectors were also considered by the authority. I am unable to accede to this submission of the Learned Counsel for the respondents. It is useful to extract the resolution of the authority, which has been placed before me, which reads as hereunder:

Xxxxxxx

From the resolution of the authority extracted above, it is manifest that the authority has accepted the report of the Commissioner. The acceptance of the report of the Commissioner, in my view, cannot be equated to the consideration of the objections of the objectors by the authority itself as required under Sub-section (1) of Section 18 of the Act. It is relevant to point out that in the resolution, it is not even stated that the authority, after considering the objections of the objectors, has approved the report of the Commissioner. Therefore, what was before the authority was only the report of the Commissioner. Mere approval of the report without consideration of the objections of the objectors cannot, in my opinion, be held as consideration of the objections as required u/s 18(1) of the Act. Whether the report of the Commissioner, as a matter of fact, was a true reflection of the objections filed by the objectors and whether there was proper application of mind by the Commissioner with reference to the objections of the objectors or not, is a matter to which the authority was required to apply its mind after considering the objections filed by the objectors. The authority, in my view, solely on the basis of the report of the Commissioner, cannot proceed to submit the scheme to the Government for sanction. When the valuable property right of the parties is sought to be taken away and when the Act does not provide for even a personal hearing the minimum that is required by an authority is to consider the objections and comply with the mandate of the law. The power to consider the objections filed objections filed objectors to the acquisition of the lands, has been conferred on the authority by the Act. The Constitution of the authority itself

speaks for the safeguard provided to the people, whose property rights are sought to be taken away. Therefore, in my view, since the material on record discloses that the representations/objections filed by the petitioners and other objectors were not considered by the authority, the recommendations of the scheme made by the authority to the State Government for sanction, is vitiated.

The sanction of scheme by the State Government on the mere recommendation of the authority without furnishing the particulars as provided under Clauses (a) to (f) of Sub-section (1) of Section of the Act is held to be vitiated. Therefore, in the instant case also, the scheme approved by the State Government is vitiated in law. It is not legal and valid and bad in law. Therefore, the acquisition proceedings in relation to these petitions are liable to be quashed. Accordingly, Points (i) & (ii) are answered.

Point (iii) - Taking over of possession:

24. The petitioners' claim that they are in physical possession of the lands but MUDA claims that it is in possession of the acquired lands were taken on 19-7-2001 under mahazars and to evidence the above fact Notification u/s 16(2) of L.A. Act was published on 13.2.2002, copy of which is produced as Annexure-R22 along with objections filed in W.P. No. 12626/2003. Copies of the mahazars are produced as Annexures-R2, 4, 5, 8, 10 and 12. In the light of these documents, it has to be examined whether possession of the lands is taken in accordance with law.

25. Section 36(3) of the Act, which is pari-materia to Section 36(3) of B.D.A. Act, is relevant and the same is extracted hereunder:

After the land vests in the Government u/s 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition and upon the authority agreeing to pay any further cost which may be incurred on account of the acquisition, transfer the land to the authority, and the land shall thereupon vest in the authority.

(emphasis supplied)

26. Section 16 of the L.A. Act reads:

When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

The word "Collector" was substituted as "Deputy Commissioner" by Land Acquisition (Mysore Extension Amendment) Act XVII of 1961. The Deputy Commissioner has to take possession or, in the alternative since in the definition of "Deputy Commissioner" u/s 3(c) of LA Act the words "an Assistant Commissioner incharge of sub-division of a district" are substituted, as per the amended definition of Section 3(c) of L.A. Act, the Assistant Commissioner incharge of the sub-division where the acquired lands are situated, has to take

possession. When amendment was made to Section 3(c) of L.A. Act by Act No. 17/1961, Section 16 of the Act also got amended and re-numbered as 16(1) & Sub-section (2) was inserted in which the words "Deputy Commissioner" is specifically mentioned. If this provision is read with Section 36(3) of MUDA Act, it abundantly makes clear that the amendment to Section 3(c) of L.A. Act by Act No. 17/61 substituting "Assistant Commissioner of the revenue sub-division" in place of Deputy Commissioner has no application to Section 16(2) of the L.A. Act to take possession of the acquired lands. If the Deputy Commissioner takes possession, then the land vests in the Government and thereafter they should be transferred to the MUDA as prescribed in Section 36(3) of the Act.

27. In the instant cases neither the Deputy Commissioner nor the Assistant Commissioner of the concerned Revenue sub-division took possession of the acquired lands. On the other hand, from the copies of the Mahazars produced by the MUDA it is seen that the Special Revenue Inspector claims to have taken possession of the acquired lands. He is not authorised to take possession of the acquired lands. It is well settled position law as laid down in the Apex Court in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, that when, a statute prescribe certain things to be done by Statutory Authorities in a particular manner, the same has to be done in that manner only or not at all. Since the Act authorise only the Deputy Commissioner to take possession, he alone has to take possession of the acquired lands and not the Special Revenue Inspector. That apart, the petitioners/owners have not signed the so called mahazars. From whom possession is taken by the Revenue Inspector is not forthcoming. The mahazars are signed by some signatories whose identity is not known. The possibility of obtaining signatures of some persons visiting the office cannot be ruled-out. Therefore, it has to be held that possession of the acquired lands were not taken over from the petitioners in accordance with law. Consequently, Notification issued u/s 16(2) of L.A. Act has no value. In other words, by mere issuance of such Notification it cannot be concluded that possession of acquired lands was taken in accordance with law.

28. There is also no transfer of the acquired lands of the petitioners to MUDA. The lands vests with the State Government only if possession of the same is taken in the manner as provided u/s 16(2) of the LA Act and transfer of the same to the MUDA as provided u/s 36(3) of the Act. Since there is no transfer, the lands have not vested with MUDA.

29. That apart, the petitioners have filed I.A.II/2004 producing photographs as Annexure-K series to show that they are in possession of the lands. The photographs produced by the petitioners would clearly show the existence of residential houses, farm houses and agricultural and Horticultural operations upon the required lands of the petitioners. In view of these, it cannot be said that possession of the lands were taken over by MUDA, In the circumstances, I.A.II/2004 is allowed.

30. Since possession of the lands remained with the petitioners, mere publication

of Section 16(2) of L.A. Act Notification to evidence the fact of taking possession cannot be accepted by this Court. That apart, the Notification is issued by the Special Land Acquisition Officer of MUDA and it is not notified either by the Deputy Commissioner of the District or Assistant Commissioner of the Revenue sub-division. Therefore, Section 16(2) of the LA Act Notification has no legal sanction at all and it cannot be considered as proof for having taken over possession of the lands of the petitioners from them. Consequently, Point (iii) is answered in the negative.

Points (iv & v): Application of decision in W.P. No. 16054/2004 and W.A. No. 1447/2000

31. In the aforementioned two cases filed by some other land owners, this Court declined to quash the impugned Notifications on account of delay and laches. MUDA wants to apply the same to the present cases and to dismiss these petitions. That cannot be done by this Court in view of the answers given to Points (i to iii) holding that the approval given to the scheme is bad in law; that possession of the lands are not taken in accordance with law and the lands are not vested with MUDA. The acquisition proceedings are void ab initio in law. Void action is always void and it can be challenged at any point of time. Even if there is delay, the same cannot be a ground to deny the relief in view of the decision of the Apex Court reported in AIR 2000 SC 2306. Further the order passed in the above writ petition need not be applied to the fact situation for the reason that in the above writ petition the legal ground that the prior sanction of the scheme of the MUDA was sanctioned by the State Government as required u/s 18(3) of the Act without considering the statement of objections to the preliminary Notification and before expiry of 30 days period from the date of service of notice upon the petitioners along with the preliminary Notification inviting objection statements to the proposed acquisition of the petitioners lands. Further the legal grounds urged in these petitions are entirely different, from the grounds urged in the above said writ petition. The petitioners have placed reliance upon the judgment of this Court in G. Jayaram Reddy Vs. State of Karnataka and Others, .

32. The petitioners have produced Annexure-D the copy of the order dated 24-8-1998 passed by this Court in W.P. No. 29211/1994 and connected cases by which the impugned Notifications have been quashed in so far as the petitioners in those petitions are concerned. That order has become final. The said order was either produced or placed reliance by the petitioner in W.P. No. 16054/2004 & WA 1447/2000.

33. The petitioners also produced Annexures-E and E1 which are the Circulars issued by the Government not to acquire fertile agricultural lands, garden lands and lands where nurseries are established. The lands in question are also garden lands with residential and farm houses. Therefore, they should have not been proposed for acquisition for formation of residential layout even though the said circulars have no statutory force, but the same are binding upon the Urban

Development Authorities and State Government.

34. For the reasons stated above, petitioners succeed. The impugned Notifications are liable to be quashed. However, since MUDA claims that sites have been formed, allotted and some of the allottees have constructed houses and are residing therein, we confine relief only in so far as the lands of the petitioners are concerned.

35. Accordingly, the writ petitions are allowed. The impugned Notifications are quashed only in so far as the lands of the petitioners are concerned.