

(1991) 02 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 4884 of 1985

Mohammed Sab

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 300A
Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 3 (1), 3 (2), 3 (3), 3 (4), 3 (5)

Citation : (1991) ILR (Kar) 2587 : (1991) 2 KarLJ 329

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : appa Rao, for the Appellant; Bharathi Nagesh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this Petition under Articles 226 and 227 of the Constitution of India, the petitioners have sought for quashing the Notification No. LAQ.HS.CR.23/80-81 dated 29-12-1980/26-3-1981 published in the Karnataka Gazette on 9th April 1981 issued under Sub-section (1) of Section 3 of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972 (hereinafter referred to as the "Act"). Prior to the publication of the Notification under Sub-section (4) of Section 3 of the Act, a Notification No. LAQ.HS.CR.35/79-80 dated 27-12-1980 under Sub-section (1) of Section 3 of the Act was also published in the Karnataka Gazette on 17-1-1980. Under the impugned Notifications, 3 lands bearing S.Nos. 210/A, 169/1 and 169/2 of Bhalki in Bidar District are proposed to be acquired. The petitioners have also sought for a declaration that Section 3 of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972 is unconstitutional.

2. It is relevant to note that prior to the filing of this Writ Petition, petitioner No. 3 had filed W.P.No. 11157/1984 challenging the award passed pursuant to the

acquisition in question. That Writ Petition was dismissed on 17-8-1984. Thereafter, he filed W.A.No. 2271/1984 which was also dismissed on 5-12-1984. Afterwards, on 6-2-1985, the present Writ Petition has been filed by the petitioners. Petitioners 1 and 2 are the brothers of petitioner No. 3. The award was passed in November 1983.

3. In the light of the contentions urged on both sides, the following points arise for consideration:

1. Whether the notice under Rule 4 of the Karnataka Acquisition of Land for Grant of House Sites Rules, 1973 was served on the petitioner?

2. Whether the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 is beyond the legislative power of the State Legislature?

3. Whether the provisions contained in Sub-sections (5) and (6) of Section 3 of the aforesaid Act are violative of Articles 14 and 300A of the Constitution?

POINT No. 1

4. The contention of the petitioners that no notice was issued under Rule 4 of the Karnataka Acquisition of Land for Grant of House Sites Rules, 1973 (hereinafter referred to as the "Rules") and as such they had no opportunity to file their objections, is without substance and it is contrary to the records. In the award produced as Annexure-C by the petitioners, it has been specifically stated thus:

"The copies of 3(1) Notification published in the official Gazette have been duly served on the land-owners. The wide publicity in the locality was also given. The land-owners were allowed to file their objections for the acquisition if any. The statutory period of 30 days is given to the land-owners. No one has filed the objections for acquisition within the time allowed. The Assistant Director of Land Records, Bidar, have furnished the JMC., of lands on 15-3-1980. According to the JMC it is seen that there is absolutely no difference between the notified extent when compared with the area effected on the spot. As such the notified extent has been adopted and draft declaration u/s 3(4) of the Act has been submitted to the Deputy Commissioner, vide this office Lr. dated 22-3-1980."

From the aforesaid statement contained in the award which has become final, it is clear that the petitioners were served with the notice under Rule 4 of the Rules. They failed to file their objections. Therefore, the contention of the petitioners that they were not served with notice and they had no opportunity to file their objections and they were not heard in the matter is not well-founded. Accordingly, Point No. 1 is answered in the affirmative.

POINT No. 2

5. In paragraph 7 of the petition, the petitioners have pleaded thus:

"There cannot be 2 separate Acts for the Acquisition of the properties for the public purposes. The Land Acquisition Act deals with all acquisition proceedings.

There is no need for separate Act for house sites. Therefore, this Act of 1972 is unconstitutional. The State Government has no legislative competence to make such laws when the Central Act is in force and is applicable to all the land acquisition proceedings."

6. It is relevant to notice that before the Constitution (Seventh Amendment) Act, 1956 came into force, the legislative power relating to acquisition and requisitioning of properties was divided between the Union and the State Legislatures and it was distributed by entries in each one of the three legislative lists in the Seventh Schedule to the Constitution i.e., Entry No. 33 in List-I, Entry No. 36 in List-II and Entry No. 42 in List III. Entry No. 33 in List-I was as follows:

"Acquisition or requisitioning of property for the purpose of the Union."

Entry No. 36 in List-II was as follows:

"Acquisition or requisition of property except for the purpose of the Union, subject to the provisions of Entry 42 of List-III."

Entry No. 42 in List III before its substitution by the Constitution (Seventh Amendment) Act, 1956 was as follows:

"42. The principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a. State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given."

7. The acquisition and requisitioning of property essentially forms a single subject. However, this power was distributed in three Entries as pointed out above and was divided between the Union and the State Legislatures. The working of the Constitution and the exercise of the power by the Union and the State Legislatures, gave rise to certain technical difficulties in legislation. Therefore, in order to avoid these difficulties and simplify the Constitutional position, it was proposed to omit the entries in the Union and the State list and replace the entry in the concurrent list by a comprehensive entry covering the whole subject [See Statement of Objects and Reasons of the Constitution (Seventh Amendment) Act, 1956]. Therefore Entry No. 33 in List I and Entry No. 36 of List II were omitted by the Constitution (Seventh Amendment) Act, 1956 and Entry No. 42 of List-III (concurrent list) came to be substituted by the following new entry:

"Acquisition and Requisitioning of Property."

Therefore, on the coming into force of the Constitution (Seventh Amendment) Act, 1956, subject to other provisions of the Constitution, it became competent for the Parliament as well as the State Legislatures to enact a law for the acquisition and requisitioning of property.

8. On the date the Act came into force i.e., 23rd July 1973, Article 31 of the Constitution was in operation. The Land Acquisition Act, 1894 (Central Act No.

1/1894) as amended by Karnataka Act No. 17/1961 also held the field on the date the Act came into force. The Act provides for acquisition of land and vesting of the same in the State Government immediately on the publication in the Official Gazette of the declaration under Sub-section (4) of Section 3 of the Act and also confers a right on the State Government to take possession of the land included in the declaration published in the Official Gazette under Sub-section (4) of Section 3 of the Act. This is clear from Sub-sections (5), (6) and (7) of Section 3 of the Act. The Notifications published under Sub-sections (1) and (4) of Section 3 of the Act are equivalent to the Notifications published under Sections 4(1) and 6(1) of the Land Acquisition Act. Thus as the Act provides for vesting in, and transferring of ownership of the property acquired to the State Government and confers a right on the State Government to take possession of the same, it attracted Clause (2) of Article 31 of the Constitution as it stood prior to Constitution (Forty Fourth Amendment) Act, 1978. Therefore, as per Clause (3) of Article 31 of the Constitution, it was required to be reserved for the consideration of the President and to receive his assent. Accordingly, the Act was reserved for the consideration of the President and it received the assent of the President on 18-7-1973. Consequently, the requirement of Article 254 of the Constitution also had been complied with. Therefore, the question of considering the inconsistency of the provisions of the Act with the Central Act and the provisions of the State Act becoming repugnant to any of the provisions of the Central Act viz., in the instant case, the Land Acquisition Act, does not arise as the requirement of Clause (2) of Article 254 of the Constitution was complied with before the Act was brought into force in as much as the assent of the President to the Act was obtained. Therefore, the contention that the State Legislature is not competent to legislate the Act in question is without force and is not well founded.

8.1. Similarly, the contention that it was not necessary to enact the Act in question when the Land Acquisition Act provides for acquisition of property for public purpose is also not well founded. It is relevant to notice that the Act is enacted for the specific purpose of acquiring the land for grant of house sites to weaker sections of the people who are houseless and site less. Thus it is intended to acquire the land for the public purpose of granting house sites to the weaker sections of the people in the State and for purposes connected therewith. The acquisition of land for any other public purpose cannot be made under the Act whereas under the Land Acquisition Act, land can be acquired for various public purposes as specified in the Land Acquisition Act and also for Companies. The acquisition under the Act, having regard to the particular public purpose for which it is made and the very nature of such public purpose makes it imperative that the acquisition should be made with utmost expedition as otherwise the purpose of providing house sites to weaker sections of the people who are houseless, and site less will be defeated. This is not possible under the Land Acquisition Act under which possession cannot be obtained until the award is passed and compensation amount is deposited. Whereas under the Act,

immediately on the publication of the declaration in the Official Gazette under Sub-section (4) of Section 3 of the Act, the land vests in the State Government and it would be entitled to secure possession in accordance with the provisions contained in Sub-sections (6) and (7) of Section 3 of the Act. Thereafter, the award proceedings can take place as per the provisions contained in the Land Acquisition Act.

8.2. The problem of providing shelter to weaker sections of the people who are houseless and site less is a very serious problem confronting the State. It cannot be solved effectively if the land is sought to be acquired in the normal manner under the Land Acquisition Act. Therefore, it is necessary to have a special enactment of the type in question with the only specific public purpose of acquiring the land for grant of house sites to weaker sections of the people in the State who are houseless and site less. Hence Point No. 2 is answered in the negative.

POINT No. 3

9. In para 8 of the petition, the petitioners have pleaded thus:

"Section 3 of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972 says that the lands shall vest absolutely in the State Government on publication of the declaration in the Official Gazette. This provision of the Act is violative of Article 14 as well as Article 300A of the Constitution of India. The State cannot acquire properties without paying the compensation. Payment of compensation cannot precede the vesting of the properties. Amount of compensation must be paid to the owners of the properties before the properties are taken or acquired. Supreme Court has held in Keshavananda Bharati's case that payment of compensation must be made before acquiring the properties. Therefore, this provision of the Act is unconstitutional."

We do not find any substance in the contention that the provisions of Section 3 of the Act are violative of Articles 14 and 300A of the Constitution. We have already pointed out that the Act provides for acquisition of land for a specific purpose. We have also pointed out that the notifications issued under Sub-sections (1) and (4) of Section 3 of the Act are equivalent to the notifications issued u/s 4(1) and 6(1) respectively of the Land Acquisition Act. Sub-section (2) of Section 3 of the Act specifically makes it incumbent upon the State Government to serve the notice on the owner or where the owner is not the occupier, on the occupier and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice why the land should not be acquired by filing objections within the time specified. The Rules framed under the Act viz., Rule 6 of the Rules provides elaborate procedure for enquiry and hearing. Thus the provisions of Sections 3(1), 3(2), 3(3) and 3(4) of the Act and Rules 3 to 6, 8 and 9 of the Rules provide all the safeguards to the owner of the land or the person interested in the land or the occupier thereof and in some respects it provides more safeguards than what is provided under the Land

Acquisition Act. The only departure it makes from the procedure provided under the Land Acquisition Act is that it provides for vesting of the land acquired and taking possession of the same before the award for payment of compensation is passed and the amount of compensation is actually paid. When it is permissible to have a specific enactment for acquisition of land for a specific purpose, there is no reason why such an enactment should not provide a procedure different from the one provided under the Land Acquisition Act as long as the different procedure provided is reasonable, fair and does not give scope for arbitrary action. In fact, two Decisions rendered by Division Bench of this Court in MUTHYALA REDDY v. STATE OF MYSORE AND ORS. 1968(2) Mys.L.J. 48 and K.B. LAXMINARANAIAH v. STATE OF MYSORE AND ORS. 1972(1) Mys.L.J. 334 have considered similar question arising under different enactment.

In Muthyala Reddy's case 1968(2) Mys.L.J. 48 the provisions contained in the City of Bangalore Improvement Act regarding acquisition were considered. The validity of Section 16(2) of the aforesaid Act was challenged in the above case as being violative of Articles 14 and 19(1)(f) of the Constitution. The Division Bench noticed the fact that the City of Bangalore Improvement Act made a departure from the provisions of the Land Acquisition Act for the purpose of service of notice on the parties whose lands were sought to be acquired under the City of Bangalore Improvement Act and also the different procedure provided for acquisition than the one contained in the Land Acquisition Act and held that the different procedure prescribed under the City of Bangalore Improvement Act did not amount to discrimination so as to attract the vice of Article 14 of the Constitution. It also held that the person whose property was proposed to be acquired had no right to a particular procedure by adherence to which the property could be acquired.

In K.B. Laxminaranaiah's case 1972(1) Mys.L.J. 334 the procedure provided for acquisition under the City of Mysore Improvement Act was challenged on the ground that it was violative of Article 14 of the Constitution by providing two parallel procedures, one under the City of Mysore Improvement Act and another under the Land Acquisition Act. The Division Bench repelled the contention and held that two parallel proceedings - one under the City of Mysore Improvement Act and the other under the Land Acquisition Act - were not available so as to entitle the Board to choose one of them. Therefore, there was no violation of Article 14 of the Constitution. In holding so, the Division Bench followed the Decision of the Supreme Court in The State of Mysore and Another Vs. D. Achiah Chetty, etc.,

Further, the Supreme Court in The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, considered the provisions of Sections 14 to 18 of the City of Bangalore Improvement Act which provided for acquisition of lands and held as follows:

"It will be seen that Section 16 of the Bangalore Act provides even more elaborately for the publication of the initial notice which is given in Section 4(1)

of the Acquisition Act so that any representations which the objectors may have to make may be considered by the Board itself u/s 17 of the Bangalore Act. Thus the object of the procedure provided by Sections 16 and 17 seems to be to take the place of the notification u/s 4(1) and the hearing of objections u/s 5A of the Acquisition Act. Under the Bangalore Act, it is Board itself which gives notices and considers objections to a scheme before communicating the scheme to the Government for sanction. It is true that the Board has not been specifically given the power by the Bangalore Act to rescind the scheme. The Bangalore Act only mentions the Board's power to modify the scheme, if it considers that to be necessary. After that, the Act directs the Board to send it to the Government for sanction. Of course, the Government could either sanction or reject the scheme. And in suitable cases, the Board could perhaps revoke its own resolution. But we need not consider or decide that question here. All we need observe here is that a corresponding special procedure which we find in the provisions of Section 16 of the Bangalore Act, need not necessarily be identical with the general procedure, serving the same object which we find in Section 4(1) of the Acquisition Act. We are concerned more here with the identity of objects and functions of provisions rather than with that of precise steps prescribed in words used in them."

10. In the instant case also, the acquisition of land for the public purpose of granting house sites to the weaker sections of the people in the State can be made only by following the procedure laid down under the Act and the Rules. There is no option left to the State Government to adopt a procedure different from the one provided under the Act. If the acquisition of land is for a public purpose of granting house sites to the weaker sections of the people in the State, it has to be done only in accordance with the provisions of the Act and not in accordance with the provisions contained in the Land Acquisition Act.

11. The provisions contained in the Act cannot also be held to be violative of. Article 300A of the Constitution which provides that no person shall be deprived of his property, save by authority of law. The property of a person is acquired under the Act which gives the authority to the State Government to acquire by following the procedure provided under the Act. The Act provides for determination of the amount of compensation for the land acquired under the Act. The provisions of the Land Acquisition Act, as amended by Karnataka Act No. 17/1961 are made applicable mutatis-mutandis in respect of the enquiry and award by the Deputy Commissioner; Reference to Court, apportionment of amount and the payment of amount in respect of the land acquired under the Act (See Section 5 of the Act). Therefore, the Act provides for acquisition of the land. It also provides for determination of the amount of compensation payable for the land acquired and payment of the same. Thus it is clear that the Act does not deprive the property of a person without the authority of law. It provides the procedure for acquisition and determination of the amount of compensation payable for the land acquired and the payment of the amount so determined. It is no doubt true that Sub-sections (5) and (6) of Section 3 of the Act provide for

vesting of the land and taking possession of the same before the amount of compensation for the land acquired is determined and paid. As long as the owner or the person interested in the land acquired, under the Act as per the provisions of the Act is entitled to be paid the amount of compensation as determined under the Act, it is not possible to hold that Sub-sections (5) and (6) of Section 3 of the Act are violative of Article 300A of the Constitution merely because the amount of compensation can be determined and paid after the possession of the land acquired is obtained. Hence point No. 3 is answered in the negative.

12. Having regard to the findings recorded on Point Nos. 2 and 3, it is declared that the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 is within the legislative competence of the State Legislature. Sub-sections (5) and (6) of Section 3 of the aforesaid Act are not violative of Articles 14 and 300A of the Constitution.

13. All the contentions raised by the petitioners fail. Hence the Writ Petition is liable to be dismissed. Accordingly it is dismissed.