

(2009) 02 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 5010 of 2008

M.V. Muralidhar and Others

APPELLANT

Vs

Karnataka Industrial Areas Development Board and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (3), 28 (4), 3 (1)

Citation : (2009) 5 KarLJ 78

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Srinivas Raghavan, for Indus Law, for the Appellant; Jayakumar S. Patil, for S. Vamshi Krishna, for Respondents-1 and 2, Udaya Holla, General along with M.B. Vishwanath, A.G.A. for Respondent-3 and B.V. Acharya for Aaren Associates, for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Petitioners are questioning the legality and correctness of the notification issued by respondent 1 u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act") and notification dated 23-1-2006 issued u/s 28(1) of the Act and also notification dated 24-10-2007 issued u/s 28(4) of the Act as illegal, null and void.

2. According to the petitioners, they are the co-owners of an immovable property bearing No. 21/24-1 situated at M.G. Road, Bangalore and they also claim that they have entered into an agreement to purchase the adjoining properties bearing No. 20/16 and No. 21 from the respective owners and that they have filed two suits to enforce the agreement of contract in O.S. Nos. 2357 and 2352 of 1985 and that the said two suits are still pending before the City Civil Court at Bangalore. Contending that these three properties are adjoining to each other and in all measuring 19297.58 square feet, present petition is filed challenging the acquisition proceedings initiated by the respondents under the provisions of

the Act to locate Trinity Circle Station by the Bangalore Metro Rail Corporation Limited-respondent 4 herein. According to the petition averments, respondents could not have invoked provisions of the Act to acquire the aforesaid properties in order to establish Trinity Circle Station for and on behalf of respondent 4 on the ground that the aim and object of the Act does not provide to acquire property for establishment of a station. It is also contended by the petitioners that an enquiry as contemplated u/s 28(3) of the Act has not been conducted properly and no reasonable opportunity has been given to the petitioners by the respondents. It is further contended that though the other Government lands are available very near to the property in question and also on the other side of MG Road, respondents without application of mind are trying to acquire the petitioners' property. They further contend that respondents have not obtained permission under the provisions of Environment Protection and Pollution Control as decided by the Hon'ble Supreme Court in Karnataka Industrial Areas Development Board Vs. Sri. C. Kenchappa and Others, , and lastly contends that when MG Road is considered as a commercial hub as per CDP, no industrial activities can be taken by the respondents.

3. Respondents have filed detailed objections. According to them, petitioners have no locus standi to question the acquisition so far as the properties bearing Nos. 20/16 and 21 which are adjacent to the properties of the petitioners bearing No. 24/1 of M.G. Road. According to them, petitioners are yet to acquire the rights over those two properties as they have filed suits for specific performance of the agreement and their rights are yet to be decided by the City Civil Court. Owners of these two properties had also challenged the acquisition proceedings by filing a writ petition in W.P. No. 2224 of 2008 which petition has been withdrawn by the owners of those two properties on 9-2-2009. They further contend that acquisition of the property by the KIADB on the directions of the State Government is in terms of the aims and objects of the Act to provide industrial infrastructural facilities since Metro Rail is part of the transport industry and Metro Rail contributes to the industries and industrial area in and around Bangalore by providing a means of communication and transport and therefore they contend that establishment of Metro Rail is well-within the definition of the words "Industrial Infrastructural Facilities" as contemplated u/s 2(7-a) of the Act. They further contend that petitioners herein had filed their objections pursuant to the notice served on them u/s 28(2) of the Act on 25-2-2006 and in the said notice they were called upon to appear before the Land Acquisition Officer for the purpose of conducting enquiry on their objections as contemplated u/s 28(3) of the Act on 2-3-2006 and that petitioners herein did not appear before the Enquiry Officer and did not participate in the enquiry. Having not participated in the enquiry, respondents contend that petitioners cannot contend before this Court that no reasonable opportunity was given to them. It is further contended that even though petitioners have not appeared before the Enquiry Officer the objections filed by the petitioners has been considered by the LAO and objections are overruled on merits. Therefore, they contend that there are no merits in the

allegation that no enquiry is conducted as contemplated u/s 28(3) of the Act. It is further contended by the respondents that there is no necessity for the respondents to obtain clearance from the Pollution Control Board or Environment Officer to establish a Metro Train as the establishment of Metro Train does not cause any pollution and relying upon the judgment of the Hon'ble Supreme Court in C. Kenchappa's case, contend that the said judgment has no application to the facts of the present case since respondents are not establishing any industry either in the residential zone or in a commercial zone. It is the case of the respondents that they are providing an electric train to provide better facilities to connect the industrial hubs located in different areas of Bangalore which does not cause any environment pollution. They further relying upon the aforesaid judgment contend that establishment of Metro Train by the respondents would not violate the conditions stipulated by the Hon'ble Supreme Court in C. Kenchappa's case. They further contend that where a station has to be located is a decision of the Government and such decision cannot be overruled by this Court and the petitioners cannot say which property has to be acquired in order to locate particular station. According to them, taking the technical opinion and other feasibility, property of the petitioners is sought to be acquired to locate Trinity Circle Station and therefore petitioners have no say in the matter where exactly the station has to be located. They further contend that alternate properties shown by the petitioners are not feasible to locate Trinity Circle Station. On these grounds, they request the Court to dismiss the petition.

4. Having heard the Counsel for the parties, this Court has to consider the contentions raised by the petitioners one by one. The main contention of the petitioners before us is that the aim and object of the Act is only to secure and establish industries in the State of Karnataka and generally to promote establishment and orderly development of industries therein and for the purpose to establish an Industrial Areas Development Board and for purposes connected with the matter aforesaid. Relying upon the same, Counsel for the petitioners contend that establishment of a Metro Train in Bangalore does not fall either under the definition of the words "Development" or "Industrial Area" or "Industrial Estate" or "Industrial Infrastructural Facilities". Therefore, they contend that very initiation of acquisition proceedings under the provisions of the Act is void ab initio and entire notification has to be quashed. Per contra, Mr. B.V. Acharya, learned Senior Counsel appearing for respondent 4-BMRCL relying upon the judgment of this Court in H.N. Nanje Gowda and Anr. v. State of Karnataka and Ors. 1996(3) Kar. L.J. 39 (DB); Ballarpur Industries Ltd. Vs. Court of the Civil Judge, Karwar and Others, and P. Rajappa alias B.P. Rajappa Vs. State of Karnataka and Others, contends that definition of "Industrial Infrastructural Facilities" has been considered in these judgments which includes to provide facilities which contributes to the development of industrial establishments in industrial areas such as Research and Development, Communication, Transport, Banking, Marketing, Technology Parks and Townships for the purpose of establishing trade tourism centres or any other purpose which the Government

may specify by a notification. According to him, establishment of Metro Train is to connect industrial suburbs located in different places of Bangalore and by providing such transport system there would be industrial development which would help further growth of industrial suburbs established in different places in and around Bangalore. Therefore, he contends that there is no substance in the arguments advanced by the Counsel for the petitioners. Counsel for the petitioners relying upon Section 14(c) of the Act contends that industrial infrastructural facilities defined u/s 2(7-a) of the Act would mean only to provide such facilities in an industrial area established by the State of Karnataka and the definition of words "Industrial Infrastructural Facilities" cannot be extended to establish Metro Train as the Metro Train is not being established within the industrial area developed by the KIADB. He has also relied upon the provisions of Sections 14(c) and 5(1) of the Act so also Section 13 of the Act. Section 5 provides for establishment and incorporation of industrial areas which reads as hereunder:

5. Establishment and incorporation.-(1) For the purpose of securing the establishment of industrial areas in the State of Karnataka and generally for promoting the rapid and orderly establishment and development of industries and for providing industrial infrastructural facilities and amenity in industrial areas in the State of Karnataka, there shall be established by the State Government by notification a Board by the name of the Karnataka Industrial Areas Development Board.

Section 13 of the Act provides the functions and powers of the Board. Section 14 of the Act is in regard to general powers of the Board. This Court, considering the actual dispute between the parties in the present case, need not consider general powers of the Board provided u/s 14 of the Act. Further, this Court has to consider the provisions of Section 5(1) of the Act. It is no doubt true that u/s 5(1) of the Act in order to secure establishment of the industrial area in the State and for promoting rapid development of industries and for providing industrial infrastructural facilities in the industrial areas in the State, a notification has to be issued. But in the instant case, there is no necessity for this Court to consider the provisions of Section 5(1) of the Act as the industrial infrastructural facilities provided by the State Government by establishing the Metro Train to connect industrial areas already establishment by the State Government in different parts of Bangalore. If the Court considers the definition of "Industrial Infrastructural Facilities" within an industrial area, the same has to be extended to provide transport facilities from one industrial area to another industrial area. Even u/s 2(7-a) of the Act, Board is empowered to establish trade and tourism centres and any other facilities as the State Government may by notification specified in industrial infrastructural facilities for the purpose of the Act. If a train is established, this Court is of the opinion that it would contribute to the development of industries established in different industrial areas without there being proper transport system it would not be possible for better growth of industrial establishments already established by the KIADB. Therefore, this Court

does not see any merits in the arguments advanced by the Counsel for the petitioners that acquisition of the property under the Act to establish Metro Train is contrary to the aims and object of the Act.

5. Counsel for the petitioners submitted that the objections filed by the petitioners has not been considered by the respondent-Board. Petitioners have produced Annexure-A to the writ petition which is a notice issued by the Special Land Acquisition Officer, KIADB dated 23-1-2006 which discloses that 30 days time has been granted to the petitioners to file their objections to the proposed notification issued u/s 28(1) of the Act either in person or by post. Notice further reads that in order to consider the statement of objections of the parties a date was fixed as 2-3-2006 at 11 a.m. and petitioners were directed to appear in person or through their authorised agent before the Special Land Acquisition Officer. Counsel for the petitioners does not dispute the receipt of such notice. But what he contends is that the notice produced by the petitioners as per Annexure-A is only a notice u/s 28(2) of the Act and that the LAO was required to issue one more notice after objections are filed by the petitioners as contemplated u/s 28(3) of the Act. Since no notice as required u/s 28(3) of the Act is issued to the petitioners, this Court has to hold that no sufficient opportunity is given to the petitioners. But this Court cannot accept the arguments advanced by the Counsel for the petitioners since in Annexure-A LAO has fixed the date of hearing as 2-3-2006 at 11 a.m. directing the petitioners to appear in person or through their authorised agent along with the documents if any to object for the acquisition proceedings. Admittedly, petitioners have not appeared before the LAO on 2-3-2006. KIADB has produced records to show that on 2-3-2006 an enquiry as contemplated u/s 28(3) of the Act was held. On perusal of the order-sheet maintained by the LAO, owners of other two properties viz., Medappa, Leela alias Leela Ramachandran and Indira Medappa have appeared before the LAO along with their Advocates. They have been heard in the matter. If the petitioners have not appeared before the LAO on the date of hearing, petitioners cannot contend before the Court that no opportunity was given to them. The Court also perused the order passed by the LAO based on the objections filed by all the parties including Medappa and others. LAO considering the objections of the petitioners have overruled the objections and recommended acquisition. Therefore, this Court is of the opinion that there is no substance in submitting that no opportunity was given and that no enquiry as contemplated u/s 28(3) of the Act was held.

6. It is contended by the Counsel for the petitioners that there are alternate properties available for the respondents to locate Trinity Circle Station. According to the petitioners, adjoining to the petitioners' property, there is a Government Hostel which is more than an acre and the same can be made use of by the Government to locate the station. Petitioners have also suggested a property very adjacent to Mayo Hall and the property situated in front of Mayo Hall on the other side of MG Road. According to him, those properties are better suited than the properties in question. But where station has to be located, it is for the

experts to take a decision. It is the case of the respondents based on the experts' opinion properties have been identified for acquisition to establish Trinity Circle Station. When the authorities relying upon the opinion of technical experts, this Court cannot direct the respondents to shift the location from the place of petitioners' property to any other place. Learned Senior Counsel Mr. B.V. Acharya relying upon the judgment of the Hon'ble Supreme Court in (2002) 10 SCC 226 contends that if a policy decision is taken to locate a station by the Government, same cannot be questioned by others. He also contends that this Court can only issue direction to reconsider the matter, but Court itself cannot make any decision. Aforesaid case is decided by the Hon'ble Supreme Court when the administrative decision was taken earlier to locate the headquarters of South Western Railways in Bangalore and later on same was shifted to Hubli. In the instant case, petitioners have not alleged any mala fides in identifying the properties to locate the Trinity Circle Station. But what they contend before the Court is that there are other alternative properties available and the respondents can be directed to shift the Trinity Circle Station to other place as suggested by the petitioners. When the petitioners are not alleging mala fides against the respondents in identifying their properties to locate a station, this Court is afraid to accept the arguments advanced by the Counsel for the petitioners just because it is convenient for the petitioners to suggest alternate lands available to the respondents. Therefore, said point has to be answered against the petitioners.

7. Learned Counsel for the petitioners further contends that as per CDP, MG Road is considered as a commercial zone and in a commercial zone an industrial area cannot be established. In order to support his arguments, he has relied upon the judgment of this Court in Special Land Acquisition Officer, Karnataka Industrial Areas Development Board and Karnataka Industrial Areas Development Board Vs. State of Karnataka and Others, . Relying upon this judgment, he contends that in a commercial zone Court cannot permit the industrial activities to be carried on in the said area. But the said judgment has no application to the facts of this case. In the aforesaid judgment, in an area reserved for park in residential area, property was sought to be acquired to establish an industry. But in the instant case, respondents are not trying to establish an industrial area within the commercial zone or in the residential zone, they are providing only infrastructure of transport system for the better enjoyment of the general public and to develop industrial area developed by the KIADB in different places of Bangalore. Therefore, the point raised by the Counsel for the petitioners and the judgments relied upon by him has no application to the facts and circumstances of this case. Lastly Counsel for the petitioners contends that on account of establishment of industry, respondents are required to obtain permission from the Environment and Pollution Control Board. To support his arguments, he has relied upon the judgment of the Supreme Court in C. Kenchappa's case. According to this Court, grounds urged by the petitioners cannot be looked into considering the facts and circumstances of this case. In this case, respondents have contended that they are establishing an electric train which does not

emanate any sound or air pollution. In para 100 of the aforesaid judgment of the Supreme Court has ruled as hereunder:

100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principles of "sustainable development:

(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

Hon"ble Supreme Court in the aforesaid ruling has directed the KIADB to incorporate certain terms and conditions in order to maintain sustainable development. But in the instant case, KIADB was not allotting industrial site in favour of respondent 4 to establish an industry in order to get clearance from the Karnataka State Pollution Control Board. Aforesaid direction is prospective in nature. But in the instant case, notification has been issued on 17-1-2006 much prior to the judgment delivered by the Hon"ble Supreme Court in the aforesaid case. Even otherwise, as pointed out earlier when the respondents are not establishing any industry, the question of obtaining any clearance from the Pollution Control Board does not arise as the establishment of Metro Train does not cause any environmental pollution which affects the ecology.

8. In view of my findings on all the points, there is no substance in this petition. Accordingly, this petition is dismissed.

9. After the arguments are over, petitioners have filed an application for amendment of the petition seeking permission to raise certain grounds, contending that establishment of railways comes under List I of Schedule VII of the Constitution of India and the establishment of railways would be an exclusive domain of the Central Government and not the State Government. Since the arguments already addressed, at this stage this Court does not see any reasons to consider the amendment application. Mr. B.V. Acharya, learned Senior Counsel for respondent 4 submits that the respondents have obtained clearance from the Union of India also. In view of the said submission, this Court does not see any merit in the arguments of the learned Counsel for the petitioners. Accordingly, the amendment application is rejected.