

(1998) 03 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 9390 of 1990

Nanjundaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Constitution of India, 1950 — Article 254, 254 (1)
Land Acquisition Act, 1894 — Section 11 A, 17, 23, 24, 25

Citation : (1998) ILR (Kar) 2776 : (1998) 3 KarLJ 382

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri Mohandas N. Hegde, for the Appellant; Sri S. Vijayashankar, Advocate General, Sri A. Nagarajappa and High Court Government Advocate, for the Respondent

Judgement

1. The petitioners are the owners of the land measuring 1 acre 6 guntas in Survey No. 56574 of Malavalli Village, Mandya District. The Deputy Commissioner-2nd respondent issued a notification dated 9-3-1990 u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the "LA Act") proposing to acquire the land for a public purpose i.e., for construction of Primary School. This notification is under challenge in this writ petition.

2. Sri Mohandas N. Hegde, learned Counsel for the petitioners submitted that the notification issued by the D.C., u/s 4(1) of the LA Act, is without jurisdiction in view of Act 68 of 1984. It is in his submission that after coming into force of the Act 68 of 1984, only the appropriate Government is authorised to issue notification u/s 4(1) of the LA Act. It is further submitted that the provisions of Act 17 of 1961 (State Act) are repugnant to the provisions of Act 68 of 1984 (Central Act) and therefore Act 17 of 1961 is impliedly repealed.

3. In reply to the said submission, the learned Advocate General submitted that there is no repugnancy between the Central Act and the State Act, in so far as it relates to the power of Deputy Commissioner to issue notification u/s 4 of the LA

Act and therefore, the notification issued by the Deputy Commissioner is valid. He further submitted that subsequent to Act 68 of 1984 the State of Karnataka has brought a Legislation called Karnataka Act No. 33 of 1991, under which the Deputy Commissioner is conferred with the power to issue notification u/s 4(1) of the LA Act.

4. The points raised before me in this writ petition were raised by Sri Mohandas N. Hegde in W.P. No. 4241 of 1995. The said writ petition was referred to the Division bench for hearing. The Division Bench heard the writ petition and disposed of the same on 5-6-1987. The Division Bench in the said petition has held as follows:

"4. Whether any of those provisions are repugnant to the State provisions and whether such provisions would prevail or not will have to be examined in the context of the specific case put forth in that regard. We cannot merely proceed that there are various new provisions under the Act 68 of 1984 in Sections 4, 6, 11A, 17, 23, 24 and 25 of the Land Acquisition Act. Therefore, we cannot say that a different view has to be taken in the matter. In the circumstances we hold that we are bound by the decision of this Court in Rajendra Babu's case. Therefore, the contention put forth on behalf of the petitioner in this regard cannot be sustained".

5. Sri Mohandas N. Hegde, learned Counsel submitted that though the point whether the Deputy Commissioner has the power to issue notification u/s 4 of the LA Act or not, was raised, it has not been considered by the Division Bench in the above said case. Therefore, he insisted for a decision on this point in this petition.

6. In order to appreciate the contentions raised by the parties, I feel it necessary to state the history of law relating to the acquisition of land in the State of Karnataka. Prior to 24-8-1961 the Mysore Land Acquisition Act (Mysore Act VII of 1894) was in force in the old Mysore area. Similarly, in other parts of the State of Karnataka different State Acts were in force. The State of Karnataka which was then called State of Mysore enacted a law called Land Acquisition (Mysore Extension and Amendment) Act, 1961 (hereinafter referred to as "State Act 17 of 1961"). The object of the said enactment was to extend the Land Acquisition Act, 1894 (hereinafter referred to as "Central Act 1/1894") to the entire State and further to amend it in its application to the State. This Act, received the assent of the President on 16-8-1961. From 16-8-1961, the Central Act 1 of 1894 as amended by State Act 17 of 1961 is in force in the State.

7. The point that arises for consideration is: Whether the Central Act 68 of 1984 which introduced many amendments to the LA Act takes away the power of the Deputy Commissioner to issue notification u/s 4(1) of the LA Act on the ground the Central Act 68 of 1984 impliedly repealed the State Act 17 of 1961.

8. In order to consider the said point it is useful to refer to Article 254 of the Constitution of India. Article 254 of the Constitution of India reads as follows:

"254(1) If any of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State".

9. The legislative entry to enact a law in respect of acquisition of land is Entry 42 in List III of Schedule VII of the Constitution. Under this entry both the Union and the State Legislature have concurrent powers to legislate the law relating to acquisition of land. Article 254(1) of the Constitution provides, that if a State law is repugnant to the Union law relating to a subject in the Concurrent List, whether the Union law is prior or latter in time, the Union law will prevail and the State law shall, to the extent of such repugnancy be void. If there is no repugnancy or direct conflict between the Union law and the State law both the statutes continue to operate in the same field. If a State law is repugnant to the Central Act within the meaning of Article 254 what becomes void is not the entire Act, but only in so far as it is repugnant to the Central Act. Under clause (2) of Article 254 of the Constitution, the law made by the State which has received the assent of the President will prevail over the Central Act, notwithstanding its repugnancy to an earlier law made by the Union. In this background, I propose to consider the contention of Sri Mohandas N. Hegde, learned Counsel regarding the validity of the notification issued by the Deputy Commissioner.

10. Section 4(1) of the Central Act prior to the amendment introduced by the State by State Act 17 of 1961 reads as follows.-

"Whenever it appears to the appropriate Government that the land in any locality is needed or is likely to be needed for any public purpose. . ."

The State by State Act 17 of 1961 amended Section 4(1) of the Act by inserting the word "Deputy Commissioner" after the word appropriate Government. After the State amendment Section 4 of the Act, reads as follows.-

"(1) Whenever it appears to the appropriate Government or the Deputy

Commissioner that land in any locality is needed or is likely to be needed for any public purpose, . . .

The Central Government has further amended the Central Act 1 of 1894 by Central Act 68 of 1984. Under this amended Act, the concurrent power conferred on the appropriate Government or the Deputy Commissioner by Central Act 1 of 1894 as amended by State Act 17 of 1961, has not been amended or modified. The power conferred on the Deputy Commissioner by State Act 17 of 1961 is only additional or supplemental to the power conferred on the appropriate Government. Therefore, it cannot be said that there is any repugnancy between the Central law and State law in the matter of issuing notification u/s 4(1) of the LA Act.

11. Whenever repugnancy arises between the Central Act and the State Act, the onus is on the party who attacks the validity of the State law. In the case on hand the learned Counsel for the petitioners has not shown in what manner and in what way the notification issued by the Deputy Commissioner is invalid on account of repugnancy between the Central law and the State law.

12. Sri Mohandas N. Hedge, learned Counsel for the petitioners cited the following decisions: Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, ; Deep Chand Vs. The State of Uttar Pradesh and Others, , and other cases in support of his contention that the State law is impliedly repealed consequent on the amendment introduced by the Central Act 68 of 1984. In all these cases, it is held that the State law is void to the extent of repugnancy. That means, not the entire State law is void but it is void only to the extent of repugnancy. Therefore, the abovesaid decisions are" of no help to petitioners.

13. Sri Mohandas N. Hegde, learned Counsel contended that u/s 4 of the LA Act, the appropriate Government is conferred with the power to issue notification if it appears to the appropriate Government that the land is needed for a public purpose. The word "appropriate Government" is defined u/s 3(ee) of the LA Act. It is in the submission of the learned Counsel that it is only that appropriate Government as defined under the Act, is competent to exercise the power to issue a notification u/s 4 of the LA Act. u/s 3 of the LA Act, certain words and expressions have been defined in order to understand the meaning of the words and expressions used elsewhere in the Act. Therefore, mere defining the expression "appropriate Government" in Section 3 of the Act will not take away the power conferred on the Deputy Commissioner u/s 4 of the LA Act, as amended by the State. The power conferred on the appropriate Government and on the Deputy Commissioner is concurrent. If that is so, it is open either for the appropriate Government or for the Deputy Commissioner to issue notification if either of them is of the opinion that the land is needed for a public purpose. Therefore, there is no substance in this contention and accordingly it is rejected.

14. Assuming that there is any repugnancy between State Act 17 of 1961 and

Central Act 68 of 1984, the repugnancy if any is removed by virtue of subsequent State amendment by State Act 33 of 1991. Under the State Act 33 of 1991 Sections 4 and 6 of the Central Act, have been substituted. This amended Act has since received the assent of the President on 1-11-1991 will prevail over the Central Act. The amended substituted Section 4 under Karnataka Act 33 of 1991 reads as follows.-

"4(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that the land in any locality is needed or is likely to be needed for any public purpose or for a company a notification stating the purpose for which the land is needed or is likely to be needed and describing the land by its survey number, if any, and its approximate area shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which atleast one shall be in the regional language and the Deputy Commissioner shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to the date of the publication of the notification). The Deputy Commissioner may also cause a copy of such notification to be served on the owner or where the owner is not the occupier, on the occupier of the land".

From a reading of the abovesaid section, it is clear that the appropriate Government or the Deputy Commissioner may issue the notification u/s 4 if it appears to either of them that the land is needed or is likely to be needed for any public purpose.

15. The learned Counsel for the petitioners submitted that in view of the decision rendered by the Division Bench in the case of Kanaka Gruha Nirmana Sahakara Sangha Vs. Kota Srinivasa Murthy (Since Deceased) by L.Rs. and Others, , submitted that the notification issued by the Deputy Commissioner is invalid. In the said decision it is held as follows.-

"Acquisition of land is covered by Entry 42 of List III of the Seventh Schedule. Being a subject covered under the Concurrent list, it has to give way to the Central Act in view of the provisions of Article 254 of the Constitution which provides that if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by the Parliament, the law made by the Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State shall to that extent of repugnancy, be void".

The abovesaid proposition of law has been reiterated by the Division Bench in a subsequent unreported case of Vijay Kumar v State of Karnataka and Others, observing as follows. -

"The observation of the Court (in Kanaka Gruha's case) had to be read in the context of the applicability of the provision of Article 254 of the Constitution. The State Act was deemed to have been repealed to the extent of repugnancy only".

Therefore, it is clear, the State Act, introducing certain amendment to the Central Act by Act 17 of 1961 has to be declared as void only to the extent of repugnancy and not the entire Act.

16. I have held that there is no repugnancy between Central Act and the State Act in respect of power to issue notification by the Deputy Commissioner u/s 4 of the LA Act. Even assuming that there is any such repugnancy prior to coming into force of State Act 33 of the Act, repugnancy if any is removed by State Act 33 of 1991. If this was brought to the notice of the Division Bench in the case of Kanaka Gruha Nirmana Sahakara Sangha, the finding in so far as it relates to the issuance of the notification by the Deputy Commissioner would have been different.

17. As stated earlier, Act 33 of 1991 was not brought to the notice of the Division Bench in the case of Kanaka Gruha Sangha, *supra*. Therefore, the said decision has been rendered without reference to the law which was in force as on the date of the order.

18. The Supreme Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , has held as follows. -

"43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind".

19. The Supreme Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, , has held as follows:

"Pronouncements of law, which are not part of the ratio decided in are classed as obiter dictum and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edition, explains the concept of sub-silentio at page 153 in these words:

"A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one part because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome the decision is not an authority on point B. Point B is said to pass sub-silentio".

20. From the abovesaid decisions it is clear that the judgment rendered in Kanaka Gruha Nirmana Sangha's case, without reference to a law that was in force i.e., State Act 33 of 1991 cannot be said to be a binding precedent as it suffers from doctrine of sub-silentio and per incurium.

21. Sri Mohandas N. Hegde, learned Counsel nextly, contended that the amendment introduced by State Act 33 of 1991 is prospective and not retrospective in nature and therefore, the notification issued earlier to the amended Act 33 of 1991 came into force is invalid in view of the decision in Kanaka Gruha Nirmana Sahakara Sangha's case, supra. Section 4 of the Central Act, was substituted by Act 33 of 1991. In view of this substitution the learned Advocate General contended that the amendment introduced by Act 33 of 1991 is to be read as if it is there from the date the principal Act came into force. In support of his submission he relied on the decision of the Supreme Court in the case of Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, wherein it is held as follows:-

"7. The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England: see Craies on Statute Law, 5th Edition, page 207; it is the law in America; See Crawford on Statutory Construction, page 110; and it is the law which the Privy Council applied to India in Keshoratin Poddar v. Nundo Lal Mallick. Bearing this in mind, it will be seen that the Act of 1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed and Section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by Section 2, that is to say, the Act of 1950 now due to expire on the 1st of October, 1952".

Following this decision, this Court in the case of Vijayakumar Shankarayya Sardar Vs. State of Karnataka, has held as follows:-

"The upshot of this discussion is that whenever an amended Act has to be applied subsequent to the date of amendment, the various unamended provisions of the Act have to be read alongwith the amended provision as though they are the part of it. "The amended part of the provision having got incorporated into the Act the provision of Section 79-A of the Act as such should be read. Section 79-A of the Act has the opening words on and from the commencement of the Amended Act". The Amended Act, as stated earlier is defined to be Act 1 of 1974 which came into effect from 1-3-1974. From that date, no one can acquire an agricultural land if his income from sources other than agricultural lands is in excess of Rs. 50,000/-. If the interpretation given in Gayathri Ramaswamy v State of Karnataka, is to be adopted then it gives rise to two sets of transactions".

22. In the case on hand the substitution of Section 4 is to be read as if it is there from the date when the Principal Act, came into force. If that is so, the notification issued by the Deputy Commissioner cannot be said to be without any authority of law.

23. The notification impugned in this writ petition is only a proposal for acquisition. It is not known ultimately after considering the objection if any filed u/s 5A of the Act, the Government will issue final notification u/s 6 of the Act. Therefore, I do not propose to interfere with the notification which is impugned in this writ petition.

24. For the reasons stated above, writ petition is dismissed. Rule is discharged.