
(2001) 08 KAR CK 0039
In the Karnataka High Court
Case No : Writ Appeal No. 1462 of 1998

Nanjundaiah and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Constitution of India, 1950 — Article 254
Land Acquisition Act, 1894 — Section 4 (1)

Citation : (2002) 3 KCCR 1576 : (2001) 4 KCCR 2534

Hon'ble Judges : G.C. Bharuka, J; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri Mohandas N. Hegde, for the Appellant; Sri K. Srinivasa Gowda, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The only question involved herein is as to whether during the period 24-9-1984 and 27-11-1991, the Deputy Commissioners had the competence to issue notifications u/s 4(1) of the Land Acquisition Act, 1894 (in short the "principal Act") as amended and extended to the State of Karnataka by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (in short the "State Amending Act")?

2. The appellants are the owners of land bearing Sy. No. 565/4 of Mallavalli Village, measuring one acre six guntas. The respondent-Deputy Commissioner, published a notification in the Karnataka Gazette, dated 15-3-1993 proposing to acquire the said land for public purpose, namely for construction of a primary school. The appellants questioned the competence of the Deputy Commissioner to issue notification in view of the amendment to the Central Act as effected by the Land Acquisition (Amendment) Act, 1984 made by the Parliament. This amending Act, came into force on 24-9-1984. The contention of the appellants before the learned Single Judge was that because of the Central Amending Act of 1984 made by the Parliament to the principal Act, the Deputy Commis- sioner

had lost his competence to issue notification u/s 4 and therefore, the impugned notification should be quashed. The submissions raised on behalf of the appellants could not find favour with the learned Single Judge and therefore the writ petition came to be dismissed. Now, the very same question has been raised before us in this intra-Court appeal.

3. Before dealing with the submissions advanced by Sri Mohandas N. Hegde, learned Counsel appearing for the appellants, we would like to refer to Section 4 of the principal Act as it stood from time to time with successive amendments incorporated therein by the State as well as Central Amending Acts and the relevant constitutional parameters.

CONSTITUTIONAL PARAMETERS

4. Originally there existed three entries in the Legislative List (Entry 33 of List I, Entry 36 of List II and Entry 42 of List III) relating to the subject of acquisition and requisition of the property. But, in order to simplify the legislative process pertaining to "acquisition and requisition" by the Seventh Constitution Amendment Act, which came into force w.e.f. 1-11-1956, Entry 33 of List I and Entry 36 of List II were omitted and earlier Entry 42 of List III was substituted by a simplified legislative entries, namely "Acquisition and requisitioning of property".

5. After placing of the entire legislative subject on "acquisition and requisition" in the Concurrent List, both the Parliament as well as legislatures of States acquired powers to legislate on the subject but subject to limitations and empowerment under Article 254 of the Constitution, which reads as under:-

"Article 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.--(1) If any provision 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 an 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".

CONTEXTUAL LEGISLATIVE HISTORY

(i) Re: Operational Area of the principal Act

6. Section 1 of the principal Act provides for its applicability to various areas and States. Originally, principal Act was applicable to whole of the British India. By Adoption of Laws Order, 1950 the Act was made applicable to whole of India except territories, which, immediately before the 1st November, 1956, were comprised in Part "B" States.

7. The Constitution (Seventh Amendment) Act, 1956, by amending Article 1 and the First Schedule to the Constitution, gave a go-by to the concept of categorisation of States like Parts A, B and C and those were replaced only by the "States" and "Union Territories" as specified in the substituted Schedule to the Constitution. Still applicability clause contained in the principal Act was retained unaltered till coming into force of the Central Amending Act of 1984, by which the principal Act was made to apply to the whole of India except the State of Jammu and Kashmir.

8. So far as the applicability of the principal Act to the State of Karnataka is concerned, it needs to be noticed that this State was formed u/s 7 of the States Reorganisation Act, 1956. It comprised of the territories drawn from the then existing State of Mysore, parts of Bombay, Hyderabad and Madras and the then existing State of Coorg,

9. Despite merger of the above five distinct territories into one State, namely the State of Karnataka (originally named "Mysore"), Section 119 of the States Reorganisation Act, retained the nexus between the merged territories and the laws applicable to those before such merger. ? Admittedly, the areas by which the State of Karnataka was comprised of were being governed by separate legislative provisions relating to acquisition of immovable properties.

10. Keeping in view the above circumstances, the State Legislature enacted the State Amending Act of 1961. It was brought into existence to have a uniform law of acquisition in the whole State of Karnataka in local Acts. This objective was achieved by repealing all the cognate local Acts relating to acquisition of immovable properties and extending the principal Act to all the territories of the State.

11. The above intention of the State Legislature is clear from the very preamble of the Act, which says that "Whereas, it is expedient to extend the Land Acquisition Act, 1894 (Central Act I of 1894), to the whole of the State of Karnataka and further to amend it in its application to the State of Karnataka".

12. By Section 2 of the State Amending Act, all the local Acts then existing were repealed to the extent they applied to the merged territories of the Karnataka, The repeals and saving section reads as under:

"2. Repeal of certain Acts.--(1) The Karnataka Land Acquisition Act, 1894

(Karnataka Act VII of 1894), as in force in the Karnataka Area; the Land Acquisition Act, 1309 (Hyderabad Act IX of 1309 Fasli), as in force in the Hyderabad Area; the Land Acquisition (Bombay Amendment) Act, 1938 (Bombay Act XVIII of 1938), the Land Acquisition (Bombay Amendment) Act, 1945 (Bombay Act XX of 1945), the Land Acquisition (Bombay Amendment) Act, 1948 (Bombay Act IV of 1948), the Land Acquisition (Bombay Amendment) Act, 1950 (Bombay Act XXVII of 1950), the Land Acquisition (Bombay Amendment) Act, 1953 (Bombay Act XXXV of 1953), as in force in the Bombay Area; the Land Acquisition (Madras Amendment) Act, 1948 (Madras Act XXI of 1948) and the Land Acquisition (Madras Amendment) Act, 1953 (Madras Act XII of 1953), as in force in the Madras Area, are hereby repealed.

(2) As from the date of commencement of this Act, the amendments made by the Acts repealed by sub-section (1) (hereinafter in this section referred to as the "repealed Acts") shall cease to continue and shall be omitted from the Land Acquisition Act, 1894 (Central Act I of 1894), (hereinafter in this Act referred to as the "principal Act"), and such of the provisions thereof as were affected by the repealed Acts shall stand revived to the extent to which they would have otherwise continued in operation but for the passing of the repealed Act; and after such revival, the amendments made to the principal Act by this Act shall become operative:

Provided that in respect of provisions which ceased to continue by virtue of this section, the provisions of Section 6 of the Mysore General Clauses Act, 1899 (Mysore Act III of 1899), shall be applicable as if such provisions were enactments repealed by a Karnataka Act and in respect of provisions which cease to continue but are re-enacted by this Act, the provision of Section 24 of the said Mysore General Clauses Act, 1899, shall be applicable as if the said provisions had been repealed but re-enacted by a Karnataka Act".

13. In view of the above legislative developments, on and from the day of coming into force of the State Amending Act of 1961 i.e., 24-8-1961, the principal Act became applicable for acquisition of immovable properties within the territories of Karnataka with the State amendments incorporated therein with the assent of the President as provided under Article 254(2) of the Constitution of India.

(ii) Re: Section 4 of the Acquisition Act

14. The principal Act had come into force on 1-3-1894. The State Amending Act of 1961 was brought into force on 24-8-1961 after receiving the assent of the President. Section 3 of this Act declares that the principal Act as amended by the State amendments will be applicable to whole of the State of Karnataka. By the State Amending Act, amendments were made to various provisions of the principal Act by insertions and substitutions,

15. So far as Section 4(1) of the principal Act is concerned, as it stood prior to enforcement of the State Amending Act of 1961, read as under:-

"Section 4. Publication of preliminary notification and powers of officers thereupon.--(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality".

16. The above Section 4 of the principal Act was amended by Section 7(1) of the State Amending Act by making certain insertions in the following manner:-

"Section 7. Amendment to Section 4 of Central Act I of 1894.--(1) In Section 4 of the principal Act.-

in sub-section (1).-

after the words "the appropriate Government", the words "or the Deputy Commissioner" shall be inserted;

for the words "notification to that effect", the words "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 substituted;

after the words "the said locality", the following sentence and explanation shall be added, namely:-

"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.

Explanation.--The expression "convenient places" includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies.

(2) xxx xxx xxx".

17. It may be noticed here that by Section 4 of the State Amending Act, the word "Collector" appearing in the Principal Act was globally substituted by the words "Deputy Commissioner". For ready reference, this section is reproduced hereunder:-

"Section 4. Substitution of the expression "Deputy Commissioner", for the expression "Collector" in Central Act I of 1894.--In the principal Act, for the word, "Collector" wherever it occurs, the words "Deputy Commissioner" shall be substituted".

18. On incorporation of the above amendments, Section 4 of the principal Act, as applicable to the State of Karnataka, read as under:-

"4. Publication of preliminary notification and powers of officers thereupon.--(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, 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 the Deputy Commissioner shall cause public notice of the substance of such notification to be given at convenient places in the said locality. 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.

Explanation.--The expression "convenient places" includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies".

(Letters in italics are insertions made by the State Amendment)

19. Subsequently, the Parliament passed the Land Acquisition (Amendment) Act, 1984, which came into force w.e.f. 24-9-1984. By this Amending Act, the Parliament made copious amendments to various provisions of the principal Act including that to Section 4 thereof. Section 4 of the principal Act as applicable to different States in India was amended by Section 4 of the Central Amending Act of 1984, which reads as under:-

"4. Amendment to Section 4.--In sub-section (1) of Section 4 of the principal Act.-

(a) after the words "any public purpose", the words "or for a company" shall be inserted;

(b) after the words "Official Gazette", the words "and in two daily newspapers circulating in that locality of which at least one shall be in the regional language" shall be inserted;

(c) after the words "in the said locality, the brackets and words "(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)" shall be inserted".

20. On incorporation of the above amendment, Section 4 of the principal Act as applicable in the State of Karnataka reads as under:-

"Section 4. Publication of preliminary notification and powers of officers thereupon.--(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 or for a company, a notification to that effect shall be published in the Official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language" and the Deputy Commissioner shall cause public notice of the substance of 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 as 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.

Explanation.--The expression "convenient places" includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies".

(The letters in italics represent the State Amendments and those in bold fonts represent Central Amendment.)

21. On a reading of Section 4 of the principal Act with insertions and substitutions made by the State as well as Central Amending Acts, it is clearly found that the powers of the Deputy Commissioner to issue notification u/s 4 has remained intact. Though it may look slightly baffling as to how the State Legislature can effect amendments in Central Law or how the Parliament can exercise similar power in relation to the State Legislation but our constitutional scheme incorporated in Article 254 of the Constitution pointedly permits such an exercise. It is now well-settled that even if in relation to a legislative field appearing in the Concurrent List of the 7th Schedule, the Parliament has made any law, the State Legislature can either replace the same as a whole for its own territory or can appropriately amend the same subject to the condition that it has received the assent of the President. Once such an assent is received, the State Legislation or the amendments made through it to the law made by the Parliament, will prevail in that State. Similarly, another aspect which is of utmost importance for the present purpose is that under the proviso to clause (2) of Article 254 of the Constitution, the Parliament has been expressly authorised to repeal or amend any State Law referable to a subject in the Concurrent List even if it has been enforced after receiving the assent of the President in terms of the clause (2) of Article 254.

22. The above constitutional mechanism has been eloquently recognised by the Supreme Court in the case of Pt. Rishikesh and Another Vs. Salma Begum (Smt), , wherein it has been held that.-

"Clause (2) of Article 254 is an exception to clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature, if found inconsistent with the Central amended law, both Central law and the State law cannot co-exist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the consideration of the President and receives the assent of the President".

23. In the present case, as noticed above, the amendments effected by the Parliament by the Central Amending Act of 1984 does not in any way take away the powers of the Deputy Commissioner to issue notification u/s 4 as conferred

by the State Legislature by its Amending Act of 1961. Therefore, the present one is not the case of repugnancy between the State Law and the Central Law rendering the State Amending Act of 1961 to be void. Arguments advanced before the learned Single Judge based on the plea of repugnancy was *ex facie* untenable and based on complete misconception of our constitutional scheme.

24. We may note here that the amendments made by the Parliament to the principal Act by its Amending Act of 1984 may have resulted in repugnancy in relation to other provisions of the principal Act as amended by the State Amending Act of 1961 but, to our mind, that cannot render Section 4 of the Act as amended by the State Legislature to be void because Section 4 with the amendments incorporated therein is quite severable in its intendment and purpose from other provisions of the Act. Therefore, even if on close analysis of other provisions in the State and the Central amendments, any repugnancy is found, in respect of some of the provisions and which are not severable then such repugnant provisions enacted by the State Legislature has to give way to the Central Law by having become void. But, for the present purpose, we need not examine those aspects nor would like to express any opinion of ours in relation thereto.

25. In order to complete the sequence, it is necessary to notice here that subsequently the State Legislature, has substituted sub-section (1) of Section 4 of the principal Act as a whole by Land Acquisition (Karnataka Amendment) Act, 1988 (Act 33 of 1991), which on receiving the assent of the President has come into force on 27-11-1991. Section 2 of this Amending Act reads as under:-

"Section 2. Amendment of Section 4.--In Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), (hereinafter referred to as the "principal Act") for sub-section (1) and the explanation thereto, the following shall be substituted, namely:-

"(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 at least 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 as 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:

Provided that the notification published in the Official Gazette shall contain the description of the land by its boundaries also.

Explanation.--The expression "convenient places" includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies" ".

26. In our considered opinion, keeping in view the legislative history of Section 4 of the principal Act, which was subjected to repeated amendments both by the State Legislature and also the Parliament, and at intervals, the State Legislature might have found advisable to replace Section 4(1) as a whole by neatly incorporating the amendments made earlier to avoid any confusion and doubts in the minds of statutory authorities relating to their powers to issue preliminary notification and also to avoid unnecessary complications, and fruitless or frivolous litigations. Substitution of Section 4 by the State Amending Act of 1991 being clearly by way of abundant caution and clarification of legislative intention has to be held as being part of the principal Act right from the day it was made applicable to the State of Karnataka by State Amending Act of 1961 at least so far as it relates to the conferring of powers on the Deputy Commissioners.

27. Despite the opinion that we have expressed above, that during the time when the impugned notification u/s 4(1) was issued by the Deputy Commissioner, he was very much competent to do so, we find it advisable and necessary to refer to certain aspects which has been raised at the Bar for quashing of the impugned preliminary notification u/s 4(1) of the Principal Act published for acquiring the lands of the appellants. It has been submitted by Sri Mohandas N. Hegde that this Court in the cases of Kanaka Gruha Nirmana Sahakara Sangha Vs. Kota Srinivasa Murthy (Since Deceased) by L.Rs. and Others, and Naveen Jayakumar and Others Vs. State of Karnataka and Others, , has held that in view of Central Amending Act of 1984, the Deputy Commissioner had lost his competence to issue notification u/s 4 of the Act. His further submission was that in view of the law laid down by the Supreme Court in the case of D.K. Trivedi and Sons v State of Gujarat, since against the above two judgments of this Court, appeals are pending before the Supreme Court, therefore, we should forbear from hearing this intra-Court appeal. The passage relied upon by Sri Hegde, learned Counsel for the appellant, from D.K. Trivedi's case, supra, reads as under:-

"If the High Court thought that the point raised by the appellants was same as was pending in I"PS Court, it ought to have stayed hearing of the writ petitions until this Court disposed of the other matters".

28. So far as the preliminary issue pertaining to our jurisdiction to hear the present appeal, as raised by Mr. Hegde is concerned, we will presently show that the objection is not at all tenable since the question involved herein, when examined in the context of appropriate details, is found to be basically different.

29. First coming to the two Division Bench judgments of this Court referred to above, we find that in both the cases this Court had placed reliance on the judgment of the Supreme Court in the case of Kanthimathy Plantation Pvt. Ltd.

Vs. State of Kerala and others, . Therefore, we find it more advisable to refer to the facts of this case and the law laid down therein, The case of Kanthimathy Plantation Private Limited, supra, relates to the State of Kerala. As already noticed above, prior to coming into force of the Central Amending Act, 1984, the principal Act was not applicable to territories, which immediately before the 1st November, 1956 were comprised in Part B States. But, the Central Amending Act of 1984, amended sub-section (2) of Section 1 of the principal Act making it applicable to whole of India except the State of Jammu and Kashmir. Prior to enforcement of the Central Amending Act of 1984 acquisition of immovable properties in the State of Kerala were governed by the State law known as "Kerala Land Acquisition Act, 1961". The Supreme Court having found the principal Act which was extended to the territories of Kerala as well and the State law of Kerala were containing repugnant provisions declared the State law as void because of express mandate contained under Article 254 of the Constitution of India. Para 3 of the judgment of the Supreme Court is relevant for the present purpose.

"There was a State Act in Kerala known as the Kerala Land Acquisition Act of 1961 which dealt with acquisition and that had been legislated on the basis of the same Entry 42. Under the Amending Act of 1984, the Land Acquisition Act of 1894 was subsequently amended. Five new provisions were inserted, twenty-one sections were substantially altered, one section was substituted and another was omitted. The Act of 1984 extended the Land Acquisition Act of 1894 to the whole of India excepting the State of Jammu and Kashmir. The provisions were substantially different from the provisions in the Kerala Act. In view of the fact that the Land Acquisition Act of 1894 was extended to the whole of India excepting one State, the Land Acquisition Act of 1894 became applicable to the State of Kerala and in view of the repugnant provisions, in terms of Article 254 of the Constitution the Kerala Act stood repealed".

30. So far as the State of Karnataka is concerned, the extension of principal Act to the whole of India (except the State of Jammu and Kashmir) is of no consequence because the Karnataka State Legislature had already extended the application of the principal Act to its territories much earlier to its Amending Act of 1961. As a matter of fact, when the Central Amending Act of 1984 came into force, there was no State Legislation as a complete Code for acquiring the immovable properties. It was only the principal Act with the State amendments which was operating in the field in this State. Therefore, there was no State Act as a complete Code which could have suffered from the vice of repugnancy under Article 254(1) of the Constitution resulting in its repeal.

31. So far as the judgment of this Court in the case of Kanaka Gruha Nirmana Sahakara Sangha, supra, is concerned, it is of no avail to the present appellant since the facts appearing therein and the law laid down in that context was entirely different than the one appearing in the present appeal. In that case, the lands were sought to be acquired for housing Co-operative Society. For that

purpose, notification u/s 4 was issued by the concerned Deputy Commissioner. But this Court held that in view of definition of the words "public purpose" as substituted in by the Central Amending Act of 1984, the land could have been acquired for the benefit of housing society only with the approval of the State Government which should also appeared on the face of the notification issued u/s 4. Para 8 of the report contains opinion of this Court in this regard. It reads as under:-

"The land in dispute has been intended to be acquired for the respondent-Co-operative Society for which the prior approval of the appropriate Government was necessary in terms of Section 3(f)(vi) of the Act. Such approval is admittedly not on the record. Similarly before initiation of action by the Collector u/s 4 of the Act, it is necessary that the land intended to be acquired should appear to the appropriate Government to be needed for any public purpose in terms of Section 3(f)(vi) of the Act. After the public purpose is determined in terms of Section 3(f)(vi) and subsection (1) of Section 4 of the Act, the Collector is required to take follow up action by publication of the notice and holding of the enquiry in terms of the procedure prescribed under Part II of the Act".

32. In the present case, admittedly, Section 3(f)(vi) of the principal Act as inserted by Central Amending Act of 1984 has absolutely no application. Therefore, in our considered opinion, the point involved in the case of Kanaka Gruha Nirmana Sahakara Sangha, supra and the present appeal cannot be said to be same. The judgment of the Division Bench in the case of Naveen Jayakumar, supra, has more or less proceeded by following earlier judgment of Division Bench in the above Kanaka Gruha Nirmana Sahakara Sangha, supra.

33. For the reasons as stated above, we hold that even during the period between 24-9-1984 and 27-11-1991, the Deputy Commissioners in the State of Karnataka were competent to issue notification u/s 4(1) of the principal Act as amended by the State Amending Act of 1961.

34. For the aforesaid reasons, the appellants are not entitled to any relief. We agree with the ultimate conclusion reached by the learned Single Judge though for reasons other than those assigned by him. The appeal is dismissed. The parties to bear their own costs.