

(1996) 07 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No's. 7421 to 7435 and 8188-8201 of 1989

N.H. Anjanappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Land Acquisition (Amendment) Act, 1961 — Section 40, 44 A
Land Acquisition Act, 1894 — Section 4 (1), 6 (1)

Citation : (1997) ILR (Kar) 576

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : C.B. Srinivasan, Udaya Holla and K.V. Narayanappa, for the Appellant; T.S. Ramachandra, for R-4 and K.P. Ashok Kumar, H.C.G.A. for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—In all these Writ Petitions the petitioners have challenged the notifications dated 30.5.1988 and 18.3.1989 issued u/s 4(1) and 6(1) of the Land Acquisition Act, 1898 (hereinafter referred to as "the Act").

2. The Petitioners claim to be the owners of certain lands which were proposed for acquisition u/s 4(1) of Act, in favour of the 4th respondent-Trinity House Building Co-operative Society, to provide sites to its members. Pursuant to the notification issued u/s 4(1) of the Act, the petitioners have filed their objections objecting the proposed acquisition on several grounds. The Land Acquisition Officer overruled all the objections and submitted the Report recommending for acquisition of the lands. On the basis of the said Report, the Government has issued a final notification u/s 6(1) of the Act. These notifications are called in question in these petitions.

3. The brief facts of the case are:-

That one Sri S. Rangarajan informed the petitioners that he would himself

personally buy the lands in question as per the market value and according the petitioners have executed a power of attorney in his favour to have the matters cleared before the appropriate authorities. Further the petitioners relying upon the false and fraudulent representation of the said S. Rangarajan have subscribed their LTM marks on some blank papers. By virtue of the said Power of Attorney Holder and LTM impressions obtained on blank papers the said S. Rangarajan has requested the State Government to acquire the lands in question in favour of the 4th respondent society for his personal aggrandisement. The petitioners being illiterates, not aware of the worldly affairs, did not know the purpose for which S. Rangarajan obtained the LTM Marks on the blank papers; the petitioners came to know that the Power of Attorney and the LTM marks obtained on the blank papers were made use of by the said Sri Rangarajan only to get their lands acquired by the Government, when they received notices pursuant to the preliminary notification. Immediately after the receipt of the notice issued by the Land Acquisition Officer, the petitioners have filed their objections stating that there is no public purpose involved in the acquisition of the lands belonging to petitioners. Petitioners further contended the lack of bona fides on the part of the 4th respondent which was only the brain child of the imagination of the said S. Rangarajan. The Land Acquisition Officer after hearing the petitioners has submitted his Report to the State Government. On the basis of the Report, the State Government has issued a notification u/s 6(1) of the Act.

4. The 4th respondent in its counter has denied all the petition averments.

5. Sri C.B. Srinivasan, Learned Counsel for the petitioners contended that the 4th respondent - Society is a Company as defined u/s 3(e)(vi) of the Act; therefore the person who is appointed to perform the functions of the Deputy Commissioner ought to have followed the provisions of the Karnataka Land Acquisition (Companies) Rules, 1973 for the purpose of acquisition of land for a company, in the instant case, as the Deputy Commissioner has not followed the procedure provided under the above said Rules, consequently, the acquisition proceedings are vitiated.

The Learned Counsel further contended that the acquisition of land for Societies is likely to result in depriving the lands of poor agriculturist and make other individual persons such as Sri S. Rangarajan a capitalist, trading in the sale of sites. The whole purpose is opposed to the scheme of the Act.

It is submitted that the Deputy Commissioner has not considered the objections filed by the petitioners in its Report submitted to the government and therefore there is no material available for the Government to form an opinion that the lands of the petitioners are required for a public purpose. In view of this the impugned notification issued on the basis of the said Report is vitiated.

Sri C.B. Srinivasan, Learned Counsel further contended that the facts in this case are identical to the one involved in the case of H.M.T. HOUSE BUILDING CO-OPERATIVE SOCIETY v. SYED KHADER wherein the Supreme Court has quashed

the acquisition proceedings and therefore in view of the said decision, these Writ Petitions are to be allowed by quashing the impugned notifications.

6. The petitioners have filed a rejoinder wherein it is stated that the entire acquisition proceeding is a colourable exercise of power by the Government at the instance of vested interest, self-seekers and exploiters. It is also stated that the materials furnished by the 4th respondent will indicate that the middlemen are allowed their influence to take for a ride to the extreme detriment of innocent and illiterate villagers.

7. On the other hand Sri T.S. Ramachandra, Learned Counsel for the 4th respondent contended that the Society is a registered House Building Co-operative Society under the provisions of the Karnataka Co-operative Societies Act; that a Three Man Committee constituted by the Government considered the representation of the 4th respondent Society and thereafter approval was accorded by the Government for initiating the acquisition proceedings for an extent of 95 acres 18 guntas of land in Avalahalli and Harohalli in favour of the 4th respondent. The Society through the agency of M/s. Srinivas Enterprises represented by its proprietor has made payments to the land owners. Therefore, the petitioners having received the consideration amount and having consented for the acquisition of their lands cannot turn round and challenge the acquisition proceedings. The conduct of the petitioners establishes the mala fide intention on their part to enrich themselves unjustly at the cost of the 4th respondent-society.

It is further contended that the acquisition of lands are not for a Company, therefore Chapter VII of the Act, is not attracted, whereas the acquisition of land by the Government is for the benefit of the 4th respondent-society which is for a public purpose and therefore it is submitted that there is no illegality or irregularity in the procedure adopted by the government in the acquisition proceedings. The Learned Counsel further contended that the petitioners should not be allowed to raise the additional grounds in the rejoinder filed on their behalf.

8. Firstly, I propose to consider the objections of the 4th respondent regarding the additional grounds raised in the rejoinder. What has been raised in the rejoinder is on the basis of the Annexures produced by the 4th respondent along with its statement of objections. When such being the case, there is no prejudice or harm that will be caused to the 4th respondent if it is allowed to raise the same, on the basis of the materials produced by the 4th respondent. Therefore, the said contention of 4th respondent is rejected and petitioners are permitted to raise the ground as stated in the Rejoinder.

9. The facts involved in these petitions are almost identical to the facts in the case of H.M.T. HOUSE BUILDING COOPEATIVE SOCIETY v. SYED KHADER ILR 1995 Kar 1962 (SC) wherein the Supreme Court has observed thus in para-20:-

"20. In the present case, a hybrid procedure appears to have been followed. Initially, the appellant Society through M/s. S.R./ Constructions purported to

acquire the lands by negotiations and sale by the land holders. Then from terms of the Agreement dated 17.3.1988, it appears that the procedure prescribed in Part-VII was to be followed and the lands were to be acquired at the cost of the appellant Society treating it to be a "Company". The allegation made on behalf of the appellant Society that the Housing Scheme had been approved by the appropriate Government on 7.11.1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part-VII of the Act. In the Agreement dated 17.3.1988 it has been specifically stated "And whereas the Government having caused inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said land is needed for the purpose referred to above has consented to the provisions of the said Act being in force in order to acquire the said land for the benefit of the society members to enter in the agreement hereinafter contained with the Government", But, ultimately, the lands have been acquired on behalf of the appropriate Government treating the requirement of the appellant Society as for a public purpose within the meaning of Section 3(F)(vi). It is surprising as to how respondent M/s S.R. Constructions entered into agreement with the appellant society assuring it that the lands, details of which were given in the Agreement itself, shall be acquired by the State Government by following the procedure of Sections 4(1) and 6(1) and for this, more than one Crore of Rupees was paid to M/s. S.R. Constructions (respondent No. 11)."

On these facts, the Supreme Court has held as follows:-

"According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the Housing Scheme in question. The power under Sections 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons, who had no role in the decision making process - whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same as invalid".

10. In the instant case the 4th respondent along with the statement of objections has produced Audit Report as Annexure-1. In the said Report there is a reference that the land owners have been paid the consideration for their lands through M/s. Srinivasa Enterprises. There is also a reference that the society entered into an agreement dated 12.3.1985 with that of M/s. Srinivasa Enterprises and as per the said agreement the Society has to pay Rs. 160/- per square yard to M/s. Srinivasa Enterprises. The said agreement also provides for the mode of payment to M/s. S.R. Constructions as follows:-

- i) Rs. 50,000/- at the time of execution of the agreement;
- ii) 25% of the value of the land shall be paid on production of the title deeds;
- iii) 25% at the time of issuance of notification u/s 4(1) of the Act;

iv) 30% to be paid immediately after the publication of final notification u/s 6(1) of the Act;

v) 15% shall be paid at the time of producing layout plan to the BDA;

10. The aforesaid audit report clearly establishes that there is an agreement entered into between the society and with M/s. Srinivasa Construction. The agreement referred to in the audit report as stated above was not produced by the Society in this Court. But however, there is reference to the terms of the agreement in the audit Report referred to above. These terms of the Agreement are almost identical with the terms of the agreement referred to by the Supreme Court in the above said decision.

11. In the statement of objections it is stated that the Society through the agency of M/s. Srinivasa Enterprises, represented by its proprietor has made payments to the land owners. This fact shows that the facts involved in these petitions are identical with that of the case involved in the decision of HMT House Building Co-Operative Society (supra). The Supreme Court in the said decision has held that the power u/s 4(1) and 6(1) of the Act has been exercised for extraneous consideration at the instance of the persons who have no role in the decision, making process. In the said view of the matter I hold that the decision rendered by the Supreme Court is applicable in all fours and therefore the impugned notifications are liable to be quashed. In view of the decision of the Supreme Court referred to above, I hold that the petitioners are entitled to challenge the impugned acquisition since the said acquisition proceeding is the product of colourable exercise of power at the instance of third parties.

12. Admittedly, in the instant case the Government has not followed the provisions of Chapter VII of the Act, Now I proceed to consider whether, can there be any acquisition of land by the Government for the 4th respondent Society for the purpose of providing residential sites to its members. Section 3(e) of the Act, reads as follows:-

"3(e) - the expression "Company" means -

i) a Company as defined in Section 3 of the companies Act, 1956, other than a Government company referred to in clause (cc);

ii) a society registered under the Societies Registration Act, 1980, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in Clause (cc)."

From a reading of the abovesaid definition it is clear that a co-operative society within the meaning of any law relating to co-operative society for the time being in force in any State other than a co-operative society referred to in Clause(cc) is

a Company. Chapter VII of the Act, provides for acquisition of land for a Company.

13. Section 40 of the Act reads as follows:-

"40. Previous Enquiry - (1) Such consent shall not be given unless the Appropriate Government be satisfied, either on the report of the Collector u/s 5A, Sub-section (2) or by an enquiry held hereinafter provided

a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provisions of amenities directly connected therewith, or

aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public. ,

2) Such enquiry shall be held by such officer and at such time and place as the Appropriate Government shall appoint.

3) Such officer may summon and enforce the attendance of witness and compel the production of documents by the same means and, as far as possible, in the same manner as provided by the CPC 1908 (5 of 1900) in the case of Civil Court."

A reading of the above section it is clear that the Act provides that the State Government may initiate acquisition proceeding for a Company only for the purpose specified in the said Section.

14. Section 44-A of the Act reads thus:-

"44A) Restriction on transfer, etc. - No Company for which any land is acquired under this part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government."

In view of Section 44-A of the Act, no Co-operative Society which is a Company as defined u/s 3(e) of the Act, for which the land has been acquired shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. In the case on hand, the land acquired for a house building co-operative society is for the purpose of providing residential sites by the society to its members. This purpose is not one of the purposes enumerated in Section 40 of the Act. Further, the Society cannot allow or transfer a site in favour of its members either by sale or otherwise without the previous sanction of the Government. In view of the above cited sections, I am of the view that there cannot be any acquisition of land by the Government in favour of a Society for the purpose of providing residential sites to its members under Chapter- VII of

the Act.

15. For the reasons stated above, Writ Petitions are allowed, and the impugned notifications insofar as it relates to the petitioners are quashed. Rule issued is made absolute.

16. Parties to bear their own costs.