

(1996) 09 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition 21975 of 1994

P. Krishnappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-09-1996

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17 (1), 19 (1)

Citation : (1997) ILR (Kar) 905

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : K.P. Ashok Kumar, HC GP, T.S. Ramachandra, A.V. Albal, K.S. Nagaraja Rao, D.R.P. Babu, G.P. Maltesh Babu, Ravivarma Kumar, V. Gopala Gowda, A.S. appanna, H.R. Sreedhar, K. Suryanarayana Rao, P.N. Nanja Reddy, N.K. Gupta, S.N. Bhat Jose Sebastian and Associates, K. Prabhakar, S.B. Lakshmi, C.G. Goplaswamy, M.S. Bhujanga Rao, R. Gopal, P.D. Surana, Srinivasan, Kashinath, M.M. Khannur, Kumar and Kumar, T. Sheshagiri Rao, S. Chennaraya Reddy, P.N. Nanja Reddy, C.M. Basavarya, Muni Govinda Raju, N.S. Hiremath, S. Shekhar Shetty and P. Krishnappa, for the Appellant; Shobha Patil, N.K. Patil, S.B. Angadi, K. Sridhar and H. Thiepperudrappa, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraih, J

1. In all these petitions, the petitioners have challenged the notification dated 29.12.1988 published in the official gazette dated 6.4.1989 issued u/s 17(1) of the BDA Act (hereinafter referred to as the "Act") and also the notification dated 9.5.1994 published in the official gazette 18.5.1994 issued u/s 19(1) of the Act.

2. The petitioners in these petitions are the owners of certain lands. The said lands were proposed for acquisition for the purpose of implementation of the scheme i.e. formation of a layout called "Banashankari V Stage" in the notification issued u/s 17(1) and (3) of the Act. In the preliminary notification the proposed extent of land measures 1851 acres 39 guntas. This was followed

by a final notification issued u/s 19(1) of the Act which restricted the requirement of land to 1459 acres 21 guntas. These notifications are challenged by the petitioners on the ground that the authorities have not followed the procedure prescribed for a declaration that the said lands are required for the public purpose. It is in the submission of petitioners' counsel that in the absence of following the procedure prescribed under the law, the entire acquisition is vitiated. In some petitions it is contended that though the authorities are required to issue notices pursuant to the preliminary notification, no notices have been issued and thereby the land owners are deprived of their right to file objections to the proposed acquisition. In reply to the said contention, the Learned Counsel appearing for BDA contended that there is no procedural irregularity in the matter of acquisition as the authorities have followed the prescribed procedure. In order to ascertain these rival contentions, I wish to refer to some of the provisions in the Act.

3. Chapter III of Act provides for development of schemes. u/s 15 of the Act, the authority may undertake works and incur expenditure for development. Section 15(1) of the Act provides that the authority may draw up a detailed schemes for the development of the Bangalore Metropolitan Area with the previous approval of the Government. Section 15(2) provides that the authority may also from time to time take up any new or additional development schemes. Section 16 of the Act provides for the details of the scheme. Section 17(1) provides that the authority shall draw up a notification stating the fact of the scheme having been made and the limits of the area comprised therein, a statement specifying the land which is proposed to be acquired. Section 17(3) provides that the authority shall cause a copy of the said notification to be published in the official gazette. Thereafter, the authority shall serve notices on every person whose name appears in the assessment list of the local authority or in the land revenue register to show cause within 30 days from the date of receipt of notice why such acquisition of the building or the land should not be made. Section 17(6) of the Act provides the mode of service of notice as contemplated u/s 17(5) of the Act. Section 18(1) of the Act provides that the authority after consideration of the representation if any received pursuant to the notices issued under Sub-section (5) of Section 17 of the Act shall submit the scheme making such modification therein as it may think fit to the Government for sanction furnishing the particulars as provided u/s 18(1) (a) to (f) of the Act. Section 18(3) provides that the Government after considering the proposal submitted to it may by order give sanction to the scheme. Thereafter u/s 19 of the Act, the Government shall publish a declaration in the official gazette stating the fact of such sanction that the land proposed to be acquired by the authority for the purpose of the scheme is required for a public purpose.

4. Relying on the above said provisions Sri T.S. Ramachandra, Learned Counsel for some of the petitioners, contended that Government in order to publish a declaration as required u/s 19 of the Act, there shall be a sanction of the scheme as contemplated u/s 18(3) of the Act and the fact of such sanction is to be

notified in the declaration published u/s 19(1) of the Act. In the absence of such sanction, the notification issued u/s 19(1) of the Act is vitiated. In order to ascertain whether there is any such sanction u/s 18(3) of the Act, the Learned Counsel brought to my notice the notification issued u/s 19(1) of the Act. The notification reads as follows "Whereas the Government of Karnataka has sanctioned improvement scheme for the formation of the layout called "Banashankari 5th Stage Layout" by the BDA vide order No. HUD-765-MNX 87 dated 29.6.1988". It is relevant to consider whether the sanction referred to in the above said notification is a sanction as contemplated u/s 18(3) of the Act. In this case, the preliminary notification is dated 29.12.1988, issued u/s 17(1) of the Act. The sanction referred to in the final notification is dated 29.6.1988 i.e., much earlier to the preliminary notification referred to above. Under the scheme of the Act, the land owners are required to be served with a notice pursuant to preliminary notification and in the event the land owners file any objections objecting the proposed acquisition, the same shall be considered by the authorities u/s 18(1) of the Act. Thereafter the report and other particulars as provided u/s 18(1)(a) to (f) are to be submitted to the Government, The Government u/s 18(3) after considering the proposals submitted may by order give sanction to the scheme. Thereafter, upon sanction of the scheme, the Government is required to publish the declaration u/s 19(1) of the Act. The sanction referred to in Section 18(3) of the Act is only after following the procedure provided for from the stage of preliminary notification. Therefore, it cannot be said that the Government sanction referred to in the final notification is a sanction as contemplated u/s 18(3) of the Act, since it is prior to the preliminary notification.

5. Section 19(1) of the Act provides that the fact of sanction as provided u/s 18(3) of the Act shall be notified in the declaration. The reading of Section 19(1) of the Act it is clear, that the sanction referred to in Section 18(3) of the Act is a condition, precedent, so as to issue a declaration to the effect that land is required for a scheme i.e. for a public purpose. Therefore, the sanction u/s 18(3) is mandatory. The Government has no power or authority to issue a notification u/s 19(1) of the Act, without passing an order sanctioning the scheme u/s 18(3) of the Act. At the time of hearing, I called upon the Learned Counsel appearing for BDA to produce the Government Order of sanction or to furnish the date of the Government Order, but, he did not produce or furnish the date of the order. I called upon the Government Advocate to produce the Government Order if at all if there is any such order, the Government Advocate did not produce the same, therefore, I am of the view that there is no Government Order as contemplated u/s 18(3) of the Act, sanctioning the scheme proposed by the authority. In the absence of such sanction, it cannot be said that the notification issued u/s 19(1) of the Act is valid.

6. Sanction referred to in the final notification appears to be an administrative sanction as contemplated u/s 15(1)(b) of the Act. Section 15 of the Act provides the authority may draw up a detailed scheme with the previous approval of the

Government. This approval is only an administrative approval to initiate the proceedings for declaration that the land is required for public purpose. In W.P.4975/85, a copy of the order referred to in final notification has been produced as Annexure-B. The reading of the said order it is dear, that Government accorded administrative approval subject to certain conditions. The source of power for the Government to issue such approval is traceable only u/s 15(1)(b) of the Act.

7. The counsel for the respondents, alternatively contended, that according approval u/s 15(1)(b) of the Act be treated as a sanction u/s 18(3) of the Act. As held by me supra, the according approval u/s 15(1)(b) is only to initiate proceedings commencing from issuance of preliminary notification u/s 17(1) of the Act, whereas, the sanction referred in Section 18(3) is subsequent to the preliminary notification which is a condition precedent to issue final notification. Therefore, the said order cannot be considered to be a sanction as contemplated u/s 18(3) of the Act.

8. The Learned Counsel for the State Government contended that once notification is issued u/s 19(1) of the Act, it implies that there is a sanction by the State Government. Statute specifically provides that there shall be an order by the State Government sanctioning the scheme. The fact of such sanction also to be notified in the declaration published u/s 19(1) of the Act. It is a well known principle that when the statute provides, that a thing to be done in a particular manner, it shall be done only in that manner. The reading of Section 18(3) and that of Section 19(1) of the Act, it is clear that there shall be an express order sanctioning the scheme since, the fact of sanction is required to be notified in the final, declaration. The provisions of Act which provides for compulsory acquisition, shall be interpreted strictly and the powers under the said Act must be exercised reasonably since it results in expropriate an owner against his will. Hence, it is not possible to accept the contention of the Government Advocate that by implication there is a sanction u/s 18(3) of the Act, the moment the final notification is issued u/s 19(1) of the Act. In some of the petitions, the petitioners have contended that though their names have appeared in the revenue records, no notices have been served on the petitioners as contemplated u/s 17(5) of the Act. In reply, to these submissions, the Learned Counsel appearing for BDA submitted that the notices were issued to the person whose name appeared in the revenue records, and therefore, the petitioners cannot have any grievance as against the said acquisition, u/s 17(5) of the Act, the notices shall be issued to the Kathedars as found in the revenue records and also to the persons as found in the assessment registers maintained by the local authority. As I have held that the notification issued u/s 19(1) of the Act is not valid in law, there is no need to consider this point and instead the liberty is to be given to the Authority to proceed with the acquisition by permitting the petitioners to file objections if any within 30 days from the date of receipt of this order without awaiting for any notice from the respondent Authority and in the event such objections are filed the Authority may consider the same as per

Section 18(1) of the Act, and thereafter to proceed in accordance with the law. I have given this liberty because the scheme framed by the Authority shall not be stalled or given up in view of my finding that the final notification issued u/s 19(1) of the Act is invalid on a technical ground.

9. For the reasons state above, these Writ Petitions are allowed. The notification issued u/s 19(1) of the Act in No. HUD 127 MNS 94 dated 9.5.1994 published in official gazette on 18.5.1994 is quashed in so far as it relates to the lands of the petitioners" is concerned. However, the liberty is reserved to the authorities to proceed with the acquisition proceedings in the light of the observations made above and complete the same within one year from today by issuing a notification u/s 19(1) of the Act:

All other contentions raised by the petitioners are left. open. The petitioners are also directed not to develop their lands or alter the nature of the lands for the period of one year from today or till the issue of final notification u/s 19(1) of the BDA Act.