

(2004) 04 KAR CK 0019

In the Karnataka High Court

Case No : Writ Appeal No. 1535 of 2004 connected with Writ Appeal No's. 1595 to 1605 of 2004

P. Rajappa alias B.P. Rajappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 3 (1)
Karnataka Land Reforms Act, 1961 — Section 79 B

Citation : (2004) 4 KarLJ 180 : (2004) 3 KCCR 1463

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : B.V. Acharya and K. Suman, for the Appellant; Rajashekar, for Respondent 3, Shobha Patil, A.G.A. for Respondent 4, S. Sujatha, for Respondent 8, Udaya Holla, for Aamsta Low Associates, for Caveator Respondent 9 in W.A. No. 1535 of 2004, for Caveator Respondent 5 in W.P. No. 51548 of 2003, for Caveator Respondent 7 in W.P. Nos. 49628 to 49630, 49630, 49272, 49498, 49270 and 49499 of 2003 and for Caveator Respondent 9 in W.P. Nos. 51126 and 51127 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—W.A. No. 1535 of 2004 is filed by P. Rajappa alias B.P. Rajappa against the common order dated 28-1-2004 passed in W.P. No. 49979 of 2003 and connected matters, wherein the learned Single Judge after considering the objections and the material on record by an elaborate order dismissed the writ petitions and has not interfered with the acquisition proceedings and notifications dated 10-12-2001 and 23-10- 2003.

The petitioners in other writ petitions claiming to be the owners of respective survey numbers have also challenged the order of the learned Single Judge.

W.A. Nos. 1595 and 1596 of 2004 have been filed by P. Narayanappa and B.N. Somashekar Reddy, the petitioners in W.P. Nos. 51126 and 51127 of 2003

respectively; W.A. No. 1597 of 2004 has been filed by K. Jamuna, the petitioner in W.P. No. 51548 of 2003; W.A. Nos. 1598 and 1599 of 2004 has been filed by Sardar, the petitioner in W.P. Nos. 49270 and 49499 of 2003; W.A. Nos. 1600 and 1601 of 2004 have been filed by Babjan, the petitioner in W.P. Nos. 49272 and 49498 of 2003; W.A. Nos. 1602 to 1604 of 2004 have been filed by Ramachandra S., Subramani S. and Ashok Kumar S., the petitioners in W.P. Nos. 49628 to 49630 of 2003 and W.A. No. 1605 of 2004 has been filed by B.N. Sadashiva Reddy, the petitioner in W.P. Nos. 48918 of 2003. These appeals are filed against the common order dated 28-1-2004 passed by the learned Single Judge in W.P. No. 49979 of 2003 and connected matters.

2. On 15-3-2004, this Court issued notice to respondents 1 to 3 returnable by 31-3-2004; Mr. Udaya Holla, the learned Counsel appeared for caveat-or-respondent 9 and this Court granted stay of dispossession till 6th April, 2004. On 31-3-2004, as per the memo, respondents 6, 8 and 9 were deleted at the appellants' risk and the matter was posted on 1-4-2004. The caveat-or-respondent 9 has filed its objections in writ appeals also.

3. The facts and controversy involved in these appeals, which arise out of common order of the learned Single Judge, are same and identical. As agreed by the parties, the writ appeals were finally heard at admission stage on 1-4-2004. For the sake of convenience, we take up the facts stated in W.A. No. 1535 of 2004.

4. In the instant case, the appellant-petitioner, claiming to be the owner of land in Sy. No. 9/5 measuring 4 acres 22 guntas, had challenged the notification dated 10-12-2001 (Annexure-A to the writ petition) issued by the 1st respondent u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 (Karnataka Act 18 of 1966) (for short, "the Act"). By the said notification, the 1st respondent declared the area wherein the appellant-petitioner's land was situated as "Industrial Area". Simultaneously, the 1st respondent issued a notification Annexure-C, dated 10-12-2001, u/s 28(1) of the Act proposing to acquire 1.10.30 acres of land. However, a Final notification dated 23-10-2003 was made u/s 28(4) of the Act restricting the acquisition to the extent of 106 acres 123/4th guntas.

5. The learned Single Judge after considering the material on record and the arguments held that the acquisition is for Information Technology Park, which is an Industrial infrastructural facility as defined under the Act and the acquisition is for a public purpose. The learned Single Judge repelled the argument that the real purpose is not notified in the preliminary notification and also the argument that acquisition is nothing but fraud and colourable exercise of power. The learned Single Judge observed that deletion of land in Sy. No. 9/4 is by mistake, later it has been included and the notification cannot be vitiated on that ground. The learned Single Judge also observed that the acquisition has been made with an absolute control and not with a view to benefit Vikas Telecom Limited. In this way, interest of the State has been safeguarded. The learned Single Judge has

taken note of the proceedings initiated under the Karnataka Land Reforms Act and observed that the proceedings or orders that may be passed would not come in the way of the State Government to acquire the land for public purpose, and dismissed the writ petitions by a common order as stated.

6. The main contention of the learned Senior Counsel for the appellant-petitioner, Sri B.V. Acharya for K Suman, is that the Government had not applied its mind before issuing the notifications u/s 3(1) and u/s 1(3) of the Act and the same are liable to be quashed. He also submits that the impugned notifications are liable to be set aside on the ground that the public purpose for which the land was proposed to be acquired was not mentioned in the preliminary notification and thereby the appellant-petitioner could not file objections to it. He submits that the land has been acquired for a purpose other than the one mentioned in the preliminary notification. He also submits that the acquisition proceedings are liable to be quashed also on the grounds that out of 106 acres and 123/4th guntas of land 90 acres of land have been purchased by the promoters of the 9th respondent and the real object of the acquisition is not a public purpose. He also submits that the lands are agricultural lands and their holding by the 9th respondent is in contravention of Section 79B of the Karnataka Land Reforms Act and in order to circumvent it, the acquisition proceedings have been initiated and the impugned notifications are liable to be quashed as fraud has been played and there is a colourable exercise of the power. He further submits that the learned Single Judge erred in not appreciating the above facts in a proper perspective and his order is liable to be set aside.

7. Sri Udaya Holla, learned Senior Counsel for the caveator 9th respondent-beneficiary submits that the order of the learned Single Judge needs no interference and the notification has been issued for a public purpose. He submits that with a view to establish an Information Technology Park, the State has issued notification dated 10-12-2001 u/s 3(1) of the Act declaring the area as "Industrial Area", and so also a preliminary notification dated 10-12-2001 u/s 28(1) of the Act was issued proposing to acquire the said land. He also submits that as against the said notification some of the landowners filed writ petitions, wherein a direction was issued to file objections; that objections were filed by the landowners, and after considering the same, the Final notification u/s 28(4) of the Act has been issued.

8. Smt. Shobha Patil, learned Additional Government Advocate for the 4th respondent-Director of Industries and Commerce and Smt. S. Sujatha, learned Counsel for 8th respondent-Bangalore Development Authority, reiterated the argument of Mr. Udaya Holla and submitted that these appeals are liable to be dismissed on the ground of delay and acquiescence and the learned Single Judge has rightly not interfered with the notifications.

9. We have heard the learned Counsels for the parties, perused the material on record and the case-law cited.

10. The law is well-settled that land can be acquired for a public purpose as per the provisions of the Land Acquisition Act. The same can also be set aside, if it is not for a public purpose or if the procedure as required under the Act has not been followed. Each case depends on the facts and circumstances of its own.

11. Now, we shall take up the cases cited by the parties. In the case of *Munshi Singh and Others Vs. Union of India (UOI)*, in the earlier notification it was mentioned that the Governor of Uttar Pradesh was pleased to notify for general information that the land mentioned in the schedule is likely to be needed for a public purpose. Their Lordship held that owing to the vagueness and indefiniteness of the public purpose stated in the notifications u/s 4(1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question the appellants were wholly unable to object effectively and exercise their right u/s 5A of the Land Acquisition Act.

In *Special Land Acquisition Officer v. Smt. Marati Gowramma and Ors.*, W.A Nos. 3427 and 3320 of 1997, DD: 11-1-1999 respondents 1 and 2 aggrieved by the declaration and the action taken under different sub-sections of Section 28 filed a writ petition, and the learned Single Judge quashed the acquisition proceedings. Their Lordships on consideration held that the quashing of the acquisition proceedings on the ground that the acquisition u/s 28(1) and 28(4) have been vitiated for not mentioning the name of the beneficiaries was contrary to the scheme of the Act and therefore, unsustainable in law. Their Lordships allowed the appeal in part, setting the order of the learned Single Judge and remitted the matter to the Land Acquisition Officer-appellant in the first appeal for fresh disposal of the objections of owners by providing them an opportunity of being heard and in accordance with law.

12. We shall also take up the case relied on by the Counsel for the respondent:

In *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, their Lordships while considering Sections 4(1) and 3(f) of the Land Acquisition Act observed that when an authority constituted under the Act has initiated the action for acquisition of a large area of land comprising several plots for planned development, the specification of the particular land needed for a specified purpose intended to be for the development ultimately to be taken up, is not a condition precedent to initiate the action for acquisition and publication of the notification u/s 4(1) of the Act in the Gazette does not get vitiated. It was also observed that the notification u/s 4(1) is not vitiated on account of the fact that planned development was not specified with particularisation of the land in question needed for the public purpose.

In *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 the public purpose stated in the three notifications is for implementation of housing scheme to meet the demands of various sectors of population under "Kalaiginar Karunanidhi Nagar Further Extension Scheme", "for the creation of a new neighbourhood known as

Kalaiginar Karunanidhi Nagar, Part II Schemes" and "for increasing housing accommodation for the development of South Madras neighbourhood" respectively. It was held that acquisition for the purpose of Housing Board, framing and publishing of a scheme under the Housing Board Act is not a precondition for issuance of notification u/s 4(1) and power of Government to acquire cannot be curtailed or restricted merely because the land to be acquired is to be made over to the Housing Board for the purpose of Housing Board Act. Their Lordships while considering the argument of vagueness in notification, observed that whether the public purpose stated in the notification is vague or not is a question of fact to be decided in each case. It was also observed that non-specification of use to which each and every bit of land so notified would be put to, does not invalidate the notification. What is clear from the above decision, is that it is not necessary to mention in the notification, the specific public purpose. In the instant case, a public purpose is there.

In *Pratibha Nema and Others Vs. State of M.P. and Others*, their lordships observed that a public purpose is involved in the acquisition of land for setting up an industry in private sector as it would ultimately benefit the people. However, any and every industry need not necessarily promote public purpose and there would be exceptions which negate the public purpose. Satisfaction of Government as to existence of public purpose cannot be lightly faulted.

13. A perusal of the definitions in Section 2 of the Act, reveals that Clause (6) deals with "Industrial Area". Section 2(7) deals with "Industrial estate", which means any site selected for factories and other buildings for the use of industries can be acquired. The said definition has been extended by adding Clause (7-a) to Section 2 of the Act by Karnataka Act 11 of 1997, by a notification dated 18-8-1997. According to Section 2(7-a) of the Act, "Industrial infrastructural facilities" means facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, marketing, Technology parks and Townships for the purpose of establishing trade and tourism centres or any other purpose which the Government may specify by a notification. Under the circumstances, the scope of "Industrial Area" has been extended to industrial infrastructural facilities and other facilities as may be specified by a notification. The issuance of notification was within the competency of the Government. In compliance of the notification dated 10-12-2001 issued u/s 28(1) of the Act, the petitioner did not file his objections initially, but subsequently filed it and the same has been considered. In view of this, the acquisition proceedings cannot be vitiated merely on the ground that the specific public purpose was not mentioned and the argument that the land has been acquired for a public purpose other than the one mentioned in the notification, is not helpful in the facts of the given case. Ultimately, it is clear that as per Section 2(7-a) of the Act, the "industrial infrastructural facilities and other facilities" are also for a public purpose. In other words, the argument is that the words "public purpose" to the extent of industrial infrastructural facility is missing and to our mind, it will not cause any prejudice

to the appellant.

14. It is clear from the material on record that the petitioner had filed objections to the notification proposing acquisition of his land and filed W.P. No. 32251 of 2002 challenging the notifications under Sections 3(1) and 28(1) of the KIADB Act impleading Vikas Telecom Limited as respondent 9 and this Court by order dated 30-10-2002 held that the said writ petition was premature and permitted the petitioner to file additional objections and pursuant to such liberty, the petitioner has filed additional objections and written submission on 4-12-2002 and the same were considered in detail and rejected by the Land Acquisition Officer by order dated 31-12-2002 and therefore it cannot be said that the notification was vague and prejudice was caused. Under the circumstances, there is also no merit in the contention of the learned Counsel for the petitioner that the entire proceeding has been initiated at the instance of Vikas Telecom Limited, as it had to overcome the provisions of the Karnataka Land Reforms Act.

15. The material on record clearly shows that action under the Karnataka Land Reforms Act was initiated subsequent to acquisition proceeding and action under the Karnataka Land Reforms Act was dropped in favour of the petitioner and there is no specific allegation of mala fides and oblique motive against the authority or its officials. Mere alleging fraud is not sufficient in the absence of pleadings and proving the same by substantial material. The material on record also shows that there is no fraud or colourable exercise of power.

16. In the instant case as the facts reveal, for serving larger public interest to achieve industrial growth, notice has been issued for a public purpose. The acquisition has started on the recommendation of High Level Committee and acquisition would vest the land in favour of KIADB only and lease-cum-sale would be executed in favour of Vikas Telecom Limited and only after conditions are fulfilled, further conveyance would be executed and this has been done only to have effective control over industrial area and infrastructural facilities provided and the petitioner has miserably failed to prove fraud or colourable exercise of power. Therefore, the argument of fraud and colourable exercise is not accepted. The fact remains that the land has been acquired for a public purpose and the scope of public purpose was extended as per Section 2(7-a) and the Government after considering objections was satisfied that the acquisition is for a public purpose. Therefore, the same cannot be said to be vitiated on this ground. It is seen that Section 4(1-A) of the Land Acquisition Act is equal to Section 28(2) of the Act, which is not in dispute.

17. The appellant cannot take advantage of the decisions in Munshi Singh's case, supra and Special Land Acquisition Officer's case, supra, as in Munshi Singh's case, the appellants were wholly unable to object effectively and in the said writ appeal, the matter was remanded for fresh disposal of the objections of owners by providing them an opportunity of being heard, whereas in the instant case, objections were filed by the appellants, which were considered and rejected. On the other hand, the decisions in Pratibha Nema's case, supra and

Ajay Krishan Shinghal are fully applicable to the facts of the given case.

18. It has come on record that the appellant had filed W.P. No. 1497 of 2002 challenging the acquisition notification. However, the appellant withdrew the same and agreed for an alternate site. The Global Investor Scheme is a policy decision of the State formulated after taking into consideration all the relevant issues and considerations. Therefore, the notification which has been issued in public interest as held cannot be interfered at this stage. The interim order granted on 15-3-2004 stands discharged.

19. No other point was argued.

20. In the instant case, the acquisition is made for "public purpose", and no procedural violation has been shown as discussed. On an overall consideration and applying the decisions of the Apex Court to the facts of the given case, the acquisition cannot be set aside. We find no error or illegality in the detailed order of the learned Single Judge so as to call for any interference.

These writ appeals are dismissed. No order as to costs.