
(2002) 03 KAR CK 0003
In the Karnataka High Court
Case No : Writ Appeal No's. 6804-05 of 1996

Patel Byrappa and Another	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 27-03-2002

Acts Referred:

Constitution of India, 1950 — Article 254, 254 (2)
Land Acquisition (Mysore Extension and Amendment) Act, 1961 — Section 5
Land Acquisition Act, 1894 — Section 1 (2), 10, 11 A, 4, 4 (1)

Citation : (2002) 3 KCCR 1576

Hon'ble Judges : N.K. Jain, C.J;N. Kumar, J;H. Rangavittalachar, J

Bench : Full Bench

Advocate : B.P. Holla, in Writ Appeal Nos. 6804-05 of 1996, for the Appellant; J.Y. Martin, A.G.A. for Respondents 1 to 3, G.L. Vishwanath and M.S. Bhujanga Rao for Respondent 4 in Writ Appeal Nos. 6804-05 of 1996, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—A Division Bench of this Court has made this Reference vide Order dated 5.10.2001 to the larger Bench in view of the conflicting judgments of two Division Benches, in Naveen Jayakumar and Others Vs. State of Karnataka and Others, and Nanjundaiah and Ors. v. State of Karnataka and Ors. Writ Appeal No. 1462 of 1998, disposed of on 1.8.2001. Thus, on the Order of the Chief Justice on 14.3.2002 this Reference is placed before us on 18.3.2002.

2. The facts leading to the Order of reference are as follows:

It is alleged that Appellants-Petitioners in Writ Appeal No. 6804 of 1996 being the sons of late Byrappa are the Members of Joint Hindu Family in possession and enjoyment of land bearing Sy. No. 23/2, measuring 36 guntas, situate at Nayandahalli village, Kengeri Hobli, Bangalore South Taluk. Their father died in the year 1951 and the katha stands in the name of their deceased father.

Appellant-Petitioner in Writ Appeal No. 6805 of 1996 is the owner of land bearing

Sy. No. 23/4, measuring 23 guntas, situate at Nayandahalli, Kengeri Hobli, Bangalore South Taluk.

However, the Deputy Commissioner issued Notification dated 22.2.1985 u/s 4(1) of the Land Acquisition Act, 1894 (for short the "1894 Act"), for the purpose of acquiring the lands for the 4th Respondent-Indian Telephone Industries Employees Housing Co-operative Society Limited and published the same in the Gazette dated 25.2.1985. The Appellants-Petitioners filed objections on 4.4.1985 stating that prior approval u/s 3(f)(vi) of the 1894 Act was not taken and contended that as the acquisition is for the purpose of the Society it falls within the definition of Section 3(c) of the 1894 Act and it is a Company and therefore, they have to follow the procedure as laid down in the Karnataka Land Acquisition (Companies) Rules, 1973. However, final Notification dated 27.2.1986 was issued u/s 6(1) of the 1894 Act and published in the Karnataka Gazette dated 28.2.1986. Award was passed on 3.6.1988. While the date of approval is 22.6.1986, the award was made beyond two years and therefore the entire proceedings are null and void as per Section 11A inserted by the Amendment Act. Appellants-Petitioners approached this Court, praying to quash the same on the ground that acquisition is not in accordance with Section 3(f)(vi) of the 1894 Act. The learned Single Judge on consideration has repelled the contention and found that the award is made within one year after excluding the period when the Notification was stayed by this Court from 16.7.1986 to 21.10.1986 and dismissed the Writ Petitions. The same is challenged in these Appeals.

3. As stated, the matter was referred to us vide order dated 5.10.2001.

4. The question that mainly arises in these writ appeals is:

Whether the Karnataka Land Acquisition Act 17 of 1961 stands repealed by the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984)?

5. The main contention of Sri B.P. Holla, learned Counsel for the Appellants, is that the case of the Appellants is fully covered by the decision in *Kanthimathy Plantation Private Limited v. State of Kerala* and Ors. AIR 1990 SC 761 and as Anr. Division Bench of this Court has differently and wrongly interpreted that ruling, the matter has been referred. Learned Counsel submitted that the initiation of acquisition proceedings on the basis of the notice issued u/s 4(1) by the Deputy Commissioner is without jurisdiction, as the competent Authority under the 1894 Act, is the appropriate Government only. In view of the Central Act, the provisions of the State Act by which the Deputy Commissioner is authorised to issue notice are not applicable. The Central Act of 1894 will prevail over the State Act of 1961 and this case is squarely covered by the decision in *Kanthimathy Plantation Private Limited* (supra), which has been followed by the earlier Division Bench in *Naveen Jayakumar and Others Vs. State of Karnataka and Others*, . Anr. Division Bench of this Court in Writ Appeal No. 1462 of 1998 (*Nanjundaiah and Ors. v. State of Karnataka and Ors.*), disposed of on 1st August, 2001 has wrongly interpreted the decision in *Kanthimathy Plantation's*

case and therefore this Reference has to be answered approving the earlier Division Bench decision in Naveen Jayakumar's case.

6. Learned Counsel for the Appellant also submits that the Division Bench in Nanjundaiah's case in para 20 of the judgment has wrongly mentioned the wordings of the Act stating that Section 4 of the Principal Act is applicable in the State of Karnataka which led to the confusion, and gave a wrong interpretation to the decision of the Supreme Court in Kanthimathy Plantation's case and has not followed the earlier Division Bench decision in Naveen Jayakumar's case.

7. On the other hand, Mr. G.L. Vishwanath, learned Counsel for Respondent No. 4, submitted that no doubt the Central Act would prevail, but the State has extended the Central Act by the State Act No. 17 of 1961 which received the assent of the President on 16.8.1961. In view of the amendment to Section 4(1) in 1961, the words "appropriate Government or Deputy Commissioner" have been inserted and therefore State Act, 1961 should be followed. In Naveen Jayakumar's case the Bench was under the impression that the Act came into force in 1984, even though the State Act was in force from 1961 and therefore the interpretation has wrongly been applied on the factual aspect. Learned Counsel submits that the power of the Deputy Commissioner has not been taken away, which was inserted long back in 1961 and therefore, the Appellants cannot say that the issuance of Notification is bad or without jurisdiction. Once the State Act, 1961 has received the assent of the President, the State Act will prevail, which is clear from Article 254(2) of the Constitution. In Naveen Jayakumar's case it has been wrongly mentioned that Deputy Commissioner has no jurisdiction, as it was thought that the same was amended in 1894, but as the insertion came into force through State Amendment in 1961, issue of notice does not call for any interference. In view of the Amendment inserting Section 11A, which came into force in 1984, question of repugnancy does not arise. Repugnancy will come only when there is conflict in the provisions of the other Act. So, the argument that the latter Division Bench has wrongly interpreted Section 4(1) cannot be accepted and more so reliance placed on Kanthimathy Plantation's case is not helpful as in Kerala State there was no such State amendment.

8. Learned Government Advocate also submits that the Government has acquired the land long back in 1984 and has allotted the same to the needy persons. In both the Central Act of 1894 and State Act of 1961 the purpose and object is to acquire the lands and give to the needy and landless persons. The power to issue notice has been given to the Deputy Commissioner by the Act of 17 of 1961 and the same has not been taken away by the subsequent amendment Acts and the Appellant cannot take advantage of the Division Bench decision in Naveen Jayakumar's, which is not helpful and not applicable and therefore, the later decision is good at law.

9. We have heard the learned Counsel for the parties at great length, perused the materials on record, relevant provisions of law and the case cited.

10. No doubt, when there is a direct collision between the provision of a law made by the State and that made by the Parliament with respect to concurrent list, the law made by the Parliament is to prevail. In other words, where the provisions of the Central Act and State Act pertaining to concurrent list are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and State Act will become void in view of the repugnancy. If the law made by the State Legislature on a subject covered by the concurrent list is inconsistent and repugnant to the provisions of law made by the Parliament, then such a law can be protected by obtaining assent of the President under Article 254(2) of the Constitution. However, if the Parliament again adds or amends or varies or repeals the law, then the Central Act will prevail.

11. In order to appreciate the rival contentions on the point in issue, it is necessary to refer to the relevant provisions of the Central Act of 1894 and the State Act of 1961 and subsequent Amendments.

12. The 1894 Act is prevailing in whole of India except the State of Jammu and Kashmir and has come into force from 1st March, 1894.

Section 4(1) of the said Act reads:

Publication of preliminary notification and powers of Officers thereupon: Whenever it appears to the "appropriate Government" 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 Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

13. The Land Acquisition (Mysore Extension and Amendment) Act XVII of 1961, Section 5 (24.8.1961) reads thus:

In Sub-section (2) of Section 1 of the Principal Act, after the expression "except the territories which immediately before the 1st November, 1956, were comprised in Part B States" the expression "other than territories specified in Clauses (a) and (c) of Sub-section (1) of Section 7 of the States Re-organisation Act, 1956 (Central Act 37 of 1956) shall be added.

14. Section 7 of the Land Acquisition (Karnataka Extension and Amendment Act, 1961 - Karnataka Act No. 17 of 1961) reads:

Amendment of Section 4 of Central Act I of 1894: In Section 4 of the Principal Act:

(1) in Sub-section (1):

(a) after the words "the appropriate Government" the words "or the Deputy Commissioner" shall be inserted;

(b) for the words "notification to that effect", the words "notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area" shall be substituted;

(c) 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.

15. By Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) Section 4(1) of the Principal Act was amended by substituting certain words mentioned therein. By enacting Land Acquisition (Karnataka Amendment) Act, 1991 (Karnataka Act No. 33 of 1991), Sub-section (1) and the explanation thereto, of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) was amended by substituting the following:

(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that the land in any 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.

16. In Kanthimathy Plantation's case the point in issue was whether in the absence of a specific provision in Central Act 68 of 1984, amending the 1894 Act, the acquisition proceedings taken under the Kerala Land Acquisition Act of 1961, Act 21 of 1962, can be continued under the 1894 Act. Considering that point, it was noticed that the Amending Act of 1984 has been made in exercise of legislative power vested in the Centre by Entry 42 in the Concurrent List. There was a State Act in Kerala known as 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, 1894 Act was subsequently amended. Five new provisions were inserted, twenty-one sections were substantially altered, one section was substituted and Anr. was omitted. The Act of 1984 extended the 1894 Act 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 1894 Act was extended to the whole of India excepting one State, the 1894 Act 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. There is no provision made in the Amending Act to indicate repeal of the State law but application of Article 254 is automatic to situations where it is applicable and by the operation of the Article the State Act stood repealed and the Central Act became applicable. The contention was that in the absence of any specific provision in the Amending Act of 1984 pending proceedings could not be taken over from the stage they were at the time when the Central Act came into operation to be continued under the Central Act of

1894 to their final stage. This contention was rejected and the conclusion of the High Court was affirmed. Relying on Anr. Supreme Court decision in *Deep Chand Vs. The State of Uttar Pradesh and Others*, it was held that it was open to the Land Acquisition Officer to continue the pending proceeding from the stage where it was at the time of coming into force of the Central Act. The Appeal filed by the KANTHIMATHY PLANTATION was dismissed. This decision and observations made therein are not helpful to the Appellants in this case, as admittedly the 1894 Act as amended by Karnataka Act of 1961, (published in the Gazette on 3.12.1958), which has received the assent of the President is applicable to the entire State, so as to give uniform law on the subject.

17. In view of Article 254(1) no doubt wherein there is inconsistency between laws made by Parliament and laws made by the Legislature of the State, the law made by the Parliament shall prevail and the law made by the State Legislature to the extent of repugnancy is void. If the State made a law enumerated in the Concurrent List which contains provisions repugnant to the provisions of an earlier law made by the Parliament, the law so made by the State, if it receives the assent of the President, will prevail in the State. Nothing has been placed on record to show that after the State Act of 1961 any law has been made by the Parliament to the 1894 Act to the extent of amending Section 4(1). In the instant case, the Karnataka State Legislature adopted and extended the Land Acquisition Act of 1894 to the whole of the State of Karnataka by enacting the Land Acquisition (Karnataka Extension and Amendment) Act, 1961. Therefore, there is no question of any inconsistency or repugnancy between the 1894 Act and the State Act of 17 of 1961. However, the 1894 Act was amended to suit the requirements of the State. The said law made by the State Legislature which included the amendments received the assent of the President. Therefore, though there is inconsistency between the 1894 Act and the State Act of 17 of 1961 to the extent it is amended by virtue of Clause (2) of Article 254 of the Constitution of India, the State law prevails over the Central law and operates in the State of Karnataka as valid law. Though the Parliament amended the 1894 Act in 1984 the said amended provisions were not repugnant to the Act No. 17 of 1961. Therefore, there is no inconsistency or repugnancy between the Central Act of 1894 as amended in 1984 and the State Act No. 17 of 1961. Hence, the decision in *Kanthimathy Plantation's* case is not applicable. Therefore, the judgment rendered in *Naveen Jayakumar's* case relying on *Kanthimathy Plantations's* case is not a good law. That apart, as already stated, amendment was made by inserting the words "or the Deputy Commissioner" after the words "appropriate Government".

18. *Naveen Jayakumar's* case, which has been relied on by the earlier Division Bench, is also not helpful to the Appellants for the reason that in that case, preliminary Notification issued u/s 4(1), final Notification issued u/s 6(1) and quashing of notices issued under Sections 9 and 10 of the Land Acquisition Act were challenged on the ground that the Petitioners therein were not issued notices under Sections 4(1), 5A, 6, 9 and 10 of the Act and no enquiry was held

as per Section 5A of the Act. The learned Single Judge referred the matter to the Division Bench observing that "It was contended on behalf of the Petitioners that the State has no power to acquire the land under the Land Acquisition Act, as amended under Act No. 17 of 1961, in view of the amendment introduced to the Central Act in the year 1984". It was also argued that Respondent No. 3 therein had no jurisdiction to initiate the process of acquisition in view of the decision of this Court in Kanaka Gruha Nirmana Sahakara Sangha Vs. Kota Srinivasa Murthy (Since Deceased) by L.Rs. and Others, . In that case it was observed that according to Section 4 of the 1894 Act, appropriate Government would include Deputy Commissioner as well. The learned Counsel for the Respondents contended that as Act No. 33 of 1991 has received the assent of the President, the law laid down in Kanaka Gruha Nirmana's case cannot be held to be a good law. The Division Bench repelled that contention on the ground that the action had been initiated by the Deputy Commissioner before the enactment of Act No. 33 of 1991 when the "appropriate Government" in the Act did not include within its ambit the "Deputy Commissioner". While reiterating and upholding the judgment in Kanaka Gruha Nirmana's case by the Division Bench it was observed that the said judgment insofar as it relates to acquisition by the Deputy Commissioner to be unconstitutional would be applicable only to the cases where the acquisition was initiated, conducted and concluded after the commencement of the Central Act, but before the enactment of Karnataka Act No. 33 of 1991. Such observations, however, is subject to the constitutional validity of Act No. 33 of 1991 which may be determined in a case where specifically its constitutional validity is challenged on such grounds as were canvassed by the learned Counsel for the Petitioners therein or such other grounds as may be brought to the notice of the Court. However, as regards the alternative submission of the learned Counsel for the Petitioners therein that action of acquisition has been initiated on the basis of a law, which was not in existence, the Court found some substance in his submission.

19. As stated, the proceedings which are to be initiated under 1894 Act which is applicable to whole of the State of Karnataka and further amended by virtue of the State Act No. 17 of 1961, got assent of the President on 16th August, 1961 and by amending Section 4 of the Principal Act, after the words "the appropriate Government" the words "or the Deputy Commissioner" were inserted. In other words in view of substitution of the expression "Deputy Commissioner", for the expression "Collector" in Central Act I of 1894 - the principal Act, for the word "Collector" wherever it occurs, the words "Deputy Commissioner" shall be substituted. Meaning thereby by virtue of Act 17 of 1961, the proceedings can be initiated by the Deputy Commissioner also. Therefore, the observation of the Division Bench that "the action had been initiated by the Deputy Commissioner before the enactment of Act No. 33 of 1991 when the "appropriate Government" in the Act did not include within its ambit the "Deputy Commissioner", is not correct. It is also to be seen that the Parliament enacted the Land Acquisition (Amendment) Act, 1984 by Act No. 68 of 1984 and thereby amended Sub-

section (1) of Section 4 of the principal Act, as under:

(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; and

(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.

But the same is not in any way the point of controversy and it is also to be seen that the State legislature enacted the Land Acquisition (Karnataka Amendment) Act, 1988 by Karnataka Act No. 33 of 1991, w.e.f. 27.11.1991 amending Sub-section (1) and the explanation thereto in Section 4 of the 1894 Act. The following was substituted namely:

(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that the land in any 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.

20. Under the circumstances, initiation of proceedings by the Deputy Commissioner cannot be said to be bad. The Division Bench has wrongly inferred that the expression "Deputy Commissioner" was not inserted and did not come within the ambit of enactment of Act No. 33 of 1991 and it led the Division Bench to the wrong conclusion, on the ground of repugnancy, and to our mind, once the words "Appropriate Government" and "Deputy Commissioner" were inserted and the same have not been taken away, the question of repugnancy will not arise, as repugnancy will come only when there is a conflicting provision in the other Act and the argument of Mr. Vishwanath, learned Counsel for Respondent-4 has substance. As stated above, the decision in Naveen Jayakumar's case is not helpful to the facts of the present case and has been decided without noticing Act 17 of 1961.

21. The other submission of the learned Counsel for the Appellant Mr. Holla, is that the Division Bench has invented and made out the law on its own without there being anything in the Act 33 of 1991. The submission of the learned Counsel for the Appellants pertaining to para No. 20 of the judgment in Nanjundaiah's case is of no consequence as the learned Judge has only mentioned for comparing the provisions of the two Acts by mentioning "The letter in italics represents the State Amendments and those in bigger fonts represents Central Amendment". That apart, no prejudice has been shown. As stated, the amendment in Section was there in the State Act No. 17 of 1961.

22. As discussed, once Section 4(1) of the Act has been amended by Act No. 17 of 1961 inserting the words "Appropriate Government" and "Deputy

Commissioner" and the same has not been taken away by amendment Act No. 33 of 1991 at any point of time, we are of the view that substitution of Sub-section (1) by the Karnataka Act 33 of 1991 with effect from 27.11.1991 does not have the effect of repealing the Karnataka Amendment Act No. 17 of 1961, as argued by Mr. Holla.

23. We have carefully gone through the judgment of Division Bench and we find that the Division Bench has considered the matter in detail and it has also observed that substitution of Section 4 by the State Amending Act of 33 of 1991 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 by Amending Act No. 17 of 1961.

24. In view of the above discussion, we are in full agreement with the decision of the Division Bench Nanjundaiah's case and as stated the decisions of the earlier Division Bench in Naveen Jayakumar's case and Kanaka Gruha Nirmana Sahakara Sangha's case are not good law on the points.

Accordingly, the question stated above is answered in negative.