

(2006) 04 KAR CK 0048
In the Karnataka High Court
Case No : Writ Appeal No. 6804 of 1996

Patel Byrappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 3 (1), 4 (1), 40, 41, 5 A

Citation : AIR 2006 Kar 200 : (2006) ILR (Kar) 3499 : (2002) 3 RCR(Civil) 306

Hon'ble Judges : S. Abdul Nazeer, J;B. Padmaraj, J

Bench : Division Bench

Advocate : G.V. Shantha Raju, for M. Shivaprakash, for the Appellant; M.B. Prabhakar, A.G.A. for Respondents 1 to 3 and G.L. Viahwanath, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

1. In this appeal, the appellants have challenged the order passed by the learned Single Judge in W.P. Nos. 10630 and 10631 of 1986 disposed of on 10-4-1996 whereby the writ petitions filed by them challenging the notifications issued for acquisition of the lands in dispute have been dismissed.

2. Petitioners are the owners of the lands bearing Sy. No. 23/2 measuring 36 guntas and Sy. No. 23/4 measuring 23 guntas situated at Nayandahalli Village, Kengeri Hobli, Bangalore South Taluk. The Special Deputy Commissioner, Bangalore proposed to acquire the lands in question along with certain other lands for the purpose of formation of house sites by ITI Employees' Housing Co-operative Society Limited-4th respondent herein (for short, "the Society"). The Preliminary Notification was published in the Gazette in LAQ.(1) CR 681 of 1983/84, dated 25-2-1985. Consequent upon the issue of Preliminary Notification, the petitioners filed their objections on 4-4-1985 inter alia contending that the acquisition of the lands in question is not for a public purpose and that the acquisition is not in accordance with Section 3(1) of the Land Acquisition Act, 1894 (for short, "the Act"). Thereafter, the State

Government has issued a declaration u/s 6(1) of the Act on 27-2-1986 published in the Gazette on 29-2-1986. The petitioners have challenged the said notification in the writ petitions before the learned Single Judge.

3. Respondents 1 to 3 have filed their counter to the writ petitions. It was contended that the landowners/petitioners were afforded an opportunity to file their objections and that their objections were considered and that they were heard. Thereafter the final notification was issued u/s 6(1) of the Act. It was further contended t] the acquisition is for a public purpose and that the State Goveri has paid Rs. 100/- as a token contribution for acquisition of the lands. It is further contended that the landowners have also participated in the award proceedings and that they have no locus standi to question the acquisition.

4. Learned Single Judge by his order dated 10-4-1996 dismissed the writ petitions. Feeling aggrieved by the said order they had filed the aforesaid writ appeal. In the appeal, the appellants have raised a plea that initiation of the 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 Act is the appropriate Government. In view of the Central Act, the provisions of State Act by which the Deputy Commissioner is authorised to issue notice is not applicable and that the Central Act 1894 will prevail over the Karnataka Amendment Act of 1961, A Division Bench of this Court found that there were two conflicting judgments of the Division Bench on this point, they are Naveen Jayakumar and Others Vs. State of Karnataka and Others, and Nanjundaiah and Ors. v. State of Karnataka and Ors. 2001 (5) Kar. L.J. 10. Therefore, the matter was referred to the Full Bench by order dated 5-10-2001. The Full Bench of this Court by the order dated 27-3-2002 (Patel Byrappa and Anr. v. State of Karnataka and Ors. ILR 2002 Kar. 1849), held that once Section 4(1). of the Act has been amended by Act No. 17 of 1961 inserting 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. Substitution of Sub-section (1) of Section 4 by the Karnataka Act No. 33 of 1991 with effect from 27-11-1991 does not have the effect of repealing the Karnataka Act No. 17 of 1961. The Full Bench agreed with the decision in Nanjundaiah's case and held that Naveen Jayakumar's case is not a good law on the point. Feeling aggrieved by the said order, the Society filed SLPs before the Hon''ble Supreme Court. The Apex Court by its judgment dated 3-10-2002 dismissed the appeals (the decision is in Kanaka Gruha Nirman Sahakara Sangha Vs. Smt. Narayanamma (Since deceased) by Lrs. and Others, Thereafter the matter is once again posted before the Division Bench. That is how the matter is posted before us today for hearing.

5. We have heard the learned Counsels for the parties and perused the materials placed on record.

6. Sri G.V. Shantha Raju, learned Senior Counsel appearing for the appellants has urged that the scheme for acquisition of lands in question has not been approved by the State Government. Therefore, the acquisition of lands cannot be

for a public purpose. He further submits that the respondents have not produced any material to show that the scheme has been approved by the State Government. He has not urged any other points in the appeal. In support of his contentions, learned Senior Counsel has relied on the decisions of the Apex Court in the cases of H.M.T. House Building Co-operative Society Vs. Syed Khader and others, and Kanaka Gruha Nirmana Sahakara Sangha .

7. On the other hand, Sri G.L. Vishwanath, learned Counsel appearing for the Society would contend that the acquisition of the lands was made by the authorities concerned for a public purpose. It is argued that detailed objections have been filed by respondent 4 in the writ appeal. It is contended that the Government has contributed Rs. 100/-towards acquisition vide Challan No. B-10, dated 27-4-1986. It is further contended that on 1-6-1983, the Revenue Commissioner and Secretary to Government has formally conveyed approval of the Government to acquire the lands in Nayandahalli Village in favour of the Society under the Land Acquisition Act. The said letter has been marked as Annexure-R5. It is further contended that the Government is the final authority whose satisfaction as to existence of public purpose is conclusive. He has relied on the following decisions:

- (i) Pandit Jhandu Lal and Others Vs. The State of Punjab and Others,
- (ii) Jage Ram and Others Vs. State of Haryana and Others,
- (iii) Bai Malimabu and Others Vs. State of Gujarat and Others,
- (iv) Narayana Raju Vs. State of Karnataka,

8. Sri M.B. Prabhakar, learned Additional Government Advocate argues that the State Government has accorded approval for acquisition of the lands as per Annexure-R5. It is submitted that objections have been filed by the State Government to the writ petition stating that there was no infirmity in the acquisition proceeding. It is further submitted that the State Government has made a contribution of Rs. 100/- for the purpose of acquisition and that the lands have been acquired for a public purpose. He has relied on the decision of the Apex Court in the case of Pratibha Nema and Others Vs. State of M.P. and Others, He has produced the original records for the perusal of the Court.

9. We have carefully considered the arguments made by the learned Counsel at the bar, perused the case papers and the records produced by the learned Additional Government Advocate.

10. Section 3(f)(vi) of Act No. 68 of 1984 defines the expression "public purpose" as under:

the expression "public purpose" includes.--

(i) to (v) x x x x x x

(vi) The provision of land for carrying out any educational, housing, health or

slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a Co-operative Society within the meaning of any law relating to Co-operative Societies for the time being in force in any State;

(vii) and (viii) x x x x x,

but does not include acquisition of land for companies.

11. Section 4 of the Act provides for publication of preliminary notification and the powers of officers thereupon. Sub-section (1) of Section 4 states that whenever it appears to the appropriate Government that the 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. Section 5-A of the Act deals with "hearing of objections" and Section 6 provides for "issuing a declaration". The 2nd proviso to Sub-section (1) of Section 6 states that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

12. In H.M.T. House Building Co-operative Society's case, the Apex Court has held that lands can be acquired for Housing Co-operative Society by the appropriate Government treating the same as acquisition for public purpose as provided in Section 3(f)(vi) of the Act. In that event there has to be a prior approval of such scheme by the appropriate Government. It has been held as follows.--

According to us, in Section 3(f)(vi), the expression "housing" has been used along with educational and health schemes. As such the Housing Scheme contemplated by Section 3(f)(vi) shall be such Housing Scheme which shall serve the maximum number of members of the Society. Such Housing Scheme should prove to be useful to the public. That is why the Parliament while introducing a new definition of "public purpose" said that any Scheme submitted by any Co-operative Society relating to housing, must receive prior approval of the appropriate Government and then only the acquisition of the land for such Scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforced, every Housing Co-operative Society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under Part VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just

a formality, it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a Housing Scheme of a Co-operative Society.

13. In Kanaka Gruha Nirmana Sahakara Sangha's case, the Apex Court while observing that in A.K. Kayamma v. State of Karnataka SLP (Civil) Nos. 18239 to 18254 of 1996, DD: 20-9-1996 (SC), Muniyappa v. State of Karnataka SLP (Civil) No. 14681 of 1995, DD: 4-10-1996 (SC) and Sumitramma v. State of Karnataka SLP (Civil) No. 10270 of 1996, DD: 4-10-1996, the decision in H.M.T. House Building Co-operative Society's case has been distinguished, it has been held that Annexure-R1 reflects a specific approval by the State Government as contemplated by Section 3(f)(vi) of the Act. In the instant case, it is the case of the appellants that there is no specific approval of the State Government for acquisition of the lands in question. As noticed above, the 4th respondent has filed objections contending that on 1-6-1993, the Revenue Commissioner and the Secretary to the Government conveyed approval to the State Government to acquire the lands in question. It has also produced the letter dated 1-6-1983 which is at Annexure-R5. Perusal of Annexure-R5 clearly states that the State Government has granted approval for acquisition of the lands in question. The letter is as follows.--

GOVERNMENT OF KARNATAKA

No. RD 46 AQB 82 Karnataka Government Secretary, Vidhana Soudha, Bangalore, dated 1st January, 1983 From,

The Revenue Commissioner and Secretary to Government, Revenue Department
To,

The Special Deputy Commissioner, Bangalore

Sir,

Sub: Acquisition of 174.29 acres of land at Nayandahalli Village, Bangalore South Taluk, in favour of I.T.I. Employees' Housing Society.

In continuation of this Department letter of even number dated 5-4-1982 on the subject mentioned above, I am directed to convey approval of Government to acquire 174.29 acres of land at Nayandahalli Village, in favour of the ITI Employees' Housing Co-operative Society Limited, Bangalore under normal rules, of Land Acquisition Act.

The acquisition proceedings may be finalised early. The schedule of the land and records of the case are enclosed herewith.

Your's faithfully,

(G. Gangappa) Under Secretary to Government, Revenue Department

Copy to:

1. The Special Land Acquisition Officer, Bangalore for immediate compliance.

2. The President, ITI Employees' Housing Co-operative Society, Bangalore.

14. In Kanaka Gruha Nirmana Sahakara Sangha's case, the Apex Court was considering a similar approval. There also, the Revenue Commissioner had sent a letter to the Special Deputy Commissioner, Bangalore, stating that the State Government has accorded approval for acquisition of lands by issue of Section 4(1) notification. The said approval was held to be a specific approval for acquisition of the lands.

15. Learned Additional Government Advocate has also pointed out from the records the various correspondence between the Society and the Special Land Acquisition Officer and the Deputy Commissioner of Co-operative Societies during the year 1983 stating therein amongst others, the according of approval to acquire the lands in question by the State Government. Even otherwise, the aforesaid letter makes it clear that the State Government has accorded prior approval for acquisition of lands. Thus, it is clear that State Government has accorded approval to acquire the lands in the year 1983 itself.

16. Learned Counsel for the appellants points out a letter from the records dated 2-12-1985 and submits that having regard to the contents of the letter, it cannot be said that there is prior approval. He has also pointed out from a report of the three member committee wherein there is a reference to a notification dated 22-2-1985. No doubt the aforesaid letter refers to the previous approval of the Government to initiate acquisition proceeding by issue of Section 4(1) notification in respect of 105 acres of land in several survey numbers of Nayandahalli Village in favour of the 4th respondent. It also states that the same has already been cleared by the Committee. Having regard to the other material on record which has been referred to by us earlier, it cannot be said that approval for acquisition was granted subsequent to the 4(1) notification by relying on above letter. Even the report pointed out by the learned Counsel for the appellants cannot be relied on for the said purpose, as it is incomplete and does not bear the date.

17. Apart from the above, the learned Counsel for the respondents has pointed out that the State Government has contributed Rs. 100/- for acquisition of lands. The State has filed objections specifically contending that it has contributed Rs. 100/- in favour of the Society as a contribution for acquisition of lands. The 4th respondent has filed objections in the writ appeal, which is as under:

The Government on its part has contributed Rs. 100/- towards the acquisition proceedings vide Challan No. B-10, dated 27-4-1986 as would be clear from a perusal of the records of the case.

Thus, it is clear that the State has also contributed towards cost of acquisition of the lands in question.

18. In Pandit Jhandu Lal's case, the Apex Court has held that the essential condition for acquisition for a public purpose is that the cost of the acquisition

should be borne, whole or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or by the whole of the cost of acquisition is met by public funds. In such a case, it is not necessary to go through the procedure prescribed by Part VII.

19. In Jage Ram's case, the State Government had contributed Rs. 100/- towards the cost of the land. It was held that where the Government had contributed money towards cost of land sought to be acquired, it is not necessary to proceed with the acquisition under Part VII of the Act. In Bai Malimabu's case, the State Government has contributed Re. 1/- from the public exchequer for the purpose of acquiring the land. It has been held that the said fact alone cannot lead to the conclusion that it was a colourable exercise of power.

20. In Pratibha Nemas case, the Apex Court has held that if the Government decides to contribute even the trifling sum towards compensation, that is sufficient for the acquisition for a public purpose. It has been held thus:

The acquisition for companies under Part VII is not divorced from the element of public purpose. The concept of public purpose runs through the gamut of Part VII as well. The provisions of Sections 40 and 41 make it clear that even in a case of acquisition for a company, public purpose is not eschewed. It follows, therefore, that the existence or non-existence of a public purpose is not a primary distinguishing factor between the acquisition for public purpose under Part II and acquisition for companies under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Section 6(1) is the main dividing ground for the two types of acquisition. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in private sector could get imbued with the character of public purpose acquisition, if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

(emphasis supplied)

21. In Narayana Raju's case, a Division Bench of this Court has held that Government is the final authority whose satisfaction as to the existence of public purpose is conclusive.

22. It is therefore clear that if the State Government decides to contribute even a nominal sum towards compensation, that is sufficient for acquisition of land for a public purpose. In the instant case, the State Government has contributed Rs. 100/- towards the cost of acquisition. Even otherwise, the State Government has accorded prior approval for acquisition of the lands. Therefore, in our view the acquisition of land is for a public purpose. No other contention has been urged on

behalf of the appellants. There is no merit in this appeal. It is accordingly dismissed.

No costs.