

(1971) 10 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 1163, 1442 to 1449, 1493 to 1496, 4417 of 1970 and 1029 of 1971

P.V. Aithala and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 26-10-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 23 (1)

Mysore Land Acquisition (Amendment) Act — Section 15 A, 3 (3), 6

Citation : AIR 1972 Kar 291 : (1972) 1 MysLJ 303

Hon'ble Judges : A. Narayana Pai, C.J.;V.S. Malimath, J

Bench : Division Bench

Advocate : K. Shivashankar Bhat, for the Appellant; K.S. Puttaswamy, High Court Govt. Pleader and B. Ramachandra Rao for Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

Malimath, J.—The lands belonging to the petitioners in this batch of 15 writ petitions have been acquired for the Mangalore Harbour project. The common prayer made in these writ petitions to declare as void the first proviso to Section 3 (3) of the Land Acquisition (Mysore Amendment and Validation) Act, 1967 (Mysore Act 10 of 1968) is not pressed. Hence, the same is not considered, reserving liberty to raise that contention, if necessary, in appropriate proceedings,

2. In the first 8 writ petitions, there is a prayer for declaration that Sections 11, 16 and 23(1) of the Land Acquisition Act, 1894, as in force in the State of Mysore, are void as offending the second proviso to Article 31-A of the Constitution. In the first two writ petitions, there is a further prayer for quashing the notification issued u/s 6 of the Act.

3. The Land Acquisition Act, 1894 which is a Central Act, was amended and extended to the entire State of Mysore, by Mysore Act 17 of 1961 (hereinafter referred to as the Act). The said Act having received the assent of the President,

came into force on the 24th of August 1961. The lands of the petitioners have been acquired under the provisions of the said Act. The Mysore Land Reforms Act, 1961 came into force on the 2nd of October 1965. The case of the petitioners in the first eight writ petitions is that the lands sought to be acquired are under their personal cultivation and are within the ceiling limit applicable to them as per the provisions of the Mysore Land Reforms Act, 1961. It was urged that Sections 11, 16 and 23 of the Act entitled the State to compulsorily acquire lands by paying compensation at a rate less than the market value of the lands. It was submitted that the lands belonging to the petitioners come within the expression "estate" as defined in clause (2) of Article 31-A of the Constitution. The second proviso to Article 31-A of the Constitution on which the petitioners have placed reliance, reads as follows:--

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

Our attention was invited to the fact that for the purpose of awarding compensation under the Act what is taken into consideration u/s 23 is the market value of the land at the date of the publication of Notification u/s 4 and not as on the date of actual acquisition of the land, which, according to the petitioners, takes place only when an award is made u/s 11 entitling the prescribed authority to take possession u/s 16 of the Act. It is necessary to mention at this stage that it is not the case of the petitioners that the provisions of Sections 11, 16, and 23 (1) of the Act are void as offending Article 31 of the Constitution. As the Act makes provision for compulsory acquisition of property for a public purpose which lays down the principles on which and the manner in which compensation is to be determined and given, the said law having also received the assent of the President, cannot be assailed on the ground that it violates Article 31 of the Constitution. Article 31-A was subsequently introduced in order to save laws providing for acquisition of estates etc. which may be void as offending Articles 14, 19 and 31 of the Constitution. Article 31-A states that,--

"Notwithstanding anything contained in Article 13, no law providing for-

(a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:"

The first proviso further states that the law made by the Legislature of a State cannot get the protection of Article 31-A unless such a law having been reserved

for consideration of the President has received his assent. The second proviso which we have extracted earlier, was introduced by the Constitution (Seventeenth Amendment) Act, 1964. The effect of the said proviso is that the protection given by Article 31-A will not be available to laws made for acquisition by the State of any estate where the land comprised therein is held by a person under personal cultivation and within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to acquisition of such land, building or structure makes provision for payment of compensation at a rate which shall not be less than the market value thereof. In our opinion, Article 31-A does not add any new fundamental right to Part III of the Constitution. Therefore, without the aid of Articles 14, 19 or 31, no law can be struck down as offending only the provisions of Article 31-A. On the other hand, Article 31-A has really the effect of restricting or abridging the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution in certain matters. We do not find it possible to agree with the submission of Shri Shivashankar Bhat that we should read the second proviso to Article 31-A of the Constitution as enlarging the rights of the citizen. A citizen who could have challenged a law relating to acquisition by the State of any estate etc. as offending Articles 14, 19 or 31 of the Constitution is now precluded from doing so if the conditions specified in Article 31-A are satisfied. If a law does not infringe Articles 14, 19 and 31 of the Constitution, Article 31-A does not come into play at all, as the said Article need be invoked only to protect laws which otherwise offend Articles 14, 19 and 31 of the Constitution. As the impugned provisions of the Act are not liable to be assailed as offending Article 31 of the Constitution, they do not need the protection of Article 31-A of the Constitution.

4. The suggestion of Shri Shivashankar Bhat that the second proviso to Article 31-A should be read really as a proviso to Article 31 of the Constitution cannot be accepted. The language employed in the proviso and the context in which it occurs makes it abundantly clear that the said proviso was introduced in the year 1964 in order to limit the protection given by Article 31-A of the Constitution. The said proviso has, therefore, to be read as an exception to the principal part of Article 31-A of the Constitution. The view we have taken accords with the view expressed by the High Court of Madras in *Sri Navaneethaswaraswami Devasthanam Vs. The State of Madras* by the Secretary to Government, Revenue Department,

5. The only other question for consideration is the one raised in the first two writ petitions, challenging the Notifications issued u/s 6 of the Act. It was urged that the State Government has not applied its mind before forming an opinion that the lands in question are needed for a public purpose. Before the final Notification dated 4th of February, 1970 was issued by the State Government u/s 6 of the Act, the State Government considered the petitions filed by the petitioners and others u/s 15A of the Act. The State Government has, after considering the case of the petitioners, passed an order on the 20th of January,

1970, overruling their objections.

6. It is observed in that order that the request of the petitioners that 4 to 5 acres of land may be left out of acquisition for constructing their residential houses may be considered by the Land Acquisition Officer in consultation with the Administrator of the Mangalore Harbour Project. It was contended that the aforesaid observation indicates that the State Govt. instead of applying its mind to the question whether the lands are needed for a public purpose or not, has entrusted the said function to the Land Acquisition Officer. But, it is clear from the context that the observation was made in answer to the request for partial withdrawal from acquisition, the power in respect of which can be exercised at any time before taking possession and even after publication of the notification, u/s 6 of the Act. The request for partial withdrawal from acquisition was made not on the ground that the lands are not needed for a public purpose but by way of seeking a concession. Therefore, the observation relied upon has no relevance to the opinion required to be formed u/s 6 of the Act. The State Government has independently considered all relevant matters and come to the conclusion that the acquisition is for a public purpose. There is, therefore, no substance in the contention of the petitioners that the State Government did not apply its mind before declaring that the lands are needed for a public purpose.

7. For the reasons stated above, all these writ petitions fail and the same are dismissed.