

(1985) 06 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 12173 to 12176 of 1984 and W.A. No's. 987 to 990 of 1985

Rukmini P. Kalburgi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-06-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (f)
Karnataka Development Boards Act, 1976 — Section 15, 16, 18, 68

Citation : (1986) ILR (Kar) 154

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : H.K. Vasudeva Reddy and N. P. Moganna, for the Appellant; N. Santosh Hegde, General, for the Respondent

Final Decision : Dismissed

Judgement

Bopanna, J.—These Petitions are disposed of by a common order since the facts are common in all these Petitions and the issues that arise for consideration are also common.

2. The petitioners claiming to be the owners of certain land in survey number 57/4 (renumbered as 57/109) situate at Shabanur Village, Davangere Taluk, have challenged the validity of the acquisition proceedings initiated by the authorities under the provisions of the Karnataka Improvement Boards Act, 1976 (hereinafter referred to as the Act). This land, it is not in dispute, forms a portion of survey number 57/4 and at the time of acquisition by the authorities under the Act, it had been converted into non-agricultural land and the petitioners had also obtained permission of the City Municipal Council, Davangere, as also from the Director of Town Planning for setting up a residential layout. After setting up the said layout the land was divided into 50 sites and it is the case of the petitioners that sites numbering 34 to 50 were allotted to P.K. Kalburgi, who is one of the petitioners herein, and petitioners 1 to 3 got sites numbered as 1 to

11, 12 to 22 and 23 to 33 respectively.

3. The petitioners have challenged the validity of the acquisition proceedings on various grounds : Briefly stated there was no proper service of notices on them in terms of the provisions of Section 15 of the Act ; that the description of the land was not correctly mentioned in the Preliminary as also in the Final Notifications ; that the area of the land mentioned in the Preliminary Notification suffers from certain discrepancies as also the boundaries of the said land and that all these only showed that the authorities had gone about the matter in a most desultory and careless manner which further discloses that the entire acquisition proceedings were vitiated by non-application of mind to the relevant material facts on record. Their further case is that the proceedings were also violative of Article 14 of the Constitution in that the procedure prescribed under the Act, more particularly Sections 15, 16 and 18 of the Act, is wholly arbitrary and unlike the relevant provisions of Land Acquisition Act, this special Act had denied the petitioners the right of hearing and therefore their valuable right to their properties had been taken away without following the procedure prescribed under the Land Acquisition Act. According to the petitioners, the land in question could have been acquired only as per the procedure prescribed under the Land Acquisition Act and the provisions of the Land Acquisition Act are complimentary to the provisions of this Special Act in view of the provisions of Section 68 of the Act and, therefore, there was no good ground for the authorities to dispense with the procedure prescribed u/s 5A of the Land Acquisition Act which provided the aggrieved parties a right of hearing either in person or through their pleader and such a valuable right had been taken away by the provisions of the special Act. They have also made a very serious grievance about the time lag in publishing the final notification. According to them, if the authorities had applied the provisions of the Land Acquisition Act they could not have published the final notification after 3 years from the date of the Preliminary Notification. The very fact that the authorities had taken 45 months to issue the Final Notification is indicative of the fact that the land in question was not at all required for the purpose for which it was sought to be acquired and no good reasons are forthcoming as to why there was such an extraordinary delay in making the declaration and the Final Notification dated 4-2-1984.

4. I have heard the Learned Counsel for the petitioners Messrs Moganna and Reddy as also the Learned Advocate-General. I will first consider the contentions touching upon the constitutional validity of Sections 15, 16 and 18 of the Act on the ground that they are violative of Article 14 of the Constitution. It has not been contended by the Learned Counsel for the petitioners that the provisions of Sections 15, 16 and 18 of the Act are bad in law for want of legislative competence. But their only grievance is that these provisions prescribe a procedure which is wholly contrary to the procedure prescribed under the Land Acquisition Act and therefore they are discriminatory and smack of arbitrariness in that the petitioners were not given an opportunity of personal hearing as required u/s 5A of the Act.

5. For a proper consideration of this contention of the Learned Counsel for the petitioners, a brief reference to the relevant provisions of the Act will be necessary. As the Preamble to the Act discloses, it provides for the establishment of Improvement Boards for the development of urban areas in the State of Karnataka and for matters connected therewith and to provide for the establishment of Improvement Boards for the development of urban areas in the State. u/s 1(3) of the Act, the Act was brought into force in the urban areas comprising the Hubli-Dharwad Municipal Corporation and the cities of Belgaum, Bellary, Bijapur, Bhadravathi, Davangere, Gulbarga and Shimoga, and therefore the Board constituted under the Act, that is, the second respondent herein, was competent to exercise the powers conferred on it under that Act in respect of lands situate in Davangere City. u/s 15 of the Act, the Board is competent to prepare a development scheme or an improvement scheme and also prepare a draft notification stating the fact of a scheme having been made and naming a place where the particulars of the scheme, a map of the area comprised therein and a statement specifying the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment tax. u/s 15(1)(a) of the Act such notification will have to be communicated to the local authorities concerned which, within 60 days from the date of receipt thereof, should forward to the Board for transmission to the Government any representation which the local authority may think fit to make with regard to the scheme and u/s 15(1)(b) the Board shall cause a notification published in the Gazette and affix the same in some conspicuous part of the Board's office, the Deputy Commissioner's Office, the office of the local authority concerned and in such other places the Board may consider necessary. Under Sub-section (3) of Section 15 of the Act, the Board during the 30 days next following the day on which such notification is published in the official Gazette should serve a notice on every person whose name appears in the assessment list of the local authority within the local limits of whose jurisdiction the area comprised in the scheme is situated or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme requiring such person to show cause within 30 days why such acquisition of the building or the land and the recovery of the betterment tax as specified in the notice should not be made. After the necessary compliance with the foregoing provisions of Section 15 of the Act, the Board has to apply to the Government for according sanction to the scheme. u/s 17 the Government may sanction either with or without modification or may refuse to sanction or may return for reconsideration, the development scheme or improvement scheme submitted to it u/s 16. u/s 17 the Government has to publish in the official Gazette a declaration stating the fact of such sanction and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose. u/s 18(3) the said declaration would be conclusive evidence that the land was needed for a public purpose and the Board shall, upon the publication of the said declaration, proceed to execute the scheme. These are the relevant sections in the Act providing for the acquisition of lands by the Board for

a development scheme or an improvement scheme. These provisions are not similar to the provisions made under Sections 4, 5A and 6 of the Act. Therefore, it was contended by the Learned Counsel for the petitioners that these provisions are violative of Article 14 of the Constitution since the right of personal hearing as provided for u/s 5A of the Act is dispensed with in this Act notwithstanding the fact that u/s 68 of the Act the provisions of this Act are in addition to and not in derogation of the provisions of the Land Acquisition Act. This argument of the Learned Counsel proceeds on the basis that the provisions of the Land Acquisition Act are also applicable for the purpose of acquiring lands under this Act since it is provided u/s 35 of the Act that the acquisition of lands under this Act shall be regulated by the provisions insofar they are applicable by the Land Acquisition Act.

6. In my view, this contention of the Learned Counsel for the petitioners is no more *res Integra* in the light of the decisions of the Division Bench of this Court in *K.B. Laxminaraniah v. State of Mysore and ors.* 1972 (1) Mys. L.J 324 and in *Muthyala Reddy v. State of Mysore and ors.* 1968 (2) Mys. LJ 48. I will first refer to the earlier decision of this Court in *Muthyala Reddy's* case 1968 (2) Mys. LJ 48 (Supra). That decision was rendered by this Court on a consideration of the relevant provisions of the City of Bangalore Improvement Act. The validity Section 16(2) was challenged therein being violative of Articles 14, 19(1)(f) of the Constitution of India. It is not in dispute that the said Act makes a departure from the provisions of the Land Acquisition Act for the purpose of service of notices on the parties whose lands are sought to be acquired under that Act and the procedure for such acquisition. This Court held that the purpose of the City of Bangalore Improvement Act is not the same as that of the Land Acquisition Act and therefore a different procedure prescribed under the City of Bangalore Improvement Act does not amount to discrimination so as to attract the vice of Article 14 of the Constitution of India. This Court also observed that a person whose property is proposed to be acquired has no right to a particular procedure by adherence to which the property could be acquired. A similar point came up for consideration before a Division Bench of this Court in *K. B. Laxminaraniah's* case 1972 (1) Mys. L.J 324 (supra). That was a case under the provision of City of Mysore Improvement Act (Act 3 of 1903). A Division Bench of this Court after referring to its earlier decisions in *Achiah Chetty v. State of Mysore* 1961 Mys. LJ 859 and *M. Laxmiah v. State of Mysore* 1966 (1) Mys. LJ 308 and following the decision of the Supreme Court in *The State of Mysore and Another Vs. D. Achiah Chetty, etc.*, rejected the contention raised by the petitioner in that case based on the provisions of Article 14 of the Constitution. That apart, the Supreme Court in *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, while dealing with the provisions of the City of Bangalore Improvement Act, which provided for the acquisition of lands, namely Sections 14 to 18 of the City of Bangalore Improvement Act, held :

"It will be seen that Section 16 of the Bangalore Act provides even more elaborately for the publication of the initial notice which is given in Section 4(1)

of the Acquisition Act so that any representations which the objectors may have to make may be considered by the Board itself u/s 17 of the Bangalore Act. Thus, the object of the procedure provided by Sections 16 and 17 seems to be to take the place of the notification u/s 4(1) and the hearing of objections u/s 5A of the Acquisition Act. Under the Bangalore Act, it is the Board itself which gives notices and considers objections to a scheme before communicating the scheme to the Government for sanction. It is true that the Board has not been specifically given the power by the Bangalore Act to rescind the scheme. The Bangalore Act only mentions the Board's power to modify the scheme, if it considers that to be necessary. After that, the Act directs the Board to send it to the Government for sanction. Of course, the Government could either sanction or reject the scheme. And, in suitable cases, the Board could perhaps revoke its own resolution. But we need not consider or decide that question here.

All we need observe here is that a corresponding special procedure, which we find in the provisions of Section 16 of the Bangalore Act, need not necessarily be identical with the general procedure, serving the same object which we find in Section 4(1) of the Acquisition Act. We are concerned more here with the identity of objects and functions of provisions rather than with that of precise steps prescribed in words used in them."

Though the City of Bangalore Development Act does not contain the provisions which are similar to the provisions of Section 68 of the Act to which I have alluded to in the earlier part of my order, the effect of Sections 15, 16, 17 and 18 of the Act is to replace for the purpose of acquiring the lands in question the provisions of Sections 4, 5A and 6 of the Act. Therefore, the challenge based on the provisions of Article 14 of the Constitution must fail.

7. On facts, it was contended by the Learned Counsel for the petitioners that the Preliminary Notification as also the Final Notification are vitiated by non-application of mind to the relevant facts on record. According to the petitioners, in the Preliminary Notification there was a mistake in describing the extent of the lands sought to be acquired by the Board. It was mentioned as 19 1\2 guntas in the preliminary notification but in the final notification it was mentioned as 4 acres 19 1\2 guntas. Secondly, though the lands were admittedly within the limits of Davangere Municipal Council, as is clear from the statement of objections filed by the petitioners before the acquiring authority, the lands were described as being situated in Shahanur Village and that mistake was compounded by the further mistake, namely, non-compliance with the provisions of Section 15 of the Act. According to them, a notice u/s 15 should have been issued to the parties describing the lands as situate within the Davangere Municipal limits. Their further grievance is that the identity of the lands was not properly disclosed in the impugned notifications and no reasons are forthcoming for excluding Survey Number 203 though it found a place in the preliminary notification. On these facts they contended that the authorities had approached the entire matter in the most casual manner and therefore the impugned

notifications are liable to be quashed. In support of this contention they relied on a decision of this Court in *Reckitt & Colman of India Ltd v. Bangalore Development Authority and ors.* 1983 (2) KarLJ 323. In that case a notification made by the B.D.A. u/s 19 of the Bangalore Development Authority Act was set aside on the ground that notices as required u/s 17(5) of that Act were served on the owners whose names were shown in the Revenue Register but no notice was served on the petitioner therein. The Judgment of this Court in that decision discloses that the petitioner therein was not served with any notice at all under the B.D.A. Act. Therefore, the conclusion reached by this Court based on the fact of non-service of notice on the petitioner therein would not be applicable to the facts of this case, since it is admitted that the petitioners had not been served with the notices ; that they were aware of the acquisition proceedings and they had also filed their objections against the proposed acquisition and their objections had been considered In the circumstances, any defect in the service of notice could not invalidate the acquisition proceedings.

8. A further contention that was raised on the facts of this case is that the power exercised by the authorities for issuing the final notification nearly after a period of 48 months is opposed to the provisions of Section 6 of the Land Acquisition Act, in that, Section 6 provides a period of limitation of 3 years for the issue of final notification whereas under this Act the authorities have taken nearly about 4 years and 8 months for issuing the final notification. No doubt, no period of limitation has been fixed for issuing final notification under this Act. Whether such a period of limitation should have been prescribed under this Act does not arise for consideration since in my view a delay of 4 years 8 months on the facts and circumstances of this case could not be said to be an unreasonable delay. It is on record that the authorities were not only acquiring the lands of the petitioners but also about 100 acres of land belonging to other owners and it had to consider the objections of as many as 200 persons who were aggrieved by the acquisition proceedings. In the circumstances, a delay of 4 years 8 months was not unreasonable on the facts of this case. The Supreme Court in *Gujarat State Transport Corporation Vs. Valji Mulji Soneji and Others*, has held on the facts of that case that a delay of 15 years for issuing the final notification was not unreasonable. However, it was contended by the Learned Counsel for the petitioners, relying on the decision of the Supreme Court in *Mansaram Vs. S.P. Pathak and Others*, that when there is no limitation to the exercise of a power, such power should be exercised in a reasonable manner and the reasonable exercise of such power should be within a reasonable time. This observation was made by the Supreme Court on a consideration of the provisions of Clauses 22, 23 and 28 of the C.P. and Berar Letting of Houses and Rent Control Order. The Supreme Court was concerned with the case of eviction of a tenant on the ground of contravention of Clause 21(2) of the aforesaid Order. I am unable to get any assistance from this decision because the power to acquire any land for a public purpose under the Act cannot be equated to the power of eviction on the ground of contravention of a statutory order under the C.P. and Berar Letting of

Houses and Rent Control Order 1949. In the circumstances, the impugned acquisition proceedings cannot be challenged on the ground that there was delay in issuing final notification.

9. The next contention of the petitioners is that the acquisition proceedings were bad because the land had already been converted into non-agricultural land and this land was also converted into building sites by the petitioners and the very fact of conversion into building sites was for the development of land within the Municipal limits of Davangere. A similar contention taken before the Division Bench of this Court was rejected by the Division Bench in *Acharya K. Ramalinga v. State of Mysore and ors.* 1969 20 Law Rep. 916. The contention touching the period of limitation was also raised in that case and that was also rejected by the Division Bench of this Court. This Court dealing with both the contentions observed that the provisions of Section 5A of the Land Acquisition Act can have no relevance under the Bangalore Improvement Act. It stands regulated exclusively by the provisions of Sections 16, 17 and 18 of that Act and those provisions do not contain any direction that the declaration u/s 18 should be made within a particular period after the publication of the scheme u/s 16 ; nor is there any other provision in the Improvement Act with respect to that matter. As regards the contention relating to the conversion of land for non-agricultural purposes, the Division Bench observed that such conversion constitutes no impediments to an acquisition under the Improvement Act if the acquisition is for an improvement scheme regulated by the provisions of that Act. An application for conversion and the subsequent grant of permission for conversion may have an impact upon the determination of the compensation properly payable in respect of the land but not on the power of acquisition. It therefore follows that none of the contentions raised by the petitioners merit any serious consideration since all these are covered by the earlier decisions of this Court as also by the decision of the Supreme Court.

10. Hence there is no merit in these Writ Petitions. Accordingly they are dismissed.

ORDER IN APPEAL

Jagannatha Shetty and Patil, JJ.

Jagannatha Shetty, J.

11. It is reported that connected W. A. No. 2286 of 1984 has been dismissed by the First Court on January 22, 1985. There is, therefore, no reason to issue notice in these appeals.

The Writ Appeals are accordingly rejected.