

(1995) 09 KAR CK 0018

In the Karnataka High Court

Case No : Regular First Appeal No. 232 of 1984

S.A. Jalaluddin

APPELLANT

Vs

Bangalore Development Authority and another

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 36
Constitution of India, 1950 — Article 136
Land Acquisition Act, 1894 — Section 11 A

Citation : AIR 1996 Kar 156 : (1995) ILR (Kar) 3321 : (1995) 5 KarLJ 651

Hon'ble Judges : S.A. Hakeem, J;B. Padmaraj, J

Bench : Division Bench

Advocate : Govinda Bhat, for M/s. Sundaraswamy and Ramadas and Anand, for the Appellant; C.B. Srinivasan, for the Respondent

Judgement

Hakeem, J.—This appeal is before us on a reference made by the learned single Judge u/s 9 of the Karnataka High Court Act, 1961.

2. The appeal is directed against the judgment and decree dated 19-9-1983 passed by the XVII Addl. City Civil Judge, Bangalore, in O.S. No. 6189 of 1980.

3. The question that arose in the suit is whether the notification published u/s 18(1)(a) of the City Improvement Trust Board Act, 1945 ("the Trust Board Act") on 5-11-1971 is barred under the provisions of the Land, Acquisition (Karnataka Amendment & Validation). Act, 1967, ("the Acquisition Act") prescribing a period of two years for issuance of a declaration u/s 6 of the Acquisition Act.

4. The appellant-plaintiff filed the suit for a declaration that the notification issued by the 1st respondent-defendant on 5-11-1971 acquiring the suit property is invalid in law and for a mandatory injunction directing the 1st respondent to restore the property and for delivery of possession of such portion of the plaintiff's property which might have been taken possession of illegally. The plaintiff had also sought for permanent injunction in respect of the remaining portion of the said property. The suit property is a land bearing Sy. No. 11

measuring 1 acre 9 1/2 guntas situated Devarajeevanahalli, Bangalore North Taluk, as described in the plaint schedule.

5. It is stated that on 24-3-1964, the City Improvement Trust Board (C.I.T.B.) issued a preliminary notification proposing to acquire the entire Sy. No. 11 for forming a lay-out. The objections against the proposed acquisition were negatived by the authority concerned. The final notification and declaration u/s 18 of the Trust Board Act was issued on 5-11-1971. This was followed by the passing of an award by the Land Acquisition Officer on 23-6-1976.

6. The main contention of the plaintiff was that the acquisition proceedings are without any authority of law. That by virtue of Section 27 of the Trust Board Act, the proceedings of the C.I.T.B. are regulated by the provisions under the Land Acquisition: Act, 1894. By virtue of the amendment of the Acquisition Act by the Land Acquisition (Mysore Amendment & Validation) Act 1957 (Act No. 10 of 1968) a proviso was introduced to Section 6 of the Acquisition Act to the effect that no declaration in respect of any particular land covered by a notification under sub-section (1) of Section 4 shall be made after the expiry of two years from the commencement of the Amendment Act. Hence, the C.I.T.B. could not have issued the final notification dated 5-11-1971, which is beyond the period of two years prescribed under the Amendment Act. The acquisition proceedings, and particularly the declaration u/s 18 of the Acquisition Act, are invalid and unenforceable.

7. The Bangalore Development Authority, in its written statement, has denied the title of the plaintiff over the suit property. It was further contended that the acquisition proceedings culminating in the declaration made on 5-11-1971 are valid in law and that possession has also been taken in pursuance thereof on 1-8-1978.

8. On the pleadings, several issues were raised. However, for our purpose, issue No. 2 a decision on which is decisive to the question involved herein, reads as follows:--

"Whether the plaintiff is entitled to the mandatory and perpetual injunctions?"

9. Having considered the effect of the provisions of Section 18 of the Trust Board Act in the light of Section 27 of the same Act and relying upon certain decisions to by it, the Court below has held that the impugned notification dated 5-11-1971 issued u/s 18(1) of the Trust Board Act cannot be held to be invalid or void in law and consequently held that the plaintiff is not entitled to the reliefs of mandatory and perpetual injunction as prayed for.

10. The relevant provision under the Acquisition Act reads thus : --

VALIDATION -- (1) xxx xxx xxx

Notwithstanding anything in clause (b) of sub-section (1), no declaration u/s 6 of the amended Act is respect of any land which has been notified before the

commencement of this Act under sub-section (1) of Section 4 of the said Act or the amended Act shall be made after the expiry of two years from the commencement of this Act."

According to Sri Govinda Bhat, learned Counsel for the appellant, the time limit prescribed under sub-section (2) of Section 3 of the Acquisition Act applies to a notification published u/s 18(1)(a) of the Trust Board Act by virtue of Section 27(2) of the said Act, in which event the final notification published u/s 18(1)(a) in the instant case on 5-11-1971 becomes invalid. On the contrary, Sri C. B. Srinivasan, learned Counsel for the respondents, has urged that Section 6 of the Land Acquisition Act cannot be applied in all respects to a notification published u/s 18(1)(a) of the Trust Board Act.

12. In our opinion, the question involved in this case is no more *res integra* in view of the clear rulings of the Supreme Court and that of this Court.

13. In *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, involving identical question, it is stated thus (Paras 20 and 22):--

"An examination of the provisions of the Bangalore Act and of acquisition proceedings under the Acquisition Act, contemplated by it, would reveal that, whereas the procedure from the notification u/s 4 to the notification u/s 6 of the Acquisition Act gives place to the procedure provided by Sections 14 to 18 of the Bangalore Act, the stage at which compensation is to be determined is to be regulated entirely by the general provisions of Section 23(1) of the Acquisition Act because there is no special or separate provision in the Bangalore Act to regulate the compensation payable. It is true that Section 23 is not specifically mentioned in the Bangalore Act. But, the obvious purpose of the opening words of Section 27 of the Bangalore Act seems to us to be that award of compensation, which is a necessary part of any law providing for acquisition, must be governed by Section 23 of the Acquisition Act

xxx xxx XXX XXX There was some argument on the meaning of the words "so far as they are applicable", used in Section 27 of the Bangalore Act. These words cannot be changed into "in so far as they are specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. Section 16) corresponding with that found in the Acquisition Act (e.g. Section 4(1)). These words bring in or make applicable, so far as this is reasonably possible, general provisions such as Section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by a necessary implication, excluded must be applied"

14. In *Bhatinda Improvement Trust Vs. Balwant Singh and others*, where a

similar question arose as to the interpretation of certain provisions of the Punjab Town Improvement Act, the Supreme Court has stated thus (Para 8):--

"..... As pointed out by the Supreme Court and the Judicial Committee in the aforesaid decisions, it is well settled law that where a statute is incorporated by a reference into a second statute, the repeal of the first statute does not affect the second. Similarly, in a case where a statute is incorporated by a reference into another statute an amendment of the statute so incorporated after the date of incorporation does not affect the second statute and the provisions of the latter statute remain the same as they were at the time of incorporation. It is again well settled that where one statute is referred to in another, it may be merely by way of reference or by way of incorporation of the same. This depends on the language used in the latter statute and other relevant circumstances....."

15. In *Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others*, the effect of limitation of three years provided under the first proviso to Section 6 of the Land Acquisition Act upon the similar provisions under the U.P. Act 1 of 1966 came up for consideration. It is held that in case of legislation by incorporation the former Act becomes an integral part and parcel of the later Act, as if it was written with ink and printed the later Act. Its validity including the provisions incorporated thereunder would be judged with reference to the power of the legislature enacting the later Act. It is not by reference. Logically when provisions in the former Act were repealed or amended, they do not, unless expressly made applicable to the subsequent Act, be deemed to be incorporated in it. The later Act is totally unaffected by any amendment or repeal. The statute being distinct and different each is to be judged with reference to its own source that emerges from its scheme, language employed and purpose it seeks to achieve. If a later Act merely makes a reference to the earlier Act or existing law, it is only by way of reference and all amendments, repeals, new law subsequently made will have effect unless its operation is saved by Section 8(1) of the General Clause Act or void under Article 254 of the Constitution. In the facts of the said case, it was held that Section 55 and the schedule to the said Act must be so read as to apply Section 6 as amended from time to time and shall be applicable to the proceedings taken under Sections 28 and 32 of the Act. In that case, the Court has made specific reference to *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, for distinguishing the said case with the case on hand and it is stated thus (para 25 of AIR):--

"In *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, , S. 27 of the City of Bangalore Improvement Act, 1945 enables the officer to apply the procedure in the Land Acquisition Act to acquisition therein except to the extent the Bangalore Act provided different procedure. It was contended that L. A. Act was by incorporation. Considering the scope and purpose of this Act, this Court held it to be by reference and applied S. 23 of the Land Acquisition Act to determine the market value. In *The Special Land Acquisition Officer, City Improvement Trust Board, Mysore Vs. P. Govindan*,

a Full Bench of the Mysore High Court held (hat the date of the determination of the compensation under S. 23(1) of the L. A. Act was the date of the notification under S. 18 of the local Act which corresponds to S. 6 of the declaration of the Land Acquisition Act. This Court held that S. 23 of the Mysore Act provided that compensation for acquisition shall be governed by the Land Acquisition Act as they exist on the date of a particular acquisition proceedings "except to the extent to which a different procedure is expressly laid down in the Mysore Act". No such different procedure was provided therein. In that background it was held that the L.A. Act was applied only by reference and to determine the market value was the date of the notification under S.6 of the Mysore Act, corresponding to S. 4(i) of L.A. Act. At this stage it is relevant to notice that this Court laid emphasis that S. 23 of the Mysore Act declared that "the general procedure provided in the Land Acquisition Act will apply except to the extent it was inapplicable. That would mean that "amendment of the procedure in the Acquisition Act will apply if it is capable of application". The emphasis laid by the counsel was that, "the departure from the generally accepted procedure which regulates acquisition and compensation for it has to be something more explicit, express and substantial than mere date of the enactment of the Mysore Act." The emphasis pointed out that must be considered in the light of the language used in that Act. The U.P. Act expressly incorporated certain provisions in the schedule, as seen earlier, by operation of S. 55 as integral scheme. Therefore, incorporation to that extent was specific, unambiguous and explicit."

16. The aforesaid view has been affirmed by the Supreme Court in its latest decision in "U.P. Avas Evam Vikas Parishad v. Pushpa Lata Awasthi" (1985) 3 SCC 573.

17. Sri Govinda Bhat, learned counsel for the appellant, laid emphasis upon sub-section (2) of Section 27 of the Trust Board Act to contend that the provisions of Section 6 are incorporated in Section 18 of the Trust Board Act. Dealing with a similar contention, N.D. V. Bhat, J. relying upon Narayanaiah's case AIR 1975 SC 2403 (supra), has held that Sections 4 and 6 of the Land Acquisition Act should yield to the provisions of Sections 14 to 18 of the Bangalore Act and similarly the provisions of Sections 4 and 6 of the Land Acquisition Act should yield to Sections 16 to 19 of the B.D.A. Act. It is further observed that it is not as if a portion of Sections 4 and 6 of the L.A. Act can be read into the provisions of Sections 17 and 19 of the B.D.A. Act. Reliance is placed upon "Hanumanthappa v. State of Karnataka : ILR (1987) Kar 3024, in which this Court had pointed out thus:--

"Acquisition under the BDA Act is not governed by Sections 4 and 6 of the Land Acquisition Act"

We are in respectful agreement with the view taken by the learned Judge on the basis of the settled law on the question.

18. Sri Govinda Bhat sought to place reliance upon the decision in G.

Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, .This was with reference to the provisions of Section 36 of the B.D.A. Act read with Section 11A of the Land Acquisition Act. It is pointed out that if a stay is operating, the period referred to therein, is suspended. It is further held that the relief under Art. 136 of the Constitution is discretionary and petitioner who has approached the Court must come with frank and full disclosure of facts. It is seen that the question as to whether the provisions of Sections 4 and 6 of the Act can be read into Sections 17 and 19 of the Trust Board Act, was not under consideration.

19. Similarly in on which reliance is placed by the learned Counsel, relates to the effect of entry by amendment in the Central Excises and Salt Act. The ratio of the decision is clearly not applicable to the present case.

20. In the view we have taken above, this appeal has to fail and is accordingly dismissed. However, in the circumstances, the parties shall bear their own costs.

21. Appeal dismissed.