

(2001) 01 KAR CK 0076
In the Karnataka High Court
Case No : Writ Petition No. 19294 of 2000

S.B. Nagappa and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 19 (7), 36, 36 (1)
Land Acquisition Act, 1894 — Section 48 (1)

Citation : (2001) ILR (Kar) 1295 : (2002) 3 KarLJ 372 : (2001) 1 KCCR 628

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : B.V. Rama Moorthy, for the Appellant; K.N. Puttegowda, Government Advocate and Rangaswamy and Associates, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—The Commissioner, Shimoga Urban Development Authority, issued a notification dated 12-11-1992 u/s 17 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "KUDA Act"), proposing to acquire the land measuring 3.29 guntas in Survey No. 112 situated at Somanakoppa Village, Shimoga Taluk, along with other lands. This notification was followed by final notification dated 24-5-1994 issued by the State Government u/s 19(1) of the KUDA Act. Thereafter, the State Government issued a notification dated 22-8-1998 withdrawing the acquisition proceedings in respect of the land measuring 3 acres 29 guntas in Survey No. 1.12 of Somanakoppa Village. Subsequently, the Government issued another notification dated 11-4-2000. This notification is under challenge by the petitioners in this petition.

2. The learned Counsel for the petitioners submits that the State Government having withdrawn the acquisition proceedings in exercise of the power conferred on it u/s 48 of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act"), has no authority whatsoever to withdraw the notification under which the

acquisition proceedings were withdrawn. Next, it is submitted that once rights are created in the landowners consequent on the withdrawal of the acquisition proceedings by issue of notification, no notification could be issued withdrawing the said notification without complying with the principles of natural justice by affording an opportunity to the landowners.

3. In reply to the said submission, learned Counsel appearing for respondent 2 submits that the Government had not exercised any power u/s 48 of the Land Acquisition Act in order to withdraw the acquisition proceedings and on the other hand the Government issued the notification withdrawing the acquisition proceedings u/s 19(7) of the KUDA Act which is without authority and jurisdiction and therefore, in exercise of the power u/s 21 of the General Clauses Act, the State Government has issued the impugned notification having realised the mistake in issuing the-notification u/s 19(7) of the KUDA Act.

4. the State Government has not filed any statement of objections in this petition, but in its argument justified its action.

5. In order to appreciate the rival contentions raised by the parties, it is useful to refer to certain provisions of the KUDA Act. Under the scheme of the Act, the Urban Development Authority may issue a notification proposing to acquire certain lands for the purpose of implementation of the Scheme framed by it. After publication of the notification u/s 17 of the KUDA Act, the Urban Development Authority after considering the representation, if any, objecting to the acquisition has to submit its proposal to the Government for sanction of the scheme. Upon sanction, the Government may issue a notification u/s 19 of the LA Act, declaring the land, notified in the notification issued u/s 17 of the LA Act, as required for a public purpose. After the declaration that the land is required for public purpose, the proceedings for acquisition are regulated u/s 36 of the KUDA Act. Section 36(1) of the KUDA Act, reads as follows.-

36. Provisions applicable to the acquisition of land otherwise than by agreement.--(1) The acquisition of land under this Act otherwise than by agreement within or without the urban area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894".

"7. After declaration Collector to take order for acquisition. -- Whenever any land shall have been so declared to be needed for a public purpose or for a company, the appropriate Government, or some officer authorised by the appropriate Government in this behalf, shall direct the Collector to make order for the acquisition of the land".

6. From reading of the above said provisions, it is clear that after the declaration that the land is required for a public purpose, by issuing a notification u/s 19(1) of the KUDA Act, the acquisition of land stalls after obtaining the orders as required u/s 7 of the LA Act, since the acquisition of land is regulated by the provisions of the LA Act as per Section 36 of the KUDA Act.

7. Therefore, the Government is at liberty to withdraw the acquisition of any land, possession of which has not been taken as provided u/s 48(1) of the LA Act.

8. The contention of the learned Counsel for the respondent is that the Government has withdrawn the acquisition proceedings u/s 19(7) of the KUDA Act even though the said section does not confer any power on the Government to withdraw the acquisition proceedings and therefore the notification withdrawing the acquisition proceeding is without jurisdiction Section 19(7) of the KUDA Act, reads as follows. -

"The authority shall not, denotify or reconvey any land included in the Scheme without the specific orders of the Government".

From a reading of the above said section, it is clear that it is the Development Authority that has the power to denotify or reconvey any land after obtaining the order from the Government. But the Government has no power either to denotify the land or to reconvey any land to the landowner.

9. In the case on hand, the State Government in the notification dated 22-8-1998 has stated that the Government has withdrawn the land from acquisition u/s 19(7) of the KUDA Act. Mere wrong mentioning or non-mentioning of the provision of law does not in any way affect the rights of the parties if the power to withdraw from, acquisition is traceable to any of the provisions of law. Section 48 of the IA Act, specifically confers power on the State Government to withdraw from the acquisition. Section 36 of the KUDA Act, provides that acquisition of land is regulated by the provisions of the LA Act. Therefore, even though the State Government in its notification has mentioned that it has withdrawn the land from acquisition u/s 19(7) of the KUDA Act, it is to be treated as a notification issued u/s 48(1) of the LA Act. Further, the 2nd respondent has not challenged the correctness of the notification dated 22-8-1998, in any proceedings. Therefore, the contentions regarding the validity of the notification is stated to be rejected since the power to denotify the land or withdraw the land from acquisition is traceable to Section 48 of the LA Act.

10. The contention of the learned Counsel for the petitioners is that the State Government has no power to withdraw the notification in exercise of the power u/s 21 of the General Clauses Act.

11. Section 21 of the General Clauses Act, reads as follows.-

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws,--

Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued".

Under this section the State Government may, add, amend, vary or rescind any

notification. The principle behind this is that the power to create includes the power to destroy and also the power to alter what is created.

12. The facts in this case are, after the declaration, declaring the land as required for a public purpose under the KUDA Act, the State Government in exercise of its power under Section 48(1) of the LA Act, issued a notification, withdrawing the proceedings for acquisition of land. When once the said notification has been issued all proceedings relating to acquisition including the notifications declaring the land as required for a public purpose would vanish, if that is so, the subsequent notification withdrawing the notification under which the acquisition proceedings were withdrawn, would not amount to reviving the proceedings which had already vanished. The consequence of withdrawing the proceedings of acquisition of land is that the landowner continue to be the owner of the land as if there were no proceedings for acquisition under any law. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, by mere withdrawing the notification under which acquisition proceedings were withdrawn, the landowner shall not be deprived of his land as it would hit by Article 300-A of the Constitution of India. Therefore, the power exercised by the State in issuing the impugned notification u/s 21 of the General Clauses Act, is illegal.

13. The impugned notification has been issued without affording any opportunity to the landowners. When once the proceedings of acquisition were withdrawn some right is created in the landowners. If that is so, the State Government ought to have afforded an opportunity to the landowners before issuing the impugned notification. In the case on hand, it is not disputed that no opportunity has been afforded to the petitioners. Therefore, even on the ground of non-compliance of principles of natural justice, the impugned notification is liable to be quashed.

In the result, I pass the following order:-

Writ petition is allowed. Rule issued is made absolute. The impugned notification dated 11-4-2000 (Annexure-E) is quashed.