

(1993) 09 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 19513 of 1993

Shankarappa Veerabasappa Bannihatti	APPELLANT
Vs	
Deputy Commissioner	RESPONDENT

Date of Decision : 07-09-1993

Acts Referred:

Karnataka Acquisition of Land for Grant of House Sites Act, 1972 — Section 5
Land Acquisition Act, 1894 — Section 11 A, 6

Citation : (1993) ILR (Kar) 2780 : (1994) 1 KarLJ 293

Hon'ble Judges : Vasanthakumar, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; Bharathi Nagesh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Vasanthakumar, J.—The petitioner has sought for declaration of acquisition proceedings initiated under Sub-section (1) of Section 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (Karnataka Act No. 18/73 hereinafter called as the Act) vide Notification No.LAQ 11/RS/OR. 19/82-83 dated 31-1-1983, gazetted on 17-2-1983 and notification issued under Sub-section (4) of Section 3 of the Act vide Notification No.LAQ 11 HSC 19/82-83 dated 29th November 1983 as having lapsed by virtue of Section 11A of the Land Acquisition Act 1894 as amended by Act 68/1984 (Karnataka Act 17/1961) and also for quashing of intimation issued by the Tahsildar Hirekerur, vide LAQ HS Kunchur 93-94 dated 18-6-1993.

2. The short question that arises for consideration is whether the provisions of Section 11A of the Land Acquisition Act 1894 as amended by Act 68/1984 is applicable to proceedings initiated under the provisions of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (Act 18/1973).

3. An extent of 2 acres and 25 guntas comprised in Sy.No. 83/2, situate in Kunchur village, Hirekerur taluk, Dharwad District, was acquired in exercise of

powers conferred under the Karnataka Acquisition of Lands for Grants of House Sites Act, 1972 for purposes of granting house sites to weaker section of the people who are houseless. Section 3 of the Act reads:-

"Acquisition of land - (1) If at any time, in the opinion of the State Government any land is required for the purpose of providing house sites to the weaker sections of people who are houseless, the State Government may, by notification, give notice of its intention to acquire such land.

(2) on the publication of a notification under Sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

4) After orders are passed under Sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under Sub-section (1) a declaration shall, by notification be made to the effect.

5) On the publication in the Official Gazette of the declaration under Sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

6) Where any land is vested in the State Government under Sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

7) If any person refuses or fails to comply with an order made under Sub-section (6), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary.

4. Amount payable - (1) Where any land is acquired by the State Government under this Act, the State Government shall pay for such acquisition an amount in accordance with the provisions of this section.

(2) Where the amount has been determined by agreement between the State Government and the person whose land has been acquired, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the State Government shall refer the case to the Deputy Commissioner for determination of the amount to be paid

for such acquisition as also the person or persons to whom such amount shall be paid.

(4) On receipt of a reference under Sub-section (3) the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested herein to appear before him and state their respective interests in the said land.

Section 5. Application of Central Act 1 of 1894:- The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 shall, mutatis mutandis apply in respect of enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of amount and the payment of amount in respect of lands acquired under this Act.

4. Rules 3, 4 and 5 of the Karnataka Acquisition of Land for Grant of House Sites Rules, 1973 envisage procedural aspects of enquiry for enabling the Asst. Commissioner to formulate his recommendations and report for submission to the Government to pass orders as contemplated under sub-section 3 of Section 3 of the Act. Rule 9 envisages the stage of issuance of Final Notification as per Sub-section (4) of Section 3 of the Act. Under the scheme of the Act, on the publication in the official Gazette of the declaration, the land vests absolutely in the State Government free from all encumbrances. After vesting, the land owner has to surrender possession of the land. Thereafter, determination of compensation amount to the land owners would arise. It is patent that the provisions of the Act are not in pari materia with the provisions of Land Acquisition (Karnataka Extension and Amendment) Act, 1961 and. Central Act 68/1984.

5. The petitioner's Counsel submits that by virtue of Section 5 of the Act, Section 11A of the Central Act 68/1984 is squarely applicable and since in the instant case as no award has been passed within 2 years from 29-11-1983 the date of final notification under Sub-section (4) of Section 3 of the Act, the entire land acquisition proceedings get lapsed. Petitioner's Counsel further submits that in lieu of the notice dated 18-6-1993 issued by the Tahsildar, it is self evident that no award having been passed. Letter dated 18-6-93 reads:

7. In support of his contention, the petitioner's Counsel places reliance on the ratio of two Decisions of the Supreme Court reported in 1) The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, Bhatinda Improvement Trust Vs. Balwant Singh and others,

Counsel particularly invites this Court's attention to Paras 20 and 22 of the Decision of the Supreme Court reported in The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, , the relevant passage being:-

"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 necessary part of any law providing for acquisition, must be governed by Section 23 of the Acquisition Act."

Further the Supreme Court observed at Para-22 as follows:-

"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(i) 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. It is surprising to find misconstruction of what did not appear to us to be reasonably open to more than one interpretation."

8. Sri F.V. Patil further invites Court's attention particulars to para-8 of the Decision of the Supreme Court reported in AIR 1992 S.C. 2217. Para-8 reads:-

".....We find ourselves unable to accept the submissions of learned Counsel for the appellant. 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 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. In the present case, however, we find that there is no question of incorporation of any of the provisions of the Land Acquisition Act into the said Act at all. The said Act does not deal with acquisition of land for the purposes of a scheme as contemplated under the said Act. The acquisition of such land for the purposes of the scheme is left to the general law of the land in that connection, namely, the Land Acquisition Act, which has to be resorted to for the purposes of acquisition of

land for the purposes of the schemes contemplated under the said Act. The only difference is that some of the provisions of the L. A. Act, as referred to in the relevant sections of said Act, are given effect to as amended by the relevant sections of the said Act. In these circumstances, it cannot be held that any provisions of the Land Acquisition Act have been incorporated into the said Act and the provisions of the Land Acquisition Act which have to be applied, are the provisions as they stand at the relevant time, namely, at the time of acquisition, in the absence of a contrary intention. There is nothing to indicate that there was any such contrary intention in the present case. In these circumstances, the notification u/s 42 should have been published within the period of three years of the date of publication of the notification u/s 4(1) of the Land Acquisition Act, as required under the first proviso to Section 6 of the Land Acquisition Act. Under Sub-clause (1) of Clause (2) of the Schedule to the said Act, which we have referred to earlier, the first publication of a notice of any improvement scheme u/s 36 of the said Act, is substituted for and has the same effect as the publication in the Government Gazette of a notification under Sub-section (1) of Section 4 of the land Acquisition Act. The notice u/s 36 of the said Act is required to be published, inter alia, in a newspaper or newspapers as set out in Section 36(2) (a) of the said Act. In the present case, such a notice was first published in the daily "Ajit" on May 30, 1977, and hence, the notification u/s 42 of the said Act should have been published on or before May 30, 1980. In fact, the notification u/s 42 of the said Act, admittedly, was published on June 30, 1980, and hence, was clearly beyond time. In these circumstances, the notice u/s 36 of the said Act lapsed on the expiry of three years from May 30, 1977, and no action pursuant to the said notice could be taken thereafter. The notification u/s 42 of the said Act was clearly beyond time and bad in law, as it was not published within the period provided. The acquisition proceedings lapsed. The submission of learned Counsel for the appellant must be rejected. No other point was canvassed before us."

When one looks into the scheme of the provisions of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972, it is to be stated that there is no question incorporation of any of the provisions of the Land Acquisition Act into the said Act except to the extent of enquiry and making of awards of envisaged u/s 11 of the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 since that was the relevant Section that was in force as on the relevant date when the Karnataka Acquisition of Lands for Grant of House Sites Act, 1971, Act 18/73, came on the Statute Book. The Land Acquisition Act, 1894, as amended by Act 68/1984 which for the first time inserted Section 11A was never in the contemplation when Karnataka Acquisition of Lands for Grant of House Sites Act, 1972 came into force on 18-7-1973. As such, the contention of petitioner's Counsel regarding applicability of Section 11A of the Central Act cannot be legally countenanced.

8. It is further to be noted that Section 5 of the Act envisages, the applicability of the provisions of the Land Acquisition (Karnataka Extension and Amendment)

Act, 1961 mutatis mutandis only in respect of enquiry and award by the Deputy Commissioner, the reference to the Court, the apportionment of the amount and payment of the amount in respect of lands acquired under the Act.

9. According to the Law Lexicon the expression "mutatis mutandis" means with the necessary changes in point of detail. Further they mean "with necessary changes being made". In Corporation of Calcutta Vs. Sirajuddin and Others, consisting of 5 Judges meaning to be attached to word/phrase mutatis mutandis has been discussed. As per CHAKRAVARTHI C.J., and S.R. DAS GUPTA "which a law directs that a provision made for a certain type of case shall apply mutatis mutandis in another type of case, it means that it shall apply with such changes as may be necessary but not that even if no change be necessary some change shall nevertheless be made". PER GUHA RAY, J., The expression "mutatis mutandis" is an adverbial phrase qualifying the verb "shall apply" and meaning those changes being made which must be made. It is to be stated that liberally mutatis mutandis means nothing more and nothing less than what is envisaged u/s 11 of the Land Acquisition (Karnataka Extension of Amendment) Act, 1961. Section 11 reads:

"Enquiry and award (Deputy Commissioner) .- On the day so fixed, or on any other day to which the enquiry has been adjourned, the Deputy Commissioner shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, Sub-section (1) and into the respective interest of the persons claiming the compensation and shall make an award under his land of

i) the true area of the land;

ii) the compensation which in his opinion should be allowed for the land; and

iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Provided that no such award shall be made by the Deputy Commissioner, without the previous approval of the State Government or such officer as the State Government may appoint in his behalf who in the case of an award made by an officer below the rank of the Deputy Commissioner of a District, may be the Deputy Commissioner of the District."

10. Another aspect has to be noticed is under the provisions of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972, the vesting takes place immediately after the notification is made under Sub-section (4) of Section 3 of the Act and later on action is initiated for taking possession. Further, payment of compensation is envisaged u/s 4 of the Act after vesting. There is no provision in the Act by which land statutorily vested reverts to the original owner by mere cancellation of notification. Similarly under the provisions of the Land Acquisition

Act (Central Act) after possession has been taken pursuant to notification u/s 17(1) of the Act, the land is vested in the Government and notification cannot be cancelled u/s 21 of the General Clauses Act nor can the notification be withdrawn in exercise of powers u/s 48 of the Land Acquisition Act (Central Act) [Ratio of the cases reported in *Jethmull Bhojraj Vs. State of Bihar and Others*, and *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, and *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*, As such the contention advanced by the petitioner's Counsel regarding applicability of the Section 11A of the Act cannot be legally sustained.

11. Smt. Bharathi Nagesh, Government Pleader, submits that by any stretch of imagination, the use of the phrase *mutatis mutandis* should not be so extended as to incorporation of Section 11A of the Land Acquisition Act (Central Act) while interpreting Section 5 of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972. She invites the ratio of the Decision of the Division Bench of this Court "in *K. RAJAGOPALA GOWDA v. STATE OF KARNATAKA* in support of her contention. Paras 6 and 7 read :

"The contention of the appellant is that as the Award has not been passed within a period of two years from the date of the publication of the declaration i.e., on 3rd May 1976, the acquisition must be held to have lapsed having regard to the provisions contained in Section 11A of the Land Acquisition Act. It is contended that Section 5 of the Act makes applicable the provisions contained in the Land Acquisition Act *mutatis mutandis* regarding enquiry and Award by the Deputy Commissioner and reference to Court, the apportionment of amount and payment of amount in respect of the lands acquired under the Act. Therefore, as Section 11A of the Land Acquisition Act relates to passing of the Award, it is attracted to the acquisition under the Act. It is not possible to accept this contention. It is relevant to notice that the Notification issued under Sub-section (1) of Section 3 of the Act and Sub-section (4) of Section 3 of the Act cannot at all be equated to the Notifications issued under Sub-section (1) of Section 4 and Section 6(1) of the Land Acquisition Act, because the consequences that flow out of such Notifications under both the enactments are different. The procedure provided for enquiry pursuant to the Notification issued u/s (1) of Section 3 of the Act and Sub-section (1) of Section 4 of the Land Acquisition Act are also quite different. We need not refer to the procedure that is contemplated for enquiry and hearing objections under both the enactments.

Para-7: Section 16 of the Land Acquisition Act specifically provides that when the Collector has made an award u/s 11 he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances, whereas it is not so in the case of acquisition under the Act. Because, under the Act, no sooner the Notification under Sub-section (4) of Section 3 is issued, the land vests in the State Government free from all encumbrances and possession of the land can be obtained. Thereafter Award proceedings can be taken up and the amount payable could be determined as per the provisions contained in the

Land Acquisition Act. Section 11-A of the Land Acquisition Act specifically provides that the Collector shall make an Award u/s 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of land does not lapse. In fact such a question under the Act does not arise because the acquired land vests in the State Government no sooner the Notification under Sub-section (4) of Section 3 is published whereas it is not so under the Land Acquisition Act. Therefore the acquisition under the Land Acquisition Act could lapse if the Award is not passed within the period of two years. It is also relevant to notice that the object is to enable the State Government to obtain possession of the land before passing the award so that it can form sites and distribute the same among the houseless and site less persons who belong to depressed classes and who are in need of house sites urgently. In fact the acquisition is for their benefit. We are therefore, of the view that the contention that as the Award has not been within two years from the date of Notification under Sub-section (4) of Section 3 of the Act, the acquisition has lapsed cannot be accepted and it is accordingly rejected."

12. For the reasons stated above, Rule issued is discharged. Writ Petition is dismissed. No costs.