

(2001) 11 KAR CK 0003

In the Karnataka High Court

Case No : Writ Appeal No's. 1438, 2289 to 2318 and 3742 of 1997

Shimoga Urban Development Authority and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 91 (1)

Citation : (2002) 2 KCCR 958

Hon'ble Judges : R.V. Raveendran, J;N.K. Patil, J

Bench : Division Bench

Advocate : Tajuddin, in Writ Appeal Nos. 1438, 2289 to 2318 of 1997 and in Writ Appeal No. 3742 of 1997, for the Appellant; Nagarajulu Naidu, A.G.A. for Respondent 1 in Writ Appeal Nos. 1438 and 2289 to 2318 of 1997, Jayakumar S. Patil, 7(a)(b), (2), Respondents 8, 9, 11, 12, 14, 18, 19(a), 20, 22, 24, 25, 26(c) and 30 Respondent 3(a), Respondent 10(a), 15(a), 13, 16 to 18, 19(b) to (e), Respondent 21(a), 23, 26(a), (b) (d), Respondents 28, 29, 31(a), 32(a) in Writ Appeal Nos. 1438 and 2289 to 2318 of 1997 and M.R. Naik in Writ Appeal No. 3742 of 1997, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The Shimoga Urban Development Authority and its Special Land Acquisition Officer are the appellants in these appeals. Writ Appeal Nos. 1438, 2289-2318 of 1997 arise from the order dated 13.12.1996 in Writ Petition Nos. 34729 of 1995 and 30337-30366 of 1992. Writ Appeal No. 3742 of 1997 arises from the order dated 5.6.1997 in Writ Petition No. 21952 of 1992.

2. The Respondents 4 to 33 were the Petitioners in Writ Petition Nos. 30337-66 of 1992 and were the owners of portions of the following lands: Survey No. 127 (12 Acres, 15 Guntas), Sy. No. 128 (1 Acre 11 Guntas), Sy. No. 131/1 (14 acres 8 Guntas), Sy. No. 131/2 (1 Acre 30 Guntas), Sy. No. 132 (11 Acres 14 Guntas), Sy. No. 133 (11 Acres 18 Guntas), Sy. No. 134 (1 Acre 32 Guntas) Sy. No. 135/1a, 135/1b, 135/2a and 135/2b (together 5 Acres 30 guntas), Sy. No. 136/1, 136/2 and 136/3 (4 Acres 21 guntas), Sy. No. 137 (1 Acre 22 guntas),

Sy. No. 138 (1 Acres 02 Guntas), Sy. No. 139/1 (1 Acre 36 Guntas), Sy. No. 139/2 (1 Acre 35 Guntas), Sy. No. 140/1 to 140/6 (together 8 Acres 15 Guntas), Sy. No. 141 (4 Acres 06 Guntas) Sy. No. 142/1 (4 Acres 33 Guntas and 1 Acre 12 Guntas), Sy. No. 143 (2 Acres 11 Guntas) Sy. No. 144 (3 Acres 03 Guntas) Sy. No. 145 (7 Acres 04 Guntas) and Sy. No. 146 (3 Acres 20 Guntas), all situated at Navile Village, Kasaba Hobli, Shimoga Taluk and District.

2.1) The Respondent Nos. 2 and 3 in Writ Appeal Nos. 1438 and 2289-2318 of 1997 were the Petitioners in Writ Petition No. 34729 of 1995 and they claim to be the owners of Survey Nos. 141 measuring 4 Acres 06 Guntas (Item No. 14 in the Final Notification) of the said village.

2.2) The Respondent in Writ Appeal No. 3742 of 1997 was the Petitioner in Writ Petition No. 21952 of 1992 and he claims to be the owner of survey No. 142/2 measuring 1 acre 30 guntas of the said village (wrongly shown as Sy. No. 142/1 measuring 1 acre 12 guntas under item No. 14 of the Final Notification).

3. In regard to the said lands and several other lands, a Preliminary Notification dated 22.1.1985 (Gazetted on 7.11.1985) was issued u/s 15(1) of the Karnataka Improvement Boards Act, 1976 stating that the Shimoga Improvement Board had prepared a Development Scheme and for that purpose it had proposed to acquire the lands specified in the said notification.

4. Karnataka Urban Development Authorities Act, 1987 ("KUDA Act" for short) was enacted by the State Government (Published in the gazette dated 19.11.1987). The said Act came into force in regard to Shimoga Urban Area on 1.5.1988 in pursuance of a notification dated 15.4.1988 issued by the State Government u/s 3(1) of the said Act. Thereafter, the Urban Development Authority was constituted for Shimoga Urban Area by issue of a notification u/s 3(1) of the said Act. Section 78(1) of the said Act provides that on the issue of a notification u/s 3(1) of the Act constituting an Urban Development Authority for any urban area, the Karnataka Improvement Boards Act, 1976, shall cease to be applicable in such urban area.

5. After publication of the Development scheme u/s 15(1) of the Karnataka Improvement Boards Act, 1976, and after considering the representation received in that behalf, the Shimoga Urban Development Authority, the successor of the Shimoga Improvement Board submitted the scheme to the State Government for sanction. It is stated that the State Government after considering the proposal submitted to it granted sanction to the scheme u/s 18(3) of the KUDA Act on 15.3.1989. Thereafter, a large extent of about 130 acres were deleted from the Preliminary notification under a notification dated 18.11.1989 (gazetted on 7.12.1989). Ultimately, a Final declaration u/s 19(1) of the KUDA Act was issued as per notification dated 2.6.1992 (gazetted on 13.8.1992) in regard to an extent of about 112 acres including the lands which are the subject matter of these appeals.

6. Feeling aggrieved, the land owners (Respondents 2 to 33 in Writ Appeal Nos.

1438, 2289 to 2318 of 1997 and the Respondent in Writ Appeal 3742 of 1997) filed the said writ petitions (referred to in para 2 above) for quashing the Preliminary Notification dated 22.1.1985 and the Final Notification dated 2.6.1992 in so far as their lands were concerned. The land owners contended that the Shimoga Improvement Board did not have any jurisdiction on 22.1.1985 or on 7.11.1985, to draw a scheme in regard to lands situated in Navile village as the said lands did not fall within the jurisdiction of the Shimoga Improvement Board. They also contended that in view of the inordinate delay between the Preliminary Notification dated 22.1.1985 (gazetted on 7.11.1985) and the Final Notification dated 2.6.1992 (gazetted on 13.8.1992), the acquisition notifications were liable to be quashed.

7. The learned Single Judge allowed Writ Petition Nos. 34729 of 1995 and 30337-366 of 1992 by a common order dated 13.12.1996. He held that the Shimoga Improvement Board had jurisdiction only over Shimoga Urban Area and as Navile village had not been included in the Shimoga Urban Area, the Board had no jurisdiction to frame a development scheme or issue a Preliminary Notification u/s 15(1) of the Karnataka Improvement Boards Act, covering or including the said village. Consequently, the acquisition notifications dated 22.1.1985 and 2.6.1992 were quashed. Following the said decision, Writ Petition No. 21952 of 1992 was allowed by another learned Single Judge, by order dated 5.6.1997.

8. Feeling aggrieved, Shimoga Urban Development Authority has filed these appeals. It is contended by the Authority that the lands in question were included in the Urban Area and therefore the learned Single Judge committed an error in proceeding on the basis that they were not included in the Urban area. It has alternatively contended that the Navile village has been included in the Planning Area of Shimoga-Bhadravathi and as the Improvement Board/Development Authority was also the Planning Authority, the Planning area should be deemed to be Urban Area for the purpose of exercising power under Sections 13, 14 and 15 of the Improvement Boards Act to prepare a development scheme and publish a notification intending to acquire the lands covered under the said development scheme. The Appellants have produced a notification (No. HUD 305 MIB 86) dated 5.8.1987 issued by the State Government u/s 2(1)(o) read with Section 3(3) of the Karnataka Improvement Boards Act 1976 [as corrected by corrigendum (No. HUD 568 MIB 87) dated 12.4.1988] under which the jurisdiction of the Shimoga Improvement Board was extended upto Shimoga-Bhadravathi Local Planning Area w.e.f. 5.8.1987.

9. Section 2(1)(o) of the Improvement Boards Act defines "Urban Area" as "any local area which is within the jurisdiction of the Local authority; and includes such other area adjacent to the limits of the Local Authority, as the Government may, from time to time, by notification specify".

10. Section 13 of the Improvement Act empowers the Improvements Boards to draw detailed schemes for the development or improvement of the areas within

its limits. Section 3(3) of that Act provides that the jurisdiction of the Board constituted in respect of any urban area shall stand extended to such other areas as may be notified under Clause (o) of Section 2(1) in respect of such urban area, with effect from the date of such notification.

11. Thus, the jurisdiction of Shimoga Improvement Board extended only to the Shimoga Municipality area (that is the local area within the jurisdiction of the Local Authority-Shimoga Municipality) till 4.8.1987. The jurisdiction was extended to the Shimoga-Bhadravathi Local Planning Area only with effect from 5.8.1987 by issue of a notification u/s 3(3) of the Improvement Act. It is not disputed that Navile village did not fall within the jurisdiction of the Local Authority i.e. within the Municipal Limits of Shimoga Municipality, but fell within the limits of the Shimoga-Bhadravathi Local Planning Area. Navile village was included within the jurisdiction of Shimoga Improvement Board and it got jurisdiction over Navile village when it became Urban area on 5.8.1987 and not earlier. Sections 13, 14 and 15 make it clear that the Improvement Board could draw up a development scheme and prepare and issue notifications specifying the lands which are intended to be acquired for the purpose of such development, only in regard to the area falling within its limits. As on 22.1.1985 when the notification u/s 15(1) of the Improvement Act was issued by the Shimoga Improvement Board, admittedly, Navile village was not part of the urban area falling within its jurisdiction. Consequently the Shimoga Improvement Board could neither form a development scheme nor issue a notification u/s 15(1) of the Improvement Boards Act, in regard to any land in Navile Village. Thus, the notification dated 22.1.1985 (gazetted on 7.11.1985) is without jurisdiction or authority and therefore void. Consequently all action taken in pursuance of it including the final declaration dated 2.6.1992 (Gazetted on 13.8.1992), are also null and void.

12. Learned Counsel for the Appellants drew our attention to a letter dated 22.1.1983 sent by the Shimoga-Bhadravathi Town Planning Authority to the Shimoga Improvement Board giving the particulars of the villages included in the Shimoga-Bhadravathi Local Planning Area and it shows that Navile village is one of the villages which falls under the Shimoga- Bhadravathi Local Planning Area. He therefore contended that the Shimoga Improvement Board had jurisdiction over Navile Village in the year 1985 when the Preliminary Notification was issued.

13. The land owners do not dispute that the Navile village was included within Shimoga-Bhadravathi Local Planning Area prior to the preliminary notification dated 22.1.1985. They however contend that the "planning area" under the Karnataka Town and Country Planning Act, 1961 is not the same as "Urban area" under the Karnataka Improvement Boards Act, 1976. The said contention has been accepted and upheld by the learned Single Judge, in our opinion, rightly.

14. Having regard to the provisions of the Karnataka Improvement Boards Act, 1976, an Improvement Board can draw up a development scheme only in regard to the areas falling within its jurisdiction or limits. Section 2(1)(o) makes it clear

that "urban area" is the local area which is within the jurisdiction of the Local Authority (Shimoga Municipal Limits in this case) unless, the State Government extends such urban area by including any other adjacent areas by issuing a notification u/s 3(3) of that Act. In this case such a notification was issued as noticed above only on 5.8.1987. When the preliminary notification was issued in January 1985, only the Shimoga Municipal limits was the Urban area. Therefore, mere fact that the Navile village, was included within the Shimoga-Bhadravathi Local Planning Area for the purpose of Karnataka Town and Country Planning Act, 1961 will not help the authority to contend that it had jurisdiction over the Navile village for the purpose of drawing up of a development scheme under Sections 13, 14 and 15 of the Karnataka Improvement Boards Act, 1976 or for issuing a notification u/s 15(1) of that Act.

15. Learned Counsel for the Appellants next relied on the decision of a learned Single Judge of this Court in Viswabharathi Housing Building Co-operative Society Limited v. Bangalore Development Authority 1989 (3) KLJ 17. We are afraid that the said decision is of no assistance as it is rendered with reference to the provisions of the Bangalore Development Authority Act, 1976 vis-a-vis the provisions of Karnataka Town and Country Planning Act, 1961 and not with reference to the Karnataka Improvement Boards Act, 1976.

16. These appeals will have to fail on one more ground. The Preliminary Notification was issued on 22.1.1985 and Published on 7.11.1985. Navile village itself was included within the Urban Area only with effect from 5.8.1987. The Development scheme was approved by the State Government u/s 18(3) of the Urban Development Authorities Act, 1987 on 15.3.1989. The Final Notification was issued more than 3 years thereafter on 2.6.1992. The time gap between the Preliminary Notification and Final Notification is as much as 7 years. Even if the period upto the approval of the scheme by the State Government is excluded, there is a delay of three years. It is no-doubt true that neither Karnataka Improvement Boards Act, 1976 nor the Karnataka Urban Development Authorities Act, 1987, prescribes any time limit for issuing a publication of a Final Notification u/s 19(1).

17. The effect of delay has been considered by the Supreme Court in Ram Chand v. Union of India JT 1993 (5) SC 465. Though the said case dealt with the delay between the date of Final Notification and the date of passing of the award, the principles enunciated therein will equally apply in respect of the delay between the Preliminary Notification and Final Notification. The following observations are apposite:

It is settled that in a statute where for exercise of power no time limit is fixed, it has to be exercised within a time which can be held to be reasonable.... The authorities are enjoined by the statute concerned, to perform their duties within a reasonable time and as such they are answerable to the Court, why such duties have not been performed by them, which has caused injury to the claimants.

The Supreme Court held that where the compensation is pegged down to the date of preliminary notification and there is inordinate delay, the market rate as on the date of preliminary notification becomes a fraction of the market rate prevailing at the time of passing of the award and taking of possession and that would be unjust to the land owners.

18. In this case the Authority has not explained the inordinate delay. Even if it is assumed that the delay upto 15.3.1989 is explained by reason of the fact that the scheme was approved by the Government u/s 18(3) of the Act on that day, there is absolutely no reason forthcoming for the delay of more than 3 years between 15.3.1989 to 2.6.1992. In this case, the land owners have approached this Court in the year 1992 immediately after the Final Notification and are having the benefit of stay. In the circumstances, even if the preliminary notification is held to be valid for any reason, the final declaration u/s 19(1) of the Act may have to be held to be invalid on the ground of delay in issuing the same. Be that as it may.

19. As we have held that the Shimoga Improvement Board had no jurisdiction to issue notification u/s 15(1) of Improvement Boards Act and as a consequent, the final notification u/s 19(1) of the Act is also not valid. There is no merit in these appeals and they are dismissed.

The dismissal of these appeals will not come in the way of the authority initiating fresh acquisition proceedings if they so desire.