
(1991) 02 KAR CK 0093

In the Karnataka High Court

Case No : Writ Petition No's. 13260 of 1983 etc.

Shri Ganesha Beshaja Ashram

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Karnataka Improvement Boards Act, 1976 — Section 15, 15 (1), 18, 18 (1)
Land Acquisition Act, 1894 — Section 4 (1), 6 (3)

Citation : (1991) ILR (Kar) 3332 : (1991) 3 KarLJ 435

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : Mahabaleshwara Bhat and P. Vishwanatha Shetty, for the Appellant;
Bharathi Nagesh, HCGP for R-1 and H.C. Ramesh and B.L. Acharya for R-2, for
the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In these Petitions under Articles 226 and 227 of the Constitution, the petitioners have sought for a declaration that the provisions of Karnataka Improvement Boards Act, 1976 (hereinafter referred to as "the Act") are ineffective and inoperative as the Act was not reserved for consideration and assent of the President, because according to the petitioners, the said Act provides for compulsory acquisition of the property. They have also sought for quashing the Notification bearing No. SCM 39/79-80 dated Nil March, 1981 published in the Gazette of 4th June 1981 issued under Sub-section (1) of Section 15 of the Act and the Notification bearing No. HUD 72 MIB.81 dated 28th August 1982 published in the Gazette of 9th September 1982 issued under Sub-section (1) of Section 18 of the Act. Under these Notifications the lands belonging to the petitioners are to be acquired by the Board for public purpose viz., for the purpose of the Scheme framed by the Board.

2. It is contended on behalf of the petitioners that Chapter III of the Act provides for acquisition of private property, as such, it falls under Article 31(2) of the

Constitution; that Article 31 was in operation when the Act was passed, as such, as required by Article 31(3) of the Constitution, the Act ought to have been reserved for consideration of the President and the assent of the President ought to have been obtained: that as no assent of the President has been obtained, the law is ineffective as provided by Article 31(3) of the Constitution; that on the date the impugned Notifications were issued the Board was not constituted therefore, the impugned Notifications issued for the purpose of the Scheme framed by the Board are illegal inasmuch as in the absence of the Constitution of the Board under the Act there could not have been any Scheme framed by the Board; that the Notifications do not provide the particulars of the Scheme, therefore, the petitioners could not effectively object to the Notifications; that at any rate the provisions contained in Section 5A of the Land Acquisition Act ought to have been followed as the effect of the impugned Notifications is nothing but to acquire the lands in question; that in the absence of the procedure provided u/s 5A of the Land Acquisition Act, the procedure provided in Chapter III of the Act is not reasonable and as such it is hit by Article 14 of the Constitution.

3. The State has not filed any Statement of Objections. However, the Improvement Board, Mangalore has filed the Statement of Objections in W.Ps. 4290 to 4300 of 1984. The records are also made available.

4. It is contended on behalf of the respondents that the Act does not provide for compulsory acquisition and requisition of a private property, it only provides for initiation of the proceedings for acquisition inasmuch as it does not provide for either determination of the compensation or taking possession of the land and vesting of the land in the State or in the Corporation owned or controlled by the State; that the determination of compensation and taking possession of the land and vesting of the land all take place under the provision of the Land Acquisition Act therefore, as provided under Clause (2A) of Article 31, the Act cannot be deemed to be the law providing for compulsory acquisition and requisition; that the Board was constituted under the Notification bearing III No. HMA 25 MIB 76 Dt.23rd February, 1977 published in the Official Extraordinary Gazette of 23rd February 1977, as such, the contention that the Board was not constituted on the date of issue of the Notification is not well founded; that as per Section 15 of the Act Notification issued under Sub-section (1) of Section 15 of the Act did provide the particulars, therefore, the contention that the Notifications do not contain the particulars of the Scheme is not well founded; that the procedure provided under Chapter III of the Act is reasonable and as such it is not opposed to Article 14 of the Constitution.

5. In the light of these contentions, the following points arise for consideration:

1. Whether the Karnataka Improvement Boards Act, 1976 ought to have been reserved for the consideration of the President and received his assent?
2. Whether the provisions contained in Chapter III of the said Act can be held to provide for the compulsory acquisition or requisitioning of the property as

contemplated under Article 31(2) of the Constitution?

3. Whether the impugned Notifications are contrary to the provisions contained in Sections 15 and 18 of the Act?

4. Whether the procedure provided under Chapter III of the Act is unreasonable?

POINT NO. 1

6. The Act was passed by the State Legislature in the year 1976. Earlier, there was an Ordinance issued being "The Karnataka Improvement Boards Ordinance 1975." The Ordinance was issued on 20th November 1975. The Ordinance is replaced by the Act. Therefore, the Act is made effective from 20th November 1975. Neither the Act nor any amendment to the Act was reserved for consideration of the President nor the assent of the President was received. On the date the Act was passed, Article 31 of the Constitution was very much operative. It came to be omitted only by Constitution (Forty Fourth Amendment) Act, 1978 with effect from 20th June 1979. For our purpose Clauses (4) (5) and (6) of Article 31 are not necessary. Therefore we reproduce Articles 31 (1) to (3) which were as follows:

"31. Compulsory acquisition of property:-

(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash.

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1) of Article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(2B) Nothing in Sub-clause (f) of Clause (1) of Article 19 shall affect any such law as is referred to in Clause (2).

(3) No such law as is referred to in Clause (2) made by the Legislature of a State

shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

7. The contention of the petitioners is that the effect of the Notifications issued under Sub-section (1) of Section 15 and Sub-section (1) of Section 18 of the Act is nothing but to compulsorily acquire a private property viz., the lands belonging to a private person therefore, these provisions are nothing but the provisions providing for compulsory acquisition, for public purpose, of a property of a private individual hence, they fall within the scope of Clause (2) of Article 31 of the Constitution. For the purpose of proper consideration of the contention, it is necessary to notice the provisions contained in Chapter III of the Act.

8. Before that, we may also advert to the object and intendment of the Act. The Act is intended for establishment of Improvement Boards for the development of urban areas in the State of Karnataka and for matters concerned therewith. Therefore, from the very object and intendment of the Act, it is clear that the Act is mainly intended to provide for the development of urban areas in the State of Karnataka. Thus, the pith and substance of the Act is to establish Improvement Boards and provide for development of urban areas. It is for this purpose, the Chapter II of the Act provides for establishment of Improvement Boards. It also defines the Development and Development Scheme and Improvement and Improvement Scheme. Section 3 provides for establishment of the Board, Section 4 provides for Constitution of the Board, Section 5 provides for term of office, Section 7 provides for disqualification for office of membership, Section 8 provides for removal of member, Sections 9 and 10 relate to Meetings of the Boards and also provide as to when the proceedings are presumed to be good and valid. Section 11 provides for execution of contracts, and Section 12 provides for duties of the Chairman of the Board. Chapter III provides for duties and powers of the Board. Sections 13 to 26 fall within Chapter III of the Act. Section 13 provides that the Board shall entertain works and incur expenditure for development and improvements. These works are to be executed subject to the control of the Government. Section 14 provides that every development scheme or improvement scheme undertaken u/s 13 of the Act shall contain certain things as enumerated in that Section. One of the provisions to be made in the Scheme is acquisition of any land which in the opinion of the Board is necessary for the execution of the Scheme. Section 15 prescribes a procedure to be followed after preparation of the Scheme. It is necessary to reproduce the Section because the contention of the petitioner is based on the contents of this Section. The said Section reads thus:

"15. Procedure after preparation of the Scheme:- (1) When any Development Scheme or Improvement Scheme has been prepared, the Board shall prepare a draft of a 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 may be

seen at all reasonable hours and shall-

(a) communicate a copy of such notification to the local authority concerned which shall, within sixty days from the date of receipt thereof, forward to the Board, for transmission to the Government as hereinafter provided, any representation which the local authority may think fit to make with regard to the Scheme; and

(b) cause a copy of the said notification to be published in the official Gazette and affixed 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 as the Board may consider necessary.

(2) If no representation is received from the local authority within the time specified in the communication under Clause (a) of Sub-section (1), the concurrence of the local authority to the proposal shall be deemed to have been given.

(3) During the thirty days next following the day on which such notification is published in the official Gazette, the Board shall 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 or land which it is proposed to acquire in executing the scheme requiring such person to show cause within thirty 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."

9. Thus, Section 15 provides that after the Scheme is prepared, the Board has to prepare the draft notification stating the fact of a Scheme having been made and naming a place where the particulars of the Scheme and the map of the area comprised therein and the statement specifying the land which it is proposed to acquire and of the land in regard to which it is proposed to recover betterment tax may be seen at all reasonable hours. A copy of the said notification has to be communicated to the local authority within sixty days. The local authority within sixty days from the date of receipt of the same is required to forward to the Board for transmission to the Government any representation it may think fit to make with regard to the Scheme. In addition to this, the draft notification is also required to be published in the Official Gazette and also in the Board Office and in the Offices of the Deputy Commissioner and in the office of the local authority concerned. If no representation is received from the local authority it must be deemed that the local authority has no objection to the Scheme, and the concurrence of the local authority to the proposal be deemed to have been given, After the publication of the draft notification in the Official Gazette as required by Sub-section (1) of Section 15 of the Act, the Board shall have to issue notice to 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 thirty 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. Thus, this provision provides for an opportunity to the person interested in the land, the owner of the land and the occupant of the land to file the objections to the proposed acquisition for the purpose of the scheme. A Division Bench of this Court in *Sharanamma Vs. State*, has held that the Notification issued u/s 15 corresponds to the notification issued u/s 4(1) of the Land Acquisition Act.

10. Section 16 provides for forward of the Scheme to the State Government along with the application for sanction accompanied by a description with full particulars of the Scheme including reasons for the modifications made therein, complete plans and estimates of the cost of executing scheme, a statement specifying the land proposed to be acquired, any representation received under Sub-section (1) of Section 15 and also the schedule showing the rateable value, entered in the assessment list of the local authority at the date of publication of a notification relating to the land u/s 15, or the land revenue assessment of all land specified in the statement under Clause (c) of Sub-section (2) of Section 16 and further particulars if any as may be provided. It is also required to send all the representations received u/s 15 of the Act. The State Government on receipt of the Scheme and the records as stated above, is required to consider the Scheme and the objection and if it is satisfied, it can accord sanction to the Scheme. Section 17 provides for sanction of the Scheme. Upon sanction of the Scheme, the Government shall have to publish the declaration in the Official Gazette as required by Sub-section (1) of Section 18 of the Act stating the fact of such sanction and the land proposed to be acquired by the Board for the purpose of the Scheme as required for public purpose. Sub-section (3) of Section 18 of the Act further provides that such a declaration shall be conclusive evidence that the land is needed for public purpose, and the Board shall, upon the publication of the said declaration proceed to execute the Scheme. Sub-sections (4), (5) and (6) of Section 18 of the Act provide for alteration of the Scheme. For the purpose of making such improvement it is open to alter the Scheme subject to the provisions of Sub-section (5) and (6) of Section 18 of the Act. In the case of alteration of the Scheme which involves the acquisition otherwise than by agreement, of any land other than that specified in the Schedule referred to in Clause (c) of sub-section (2) of Section 16, the provisions of Section 15 of the Act have to be followed. The other provisions viz., 19, 20, 21 and 22 provide for levy of betterment tax, assessment of betterment tax, manner of payment of betterment tax and recovery of betterment tax. Therefore, the same need not be referred to as they are not necessary for our purpose. Section 23 provides that payment of betterment tax is no bar for acquisition under a fresh declaration. Sections 24 and 25 need not be adverted to. Section 26 provides that the

Development Scheme shall be executed within a period of three years from the date of sanction of the Scheme, provided that the Government may, by order, extend the time for execution. This time limit is also relevant while considering the contention as to whether the procedure provided under Chapter III of the Act is reasonable.

11. The notice issued u/s 18(1) and (3) of the Act are held to be equivalent to the notice published u/s 6(1) and (3) of the Land Acquisition Act in the aforesaid Decision in Sharanamma's Case. In Sharanamma's case the scope and effect of Section 34 and 35 read with Sections 15 and 18 of the Act has also been considered and it has been held as follows:

"9. Section 34 clearly vests with the authority the power to acquire the land by agreement. With this Section, we are not very much concerned. u/s 35, the power to acquire otherwise than by agreement viz., otherwise than what is contemplated u/s 34 is contemplated. By a careful reading of Sub-section (1) of Section 35, it would be clear that the acquisition has to be regulated by the provisions of the Land Acquisition Act, 1894 as far as they are applicable, in other words, "Mutatis Mutandis". Where therefore, it is not the entire gamut of the Land Acquisition Act which requires to be applied but only selective provisions in so far as they are applicable, one has to search for the powers of the Board to acquire. Those powers are found u/s 15 of the Act. Section 15 deals with the procedure after the preparation of the scheme. Once the scheme is prepared and it is approved by the Government, what has to be done is stated under Sub-section (3). It reads:

"(3) During the thirty days next following the day on which such notification is published in the Official Gazette, the Board shall 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 thirty 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."

Therefore, this corresponds to the notification u/s 4(1) of the Act of 1894. Such a notification came to be issued on 24-11-1977 and the Gazette publication being dated 22-12-1977. In response to this, objections were filed by all these Writ Petitioners viz., Sharanamma on 6-3-1978; Parvathi Bai objections not filed; Laxmibai objections filed on 6-3-1978; Neelamma on 3-3-1978; Malleshappa on 28-2-1978; Bandappa and Shankarappa on 20-2-1978 and Maniklala, objections filed on two days on 12-1-1978 and 17-3-1978. These are Writ Petitioners respectively W.P. No. 7455 of 1984; W.P. No. 6927 of 1984; W.P. No. 6929 of 1984; W.P. No. 7290 of 1984; W.P. No. 7465 of 1984; W.P. No. 6616 of 1984 and W.P. No. 14745 of 1984. Those objections were considered and overruled on 25-5-1978 in accordance with Section 16(1) of the Act. After overruling the same

the scheme was forwarded to the State Government which came to be approved on 10-2-1982 and the scheme itself was sanctioned on 13-8-1982. There was inspection of the land on 5-9-1983. After all this came to be issued the declaration u/s 18(1) on 23-12-1983. It also requires to be noted at this stage that Section 18(3) states as follows:

"(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose, and the Board shall, upon the publication of the said declaration proceed to execute the scheme."

This corresponds with Section 6(3) of the Act of 1894. Thus it is clear that with regard to a declaration of a public purpose alone, a Preliminary Notification u/s 4(1) requires to be issued and the objections filed and after considering the objections, the declaration u/s 6 is issued. Those procedures are provided for under Sections 15 and 18 of the Act.

10. It is also well settled that, under the Act of 1894, once the declaration u/s 6 is issued, it becomes final and conclusive for two reasons: (i) the land is needed and (ii) for a public purpose - vide AIR 1963 SC (Smt. Somawanti v. State of Punjab). That is also stated u/s 18(3) of the Act to which we have already made a reference. This procedure therefore had taken place in substitution of the procedure under the Land Acquisition Act viz., u/s 4(1) read with Section 6 of the Act of 1894 and by mistake the notification u/s 4(1) of the Act of 1894 had come to be issued in this case on 1-2-1983 and objections were filed and thereafter it was realised that the notification u/s 4(1) of the Act was not only a mistake but wholly superfluous. Therefore, it came to be rightly withdrawn. It is after this that the notification u/s 18 was issued on 23-12-1983 as state above. That was followed by the notice under Sections 8 and 10 of the Land Acquisition Act issued on 8-3-1984. That means with regard to the rest of the procedure after the declaration u/s 6 as far as may be the Land Acquisition Act need to be followed. That account for the issue of notice under Sections 9 and 10. Therefore, in view of what we have stated above, it is not correct on the part of the petitioners to contend that once the notification u/s 4(1) of the Act of 1894 came to be issued and withdrawn, the further proceedings under the Act cannot take place. That ignores the solitary effect of the statutory provisions particularly Sections 15 and 18. We have already referred to Section 23 of the Act which has no bearing as far as the present discussion is concerned. Thus, we conclude as rightly contended by the learned Government Advocate that there is no infirmity at ail attached to the proceedings relating to the acquisition, subject matter of the writ petitions."

Therefore, it is clear from the aforesaid Decision that the provisions contained in Sections 15(1) and 18(1) and Section 18(3) of the Act correspond to the provisions contained in Sections 4(1) and 6(1) and Section 6(3) of the Land Acquisition Act. As far as the determination of compensation and payment of the same and vesting and taking possession of the land are concerned, the same have to be done in accordance with the provisions contained in the Land

Acquisition Act.

12. Therefore, the question for consideration is whether the provisions contained in Sections 15 and 18 of the Act amount to providing for compulsory acquisition and requisition of the property of a person. It may be relevant to notice that Section 15 of the Act uses the expression "proposed to acquire" and Section 18 of the Act uses the expression "proposed to be acquired." Thus these provisions only provide for initiation of the proceedings for acquisition. As per Section 35 of the Act, the acquisition of land within or without the urban area under the Act shall be regulated by the provisions so far as they are applicable to the Land Acquisition Act. Therefore, the provisions relating to filing a claim petition, determination of compensation, passing of award, payment of compensation, taking possession of the property acquired and vesting of the same in the State or the Corporation owned or controlled by the State, in the State and publication of Notification u/s 16(2) of the Land Acquisition Act take place only under the provisions contained in the Land Acquisition Act and not under any of the provisions contained in the Act. Thus the ownership of a private party stands transferred not by reason of the provisions contained in the Act nor by following the procedure prescribed under the Act but by reason of the award passed, compensation paid, possession obtained and the Notification issued as per, and under, the provisions of the Land Acquisition Act. It is only on taking possession of the land acquired, it vests absolutely in the State; until then it does not vest in the State. The Notification published u/s 16(2) of the Land Acquisition Act in the Official Gazette shall be the evidence of the fact of taking possession of the land by the State. Therefore, it is not possible to hold that the provisions contained in Chapter III of the Act provide for transferring and vesting of ownership in the State of the property acquired. The Clause (2A) of Article 31 of the Constitution specifically provides that "Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property." Therefore, in the absence of the provisions in Chapter III of the Act in particular, and the Act in general providing for transfer of ownership to and vesting of property in and conferring right to possession of the property acquired on the State or a Corporation owned or controlled by the State, it is the Constitutional Mandate that such law shall not be deemed to provide for compulsory acquisition or requisition of the property, even though such law may provide for depriving any person of his property. Therefore, even if it is held that the provisions contained in Sections 15(1) and 18(1) and (3) of the Act correspond to Sections 4(1), 6(1) and 6(3) of the Land Acquisition Act, nevertheless, these provisions cannot be construed, or deemed, to be the provisions providing for compulsory acquisition or requisition of the property; therefore, cannot be held to fall under Article 31(2) of the Constitution. In that event, Article 31(3) is not attracted. Therefore, it was not necessary for the State to reserve the Act either for consideration of the President or to obtain the assent

of the President to the Act.

13. Even if it is held that the provisions contained in Sections 15(1), 18(1) and (3) of the Act correspond to Sections 4(1), 6(1) and 6(3) of the Land Acquisition Act, nevertheless, the Notifications issued under these provisions cannot be held to transfer or have the effect of transferring the ownership of the property proposed to be acquired, to the State. It is also not possible to hold that the Notifications issued under Sections 15(1) and 18(1) of the Act confer on, or create in, the State, or a Corporation owned or controlled by the State, a right to possession of the property acquired. On the publication of these Notifications it would not be open to the Board or its Officers to enter upon the land and take possession of the same. Such a right will accrue to the Board and its officers after the award is passed and the amount of compensation awarded is deposited. Therefore, by mere issuance of the Notifications under Sections 15(1) and 18(1) of the Act, the acquisition does not take place.

14. This position may also be explained, and reached, with reference to the provisions contained in Section 6(3) of the Land Acquisition Act. A Division Bench of this Court in the case of *Sharanamma v. State* has already pointed out that Sub-section (3) of Section 18 of the Act is equivalent to Sub-section (3) of Section 6 of the Act. Section 6(3) of the Land Acquisition Act, 1894 reads as under:

"The said declaration shall be conclusive evidence that the land is needed for a public purpose or for Company, as the case may be; and after making such declaration the appropriate Government may acquire the land in manner hereinafter appearing."

The underlined words "may acquire the land in manner hereinafter appearing" clearly indicate that the publication of the Notification under Sub-section (1) of Section 6 of the Act will only enable the State Government to acquire the land/property as per the provisions contained in the Land Acquisition Act from Section 6 onwards. Similarly, the declaration made u/s 18(1) of the Act as per Section 18(3) of the Act, shall be conclusive evidence that the property/land is needed for public purpose and the Board shall, upon the publication of the said declaration, proceed to execute the scheme. After the publication of such Notification, the provisions contained in the Land Acquisition Act as provided by Section 35 of the Act are to be followed *mutatis mutandis*. In other words, the provisions contained in Section 9 onwards in the Land Acquisition Act are to be followed. After following the provisions contained in the Land Acquisition Act and when the proceedings cover the stage of Section 16 of the Land Acquisition Act, the property acquired vests in the State Government or in the Corporation owned or controlled by the State Government, as the case may be. On the happening of that event, the acquisition becomes complete. Therefore, there is no doubt that mere publication of the Notifications under Sections 15(1) and 18(1) of the Karnataka Improvement Boards Act, 1976, does not result in the acquisition of the land/property; it only paves the way for acquisition of land/property.

Therefore, the provisions contained in Chapter III of the Act cannot be held, by any stretch of imagination that they provide for compulsory acquisition and requisition of the land/property thereby transferring the ownership of the same in or conferring a right to possession of the same, on the State or the Corporation owned or controlled by the State Government. As already pointed out, vesting of the property acquired takes place only on the happening of the event as contemplated u/s 16 of the Land Acquisition Act. Therefore, Chapter III of the Act cannot be interpreted or construed to provide for the compulsory acquisition or requisition of a property so as to transfer the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State so as to attract Article 31(2) of the Constitution of India. Consequently Clause (3) of Article 31 of the Constitution is not attracted. Therefore, it was not necessary to reserve the Act for consideration of the President and to receive the assent of the President. Hence, we answer Point No. 1 in the negative.

POINT NO. 2

15. The finding recorded on Point No. 1 and the reasons stated therein are sufficient to answer Point No. 2. Accordingly, Point No. 2 is answered as follows:

The provisions contained in Chapter III of the Act cannot be held to provide for compulsory acquisition or requisitioning of the property as contemplated under Article 31(2) of the Constitution of India. Thus Point No. 2 is answered in the negative.

POINT NO. 3

16. It is not possible to agree with the contention of the learned Counsel for the petitioner that the Notification issued u/s 15(1) of the Act, is not in accordance with the provisions contained therein. The Notification bearing No. SCM 39/79-80 dated March 1981 (Annexure-A) reads as under:

"In exercise of the powers vested u/s 15(1) of the Karnataka Improvement Boards Act, 1976, it is hereby notified by the Improvement Board, Mangalore, for information of the general public that the Improvement Board of Mangalore, has prepared a residential development scheme for the area mentioned in the schedule appended and in respect of which a map showing the area comprised in the scheme, a statement of the lands in regard to which it is proposed to recover betterment tax may be perused in the office of the Chairman, Improvement Board of Mangalore, Municipal Office (Old) Building, Mangalore during office hours on all working days:

SCHEDULE

Details of the lands proposed to be acquired by the Improvement Board Mangalore for a Development Scheme:

District: Hobli:

Dakshina Kannada Mangalore-A

Taluk: Mangalore Village: 94-A Bolor

Sl.No.

T.S.No.

Classification Extent to be acquired A.C.

Name of the Khatedar Anubhavadar

1

2

3

4

1.

810/1 Portion

Garden 1.20

Khatedar N. Srinivas Prabhu (deceased by his L.Rs)

1. Smt. Sarojini S. Prabhu

2. Dr. U.S. Prabhu

3. Smt. Hemalatha G. Mallya

4. Dr. N.J. Prabhu

5. Smt Prabha S. Acharya

6. Smt. Arundathi R. Kamath

Boundaries

North Survey No.

East Survey No.

South Survey No.

West Survey No.

5

Road and 810/1 (P)

811/2 811/3

811/1A

810/2 810/1 Portion

Sd/- Chairman Improvement Board, Mangalore." Thus the Notification states in clear terms that the Improvement Board of Mangalore, has prepared a residential Development Scheme for the area mentioned in the schedule appended and in respect of which a map showing the area comprised in the Scheme, a statement of the lands proposed to be acquired and a statement of the lands in regard to which it is proposed to recover betterment tax may be perused in the office of the Chairman, Improvement Board of Mangalore, Municipal Office (Old) Building, Mangalore during office hours on all working days.

The Notification gives all the particulars which are required to be given as per Section 15(1) of the Act. Therefore this contention of the learned Counsel is rejected. So far as Section 18(1) of the Act, is concerned it only requires that upon sanction of the scheme u/s 17 of the Act, the Government shall 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 purpose of the Scheme is required for public purpose. The Notification issued u/s 18(1) of the Act vide Annexure-D satisfies all those conditions. It declares that the properties specified in the schedule, the same being a little more or less are needed for a public purpose, to wit a residential development scheme in the area mentioned in the schedule. Therefore, it is not possible to hold that Annexure-D issued u/s 18(1) of the Act, suffers from any infirmity. Hence, Point No. 3 is answered in the negative.

POINT NO. 4

17. The contention of the learned Counsel for the petitioners is that the procedure provided under Sections 15 and 18 of the Act, is not reasonable in as much as it does not provide for personal hearing of the objectors. Hence, it is hit by Article 14 of the Constitution as it amounts to taking away the property arbitrarily. It is not possible to accept this contention. The provisions contained in Section 15(3) of the Act, provide for service of 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 on 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 thirty 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. The objections filed by the persons interested are required to be taken into consideration by the State Government. Therefore, the objections are to be submitted along with the Scheme to the State Government, which in turn has to take them into consideration, and thereafter accord sanction for the Scheme. Therefore, the procedures provided under Sections 15 and 16 of the Act, enable the persons interested to file objections and makes it incumbent on the Government to consider the objections. It has to be borne in mind that the acquisition for the purpose of the Scheme cannot be treated in the same manner as the acquisition

of a stray land for any other public purpose. The Scheme as contemplated under the Act, is Development Scheme or Improvement Scheme and such a Scheme has to be considered by the local authority concerned and also the State Government. Section 16 of the Act, provides that the objections are to be submitted along with the Scheme to the State Government for according sanction. Thus the procedure provided takes into account all the necessary requirements. Further Section 26 of the Act provides that the execution of the Development Scheme or an Improvement Scheme has to be completed within a period of three years from the date of sanction of the Scheme. Therefore, the contention that after the Scheme is sanctioned the procedure provided under the Land Acquisition Act for acquisition of the land shall have to be followed is only stated to be rejected. We have already pointed out that the Notifications issued under Sections 15(1) and 18(1) of the Karnataka Improvement Boards Act, 1976 correspond to the Notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894. The fact that there is no provision for personal hearing cannot by itself be a ground for holding that the procedure provided is unreasonable as long as there is a provision for objecting to the acquisition and consideration of those objections by the State Government. The learned Single Judge of this Court in the case of Rukmini P. Kalburgi Vs. State of Karnataka, had an occasion to consider whether the procedure provided in Sections 15, 16 and 18 is violative of Article 14 of the Constitution. The relevant portion of the Judgment reads as follows:

"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 others*, and in *Muthyala Reddy v. State of Mysore and others*. I will first refer to the earlier decision of this Court in *Muthyala Reddy's case* (*supra*). That decision was rendered by this Court on a consideration of the relevant provisions of the City of Bangalore Improvement Act. The validity of 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* (*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* and *M. Laxmiah v. State of Mysore* and following the decision of the Supreme Court in

State of Mysore v. D. Achiah Setty, 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 City Improvement Trust, Bangalore v. H. Narayanayya, while dealing with the provisions of the City of Bangalore Improvement Act, which provided for the acquisition of lands, namely Sections 14 and 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 commencing 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."

18. It is unnecessary to delve upon this aspect any further, because the Judgment in Rukmini P. Kalburgi's case is affirmed in W.A.Nos. 987 to 990/1985 decided on 24th June 1985 as may be found at page 166 of the very same Report. Hence, we hold that the procedure provided in Chapter III of the Act is reasonable and it is not violative of Article 14 of the Constitution. Accordingly, Point No. 4 is answered in the negative.

19. No other contention is urged.

20. All the contentions urged by the petitioners fail. Accordingly, the Writ Petitions are dismissed.