

(2002) 03 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No"s. 36974 to 36989 of 2001

Smt. Mohini S. Hegde and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17, 18, 3

Citation : (2002) ILR (Kar) 2117 : (2002) 4 KarLJ 48 : (2002) 2 KCCR 165 SN

Hon'ble Judges : Tirath Singh Thakur, J

Bench : Single Bench

Advocate : Hegde Associates, for the Appellant; Ashok Mensinkai, A.G.A. for Respondent-1 and Tajuddin, for Respondent-2, for the Respondent

Judgement

Tirath Singh Thakur, J.—In these petitions for a writ of certiorari, the petitioners assail the validity of a notification issued by the Mangalore Urban Development Authority u/s 19(1) of the Karnataka Urban Development Authorities Act, 1987, insofar as the same pertains to the land owned by the petitioners. The challenge arises in the following circumstances.

2. The petitioners claim to be the owners of different parcels of land in different survey numbers of Village Padavu in Mangalore Taluk of Dakshina Kannada District. In terms of a notification issued u/s 17(1) of the Act mentioned above, an area measuring 15 acres and 57 cents in all comprising different survey numbers including those owned by the petitioners was notified for acquisition by the Mangalore Urban Development Authority. This was followed by a notification u/s 19(1) of the said Act, the validity whereof was challenged by the petitioners in Writ Petition Nos. 26185 to 26192 of 2001 filed earlier. The challenge rested primarily on the plea that the petitioners did not have a reasonable opportunity of filing objections to the preliminary notification thus rendering the final notification bad in law on the principles of natural justice. That plea eventually prevailed before a Single Bench of this Court who by Order dated 23-8-2001 permitted the petitioners to file their objections before the Authority within two

weeks from the date of the said Order. The Court further directed that if the objections are filed, the Authority shall consider the same and pass appropriate Orders within four weeks thereafter. During the intervening period, the Authority was restrained from taking any further action pursuant to the impugned notification u/s 19(1) of the Act. It was also observed that in case the Authority found favour with the objections raised by the petitioners, the final notification issued by it shall be modified appropriately.

3. The petitioners appear to have filed their objections pursuant to the above directions which were considered and rejected in terms of Orders passed under the signature of the Commissioner of the Mangalore Urban Development Authority, Mangalore. Aggrieved, the petitioners have filed the present batch of petitions once again challenging the validity of the final notification and seeking a mandamus directing the Authority to consider the objections filed by them before taking any further action in the matter.

4. Learned Counsel for the petitioners confined his submissions to only two aspects of the matter. Firstly, he argued that the objections filed by the petitioners had not been considered by the Mangalore Urban Development Authority as required u/s 18 of the Act and the direction issued by this Court in the earlier batch of petitions. He urged that the Orders communicated to the petitioners rejecting their objections showed that the same had been considered by the Commissioner alone. The matter was not according to the learned Counsel at any stage placed before the Authority for consideration which was not only a violation of Section 18(1) of the Act but also the direction issued by this Court.

5. Alternatively, he submitted that although according to the Orders passed by the Commissioner and the statement of objections filed on behalf of the Authority, the latter had resolved to exclude from acquisition proceedings that part of the land on which the owners had already raised construction, yet the said exclusion was not reflected in the final notification issued u/s 19(1) of the Act. There was, thus, according to the Learned Counsel a contradiction between what the Authority claims to have done and the final declaration actually made by it.

6. Section 18 of the Karnataka Urban Development Authorities Act, 1987 envisages consideration of representations received against the scheme after the same is published. It provides that the Authority shall submit the scheme to the Government for sanction after consideration of the representations if any received in respect thereof. A plain reading of that provision shows that the same envisages consideration of the representations by the "Authority". The expression "Authority" has been defined u/s 2(a) of the Act to mean Urban Development Authority constituted u/s 3 of the Act. Section 3 of the Act in turn empowers the Government to constitute for any urban area, an authority for development of such area. It further provides that the Authority shall be a body corporate having perpetual succession and common seal with power, subject to the provisions of the Act to acquire, hold and dispose off property. Section 10 of

the Act stipulates the powers of different Authorities and inter alia prescribes that the Commissioner may, on behalf of the Authority, sanction any estimate, call for tenders or enter into any contract or agreement the value or amount whereof does not exceed Rs. 5 lakhs. Section 13 of the Act provides that the Commissioner shall be the Chief Executive and the Administrative Officer of the Authority and shall in addition to performing such functions as are conferred upon him by or under this Act or under any law for the time being in force carry into effect the resolutions of the Authority and keep and conduct the Authority's correspondence, carry out and execute such schemes and works as the Government may direct and incur necessary expenditure therefore. The Commissioner is also responsible for implementing the schemes of the Authority, operating the accounts of the Authority, exercising supervision and control of the proceedings of all officers and servants of the Authority and to authenticate by his signature all permissions, orders, decisions, notices and other documents of the Authority.

7. The power to undertake works and incur expenditure for development including the power to draw up detailed schemes for development of the area is vested in the Authority u/s 15 of the Act. Section 17 of the Act prescribes the procedure to be adopted on completion of the schemes whereas Section 18 of the Act governs the sanction of such schemes.

8. A careful reading of the provisions of the Act, therefore shows that there is a clear division of powers between the Commissioner on the one hand and the Authority on the other. The power to sanction any estimate, call for tenders, enter into contracts and agreements of the prescribed value is vested in the Commissioner besides the duties that are conferred upon him in terms of Section 13 of the Act. In contradistinction matters relating to the schemes and the sanction thereof under Sections 17 and 18 of the Act rest only with the Authority. The power exercisable under the said provisions and in particular the power to submit the scheme to the Government for its sanction u/s 18 of the Act is exercisable only by the Authority, that too after it has considered the representations received in respect thereof. In order that the consideration of the representations is treated as valid, the same must be a consideration by the Authority itself and not the Commissioner, no matter the Commissioner is the Chief Executive and Administrative Officer of the Authority. The consideration of representations cannot be delegated or assigned to the Commissioner in the absence of a specific statutory provision to that effect.

9. In *Ameer Khan and Others Vs. State of Karnataka and Others*, referred to by the Counsel appearing for the petitioners, one of the issues that arose for consideration was whether the objections filed to preliminary notification u/s 17 of the Act were required to be considered by the Authority or the consideration by the Commissioner could also suffice. That too was a case where the objections had been considered by the Commissioner of the Urban Development Authority, Tumkur. The argument was that such a consideration was non est the eye of the

law. On behalf of the Authority, it was contended that the Commissioner had upon consideration of the objections submitted a report to the Authority which report was upon consideration accepted by the Authority. This according to the Authority sufficiently complied with the requirement of Section 18(1) of the Act and tantamounted to a consideration by the Authority itself. The Court, did not, however, find favour with that line of reasoning. It declared that the power to consider the objections was conferred upon the Authority and could be exercised only by it. Consideration by the Commissioner could not suffice. The following passages are in this regard relevant:

"I find considerable force in the third submission of the learned Counsel for the petitioners that the representations/petitions filed by the petitioners have not been considered by the Authority in terms of Sub-section (1) of Section 18 of the Act. Annexure-R1 produced by the second respondent shows that the Commissioner of the second respondent-Authority had considered the objections filed by the petitioners and other landowners and he had also heard the learned Counsel appearing for some of the objectors. Sub-section (1) of Section 18 of the Act, in my view, mandates the "Authority to consider the representations of the objectors and submit the Scheme in the light of the objections furnished, with such modifications as the Authority may deem fit, to the State Government for its sanction. There cannot be any doubt that the Commissioner is not the Authority".

"The constitution of the Authority itself speaks for the safeguard provided to the people, whose property rights are sought to be taken away. Therefore, in my view, since the material on record discloses that the representations/objections filed by the petitioners and other objectors were not considered by the Authority, the recommendation of the Scheme made by the Authority to the State Government for sanction, is vitiated".

10. The question then is whether the Authority has in the instant case considered and rejected the objections filed by the petitioners. In support of their claim that the objections were considered and turned down by the Authority, the respondent-Authority has produced the original records comprising the resolution book maintained by the Mangalore Urban Development Authority from which it appears that the objections received from the petitioners pursuant to the Order issued by this Court were placed before the Authority in its meeting held on 12-9-2001. The Authority had, however, after consideration of the objections resolved the same and directed the Commissioner to issue an appropriate endorsement to that effect. The Commissioner has pursuant to the said resolution by his endorsement dated 15-9-2001 informed the petitioners accordingly. A copy of the resolution mentioned above has been placed on record by Mr. Tajuddin, Counsel for the Authority. In the light of this material, the argument that the Authority had not considered the objections itself as required under law will have to be rejected. It is true that the Commissioner's endorsement does not make any reference to the resolution passed by the

Authority as it ought to have but so long as the records maintained by the Authority evidences consideration of the objections by the Authority itself, the fact that the endorsement issued by the Commissioner pursuant to the resolution of the Authority does not make any mention or does not refer to the resolution should not make any material difference.

11. The only other aspect that needs to be considered is whether there is any contradiction between the final declaration issued by the Authority and what the Authority claims to have done in the matter of executing a part of the area initially notified for acquisition. The preliminary notification as seen earlier related to an area measuring 15 acres and 57 cents. The Orders communicated to the petitioners by which their objections were rejected inter alia makes the following statement:

"The Authority after considering various objections of the objectors that they are residing in those residential houses such piece of lands are left out of acquisition".

12. In the objections statement filed on behalf of the Authority also a similar assertion has been made in the following words:

"It is submitted that the preliminary notification was issued to acquire about 15 acres 57 cents of Padavu Village. Mangalore after receiving such objections and wherever any built-up areas are situated such dwelling-houses are left out including 0.22 cents in Sy. No. 123/3A, pertaining to one of the petitioners. Hence the remaining extent of only about 14 acres 49.5 cents was notified for final notification".

13. From a reading of the above, it is evident that according to the Authority, out of the total extent of land initially notified, certain areas which were already utilised for construction of houses by the owners had been excluded including 22 cents in Survey No. 123/3. It also appears that according to the Authority, the final acquisition proceedings were proposed only for 14 acres and 49.5 cents. If that were so, the Authority ought to have issued the notification for 14 acres and 49.5 cents only or suitably modified the notification already issued. That, however, is not what has been done. The final notification continues to show 15 acres and 57 cents as mentioned in the preliminary notification. Mr. Tajuddin submitted that a suitable corrigendum is being issued by the Authority confining the acquisition to the lesser area mentioned earlier. That submission is recorded with the observation that the Authority shall suitably modify the final declaration to confine the acquisition proceedings to an area measuring 14 acres and 49.5 cents only.

14. The writ petitions are accordingly disposed off with the above observations leaving the parties to bear their own costs.