

(2003) 02 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No"s. 30059-30061 of 2000 and 14086 of 2001

Smt. M.V. Lalithamani and Others

APPELLANT

Vs

Mysore Urban Development Authority and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 15, 17, 17, 18, 19 (1)

Citation : (2003) ILR (Kar) 1695 : (2003) 4 KarLJ 528 : (2003) 2 KCCR 127 SN

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Ramesh P. Kulkarni and Kumar and Kumar, for the Appellant; P.S. Manjunath, for R1-2 and M.R. Vijayakumar, GP for R1, R3, for the Respondent

Final Decision : Dismissed

Judgement

Rangavittalachar, J.—Petitioners have challenged in these petitions the acquisition proceedings initiated by the Mysore Urban Development Authority (MUDA for short) in respect of several items of agricultural lands situate at Nachanahalli Village, Mysore Taluk more particularly described in the schedule to the Writ Petition in this proceedings. Briefly stated the facts are:

Petition scheduled properties which are several items of agricultural lands are owned by the writ petitioners. These properties, among several other properties belonging to various other persons, were notified for acquisition u/s 17 of the Karnataka Urban Development Authorities Act, 1987 ("Act" for short) by a gazette notification dated 30.1.1992 and by a final notification issued u/s 19(1) dated 9.3.1998 for purposes of development of Mysore City Nachanahalli III Stage. These two notifications are challenged in these Writ Petitions.

2. The main grounds of challenge are: Firstly, that the MUDA drew up a scheme for taking up the developmental work without the prior approval of the State Government as required u/s 15(b). Secondly, before publication of the final notification u/s 19(1), no prior sanction of the Government to the scheme as

required u/s 18 of the Act was obtained. Lastly, there is an inordinate unexplained delay of about six years from the date of the preliminary notification to the date of the final notification.

3. Detailed statement of objections has been filed by the contesting 1st respondent. It is stated that factually, before the publication of the final notification u/s 19(1), MUDA had obtained the sanction of the Government. In so far as delay, it is stated that the delay had occurred on account of various factors like the taking of institutional decisions and the pendency of the Writ Petition before this Court.

4. On behalf of the State and the 3rd respondent, affidavit has been filed by the Under Secretary to Government under the orders of this Court explaining the reason why the original records could not be secured earlier.

5. The contention of Sri C.B. Srtnivasan, Counsel appearing for the petitioner is that, any urban Authority when it seeks to acquire private property for a development scheme has to first draw a scheme in terms of Section 16 of the Act with the approval of the State Government as required u/s 15 of the Act. It has to then notify in the gazette u/s 17 of the Act inviting objections from the local authorities and from interested persons. Thereafter, the scheme along with the objections of the private individuals and the local authorities has to be submitted to the State Government u/s 18 of the Act. The State Government has to apply its mind to the objections forwarded to it and has to grant sanction to the scheme. Thereafter, the final notification u/s 19 can be issued declaring its intention that the land is needed for the public purpose. Every step envisaged in Sections 15, 17 and 18 has to be mandatorily obeyed by the Authority failing which the entire acquisition proceedings become void.

6. In this case, firstly, the MUDA had not obtained prior approval of the State Government as required by Section 15 of the Act. Secondly, the State Government had not applied its mind to the objections filed by the petitioners nor the State Government had accorded sanction to the Scheme as per Section 18 of the Act. Therefore, the entire acquisition is illegal being against the provisions of law. Learned Counsel relied on the decision of this Court in Ameer Khan and Others Vs. State of Karnataka and Others, in support of his contention.

7. Nextly he submitted that there is an inordinate unexplained delay of about six years from the date of the preliminary notification to the date of final notification. On this ground also the final notification deserves to be quashed in view of the decision of this Court in SHIMOGA URBAN DEVELOPMENT AUTHORITY AND ANR. v. STATE OF KARNATAKA AND ORS. ILR 2002 KAR 2078

8. In reply to the said contention, Sri Manjunath appearing for 1st respondent submitted that Section 15 of the Act applies only to cases where the MUDA incurs expenditure funded by the State Government in which event the Authority needs to obtain administrative approval from the State Government for incurring expenditure. In the facts of the present case, the MUDA has obtained such an

approval.

9. On the contention that there is lack of application of mind by the State Government to the objections of private parties, learned Counsel submitted that State Government is obliged to consider the objections of the Local Authorities for consideration sent by MUDA and the objections of private persons has to be considered by the MUDA only and not by the State Government. The MUDA had considered all the objections filed by the objectors and since no representations were received by the local authorities, they were not sent to the State Government.

10. On the contention that no prior approval to the scheme was obtained, learned Counsel submitted such approval was in fact, given by the Government.

11. On delay, it was submitted since several steps were required to be taken after the date of the preliminary notification before publication of the final notification both by the State Government and the MUDA and also due to the pendency of the Writ Petition before this Court, the delay is explained. The decision in SHIMOGA URBAN DEVELOPMENT AUTHORITY'S case has no application to the facts of the present case.

12. In order to appreciate the rival contentions, first it is necessary to refer to the relevant provisions of the Urban Development Authority Act in relation to the statutory requirements for acquisition of property.

13. The Karnataka Urban Development Authorities Act, 1987 was enacted with the purpose of developing major and important urban areas in the State. The State Government has been empowered u/s 3 of the Act to constitute Urban Authorities for each urban area to implement the provisions of the Act. Under the scheme of the Act, the Urban Authority is empowered to take up developmental schemes for the urban areas, and wherever necessary for the said purpose, to acquire the lands. Chapter III of the Act provides for Developmental Schemes. Section 15 expresses what is a "development scheme" and the powers of the Authority. Section 16 of the Act states the particulars the development scheme to contain. If any private land is needed for the scheme, the Authority shall notify u/s 17 its intentment to acquire the land. This section is analogous to Section 4 of the Land Acquisition Act and u/s 18, the Authority must obtain approval of State Government and then issue a final notification u/s 19 of the Act which is analogous to Section 6 of the Land Acquisition Act. Sections 15, 17 and 18 are extracted for reference herein as on the interpretation of which the petitioner has raised his contentions.

Section 15. Power of Authority to undertake works and incur expenditure for development etc.

1. The authority may -

a. Draw up detailed schemes (hereinafter referred to as "development scheme" for the development of the urban area; and

b. With the previous approval of the Government, undertake from time to time any works for the development of the urban area and incur expenditure therefore and also for the framing and execution of development schemes.

2. The authority may also from time to time make and take up any new or additional development schemes -

(i) On its own initiative, if satisfied of the sufficiency of its resources, or

(ii) On the recommendations of the Local Authority, if the local authority places at the disposal of the authority, the necessary funds for framing and carrying out any schemes; or.

(iii) otherwise.

3. Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems it necessary, require the authority to take up any development scheme or work and execute it subject to such -terms and conditions as may be specified by the Government.

Section 17: Procedure on completion of schemes:

1. When a development scheme has been prepared, the authority shall draw up a notification stating the fact of all scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which betterment tax may be levied may be seen at all reasonable hours.

2. A copy of the said notification shall be sent to the Local Authority, which shall, within thirty days from the date of receipt thereof forward to the authority for transmission to the Government as hereinafter provided, any representation which the Local Authority may think fit to make with regard to the scheme.

3. The authority shall also cause a copy of the said notification to be published in two consecutive issues of a local newspaper having wide circulation in the area and affixed in some conspicuous part of its own office, the Deputy Commissioner's office of the Local Authority land in such other places as the authority may consider necessary.

4. If no representation is received from the local authority within the time specified in Sub-section (2), the concurrence of the local authority to the scheme shall be deemed to have been given.

5. During the thirty days next following the day on which such notification is published in the local newspapers the authority shall serve a notice on every person whose name appears in the assessment list of the Local Authority or in the land revenue register as being primarily liable to pay the property tax of land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the authority proposes to recover

betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

Section 18: Sanction of Scheme:

1. After publication of the scheme and service of notices as provided in Section 17 and after consideration of representations, if any, received in respect thereof, the authority shall submit the scheme, making such modifications, therein as it may think fit to the Government for sanction furnishing:-

a. a description with full particulars of the scheme including the reasons for any modification inserted therein;

b. Complete plans and estimates of the cost of executing the scheme;

c. a statement specifying the land proposed to be acquired;

d. any representation received under Sub-section (2) of Section 17.

e. a schedule showing the rateable value as entered in the municipal assessment book on the date of the publication of a notification relating to the land u/s 17 or the land assessment of all land specified in the statement under Clause (c) and;

f. such other particulars, if any, as may be prescribed.

2. Where any development scheme provides for the construction of houses, the authority shall also submit to the Government plans and estimates for the construction of the houses.

3. After considering the proposal submitted to it the Government may, by order, give sanction to the scheme.

14. By a reading of Sections 15, 17 and 18 what is manifest is that Section 15 is a "power conferment section" on the Authority to take up developmental works and incur expenditure as the very heading of the section itself suggests. In cases where the Authority has its own resources, it can independently take up the work without the nod of the State Government. But, where it has to depend on the State Government for finances, then it has to obtain the administrative approval of the State Government for incurring expenditure. The approval contemplated u/s 15(b) of the Act is the approval for "incurring expenditure" for execution of a developmental scheme and not for approval to acquire a land for developmental scheme. The distinction between the two is significant and important as admittedly at the stage of seeking approval to incur expenditure no rights of private parties are involved. Therefore the submission that the developmental scheme first must be approved by the State Government before the Authority issues a notification u/s 17 of the Act, has no merit.

15. On facts the records reveal that MUDA in fact had obtained the administrative approval. In this case, the learned Government Advocate has made available the records. At page 1 of the records, it is stated that the

Commissioner MUDA, Mysore has submitted a scheme for Nachanahalli III Stage and has requested for administrative approval of the layout. The survey numbers of the lands sought to be acquired is also mentioned. The estimated cost of the Scheme is stated to be 1,320 lakhs. The Secretary to the Government by his noting dated 4.8.1992 has noted "Chief Secretary may please follow up". Thereafter, the Chief Secretary has noted "Draft Cabinet may be approved" and is signed by the Minister for HUD on 5.8.1992. By these notings, there cannot be any doubt that Cabinet had granted the administrative approval for incurring expenditure. Therefore, Section 15 has been complied with.

16. If after the publication of the notification u/s 17 of the Act, any representation is received by interested private persons and by local authorities, the Urban Authority after considering the representations or objections of private persons and may or may not suitably modify the scheme. After it decides to do so, it has to forward to the State Government, the Scheme and its decision together with the representations received if any by the Local Authorities. Thereafter the State Government has to take into consideration the representations of the local authorities subject to the other requirements stated in Section 18 and may grant approval to the scheme. Thus u/s 18 of the Act the representations sent in pursuance of the notification u/s 17 is divided into two categories - (1) of all the interested persons other than the local authorities (2) Representations of Local Authorities. The former has to be considered by the Urban Authority, in this case MUDA and later to be considered by the State Government.

17. Thus, the contention that the State Government had not considered the objections of the petitioner before sanctioning the Scheme has no merit. It is not the case of the petitioner that MUDA had not considered the representations.

18. On the contention that no prior approval of the State Government was obtained u/s 18, the contention is factually incorrect. The records disclose that in the file DD 26 UDD 26 MIB 98 on 13.2.1998, there is a noting to the effect that the Commissioner, MUDA has proposed to acquire the lands for the development of Nachanahalli III Stage by a preliminary notification dated 30.1.1992 and approval is sought for issuing the final notification u/s 19(1) and (2). The file is sent for approval by the Under Secretary on 23.1.1998. Approval has been granted on 27.2.1998 by stating "anumodhisabahudu". The final notification u/s 19(1) was issued on 9.3.1998 and published in the gazette on 2.4.1998. Therefore, prior to the publication of the final notification u/s 19 on 9.3.1998, approval of the Government was obtained on 27.2.1998.

19. In view of the fact that prior sanction has been obtained by the 1st respondent, the decision in Ameer Khan's case referred to by the learned Counsel has no application to the facts of this case.

20. On the last contention of unexplained delay it is to be stated that under the scheme of the Act, no time limit is prescribed as is done under the Karnataka

Land Acquisition Act, 1984. However the Division Bench of this Court in SHIMOGA URBAN DEVELOPMENT AUTHORITY'S CASE, while interpreting Sections 17 and 19 of the Act, relying on the decision of the Supreme Court in RAM CHAND v. UNION OF INDIA 1993(5) SC 465 has held as follows at para 18:

In this case the Authority has not explained the inordinate delay. Even if it is assumed that the delay up to 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 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".

21. According to the decision, if there is no explanation offered for the delay becomes fatal. In other words, if there is acceptable explanation, delay is to be condoned. Therefore quashing of the final notification on the ground of delay depends upon whether delay has been properly explained or not.

22. In the facts of the present case, learned Counsel for the 1st respondent Sri Manjunath has given the following dates on the basis of the records, the correctness of which has not been disputed by the learned Counsel for the petitioner. It is stated therein that after the preliminary notification dated 30.1.1992 for issuing the gazette notification, publication in news papers etc., time was consumed till 25.6.1992. MUDA project estimates were sent to the Government on 1.8.1992. Thereafter, individual notices were issued u/s 17(5) on 3.9.1992. On 16.9.1992 MUDA passed resolution for change of the land use. On 12.10.1992 a further proposal for extension of Nachanahalli III stage by acquiring additional land to an extent of 72 guntas was sent. Some time elapsed for obtaining the clarification from the ULC Deputy Commissioner. Thereafter MUDA passed a resolution on 13.11.1992 seeking approval of the State Government and the same was sent immediately. Since some time elapsed for revising the proposal on account of seeking for additional land by acquisition, at that stage, a proposal was sent on 30.5.1994 regarding the acquisition of land for Sir M. Vishveshwaraiah House Building Co-operative Society. MUDA sent this proposal to the Government seeking for deletion of about 67 acres and 39 guntas of land. This was rejected by the State Government on 1.10.1994. On 5.10.1996, this rejection of the approval by the Government was placed before the authority. During this period, another circumstance intervened causing delay. It being that, the Sir M. Vishveshwaraiah House Building Co-operative Society had filed a Writ Petition in WP 884/94 for a direction to the MUDA to acquire the land on behalf of the said society. The said Writ Petition came to be dismissed as withdrawn on 19.1.1998.

23. The approval of the Commissioner overruling the objection when placed before the authority, the authority resolved for a spot inspection of the land on

20.12.1996 which was conducted on 24.1.1997. The authority again passed resolution to give up acquisition of 23 acres and 10 guntas in favour of Siddalingeshwara House Building Co-operative Society. Accordingly a letter was addressed on 19.8.1997 with a request to issue a final notification u/s 19(1). The final notification thereafter was issued on 9.2.1998. Subsequently, another Writ Petition came to be filed by Sir M. Vishveshwaraiah House Building Co-operative Society in W.P. 1832/99 which came to be dismissed by the learned Single Judge of this Court on 17.12.1999 and the writ appeal also came to be dismissed subsequently.

24. By a narration of the events stated above, it cannot be said that the delay is not explained. May be during certain periods particularly between 13.11.1992 to 14.10.1993 for a period of about 11 months, it is not explained. But in the long history of events, this unexplained delay of 11 months cannot be viewed so seriously as to declare the proceedings as void. In view of the explanation offered for the delay which I find is satisfactory, the ratio of the decision in SHIMOGA URBAN DEVELOPMENT AUTHORITY'S case has no application to the facts of this case.

25. One other factor that requires to be considered regarding the objection for delay is that petitioners are equally guilty of approaching this Court belatedly and is a case of pot calling the kettle black. The final notification was issued on 9.3.1998. WPs 30059-61/00 is filed on 8.9.2000, more than 2 years and 5 months. Petitioners cannot plead ignorance of the notification because admittedly they were parties to the Writ Petition WP 1832/99 filed by the society which was disposed of on 17.12.1999. No explanation is offered even after being made aware of the notification, why they choose to kept quite for such a long time. In acquisition proceedings, challenge to the notification after two and half years is certainly fatal more so, when developmental work is involved. No other point has been urged. I do not find any merit in these petitions.

26. Petitions are dismissed. No costs.