
(1997) 02 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No"s. 18458/90 and 19160/90

Sri A. Thippaiah by his LR"s

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 15
Land Acquisition Act, 1894 — Section 3 (f), 3 (f) (iii), 4 (1), 6 (1)

Citation : AIR 1998 Kar 70 : (1997) ILR (Kar) 1391 : (1997) 4 KarLJ 225

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : K. Raghavendra Rao, for the Appellant; K.P. Ashok Kumar, G.A. for R-1 to R-3 and Basavaraj Kareddy, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—The petitioner are the owners of the certain extent of lands situated at Bellary. The said lands were proposed for acquisition in a preliminary notification dated 17.7.1989 issued u/s 4(1) of the Land Acquisition Act (hereinafter called L.A. Act). The said notification was followed by a final notification dated 22.8.1990 issued u/s 6(1) of the Act. These two notifications have been challenged by the petitioners in these Writ Petitions.

2. Learned Counsel for petitioners contended that under the Karnataka Urban Development Authorities Act, 1987, (hereinafter called U.D.A. Act) the 4th respondent Bellary Urban Development Authority may initiate the proceedings for acquisition of the land for the purpose of implementing the development schemes framed by it and when such being the case it is not appropriate for the State Government to initiate the proceedings under the provisions of the Land Acquisition Act for the purpose of formation of sites by the Urban Development Board.

In order to appreciate the above contention it is useful to refer to certain facts of the case. In the instant case, the State Government issued the notifications

under the Land Acquisition Act for the purpose of distribution of the sites by the Bellary Urban Development Authority. This notification is called in question by the petitioners in these petitions on the ground that the Government has no power to acquire the land under the provisions of the L.A. Act, where there is a specific enactment called U.D.A. Act, under which the State Government may acquire the land for the purpose of implementing the development schemes. In order to consider the same, it is necessary to refer to certain provisions of the L.A. Act. Section 3(f) defines the public purpose. Section 3(f)(iii) reads as follows:-

"the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;"

Section 3(f)(vii) reads as follows:-

"the provision of land for any other scheme for development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;"

The reading of the above said Sections it is dear, that any acquisition of land for the above said purpose is a public purpose. In the instant case, the land was proposed for acquisition for the purpose of formation of sites with a view to implement the scheme sponsored by the Government through the Urban Development Authority. Therefore, it is a public purpose.

3. Section 15 of the Karnataka Urban Development Authorities Act, 1987 confers the powers on the authority to undertake works and incur expenditure for development, etc. Sub-section (1) of Section 15 provides that the authority may draw up detailed scheme for the development of the Urban Area. Sub-section (2) provides that the authority may also from time to time take up any new or additional development schemes. Sub-section (3) of Section 15 reads as follows:-

"Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems fit 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."

The reading of the above Section, it is dear that the authority may not only execute the scheme framed by it, but also undertake any of the schemes as required by the State Government. In the case on hand, the Government proposed for acquisition of land requiring the said land for the purpose of implementing the developmental scheme sponsored by the State Government through the 4th respondent which is a public purpose under the provisions of the L.A. Act. Therefore, it is permissible under the provisions of the L.A. Act to acquire the land for the purpose of getting scheme implemented through the Urban Development Authority, as the said Authority is constituted not only to implement the scheme framed by it but also to execute the scheme entrusted to

it by the State Government.

4. Learned Counsel for petitioner relied on the following decisions:-

- i) Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, .;
- ii) B.T. Sakku Vs. The Commissioner, Bangalore Development Authority, Bangalore and Another, .
- iii) The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, .
- iv) HANUMANTHAPPA v. STATE OF KARNATAKA ILR 1987 Pg 3024;

v) Y. Mahesh Vs. Mysore Urban Development Authority, , in support of his contention that when there is a specific procedure under the Urban Development Authorities Act, for acquisition of the Land the said procedure are required to be followed as the Scheme is required to be implemented by the U.D. Authority. It is true that the Scheme is required to be implemented by the U.D. Authority, under the Scheme of the U.D.A. Act, the Authority is constituted, as stated earlier, not only to implement its Scheme but also to execute the scheme entrusted to it. In the instant case, land was notified for acquisition under the Land Acquisition Act. Therefore the procedures prescribed under the said Act are required to be followed. It is not the case of the petitioners that the procedure prescribed under the L.A. Act for the purpose of acquisition of land has not been followed. Therefore, the above said decisions are not applicable to the facts of these cases.

5. The Supreme Court in Case of Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, , has held that the amendment introduced cannot take away or exclude the provisions of Land Acquisition Act, such as Section 4, 6, 50 etc. for the purpose of acquisition of Trust. In view of this decision, I am of the opinion that there is no substance in the contention of the petitioner.

6. In these Writ Petitions, the Learned Counsel for petitioner submitted that they have filed objections to the proposed acquisition of land pursuant to the preliminary notification; thereafter the Land Acquisition Officer without affording any opportunity of hearing to the petitioners submitted the report to the State Government u/s 51 of the Act. The State Government on the basis of the said report, issued the final notification u/s 6(1) of the L.A. Act; which according to the petitioners is illegal. In order to ascertain whether the Land Acquisition Officer has afforded opportunity of hearing to the petitioner pursuant to the objections filed by them, I called upon the Learned Government Pleader, to produce the records, Accordingly the G.A. produced the records to the Court. From the records, it is seen that on 25.10.1989, the advocate for the petitioners has filed his written arguments and thereafter it was adjourned to 8.11.89 to produce certain documents. On 8.11.1989, no proceedings have been taken place. This shows that there is nothing on records to show that the petitioners were heard pursuant to their objections. Learned Counsel for the Board submitted that the petitioners were heard by the Land Acquisition Officer. This

argument cannot be accepted because from the records produced by the Learned Government Advocate, nothing is available to show that the petitioners were heard by the Land Acquisition Officer. Under these circumstances, the final notification issued u/s 6(1) of the Act is liable to be quashed. Accordingly, I pass the following Order:

ORDER

The Writ Petitions are allowed. The final notification dated 22.8.1990 is quashed in so far as it relates to the lands of the petitioners reserving liberty to proceed with the acquisition after affording opportunity of hearing to the petitioners on the objection filed by the petitioners pursuant to the preliminary Notification issued u/s 4(1) of the Act.