
(2003) 06 KAR CK 0079

In the Karnataka High Court

Case No : Writ Appeal No's. 5186 and 5187 of 1998

Thimmappa and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 39, 4 (1), 42, 5 A, 6

Citation : (2003) 6 KarLJ 5 : (2003) 3 KCCR 2247

Hon'ble Judges : Kumar Rajaratnam, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : B.T. Parthasarathy, for the Appellant; Government Advocate for Respondents 1 to 3; C.R. Goulay, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

1. These writ appeals are taken up for final disposal with the consent of the learned Counsels appearing on both sides.

2. The appellants are landowners. They filed the writ petitions before the learned Single Judge seeking to quash Section 4(1). Preliminary notification and the final notification u/s 6(1) under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). The learned Single Judge dismissed the writ petitions filed by the petitioners. Aggrieved by the order of the learned Single Judge, the petitioners are the appellants before this Court.

3. The facts are briefly set out herein.-

A preliminary notification u/s 4(1) of the Act was issued on 17-12-1992 and published in the Chavadi on 23-1-1993. The final notification u/s 6(1) of the Act was issued on 22-1-1994 and an award was passed on 25-5-1994. Possession of the land was taken by the State Government on 16-7-1994. The writ petitions were filed before the learned Single Judge on 26-9-1994.

4. Out of a large extent of land, measuring about 7 acres of land, the first

appellant sought for quashing of the notification with respect to 29 guntas of land. The second appellant sought for quashing of his 1/4th undivided share out of the acquired land of 27 guntas of land. As far as the 2nd appellant is concerned, other than the second appellant the other brothers in the joint family have accepted the compensation in L.A.C. No. 325/92-93.

5. In effect, the proceedings are sought to be quashed by the appellants only to a small portion of the land that was acquired u/s 4(1) of the Act dated 17-12-1992.

6. However, this will not come in the way of the petitioners challenging the acquisition insofar as the lands that are owned by the appellants and we are bound to meet the submissions made by Mr. B.T. Parthasarathy, learned Senior Counsel.

7. The main and perhaps the only thrust of the submission of the learned Senior Counsel was that the land that was not acquired under Part II of the Act, but under Part VII. Part VII deals with acquisition of land for Companies. It was submitted by Mr. Parthasarathy that if the lands were acquired by the State Government under Part VII of the Act for the benefit of a Company, then the procedure contemplated under Sections 39 to 42 of the Act will have to be complied with read with the Karnataka Land Acquisition (Companies) Rules, 1973. Mr. Parthasarathy, learned Senior Counsel, for the appellants submitted that respondent 4 is a Society pioneering work in the field of education, particularly, among scheduled castes, scheduled tribes, other backward and rural people. The appellants have no quarrel with the bona fide of 4th respondent-Society. In fact, they pay compliment in the writ petitions to the pioneering work done by respondent 4-Society. The grievance of the appellants was that respondent 4-Society was acquiring Government and other lands while most of the lands are unutilised. It was submitted that in 1991, 197 acres 23 guntas of land were acquired for the benefit of 4th respondent-Society for the Medical College, Hospital, Hostels and related requirements. Therefore, it was vehemently submitted that the acquisition by the State Government for the benefit of 4th respondent-Society was at the expense of landowners and a colourable exercise of power by the State Government to favour 4th respondent-Society.

8. In these writ petitions, we are not concerned with the adequacy or inadequacy of lands that were acquired for the benefit of 4th respondent-Society. We are primarily concerned with the legal submissions made on behalf of the appellants. As stated earlier, the submission was that the land was acquired under the provisions of Part VII of the Act and the Karnataka Land Acquisition (Companies) Rules, 1973 (hereinafter referred to as the "Companies Rules") was not adhered to by the respondents. To enforce this submission, the learned Counsel took us through Section 4(1) notification issued in these cases dated 17-12-1992, and published in Chavadi on 23-1-1993.

9. We shall extract the preamble of the notification which reads as follows.-

"Notification No. LAQ SR 41/92-93, dated 17-10-1992.-

The Deputy Commissioner, Tumkur District, Tumkur, revealed the matter in respect of the lands as mentioned in the Schedule of the notification may be required for public purpose i.e., the construction of Staff Quarters of Medical College and Hospital Employees run by Sri Siddartha Education Society and the Government of Karnataka has granted the said proposal on 24-6-1992 under the provisions of Land Acquisition (Company) Rules, 1973 in G.O. No. RD 81 LAQ 92. . . .".

(emphasis supplied)

It was submitted that the last three lines extracted above would indicate that the acquisition was under the provisions of the Companies Rules. Taking the argument one step further, it was submitted that if the acquisition was under Part VII of the Act, then it was not under Part II of the Act which deals with acquisition for any public purpose. It was further submitted that admittedly, the procedure contemplated under Part VII read with Companies Rules was not complied with and, therefore, the acquisition was bad in law.

10. We shall examine this aspect of the matter in some detail. The Act defines "public purpose" u/s 3(f). The "public purpose" includes acquisition on behalf of a Co-operative Society provided the purpose of acquisition is, educational, housing; health or slum clearance.

11. Section 3(f)(vi) reads.-

"The expression public purpose" includes-

xxx xxx xxx (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State".

Admittedly, the beneficiary respondent 4 herein is a society registered under the Societies Registration Act. It is also a registered Educational Institution. The acquisition is for the purpose of building quarters for emergency staff like Laboratory Technicians, X-ray Technicians, Pharmacists, Operation Theatre Nurses, Scanning Staff, Casualty Staff, Drivers, Receptionists, Blood Bank Staff, etc., who are required to be called immediately for the purpose of attending to their duties. The land was also required for establishing a school for the children of the staff of the Institute.

12. Section 4(1) notification refers to the fact that the land sought to be acquired

is required for "public purpose" i.e., construction of Staff Quarters of Medical College and Hospital Employees run by Sri Siddhartha Education Society. This is made clear, on a perusal of Section 4(1) notification, at Annexure-C. The reading of Section 3(f)(vi) would indicate that if the land is to be acquired by a society registered under the Societies Registration Act, it would require the prior approval of the appropriate Government. In other words, even if acquisition was for a public purpose, there should be prior approval of the appropriate Government when the land is required for the benefit of a Local Authority, or a Society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State or a Co-operative Society within the meaning of any law relating to Co-operative Societies for the time being in force in any State. Section 3(f)(vi) appears to make it clear that there should be prior approval of the appropriate Government if the land is to be acquired for the benefit of a registered society for the purpose of carrying out any educational, housing, health scheme even if it is for public purpose.

13. Apart from Part n which deals with public purpose Part VII deals with acquisition of land for Companies. "Company" u/s 3(e)(ii) includes the Society registered under the Societies Registration Act, 1860. Therefore, there is no difficulty in holding that the provision under Part VII with respect to acquisition of land for companies would include acquisition of land on behalf of a society. It is not necessary to elaborately deal with acquisition under Part VII. Briefly stated, if the acquisition is under Part VII for the benefit of a Company (including society) there should be prior approval of the appropriate Government and there should be an execution of the agreement with the beneficiary and there should also be an enquiry as contemplated u/s 40 of the Act. In other words, a pre-condition is, that there should be an agreement between the company and the appropriate Government u/s 41 and that agreement should be published u/s 42 of the Act. This procedure was not admittedly followed in these cases.

14. The contention of the State was that acquisition was for a public purpose under Part II of the Act. It is also not disputed by Mr. B.T. Parthasarathy that if Part II applies the procedure followed by the State cannot be faulted with. Section 4(1) notification at Annexure-C briefly mentions that the Government has granted the proposal on 24-6-1992 under the provisions of Land Acquisition (Company) Rules, 1973.

15. The only question to be answered by this Court is whether by a mere mention of the reference to the Company Rules, 1973 would make the acquisition proceedings non est because Part II of the Act was followed and not for Part VII.

15-A. It is possible to understand that the reference to the Company Rules in Section 4(1) notification arose because of procedure that was to be followed u/s 3(f)(vi). u/s 3(f)(vi) even if a land is acquired on behalf of the society for a public purpose, the prior approval of the State Government was required. It is perhaps only in that context a reference was made to the Company Rules in

Section 4(1) notification. Other than this brief reference to Company Rules, the entire proceedings proceeded under Part II and not under Part VII.

16. The Supreme Court in the case of State Government Houseless Harijan Employees' Association v. State of Karnataka and Ors. AIR 2001 SC 437 : AIR 2001 SCW 27 : (2001)1 SCC 610 in more or less similar circumstances held that it is possible that even if the original acquisition commenced under Part VII it can be continued under Part II if the acquisition was being made for a public purpose. The Supreme Court has pronounced as follows.-

"It was pursuant to this directive that enquiries were held and the District and State Level Committees enquired into and verified the appellant's ease before recommending it. The material was relevant not only to the question of public purpose u/s 4 but could also form the basis of an approval u/s 3(f)(vi). It is not disputed that the material was considered when the second and the third notifications u/s 4(1) were issued and both these notifications clearly state that the acquisition was being made for a public purpose and not under Part VII of the Act. Therefore, even if the acquisition was originally commenced under Part VII it was continued under Part II. A converse situation occurred in Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, where although the notification u/s 4(1) was issued for a public purpose, the declaration u/s 6 showed that it was under Part VII. The declaration clearly referred to the inquiry made under Rule 4 of the Land Acquisition (Companies) Rules, 1963 and the agreement entered into between the appellant-Society and the State. Moreover, it was not pleaded by the State before the High Court that the acquisition was for a public purpose and not under Chapter VII of the Act. Therefore, it was held that it was not open to the Counsel for the State to raise a contention which was contrary to the case pleaded before the High Court.

In this case the earlier notifications were not cancelled nor is there any question of any agreement u/s 41 being superseded by another. No further steps could be taken on the earlier notifications only because of administrative delay which crossed the period of limitation provided u/s 6(1-A). While the proceedings u/s 4(1) may come to an end as a matter of law, it does not mean that the material on the basis of which the earlier notification was issued ceased to exist as a matter of fact.

Section 4(1) read with Section 3(f)(vi) of the Act indicates that there are two separate functions to be performed by the State Government. u/s 4(1) it must prima facie come to the conclusion that the land proposed to be acquired is required for a public purpose and u/s 3(f)(vi) such tentative conclusion must be coupled with specific approval to acquire the land for the purposes specified for the benefit of the registered society or co-operative society, as the case may be. The Act does not specify the material on which either the tentative conclusion to Section 4(1) or approval u/s 3(f)(vi) are to be based. In Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, it was held that the view of the Government that land is needed either for public purpose or for a

company may be based either on independent enquiry or from resorts and information received by the Government or even from an application by the company concerned. The same sources may provide information for granting prior approval u/s 3(f)(vi). There is no prohibition on the State Government acting on the basis of material already on record provided the material is sufficient, relevant and genuine. The material in this case although collected prior to the issuance of the second notification was all this and according to the letter of approval, the matter was "minutely examined" by the State Government in consultation with the Law Department before granting the approval for the third and final notification in 1991.

The final submission of the owner/respondents was that the present acquisition was in fact being made under Part VII and that none of the provisions in Part VII had been followed.

The third notification *ex facie* states that it was issued for public purposes under Part II of the Act. The finding of the learned Single Judge also was: "It is clear that the acquisition proceedings are initiated under Part II of the Act and not under Part VII of the Act". Furthermore, the only stumbling-block raised by the respondent-owners all along was the issue of the applicability of Section 3(f)(vi) only because the acquisition was under Part II. It was commenced and continued as such. The respondent's argument that the procedure followed was a hybrid procedure of Part II and Part VII, therefore, is erroneous".

This is a clear authority to hold that for the proposition that merely mentioning the Company Rules in Section 4(1) notification of the Act cannot be the sole criteria to hold that the proceedings are under Part VII. Ultimately, what matters is whether the proceedings is for a public purpose and farther whether the Enquiry u/s 5-A and the declaration u/s 6 of the Act is for a public purpose under Part II. A mere mention of the Company Rules u/s 4(1) notification could be for the purpose of getting prior sanction and not for the purpose of acquisition under Part VII.

17. A perusal of the final notification indicates that the acquisition was for a "public purpose" and, therefore, the proceedings are clearly under Part II and not Part VII.

18. The Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, pronounced as follows.-

"It is well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash

the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches".

19. The Supreme Court in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, pronounced as follows.-

"Striking down any act for mala fide exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. Even so, we will examine the merits of the contention here from the point of view of the serious factors placed for our consideration".

A perusal of the records clearly indicates that Section 4(1) notification and Section 6(1) and (3) declarations of the Act are for a public purpose.

20. It was submitted by Mr. Goulay that with regard to the appellant in Writ Appeal No. 5187 of 1998, the joint award and acquisition cannot be challenged by one in respect of his portion which is undivided, the award becomes final (*The State of Punjab Vs. Nathu Ram*,).

21. The total extent of land of 7 acres 26 guntas acquired u/s 4(1) notification of the Act has become final with respect to 7 acres 10 guntas of land.

22. The Supreme Court in *Om Prakash and Another Vs. State of U.P. and Others*, has pronounced that where acquisition is bad in law, the Courts need not interfere with the acquisition proceedings when only 1/10th of the land was subject to challenge. The Supreme Court held that it is neither advisable nor feasible to interfere with the acquisition of large tracts of land when the occupants of 9/10th of the acquired lands have not thought it fit to challenge the acquisition proceedings and the occupants of only 1/10th of lands are agitating their grievance. In the present case before us, out of 7 acres 26 guntas of land the acquisition has become final in respect of 6 acres 10 guntas of land. Looking at from any angle, there is no merit in these writ appeals.

23. Sri B.T. Parthasarathy, learned Senior Counsel for the appellants, relied on the judgment of the Supreme Court in *H.M.T. House Building Co-operative Society Vs. Syed Khader and others*, and submitted that the Supreme Court had struck down the acquisition on the ground that there was no prior approval of the appropriate Government.

24. That was a case where the State had not granted prior approval u/s 3(f)(vi) of the Act to the Housing Scheme in question and the power under Sections 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the middleman.

25. In the present case, Sections 4(1) and 6(1) of the Act has been exercised for

a "public purpose" and on the materials placed before the Court it cannot be said that the acquisition proceedings were under Part VII of the Act. No other submissions were made before this Court.

26. Accordingly, these writ appeals are dismissed. No costs.

27. The appellants, if they so desire, may seek a reference before the competent Civil Court u/s 18 of the Land Acquisition Act, 1894 within a period of one month from the date of receipt of this judgment.