
(2010) 10 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 3758 of 2008

Veerappa Thimmaiah

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

National Highways Act, 1956 — Section 3 (1), 3 A, 3 C

Citation : (2010) 10 KAR CK 0003

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H.C. Shivaramu, for the Appellant; Syeda Shehnaz, ACGSC for R1, Shilpa Shah, for Singhanian and Partners for R2, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Public authorities, statutory authorities, administrative authorities in this country think they are law unto themselves; they come before court in answer to the notices issued in the writ petitions wherein the aggrieved persons/citizens of the country file petitions seeking for judicial review of administrative action only to claim to be immune from scrutiny and examination, on the bogey of some action having been taken based on some expert advice or on some technical advice.

2. The present writ petition is one such case, where the writ Petitioner, owner of a land and building located in the vicinity of national highway No 48 at Madigundanahalli, Kudur hobli, Magadi taluk, Ramanagaram district, is complaining that considerable extent of his land and building, in all measuring about 1416 sq.mtrs spread over two survey numbers viz., Sy No 37/2D and 37/2E, have been notified for acquisition by the central government for the benefit of national highways authorities under the provisions of National Highways Act, 1956 [for short, the Act), but the proceedings have taken place in a haphazard, arbitrary, whimsical and even prejudicial manner to the Petitioner, to the detriment of the Petitioner and has therefore sought for the following relief:

- i) issue a writ of certiorari or writ or order or direction to quash the notification No. SO 1835 (E) dated 26.10.2007 issued by the first Respondent published in the Gazette Extraordinary dated 26.10.2007 at Annexure - H in so far as the Petitioner's land in Sy. No. 37/2D and 37/2E concerned; and
- ii) issue any other appropriate writ or order or direction deemed fit in the circumstances including payment of cost

Contending that while it is always open to the public authorities to take up public causes including widening and improving of national highways, which, the Respondents claim is part of national highways development project but at the same time it should be done in a manner contemplated by law, in a fair and non-arbitrary manner, but action taken by the Respondents in the present case is arbitrary, whimsical, outright, biased against the Petitioner, to the detriment of the Petitioner and therefore the Petitioner has come before this Court for relief.

3. Notices had been issued to the Respondents and subsequently M/s. Singhanian & Partners, have entered appearance for the highways authority, whereas the first Respondent-union of India though is represented by Sri Syeda Shehnaz, Addl Central Govt Standing Counsel, none has appeared before the court today for first Respondent.

4. Statement of objections has been filed on behalf of the second Respondent contending that the acquisition of part of land and building belonging to the Petitioner is for the purpose of widening of existing highway into a four-lane highway from KM 28.00 to KM 110 on NH48 [Nelamangala to Hassan section]: that the ministry of shipping, road transport and highways is concerned with this project and had caused acquisition proceedings exercising the power under Sub-section (1) Section 3 of the Act by issue of notification dated 17-11-2006, declaring its intention to acquire the land mentioned in the schedule to the notification; that it has been duly notified, objections invited, objectors heard and acquisition proceedings processed and finalized; that the petition averments are incorrect, perverse, without substance; that the project of widening the road is being carried on in consonance with the parameters set by the Indian Road Congress and the detailed project report has been prepared by a team of experts and consultants, keeping in view the geometric viz., vertical and horizontal curves, topography of area and design, speed etc; that all technical details have been kept in mind; that while it is a fact that the Petitioner had filed his objections to the proposal, the Petitioner has been heard, but his objections have been rejected by the special land acquisition officer and thereafter acquisition proceedings have been finalized and the project manager of the highways authority has passed an order disallowing the objections; that thereafter, acquisition proceedings have been finalized; that the allegation of the Petitioner that the road takes a deliberate curve at the place where the Petitioner's land and building is located, is incorrect; that the alignment of road and the curves are all keeping in view the need for the widening the road and straightening the road; that a copy of the alignment plan of the highway at that plot, produced at

Annexure-RI to the statement of objections, is testimony of the Respondents conduct and action to develop the proposed four-lane of the highway, keeping in mind the geometry of the road for the purpose of widening and also to ensure the improvement of horizontal curves and minimizing the curves wherever it is inevitable etc., in terms of para-5 of the statement of objections, reading as under:

5. Paragraph 9 to 11: The allegations made by the Petitioner is perverse and without any substance. It is submitted that the alignment of the proposed 4-lane carriageway has been decided as per the parameters laid down by Indian Road Congress and on the Detailed Project Report prepared by team of Expert Consultants keeping in view geometries viz, vertical & horizontal curves, gradient, topography of area and design speed etc. Further in order to avoid minimize wastage of existing carriageway, the proposed 4-lane is designed in such a way that the existing 2-lane carriageway is retained to the extent feasible and additional 2-lane carriageway is constructed. In accordance with the same, the existing carriageway has been retained and the new carriageway has been proposed on the left hand side of existing carriageway with a median of 4.5 m. It is submitted that the acquisition of the properties as notified in 3-D notification is inevitable for the proposed Right of Way of 60m. It is further submitted that the existing road is serpentine with five horizontal curves within a distance of one kilometer. Under the proposed 4-laning of the highway the geometry of the road is also being improved by appropriately positioning the new carriageway so as to minimize or improve the horizontal curves. The copy of the alignment plan of the national highway at this stretch is produced herewith and marked as Annexure-RI

It is, therefore, prayed for dismissal of the petition, as the petition is without merit etc.

5. To the statement of objections, a supplementary memo for placing on record copies of the following six documents is appended:

1. Objections filed by the Petitioner before the Asst Commissioner and Competent Authority.
2. Notice u/s 3C for hearing of the objections.
3. Minutes of the hearing by Asst. Commissioner and Competent Authority.
4. NHAI's letter in response to the Petitioner's objection.
5. Order passed by the Asst. Commissioner and Competent Authority.
6. Consolidated report by the Asst Commissioner and Competent Authority after publication of notification u/s 3A and hearing of objections u/s 3C of NH Act
6. I have heard Sri H.C. Shivaramu, learned Counsel for the Petitioner and Ms. Smt Shilpa Shah, learned Counsel for second Respondent, perused the petition pleadings, statement of objections and the annexures appended to the petition as well as the documents produced along with the memo.

7. Submission of learned Counsel for the Petitioner is that the Petitioner had pointed out at the earliest point of time and even before the special land acquisition officer by filing his written objections [[copy at Annexure-D to the writ petition], which is also produced as document along with the memo of documents placed by the second Respondent before the court, and has drawn my specification attention to the factum of the proposed widening and straightening all the curves being not exactly achieved by the intended action taken by the Respondents, particularly in getting deeper into the property of the Petitioner on the left hand side of the road as one proceeds from Nagamangala to Hassan and has submitted that the proposed action instead of either straightening a curve or minimizing a curve, has only resulted in deepening the curve, by deliberately extending the curve into the property of the Petitioner; that it is being done, only due to political rivalry that exists between the Petitioner, a person having lineage towards a political party, which is opposed to the party in governance at the relevant point of time, which controls the Respondent-authority; that the biased and mala fide action is very obvious on the face of the record, as even when there was a possibility to straighten the road at the particular place, the curve is deepened to the utmost detriment of the Petitioner; that such action will result in not only acquiring considerably more than the required extent of Petitioner's land, but also will result in demolition of a choultry/kalyana mantap constructed by the Petitioner for the benefit and welfare of the people of the surrounding villages; that it will also result in considerable financial loss to the Petitioner etc., but instead of avoiding the unnecessary acquisition of land only to enhance the curve, it would have been proper and even easier for the authority to straighten the road at that point and if need be, should acquire the land on the other side of the road, but acquisition of the land on the left side of the road at that spot where the Petitioner's land and kalyana mantap is situated is being deliberately done to harm the interest of the Petitioner.

8. In this regard, learned Counsel for the Petitioner has drawn my attention to the following portion of the objections placed before the special land acquisition officer:

It is learnt from the civil engineering faculty that while widening any road, the normal principle adopted is to measure the extent of widening from the middle of the road so that the aggrieved persons do not accuse of any favoritism or arbitrariness in the process of acquisition. However, in the present acquisition, an extent of 200 feet is acquired on the southern side of the road while an extent of 50 feet is proposed to be acquired on the northern side of the road. You are informed that my building lies within the southern margin while there are no buildings within the northern margin. Thus there is no justification for the acquisition to be mode disproportionately and this has resulted in unwanted curves, bends in the proposed road.

9. learned Counsel for the Petitioner would submit that the manner in which the power available under the provisions of the Act is used rather misused for

drawing plans by the so-called experts, only betrays the faulty and mala fide manner of functioning of the Respondents, not only in the matter of exercise of statutory powers under the Act but also in the matter of drawing and preparation of plan, particularly for preparing plan drawings at the place where the Petitioner's land is located and lying in between the stretch of the national highway from KM 49.474 to KM 50, clearly indicates that the proposed plan and sketch is faulty; that even a layperson can observe that the road which could have been otherwise proceeded straight has unnecessarily taken a left leap and curve at that point; that the mala fide action is writ large on the face of the record and therefore the action taken by the authority for exercising power for acquisition of land in between this stretch is vitiated by arbitrary manner of exercise of power and for the purpose not envisaged with the object and intention of the notification for acquisition and deserves to be quashed.

10. It is also submitted by pointing to the record, particularly document No 3 - minutes of hearing by the competent authority, wherein, according to the learned Counsel for the Petitioner, the special land acquisition officer himself had opined as under:

27-1-2007 Case called

Petitioner present Z.P. member Advocate R.M. presents (sic). Objections filed. Needs second thought for alignment of road. His choultry constructed spending 1.5 crores. Land of 7 lakhs. If road alignment is altered it would same (sic) choultry. There is bend which can be straightened.

Filed objections.

Sd/- Veerappa. G.S. Nayak

Sd/- S.L.A.O. Veerappa. G.S. Nayak

11. Based on this noting, submission of Sri Shivaramu, learned Counsel for the Petitioner is that the special land acquisition officer himself had opined that the stretch of the road involves a bend at the spot and that can be straightened etc. It is also submitted that even while the acquiring authority was prepared for putting corrective measures, it is the very strong objection filed on behalf of the national highway authority by its project director, which had resulted in the rejection order as under:

03-04-07

Heard the objection. The project director NHAI in his letter dated 14-3-2007 has replied that the acquisition of land is based on alignment of proposed 4-laning of NH-48 and the land notified is essential for the project and hence cannot be dropped from acquisition. Hence the requested of the Applicant cannot be considered [sic].

The objection is disallowed.

Sd/- Special Land Acquisition Officer and Competent Authority, NH-48, Nelamangala-Hassan Section, Kunigal, Tumkur District

This order is again vitiated etc., and further acquisition proceedings based on such order is defective and deserves to be quashed.

12. Appearing on behalf of the second Respondent-authority, Ms Shilpa Shah, learned Counsel, has very vehemently submitted that the project is at a very advanced stage; that 80% of the work has already been completed as on date; that though this is not reflected in the statement of objections that had been filed earlier, the present position is asserted through the memo placed before the court today and as indicated by Sri Jwala kumar, project director, who is present before the court and who has been brought before the court by the authority for explaining the technical aspects of the project etc; that there is absolutely nothing wrong with the acquisition proceedings; that every procedure is meticulously followed:

that convenience or inconvenience to a land owner whose land or building may be located on the highway or in the vicinity of the highway or on the sidelines of the highway, which is required for a developmental purpose, cannot be a consideration in determining the legality or otherwise of the acquisition proceedings; that the entire project has been finalized on obtaining able expert guidance and advice; that when once the validity of the acquisition proceedings are not found wanting, there is no scope for the courts to interfere with the manner of implementation of the project and courts cannot sit in judgment over the decisions of experts and technical persons; that drawing up of road plan etc., have all been done in consultation with the technical experts and there is no scope for interference by courts in a matter of this nature; that the allegation of mala fide is not made good by impleading necessary persons by names, no particular averment or allegation of mala fide is levelled against any particular person in the petition and in this view of the matter, the writ petition deserves to be dismissed; that the petition is more an impediment for development work rather than espousing any legitimate cause or grievance of the Petitioner; that it is without merit, frivolous and deserves to be dismissed.

13. In support of the submissions, learned Counsel for second Respondent has placed reliance on the judgment of the Supreme Court in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, to submit that in terms of the ratio of this judgment, there is no scope for the court to interfere with a matter of this nature. learned Counsel has placed a strong reliance on the observation contained in para-10 of the judgment, reading as under:

10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with

China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 -indeed any of their discretionary powers. It may even be open to the High Court to direct in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interest. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings.

14. Original record is also placed before the court, indicating the plan, alignment and design of the road in respect of a stretch of NH48 lying in between KM 49.474 to KM 50. With reference to the sketch and plan, it is very vehemently asserted by Ms. Shilpa Shah, learned Counsel for second Respondent that the curve of the road at that point is very necessary and it sub-serves the purposes of an overall project and such assertion is also sought to be bolstered by the version of Sri Jwala Kumar, Project Manager, who, it is claimed is an executive engineer and a technical person, to submit that mere straightening of a possible curve of the road at a particular point i.e. stretch of NH48 lying in between KM 49.474 to KM 50 is not the thing, but the entire plan and drawings one is required to be examined in a comprehensive manner; that a curve before this stretch and a curve after this stretch are all required to be kept in mind while deciding the question of straightening a stretch of road and whether to be

aligned, to reduce or avoid the curve at that particular place and as expert opinion is to provide for such a curve at this place, it is being carried out etc.

15. I have also been taken through the original records, plan and the extract of the sketch/plan of the proposed widening of the road, a copy of which is produced at Annexure-F to the writ petition, which in respect of the stretch of NH48 lying in between KM 49.474 to KM 50 of the highway and even on a comparison and combined viewing of these two plans and sketch, it is very obvious even to the naked eye of a layperson that the road is taking a left curve at the point where the Petitioner's property is located and again coming back to a point of the highway at KM 50 stone. Nothing could be easier than having a straight stretch of road in the stretch between KM 49.474 to KM 50, but for reasons not explained and not made good on facts, but sought to be hidden under the so-called technical expertise and expert advice, the curve is sought to be maintained, which, even to my understanding, does not serve any worthwhile purpose, but on the other hand, contrary and diametrically opposed to the object of straightening and reducing curves and assuming that there was a curve earlier in the original highway, while widening, when it is possible to straighten the road between these two kilometer points and should have been attempted and it is this obvious thing which lends credence to the allegation of the Petitioner, which the Petitioner had made at the earliest point of time even while filing his objections before the special land acquisition officer that the road is taking a deliberate left curve at the place the property of the Petitioner is located only to harm the interest of the Petitioner due to political rivalry that has existed between the Petitioner and persons wielding influence with the national highway authorities, due to their political affiliations etc.,

16. Whether such averments and allegations are made good by naming any person or otherwise, legal mala fides are writ large on the face of the record, in the authority persisting in having the road, nay, highway with the curve only so as to ensure that the land of the Petitioner is acquired and the building of the Petitioner is demolished for no cause; for no purpose and for no one's benefit, but only to the detriment of the Petitioner.

17. While, this Court does not sit in appeal over the opinion of any expert nor this Court takes over the administration or the manner of implementation of a project nor is the court concerned with the details of policy making, nor even as to the manner in which the road is to be laid as to in what manner, it should run in whose property, whether the road is to take a curve or a sharp curve or a bend, which are all, as observed by the Supreme Court, are matters best left to experts and persons conversant with such matters and to the administrators, who supervise all such actions, nevertheless, all such action and function upon the administrative side is subjected to judicial review of administrative action and has to necessarily answer the test of fairness and non-arbitrariness in State action, failing which such action is inevitably hit by Article 14 of the Constitution of India.

18. With no worthwhile explanation forthcoming for the retention of the curve at the particular place, but on the face of it, such a retention being to the detriment and agony of the Petitioner and though the Petitioner has been making persistent efforts to instill a sense of fairness and proper action to be taken on the part of the authority, that having failed, the Petitioner has approached this Court.

19. this Court, acting as a guardian of rights of citizens, having a constitutional mandate to protect the rights and liberty of citizens, has a duty to perform to rein in muscle flexing administrative authorities, particularly when abuse and misuse of power is sought to be camouflaged the so-called technical expertise or guidance and even otherwise and to ensure that public authorities, public administrators and statutory functionaries always act only in consonance with statutory provisions, exercise such statutory powers and administrative powers in a fair, non-arbitrary manner; that they do not misuse or abuse their power to favour one and to victimize another person and ultimately to ensure that public authorities always act in the larger public interest, eschewing private and personal interest.

20. Proper exercise and utilization of statutory powers is not the manner of conduct of second Respondent in the present case. Even the special land acquisition officer had occasion to record the need that the road can be straightened and the bend can be straightened and that the curve can be avoided.

21. Though Ms. Shilpa Shah, learned Counsel for second Respondent, seeks to explain this as a recording by the special land acquisition officer of the version of the Petitioner as objector, that will not detract from the recording by the special land acquisition officer, as his signature is found at the end of such recording and it is very much part of the note sheets extract which is placed before the court by the very second Respondent, in fact, it is thereafter, the very officer has passed orders subsequently, rejecting such objections for the reason that the project director of the national highway authority has strongly pleaded for overlooking the objection, as they have already finalized the plan etc.

22. In this background, even the submission of learned Counsel for second Respondent that the project is in an advanced stage and therefore no interference is warranted, does not carry conviction, as it is not as though the project is going to be affected by taking corrective measures, if an erroneous step had been taken, if an illegal action has been taken, if the power is misused or abused.

23. Even if were to be so, nevertheless, it is the duty of this Court to correct it and to permit only such actions of administrative authorities which are law conforming alone to be permitted to sustain and it is also equally necessary for the authority to realize its mistake and not to keep trudging blindly in the wrong direction, but to head in the right direction, as it is always said "better late than never".

24. The acquisition of land for the purpose of widening NH48 particularly the stretch between KM 49.474 to KM 50 is clearly vitiated by arbitrariness and mala fide exercise of power for such acquisition and the manner in which it is exercised and the authority has projected the so called design and plan, which are on the face of it flawed.

25. Therefore, such proceedings under the impugned notification in respect of the stretch of the highway between KM 49.474 to KM 50 is hereby quashed by issue of a writ of certiorari, but liberty is reserved to the Respondents 1 and 2 to take corrective measure and to go ahead, after proper re notification to subserve the overall object of widening of the road and straightening the curves etc., keeping in view the observations made in this order and by ensuring that the road does not take an unnecessary curve; that it does not take an avoidable curve. The judgment of the Supreme Court, on which reliance is placed by learned Counsel for second Respondent, in no way furthers the case of the second Respondent in the present case, as a judgment and observation of the Supreme Court is not a blanket chit given to a public authority to act in an arbitrary, whimsical and irrational manner. No judgment can save an arbitrary action of a public authority, when it is in violation of Article 14 of the Constitution of India.

26. All courts and authorities in this country function under the powers and authority vested in them under the Constitution and no authority can claim immunity from the operation of the provisions of the Constitution. While it is desirable that our country also requires development, requires to gear up to the levels of global competitors and keep our nation if not in the forefront at least in the company of a forerunner, that cannot be achieved at the cost of trampling of the rights of the citizens, violating statutory provisions, even violating the constitutional mandate and such action will definitely be frowned upon and voided by courts even in exercise of jurisdiction of judicial review of administrative action. This is one classic case where such power is very necessarily to be exercised and it is accordingly exercised.

27. Writ petition allowed by issuing a writ of certiorari to quash the acquisition proceedings in respect of the stretch of the highway between KM 49.474 to KM 50, reserving liberty as indicated above in favour of second Respondent. Rule made absolute. No order as to costs.