

(1989) 09 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petns. No's. 8719 and 8720 of 1989

Vishwabharathi House Building Co-operative Society Ltd.,
Bangalore and another

APPELLANT

Vs

The Bangalore Development Authority

RESPONDENT

Date of Decision : 23-09-1989

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 15 (1) (a), 35
Land Acquisition Act, 1894 — Section 50 (2)

Citation : AIR 1990 Kar 214 : (1989) 3 KarLJ 434

Hon'ble Judges : N. Venkatachala, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; Shivaraj Patil, for the Respondent

Judgement

1. Did the Bangalore Development Authority ("the Authority") not have jurisdiction under clause (a) of sub-section(1) of S. 15 of the Bangalore Development Authority Act, 1976 ("the Act"), to prepare, frame or draw up a "development scheme" generally called as "improvement scheme" respecting an adjacent area of the "Bangalore Metropolitan Area", is the main point raised for consideration and decision in these writ petitions.

2. As to how and why the said point is raised, warrant the making of a brief antecedent factual statement before referring to the material statutory provisions bearing on that point and considering and deciding upon it.

An area of 1843 acres 6 guntas of land comprised in several Survey Numbers of Uttarahalli, Marasandra, Vaddarapalya, Doddakallasandra, Yelachenahally, Halage-vaderahally, Channasandra, Bikasipura, Vasanthapura and Konanakunte villages is an "adjacent area" of Bangalore Metropolitan Area. In respect of that adjacent area, a development scheme called "Banashankari V Stage Layout" came to be prepared by the Authority in exercise of its powers under clause (a) of sub-section (1) of S. 15 of the Act. After preparation of that "development scheme",

the Authority, it is said, drew up a notification containing, among other matters, (i) a statement that a development scheme had been prepared; (ii) the limits of the area comprised in that scheme and (iii) a specification of the lands comprised in that area proposed for acquisition, as required by subsection (1) of S. 17 of the Act. A copy of that notification, it is also said, was published in the Karnataka Official Gazette dated March 30, 1989, as required by sub-section (3) of S. 17 of the Act. One such publication is, what is produced along with the writ petitions as Annexure-E. Again, an area of 1333 acres 34 guntas of land comprised in several Survey Numbers of Konanakunte, Raghuvanahally, Alahalli, Thippasandra, Doddakallasandra, Arakere, Hulimavu, Vajrahalli and Raghuvanahally villages is an "adjacent area" of the Bangalore Metropolitan Area. In respect of that adjacent area, a "development scheme" called "Jayaprakashnarayan Nagar IX Stage" came to be prepared by the Authority in exercise of its powers under clause (a) of subsection (1) of S. 15 of the Act. After preparation of that development scheme, the Authority, it is said, drew up a notification containing among other matters (i) a statement that a development scheme had been prepared; (ii) the limits of the area comprised in that scheme; and (iii) a specification of the lands comprised in that area proposed for acquisition, as required by sub-section (1) of S. 17 of the Act. A copy of that notification, it is also said, was published in the Karnataka Official Gazette dated January 5, 1989, as required by sub-section (3) of S. 17 of the Act, One such publication is what is produced along with the writ petitions as Annexure-F.

3. Vishwabharathi House Building Cooperative Society Ltd., is the petitioner in writ petition No. 8719 of 1989 which claims to have entered into an agreement with the owners of lands in Survey Nos. 189, 190/1 and 191 of Halagevadeyarahalli village in the "adjacent area" respecting which "Banashan-kari V Stage Lay-out" development scheme is made. B. Krishna Bhat is the petitioner in Writ Petition No. 8720 of 1989, who claims to be the owner of lands in Survey Nos. 217/1A, 217/1B and 255, also of Halagevadeyarahalli village, in the "adjacent area" respecting which "Banashan-kari V Stage Lay-out" development scheme has been prepared. The petitioners have stated that the lands in Survey Nos. 189, 190/1, 191, 217/1A, 217/1B and 255 of Halagevadeyarahalli village, in which they are interested either as intending purchasers or owners, are needed along with other lands of the same village for formation of a private lay-out of their own called "V Phase of Vishwabharathi Housing Complex" and have moved the State Government to acquire those lands for formation of that private lay-out. Since the said lands and other lands of various villagers are included by the Authority in its aforesaid development (improvement) schemes and proposed for their acquisition under the aforesaid notifications, the present writ petitioners, it is said, have filed these writ petitions impugning those notifications not merely as persons who are adversely affected but also as persons acting in the interests of public, that is, of those whose lands are proposed for acquisition.

4. Material statutory provisions bearing on the point which is raised for

consideration and decision for facility of easy reference, could be mentioned here.

Out of the definition clauses in S. 2 of the Act, clause (c) which defines the "Bangalore Development Area" reads :

"(c) "Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify;"

Sub-section (1) of S. 3 of the Act, which provides for constitution of the "Bangalore Development Authority", reads :

"(1) As soon as may be after the date of commencement of this Act, the Government shall, by notification, constitute for the Bangalore Metropolitan Area an Authority to be called the Bangalore Development Authority."

Sub-section (2) of S. 3 of the Act, which provides for acquisition of property by the Authority, reads:

"(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both moveable and Immovable and to contract and shall by the said name sue or be sued."

Section 14 of the Act, which refers not merely to the objects for which the Bangalore Development Authority is constituted but also to the power invested in it for achieving such objections, reads :

"The objects of the Authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of move- able and Immovable property, whether with- in or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto."

(Underlining is mine)

Section 15 of the Act, which empowers the Bangalore Development Authority to undertake works and incur expenditure for development etc., by its sub-section (1), clause (a) thereof, enables that Authority to draw up detailed schemes referable as "development scheme", for the development of the Bangalore Metropolitan Area, thus :

"(1) The Authority may (a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area....."

(Underlining is mine)

Section 16 of the Act dealing with the matters to be provided for in a development scheme made under S. 15, by its sub-section (1), provides for acquisition of land, thus :

"Every development scheme u/s 15 -- (1) shall, within the limits of the area comprised in the scheme, provide for --

(a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme."

Sub-section (1) of S. 17 of the Act, which refers to drawing up of a notification indicating the fact of the development scheme having been made, the limits of the area comprised therein and the lands proposed to be acquired for the scheme, reads :

"(1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a 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 a betterment tax may be levied may be seen at all reasonable hours."

Sub-section (3) of S. 17 of the Act, which provides for publication of the copy of the notification drawn up under sub-section (1), reads :

"(3) The Authority shall also cause a copy of the said notification to be published in three consecutive issues of the Official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's office, the Office of the Corporation and in such other places as the Authority may consider necessary."

Sub-section (5) of S. 17 requires issue of show-cause notice as to why lands proposed to be acquired under sub-section (1) thereof should not be acquired.

Sub-section (1) of S. 18 provides, inter alia, for consideration by the Authority of representations received pursuant to the notices issued under sub-section (5) of S. 17 and for submitting the development scheme with such modification as it may think fit, to the State Government for sanction.

Sub-section (3) provides for consideration of the development scheme submitted under sub-section (1) and grant of its sanction by the Government.

Sub-sections (1) and (3) of Section 19 of the Act dealing with the declaration to be made that a land within the scheme proposed for acquisition is required for a public purpose and of its evidentiary value, read :

"(1) Upon sanction of the scheme, the Government shall publish in the official Gazette declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a

public purpose.

(2) xx xx xx (3) The said declaration shall be conclusive evidence, that the land is needed for public purpose and the Authority shall, upon the publication of the said declaration, proceed to execute the same."

Section 25 of the Act, under its sub-section(1), refers to the power of the Authority to take works for further development of the Bangalore Metropolitan Area, thus :

"(1) Notwithstanding anything contained in any other provision of this Act, the Authority may, with the previous sanction of the Government, take up such works as the Authority considers necessary or desirable for the further development of any area within the Bangalore Metropolitan Area."

Section 35 of the Act, which empowers the Authority to acquire land by agreement, reads :

"Subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, whether situated within or without the Bangalore Metropolitan Areas for the purchase of such land or interest therein for the purpose of this Act."

Section 36 of the Act, which provides for acquisition of land otherwise than by agreement, reads :

"Provisions applicable to the acquisition of land otherwise than by agreement,--

(1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.

(2) For the purpose of sub-section (2) of Section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government u/s 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall upon payment of the cost of the acquisition, and upon the Authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority."

The Preamble to the Act, it may be mentioned, declares that it is an Act made to provide for establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith.

Section 81-B of the Karnataka Town and Country Planning Act, 1961 ("the Planning Act"), reads :

"81-B. Consequences to ensue upon the constitution of the Bangalore

Development Authority,-- Notwithstanding anything contained in this Act, with effect from the date on which the Bangalore Development Authority is constituted under the Bangalore Development Authority Act, 1976, the following consequences shall ensue:--

(i) the Bangalore Development Authority shall be the local planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted;

(ii) the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a local Planning Authority constituted for the Bangalore City.

..... (omitted as unnecessary for present cases).....".

5. The main point shall now be taken up for consideration and decision.

Sub-sections (1) and (3) of S. 17, sub-sec. (5) of S. 17, sub-sections (1) and (3) of S. 18 and sub-sections (1) and (3) of S. 19 of the Act correspond respectively to sub-section (1) of Section 4, sub-section (1), of S. 5A, sub-section (2) of S. 5A, sub-sections (1) and (3) of Section 6 of the Land Acquisition Act, 1894, providing for compulsory acquisition of land for a public purpose from the stage the land is proposed for acquisition for a public purpose to the stage that a declaration made by the State Government that the land is needed for the public purpose shall be regarded as conclusive evidence, if not disputed. In fact, the learned counsel for the petitioners did not dispute the legal position, and very rightly, that the Authority would be acting within its power, if it draws up a notification specifying therein the lands proposed to be acquired for a development scheme prepared by it as provided for under sub-section (1) of S. 17 of the Act and cause a copy of such notification to be published in the official gazette as provided for under sub-section (3) thereof. But, his contention was that the land included in such development scheme, if forms a part of the adjacent area of the Bangalore Metropolitan Area, the development scheme comprised of such adjacent area has to be regarded as that made beyond the powers of the Authority under clause (a) of sub-section (1) of S. 15 of the Act and hence the notifications (Annexures E and F) published proposing the acquisition of lands forming the adjacent area of the Bangalore Metropolitan Area as those comprised in the development schemes, are a nullity. The contention of the learned Counsel for the petitioners, precisely put, was that the Authority though has the power to draw up or prepare a development scheme under clause (a) of sub-section (1) of S. 15 of the Act respecting an area falling within the Bangalore Metropolitan Area, it has not such power under that clause to draw up or prepare a development scheme respecting an area falling outside the Bangalore Metropolitan Area. The Authority, it was his submission, would be acting intra vires its powers under clause (a) of sub-section (1) of S. 15 of the Act if it draws up or prepares a development scheme for an area within the

Bangalore Metropolitan Area, but would be acting ultra vires its powers under that clause, if it draws up or prepares a development scheme for an area outside the Bangalore Metropolitan Area.

On the other hand, it was urged for the Authority that the authority was empowered to draw up or prepare a development scheme clause (a) of sub-section (1) of S. 15 of the Act not merely respecting an area falling within the Bangalore Metropolitan Area, but also respecting an area falling outside it and hence it cannot be said that the land falling outside the Metropolitan Area proposed to be acquired under the impugned notifications had been included by the Authority in the development schemes, ultra vires its powers. It was also urged for the authority that the inclusion of lands lying in the adjacent area of the "Bangalore Metropolitan Area" in the development schemes prepared by it under clause (a) of sub-section (1) of S. 15 of the Act, could also be regarded as that done within the power of the authority, in that, under S. 81-B of the Planning Act, it becomes a local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority was constituted. The endeavour was to show that the Bangalore Development Authority under the Act, which is vested with powers of the Planning Authority under the Planning Act, had jurisdiction to prepare development schemes respecting adjacent areas in which lands proposed to be acquired under the impugned notification are situated.

6. It is true, as could be seen from S. 81-B of the Planning Act, excerpted above, that the Bangalore Development Authority becomes a local Planning Authority. But, it is not necessary in the instant cases to go into the question whether the Authority, as a local Planning Authority, was empowered to prepare development schemes comprised of the adjacent areas of the Bangalore Metropolitan Area specifying the lands of those areas in the impugned notifications as those proposed for acquisition, in that, the Authority could be held to have had power to draw up or prepare development schemes under clause (a) of subsection (1) of S. 15 of the Act respecting lands comprised in the adjacent areas of the Bangalore Metropolitan Area, on the basis of the very provisions of the Act to which I shall advert, presently.

7. Clause (a) of sub-section (1) of S. 15 of the Act, excerpted above, invests the Authority with power to draw up a development scheme for the development of the Bangalore Metropolitan Area, is not merely beyond doubt but is undisputed. The power so invested in the Authority under the clause to draw up a development scheme for the development of the Bangalore Metropolitan Area, according to the learned Counsel for the petitioners, has to be construed as that confined to drawing up of a development scheme respecting lands of an area within the Bangalore Metropolitan Area and not outside such area. He sought to obtain support for such construction by referring to the preamble to the Act,

definition clause (c) relating to "Bangalore Metropolitan Area" in S. 2 of the Act and sub-section (2) of S. 3, Ss. 14, 25(1) and 35 of the Act. Clause (a) of sub-section (1) of S. 15 of the Act, in my view, cannot be construed in the manner sought for by the learned Counsel for the petitioners either on the language of that clause or by obtaining assistance of other provisions of the Act, on which reliance was placed. When the express language of clause (a) of sub-section (1) of S. 15 of the Act enables the Authority to draw up a "development scheme" for the development of the Bangalore Metropolitan Area, to hold that that clause enables the Authority to draw up a "development scheme" for the development within the Bangalore Metropolitan Area will result in regarding the preposition "of" used in the clause, which comprehends development of the Bangalore Metropolitan Area both "within" and "outside" as a preposition which limits the development of the Bangalore Metropolitan Area to an area "within" it. I find no warrant to hold so, by reading down the meaning of the preposition "of" in the clause. In fact, Section 14, which was relied upon by the learned Counsel for the petitioners to read down the preposition "of" in the said clause, instead of warranting such reading down, goes against it. The provision in S. 14 of the Act, which precedes the provision in Section 15, when empowers the Authority to acquire, hold, manage and dispose of the property within or outside the Bangalore Metropolitan Area, to promote and secure the development of Bangalore Metropolitan Area, to hold that the "development scheme, to be drawn up or prepared by the Authority under clause (a) of sub-section (1) of S. 15 of the Act cannot comprise of the area lying outside the Bangalore Metropolitan Area, but has to comprise of only an area (property) lying within the Bangalore Metropolitan Area, would result in giving the preposition "of" in the clause a meaning unwarranted in the context and setting in which the clause is Introduced by the Legislature, the avowed object of which as envisaged in S. 14, is but to empower the Authority to prepare the "development schemes" for the development of the Bangalore Metropolitan Area by acquiring, holding, managing and disposing of the property within or outside the Bangalore Metropolitan Area.

8. Coming to sub-section (1) of S. 16 of the Act, it provides that the "development scheme" to be prepared by the Authority shall specify the limits of the area comprised in the scheme and the lands to be acquired for execution of such scheme. I am unable to find from a perusal of that sub-section anything which would indicate that the area comprised in the scheme cannot cover the adjacent area of the Bangalore Metropolitan Area, that is, the area outside the Bangalore Metropolitan Area, as sought to be pointed out by the learned Counsel for the petitioners. Then, S. 25 of the Act, to which my attention was drawn, no doubt, empowers the Authority to take up works for the further development of an area within the Bangalore Metropolitan Area. If it was really the intention of the Legislature to confine the power of the Authority to draw up a "development scheme" under clause (a) of sub-section (1) of S. 15 of the Act to an area within the Bangalore Metropolitan Area, it would not have been difficult to it to say that the development scheme to be drawn up thereunder should be for an area within

the Bangalore Metropolitan Area, as had been done under sub-section (1) of S. 25 of the Act while referring to further development to be made by the Authority as that to be made within the Bangalore Metropolitan Area. Sub-section (1) of S. 25, therefore, instead of supporting the construction sought to be placed on clause (a) of sub-section (i) of S. 15, by the learned Counsel for the petitioners, goes against such construction. Again, when the definition clause of "Bangalore Metropolitan Area, in Section 2 of the Act, to which also my attention was drawn, gives the meaning of such Bangalore Metropolitan Area as such other areas adjacent to the Bangalore Metropolitan Area; as the Government may, from time to time by notification, specify, the same cannot, in my view, have the effect of excluding such adjacent areas from being included in a "development scheme" envisaged in clause (a) of sub section (1) of S. 15 of the Act, as sought to be made out. The provision, in the definition clause relating to the notification to be issued by the Government respecting the adjacent areas of the Bangalore Metropolitan Area to be included in the Bangalore Metropolitan Area, as I find it, is a power exercisable by the Government subsequent to the implementation of the development scheme drawn up by the Authority and not the one, the recourse to which has to be had by the Authority, even before a "development scheme" is drawn by it. Further, S. 35 of the Act, which empowers the Authority to enter into an agreement with the owner of any land or interest, whether situated within or without the Bangalore Metropolitan Area for the purchase of such land or interest therein for the purpose of the Act, cannot in any way affect the power of the Authority to acquire such land or interest therein in accordance with the provisions of the Act providing for compulsory acquisition, to which I have already adverted. Indeed, sub-section (1) of S. 36 of the Act declaring that the acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894, read with the provision in sub-section (2) of S. 3 of the Act empowering the Authority to acquire the property, would clearly indicate that the provisions of the Act relating to the acquisition of land within or without the Bangalore Metropolitan Area could be availed of by the Authority for the purpose of the Act. However, I am unable to find anything in S. 35 of the Act which would show that the power of the Authority in drawing up a development scheme should not include the area or lands outside the Bangalore Metropolitan Area. Moreover, the preamble to the Act, which was also relied upon by the learned Counsel for the petitioners to support the restricted construction which he wanted me to place on clause (a) of sub-section (1) of S. 15 of the Act by declaring that the Act is intended to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto, if anything makes it obvious that the power invested in the Authority under clause (a) of sub-section (1) of Section 15 of the Act to draw up a "development scheme" for the development of "Bangalore Metropolitan Area" includes not merely the power to draw up such scheme for the area within the Bangalore Metropolitan Area, but also for areas adjacent to it.

9. I, therefore, hold that the Bangalore Development Authority did have jurisdiction under clause (a) of sub-section (1) of S. 15 of the Act to prepare, frame or draw up a "development scheme" generally called as "improvement scheme" respecting an adjacent area of the "Bangalore Metropolitan Area".

10. If the Authority has thus the power to prepare a "development scheme" for the Bangalore Metropolitan Area comprised of lands in the adjacent area of the Bangalore Metropolitan Area, it necessarily follows that the Authority has, under sub-section (1) of S. 17 of the Act, power to draw up a notification specifying the lands in the adjacent area of the Bangalore Metropolitan Area proposed for acquisition and have a copy of that notification published in the Official Gazette, as provided for under sub-section (3) of Section 17 of the Act. As the impugned notifications (Annexures E and F) published in the Karnataka Gazette are made, specifying the lands of the adjacent area of the Bangalore Metropolitan Area respecting which the Authority had power to prepare a development scheme under clause (a) of sub-section (1) of Section 15 of the Act, it cannot be held that they are the notifications made ultra vires the power of the Authority. Hence, they are not liable to be annulled, as sought for.

11. In the result, these writ petitions fail and are dismissed, however, without costs.

12. Petitions dismissed.