

(2005) 10 KAR CK 0054

In the Karnataka High Court

Case No : Writ Appeal No. 1542, 2089, 2230, 2236 to 2240, 2241 and 5601 of 1998, 731 to 733 of 1999, 1527, 1548 to 1550, 1615 to 1617, 4284, 5240 and 6127 of 1998, 571, 1232 and 1775 of 2000, 7742 of 2003 and 841 of 2001

Yellappa Mudukappa Itagi and Another

APPELLANT

Vs

Hubli-Dharwad Urban Development Authority and Another

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 32 (2), 32 (5), 78
Constitution of India, 1950 — Article 14, 19 (1) (f), 300A, 38, 47

Citation : (2005) 6 KarLJ 636 : (2006) 1 KCCR 611

Hon'ble Judges : S.R. Nayak, J; Ram Mohan Reddy, J

Bench : Division Bench

Advocate : Jaya kumar S. Patil and Associates, in W.A. Nos. 1542, 2089, 1527, 1548 to 1550 of 1998 and 731 to 733 of 1999 and 7742 of 2003, S.V. Prakash, in W.A. Nos. 2230, 2236 to 2240, 2241, 4284 and 5240 of 1998, C.H. Jadhav, in W.A. Nos. 5601 of 1998 and 1232 and 1775 of 2000 and 841 of 2001, Subash B. Adi, in W.A. Nos. 1615 to 1617 of 1998, Suresh S. Joshi, in W.A. No. 6127 of 1998, G.S. Vishweswara, in W.A. No. 571 of 2000, for the Appellant; Basavaprabhu S. Patil, for Respondent-1 in W.A. No. 1542 of 1998 and for Respondent-2 in W.A. Nos. 2089, 5601, 1527, 1548 to 1550 and 6127 of 1998, 731 to 733 of 1999 and 571 and 1232 of 2000, Basavaprabhu S. Patil and A. Niranjana Kumar for Respondent-2 in W.A. No. 7742 of 2003, V.Y. Kumar, Government Advocate in W.A. No. 1542 of 1998, for Respondent-1 in W.A. Nos. 2089, 2241, 5601, 1527, 4284, 5240 and 6127 of 1998, 731 to 733 of 1999 571, 1232 and 1775 of 2000 and for Respondent-2 in W.A. No. 2230 of 1998, Tajuddin, for Respondent-1 in W.A. No. 2230 of 1998, Government Advocate for Respondent-1 in W.A. Nos. 2236 to 2240 of 1998 and for Respondents-2 and 3 in W.A. Nos. 2236 to 2240, 2241 and 4284 of 1998 and for Respondent-2 in W.A. No. 5240 of 1998, Kesvy and Company for Respondent-3 in W.A. No. 2089 of 1998, B. Rudragowda, for Respondent-3 in W.A. No. 2230 of 1998, H.K. Vasudeva Reddy, for Respondent-3 in W.A. Nos. 731 to 733 of 1999 and 1527 and 1548 to 1550 of 1998, Sundaraswamy, Ramdas and Anand for Respondent-4 in W.A. No. 1527 of 1998, N.R. Bhaskar, J.S. Shetty, Veena Jadhav and Y.R. Sadashiva Reddy, Additional Central Government Standing Counsels for Respondent-4 in W.A. Nos. 1615 to 1617 of 1998, R.I. D'Sa, for Respondent 2 in W.A. No. 1775 of 2000 and Government Advocate for Respondent-1 in W.A. Nos.

Judgement

Ram Mohan Reddy, J.—These intra-Court appeals are filed by the unsuccessful petitioners assailing the order dated 27-3-1998 passed in W.P. No. 21413 of 1994 and batch (Dr. Radhakrishna Co-operative Housing Society Limited, Hosur, Hubli and Ors. v. Government of Karnataka and Ors., 1999(2) Kar. L.J. 637 : ILR 1998 Kar. 3794; order dated 30-3-1998 in W.P. No. 19748 of 1997; order dated 25-9-1998 in W.P. No. 28208 of 1998; order dated 6-10-1998 in W.P. No. 22106 of 1996; order dated 24-11-1999 in W.P. No. 4839 of 1997; order dated 17-12-1999 in W.P. No. 44864 of 1999; order dated 27-1-2000 in W.P. No. 44728 of 1999; order dated 6-10-2003 in W.P. No. 27435 of 2003 and order dated 21-11-2000 in W.P. No. 28014 of 1999 by learned Single Judge of this Court, upholding the constitutional validity of sub- section (5) of Section 32 of the Karnataka Urban Development Authorities Act, 1987 (for short, "Act"), while declining to declare the petitioners to be owners of the civic amenity sites and that the Urban Development Authority has no right to deal with the said problem.

2. The appellants, either owners of lands or colonizers, with an intention to form an extension or layout, applied to the Commissioner, enclosing plans showing the particulars as required by Sub-section (2) of Section 32 of the Act. The appellants, in terms of Sub-section (5), agreed to transfer to the authority the ownership of the roads, drains, water supply mains, parks, open spaces and civic amenity areas, laid out by them permanently, without claiming any compensation. The authority, being satisfied that the appellants have complied with the statutory provisions, accorded sanction to the plans subject to certain conditions, one of which, was the statutory prescription to transfer the ownership of the civic amenity area, to the authority permanently, without claiming compensation. The appellants accepted the sanction subject to the above condition and after forming the layout consisting of sites, roads, drains, sewers, parks, open spaces, civic amenity areas, etc., refused to abide by the condition to transfer the civic amenity areas to the authority, free of cost, permanently, without claiming compensation. The appellants unsuccessfully challenged the vires of Sub-section (5) of Section 32 of the Act insofar as it relates to transfer of ownership of the open spaces and civic amenity areas to the authority. Hence, these appeals.

3. The contentions advanced by the learned Counsel for the appellants are the very same as canvassed before the learned Single Judge. The main grounds of challenge of the appellants, as advanced by their learned Counsel, are two-fold and they are:

(i) Any form of compulsory acquisition of private land should be done only under the Land Acquisition Act, 1894;

(ii) The condition requiring the appellants to transfer the land without compensation is arbitrary, unreasonable and is violative of Article 14 of the Constitution.

4. Elaborating on the first contention, it is urged that the requirement to transfer ownership compulsorily is not in exercise of regulatory power of the State but a clear case of acquisition. Appropriation of private land in whatever mode or method, according to the learned Counsel, is an instance of acquisition and that the law made for acquisition by a distinct and separate power of the State under the Entry 42, List III should satisfy the constitutional requirement, including Article 300-A of the Constitution.

5. As regards the second contention, it is urged that the provision of the Bangalore Development Authority Act, 1976, analogous to Section 32(5) of the Act does not stipulate the condition to agree for transfer of open spaces and civic amenity sites to the authority without compensation. Hence, the impugned provision is arbitrary, discriminatory and violative of Article 14 postulates.

6. Per contra, learned Counsel for the respondent-authority would support the findings of the learned Single Judge as being well-merited and not calling for interference. It was contended on behalf of the respondent-authority that:

(a) Section 32(5) of the Act prescribes a condition precedent for seeking permission to form a layout which is different from acquisition of land for public purpose under the Land Acquisition Act;

(b) forming a layout on the part of the appellants is a voluntary act whereas acquisition of a land under the Land Acquisition Act for a public purpose is an involuntary action; and

(c) forming a layout is a business venture of the appellants whereas acquisition of a land under the Land Acquisition Act is a forced taking over of a land of a private person without his assent for a public purpose to subserve public interest.

7. In order to appreciate the contentions advanced by the learned Counsel, we refer to the objects of the enactment in brief. Before the Act was enacted in the year 1987 by the, State Legislature, there was in force in the State of Karnataka, the Karnataka Improvement Boards Act, 1976 and the City of Mysore Improvement Act, 1903. These two Acts were repealed by Section 78 of the Act and in their place, the Act was brought into force inter alia with the object of providing for the establishment of Urban Development Authorities for ? the planned development of major and important urban areas in the State and areas adjacent thereto. A conspectus of the scheme of the Act and Rules, discloses a comprehensive approach to the development of the urban areas, in a balanced manner, with sufficient attention to ecology, pollution, overcrowding, amenities, etc., required for leading a wholesome civic life, for which Urban Development Authorities were required to be established for certain areas of the State, to carry out the schemes, plans and functions of the authority. The Act makes

provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The land is developed and distributed amongst the people as house sites. Lands are reserved for providing public amenities which are necessary for health, comfort and convenience of the inhabitants of the layouts. Community centres, parks, playgrounds, shopping complex, roads, drains, post-office, police station are all necessary for civic life and these amenities are enjoyed by all. It can therefore be said that the intention of the impugned provision is to secure the very objectives of the Act itself and also to promote the welfare of the inhabitants of the layouts as mandated by Articles 38 and 47 of the Constitution. We are reminded of the observation of V.R. Krishna Iyer, J., in the case of *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, that in interpreting a provision of the statute, the Court should be loyal to the high purpose of the Constitution and it should ascribe expansive meaning to the pregnant words used with hopeful foresight, not to circumscribe their connotation into contradiction of the objectives inspiring the provision.

8. While interpreting the statute, it is to be construed so as to make it effective and operative on the principle expressed in the maxim "*Ut res magis valeat quam pereat*" (It is better to validate a thing than to invalidate it). There is a presumption that the Legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of a Legislature or that it has transgressed other constitutional mandates, such as those violating the fundamental rights is always on the person who challenges its vires. The Courts strongly lean against reducing a statute to a futility. As far as possible, the Courts act to make a legislation effective and operative.

9. A plain reading of Section 32(5) of the Act prescribes a condition precedent for seeking permission to form a layout which is different from acquisition of land for public purpose under the Land Acquisition Act. Forming of the layout on the part of the appellants is a voluntary Act whereas acquisition of land under the Land Acquisition Act for a public purpose is an involuntary action. Forming of extension or layout, is a business venture of the appellants, whereas acquisition of a land under the Land Acquisition Act is a forced taking over of a land of a private person without his assent for a public purpose to subserve public interest. The prescription is a package, deal, a sort of *quid pro quo* for grant of permission for the benefits the appellants receive, while acquisition of lands under the Land Acquisition Act is a step in furtherance of collecting lands for public purpose. The State demands lands from the appellants for public purpose not as a price to make unlawful gain but to provide civic amenities to the inhabitants of the layout itself.

10. The scheme envisaged under the Act, provides for transfer of ownership of the civic amenity sites, open spaces, roads, drains, sewers, etc., for effective management of the civic amenity sites while providing good roads, working drains and facilities by the State, a statutory obligation which benefits are direct,

regular and endowed to the lands. The precondition imposed under Sub-section (5) of Section 32 of the Act cannot be characterised as "land grabbing", but on the contrary the colonizer himself is benefited enabling him to secure a better price for the developed plots, since price fixation for the plots is left to the discretion of the colonizer.

11. The orderly development of the urban area, under the Act, requires the providing of civic amenity sites which is the primary responsibility of the State, which cannot be entrusted to private persons. Thus, the taking over of civic amenity sites cannot be regarded as a separate event of acquisition, but it is a concomitant of the power, nay the duty of the State to permit formation of the layout to subserve the legitimate and required needs of the inhabitants of the layout and to ensure healthy and planned development of human habitation.

12. The developer, colonizer or the owner who intends to secure permission for formation of new extension or layouts is required to dedicate civic amenity areas amongst other areas for public use. The user of the property is and always shall be with the public. The appellants thus surrendered their rights in the property for the benefit of the public. The civic amenity area falls within the meaning of the terms civic amenity, "under Sub-section (h) of Section 2 of the Act". The civic amenity area dedicated to the public by the appellants, partakes the character of civic amenity and no longer remains under the control of the appellants. The appellants have no right, at all times to prevent the public from using the same. When the appellants by their own volition permitted the property to be converted into civic amenity, they have no right to claim compensation. The civic amenity sites are meant for public use. It is necessary that the civic amenity sites which are used by public are maintained and managed and also saved from public abuse by the authority. The authority constituted under the Act exercises regulatory control and is responsible for the upkeep of the civic amenity sites.

13. In conclusion we say that no exception can be taken to the finding of the learned Single Judge that the State has the requisite legislative competence to legislate the Act. Taking over of land towards civic amenities, in pith and substance, is not acquisition or requisition of the land falling under Entry 42, List III of Seventh Schedule.

14. We find no substance in the contention that the acquisition of land under the Bangalore Development Authority Act for public purpose, on payment of compensation, as compared to lands taken over under the Act, without compensation violates Article 14 postulates. Both the lands cannot be regarded as the lands belonging to a well-defined class for the purpose of Article 14 since on acquisition of lands under the Bangalore Development Authority Act, compensation is paid at the rate of 40-47% of the sital value, as against higher price the colonizer fixes for developed plots. Therefore, the challenge to the constitutional validity of Section 32(5) of the Act falls on all the counts.

15. Alternatively, it needs to be noticed that even assuming that Section 32(5) of

the Act amounts to expropriation of civic amenity sites for public purpose, of preservation of public health or prevention of damage to life and property, the declaration of the law in the case of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., ,, in the circumstances, is apposite:

"We further hold that after the Constitution (Forty-fourth Amendment) Act, 1978 has come into force, the right to property in Articles 19(1)(f) and 31 had its obliteration from Chapter III, Fundamental Rights. Its abridgement and curtailment does not get retrieved its lost position, nor gets restituted with renewed vigour claiming compensation under the garb "deprivation of property" in Article 300-A".

In the result, the appeals are without merit, and are dismissed, without an order as to costs.