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SooperKanoon Citation : sooperkanoon.com/375519

Court : Karnataka

Decided On : Nov-26-1964

Reported in : AIR1965Kant269; AIR1965Mys269; (1965)1MysLJ269

Judge : K.S. Hegde and ;M. Santhosh, JJ.

Acts : [Constitution of India](#) - Article 226; Mysore Land Acquisition Act, 1894 - Sections 4(1), 6 and 55; ;[Land Acquisition \(Mysore Extension and Amendment\) Act, 1961](#) - Sections 2(2); Mysore General Clauses Act, 1899 - Sections 6

Appeal No. : Writ Petn. Nos. 2350 and 2351 of 1963

Appellant : M. Subbanna Naik and ors.

Respondent : The State of Mysore and ors.

Judgement :

Hegde, J.

(1) These petitions under Art. 226 of the Constitution raise identical questions of law. Therefore, they can be disposed of in one order.

(2) In these petitions, this court is asked to quash the acquisition proceedings commencing with the government Notification No. RDH 4 LCI 60 dated 18-2-1960 issued under S. 4(1) of the Mysore Land Acquisition Act (Act VII of 1894), to be hereinafter referred to as the 'Act', and all consequential proceedings taken

thereupon including the Notification No. RDH 4 LCI 60 dated 22-11-1960 issued under S. 6 of the Act, in respect of the petitioner's lands bearing Survey Numbers 50/1, 62 and 50/2 of Haralapura Village, Kasaba Hobli, Harihar Taluk Chitradurga District.

(3) The material facts are not in dispute and they may be stated thus : The joint family of the petitioners in W.P. 2350/63 is the owner of S.No. 50/2 of that village. The Mysore Kirloskar Ltd., (3rd respondent in these petitions) wanted these lands for the extension of its factory. After holding necessary enquiries, the Government notified these lands amongst others, under S. 4(1) of the 'Act' for acquisition. Thereafter, enquiries were held under S. 5-A of the 'Act'. On 20-11-1960 an agreement was entered into between the Government of Mysore and the 3rd respondent under S. 41 of the 'Act'. The said agreement was published in the Mysore Gazette dated 1-2-1960. On 22-11-1960, a notification under S. 6 of the 'Act' (Notification No. RDH4 LCI 60 dated 22-11-1960), notifying the acquisition of the lands in question, was published. During the pendency of the land acquisition proceedings in question, several legislative changes took place. In the year 1961, the Mysore Legislature passed the [Land Acquisition \(Mysore Extension and Amendment\) Act, 1961](#), (Mysore Act 17 of 1961) and the said Act came into force on 24-8-1961 after receiving the assent of the President. It repealed the 'Act' and extended the Central Land Acquisition Act, 1894 (Central Act I of 1894) as amended by the said Act to the entire State of Mysore. Hereinafter, this Act will be referred to as the '1961 Act'. In view of the proviso to sub-s. (2) of S. 2 of the 1961 Act, read with S. 6 of the Mysore General Clauses Act, 1899, proceedings taken under the corresponding repealed Acts including the 'Act' were treated as having been taken under the corresponding provisions of the 1961 Act. In these cases the acquisition proceedings were partly held under the 'Act' and partly under the 1961 Act. The case for the petitioners is that those proceedings are invalid as under the provisions of those statutes the Government had no competence to acquire lands for extension of a factory.

(4) In the affidavits filed in support of these petitions, it is alleged that presumably because of the pronouncement of the Supreme Court, in R.L. Arora v. State of Uttar Pradesh, : AIR 1962 SC764 , the Government of Mysore issued Circular No.

R.D. 55 LAF 62 dated 14-12-1962 staying further proceedings on acquisition of lands for and on behalf of companies till such time as rules were framed by the Government of India under S. 55 of the Land Acquisition Act (Central Act I of 1894) as amended by the Land Acquisition (Amendment) Act 1962 (Central Act 31 of 1962). The central Government framed Land Acquisition (Companies) Rules, 1963 on 22-6-1963 and the same was published in the Mysore Gazette dated 8-8-1963. After the said rules were framed. the 2nd respondent proceeded to pass the award. Accordingly, he asked the petitioners and others, whose lands have been notified for acquisition, to appear before the Tahsildar, Harihar, on 14-10-1963 to receive the compensation awarded by him, which compensation, according to the petitioners, is highly inadequate. It is at that stage these petitions were filed and interim orders obtained staying further proceedings.

(5) In their pleadings the petitioners challenged the validity of the acquisition proceedings on various grounds. But at the time of hearing, Sri E.S. Venkataramiah, the learned counsel for the petitioners, primarily attacked the validity of the acquisition proceedings on the basis of the decision of the Supreme Court in : AIR 1962 SC764 . According to him neither Ordinance No. 3 of 1962 dated 20-7-1962 issued by the President nor the Central Act 31 of 1962 has any application to the facts of the present cases as the acquisition in question was made under the provisions, of the 'Act' and the 1961 Act. On the other hand, it was contended by Sri V.L. Narasimhamurthy, the learned counsel for Mysore Kirloskar Ltd., that the impugned proceedings are valid, whether we hold, that they were held under the 'Act' or 1961 Act or Central Act 1 of 1894, as amended by Central Act 31 of 1962. Therefore, the question for our decision are :

1. Do the provisions of Central Act 31 of 1962 govern the impugned acquisition? If not, is the said acquisition valid? And
2. Is the said acquisition valid even if it is held that the provisions of Central Act 31 of 1962 govern the same?

(6) In order to pronounce on the questions formulated above, it is necessary to refer to the development of law relating to the land acquisition. The former State of Mysore being a Princely State, the Central Land Acquisition Act (Act 1 of 1894)

had no application in that State. Land Acquisitions in that State were made under the 'Act'. By and large, that Act was a faithful copy of the Central Act 1 of 1894. Re organization of States took place on 1-11-1956, as a result of which the New State of Mysore, comprising the old State of Mysore, a portion of the former State of Bombay, a portion of the former State of Madras, a portion of former State of Hyderabad and the centrally administered area of Coorg State, was formed. In the matter of land acquisition, there was no common law applying to the entire State. Separate laws continued to be in force till Act 17 of 1961 was enacted by the new State of Mysore, which Act, as mentioned earlier, came into force on 24-8-1961.

(7) We have now to see the true effect of the 1961 Act. It was enacted by the State Legislature in exercise of the powers conferred on it under Entry 42 of List III of the 7th Schedule of the Constitution. It is a State Legislation. That is also what it purports to be. The title to the Act says: 'The [Land Acquisition \(Mysore Extension and Amendment\) Act, 1961](#)'. Its preamble reads :

'An Act to extend the Land Acquisition Act, 1894 (Central Act 1 of 1894), to the whole of the State of Mysore and further to amend it in its application to the State.'

The circumstances that the State Legislature purported to extend Central Act 1 of 1894 and further to amend it in its application to this State, cannot convert that enactment into a Central enactment. The State Legislature, instead of re-enacting several of the provisions of Central Act 1 of 1894, adopted the convenient legislative practice of enacting a statute by a reference to another Statute. In other words, it bodily lifted some of the provisions of the Central Act 1 of 1894 and adopted them as its own, either with or without amendment. It is incorrect to say that the State Legislature has extended a Central Act to the State. In law, it is a fresh enactment. Central Act 1, 1894, does not apply to this State on its own force. The 1961 Act has an independent existence of its own. It has no permanent link with the Central Act 1 of 1894. The Parliament cannot amend any provisions of the 1961 Act. If the parliament amends any of the provisions of Central Act 1 of 1894, that amendment, on its force, does not operate as an amendment of the 1961 Act. The State Legislature as well as the Central legislature are sovereign legislatures; one legislature cannot amend the statutes of another legislature. Hence there can

be little doubt that Central Act 31 of 1962, which amended some of the provisions of the Central Act 1 of 1894 does not and could not amend any of the provisions of the 1961 Act. Section 7 of that Act validated 'every acquisition of land for a company made or purporting to have been made under Part VII of the Principal Act'. The Principal act is central Act 1 of 1894. If this conclusion is right, then it follows that the validity of the impugned acquisition proceedings will have to be judged solely on the basis of the 'Act' and the 1961 Act.

(8) It has to be borne in mind that the agreement contemplated by S. 41 of the 'Act' was entered into between the Company and the Government on 18-2-1960, i.e. long before the 1961 Act came into force. At that time the definition of 'Public purpose' did not include an acquisition for a company as such. The 1961 Act, no doubt, did enlarge the definition of the expression 'Public purpose'. The amended definition includes the provision of land for a company where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public. It is unnecessary to consider the effect of this amendment as that amendment is not retrospective in effect. It came into force after notifications under Ss. 4 and 6 of the 'Act' were issued. That apart, Ss. 39 to 42 of the 'Act' remained intact. Clause (2) of S. 40 provides that an acquisition for a company if not made for one of the purposes mentioned in clause (a), that should be, in order to be valid, for the construction of some work and such work is likely to prove useful to public; and clause (5) of S. 41 says that where acquisition is for the construction of any work, other than mentioned in clause (4), the agreement entered into between the Company and the Government should contain terms on which the public shall be entitled to use the work. Admittedly, in the case before us, the agreement--there is only one agreement--entered into between the Company and the Government does not include any term or terms 'on which the public shall be entitled to use the work'. Section 6 of the 'Act' says:

'Subject to the provisions of Part VII of this Act, when the State Government is satisfied, after considering the report, if any, made under S. 5-A, sub-s. (2) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such State Government or of some officer duly authorised to certify its orders.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority,'

As the purpose for which the lands in question are being acquired is not one of those mentioned in S. 40 and further as the agreement entered into between the Company and the Government does not conform to the requirements of S. 41, the notification under S. 6 of the 'Act' is clearly an invalid notification.

(9) The scope of Ss. 6, 40 and 41 of the Central Act 1 of 1894, as they stood before the amendment of that Act by Act 31 of 1962, came up for consideration by the Supreme Court in : AIR 1962 SC764 . The Supreme Court held by a majority that S. 38 as well as the opening words of S. 6 make it clear that the operative provisions of the Act for the purpose of acquiring land for a company will only apply when two conditions precedent have been satisfied, namely, (i) the previous consent of the appropriate Government has been given to the acquisition, and (ii) the Company has entered into an agreement as provided in the Act. This brings in Ss. 40, 41 and 42 of the Act. Section 40 lays down when the consent of the appropriate Government can be given. Section 41 lays down the terms which must be incorporated in the agreement. Section 42 then provides that every such agreement shall be published in the official gazette and thereupon, the terms as regards the use of the work by the public become part of the Act. Where the acquisition of land by a company is intended for the construction of certain works, the consent of the Government has to be given on satisfaction that the work is likely to prove useful to the public under S. 40(1)(b). The fifth term of S. 41 is directly related to S. 40(1)(b) and there can be no doubt that in finding out what is meant by S. 40(1)(b) the Court must take into account the fifth term in S. 41. It is only by reading the two together that it will be possible to find out the intention of the legislature when it provided for acquisition of land for a Company through the machinery of the Act. What the provisions of Ss. 40 and 41 require is that the work should be directly useful to the public and the agreement shall contain a term how the public shall have the right to use the work directly themselves. Under the relevant words in sections 40(1)(b) and 41 it is works like a hospital, a public reading room or library or an educational institution open to the public or such

other work as the public may directly use that are contemplated and it is only for such works, which are useful to the public in this way and can be directly used by it, that land can be acquired for a company under the Act. Where therefore certain land is sought to be acquired for the construction of textile machinery under section 41 show that those whom have business with the company shall have only such right of access to and use of the land works as may be necessary for the transaction of their business with the firm, this is not what the relevant provisions of sections 40 and 41 require. It was further laid down that the fact that the product of the company would be useful to the public is not sufficient to being the acquisition for a company within the meaning of the relevant words in section 40 ad 41 of the Act. Therefore, merely because the Government was satisfied that the acquisition is needed for the construction of some work and that work is likely to be useful to the public is not enough to entitle it to use the machinery of the Act for the purpose of acquisition in such a case. The Court also laid down that though it is not for the Court to enter upon a consideration of the question how far the provision made by the Government in the terms of the agreement sufficiently safeguards the interests of the public, that being a matter entirely for the satisfaction of the Government, the interpretation of the material terms in section 40(1)(b) and the fifth term in the agreement provided in section 41 read together is and must always be within the jurisdiction of the Court. It is for the Court to say what the words in section 40 and 41 mean though it is for the Government to decide whether the work is useful to the public and whether the terms contain provisions for the manner in which the public shall be entitled to use the work. It is only in this latter part that the Government's satisfaction comes in and if the Government is satisfied, that satisfaction of the Government must be based on the meaning given to the works and also say that they are satisfied on the meaning given by them. The argument, therefore, that it is the Government's satisfaction which is required both by sections 40 and 41 is of no help.

(10) The rule laid down in the above case is fully applicable to the facts of the cases before us. Sections 6 and 39 to 42 of the 'Act' or even in the 1961 Act are in pari materia with the corresponding provisions in Central Act I of 1894. Hence, the decision of the Supreme Court cited above fully governs the cases before us.

(11) Assuming that the provisions of the Central Act 31 of 1962 govern the impugned proceedings even then, section 7 of the Act--the validating provision--is not applicable to those proceedings. That section is not applicable validates acquisition made before July 20, 1962, which means that by that date the land acquired must have vested with the Government either under section 16 or 17 of the Act. Vide *R.L. Arora v. State of Uttar Pradesh*, : [1964]6SCR784 . That is not the case here. The lands sought to be acquired have not yet vested in Government.

(12) It was urged on behalf of the respondents that we should decline to exercise our discretion in favour of the petitioners as the petitioners did not seek relief at the hands of this court at the earliest possible opportunity. We do not think that there is any substance in this contention. The petitioners had objected to the acquisition from the very beginning. They have come up to this court immediately proceedings under section 9 of the 'Act' were taken. They say that they were under the impression that the State Government would drop the acquisition proceedings after the Supreme Court rendered its decision in Arora's case. They had reasons to entertain that belief. Further, in these cases, what is complained of is the violation of the fundamental right of the petitioners to hold their property. Therefore, the question of delay is not very material.

(13) We see nothing illegal in the notification issued under section 4 of the 'Act'. But notification issued under section 6 is clearly illegal. Hence, we allow these petitions and quash the notification under section 6 of the 'Act' and proceedings resulting therefrom, in so far as they relate to Survey Numbers 50/1, 62 and 50/2. Respondents 1 and 3 shall pay the costs of the petitioners. Advocate's fees Rs. 100/-.

(14) Petitions partly allowed.