

D. Ramappa and Etc. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Sep-07-1987

Reported in : AIR1989Kant24

Judge : P.P. Bopanna, J.

Acts : Karnataka Improvement Boards Act, 1976 - Sections 35; [Land Acquisition Act, 1894](#) - Sections 4

Appeal No. : Writ Petn. Nos. 5371 to 5377, 6540 and 6541 of 1987

Appellant : D. Ramappa and Etc.

Respondent : State of Karnataka and ors.

Advocate for Def. : S. Lakshminarayana, Govt. Pleader and ;Jayakumar S. Patil, Adv.

Advocate for Pet/Ap. : Kadidal Manjappa and ;S. Vigneswara Sastry, Advs.

Judgement :

ORDER

1. By consent of Counsel for parties, these Writ Petitions are treated as, having been posted for final hearing and I have heard the learned Counsel for the parties.
2. This is the third round of litigation between the parties. Earlier, the State Government had passed an order on 3-4-1979 directing that Millaghatta tank

should be breached and that the tank bed measuring 27 acres and odd should be transferred to the Shimoga Municipality, free of cost, for the formation of sites to be distributed among the poor people. This order was challenged by the petitioners and some other Achkatdars in Writ Petitions Nos. 6527 to 6536 of 1979. When the said Writ Petitions came up for final hearing on 20-6-1979, the Government Pleader, on behalf of the Government, had filed a memo stating that the Government would withdraw the impugned Government Order and accordingly, the Writ Petitions did not survive for consideration. However, under the instructions of the State Government, the Deputy Commissioner issued a notification under S. 4(1) of the Land Acquisition Act on 8-4-1980 notifying its intention to acquire portions of nine Survey numbers in- the command area of Millaghatta village belonging to the 7th petitioner and some other Atchkatdars, on the ground that the same were required for the purpose of excavating a 'draft canal'. Necessary declaration under S. 6 of the Land Acquisition Act was made on 13-1-1982 and the final notification was published in the Karnataka Gazette dt. 28-1-1982. The 7th petitioner, that is, petitioner in W.P. 5377/87 and the brother of the 3rd petitioner (petitioner in W.P. 5373/87) and two others filed W.P. Nos. 191:71 to 19174 of 1982 and these Writ Petitions, it is not disputed, are still pending consideration by this Court. However, those petitioners had the benefit of an interim order staying their dispossession from the land in question. Now the grievance of the petitioners is that the State Government having failed to acquire these lands in the earlier two attempts have now thought upon and engineered the' scheme of acquiring these lands by having recourse to the Karnataka Improvement Boards Act, 1976 ('the Improvement Act' for short). Accordingly, a scheme was sought to be framed under the Improvement Act and under that scheme, under the guise of providing sites to the persons belonging to the weaker sections of the community in Shimoga city, the State Government as well as the City Improvement Board, the 2nd respondent are, now trying to dispossess the petitioners from their valuable lands which are agricultural lands and thereby they are going to be deprived of their main source of livelihood. Their grievance is that the valuable rights conferred on them under the Land Acquisition Act were sought to be taken away with ulterior motives.

3. A similar matter came up for consideration before this Court from the Davanagere Municipality in Writ petitions Nos. 12173 to 12176 of 1984. There also, a scheme prepared under the Improvement Act by the City Improvement Board of Davanagere was challenged by the petitioners on various grounds inclusive of Art. 14 of the Constitution. This Court, on consideration of the relevant provisions of the Improvement Act and also the provision of the Land Acquisition Act, and particularly the challenge to the constitutional validity of provisions under Ss. 15, 16 and 18 of the Improvement Act, sustained the validity of the acquisition, proceedings, initiated under the Improvement Act. The decision of this Court was also affirmed in appeal and by the Supreme Court. Accordingly, learned Counsel for the petitioners have not challenged the constitutional validity of the provisions under Ss. 15, 16 and 18 of the Improvement Act. However, they have sought to challenge the validity of the acquisition proceedings on various factual grounds, namely, that some of the petitioners, that is, petitioners 2 and 3 had no notice of the acquisition proceedings initiated under the Improvement Act: that the declaration made by the Government sanctioning the Scheme as prepared by the 2nd respondent-Board is hit by the provisions of the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as the 'Planning Act') inasmuch as the permission of the authorities under the Planning Act was not obtained by the State Government before it made the declaration under S. 18 of the Improvement Act : that there was inordinate delay in making the final declaration and therefore, such a declaration should not be allowed to stand in the eye of law and the petitioners who are-primarily agriculturists, are entirely depending for, their livelihood on these agricultural lands and, therefore,,: this Court should interfere with the impugned acquisition proceedings. They also relied upon the decisions of this Court reported in ILR (1986) 1 Kant 820 and : ILR 1987 KAR1260 .

4. Both the State Government as also the 2nd respondent t- Board have entered appearance through learned Counsel and opposed the prayer in the Writ Petitions. Learned Counsel for the 2nd respondent Board has also produced the relevant records relating to the impugned acquisition proceedings.

5. The fact that the State Government had made a declaration sanctioning the Scheme cannot be disputed in the light of the proceedings of the State

Government dt. 27-1-1987. The preamble to the Government Order dt. 27-1-1987 shows that the 2nd respondent- Board had submitted proposals under its letter dt. 19-5-1986 seeking the Government's sanction for the Development Scheme in Survey Nos. 77, 78, 94 to 97, 100 and 106 of Millaghatta village of Shimoga District pursuant to the resolution dt. 13-8-1986 resolving to form a lay-out in an area of 15 hectares of land in the aforesaid Survey numbers at an estimated cost of Rs. 44 lakhs. Approval of the Karnataka Electricity Board and also the Karnataka Urban Water Supply and Sewerage Board was obtained before the Scheme was put up for sanction. The Government, after considering the proposals of the Board accorded administrative sanction under S. 17 of the Improvement Act subject to the condition that the Scheme would be self-financing scheme and no financial assistance would be provided by the Government. Once declaration is made under S. 18 of the Improvement Act, the next course is to acquire the land under S. 35 of the Improvement Act, unless there were to be an agreement between the parties under S. 34 of the Improvement Act. Petitioners objected to the acquisition proceedings as could be seen from the statement of objections before the authorities. Therefore Respondent - 2 could not have relied on S. 34 of the Improvement Act and that is why, they had to request the State Government to initiate proceedings under S. 35 of the Improvement Act. That is how, the acquisition proceedings were commenced under the Land Acquisition Act since S. 35 of the Improvement Act provides that the acquisition of the land otherwise than by agreement, shall be regulated as far as possible by the provisions of the Land Acquisition Act.

6. In my view, on these facts, there is very little in these Writ Petitions which requires serious consideration. However, it was contended by the learned counsel for the petitioners that the scheme itself is bad in law notwithstanding the declaration made by the State Government since the same is violative of the relevant provisions of the Planning Act. This contention has been specifically taken in the Writ Petitions. In order to meet the same, learned Counsel for the 2nd respondent-Board has produced a copy of the letter dt. 19-5-1986 from the Chairman of the 2nd respondent-Board to the State Government and copied to the Chairman of the Town Planning Authority, Shimoga Bhadravathi Area, Shimoga, for information and with a request to permit the lay-out plan for the aforesaid survey

numbers. In the endorsement by the Chairman to the Town Planning Authority it had been specifically mentioned that this scheme was to provide sites to the working class and to the economically weaker sections of the community. A copy of the entire scheme was also sent for reference and early action. That apart, it is also seen from the records that the lands in question come within the Outline Development Plan ('ODP') prepared under the Improvement Act. The Town Planning Authority has not exclusively reserved these lands either for industrial purpose or for residential purpose. The Certificate issued by the Town Planning Authority on 12-6-1987 in pursuance of the request made by the 2nd respondent Board shows that these Survey numbers were reserved not only for residential purpose but also for industrial purpose. In some cases, namely, Survey Nos. 95, 96 and 100 they are reserved for trade-shops and park and also for residential purpose. Even assuming that these lands are reserved for a specific purpose in the ODP, the Town Planning Authority having not objected to the Scheme submitted by the 2nd respondent for its approval, this Court should proceed on the basis that the permission of the Town Planning Authority was obtained by the 2nd respondent-Board before it obtained sanction of the Government under S. 18 of the Improvement Act. As per S. 15(2) of the Planning Act if the Town Planning Authority does not communicate to the Board within three months from the receipt of the Scheme, under S. 15(l) of the Planning Act, permission shall be deemed to have been grant to the Board. In the absence of any material to show that the Town Planning Authority has rejected the Scheme presented by the 2nd respondent-Board, this Court can safely proceed on the basis that the Scheme was considered by the Planning Authority. and therefore, the decisions cited by the learned Counsel for the petitioners are not relevant for the purpose of considering the validity of the acquisition proceedings. It is well-settled that the authorities who prepare the scheme ,and sanction the scheme are the best Judges of the requirement of the land for a public purpose. It cannot be disputed that these lands are sought to be acquired to provide sites to the weaker sections of the community in Shimoga City. Such a scheme would be the need of the day also cannot be disputed. There is tremendous shortage of housing facilities in the rural areas to the persons belonging to weaker sections of the Society.

7. In the circumstances, the petitioners who are a few in number cannot complain about the acquisition proceedings on the ground that they are going to be deprived of their source of livelihood. That is a sacrifice by the petitioners for the larger interest of a larger number in the Society who belong to, the weaker section.

8. Though it was contended by Sri Manjappa learned Counsel for the petitioners, that some of the petitioners had no notice of the proceedings, it could be seen from the records that it is only petitioner No. 3 who was not served with the notice and others have been served with the notice. Assuming that petitioner No. 3 was not served with the notice of the proceedings, he has filed his objections and his objections have been fully considered by the authorities before the Scheme was sanctioned. Therefore, it is not necessary to go into the question whether there should have been notice to all the parties before the Scheme was sanctioned. Even assuming that some of the petitioners have not been served with the notice, a large extent of lands, measuring about 33 hectares have been acquired for the purpose of forming a, lay-out for the weaker section of the society and therefore, it may not be proper for this Court to interfere with the validity of the acquisition proceedings solely on the ground that some of the petitioners had not been properly served.

9. However, it may be necessary to make an observation regarding being had to the needs of the petitioners under the circumstances. The 2nd respondent-Board may favourably consider the request of the petitioners to allot suitable building sites to them if they are otherwise entitled to allotment of such sites. They are also residents of Shimoga. Even assuming that they are holders of other agricultural lands, they have a right to live in the place of their avocation and their request for allotment of sites, I am sure, will be favourably considered by the 2nd respondent-Board, if they are otherwise eligible.

10. In the result, these Writ Petitions are dismissed subject to the above observation. Rule discharged. No costs.

11. The above order will cover Writ Petitions 6540 and 6541 of 1987 though the lands concerned in those Writ Petitions are situated in Kallahalli village of Shimoga Taluk which form part of the Outline Development Plan and necessary permission

has been obtained by the 2nd respondent-Board. Subject to the observation made at para 9 above, these Petitions are also dismissed. Rule discharged.

12. Petitions dismissed.

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