

Annayya Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-08-1988

Reported in : ILR1989KAR932; 1988(2)KarLJ263

Judge : Bopanna, J.

Acts : [Constitution of India](#) - Article 21 and 226; [Land Acquisition Act, 1894](#) - Sections 6

Appeal No. : W.P. Nos. 9032 to 9041 of 1988

Appellant : Annayya

Respondent : State of Karnataka

Advocate for Def. : S. Lakshminarayan, HCGP for R-1 to R-3 and ;P. Viswanatha Shetty, Adv. for R-4

Advocate for Pet/Ap. : H.R. Venkataramanah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bopanna, J

1. Since elaborate arguments were advanced by the learned Counsel on both the sides on the interim order sought for by the petitioners, these petitions are treated as having been posted for hearing and I have heard the learned Counsel for the parties.

2. In the ordinary course these petitions should have been dismissed on the short ground that the very same preliminary notification was sustained by this Court in W.P.No. 2628/85 disposed of on 14th January 1987. Justice Swami had dismissed the petition filed by one Balappa Reddy who was an owner of the land bearing Survey No. 167 of Kodihalli village and the notifications impugned therein is the same notification impugned in these petitions. The decision of the learned Judge was affirmed in Writ Appeal No. 1406/87 Balappa Reddy v. State of Karnataka. But the learned Counsel for the petitioners in these petitions had raised certain points which according to him were not urged before the learned Single Judge in the earlier Writ Petition and therefore he submitted that the petitioner's case must be considered without reference to the decision of this Court made in the earlier Writ Petition.

3. Since the learned Counsel raised certain substantial questions of law in support of his challenge to the impugned notification which had been sustained in the earlier Writ Petition. I had directed the contesting respondents to file their return and I had the benefit of the arguments of their learned Counsel also.

4. The three contentions raised by the learned Counsel for the petitioners in support of his challenge to the impugned notifications are: firstly, that the impugned acquisition proceedings were initiated for the benefit of a Company and the contesting respondent admittedly being a Company the provisions of the Land Acquisition Act and also the Rules framed thereunder insofar they relate to acquisition of land for companies had not been followed in these cases and therefore the impugned proceedings are bad in law. In support of this contention he relied on two decisions of the Supreme Court in VALJIBHAI MULJI BHAI SONEJI AND ANR. v. THE STATE OF BOMBAY (now Gujarat) AND ANR. : [1964]3SCR686 : and in STATE OF PUNJAB AND ORS. v. RAJA RAM AND ORS. : [1981]2SCR712 .

5. Secondly under the Karnataka Land Reforms Act, 1961 the lands in question could not have been acquired by a company as Section 79-B is a total bar for acquisition of land by the companies.

6. Thirdly, that the company for whose benefit the lands were acquired could not have leased the land to third parties and therefore the acquisition proceedings were initiated for some extraneous purposes and not for the public purpose specifically mentioned in the impugned notifications. He submitted that the acquisition proceedings have been initiated for putting up a five star hotel but in the additional statement filed today by the petitioners it is brought to the notice of this Court that the impugned acquisition proceedings were initiated for the benefit of a House Building Co-operative Society promoted by one Dayananda Pai. He has also brought to the notice of this Court that some other lands which were acquired under the impugned notifications were transferred to a House Building Development Company known as M/s Century Galaxy Developers Private Ltd. in terms of the resolution of the B.D.A. in subject No. 1057. This resolution of the B.D.A. was passed in the meeting held on 22nd April 1988. This resolution of the B.D.A. was passed in the meeting held on 22nd April 1988. That resolution reads as under:

'Sub. No. 1057: Approval of development plan for Group Housing Scheme in an area measuring 14A-08 Gts. comprising Sy.Nos. 153, 158, 159, 160/1 to 164/4, 163/1, 163/2, 164/1, 164/2, 165/1 to 165/6, 166/1 to 166/4 and 167 of Kodihalli village along Airport Road in favour of M/s Century Galaxy Developers Private Ltd.'

7. These Writ Petitions were filed on 8-6-1988 nearly 6 years after the preliminary notification. Therefore, a heavy burden is cast on the petitioners to explain satisfactorily the delay in approaching this Court for the reliefs sought for. Mr. Venkataramaniah, learned Counsel for the petitioners, in my view, had no answer to this question apart from pleading that the petitioners are very poor agriculturists and were solely dependent on the small holdings which are sought to be acquired under the impugned notifications. His other contention is that if the petitioners are able to explain the legal mala fides in the impugned acquisition proceedings it is open to this Court to condone the delay and grant the necessary reliefs as prayed

for. In my view, the fact that the petitioners are owners of small extents of land and they are solely dependent on those lands for their livelihood is not a consideration for condoning the delay in these proceedings because under the impugned notification and also under the other notifications pertaining to this project envisaged by the Karnataka State Tourism Development Corporation, large extents of lands have been acquired in the area in question and a major portion of the land had also been put to use for the purpose for which it had been acquired. It cannot be disputed that the State Tourism Development Corporation has substantially achieved the purpose for which the land was sought to be acquired for the establishment of a golf course in the vicinity of the area where the lands are sought to be acquired. The KSTDC had also called for tenders from outside parties for putting up a five star hotel and that is also one of the purposes for which the lands are sought to be acquired. The petitioners were aware of these facts and therefore they could have approached this Court sufficiently early but what they did was they approached the Civil Court sometime in the year 1988 and after having failed to obtain any interim order by the Civil Court they withdrew the civil suit filed by them and have approached this Court. As observed by the Supreme Court in *HARI SINGH & ORS v. STATE OF UP & ORS.* : [1984]3SCR417 , in matters involving land acquisition for a public purpose, the party who seeks to impugn the validity of the acquisition proceedings should approach this Court in time and the petition is liable to be dismissed on the ground of laches only, if it is proved that the petitioner had knowledge of the proceedings when they were initiated. The Supreme Court observed in Hari Singh's case (supra) as under:

'At the outset we are of the view that the Writ Petition filed in July 1982 questioning the notification issued in January 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act, but they have not pleaded that there was no publication in the locality of the public notice or the substance of the notification as required by Section 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law.....It is difficult to believe that the appellants who are residents of that place would not have known till July 1982 that

the impugned notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should therefore fail on the ground of delay alone.'

This ruling of the Supreme Court applies with all force to the case on hand. Here we are dealing with a case where the petitioners have approached this Court after a lapse of more than six years and as noticed earlier a heavy burden is cast on the petitioners to explain the delay which has not been discharged by them. On that ground alone these petitions should be dismissed.

8. However, Mr. Venkataramanah contended that if the petitioners are able to establish legal mala fides that would be sufficient for interference by this Court. It is no doubt true that the Supreme Court in *THE STATE OF PUNJAB AND ANR. v. GURDAYAL SINGH AND ANR* : [1980]1SCR1071 . has ruled that in land acquisition proceedings the Courts could interfere when legal mala fides are established. But in that case the Supreme Court did not lay down the law that the delay in approaching this Court could be condoned provided legal mala fides are established. The plea of the petitioners that there are legal mala fides in the impugned acquisition proceedings rests on the resolution passed by the BDA to which I have made a brief reference transferring certain lands measuring about 14 acres to a house building development company, namely, Century Galaxy Developers Private Ltd. Those lands admittedly are not the petitioners' lands. But the petitioners only apprehend that their lands would also be transferred to those builders. In such an eventuality, it is open to the petitioners to challenge the proposal to transfer their lands to the aforesaid company on the ground of legal malafides, if any. But right now it cannot be said that the petitioners are in any way aggrieved by the alleged transfer of other persons lands by the BDA to the house building development company and therefore it is not possible to accept the contention of the learned Counsel for the petitioners that legal malafides are established in this case. The second contention advanced by the learned Counsel for the petitioners rests on the interpretation of the word 'company' under the provisions of the Land Acquisition Act. I am of the view that the decisions relied upon by the petitioners in *State of Punjab and ors. v. Raja Ram & ors.* and in *Valji*

Bhai Mulji Bhai soneji & ors. v. State of Bombay (now Gujarat) are not applicable to the facts of this case since on the facts placed before this Court it is clear that the State Government, had made a contribution of Rs. 1,000/- in terms of the proviso to Section 6 of the Act and therefore the provisions of Chapter VII are not made applicable to these proceedings. It was vehemently contended by Mr. Venkataramaniah that this Court should not rely on a bare assertion made by the contesting respondents in their statement of objections to the effect that the State Government had made a contribution of Rs. 1,000/- on 24-8-1988. The statement of objections are supported by the verifying affidavit of the Managing Director of the KSTDC and I find no good reason to disbelieve his assertion and therefore the acquisition in question is fully covered by the proviso to Section 6 of the Act and consequently the proceedings under Chapter VII of the Act are not attracted to the facts of these cases. The law is also well settled though the point in issue was not argued before my learned brother Justice Swami in the earlier Writ Petition. The contention of Mr. Venkataramaniah is that in the earlier Writ Petition this point was not taken in the manner put forth before this Court and therefore there was no consideration at all of the provisions of Section 6 of the Act read with Chapter VII of the Act. I am in agreement with this contention of Mr. Venkataramaniah, but all the same I am of the view that the decision of the Supreme Court in MANUBHAI JETHALAL PATEL AND ANR. v. STATE OF GUJARAT AND ORS : AIR 1984 SC120 . completely supports the case of the contesting respondents. That is a decision rendered by a three-Judge Bench of the Supreme Court and the point that arose for consideration was whether the acquisition for Gujarat State Road Transport Corporation was an acquisition for a public purpose which did not attract the provisions of Chapter VII of the Act. In that case the Supreme Court found that the 'State is acquiring lands to carry out public purpose with the instrumentality of the Gujarat State Road Transport Corporation. It is not an acquisition for a company with the funds exclusively provided by the company which would attract Part VII of the Act. In our view the High Court is right in reaching the conclusion that neither Part VII of the Land Acquisition Act nor the Company Acquisition Rules would be attracted....'. In para-4 of the Judgment the Supreme Court considered the meaning of the proviso to Section 6 of the Act and observed as follows:

'The last contention of Mr. Gopal Subramaniam is that the contribution from the public exchequer in the amount of Rs. 1/- which enabled the High Court to hold that it was an acquisition for a public purpose for a company is in fact illusory and therefore, it cannot be said that the power to acquire land has been exercised by the State Government for a public purpose. In *Somavanti v. State of Punjab* : [1963]2SCR774 a contribution of Rs. 100/- from the public exchequer was held sufficient to come to the conclusion that the acquisition is for a public purpose with the aid of State fund.....'.

The learned Counsel for the petitioners however contended that a Constitution Bench of the Supreme Court in *Valjibhai's case* (supra) and also a smaller Bench of the Supreme Court in : [1981]2SCR712 (supra) have taken a contrary view and therefore the former decision should be followed in preference to the later decision of the Supreme Court. Though the decision reported in : [1964]3SCR686 is a decision of a constitutional Bench of the Supreme Court, in that case, the interpretation of the proviso to Section 6 of the Act did not arise for consideration. Likewise, the Supreme Court in : [1981]2SCR712 did not also consider the scope of the proviso to Section 6 of the Act. In the circumstances, without going into the question whether a decision of a smaller Bench or a larger Bench is binding on this Court, I can proceed on the basis that the law has been correctly laid down by the Supreme Court in *SOMAVANTI'S case* : [1963]2SCR774 which was subsequently followed by the Supreme Court in : AIR 1984 SC120 . Therefore, the challenge to the impugned notification on this ground falls. The third submission of Mr. Venkataramaniam need not detain me for long. He submitted that in view of the bar contained in Section 79B of the KLR Act, namely, acquisition by the State for the benefit of a statutory Corporation is not lawful for it was the Corporation which had acquired the land and therefore Section 79B is attracted to the facts of the case. Section 109 of the KLR Act is an answer to this contention.

9. Lastly Mr. Venkataramaniam relied on the provisions of Article 21 of the Constitution for sustaining his challenge to the impugned notification. It may be that the petitioners are poor farmers solely depending on the land in question. But these lands are sought to be acquired only after paying compensation due to them under the Land Acquisition Act and it cannot be said that the compensation

payable to them under the Act is an illusory one. The observations made by the Supreme Court on the application of Article 21 of the Constitution in Olga Tellis case : AIR 1986 SC180 cannot be imported into the fact situation of this case for granting any relief to the petitioners. When the lands are sought to be acquired for a public purpose the persons whose lands are taken are eligible for compensation and such compensation is also controlled by the provisions of the statute. In the circumstances I do not think that this is a case where this Court should invoke the provisions of Article 21 of the Constitution and give relief to the petitioners.

10. As noticed earlier on the facts pleaded the petitioners had not satisfactorily explained the delay of more than 6 years in approaching this Court and hence this Court should be very slow to interfere with the impugned proceedings in the face of such laches.

For these reasons these petitions are dismissed. In the circumstances parties to bear their own costs.

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