

Abdul Rehman and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Mar-05-2003

Reported in : AIR2003Kant311; 2003(4)KarLJ148

Judge : N.K. Jain, C.J., ;A.V. Srinivasa Reddy and ;V.G. Sabhahit, JJ.

Acts : Karnataka Improvement Boards Act, 1976 - Sections 2(1), 13 to 18, 19(1), 26, 35 and 68; Bangalore Development Authority Act, 1976 - Sections 2, 15 to 19, 27, 36 and 73; [Land Acquisition Act, 1894](#) - Sections 5A, 6 and 11A; [Constitution of India](#) - Article 246(3); City Improvement Boards Act; Land Acquisition (Amendment) Act, 1984

Appeal No. : Writ Appeal Nos. 3931, 4556 and 4705 to 4716 of 1997 and 3652 of 1998 and Writ Petition Nos. 24402 a

Appellant : Abdul Rehman and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Sateesh M. Doddamani, Government Adv. for Respondent-1 in W.A. Nos. 3931, 4556 and 4705 to 4716 of 1997 and 3652 of 1998 and W.P. Nos. 24402 and 26551 of 1998 and ;Tajuddin, Adv. for Caveator-Responde

Advocate for Pet/Ap. : T.S. Amar Kumar, Adv. for Lawyers Inc. in W.A. Nos. 3931, 4556 and 4705 to 4716 of 1997 and in W.P. Nos. 24402 and 26551 of 1998 and ;Shiva Kumar Kalloor, Adv. in W.A. No. 3652 of 1998

Judgement :

ORDER

N.K. Jain, C.J.

1. A Division Bench of this Court on 12-4-1999 referred the following question to the Full Bench:

'Whether Section 35 of the Karnataka Improvement Boards Act has adopted the entire Land Acquisition Act or incorporated some of its provisions?'

2. As per the order of the Division Bench, the matter was posted before the Full Bench. On 25-11-1999, a Full Bench of this Court granted two weeks' time to do the needful and in case of default, appeals/petitions stand dismissed without further orders. Thereafter needful was not done vide order dated 25-11-1999, hence writ appeals automatically stood dismissed. Thereafter, civil petitions were filed. In view of the retirement of Chief Justice, one of the Members of the Bench, the Chief Justice vide order dated 4-3-2003 constituted this Full Bench and civil petitions were posted today, they were allowed and writ appeals are restored to file. Hence, this reference has come up before us today.

3. As agreed by the respective learned Counsels, the matter has been considered today.

4. As stated, the question about the applicability of the provisions introduced by the Land Acquisition Amendment Act under the provisions of the Bangalore Development Authority Act has been considered by this Court in *Khoday Distilleries Limited, Bangalore v. State of Karnataka and Ors.*, : ILR 1997 KAR1419 and the same has been approved by the Apex Court in *Munithimmaiah v. State of Karnataka and Ors.*, : [2002]2SCR825

5. The learned Counsel submits that the provisions of the City Improvement Boards Act are identical to the provisions of the Bangalore Development Authority Act and therefore the controversy has already been set at rest by the decision of the Apex Court, which is applicable to the case and therefore the question referred may be answered in terms of the decision of the Supreme Court.

6. The legal position has not been disputed.

7. The Apex Court in *Munithimmaiah's case*, *supra*, made the following observation:

'On an overall consideration of the entire situation also it could not either possibly or reasonably be stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the Bangalore Development Authority Act. When the Bangalore Development Authority Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of the Bangalore Development Authority Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the Bangalore Development Authority Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11A, which cannot also on its own force have any application to actions taken under the Bangalore Development Authority Act. Consequently, there is no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in *Khoday Distilleries Limited's case*, *supra*, to exclude the applicability of Sections 6 and 11A as amended and inserted by the Central Amendment Act of 1984 to the proceedings under the Bangalore Development Authority Act'.

8. As stated, it is held that the provisions of the City Improvement Boards Act are identical to the provisions of the Bangalore Development Authority Act and therefore, the decision of the Supreme Court would also be applicable to the provisions of the said Act and hence the question referred for decision of this

Bench is answered in terms of the decision of the Supreme Court as stated above. The provisions of the Land Acquisition Amendment Act, 1984 amending Sections 6 and 11A would not ipso facto apply to the provisions of the Bangalore Development Authority Act and the Urban Development Authority Act. Accordingly, the reference is answered.

The writ appeals shall now be placed before the appropriate Bench for disposal on merits.

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