

Naveen Jayakumar and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jun-15-1998

Reported in : 1998(4)KarLJ413

Judge : R.P. Sethi, C.J. and;K.R. Prasada Rao, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 1(2); Land Acquisition (Amendment) Act, 1984; Karnataka Land Acquisition Act, 1961 -4(1), 5-A, 6, 9 and 10; Karnataka Land Acquisition (Amendment) Act, 1964 - Sections 17; Karnataka Land Acquisition (Amendment) Act, 1984; [Constitution of India](#) - Article 254

Appeal No. : Writ Petition Nos. 3539 to 3542 of 1996 connected with Petition No. 6603 of 1996

Appellant : Naveen Jayakumar and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri A.V.S. Reddy, Additional Government Adv. and ;Sri J.M. Rajanna Shetty, Central Government Standing Counsel

Advocate for Pet/Ap. : Sri Basavaprabhu S. Patil, Adv.

Judgement :

ORDER

R.P. Sethi, C.J.

1. Petitioners in W.P. Nos. 3539 to 3542 of 1996, who are the sons and daughter of one Sri P.B. Jayakumar, have prayed for quashing the preliminary notification issued under Section 4(1) and final notification issued under Section 6(1) of the Land Acquisition Act (hereinafter referred to as 'the Act'). They have also prayed for quashing of the notices issued under Sections 9 and 10 of the said Act. It is prayed that the award made in the case on 28-12-1995 also be set aside. The action of the respondents is challenged on various grounds including non-issuance of notice to the petitioners under Sections 4(1), 5-A, 6, 9 and 10 of the Act. It is further contended that as no enquiry has been held in terms of Section 5-A of the Act, the acquisition proceedings were liable to be quashed.

2. In their statement of objections, the respondents have submitted that the land belonging to Sri P.B. Jayakumar was sought to be acquired for constructing the office and staff quarters of 2nd Respondent. Notice issued under Section 4(1) of the Act dated 11-6-1993 was published in the Karnataka Gazette on 24-6-1993 and in 'Sanje Vani' and 'Samyukta Karnataka' on 6-7-1993 and 9-8-1993 respectively. Public notice was published on the property on 19-8-1993. After issue of notice under Section 4, an enquiry as contemplated under Section 5-A of the Act was conducted in which the owner, namely, Sri P.B. Jayakumar, appeared and gave his consent for acquisition of the property in question on 22-9-1993. Declaration in terms of Section 6 of the Act was issued on 30-11-1993 and was published in 'Samyukta Karnataka' on 18-12-1993. It is contended that as per the revenue record, the khatha of the property stood in the name of Sri P.B. Jayakumar only. The partition alleged to have been made amongst the said Sri P.B. Jayakumar and the petitioners were neither registered nor reflected in the revenue record. All other allegations made by the petitioners have been denied being false.

3. The learned Single Judge, who earlier heard the petitions, referred the matter to this Court vide his order dated 28-10-1997 observing:

'It is contended on behalf of the petitioners that the State has no power to acquire the land under the Land Acquisition Act, as amended under Act No. 17 of 1961, in view of the amendment introduced to the Central Act in the year 1984.

It is further contended that in respect of the land required by the Central Government it is the Central Government, which is the appropriate Government for the purpose of initiating the proceedings and not the State Government. XXXXXXXXXX'.

4. The learned Counsel appearing for the petitioners submitted that after the application of the Central Act in the State of Karnataka, respondent 3 had no jurisdiction to initiate the process of acquisition. In support of his contention, he has relied upon the judgment of this Court in *Kanaka Gruha Nirmana Sahakara Sangha, Avalahalli, Bangalore South Taluk v Sri Kota Srinivasa Murthy and Others*. Refuting the allegations of the petitioners, the learned Counsel appearing for the respondents has submitted that in view of Karnataka Act No. 33 of 1991, the aforesaid judgment cannot be held to be laying down the correct proposition of law and that respondent 3 was justified in initiating the acquisition proceedings with regard to the land, the subject-matter of litigation.

5. The learned Counsel for the petitioners has tried to challenge the constitutional validity of Karnataka Act No. 33 of 1991 on various grounds including the ground that the State legislature had no jurisdiction to enact that law which sought to amend the Central Act No. 1 of 1894 made applicable to the State of Karnataka. The admitted position is that the [Land Acquisition Act, 1894](#) being Central Act No. 1 of 1894 was enforced in the State of Karnataka with effect from 24-9-1984 and, whereafter, all acquisition proceedings were initiated, conducted and concluded under the said Act along with the amendments made to it from time to time in terms of various constitutional provisions. Even though, prima facie, we found some substance in the submission of the learned Counsel for the petitioners regarding the constitutional validity of Act No. 33 of 1991, yet in the absence of specific challenge to its enactment and the pleadings in that behalf, we are not in a position to adjudicate the pleas raised. Leaving the matter as it is, we have decided to determine the legality of the action of the respondents on the assumption that the said Act was enacted with the purpose of making the Central Act applicable in the State of Karnataka with modifications noticed therein.

6. According to the amendment made under Section 4 of the Central Act, the 'appropriate Government' would include the Deputy Commissioner as well. The learned Counsel for the respondents submitted that as Act No. 33 of 1991 has received the assent of the President, the law laid down in Kanaka Gruha Nirmana's case cannot be held to be a good law. We are not impressed with such a submission as, admittedly, in that case, the action had been initiated by the Deputy Commissioner before the enactment of Act No. 33 of 1991 when the 'appropriate Government' in the Act did not include within its ambit the 'Deputy Commissioner'. While reiterating and upholding the judgment in Kanaka Gruha Nirmana's case, we observed that the said judgment insofar as it relates to acquisition by the Deputy Commissioner to be unconstitutional would be applicable only to the cases where the acquisition was initiated, conducted and concluded after the commencement of the Central Act, but before the enactment of Karnataka Act No. 33 of 1991. Such observation, however, is subject to the constitutional validity of Act No. 33 of 1991 which may be determined in a case where specifically its constitutional validity is challenged on the grounds as were canvassed by the learned Counsel for the petitioners, or such other grounds as may be brought to the notice of the Court.

7. The learned Counsel for the petitioners has alternatively submitted that as the action for acquisition has been initiated on the basis of a law which is not existent, the whole of the proceedings are liable to be quashed. Referring specifically to Annexure-B, the notification under Section 4(1) of the Act, the learned Counsel submitted that after coming into force of the Central Act, the Karnataka Land Acquisition Act, 1961 stood repealed by implication and as such, the respondents had no jurisdiction to initiate action for acquisition against a law which had outlived its life and utility. We find substance in this submission. The Notification-Annexure-B reads as under:

'It has come to the notice of the Special D.C., Bangalore District, Bangalore that the land notified in the following schedule is required by the Subsidiary Intelligence Bureau, Government of India, No. 25 (Old No. 8), Infantry Road, Bangalore, for construction of its office and residential quarters for its staff.

The Special Land Acquisition Officer, Visveshwaraiah Centre, Podium Block, 3rd floor, Bangalore or his representative is hereby authorised to take suitable action towards acquisition under the provisions of Karnataka Land Acquisition Act, 1961. Section 17, as amended in 1964 and 1984, Section 4(2). It is hereby notified vide Section 4(1) of the Karnataka Land Acquisition Act that.- XXX XXXXXX'.

The Supreme Court in *Kanthimathy Plantation Private Limited v State of Kerala and Others*, dealt with such a situation in relation to the law of acquisition in the State of Kerala before the amendment of the Central Act, and held:

'The Legislative Entry for acquisition and requisitioning of property is Entry 42 in List III of the Seventh Schedule. Previously, Entry 33 in List I and Entry 38 in List II of the Seventh Schedule dealt with acquisition and requisitioning in the respective fields. But by the Seventh Amendment of the Constitution in 1956 those two entries from Lists I and II were omitted and Entry 42 in the Concurrent List was inserted. The Amending Act of 1984 has been made in exercise of Legislative power vested in the Centre by Entry 42 in the Concurrent List. There was a State Act in Kerala known as the Kerala Land Acquisition Act of 1961 which dealt with acquisition and that had been legislated on the basis of the same Entry 42. Under the Amendment Act of 1984, the Land Acquisition Act of 1894 was subsequently amended. Five new provisions were inserted, twenty-one sections were substantially altered, one section was substituted and another was omitted. The Act of 1984 extended the Land Acquisition Act of 1894 to the whole of India excepting the State of Jammu and Kashmir. The provisions were substantially different from the provisions in the Kerala Act. In view of the fact that the Land Acquisition Act of 1894 was extended to the whole of India excepting one State, the Land Acquisition Act of 1894 became applicable in the State of Kerala and in view of the repugnant provisions, in terms of Article 254 of the Constitution the Kerala Act stood repealed. There is no provision made in the Amending Act to indicate repeal of the State law but application of Article 254 is automatic to situations where it is applicable and by the operation of the Article, the State Act stood repealed and the Central Act became applicable. That such is the actual position is not challenged by Counsel for the appellant. In fact in the notes submitted to this Court that position appears to have been accepted'.

After referring to various circumstances, the scheme of the Central Act, number of judgments on the point and the constitutional provisions, this Court in *Kanaka Gruha Nirmana's case*, *supra*, held:

'It has to be noted that prior to 24-9-1984 the Act was applicable to the whole of India except the territories which immediately before the 1st of November, 1956 were comprised in Part 'B' States. Such Part 'B' States were abolished on 1st of November, 1956 and only the States and the Union Territories came into existence as detailed in the First Schedule of the Constitution. By amending sub-section (1) of Section 2, the Act was extended to the whole of India except the State of Jammu and Kashmir, as noted earlier. The extension of the Act including to the State of Karnataka impliedly repealed the State Act dealing with the land acquisition. Assuming for the sake of argument that the State Act has not been repealed even impliedly, it has otherwise to yield and give way to the Central Act. Acquisition of land is covered by Entry No. 42 of List III of the Seventh Schedule. Being a subject covered under the Concurrent list, it has to give way to the Central Act in view of the provisions of Article 254 of the Constitution which provides that if any provision of law made by the legislature of a State is repugnant to any provision of a law made by the Parliament, the law made by the Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State, shall to that extent of repugnancy, be void'.

8. We are also of the opinion that realising that the Karnataka Land Acquisition Act, 1961 was non-existent being impliedly repealed with the commencement of Central Act No. 1 of 1894, the State Legislature enacted Act No. 33 of 1991. If the aforesaid Act of 1961 was deemed to be in operation, there was no necessity of amending Section 4 by Act No. 33 of 1991 because admittedly, such a provision already existed in the L.A. Act, 1961. The State Government and the State Legislature themselves are shown to be aware, conscious and convinced that the State Land Acquisition Act, 1961 was not operative. In the absence of a legislation which stood impliedly repealed with the extension of the Central Act, the respondents were not justified in initiating action under the aforesaid statute. The acquisition proceedings initiated, conducted and concluded under the aforesaid

Act, therefore, being without jurisdiction, are liable to be quashed.

9. Accordingly, writ petitions are allowed. Rule issued is made absolute. Notifications and award impugned in the writ petitions are quashed.

10. In view of the orders passed in Writ Petition Nos. 3539 to 3542 of 1996, Writ Petition No. 6603 of 1996 shall stand disposed of in terms thereof.

11. It is however made clear that setting aside of the notifications and the award impugned in the writ petitions, would not prevent the authorities/respondents from initiating fresh action of acquisition if so required, but only in accordance with the provisions of the Central Act as applicable in the State of Karnataka and in the light of the observations made hereinabove.

No costs.

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