

Vijayakumar Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-09-1997

Reported in : 1999(4)KarLJ128

Judge : R.P. Sehti, C.J. and; S.R. Bannurmath, J.

Acts : Karnataka High Court Act, 1961 - Sections 2, 4, 5-A and 6; High Court of Karnataka Writ Proceeding Rules, 1977 - Rule 27; [Land Acquisition Act, 1894](#) - Sections 3, 4(1) and 6(1); [Constitution of India](#) - Articles 254 and 226; Amendment Act, 1984; [General Clauses Act, 1897](#) - Sections 6

Appeal No. : Writ Appeal No. 8031 of 1996

Appellant : Vijayakumar

Respondent : State of Karnataka and Others

Advocate for Def. : Sri Basavaraj V. Sabarad, Adv. and ;Sri A.V. Srinivasa Reddy, Additional Government Advocate

Advocate for Pet/Ap. : Sri Mohandas N. Hegde, Adv.

Judgement :

R.P. Sethi, C.J.

1. Land measuring 5 acres 39 guntas in Survey No. 25 of Kotanur D. Village owned by the appellant was proposed to be acquired for the purposes of the

Karnataka Housing Board vide notification issued under Section 4 of the Land Acquisition Act (hereinafter called the 'Act') published in the Karnataka Gazette on 29-10-1987. Objections filed by the appellant were rejected and final notification under Section 6 of the Act was issued which was published in the Gazette on 9-6-1988. It was submitted that as the Assistant Commissioner had failed to consider the objections filed by the appellant before submission of his report in terms of Section 5-A of the Act, the final notification issued by the respondents was liable to be quashed. It was submitted that the appellant raised other objections to the acquisition on the ground that the land in question had earlier sought to be acquired in the year 1982 by the City Improvement Trust Board and the same was dropped on the representation made by him. Such an objection was allegedly not properly considered by the Assistant Commissioner before submitting the report.

2. In the reply affidavit filed on behalf of the respondents it was submitted that the land in dispute was being acquired for the public purpose. It was contended that after issuing statutory notice, the respondents conducted an enquiry in terms of Section 5-A of the Act, but despite service the appellant did not produce any record to substantiate his claim that the land in Sy. No. 25 along with Sy. Nos. 24/1 and 24/2 had been dropped from acquisition proceedings by the City Improvement Trust Board, Gulbarga. Even otherwise the dropping of proceedings did not prevent the respondents from acquiring the lands for the benefit of the Karnataka Housing Board. The notifications issued under Sections 4 and 6 of the Act were claimed to be legal, valid and according to law.

3. The writ petition was dismissed by the learned Single Judge holding:

'The main grievance of the petitioner in this writ petition is that the objection filed by the petitioner has not been considered by the Assistant Commissioner. From the records it is seen that the petitioner was heard by the Assistant Commissioner and thereafter submitted the report under Section 5-A considering each of the objections filed by the petitioner. Therefore, there is no illegality in the procedure adopted by the authorities. The other contentions raised by the petitioner, have not been urged at the time of arguments'.

4. The learned Counsel appearing for the appellant has now vehemently argued that as the acquisition proceedings had not been initiated by the competent authority, the same was liable to be quashed. It is submitted that after coming into force of the Central Act vide Act 68 of 1984, the Deputy Commissioner had no jurisdiction to issue the notification under Section 4 of the Land Acquisition Act as he could not be held to be either Collector or Appropriate Government within the meaning of the Central Act. In support of his contention the learned Counsel has relied upon the Division Bench judgment of this Court in *Kanaka Gruha Nirmana Sahakara Sangha, Avalahalli, Bangalore South Taluk v Kota Srinivasa Murthy (since deceased) by L.Rs and Others* .

5. The learned Counsel appearing for the respondents rightly argued that the submissions made on behalf of the appellant are afterthought and apparently alleged to make grounds for filing the appeal. A perusal of the writ petition and the record produced before the learned Single Judge would clearly show that no such plea was raised by or on behalf of the appellant. The plea as to whether the action had been initiated by the Appropriate Authority within the meaning of the Act was a plea of fact which could be decided only on the basis of the pleadings. In the absence of specific pleadings the appellant cannot raise new pleas at this belated stage. In the cases relied upon by the learned Counsel for the appellant this Court had 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 was 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 was not repealed even impliedly, it has otherwise to yield and give way to the Central Act. Acquisition of land is covered by Entry 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. 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 vide Act No. 68 of 1984. The Apex Court held:--'The Legislative Entry for acquisition and requisitioning of property is 42 in List III of the Seventh Schedule. Previously, Entry 33 in List I and Entry 38 in List II of 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 to 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' .

A Constitutional Bench of the Apex Court in *Deep Chand v State of Uttar Pradesh and Others*, had earlier held:

'It is not disputed that under the proviso to Article 254(2), the Parliament can repeal the law made by the Legislature of a State and that Parliament can repeal the repugnant State law whether directly or by necessary implication. Assuming that Parliament in the present case by enacting the Amending Act repugnant to the State law with respect to the same subject-matter i.e., nationalisation of road transport, impliedly repealed the State law, would it have the effect of effacing the scheme already made? If there was a repeal, the provisions of Section 6 of the General Clauses Act of 1897 are directly attracted, the relevant part of Section 6 of the General Clauses Act reads: 'Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder'.

The express words used in clause (b) certainly take in the scheme framed under the repealed Act. It was a thing duly done under the repealed Act'.

There is, therefore, force in the submissions of the learned Counsel for the appellant-landowners that after the applicability of the Central Act, the powers of acquisition were to be exercised strictly in accordance with the Central Act by the authorities specified therein and by none else. Realising such a settled position of law, the learned Counsel appearing for the respondents have relied upon Annexure-R1 to submit that in effect and essence, the appropriate Government had exercised the powers and that the Deputy Commissioner, the Collector, had only performed his duties as cast upon him under Part II of the Act. It is contended that the satisfaction recorded is that of the Government and not of the Collector or the Deputy Commissioner. Presumably, having in his mind Annexure-R1, the

learned Single Judge also held:

'..In view of the direction of the Government to the Deputy Commissioner to initiate acquisition proceedings for the benefit of the 4th respondent-society, I do not think that there is any substance in the contention of Sri Ramachandra and accordingly it is rejected' '.

6. After referring to the judgments of the Supreme Court in Kanthimathy Plantation Private Limited's case, supra and Deep Chand's case, supra, it was held that after the applicability of the Central Act, the powers of acquisition were to be exercised strictly in accordance with the Central Act by the Authorities specified therein and by none else. The observations of the Court had to be read in the context of the applicability of the provisions of Article 254 of the Constitution. The State Act was deemed to have been repealed to the extent of repugnancy only. This position of law already declared by us is being reproduced even at the cost of repetition to allow the apprehensions and the doubts expressed. The Court had held:

'Acquisition of land is covered by Entry 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'.

7. In view of what we have noticed herein above there is no merit in this appeal which has been filed upon misconceived notions of law and completely ignoring the facts pleaded in the writ petition.

8. Appeal is dismissed without any order as to costs.