

B. Umesh Vs. Bangalore Development Authority

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Court : Karnataka

Decided On : Feb-08-1991

Reported in : ILR1991KAR824

Judge : Mohan, C.J. and ;Kedambady Jagannatha Shetty, J.

Acts : Bangalore Development Authority Act, 1976 - Sections 65

Appeal No. : W.P. Nos. 2842 to 2846, 18036 to 18053 and 18054 to 18071 of 1989 A/W CCC 327 to 331 of 1989 and W.

Appellant : B. Umesh

Respondent : Bangalore Development Authority

Advocate for Def. : S.G. Sundaraswamy, ;A.J. Sadashiva, Advs. for R-1, ;N.K. Gupta, Govt. Adv. for R-2 and ;M.H. Datar, Adv. for R-3

Advocate for Pet/Ap. : Govind Swaminadhan, ;C.S. Krishnamurthy, ;H.N. Narayan and ;C.S. Amarkumar, Advs.

Disposition : Petition dismissed

Judgement :

Mohan, C.J.

1. All these matters can be dealt with under a common Judgment since the point involved is one and the same.

2. Lands bearing various survey numbers measuring an extent of 1,134 Acres and 12 Guntas situate in Nagasettyhalli and Chikkamaranahalli Villages were notified for acquisition by the Bangalore Development Authority (for short 'BDA'). This was for the formation of what is known as 'Rajmahal Vilas II Stage'. The preliminary Notification was issued on 3-1-1977, and the Final Notification was issued on 2-8-1978. Pursuant to this, an award was passed and possession was taken in 1980 and 1982. The BDA decided to construct 558 High Income Group Houses in Rajmahal Vilas II Stage under 'Self Financing Scheme'. Applications were called for, for allotment of houses. Several applicants had made initial deposits varying from Rs. 90,000/- per house. It was assured by the BDA that the houses would be completed by the end of 1983. The land for the scheme was selected out of the above notified lands. Though award was passed, actually possession could not be taken except recording of possession.

The land owners i.e., the farmers of these lands which are under acquisition, did not allow the layout work to be carried out by the BDA. In fact they obstructed the work for breaching the tank situate at Chikkamaranahalli comprised in the acquired land. Therefore, efforts to form a layout could not succeed in view of the stiff resistance from the owners who were aggrieved by the low compensation offered in respect of their lands. They were in fact agitating for higher compensation. Representations had also been made in this behalf. As the BDA was keen on the layout work being carried out in the acquired land without any impediment, the then Chairman of the BDA initiated move for amicable settlement with the farmers through their representatives and others. A settlement was worked out on the following lines:-

'(i) The farmers will physically hand over about 95 acres of lands to BDA in the area for the said self-financing scheme.

(ii) The compensation already fixed by BDA will be accepted by the land owners.

(iii) The BDA shall give a site of 40'x60' size free of cost to the land owners of the land or their representatives.

(iv) The villagers had taken advances on their lands (about 5 to 6 years earlier to acquisition by BDA) fixing the land cost at Rs. 1,00,000/- (Rupees one lakh only) per acre and they had to return the money with interest from whom they had taken advances. So the BDA has to transfer 30 acres 34 guntas of land from the lands meant for Rajmahal Vilas II Stage Layout as per the Rules for formation of private layout. The compensation amount which was deposited in the Court will have to be credited back by the owner. Further, the amount of compensation credited in the RD of BDA will also be withdrawn as no compensation can be paid to the land owners of the above mentioned 30 acres 34 guntas. As this land dispute was pending over 2 years even at the time of negotiating the matter during 1984 it was proposed to place the proposal for the consideration of the Authority, The above was placed before the I respondent for consideration in the meeting held on 26-6-1984 and the I respondent thereafter passed resolution wherein it was resolved that the land owners or their representatives on their surrendering 95 acres of land should be provided with one site of dimension of 40' x 60' free of cost and that they should accept the compensation already fixed by the BDA and an extent of land measuring 30 acres and 34 guntas should be released in favour of the land owners or their representatives for formation of private layout.'

As a result of the Resolution of the BDA dated 26-6-1984, the resistance offered by the land owners for the formation of the layout was withdrawn. The BDA was able to secure possession of 95 acres of land in the Achkat of Nagashettyhalli tank for implementing the scheme of construction of 558 HIG Houses. The houses have been completed and they are ready for occupation by the allottees.

The farmers and the owners of 95 acres of land which was agreed to be surrendered to the BDA for Implementing the scheme of building houses under HIG Self Financing Scheme, executed a general Power of Attorney in favour of the third respondent C.V.L. Sastry to work as their representative for implementation of the resolution of the BDA dated 26-6-1964. He was also empowered to act on behalf of the land owners to secure sites measuring 40' x 60' each..

The Writ Petitioners who were given sites have paid huge amounts for acquisition of the same, and they were nominated by their General Power of Attorney Holder - the third respondent - for allotment of sites. At the request of the third respondent, the BDA allotted sites bearing various numbers to the petitioners as per allotment orders issued to them. Thus the BDA recognised the petitioners as allottees of the sites which are situated in the area adjoining the Houses for HIG constructed under Self Financing Scheme, The sites allotted to the petitioners measure 40' x 60' each..

Inasmuch as the allotments were made as early as 1985 and since then four years have elapsed, the BDA had failed to issue Possession Certificates to the petitioners in spite of repeated requests. Though personal contacts were made several times, they were of no use. Still Possession Certificates are to be issued, and likewise sale-deeds are to be executed. But to their surprise, the petitioners learnt that the Government by its letter dated 6-1-1989 sent to the BDA, stayed the implementation of the BDA's resolution dated 26-6-1984 bearing No. 384. According to the petitioners, the lands were surrendered on the- express understanding that the land-owners should be given and placed in possession of a site each measuring 40' x 60'. The owners have not even been paid compensation. Further, to deny even the allotment of sites cannot be tolerated, and it is but right that the BDA should also fulfil its obligation. The order of the Government dated 6-1-1989 is in excess of the authority and the same is violative of the provisions of the Bangalore Development Authority Act, 1976, (for short 'the Act'). The owners of lands have a right to have a site free of cost in the event of acquisition by the BDA. The petitioners being the representatives of the nominees of the land-owners are entitled to the sites as evidenced by the allotment letters. Refusal to make allotment pursuant to the said Government Letter, is not only illegal but arbitrary and the same deserves to be quashed. By not taking follow-up action granting Possession Certificates and sale deeds, they have been put to serious loss, prejudice and inconvenience. After making huge investments on the sites they are unable to exploit the same. They cannot even approach the authorities for sanction of licence, plan etc. The cost of construction is increasing every day and as such they are put to great inconvenience and loss which cannot be compensated in any manner. It is under these circumstances, they have

preferred these Writ Petitions praying to quash the said Government Letter/Order dated 6-1-1989 and for a mandamus directing the BDA to issue forthwith Possession Certificates and sale deeds in favour of the petitioners in respect of the sites allotted them in implementation of the Resolution dated 26-6-1984.

3. A statement of objections has been filed by the BDA, and in paragraph-2 it is stated thus:

'The claim of the petitioners rests only on the Board Resolution No. 384 dated 26-6-1984. According to the said resolution an area of 30 acres 34 guntas of land acquired by Government for Bangalore Development Authority, has to be released in favour of the ryots or their representatives and that in respect of 95 acres acquired land to be utilised by Bangalore Development Authority for Rajamahal Vilas II Stage Extension, compensation as awarded by the Land Acquisition Officer will be accepted, and in addition 90 sites each of the dimension of 40ft x 60ft of the rate of one site per acre should be given to the khatedars in the layout formed in the acquired land by Bangalore Development Authority....'

In respect of the lands acquired an award of compensation was passed and the same was notified to the concerned persons viz., the registered khatedars in the revenue records. Possession of the acquired land was also taken by the Government and handed over to the Engineering Section on different dates in the years 1980 and 1982. Thus the acquisition process had been completed and title to the acquired lands stood vested in the State Government long before the BDA's resolution dated 26-6-1984 and the impugned Government Order dated 6-1-1989. Some of the lands notified for acquisition formed part of the achkat in Nagasettihalli tank. Despite acquisition, there was unlawful obstruction for the formation of the layout, and it was at that stage that talks took place which ultimately resulted in the passing of the Resolution dated 26-6-1984 by the BDA as a measure of expediency. Though allotment orders were issued, no further action was taken in pursuance of the same in view of the Government Letter dated 6-1-1989 staying further action pursuant to the said resolution. The BDA passed the said resolution apparently under the impression that it was within its powers to do so, and it is now realised that it does not have such power and the whole of the

said resolution is contrary to the provisions of the Act as interpreted in various decisions of this Court.

It is submitted that the power to alienate under Section 38 of the Act does not extend to lands acquired for it for the formation of a layout for sites. In the instant case, lands were acquired for the purpose of forming a layout called Rajamahar Vilas II Stage. It is not within the power of the BDA to convey any site out of the sites so laid down to any person by reason only of the fact that he was one of the holders whose lands had been acquired; there is also no provision in the Act to give any site free of cost; the allotment of sites in any layout can only be in terms of the Allotment Rules and not in contravention thereof.

It is now realised that the allotment letters issued in favour of the petitioners pursuant to the resolution dated 26-6-1984 do not conform to the requirements of the Act and the Rules. Such a Resolution was impermissible in law. It is also well settled that the land acquired under the Act and which has come to vest in the Government cannot be released from acquisition or reconveyed to the owner after the acquisition process had been completed and the land had come to vest in the State as in the instant case.

The State Government has power under Section 65 of the Act to issue directions such as those contained in the impugned letter dated 6-1-1989. It is the duty of the BDA to comply with such directions. The allotment of 90 sites in bulk to the purported ex-land owners is contrary to the provisions of the Act and the Rules.

It is understood that the power of attorney given to the third respondent - one individual - had been cancelled by many owners. Possession as sought by the representatives of the third respondent (namely the petitioners) purporting to be on behalf of the owners of lands virtually becomes bulk allotment to him. This is per se contrary to the intendment of the Act and the provisions of the Allotment Rules.

The prayer to quash the Government Letter is untenable. Even apart from the Government Letter, a mandamus of the kind sought for by the petitioners is impermissible in law. If the resolution of the BDA dated 26-6-1984 is void in law, it cannot be enforced. Therefore, should a mandamus be issued that would amount

to requiring the BDA to do something contrary to law laid down by this Court. Thus it is prayed that the Writ Petitions may be dismissed.

4. Mr. Swaminadhan, learned Counsel for the petitioners, draws our attention to the background leading to the resolution of the BDA dated 26-6-1984 and urges that because of the settlement the owners were obliged to part with their lands and the Note of the BDA considered at the time of passing the Resolution, clearly stated as to how the settlement was worked out examining the legal implications as to the breach of the tank after paying higher compensation or ex-gratia payment. They were found to be not favourable. It was under these circumstances, considering the difficulties, allotment of sites was agreed to. It is an undeniable fact that recognising the right of the petitioners, individual allotment orders were issued. Therefore, it is too late in the day to resile from that stand and take umbrage under the letter of the Government.

It is not open to the BDA to contend that the resolution dated 26-6-1984 is void or ultra vires. An authority cannot be allowed to act in this arbitrary way. In such a case the principle as laid down in *STATE OF U.P. v. PISTA DEVI*, : [1986]3SCR743 directing allotment of sites in lieu of the lands which have been deprived under land acquisition proceedings, must be applied.

The Government has no power to stay the implementation of the resolution of the BDA. In fact the Government has not purported to act under Section 65B of the Act. Therefore that cannot help the BDA to deny the legitimate relief to which the petitioners are entitled.

5. Mr. S.G. Sundaraswamy, Senior Advocate, appearing for the BDA, submits that whatever equity is urged by the petitioners it is to be seen whether the resolution of the BDA dated 26-6-1984 is valid. If it turns out to be ultra vires of the powers of the BDA as delineated under the Act, then it cannot be enforced. The statement of objections takes a positive stand as to how the resolution is void in law. From out of the void resolution no right will flow. It is void because Section 38 dealing with the power of transfer, does not apply. Section 14 equally is inapplicable. Therefore, the Government have power to stay the same. There is no provision in the Act to make an allotment of this character, and therefore that cannot be sought

to be enforced. Even under Article 226 of the Constitution, if something is forbidden by the Statute, the Courts will not enforce such a contract and require the authority to do something which is illegal, and it has been so laid down in *SANTOSH KUMAR v. CENTRAL WAREHOUSING CORPORATION*, : [1986]1SCR603 .

The question of even disgorging the benefit because of the void nature of the resolution, cannot arise because the petitioners are not the owners of lands and they are only the allottees from the third respondent the General Power of Attorney Holder. Therefore, there cannot be any equity in their favour as well.

6. Having regard to the above arguments, the only question that arises for our consideration is whether the resolution of the BDA dated 26-6-1984 is void in law? Should this question be answered in the affirmative, nothing further arises viz., whether the Government was within its power to stay that resolution.

No doubt the acquisition proceedings are completed. But it appears that actual possession of these 95 acres of land could not be taken. The Note of the Authority and the Resolution of the BDA dated 26-6-1984 read as follows:-

'AUTHORITY NOTE

Sub: Construction of HIG Houses under Self Financing Scheme at Rajamahal Vilas II Stage Layout.

The Scheme for construction of 558 houses of HIG under Self Financing Scheme at Rajamahal Vilas IIInd Stage was approved by Government in G.O.No. HUD 122 MNX 82 dated 3rd July 1982.

The area earmarked for this project is 68 acres near Nagashettihalli Village.

The lands for the above mentioned scheme as well as for Dollar Scheme in Rajamahal Vilas IIInd Stage have been notified by Final Notification No. HUD 39 MNJ 78 dated 2-8-1978 published in the Karnataka Gazette dated 31-8-1978. The awards in respect of the entire area have been passed, possession of the land taken and handed over to the Engineering Section on different dates in the years

1980-1982. Out of the total lands notified, the extent of land coming under the achkat of Nagashettihalli tank is 89A 36G.

The villagers in the area did not allow to form the sites on the plea that the compensation was instalments. The lands reserved for this layout are the achkat land of Nagashettihalli tank. Three attempts were made to form the layout with police force but again failed. Government had given approval to breach the tank and Public Works Department tried twice to breach the tank even with the help of police force but the attempt was not successful.

A meeting was held in the chambers of Hon'ble Chief Minister in this regard, with all the concerned secretaries of Government the Chairman and Commissioner, BDA. It was opined that the tank can be breached only after paying higher compensation or ex-gratia, payment to achkatdars if permissible.

The legal implications of the above proposal were examined and found to be not favourable. So attempts were made by the Chairman to meet the villagers and other leaders of the area to arrive at a solution for this long pending case. The negotiations with the land holders have been finalised with the following three conditions:-

1. The villagers will physically hand over about 95 acres of land to BDA in the area.
2. The compensation already fixed by BDA will be accepted by the land owners.
3. The BDA shall give the site of 40' x 60' size free of cost per acre of land to other owner of land under the above or his representative.
4. The villagers had taken advances on their land (about 5 to 6 years earlier to acquisition by BDA) fixing the land cost at Rs. 1 lakh per acre and now they have to return the money with interest from whom they had taken advance. So BDA has to transfer 30 acres of land as per Rules to the land owners or their representatives for formation of private layout. Compensation amount which has been deposited in the Court will have to be credited back by the owner. Further the amount of compensation credited in R.D. of the BDA will also be withdrawn as no

amount be paid to land owners of the above mentioned at 4.

As this land dispute was pending over 2 years it was proposed to send the proposal for consideration of the authority.

Applications for allotment of houses were received during 1982. The applicants have deposited initial amount ranging from Rs. 60,000/- to 90,000/- per house. The authority has assured at the time of calling for application that the buildings will be completed by end of 83.

So the following proposals are placed before the authority for consideration:-

1. To accept the proposal of the ryots of using 95 acres of land as per statement.
2. To release 30A-34 guntas of land to the ryots or their representative as per the statement.
3. To allot one site each of 40' x 60' size to the khatedar or authorised person free of cost at of 1 site per acre or 90 sites.

Sd/- Sd/- Sd/- Sd/-Spl. D.C. E.E.(N) Commr. Chairman BDA MEETING DATED 26-6-1984

Subject No. 384

Thereafter, on 14-8-1984, an Endorsement was made to the following effect:-

'BANGALORE DEVELOPMENT AUTHORITY

Dated 14-8-1984

ENDORSEMENT

Sub: Allotment of sites for the land owners measuring 60' x 40' Rajamahal Vilas II Stage.

Ref: Authority Resolution No. 384 dated 26-6-1984.

The Authority has resolved in its resolution to utilise 95 acres of land as annexed, to release 30 acres 34 guntas to ryots or their representatives, as per the list and also 90 sites (one site per acre or 90 sites in total) will be given to the Achkatdars or their nominees measuring 40' x 60' at free of cost.

Sd/-

Addl. Land Acq. Officer,

BDA, Bangalore

To

Sri Kempaiah

Magasettihalli Village

Hebbal Post, Bangalore-24.'

Then on various dates allotment orders were issued in favour of the petitioners. By way of example, we will only refer to one such allotment letter and it reads:-

ENDORSEMENT

Sub: Allotment of one site in favour of Shri B. Umesh s/o Boraiah, representative of Achkatdarsi of Nagasettihalli and Chikkamarenahalli Villages coming under RMV-II Stage - out of 60 sites already released.

Ref: Application of Sri C.V.L. Sastry, bearing No. 64/CVL/85-86 dated 16-9-1985 GPA holder of Achkatdars of the said villages.

With reference to the above requisition made by Shri C.V.L. Sastry GPA Holder of Achkatdars, Shri B. Umesh s/o Shri Boraiah is hereby informed that he has been allotted with a site No. 47, measuring 40' x 60' in Rajamahal Vilas II Stage, adjoining to HIG Scheme of BDA.

Sd/-H.N. Ranganathan,

Spl. Deputy Commissioner

BDA, Bangalore.

To

Sri B. Umesh

S/o Shri Boraiah,

81/4, 2nd Main Road,

Vyalikaval, Bangalore-3.'

Then the petitioners went on complaining about the inaction of the BDA in granting Possession Certificates and sale deeds. The Government of Karnataka on 6-1-1989 wrote to the BDA as follows:-

'GOVERNMENT OF KARNATAKA

D. PUTTASWAMY,

Karnataka Govt. Secretariat

Under Secretary to

M.S. Building

Government Bangalore,

HUD Department

6th January 1989

D.O.No. HUD 29 MNX 89

Dear Sir,

Sub: Resolution No. 384 dated 26-6-1984 of the BDA - not to give effect to.

I am desired to state that the matter pertaining to the subject mentioned above was discussed with the Hon'ble Minister for Housing and Urban Development Department and it was decided that a communication be addressed to the Bangalore Development Authority directing it not to take any further action on the basis of the Board's resolution No. 384 dated 26-6-1984 until further orders from the Government. It was also decided that the authority should send a note on the development so far, arising out of the above mentioned resolution, along with the file of the BDA leading to the passing of the resolution indicated above.

I am desired to request you kindly to take immediate action in this regard and comply with sending a note and also the file leading to the subject. The matter may please be treated as MOST URGENT.'

Then on 14-2-1989, the BDA gave endorsements to the petitioners to the following effect:-

'With reference to your application on the subject cited above, this is to inform you that the Government have directed the BDA not to take further action on the basis of the Board's resolution No. 384 dated 26-6-1984 until further orders from the Government. Further action will be taken in the matter after the receipt of further order and records from the Government. This is for your information.'

The Resolution of the BDA dated 26-6-1984 puts the matter beyond doubt that one site measuring 40' x 60' to the khatedars or the authorised persons, at the rate of one site per acre or 90 sites are to be allotted free of cost. But, the question is, is the said resolution valid?

7. The stand taken by the BDA is three-fold: (i) It is not within its power to convey any site to any person by reason only of the fact that he was one of the holders whose land had been acquired; (ii) there is no provision in the Act and Rules to give any site free of cost; and (iii) the allotment of sites could be made' only in terms of the Allotment Rules and not in contravention thereof.

8. Concerning the powers of the BDA, we will examine each of the authorities relied on by the BDA.

9. In B.N. SATHYANARAYANA RAO v. STATE OF KARNATAKA, : ILR 1987 KAR790 the headnote reads as follows:

'There is no provision in the Act or in the Rules framed thereunder which enable the BDA to reconvey the site. Reconveyance in a way is opposed to the scheme itself. Scheme is formed for the purpose of forming sites for allotting them as per the Rules. The Rules do not provide for reconveyance. Therefore it is not possible to hold that there is any right to seek reconveyance.

It is not possible to apply the Rule of promissory estoppel in cases where there is no provision contained in the Act, or in the Rules framed thereunder enabling the BDA to allot or reconvey the sites in the manner proposed to be done by the Notification. Therefore the BDA cannot be directed to allot or reconvey the site on the ground that it had promised to allot or reconvey the sites.'

In that case the petitioners were in occupation of revenue sites. They were acquired for the purpose of formation of Matadahalli layout. A Notification was issued on 14-7-1976 by the BDA stating that the revenue site owners would be allotted sites equal to the revenue site acquired as far as possible not exceeding 40' x 60' on condition that no other family member owns a site or house within the Bangalore Metropolitan Area. When that was sought to be enforced, Swami, J., held as follows:-

'5. However, the learned Counsel for the petitioners has tried to take refuge under the equitable doctrine of promissory estoppel on the basis of the Notification issued by the then Chairman of the BDA dated 14-7-1976 as per Annexure-B. The petitioners claim that as per and in pursuance of the Notification (Annexure-B) they have filed the affidavits and have not challenged the acquisition and have altered their position to their disadvantage, therefore, it is not now open to the BDA to resile from the notification and deny allotment of sites to the petitioners by way of reconveyance. The Notification (Annexure-B) relied upon by the petitioners is issued by the then Chairman of the BDA. That Notification is not a direct invitation to the petitioners or persons similarly situated to file an affidavit and seek allotment of sites. The notification only states that the revenue site owners may file the affidavit within one month from the date of receipt of the letter to the effect that

they and any of the members of their family do not own any site or house within the metropolitan area. It is not the case of the petitioners that pursuant to the aforesaid notification they received a communication from the BDA to file the affidavit claiming allotment of sites by reconveyance. Therefore unless each of the petitioners had received the communication from the BDA assuring them to allot a site by way of reconveyance or otherwise and further instructing them to file necessary affidavit or application pursuant thereto, they had no reason to believe that the BDA had promised to allot or reconvey a site to each one of them. No such claim is made or no such communication is received. In addition to this it is not possible to apply the rule of promissory estoppel in cases where there is no provision contained in the Act or in the Rules framed thereunder enabling the BDA to allot or reconvey the sites in the manner proposed to be done by the notification (Annexure-B). Therefore, I am of the view that the BDA cannot be directed to allot or reconvey a site to each of the petitioners on the ground that it had promised to allot or reconvey a site to each one of the petitioners.'

In *B. VENKATASWAMY REDDY v. STATE*, : ILR 1989 KAR75 where it was agreed to denotify an acquisition and that resolution was withdrawn, a question arose whether a plea of promissory estoppel could be enforced. Bopanna, J., held as follows:

'On the plain terms of Section 38, it consists of 2 parts. The first part deals with the power of the BDA to lease, sell or otherwise transfer any movable or immoveable property which belongs to it. The second part deals with the power of the BDA to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. The comma after the first part of Section 38 makes it clear that these 2 parts should be read disjunctively and not conjunctively. If Sections 36, 37 and 38 of the Act are read together it is clear that a distinction is made between the power of the BDA to sell or otherwise transfer any movable or immovable property belonging to it and the power of the BDA to appropriate or apply the land vested in or acquired by it for the formation of open spaces or for building purposes or for any other development scheme.' (Headnote)

The same learned Judge, again in *RASAL BAI v. BANGALORE DEVELOPMENT AUTHORITY*, : ILR 1989 KAR2299 held as follows:

'The lands were acquired by the State Government under the relevant provisions of the BDA Act and not by the BDA. The proceedings for acquiring these lands could be dropped only by the State Government and not by the BDA. Under the scheme of the BDA Act it is clear that the lands vested in the BDA under the provisions of Section 36 of the BDA Act...If this Section is read with Section 38 of the BDA Act it is clear that no part of the land acquired by the State Government could be released by the BDA and the BDA is not competent to denotify the acquisition of the land which had been acquired for it earlier by the State Government by invoking the provisions of Sections 17 and 19 of the BDA Act...If a proper construction is put on Section 38 of the BDA Act it is only the land belonging to the BDA that could be dealt with by the BDA in the manner it likes. If the lands are acquired by the State Government for the BDA and the lands had vested in the BDA by such acquisition, the BDA is not competent to divest itself of those lands on the representations made by the aggrieved owners.' (Headnote)

In *TELECOM EMPLOYEES CO-OP. HOUSING SOCIETY LTD. v. SC. ST. MC. BC. IMPROVEMENT CENTRE*, : ILR 1990 KAR3320 a Division Bench of this Court while considering the scope of Sections 38 and 14 of the Act and deciding whether the bulk allotment was permissible, held as follow:

'26. In view of what has been seen above, it would be clear that where Section 38 of the Act says 'subject to such restrictions, conditions and limitations as may be prescribed' the power is unavailable unless those restrictions, conditions and limitations are prescribed. Otherwise, as the learned Advocate General rightly submits, the exercise of power would be arbitrary. There is no touchstone on which such arbitrariness could be tested because the Act does not throw any guideline one of the societies may be favoured with sale of large extent of land, the other may not be so favoured or may be favoured with even a smaller extent of land. Therefore, there is no use contending that the individual action may be tested whether it is arbitrary. Thus we conclude that when power is made available conditional upon prescription, the phrase 'subject to' in the context meaning only

conditional upon, the exercise of power in the absence of such prescription is illegal.

In this connection we may also note Section 37 which says that subject to such limitations and conditions as it may impose and to the provisions of the Act the Government may transfer to and vest in the Authority any land. Therefore, the Government transferring of land itself is subject to the conditions not only to be imposed but also as provided. In this regard, one cannot lose sight of the important fact that the power of the BDA is only for the utilisation of the land for the purpose of any development scheme. It cannot be urged that when Section 14 says 'secure the development', the development could be secured through another agency. This argument loses sight of the comprehensive definition of 'development' which includes the carrying out of building, engineering or other operations. Therefore, for instance, if the BDA is obliged to put up certain engineering structures, instead of doing it itself, it can secure the help of an outside agency. That cannot tantamount to a power under Section 14 to sell lands in favour of co-operative societies thereby altogether abandoning its statutory obligations ...'

10. Thus it is clear that the resolution of the BDA dated 26-6-1984 passed on the assumption that it was within its power to do so, is void in law. From out of such void action no right could ever be claimed. Where, therefore, the resolution passed is not permissible under the Act, it is ultra vires.

We may usefully refer to Anson's Law of Contract 24th Edition as to the applicability of doctrine of ultra vires in relation to the contractual capacity of a Corporation; at pages 219 and 229 it is stated as follows:

'The contractual capacity of a Corporation incorporated by statute is limited by the fact that any act done by the Corporation outside its statutory powers is, at common law, ULTRA VIRES and void. Since the Corporation has no existence independent of the Act of Parliament which creates the Corporation or authorities its creation, it follows that its capacity is limited to the exercise of such powers as are actually conferred by, or may reasonably be deduced from, the language of the statute. Thus a company incorporated under the Companies Act is bound by

the objects listed in its memorandum of association, for it is incorporated for the purposes set out in the memorandum. The company can make no contracts inconsistent with, or foreign to, those objects, and if it does so, the contract so made is, at common law, void and unenforceable as being ULTRA VIRES the company.

The leading case on the application of the ultra vires doctrine is ASHBURY RAILWAY CARRIAGE AND IRON CO. v. RICHE (1885 L.R. 7 H.L. 653): A company was incorporated with objects (set out in the memorandum of association) as follows: (i) to make, and sell, or to lend on hire, railway wagons and carriages and other rolling stock, (ii) to carry on the business of mechanical engineers and general contractors, (iii) to purchase, lease, work and sell mines, minerals, land and buildings, and (iv) to buy and sell as merchants, timber, coal, metals, or other materials. The Company contracted to assign to another company a concession which it had bought for the construction of P. railway in Belgium.

The House of Lords held that the contract, being related to the actual construction of a railway, as opposed to railway stock, was ULTRA VIRES the objects in the memorandum and void. Even if the shareholders subsequently ratified the contract, it could not thereby be rendered binding on the company.'

Therefore, a contract of this nature cannot be enforced.

We may now refer to the ruling relied on by Mr. Sundaraswamy viz., : [1986]1SCR603 . In para-graph-4 of the said decision, it is held as follows:

'....Surely What may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Article 226. Article 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute...'

This clearly supports the stand of the BDA. However, Mr. Swaminadhan would rely on the principle laid down in : [1986]3SCR743 which read as follows:

'9. It is, however, argued by the learned Counsel for the respondents that many of the persons from whom lands have been acquired are also persons without

houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice, Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21(2) of the Delhi Development Act, 1957 which reads as follows:-

21(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under Sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled, with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase its subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.'

10. Although the said Section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the Country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or

shop buildings in the urban area in question.'

We find no possibility of applying this decision to a void contract. Once we arrive at this position, we do not know how a mandamus would lie. The Government in exercise of its powers under Section 65 of the Act has rightly stayed the implementation of the resolution of the BDA dated 26-6-1984. It cannot be denied that the owners are obliged to part with their lands. It cannot equally be denied that they accepted a lower compensation. Therefore, there was hope against hope that one site per acre would be given free of cost. Whatever may be the equity in their favour, we do not think we can persuade ourselves to apply an equity disregardful of the void nature of the resolution. We cannot even direct the BDA to disgorge the benefit and restore the status quo ante because the petitioners before us claim through a General Power of Attorney Holder. They are not the owners from whom lands were acquired. Therefore, looked at from any point of view, we hold that the petitioners can neither succeed in seeking a Mandamus nor a Certiorari. Accordingly, we dismiss all these Writ Petitions. However, there shall be no order as to costs.

CCCs 327 to 331/1989 and WAs 2070 to 74/1990 arise out of interim orders passed in the Writ Petitions. Since the Writ Petitions themselves have been dismissed, these CCCs and WAs also will stand dismissed.

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