

Sharanamma Vs. State

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Court : Karnataka

Decided On : Aug-08-1990

Reported in : ILR1990KAR3629

Judge : S. Mohan, C.J. and ;M. Ramakrishna, J.

Acts : Karnataka Improvement Board Act, 1976 - Sections 15(3), 18(3), 35 and 35(1); Land aquisition Act, 1894 - Sections 4(1) and 6(3)

Appeal No. : W.P. Nos. 6616, 6927, 6929, 7290, 7455, 7465 and 14745

Appellant : Sharanamma

Respondent : State

Advocate for Def. : N. Devadas, Govt. Adv.

Advocate for Pet/Ap. : M. Rama Bhat, ;Kadidal Manjappa and ;Annadanayya Puranik, Advs.

Disposition : Writ petition dismissed

Judgement :

ORDER

S. Mohan, C.J.

1. All these Writ Petitions can be dealt with under a common order. The facts are as under:-

The Writ Petitions are to quash the Notification dated 23-12-1983 issued under Section 13(1) of the Karnataka Improvement Boards Act, 1976 (the Act for short), as well as the Preliminary Notification dated 24-11-1977 issued under Section 15(1) of the Act.

2. The City Improvement Board, Gulbarga (hereinafter called the Board), one of the respondents in these Writ Petitions, has been constituted under the provisions of the Act. The Board in its Meeting held on 25-5-1977 resolved to take residential development scheme on the filter bed comprising 159 acres and 4 guntas of land in various survey numbers. Accordingly, the development scheme was prepared and the same was forwarded to the Government for approval. The Government exercising its power under the Act approved the scheme. Thereafter, the Board issued the notification under Section 15(1) of the Act on 24-11-1977. This was published in the Karnataka Gazette dated 22-12-1977. The objections were filed opposing the proposed acquisition. They were overruled on 25-5-1978.

3. When the matter stood thus, a notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act of 1894 for short) (Central Act No. 1 of 1894) came to be issued on 1-2-1983. It was published on 10-2-1983 in the Government Gazette. Objections were filed and before the matter could be proceeded with further, the notification under Section 4(1) of the Act of 1894 came to be withdrawn. After all this, the declaration under Section 18(3) of the Act was issued on 23-12-1983. The Board after overruling the objections of the petitioners and other owners and occupants of the lands forwarded the scheme to the Government by its letter dated 10-2-1982. On 13-8-1982 the Government sanctioned the scheme. The authorities of the Board inspected the land on 15-9-1983 and thereafter made a declaration as required under Section 18(1) of the Act declaring that the entire area comprising 159 acres 4 guntas was needed for the purpose viz., for the residential development scheme in the area sanctioned on filter bed, Gulbarga.

4. The Special Land Acquisition Officer was appointed to perform the duties of the Deputy Commissioner for the purpose of acquisition of the lands. The aforesaid notification under Section 18(1) of the Act was published in the Government Gazette on 23-12-1983.

5. At this stage, it is necessary for us to mention that though there was no necessity at all to invoke the provisions of the Act of 1894, on an erroneous impression, the Preliminary Notification under Section 4(1) of the Act of 1894 was issued which ultimately came to be withdrawn as stated above. It is in these circumstances, the Writ Petitions have come to be preferred.

6. Learned Counsel for the petitioners urged only one point before us. Where resort was had to the Act of 1894 by issuing a Preliminary Notification under Section 4(1), after its withdrawal when objections had come to be filed to that notification, once again resort cannot be had to the Act. The matter ought to have been pursued under the Act of 1894 and not under the Act in question. Where therefore after establishing those proceedings, notices under Sections 9 and 10 came to be issued, it is not open to the Board to follow the provisions of Sections 34 and 35 of the Act. This contention is fortified if Section 23 is looked at. In short, the submission is that without further declaration, the procedure adopted for Issuing notices under Sections 9 and 10 and then for acquisition are bad in law.

7. This submission is countered by the learned Government Advocate by stating that the Karnataka Improvement Boards Act, 1976 is a complete code itself including acquisition of lands. Under Section 35 of the Act, the Board is constituted as a Local Authority which is enabled to acquire the land. The procedure under the Land Acquisition Act needs to be followed only so far as it is applicable. Therefore, it does not require to be followed in its entirety. In the instant case, by mistake, Section 4(1) notification under the Act of 1894 came to be issued on 1-2-1983 which was published in the Gazette. Objections were filed. But it was not pursued because it was found, having regard to the power of the Board under the Act, to be wholly unnecessary. Therefore, it was withdrawn. Thereafter, there was no impediment to continue the acquisition proceedings under Section 18(1) of the Act. In short, the notification under Section 15 tantamounts to the notification under

Section 4(1) while the declaration under Section 18 would tantamount to declaration under Section 6 of the Land Acquisition Act. It is only thereafter the procedure under the Land Acquisition Act requires to be followed. That has been done by issuing Sections 9 and 10 notice on 8-3-1984. Therefore, there is no infirmity in the procedure adopted.

8. In order to appreciate the respective contentions, it is necessary on our part to note a few important Sections of the Act. The Preamble reads:

'An Act to provide for the establishment of Improvement Boards for the development of urban areas in the State of Karnataka.....'

The 'Board' is an authority constituted under Section 3 for any urban area. One such Board is the City Improvement Board, Gulbarga, one of the respondents herein. This Board under Section 3(2) is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall by the said name sue and be sued. Therefore, it is clear that the Board has been granted power to acquire land.

Under Section 23 it is stated:

'23. Payment no bar for acquisition under a fresh declaration - If any land, in respect of which the payment of a betterment tax has been accepted or determined under Section 20 be subsequently required for any of the purposes of this Act, the acceptance or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under Section 6 of the Land Acquisition Act, 1894.'

With this, we pass on to Sections 34 and 35. Section 34 reads:

'34. Board to have power to acquire land by agreement - Subject to the provisions of this Act and with the previous approval of the Government, the Board may enter into an agreement with the owner of any land or any interest therein whether situated within or without the urban area for the purchase or lease of such land or interest therein for the purpose of this Act.'

Section 35 reads:

'35. Provisions applicable to the acquisition of land otherwise than by agreement -
(1) The acquisition otherwise than by agreement of land within or without the urban area under this Act shall be regulated by the provisions so far as they are applicable of the Land Acquisition Act, 1394.

(2) For the purpose of Sub-section (2) of Section 50 of the Land Acquisition Act, 1894, the Board shall be deemed to be the Local Authority concerned.

(3) After the land vests in the Government under Section 15 of the Land Acquisition Act, 1894 the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Board agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Board, and the land shall thereupon vest in the Board.'

9. Section 34 clearly vests with the authority the power to acquire the land by agreement. With this Section, we are not very much concerned. Under Section 35, the power to acquire otherwise than by agreement viz., otherwise than what is contemplated under Section 34 is contemplated. By a careful reading of Sub-section (1) of Section 35, it would be clear that the acquisition has to be regulated by the provisions of the Land Acquisition Act, 1894 as far as they are applicable. In other words, 'mutatis mutandis'. Where therefore, it is not the entire gamut of the Land Acquisition Act which requires to be applied but only selective provisions in so far as they are applicable, one has to search for the powers of the Board to acquire. Those powers are found under Section 15 of the Apt. Section 15 deals with the procedure after the preparation of the scheme. Once the scheme is prepared and it is approved by the Government, what has to be done is seated under Sub-section (3). It reads:

'(3) During the thirty days next following the day on which such notification is published in the Official Gazette, the Board shall serve a notice on every person whose name appears in the assessment list of the Local Authority within the local limits of whose jurisdiction the area comprised in the Scheme is situated or in the land revenue register as being primarily liable to pay the property tax or land

revenue assessment on any building or land which it is proposed to acquire in executing the Scheme requiring such person to show cause within thirty days why such acquisition of the building or the land and the recovery of the betterment tax as specified in the notice should not be made.'

Therefore, this corresponds to the notification under] Section 4(1) of the Act of 1894. Such a notification came to be issued on 24-11-1977 and the Gazette publication being dated 22-12-1977. In response to this, objections were filed by all these Writ Petitioners viz., Sharanamma on 6-3-1978; Parvathi Bai objections not filed; Laxmibai objections filed on 6-3-1978; Neelamma on 3-3-1978; Malleshappa on 28-2-1978; Bandappa and Shankarappa on 20-2-1978 and Maniklal, objections filed on two days on 12-1-1978 and 17-3-1978. These are Writ Petitioners respectively in W.P. No. 7455 of 1984; W.P. No. 6927 of 1984; W.P.No.6929 of 1984; W.P. No. 7290 of 1984; W.P. No. 7465 of 1984; W.P. No. 6616 of 1984 and W.P. No. 14745 of 1984. Those objections were considered and overruled on 25-5-1978 in accordance with Section 16(1) of the Act. After overruling the same, the scheme was forwarded to the State Government which came to be approved on 10-2-1982 and the scheme itself was sanctioned on 13-8-1982. There was inspection of the land on 5-9-1983. After all this came to be issued the declaration under Section 13(1) on 23-12-1983. It also requires to be noted at this stage that Section 18(3) states as follows:-

'(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose, and the Board shall, upon the publication of the said declaration proceed to execute the scheme.'

This corresponds with Section 6(3) of the Act of 1394. Thus it is clear that with regard to a declaration of a public purpose alone, a Preliminary Notification under Section 4(1) requires to be issued and the objections filed and after considering the objections, the declaration under Section 6 is issued. Those procedures are provided for under Sections 15 and 18 of the Act.

10. It is also well settled that, under the Act of 1894, once the declaration under Section 5 is issued, it becomes final and conclusive for two reasons; (i) the land is needed and (ii) for a public purpose - wide : [1963]2SCR774 , Smt. Somawanti v.

State of Panjab. That is also stated under Section 18(3) of the Act to which we have already made a reference. This procedure therefore had taken place in substitution of the procedure under the Land Acquisition Act viz., under Section 4(1) read with Section 6 of the Act of 1894 and by mistake the notification under Section 4(1) of the Act of 1894 had come to be issued in this case on 1-2-1983 and objections were filed and thereafter it was realised that the notification under Section 4(1) of the Act was not only a mistake but wholly superfluous. Therefore, it came to be rightly withdrawn. It is after this that the notification under Section 18 was issued on 23-12-1983 as stated above That was followed by the notice under Sections 8 and 10 of the Land Acquisition Act issued on 8-3-1984. That means with regard to the rest of the procedure after the declaration under Section 6 as far as may be the Land Acquisition Act need to be followed. That accounts for the issue of notice under Sections 9 and 10. Therefore, in view of what we have stated above, it is not correct on the part of the petitioners to contend that once the notification under Section 4(1) of the Act of 1894 came to be issued and withdrawn, the further proceedings under the Act cannot take place. That ignores the solitary effect of the statutory provisions particularly Sections 15 and 13. We have already referred to Section 23 of the Act which has no bearing as far as the present discussion is concerned. Thus, we conclude as rightly contended by the learned Government Advocate that there is no infirmity at all attached to the proceedings relating to the acquisition, subject matter of the Writ Petitions.

11. No other contention is urged.

12. The Writ Petitions are hereby dismissed. No costs. Counsel fee is fixed at Rs. 250/- per set.

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