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Court : Karnataka

Decided On : Mar-23-2005

Judge : S.R. Nayak and ;Anand Byrareddy, JJ.

Acts : Land Acquisition Act, 1894 - Sections 3, 4(1), 6(1) and 11A; Companies Act, 1956 - Sections 3 ; Societies Registration Act, 1860

Appeal No. : Writ Appeal Nos. 4899 and 4916 to 4918 of 2002

Appellant : Murugesh Mudaliar and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Deshraj, High Court Government Adv. for Respondents 1 to 3 in W.A. Nos. 4916 to 1918 of 2002 and for Respondent 2 in W.A. No. 4899 of 2002, ;S.S. Naganand, ;Pradeep S. Sawkar, ;S. Sriranga and ;Santho

Advocate for Pet/Ap. : K.N. Phanindra, Adv. for W.A. Nos. 4916 to 4918 of 2002 and ;K. Krishna, Adv. for W.A. No. 4899 of 2002

Disposition : Appeal dismissed

Judgement :

1. The owners of the acquired land being aggrieved by the order of the learned Single Judge dated 23-7-2002 passed in Writ Petition Nos. 6522 to 6524 of 1998 have preferred Writ Appeal Nos. 4916 to 4918 of 2002 whereas, the Bangalore

Development Authority (for short, 'BDA') being aggrieved by the order of the learned Single Judge dated 18-7-2002 passed in Writ Petition No. 30558 of 2000 (Smt. Andalamma v. State of Karnataka and Ors. : ILR 2003 KAR1466 has preferred Writ Appeal No. 4899 of 2002. Since the dispute brought before the Court in both the set of writ appeals relate to the same subject land, we clubbed both the appeals, heard them together and they are being disposed of by this common judgment.

2. The mother of the appellants in W.A. Nos. 4916 to 4918 of 2002 viz., late Smt. Andalamma was the owner of 3 acres 8 guntas of land comprised in Sy. No. 20/1B of Madivala Village, Bangalore South Taluk. The said land was sought to be acquired by the Government for formation of Koramangala Layout by issuing preliminary notification dated 26-11-1959 under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') and declaration under Section 6(1) of the Act dated 28-9-1965 published in the Official Gazette on 7-10-1965. The award was passed in the said proceedings on 2-9-1969. But, that award was approved by the Government only on 5-9-2000. The mother of the appellants in W.A. Nos. 4916 to 4918 of 2002 assailed the above land acquisition proceedings by filing Writ Petition No. 30558 of 2000 by contending that the acquisition proceedings initiated under the Act had lapsed on the ground that no award was passed within two years from the date of final declaration as required under Section 11-A of the Act. The learned Single Judge, accepting the above contention as valid ground to nullify the acquisition proceedings, allowed the writ petition and declared that the land acquisition proceedings initiated by the Government had lapsed, because, the Land Acquisition Officer had failed to pass award within a stipulated period, by judgment and order dated 18-7-2002. The BDA being aggrieved by the said judgment of the learned Single Judge, has preferred Writ Appeal No. 4899 of 2002.

3. Again, 2 acres 35 guntas of land out of 3 acres 8 guntas of land in Sy. No. 20/1B of Madivala Village, Bangalore South taluk (for short, 'the Schedule land') was sought to be acquired by the State Government by issuing preliminary notification dated 14-9-1995 under Section 4(1) of the Act and final notification dated 27-9-1996 under Section 6(1) of the Act for the benefit of the Indian Institute

of Astrophysics (for short, 'the Institute')-4th respondent in Writ Appeal Nos. 4916 to 4918 of 2002 for construction of residential quarters for its staff. These proceedings were also assailed by Smt. Andalamma and her children in Writ Petition Nos. 6522 to 6524 of 1998. It appears that certain others who had obtained sale agreements from the owners also filed Writ Petition Nos. 31941 and 31942 of 1997. The learned Single Judge clubbed both the set of writ petitions and heard them together and disposed of the same by common order dated 23-7-2002. The learned Single Judge dismissed the writ petitions. Since Smt. Andalamma, petitioner in W.P. No. 6525 of 1998, died during the pendency of the proceedings, the other petitioners who are her sons, preferred Writ Appeal Nos. 4916 to 4918 of 2002 being aggrieved by the order of the learned Single Judge.

4. We have heard Sri K.N. Phanindra, learned Counsel for the appellants in W.A. Nos. 4916 to 4918 of 2002, Sri Deshraj, learned Government Advocate for respondents 1 to 3, learned Counsel for the 4th respondent-Institute and Sri K. Krishna, learned Counsel for the appellant in W.A. No. 4899 of 2002 and Sri Jayakumar S. Patil, learned Senior Counsel for respondents Ha) to (c).

5. Sri K.N. Phanindra, would contend that the initiation of the proceedings to acquire the schedule land on the basis that the 4th respondent is a department of the Government is vitiated. According to the learned Counsel, the 4th respondent should be regarded as a 'Company' within the meaning of that term as defined under Clause (e) of Section 3 of the Act. He would submit that since 4th respondent is a Company and if the schedule land is required for that Company, the acquiring authorities should have initiated proceedings under Part VII of the Act and, in that view of the matter, the impugned acquisition proceedings should have been quashed by the learned Single Judge. That is the only contention raised and argued by Sri KN. Phanindra before us.

6. Sri K. Krishna, learned Standing Counsel for the BDA would submit that since 3 acres 8 guntas of land in Sy. No. 20/1B of Madivala Village was acquired, even assuming that 2 acres 35 guntas of land is required for the benefit of 4th respondent for construction of residential quarters for its staff, there was no justification for the learned Single Judge to quash the entire proceedings. In other

words, Sri Krishna would contend that the acquisition of balance of 13 guntas of land could have been sustained by the learned Single Judge. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the contesting respondents would support the order of the learned Single Judge.

7. We do not find any merit in the contention of Sri Phanindra. Sub-section (1) of Section 4 of the Act in unmistakable terms provides that whenever it appears to the appropriate Government that land in any locality is needed or likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the Official Gazette proposing to acquire such land. It is true that Part VII of the Act exclusively deals with acquisition of the land for companies. Therefore, the question to be considered is whether the 4th respondent could be regarded as a 'Company' within the meaning of that term as defined in Clause (e) of Section 3 of the Act? Clause (e) of Section 3 of the Act defines the expression 'Company'. It reads thus:

3. xxx xxx(e) the expression 'Company' means.--

(i) a Company as defined in Section 3 of the Companies Act, 1956, other than a Government Company referred to in Clause (cc);

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a Society referred to in Clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in Clause (cc).

According to Sri Phanindra, the 4th respondent should be regarded as a Society envisaged in Sub-clause (ii) of Clause (e) of Section 3 of the Act. We do not agree with him. In terms of the definition, the 4th respondent could he a Company only if the 4th respondent is a society registered under the Societies Registration Act, 1860 other than a Society referred to in Clause (c). In other words, if the 4th respondent could be brought within the definition of Clause (cc) which defines the

expression 'Corporation owned or controlled by the State', it could not be regarded as a Company. Sri Phanindra would accept this position as correct. Therefore, the only thing to be seen is whether the 4th respondent-Institute could be brought under the expression 'Corporation owned or controlled by the State'. This expression is defined to mean, among other things, a Society registered under the Societies Registration Act, 1860 and such society being a Society established or administered by Government. Admittedly, the 4th respondent is a Society which is registered under the Societies Registration Act, 1860. The 4th respondent, in order to fall within the expression 'Corporation owned or controlled by the State' is required to further satisfy that it was established by the Government. The pleadings and proof laid before the Court would satisfactorily establish that the 4th respondent was established by the Government of India exclusively for its purpose and to sub-serve the public interest. It was also pointed out that the entire funding is done by the Government of India. There is also no controversy between the parties that the Government of India alone took initiative to establish the 4th respondent. Therefore, the 4th respondent can be regarded as 'a 'Corporation owned or controlled by the State' within the meaning of that expression as defined in Clause (cc) of Section 3 of the Act. If that is so, there was no need for the acquiring authority to take steps to acquire the land treating the 4th respondent as a Company adhering to the procedure envisaged in Part VII of the Act.

8. This takes us to the contention of Sri K. Krishna, learned Counsel for the BDA-appellant in Writ Appeal No. 4899 of 2002. It is true that entire 3 acres S guntas of land in Sy. No. 20/1B of Madivala Village was acquired. No exception can be taken to the order of the learned Single Judge in holding that the acquisition proceedings lapsed having regard to the fact that the award was not passed by the Land Acquisition Officer within the stipulated time. Preliminary notification under Section 4(1) was issued on 26-11-1959 and final declaration under Section 6(1) was made on 28-9-1965 and the same was published in the Official Gazette on 7-10-1965 whereas, the award though passed by the LAO on 2-9-1969, was approved by the Government only on 5-9-2000. The time-gap between 1965 and 2000 is a factor which should be a legitimate basis to nullify the impugned action taken in exercise of the eminent domain power of the State. When once the land acquisition proceedings initiated in the year 1959 had lapsed, it should not lie in

the mouth of the BDA that balance of 13 guntas of land should have been allowed to be retained by the BDA notwithstanding the vice of nullity attached to the impugned action. Be that as it may, 13 guntas of land is very meagre in extent and that would not serve any public purpose. Looking from that angle also, we do not find any merit in the contention that at least 13 guntas of land acquired under Section 4(1) notification dated 26-11-1959 should have been sustained by the learned Single Judge.

9. In the result and for the foregoing reasons, we dismiss Writ Appeal Nos. 4916 to 4918 of 2002 as well as Writ Appeal No. 4899 of 2002. No costs.

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