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Court : Karnataka

Decided On : Jan-03-2013

Judge : Anand Byrareddy

Appeal No. : Writ Petition No. 37797 of 2011 (LA-BDA)

Appellant : H. Krishna Reddy

Respondent : The State of Karnataka by Its Secretary, Department of Housing and Urban Development and Another

Judgement :

(This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to declare that the scheme by name "Byrasandra-Tavarakere-Madiwalal, 6th stage Layout" as propounded under Notification dated 8.9.1987 as per Annexure-A and the Final Notification dated 28.7.1990 of the first respondent is lapsed in view of Section 27 of the BDA Act as per Annexure- B; consequently restrain the respondent Nos. 1 and 2 from interfering with the property right of the petitioner in respect of land bearing Sy.No.80/1, measuring 3 acres, 26 guntas in view of the Notification at Annexure-A and B and quash the O.M. dated 13.06.2011 issued by the first respondent as per Annexure-L.)

It is the case of the petitioner that land bearing survey no.80/1, measuring 3 acres and 26 guntas of Arakere Village, Begur Hobli, Bangalore North Taluk, was held by the father of the petitioner as a tenant, who was personally cultivating the same. He had claimed occupancy rights under the provisions of the Karnataka Land Reforms Act, 1961 (Hereinafter referred to as the 'KLR Act', for brevity), which was granted in his favour in the year 1981 and was in occupation of the same.

2. The Bangalore Development Authority (Hereinafter referred to as the 'BDA', for brevity) had formulated a Scheme called 'Byrasandra Tavarekere Madiwala 6th Stage Layout' and had issued a Preliminary Notification under Section 17 of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the 'BDA Act', for brevity) dated 8.9.1987. The Scheme covered an area of about 805 acres 21 guntas of land, comprising of 524 acres 09 guntas of Hulimavu village, 231 acres 21 guntas of Arakere village, which included the land mentioned hereinabove. The Scheme was sanctioned by the Government by an order dated 10.3.1989. A final notification was also issued under Section 19 of the BDA Act dated 28.7.1990. In the said notification, the total extent of land was reduced to 562 acres and 34guntas comprising of 388 acres 9 guntas of Hulimavu Village and 174 acres 25 guntas of Arakere Village. The petitioner's father was the notified holder of the land. It transpires that during the year 1995, an extent of 45 acres and 20 guntas of land was released in favour of M/s Shanthi Builders with permission to develop the land.

3. It is the case of the petitioner that the Scheme was not executed even as on the date of the petition. On the other hand, the State Government had issued a notification under Section 48 of the Land Acquisition Act, 1894 (Hereinafter referred to as the 'LA Act', for brevity) dated 28.2.2001, withdrawing from acquisition of the lands bearing survey nos.78/1 and 78/2A of Arakere village. It is the further grievance of the petitioner that out of a total extent of 388 acres 9 guntas of Hulimavu village, only an extent of 13 acres was sought to be used for the Scheme. But, even this did not materialize. Similarly, out of the total extent of 174 acres 25 guntas of Arakere village, about 4 acres and 20 guntas was sought to be used for formation of sites. Hence, there was no development, which was of

any significance insofar as the implementation of the Scheme is concerned and is squarely covered under Section 27 of the BDA Act and the Scheme is, therefore, deemed to have lapsed by virtue of Section 27 of the BDA Act.

The petitioner is said to have made a representation to the State Government in this regard. It also transpires that the State Government, in response, had issued a notification under section 48 of the LA Act dated 22.9.2010 and that out of the total extent of 3 acres 26 guntas of land the petitioner, an extent of 3 acres was dropped from the acquisition proceedings. The petitioner had then approached the competent authority seeking conversion of the land from agricultural use to residential use, which was duly sanctioned as on 9.11.2010. It is claimed that the petitioner had continued in possession of the entire extent of land and consequent upon the issuance of the notification under Section 48 of the LA Act, the mutation entry was duly made out in the name of the petitioner in the record of rights, with effect from the year 2010. However, the State Government by a further Official memorandum dated 13.6.2011, has sought to withdraw the notification issued earlier under Section 48 of the LA Act, in effect, seeking to revive the acquisition proceedings and it is in that background that the present petition is filed questioning the act of the State Government in seeking to withdraw the notification under Section 48 of the LA Act.

4. Shri Madhusudan R Naik, learned Senior Advocate appearing for the Counsel for the petitioner, while reiterating the above sequence of events, would submit that once the Scheme has lapsed by efflux of time and the State Government also having issued a notification under Section 48 of the LA Act, revocation of such withdrawal is invalid and there is no provision under the LA Act affording such power to the State Government. In the absence of any express power, there is lack of inherent authority in the State Government seeking to revoke the withdrawal. Even if the State Government had not chosen to issue a notification under Section 48 of the LA Act, the circumstance brought Section 27 of the BDA Act into play and hence, the withdrawal from the acquisition proceedings by issuing a formal notification under Section 48 of the LA Act, was itself superfluous and therefore, seeking to revoke such withdrawal is clearly meaningless. The learned Senior Advocate places reliance on the following authorities, to contend

that the petition be allowed, in terms as prayed for.

1) Indian National Congress vs. Institute of Social Welfare and Others, 2002 AIR SCW 2245,

2) The Bangalore Development Authority vs. The State of Karnataka and others, WA 8084/2003.

5. The State Government has not chosen to file any statement of objections. However, the learned Government Pleader cites the following authorities to justify the action of the State Government.

1) Uma Shankar and Others vs. State of Karnataka and Others, 2012(3) AIR Kar.R 3,

2) P.G.Vimala vs. The State of Karnataka, WP 33959-962/2010 dated 7.3.2011

3) L and T Komatsu Limited vs. All India Trade Union Congress Karnataka State Committee,

4) Shree Sidhballi Steels Limited vs. State of Uttar Pradesh, (2011)3 SCC 193.

6. The BDA has filed Statement of objections only to elaborate on the sequence of events as regards the Special Land Acquisition Officer having passed an award determining the compensation payable in respect of land in question and the compensation amount having been deposited before the Civil Court and the possession of the land having been taken in terms of Section 16 of the LA Act dated 22.3.1994 and the same having been handed over to the Assistant Engineer of the BDA, while also acknowledging that the Government had withdrawn from acquisition by issuing a notification under Section 48 of the LA Act as on 22.9.2010 and the said notification being revoked by a further notification dated 13.6.2011.

It is further admitted that there is partial implementation of the Scheme with no claim to any substantial implementation of the Scheme. The specific averment by the petitioner, as to the actual extent that was admitted to be developed is not denied. The specific paltry extent, as stated by the petitioner, in which there was a

half-hearted attempt at formation of sites is not denied. The petitioner has also filed a rejoinder to reiterate that except about 17 acres, namely, 13 acres of land in Hulimavu village and 4 acres in Arakere village, all the remaining lands have not been utilized for the formation of any layout and they are either denotified or have been abandoned. The petitioner has questioned the authenticity of the award and lack of approval by the competent authority. The petitioner has also questioned the mahazar and would contend that it is invalid as it is apparently drawn up by a revenue inspector, who was incompetent to take possession of the land. On the other hand, it is vehemently denied that possession was ever taken from the petitioner and the revenue records reflect the continuous possession by the petitioner.

7. In the above background, the point for consideration is, whether, after the State Government chose to withdraw from the acquisition proceedings by issuing a notification under Section 48 of the LA Act, whether the said notification could be revoked by the State Government, thereby claiming that the acquisition proceedings are completed in all respects. A copy of the order seeking to withdraw or revoke the notification under Section 48(1) of the LA Act is a cryptic notification and does not assign any reason whatsoever for such revocation of the withdrawal.

8. The learned Government Pleader has sought to justify and sustain the impugned notification by reference to Section 21 of the General Clauses Act, 1897 (Hereinafter referred to as the 'GC Act', for brevity). Attention is drawn to the observation of the apex court in *Shree Sidhballi Steels Limited*, supra, as regards the scope of Section 21 of the GC Act, namely, that it is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Amongst other things, the Section specifically deals with power to add to, amend, vary or rescind the notifications. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. It embodies a rule of construction. The nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. And on that analogy, an administrative decision is revocable while a judicial decision is not

revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorises such an exercise expressly or by necessary implication. Attention is also drawn to a circumstance where the State Government had withdrawn a notification by drawing sustenance from Section 21 of the GC Act, notwithstanding that the notification that was withdrawn, had been upheld by the apex court, as observed by a division bench of this court in the case of L and T Komatsu Limited, *supra*, that such action on the part of the State Government to rescind the notification for good reasons, cannot be held to be bad in law and that it could not be said that it was a case of want of authority to revoke an earlier notification. Attention is drawn to other decisions where this court has upheld such revocation of a notification under Section 48 of the LA Act, in an unreported decision in WP 33959-62/2010 and in the case of Uma Shankar and others, *supra*.

On the other hand, in *Vijaya Leasing Limited*, *supra*, a division bench of this court has dealt with the question where a notification issued under Section 48(1) of the LA Act could be annulled.

Insofar as the contention that the State Government could draw sustenance from Section 21 of the GC Act, it was held thus:

".... Suffice it to state that having perused several authorities placed before us by the learned Counsel for the parties, we do not find any direct judgment of the Apex Court or this Court or any other High Court to say that the provisions of Section 21 of the General Clauses Act are applicable with regard to an order that may be made by the State Government in exercise of its power under Sub-Section (1) of Section 48 of the Act. In *THE STATE OF MADHYA PRADESH AND ORS. v. VISHNU PRASAD SHARMA AND ORS.*, AIR 1966 SC 1593 a three-Judge Bench of the Apex Court has opined that the Notification issued under Section 4(1) of the Act initiating the land acquisition proceedings can be withdrawn by the State Government in terms of Section 21 of the General Clauses Act. A contrary view was taken by a Division Bench of Supreme Court in *LARSEN AND TOUBRO LIMITED V. STATE OF GUJARAT AND ORS.*, AIR 1998 SC 11608. It is seen that the two-Judge Bench of the Supreme Court have not noticed the earlier larger

Bench binding decision in Vishnu Prasad Sharma's case (supra). Alternatively, it needs to be emphasized that even assuming that Section 21 of the General Clauses Act could be invoked by the State Government, the necessary condition to invoke that power did not exist in this case when the Government issued the impugned Notification. The rights of the owner of acquired land before the Notification under Sub-section (1) of Section 48 of the Act and the rights of the owner thereafterwards are all together different in legal terms. There is no dispute and there cannot be any dispute between the parties that after the State Government issued Notification under Sub-section (1) of Section 48 of the Act, the lands sought to be acquired stood reverted to the owner with full bundle of rights. The petitioner-owner being the purchaser of the schedule land from the vendee of the original owner, it stepped into the shoes of the original owners with all legal entitlements. In other words, all steps and proceedings taken by the State in exercise of its eminent domain power starting with issuance of Section 4(1) Notification and ending with passing of the award are wiped out by virtue and force of the legal consequences that flow from the issuance of notification under Sub-section (1) of Section 48 of the Act. If this is the legal consequence, then, the attempt of the State Government again to acquire the very schedule land by a shortcut method by issuing the impugned notification to withdraw the Notification issued under Sub-section (1) of Section 48 of the Act should be frustrated. After issuing Notification under Sub-section (1) of Section 48 of the Act, if the land previously sought to be acquired is required for any public purpose, the only course open to the State Government is to again initiate proceedings envisaged under the Act to acquire the land by issuing Section 4(1) Notification again. Therefore, it cannot be said that the power to issue the impugned notification withdrawing the earlier Notification issued under Sub-section (1) of Section 48 of the Act is a part of the power of the State Government conferred on it under Sub-section (1) of Section 48 of the Act."

In the case of S.B.Nagappa and others, supra, a similar contention raised on behalf of the State Government with reference to Section 21 of the GC Act, was addressed as follows:-

"10. The contention of the learned Counsel for the petitioners is that the State Government has no power to withdraw the notification in exercise of the power under Section 21 of the General Clauses Act.

11. Section 21 of the General Clauses Act, reads as follows.-

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws,--

Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye- laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued".

Under this section the State Government may, add, amend, vary or rescind any notification. The principle behind this is that the power to create includes the power to destroy and also the power to alter what is created.

12. The facts in this case are, after the declaration, declaring the land as required for a public purpose under the KUDA Act, the State Government in exercise of its power under Section 48(1) of the LA Act, issued a notification, withdrawing the proceedings for acquisition of land. When once the said notification has been issued all proceedings relating to acquisition including the notifications declaring the land as required for a public purpose would vanish, if that is so, the subsequent notification withdrawing the notification under which the acquisition proceedings were withdrawn, would not amount to reviving the proceedings which had already vanished. The consequence of withdrawing the proceedings of acquisition of land is that the landowner continue to be the owner of the land as if there were no proceedings for acquisition under any law. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, by mere withdrawing the notification under which acquisition proceedings were withdrawn, the landowner shall not be deprived of his land as it would hit by Article 300-A of the Constitution of India. Therefore, the power exercised by the State in issuing the impugned notification under Section 21 of the General Clauses Act, is illegal.

13. The impugned notification has been issued without affording any opportunity to the landowners. When once the proceedings of acquisition were withdrawn some right is created in the landowners. If that is so, the State Government ought to have afforded an opportunity to the landowners before issuing the impugned notification. In the case on hand, it is not disputed that no opportunity has been afforded to the petitioners. Therefore, even on the ground of non-compliance of principles of natural justice, the impugned notification is liable to be quashed."

The general power under Section 21 of the GC Act of rescinding a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute, under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order (See: *State of Kerala vs. K.G.Madhavan Pillai*, AIR 1989 SC 49; *H.C.Suman vs. Rehabilitation Ministry Employees' Co-operative House Building Society Limited*, (1991)4 SCC 485).

9. In the light of the above authorities and in the facts and circumstances of the case, the notification issued under section 48(1) of the LA Act, in the absence of any other vitiating circumstance, would attain finality. The same cannot be revoked by recourse to Section 21 of the GC Act. The LA Act is a complete Code. The acquisition proceedings in the instant case, were under the provisions of the BDA Act, to which the relevant provisions of the LA Act are also made applicable. Apart from the fact that the Scheme formulated under the BDA Act not having been substantially implemented within a period of 5 years, the rigour of Section 27 of the BDA Act would render the Scheme as having lapsed. The issuance of a notification under Section 48(1) of the LA Act was, therefore, a formality which in any event, rendered finality to the proceedings and as consistently held by this court, on withdrawal from the acquisition proceedings by issuance of such a notification under section 48(1) of the LA Act, all steps and proceedings taken by the State in exercise of its eminent domain power starting with the issuance of a notification under section 4(1) and ending with the passing of an award are wiped out and the lands acquired stand reverted to the owner with all legal entitlements. Therefore, it is no longer available to the State Government to revoke the notification under Section 48(1) of the LA Act. The only course open to the State

Government, if the very land is required for any other public purpose, is to initiate fresh acquisition proceedings. On this aspect, there is no authority cited to the contrary. The two decisions of this court, which are sought to be relied upon by the learned counsel for the respondents are not applicable to the facts and circumstances of the present case.

In WP 33959-62/2010, *supra*, this court has found as a fact that a notification under Section 48(1) of the LA Act was issued by the State Government on the misrepresentation by the petitioner as to the physical possession of the land not having been taken and it is on realising this glaring circumstance that the possession had in fact been taken and therefore, it was not possible for the State Government to withdraw from the acquisition proceedings, the notification issued under Section 48(1) of the LA Act came to be revoked. In the present case on hand, the revocation was not for any such reason.

Similarly in Uma Shankar's case, *supra*, the revocation of a notification under Section 48(1) of the LA Act was upheld, as it was warranted on account of a notification under Section 48(1) of the LA Act having been issued contrary to a reported judgment of the Supreme Court. Therefore, the notification under Section 48(1) of the LA Act was held as being void ab initio and the revocation of the notification was held to be in accordance with law.

In that view of the matter, the present writ petition is allowed. Annexure -L is quashed.

Incidentally, it is observed that the land in survey no.80/1, which is the subject matter of the present petition totally measured 3 acres 26 guntas. The notification under Section 48(1) of the LA Act was restricted to 3 acres. The said notification is not under challenge. The State Government purportedly claims to have utilized 26 guntas of land for the formation of a road, which is also acknowledged by the petitioner in the rejoinder to the statement of objections. Hence, the prayer in the petition is granted to the extent of quashing Annexure-L which is a notification seeking to revoke the notification under Section 48(1) of the LA Act.