

The State of Mysore and Another

Vs

D. Achiah Chetty, Etc.

Civil Appeal Nos. 111 to 113 and 115 to 117 of 1966

(CJI M. Hidayatullah, J. C. Shah, V. Ramaswami-I, A. N. Grover G. K. Mitter JJ)

11.12.1968

JUDGMENT

HIDAYATULLAH, C.J. -

1. These appeals by special leave are against a common judgment of the High Court of Mysore, December 22, 1959, allowing a batch of writ petitions. By the order now impugned, the High Court had quashed two notifications issued under Sections 4 and 6 of the Mysore Land Acquisition Act, 1894, and published in the Mysore Gazette, dated May 7, 1959 and October 15, 1959, respectively, and restrained the State Government from acquiring the land affected by the said notifications. The State now appeals.

2. The petitions were directed against the State of Mysore and the Special Land Acquisition Officer, City Improvement Trust Board, Bangalore. In some of the petitions there were other respondents either with or without the Special Land Acquisition Officer. Nothing, however, turns upon the array of the respondents.

3. In Mysore there are two Acts bearing on acquisition of private land for public purposes. The first is the Mysore Land Acquisition Act which follows the same scheme as the Land Acquisition act in force in India. The other is the City of Bangalore Improvement Act, 1945. The latter Act constitutes a Board of Trustees charged with the execution of the Act and in its third Chapter lays down the duties and powers of the Board and the manner in which improvement schemes are to be effectuated. Sections 14 to 18 and Section 27 outline the procedure by which acquisition of land is to be made. Section 52 of the Act lays down that any provision of law contained in any other enactment in force in Mysore repugnant to any provision contained in the Improvement Act is to stand down to the extent of the repugnancy. The Mysore Land Acquisition Act has also Sections 4, 5-A and 6 analogous to the corresponding sections in the Central Land Acquisition Act in force in the whole of India.

4. The land in respect of which the present dispute has arisen is Survey No. 2 of Raja Mahal Village, Kasha Hobli, Bangalore North Taluk. This land belonged originally to the Maharaja who divided it into plots. The petitioners, who came before the High Court, are owners of some of the plots which were transferred to them by different modes such as sale, gift, etc. These petitioners acquired plots for purposes of their own. Some had made layouts already with the prior sanction of the Board and spent money in laying-out the plots including amounts paid out to the Board in this connection. The notification under Section 4 issued for acquisition of these plots stated that they were being acquired for public purposes, to wit Raja Mahal Vilas Layout. A number of petitions were filed in the High Court to question the validity of the action. It was said that the notification under Section 4 of the

Mysore Land Acquisition Act gave no particulars and was followed by the notification under Section 6 with the result that the opportunity under Section 5-A of objecting to the acquisition was lost to the petitioners. It was also contended that the scheme of layout was feasible only under the Improvement Act through the Board of Trustees for the Improvement of the City of Bangalore and the procedure in Chapter III of that act had to be followed. The acquisition, however, was being made entirely under the Land Acquisition Act without any advertence to the provisions of the Improvement Act. It was, therefore, contended that the action of the Government was ultra vires Section 52 of the Improvement Act and the provisions of the Third Chapter of that Act. It was also submitted that the action in using the provisions of the Mysore Land Acquisition Act was discriminatory because in other cases the provisions of the Improvement Act were applied.

5. The petitions were filed between the last week of December, 1959 and the last week of March, 1960. Before the petitions came up for hearing, the Governor of Mysore promulgated on June 9, 1960, an Ordinance called the City of Bangalore Improvement (Amendment) Ordinance (No. 1 of 1960), introducing retrospectively Section 27-A. This was followed by an Act which re-enacted the provisions of the ordinance. The Act was, however, not reserved for the assent of the President, nor was his assent taken to its introduction. By this section compliance with the Third Chapter of the Improvement Act was dispensed with. The petitioners then challenged the Amending Ordinance and the Amending Act as not complying with Articles 213(1) and 254(1) of the Constitution. The State of Mysore relied upon the Mysore Land Acquisition Act for the validity of the proceedings. The petitioners submitted that the public purpose was linked up with the improvement of the city of Bangalore and thus fell to be governed by the Improvement Act. They contended that the discrimination still continued if the attempted inclusion of Section 27-A in the City Improvement Act was held to be unconstitutional. It may be mentioned that in one petition a ground of estoppel had been raised, as expenditure had been incurred in laying out the plots and the Board had received payment for its sanction.

6. The petitions in the High Court, therefore, proceeded on the following three broad points - (1) validity of Ordinance I of 1960 and the Mysore Act XIII of 1960; (2) non-compliance with the City of Bangalore Improvement Act, 1945; and (3) discrimination between two classes of cases, i.e. those in which the provisions of Chapter III of the Improvement Act were followed and those like the case of the petitioners in which they were not followed. An additional point of estoppel was special to one petition only.

7. The High Court rightly declared unconstitutional Ordinance I of 1960 and the Amending Act XIII of 1960 on the short ground that the former offended clause (1) of article 213 being promulgated without the instructions of the President and the latter offended clause (2) of Article 254, as it was not reserved for the consideration of the President and was not assented to by him. These grounds are so patent that no attempt was made before us to urge anything to the contrary.

8. The High Court next considered the validity of the notifications on the ground of discrimination and found that the provisions of the Third Chapter of the Improvement Act had to be followed in law. Since they were by-passed, the High Court found discrimination between these cases and the cases of others in which the provisions were followed. The High Court held that his shortened procedure offended against the equality clause in the Constitution. The State was aggrieved by the decision and this appeal is the result.

9. Before this appeal came up for hearing a Validating Act was passed by the Legislature of the State. This Validating Act was reserved for the assent of the President. The State in arguing these

appeals seeks support from the provisions of the Validating Act and contends that the judgment under appeal cannot now be supported because of the validation of the acquisition notwithstanding the provisions of the Improvement Act. The case before us, therefore, was considered under the new Validating Act. Before we discuss the arguments, which are advanced in support of the decision of the High Court and those against it, we may set out here the provisions of the Validating Act since they are the main subject of controversy in the appeals before us. The Act in question is the Bangalore Acquisition of Lands (Validation) Act, 1962 (Act 19 of 1963). It received the assent of the President on the Fourth day of May, 1963. As its long title shows, it is an act to validate the acquisition under the Mysore Land Acquisition Act, 1894, of lands by the State Government for the purpose of improvement, expansion or development of the City of Bangalore, and the orders passed and the proceedings held in connection therewith. The Act is intended to apply to any area to which the City of Bangalore Improvement Act, 1945, extends and validates orders passed and proceedings held in connection therewith. The Act consists of only two sections. The first section gives the short title and the second section deals with validation of certain acquisition of lands and proceedings and orders connected therewith.

The second section reads as follows :

"2. Validation of certain acquisition of lands and proceedings and orders connected therewith :

(1) Notwithstanding anything contained in the City of Bangalore Improvement Act, 1945 (Mysore Act V of 1945), or in any other law, or in any judgment, decree or order of any court :

(a) every acquisition of land for the purpose of improvement, expansion or development of the City of Bangalore or any area to which the City of Bangalore Improvement Act, 1945, extends, made by the State Government acting or purporting to act under the Mysore Land Acquisition Act, 1894 (Mysore Act VII of 1894), at any time before the commencement of this Act, and every proceeding held, notification issued and order made in connection with the acquisition of land for the said purpose shall be deemed for all purposes to have been validly made, held to issue, as the case may be, and any acquisition proceeding commenced under the Mysore Land Acquisition Act, 1894, for the said purpose before the commencement of this Act but not concluded before such commencement, may be continued under the Land Acquisition Act, 1894 (Central Act I of 1894), as extended to the State of Mysore by the Land Acquisition (Mysore Extension and Amendment) Act, 1961, and accordingly no acquisition so made, no proceeding held, no notification issued and no order made by the State Government or by any authority under the Mysore Land Acquisition Act, 1894, or the Land Acquisition Act, 1894, in connection with any such acquisition shall be called in question on the ground that the State Government was not competent to make acquisition of land for the said purpose under the said Act or on any other ground whatsoever;

(b) any land to the acquisition of which the provisions of clause (a) are applicable shall, after it has vested in the State Government, be deemed to have been transferred, or stand transferred, as the case may be, to the Board of Trustees for the improvement of the City of Bangalore.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person from questioning in accordance with provisions of the Mysore Land Acquisition Act, 1894, or the Land Acquisition Act, 1894, and the rules made under the said Acts, any notification or order made thereunder."

10. Now the effect of this section is in many directions. It applies first to every acquisition of land for the purpose of improvement, expansion or development of the City of Bangalore by the State Government, purporting to act under the Mysore Land Acquisition Act but only to acquisitions made before that Act came into force. Next it applies to every proceeding held, notification issued or order made in connection therewith. Then it provides that all these shall be deemed to be validly made, held or issued. Then it provides that pending proceedings may be continued under the Mysore Land Acquisition Act and no order made is to be called in question on the ground that the State Government was not competent to make acquisition for the said purpose under that Act or on any ground whatsoever. All these provisions are to be effective notwithstanding the City of Bangalore Improvement Act, 1945, or any other law, judgment, decree or order of any court. The land to which these provisions apply is further to be deemed to have been transferred or stand transferred to the Board of Trustees for the improvement of the City of Bangalore. The only room left for questioning any order or notification is in accordance with the provisions of the Mysore Land Acquisition Act, 1894, the Land Acquisition Act, 1894, and the rules made under those Acts.

11. The State Government claims that this Validating Act cuts short all controversy. It has validated all past actions notwithstanding any breach of the Improvement Act or any other law or the decree and order of the High Court. It further submits that the action cannot be called in question on the ground that State Government was not competent to make the acquisition of land or on any other ground whatsoever. It further submits that proceedings already afoot can continue.

12. This contention is met by the respondents on three main grounds : The first is that there are still two Acts which cover the same field but prescribe two different procedures. In one procedure there is an inquiry, assessment of the public purpose, preparation of scheme, and in the other, there is none. The more prejudicial procedure which is that of the Acquisition Act must be disallowed as it is discriminatory and therefore the two notifications still continue to be unconstitutional.

13. The above argument denies to the Legislature the supremacy which it possesses to make laws on the subject of acquisition. What the Legislature has done is to make retrospectively a single law for the acquisition of these properties. The Legislature could always have repealed retrospectively the Improvement act rendering all acquisitions to be governed by the Mysore Land Acquisition Act alone. This power of the Legislature is not denied. The resulting position after the Validating Act is not different. By the non-obstante clause the Improvement Act is put out of the way and by the operative part the proceedings for acquisition are wholly brought under the Mysore Land Acquisition Act to be continued only under that Act. The Validating Act removes altogether from consideration any implication arising from Chapter III or Section 52 of the Improvement Act in much the same way as if that Act had not been passed.

14. The Validating Act goes further and says that all the acquisitions shall not be called in question on the ground that the State Government was not competent to make the acquisition. No claim based upon the failure to observe the Improvement Act can, therefore, be heard. The State relies upon the last six words of the first clause of Section 2(1) of the Validation Act to contend further, that the acquisition cannot be called on any ground whatsoever except in so far as door for

objections is kept open by the second sub-section. This perhaps a larger claim than these words warrant. What those words mean is no more than that in addition to the ground that the State Government was not competent, no other ground based upon breach of the Improvement Act or any other law is to be entertained. Those words must be read down. They do not mean what they appear to say. Objections for example of breach of the Constitution or of fundamental rights will of course remain. It is for this reason that the Legislature enacts sub-section (2) to remove doubts and expressly allows objections under the Mysore Land Acquisition Act, 1894, or the Land Acquisition Act, 1894, to be raised, notwithstanding the sweeping language of the last six words of the previous section. Therefore all objections on the ground that in the acquisition there has been non-observance of the provisions of the Improvement Act must fail.

15. Mr. S. T. Desai, however, contends that an acquisition hit by Article 14 or anything done previously cannot ever be validated, unless the vice of unreasonable classification is removed and the Validating Act is ineffective for that reason. This argument leads to the logical conclusion that a discrimination arising from selection of one law for action rather than the other, when two procedures are available, can never be righted by removing retrospectively one of the competing laws from the field. This is a wrong assumption. In *Piara Dusadh and Others v. K. E.* ((1944) FCR 61) trials before special Judges (not Sessions Judges under the Code of Criminal Procedure) were deemed to be trials before Sessions Judges in accordance with the code and the Federal Court upheld the constitutionality of the ordinance by which this fiction was created. The supremacy of the Legislatures in India, within the constitutional limits of their jurisdiction is as complete as that of the British Parliament. If two procedures exist and one is followed and the other discarded, there may in a given case be found discrimination. But the Legislature has still the competence to put out of action retrospectively one of the procedures leaving one procedure only available, namely, the one followed and thus to make disappear the discrimination. In this way a Validating Act can get over discrimination. Where, however, the legislative competence is not available, the discrimination must remain for ever since that discrimination can only be removed by a Legislature having power to create a single procedure out of two and not by a Legislature which has not that power.

16. Here the Legislature was supreme in the field of acquisition. The only curb on its powers was the requirement of President's assent and that admittedly was obtained unlike the previous occasion when the Amending Act failed for want of such assent. Therefore the Validating Act enacted in 1963 does not suffer from the defect from which the Amending Act of 1960 suffered.

17. The same argument is next put in another way. It is said that the Mysore Land Acquisition Act, 1894 and the Land Acquisition Act, 1894 are general laws and they must give way to the special law in the Improvement Act, more so in view of Section 52 of the Act last mentioned. But this again ignores the position that after the Validating Act there is no Improvement Act to consider.

18. It is contended that acquisition by the Improvement Trust is not a public purpose. We declined to hear this argument which does not arise in the appeal before us since it was not raised in the High Court.

19. Mr. Sarjoo Prasad also argues that there will be now two classes of cases, one in whose case the Validating Act dispenses with the procedure of the Improvement Act and those in whose case the procedure will be followed. This is the same argument in another form and is equally futile. Class legislation is always permissible. There is a special class in whose case the acquisition was under the Acquisition Act without following the procedure of the Improvement Act. There are two distinct classes of cases and the differentia is the striking down of action in the second class and the need for

validation. All Validating Acts lead to two distinct classes those in which validation is necessary and those in which it is not. The Legislature is always competent to validate procedural defects without in any way losing its jurisdiction by reason of the existence of the other class.

20. The arguments that no opportunity was given to oppose the acquisition on the ground that no public purpose was subserved, must fail because a notification has already been issued under Section 6 of the Land Acquisition Act. It is too late for this court to enter into the question of public purpose.

21. It remains to consider the argument based on estoppel which is claimed in C.A. No. 111 of 1966. There is no doubt that the High Court has not decided that issue. The writ petition must therefore be remanded to the High Court for the consideration of that ground.

22. The result therefore is that all appeals are allowed. All writ petitions (except 114 which is to be compromised and C.A. No. 111 of 1966 in which there is a remand) will be dismissed. There shall, however, be no order as to costs. Writ Petition No. 1076 of 1959 (C.A. No. 111 of 1966) shall stand remanded to the High Court but there shall be no order about costs.

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