

The Special Land Acquisition Officer, City Improvement Trust Board, Mysore

Vs

P. Govindan

Civil Appeal No. 2539 of 1972

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

10.09.1976

JUDGMENT

BEG, J. -

1. The judgment of a Division Bench of the Mysore High Court under appeal before us, after certification of the case as fit for an appeal to us, follows the decision of a Full Bench of that Court in Venkatamma v. Special Land Acquisition Officer (AIR 1972 Mys 193 : (1972) 1 Mys LJ 398 (FB)). The Full Bench had held that the date for the determination of compensation under the provisions of Section 23(1) of the Land Acquisition Act, which was to be applied to acquisition under the City of Mysore Improvement Act 3 of 1903 (hereinafter referred to as 'the Mysore Act'), was the date of notification under Section 18 of the Act corresponding to Section 6 of the Acquisition Act.

2. Recently, we have had to deal with a case in which the provisions of the City of Bangalore Improvement Act, 1945, corresponding substantially with those of the Act now before us, were interpreted by us. The provisions of Sections 14, 16, and 18 of the Mysore Act of 1903, as well as the Bangalore Act of 1945 are identical. And, the provisions of Section 23 of the Mysore Act are identical with those of Section 27 of the Bangalore Act. Therefore, a Division Bench of the Karnataka High Court considered itself bound by the Full Bench decision of the Mysore High Court (subsequently the Karnataka High Court) on the provisions of the Mysore Act of 1903 even in interpreting the Bangalore Act of 1945. But, this Court held, in the Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah ((1976) 4 SCC 9), that the Division Bench decision of the Karnataka High Court, holding that the market value, for the purposes of compensation, must be determined with reference to the date of notification under Section 18 of the Bangalore Act, was erroneous. It, therefore, allowed the appeals from the judgment of the Division Bench of the Karnataka High Court which had purported to follow the Full Bench decision on the Mysore Act of 1903.

3. The main argument in the appeal before us is that this Court had observed in Narayanaiah's case that the Full Bench decision related to an interpretation of provisions of an Act as it stood in 1903, when the date of market value, to be determined for purpose of compensation, was the date of notification under Section 6 of the Acquisition Act. That date was subsequently changed by the Mysore Act 1 of 1927 to that of publication and notification under Section 4(1) of the Acquisition Act. It is true that this Court did observe that this difference was vital. In doing so, it had accepted the argument put forward on behalf of the Land Acquisition Officer. But, it had not decided what was the real meaning of provisions of Section 23 of the Mysore Act which correspond with Section 27 of the Bangalore Act.

4. Section 23 of the Mysore Act now before us reads as follows :

23. The acquisition otherwise than by agreement of land within or without the City under this Act shall be regulated by the provisions. So far as they are applicable, of the Land Acquisition Act, 1894, and by the following further provisions, namely :

(1) Upon the passing of a resolution by the Board that an improvement scheme under Section 14 is necessary in respect of any locality, it shall be lawful for any person either generally or specially authorised by the Board in this behalf and for his servants and workmen, to do all such acts on or in respect of land in the locality as it would be lawful for an officer duly authorised by Government to act under Section 4(2) of the Land Acquisition Act, and for his servants and workmen, to do thereunder : and the provisions contained in Section 5 of the said Act shall likewise be applicable in respect of damage caused by any of the acts first mentioned.

(2) The publication of a declaration under Section 18 shall be deemed to be the publication of a declaration under Section 6 of the Land Acquisition Act.

(3) For the purposes of Section 50(2) of the Land Acquisition Act, the Board shall be deemed to be the local authority concerned.

(4) After the land vests in the Government under Section 16 of the Land Acquisition Act, the Deputy Commissioner shall, upon payment of the cost of 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.

5. The reasoning of the Full Bench of the Mysore High Court, which did not appeal to this Court in Narayanaiah's case, was that, since a declaration under Section 18 of the Act was equated with Section 6 of the Acquisition Act, proceedings under Section 4(1) of the Acquisition Act could only be equated with the stage of a resolution under Section 14(1) of the Act which was anterior to the declaration under Section 18 of the Mysore Act. Section 16 of the Act is also anterior to Section 18. This Court found that, although the procedure laid down in Section 16 of the Bangalore Act, which corresponds exactly with Section 16 of the Mysore Act now before us, is more elaborate than the procedure under Section 4(1) of the Acquisition Act, yet, the purpose of Section 16 of the Bangalore Act was the same as that of Section 4 (1) of the Acquisition Act. We think that this reasoning applies equally to the provisions of Mysore Act.

6. It is true that it can be more plausibly argued, with regard to the provisions of Mysore Act of 1903, that the market value for acquisition under this Act should be determined with reference to the Acquisition Act as it stood in 1903. After carefully considering this point of view, we think that such a departure from the generally accepted procedure which regulates acquisition and compensation for it under similar Acts in the State of Mysore as well as under Land Acquisition Act today has to be justified by something more explicit, express, and substantial than the mere date of enactment of the Mysore Act. If Section 23(1) of the Acquisition Act lays down, as we think it does, the only procedure for award of compensation, it has to be followed as it exists at the time of acquisition proceedings. No one has a vested right in a particular procedure. It is a fair interpretation of Section 23 of the Mysore Act of 1903 to hold that it means that, whatever may be the procedure there, with regard to matters regulating compensation under the Acquisition Act, at the time of

acquisition proceedings, will apply to acquisition under the Mysore Act.

7. If the procedure that the market value should be determined with reference to Section 6 of the Acquisition Act had been replaced, by an amendment of 1927, by the provision that the relevant date will be the date of notification under Section 4(1) of the Acquisition Act, we will really have to determine what is the equivalent in the Mysore Act of proceeding under Section 4(1) of the Acquisition Act. The provision relating to determination of compensation with reference to Section 6 having disappeared was no longer available to be applied at all on the date of the acquisition with which we are now concerned. Hence, to argue that the equivalent of Section 6 notification under the Acquisition Act should govern even proceeding commenced after the amendment would be to apply what had ceased to exist long before the proceedings commenced. The amendment of Section 23(1) of the Acquisition Act meant a legally valid substitution of the notification under Section 4(1) for the one under Section 6 of the Acquisition Act. This implied an effective repeal and replacement. In such a situation, according to Section 6 of the Mysore General Clauses Act, only proceedings commenced before the repeal would be governed by the unamended procedure. We think that the language of Section 23 of the Mysore Act applies the provision of the Acquisition Act to acquisitions under the Mysore Act, except to the extent of express deviation by the Mysore Act from the general procedure in the Acquisition Act as amended from time to time. The procedure contained in the Acquisition Act, for the time being, did not need to be expressly applied once again after each amendment of the Acquisition Act, as the Mysore High Court seems to have opined. It was enough to lay down, as Section 23 of the Mysore Act does that the general procedure found in the Acquisition Act will apply except to the extent it was inapplicable. This means that amendments of the procedure in the Acquisition Act will apply if it is capable of application.

8. In the case before us, the preliminary notification under Section 16 of the Mysore Act of 1903 was published on May 27, 1965. This we equate with notification under Section 4(1) of the Acquisition Act for reasons we have already given in Narayanaiah's case. At that time, there was no date other than the date of the notification under Section 4(1) of the Acquisition Act prescribed for ascertainment of the market value, as a matter of correct procedure for determining compensation. The procedure under the unamended Act may have had relevance for acquisition proceedings begun before the amendment of the Acquisition Act in 1927 when it really existed. But, we think that it is a fair interpretation of the provisions of Section 23 of the Mysore Act to hold that compensation for acquisitions will be governed by the general provisions of the Acquisition Act as they exist on the date of a particular acquisition proceeding except to the extent to which a different procedure is expressly laid down in the Mysore Act. On the view we take, the market value of the property acquired had to be determined with reference to the date of notification under Section 16 of the Mysore Act.

9. Consequently, we set aside the judgment and orders of the Mysore High Court. We remand the case to the High Court for determination of the market value and disposal of the case in accordance with law as declared by us. The parties will bear their own costs throughout.

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