

SUPREME COURT OF INDIA

S. A. Jalaluddin

Vs.

Bangalore Development Authority

C.A.No.10910 of 1996

(Doraiswamy Raju and D.M. Dharmadhikari JJ.)

27.02.2003

JUDGMENT

Doraiswamy Raju J.

1. The above appeal has been filed against the judgment of a Division Bench of the Karnataka High Court dated 26th September, 1995, in RFA No. 232 of 1984 whereunder a challenge made to the Notification dated 5.11.1971 issued under Section 18(1)(a) of *The City of Bangalore Improvement Act, 1945* (hereinafter referred to as "the Act") as barred by limitation under the provisions of the *Land Acquisition (Karnataka Amendment and Validation) Act, 1967* (hereinafter referred to as the Karnataka Act") which by an amendment to the Central Land Acquisition Act prescribed a period to two year of limitations for issuance of a declaration under Section 6 of the Acquisition Act and consequently without the authority of law came to be repelled. To be more specific, as could be seen from the judgment under appeal the contention of the appellant was that by virtue of Section 27 of the Act the proceedings initiated thereunder for acquisition of land are to be regulated by the provisions under the Land Acquisition Act, and having regard to the said amendment to the Land Acquisition Act by the Karnataka Act and the proviso introduced to Section 6 to the effect that no declaration could be made or issued in respect of any particular land covered by a notification under sub-section (a) of Section 4, after the expiry of two years from the notification under Section 4(1) or from the commencement of the Amendment Act. Hence, the plea was that the Board should not have issued the final notification date 5.11.1971 and consequently acquisition proceedings, particularly, the declarations under Section 18 have been rendered invalid and unenforceable. The Division Bench of the High Court after adverting to the catena of cases including the one reported in (*The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah etc*¹.) has chosen to reject the challenge. Not satisfied, the appellants have come before this Court.

2. Mr. S. Ravindra Bhat, the learned counsel appearing for the appellant tried to contend that having regard to the provision of the Act which by virtue of stipulation contained in Sections 18(1)(c) and 27(2) deemed the declaration under Section 18 of the Act to be a declaration under Section 6 of the Land Acquisition Act, the amendments incorporated to the Central Land Acquisition Act imposing a limitation on the exercise of power of acquisition itself

would enure of the benefit of land owner. Argued the learned counsel further that the Bangalore Act under consideration, by means of reference refers and adopts the provisions of the Acquisition Act and, therefore, the principles laid down in the line of cases pertaining to legislation by incorporation will have no relevance in adjudging the challenge by the appellant in this case. Accordingly, the learned counsel tried to distinguish the earlier decision noticed by the Division Bench as well as the decision reported in (*Munithimmaiah v. The State of Karnataka and others*²) and (*Nagpur Improvement Trust v. Vasant Rao and others*³) etc. etc. A submission was also made placing reliance upon the decision of this Court in (*Nagpur Improvement Trust and another v. Vithal Rao and others*⁴) that so far as the citizen/land owner is concerned, it is immaterial whether the acquisition is under one Act or the other or what purpose and that the safeguards available under the Central Land Acquisition Act, should be equally rendered available to all kind of acquisition irrespective of the purpose or the special law concerned for acquisition of the land of a citizen.

3. Per contra, Mr. Altaf Ahmed, the learned Additional Solicitor General appearing for the respondents placed strong reliance upon the decision of this Court reported in (*Munithimmaiah v. The State of Karnataka and others*⁵) and (*Nagpur Improvement Trust v. Yasan and others*⁶) etc. etc. as also the decision in (*The Land Acquisition Officer, City improve Trust Board v. H. Narayanaiah etc. etc.*). In our view, it is unnecessary for us to undertake an extensive consideration of the relevant principles which should guide a decision in this case since we find such principles to have been stated and re-stated in series of decisions, including the two latest pronouncements as noticed above.

4. The decision in (*Nagpur Improvement Trust v. Vasant Rao and others*⁷) almost a similar challenge came to be projected and rejected as herein under: "So far as the acquisition under the Nagpur Act and the U.P. Act are concerned, they have been challenged on the ground that the notification corresponding to the declaration under Section of the Land Acquisition Act was made more than 3 years after the expiry of the date of publication of the notification corresponding to the notification under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition Act by insertion of proviso thereto by Act 13 of 1967, would apply to the acquisitions, we have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent amendments of Section 6 by the *Land Acquisition (Amendment and Validation) Act, 1967* (Act 13 of 1967) or by Act 68 of 1984, will have no effect on the acquisition made under the State Acts."

5. That apart, we are of the view, that the City of Bangalore Improvement Act, 1945 provides for formulating a scheme as also the manner in which it should be published and carried out, in execution. Section 18 provides that after the sanction of the Government has been obtained for the scheme, the Chairman of the Board shall forward a declaration for notification under the signature of a Secretary to the Government, stating the fact of such sanction and that the land in question was proposed to be acquired by the Board and the purposes of the scheme. It is further ordained therein that the declaration shall be published

in the Mysore Gazette and shall state the limits within which the land proposed to be acquired is situated, with the details of the particulars specified therein and that the said declaration shall be conclusive evidence that the land is needed for the public purpose and the board upon the publication of the said declaration shall proceed to execute the same. Section 19 provides that where within a period of 7 years from the date of publication in the Mysore Gazette of the declaration in clause (b) of sub-section (1) of Section 18, the Board fails to execute the scheme, substantially the scheme shall lapse from the said stipulation is that the declaration published under Section 18(1)(c) has validity period of seven years for being pursued for further action under Section 27 of the Act. While that be the position, it is futile for the appellants to contend that the declaration being not published within two years of the period specified in the land Acquisition Act, the proceedings under the Improvement Act shall lapse and be of no effect. Section 27 also stipulates that the Land Acquisition Act and the provisions noticed thereunder attracted to proceedings under the Act "so far as they are applicable". and consequently in respect of the matters wherein the City of Banaglore Improvement Act, 1943 has its own period of limitation or restrictions on the exercise of powers under the Act or specific provisions it is impermissible to read into the provisions of the Improvement Trust Act, the provisions of the Land Acquisition Act, so as to override or nullify the provisions of the Improvement Trust Act.

6. We are also not persuaded to countenance the challenge based on the decision reported (*Nagpur Improvement Trust and another v. Vithal Rao and others*⁸). The very reasoning therein of the Constitution Bench of this Court was in the particular context of deprivation of the property of a citizen without payment of the due compensation by highlighting the fact that the right of the owner, who comes to be deprived of this property, to receive compensation should not depend upon the purpose or the law which enables such acquisition. This principle cannot be extended de hors the ratio or rationale behind it for all purposes, to the extent of contending that all acquisitions must be under the same law and under same procedural formalities, de hors the special law to meet different contingencies or deal with various exigencies of situation. As a matter of fact, even in the later line of cases wherein this Court has specifically declined to read into the limitations on the exercise of powers importing such limitations under the Central Act, into the special enactments the position was made clear in unmistakable terms that so far as the payment of compensation is concerned, there could be no different yardstick based on the purpose of acquisition or the provisions of law under which it is acquired. The ratio of the decision in 1973(1) SCC 500 (supra) was not extended beyond its purpose, to apply the principle or the proposition of law sought to be raised to import a limitation on the very exercise of power of acquisition for and under the special and specific laws which as we have observed earlier has to be adjudged with particular reference in this case to only the City of Bangalore Improvement Trust Act, 1945.

7. For all the reasons stated above, we see no merit in the challenge made to the decision of the High Court. The appeal, therefore, fails and stands dismissed. No costs.

¹1977 (1) SCR 178

²2002 (4) SCC 326

³2002 (7) SCC 657

⁴1973(1) SCC 500

⁵2002(4) SCC 326

⁶2002 (7) SCC 657

⁷2002(7) 657

⁸1973(1) SCC 500