

SUPREME COURT OF INDIA

Mahadevappa Lachappa Kinagi

Vs.

State of Karnataka

(Tarun Chatterjee and Aftab Alam JJ.)

30.07.2008

ORDER

1. Leave granted.

2. This appeal is filed against the judgment and order dated 3rd of October, 2007 passed in Writ Appeal No. 834 of 2007 whereby the High Court had dismissed the appeal of the appellants holding that in the facts and circumstances of the case, the power under Section 17 of the *Land Acquisition Act* (in short the "Act") was validly invoked.

3. Before we proceed further, we may note that at the time of issuing notice on the respondents, this Court on 14th of December,2007 passed the following order :-

"Issue notice. Status quo as on today shall be maintained."

4. An application for vacating the interim order was listed for hearing on 16th of July, 2008 and the learned counsel appearing for the parties submitted before us, on instructions, that instead of hearing out the application for vacating the interim order, it would be fit and proper if the Special Leave Petition itself was decided. Accordingly, with the consent of the learned counsel for the parties, the SLP itself was taken up for hearing which was heard on grant of leave in presence of learned counsel for the parties.

5. The appellants are owners of Sy Nos.172/1A, 2A, 2B and 173/2 totaling 18.5 Acres situated at Almel Village Sindagi Taluk in the State of Karnataka. During the year 1962, due to over flow of Bhima river, Tharapura village was submerged. The State Government acquired about 14 Acres of land in Sy No.188, 189 and 90/2 of Almel Village in order to rehabilitate the families of Tharapura village which was submerged by the over flow of Bhima river. On the said acquired lands, the State Government had rehabilitated 85 families of Tharapura village whereas 145 families of the said village were still not rehabilitated. It is not in dispute that after rehabilitating 85 families as stated hereinabove on the aforesaid acquired lands, another 145 families still were residing in the Tharapura village including the appellants. In the year 1994, technical sanction was given for the Bhima Lift Irrigation Project. Accordingly, sanction was accorded to construct a barrage on the Bhima river for which final sanction was given in the financial year 2003-2004. Thereafter,

construction work began and this project was aimed to extend irrigation facilities to 24,200 hectares of land. As a result of the detailed technical status, it was found that the project, i.e., Bhima Irrigation Project, would result in the complete submergence of Tharapura village owing to water spread when the barrage is commissioned. For this reason, it was found imperative and absolutely necessary to evacuate the villagers still staying in Tharapura village. Accordingly, before commissioning the barrage, decision was taken to rehabilitate another 145 families of Tharapura village in some other area.

6. It is not in dispute that construction work of the barrage is ready for operation. At this stage, it was thought proper to rehabilitate 145 families, for which lands were sought to be acquired. Under these circumstances, the commissioning of the barrage on the Bhima river could not be started although it was completed because the 145 families in the said village could not be shifted. To meet this problem, the notification under Section 4(1) of the Act was issued on 10th of August, 2006 for acquiring the lands of the appellants namely, Sy Nos. 172/1A, 2A, 2B and 173/2 totaling 18.5 Acres.

7. This notification was under challenge before the High Court by way of a writ application, which was dismissed by a learned Single Judge of the High Court and the said order was affirmed by a Division Bench of the High Court. The orders of the High court are now under challenge before us in appeal. The learned senior counsel appearing on behalf of the appellants, Mr. Vasudev substantially raised the submission before us that since the rehabilitation project was pending since 1962, the emergency power under Section 17 of the Act, could not have been exercised by the State Government in the year 2006. Accordingly, it was contended by Mr. Vasudev, learned senior counsel appearing on behalf of the appellants, that since there was no urgency in the matter to invoke emergency provision for acquisition under Section 17 of the Act and normal procedure ought to have been followed, the notification under Section 4 of the Act should be quashed. In support of this contention whether emergency power under Section 17 of the Act could be invoked in the facts and circumstances of the present case particularly after such a long delay Mr. Vasudev strongly relied on a decision of this Court in the case of *Union of India and Ors. vs. Mukesh Hans etc.*¹, particularly on paragraphs 31 and 32 of the said Judgment.

9. Mr. Vasudev contended that since Section 17 provides that in cases where an appropriate Government has come to a conclusion that there exists an urgency or unforeseen emergency as required under Sub- Sections (1) and (2) of Section 17, it may direct that the provisions of Section 5A shall not apply and if such direction is given, then Section 5-A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of Section 4

“(1) notification and possession can be taken. Relying on these two paragraphs, namely paragraphs 31 and 32 of the aforesaid decision of this Court, Mr. Vasudev sought to argue that in this case, the High Court had failed to consider that it was the duty of the authorities to come to a conclusion that there exists an urgency or unforeseen emergency as required by Sub-section (1) and (2) of Section 17 before such emergency provision could be invoked. Mr. Vasudev learned counsel for the appellants further contended that the notification under Section 4(1) read with Section

17 of the Act must be quashed as there was nothing on the record to show that the State Government had made out any case to invoke such emergency provision. There is no quarrel on this proposition at all. It is true that if the Court comes to a conclusion whether there exists any unforeseen emergency to invoke power under Section 17 of the Act, it was the duty of the authorities to proceed with the normal procedure under Section 5A of the Act. We are, however, on the facts and circumstances of this case, unable to rely on this observation of this Court in the aforesaid paragraphs of this decision cited by Mr. Vasudev. In this case, we find that emergency power under Section 17 was required to be invoked, as the admitted facts of the present case that on the lands initially acquired only 85 families were reallocated or rehabilitated. The Tharapura village was going to be sub-merged after the construction of the barrage and 145 families would be immediately shifted to somewhere else. In view of this emergency and in view of the fact that the barrage has already been completed and it is going to be commissioned, it was thought fit and proper that the land, as noted hereinabove, should be acquired.

11. It cannot be forgotten that the commissioning of the entire project has been held-up on account of the present appellants only. In fact, the appellants challenged the resolution of the concerned Panchayat before the High Court of Karnataka, which was rejected by the learned Single Judge, who found that the acquisition process was proper.

12. This fact of moving the writ petition practically challenging the proposal to acquire the land was suppressed when the present writ application was moved. The rehabilitation of 145 families could be immediately required because of the commissioning of the barrage on the Bhima river. Not only this, pursuant to the acquisition of the lands in question, the respondents have awarded contract for construction for Tharapura Rehabilitation Centre for providing civic amenities as part of the Lift Irrigation Scheme, which is valued at Rs. 3,34,17,747/-. If this contract is not permitted to be executed and works are not completed, the 145 families of Tharapura village cannot be shifted and the entire contract amount will be wasted. This being the admitted position, we are unable to agree with Mr. Vasudev that in the facts and circumstances of the present case, the invocation of emergency power under Section 17 of the Act without following the normal procedure was not proper.

13. It is no doubt true that Section 17 of the Act confers extraordinary powers on the authorities under which it can dispense with the Normal procedure laid down under Section 5-A of the Act in cases of exceptional urgency. It is also true that such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. In *Union of India & Ors. vs. Krishan Lal Arneja & Ors.*², this Court has clearly laid down that Section 17 confers extraordinary powers on the authorities to dispense with the normal procedure under Section 5-A of the Act if the authorities are of the opinion that it was a case of exceptional urgency. In view of our discussions made herein above to the extent that the barrage itself over the Bhima River could not be commissioned and if such commissioning is done before rehabilitating the 145 families of Tharapura Village which will be submerged on such commissioning is shifted, the project would then also result in total submergence of

Tharapura Village. It is not possible to hold that this was not an exceptional case where emergency power under Section 17 could not be invoked. For the reasons aforesaid, we do not find any merit in this appeal and the appeal is, therefore, dismissed. There will be no order as to costs.

The interim order granted on 14th December, 2007 stands vacated. In view of this judgment by which the appeal itself has been disposed of, no order need be passed on the application for vacating the interim order, it is also disposed of as infructuous.

¹(2004) 8 SCC 14

²(2004) 8 SCC 453