

**SUPREME COURT OF INDIA**

N.Rajanna

Vs.

State of Karnataka

C.A.No.4070 of 2010

(G.S.Singhvi J.)

04.05.2010

**JUDGEMENT**

**G.S.Singhvi, J.**

1. Leave granted.

2. Whether the Division Bench of the High Court of Karnataka could modify order dated 13.2.2009 passed by the learned Single Judge in Writ Petition No. 15348/2008 without issuing notice and giving opportunity of hearing to the appellants, who claim to have right over the land sought to be acquired by the State Government on behalf of respondent No.3 and 2 who were represented before the learned Single Judge through an advocate is the question which arises for consideration in these appeals filed against order dated 17.4.2009 passed by the Division Bench in Writ Appeal No. 1295/2009.

3. Respondent No.3 filed an application under the Karnataka Industries (Facilitation) Act, 2002 (for short, 'the Facilitation Act') for approval of its proposed project which included Tourist Complex, Commercial Space, Financial Hub, Research and Development Facility with Residential Condominium, Service Apartments and Medical City to be set up in Chalamakunte village, Chikkajala Hobli, Bangalore North Taluk on land measuring 500 Acres. On coming to know of the application made by respondent No.3 for acquisition of land for its project, the appellants and others filed objections dated 30th May, 2007 by asserting that their claim for grant of occupancy rights over a portion of the land sought to be acquired was pending before the competent authority, which is required to decide the matter in compliance of the direction given by the High Court in Writ Petition Nos. 33954 and 41207 of 1982.

4. The project of respondent No.3 was considered in 10th, 13th and 15th meetings of the State High Level Clearance Committee (for short, 'the Committee'). After seeking some clarifications from respondent No.3, the Committee recommended approval of the project. The State Government accepted the recommendations of the Committee and issued order

dated 18.11.2008 for approval of the project of respondent No.3 subject to certain conditions. While making recommendations in favour of respondent No.3, the Committee took note of letter dated 28.4.2008 sent by Principal Secretary to Government, Revenue Department, wherein he made a mention of the pendency of case for grant of occupancy right.

“This is evinced from the following extract of order dated 18.11.2008:

"The Principal Secretary to Government, Revenue Department, vide letter dated 28.4.2008 has informed that, the lands in Sy. No. 1 to 104 of Chalamanakunte village is Jodi Inam and there is a case pending before Land Tribunal on grant of occupancy rights. In this regard, the Committee felt that if the occupancy rights are confirmed, the occupants will get the compensation. Otherwise, the cost of lands to be determined by SLAO have to be remitted to the Government, as such there is no hindrance for acquisition, however it was felt that the consent of revenue department is necessary in this regard.”

5. After 8 days, the State Government revised its decision and issued order dated 26.11.2008 for withdrawal of the approval accorded to the project of respondent No.3 on the ground of pendency of the case before the competent authority. This action of the State Government was ratified by the Committee in its meeting held on 28.1.2009.

6. Respondent No.3 challenged order dated 26.11.2008 in Writ Petition No. 15348/2008 by contending that under the Facilitation Act, the State Government does not have the power to review the approval accorded to its project. Another plea taken by respondent No.3 was that the action of the State Government is vitiated due to violation of the rules of natural justice.

7. During the pendency of the writ petition, the appellants filed an application dated 13.1.2009 for their impleadment as party by asserting that they have direct interest in the property sought to be acquired for the project of respondent No.3. On their part, respondent Nos. 1 and 2 filed objections to contest the writ petition.

8. After hearing learned counsel for the parties and Shri B.M. Shyam Prasad, who had appeared on behalf of the appellants, the learned Single Judge passed order dated 13.2.2009 whereby he partly allowed the writ petition. He rejected the plea taken by respondent Nos.1 and 2 that approval to the project of respondent No.3 did not create a right in its favour and held that the minimum expected of the State Government was to hear the writ petitioner before withdrawing the approval. However, instead of quashing order dated 26.11.2008, the learned Single Judge directed the State Government to hear respondent No.3 and pass fresh order. Paragraph 8 and operative portion of the order passed by the learned Single Judge read as under:

“8. In that view of the matter, the impugned order cannot be sustained. But at the same time, it is not necessary to quash the impugned annexure. When a project has been approved by the State in accordance with law, if they want to withdraw it, it is

always open to them to do so after hearing the person to whom such an approval is granted and thereafter take a decision in accordance with law so that the aggrieved person will have the satisfaction of putting forth his case. In that view of the matter, I pass the following:

## ORDER

1. Writ Petition is allowed in part.
2. Annexure-A shall be treated only as a show cause notice issued by the State High Level Clearance Committee to the petitioner asking him to show cause why the approval of his project accorded on 18.11.2008 should not be recalled or withdrawn.
3. It is open to the petitioner to contend and raise all such defences which are available to him in law.
4. The authorities shall after hearing the petitioner pass appropriate orders in accordance with law.
5. It is submitted that the owners of the lands have already objected to the grant of land and are before the authorities and therefore, it would be appropriate for the authorities also to hear the owners of the land, if, the said land is meant to be given to the petitioner.
6. All contentions urged in this petition by all the parties are kept open to be decided by the appropriate authorities.
7. Consequent to Annexure-A, all the orders passed by the Government or by the High Level Committee has no value in the eye of law and are unenforceable.
8. IA for impleading is ordered to be filed.
9. No costs.”
9. Respondent No.3 did not feel satisfied with the directions given by the learned Single Judge and challenged the order passed by him in Writ Appeal No. 1295/2009. By the impugned judgment, the Division Bench allowed the writ appeal, quashed order dated 26.11.2008 and directed the State Government to proceed on the basis of approval granted by it on 18.11.2008.
10. Shri P.S. Patwalia, learned senior counsel appearing for the appellants argued that the impugned judgment is liable to be set aside because the Division Bench of the High Court disposed of the appeal without complying with the basics of the natural justice, inasmuch as no notice or opportunity of hearing was given to his clients. Learned counsel emphasized that

the appellants have direct and substantial interest in the land sought to be acquired for the project of respondent No.3 because their claim for grant of occupancy rights is pending before the competent authority and argued that the Division Bench committed serious error by directing implementation of the project of respondent No.3 without issuing notice to the appellants. Shri Patwalia submitted that the so-called consent given by one of the claimants of occupancy rights, namely, Shri H. Kempiah cannot be made basis for depriving the appellants of their legitimate right to be heard and oppose the acquisition of land ignoring that in terms of the direction given by the High Court in Writ Petition Nos. 33954 and 41207/1982, the competent authority is yet to decide the issue relating to grant of occupancy rights. Ms. Anitha Shenoy, learned counsel for the State of Karnataka not only supported Shri Patwalia, but also justified the Government's decision to withdraw the approval accorded to the project of respondent No.3 by arguing that the decision contained in order dated 18.11.2008 was vitiated due to non consideration of the relevant factors including the pendency of case relating to occupancy rights. Dr. Abhishek Manu Singhvi, learned senior counsel appearing for respondent No.3, pointed out that the impleadment application filed by the appellants had not been allowed by the learned Single Judge and submitted that the factual statement contained in paragraphs 5 and 13.11 of the impugned judgment suggesting that the learned Single Judge had already impleaded the appellants as parties to the writ petition does not appear to be correct. He then submitted that the appellants do not have any locus to be heard in the proceedings instituted by respondent No.3 against the Government's decision to withdraw the approval to its project because the competent authority is yet to decide their claim for occupancy rights. The last submission of the learned senior counsel is that even if this Court comes to the conclusion that the Division Bench ought to have heard the appellants, the impugned judgment may not be disturbed because, in the event of grant of occupancy rights to the appellants, they will get a maximum of 103 Acres land and for that his client is prepared to pay the prevailing market value so that the implementation of the project may not be delayed.

11. We have considered the respective submissions. In our view, the impugned judgment is liable to be set aside only on the ground that the procedure adopted by the Division Bench in deciding the appeal preferred by respondent No.3 was contrary to one of the well recognized facets of natural justice i.e., audi alterm partem. A careful scrutiny of the records reveal that while considering the project of respondent No.3 and approving the same, the Committee and the State Government were alive to the fact that the issue relating to grant of occupancy rights in respect of the land comprised in survey Nos.1 to 104 of Village Chalamakunte is pending adjudication before the competent authority. It is also not in dispute that even before consideration of the project of respondent No.3 by the Committee, the appellants had filed objections dated 30.5.2007 against proposed acquisition of the land. They had also filed an application under Order 1 Rule 10 CPC for being impleaded as parties to Writ Petition No.15348/2008. Although, it is not clear from the order of the learned Single Judge whether the application filed by the appellants was allowed, but this much is evident that their advocate Shri B.M. Shyamprasad was heard along with other learned counsel. This appears to be the reason why in paragraph 5 of the operative portion of the order passed by him, the learned Single Judge made it clear that land owners must be heard before their land is

acquired. The Division Bench of the High Court proceeded on the premise that the application filed by the appellants for their impleadment as parties was allowed by the learned Single Judge. This is clearly reflected in paragraphs 5 and 13.11 of the impugned judgment.

“Therefore, the Division Bench should have afforded an opportunity of hearing to the appellants before deciding the appeal preferred by respondent No.3 and directing the State Government to act in accordance with approval accorded vide order dated 18.11.2008. In any case, once the learned Single Judge had heard the counsel representing the appellants and the Division Bench found that their application for impleadment had been allowed, the minimum which the Division Bench ought to have done was to issue notice to the appellants and given them an opportunity to contest the appeal.”

12. Although, the issue relating to grant of occupancy right over the land comprised in survey Nos.1 to 104 of Village Chalamakunte is yet to be decided by the competent authority, it cannot be said that the appellants do not have the locus to be heard in the proceedings which may result in acquisition of the land. If ultimately the competent authority accepts the claim of the appellants for grant of occupancy rights and in the meanwhile the land is utilized by respondent No.3, the determination made by the competent authority will become illusory for them.

13. The submission of the learned counsel for respondent No.3 that his client is prepared to pay market value of the land to the appellants subject to their claim being finally adjudicated by the competent authority in the proceedings relating to grant of occupancy rights cannot be accepted because the learned counsel for the appellants emphasized that his client would like to contest the very approval of the project of respondent No.3 and support the decision taken by the Government to withdraw the same.

14. In the result, the appeals are allowed. The impugned judgment is set aside and the matter is remitted to the High Court for deciding the appeal of respondent No.3 afresh after giving opportunity of hearing to the 1 parties. Keeping in view the nature of the case, we request the High Court to dispose of the appeal as early as possible but latest within two months from the date of receipt/production of copy of this order.