

SUPREME COURT OF INDIA

P. Parthasarathy

Vs.

State of Karnataka & Ors.

SLP(Civil)No.19510/2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

24.08.2011

ORDER

1. This special leave petition is directed against the judgment and order dated 15.6.2011 passed by the Division Bench of the Karnataka High Court affirming the judgment and order passed by the learned Single Judge of the same High Court.

2. By the aforesaid order, the High Court where the legality and validity of the final notification dated 6.2.09 issued under sub-section (4) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as the 'Act') was challenged upheld the validity and legality of the aforesaid notification issued by the respondent/State exercising the powers vested in it under sub-section (4) of Section 28 of the Act.

3. The petitioner herein is the owner of survey no. 154/10 measuring about 2 acres at Kengeri village, Kengeri Hobli, Bangalore South taluk. The land of the petitioner was the subject matter of the notification issued by the State of Karnataka. The notification was issued under Section 28(1) of the Act. The petitioner, however, did not file any objection whereupon a final notification under Section 28(4) of the Act was issued, which, however, was challenged before the learned Single Judge of the Karnataka High Court by filing a writ petition, which was registered and numbered as W.P. No. 24867 of 2005.

4. The learned Single Judge by judgment and order dated 13.01.2009 allowed the said writ petition filed by the petitioner herein and quashed the final notification issued and also the consequential corrigendum. The learned Single Judge also gave a liberty to the respondents to identify the land which they propose to acquire. It was also held therein by the learned Single Judge that the petitioner as also the respondent no. 4 would take the proceeding before the High Court as the notice in the matter of identification of the land in question and file their objections within a period of four weeks. Subsequent thereto, a notice was issued to the petitioner by the Board on 6.2.2009. In the said notice, the Board informed the petitioner that the land described in the notice is required for the development of the Karnataka Industrial Development Board and that the Government of Karnataka had issued a notification under sub-section (1) of Section 28 of the Act by notification dated 19.12.1998. The petitioner was

further informed that he may show cause as to why the land should not be acquired and that such a notice is being given to the petitioner pursuant to the order passed by the High Court in the aforesaid writ petition. A description of the land was also given in the said notice. The petitioner as against the same submitted a reply contending, inter alia, that the land of the petitioner could not and would not come within the aforesaid acquisition and, therefore, his name shown in the preliminary notification dated 19.12.1998 be deleted. He further stated in the said reply filed that the plan prepared for road including the peripheral road junction, approved by the competent authority clearly indicate that the land in question is not at all required or proposed to be acquired and that being the state of affairs, acquisition of any portion of the said land bearing survey no. 154 cannot be sustained either in facts or in law and the same is liable to be dropped from acquisition.

5. After the receipt of the aforesaid objection filed by the petitioner, an enquiry was conducted by the Special Land Acquisition Officer. A report was also prepared, which is placed on record. It appears the petitioner was represented by his counsel in the said enquiry proceedings. The concerned officer considered the records and then ordered that notices be issued to all concerned persons including the petitioner notifying them that a survey would be conducted to measure the land and that the petitioner should be present in the aforesaid survey to be made to show their respective lands.

6. It is also disclosed from the record that as per the date fixed i.e. on 18.4.2009, the concerned officers visited the spot and on that day, the concerned persons including the petitioner and others were present. In the said survey, the previous phoded numbers were cancelled and thereafter the mahazar was drawn in the presence of the parties and they were also given sketch copies with available records in terms of their requests. The officer, thereafter, heard the arguments and after referring to the order of the Karnataka High Court dated 13.01.2009 it was held that the land measuring 2.33 acres is required for the project. Thereafter the said Land Acquisition Officer passed an order that the land bearing survey no. 154/10 of Kengeri village, Kengeri Hobli, Bangalore South taluk is required for the proposed reasons of acquisition and that the same is suitable and required as per the joint measurement and schedule and, therefore, the said land measuring 2.33 acres was ordered to be acquired. Consequent thereupon a notification under Section 28(4) was issued whereby the land of the petitioner was acquired by putting the name of the petitioner in the schedule annexed to the said notification.

7. The validity of the aforesaid notification was challenged by filing a writ petition in the Karnataka High Court. The learned Single Judge who heard the writ petition, after hearing the counsel appearing for the parties, dismissed the writ petition by his order dated 11.9.2009 holding that the order of the learned Single Judge in the earlier writ petition no. 24867/2005 directing the Land Acquisition Officer to provide opportunity to the petitioner and also to identify the land and thereafter to proceed with the matter having become final and binding and since subsequent to the said order, the land having been identified and his objections having been considered and the actual portion of the land required for formation of the road having been notified, there could be no further grievance of the petitioner. Consequently, the writ petition filed by the petitioner was dismissed.

8. Being aggrieved by the said order, a writ appeal was filed before the High Court, which is the impugned judgment and order. By the said judgment, the Division Bench of the High Court dismissed the appeal holding that any defect in the preliminary notification would not prove fatal to the acquisition proceedings. It was also held that though survey number was not challenged, a fresh inquiry was held to identify the land whereupon the land was identified and thereafter order was passed followed by final declaration that the land of the petitioner is required for the project. Consequently, the appeal was also dismissed and the present petition was filed on which we have heard the learned counsel appearing for the parties.

9. Mr. P.P. Rao, learned senior counsel appearing for the petitioner has submitted that the land was not identifiable as although the extent of land was mentioned in the notification but the boundaries that were given were incorrect and erroneous and, therefore, the notification issued by the respondent State under sub-section (4) of Section 28 of the Act is liable to be quashed.

10. In support of the aforesaid contention, the learned counsel has relied upon the decisions of this Court titled *Narendrajit Singh & Anr Vs. The State of U.P. and Anr. reported in*¹ *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others reported in*² *and Om Prakash Sharma and Others Vs. M.P. Audyogik Kendra Vikas Nigam and Others reported in*³

11. Mr. Dushyant Dave, learned senior counsel appearing for the respondent no. 5 and Ms. Shenoy, learned counsel appearing for the State have refuted the aforesaid submissions of the counsel appearing for the petitioner and submitted that the land which was sought to be acquired by the respondent was identifiable all along. It is also submitted that the petitioner was given opportunity to file his objections, which were considered, and even the land was re-surveyed in order to identify the exact location and area of the land in terms of the order passed by the learned Single Judge and thereafter upon proper identification and verification of the land, the notification under sub-section (4) of Section 28 of the Act having been validly issued, there could be no interference in the present case.

12. In the light of the aforesaid submissions of the counsel appearing for the respondents, we propose to dispose of this special leave petition by giving our reasons thereof.

13. The project that we are concerned with was also the subject matter of appeal filed in this Court in the case of *State of Karnataka and Anr. Vs. All India Manufacturers Association and Anr. reported in*⁴. In paragraph 77 of the said judgment, it was held by this Court that the concerned project is an integrated infrastructure development project and is not merely a highway project. It was also held that the project which is styled, conceived and implemented is the Bangalore-Mysore Infrastructure Corridor Project which conceived of the development of roads between Bangalore and Mysore. There are several interchanges in and around the periphery of the city of the Bangalore together with numerous developmental infrastructure

activities along with the highway at several points. It is, therefore, needless to reiterate that the project is a very important project and the land which is sought to be acquired is proposed to be a part of the peripheral road being a part of the aforesaid developmental infrastructure.

14. The issue that arises for our consideration is whether there was any inaccuracy with regard to the description of the boundaries of the land which is sought to be acquired by the respondents. In fact, in the earlier round of litigation wherein validity of sub-section (1) of Section 28 was not challenged, what was done was to quash the notification issued under sub-section (4) of Section 28, which was in fact under challenge. Even thereafter and pursuant to the orders of the High Court which had become final and binding, a re-survey was done after going through the objection filed by the petitioner. In the said re-survey where the petitioner was also personally present, the land proposed to be taken and acquired was identified, sketch map was prepared and thereafter only the final notification under sub-section (4) of Section 28 was issued.

15. That the petitioner could file his objection and he was fully heard and was also given an opportunity regarding identification of the land indicates that the petitioner had ample opportunity to place his case, which was considered but decided against him. In our considered opinion full opportunity having been given to the petitioner to place his case and to oppose the acquisition process, there could be no further grievance of the petitioner in that regard.

16. We are also of the opinion that no prejudice is caused to the petitioner in any manner for the land was re-surveyed and thereafter the land sought to be acquired was identified, which included the land of the petitioner and, therefore, the entire pre-conditions and formalities as laid down under Section 28 of the Act were duly complied with and were adhered to and followed and, therefore, there cannot be any further cause of grievance for the petitioner.

17. In this connection, we may appropriately refer to a decision of the Constitution Bench of this Court in *Babu Barkya Thakur Vs. State of Bombay and Others*, reported in AIR 1960 SC 1203. In paragraph 12 of the said judgment, the Supreme Court has held that the purpose of the notification under Section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels and if necessary digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It was further held in that decision that it is only under Section 6 that a firm declaration has to be made by the Government that the land with proper description and area so as to identifiable is needed for a public purpose or for a company. The aforesaid observation was made after holding that what was a mere proposal under Section 4 becomes a subject matter of a definite proceeding for acquisition on issuance of notification under Section 6 of the Act.

18. We feel that the law laid down in the said decision applies in full force to this case also. In the present case also there were some errors and mistakes in the notification issued under sub-section (1) of Section 28 of the Act but the same did not, in any manner, prevent the

petitioner from submitting an effective objection and also from getting an opportunity of effective hearing for him. A re-survey was done in his presence and, therefore, the purpose for which the provision of sub-section (1), (2) and (3) have been enacted, have been fully carried out in the present case.

19. We are, therefore, of the considered opinion that although there was some discrepancy in the description of the property proposed to be acquired and the description given although might not have been exactly accurate, but the same did not in any manner misled the petitioner regarding the identity of the land which is corroborated by the fact of the detailed enquiry which was conducted in his presence. The petitioner was also able to file a detailed and effective reply to the show cause notice issued to him.

20. The decisions which are relied upon by the learned counsel appearing for the petitioner are clearly distinguishable on facts. So far the decision in case of *Narendrajit Singh & Anr. Vs. The State of U.P. and Anr. reported in (1970) 1 SCC 125* (supra) is concerned, in the said case we find that this Court interfered with the declaration because there was no particulars given in the notification. In the said case, there was no mention of any locality at all and in that context, this Court interfered with the proposed acquisition.

21. So far the next case, namely, *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others reported in (1992) 2 SCC 168* (supra) is concerned, in that case also details and particulars of the land were not given and a wrong public purpose was mentioned and in that view of the matter, this Court interfered with the acquisition proceeding.

22. As regards the case of *Om Prakash Sharma and Others Vs. M.P. Audyogik Kendra Vikas Nigam and Others reported in (2005) 10 SCC 306* (supra) which was relied upon by the counsel for the petitioner is concerned, in that case neither any survey number was given nor any khasra number was given. Even the name of the persons were not mentioned and in that context the declaration was quashed with a liberty by way of giving a fresh opportunity for initiation of a fresh acquisition proceeding.

23. The aforesaid cases are clearly distinguishable on facts and, therefore, they have no application in the facts and circumstances of the present case.

24. Considering the entire facts and circumstances of the case, we are of the considered opinion that the learned Single Judge as also the learned Division Bench of the Karnataka High Court did not commit any mistake or error in dismissing the writ petition.

25. We find no infirmity in the impugned judgment and order passed by the Division Bench. The petition has no merit and is dismissed, but leaving the parties to bear their own costs.

26. Since we have dismissed this petition, any interim order passed by the High Court shall also stand vacated by this order.

Judgment Referred.

¹(1970) 1 SCC 0125
²(1992) 2 SCC 0168
³(2005) 10 SCC 0306
⁴(2006) 4 SCC 0683