NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 4681 OF 2008
(Arising out of SLP©No……..CC 5931 of 2008)

Sri V. Prabhakar and Ors. …Appellant

VERSUS

Bangalore Mahanagara Palike
Bangalore, Karnataka and Ors. …Respondents

O R D E R

1. Delay condoned.

2. Leave granted.

3. This appeal is directed against the Judgment and order dated 19th of September, 2007 of a Division Bench of the High Court of Karnataka at Bangalore in Writ Appeal No. 6192 of 2002, whereby the Division Bench of the High Court had

reversed the order of a learned Single Judge of the High Court quashing the acquisition proceeding in respect of the land belonging to the appellants and rejected the writ application of the appellants.

4. The Bangalore Mahanagara Palike, Bangalore, took a resolution to acquire the property of the appellants bearing No. 67/1 and 67/2 situated at 3rd Main Road, Ramachandrapuram, Division No. 20, Bangalore, which was purchased by the appellants by registered deeds of sale on 5th of December, 1996, to establish a school with a playground and a hospital. The purpose for which the land was acquired could not be disputed that such purpose was for a public purpose. The State Government thereafter, after approval of the resolution to acquire the aforesaid property, issued a notification on 18th of June, 1998 under

Section 4 (1) of the Land Acquisition Act (in short the "Act"). Since the appellants had purchased the acquired property, they challenged the notification under Section 4(1) of the Act on the ground that the acquisition was not bonafide. It was alleged by the appellants that the acquisition was malafide because the property was sought to be acquired to start a school with a playground and a hospital, which would not be possible to establish on the small piece of land measuring less than half an acre belonging to the appellants. Since the notification was not withdrawn, the appellants moved a writ application challenging the acquisition on the ground that acquisition was not bonafide. The learned single Judge of the High Court held that the area acquired was little less than half an acre and, therefore,

it was not possible to establish school with a playground and a hospital in such a small area. Accordingly, the learned Single Judge of the High Court held that there could not exist a public purpose for acquiring the property and, therefore, quashed the acquisition proceedings. An appeal was carried by the respondents before the Division Bench of the High Court which, by the impugned order, had set aside the order of the learned Single Judge holding that the land so acquired was acquired for public purpose for the establishment of a school with a playground and a hospital, and that if the area of the acquired land which is half an acre is not sufficient to satisfy all the three requirements, namely-

(i) Establishment of a school;

(ii) A play ground;

(iii) A hospital,

at least one of such requirements could be satisfied. Upon these findings, the Division Bench of the High Court had set aside the order of the learned Single Judge and held that the notification under Section 4(1) of the Act could not be quashed on the ground of malafides. It is this order of the Division Bench of the High Court, the SLP was filed in this Court, which on grant of leave was heard in presence of the learned counsel for the parties.

5. We have heard learned counsel for the parties and considered the entire materials on record including the contrary findings of the learned Single Judge as well as of the Division Bench on the question of malafides to acquire the property of the appellant. It appears from the record that there was no material to substantiate the case of malafides as made out by the appellants in the writ application. It also

appears from the record that the Deputy Commissioner (Administration) of the State Government, by his letter dated 1st of September, 1997, found the need for acquisition of the acquired property for the purpose of establishing a school with a play ground and a hospital for which necessary amounts have already been deposited. The Division Bench of the High Court, in our view, rightly pointed out that if the area acquired was not sufficient to satisfy all the three requirements, then also, the acquired land could be used for one of the suitable purpose namely a school or a playground or a hospital.

6. That apart, we also find that a writ application was filed by the appellants before the High Court earlier challenging a resolution to acquire the properties of the appellants for the aforesaid public purpose. The High Court

rejected the writ application and held that there was no ground to hold that the acquired properties could not be utilized for the purpose of establishing a school with a playground and a hospital. Unfortunately, it appears that the appellants had suppressed the fact of rejection of this earlier writ petition in the subsequent writ application challenging the notification under Section 4(1) of the Act.

7. For the reasons aforesaid, there is no merit in this appeal and the appeal stands dismissed without any order as to costs.

……J.
[TARUN CHATTERJEE]

New Delhi. ……J.
July 28, 2008. [AFTAB ALAM]