CASE NO.:
Appeal (civil) 7059-7060 of 2000

PETITIONER:
H.M.T. Ltd. rep. by its Deputy General Manager (HRM) and Anr

RESPONDENT:
Mudappa & Ors

DATE OF JUDGMENT: 08/02/2007

BENCH:
C.K. Thakker & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

C.K. Thakker, J.

These two appeals arise out of the judgment and order dated September 8, 1998 passed by learned Single Judge of the High Court of Karnataka in Writ Petition No. 5580 of 1998 and confirmed by the Division Bench in Writ Appeal Nos. 5051-5052 of 1998 on October 28, 1998.

By the impugned order, the High Court upheld the contention of the original petitioners and quashed notification dated November 13, 1997 issued by the State of Karnataka under sub-section (1) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act").

To appreciate the controversy raised in the appeals, it is necessary to state relevant facts. The respondents are heirs and legal representatives of deceased Akkahonnamma who died somewhere in the year 1993. She was the owner of land bearing Survey No. 113/3 admeasuring 2 acres, 37 gunthas situated in Devarayapatna, Tumkur Taluk. In the year 1978, the Industrial Area Development Board, Karnataka ('Board' for short) acquired 120 acres of land of different survey numbers situated in Devarayapatna for the purpose of establishing a Watch Factory, namely, H.M.T. Ltd. (appellant herein). The land admeasuring 1 acre, 38 gunthas out of 2 acres, 37 gunthas of Survey No. 113/3 owned by the respondents was also acquired in the acquisition proceedings. The remaining land to the extent of 39 gunthas was not acquired. It was, however, the case of the respondents that the General Manager, H.M.T. took possession of the entire area of 2 acres, 37 gunthas even though he was entitled to take possession of land only of 1 acre, 38 gunthas. He thereby unauthorisedly took over possession of 39 gunthas of land. A request was, therefore, made to the General Manager, H.M.T. to return possession of 39 gunthas to the owners. He, however, refused to hand over possession. By a communication dated July 20, 1984, the Board called upon the owners of the land to show cause as to why the actual extent of acquired land should not be continued to be occupied by the H.M.T. The owners did not oblige the Board and filed a suit against the authorities, being O.S. No. 341 of 1985 for declaration of title and also for possession of land. The suit was decreed by the Trial Court. An appeal filed

against the said decree came to be dismissed by the First Appellate Court. The said order was not challenged and the decree became final. Execution proceedings had been initiated by the owners and by an order dated June 13, 1997, the Executing Court directed H.M.T. to hand over actual and peaceful possession of the land to the owners. The order passed by the Executing Court was challenged by the H.M.T. by filing a revision which came to be allowed and the matter was remanded to the Executing Court with a direction to the Executing Court to afford an opportunity to H.M.T. of hearing and to pass an appropriate order in accordance with law. Meanwhile, however, H.M.T. appears to have requested the State Government to acquire land and a notification under sub-section (1) of Section 28 of the Act for proposed acquisition of land for public purpose, viz. for developing industry came to be issued on November 13, 1997 which was published in Official Gazette on December 11, 1997. The owners of the land came to know about the issuance of notification and they invoked the jurisdiction of the High Court of Karnataka under Article 226 of the Constitution by filing a Writ Petition. It was alleged that the notification had been issued mala fide in order to deprive the owners of their rights to recover possession and to defeat the decree passed by a court of competent jurisdiction. A prayer was made for quashing and setting aside the notification, directing the authorities to hand over possession of 39 gunthas of land of Survey No. 113/3 to the owners in view of the decree passed by a competent court which had become final.

Before the learned Single Judge, it was contended on behalf of the appellants (respondents before the High Court) that the petition was premature and was liable to be rejected at the threshold as the Notification was merely a preliminary notification and final declaration was yet to be made after considering the objections, if any, to be filed by the owners of the land. It was also submitted that the owners had failed to even prima facie satisfy the Court that the action was mala fide and the power was exercised for colourable or collateral purpose. The land was sought to be acquired for public purpose, namely, for developing industry through Board and allegation of legal mala fide was baseless. It was also urged that Civil Court had reserved the liberty to acquire the land in accordance with law. But even otherwise, the decree passed by a court could not take away power of the State. Moreover, the land was covered by the provisions of the Official Secrets Act, 1923 having declared it as 'prohibited area'.

The learned Single Judge described the case as one of 'exploitation of statutory provisions to defeat the just rights of an individual decreed by the law Courts, in the name of public purpose' and held that the power had been exercised by the authorities mala fide and the action was liable to be quashed and set aside. The Court noted that the respondents had no right, title or interest in the land in question and yet it continued to retain possession of the land for about 18 years. It refused to vacate the property though request was made by the owners. When the suit was decreed, appeal was dismissed and no further action was taken, the decree had become final. In spite of decree in favour of the owners, possession was never returned to successful plaintiffs and they were constrained to take out

execution proceedings. When warrant for possession was issued, instead of obeying the decree of the court and handing over possession of land, the Company requested the Board to initiate proceedings for acquisition of land under the Act and notification under Section 28(1) was issued. It was also observed that neither a notification under sub-section (3) of Section 1 nor under sub-section (1) of Section 3 was issued by the State in accordance with law and the land was sought to be acquired. The Court, no doubt, noted that such notifications were issued, but all the three notifications, i.e., notification under sub-section (3) of Section 1, sub-section (1) of Section 3 and sub-section (1) of Section 28 were issued on one and the same day. They were also published simultaneously on December 11, 1997 in the Official Gazette. Such an action, in the opinion of learned Single Judge, was in mala fide exercise of power to deprive the owners of the land who got decree for possession in their favour. The action was, therefore, bad in law. Accordingly, the petition was allowed and the notification under sub-section (1) of Section 28 was quashed.

Being aggrieved by the order passed by the Single Judge, intra-court appeals were filed by the appellants which were dismissed by a Division Bench of the Court by a cryptic order observing that the notification had been issued in violation of the provisions of the Act and to deprive the writ petitioners of fruits of the decree obtained by them.

When the matter came up before this Court, notice was issued on March 15, 1999. It appears that there was some talk of settlement. Record reflects that the matter was adjourned from time to time to explore possibility of settlement, if any, but settlement could not be arrived at and on December 1, 2000, leave was granted.

We have heard the learned advocates for the parties.

The learned counsel for the appellants strenuously contended that the High Court has committed an error of law in allowing the petition filed by the owners and in setting aside a statutory notification issued by the State of Karnataka in exercise of power under sub-section (1) of Section 28 of the Act. He submitted that it was within the power of the State Government to issue statutory notification for acquisition of land and the High Court was wrong in quashing it on the ground of mala fide exercise of power. So far as decree for possession is concerned, it was submitted by the counsel that irrespective of the decree of a court of law, statutory power could be exercised by the State under the Act. The notification was preliminary in nature reflecting the intention of the State to acquire the land and the owners were to get an opportunity to raise objections, if any, and thereafter the final notification was to be issued. It was, therefore, urged that preliminary objection raised on behalf of the authorities that the petition was premature ought to have been upheld by granting liberty to the owners to raise all objections against the proposed action. It was also submitted that H.M.T. needed the land for expansion of the factory. Moreover, the land in question was covered by the provisions of the Official Secrets Act, 1923 having declared the land as ’prohibited area’ and on that ground also, acquisition of land was necessary. The order passed by the learned Single Judge

and confirmed by the Division Bench, therefore, deserves to be set aside.

The learned counsel for the owners, on the other hand, supported the order passed by the High Court. He submitted that initial action of the authorities was wrong inasmuch as though acquired land was 1 acre, 38 gunthas, they illegally took possession of the entire land of Survey No. 113/3 admeasuring 2 acres, 37 gunthas and thereby the owners were deprived of lawful ownership and possession of 39 gunthas of land. In spite of several requests, nothing was done by H.M.T. and the owners were compelled to file a suit for declaration of title and possession which was decreed and the decree was confirmed in appeal. Even thereafter, possession was not handed over to the successful plaintiffs and execution proceedings were to be taken out. It was only when the direction was issued to the appellants herein to hand over possession that wheels were moved fast and a request was made to the State Government to issue notification for acquisition of 39 gunthas of land. The High Court was, therefore, right in holding that the action was mala fide and the notification was liable to be quashed. No exception can be made against such just and equitable order and no fault can be found. The appeals deserve to be dismissed with exemplary costs.

Ms. Kiran Suri, learned counsel for the State of Karnataka supported the case of the appellants. She submitted that power to issue notification under sub-section (1) of Section 28 is statutory and when it was a preliminary notification, the High Court should not have entertained a petition. It was only after the final notification that aggrieved party may approach a court of law. It was, therefore, submitted that the High Court was wrong in quashing the notification.

Having heard the learned counsel for the parties, in our opinion, the High Court was not right in quashing the notification issued under the Act, particularly, when it was a preliminary notification reflecting the intention of the State to acquire land for public purpose, i.e. for the purpose of developing industry. It is, no doubt, true that the land bearing Survey No. 113/3 comprises of 2 acres, 37 gunthas and the respondents are the owners thereof. It is equally true that by notification dated June 29, 1978, 1 acre, 38 gunthas had been acquired and award was passed in respect of the said area. It is also correct that instead of acquiring and taking over possession of 1 acre, 38 gunthas, the appellants took over possession of the entire land of Survey No. 113/3 admeasuring 2 acres, 37 gunthas thereby illegally and unauthorisedly taking possession of 0 acre, 39 gunthas. Obviously, therefore, it was open to the owners to make complaint and also to take appropriate proceedings as they were illegally deprived of ownership and possession of 39 gunthas of land. When the request to return possession of the excess land was ignored by the appellants, they naturally approached a court of law and obtained a decree. It is not in dispute that the decree was confirmed in appeal and had become final. Execution proceedings were taken out and at that stage, the appellants moved the State Authorities to acquire land under the Act. The question, however, is whether the action of the State Authorities in initiating acquisition proceedings under a valid law could be said to be illegal, unlawful or in mala fide exercise of power?

So far as the High Court is concerned, it held that the course adopted by the authorities was contrary to law. It is reflected in the approach of the Court wherein the learned Single Judge observed that it was a case of exploitation of statutory provisions in the name of public purpose to defeat just rights of an individual who had obtained decree in his favour.

In our considered view, however, this approach is neither legal nor permissible. Passing of a decree by a competent court is one thing and exercise of statutory power by the authority is altogether a different thing. It is possible in a given case to come to a conclusion on the basis of evidence produced and materials placed on record to conclude that the action has been taken mala fide or for a collateral purpose or in colourable exercise of power. But, in our opinion, issuance of preliminary notification after a decree by a court of law would not ipso facto make it vulnerable and exercise of power mala fide. To us, therefore, the authorities were right in raising a preliminary objection that the petition was premature as by issuance of notification under sub-section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose i.e. for developing industry. To appreciate the contention of the appellants, we may reproduce the section which reads thus\027

Bare reading of the above provision makes it abundantly clear that if in the opinion of the State Government any land is required for purpose of development by the Board, a notification of its 'intention to acquire' the land can be issued for acquisition of such land. The notification was accordingly issued on November 13, 1997. Sub-section (2) of Section 28 then requires the State Government to serve notice upon the owner or occupier of the land and all such persons known or believed to be interested therein to show cause why the land should not be acquired. Sub-section (3) casts an obligation on the State Government to consider the objections of the owner, occupier or other person interested in land and to pass such order as it deems fit after affording an 'opportunity of being heard'. If it is satisfied that any land should be acquired, a declaration can be made under sub-section (4) which shall be notified in Official Gazette.

The scheme of Section 28 is thus similar to the scheme of acquisition of land under the Land Acquisition Act, 1894 under which such preliminary notification is issued, opportunity of being heard is afforded to the persons interested in the land and only thereafter final notification can be issued. At the stage of raising objections against acquisition, it is open to the respondents herein to raise all contentions. In spite of such objections, if final notification is issued by the State, it is open to them to take appropriate proceedings or to invoke jurisdiction of the High Court under Article 226 of the Constitution. Unfortunately, however, the High Court entertained the petition and quashed the

preliminary notification overruling well-founded objection as to maintainability of petition raised by the State and the appellants herein.

The High Court was also not right in coming to the conclusion that since a decree was passed by a competent court, no notification under the Act could have been issued by the State. The power exercised by the State was statutory in nature and irrespective of a decree in favour of the owners, such notification could be issued. A situation similar to one before us had arisen in State of Andhra Pradesh & Ors. v. Govardhanlal Pitti, (2003) 4 SCC 739. In Govardhanlal, a school building belonging to G was in the possession of the State as a tenant. An order of eviction was passed and the State was directed to hand over possession of property to G within a particular period. The State then took out proceedings under the Land Acquisition Act, 1894 for acquiring the property for public purpose, namely, for a school. G challenged the proceedings as mala fide. The High Court upheld the contention observing that there was 'malice in law' inasmuch as the proceedings were initiated to scuttle a valid decree passed by a competent court. The State approached this Court.

Allowing the appeal and setting aside the order of the High Court, this Court held that the school was there since 1954 and was catering to the educational needs of children residing in the heart of the city. It could not, therefore, be contended that there was no genuine public purpose. Exercise of power under the Act in the facts and circumstances, therefore, could not be held mala fide.

The Court also explained the concept of legal mala fide. By referring to Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989, the Court stated;

"The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'."

It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law, i.e. legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.

In the instant case also, the record reveals that in 1978 itself, the possession of the entire land of Survey No. 113/3 had been taken over by the appellants albeit part of it illegally (to the extent of 39 gunthas). It was only because of the decree passed in favour of the owners of the land that the appellants realized that an appropriate action in consonance with law was to acquire the land and hence, a request was made to the State to take an action under the Act and a notification

was issued. Such act cannot be said to be illegal, particularly when the notification was preliminary in nature and opportunity under the Act was to be afforded to the owners 'of being heard'. The High Court, in our considered opinion, was wrong and had committed an error of law in entertaining the petition and in allowing it at the stage of issuance of notification under sub-section (1) of Section 28.

The learned Single Judge had also found fault with the State authorities in issuing simultaneous notifications under sub-section (3) of Section 1 and sub-section (1) of Section 3 of the Act. Sub-section (2) of Section 1 of the Act states that the Act 'extends to the whole of the State of Karnataka'. Sub-section (3) then reads\027

(3) This Act except Chapter VII shall come into force at once: Chapter VII shall come into force in such area and from such date as the State Government may, from time to time, by notification, specify in this behalf.

It may be noted that Chapter VII relates to 'Acquisition and Disposal of Land'. Chapter II deals with 'Industrial Areas'. Section 3 provides for 'declaration of industrial areas' as defined in sub-section (6) of Section 2 of the Act. Sub-section (1) of Section 3 enables the State Government to declare any area as 'industrial area'. It reads;

(1) The State Government may, by notification, declare any area in the State to be an industrial area for the purposes of this Act.

It is on record that notifications under sub-section (3) of Section 1 and sub-section (1) of Section 3 were issued by the State. The learned Single Judge, however, observed that it is only after the Executing Court directed the judgment-debtors to deliver possession of the property that the latter persuaded the State to issue such notifications. He also found fault with the State Authorities in not producing material for the perusal of the Court for the alleged expansion of the industry. The learned Judge noted that it was not the case of the judgment-debtors in execution proceedings that the land was needed for development of industry and, therefore, a decision was taken to acquire the land. According to the learned Single Judge, the land was situated in one corner of the area and was lying vacant.

In our opinion, the approach of the learned Single Judge could not be said to be legal or in consonance with law. The State authorities were not required to produce material for 'perusal' of the Court as to expansion of industrial area or development of industry. It was also not expected of the judgment-debtors to contend before the Executing Court that the land was required for expansion of the industry. The reason weighed with the learned Single Judge, therefore, in our opinion, could not be made basis for quashing the notification. The learned Single Judge also observed that issuance of simultaneous notifications under Section 1(3), Section 3(1) and Section 28(1) was illegal.

In this connection, the learned Single Judge noted\027

"10. It is seen from the impugned notification that they have been issued by the

first respondent and not by the second respondent. It is not the case of the first respondent that any representation of the 5th respondent to acquire any land to expand their factory was pending consideration before the decree was made by the Court. On the other hand, it is contended by the second respondent that the land in question has been sought to be acquired for expansion of the fifth respondent factory. It is not the case of the second respondent that they recommended to the Government to acquire this land for the expansion of the fifth respondent as no material was produced for perusal regarding the declaration of 'industrial area' to expand the industry. It is further material to see that the first respondent in exercise of its power under sub-section (3) of the Act issued a composite notification declaring the industrial area and the application of Chapter VII to such area. It is further material to see that such notifications have been issued only in respect of the lands in question and no other lands have been included. The notification issued under Section 3(1) of the Act has been published in page No.253 of the Karnataka Gazette dated December 11, 1997 without mentioning the lands in respect of which such notification was issued. The notification issued under Section 1(3) of the Act has been published in page No.254 of the same Gazette and the lands in respect of which the said notification was issued has been published in page 255. In page No. 256 also the same schedule is published the purpose of which is not known.

11. Section 3(1) of the Act requires that the State Government shall declare any area as an industrial area by a notification and a notification under sub-section (3) of Section 1 of the Act is required to be issued to extend the provisions of Chapter VII in respect of the area declared as an industrial area under Sub-section (1) of Section 3 of the Act by the notification. It is, therefore, clear that there shall be two different and independent notifications issued under two different provisions of the Act. The composite notification issued as per Annexure-D under sub-section (1) of Section 3 without mentioning the particulars of the land, and sub-section (3) of Section 1 of the Act is impermissible in law, consequently the notification issued under Section 28(1) of the Act is illegal, void and invalid".

The learned Single Judge was conscious of the fact that notification under Section 28(1) was merely a preliminary notification and in the nature of proposal. He, however, negatived preliminary objection raised by the authorities and observed;

"12. It was contended by the respondent that the petition is premature and hence liable to be dismissed as the notification

issued under Section 28(1) of the Act is only a proposal, which may or may not be perused after considering the objections is filed by the petitioners. In the normal course the objection of the respondents would have been tenable. But, in the facts and circumstances of this case, where respondents 4 and 5 have hell bent upon retainingthe land which they have illegally occupied and the first respondent acceded to their request to acquire the same without considering the past history, within a span of one month from the date of disposal of CRP by this Court, their contention s untenable as the procedure under Section 28(2) & (3) of the Act would be an empty formality. The respondents did not produce any material to show that the land in question is covered by the provisions of Official Secrets Act. Mere prohibition of entry to the general public is not sufficient to hold that the land in question is declared as a 'prohibited area' under the provisions of Official Secrets Act. The conduct of the respondents particularly of respondents 4 and 5 for whose benefit the land is sought to be acquired, clearly demonstrates their mala fide intention to defeat the decree of a court of competent jurisdiction".

According to the learned Judge, therefore, giving of opportunity of being heard was merely an 'empty formality' and since it was mala fide exercise of power by the State to deprive the owners of the fruits of the decree obtained by them, they were entitled to relief of quashing of notification at that stage without further delay.

In our judgment, the learned Single Judge was wholly in error in taking such view and quashing the notification. Upholding of such view would make statutory provisions under the Act or similar provisions in other laws, (for example, the Land Acquisition Act, 1894) nugatory and otiose. We are also of the view that the learned Single Judge was not right in finding fault with the State Authorities in issuing notifications under Section 1(3), Section 3(1) and Section 28(1) simultaneously. There is no bar in issuing such notifications as has been done and no provision has been shown to us by the learned counsel for the contesting respondents which prevented the State from doing so. Even that ground, therefore, cannot help the land-owners.

The order passed by the learned Single Judge could not have been upheld by the Division Bench. Unfortunately however, the Division Bench confirmed the order of the Single Judge without considering all aspects of the matter. The said order also, therefore, deserves to be set aside.

For the foregoing reasons, the appeals deserve to be allowed and are, accordingly, allowed. The order passed by the learned Single Judge and confirmed by the Division Bench is set aside. The authorities are at liberty to take appropriate proceedings in accordance with law on the basis of notification under sub-section (1) of Section 28 of the Act. It goes without saying that all proceedings will have to be undertaken in accordance with Section 28 of the Act and it is open to the owners to

raise all contentions that under the notification of 1978, the acquisition was to the extent of 1 acre, 38 gunthas of land but the appellants took over possession of additional 39 gunthas of land; that in spite of request and prayer, possession of 39 gunthas of land was never restored to them; that they were required to file suit for possession; that a decree was passed in their favour which was confirmed by the appellate court which had become final; that even thereafter, execution proceedings were taken out wherein direction was issued to the appellants to hand over possession of the land to them, and at that stage, the notification under Section 28(1) was issued. As and when such objections will be taken, an appropriate order would be passed by the authorities in accordance with law. All contentions of the parties are kept open. We may clarify that we may not be understood to have expressed any opinion one way or the other and all parties are at liberty to put forward their pleas before the authorities.

The appeals are disposed of accordingly. There shall be no order as to costs.