

CASE NO.:
Appeal (civil) 2086-2087 of 2004

PETITIONER:
The Vyalikaval House Building Co-Op.Society by its Secretary

RESPONDENT:
V.Chandrappa & Ors

DATE OF JUDGMENT: 02/02/2007

BENCH:
G.P. Mathur & A.K. Mathur

JUDGMENT:

J U D G M E N T

A.K. MATHUR, J.

These appeals are directed against the order passed by the Division Bench of the Karnataka High Court at Bangalore in Writ Appeal No.2294 of 1999 dated 17.1.2000 whereby the Division Bench of the High Court has set aside the order dated 11.11.1998 in Writ Petition No.30622 of 1998 passed by learned Single Judge for the reasons mentioned in Writ Appeal No.2188 of 1998 disposed of by the Division Bench of the High Court on 17.1.2000 and the order dated 22.3.2002 passed by the Division Bench in the Review Petition No.156 of 2000 in W.A.No.2294 of 1999.

This case has a chequered history, therefore, in order to deal with it, it will be necessary to refer to certain facts. A notification was issued on 22.12.1984 under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred to as 'the Act') for acquiring 176 acres and 5 guntas of land in Nagavara village of Bangalore North Taluk. Declaration under Section 6 of the Act was issued on 21.2.1986 and the award was passed on the basis of the aforesaid notification on 16.11.1987. It was alleged that the possession of the land was taken on different dates up to the year 1992. It was alleged that possession of 31 acres and 21 guntas of land including an area measuring 1 acre and 25 guntas situated in Survey No.78/4 of Nagavara village was taken on 6.8.1988. Aggrieved against the aforesaid notification and the award private petitioners filed writ petition assailing the validity thereof on variety of grounds. It was alleged that this land measuring 8 acres and 2 guntas was owned jointly by a family comprising 5 brothers, namely; Pattadi Haumanthappa, Pattadi Venkateshappa, Pattadi Nannappa, Pattadi Lakshmaiah and Pattadi Nagappa, all deceased and survived by their legal heirs, who filed the writ petition. The main grievance of these petitioners was that this notification was very adversely commented by the Karnataka High Court in the case of Narayana Reddy. V. State of Karnataka [ILR 1991 Kar. 2248] and the decision of the Division Bench of the Karnataka High Court in Writ Appeal Nos.2336-2343 of 1997 and connected matters which were disposed of on 5.3.1998. In that judgment it was held that the whole acquisition proceedings stand vitiated on account of fraud, the appellant Society was also found to be not bonafide housing society, therefore, on the basis of the same reasoning the present notification was also challenged and it was urged that the impugned notification also suffered from same vice of mala

fide, therefore, it should be quashed. It was alleged that the delay in approaching the Court was irrelevant since the validity of the same notification in which other lands were acquired along with the present land has been found to be void.

This writ petition was contested by the appellant-society as respondent and it was alleged that it was hopelessly barred by time being delayed by 14 years and it was also submitted that the writ petitioners had participated in the inquiry under section 5A of the Act and have also received substantial amount from the appellant-society pursuant to the agreement executed in their favour. Learned Single Judge dismissed the writ petition on the ground of being hopelessly barred by time and the writ petitioners participated in the proceedings therefore they have acquiesced in the matter. Aggrieved against this order passed by learned Single Judge, a writ appeal was filed by the respondents which came to be allowed by the Division Bench for the reasons mentioned in another writ appeal decided by the same Division Bench headed by the Chief Justice of the High Court on 17.1.2000. In that writ appeal the Division Bench held that the entire acquisition on behalf of the appellant-society was actuated with fraud as held in Narayana Reddy v. State of Karnataka [ILR 1991 Kar.2248]. In that case it was held as follows :

" As seen from the findings of G.V.K.Rao Inquiry Report, in respect of five respondent societies and the report of the Joint Registrar in respect of Vualikaval House Building Co-operative Society, these Societies had indulged in enrolling large number of members illegally inclusive of ineligible members and had also indulged in enrolling large number of bogus members. The only inference that is possible from this is that the office bearers of the societies had entered into unholy alliance with the respective agents for the purpose of making money, as submitted for the petitioners otherwise, there is no reason as to why such an Agreement should have been brought about by the office bearers of the Society and the agents. Unless these persons had the intention of making huge profits as alleged by the petitioners, they would not have indulged in enrolment of ineligible and bogus members. The circumstance that without considering all these relevant materials the Government had accorded its approval, is sufficient to hold that the agents had prevailed upon the Government to take a decision to acquire the lands without going into all those relevant facts. The irresistible inference flowing from the facts and circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide housing scheme but is substantially for the purpose of enabling the concerned office bearers of respondent-societies and their agents to indulge in sale of sites in the guise of allotment of sites to the Members/ Associate members of the society to

make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus the decision of the Government to acquire the lands suffers from legal malafides and therefore the impugned Notifications are liable to be struck down."

In view of aforesaid observation, their Lordships of Division Bench held that since the acquisition was colourable exercise of the power, therefore, delay cannot be a good ground to dismiss the writ petition. The said judgment of the Division Bench of the High Court of Karnataka was affirmed by this Court in Special Leave Petition Nos.(c)..CC 525-532 of 1999 and Special Leave Petition Nos.(c) ..CC 504-522 of 1999 decided on 14.7.1999 and it was held that the appellant-society is a bogus house building society and accordingly, the order passed by the learned Single Judge was set aside by Division Bench. Against the order of the Division Bench passed in Writ Appeal No.2294 of 1999 a review petition was filed which was dismissed on 22.3.2002. Hence both these appeals.

Learned counsel for the appellant urged before us that the view taken by the Division Bench of the High Court is not correct as the Division Bench should not have condoned the inordinate delay of 14 years and secondly, learned counsel further submitted that the respondents herein being the beneficiary had entered into an agreement of sale and had accepted the whole amount not to file objections under Section 5A of the Act for acquiring the aforesaid land. Learned counsel for the appellant has emphasized that the Division Bench has gone wrong in setting aside the order of the learned Single Judge as the learned Single Judge has discussed the factual controversy in greater detail.

As against this, learned counsel for the respondents submitted that there was not one judgment but there are number of judgments in which such acquisition of land has been set aside. Learned counsel for the respondents invited our attention to two decisions of this Court in the case of H.M.T. House Building Co-operative Society v. Syed Khader & Ors. [(1995) 2 SCC 677] and H.M.T. House Building Co-operative Society v. M.Venkatswamappa & Ors. etc. etc. [(1995) 3 SCC 128] in which similar societies filed Special Leave Petitions and this Court affirmed the order of the Karnataka High Court and held that the whole exercise of acquiring the land by various societies including the present appellant-society was actuated with mala fide and quashed all acquisitions. In this connection, a reference may be made to H.M.T.House Building Co-operative Society's case (supra) wherein the similar question was raised by the Co-operative Society like the appellant herein and in that context their Lordships framed the question in paragraph 18 of the judgment which heads as follows :

" 18. Now the question which is to be answered is as to whether in view of the definition of "public purpose" introduced by the aforesaid Amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the society and without putting such housing cooperative society to term in respect of nature of construction, the

area to be allotted to the members and restrictions on transfer thereof ?"

This question was answered by their Lordships in paragraphs 21 & 22 which reads thus:

" \005That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing scheme in question. The power under Section 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in the decision-making process \026 whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid."

22. In the present case there has been contravention of Section 3(f) (vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V.Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for "public purpose", to outsiders as part of commercial venture, undertaken by the office-bearer of the appellant-Society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s. S.R.Constructions, Respondent No.11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government."

Similarly, in H.M.T.House Building Cooperative Society ((1995) 3 SCC 128] in which the present appellant was one of the societies, which challenged the order of the Division Bench of the High Court of Karnataka, their Lordships dismissed the Special Leave Petition following the judgment in H.M.T. House Building Cooperative Society (supra). In paragraph 3 of the judgment while dealing with the facts of this society their Lordships observed that this society had advertised inviting persons who want to have mansions in the

city of Bangalore and had also given the names and addresses of the representative at Dubai. It was held that on the basis of the aforesaid material the High Court has rightly come to the conclusion that the society itself was not bona fide house building society and accordingly, the order passed by the High Court setting aside the acquisition of the land was upheld by this Court and the SLP was dismissed. Paragraph 3 reads as follows :

" 3. Lands on basis of the notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, had been acquired for the petitioner-House Building Society, treating the said acquisition to be for a public purpose. No order of the State Government as required by Section 3(f)(vi) granting prior approval for acquisition of the lands in question for the housing scheme of the petitioner-society has been produced. The petitioner-Society had also entered into an agreement with the contractor more or less on the same terms and conditions as was in the case of HMT House Building Cooperative Society, assuring that the lands in question shall be acquired on basis of the notification issued by the State Government under Sections 4(1) and 6(1) of the Act. The High Court in its impugned judgment has given details of the allegations made against the petitioner-Society regarding collection of huge amounts from different applicants for site who were not even members of the Society and how the Society had entered into an agreement with agents, who with their influence have got the lands acquired. The High Court has also referred to an advertisement issued by the petitioner-Society inviting persons who want to have mansions in the city of Bangalore. It also gave the name and address of a representative at Dubai. On basis of the aforesaid materials, the High Court has come to the conclusion that the society itself was not a bona fide House Building Society. The High Court has also recorded a finding that the notifications under Sections 4(1) and 6(1) of the Act had been issued at the instance of the agents appointed by the petitioner-Society, to whom huge amounts had been paid for influencing the Government to issue the aforesaid notifications. Mr. Ramaswamy, appearing for the petitioner-Society purported to distinguish this case on facts from the case of HMT House Building Cooperative Society. But according to us, the facts of the present case are similar to the case of HMT House Building Cooperative Society and there is no scope to interfere with the order of the High Court, quashing the notifications under Sections 4(1) and 6(1). Accordingly, the special leave petitions filed on behalf of the petitioner-Society are dismissed. No costs."

Learned counsel for the respondents has also invited our attention that same notification was set aside by the High Court and the said order of the High Court was also upheld by this Court by dismissing the S.L.P.(c) No.6196 of 1998 on 7.4.1998 and S.L.P.(c) ..CC 495-a498 of 1999 on 14.7.1999

concerning the very same appellant society. In this background, when the acquisition has been found to be totally mala fide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance. Learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence. Learned Counsel for respondents raised other pleas like decree for partition was granted among brothers & they were not made parties, we are not going into those questions when we are satisfied that when acquisition stand vitiated on account of mala fide, nothing remains further.

In the light of the discussions made above, the view taken by the Division Bench of the High Court of Karnataka in the impugned judgment is correct and we uphold the same and dismiss both the appeals. No order as to costs.