

CASE NO.:
Appeal (civil) 6288 of 1999

PETITIONER:
B.E.M.L. Employees House Bld.Co-op.Society Ltd.

RESPONDENT:
State of Karnataka & Ors.

DATE OF JUDGMENT: 10/09/2004

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

SRIKRISHNA, J.

The judgment of the Division Bench of the Karnataka High Court dismissing the writ appeal of the appellant is impugned here.

The appellant is a cooperative society of the employees of a public sector company known as 'Bharat Earth Movers Limited' in Bangalore. The appellant society moved the State Government for acquisition of land for the purpose of construction of residential houses for its members. The State Government decided to acquire a large tracts of land inclusive of land in Survey No. 11 of Thubarahalli Village, Verthur Holli, Bangalore South Taluka. We are only concerned here with fifth Respondent (G. Ramaiah Reddy), whose land to an extent of 1 acre 30 guntas in Survey No. 11 was also acquired by the Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called 'the Act') issued on 26.3.1990. Several land owners including the fifth Respondent filed objections to the proposal of acquisition of their lands. One of the grounds urged by the fifth Respondent was that he had put up houses on his land proposed to be acquired and also that he had sunk a bore well on it. An enquiry was held under Section 5A of the Act by the Special Land Acquisition Officer (SLAO) after which the SLAO submitted a report. As far as the land of the fifth Respondent is concerned, the SLAO reported: "Houses with ACC roofing have come up to the extent of 1 acre and 24 guntas and is located in the western side of the proposed layout and is at the end of the same. Hence, if this part is dropped from the acquisition it would not disturb the layout."

The SLAO, however, overruled the objections made by the fifth Respondent with regard to acquisition of his land in Survey No. 22/3. In the said report the SLAO had made similar recommendations for deleting certain other lands from acquisition. When the notification under Section 6 was published on 15.8.1991, it was found that the State Government had accepted the recommendations of the SLAO for exclusion from acquisition of several other lands, but not with regard to the land of the fifth Respondent situated on Survey No. 11.

Fifth Respondent and five other land owners challenged the acquisition by writ petitions filed before the High Court of Karnataka. Fifth Respondent's writ petition was W.P. 3057 of 1992. Although, a number of contentions were urged in support of the writ petitions, it is not necessary to deal with them as the learned Single Judge who heard the writ petitions rejected all the contentions except the one based on Article 14, urged in Writ Petition No. 3057/1992 by the present fifth Respondent. Consequently, the learned Single dismissed all the writ petitions except writ petition No. 3057/1992 filed by the fifth Respondent which came to be allowed and the acquisition which was the subject matter of the said writ petition was

quashed in toto.

The present appellant challenged the judgment and order of the learned Single Judge by writ appeal No. 67 of 1997. The Division Bench dismissed the writ appeal and upheld the judgment of the learned Single Judge. Hence, this appeal.

A perusal of the judgment of the learned Single Judge indicates that the challenge to acquisition proceedings based on several grounds were negatived and, thus, six out of the seven writ petitions failed. As far as the present Respondent No. 5 is concerned, the learned Single Judge upheld the challenge as he found that the State Government had accepted and acted upon the Land Acquisition Officer's report under Section 5A of the Act for dropping the acquisition proceedings in respect of several similarly situated cases, but only in the case of the fifth Respondent, despite a recommendation to drop the acquisition proceedings, the Government had gone ahead with the acquisition proceedings. No plausible reasons for such discriminative action against the fifth Respondent's land were placed on record.

It is the case of the fifth Respondent that all the cases where Land Acquisition Officer had recommended dropping of acquisition proceedings were similarly situated and there was no reasonable ground, whatsoever, for making a discrimination in his case to continue with the acquisition proceedings. It was urged before the learned Single Judge that the State Government had acted arbitrarily by failure to apply the same yardstick in respect of the fifth Respondent's land. The Division Bench has accepted this reasoning of the learned Single Judge.

It was urged by the learned counsel for the appellant that whatever be the recommendations of the Land Acquisition Officer in his report under Section 5A, they were merely recommendations and the State Government was not bound to accept them. The State Government had wide discretion to accept or reject the said report under Section 5A of the Act and take independent decision to continue or discontinue the acquisition proceedings in respect of any particular land proposed to be acquired. Wide, the discretion may be; but, not wild. All exercise of statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice which is anathema to the Rule of Law envisaged in Article 14 of the Constitution. The facts placed on record do not indicate that the case of the fifth Respondent was similar, if not identical, to that of the other land owners, whose lands were dropped from the acquisition proceedings. Neither the appellant, nor the State Government has been able to show us any rational distinction between the case of the fifth Respondent and the cases of the other land owners, whose lands were excluded from the acquisition. When this is so, it appears to us that the vice of hostile discrimination infects and vitiates the decision taken by the State Government to continue with the acquisition against the fifth Respondent's land.

A faint argument was made by the learned counsel for the State Government that inasmuch as the Government's files had been called for and perused, there might have been some reason on the file justifying the non-exclusion of the fifth Respondent's land from the acquisition proceedings. It is difficult to accept the suggestion, for if there was any such reason the High Court would not have struck down the acquisition proceedings as hit by Article 14 of the Constitution. In any event, to put the matter beyond cavil, we adjourned the matter twice to enable the learned counsel for the State Government to produce the relevant files before us. Despite the adjournments granted, no such files have been produced and we were informed that the files are "not traceable". In this state of record, we find it difficult to accept the argument of the learned counsel for the State Government.

The learned counsel for the appellant alternatively argued that even if the fifth Respondent succeeded in establishing discrimination in his case, the

High Court was not justified in quashing the preliminary notification under Section 4(1) of the Act. He reiterated the argument that, at the most, the final notification could have been quashed and the authorities under the Act directed to proceed afresh from the stage of submitting a report under Section 5A of the Act. He also contended that the report under Section 5A had not been accepted, as the Revenue Secretary had made a spot inspection and decided not to agree with the report of the Land Acquisition Officer. As we have already pointed out, we have no material placed on record to show as to what really moved the Revenue Secretary or the State Government to overrule the recommendations of the Land Acquisition Officer only with respect to the land of the fifth Respondent. Nor, are we impressed by the argument that only the final notification had to be quashed and the matter be remitted to the authorities below. Once it is held that the action was discriminatory and hit by Article 14 of the Constitution of India, then the High Court was justified in quashing the whole proceedings, including the notification under Section 4(1), as prayed for by the fifth Respondent.

In the result, we find no reason to interfere with the judgment of the High Court.

There is no merit in this appeal and the appeal is dismissed.

No order as to costs.