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S.A. JALALUDDIN

v.

BANGALORE DEVELOPMENT AUTHORITY AND ANR.

FEBRUARY 27, 2003

B

[DORAISWAMY RAJU AND D.M. DHARMADHIKARI, JJ.]

Urban Development:

C

The City of Bangalore Improvement Act, 1945; Section 18(1)(a)(b) and (c)—Notification prescribing certain period of limitation for issuance of declaration under the Central Land Acquisition Act—Challenged as barred by limitation under the provisions of Karnataka Act—Held: it is impermissible to read into the provision of the Improvement Act, the provision of the Land Acquisition Act, so as to override or nullify such provision of acquisition under the Improvement Act—Land Acquisition Act, 1894—Land Acquisition (Karnataka Amendment and Validation) Act, 1967.

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Appellant had challenged the Notifications issued by the respondent under Section 18(1)(a) of the City of Bangalore Improvement Act (Act) and consequently the acquisition proceedings. The Notification prescribed limited period of two years for issuance of a declaration under Section 6 of the Acquisition Act which was allegedly barred by limitation under the provisions of the Land Acquisition (Karnataka Amendment and Validation) Act (Karnataka Act). High Court rejected the challenge. Hence the present appeal.

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It was contended for the appellant that since declaration under the provision of the Act was to be considered as declaration under the Land Acquisition Act, the amendments in the Land Acquisition Act imposing limitation on the exercise of power of acquisition would enure to the benefit of land owner; and that irrespective of acquisition proceedings under any of the Act, the safeguards available under the Central Land Acquisition Act should also be made available to the land owner irrespective of the purpose of the special law enacted for acquisition of land.

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Dismissing the appeals, the Court

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HELD: 1.1. The declaration published under Section 18(1)(c) of the

City of Bangalore Improvement Act has a validity period of seven years for being pursued for further action under Section 27 of the Act. Section 27 also stipulates that the Land Acquisition Act and the provisions noticed thereunder are attracted to proceedings under the Act “so far as they are applicable”, and consequently in respect of the matters wherein the City of Bangalore Improvement Act, 1945 has its own period of limitation or restrictions on the exercise of powers under the Act or specific provisions it is impermissible to read into the provisions of the Improvement Act, the provisions of the Land Acquisition Act, so as to override or nullify the provisions of the Improvement Act. [414-F-H]

The State of Karnataka and Ors., [2002] 4 SCC 326; *Nagpur Improvement Trust v. Vasantrao and Ors. etc. etc.*, [2002] 7 SCC 657 and *The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah etc. etc.*, [1977] 1 SCR 178, referred to.

1.2. This Court has in some of the similar cases specifically declined to read into the limitations on the exercise of powers importing such limitations under the Central Act, into the special enactments the position was made clear in unmistakable terms that so far as the payment of compensation is concerned, there could be no different yardstick based on the purpose of acquisition or the provisions of law under which it is acquired. The ratio of the decision in **Nagpur Improvement Trust & Anr. v. Vithal Rao and Ors.* was not extended beyond its purpose, to apply the principle or the proposition of law sought to be raised to import a limitation on the very exercise of power of acquisition for and under the special and specific laws which has to be adjudged with particular reference, in the instant case, to only the City of Bangalore Improvement Act, 1945. [415-C-E]

**Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.*, [1973] 1 SCC 500, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10910 of 1996.

From the Judgment and Order dated 26.9.95 of the Karnataka High Court in R.F.A. No. 232 of 1984.

S. Ravindra Bhat for the Appellant.

Altaf Ahmed, Additional Solicitor General, S.K. Kulkarni, M. Girish

A Kumar and Ankur S. Kulkarni for Ms. Sangeeta Kumar for the Respondents.

The Judgment of the Court was delivered by

B The above appeal has been filed against the judgment of a Division Bench of the Karnataka High Court dated 26th September, 1995 in RFA No. 232 of 1984 whereunder a challenge made to the Notification dated 5-11-1971 issued under Section 18(1)(a) of The City of Bangalore Improvement Act, 1945 (hereinafter referred to as "the Act") as barred by limitation under the provisions of the Land Acquisition (Karnataka Amendment and Validation) Act, 1967 (hereinafter referred to as "the Karnataka Act" which by an amendment to the Central Land Acquisition Act prescribed a period of two years of limitation for issuance of a declaration under Section 6 of the Acquisition Act and consequently without the authority of law came to be repelled. To be more specific as could be seen from the judgment under appeal the contention of the appellant was that by virtue of Section 27 of the Act the proceedings initiated thereunder for acquisition of land are to be regulated by the provisions under the Land Acquisition Act, 1894 and having regard to the said amendment to the Land Acquisition Act by the Karnataka Act and the proviso introduced to Section 6 to the effect that no declaration could be made or issued in respect of any particular land covered by a notification under sub-section (1) of Section 4, after the expiry of two years from the notification under Section 4(1) or from the commencement of the Amendment Act. Hence, the plea was that the Board should not have issued the final notification dated 5-11-1971 and consequently acquisition proceedings, particularly, the declarations under Section 18 have been rendered invalid and unenforceable. The Division Bench of the High Court after adverting to the catena of cases including the one reported in [1977] 1 SCR 178. The Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah etc. etc. has chosen to reject the challenge. Not satisfied, the appellant have come before this Court.

G Mr. S. Ravindra Bhat, the learned counsel appearing for the appellant tried to contend that having regard to the provisions of the Act which by virtue of stipulation contained in Section 18(1)(c) and 27(2) deemed the declaration under Section 18 of the Act to be a declaration under Section 6 of the Land Acquisition Act, the amendments incorporated to the Central Land Acquisition Act imposing a limitation on the exercise of power of acquisition itself would enure to the benefit of land owner. Argued the learned counsel further that the Bangalore Act under consideration, by means of

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reference refers and adopts the provisions of the Acquisition Act and, therefore, the principle laid down in the line of cases pertaining to legislation by incorporation will have no relevance in adjudging the challenge by the appellant in this case. Accordingly, the learned counsel tried to distinguish the earlier decision noticed by the Division Bench as well as the decision reported in [2002] 4 SCC 326 *Munithimmaiah v. The State of Karnataka and Ors.*, and [2002] 7 SCC 657 (*Nagpur Improvement Trust v. Vasantrao and Ors., etc. etc.*) A submission was also made placing reliance upon the decision of this Court in [1973] 1 SCC 500 (*Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.*), that so far as the citizen/land owner is concerned it is immaterial whether the acquisition is under one Act or the other or what purpose and that the safeguards available under the Central Land Acquisition Act, should be equally rendered available to all kinds of acquisition irrespective of the purpose or the special law concerned for acquisition of the land of a citizen.

Per contra, Mr. Altaf Ahmed, the learned Additional Solicitor General appearing for the respondent's placed strong reliance upon the decision of this Court reported in [2002] 4 SCC 326, (*Munithimmaiah v. The State of Karnataka and Ors.*) [2002] 7 SCC 657, (*Nagpur Improvement Trust v. Vasantrao and Ors., etc. etc.*) as also the decision in [1977] 1 SCR 178 (*The Land Acquisition Officer, City Improve Trust Board v. H. Narayanaiah etc. etc.*) In our view, it is unnecessary for us to undertake an extensive consideration of the relevant principle which should guide a decision in this case since we find such principles to have been stated and re-stated in a series of decisions, including the two latest pronouncements as noticed above.

The decisions in [2002] 7 SCC 657 (*Nagpur Improvement Trust v. Vasant Rao and Ors.*) almost a similar challenge came to be projected and rejected as herein under:

59. "So far as the acquisition under the Nagpur Act and the U.P. Act are concerned they have been challenged on the ground that the notification corresponding to the declaration under Section 6 of the Land Acquisition Act was made more than 3 years after the expiry of the date of the publication of the notification corresponding to the notification under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition Act by insertion of

- A proviso thereto by Act 11 of 1967, would apply to the acquisitions. We have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent amendments of Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967 (Act 13 of 1967) or by Act 68 of 1984, will
- B have no effect on the acquisition made under the State Acts.”

- That apart, we are of the view, that the City of Bangalore Improvement Act, 1945 provides for formulating a scheme as also the manner in which it should be published and carried out, in execution. Section 18 provides that
- C after the sanction of the Government has been obtained for the scheme, the Chairman of the Board shall forward a declaration for notification under the signature of a Secretary to the Government, stating the fact of such sanction and that the land in question was proposed to be acquired by the Board and the purposes of the scheme. It is further ordained therein that the declaration shall be published in the Mysore Gazette and shall state the limits within
- D which the land proposed to be acquired is situate, with the details of the particulars specified therein and that the said declaration shall be conclusive evidence that the land is needed for the public purpose and the Board shall upon the publication of the said declaration shall proceed to execute the same. Section 19 provides that where within a period of 7 years from the date of publication in the Mysore Gazette of the declaration in clause (b) of sub-
- E section (1) of Section 18, the Board fails to execute the scheme, substantially the scheme shall lapse and the provisions of Section 27 shall become in operative. The sum and substance of it as also the consequences flowing from the said stipulation is that the declaration published under Section 18(1)(c) has a validity period of seven years for being pursued for further action under
- F Section 27 of the Act. While that be the position, it is futile for the appellants to contend that the declaration being not published within two years of the period specified in the Land Acquisition Act, the proceedings under the Improvement Act shall lapse and be of no effect. Section 27 also stipulates that the Land Acquisition Act and the provisions noticed thereunder are attracted to proceedings under the Act “so far as they are applicable”, and
- G consequently in respect of the matters wherein the City of Bangalore Improvement Act, 1945 has its own period of limitation or restrictions on the exercise of powers under the Act or specific provisions it is impermissible to read into the provisions of the Improvement Trust Act, the provisions of the Land Acquisition Act, so as to override or nullify the provisions of the
- H Improvement Trust Act.

We are also not persuaded to contenance the challenge based on, the decision reported in [1973] 1 SCC 500 *Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.* The very reasoning therein of the Constitution Bench of this Court was in the particular context of deprivation of the property of a citizen without payment of the due compensation by high lighting the fact that the right of the owner, who comes to be deprived of his property, to receive compensation should not depend upon the purpose or the law which enables such acquisition. This principle cannot be extended dehors the ratio or rationale behind it for all purposes, to the extent of contending that all acquisitions must be under the same law and under same procedural formalities, dehors the special law to meet different contingencies or deal with various exigencies of situation. As a matter of fact, even in the later line of cases wherein this Court has specifically declined to read into the limitations on the exercise of powers importing such limitations under the Central Act, into the special enactments the position was made clear in unmistakable terms that so far as the payment of compensation is concerned, there could be no different yardstick based on the purpose of acquisition or the provisions of law under which it is acquired. The ratio of the decision in [1973] 1 SCC 500 (*supra*) was not extended beyond its purpose, to apply the principle or the proposition of law sought to be raised to import a limitation on the very exercise of power of acquisition for and under the special and specific laws which as we have observed earlier has to be adjudged with particular reference in this case, to only the City of Bangalore Improvement Trust Act, 1945.

For all the reasons stated above, we see no merit in the challenge made to the decision of the High Court. The appeal, therefore, fails and stands dismissed. No costs.

S.K.S.

Appeal dismissed.