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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF JANUARY 1999

PRESENT

THE HON'BLE MR. JUSTICE A.J. SADASHIVA

AND

THE HON'BLE MR. JUSTICE S.R. BANNURMATH

WRIT APPEAL No. 3427/1997 c/w W.A. 3320/1997.

BETWEEN:

IN W.A.No. 3427/1997

The Special Land Acquisition
Officer, Karnataka Industrial
Areas Development Board, State
Employees' Co-operative Bank
Building, Dharwad.

.. Appellant

(By Sri K.V. Marayanappa, Adv.,)

AND:

1. Smt. Marati Gowramma,
w/o Ponnuswami, major.
2. Smt. Savitramma, major.

Both are residents of
Kavalattu Kumarapatnam,
Ranebennur Taluk,
Dharwad Dist.,

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3. The State of Karnataka
by its Secretary,

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Department of Commerce
and Industries, M.S.Bldg.,
Dr.Ambedkar Road,
Bangalore-560 001.

4. M/s Sangam Solvent Extracts
Ltd., Regd Office at 'Industry
House', No.45, Race Course
Road, Bangalore-560 001, by
its Director.

.. Respondents

(By Sri Nyayamitra, Adv., for R1;
Sri K.G.Raghavan, Adv., for R4;
Sri Srinivasareddy, JGA, for R3)

IN W.A.No. 3320/1997

M/s Sangam Solvent Extracts
Ltd., with its registered
office at Industry House,
No.45, Race Course Road,
Bangalore-560 001, represented
by its Director, Shri. Arun K.
Malpani.

.. Appellant

(By Sri K.G.Raghavan, Adv.,)

AND:

1. Smt Marati Gowramma, w/o
Pannuswami, major.
2. Smt.Savitramma, major.

Both are r/o Kavaletthu,
Kumarapatnam, Ranebennur
Taluk, Dharwad Dist.,

by

3. The State of Karnataka
by its Secretary,
Dept. of Commerce &
Industries, M.S.Bldg.,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

4. The Special Land Acqui-
sition Officer, Karnataka
Industrial Areas Develop-
ment Board, State Employees
Co-operative Bank Bldg.,
Dharwad.

.. Respondents

(By Sri A.V. Srinivasa Reddy, AGA, for R3;
Sri Devedas, Adv., for R2)

These Writ Appeals filed u/s 4 of the
Karnataka High Court Act, praying to set aside
the order dated 11.3.97 in W.P.No.17824/1994.

These Writ Appeals coming on for hearing
this day, SADASHIVA J., delivered the following :-

JUDGMENT

These Appeals are directed against the
order dated 11th March 1997 passed by the
learned single Judge in W.P.No.17824/1994
allowing the petition and quashing the preli-
minary notification dated 26.9.1991 and the
declaration dated 6.1.1994 issued under Sections
28(1) and 28(4) of the Karnataka Industrial
Areas Development Act, 1966 (for short "the Act").

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2. The first Appeal has been filed by the Karnataka Industrial Areas Development Board whereas the second Appeal is filed by the beneficiary of acquisition.

3. Sy.No.38/3 measuring 4 acres 34 guntas situated in Kavalathu Village, Ranebennur Taluk, belongs to respondents-1 and 2. By notification dated 26.9.1991 issued under Section 28(1) of the Act, the State Government expressed its intention to acquire the aforesaid land in view of its opinion that the aforesaid land was required for development by the Karnataka Industrial Area Development Board for the establishment of industries therein. A declaration was also made under Section 28(4) of the Act declaring that the aforesaid land is needed for the purposes for which it was proposed to be acquired. Respondents-1 and 2 having been aggrieved by the declaration approached this Court by way of a petition

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under Article 226 of the Constitution of India in W.P.No.29219/1992 for quashing the declaration. This Court by order dated 22.2.1993 allowed the aforesaid petition and made the rule absolute on quashing the declaration dated 19th March 1992 and remitted the matter to the respondents for fresh consideration in strict compliance with Sections 28(2) and 28(3) of the Act.

4. It is seen from the records that, respondents-1 and 2 appeared to have refused to accept the notices on account of which the Land Acquisition Officer is stated to have served the same by affixture. However, the husband of the first respondent appeared to have made a statement before the Land Acquisition Officer objecting to the acquisition. As there was no authorisation by respondents-1 and 2 for the husband of the first respondent to appear before the Land Acquisition Officer and to make any statement, the Land Acquisition Officer issued another notice to respondents-1

and 2 either to affirm or to make a further statement pursuant to the statement of the husband of the first respondent. It is further seen from the records that the Land Acquisition Officer sought for certain clarification from the Joint Director for Industries and Commerce in respect of the industry for which a provisional certificate was stated to have been issued in favour of respondents-1 and 2. The Land Acquisition Officer also appeared to have received a report from the Tahsildar in respect of the status of the land sought to be acquired and after receiving the report he proceeded to make an order under Section 28(3) of the Act over-ruling the objections of respondents-1 and 2 and recommending for issue of declaration under Section 28(4) of the Act. Accordingly, a declaration was issued and actions were also taken under the different sub-sections of Section 28 of the Act. Aggrieved by the declaration and the

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action taken by the respondents under different sub-sections of Section 28; respondents-1 and 2 filed a petition under Articles 226 and 227 of the Constitution of India in WP No.17824/1994 for quashing the acquisition proceedings for various reasons.

5. The learned single Judge allowed the petition and quashed the acquisition proceedings inter alia holding that the acquisition is not for a public purpose as the preliminary notification was not issued by the Government indicating that the acquisition is proposed for the benefit of the Appellant in the second Appeal. The learned single Judge has also held that respondents-1 and 2 have been deprived of an opportunity to contest the claim of the Appellant in the second Petition in respect of their bonafide requirement.

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6. In view of the decision of this Court in HEGGAPPANAVARA MARKHANDAPPA & OTHERS Vs. STATE OF MYSORE & OTHERS, 1974(1) KLJ 71, we are of the view that, there is no requirement to mention the name of the beneficiaries in the preliminary notification issued under Section 28(1) of the Act as the lands would be acquired for the development of industrial area only after issuing a notification declaring any area as an industrial area and another notification under sub-section (3) of Section 1 of the Act applying the provisions of Chapter-VII of the Act in respect of such area with effect from such dates as may be notified therein. It is not the case of the respondents-1 and 2 that the Government had not issued any notification either under Section 3 of the Act or under sub-section (3) of Section 1 of the Act. It is specifically contended by the Appellant in the first Appeal that the land in question

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has been notified for acquisition after declaring the area as an industrial area and applying the provisions of Chapter-VII of the Act in respect of such area from the date of publication of the notification. The object of the Act is to acquire the land for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein and for that purpose to establish an industrial areas development board and for the purposes connected with the matters aforesaid.

7. IN BALLARPUR INDUSTRIES LIMITED & KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD Vs. CIVIL JUDGE, ILR 1987 Kar 3445, this Court has held that:-

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"(i) The object of the Act is quite wide. An exercise of power under the Act, cannot be attributed to a particular species of the object, unless, that is clearly spelled out from the expressed conduct of the state.

(ii) As is clear from Section 28(1), land may be acquired either (i) for the purpose of development by the Board or (ii) for any other purpose in furtherance of the objects of the Act.

(iii) Chapter VII (Sections 27 to 31) shows that acquisition of land thereunder is by the State Government. Section 28(1) is comparable to Section 4 of the Land Acquisition Act and Section 28(4) to Section 6 thereof. But under Section 28(5) the land vests in the State Government immediately on the making of the declaration under Section 28(4). Provisions such as Sections 8 to 15 of the Land Acquisition Act preceding the vesting of land under the provisions of Land

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Acquisition Act, is not made under the Act. The scheme of the Act in this regard is more akin to the provisions of Section 17 of the L.A. Act (minus the notice under Section 9 of L.A. Act)."

8. In HEGGAPPANAVARA MARKHANDAPPA & OTHERS Va. STATE OF MYSORE AND OTHERS, 1974(1) KLJ 71, this Court has held that,

"Even before initial steps are taken for acquisition of land for the purpose of the Act, negotiations could be made with persons, institutions or authorities who may be in need of land for establishing industries and the Board can receive deposits in advance in contemplation of allotment of lands. That would not justify the inference that there has been a fraud on power.

Even if in a particular place a single industry is established,

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the same would answer the definition of 'industrial estate' within S.2(7). The fact that the entire area acquired (700 acres) had been given to a company for establishing an industry would not establish that there has been a fraud on power." (extracted from the Head-Notes).

9. In view of the aforesaid decisions it is clear that there is no requirement of law to mention the name of the beneficiaries either in the preliminary notification or in the declaration issued under Sections 28(1) and 28(4) of the Act as the land is sought to be acquired by the Government for the development of the industrial area and for allotment of the same in favour of different industries. It is further clear that, for such purposes there is no legal impediment for the Board to take consultation and to receive advance

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payments from the prospective allottees if there is any and such process would not amount to fraud on exercise of power.

10. For the reasons aforesaid, we are of the considered view that the order quashing the acquisition proceedings on the ground that the acquisition under Sections 28(1) and 28(4) have been vitiated for not mentioning the name of the beneficiaries is contrary to the scheme of the Act and, therefore, unsustainable in law.

11. However, in view of the non-compliance with Section 28(3) of the Act in as much as not providing an opportunity of being heard to the owners of the land by the Land Acquisition Officer, the declaration dated 6.1.1994 published in Karnataka Gazette dated 3.2.1994 is unsustainable in law and is liable to be quashed.

12. Accordingly, these Appeals are allowed in part. The order dated 11th March 1997

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passed by the learned single Judge allowing W.P.No.17824/1994 quashing the preliminary notification dated 6.9.1991 gazetted on September 26, 1991 is set aside. However, the order quashing the declaration dated 6.1.1994 gazetted on 3.2.1994 is maintained, not for the reasons assigned by the learned single Judge but for the reasons aforesaid. The matter is remitted to the Land Acquisition Officer-Appellant in the first appeal-for fresh disposal of the objections of the owners by providing them an opportunity of being heard and in accordance with law. The respondents-1 and 2 are directed to appear before the Land Acquisition Officer on 28.1.1999, either personally or through their agent duly authorised, without fail and without expecting any notice therefrom to take further date of hearing.

13. All contentions are kept open.

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14. In the circumstances of the case,
there is no order as to costs.

Sd/-
Judge

Sd/-
Judge

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