Munithimmaiah Appellant vs State Of Karnataka & Ors. Respondents on 22 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1574, 2002 AIR SCW 1472, 2002 AIR - KANT. H. C. R. 997, 2002 (3) SCALE 194, 2002 (4) SCC 326, 2002 (2) SLT 748, (2002) 3 JT 254 (SC), 2002 (2) UPLBEC 1558, 2002 (3) JT 254, 2002 (5) SRJ 166, (2002) ILR (KANT) (3) 3023, (2002) 2 LANDLR 423, (2002) 2 UPLBEC 1558, (2002) 1 LACC 573, (2002) 2 RECCIVR 527, (2002) 2 ICC 773, (2002) 3 SCALE 194, (2002) 3 SUPREME 1

Bench: Doraiswamy Raju, Ashok Bhan

CASE NO.:
Appeal (civil) 2338 of 2002

PETITIONER:
MUNITHIMMAIAH

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 22/03/2002

BENCH:
Doraiswamy Raju & Ashok Bhan

JUDGMENT:

RAJU, J.

Special leave granted.

This appeal has been filed against the judgment dated 2.3.2000 of a Division Bench of the Karnataka High Court in Writ Petition No.2083 of 1996, wherein the relief sought in the nature of a writ of certiorari to quash the entire acquisition proceedings pertaining to Survey No.81/6 in Agrahara Dasarahalli Village, Yeswanthapura Hobli, Bangalore North Taluk, and the Award said to have been passed by the Special Land Acquisition Officer, Bangalore Development Authority, on 22.2.1995, came to be rejected on the ground that the matter is covered against the appellant by an earlier Division Bench Judgment reported in Khoday Distilleries Limited Vs. State of Karnataka

[ILR 1997 KAR. 1419]. For appreciating the points raised as well as the grievance sought to be made out, it would be necessary to advert to certain salient factual details pertaining to the matter.

The appellant claims to be the owner in possession of the land comprised in Survey No.81/6, Agrahara Dasarahalli Village, Yeswanthapur Hobli, Bangalore North Taluk. Permission was said to have been obtained by the appellant on 2.8.1969 from the Deputy Commissioner, Bangalore, sanctioning conversion of one acre 16 guntas in the said Survey number into non-agricultural use, leaving the remaining 20 guntas as `Kharab' land. The permission was subject to certain conditions, which, among other things, included compliance with the formalities prescribed by and obligations to the City Improvement Trust Board or need to secure the approval for the layout and building plans from the said Board and obtaining of necessary licences, etc. from the competent authority before the commencement of any construction work on the said land. The appellant also claims to have substantially commenced construction. While the matter stood thus, a preliminary Notification was said to have been published in the Official Gazette dated 25.7.1974 proposing the acquisition of the land belonging to the appellant in Survey No.81/6 along with some other lands in Survey Nos.81/1, 81/2., 81/3, 81/4 and 81/5 for the formation of a layout known as the "West of Chord Road-IV Stage". The appellant claims to have filed objections, among other things, stating that already a proposal dated 12.8.1974 for formation of a private layout under Section 25 of the City Improvement Trust Board Act was submitted by him and the same was pending with the CIT Board. Once again, the appellant claims that the portions of the land were sold to various purchasers and buildings were put up leaving no vacant land for formation of any site in Survey No.81/2 and only 27 guntas of land in Survey No.81/2 was used by the owners of the buildings in the area as Kacha Road.

By a Gazette Notification on 31.1.1980 the Government of Karnataka published a Notification under Section 19(1) of the Bangalore Development Authority Act, 1976 [hereinafter referred to as `the Act'] making known about the sanction of an improvement scheme for the formation of layout called "West of Chord Road, IV Stage", and the publication of preliminary Notification on 25.7.1974 and the declaration then made under Section 19 of the Act that the lands specified in the said Notification, noticed supra, are needed for a public purpose for the formation of the layout in question. Thereafter, an Award was also said to have been passed on 19.3.1981 in respect of Survey No.81/2 measuring 27 guntas and possession of the same was also taken for forming a road. The Special Land Acquisition Officer, B.D.A., was also appointed to perform the functions of the Deputy Commissioner under the Land Acquisition Act in exercise of the powers conferred under Section 36 of the Act read with sub-section (2) of Sections 6 and 7 of the Land Acquisition Act, 1894 as amended and extended from time to time by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961. The appellant claims that the Commissioner of the Bangalore Development Authority also informed on 19.8.1982 that the land comprised in Survey No.81/6, noticed above, was not really required by the CIT Board for its Schemes. When the appellant approached the Commissioner, B.D.A., he was also informed about the Notification of the lands measuring one acre 36 guntas for acquisition for the Scheme in question and the pendency of those proceedings. Finally, as noticed earlier, the Award came to be made under Section 11 of the Land Acquisition Act, 1894 on 22.12.1995. Since the appellant seems to have mainly challenged the proceedings placing reliance on Section 11-A of the Land Acquisition Act inserted into the main Act by the Land Acquisition (Amendment) Act, 1984 and the very question similar to the one raised, was dealt with elaborately

and held against the stand of the petitioner in the decision reported in Khoday Distilleries Limited case (supra), the Writ Petition of the appellant came to be dismissed necessitating this appeal.

The main and substantial question raised by Shri D.P. Chaturvedi, learned counsel for the appellant, before us is that the High Court erred in following the earlier decision in Khoday Distilleries Ltd. case (supra) and that having regard to the provisions contained in Section 11-A of the Land Acquisition Act, 1894, the Award passed beyond the stipulated period of limitation is illegal and that after the expiry of the stipulated period under Section 11-A, the acquisition proceedings stood lapsed and, therefore, the claim of the appellant ought to have been sustained. Though, the learned counsel for the appellant tried to urge that the lands of the appellant are not really required to be acquired for implementation of the Scheme in question, we are not adverting to such contentions in detail since no such ground seems to have been argued before the High Court and strong objection is also taken by the learned Senior Counsel for the respondents for such pleas being raised in this Court. To complete the sequence of narration of facts and particularly the grievance sought to be made about the delay by the appellant in this Court, it is useful to refer to the fact that under the pretext of alleged trespass into the land in question pursuant to the allotments made by the B.D.A. in favour of certain third parties, the appellant filed O.S. No.3361 of 1989 seeking a declaration that the land was not acquired for any public purpose and also for an injunction restraining interference with his possession of the land. Though the appellant was able to secure interim orders in his favour, which came to be confirmed at that stage by the High Court also ultimately, the Civil Suit came to be dismissed only on 20.1.1995 holding that the appellant was not in possession and that the Civil Court cannot declare the Notification for acquisition, to be null and void. The appellant appears to have filed an appeal in R.F.A. No.90/95 as well as an overlapping Writ Petition. It is at that stage that taking leave of the Court, the Award came to be passed and the matter was brought to the notice of the High Court on 6.12.1996 in the pending proceedings.

Per contra, Shri Altaf Ahmad, learned Additional Solicitor General, as also the other counsel following his submissions, submitted that the decision rendered in Khoday Distilleries Ltd. (supra) by a Division Bench of the Karnataka High Court, which came to be followed and applied in the present case, lays down the correct position of law and the decision does not suffer from any infirmity to call for interference in this appeal.

Strong reliance has been placed for the appellant on the decisions reported in The Special Land Acquisition Officer, City Improvement Trust Board, Mysore vs P. Govindan (AIR 1976 SC 2517) and Mariyappa and Others vs State of Karnataka and Others [1998 (3) SCC 276].

In the first of the above decisions, this Court, after adverting to an earlier decision reported in The Land Acquisition Officer, City Improvement Trust Board, Bangalore vs H. Narayanaiah Etc. Etc. (AIR 1976 SC 2403), observed as follows:

> "6. It is true that it can be more plausibly argued, with regard to the provisions of Mysore Act of 1903, that the market value for acquisitions under this Act should be determined with reference to the Acquisition Act as it stood in 1903. After carefully considering this point of view, we think that such a departure from the generally

> accepted procedure which regulates acquisition and compensation for it under similar Acts in the State of Mysore as well as under Land Acquisition Act today has to be justified by something more explicit, express and substantial than the mere date of enactment of the Mysore Act. If Section 23(1) of the Acquisition Act lays down, as we think it does, the only procedure for award of compensation, it has to be followed as it exists at the time of acquisition proceedings. No one has a vested right in a particular procedure. It is a fair interpretation of Section 23 of the Mysore Act of 1903 to hold that it means that, whatever may be the procedure there, with regard to matters regulating compensation under the Acquisition Act, at the time of acquisition proceedings will apply to acquisitions under the Mysore Act."

Proceeding further, and placing also reliance on Section 6 of the Mysore General Clauses Act, it was ultimately held that in substance Section 23 of the City of Mysore Improvement Act, 1903 provided for the application of the general procedure found in the Land Acquisition Act except to the extent it was inapplicable, meaning thereby that the amendments of the procedure in the Land Acquisition Act, will apply "if it is capable of application". In Narayanaiah's case (supra) this Court, while construing the words "so far as they are applicable" in Section 27 of the City of Bangalore Improvement Act, 1945, observed that the intention in using these words was to exclude only those provisions of the Land Acquisition Act which become inapplicable because of any special procedure prescribed under the Bangalore Act and those words sufficiently bring in or make applicable, so far as it is reasonably possible, the general provisions like Section 23 of the Land Acquisition Act laying down the principles for the determination of compensation payable. In that context, it was specifically observed, "They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or by a necessary implication, excluded must be applied."

It is not only relevant but necessary to notice even at this stage that the Division Bench of the Karnataka High Court, while deciding the case reported in Khoday Distilleries Ltd. (supra) specifically referred to and only applied the ratio of the above noticed decisions of this Court as well as the one rendered in Farid Ahmed Abdul Samad & Another vs The Municipal Corporation of the City of Ahmedabad & Another (AIR 1976 SC 2095). A detailed and meticulous comparative analysis of the relevant provisions of the Bangalore Development Authority Act, 1976 and the Land Acquisition Act, 1894, as amended by the Amending Act of 1984, was made by the Division Bench of the High Court and it was observed as hereunder:

> ".The two sets of provisions under Sections 4, 5A and 6 of the L.A. Act are comparable with the provisions of Sections 17 and 18 of the B.D.A. Act. Under the provisions of the L.A. Act, if the final notification is not issued within the period mentioned therein and if any award is not made within the time prescribed under Section 11-A of the Act, the acquisition proceedings would lapse. In the case of schemes covered by the B.D.A. Act, the authority has to execute the schemes within a period of 5 years and if the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative. Thus in substance there are provisions under the B.D.A. Act to indicate the proposals for

acquisition, considering the objections thereto, sanctioning the proposal for acquisition on consideration of such objections and if such acts do not take place within a period of 5 years the proceedings would lapse. The Supreme Court in several decisions where questions of delay in the implementation of the proposals made under the L.A. Act for purpose of completion of the acquisition proceedings occurs, has taken the view that if the same is unreasonable, the acquisition proceedings could be quashed, prior to the introduction of Section 6 and 11-A of the L.A. Act prescribing limitation on the powers and the time within which such action should be taken. It would be a matter of policy for the Legislature to indicate the time within which such acts should be taken. In the case of B.D.A. Act, considering the nature and complexity of the implementation of the scheme, a period of 5 years has been fixed for purpose of completion of the scheme from the date of issue of the notification under Section 19 of the B.D.A. Act on sanction of the scheme. Therefore, when the Legislature itself has taken note of within what period the schemes have to be implemented and prescribes an authority thereto and also provides for as to what consequence would follow on non-implementation of the scheme within that period, we do not think this Court can take a view that such implementation of the scheme is in any way discriminatory when compared to the provisions of the L. A. Act. In substance, both the provisions provided for identical situation may be in case of L.A. Act more details are set forth such as the period within which final notification has to be issued and the period within which award has to be passed. But in case of the B.D.A. Act implementation of the scheme has been limited to a period of 5 years as provided in Section 27 of the B.D.A. Act.

9. Section 27 of the B.D.A. Act provides that where within a period of 5 years from the date of the publication in the official gazette of the declaration under Section 19(1), the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative. In the L.A. Act certain period has been fixed which is considered to be reasonable within which the final notification will have to be issued and award has to be passed and if such acts are done beyond the time prescribed therein, the acquisition of land will lapse. To the same effect is Section 27 of the B.D.A. Act. If the B.D.A. Act provides for 5 years to be reasonable period for substantial compliance with the scheme, we cannot state that the said provision is unreasonable of not proper. Thus the scheme of the L.A. Act as modified by the B.D.A. Act would be applicable by reason of the provisions of Sections 17, 18, 27 and 36 of the B.D.A. Act."

After adopting such process of reasoning only the High Court held in para 12 of the report, "we hold therefore that the provisions of Section 6 and Section 11-A of the Land Acquisition Act, which provide for the period of Limitation within which the final notification can be made and award could be passed are excluded from the application to acquisition made under B.D.A. Act by necessary implication. The rest of the provisions other than those relating to the issue of preliminary notification, final notification or period within which the award should be passed and lapsing of proceedings under the B.D.A. Act, of the L.A. Act would certainly be applicable." Thus, a decision as

to the inapplicability of the provisions of Section 6 and 11-A where the period of limitation is prescribed respectively for the issue of final notification and for passing the Award, in relation to proceedings for acquisition under the B.D.A. Act came to be rendered on a mere construction of the relevant provisions in the light of the very principles laid down by this Court in the earlier decisions, noticed supra, even without reference to the general question as to whether the reference in the B.D.A. Act to the provisions of the L.A. Act amount to legislation by reference or incorporation. We are in entire agreement with the reasoning and also affirm the ultimate conclusions arrived at by the High Court in Khoday Distilleries Ltd case (supra) which, in our view also, is squarely in conformity with the ratio of the earlier decisions of this Court specifically noticed and relied upon, in support thereof.

The decision in Mariyappa and Others case (supra) has no relevance or application to the case on hand for more than one reason. In para 40 of the report it is found stated: "we are not to be understood as having said anything with regard to the Bangalore Development Act, 1976". That apart, this Court, on an analysis of the provisions of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 in contrast to the provisions of the Land Acquisition Act, 1894, observed that not only the Karnataka Act, 1972 had a skeleton of only seven sections without any full machinery for being treated as a complete Code without depending on the Central Act, 1894, for being functional so far as the inquiry, passing of Award, seeking reference and apportionment and payment of compensation, etc. is concerned, but the Karnataka Act, 1972 and the Central Act, 1894 are supplemental to each other and both the Acts are in pari materia since the subject-matter of the 1972 Act could have otherwise also come within the ambit of the Central Act and, therefore, the Karnataka Act, 1972 cannot be considered to deal with any subject other than acquisition of land. On the general question as to the principles of legislation by incorporation or referential legislation, reference has been made to the decision reported in State of M.P. Vs. M.V. Narasimhan and the principles contained therein are as hereunder :-

> "Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:
>
> (a) Where the subsequent Act and the previous Act are supplemental to each other;
>
> (b) Where the two Acts are in pari materia;
>
> (c) Where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
>
> (d) Where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

Scanning through the nature of legislation, enacted as the Karnataka Act, 1972, it has been held that the said Act 1972 clearly comes within the exceptions stated in M.V. Narasimhan's case (supra) for

the following reasons :

> "Firstly there being no detailed machinery whatsoever in the Karnataka Act, 1972, that Act cannot be treated as a self-contained or complete code. Secondly, the Karnataka Act, 1972 and the Central Act, 1894 (as amended by the Karnataka Act, 1961) are supplemental to each other for unless the Central Act supplements the Karnataka Act, the latter cannot function. Thirdly, these Acts are in pari materia because the Karnataka Act, 1972 unlike the Calcutta Act, 1911 and the U.P. Act, 1965 does not deal with any other subject but deals with the same subject of land acquisition which otherwise would have fallen within the ambit of the Central Act, 1894. For the aforesaid reasons, we are of the view that the amendments made in 1984 to the Central Act, 1894 including Section 11-A have to be read into the Karnataka Act, 1972, so far as enquiry, award, reference to court, apportionment of amount and the payment of amount in respect of land acquired under the Act."

The decision in U.P. Avas Evam Vikas Parishad Vs. Jainul Islam & Anr. [(1998) 2 SCC 467], which has also been noticed and distinguished in Mariyappa's case (supra), dealt extensively with the salient principles relevant as well as governing the construction of legislation by reference and by incorporation. On a review of the entire case-law on the subject, this Court observed that in case of incorporation of provisions of an earlier legislation in a subsequent statute they get frozen and atrophied and the repeal or amendment of the earlier legislation does not affect the operation of the incorporating statute and that the question as to whether a legislation is by incorporation or by reference would invariably depend on the language used in the incorporating statute and other relevant circumstances. Adverting to the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 and the provisions of the Land Acquisition Act, 1894, as amended in 1984, it was held that the Adhiniyam and the Land Acquisiton Act cannot be regarded as supplemental to each other since the Adhiniyam contains provisions regarding acquisition of land which are complete and self-contained and, therefore, the provisions of the Land Acquisition Act as applicable in the State of U.P., at the time of passing of the Adhiniyam in 1965 alone applied and the subsequent repeal or amendment in the Central Land Acquisition Act unless any of the exceptional situations indicated in M.V. Narasimhan's case (supra) can be said to be attracted. Despite coming to such conclusions, on the principles of law governing the category of referential legislation or legislation by incorporation those provisions inserted by way of an amendment by the Land Acquisition (Amendment) Act of 1984 in the Land Acquisition Act, 1894 relating to determination and payment of compensation, viz., Section 23(1-A) and Sections 23(2) and 28 would be applicable to acquisition for the purpose of the Adhiniyam under Section 55 of the Adhiniyam by applying the ratio of a seven-Judge Constitution Bench decision in Nagpur Improvement Trust & Ors. Vs. Vithal Rao & Ors. [(1973) 1 SCC 500] holding that there can be no differential treatment in the determination of the principles of compensation payable merely on the distinction based upon who acquires the property, namely, whether the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government, because as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other for one or other of its purposes.

So far as the B.D.A. Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure a planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefor is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the VIIth Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the VIIth Schedule to the Constitution of India, the field in respect of which is already occupied by the Central Enactment of 1894, as amended from time to time. If at all, the B.D.A. Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of the B.D.A. and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the B.D.A. Act that the Karnataka legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it the Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the B.D.A. Act vis-à- vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, and, in our view, very rightly too, considered to constitute a special and self-contained code of its own and the B.D.A. Act and Central Act cannot be said to be either supplemental to each other, or pari materia legislations. That apart, the B.D.A. Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the B.D.A. Act. When the B.D.A. Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of B.D.A. Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the B.D.A. Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11-A, which cannot also on its own force have any application to actions taken under the B.D.A. Act. Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in Khoday Distilleries Ltd. case (Supra) to exclude the applicability of Sections 6 and 11-A as amended and inserted by the Central Amendment Act of 1984 to proceedings under the B.D.A. Act. The submissions to the contra on behalf of the appellant has no merit whatsoever and do not commend for our acceptance.

The wail about the inordinate delay or laches in passing the Award cannot be countenanced at the instance of the appellant who contributed mainly for the same by institution of litigation causing through prohibitory orders obtained, impediments in the expeditious implementation of the portion of the Scheme by taking further course of action under the B.D.A. Act, including the passing of the

Award.

For all the reasons stated supra, we see no merit in the appeal and the same shall stand dismissed, but with no costs.

..J. [Doraiswamy Raju] J. [Ashok Bhan] March 22, 2002.