

S.S. DARSHAN ETC.

v.

STATE OF KARNATAKA & ORS.

NOVEMBER 14, 1995

[J.S. VERMA AND K. VENKATASWAMY, JJ.]

*Land Acquisition Act, 1894—Section 4(1) r/ws 17—Notification under—Validity of acquisition for purpose of setting up Information Technology Park—Need of additional land contiguous to area acquired earlier for project—Public purpose—Acquisition held valid.*

Two writ petitions were filed challenging the validity of the notification issued u/s 4(1) r/ws 17 of the Land Acquisition Act, 1894 and the declaration issued u/s 6 for acquisition of land for Industrial Areas Development Board to establish Information Technological Park alleging that these notifications were invalid apart from the fact that the user of the acquired land by them was beneficial to the society and not merely of private gain to the appellants. A large tract of land contiguous to the area acquired by the impugned notifications had already been acquired by the Board under the Karnataka Industrial Area Development Act, 1966 for the project of setting up the technology park. That area was found to be inadequate for the project on account of which the contiguous disputed area had been acquired under the Land Acquisition Act, 1894. The two petitions were dismissed by the High Court. These appeals by special leave had been filed against dismissal of the writ petitions.

The appellants contended primarily that the acquisition was for private limited company known as Information Technology Park (Pvt.) Ltd. and not for a public purpose under the Act, on account of which the special powers in case of urgency in section 17 of the Act could not be invoked; that the acquisition of the present area should also be made only under the Karnataka Act of 1966 instead of the Land Acquisition Act since the Karnataka Act gives greater opportunity to the owners of the land to resist the acquisition and therefore, the acquisition under the Central Act is violative of Article 14 since it deprives the appellants of the right of the more liberal provisions of the Karnataka Act and that the user of the acquired land shown in the master plan being different, there could not be

**A** a conversion of the user except in accordance with the provisions for making the change in the land use.

The respondent contended that the acquisition was for the public purpose of establishment of a technological park of national importance, which was a joint venture project.

**B** Dismissing the appeal, this Court

**C** HELD : 1.1. The present acquisition was for the public purpose of setting up the Technological Park by the Government of Karnataka through the Industrial Areas Development Board and the acquisition of additional area became necessary on account of the inadequacy of the land acquired earlier under the Karnataka Industries Areas Development Act, 1966, in view of the urgency and the need to speed up the project. [227-E-F]

**D** 1.2. In view of the urgent need for the acquisition of land, which could not be met under the Karnataka Act, 1966, resort to the provisions of the Central Land Acquisition Act, which were applicable, could not be faulted. Moreover, Chapter VII relating to 'Acquisition and disposal of Land' in the Karnataka Act has to be read in the light of section 27, which says that the provision of this Chapter shall apply to such areas from such dates as have been notified by the State Government under sub-section (3) of Section 1. Accordingly, the provision in section 28 therein for Acquisition of Land applies only to areas notified under sub-section (3) of section 1. It was only an area of about 1 acre out of the acquired area of 11 acres 36 gunthas, which had been so notified. [227-H; 228-A-B]

**E** 1.3. It was not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the Land Acquisition Act, 1894. Therefore, it cannot be said that there could not be conversion of the uses except in accordance with the provisions for making the change in the land use. [228-E]

**F** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10305 of 1995 Etc.

From the Judgment and Order dated 14.7.95 of the Karnataka High Court in W.P. No. 25555 of 1994.

**G** G.L. Sanghi, Shanti Bhushan and Ambrish Kumar for the Appellants.

Ashok Desai, Arun Jaitley (NP), Pankaj, Manoj Wad and Ms. Jayashree Wad for the Respondents. A

Altaf Ahmed, Additional Solicitor General, Sandeep Narain and Shri Narain for the Respondent No. 6.

H.B. Datar, Yashwant Mathur for the Respondent No. 4. B

The Judgment of the Court was delivered by

J.S. VERMA, J. Leave granted.

These appeals by special leave are against dismissal of two writ petitions by a common order dated 14th July, 1995, passed by a Division Bench of the High Court of Karnataka. The challenge made in these writ petitions was to the validity of the notification dated 16/7/1994, issued under Section 4(1) read with Section 17 of the Land Acquisition Act, 1894 (for short 'the Act') and the notification dated 22/8/1994 issued under Section 6 thereof by State of Karnataka for acquisition of 11 acres 36 gunthas of land in Pattandur Agrahara Village, Whitefield, Bangalore Taluk, Bangalore, belonging to the appellants. The appellants contended that these notifications are invalid apart from the fact that the user of the acquired land by them is beneficial to the society and not merely of private gain to the appellants. The several grounds on which validity of the acquisition was challenged have been rejected by the High Court. The nature of use of the acquired land by the appellants does not require any further reference since the validity of the acquisition does not depend on it. C D E

Shri Shanti Bhushan, learned counsel for the appellant, contended primarily that the acquisition is for a private limited company and not for a public purpose under the provisions of the Land Acquisition Act, 1894, on account of which the special powers in case of urgency in Section 17 of the Act could not be invoked and, therefore, the provision of section 5A requiring the hearing of objections cannot be dispensed with. On this basis, it was contended that the notification in exercise of the power under Section 17(4) and the subsequent declaration made under Section 6 of the Act is invalid. In support of this submission learned counsel for the appellant referred to certain documents which admittedly indicate the purpose of the acquisition. The construction made of these documents by Shri Shanti Bhushan is that the acquisition is not for the Karnataka F G H

- A Industrial Areas Development Board (for short 'the Board') but for the private limited company known as Information Technology Park (Pvt.) Ltd., in which the Board has 20% equity shares. In reply, the learned Additional Solicitor General and Shri Ashok Desai contended that the acquisition is for the public purpose of establishment of a technological park of undoubted national importance, which is a joint venture project, involving three collaborators of which the Government of Karnataka is one acting through the Karnataka Industrial Areas Development Board. Learned Additional Solicitor General submitted that these documents read as a whole, indicated the nature of joint venture and the kind of project for which this acquisition has been made, which makes it clear that it is not merely for the purpose of a company unrelated to the specified public purpose. The documents with reference to which this point has to be determined are relied on by both sides.

- D Admittedly, a large tract of land contiguous to the area acquired by the impugned notifications had already been acquired by the said Board under the Karnataka Industrial Areas Development Act, 1966 (for short 'Karnataka Act'), which also provides for acquisition of land for the Board. That area was found to be inadequate for the project on account of which the contiguous disputed area has been acquired under the Land Acquisition Act, 1894. The fact that the larger area acquired earlier for the Board is meant for the said project of setting up the technology park has not been disputed. It is also not disputed that the present acquisition under the Land Acquisition Act is to meet the need due to the inadequacy of the earlier acquisition made by the Board. In fact a separate argument of learned counsel for the appellant, adverted to later, is that the acquisition of the present area should also be made only under the Karnataka Act of 1966 instead of the Land Acquisition Act since the Karnataka Act gives greater opportunity to the owners of the land to resist the acquisition. This background of the present acquisition is also significant to determine the purpose of the present acquisition.

- G A letter dated July 5, 1994 (Annexure-G) by Tata Industries to the Government of Karnataka is on the subject of 'Requirement of additional land for setting up of Bangalore Information Technology Park' as a joint venture project between Tata Industries Limited, Information Technology Park Investment Pvt. Ltd. (ITPI), a Consortium of Singapore Companies H (CSC) and Government of Karnataka through Karnataka Industrial Areas

Development Board (KIADB). The letter emphasises on the need of speed in taking all steps for the setting up on an International Scale of the Information Technology Park. It then mentions the further need of the adjoining land of about 12 acres for the project by the Government for the Board which can be used for the Information Technology Park along with the land already earmarked for the purpose. The next document is letter dated 7th July, 1994 (Annexure-H) by the Board to the Government of Karnataka making the request for acquisition of 11 acres and 36 gunthas of land in question for the said project. It is the joint venture project for setting up the Technology Park for which request was made to invoke the emergency provision in Section 17 of the Land Acquisition Act because of the urgent need. The notification dated 16/7/1994 (Annexure-I) under Section 4(1) and Section 17 of the Land Acquisition Act, 1894 was then published on 18/7/1994 which begins as under :—

"The lands shown in the annexed index are required for a public purpose, that is, to establish information technological park through Karnataka Industrial Areas Development Board".

The above extract mentions the purpose of acquisition as a public purpose to establish Information Technological Park through Karnataka Industrial Areas Development Board. The specific mention of the purpose of acquisition in this Notification is undoubtedly the public purpose of establishing the Information Technological Park through the Board. Learned counsel for the appellants rightly did not dispute that the acquisition for the Board is not acquisition for the company to attract this argument. If the acquisition is for the Board then the other argument is that it should be made under the Karnataka Industrial Areas Development Act, 1966 and not the Central Act. The other argument would be considered later.

The documents, so far, do indicate that the acquisition is for the public purpose of setting up the Information Technological Park through the Board. However, reference is made to the written statement (Annexure-F) in a suit filed by the appellant - S.S. Darshan against the State Government and Board in which it is mentioned that the land acquired by the Board is being transferred in favour of M/s. Bangalore Information Technology Park, a Private Limited Company incorporated under the Companies Act with the participation of Tata Group of Companies, a group of companies incorporated in Singapore and Board for developing the Information Technology Park with an investment of several hundred

A crores of rupees, which would earn considerable foreign exchange and provide jobs to 18,000 engineers. On this basis, learned counsel urged that the transfer of the acquired land would be made in favour of a private limited company which shows that the acquisition is not for the public purpose but for a Private Limited Company. Reliance was also placed on the lease agreement (Annexure-Q) between the Board and the Information Technology Park (Pvt.) Limited (the lessee) under which the Board has agreed to lease to the Company the land acquired earlier for a term of 11 years which ultimately would be converted into a sale in favour of the Company. It was urged, and is not disputed, that a similar lease-cum-sale agreement would be executed by the Board in favour of the Company in respect of the additional land being acquired under the impugned notifications. Shri Shanti Bhushan contended that reading all those documents together, it is clear that the acquisition is ultimately for the Private Company as evident from the lease-cum-sale agreement between the Board and the Company. It was submitted that the form in which the agreement has already been executed in respect of the land earlier acquired for the same project bears striking similarity to the form of sale prescribed in the regulations governing the disposal of lands by the Board under Section 14(a) of the Karnataka Industrial Areas Development Act, 1966. No doubt all the documents have to be read together to determine the purpose of the present acquisition.

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We have already indicated with reference to the notification issued under Sections 4(1) and 17 of the Land Acquisition Act that the purpose of acquiring land mentioned therein is the public purpose of setting up the Technology Park through the Board. The two letters (Annexures G & H) which led to the issuance of the notification, also indicate the same. The affidavit of M.N. Vidyashankar-Executive Member of the Board (at Pages 238 to 243 of the Paper Book) gives the relevant facts indicating the purpose of the acquisition. It describes the nature of joint venture called Information Technology Park Pvt. Ltd. (respondent No. 5) which is a joint venture company promoted by (1) the Board (2) Singapore Consortium of five companies and (3) Tata Industries Ltd., in which the share holding is restricted only to these three promoters and the Board has 20% equity shares therein. It says that the present acquisition is made for the said project and the involvement of the Company is only for this purpose ensuring the use of the land acquired only for this project, namely, establishment of the Information Technology Park, since the expertise required

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for the establishment of the Park is being provided by the Singapore Consortium and Tata Industries Ltd. The affidavit gives the details of the control by the Board to ensure use of the entire land only for this project and not for any other purpose. Proceedings of the meeting of the Board held on 24/1/1994 have been annexed to the affidavit. This mentions clearly that in the joint venture agreement, it is clearly provided that the Board has veto power in the matters pertaining to policies and guidelines etc. and provision has been made to enable the Board to enforce the policy decisions. It further provides as under :

"The proposed Information Technology Park would have the facilities like, power supply, water supply, centrally airconditioning, facilities for transmission of data through satellite etc., in addition to the common facilities, like, administrative block, canteen, hospitals and residential accommodation for the Executive Staff. The Park should be fully functional before expiry of the lease period."

The other provisions also indicate that the involvement of the Company is only for carrying out the object of setting up this project.

We have no doubt that the cumulative effect of all these documents is that the present acquisition is for the public purpose of setting up the Technology Park by the Government of Karnataka through the said Board and the acquisition of this additional area became necessary on account of the inadequacy of the land acquired earlier under the Karnataka Act of 1966, in view of the urgency and the need to speed up the project. The foundation for the primary submission of the learned counsel for the appellants does not, therefore, exist.

The next contention of learned counsel for the appellants is indeed a corollary of the primary submission which is already rejected. The contention is that the acquisition being for the private company, the provision of the Central Act which had been invoked are inapplicable. This question does not arise in view of the rejection of the primary submission.

The next contention is that the acquisition under the Central Act which is a more stringent provision is violative of Article 14 since it deprives the appellants of the right of the more liberal provisions of the Karnataka Act, 1966. In our opinion, there is no merit in this contention as well. In view of the urgent need for the acquisition of this land, which

- A cannot be met under the Karnataka Act, resort to the provisions of the Central Act which are applicable cannot be faulted. Moreover, Chapter VII relating to 'Acquisition and Disposal of Land' in the Karnataka Act has to be read in the light of Section 27, which says that the provision of this Chapter shall apply to such areas from such dates as have been notified
- B by the State Government under sub-section (3) of Section 1. Accordingly, the provision in Section 28 therein for Acquisition of Land applies only to areas notified under sub-section (3) of Section 1. Admittedly, it is only an area of about 1 acre out of the acquired area of 11 acres 36 gunthas, which has been so notified. For this reason, this argument does not arise in respect of the remaining area of about 10 acres. Shri G.L. Sanghi also
- C appearing for one of the appellants advanced the further argument that the Karnataka Act excludes the applicability of the Central Act since they operate in the same field. The fact of inapplicability of the Karnataka Act by virtue of Section 27 therein to about 10 acres of the acquired land is significant to repel this argument in respect of at least the major portion
- D of the acquired land. Moreover, we are not impressed with the argument based on Article 14 in the facts and circumstances of this case.

- The last submission of learned counsel for the appellant is that the user of the acquired land shown in the master plan being different, there cannot be a conversion of the user except in accordance with the provisions
- E for making the change in the land use. It is not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the Land Acquisition Act, 1894. This argument also had no merit.

- An argument was also made alleging *malafides* on the ground of a
- F dispute raised by the appellant to the right of way claimed for use of the earlier acquired land for implementation of the project, through a portion of the now acquired land. We have examined the facts on which the argument is based. We are not satisfied that any ground of *malafides* is made out in the present case. The present acquisition is shown to be for
- G the public purpose of setting up the Information Technology Park and to meet the need of additional land contiguous to the area acquired earlier for the project by the Board.

Consequently, the appeals are dismissed. No costs.