REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO(S).1614-1616 OF 2019
IN
MISCELLANEOUS APPLICATION NO(S).1346-1348 OF 2019
IN
CIVIL APPEAL NO(S).7661-7663 OF 2018

BANGALORE DEVELOPMENT AUTHORITY & ANR. ... APPELLANTS

VERSUS

THE STATE OF KARNATAKA & ORS. ... RESPONDENTS

ORDER

S. Abdul Nazeer, J.

I.A.No.147134 of 2021

(1) A peripheral ring road (for short, 'PRR') encircling Bangalore City for the length of 116 Kms. was proposed vide Letter dated 27.11.2006 by the Bangalore Development Authority ('BDA' for short) to the State Government. The scheme was sanctioned by the Government of Karnataka vide

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Reason:

DD 399 MNX 2006 Bangalore dated 23.04.2007. This PRR is to provide connectivity to various destinations in all the

directions for onward traffic without entering the city of Bangalore and thus minimising the congestion on the outer ring road as well as on the internal roads of the city. The affidavit filed by the Additional Chief Secretary before this Court dated 09.11.2021 highlights the importance of construction of PRR as under:

> "PROJECT NECESSITY
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> 2. At the outset it is submitted that the Bengaluru City needs the Peripheral Ring Road (PRR) more than ever in view of the phenomenal growth of the city in all directions. The geographical extent of the city has grown to 2196 sq. kms. The vehicle count as of 2019 was over 80 lakhs. Bengaluru being the capital city, thousands of vehicles come in every day from various parts of the state as well as outside the state. There is enormous pressure on city roads and public transport system is overstressed. The PRR will greatly reduce the stress and congestion in the city roads. The Government is very keen to facilitate the early execution of the PRR."

2. Notifications, both preliminary and final, have been issued by the BDA for acquisition of the lands for the PRR and several writ petitions were filed before the High Court of Karnataka challenging these notifications. One such writ petition was W.P.No.4550 of 2008 (**Sri Sudhakar Hegde and others vs. the State of Karnataka and others**). Several other similar

matters were clubbed along with the said writ petition. Learned Single Judge of the Karnataka High Court decided these matters on 22.07.2014. The questions formulated in the said cases were as under:

> "(a) Whether the repeal of the Land Acquisition Act 1894, has the effect of frustrating any proceedings with reference to Section 36 of the BDA Act.
>
> (b) Whether the acquisition proceedings can be said to have lapsed by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 having come into force."

3. On the first question, learned Single Judge held that the provisions of the Land Acquisition Act, 1894 (for short, 'LA Act') that are made applicable to the BDA, are in the nature of legislation by reference. It was further held that in view of the repeal of the LA Act by coming into force of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act') during the pendency of the writ petitions, it would be the corresponding provisions under the 2013 Act in so far as they are applicable which would regulate the acquisition proceedings. Learned Judge further held that the repeal of LA Act and coming into force of 2013 Act would not frustrate

further proceedings under the Bangalore Development Authority Act (for short 'the BDA Act').

4. However, on the second question, the Court observed that "it cannot therefore be said that by virtue of Section 24 of 2013 Act, the proceedings stood lapsed." The Court held that the procedure that would regulate the proceedings would be as per the provisions of 2013 Act in so far as they are applicable. This would include the determination of compensation in accordance with the 2013 Act as no award had been passed in the present proceedings.

5. BDA has filed the above application contending that the direction in the above cases has totally upset the budget calculation of the project. It is further contended that the High Court has failed to refer and to consider the Constitution Bench judgment of this Court in **Offshore Holdings Private Limited v. Bangalore Development Authority and others**[1]**.** It is also contended that Section 36 of the BDA Act clearly mandates legislation by incorporation. BDA has filed this application seeking mainly the following relief:

> "Hold that the 2013 Act is not applicable to the BDA Act and the Judgment of the learned Single Judge dated 11/07/2014 in WP 4550/2008 and connected matters is per in-curium, otiose and unenforceable."

1(2011) 3 SCC 139

6. We have heard the learned counsel for the parties.

7. The BDA Act was enacted by the Legislature of the State of Karnataka to provide for the establishment of a Development Authority for the development of city of Bangalore and the areas adjacent thereto and for matters connected therewith. The objects and reasons for enacting the Bangalore Development Act, 1976 are as under:

> "STATEMENT OF OBJECTS AND REASONS
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> KARNATAKA ACT, NO.12 OF 1976
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> Karnataka Gazette, Extraordinary, dated 5-2-1976
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> At the conference of the Ministers for Housing and Urban Development held at Delhi in November, 1971, it was agreed that a common Authority for the development of metropolitan cities should be set up.
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> Bangalore City with its population (as per last census) is a Metropolitan City. Different Authorities like the City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority are exercising jurisdiction over the area. Some of the functions of these bodies like development, planning, etc., are overlapping creating thereby avoidable confusion, besides hampering co-ordinated development. It is, therefore, considered necessary to set up a single authority like the Delhi Development Authority for the city areas adjacent to it which in course of time will become part of the city.
>
> For the speedy implementation of the above said objects as also the 20-point programme and for establishing a co-ordinating Central Authority, urgent action was called for. Moreover, the haphazard and irregular growth would continue unless checked by the Development Authority and it may not be possible to rectify or correct mistakes in the future.

> It was therefore necessary to issue the measure in the form of an Ordinance.
>
> The Bill seeks to replace the said Ordinance."

8. Section 14 of the BDA Act underlines the object of the Authority in the below terms:

> "14. **Objects of the Authority**:- The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of expedient for the purpose of such development and for purposes incidental thereto."

9. Chapter III of the BDA Act provides for the power of the Authority to take up execution of development schemes for the development of the Bangalore Metropolitan area. Section 15 empowers the BDA to frame development schemes with the previous permission of the government to execute the same. Section 16 enumerates the particulars to be provided in such schemes. After preparation of the scheme under Section 17, the Authority shall draw up a notification furnishing the particulars of the scheme and the place where the lands proposed for acquisition. Within 30 days, notice shall be issued to the concerned persons inviting objections, if any, for the proposed acquisition. After considering the representations received in

that regard, the scheme shall be submitted to the government for sanction with modifications, if any, together with the plan, estimates and other particulars. After considering the proposals, the Government has to sanction the same. Upon sanction of the scheme under Section 19, the Government shall publish declaration that the lands are required for the public purpose. These are the formalities required to be complied with before proceeding further in the matter of execution of the scheme.

10. Chapter IV of the BDA Act deals with "Acquisition of Land". This chapter contains Sections 35 and 36. The relevant provision for the purpose of the present case is sub-section (1) of Section 36 which is as under:

> "**36. Provisions applicable to the acquisition of land otherwise than by agreement** – (1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act. 1894."

11. Sub-section (3) of Section 36 of the BDA Act states that after the land vests in the Government under Section 16 of the LA Act, then the Government upon payment of cost of acquisition and upon the Authority agreeing to pay any further cost which may be incurred on the acquisition, shall transfer the land to the Authority whereupon it shall vest in the Authority.

12. The primary object of the BDA Act is to carry out a planned development and acquisition, is merely incident of such planned development. It is also clear that the provisions of the LA Act would be attracted only insofar as they are applicable to the BDA Act. Where there are specific provisions under the BDA Act, the provisions of the LA Act will not be attracted. The BDA Act has provided a complete process for determination of rights. For the purpose of the claims in regard to the matters which are not specifically dealt with in the BDA Act, reference to the LA Act in terms of Section 36 has been made. The intention of the Legislature is to take recourse for the provisions of the LA Act to a limited extent and subject to the supremacy of the provisions of the BDA Act. This is evident from the expression “so far as they are applicable” employed in sub-section (1) of Section 36. In **Offshore Holdings Private Limited** (supra), a Constitution Bench of this Court, after considering the scheme of the BDA Act and having regard to the language employed in Section 36, held that it is a legislation by incorporation.

13. Incorporation of an earlier Act into the later Act is a legislative device for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into

the later Act. Once the incorporation is made, the provisions of incorporated statute become an integral part of the statute in which it is transferred and thereafter there is no need to refer to the statute from which incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. (See: **C.N. Paramasivam and Another vs. Sunrise Plaza Through Partner and Others**[2])

14. In **Offshore Holdings Private Limited** (supra), it was held as under:

> **"43.** All these provisions show that the BDA Act has provided for a complete adjudicatory process for determination of rights and claims. Only in regard to the matters which are not specifically dealt with in the BDA Act, reference to the Land Acquisition Act, in terms of Section 36, has been made, for example, acquisition of land and payment of compensation. This also is a pointer to the BDA Act being a self-contained Act.
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> XXX XXX XXX
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> **50.** Applying the above principle to the facts of the case in hand, it will be clear that the provisions relating to acquisition like passing of an award, payment of compensation and the legal remedies available under the Central Act would have to be applied to the acquisitions under the State Act but the bar contained in Sections 6 and 11-A of the Central Act cannot be made an integral part of the State Act as the State Act itself has provided specific time-frames under its various provisions as well as consequences of default thereto. The scheme, thus, does not admit such incorporation.
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> XXX XXX XXX
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> **57.** The *sequitur* to the above principle is that the BDA Act has already been held to be a valid law by this Court not

2 2013 (9) SCC 460

> repugnant to the Land Acquisition Act as they operate in their respective fields without any conflict. For the reasons aforereferred as well as the detailed reasons given by us in *Girnar Traders (3)*[5], which reasoning would form part of this judgment, we have no hesitation in concluding that the BDA Act is a self-contained code. The language of Section 36 of the BDA Act clearly mandates legislation by incorporation and as per the scheme of the two Acts, effective and complete implementation of the State law without any conflict is possible. The object of the State law being planned development, acquisition is merely incidental thereto and, therefore, such an approach does not offend any of the known principles of statutory interpretation."
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> (emphasis supplied)

15. In **Special Land Acquisition Officer, KIADB, Mysore and Another vs. Anasuya Bai (dead) by Legal Representatives and others**[3] this Court was considering an identical question. There it was held that Section 11-A of the LA Act and Section 24(2) of 2013 Act are not applicable for acquisition made under KIADB Act. It was held thus:

> **"30.** Having regard to the aforesaid raison d'être for non-application of the old LA Act, on the parity of reasoning, provision of Section 24(2) of the new LA Act making Section 11-A of the old LA Act would, obviously, be not applicable. We would like to refer to the judgment in *State of M.P.* v. *M.V. Narasimhan*[4] in this behalf where following proposition is laid down: (SCC p. 385, para 15)
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> "*15.* … '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:
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> (*a*) where the subsequent Act and the previous Act are supplemental to each other;
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> (*b*) where the two Acts are in pari materia;

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3 2017 (3) SCC 313
4 2011 (3) SCC 1

> (*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
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> (*d*) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.'"

16. On 3.12.2020 this Court in this very case has held as under:

> "Needless to state that the acquisition of the land under the BDA Act is regulated by the provisions of the LA Act so far as they are applicable. (See: Section 36 of the BDA Act). The borrowed provisions of LA Act, became an integral part of the BDA Act and are totally unaffected by the repeal of the LA Act. In other words, the provisions of the LA Act are incorporated into the BDA Act so far as they are applicable. Of course, the bar contained in Section 6 and 11-A of the LA Act, are not applicable to the BDA Act. We have discussed this aspect of the matter in our main judgment dated 03/08/2018. It is also clear that the provisions of the Right of Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 are not applicable for the acquisition made under the BDA Act. Final notification has also been issued after the pronouncement of judgment by this Court in Civil Appeal No(s). 7661-7663 of 2018 dated 03/08/2018. We direct the BDA to proceed with the acquisition of the land as proposed in the notification."

17. Therefore, the provisions of the LA Act continue to apply for acquisitions made in the BDA Act so far as they are applicable as it is a legislation by incorporation having regard to Section 36 of the BDA Act.

18. The question may also be examined from a different angle. Section 24 of the 2013 Act expressly refers to the land

acquisition proceedings initiated under the LA Act. Sub-section (1) of Section 24 of the 2013 Act is as under:

> **"24. Land acquisition process under Act No. 1 of 1984 shall be deemed to have lapsed in certain cases -** (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--
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> (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
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> (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
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> (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:
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> Provided that where an award has been made and compensation in respect of a majority of and holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

19. The 2013 Act repeals only the LA Act and not any other Central or State enactment dealing with acquisition. Therefore, what is sought to be saved under Section 24 of the 2013 Act is only acquisitions which had been initiated under the LA Act and

not those acquisitions which had been initiated under any other Central or State enactment. The expression contained in Section 24 of the LA Act cannot be given extensive interpretation by adding words into the provision, in the absence of the provision itself giving rise to any such implication. We are of the view that 2013 Act would not regulate the acquisition proceedings made under the BDA Act.

20. Section 105 of the 2013 Act states that the provisions of the 2013 Act shall not apply to the enactments in the Fourth Schedule or are to apply with modifications in terms of notification issued by the Central Government under Section 105(3) of the 2013 Act. Section 105 does not apply to the present case.

21. Recently, a Division Bench of the Karnataka High Court in **Sri. L. Ramareddy vs. the State of Karnataka and Ors.**[5] has considered identical questions in great detail and has concluded as under:

> "**44**. In the circumstances, it is concluded and held that Section 24 does not take within its scope nor does it apply to acquisitions which have been initiated under the provisions of any other enactment particularly, State enactment, such as, BDA Act. The said Section is restricted to only those acquisitions which have

5 W.A. No.1415/2018 (LA-BDA) disposed of on 1st December, 2020

> been initiated under the provisions of the LA Act, 1894 only. Subject to compliance of the conditions mentioned under sub-section (2) of Section 24, the land owner would be entitled to the deeming provision regarding lapse of acquisition and not otherwise."

We are in complete agreement with this judgment of the High Court.

22. We may also notice here that the learned Single Judge of the High Court has not followed the judgment in **Offshore Holdings Private Limited** (supra) wherein it was clearly held that the provisions of the LA Act are applicable to the BDA Act by incorporation.

23. In view of the above, the Learned Judge of the High Court in **Sri Sudhakar Hegde** (supra) was not justified in holding that the provisions of LA Act that are made applicable to the BDA Act are in the nature of legislation by reference. The learned Judge has also erred in holding that in view of the repeal of LA Act by coming into force of 2013 Act, the corresponding provisions of 2013 Act would regulate acquisition proceedings under the BDA Act and that this would include determination of compensation in accordance with 2013 Act. It is hereby clarified that since LA Act has been incorporated into the BDA Act so far as they are applicable, the provisions of

2013 Act are not applicable for the acquisitions made under the BDA Act. Therefore, the judgment of the learned Single Judge of the High Court in **Sri Sudhakar Hegde** (supra) and other connected matters is hereby overruled.

24. Application is accordingly disposed of.

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

New Delhi;
January 20, 2022