

Arkavathi Layout in Imbraglio

(Bondu Ramaswamy V/s. Bangalore Development Authority & Others
In Civil Appeal No. 4097 of 2010 – MANU/SC/0334/2010)

The saga of land owners whose lands were sought to be acquired by the Bangalore Development Authority (in short BDA) in the year 2002 continues despite the order of Supreme Court dated 5-5-2010 disposing of the appeals filed by certain land owners with certain directions.

The elaborate judgment deals with several constitutional issues. Seven points were formulated by the Supreme Court. Six of them deal purely with legal issues. All of them have been held in favour of the State. The Seventh question relates to the modus operandi of the BDA. The concurrent finding of fact by the learned single Judge and Division Bench of the High Court was that the acquisition was vitiated on account of several factors such as non-application of mind, lack of proper survey, lack of proper information regarding suitability and availability of land and lastly deletion of vast areas from the proposed acquisition.

The power of eminent domain is an aspect of sovereignty. It is defined in Black's Law dictionary 9th edition as the inherent power of a Governmental entity to take privately owned property especially land and convert into public use subject to reasonable compensation for the taking. The concept as originated in the 17th century has attributed to the legal scholar Grotius who believed that the State possessed the power to take or destroy property for the benefit of social unit. This was endorsed by the famous jurist Black Stone, in a caveat that the State was bound to pay reasonable price or just compensation. The US Supreme Court has described this power as an off spring of political necessity in *Bauman V/s Ross* 167 US 548. While considering the issues formulated by the court, this principle of eminent domain had its full play. The court has rejected

all contentions of the land owners and has upheld the power of the State to acquire land for public purpose under the BDA Act.

The most important challenge was the manner in which the power was sought to be exercised. Judicial review of demonstrative action is a basic structure of the Indian constitution. The power is vested in the higher judiciary viz., the High Courts under Articles 226 & 227 of the Constitution. All power vested in any authority is a sacred trust. Judicial review is the answer to the question – who guards the Guards? It is the power of the court to ensure the public authorities responsible for ensuring accountability of Government do so within the boundaries of their own lawful powers. In a constitutional democracy, the rule of judicial review is to guard the rights of the individual against abuse of official power – See De Smith's Judicial Review – 6th Editions – para 1-010.

In a constitution on the rule of law which primarily mandates that everything must be done according to law, at the powers of Government which would otherwise be a wrong such as taking a man's land must be able to justify its action as authorized by law. Every act on Governmental power which affects the legal rights of any person must be shown to them a strictly legal pedigree. The effected person may resort to courts of law and if the legal pedigree is not found to be perfectly in order; the court will invalidate the act which he can then safely disregard. Coke, spoke in picturesque language that Government should act with the Golden and Straight Method of Law has posed to the uncertain and crooked of discretion – See Wade & Forsyth 10th Edition Page 17.

With the above sacred rule of judicial review, the decision of the Supreme Court is critically analyzed:

One of the contentions urged by the land owners was that the power of eminent domain had been abused, misused or used for corrupt

purposes. The learned single Judge and the Division Bench examined the facts and categorically recorded a finding concurrently that there was discrimination in acquisition of land; that there was non-application of mind and that the acquisition does not pass on the touch stone of non-arbitrariness. The Supreme Court has confirmed its findings. In fact it acts further in para 69 to hold that the BDA has not seriously disputed the fact that there was arbitrariness and discrimination in the matter of acquisition proceedings. The court then records a finding that the BDA has not placed true and correct position even before the Supreme Court. In paras 71 to 73, the court records findings regarding the lands proposed to be acquired in the villages of Kempapura, Srirampur, Venkateshapura, Nagavara, Hennur and Challakere. These findings are illustrative. In para 76, the court adverts to the argument of the land owners that rich, powerful and persons with connections and money power influenced the acquisition process. Without examining this, the court affirms the concurrent finding of the learned single Judge and the Division Bench that the process of acquisition was not fair.

At this stage, it must be pointed out with due respect that there was a misdirection by the Supreme Court as regards the legal effect of such an acquisition process. The argument was not merely posed on discrimination viz., that someone else's land was not acquired though that person was in a similar position or that someone else's land though notified initially had not been acquired. The argument on the matter of principle regarding the manner in which the BDA went about with the acquisition. In fact in para 81, the court makes the following observation:

"In the absence of satisfactory explanations in such a case, it may be necessary to presume that there was misuse or abuse the acquisition process."

The court has then examined various aspects of discrimination and the power of the court to grant relief where there has been discrimination.

The court comes to the conclusion that the Division Bench was right in upholding the acquisition process in stead of recording such findings in order to uphold public interest. We find a number of paragraphs in the judgment devoted to the malady of land acquisition, the law governing it and the need to pay just compensation.

The reasoning of the Supreme Court to uphold the illegal acquisition is contained in para 90. With great respect it is to be stated that the Supreme Court has completely lost sight of the fact that rule of law has been totally violated by the State. The fact that some of the land owners have received compensation cannot be a reason to throw out the land owner who has approached the court in due time and has proved through the maize of the High Court and Supreme Court that the State did not act fairly, but has still denied his relief. The other reason given by the Supreme Court is that development activities have been carried out by the BDA by allotting plots and making provisional or actual allotments. When the land owners have challenged the acquisition promptly and the matter is before court and the Petitioners have succeeded before the learned Single Judge, without any factual data as to when such developmental activity was carried out, but took that decision to carry out the development activity when the matters were sub judice, what is the sum spent on such development, when applications were invited and when allotments were made. If the BDA has taken law to its hands and has proceeded with its illegality ignoring the due process of the court that cannot be a factor to deny relief to a land owner who is before the court knocking at the doors of justice seeking his land back. The State has succeeded by playing a trump card with public interest and the court has bent over backwards to deny relief to citizens who have successfully demonstrated and proved to the satisfaction of learned Single Judge, Division Bench and the Supreme Court that the action of BDA was unfair and unjust.

With great respect, the judgment ends with a wrong signal to the power that State can get away with anything and the court will come to their rescue.

Lastly Jurisprudentially, the judgment would be cited as a precedent in every land acquisition case in future to urge the court to give **“alternate”** directions to the Petitioners even if they successfully prove illegality and uphold the acquisition at any cost. In effect, this is what the Supreme Court has done. It has declined relief to the Petitioners by allowing them to retain ownership of their land and in stead has directed that crumbs be thrown at them in the form of allotment of developed plots. If the BDA has the repository of power has misused its power, it must bear the consequences and the land must come back to the land owner. Nothing prevents BDA from invoking the power of eminent domain once again in respect of those lands which come to the land owners, if there are grounds to justify the exercise of such power. The land owners ought to have appreciation in value of the persons concerned and the BDA ought to pay for their lapses.

In conclusion, the judgment of the Supreme Court will fall in the category of the ... ADM Jabalpur Case where the Supreme Court let out that the citizen of this country in the matter of his individual member with that famous and erudite, Justice H.R. Khanna is missing in this judgment.