

(2014) 11 KAR CK 0255

In the Karnataka High Court

Case No : Writ Petition Nos. 17930/2014 and 18238-18240/2014 (LA-KIADB)

A. Venkataraju

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 29(2)

Karnataka Land Revenue Act, 1964 — Section 136

Land Acquisition Act, 1894 — Section 12(2), 18, 18(3)(b), 28(A), 30

Citation : (2014) 11 KAR CK 0255

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Prakash T. Hebbar, Advocate for the Appellant; S.V. Giri Kumar, AGA for K. Krishna, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the award dated 19.04.2012 impugned at Annexure-A and the endorsement dated 25.02.2014 impugned at Annexure-B to the petition. The petitioners are also seeking for issue of mandamus to direct the respondents to pass a fresh order fixing a fair compensation as has been done in respect of similarly placed land losers in Bagalur Village, Jala Hobli, Bangalore North (Additional) Taluk at the rate of Rs. 70,00,000/- per acre.

2. The petitioners herein claim to be the owners of the land measuring Sy. No. 177/P13 measuring 30 guntas and 177/P16 measuring 2 acres of Bagalur Village, Jala Hobli, Bangalore North (Additional) Taluk. The manner in which the title to the properties were acquired by the petitioners' family has been referred to in the petition and the details of the same need not be adverted in this petition as such consideration would be made in an appropriate proceedings.

3. The fact that the said lands have been acquired by the respondents is not in dispute. The only issue which arises for consideration herein is with regard to the payment of appropriate compensation in respect of the said properties to the

petitioners. In respect of the properties which were acquired by the respondents under the same notification, notice as contemplated under Section 29(2) of the KIAD Act was issued and the consent awards were passed in respect of the lands, wherein the land owners did not raise any objection.

4. In the instant case, it is no doubt true that the petitioners herein did not object for passing of the consent award in terms of the notice issued under Section 29(2) of the KIAD Act. However, the respondents on noticing that there were certain issues relating to the properties as claimed by the petitioners had refrained from passing the consent award in respect of the lands in question. In that view, a general award dated 19.04.2012 was passed fixing the total compensation at Rs. 44,20,000/-. The petitioners therefore claim to be aggrieved by the same contending that in respect of the other similarly placed land owners, by consent award a sum of Rs. 70,00,000/- has been fixed. In that view, the petitioners have made a representation dated 10.02.2014 seeking similar compensation as paid to the other land owners. The earlier representations which had been made by the petitioners dated 25.07.2011 and 04.08.2009 had also not been considered by the respondents.

5. In that view, the petitioners were before this Court in W.P. Nos. 39293-39294/2011 disposed of on 31.10.2011 and W.P. Nos. 1148/2012 and 2518/2012 disposed of on 25.01.2012 seeking consideration of their representations. This Court on taking note of the fact that the representations had remained pending had directed the respondents to consider and dispose of the same. The respondents in the meanwhile had passed the impugned award dated 19.04.2012 and had also deposited the amount in the Civil Court in L.A.C. No. 4/2012 for the purpose of disbursement as provided under Sections 30 and 31 of the Land Acquisition Act. The Court below by its judgment dated 19.12.2013 has ordered disbursement of the amount and the petitioners have received the same. In that light, the respondents by their impugned endorsement dated 25.02.2014 (Annexure-B) have intimated the petitioners that their request for passing a consent award and determining the same compensation as has been granted to the other land losers cannot be accepted. It is in that view, the petitioners are before this Court claiming to be aggrieved by the same.

6. The petitioners contend that despite the request being made by the petitioners seeking for a consent award to be passed, such request had not been accepted. It is the case of the petitioners that though the respondents have declined to consider the request of the petitioners on the ground that there were certain disputes with regard to the property, the dispute as referred is not in relation to title to the property but, there were revenue proceedings under Section 136 of the Karnataka Land Revenue Act. Hence, it is contended that the respondents were not justified in rejecting the request of the petitioners for passing the consent award on the said ground.

7. The respondents in order to sustain their action have filed their objection

statement. Reference is made to the notice that had been issued under Section 29(2) of the KIAD Act and also the proceedings under Section 136 of the Karnataka Land Revenue Act to contend that as on the date when the consent awards were passed in respect of the other land owners, the said proceeding was pending and therefore, the request of the petitioners for passing a consent award in such circumstance was not acceptable. The respondents have also contended that the petitioners instead of agitating the present matter at that stage should have sought for appropriate reference as contemplated under Section 18 of the Land Acquisition Act or they may avail their remedies as provided under Section 28(A) of the Land Acquisition Act but, in any event their request for passing a consent award in the said circumstance would not arise.

8. In the light of the above, insofar as the claim as put forth by the petitioners seeking similar payment as has been made in respect of the other land losers under a consent award needs consideration at the outset. The fact that there were revenue proceedings as provided under Section 136 of the Karnataka Land Revenue Act is not in dispute.

9. Be that as it may, what is necessary to be noticed herein is that the petitioners did not assail the action of the respondents rejecting the request of the petitioners to pass a consent award at a stage prior to passing of the general award though representations were made by the petitioners and the same had not been considered and this Court had directed consideration of the same. Further, on the general award dated 19.04.2012 being passed and the amount being deposited in the Civil Court, the petitioners having participated in the said proceedings have also received the compensation which had been determined under the general award.

10. Therefore, when much water has flown and the petitioners to the said extent had received the compensation determined under the general award, the petitioners by way of a contention raised in the instant petition cannot succeed insofar as assailing the said award at this stage or the endorsement dated 25.02.2014 which had been issued by the respondents declining the request of the petitioners to pass a consent award. Though the above noticed aspects would be the position insofar as determination of the right of the petitioners to seek for a consent award in the present circumstance, certain other aspects of the matter cannot be lost sight. The petitioners in fact have pleaded in the petition that though they have received the amount in the proceedings under Sections 30 and 31 of the Land Acquisition Act, the same is without prejudice to their right to seek for enhancement of the compensation as provided under Section 18 of the Land Acquisition Act. In that light, a very perusal of the endorsement dated 25.02.2014 issued by the respondents would disclose that prior to the passing of the general award on 19.04.2012, the petitioners in fact had made a representation seeking appropriate compensation in respect of the property in the light of the quantum of compensation that had been determined in respect of persons who had agreed for the consent award.

11. Further, it is pointed out from the same endorsement that an earlier endorsement dated 28.05.2012 had been issued to the petitioners in respect of the very same issue declining the request of the petitioners to pass a consent award. If the said aspect is kept in view and on noticing that the general award dated 19.04.2012 had been passed, the representations and the endorsement thereto on 28.05.2012 would disclose that even prior to the award 90 days from the date of passing of the award itself, irrespective notice under Section 12(2) of the Land Acquisition Act being issued to the petitioners, a protest had been raised by the petitioners with regard to the quantum of compensation that had been determined. If that be so, the position is that even if the request of the petitioners cannot be accepted for passing a consent award, certainly, a duty is cast on the Land Acquisition Officer to refer the matter to the Reference Court for considering enhancement of the compensation as contemplated under Section 18 of the Land Acquisition Act. In a circumstance where such reference is not made, the petitioners in any event would have the right of filing a petition before the Reference Court as contemplated under Section 18(3)(b) of the Land Acquisition Act requesting that a direction be issued to the Land Acquisition Officer to refer the matter. The said time frame of three years in any event has not elapsed from the date of the award itself.

12. Therefore, instead of driving the petitioner once over again to file such petition before the Reference Court and to seek for reference, the interest of justice would be served if the Land Acquisition Officer is directed to refer the claim of the petitioners for enhancement of compensation to the Reference Court for consideration. Thereafter, the Reference Court will consider the merits of the claim for compensation in accordance with law without reference to limitation.

13. In that view, a direction is issued to the second respondent to refer the claim of the petitioners to the Jurisdictional Reference Court as contemplated under Section 18 of the Land Acquisition Act which would be registered by the Reference Court and the compensation be determined in accordance with law after notifying the parties concerned. In that regard, all contentions of the parties are left open to be urged before the Reference Court.

In terms of the above, these writ petitions stand disposed of.