

(1991) 02 KAR CK 0092
In the Karnataka High Court
Case No : Writ Petition No. 6918 of 1986

Abdul Khader Mekhri

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4)
Karnataka Land Revenue Act, 1964 — Section 128

Citation : (1991) ILR (Kar) 3203 : (1991) 1 KarLJ 371

Hon'ble Judges : K.A. Swami, J;D.R. Vithal Rao, J

Bench : Division Bench

Advocate : K. Prabhakar, for the Appellant; K.V. Narayanappa, for R-2 and G.B. Manjunath, for R-3 to R-7, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—The applicants in I.A. No. I are the persons interested in the lands in question. Therefore, the application is allowed and they are permitted to come on record as Respondents 3 to 7. Cause title be amended.

2. In this Petition under Articles 226 and 227 of the Constitution, the petitioners have sought for quashing the Notification bearing No. CI/99/SPQ 82 dated 11-8-1982 published in the Official Gazette dated 4-11-1982 issued under Sub-section (1) of Section 28 of the Karnataka Industrial Area Development Act, 1966 (hereinafter referred to as "the Act") giving notice of intention to acquire the lands in question along with several other lands.

3. The lands in question are S. Nos. 51, 53, 54, 55, 56, 57, 58 and 59 of Koorgally Village, Taluk and District Mysore, totally measuring 85 acres. They have also sought for quashing the Notification issued u/s 28(4) of the Act bearing No. CI 99 SPQ.82 dated 11th April 1983 published in the Official Gazette of 5th May 1983.

4. The petitioners are the heirs of one Sri Abdul Khader Mekhri, who was the

owner of the lands in question. This Petition is filed on 15-4-1986 whereas the Final Notification u/s 28(4) of the Act was published in the Official Gazette of 5th May 1983. Thus, after a lapse of three years, the Writ Petition has been filed.

5. It is contended on behalf of the petitioners that the impugned Notifications in so far they relate to the lands in question are invalid because the Khatedar of the lands is shown as Abdul Khader Mekhri, in the Notification issued under Sub-section (1) of Section 28 of the Act, even though Abdul Khader Mekhri died as long back as in the year 1971; that in the Notification issued u/s 28(4) of the Act even the name of Abdul Khader Mekhri is not shown in respect of the lands in question except S. No. 51; that at any rate the names of the petitioners who are the heirs of deceased Abdul Khader Mekhri ought to have been shown as the Khatedars and notice pursuant to the Notification of intention to acquire the lands in question for the purpose of development by Karnataka Industrial Areas Development Board for the establishment of Industries therein, ought to have been issued; that such notice was not served upon the petitioners therefore, they could not file their objections and as such could not participate in the enquiry and could not resist the acquisition.

6. On the contrary, it is contended on behalf of the second respondent as well as on behalf of the applicants in I.A. No. 1 impleaded as respondents 3 to 7 who claim to be the tenants in occupation of the lands and have been granted occupancy right under the Karnataka Land Reforms Act, that the petitioners did not get their names mutated in the relevant revenue records as required by Section 128 of the Karnataka Land Revenue Act, 1964, as such, no notice could be issued to the petitioners pursuant to the Notification published u/s 28(1) of the Act inasmuch as the second respondent could not come to know the names of the petitioners as the persons having interest in the lands. It is also contended that the acquisition had been completed long back and the possession of the lands were obtained from applicants in I.A. No. 1 on 4-12-1982 itself and the factory also has come up on the lands in question, long back and it is working.

7. It is not in dispute nor it is the case of the petitioners that they got their names mutated in the relevant revenue records. However, it is not possible to accept the contention of the respondents 1 and 2 and also of the applicants in I.A. No. 1 that as the names of the petitioners were not got mutated in the relevant revenue records under Chapter XI of the Karnataka Land Revenue Act, 1964, the second respondent was not required to serve notice on the petitioners. Sub-section (2) of Section 28 of the Act specifically provides thus:

"On publication of a notification under Sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within 30 days from the date of service of the notice, why the land should not be acquired."

(Underlining is by us)

It is not in dispute that Abdul Khader Mekhri was the owner. It is also not in dispute that the petitioners are the heirs of Abdul Khader Mekhri. Therefore, it is not possible to hold that there were no persons interested in the lands in question. As per Sub-section (2) of Section 28 of the Act reproduced above, it was incumbent upon the State Government and also the 2nd respondent to ascertain the heirs of deceased Abdul Khader Mekhri and serve notice upon them as it was necessary to serve notice, upon the owner. If the owner Abdul Khader Mekhri - had expired in the year 1971, it was necessary to ascertain his heirs and serve notice upon them. Acquisition proceeding was commenced only in the year 1982. Under these circumstances, there was a failure on the part of the State Government and the 2nd respondent in not making an attempt to ascertain the heirs of the owners who were also persons interested in the lands, and not serving notice upon them. It was not at all difficult for the respondents to ascertain the names of the petitioners because the proceeding was going on between the petitioners and the applicants in I.A. No. 1 under the Karnataka Land Reforms Act for grant of occupancy right. Therefore, it is not possible to accept the contention of the respondents and also the applicants in I.A. No. 1 that in the event of the death of the owner the land proposed to be acquired under the Act, if the names of the heirs of the deceased owner are not entered in the revenue records it is not incumbent upon the State Government and the Special Land Acquisition Officer exercising the power under the Act to ascertain the names of the heirs and serve notice upon them merely on the ground that the names of the heirs of the deceased owner are not entered in the relevant revenue records. By the acquisition private property of an individual is taken away. A private property of an individual cannot be taken away or acquired except in accordance with law. As per Sub-section (2) of Section 28 of the Act it was incumbent to serve notice upon the petitioners. This conclusion of ours should have normally resulted in quashing the impugned Notifications in so far they relate to the lands in question, However, the subsequent developments in the case and the laches on the part of the petitioners make us to refrain from granting the relief to the petitioners. There is a delay of more than three years in filing this Writ Petition as already pointed out. There is no reasonable explanation for this long delay. The notice was published in the Official Gazette. The tenants in occupation of the lands handed over the possession as long back as in the year 1982 and the fact of acquisition was brought on record in the proceeding before the Land Tribunal as reflected in the order of the Land Tribunal. Therefore, the petitioners are guilty of laches in not approaching this Court immediately on the publication of the Notification in the Gazette dated 5th May 1983 u/s 28(4) of the Act.

8. Added to this, after obtaining the possession, the industrial layout was formed. The lands in question along with several other lands were allotted to the Bharat Earth Movers Ltd., and they have put up the factory which has been functioning. The factory had come into existence as on the date of filing of the Writ Petition. That being so, it is not possible to believe the petitioners that they

were not aware of the acquisition proceedings even though big factory had come up on the lands in question long before filing of the Writ Petition. Therefore, we are of the view that the petitioners are guilty of laches. Hence, they are not entitled to the relief sought for. Further, the position has reached the irreversible stage because the Bharat Earth Movers Ltd., has come up on the lands, in question long back. However, it is brought to our notice that compensation proceedings have not been completed. The petitioners have not filed the Claim Petitions because of the fact that their names are not found in the impugned Notifications. It cannot be denied that the petitioners are entitled to put forth their claim for compensation. Whether they are entitled to any compensation and if so, what is the extent of compensation to be awarded to them, are not the matters to be gone into in this Writ Petition. Therefore, we are of the view that while dismissing the Petitions a direction is required to be issued to the second respondent to receive the Claim Petitions of the petitioners if they file the same within sixty days from today.

9. For the reasons stated above, we decline to interfere with the acquisition proceedings and dismiss the Writ Petition. However, we direct the second respondent that in case the petitioners file the Claim Petitions for compensation within 60 days from today the same shall be received and enquired into and decided in accordance with law.

If the applicants in I.A. No. I who have been allowed to come on record have not filed the Claim Petitions, it is also open to them to file the Claim Petitions within the aforesaid period. In that event, the second respondent shall receive the same and decide in accordance with law.