

(2014) 02 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 40140-40141 of 2012 (LA-RES)

Anitha Kishori D'Silva

APPELLANT

Vs

The Land Acquisition Officer Cum Assistant Commissioner,
Mangalore Sub-Division and Others

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4 4(1) 48(1) 5A 6

Citation : (2014) 02 KAR CK 0012

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Sampath Anand Shetty, for M/s. Sampat and Vatsala Law Associates, for the Appellant; D. Nagaraj, Additional Government Advocate for Respondent Nos. 1 to 3, Shri. Naveed Ahmed, Advocate for Respondent Nos. 4 and 5, Shri. K.R. Sreenivasa Patavardhan, Advocate for Respondent Nos. 6 and 7 and Shri. Vishwanath R. Hegde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The facts of the case are that, land bearing Sy. no. 231/1A4 and 231/2 of Badaga Ulipady village is said to belong to the petitioner on a mulageni right under a registered sale deed dated 1.2.2007, including a portion measuring about 2 cents, which is the subject matter of the present proceedings. The said area of 2 cents is sought to be acquired for the purpose of formation of a connecting road between Kaikamba-Arbi-Nadaje-Muttur, under the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act", for brevity), under preliminary and final notifications dated 4.3.2008 and 18.7.2012. It is claimed that under an exchange deed dated 20.12.1965, a 15 feet wide road was reserved in the lands aforesaid to provide access to the Mangalore-Karkala Main road.

It is stated that in the year 1988, the father of respondents 4 and 5 one A.J. Lobo had demolished a compound wall around the petitioner's land and had

encroached upon the same. This had resulted in multiple civil suits, two by the predecessor of the petitioner and one by the said Lobo. The suits were decided in favour of the petitioner and the same had attained finality in appeal that were filed.

It is stated that apart from the interference by the said Lobo, the then Zilla Parishad, through the members of the Mandal Panchayat had sought to form a road over the very same disputed portion of the land. It is stated that the predecessor in title of the petitioner had obtained a judgment and decree of permanent injunction against such interference, in the year 1990.

It is further stated that there was a notification u/s 4(1) of the LA Act, 1894 proposing to acquire the same extent of land, dated 7.1.2006, for formation of "Kaikamba-Nadaje" road. But the same was dropped vide notification dated 2.1.2007. The withdrawal from acquisition had been questioned by several persons in a writ petition before this court in W.P. No. 3962/2007. The same having been allowed, had been challenged in appeal in W.A. No. 11/2008. During the pendency of the appeal, a fresh preliminary notification having been issued dated 24.3.2008 in respect of the same land measuring 2 cents, for the formation this time of the Kaikamba-Arbi-Nadaje-Muttur access road, which according to the petitioner indicates the arbitrary and malicious intention of the State, in seeking to further the actual self-interest of few individuals who may benefit by the formation of any alleged road and that the same would not serve any public interest. As a result, the pending appeal was disposed of as having become infructuous.

It is stated that though the petitioner had filed serious objections to the said preliminary notification dated 24.3.2008, there was no enquiry conducted u/s 5A of the LA Act, but however, a belated declaration u/s 6 has been made by notification dated 18.7.2012. It is the said proceedings that are sought to be questioned in the present petition.

2. The learned counsel for the petitioner had argued vehemently and at length as to the sequence of events, the alleged mala fides on the part of certain individuals in orchestrating the acquisition proceedings for private interests as well as the circumstance that there are as many as 6 connecting roads leading off the main road providing access to the very area now sought to be accessed through the road to be formed and hence it is evident that the exercise smacks of mala fides. It is also highlighted that if the road is formed over the land which belongs to the petitioner, it would result in the petitioner's property being split asunder rendering a portion, which is not subject matter of acquisition, useless. Reliance is placed on a large number of authorities in support of the petition.

3. The State has not filed any statement of objections except producing certain documents under a memo dated 19.2.2013. Respondent no. 8, the Ganjimutt Gram Panchayat has opposed the petition and it is contended on its behalf by the learned counsel representing the panchayat, that the basis of the case of the

petitioner is misleading and false. It is contended that the rough sketch produced at Annexure-D to the petition is not accurate and it is denied as false that there are six connecting roads as indicated. It is asserted that it is the Panchayat that is required to take measures for the formation of any road and it is only after satisfying itself of the requirement of connecting National Highway no. 13-namely, the Moodabidri-Mangalore to Kaikamba-Arbi-Nadaje-Muttur Road at the junction of Kaikamba circle, had resolved to form the connecting road by a resolution dated 12.7.2005. It is claimed that the road did exist 20 years prior to 2005 and was being used by the general public. It is asserted that the petitioner claims to be a subsequent purchaser of the property in the year 2007. It is stated that pursuant to the preliminary notification issued earlier, a spot inspection had been conducted by the Land Acquisition Officer and the Assistant Commissioner, Mangalore Sub-division, in the presence of the office bearers and objectors and it was the overwhelming opinion that the proposed road was most suitable compared to any other alternative road. The said report is produced. It is stated that immediately after the said report was submitted, there was a change in the local political scenario and in view of the political pressure, the then Minister for Fisheries Sri. B. Nagaraja Shetty issued a communication (Tippani) dated 05.08.2006 addressed to the Principal Secretary to Government, Revenue Department to consider the representation of the objection, sympathetically. Accordingly, without the consultation of this respondent, the Deputy Commissioner, D.K., Mangalore issued a Notification u/s 48(1) of the Land Acquisition Act dropping the proposed acquisition, holding that the proposed acquisition will not be beneficial to public. Immediately thereafter, a complaint was lodged by this respondent represented by its then president, to the Karnataka Lokayuktha (Technical Wing), Bangalore. Based on the complaint lodged by this respondent, an enquiry was held by the Executive Engineer-I, Technical Wing, Karnataka Lokayuktha, Bangalore, by holding a spot inspection in the presence of revenue authorities and all concerned and issued an Investigation Report dated 30.03.2007 holding that the proposed road is very helpful to the general public and the residents who are using this road for their day-to-day activities and that all other link roads connecting NH-13, are very narrow. The Notification issued u/s 48(1) of the LA Act was challenged by the local residents in W.P. No. 3962/2007, before this Court. This Court had allowed the writ petition by its order dated 23.11.2007 and the Notification issued u/s 48(1) of the LA Act was quashed. A direction was also issued to the Land Acquisition Officer to consider the matter, after hearing the parties and after holding a spot inspection.

Being aggrieved by the order dated 23.11.2007 in W.P. No. 3962/2007, the petitioner herein along with J.L. Fernandes, both represented by their GPA Holder Mr. Robert Jerome D'Silva, filed an appeal in W.A. No. 11/2008 before this Court. However, during the pendency of the writ appeal, a fresh notification came to be issued u/s 4(1) of the LA Act re-notifying the lands in question. Having regard to the fresh notification being issued, the writ appeal was disposed of with liberty to

challenge the fresh notification.

4. It is contended that the land in question is admittedly a very small portion of the land measuring only 2 Cents and the road for the purpose of which the said land has been acquired has already been completely metaled, but for the objection raised by the husband of the petitioner only an extent of about 50 yards at the Junction of National Highway, NH-13 and Kaikamba Circle. A perusal of the photographs produced also makes it clear that the road is already existing in the property in question, which is made use of by the general public since long. The petitioner has approached this Court on the basis of a sketch which is not an authenticated sketch showing a different picture of the existence of the six roads connecting NH-13. The respondent claims that keeping in view the need of the general public and the requirement of formation of the road that the proceedings are initiated. It is not open to the petitioner to claim that the acquisition is not for a public purpose. It is stated that the claim made by the petitioner that there are as many as 6 roads existing in the locality for the members of the public to reach Nadaje from Mangalore-Karkala Road and that all the said 6 roads would have access to Arbi as well as Nadaje, is not true. Attention is drawn to a sketch, which indicates that there are 2 other roads connecting NH-13 to Nadaje, out of which one of the roads is a pathway passing through Gurukambala Ladies P.U. College and another by the side of Kaikamba Petrol Bunk. It is stated that there is another road which is a very narrow road measuring about 8 feet wide. However, it is contended by the respondent that, the road in question is more convenient to the general public since there is a Masjid at the entrance of Kaikamba Circle, there is a Hindu Burial Ground a little further and an Anganawadi Centre run by the respondent. There are about 700 houses around the road in question, the residents of which have been making use of this road.

5. The respondent No. 8 contends submits that, the petitioner cannot take advantage of the outcome of the proceedings of O.S. No. 773/1988, O.S. No. 415/1989 or O.S. No. 237/1989 in view of the fact that the said proceedings were held between private parties for redressal of their personal property rights, which cannot be a ground to stall the acquisition proceedings initiated by the respondent for a public purpose. That after the earlier notification having been came to be issued u/s 48(1) of the LA Act, the Power of Holder of the petitioner, high-handedly had tried to enclose the property in question by putting up a fence. However, at the instance of the general public using this road, the fence was removed in the presence of the Lokayukta Officials who visited the property on 30.03.2007 and presently there is a regular road on the property in question. Even subsequent to the first notification dated 30.11.2005, mere has been enormous increase in the people using this road as a public road and for movement of traffic. It is hence submitted that taking into consideration the subsequent developments also, the petition is liable to be dismissed.

It is further contended that in so far as the alleged delay between the

notifications as vitiating the acquisition proceedings are concerned, the learned counsel for the respondent has furnished the following list of dates in tabular form, which is not disputed, to contend that it is by virtue of the interim order granted in the Writ appeal that the delay had occasioned.

6. By way of reply, the learned counsel for the petitioner contends thus:

A specific contention has been taken by the petitioner in regard to the publication of the final notification after the expiry of 01 year i.e. after 04 years from the date of preliminary notification vide Annexure-B dated 24.03.2008 and the final notification dated 18.09.2012 vide Annexure-A gazetted on 04.08.2012. The said contention is available in paragraph-22 of writ petition. The State Government has not filed any statement of objection, nor justified its action in making the final notification after the expiry of 04 years from the date of preliminary notification.

The learned counsel for the petitioner has relied in the cases of Kamal Trading Private Limited (now known as Manav Investment and Trading Company Ltd.) Vs. State of West Bengal and Others, and Anand Singh and Another Vs. State of Uttar Pradesh and Others, .

7. In the present case on hand, it is not in dispute that the petitioner had filed a serious objection in respect of the proposed acquisition. Specific allegations had been made against the respondents 4 to 7, who according to the petitioner were responsible for the proposed acquisition after having lost the battle in the civil courts with respect to the same subject property. Even though, the petitioner's wife had purchased the property in question in the year 2007 as per Annexure-C, her husband was the GPA holder of her vendor J.L. Fernandis who took delivery of the property as evidenced by Annexure-E execution proceedings. The objections of the petitioner to the preliminary notification are available at Annexure-G page-50 to 56 and specific allegations are made against the respondents 4 to 7. But despite that, no enquiry had been held by the State Government as required under Section-5A of the LA Act and no material in that regard has been placed before this Court by the State Government. As per the Karnataka amendment, it was the duty of the acquiring authority to provide a copy of the report containing its recommendations on the objections and a copy of the report was to be provided to the petitioner/land owner. In the instant case, the State Government has not produced any material in support of the enquiry having been held with respect to the serious objections filed by the petitioner in respect of the preliminary notification. The State Government has simply relied upon a memo of documents, which do not satisfy the mandatory requirement of Section 5A of the Act.

The learned counsel for the petitioner places relies the following citations:

1. Raghbir Singh Sehrawat Vs. State of Haryana and Others,
2. Patasi Devi Vs. State of Haryana and Others,

3. State of Punjab and Another Vs. Gurdial Singh and Others,

4. Sri Lakshminaryana and Others Vs. State of Karnataka and Others,

8. The above citations would support the contention of the petitioner that the proposed road was not for a public purpose and the same was at the behest of respondents 4 to 7 to serve their private purpose. In fact., the husband of the petitioner was the GPA Holder of the erstwhile owner of the landed property throughout the proceedings before the civil court including in the execution proceedings vide Annexures E and S. The requisition of the Panchayat as per Annexure-R3 was for maintaining of status quo of utilization of the road which alleged to have existed for 20 years prior to the said date. But, in the civil court, it was concluded that there existed no road. Contrary to the contentions of the Panchayat regarding the existence of the road, the public purpose conceived by the State Government in the impugned notification was for formation of the road (the expression employed in the notification is "Rachane"). If according to the Panchayat there existed a road for 20 years in two cents of land belonging to the petitioner, there was no need for formation of the proposed road by way of acquisition proceedings. Thus, there is no nexus between requisition made by the Panchayat as per Annexure-R3 and the public purpose of formation of a road, that too only in two cents of land without there being acquisition of land comprised in Survey No. 153 of Ulipady Village to connect the main road running from South to North leading to Arbi and from Arbi to Nadaje i.e. from North to South. The initial acquisition of land by virtue of preliminary notification dated 30.11.2006 was for Kaikamba-Nadaje Link Road vide Annexure-F. Later, the public purpose envisaged in the impugned preliminary notification as per Annexure-B dated 24.03.2008 is Kaikamba-Arbi-Nadaje-Mutturu Link Road. From this, it is clear that the very same two cents of lands was sought to be acquired for an all together different public purpose. In that view of the matter, the counsel for the petitioner submits that the very sequence of events narrated in the petition have not been controverted by the respondents 4 to 7, though they had an opportunity to controvert the serious allegations made by the petitioner in respect of colourable exercise of power, mala fide intentions and fraud on power. It is only the Panchayat who later got impleaded as respondent No. 8, who sought to justify the action of the State, obviously at the behest of respondents 4 to 7. Therefore, it is stated that the above decisions would come to the aid of the petitioner in getting the notification quashed on the ground of colourable exercise of power/fraud on power.

Having regard to the above rival contentions, the disputed questions of fact are hardly capable of adjudication in these proceedings. In so far as the challenge to the validity of the acquisition proceedings are concerned, there is no merit in the contention that there has been no detailed enquiry on the various contentions raised by way of objections to the notification u/s 4 of the Act. Secondly, the contention that there is a delay in issuing the final notification is also not tenable having regard to the sequence of events as indicated above. The interim order

passed in the writ appeal, by this court, if taken into account would adequately account for the delay.

Consequently, there is no merit to be found in these petitions and the same are dismissed.