

(2015) 02 KAR CK 0163

In the Karnataka High Court

Case No : Writ Petition Nos. 54949-54951/2013 (LA-KIADB)

Bhagyamma and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Industrial Areas Development Act, 1966 — Section 28, 28(1), 28(4)
Land Acquisition Act, 1894 — Section 11-A

Citation : (2015) 02 KAR CK 0163

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : J.M. Rajanna Setty, Advocate, for the Appellant; Sathyanarayana Singh, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—Though the matter is listed for considering I.A. No. 1/15, which is an application for vacating stay, granted by this Court, filed by respondents 2 and 3, it is taken up for final hearing.

2. I have heard learned counsel for the parties at length and also perused original records produced by respondent Nos. 2 and 3.

3. Petitioners are the wife and children of late Krishnappa. Late Krishnappa was son of late Chikka Appanna, who was the notified khathedar in respect of land bearing Sy. No. 139 measuring 3 acres 32 guntas situated at Singehalli Village, Vemagal Hobli, Kolar Taluk, Kolar District.

4. Petitioners have assailed preliminary notification dated 06.07.2010 (Annexure-D) issued under Section 28(1) of the Karnataka Industrial Area Development Board Act, 1966 (hereinafter referred to as "the Act", for the sake of brevity), as well as final declaration and notification dated 09.09.2011 (Annexure-E) issued under Section 28(4) of the said Act in the present writ petitions.

5. During the course of submission, petitioner's counsel drew my attention to the fact that the impugned notifications have been issued in respect of land in question, in the name of a dead person i.e., Chikka Appanna, who had died on 22.01.2007. He further contended that the respondents could not have shown his name as the Khathedar of the land in question and the petitioners who are his legal heirs were not issued any notice as stipulated under Sub-Section (2) of Section 28 of the Act. It is contended that pursuant to a compromise decree passed in O.S. No. 386/2008 by the II Addl. Civil Judge (Jr. Dn.), Kolar, out of 3 acres 32 guntas, an extent of 2 acres has fallen to the share of the petitioners and 27 1/2 guntas each have fallen to the share of Sri. Muniyappa and Sri. Venkatesh and an extent of 15 guntas has fallen to the share of Anusuyamma and therefore, the petitioners having the ownership and possession of land in question, subsequent to the death of Chikka Appanna, ought to have been notified about the impugned acquisition. He therefore contended that the acquisition notifications may be quashed as far as petitioners are concerned.

6. Per contra, learned counsel for the respondent Nos. 2 and 3 with reference to the original records contended that the name of Chikka Appanna continued in the revenue records, despite his death in the year 2007 and that the petitioners herein had not taken any steps for inclusion of their names in the revenue records. Prior to the issuance of notification under Section 28(1) of the Act, respondents were not bound to ascertain as to whether Chikka Appanna, was alive or dead or, as his name was found in the revenue records, as to whether notices were to be issued to his legal representatives. In the absence of names of petitioners being entered in the revenue records, respondents were not bound to issue any notice to the petitioners. Therefore, there is no infirmity in the acquisition notifications.

7. He also drew my attention to communication dated 02.02.2011 issued by the petitioner No. 2 to the respondent - authorities by which it becomes clear that the petitioners were seeking compensation and therefore, they are estopped from assailing the acquisition. He further contended that there is no merit in these writ petitions and that in view of the judgment and decree passed in O.S. No. 386/2008 the respondents would pay the compensation to the petitioners in respect of 2 acres just as other persons have sought compensation in respect of the aforesaid other extent of lands. He therefore contended that the writ petition is devoid of merit and may be dismissed.

8. Having heard the learned counsel for the parties, it is noticed that although Chikka Appanna's name was entered in the revenue records and he died on 22.01.2007, thereafter there was no further entries or mutation orders passed insofar as his heirs are concerned, as there was a civil litigation instituted and pending between his heirs in O.S. No. 386/2008 and till a compromise decree was passed in that suit, the share of the petitioners as well as other sharers in respect of 3 acres 32 guntas of land in Sy. No. 139, was not determined. In the absence of there being any mutation entries on the basis of inheritance khatha

proceedings, prior to the issuance of the preliminary notification, respondent - authorities on the basis of revenue records, which showed the name of Chikka Appanna, notified him as the Khathedar. There can be no infirmity in the procedure adopted by the respondent - authorities in showing the name of Chikka Appanna as the Khathedar, as the petitioners or the co-sharers did not have their names entered in the revenue records by then. Subsequent to the disposal of the suit on 30.01.2010, i.e., petitioners too did not take steps to get their names entered in the revenue records. In fact, by communication dated 02.02.2011, second petitioner brought to the notice of the respondent - authorities about the decree passed in O.S. No. 386/2008 and has expressly sought for issuance of notice to him for the purpose of determination and disbursement of compensation. A copy of that letter is at Annexure - F. On perusal of the said letter, it becomes clear that the petitioners did not have any objection to the acquisition. As such, they were interested in the determination and disbursement of compensation in their names. When the owners or persons interested in the land seek compensation in the same breath, they cannot also assail the acquisition. In that view of the matter, challenge made to the acquisition fails.

9. In this context, reliance could be placed on a decision of the Division Bench of this Court in V.T. Krishnamoorthy Vs. State of Karnataka, , wherein, placing reliance on an earlier judgment of this Court in W.A. No. 781/1989 disposed on 6/11/1989, the Division Bench held that it is well settled in law, that where a person seeks compensation, he cannot maintain a writ petition under Article 226 of the Constitution, assailing the notifications. This is based on the doctrine of approbation and reprobation.

10. Even then, the main contention raised in these writ petitions is with regard to the award being belatedly passed and there being violation of Section 11-A of the Land Acquisition Act, 1984. It is contended that, in fact, in the instant case, no award has yet been passed and therefore, in view of there being non-compliance of Section 11-A of the aforesaid Act, acquisition has lapsed. It is noted that the impugned acquisition is under the provisions of the KIAD Act. Hon"ble Supreme Court in the case of M. Nagabhushana Vs. State of Karnataka and Others, has held that Section 11-A does not apply to the provisions of the KIAD Act. Therefore, impugning the acquisition on that ground is without any merit.

11. In response, learned counsel for petitioners relied on a decision of the learned single Judge of this Court in the case of Sri Chaluve Gowda @ Chikkonu Vs. State of Karnataka, Karnataka Industrial Area Development Board and Special Land Acquisition Officer, Mysore, to contend that the award must be made within a reasonable time even though there is no time frame fixed under the provisions of KIAD Act, pass award as stipulated under Section 11-A of the Act. Thus, this Court has held that an award must be made within a reasonable time. In the instant case, it is noted that subsequent to the demise of Chikkappa, there was litigation between his legal heirs, which was

compromised by a decree passed by the trial Court in O.S. No. 386/2008 on 30/1/2010 and thereafter on 2/2/2011, 2nd petitioner wrote to respondents with regard to the determination and disbursement of compensation and the writ petitions assailing notifications was filed on 2/12/2013. In that view of the matter, there has been no unreasonable delay in passing the award as petitioners themselves are before this Court, assailing the acquisition notifications, after acquiring right, title and interest in respect of 2 acres of land only in Sy. No. 139. Therefore, the aforesaid judgment has no application having regard to the facts of the present case.

12. The respondents are directed to determine and disburse the compensation in the names of petitioners in respect of 2 acres land in Sy. No. 139 as sought by them, which is also evident from the letter dated 23.07.2014 written by the other co-sharer Muniyappa, wherein the share of the petitioners has been acknowledged to be 2 acres. In the result, the challenge to the acquisition fails. However, the respondents are directed to determine and disburse the compensation to the petitioners in respect of 2 acres of land in Sy. No. 139 of Singehalli Village, Vemagal Hobli, Kolar Taluk, Kolar District, in accordance with law in an expeditious manner.

13. In view of dismissal of the writ petitions, no order on I.A. 1/15 is called for and it is ordered to be filed.