

(2016) 07 KAR CK 0105

In the Karnataka High Court

Case No : Writ Petition No. 30796 of 2014 (LA-KIADB).

B.P. Gurumallappa - Petitioner @HASH State of Karnataka and Others

Date of Decision : 26-07-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(2), Section 28(3)

Citation : (2016) 6 KantLJ 494

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : Sri. P.C. Sunitha, Advocate, for the Petitioner; Sri. R.B. Satyanarayana Singh, Additional Government Advocate, for the Respondent Nos. 1, 2 and 6; Sri. B.B. Patil, Advocate, for the Respondent Nos. 3 to 5

Final Decision : Disposed Off

Judgement

S. Abdul Nazeer, J. - Though this matter is listed for orders, by consent of the learned Counsel for the parties, it is taken up for final hearing, heard and disposed of by this order.

2. The subject-matter of this writ petition is Sy. No. 23 measuring 6 acres 24 guntas of Badanguppe Village, Chamarajanagar Taluk and District.

3. Respondent 4 issued a notification under Section 28(1) of the Karnataka Industrial Areas Development Act, 1966 (for short "the Act"), proposing to acquire the said lands along with certain other lands. Thereafter, notice was issued to the petitioner under Section 28(2) of the Act. The petitioner filed objections as per Annexure-H, dated 29-1-2010, opposing acquisition of the land. Respondent 4 by his order at Annexure-R4 has posted the matter for spot inspection. Thereafter, final notification at Annexure-M, dated 1-2-2014 has been issued by respondent 1. The petitioner has called in question the legality and correctness of the said notifications in this writ petition.

4. The main contention of the learned Counsel for the petitioner is that respondent 4 has held an enquiry as contemplated under Section 28(3) of the Act. Therefore, entire acquisition proceeding is vitiated.

5. On the other hand, learned Counsel for the respondents has sought to justify the impugned notification.

6. I have carefully considered the arguments made at the bar and perused the materials placed on record.

7. In response to the notice issued under Section 28(2) of the Act, the petitioner has sent detailed reply as per Annexure-H opposing the acquisition. It is also clear that no enquiry has been held as contemplated under Section 28(3) of the Act and no order has been passed after granting the petitioner an opportunity of being heard. In fact, the objections filed by the petitioner has not been considered. The matter was posted for spot inspection.

8. Sub-section (2) of Section 28 of the Act states, 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 thirty days from the date of service of the notice, why the land should not be acquired. Sub-section (3) of Section 28 of the Act states, after considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

9. In *The Barium Chemicals Limited and Another v. A.J. Rana and Others*, AIR 1972 SC 591 the Apex Court was considering the meaning of the word "consider". It has been held thus:

"The words "considers it necessary" postulate that the authority" concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect" (vide shorter Oxford Dictionary). According to *Words and Phrases - Permanent Edn.*, Vol. 8-A to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent."

10. This Court in the case of *D. Hemachandra Sagar and Another v. State of Karnataka and Others*, 1999 (1) K.L.J. 510 was considering the case relating to consideration of objections by the Bangalore Development Authority under Section 17(5) of the Act. It has been held as under:

"A statutory Authority like BDA evolves its own procedure to consider the representations filed by the owners in respect of the proposed acquisition. There is no hard and fast rule that the Authority itself should consider each of the representations before making appropriate orders. However, it is settled that the consideration of the representation by any Authority should be in the manner recognised by law. "Consideration of representation" postulates that the Authority concerned has thought over the matter by applying its mind to the relevant portion of the representations and may make its recommendation assigning reasons for such recommendation. Mere extracting the nature of objections and his remarks without assigning reasons is no consideration at all."

11. The Apex Court in the case of Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai and Others, (2005) 7 SCC 627, was considering the scope of Section 5-A of the Land Acquisition Act, 1894, which is in pari materia with Section 28(3) of the Act. It has been held as under:

"The Land Acquisition Act is an expropriator) legislation. In such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. Section 5-A of the Act confers a valuable and important right in favour of a person whose lands are sought to be acquired and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

It has been further held as under:

"The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the Court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The Court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Section 6(3) of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a Statutory Authority exercises such enormous power it must be done in a fair and reasonable manner."

12. In Raghbir Singh Sehrawat v. State of Haryana and Others, (2012) 1 SCC 792 the Apex Court has held as under:

"42. It is difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without

complying with the mandate of the statute. As noted by the National Commission on Farmers, the acquisition of agricultural land in the name of planned development or industrial growth would seriously affect the availability of food in future. After independence, the administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide."

(emphasis supplied)

13. In the instant case, respondent 4 has not considered the objections filed by the petitioner. Tire petitioner was not granted an opportunity of being heard. I am of the view that final notification at Annexure-M, dated 1-2-2014 insofar as the aforesaid land is concerned, requires to be quashed and the matter requires reconsideration by respondent 4.

14. In the result, writ petition succeeds and it is accordingly allowed in part. Consequently, final notification at Annexure-M, dated 1-2-2014 insofar as the petitioner's land is concerned, is hereby quashed. The matter is remitted back to respondent 4 for fresh disposal in accordance with law and in the light of the observations made above. Respondent 4 is directed to proceed further in the matter from the date of holding an enquiry under Section 28(3) of the Act. The petitioner is directed to appear before respondent 4 on 29-8-2016 without any further notice.

15. In view of the disposal of the writ petition as above, I.A. No. 1 of 2016 does not survive for consideration. It is accordingly disposed of. No costs