
(1989) 06 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 707 of 1989

B.U. Dalu

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 13
Land Acquisition Act, 1894 — Section 64

Citation : (1989) ILR (Kar) 3076 : (1989) 2 KarLJ 237

Hon'ble Judges : Shivashankar Bhat, J

Bench : Single Bench

Advocate : A.K. Subbaiah, for the Appellant; S.B. Shahapur, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.

Issue rule.

1. The petitioner's land measuring 0.71 acre was acquired for the implementation of Harangi Project and an award was made for payment of Rs. 47,295/- by way of compensation, payable to the petitioner and his brother. A notice dated 25-5-1988 (Annexure A) was issued to the petitioner intimating that award has been made and intimating him that the compensation would be paid on 29-9-1988. According to the petitioner, when he went to the office of the 2nd respondent, instead of making the payment, he was asked to go to the office again and again and that he visited the office of the 2nd respondent on many occasions and he had to spend over Rs. 3,000/- in this regard. Even then, the amount was not paid to him and consequently he had to file this Writ Petition on 10-1-1989 seeking an appropriate Writ, order or direction directing the respondents to make an immediate payment of the compensation awarded and notified as per Annexure A. Having regard to the fact stated in the Writ Petition, this Court directed the learned Government Pleader to take notice on 11-1-1989.

Thereafter the Writ Petition was adjourned atleast on two occasions, the last adjournment being on 30-3-1989.

2. The facts of the case are quite simple. All that the respondents had to state, is the reason for not paying the compensation to the petitioner inspite of the award made under the provisions of the Land Acquisition Act. In case there was a proper reason for the non-payment, which had to be explained by filing a statement of objections, the respondents could have instructed the learned Government Pleader the nature of their defence, so that, he could have placed the said plea, atleast generally, before the Court. If the respondents point out a plausible defence, this Court always grants sufficient time to the respondents to file the objection statement or issues rule nisi, instead of keeping the matter in the Preliminary Hearing List. Object of issuing a notice under the proviso to Rule 13 of the Writ Proceedings Rules as to why Rule Nisi should not be issued (i.e. notice re: Rule) is to find out as to whether the petitioner has an effective alternative remedy, or whether the petitioner's explanation regarding laches (in case of delay) is prima facie acceptable, or whether the grievance of the petitioner could be satisfied by an explanation of the respondent or whether petitioner's assertion of facts in the Writ Petition is patently erroneous or correct etc. This practice of issuing notice re: Rule is an exception to the normal practice of issuing Rule Nisi whenever petitioner makes out a prima facie case or an arguable case.

3. In a substantial number of cases, facts would be simple and straight; an interpretation of a clause in the statute or a document may be involved; Court may have a doubt in respect of certain assertions made by the petitioner; in some cases respondent may come forward with a ready answer either willing to the grant of relief to the petitioner or point out the flaw in the petitioner's case disentitling him to any relief. It is not possible to categorise the innumerable circumstances under which the Court may issue notice re: Rule. But most of those cases may involve fact situations as stated above. The purpose of this proviso to Rule 13(a) is to enable the disposal of such cases early, instead of keeping them accumulated with other cases involving complicated questions.

4. Whenever "Notice Re: Rule" is issued, the respondent has to instruct his Counsel and place before the Court the nature of his defence. In case the intended defence is shown to be of a substantial character, and is not frivolous or vexatious, the Court would either issue Rule or would certainly grant further time to the respondent to place his defence on record by filing his statement of objections.

5. The complaint against the respondents is that they are procrastinating and having failed to discharge their statutory obligations. A period of six months after notice to them is more than sufficient for them to place the nature of their defence before the Court. Any grant of further time will result in aiding the alleged callousness of the respondents. Respondents have not even cared to instruct the learned Government Pleader as to the nature of their defence.

6. The Award binds the respondents. They have acquired the petitioner's land. Payment of compensation for the land acquired is a statutory obligation. In fact, the power to acquire land compulsorily, is always coupled with the duty to pay compensation for the same. Earlier, under Article 31 of the Constitution, no law for acquisition of property was valid unless it provided for payment of compensation. Though this Article is deleted, it is replaced by Article 300A of the Constitution which says that "no person shall be deprived of his property save by authority of law". Provisions of the Land Acquisition Act empower the acquisition of land for which payment of compensation is mandatory. Normally, the land on acquisition can be taken possession of only after an award is made (vide Section 16 of the Land Acquisition Act). The award is to be made u/s 11 and has to be notified as per Section 12. The interest rights of the claimants to the compensation and the quantification of the compensation offered by the acquiring authority are the subject matter of an award. Whenever there is a dispute as to the right of a claimant for the compensation, the Act provides for depositing the compensation in Civil Court so that the dispute regarding the right could be resolved by the Civil Court. However, when the Award does not disclose the award existence of any dispute and the award made by the Land Acquisition Officer admits the right of a person to receive the compensation, it is inconceivable as to why he should not make the payment to the said person.

7. As observed by Cooley (A Treatise on the Constitutional Limitations, page 559), "it is a primary requisite, in the appropriation of lands for public purposes, that compensation shall be made therefore." This does not mean that payment of compensation is a pre-requisite for taking possession of the land. But there should be an early payment of compensation to make the procedure fair and just.

8. For a large number of people, land is the means of livelihood and occupation. A person who loses his land for a public purpose has to think of an alternative place to carry on his occupation; he may have to search for an alternative occupation also. The statutory authorities should act sympathetically and promptly in a situation as this.

9. For the reasons stated above, I decline the request of the learned Counsel for the respondent for an adjournment. No plausible defence was pointed out by him against the prayer made in the Writ Petition.

10. Consequently, the Writ Petition is allowed. The 2nd respondent is directed to make the payment in respect of the land S.No. 49/17 acquired from the petitioner according to law within four weeks from today. Petitioner is entitled to his costs payable by the respondents computed at Rs. 1,000/-.

Rule is made absolute.