

(2013) 05 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 43463 of 2011 (LB-RES)

C.G. Gangadhar

APPELLANT

Vs

Mysore Urban Development Authority and Another

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17

Citation : (2013) 4 AKR 366 : (2013) 4 KarLJ 559

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Sriyuths M.S. Bhagwat, D. Pavanesh and Lokesh M, for the Appellant; Sriyuths N.B. Vishwanath, High Court Government Pleader and P.S. Manjunath, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the preliminary notification dated 12-12-2006, Annexure-A issued by the first respondent insofar as it relates to the land belonging to the petitioner measuring 1 acre 39 guntas in Sy. No. 81 situated at Sarakari Utthanahalli Village, Varuna Hobli, Mysore Taluk. Respondents issued a preliminary notification on 12-12-2006 as per Annexure-A proposing to acquire 760.02 acres for formation of layout called "Shantaveri Gopalagowdanagar, II Stage Extension, Mysore. This preliminary notification was issued u/s 17 of the Karnataka Urban Development Authorities Act, 1987. In this preliminary notification respondents have also proposed to acquire the land belonging to the petitioner. Even after lapse of four years the respondents have not issued the final notification. Therefore, the petitioner is before this Court to quash the acquisition proceedings insofar as it relates to the land belonging to the petitioner.

2. Heard arguments on both the side and perused the entire writ papers.

3. A Division Bench of this Court in Shimoga Urban Development Authority and Another Vs. State of Karnataka and Others, considered the question of delay in issuing the final notification. For the purpose of this case the relevant paras 17 and 18 are as under:

17. The effect of delay has been considered by the Supreme Court in Ram Chand and Others Vs. Union of India (UOI) and Others, Though the said case dealt with the delay between the date of final notification and the date of passing of the award, the principles enunciated therein will equally apply in respect of the delay between the preliminary notification and final notification. The following observations are apposite:

It is settled that in a statute where for exercise of power no time limit is fixed, it has to be exercised within a time which can be held to be reasonable. The authorities are enjoined by the statute concerned, to perform their duties within a reasonable time and as such they are answerable to the Court, why such duties have not been performed by them, which has caused injury to the claimants.

The Supreme Court held that where the compensation is pegged down to the date of preliminary notification and there is inordinate delay, the market rate as on the date of preliminary notification becomes a fraction of the market rate prevailing at the time of passing of the award and taking of possession and that would be unjust to the landowners.

18. In this case the Authority has not explained the inordinate delay. Even if it is assumed that the delay upto 15-3-1989 is explained by reason of the fact that the scheme was approved by the Government u/s 18(3) of the Act on that day, there is absolutely no reason forthcoming for the delay of more than 3 years between 15-3-1989 to 2-6-1992. In this case, the landowners have approached this Court in the year 1992 immediately after the Final Notification and are having the benefit of stay. In the circumstances, even if the preliminary notification is held to be valid for any reason, the final declaration u/s 19(1) of the Act may have to be held to be invalid on the ground of delay in issuing the same. Be that as it may.

4. Further learned Single Judge of this Court in Smt. M.V. Lalithamani and Others Vs. Mysore Urban Development Authority and Others, by considering the law declared by the Division Bench of this Court in the case referred above held "if there is no explanation offered the delay becomes fatal. In other words, if there is acceptable explanation, delay is to be condoned. Therefore quashing of the final notification on the ground of delay depends upon whether delay has been properly explained or not". Further the learned Single Judge of this Court in W.P. Nos. 19468 to 19475 of 2012 vide order dated 3-7-2012 (unreported judgment) held that "preliminary notification is only a proposal for acquisition of land and the landowner will have an opportunity to oppose the same by filing the objections". Therefore the writ petition filed questioning the preliminary notification came to be dismissed.

5. It is not in dispute that the Karnataka Urban Development Authorities Act, 1987 do not specify the period in which the final notification is to be issued unlike under the provisions of the Land Acquisition Act, 1894. In those circumstances, a Division Bench of this Court and learned Single Judge of this Court in the decisions referred to above held that in the absence of any specific provisions specifying the period of limitation to issue the final notification the same is to be issued within a reasonable time. What is the reasonable time depends on the facts and circumstances of each case. If there is acceptable and satisfactory explanation for the delay in issuing the final notification then the Courts cannot quash the acquisition proceedings. Keeping these principles in view, it is necessary to examine the fact situation in the present case.

6. Admittedly, the impugned preliminary notification was issued on 12-12-2006 u/s 17 of the Karnataka Urban Development Authorities Act. Even after lapse of 6? years the final notification is not issued. After lapse of four years, 11 months from the date of issuing of preliminary notification the petitioner is before this Court questioning the same. Respondents in their statement of objections offered explanation and the same reads as under:

In this case also, this respondent seeks to place the following chronology of events in justification of the delay in issuing the final notification:

7. A reading of the above explanation manifestly makes it clear that the same is not reasonable and satisfactory. The steps that are required to be taken by the respondents before initiation of acquisition proceedings are taken by them after issuing of preliminary notification. Therefore the various steps taken by the respondents after issuing of preliminary notification cannot be a satisfactory explanation for this inordinate delay of 6? years from the date of initiation of preliminary notification. Therefore, the explanation offered by the respondent as stated above is liable to be rejected. When a preliminary notification is issued certain civil and legal consequences will follow. After issuing of preliminary notification the owner of the land is barred from alienating, developing and improving the land. Further the owner of the land will be forced to part with the land for market value as on the date of preliminary notification when prices are escalated. This Court can take judicial notice that in the recent past in and around Mysore where the lands in question is situated the land rates are escalated tremendously. The delay in issuing the final notification by the respondents has caused great hardship, loss and inconvenience to the petitioner who is the owner of a bit of land. For the reasons stated above, the following:

ORDER

(i) Writ petition is hereby allowed.

(ii) The impugned preliminary notification dated 12-12-2006 issued by the first respondent as per Annexure-A, insofar as petitioner is concerned is hereby quashed.

(iii) Ordered accordingly.