

(2016) 07 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 701 of 2016 (LA-BDA).

Chandru R - Petitioner @HASH State of Karnataka and Others

Date of Decision : 13-07-2016

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 27
Land Acquisition Act, 1894 — Section 12(2), Section 16, Section 16(2)

Citation : (2016) 6 KantLJ 409

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Prof. Ravivarmakumar, Senior Advocate for Sri Vijaya Kumar, Advocate, for the Petitioner; Sri. R.B. Sathyanarayana Singh, Additional Government Advocate, for the Respondent No. 1; Sri. A. Lokanati Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J. - The petitioner has called into question the endorsement dated 23-2-2015 (Annexure-S) turning down the petitioner's request for the withdrawal of the land from acquisition. He has also sought the relief of declaration that the acquisition proceedings in respect of the land in question have lapsed.

2. Sri Ravi Varma Kumar, learned Senior Counsel appearing for Sri B.B Bajentri for the petitioner submits that the land in question is converted from the agricultural to non-agricultural purpose. Such lands cannot be acquired. In support of his submissions, he relies on this Court's orders dated 22-2-2006 (Annexure-H), 30-5-2011 (Annexure-K) and 1-12-2014 (Annexure-R) in W.P. Nos. 9612 of 2006, 18197 of 2011 and 53180 of 2014 respectively.

3. Sri Ravi Varma Kumar further submits that the impugned order is not reflective of the application of mind and consideration of the relevant materials. He brings to my notice the third respondent's report dated 6-8-2013 (Annexure-Q) recommending the withdrawal of the lands in question from the acquisition, as guideline 3 in Junjamma and others v. Bangalore Development Authority, ILR

2005 Kar. 608 is applicable to this case. He submits that the said report itself is prepared on holding the spot inspection by the third respondent.

4. The learned Senior Counsel, on instructions asserts the possession of the petitioner of the land in question. He endeavours to point out with reference to Annexure-R2 that: (i) the mahazar is not drawn by any Authorised Officer of the State Government; (ii) the landowner was not present at the time of drawing the alleged mahazar; (iii) the mahazar is in cyclostyled form; and (iv) it does not contain the addresses, much less the names of the mahazardars.

5. The learned Senior Counsel submits that the issuance of the publication under Section 16(2) of the Land Acquisition Act, 1894 ("Old Act" for short) on 3-8-2011 is in utter violation of the three orders passed by this Court in W.P. Nos. 9612 of 2006, 18197 of 2011 and 53180 of 2014. He submits that the conduct of the respondents is contumacious.

6. He relies on this Court's decision in the case of H. Eraiah and Another v. State of Karnataka and Others, 2014 (2) Kar. L.J. 77. He submits that the acquisition proceedings have lapsed by the operation of law. He reads out the provisions contained in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("New Act" for short). It reads as under:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. - (1).....

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

7. Sri R.B. Sathyanarayana Singh, learned Additional Government Advocate prays for the dismissal of this petition.

8. Sri A. Lokanath, learned Counsel appearing for the respondents 2 and 3 submits that there is no question of deleting the lands in question from the acquisition proceedings, as the award is passed on 12-4-2004 and the amounts are deposited with the Reference Court on 21-10-2005. He submits that the possession is also taken on 26-5-2004 and that the act of taking over the

possession is published in the Gazette under Section 16(2) of the Land Acquisition Act, 1894 on 3-8-2011.

9. The submissions of the learned Counsel have received my thoughtful consideration. The following three questions fall for my consideration:

(i) Whether the claim of the BDA that it has taken over the possession of the land in question is acceptable?

(ii) Whether the deposit of the amounts with the Reference Court amounts to satisfying the award and consequently saves the acquisition proceedings taken under the Land Acquisition Act, 1894?

(iii) Whether the petitioner is entitled to the relief of declaration that the acquisition proceedings have lapsed?

In Re: Question No. 1:

10. This Court's decision in the case of *D. Narayanappa v. State of Karnataka*, by its Secretary, Housing and Urban Development Department, Bangalore and Others" ILR 2005 Kar. 295 is of immense value for examining the first question. In the said case, this Court did not accept Section 16(2) Gazette notification, as it only showed the taking over of the symbolic possession and as the landowner in the said case was in settled possession and as the B.D.A. did not furnish the materials particulars as to from whom the possession was taken, how it was taken, etc.

11. Further, in the case of *Meenakshi Thimmaiah and Others v. State of Karnataka* by its Secretary, Urban Development Department and Another, ILR 2010 Kar. 62 it is held that the lands vest with the State Government, only if the possession of the same is taken in a manner known to law. In the said reported case, the possession of the land was stated to have been taken by the Revenue Inspector. It is held therein that such an officer is not authorised to take the possession of the acquired lands. The mahazar was also disbelieved, as it was signed by some persons whose identity was not known.

12. Further, the B.D.A. has not placed any material on record to show that the petitioner was indeed called upon to surrender the vacant possession. The mahazar is not signed by the owner or occupant of the land; it just contains some signatures whose identity is not ascertainable, because the names and addresses of mahazar witnesses are not mentioned at all.

13. In its decision in the case of *Prahlad Singh and Others v. Union of India and Others*, (2011)5 SCC 386 the Hon"ble Supreme Court has held that the vesting of the land under Section 16 of the Land Acquisition Act presupposes the actual taking of possession and till that is done, the legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the Acquiring Authority.

14. In the instant case, as already noticed earlier, no credence can be given to the respondents' claim that they have taken over the actual and physical

possession of the land.

15. No explanation is forthcoming from the respondents as to why they took seven long years for publishing the act of taking over the possession. As per the official version of the respondents, the possession mahazar is drawn on 26-5-2004 and the notification under Section 16(2) is issued on 3-8-2011.

16. Yet another aspect, which cannot be glossed over is that this Court, by its three orders dated 22-2-2006 (Annexure-H), 30-5-2011 (Annexure-K) and 1-12-2014 (Annexure-R) in W.P. Nos. 9612 of 2006, 18197 of 2011 and 53180 of 2014 directed the respondents not to disturb the possession of the writ petitioners and not to take any prejudicial action against their possession until such time that their representation for the release of the lands from acquisition is disposed of. Notwithstanding the three orders passed by this Court, the respondents published the act of taking the possession in Gazette on 3-8-2011. Tire least that can be said is that it is not in the letter and spirit of the said three orders.

17. Sri. Lokanath has produced the original file. On browsing through the same, the file is returned to him. It contains a copy of Section 12(2) notice. The seal found thereon reads as follows:

VERNACULAR MATTER

Sd/-

27-5-2004 Revenue Inspector,

S.A.L.A.O. Section,

B.D.A., Bangalore."

18. The plain reading of Section 12(2) notice and the seal thereon reveals that it was affixed on the land in question on 27-5-2004 and the possession is taken one day before the said date. It is stated in the said notice that the petitioner is called upon to surrender the vacant possession of the land on 26-5-2004. The sequence of events is clearly indicative of the landowner not being put on notice to handover the vacant possession or to be present to witness the act of taking over the possession.

19. For the all the aforesaid reasons, the respondents' version that they have taken over the possession of the lands in question is unacceptable.

In Re: Question No. 2:

20. The respondent cannot take the stand that the compensation amount is disbursed. It is not known as to why Section 12(2) notice was not sent under RPAD or by certificate of posting to the petitioner and other persons interested in the land to receive the compensation. Nothing is placed on record, except the endorsement that it is affixed on the land in question. The question of depositing the compensation amounts would arise only if there is dispute as to who is

entitled to receive the amounts or the proportion in which it is to be received or the person who is entitled to receive the compensation amount does not come forward to receive it. Merely sending the money to the Reference Court or to the Government Treasury does not amount to satisfying the award. In saying so, I am fortified by the Apex Court's judgment in the case of Rattan Singh v. Union of India and Another, 2015 AIR SCW 6843. The relevant portion of the said judgment is extracted herein below:

".....Section 31 mandates the Collector to make payment of compensation to such persons unless prevented by one of the contingencies contemplated in sub-section (2), namely: (i) the persons interested entitled to compensation do not consent to receive it; (ii) there is no person competent to alienate the land; and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of these contingencies the Collector is prevented from making payment of compensation to the persons entitled to compensation, the Collector is required to deposit the compensation in the Court to which reference under Section 18 may be made. Thus compensation can be regarded as "paid" if the compensation has literally been paid to the person interested, or after being offered to such person, it has been deposited in the Court. The deposit of the Award in a Government Treasury would not amount to compensation being paid to the person interested "

21. As held by the Apex Court in the case of Tukaram Kana Joshi and Others through Power-of-Attorney Holder v. Maharashtra Industrial Development Corporation and Others, 2012 AIR SCW 6343 even under valid acquisition proceedings there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest and make the payment of requisite compensation.

22. In the case on hand, the award is admittedly passed on 12-4-2004. But the payment of compensation has been eluding the landowners. Even when the respondents claim that they have deposited the amounts on 21-10-2005, it would not mitigate the difficulties of the land losers. The Apex Court has this to say in para 12 of its decision in K. Krishna Reddy and Others v. The Special Deputy Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh, AIR 1988 SC 2123:

"12..... After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may, lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should

be made without delay. The enhanced compensation must be determined without loss of time....."

23. For all the aforesaid reasons Question No. 2 is answered in the negative.

Re: Question No. 3:

24. All the three circumstances enumerated under Section 24(2) of the New Act are attracted to the facts of this case:

(i) Admittedly, award is made five years prior to the passing of 2013 Act;

(ii) Physical possession of the land is not taken;

(iii) Compensation is not paid.

25. Therefore, the proceedings are liable to be declared as lapsed. The third question is answered accordingly.

26. In the result, I allow this petition by declaring that the acquisition proceedings initiated vide the impugned notifications and the scheme for further extension of Sir M.V. Layout have lapsed insofar as they pertain to the petitioner's lands.

27. Needless to observe that if the land in question is required for any public purpose, it is open to the respondents to resort to the initiation of the acquisition proceedings afresh.

28. No order as to costs.