

(2014) 01 KAR CK 0193
In the Karnataka High Court
Case No : Writ Petition No. 39824 of 2011

Chinnamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 12(2), 16(2), 4(1), 5A

Citation : (2014) 1 AKR 643 : (2014) 2 KCCR 1510

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : P. Krishnappa, Advocate for the Appellant; T.M. Venkata Reddy and H.T. Narendra Prasad, Addl. Govt, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—The petitioners are said to belong to the Thoti community of Hinnakki village, Anekal Taluk. With the coming into force of the Karnataka Village Offices Abolition Act, 1961 (Hereinafter referred to as the "KVOA Act", for brevity) the Hakkudars are said to have been registered as the occupants of the following lands and the petitioners claim under the said Hakkudars.

The petitioners claim that there was an order of regrant made as on 29.6.1972 and pursuant to the same, mutation entries were effected in favour of the petitioners to the extent of one-fourth share each in the said lands.

The present petition is filed in respect of Survey No. 49 to the extent of 4 1/2 guntas out of 24 1/2 guntas insofar as petitioners-1 to 4 are concerned and an extent of 4 1/2 guntas out of 24 1/2 guntas insofar it relates to petitioner No. 5. Whereas the other survey numbers have been acquired and the compensation has been received by the petitioners in respect of other survey numbers. Petitioners 1 to 4 admit to having received compensation in respect of an extent of 20 guntas out of 24 1/2 guntas and petitioner No. 5 also admits having received the compensation in respect of an extent of 20 guntas out of 24 1/2 guntas of the said lands.

The Land Acquisition Officer (LAO) is said to have passed an award on 10.8.2007. The same has been approved by the Commissioner, Karnataka Housing Board (KHB), Bangalore. It is however claimed that the award notice u/s 12(2) of the Land Acquisition Act, 1894 (Hereinafter referred to as the "L.A. Act", for brevity) was not issued and served on petitioners 1 to 5. As per the award, the compensation in respect an extent of 20 guntas out of 24 1/2 guntas in Sy. No. 49 has been awarded and in respect of an extent of 20 1/2 guntas in Sy. No. 49, the award was made in favour of Khatedars and in all, the award is in respect of an extent of 2 acres 9 guntas of land in favour of 4 sets of people out of total extent of 2 acres 18 guntas. It is asserted that no award has been made in respect of constructions existing thereon and that the award was a consent award made by the Special LAO. As per the award, notice under Sections 9 and 10 of the L.A. Act was said to have been issued to H. M. Veerabhadrappe, petitioner No. 5 herein, to the extent of 20 guntas and Smt. Chinnamma to the extent of 20 guntas.

Petitioner No. 5 - H.M. Veerabhadraiah, son of late Muniswamy and Karagappa, son of late Muniswamy are said to have had filed an application dated 27.5.2005 contending that Survey No. 49, measured 2 acres 18 guntas and there were ancestral graves in the land and they had further stated that they had constructed houses in Survey No. 49 and the same was adjacent to an area known as the Janatha Colony.

A representation dated 23.11.2010 was said to have been addressed to the Commissioner, KHB by Smt. Chinnamma contending that Survey No. 49, of which 4 1/2 guntas was not the subject-matter of acquisition.

It is the case of the petitioners that the award made by the LAO is only to the extent of 20 guntas insofar as the petitioners 1 to 4 are concerned and to the extent of 20 guntas insofar as the petitioner No. 5 is concerned. It is asserted that an extent of 4 1/2 guntas, each, so far as the constructions existing over the land bearing Survey No. 49 is concerned was never acquired and no award is made to the extent of 4 1/2 guntas, each, in the said survey number.

2. The petition is contested by the KHB to contend that the land bearing Survey No. 49 measuring 2 acres 18 guntas, situated at Hinnakki Village, Anekal Taluk belonged to the original khatedhars, namely, Muniveeappa, Muniswamy, Chinnamma and other Anubhavaders. The said land was acquired by respondent No. 2 for the purpose of allotting sites and constructing houses for the public as per preliminary notification dated 1.4.2005 u/s 4(1) of the L.A. Act and the same was published in the gazette on 28.4.2005 and consequently, the final notification dated 2.11.2006 has been issued u/s 6(1) of the L.A. Act and the same published in the gazette on 9.11.2006. This was preceded by an inquiry by respondent No. 2 u/s 5A of the L.A. Act, on 13.2.2006 and thereafter an award was passed on 14.8.2007.

It is contended that based on the acquisition made, the respondent had passed a

consent award on 14.8.2007 in respect of an extent of 2 acres 9 guntas only, out of the entire property, at the rate of Rs. 34,00,000/- per acre in the names of Veerabhadrappa, Nanjamma, Chinnamma and Rudrappa. Thereafter, the possession was taken u/s 16(2) of the L.A. Act, on 14.8.2007 itself and the same was gazetted on 1.12.2011.

It is further contended that the respondent had also passed a general award on 11.2.2009 in respect of the remaining extent of 0-9 guntas, which is the subject-matter of challenge in the present writ petition. The respondent consequently has taken possession u/s 16(2) of the L.A. Act on 8.12.2010 and the same was gazetted on 1.12.2011. Hence, the said disputed land measuring 0-9 guntas has vested with the respondent. It is claimed that the respondent had also served notices under Sections 9 and 10 of the L.A. Act to the respective khatedhars and Anubhavaders vide Notice dated 2.9.2008. The respondent has also served notices u/s 12(2) of the L.A. Act of passing the award vide notice dated 5.8.2009 to the respective family members of Chinnamma and Veerabhadrappa on 14.10.2009. Hence, it is contended that the entire acquisition proceedings were complete and the land has vested with the respondent.

It is further contended that as the acquisition proceedings are complete and since possession has already been taken, the petitioners are not entitled to any relief except seeking the award of compensation amount and as on the date of filing of the petition, the petitioners were not the owners and did not have any other right over the land. However, at Paragraph No. 5 of the Statement of Objections dated 6.11.2012, it is stated thus:

It is submitted that as per the pleadings in the writ petition stating the petitioners have been putting up the constructions on the land measuring 0-9 guntas in Sl. No. 49 of Hinnakki Village. But after demarking the land by preparing a sketch by the concerned survey department of this respondent, stating that the said constructions were made by the petitioners is only in B. Kharab Land belonging to the Government which is adjacent towards the Southern side of this respondent acquired land. Therefore, the constructions are not made in Sy. No. 49. Which is abutting to the same and about 5 to 6 feet constructions were encroached in Sy. No. 49 belonging to this respondent. This respondent also is herewith produced the sketch as prepared by this respondent and marked at Annexures - R5 and R6.

3. Then again, by a further statement of objections dated 29.11.2013, it is stated thus:-- It is submits that based on the completion of Acquisition proceedings this respondents was got approved the layout plan from the competent authority for the purpose of formation of Suryanagara 2nd phase and consequently carried out the work formed the layout. The copy of layout sketch is here with produced at Annexure-R9. The copies of photos of the existing constructions is herewith producing and marked at Annexure Nos. 10 and 11. Where in it as already noticed at Annexures-R5 and R6 saying that the constructions made in Government land called as Janatha colony and a portion of dilapidated small shed

measuring 3 x 5 feet has been constructed in 9 guntas including the Janatha colony. Therefore at any circumstance, the petitioners are not putting up any pukka constructions on the disputed land. Hence after completing the acquisition proceedings and also the possession already taken these respondents are in continuous peace full possession and enjoyment of the site property and also formed the residential layout for allotment to public needy. Hence these respondents are the owners have all right title and interest over the site schedule property. Hence the writ petition field is bad in law and not entitled any relief"s sought in the writ petition.

As seen from these contentions, there is a serious dispute about the "pucca" constructions, which the petitioners contend are existing over the land purportedly acquired, but of which possession has never been taken, where as it is the case of the respondents that the said constructions are illegally made in Government land albeit outside the acquired land and that there are no existing "pucca" buildings over the acquired land. This would only lead to a situation where the petitioners, if they are in possession of properly constructed properties, whether legally or illegally, even according to the respondents - but which is purportedly outside the acquired land - they cannot be dispossessed with reference to the acquisition proceedings under challenge. It would be for the State to take appropriate steps in accordance with law to recover the same from the petitioners if it is established that they are in illegal occupation of Government land.

The writ petitions are accordingly disposed of.