
(2014) 04 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No. 54301 of 2013 (LA-KIADB)

Deepak Anand

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 28(1), 28(4), 3(1)
Land Acquisition Act, 1894 — Section 11, 11(1), 12(2), 4, 8

Citation : (2014) 4 KarLJ 631

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.V. Bhat, Advocate for the Appellant; D. Nagaraj, Additional Government Advocate and B.B. Patil, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioners and the learned Counsel for the respondents. The petitioners claim that they are the absolute owners of converted land bearing Sy. No. 119 Old No. 90 measuring 1 acre 10 guntas situated adjacent to the National Highway No. 7, Kannamangala Village, Devanahalli Taluk, Bangalore District, having purchased the same under a sale deed dated 1-12-2003. The respondents had issued notifications under Sections 3(1) and 1(3) as well as Section 28(1) and 28(4) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the KIAD Act", for brevity) and the same was sought to be acquired for the Bangalore International Airport. The petitioners claim that they were not notified nor was any notice issued to them of any acquisition. It is by hindsight that the acquisition was challenged by way of writ proceedings before this Court in W.P. No. 11483 of 2008. The petitions were disposed of with a direction to the respondent 2 to pass appropriate orders in terms of the order passed in an earlier writ petition in W.P. No. 18550 of 2007 and connected cases, wherein the acquisition was upheld. However, certain directions were issued to the effect that the petitioners be given additional compensation and directing the second

respondent to determine the market value as on 29-10-2007 and not as on 6-4-2004. The petitioners claim that the respondents had issued a notice dated 3-2-2010 calling upon them to produce certain documents in support of their claim, pursuant to which they had produced the same as on 31-1-2011. Since there was no further communication, the petitioners had made series of representations commencing with a representation dated 25-7-2012 and three other representations including one on 30-8-2013. It was brought to the attention of the second respondent that the market value prevalent at the area at the relevant point of time was much larger than what was awarded in the earlier proceedings. Despite the same, there was no notice of hearing regarding enquiry in the award proceedings from the respondents. It is only by notice dated 14-11-2013 issued u/s 12(2) of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act", for brevity) dated 29-10-2013 that the petitioners were informed that an award had been passed and that the same had been approved by the Special Deputy Commissioner by his order dated 8-7-2013. The notice indicated that the award was for a sum of Rs. 75,32,281/- and that the petitioners should be personally present before the authorities within 15 days from the date of receipt of the said notice, failing which the amount would be deposited before the Competent Civil Court. It is pursuant to this that the petitioners learnt of the award having been passed.

2. On 7-3-2012, the second respondent had called for details of the transactions that had taken place between the years 2005-2006, 2006-2007 and 2007-2008 in the neighbourhood of lands bearing Sy. No. 90, New No. 119 of Kannamangala Village. The Sub-Registrar is said to have furnished details of such transactions. The petitioners in turn had furnished particulars of transactions in the neighbourhood and it was particularly urged that the second respondent ought not to rely on an earlier award passed by the second respondent dated 9-1-2010 wherein a sale transaction of the year 2007 had been taken into consideration. In spite of this, it is the case of the petitioners, that without affording an opportunity of hearing, the award has been passed restricting the compensation to a sum of Rs. 75,32,281/-.

3. The learned Counsel for the petitioner would draw attention to Section 11(1) of the LA Act, which is reproduced hereunder, for ready reference:

"11. (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land at the date of the publication of the notification u/s 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand and seal.--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

and would point out that there is no consideration by the second respondent of the specific objections raised by the petitioners and therefore, the entire proceedings u/s 11(1), purportedly conducted by respondent 2 is a farce and that there is no application of mind in considering the claim for compensation on the basis of material that is made available, which has been pointedly ignored in passing the award.

4. While the learned Counsel for the respondents in opposing the petition, has filed statement of objections placing reliance on a decision of the High Court in the case of Ramanlal Deochand Shah Vs. The State of Maharashtra and Another, . This was apparently a case where the landowner had claimed compensation at a particular rate. Whereas the Special Land Acquisition Officer had determined the compensation at a fraction of the amount claimed by the landowner. That having been challenged before the Reference Court, the Reference Court had enhanced the amount, while finding that the Land Acquisition Officer had not assigned any reason or the basis in arriving at the rate of compensation. The same having been carried to the High Court, the High Court in turn had held that the landowner stood in the position of the plaintiff and it was for him to establish the amount of compensation claimed and therefore, the Reference Court was not justified in enhancing the compensation, merely holding that the Land Acquisition Officer had not assigned any basis for awarding the compensation. It was also held that the award is in the nature of an offer and the reference made to the Civil Court is not in the nature of an appeal and hence, it was open for the landowner to establish his case for higher amount of compensation, notwithstanding the rate of compensation awarded.

5. The reasoning of the High Court in the above case on the facts and circumstances of that case cannot be applied to the present case on hand, which is primarily questioning the manner in which the Land Acquisition Officer has complied with the mandate u/s 11. The petitioners having specifically brought to the attention of the Land Acquisition Officer of several transactions whereby the value of the land was for all purposes shown at a higher rate than was adopted by the Land Acquisition Officer, with reference to an earlier award of a much earlier period which the petitioners had specifically prayed, ought not to be the basis, as there were subsequent transactions which indicated the value of the

land. Having regard to the location of the land of the petitioners, vis-?-vis the award that was passed in respect of certain lands, would certainly make a difference, which has not been taken into consideration. Notwithstanding that the petitioners may have the liberty of seeking enhanced compensation before the Civil Court the enquiry to be conducted u/s 11 and the manner in which the award should be passed after taking into consideration the relevant factors, cannot be turned into a farce. There ought to be relevance to the function cast on the Land Acquisition Officer in addressing the basis of the award. That cannot be overlooked, or be permitted to be circumvented and the Land Acquisition Officer is not in a position to ignore material that is made available by the landowners and the same ought to be taken into consideration in arriving at the just amount of compensation. It is not open for the Acquiring Authority to dismiss any such challenge to the manner in which the award is passed on the footing that it is always open for the landowner to establish his claim before the Reference Court.

Accordingly, there is a failure of justice in the Land Acquisition Officer not having taken into consideration the material that was made available by the petitioners before passing the award. Consequently, the petition is allowed. The matter is remanded to the Land Acquisition Officer to pass an award afresh, after taking into consideration the material that was made available by the petitioners, though it is always in the discretion of the Land Acquisition Officer to pass an appropriate award.

The learned Counsel for the respondents would also express an apprehension that by virtue of any such order of remand, it should not be construed that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (hereinafter referred to as "the New Act", for brevity) would be applicable. By no stretch of imagination can it be said that the New Act would become applicable. It is only under the provisions of the Land Acquisition Act, 1894 that there shall be a reconsideration of the case of the petitioners. With that observation, the petition stands allowed in terms as above. Annexure-F stands quashed.