
(1995) 04 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petns. No's. 10279 to 86 of 1994, 10190 to 10203, 11431 to 11441 and 19162 to 19164 of 1994

Desigowda and others etc.

APPELLANT

Vs

The Karnataka Industrial Area Development Board

RESPONDENT

Date of Decision : 07-04-1995

Acts Referred:

Contract Act, 1872 — Section 23

Land Acquisition Act, 1894 — Section 28 A

Citation : AIR 1996 Kar 197 : (1995) ILR (Kar) 2250 : (1995) 5 KarLJ 147

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : P.S. Manjunath and H.C. Shivaram, for the Appellant; K.V. Narayanappa, for the Respondent

Judgement

1. The petitioners in all these petitions were owners of lands in Hootagalli village. The lands of the petitioners were acquired for development of an industrial area by the respondent Board (Karnataka Industrial Areas Development Board) under preliminary notification dated 10-7-1980 and final notification dated 2-11-1981 issued under Ss.28(1) and 28(4) of the Karnataka Industrial Areas Development Act, 1966 ("Act" for short). In all these cases, the petitioners entered into agreements with the State Government agreeing to receive compensation ranging from Rs. 18,000/- to Rs. 18,750/- per acre, under S.29(2) of the said Act. The petitioners also executed Indemnity Bonds in favour of the Government and the respondent Board, indemnifying them against any claim that may be made by any third parties, as a consequence of the State Government and the respondent Board acting on the representations of the petitioners that they were the owners of the lands and consequently paying the compensation amount to them. On the basis of such agreements. Bills were prepared for the compensation amount and the interest thereon; and the same had been paid to the petitioners in or about the year 1985 in full settlement. No awards were passed in regard to the acquisition of lands of petitioners, under S. 29(3) of the

said Act, as the compensation had been determined by agreement under S. 29(2).

2. Some other owners of lands acquired under the same notifications, did not however enter into agreements under S. 29(2). In those cases, the State Government referred the matters to the Deputy Commissioner for determination of the compensation, under S. 29(3). The Deputy Commissioner passed awards; and not being satisfied with such awards, those owners sought reference to the Civil Court. The Civil Court by judgment and award dated 25-8-1993 passed in LAC No. 389 and 390/1987, determined the, market value in regard to such lands at Rs. 28,500/- per acre. The petitioners, who had already received compensation by agreement under S. 29(2) of the said Act, at the rate of Rs. 18,000/- to Rs. 18,750/- per acre, made claims for increase in the compensation, under S. 28A of the Land Acquisition Act, 1894 ("LA Act" for short) on the ground that their lands were also situated in the same area and covered by the same Notifications and therefore they are also entitled to increased compensation at the rate of Rs. 28,500/- per acre, as in the case of the petitioners in LAC Nos. 389 and 390/1987. The said applications have been rejected by the Respondent Board by Endorsements dated 12-1-1994 (Annexures-C1 to C10 in W.P. 10279-86/1994, Annexure-C1 to C17 in W.P. Nos. 10190-203/1994, C1 to C13 in W.P. 11431 to 11441/1994 and C1 to C4 in W.P. Nos. 18162 to 264/1994), on the ground that S. 28A of the L.A. Act is inapplicable to cases where the owners had been paid compensation under S. 29(2) of the KIAD Act. Feeling aggrieved, the petitioners have filed these petitions for quashing the said endorsements rejecting their claims. Petitioners have also sought a declaration that S. 28A of the L.A. Act is applicable, even where the compensation for the acquired land is determined by agreement and for a direction to the respondent to pay increased compensation to the petitioners, at the rate fixed by the Civil Court in LAC. 389 and 390/1987.

3. The learned counsel for the petitioners contended that S. 28A of the L.A. Act is applicable in regard to all compulsory acquisitions whether under the L.A. Act or under other Acts. He also contended that irrespective of whether compensation is determined by agreement or by an enquiry and award, S. 28A of L.A. Act is applicable.

4. Chapter VII of the KIAD Act deals with acquisition of land. Section 29 provides for two distinct modes of determination of compensation in regard to the lands acquired by the State Government, under the said chapter. Sub-section (2) provides for determination of compensation by agreement between the State Government and the person to be compensated. Sub-section (3) provides that where no agreement is reached in regard to compensation, the State Government shall refer the matter to the Deputy Commissioner for determination of the amount of compensation and the persons to whom such compensation should be paid. Section 30 makes the provisions of the Land Acquisition Act, 1894 applicable mutatis mutandis in regard to (a) enquiry and award by the

Deputy Commissioner, (b) reference to Court, (c) apportionment of compensation and payment of compensation, in regard to lands acquired under the said chapter. Section 47 provides that the provisions of the KIAD Act shall have effect notwithstanding anything inconsistent contained in any other law. The questions that arise for consideration, with reference to the said provisions, are:

(i) Whether the provisions of LA Act are made applicable to cases where compensation is determined by agreement; and if so,

(ii) Whether S. 28A of LA Act introduced by Central Act 68 of 1984 will apply to such cases where compensation is determined by agreement;

5. Where compensation is determined by agreement between the State Government and the person to be compensated, there is no question of enquiry and award by the Deputy Commissioner or reference to Court or apportionment and payment of compensation. The provisions of L.A. Act are made applicable *mutatis mutandis* only in regard to enquiry and award by the Deputy Commissioner, reference to court and apportionment of payment of compensation. These matters, namely enquiry and award by the Deputy Commissioner, reference to court and apportionment and payment of compensation arise only in regard to cases falling under S. 29(3) of KIAD Act, where there is no agreement regarding compensation and where compensation is determined by the Deputy Commissioner by enquiry and award.

6. A careful reading of S. 30 with S. 29(2) and S. 29(3) of KIAD Act, makes it clear that Section 30 of KIAD Act is not applicable in regard to acquisitions for which compensation is determined by agreement between the State and the person to be compensated, under S. 29(2) of the KIAD Act. There is no enquiry or award, there is no reference and there is apportionment and payment in the case of determination of compensation by agreement. But where there is no agreement and the matter is referred to the Deputy Commissioner for determination of compensation, the provisions of L.A. Act will *mutatis mutandis*, apply, that is Ss. 11 to 15 of Part II of L.A. Act is made applicable to enquiry and award by the Deputy Commissioner, Part III of L.A. Act to references to Court, Part IV of L.A. Act to apportionment of compensation and Part V of L.A. Act to payment of compensation. When the provisions of Land Acquisition Act are not at all applicable in regard to acquisitions covered under S. 29(2) of the KIAD Act, the question of applying S. 28A of Act does not arise at all. In the cases of petitioners, the entire matter is regulated by agreement between the parties and compensation was directly paid to them on the basis of the agreement.

7. Whether S. 28A of LA Act introduced by Central Act 68 of 1984 will be applicable to cases falling under S. 29(3) of the KIAD Act, to which provisions of LA Act are made applicable by S. 30 of KIAD Act, having regard to the principles of incorporation of a Statute by reference, is a matter that does not arise for consideration in these cases and therefore left open.

8. The learned counsel for the petitioner relied on the decision of the Himachal Pradesh High Court in *Smt. Sunyukta Guler and Others Vs. State of Himachal Pradesh*, and contended that even where the land owners had accepted compensation award without protest and without seeking reference under S. 18 of the Land Acquisition Act, they can seek payment of increased compensation under S. 28A of LA Act. The said decision deals with acquisition under the LA Act. The said decision is of no assistance to the petitioners as I have held that none of the provisions of Land Acquisition Act, is applicable in regard to acquisitions falling under S. 29(2) of the KIAD Act.

9. The learned counsel for the petitioners next contended that even if S. 28A is in applicable, petitioners will still be entitled to seek a direction to respondent for payment of compensation as per the award passed by the civil Court. He contended that a person Whose land has been acquired is entitled to just compensation; that if a person is paid compensation at a rate which is subsequently found to be inadequate on account of Civil Court determining a higher compensation for similar land, then the payment earlier made, even by agreement, will cease to be just compensation; and that the agreement in pursuance of which lesser compensation has been paid, will have to be treated as a contract opposed to public policy and therefore void, under S. 23 of the Contract Act. He concludes that the agreement cannot therefore be used to deny just compensation to erstwhile land owners; and the payment made in pursuance of such agreements will have to be treated as payment on account, and this court, in exercise of its powers under Art. 226, should direct payment of compensation to petitioners at the increased rate determined by the civil Court, to avoid discrimination and arbitrariness. The learned counsel for petitioners relied on the decision of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and the decision of this Court in *Suresh Mahajan Vs. Myveneers*, wherein it is held that if the terms of a contract are so unfair and unreasonable that they shock the conscience of the Court, S. 23 of the Contract Act will be attracted.

9A. Section 23 of the Indian Contract Act provides that consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. The said section further provides that in each of these cases, the consideration or object of an agreement is said to be unlawful and every agreement of which the object or consideration is unlawful, is void. The contention of the petitioners is that the agreement falls under the last category of unlawful agreements that is cases where the Court regards an agreement as being opposed to public policy. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, the Supreme Court observed : "..... the expression "public policy" and "opposed to public policy" are incapable of precise definition. It connotes some matter which concerns the public good and public interest. The concept of what is for

the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time."

10. The question is whether in these cases, the agreements are so unfair and unreasonable that they shock the conscience of the Court and therefore opposed to public policy as held by the Supreme Court. The respondent is a statutory body. The petitioners are land holders and they have entered into agreements with the respondent Board in the year 1985, voluntarily agreeing to receive compensation at rates varying from Rs. 18,000/- to Rs. 18,750/-. Such agreement is not entered by only one land holder, but by a large number of land holders. Such agreements are contemplated and in fact specifically provided for as the main mode of determination of compensation under the KIAD Act. The compensation amount was also received by the petitioners without protest in or about the year 1985 and the same was not challenged by any of the petitioners as being on the lower side or as being unfair, unjust or unreasonable. Nor did the petitioners at any point of time challenged the agreement entered by them under S. 29(2) of KIAD Act, on the ground that they were obtained by misrepresentation or coercion or by any other unlawful means or on the ground that they were opposed to public policy and therefore void. Merely because eight or ten years later, the Civil Court in a reference has determined the compensation at Rs. 28,500/-per acre for similar land, it cannot now be contended that the agreements voluntarily entered by the petitioners under S. 29(2) of KIAD Act, in the year 1985 were unreasonable and unfair. Nor do they shock the conscience of the Court to hold that they are opposed to public policy.

11. In fact, reference to S. 23 of Contract Act is inappropriate, where the complaint is that the consideration is inadequate. The relevant provision is S. 25 of the Contract Act which provides that an agreement made with out consideration (except where the agree ment is in writing and registered or where the agreement is a promise to pay a time-barred debt), is void.

Explanation 2 to S. 25 provides that an agreement to which consent of the promise is freely given is not void, merely because the consideration is inadequate. It is not the case of the petitioners that the agreements were not entered voluntarily or that their consent was not freely given. Hence petitioners cannot contend that the agreements entered by them under S. 29(2) of KIAD Act are void, for want of adequate consideration. Nothing prevented the petitioners to seek determination of compensation by enquiry under S. 29(3). Where the two sets of cases are governed by different provisions of a Statute and petitioners have not pursued the remedy pursued by the other owners under S. 29(3), the " petitioners cannot complain of discrimination or inequality on the ground that the consideration/compensation obtained by persons who entered into agreements under S. 29(2) and the consideration/compensation obtained by persons who sought determination of compensation by enquiry under S.29(3), are different. Hence the second contention of the petitioner is also liable to be rejected.

12. At this stage, it may be relevant to refer to the decision of the Supreme Court in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, . In that "case the petitioners filed a SLP seeking increase in compensation belatedly on the ground that the Supreme Court had in other cases, enhanced the compensation for adjoining lands. The Supreme Court held that there is no provision in the Land Acquisition Act, apart from Sec. 28A for reopening of an Award which has become final and conclusive. For availing the remedy of redetermination of compensation u/s 28A, the conditions laid down therein had to be fulfilled by making an application within prescribed time before the Collector, provided the person claiming such relief had not applied for reference u/s 18 of the L. A. Act. The Supreme Court held that in regard to cases to which Section 28A of L. A. Act did not apply, it would not be possible to entertain a petition for increasing the compensation merely on the ground that increased rate of compensation had been fixed for the adjoining land. In these cases also, once it is held that Section 28A of L. A. Act is found to be inapplicable, the question of this Court entertaining any petition on vague grounds of injustice and discrimination would not arise.

13. In view of the above, the impugned endorsements issued by the Respondents are in accordance with law and the petitioners are not entitled to any of the reliefs sought in these petitions. These petitions are dismissed accordingly.

In Writ Petitions Nos. 19162 to 19164/94, Sri K. V. Narayanapp" a, is permitted to file vakalath for the respondent within six weeks.

14. Petitions dismissed.