
(2013) 06 KAR CK 0077

In the Karnataka High Court

Case No : Writ Petition No's. 404-443 of 2013 (GM-POL-PIL)

Dharwad Growth Centre Industries Association and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 4

National Green Tribunal Act, 2010 — Section 14, 29, 30, 38(5)

Citation : (2013) 06 KAR CK 0077

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : N.S. Vijayanth Babu and Sri Srinand A. Pachhapure, for the Appellant; R.G. Kolle, AGA for R1 and R4, Sri. Basavaraj Sabarad, for R2, Sri. D. Nagaraj, for R3, Sri. Kalyan Basavaraj, ASG and Smt. H.K. Devaki, CGC for R5, Sri. Srinivas Rao, for M/s. Srinivas and Badri Assts. for R6, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna J.

1. Three distinct groups of petitioners have filed these writ petitions as a Public Interest Litigation, seeking the following reliefs:-

Wherefore, the Petitioners humbly pray this Honorable Court be pleased to:

- i) Issue writ of mandamus directing Respondent-2 to cancel the allotment of lands in Plot Nos. 360 to 462 made to Respondents vide Letter No. IADB/AS/DWD/3042/06-07 dated 22/03/07 (Annexure-A) or in alternative hold it as unlawful;
- ii) Issue writ of mandamus directing Respondent-3 to cancel the Consent for Establishment given to Respondent-6 vide Letter No. PCB/04/CFE/LR/09-10 dated 20/08/09 (Annexure-D) or in alternative hold it as unlawful;
- iii) Issue writ of mandamus directing Respondent-5 to cancel the environment

clearance given to Respondent-6 vide Letter No. F. No. J-11011/926/2008-IA II((1) dated 11/02/2009 (Annexure-C) or in alternative hold it as unlawful;

iv) Issue directions to the Respondents to take appropriate action against their errant officials responsible for supporting Respondent-6 in obtaining various permissions/clearances for unlawfully setting up of the hazardous plants;

v) Issue directions to the Respondents to pay the costs of these petitions; and

vi) Issue any other appropriate directions to the Respondents deemed fit and proper in the facts and circumstances of the case, in the interests of justice and equity.

Petitioner Nos. 2 to 40 claim to be public spirited citizens. Petitioner No. 1 is an Association of Industries called "Dharwad Growth Centre Industries Association". Petitioner Nos. 2 to 10 are industrialists, who have been allotted industrial plots in Belur Industrial Area, Dharwad. Petitioner Nos. 11 to 16 are Advocates practicing in Circuit Bench of the High Court of Karnataka at Dharwad. Petitioner Nos. 17 to 40 are agriculturists and residents of Belur, Heggeri and Kotur villages. They have averred that Dharwad Taluk was in Zone-II (backward taluks) category in the classification of taluks made in the Karnataka New Industrial Policy 2006-11 and in Zone-III (backward taluks) of the New Industrial Policy 2009-14. That Plot Nos. 360 to 462, totally 103 industrial plots have been allotted to respondent No. 6 by allotment letter dated 22/03/2007 for setting up of a sponge iron and steel plant as per Annexure "A". The allotment of land was on a lease-cum-sale basis for a period of six years and subject to various conditions and clearances to be obtained from respondent Nos. 3 to 5. Possession of the said lands was handed over to respondent No. 6 on 02/08/2008. Out of the area of 60 acres allotted to respondent No. 6, four sponge iron plants and other ancillary units are to be set up. On 11/02/2009, respondent No. 5 accorded environmental clearance to respondent No. 6 under the Environment Impact Assessment Notification dated 14/09/2006. Also, respondent No. 3 accorded Consent For Establishment (CFE), on 20/08/2009 to respondent No. 6, valid for a period of five years, subject to various conditions. Respondent No. 6 has commenced work for setting up of the plants. This area allotted to respondent No. 6 is close to Belur village, which is about one km away; Kotur village, is at a distance of 2.5 km. and Mummigatti village, is at a distance of 2 km. The Circuit Bench of the High Court at Dharwad is at a distance of about one km. The manufacture of sponge iron and steel billets require water and in that area, there is scarcity of water. The transportation of raw materials to the sponge iron and steel plant would involve movement of large number of trucks, which would cause noise and air pollution in the area. There would be emanation of effluents, which would cause air and water pollution, which would adversely affect the small and medium scale industries in the neighbourhood as also the health of the people living and working in the neighbourhood. In that connection, on 22/01/2010, the Vice President of Mummigatti Gram Panchayat, addressed a letter to the Branch Office of respondent No. 2 to prevent the setting

up of the sponge iron and steel plant. Similarly, in March 2012, certain members of petitioner No. 1-Association sought closure of the same. Heggeri villagers and Kotur Gram Panchayat have also sought prevention of the establishment of sponge iron and steel plant being set up by respondent No. 6.

2. On the aforesaid premise, it is contended by the petitioners that the establishment of sponge iron and steel plant by respondent No. 6 is unlawful and impermissible in law and that the allotment of land, grant of environmental clearance and the Consent For Establishment of the plant are all unlawful. Invoking Article 21 and 19(1)(g) of the Constitution, the petitioners have sought the aforesaid prayers.

3. Statement of objections have been filed by respondent No. 6 contending that the writ petition is not maintainable as the petitioners have not approached this Court with clean hands as they have suppressed material facts and have misrepresented facts. Respondent No. 6 has stated that the petitioners have to avail the alternative remedy of approaching the National Green Tribunal, as far as prayers 2 and 3 are concerned, as they relate to environmental issues covered under Schedule-I of the National Green Tribunal Act (hereinafter, referred to as the "NGT Act", for the sake of brevity).

4. Narrating the background of setting up of the industry, it is stated that the State High Level Committee (SHLC) at its meeting held on 31/03/2006, considered the proposal of respondent No. 6 for setting up of an integrated steel industry and after due deliberation, accepted its proposal by issuance of Government Order dated 16/03/2007, communicating to various authorities the facilities and amenities that respondent No. 6 is entitled to for setting up of its industry in Belur Industrial Area near Dharwad. Consequently, sixty Acres of land was allotted by the second respondent by letter of allotment dated 22/03/2007 and possession thereof, was handed over on 02/08/2008. An application was made by respondent No. 6 in order to seek approval from the Ministry of Environment and Forests (MOEF) and by order dated 11/02/2009, environmental clearance was granted. Subsequently, the Karnataka State Pollution Control Board (KSPCB), granted approval for establishment of a mini integrated steel plant along with captive power plant of 30 MW capacity in the land allotted to respondent No. 6. Thereafter, respondent No. 6 has commenced construction work of the industry, after obtaining permission from various authorities.

5. The allotment of sixty Acres of land from respondent No. 2 to respondent No. 6 by the SHLC is in view of Regulation 13 of the Karnataka Industrial Area Development Act (hereinafter, referred to as the "KIAD Act"). Respondent No. 6 has also stated that the distance between the land allotted to it and the Circuit Bench of this Court, Heggeri, Belur and Kotur villages as well as Mummugatti, are incorrect and infact, industries of similar nature namely, Southern Forge Steel Limited, Bharat NRF Coke Limited, RPA Ferro Alloys, are all located in the vicinity, there is adequate water supply for establishment of the industry and rain water harvesting and water conservation measures would be adopted to save

water. Similarly, the effluents from the power plant would be neutralized in a neutralization tank and would also be treated by adopting the latest technology. Protection of the environment would be borne in mind by planting at least 8,000 saplings in the first phase of plantation and another 5,000 saplings in the second phase within its premises. That 90% of the total cost of project has been invested and the project is nearing completion. The location of respondent No. 6-industry is at the end of the industrial area and would not have any adverse impact on any one, including the petitioners.

6. Upon the clearance given by the MOEF, it was notified in two daily newspapers namely "Times of India" and "Kannada Prabha" on 31/03/2009 and respondent No. 6 had commenced its work on the project and infact, has substantially completed it and after a lapse of four years when the project is at the final stage of construction, the petitioners have approached this Court. That petitioners No. 2 to 9 are running their respective industries in the immediate industrialized neighbourhood. Therefore, they cannot be selective in ventilating their grievance only against respondent No. 6. That petitioners No. 16 to 40, who claim to be agriculturists are in the neighbouring areas and respondent No. 2 by Notification dated 11/12/2009 has declared the lands of the majority of the petitioners as industrial lands by issuing a notification u/s 3(1) of the KIAD Act and preliminary notification dated 11/12/2009 has been issued u/s 28(1) of the said Act. Therefore, those lands are now to be utilized for industrial purposes and they cannot have any grievance against respondent No. 6-industry. Therefore, they have sought dismissal of the writ petition.

7. We have heard learned counsel for the parties.

8. Learned counsel for petitioners, in his oral submissions and synopsis of arguments filed on 06/06/2013, has drawn our attention to three aspects of the matter. The first is regarding allotment of 103 plots (Annexure "A"), the second is with regard to grant of environmental clearance (Annexure "C") and the third is in respect of Consent For Establishment (Annexure "D") granted to respondent No. 6. The main thrust of his argument is that these orders are not in accordance with law and therefore, respondent No. 6 ought not to have been permitted to proceed with the setting up of sponge iron and steel plant at Belur Industrial Area. Reiterating the averments made in the writ petition, he submitted that the prayers sought in the writ petition be granted.

9. Countering the same, learned counsel for respondent No. 6 at the outset, contended that the petitioners have no real public interest to attain in these writ petitions. That petitioner Nos. 2 to 10 are the allottees in the very same Belur Industrial Area and therefore, they cannot have any grievance against respondent No. 6. Petitioner Nos. 11 to 16 are Advocates, who have merely lent their names to the writ petition without really being aggrieved by the action of the respondents. That many of the lands belonging to respondent Nos. 17 to 40 have been notified for acquisition, for industrial purposes by respondent No. 2 and therefore, they also cannot have any grievance. He also stated that as far as

prayer Nos. 2 and 3 are concerned, the matter may be considered by the NGT. That there is a delay on the part of the petitioners in assailing the allotment of land made to the respondent No. 6 way back in the year 2007. The said allotment is in accordance with the Karnataka Industries (Facilitation) Act, 2002 and also supported by the judgment of the Hon"ble Supreme Court in the case of Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, Also there are many false statements and suppressions made in the writ petition. Therefore, the petitioners cannot be granted any relief, is the submission.

10. The respondent-authorities have supported the respective orders passed by them.

11. In the background of the aforesaid pleadings and arguments, the only point that arises for our consideration is as to whether the petitioners are entitled to any of the reliefs claimed by them.

12. The prayers sought by the petitioners are extracted above. At the outset, we hold that prayer Nos. 2 and 3 which pertain to the Consent For Establishment and environmental clearance are matters which have to be considered by the NGT in view of Chapter-III of the NGT Act. Therefore, we do not propose to enter into any examination of legality or propriety of the said orders dated 20/08/2008 and 11/02/2009 (Annexure "B" and "C") respectively. Liberty is reserved to the petitioners to agitate their claims on those aspects before the NGT, if they are so advised.

13. The observations made by the Hon"ble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others, extracted below form the basis for refraining from adjudicating certain issues as aforesaid:-

38. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the "NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

39. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven Statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct

transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

14. As far as prayer No. 1 is concerned, it deals with allotment of plot Nos. 360 to 462 made to respondent No. 6 by letter dated 22/03/2007 (Annexure "A"). As already stated, the said allotment has been made by the second respondent for the purpose of sponge iron and steel plant to be set up by respondent No. 6. It is not in dispute that the plots allotted to respondent No. 6 are in Belur Industrial Area, which is one of the growth centers. Possession of the lands was given to respondent No. 6 on 02/08/2008. Subsequently, various approvals and clearances have been obtained by respondent No. 6 and according to it construction of the plant is substantially completed. If petitioners are persons who are in the vicinity of the plots allotted to respondent No. 6 either as industrialists or the Advocates practicing in the Circuit Bench at Dharwad or agriculturists in the areas in question, we fail to understand as to how the petitioners have remained silent all these years and have thought of preferring a writ petition only in January, 2013, assailing the allotment of land made to respondent No. 6 in the year 2007. The allotment of land to respondent No. 6 could not have escaped the attention of the petitioners having regard to the fact that they are in the vicinity of the plots allotted to respondent No. 6.

15. Also no illegality in the allotment of the plots to respondent No. 6 have been made out by the petitioners. The only point stated is that sinking of bore wells by respondent No. 6 is contrary to the conditions of allotment. If that were so, in our view that would be a matter for the respondent concerned to consider and take action. But such alleged violation of condition may not per se make the very allotment of land to respondent No. 6 illegal. Infact, in case of Chairman & MD. BPL Ltd., it has been held by the Hon'ble Supreme Court that allotment of land is a statutory act of the Board. Once a consultation takes place by mutual discussions and a consensus is arrived at between different authorities performing different functions under various statutes, the purpose for which consultation was made would be satisfied. Although, normally allotment of industrial plots should be done in terms of Regulation 7 after inviting applications, the same would not preclude the authorities of the Board, having regard to the fact situation obtaining, to take recourse to Regulation 13. If the power exercised by the statutory authorities can be traced to a provision attached to a statute, unless and until violation of mandatory provisions thereof is proved, it cannot be held that a decision is taken for an unauthorized or illegal purpose. The court would not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof, unless any illegality is shown. In the said case, it was also noted that delay would defeat equity as the allotment was made in the year 1995 and the writ application was filed after one year. By that time the company had taken possession of the land and had made sufficient investment. The Hon'ble Supreme Court therefore held that delay of this nature would have to be considered by the High Court to be of vital importance. In the absence of any

finding that legal malice was committed, all that the Court has to see is, whether there was fair play in action. A decision which has been taken after due deliberations and upon due application of mind, cannot be held to be suffering from malice in law on the ground that there had been undue haste on the part of the State and the Board.

16. Having regard to those observations, we find that no ground for judicial review of the action of respondent No. 2 in allotting the industrial plots to respondent No. 6 has been made out by the petitioners, much less, a violation of any fundamental right is established.

17. That apart, the allotment of land in the instant case was made on 16/03/2007 and the writ petition assailing the same is filed in January 2013, nearly six years thereafter. In the interregnum, possession has been handed over to respondent No. 6, which has made substantial progress in the setting up of the plant by making huge investments. The same cannot be interfered at this stage at the instance of the petitioners, even though the petition is styled as a public interest litigation. Therefore, we hold that the writ petitions have to be dismissed on the ground of delay insofar as prayer No. 1 is concerned.

18. Infact there is a plethora of decisions of the Hon"ble Supreme Court on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the Constitution cannot extend its hands to such persons who approach the Court after several years. In fact, the Apex Court has held in several decisions that stale claims ought not to be entertained by the High Courts exercising writ jurisdiction under Article 226 of the Constitution. The doctrine of delay and laches cannot be relaxed in the instant case although in certain instances Courts have entertained PIL despite delay. The decisions in that regard are as follows:-

a) In a recent decision of the Apex Court reported in *State of Orissa and Another Vs. Mamata Mohanty*, the consideration of an application where delay and laches could be attributed against a person who approaches in a writ petition is discussed by stating that though the Limitation Act, 1963 does not apply to writ jurisdiction, however, the doctrine of Limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches.

b) In the case of *Shankar Co-op. Housing Society Ltd. v. M. Prabhakar & Ors* reported in 2011 AIR SCW 3033, the Apex Court at Para 53 has given the relevant considerations, in determining whether delay or laches in approaching the writ court under Article 226 of the Constitution. The same reads as follows;

53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion,

and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay.

c) Similarly, in *Sawaran Lata etc. Vs. State of Haryana and Others*, the Apex Court held that, when the notification u/s 4 of the Land Acquisition Act, 1894 was issued in the year 2001 and the award was passed in the year 2004, writ petitions filed for quashing of the notification in the year 2009 have to be dismissed on the ground of delay or otherwise litigants having no idea of law of limitation would dare to abuse the process of the Court, delay and laches should not be encouraged.

d) In *Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan and Others*, when the acquisition proceedings were challenged ten years after notifications were issued, the Apex Court held that the High Court should not have entertained the writ petition particularly after passing of the award and that the High Court should have dismissed the writ petition on the threshold on the ground of delay and laches.

e) In *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, the Apex Court has followed its earlier decision in the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, It was held that the writ petition had been filed after possession was taken over and the award had become final and therefore, the writ petition had to be dismissed on the ground of delay and laches.

f) The order of the High Court dismissing the writ petition was confirmed by the Apex Court in *Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others*, as the filing of the writ petition was nine years after the declaration was issued u/s 6(1) of the Act and the delay of six years after passing of the award and the delayed filing of the writ petition was a reason for refusing to entertain the prayer made in the writ petition.

g) In the aforesaid case, reference is made to another decision of the Apex Court in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, wherein the Apex Court has cautioned the High Court not to entertain the writ petitions where there is inordinate delay while exercising jurisdiction under Article 226 of the

Constitution of India. The said decisions are clearly applicable to the facts of the present case even though it is a Public Interest Litigation.

19. One other aspect that requires to be considered is with regard to misrepresentations and suppression made in the writ petition. At Paragraph 20, it has been stated that the industrial plots allotted to respondent No. 6 is within a distance of one km. from Heggeri village; and at a distance of about one km. from Belur village; 2.5 km. away from Kotur village and at an aerial distance of 2 km from Mummigatti. That Kolhapur forest is at a distance of one km. from the industrial plant. Respondent No. 6 in its statement of objections has denied these facts and has stated that the distance between the plant and Heggeri village is 1.9 km., while Belur village is 2.4 km; Kotur village is 3.4 km and Mummigatti is 4 km. away from the plant. It is also stated that other similar industries such as, Southern Forge Steel Limited; Bharat NRF Coke Limited, and RPA Ferro Alloys are situated closer to these villages than the plant of respondent No. 6 which fact is suppressed by the petitioners. It has also been stated that 90% of the total cost of the project is already invested and the project is nearing completion, whereas, the petitioners in their arguments stated that construction of the plant had recently commenced. That, is belied by Annexure "E-1" to "E-6", which are the photographs produced by the petitioners themselves, from which, it can be discerned that substantial construction of the plant has been completed. Therefore, the petitioners have sought to base their grievance on misstatements and misrepresentations and for this reason also, the petitioners are not entitled to any relief. In this context, a recent decision of the Hon'ble Supreme Court in Dalip Singh Vs. State of U.P. and Others, holds:-

In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

20. Having regard to the above observations of the Apex Court with regard to the suppression of material facts, it is observed that in this case, no relief can be granted to the petitioners who have riot disclosed true and correct facts before this Court. Therefore, the aforementioned writ petitions have to be dismissed also on the ground of suppression of material facts. When the petitioner Nos. 1 to 10 had every reason to know about the allotment made to respondent No. 6 and petitioner Nos. 17 to 40 were well aware of the fact that their lands are also to be acquired for industrial purposes, no public interest could be espoused by them in filing these writ petitions. We also deprecate the practice of Advocates, who are petitioner Nos. 11 to 16 lending their names to such writ petitions. Infact, in recent times, this Court is coming across several cases assailing policy decisions and actions of the executive and various authorities wherein Advocates

as parties attempt to espouse some assumed or alleged public interest when in fact, filing of such petitions runs counter to public interest. Mere lending of names by Advocates to such litigations neither in any way enhance public interest nor give any credence to their cause. Therefore, the writ petitions are dismissed with costs of Rs. 40,000/-, to be paid by the petitioners to Karnataka Legal Services Authority, Bangalore, within a period of two months, failing which, the said Authority, shall take steps for recovery of the said amount.