

(2013) 11 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition No. 6889 of 2012 (LA-KIADB)

D.M. Prabhakar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(3), 28(4), 3(1)

Citation : (2013) 11 KAR CK 0098

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.V. Prakash, for the Appellant; Praveen G. Adagatti, Advocate for Respondent Nos. 2 and 3 and Shri. H.T. Narendra Prasad, Additional Government Advocate for Respondent Nos. 1 and 4, for the Respondent

Final Decision : Partly Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents. It is the case of the petitioner that he was the owner of lands bearing Survey No. 50/1 measuring 2 acres; Survey No. 58/3 measuring 2 acres and Survey No. 54/P3 measuring 4 acres of Devikattikoppa, Shimoga Taluk. The petitioner claims to have inherited the lands from his ancestors and he is an agriculturist by birth and that apart from the above lands, he has no other source of livelihood and he ekes out his living by cultivating the said lands. It is stated that the first respondent namely, the State Government had declared certain area as an industrial area, styled as "Suvarna Corridor", and had issued a notification u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the "KIAD Act", for brevity) in respect of 956 acres 13 guntas of land of Devakathikoppa and Sidlipura villages of Shimoga Taluk and the present lands of the petitioners were also included therein. Pursuant to which, a notification u/s 28(1) of the KIAD Act was issued, proposing to acquire the land for the purpose of establishment of an industrial area. The petitioner was then served an individual notice u/s 28(3) of the KIAD Act to show

cause as to why his land measuring 6 acres 29 guntas comprised in three survey numbers, should not be acquired for a public purpose. The petitioner had filed his objections only in respect of an extent of 29 guntas while pointing out that it is not agricultural land and it consists of an ancestral house as well as a newly constructed Mangalore tiled house and an arecanut processing unit, an areca threshing yard apart from coconut trees and cattle sheds.

2. The third respondent, according to the petitioner, without conducting an inquiry and without giving a right of hearing, has proceeded to submit a representation recommending acquisition of the lands of the petitioner including 29 guntas, in respect of which, the petitioner had sought to file his objections, while he did not resist the proposed acquisition of 6 acres of land. Consequently, upon the recommendation made by the first respondent, a notification u/s 28(4) having been issued, the petitioner then submitted representations to the several authorities, including the Governor of the State and the Chief Minister apart from the Deputy Commissioner, Shimoga District, but to no avail. Therefore, the present petition.

3. The primary contention of the learned Counsel for the petitioner is that he was not afforded a right of hearing pursuant to the notice issued u/s 28(3) of the KIAD Act and the objections filed to the preliminary notification.

4. The learned Counsel for the respondent therefore, was called upon to procure the records and to ascertain whether the petitioner had been afforded a hearing. The learned Counsel for the respondent after obtaining instructions would submit that the petitioner had willfully refrained from appearing at the hearing and it was not the fault of the respondents, that the petitioner had not chosen to appear. Therefore, there was no choice, but to proceed further and consequently, the notification u/s 28(4) of the KIAD Act having been issued, the land vests in the State Government and it is now for the respondent to take possession of the same. Therefore, the petition is infructuous and seeks that the same be dismissed. Having regard to the circumstance that the petitioner does not resist the acquisition of a major portion of land to the extent of 6 acres and only seeks that the limited extent of 29 guntas be exempted, wherein there are two houses and an industrial unit apart from cattle sheds and other appurtenances, it is now in the fitness of things that the petitioner's case be considered. Therefore, the proceedings, insofar as the petitioner is concerned, resting with the notification u/s 28(4) is set aside and the matter is reverted to the stage of considering the objections filed by the petitioner.

Accordingly, the petitioner shall be afforded a hearing and an appropriate order passed thereon in accordance with law, having due regard to the circumstances pleaded by the petitioner. In order to avoid any further delay, the respondents shall hear the petitioner at a hearing to be held on 2.12.2013 or such other adjourned date, of which the petitioner shall be duly informed and appropriate orders be passed expeditiously.

With that observation, the petition is allowed in part.