

(2016) 07 KAR CK 0124

In the Karnataka High Court

Case No : Writ Petition No. 38480 of 2014 (LA-KIADB) and Writ Petition No. 38937 of 2014

Dr. N. Lakshmipathi Babu

APPELLANT

Vs

Government of Karnataka

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1)

Citation : (2017) 1 KantLJ 70

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : P.V. Chandrashekar, Advocate, for the Respondents No. 2 and 3; Sriyuths Sunil Dutt Yadav, Special Government Advocate, for the Respondents No. 1, 4, 5 and 8; Sri Udaya Holla, Senior Advocate for Sri Suraj Govindaraj and Sri Anup S. Shah, Advocates, for th

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J. - The petitioner who is the owner of the land measuring 4 acres 30 guntas standing at Sy. Nos. 27/2 and 29 of Talagattapura Village has raised the challenge to the preliminary notification, dated 2-6-1999 issued under Section 28(1) of Karnataka Industrial Areas Development Act, 1966 ("K.I.A.D. Act" for short). Further, the petitioner has also sought the relief of declaration the that said lands are free from any acquisition.

2. Sri Udaya Holla, learned Senior Counsel appearing for Suraj Govindaraj for the petitioner submits the that issues raised in this writ petition are no more res integra; they are fully covered by this Court's order, dated 22-2-2016 passed in W.P. Nos. 30353 and 30476 to 30479 of 2015. In the said case, this Court has held the that State has abandoned the lands from acquisition proceedings as the acquisition proceedings have not progressed from 1999, the year of the issuance of the preliminary notification. He submits that in the instant case also no proceedings whatsoever have taken place ever since the issuance of the

preliminary notification, 17 years ago.

3. Sri Sunil Dutt Yadav, learned Special Government Counsel appearing for the respondents 1, 4, 5 and 8 submits the thatse petitions are premature. He submits the that issuance of the preliminary notification does not give any firm cause of action to any party. He submits the that preliminary notification is only in the nature of intendment or proposal. He submits that if, as and when the final notification is issued, the party gets the firm cause of action to approach this Court.

4. Sri Yadav submits the that pendency of a series of litigations are coming in the way of the speedy conclusion of the enquiry proceedings.

5. Sri P.V. Chandrashekhar, learned Counsel for the respondents 2 and 3 submits the thatre is nothing which is wanting on the part of the respondent-Karnataka Industrial Areas Development Board ("K.I.A.D.B." for short) as the order under Section 28(3) is already passed on 19-2-2004 (Annexure-S).

6. Sri R.V.S. Nayak, learned Counsel for the respondents 6 and 7 submits that this Court and the Apex Court have given the mandate to the State Government and the respondents 6 and 7 to complete the Bangalore-Mysore Infrastructure Corridor Project. He submits the that land in question is required for the said Project. He submits the that order, dated 22-2-2016 passed by the learned Single Judge in W.P. Nos. 30353 and 30476 to 30479 of 2015 has not attained the finality. Both the respondents 6 and 7 and the K.I.A.D.B. have already preferred the appeals against the said order before the Division Bench. He submits the that writ appeals are pending consideration. He further submits the that said order of the learned Single Judge is passed without hearing the beneficiary of acquisition, namely, respondents 6 and 7.

7. The submissions of the learned Counsel have received my thoughtful consideration. Admittedly, the preliminary notification is of 1999 vintage. For the reasons best known to the said authorities, they have not taken out any proceedings based on and pursuant to the said preliminary notification. Just because the statute does not prescribe the outer limit within which the final notification is to be issued and within which the award is to be passed, it does not mean the that final notification can be issued and award can be passed after decades and decades of the issuing of the preliminary notification. Preliminary notification cannot be treated as some kind of reservoir from which the final notification can be issued after tens of years. As held by the Apex Court in the case of Tukaram Kana Joshi and Others through Power-of-Attorney Holder v. Maharashtra Industrial Development Corporation and Others, 2012 AIR SCW 6343 even under valid acquisition proceedings there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest and make the payment of requisite compensation. The respondent-authorities cannot now issue the final notification, pass the award and determine the market value which was prevailing in 1999.

8. It is profitable to read what the Apex Court had to say in para 12 of its decision in the case of K. Krishna Reddy and Others v. The Special Deputy Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh, AIR 1988 SC 2123:

"12..... After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for the Appellate Court to do modest best to mitigate hardships. The Appellate Court may direct some interim payment to claimants subject to adjustment in the eventual award."

9. It is also helpful to refer to what this Court has said in the case of Smt. Andamma v. State of Karnataka and Others, 2002 (5) Kar.L.J. 389. Para 11 of the said judgment is extracted herein below:

"11. The final declaration in the case on hand is dated 28-9-1965, whereas, the award was passed by the Land Acquisition Officer on 2-9-1969 and the award was approved by the Deputy Commissioner on 5-9-2000 i.e., almost after 29 to 30 years from the date of passing the award. Even assuming that Section 11-A of the Act is not in statute book, the State Government which acquired the properties is expected to pass the award within the reasonable time. If the Government fails to pass an award for a considerable length of time, any landowner could reasonably believe that the Government is not interested in acquiring the land as the same is not required for the purpose for which it was notified for acquisition. Therefore, I am of the considered view that if no award has been passed within a reasonable time, it is just and proper for the Court to declare the said proceedings as lapsed keeping in view the conduct of the acquiring authority. Hence, this is a fit case where a declaration is to be made declaring the acquisition proceedings as lapsed for the reasons stated above."

10. Just because some cases were pending before the Court the issuance of the final notification cannot be put off indefinitely, more so, when there were no stay or injunctive order forbidding the respondent-authorities from issuing the final notification.

11. For all the aforesaid reasons, I hold the that acquisition proceedings initiated vide the impugned preliminary notification have lapsed insofar as they pertain to the petitioner's lands. It is made clear that if the need for the lands in question persists, it shall be open to the Government to resort to the initiation of the acquisition proceedings afresh. If fresh proceedings are indeed initiated, it shall also be open to the petitioner to resist the same taking such defences as are permissible in law.

12. These petitions are accordingly allowed. No order as to costs.