

(2010) 12 KAR CK 0109

In the Karnataka High Court

Case No : Writ Petition No's. 28268 and 39046 to 39053 of 2010

Fakrulla Khan

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2011) 3 KarLJ 568 : (2011) 3 KCCR 1748

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.S. Prasanna Kumar, for the Appellant; Venkatesh Dodderi, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petitions by a person who claims to be an agreement holder with the owner of lands in Sy. No. 40, measuring 32 acres situated at Bandikodigenahalli Village, Jala Hobli, Bengalooru North Taluk which were subject-matter of acquisition proceedings by the State Government under the provisions of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the KIADB Act").

2. It is the version of the Petitioner that even when the Petitioner had acquired some interest in the subject lands and notwithstanding bringing this development to the notice of the 4th Respondent, the Special Land Acquisition Officer, KIADB; that the Petitioner has an agreement with the owner of the land for sale of subject lands to him and that the agreement had been preceded by the payment of a substantial amount to the owner, nevertheless the Land Acquisition Officer has at the time of disbursement of compensation to persons having interest in the land has acted in a collusive manner with the owner of the land; that the 4th Respondent has deliberately, with a view to favour the owner of the land and to the detriment of the Petitioner, has made payment of the entire amount of compensation in favour of the owner, ignoring the Petitioner's rights and his claim based in the agreement; that on a complaint against the 4th Respondent,

the 3rd Respondent-Special Deputy Commissioner attached to the Board had conducted an enquiry and had found that the complaint and allegations of the Petitioner, levelled against the 4th Respondent are true in terms of his order dated 1-1-2010, copy produced at Annexure-S to the petition and has also found that the 4th Respondent has acted contrary to the statutory provisions, amounting to a dereliction of duty on his part in not depositing the compensation amount before the Civil Court and instead of directing the parties to get their dispute resolved before the Civil Court but by making payment of compensation to the owner of the land in a manner preemptive of the rights of the Petitioner; that the Petitioner in the circumstances, having no other alternative remedy in law has approached this Court seeking for the following prayer:

- a. Directing the 4th Respondent to deposit in the Civil Court the entire award amount of Rs. 9,92,00,000/- (Rupees Nine Crores Ninety-two Lakh only) along with interest of 18% p.a. by recovering the same from the Kathedars or from the 4th Respondent;
- b. Declare that all the Respondents are jointly responsible for the damages caused to the Petitioner and direct the Respondents to pay compensation at the rate of Rs. 4 Crores per acre as per the market value or in the alternative direct the Respondents to allot equivalent land;
- c. Direct the Respondents to pay an amount of Rs. 70 lakh per acre as award amount for acquiring an extent of 32 acres in Sy. Nos. 40/P19, P20, P21, P22, P23, P25, P26 and P27 of Bandikodigehalli, Jala Hobli, Bengalooru North Taluk, then Devanahalli Taluk, as per the compensation amount awarded for neighbouring Bagalur Village;
- d. Or in the alternative direct the Respondents to de-notify the land in Sy. Nos. 40/P19, P20, P21, P22, P23, P25, P26 and P27, totally measuring 32 acres situated at Bandikodigenahalli Village, Jala Hobli, Bengalooru North Taluk, then Devanahalli Taluk, from the acquisition proceedings.

3. Appearing on behalf of the Petitioner Sri Prasanna Kumar, learned Counsel submits that when a higher official of the Board viz., the Special Deputy Commissioner, has on an enquiry found truth in the allegations made and also has held the 4th Respondent guilty of infraction of statutory provisions and when once it is found that the landowner was not entitled to receive the amount, it was incumbent on the Respondents 3 and 4 to have directed the owner to redeposit the amount so that the amount can be in turn deposited before the Civil Court and the parties directed to get their dispute resolved before the Civil Court. Not issuing such direction to the landowner, who had received entire compensation, is dereliction of duty on the part of Respondents 3 and 4 and therefore, Petitioner is entitled to seek necessary relief from this Court, at least to take action for ensuring the compensation amount got deposited before the Civil Court, by resorting to such action as is warranted in law against the owner.

4. However, merited the claim and the submission of the Petitioner may be, relief

of this nature cannot be the one that can be obtained in writ jurisdiction. What is examined in writ jurisdiction is only the action taken by a statutory authority, within the scope of the jurisdiction of the judicial review of administrative action.

5. While on the face of, it does appear that the 4th Respondent-Land Acquisition Officer, might have acted in a preemptive manner and even may be to the detriment of the interest of the Petitioner, but even in such a situation, the relief as sought for in this writ petition cannot be granted in the exercise of writ jurisdiction by judicial review of administrative action, for the reason that in this jurisdiction, this Court does not determine the rights of the parties, nor issues any declaration in favour of private persons either for recognising their rights or for conferring any status on them which can operate in rem but can only issue a writ for saving an existing undisputed right for getting one's rights determined and for getting such relief and remedy, it is only the Civil Court which is the proper forum.

6. Petitioner claims his right under an agreement and it is not the function of the writ Court to examine what right a person gets under an agreement entered into between private parties, while exercising the power of judicial review of administrative action. The basic dispute is one relating to inter se rights of parties.

7. No doubt the incidental misuse and abuse of power by statutory functionaries might also be involved, but unless the person complaining has a definite right in the subject-matter and if such misuse of power, or exercise of power by a public authority was directly and factually affecting such existing rights, that infringement of right alone is examined in writ jurisdiction. It is therefore, while this matter is not examined any further but reserving liberty to the Petitioner to work out his remedy elsewhere in accordance with law, these writ petitions are dismissed.

8. Registrar (General) of this Court is directed to forward a copy of this order along with necessary copies of the record to the Karnataka Lokayuktha to enable the Karnataka Lokayuktha to hold an enquiry into the manner of functioning of the Special Land Acquisition of the KIADB, who was instrumental and who has passed orders for payment of the entire compensation in favour of the owner of the lands, even when it was opposed to by Petitioner and particularly so, as it has come to the notice of this Court, in several other cases also that the statutory authorities like the Special Land Acquisition Officer attached to the Board have been conducting/functions in a most arbitrary, whimsical manner and may be more often than not are acting for extraneous consideration and even by accepting the graft, etc.! This is a matter for investigation and for follow up action by an investigating agency like the Karnataka Lokayuktha. Karnataka Lokayuktha to cause an enquiry, if the matter has already, not been examined elsewhere, in accordance with law and no ensure that necessary follow up action is taken not only for preventing such instances, but also to ensure public interest is protected by curbing the illegal activities of the officials of the Board who are

indulging in such nefarious and illegal activities.

While it is ordered accordingly and directions as indicated above is issued to the Karnataka Lokayuktha but these writ petitions are dismissed.