

(2014) 12 KAR CK 0011

In the Karnataka High Court

Case No : Writ Appeal Nos. 460/2010, 3796-3799/2010 (LA-RES) and Misc. W. No. 8980/2010 C/W Writ Appeal Nos. 471/2010 and 479/2010(LA-KIADB) and Misc. W. No. 11709/2010 in Writ Appeal No. 460/2010 and Writ Appeal Nos. 3796-3799/2010 and Misc. W. No. 8980/2010

G. Srinivas

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

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

Citation : (2014) 12 KAR CK 0011

Hon'ble Judges : D.H. Waghela, C.J.;Budihal R.B., J

Bench : Division Bench

Advocate : Aswin Prabhu S.D. and Chandrashekar V, Advocate for the Appellant; Sandeep Patil, Spl. Govt. Adv., R.V.S. Naik, P.V. Chandrashekar, Kalyan Basavaraj and D. Nagaraj, Advocate for the Respondent

Judgement

Budihal R.B, J.—The appellants in both writ appeals have challenged the common order dated 11.2.2010 passed by the learned Single Judge in W.P. Nos. 21427-431/2009 and W.P. Nos. 26605-606/2009.

2. Since common questions of law and facts were involved, both the appeals were taken together for disposal by common judgment in order to avoid repetition of discussion.

3. The appellant in W.A. No. 460/2010 had earlier approached this Court by filing W.P. Nos. 45932-33/2003 challenging acquisition of his lands vide notification issued under Sections 28(1) and 28(4) of the Karnataka Industrial Areas Development Act (for short "the KIAD Act") for the purpose of Bengaluru-Mysuru Infrastructure Corridor Project (hereinafter referred to as "BMICP" for short). He claimed to be an agriculturist and absolute owner of the lands bearing Sy. Nos. 6/2, 10/4, 10/5, 10/6 and 64 of Chikkathoguru village, Bengaluru South Taluk. Notification under Section 28(1) was issued on 2.6.1999 and 29.1.2003 whereas

the notification under Section 28(4) was issued on 8.4.2003 and 5.7.2003. The said writ petitions were dismissed by order dated 28.2.2005. The Hon''ble Supreme Court, on 20.4.2006, dismissed the petitions filed by the appellant as well as the other land owners challenging the order of this Court dated 28.2.2005 and confirmed the same as regards acquisition of lands.

4. The appellants in W.A. No. 471/2010 were the owners of land bearing Sy. No. 114 of Gottigere village, Uttarahalli Hobli, Bangalore South Taluk measuring 2 acres 35 guntas. The said land was proposed to be acquired as per notification dated 29.1.2003 issued under Section 28(1) followed by another notification dated 5.7.2003 issued under section 28(4) of the KIAD Act. The appellants preferred W.P. No. 15466/2005 challenging the said notification and the same was dismissed on 18.11.2005.

5. Learned Counsel appearing for the appellants during the course of the arguments submitted that though the earlier writ petitions filed by the appellants were dismissed and the said orders were confirmed in the writ appeals, in view of the changed circumstances which were noticed by the appellants, they preferred W.P. Nos. 21427-431/2009 and W.P. Nos. 26605-606/2009 subsequently. However, the learned Single Judge has, without considering the subsequent changes and the submissions of the appellants in the writ proceedings, erroneously dismissed the writ petitions. He submitted that execution of the work at the site by BMICP was not strictly in accordance with the framework agreement entered into between the state government and the Nandi Infrastructure Corridor Enterprises Limited (for short "NICE Limited"). It is his contention that the work carried out was not as per the alignment revealed in the project technical report. He submitted that the alignment of the outer peripheral road falls about 2 kms. outside the alignment of national highway and the bypass proposed by BDA. The NICE acquired the lands consisting of excess area which was not at all required for implementation of the project and because of this, the poor farmers lost their fertile and valuable lands. Now the project is completed and the area acquired in excess is unnecessarily retained by the NICE Limited. It is also submitted that some of the land owners have approached the Hon''ble Supreme Court in SLP (Civil) No. 20722/2011, wherein, the Hon''ble Supreme Court has admitted the SLP and granted status quo order in respect of the lands. In this regard, he has produced the order dated 26.9.2011 of the Apex Court in the aforesaid SLP. Lastly, the learned Counsel submitted that when similar issue in the above SLP is pending before the Hon''ble Supreme Court, it may be necessary to keep these appeals pending till decision in the said case. In support of his contention, the learned Counsel relied upon the decisions of the Hon''ble Supreme Court in D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, and referred to paragraph 83 of the judgment.

6. Per contra, learned counsel appearing for respondent No. 9 - NICE Limited submitted that the appellants herein had earlier filed writ petitions challenging the acquisition of their lands and they have been dismissed by this Court. Some

of the land owners challenged the order of the learned Single Judge in the writ appeals, which were also dismissed. In this connection, the learned Counsel produced copy of the order dated 23.11.2010 passed in W.A. No. 470/2010 and W.A. Nos. 472-478/2010 and 3846-3847/2010. He has also produced copy of the other judgments of this Court in W.A. Nos. 650-654 and 753/2010 dated 6.10.2010 and W.A. Nos. 1050-1054/2010 dated 16.11.2010. The learned Counsel further relied on the judgment of the Hon"ble Supreme Court in M. Nagabhushana Vs. State of Karnataka and Others, and submitted that the Apex Court, while dismissing C.A. No. 1215/2011, had upheld acquisition of the lands. In view of the judgments of the Hon"ble Supreme Court as well the judgments of the Division Benches of this Court passed in many writ appeals, the present appeals are not at all maintainable. He also submitted that the appellants have filed the present appeals only to drag on the matter for one or the other reasons and hence, prayed to dismiss the appeals.

7. We have perused the records of the case in the writ appeals and considered the submissions made by the learned Counsel on both sides and also decisions referred above.

8. Perusing the order of the Hon"ble Supreme Court in M. Nagabhushana's case (Supra), it is clear that M. Nagabhushana had filed W.P. No. 1028/2007 (LA-KIADB) before this Court challenging the notifications issued under Sections 28(1) and 28(4) of the KIAD Act and sought to quash the acquisition proceedings. After considering the merits, the learned Single Judge of this Court had rejected the writ petition by order dated 28.5.2007, against which W.A. No. 1192/2007 (LA-KIADB) was filed, wherein the Division Bench of this Court confirmed the order of the learned Single Judge and dismissed the writ appeal by its judgment dated 23.7.2010. The said judgment was challenged before the Hon"ble Supreme Court in Civil Appeal No. 1215/2011, wherein the Apex Court by its judgment dated 2.2.2011 had dismissed the appeal. In para Nos. 37 to 40 of the said judgment it is held as under:

"37. For the reasons indicated hereinabove, this Court holds that the filing of this appeal before this Court is an instance of an abuse of the process of court. The main purpose was to hold up, on one or the other pretext, the land acquisition proceeding which, as held by this court in AIMO Case, was initiated to "achieve a larger public purpose".

38. In that view of the matter, this Court makes it clear that the State Government should complete the project as early as possible and should not do anything, including releasing any land acquired under this project, as that may impede the completion of the project and would not be compatible with the larger public interest which the project is intended to serve.

39. This Court, therefore, dismisses this appeal with costs assessed at Rs. 10 lakhs, to be paid by the appellant in favour of the Karnataka High Court legal Services Authority within a period of six weeks from date. In default, a

proceeding will be initiated against the appellant on a complaint by the Karnataka High Court Legal Services authority by the appropriate authority under the relevant Public Demand Recovery Act for recovery of this cost amount as arrears of land revenue.

40. The appeal is, thus, dismissed with costs as aforesaid. Interim orders, if any, are vacated."

9. We have also perused the judgments passed in the above referred three writ appeals, wherein the Division Bench of this Court had considered all the aspects of the matters and dismissed the appeals. The Hon''ble Supreme Court in case of State of Karnataka and Another Vs. All India Manufacturers Organization and Others, had also considered the merits of the case and ultimately dismissed the appeal.

10. Regarding submission of the learned Counsel for the appellants to keep the matters in abeyance till decision of the Hon''ble Supreme Court in SLP (Civil) No. 20722/2011, the appellants have not furnished any details or the material pertaining to the said case. Not only that, when acquisition of the lands for the aforesaid project was challenged in various proceedings before the learned Single Judge of this Court and the petitions were dismissed, and the dismissal was confirmed in the writ appeals by the Division Bench of this Court as also the Hon''ble Supreme Court in the SLPs., the contentions of the learned Counsel for the appellants do not have any substance. There are no valid and justifiable grounds to take any divergent view. Therefore, the appeals are dismissed with no order as to cost.

11. In view of dismissal of the appeals, all pending Misc. writ applications and I.As. do not survive for consideration. They are also accordingly dismissed.