(1979) 08 KAR CK 0035

In the Karnataka High Court

Case No : W.P. 8891/77

Gangadharappa G and Others APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 08-08-1979

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 29(1)

Citation : (1980) 1 KarLJ 324

Hon'ble Judges : Puttaswamy, J

Judgement

1. In this writ petition under Art. 226 of the Constitution, the petitioners have sought for a writ in the nature of mandamus to respondent-2 to pay the balance of compensation of amount payable to them in respect of the lands acquired from them under the provisions of the Karnataka Industrial Areas Development Act of 1966 (Karnataka Act No. 18 of 1966) (hereinafter referred to as the ''Act'').

2. Among others, the petitioners claim to be the owners of Sy. Nos. 26, 28, 30, 31, 32, 33 and 34 measuring an extent of 54 acres 31 guntas of land situated in Boodihal village of Devanahalli taluk, Bangalore District. A public limited company called Serle (India) Ltd. moved the Government for acquisition of the aforesaid lands under the Act. Accordingly, the Government in notification No. Cl. 2 FDB 76 dated 1st July 1976 (Ext. ''A'') issued a preliminary notification proposing to acquire the said lands for development by the Karnataka Industrial Areas Development Board, (hereinafter referred to as the Board) constituted and functioning under the Act. As the petitioners did not oppose the acquisition of the said lands, the Government issued a final notification on 4th October 1976 under the Act, (Ext. B) declaring their acquisition for the aforesaid purpose. So far as the compensation payable for the aforesaid lands, the petitioners and the State Government entered into an agreement on 6-8-1977 (Ext. E) under s. 29(2) of the Act. Under the said agreement, the petitioners agreed to receive a sum of Rs. 3,50,000 as full and final compensation payable by the Government for the said lands, which was agreed to by the State Government. The agreement entered'' into on 6-8-1977 is in conformity with Art. 299 of the Constitution, and

is therefore a valid and an enforceable agreement against Government. In pursuance of the said agreement, the respondents have paid a sum of Rs. 3,14,854 to the petitioners and have withheld the balance of Rs. 35,145-44 P. On more than one occasion the petitioners approached respondent No. 2 who is the authorised officer to make payment, but the said authority did not accede to their demands. With no alternative left, the petitioners have moved this Court on 19-9-1977 under Article 226 of the Constitution for relief.

3. On 26-9-1977 this Court ordered emergent notices to the respondents to show cause as to why rule nisi should not be issued. On 23-11-1977, Jagannatha Shetty, J. directed the petitioners to approach respondent-2 with their title deeds of Sy. Nos. 30 and 31 apparently for the reason the said authority had some doubt about their title to the said two lands. In pursuance of the said order of Jagannatha Shetty, J, the petitioners again appeared before respondent-2 and produced their title deeds and sought for payment of the balance of compensation. On 11-7-1978 respondent No. 2 passed an order holding that the petitioners were entitled for payment of the compensation in respect of "put kharab area", amounting to Rs. 2,600 and the balance should be withheld. On the basis of that order, respondent-2, on 18-11-1978 has made a reference to the Additional Civil Judge, Bangalore District, purporting to be under s. 30 of the Karnataka Land Acquisition Act, which is made applicable for acquisition of lands under the Act. In that reference respondent No. 2 does not state that any other person has raised a dispute as to the title of the aforesaid lands. But as can be gathered from his order and the submission made by Sri C. Shivappa, learned High Court Government Pleader, it appears, respondent No. 2 has withheld the payment of the balance of the amount on the ground that the extent of land notified for acquisition does not tally with the sale deeds. Sri Shivappa, also submitted that the reference made by respondent No. 2 to the Additional Civil Judge numbered as LAC. 340 of 1978 is pending adjudication before that Court and the same stands posted to 22-8-1979 for evidence.

4. Sri P.K. Padmanabhan, learned counsel for the petitioners contended that in accordance with the agreement dated 6-8-1977, respondent No. 2 was under a legal obligation to make the payment of compensation and his action in withholding a portion thereof was unauthorised and illegal. Sri Shivappa supported the action of respondent No. 2. He urged that the extent of lands notified for acquisition does not tally" with the sale deeds and therefore, respondent No. 2 was justified in making a reference to the Civil Court. Sri Shivappa, also urged that the claim made by the petitioners which arises out of an ordinary contract cannot be enforced under Art. 226 of the Constitution.

5. S. 29 of the Act, regulates the payment of compensation in respect of lands acquired by the State Government under Chapter 7 of, the Act. Sub-sec. (1) of s. 29 of the Act imposes a legal obligation on State Government to pay the compensation to the land owners, whose lands are acquired under the Act, though it may recover the same from the Board or the ultimate beneficiaries. The

land owner is not concerned as to how and from whom the State Government recovers the amounts. Sub-sec. (2) of s. 29 of the Act provides for an agreement and payment of compensation thereto to the land owner by the State Government. Such an agreement between the persons to be compensated and the State Government dispenses with the determination of compensation by the competent authority, but does not dispense with the obligation of the State Government and its subordinates to pay the compensation. When there is no such agreement, sub-sec. (3) of s. 29 requires the compensation payable for the acquired lands to be determined by the Deputy Commissions. In such an event only, the Deputy Commissioner is required to issue notices on the owners, occupiers and on persons who are known or believed to be interested in the lands and make a determination after considering the claims to be made before him. For such determination, the provisions of the Land Acquisition Act mutatis mutandis apply (vide s. 30 of the Act). Whenever there is an agreement between the State Government and the persons to be compensated, the payment thereof is regulated by the agreement and not by the provisions of the Land Acquisition Act. The agreement only regulates the amount and the persons to whom payment is to be made and other matters that are incidental to them. But the obligation to pay the compensation, though referable to the agreement does not arise out of the agreement but is referable to sub-section (1) of s. 29 of the Act. Such a contract is not an ordinary contract but is a statutory contract. In this view, the State Government and respondent No. 2 were under a legal obligation to pay the entire compensation of Rs. 3,50,000 to the petitioners without any demur and delay. But that unfortunately has not happened and respondent No. 2 has without any justification delayed the payment of the balance raising frivolous objections.

6. In the preliminary and final notifications as also in the agreement, the extent of land acquired is stated as 54 acres 31 guntas. The extent of lands specified therein was conclusive between the parties. Before a final notification is issued and an agreement is entered into all these matters are ascertained by the Government. For these reasons also, I find it difficult to appreciate on the needless inquiry embarked by respondent No. 2.

7. Earlier 1 have held that payment of compensation arises under the Act and is not referable to the agreement. In this view this writ petition to enforce a legal obligation/duty enjoined by the Act is maintainable.

8. In his order dated 15-11-1977 or 23-11-1977, Jagannatha Shetty, J, did not direct respondent No. 2 to embark on an enquiry on the extent of lands and make a reference, if he had any doubt on that question. In his order dated 11-7-1978 or in his reference dated 18-11-1978, to the Civil Court respondent No. 2, does not even state that there is any dispute as to the apportionment of the balance of compensation in respect of the lands acquired under the Act. In the reference dated 18-11-1978, made to Civil Court, the only reason given by respondent No. 2 for making the reference is ''legal reasons'', the meaning of

which is difficult to understand.

9. The order made by respondent No. 2 on 11-7-1978 as also the reference made by him on 18-11-1978 do not flow from the order made by Jagannatha Shetty J., in any event the reference to the Civil Court does not fall within the purview of s. 30 of the Land Acquisition Act. For these reasons I do not see any merit in the contention of Sri Shivappa, that I should decline to exercise the extra-ordinary jurisdiction conferred on this Court under Art. 226 of the Constitution.

10. As I have reached the conclusion that the petitioners were entitled for payment of entire compensation of Rs 3.50,00 under the agreement, dated 6-8-1977, it is necessary to direct respondent No. 2 to recall the reference made by him to the Additional Civil Judge and also the amount deposited by him in that Court and arrange for its payment to the petitioners.

11. In the light of my above discussion, I issue a writ in the nature of mandamus to respondent No. 2 to forthwith recall the reference made by him on 18-11-197 and the amounts deposited by him in that court and make payment of the balance of compensation due to the petitioners under the agreement dated 6-8-1977 within 45 days from the date of the receipt of the writ or order of this Court.

12. An examination of the events noticed earlier reveals that respondent No. 2 raised a needless dispute withholding the payment of the amounts legally due to the petitioners and has also persisted in justifying his wholly unjustified action. I am therefore of the opinion, that this is a fitcase in which I should award exemplary costs of Rs. 500/-.

13. Rule issued is made absolute.

14. Petitioners are entitled to the costs. Advocate''s fee Rs. 500.