

(2015) 11 KAR CK 0144

In the Karnataka High Court

Case No : Writ Petition Nos. 202539-202558/2015 (LA-RES)

Gollalappa and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2015) 11 KAR CK 0144

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Shivanand Patil and Devanand Desai, Advocates, for the Appellant;
Syed Habeeb, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court seeking that the representations dated 15.10.2013 and 20.01.2014 at Annexures - K and L be directed to be considered by the respondents and as per the request made therein, the petitioners be adequately compensated for utilisation of the lands belonging to the petitioner.

2. The petitioners in paragraph 1 of the petitions have referred to the details of the properties claimed to be owned by them in the different survey numbers measuring different extents. The case of the petitioners is that the respondents while forming the road from Yalagi to Malli have utilised the lands owned by the petitioners without following the due process of law to acquire the same and pay compensation to the petitioners. It is in that view, the petitioners claim that in view of the provision contained in Article 300A of the Constitution of India, their right can be divested only by due process of law and not otherwise. It is in that view the petitioners further claim that for utilisation of the lands belonging to them for the purpose of formation of the road, they are entitled to be compensated. In that regard, since the representation as made by the petitioners had not received consideration by the respondents, the petitioners are

before this Court seeking consideration of their representation.

3. The respondents have filed a memo dated 18.09.2015 enclosing thereto the endorsement dated 09.09.2015. The Learned Government Advocate with reference to the endorsement would contend that by the endorsement, the claim as put forth by the petitioners has been repudiated and as such the consideration of the representation would not arise. The contents of the endorsement is referred to point out that the respondents have intimated the petitioners that the road has been formed much prior to independence and as such the consideration as claimed by the petitioners at this point cannot be made.

4. Having noticed the endorsement filed on behalf of the respondents, in a normal circumstance the same ought to have been accepted as a consideration of the representation and rejection thereto. However, what is necessary to be noticed in the instant facts is that one of the similarly placed persons was before this Court in an earlier proceedings. This Court in W.P. No. 82219/2009 disposed of on 05.07.2011 had directed the respondents to consider the representation in accordance with law. The appeal filed by the respondents herein in WA No. 10253/2011 was dismissed by the order dated 08.10.2012. The respondents had preferred a Special Leave Petition which was registered in CC 13422/2013 before the Hon"ble Supreme Court wherein certain observations were made and the petition filed by the respondents herein was dismissed. Though in the said proceedings, the petitioner therein had been granted the benefit by this Court, insofar as the petitioners herein are concerned, at this stage, this Court cannot conclude as to whether the properties belonging to the petitioners has in fact been utilised by the respondents for formation of the road or as to whether a road already existed even prior to they had acquired the property. The endorsement as issued by the respondents is too vague as it does not determine the right of the petitioners as sought in the representation nor does it give any specific details of existence of the road. The endorsement only states that the roads in the region have been formed much earlier and therefore, the claim of the petitioners cannot be sustained.

5. In that light, a perusal of the representation made by the petitioners would disclose that the details of the properties owned by them in the specific survey numbers have been stated therein. It is no doubt true that as pointed out by the Learned Government Advocate the extent indicated against the survey number are larger extents. Therefore, it cannot be assumed that such large extents have been utilised for the roads. It is true that the extent indicated therein cannot be assumed as the extent utilised for the roads as being claimed by the petitioners from the representation, even if the allegation is ultimately found to be true. What is to be noticed is that the petitioners claim to be the owners of the properties to the respective extents as indicated in the survey numbers. If the ownership to the properties is established by the petitioners to have been acquired prior to formation of the road, certainly it would not be difficult for the respondents to find out from the records as to whether the road to which the

petitioners refer passes through the said survey numbers and if so, whether any of the properties belonging to the petitioners has been utilised for the said road. Once having ascertained that aspect of the matter, it would also be appropriate for the respondents to take note as to whether such utilisation of the land has been made by following due process of law.

6. Needless to mention that if the respondents find that the lands were owned by the petitioners prior to formation of road and the extent utilised has not been secured from the land owners by divesting it in accordance with law, certainly the respondents would have to thereafter determine the actual extent that has been utilised from each of the petitioners and if in fact the same has been utilised, appropriate steps are required to be taken to either compensate the petitioners by private negotiation or to initiate appropriate proceedings in accordance with law to determine the compensation. Therefore, the consideration of the representation would have to be done in such fashion in order to ensure that an appropriate consideration is made.

7. Therefore, each of the petitioners herein in support of their representation, shall submit the documents of ownership to the third respondent. The third respondent shall thereafter examine all these aspects of the matter which has been indicated above and put up the observation/recommendation to the first respondent. The first respondent shall thereafter take a decision in the matter and convey the same to the petitioners. The petitioners shall therefore furnish all details to the third respondent within four weeks from the date of receipt of a copy of this order. The nature of inquiry as has been indicated above shall be made by the third respondent as expeditiously as possible but not later than three months from the date on which the details are furnished by the petitioners. The observation/recommendation as submitted by the third respondent to the first respondent shall be taken note of by the first respondent and orders thereupon shall be passed by the first respondent and be conveyed to the petitioners within three months thereafter. In any event, the entire process shall be completed within six months from the date on which the details are submitted by the petitioners to the third respondent along with the necessary documents.

8. Needless to mention that if in the said process, the conclusion reached by the third and first respondent is to indicate that the property belonging to the petitioners have been utilised and they are entitled to compensation, steps shall thereafter be taken in that regard in an expeditious manner.

The petitions stand disposed of with the above directions.