

(2010) 10 KAR CK 0062

In the Karnataka High Court

Case No : Writ Appeal No"s. 650 to 654 and 753 of 2010

H. Hanumappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

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

Citation : (2011) 2 KarLJ 273

Hon'ble Judges : V.G. Sabhahit, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : V. Lakshminarayana, for the Appellant; Sriyuths Anantha Mandagi, T. Narayanaswamy, King and Patridge, Ashok Haranahalli, General, Sandeep Patil and B.R. Sabarad, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—These writ appeals are filed by the Petitioners in W.P. Nos. 27565 to 27570 of 2009 being aggrieved by the order of

the learned Single Judge dated 11-2-2010 wherein the learned Single Judge has dismissed the Writ Petition Nos. 27565 to 27570 of 2009 and

connected petitions by a common order as devoid of merit.

2. The Appellants herein filed W.P. Nos. 27565 to 27570 of 2009 averring that the Petitioners 1 and 2 were the owners of land bearing Sy. Nos.

69, 70 and 71/1 of Hosakerehalli Village, Bangalore South Taluk comprising of Sy. Nos. 69/P1 measuring 32.04 guntas, 69/P1 measuring 10

guntas, 69/P1 measuring 1 acre, 71/1 measuring 1 acre 06 guntas, 71/1 measuring 1 acre 06 guntas, 70 measuring 10 guntas, 71/1 measuring 1

acre 05 guntas, 69/P1 measuring 1 acre, 69/P1 measuring 30 guntas, 70 and 71/1 measuring 27 guntas and 70 and 71/1 measuring 28 guntas

(hereinafter called "Schedule lands"). The said lands were sold in favour of Petitioners 3 to 6 under sale deeds dated 27-3-2006, 5-10-2005, 20-

12-2006 and 15-12-2006 and the Petitioners are in possession and enjoyment of the above said lands and after sale, the purchasers-Petitioners 3

to 6 are in possession of the said lands under respective sale deeds executed in their favour. It is the contention of the Petitioners that the schedule

lands were proposed to be acquired under preliminary notification dated 29-1-2003 issued u/s 28(1) of the Karnataka Industrial Areas

Development Act, 1966 (hereinafter called the Act") and the same was followed by final notification dated 5-7-2003 u/s 28(4) of the Act. It is the

further case of the Petitioners that there were acquisition proceedings in respect of the said lands. However, in view of the complaints received

regarding excess land acquired, which is in excess of land to be handed over to 6th and 7th Respondents in the writ petition, a high level committee

was formed and the high level committee went into the aspects as to whether the acquired land is necessary for the BMIC project and as to

whether excess land has been acquired and what is the extent of land to be handed over to BMIC for executing the project as per FWA and the

Government accepted the final report of the said Committee by order dated 6-4-2005 as per Annexure-H and held that schedule lands were not

required for implementing the project and accordingly, prepared the list showing the extent of land acquired for executing the project and the

schedule lands were not shown in the said report.

3. It is the contention of the Petitioners that the application was given by the Petitioners for conversion of schedule lands for non-agricultural

purposes and the Deputy Commissioner, by orders dated 9-5-2005 and 4-10-2008 granted permission as per Annexures-B to G in the writ

petition for conversion and the Petitioners have paid conversion fee of Rs. 54,450/- per acre and as the Petitioners have invested huge sums of

money and their lands have been improved and they are in possession and enjoyment of the schedule lands. It is the contention of the Petitioners

that their lands are not included in the final report of the expert committee which have been approved by the State Government by Government

Order dated 6-4-2005 and the Government constituted Expert Committee to examine the implementation regarding Corridor project and in view

of the fact that by order dated 6-4-2005 the acquisition of schedule lands are deemed to have been dropped and abandoned. KIADB did not

take possession of the land from the Petitioners nor passed the award in that behalf and therefore, conversion orders have been issued on the

ground that Petitioners are the absolute owners having full marketable title. It is also the contention of the Petitioners that the schedule lands though

acquired is not required for the project and it is away from the peripheral road and alignment of the road could not have been changed and

therefore the writ Petitioners sought for the following reliefs:

1. Direct the Respondents not to implement the Bangalore-Mysore Infrastructure Corridor Project as against the petition lands namely Sy. Nos.

69, 70, 71/1 of Hosakerehalli Village, Uttarahalli Hobli, Bangalore South Taluk, more fully described in the schedule in view of the Government

order dated 6-4-2005 produced at Annexure-H.

2. Issue a writ of certiorari or any other writ quashing the letters dated 19-8-2008 bearing No. RRT/CR/5/2008-09 issued by the Tahsildar,

Bangalore South Taluk and letter dated 28-1-2009 in No. BMICP/LAQ/CR/1/2008-09 issued by the Special Deputy Commissioner, KIADB to

the Special Deputy Commissioner (Revenue), Bangalore Urban, Bangalore vide Annexures-V and W respectively.

3. Declare that any exercise of power in respect of the petition lands namely Sy. Nos. 69, 70, 71/1 of Hosakerehalli Village, Uttarahalli Hobli,

Bangalore South Taluk contrary to Frame work Agreement and GO dated 6-4-2005 is in total violation of the order passed by this Hon"ble Court

dated 3-5-2005 and Hon"ble Supreme Court dated 20-4-2006 produced at Annexures-A and R respectively.

4. Issue a writ of Mandamus directing the Tahsildar, Bangalore South Taluk and Special Deputy Commissioner (Revenue), Bangalore Urban,

Bangalore not to alter the names of the Petitioners in the revenue records in pursuance of the two letters dated 19-8-2008 bearing No.

RRT/CR/5/2008-09 issued by the Tahsildar, Bangalore South Taluk and letter dated 28-1-2009 in No. BMICP/LAQ/1/2008-09 issued by the

Special Deputy Commissioner, KIADB, Bangalore.

5. Grant such other order or direction as deems fit to grant in the facts and circumstances of the case.

4. The writ petitions were resisted by 7th Respondent by filing statement of objections contending that schedule lands have been acquired in

accordance with law u/s 28(1) and (4) of the Act. The appointment of the Committee on the basis of whose recommendation the order dated 6-4-

2005 has been set aside by the Division Bench of this Court and the Hon''ble Supreme Court and the contention as to whether the land acquired is

in excess than required for implementing the project has been considered by the Division Bench of this Court and the Hon''ble Supreme Court

which has confirmed the order passed by the Division Bench of this Court and therefore, writ petitions are devoid of merit.

5. The learned Single Judge clubbed the said writ petitions along with other writ petitions where similar contentions have been raised and by a

common order dated 11-2-2010 held that petitions are devoid of merit as acquisition proceedings have become final in view of the decision of the

Division Bench of this Court and the Hon''ble Supreme Court and notification dated 6-4-2005 cannot be construed as dropping of acquisition

proceedings in respect of the schedule lands and the appointment of committee itself is quashed and therefore, Petitioners are not entitled to any

benefit on the basis of the recommendation made by the Committee and therefore, petitions are devoid of merit and dismissed the writ petitions.

Being aggrieved by the said order of the learned Single Judge dated 11-2-2010 these appeals are filed by the writ Petitioners in W.P. Nos. 27565

to 27570 of 2009.

6. We have heard the learned Counsel appearing for the Appellants, learned Senior Counsel appearing for Respondent 8, learned Advocate

General appearing for the Respondent-State and the learned Counsel appearing for KIADB-Respondent 4.

7. The learned Counsel for the Appellants submitted that writ Petitioners have not challenged the acquisition proceedings of their lands pursuant to

notifications u/s 28(1) and (4) of the Act and in view of the Government Order dated 6-4-2005, the basis on which recommendation made by the

High Level Expert Committee, the proceedings regarding acquisition of lands shall be deemed to have been dropped as the possession of lands

have not been taken and awards have not been passed. The learned Counsel further submitted that even according to the contention of the

Respondents, schedule lands were acquired for laying peripheral road and schedule lands are away from peripheral road and would never be

required for implementation of the project and would not fall within the ambit of FWA. The learned Counsel further submitted that High Level

Committee was constituted for implementation of the FWA pursuant to the decision of the Hon"ble Supreme Court in State of Karnataka and

Another Vs. All India Manufacturers Organization and Others, . Therefore, the learned Single Judge ought to have allowed the writ petitions and

was not justified in dismissing the writ petitions.

8. The learned Advocate General appearing for the State submitted that the Petitioners have not challenged the acquisition proceedings.

Constitution of the Expert Committee dated 4-11-2004 and 17-12-2004 on the basis of whose recommendation the order dated 6-5-2004 was

passed has been set aside by the Division Bench of this Court in All India Manufacturers Organisation, Mumbai v. State of Karnataka and Ors.

2005 (3) Kar. L.J. 438 (DB) and the same has been confirmed by the Hon"ble Supreme Court in All India Manufacturers Organisation"s case

and therefore, the writ Petitioners cannot claim any benefit under the Government order dated 6-4-2005 and the question as to whether the lands

acquired is far in excess of land required for executing FWA as also considered by the Hon"ble Supreme Court and the said contention raised in

the writ petitions has been rejected by the Hon"ble Supreme Court and therefore, the learned Single Judge has rightly dismissed the writ petitions

and these appeals are devoid of merits. In support of his contention, he has relied upon the decision of the Supreme Court at paragraphs 76, 77,

78 and 79 in the All India Manufacturers Organisation"s case.

9. Sri Ananth Mandagi, learned Senior Counsel appearing for the 8th Respondent submitted that as rightly argued by the learned Advocate

General, the very formation of the Expert Committee has been quashed as it was a step to protract the implementation of the FWA as per the

order of the Hon"ble Supreme Court and when the formation of the Committee and all recommendations thereto and consequential orders are

quashed, the Government order dated 6-4-2005 is not available to the Petitioners and the question of acquisition of excess land has already been

considered by the Division Bench of this Court and Hon"ble Supreme Court in All

India Manufacturers Organisation's case and the contentions of

the Petitioners have been negated in the said cases and therefore the order of the learned Single Judge is justified and appeals are devoid of merit.

10. The learned Counsel appearing for KIADB also argued that benefit of the Government Order dated 6-4-2005 is not available to the

Petitioners as the lands have been acquired as per the order of the Government and all contentions raised in this case have already been answered

by the decision of the Division Bench of this Court and Hon'ble Supreme Court in All India Manufacturers Organisation's case.

In reply, learned Counsel appearing for the Appellants submitted that the Appellants are not parties to the petitions wherein acquisition proceedings

had been challenged and High Level Committee is now formed for implementation of FWA as per the orders passed by the Hon'ble Supreme

Court in All India Manufacturers Organisation's case and therefore, the learned Single Judge was not justified in dismissing the writ petitions and

the writ appeals may be allowed.

11. We have given careful consideration to the contentions of learned Counsel appearing for the parties and scrutinised the material on record.

12. The material on record would clearly show that Petitioners 1 and 2 claim to be the owners of the Schedule lands which have been sold to

Petitioners 3 to 6 and according to them, Petitioners 3 to 6 are in possession and enjoyment of the schedule lands after execution of the sale deeds

in their favour and claim that order of conversion was passed on the basis of title of the Petitioners as per marketable title and the basis on which

they claim that the acquisition of their lands should be deemed to have been dropped is the order dated 6-4-2005 passed by the Government on

the basis of the recommendation made by the Expert Committee. According to the Petitioners, the said order must be deemed to have been dropped

the further acquisition proceedings of the schedule lands and therefore, award has not been passed and possession has not been taken.

13. The other contention of the Petitioners is that though the schedule lands have been acquired u/s 28(1) and (4) of the KIADB Act, the

Petitioners have not challenged the acquisition as the said lands are not required for implementing the project of 7th Respondent as they are excess

lands and there was fraud committed by the Respondent 7 on the Government in getting the excess lands acquired and therefore, schedule lands are not required for implementing FWA.

14. It is unnecessary to go into detail about the right which the Petitioners claim pursuant to Government Order dated 6-4-2005 which is the sheet

anchor of the contention to the effect that the said order should be deemed to have dropped the acquisition proceedings in respect of the schedule

lands which was made on the basis of the recommendation of the Expert Committee which was constituted on 4-11-2004 and 17-12-2004 and

the Division Bench of this Court in W.P. No. 45334 of 2004 and connected matters, disposed of on 3-5-2005 (All India Manufacturers

Organisation v. State of Karnataka and Ors.) has specifically observed that the constitution of Review Committee and Expert Committee dated 4-

11-2004 and 17-12-2004 to go into the question of excess land and the report submitted by them and all subsequent action taken incidental

thereto deserves to be quashed as it is violative of the agreement entered into by the Government with the 7th Respondent. The finding of the

Division Bench has been confirmed by the Hon''ble Supreme Court in State of Karnataka v. All India Manufacturers Organisation and therefore,

the very constitution of the Expert Committee dated 4-11-2004 and 17-12-2004 have been set aside and all actions pursuant to the

recommendation of the Committee have also been set aside. Therefore, the Petitioners cannot now contend that they are entitled to benefit of the

said Government order dated 6-4-2005 which has been quashed by the Division Bench and confirmed by the Hon''ble Supreme Court.

15. The only other contention which is urged by the learned Counsel appearing for the Appellants is that the scheduled lands are far away from

peripheral road and even assuming that acquisition is valid and it is not deemed to have been dropped in view of the Government Order dated 6-

4-2005, the said lands are not required for implementing the project. The same contention had been raised regarding acquisition of excess land

along with the other contentions before the Division Bench of this Court and Hon''ble Supreme Court in All India Manufacturers Organisation's

case cited above, the Supreme Court has observed as follows.--

77. In our view, this was an entirely misconceived argument. As we have pointed

out in the earlier part of our judgment, the project is an integrated infrastructure development project and not merely a highway project. The project as it has been styled, conceived and implemented was the Bangalore-Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities, along with the highway at several points. As an integrated project, it may require the acquisition and transfer of lands even away from the main alignment of the road.

78. The various changes brought about to the KIAD Act, also reflect the intention of the State Legislature to provide for land acquisition for the project. The expressions ""industrial area"" and ""industrial infrastructural facilities"" as defined under the KIAD Act, definitely include within their ambit establishment of facilities that contribute to the development of industries. We cannot forget that, as originally enacted, the KIAD Act had a different, narrower definition of ""Industrial area"" in Section 2(6). In 1997, the definition was broadened to also include ""industrial infrastructural facilities and amenities"". Further, Section 2(7-a) was added to define ""Industrial Infrastructural facilities"" in a manner broad enough to take into its sweep the land acquisition for the project.

79. The learned Single Judge erred in assuming that the lands acquired from places away from the main alignment of the road were not a part of the project and that is the reason he was persuaded to hold that only 60% of the land acquisition was justified because it pertained to the land acquired for the main alignment of the highway. This, in the view of the Division Bench, and in our view, was entirely erroneous. The Division Bench was right in taking the view that the project was an integrated project intended for public purpose and, irrespective of where the land was situated, so long as it arose from the terms of the FWA, there was no question of characterising it as unconnected with a public purpose. We are, therefore, in agreement with the finding of the High Court on this issue.

16. The principles laid down in the above decision negating the contention raised before the Hon"ble Supreme Court would clearly show that there is no merit in the contention raised by the Petitioners and the same is

required to be answered against them following the decision of the Hon"ble Supreme Court.

17. Accordingly, we hold that writ appeals are devoid of merit and pass the following order.

Writ appeals are dismissed.