
(2015) 01 KAR CK 0257

In the Karnataka High Court

Case No : Writ Appeal No. 472 of 2012 (LA-KIADB)

Hind Mercantile Corporation Private Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

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

Citation : (2015) 01 KAR CK 0257

Hon'ble Judges : S. Sujatha, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : S. Mubarak Begum, Advocate for R. Kothwal, for the Appellant; D. Nagaraj, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Heard the learned counsel for the parties.

2. The appellant is questioning the legality and correctness of the order passed by a learned Single Judge dated 25-11-2010 in WP No. 21136 of 2010.

3. The facts leading to this appeal are that: The appellant was petitioner before the learned Single Judge. The writ petition came to be filed to quash the final notification dated 7-3-1985 and for issue of a writ of certiorari to quash the award dated 2-9-2004 passed by the special land acquisition officer, KIADB vide Annexure-A to the writ petition in respect of land measuring 1 acre 1 PA guntas in Sy No. 36 of Yeshwanthapura village, Yeshwanthapura hobli, Bengaluru north taluk.

4. According to the appellant-writ petitioner, the appellant is a company registered under the provisions of the Companies Act, 1956. The appellant-company, for its benefit, had purchased land measuring 3 acres 15 guntas in Sy No. 36 of Yeshwanthapura village under a registered sale deed dated 28-9-1959 and the company was enjoying the land as its absolute owner. In the year 1970, the appellant-company went into liquidation in Company Petition No. 97 of 1970

before the Hon''ble Madras High Court. The official liquidator attached to the Madras High Court was appointed as liquidator to carry out the liquidation process. In the year 1983, second respondent had initiated acquisition proceedings to acquire 3 acres 24 guntas of land in favour of M/s. Mysore Lamp Works Ltd., Yeshwanthpura i.e. 1 acre in Sy No. 34, 1 acre 10 guntas in Sy No. 32 and 1 acre 14 guntas in Sy No. 36, under the preliminary notification dated 17-4-1984. Out of these three parcels of land, the appellant was the owner of 1 acre 14 guntas in Sy No. 36. The final notification came to be published on 4-3-1985 under Section 28(4) of the Karnataka Industrial Areas Development Act, 1966 [for short, the Act]. The award was passed on 23-4-1986. However, while passing the award, the same was confined only to two parcels of land which do not belonging to the appellant and the land of the appellant was left out and no award was passed in respect of the land of the appellant.

5. When the matter was pending before the Madras High Court in Company Petition No. 97 of 1970, without passing an award in respect of the land of the appellant, the special land acquisition officer of KIADB filed an application before the Company Court in CA No. 458 of 1985, requesting the court to direct the official liquidator to hand over the possession of Sy No. 36, which was subject matter of acquisition proceedings, though no award was passed in respect of the said land. The learned Company Judge of the Madras High Court allowed the application subject to the condition that survey of the land has to be conducted in the presence of the official liquidator and thereafter possession of the land shall be taken by the KIADB. But, for the reasons best known to the KIADB, the land was not surveyed and possession was not taken over in terms of the order passed by the Madras High Court CA No. 458 of 1985 dated 3-4-1987.

6. Subsequently, again without passing an award in respect of the land of the appellant, one more application came to be filed before the Madras High Court in Company Application No. 997 of 1994 in Company Petition No. 97 of 1970, which application came to be rejected by the Company Court of the Madras High Court. Having lost the application filed before the Company Court, all of a sudden, an amended award came to be passed on 2-9-2004 by the special land acquisition officer vide Annexure-A to the writ petition, passing an award in respect of the land of the appellant bearing Sy No. 36 measuring 1 acre 1 PA guntas. Challenging the said amended award, appellant has filed the instant writ petition.

7. The writ petition came to be rejected by the learned Single Judge on two grounds. According to the learned Single Judge, the appellant-writ petitioner did not disclose the true state of affairs in respect of the company petition filed before the Madras High Court and also on the ground that there is delay in approaching the court. Aggrieved by the order of dismissal of the writ petition, the present appeal is filed.

8. Learned counsel for the appellant contends that the learned Single Judge has committed an error in not considering the writ petition of the appellant on merits. According to her, the preliminary notification was issued on 17-4-1984

and the final notification was issued on 7-3-1985. Thereafter, an award came to be passed on 23-4-1986, excluding the land of the appellant. According to her, when no award was passed in respect of the land of the appellant in the year 1986, the appellant presumed that the land of the appellant is not required by the KIADB or its beneficiary M/s. Mysore Lamp Works Ltd. According to the learned counsel for the appellant, when an award was not passed in respect of the land of the appellant in the year 1986, without passing a proper award, the land acquisition officer intended to take possession of the land through the company court by making an application before the company court in CA No. 458 of 1984, requesting the company court to direct the official liquidator to release the land of the appellant. She submits that though an order was passed in favour of KIADB on 3-4-1987, directing the officers of the KIADB to survey the land in the presence of the official liquidator and take possession, KIADB did not conduct any survey and possession of the land was not taken in the presence of the official liquidator. Subsequently, KIADB filed another application for the same relief in CA No. 997 of 1994, which application came to be rejected. Therefore, she contends that when the second application filed in CA No. 997 of 1994 is rejected, KIADB cannot contend that possession of the land lies with it, since the official liquidator has not handed over the possession of the land to KIADB.

9. It is also the case of the appellant that no award was passed in respect of the land of the appellant by the KIADB, since M/s. Mysore Lamp Works Ltd., in whose favour the land was notified, went under liquidation and also informed the KIADB that it is unable to pay the compensation payable to the landowner. According to the appellant, by way of an amended award, KIADB could not have passed an award on 2-9-2004 vide Annexure-A to the writ petition, 22 years after the initiation of acquisition proceedings. Therefore, learned counsel for the appellant contends that the learned Single Judge has committed an error in dismissing the writ petition without considering the case of the appellant on merits.

10. It is also the case of the appellant that KIADB did not initiate acquisition proceedings for establishment of an industrial area and that the acquisition proceedings were initiated only to provide an additional land to M/s. Mysore Lamp Works Ltd., which need is no longer available to the said company, because it went into liquidation and expressed its inability to deposit the compensation and till today M/s. Mysore Lamp Works Ltd., has not deposited the compensation payable to the landowner. Therefore, she contends that the appeal filed by the appellant requires to be allowed by setting aside the order passed by the learned Single Judge, since an error is committed by the learned Single Judge. She also submits that pursuant to the company court order, the official liquidator of Madras High Court has returned the assets of the company to the appellant.

11. Learned counsel for the respondent-KIADB submits that though no award was passed in respect of the land of the appellant while passing the award on 23-4-1986, possession of the land has been taken over by the KIADB by drawing a mahazar on 11-6-2004. He further submits that by oversight award in respect

of the land of the appellant was not passed on 23-4-1986 and therefore an amended award came to be passed on 2-9-2004 vide Annexure-A to the writ petition. In the circumstance, he contends that the learned Single Judge is justified in dismissing the writ petition on the ground of delay and laches. Therefore, he requests the court to dismiss the appeal.

12. Having heard the learned counsel for the parties, what is to be considered in this appeal is whether the learned Single Judge has committed an error in dismissing the writ petition and if so whether the order of the learned Single Judge requires to be interfered with?

13. It is not in dispute that the appellant-company is the owner of land measuring 1 acre 1 PA guntas in Sy No. 36 of Yeshwanthapura village, which was notified, along with two other lands belonging to other persons, under preliminary notification dated 17-4-1984 for the benefit of M/s. Mysore Lamp Works Ltd., which is a state owned undertaking. It is also not in dispute that the final notification was issued on 7-3-1985 and for the reasons best known to the KIADB, no award was passed in respect of the land of the appellant. However, in respect of the other two parcels of lands, an award came to be passed on 23-4-1986. Therefore, the owner of the land would be under the impression that its land was no more required for the benefit of M/s. Mysore Lamp Works Ltd.

14. It is also not in dispute that when the acquisition proceedings were initiated by the KIADB, the appellant-company was under liquidation proceedings before the Madras High Court in Company Petition No. 97 of 1970 and the official liquidator attached to the Madras High Court was in charge of the affairs of the company. The official liquidator did not challenge the acquisition proceedings within a reasonable time. However, since no award was passed in respect of the land of the appellant, there was no need for the official liquidator or the appellant company to challenge the acquisition proceedings.

15. It is also not in dispute that the KIADB made an application before the company court requesting the court to direct the official liquidator to hand over the possession of the land in question, which application came to be allowed on 3-4-1987 in CA No. 458 of 1985 and though a direction was issued to the KIADB to conduct survey of the land in the presence of the official liquidator and take possession in accordance with law, no steps were taken by the KIADB to survey the land and take possession in terms of the directions of the company court. Later, another application came to be filed by the KIADB in CA No. 997 of 1994 and the same has been rejected by the company court. Therefore, in law, possession of the land has not been taken by the KIADB under due process of law. However, it is contended by the learned counsel for the respondent-KIADB that possession was taken on 11-6-2004 by drawing a mahazar. But, before taking possession of the land on 11-6-2004, KIADB has not acted in accordance with the directions issued by the company court. Apart from this, M/s. Mysore Lamp Works Ltd., declined to take possession of the land on account of its financial difficulties, because, by that time, the said company was under

liquidation proceedings before this court. In the circumstances, M/s. Mysore Lamp Works Ltd., had addressed a letter to the special land acquisition officer, KIADB on 6-2-2003, expressing its inability to deposit the cost of acquisition, since there was already an order to close down M/s. Mysore Lamp Works Ltd., by the state government. In spite of receiving such a letter from M/s. Mysore Lamp Works Ltd., an award came to be passed vide Annexure-A to the writ petition on 2-9-2004.

16. Therefore, the short question that arises for our consideration is when the land is notified for the benefit of M/s. Mysore Lamp Works Ltd., and when the said company is unable to pursue the acquisition proceedings and expressed its difficulty in depositing the cost of land and in view of the order passed by the state government to close down the company, in all fairness, KIADB was required not to pass an award on 2-9-2004, because, the land in question was not notified for establishing an industrial area formed by the KIADB, but it was for the specific purpose for the benefit of M/s. Mysore Lamp Works Ltd. In spite of the same, an award came to be passed on 2-9-2004.

17. In addition to that, in the award passed on 2-9-2004, no reasons are assigned as to why an amended award came to be passed in the year 2004 when the original award is dated 23-4-1986. An amendment to the award can be passed only if there is any clerical mistake or otherwise. But, in the instant case, the land of the appellant has not been included in the original award dated 23-4-1986 and 18 years after the award, an amended award came to be passed, that too when there was no need for the KIADB to pass such an award, since the purpose for which the acquisition proceedings were initiated was no longer available to the benefit of M/s. Mysore Lamp Works Ltd., on account of its closure by the state government.

18. The learned Single Judge, without considering all these aspects, has rejected the writ petition on technical grounds, which, according to us, is an error committed by the learned Single Judge and required to be set aside.

19. In the result, appeal is allowed and award dated 2-9-2004 vide Annexure-A to the writ petition is hereby quashed. Consequently, the preliminary notification dated 17-4-1984 and the final notification dated 7-3-1985, in so far they relate to the land of the appellant is concerned, is deemed to have been lapsed on account of delay and laches, as the land is no more required for the benefit of M/s. Mysore Lamp Works Ltd. If any amount is deposited by the KIADB before the civil court, liberty is granted to it to withdraw the amount.