
(1961) 11 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No"s. 471, 484 to 489 of 1961

Hunnikeri Bros.

APPELLANT

Vs

Asst. Commissioner, Dharwar Division and Another

RESPONDENT

Date of Decision : 13-11-1961

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 18, 4, 9 (3), 9 (s)

Citation : AIR 1962 Kar 169

Hon'ble Judges : Mir Iqbal Hussain, J;A.B. Somnath Iyer, J

Bench : Division Bench

Advocate : H.P. Datar, for the Appellant; D.M. Chandrasekar, High Court Govt. Pleader, for the Respondent

Judgement

Somnath Iyer, J.

(1) There seven writ petitions concern the validity of an acquisition proceeding in which a land situate in Marain Timmasagar, in Hbli, to the extent if a little more than four acres, was proposed to be acquired under a preliminary notification published u/s 4 of the Land Acquisition Act in June 7, 1956, its supplemented by a final notification published on October 12, 1956, and amended by yet another notification published in June 30, 1958. The award in those Acquisition proceedings was made on March 21, 1961. On March 22, 1961, the City Survey Officer issued a notice to the petitioners before us, calling upon them to deliver possession of the acquired land to the State Transport Department on April 25, 1961. In there application which were pretended to this Court on April 20, 1961. We are asked to restrain the City Survey Officer and Tahslider, hebli, from taking delivery of possession of the acquired property, and to quash the award made by the Collector, on March 21, 1961.

(2) We shall first portend to consider the challenge made to the award. The ground in which the award is assailed is that although tpeters were all lessees of the acquired property, holding those bits of property under a lease in their favour by the Intied Basel Mission Church, Mangalore and therefore, were persons

known or believed to be interested in the acquired property, the Collector issued no notices to them property, Section 9(3) of the Land Acquisition Act.

(3) It is admitted that no notices were issued to any of the petitioners under the provisions of that sub-section and in defence of that omission, what the Collector has stated in the affidavit which he has produced before us is that they were not known or believed to be interested in any portion of the acquired property since their names do not find a place in the Property Register.

(4) the petitioners in Writ Petitions 484, 485, 486, 487, and 489 of 1961, notwithstanding the omission on the part of the Collector to serve notices on them did present claims before the Collector, claiming the compensation which according to them, was payable. The petitioner in Writ Petition, No. 471 of 1961, in addition to the direct claim which he made before the Collector, also presented a claim through the church. These petitioners were all awarded compensation which the Collector considered to be adequate, and the only person who has not been awarded any compensation and who has not made any claim directly or indirectly to the Collector is the petitioner in Writ Petition No. 488 of 1961.

(5) The question to be considered is whether in those circumstances, it could be said that the award made by the Collector is, as contended by Mr. Darat, void, and therefore, liable to be quashed.

(6) As pointed out by this Court in Writ Petn. No. 249 of 1959 (Mys), the object in enacting sub-section (3) of Section 9 of the Land Acquisition Act is to afford to persons occupying the land or interested in it to make a claim for compensation so that the Collector might decide the compensation payable to them, and order its payment. If in the making of that claim or from establishment, the omission to serve a notice under sub-section (3) of Section 9 has brought about a hindrance. It is clear that the person who has so prevented from making a claim or from establishment of it, has a right to challenge the award by the adoption of suitable steps for that purpose. It is, however, clear that there is no inflexible rule that an omission in all circumstances, vitiates an award. It is, however, unnecessary to pursue this discussion since, in the circumstances of this case, it is obvious that in the case of every petition other than the petitioner in Writ Petition No. 488 of 1961, it could not be said that there was any difficulty presented by the omission to serve them with notice u/s 9(s) in the presentation or establishment of a claim for compensation. Out of the six petitioners. Five of them presented claims were adjudicated upon. The petitioner in Writ Petition No. 471 of 1961, must also be regarded to have made a claim, although he made it through the Church. In those circumstances, it would not be possible for us to hold that the award, in so far as it is possible is invalid or void. In so far as the petitioner Writ Petition No. 488 of 1961 is concerned it does not appear that he ever intervened in the acquisition proceedings. Nor is there any material to show that he had any interest in the land or was its occupant. However that may be, it is clear that there is nothing to show that the Collector knew or believed that he had any interest in the land proposed to be acquired, sub-section (3) of section 9

enjoins the service of notice only on those who are known or believed to have, an interest in the property which is proposed to be acquired, and so on an it is not established that the Petitioner in Writ Petition No. 471. Of 1961 was known or believed to have any interest in the acquired property, it cannot be said that the Collector was under a statutory duty to serve a notice on him. At any rate, the omission to do so cannot be made the ground for an attack that the award to any extent is a void award.

(7) We should not be understood as having said that we have come to the conclusion that the petitioner in Writ Petition No. 471. Of 1961 has no interest in the land which is now acquired ; if he has any, it will be open to him to establish that right by the institution of an appropriate suit and claim appropriate reliefs.

(8) But in the case of the remaining six petitioners, is impossible for us to hold that the award itself had no evidence in the eye of law or was void. Their own conduct in intervening to the acquisition proceedings in which they presented to them clearly precludes them from urging any such contention. At the highest, what may be said is that by reason of the omission to issue a notice to them, they have been prejudiced to the extent that they were presented from asking for a reference u/s 18 of the Land Acquisition Act, to the Court, for the award of enhanced compensation. The only order that we should therefore make would be to direct the collector. If an application is pretended to him for that purpose u/s 18 of the Land Acquisition Act by any of these six petitioners, to make a reference under the provisions of that section to the competent court so that court might dispose of the reference only on merits, although much reference might have been made beyond the time prescribed by section 18 of the Land Acquisition Act. Mr. Government Pleader undertakes that on behalf of the Collector, no argument will be advanced before the Court that the references were made beyond the period or limitation. The only other direction that we need give in this regard is that the collector should make the references as directly only of the petitioners to any of them present application for references u/s 18, within a period of six weeks from this date.

(9) If, therefore, it is not possible to hold that there was no award made by the Collector. In this case, it was permissible for the Collector u/s 16 of the Land Acquisition Act, to take possession of the property. But, it is urged that the City Survey Officer who called upon the petitioners to deliver possession of the property on April 25, 1961, is not a Collector within the meaning of sec, 16 and therefore was incompetent to take possession which the Collector alone can take u/s 18.

(10) The short answer to this argument is that section 16 does not require the Collector personally to go to the land and stand there, and then proclaim that he has taken possession, and that it is enough if he authorities someone whom he wishes to take delivery of possession to go there and take possession. It has been pointed out to us by Mr. Government Pleader that by a letter addressed to the City Survey Officer for Tab slider on March 21, 1961, by the Collector in this

case who was the Land Acquisition officer, the Tahslider was authorised by him to take possession of the land, and it is for this reason that the City Survey Officers (Tahslier) called upon, by means of his notices which he issued on march 21, 1961, the petitioners to deliver possession of the land on April 25, 1961. The argument that some one other than the Collector has been trying to disturb the possession of the petitioners without the authority of law, must therefore fall.

(11) There remains only one more contention to be considered. That contention is the since the land was acquired for the purpose of the State Transport Corporation of Bombay, and that Corporation is no longer functioning within the new State of Mysore, the City Survey Officer had no power to take delivery of possession of the land for the purpose of the State Transport Department, as he purports to do in the notice issued by him.

(12) The answer to this argument is that the assets of the State Transport Corporation, Bombay have now devolved upon the State Reorganisation Act, and the State Transport Department of Mysore was therefore entitled to be delivered possession of the property which was originally intended to be delivered to the State transport Corporation of Bombay.

(13) These writ Petitions succeed only to the extent indicated and in other respects stand dismissed. It will now be open to the City Survey Officer to take possession of the land as proposed by him in the notices issued on March 22, 1961. The petitioners are granted one month's time to vacate and deliver possession.

(14) In the circumstances, there will be no order as to costs.

(15) Order accordingly.