

(1995) 09 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No"s. 34559-61 of 1994

J.M. Sohanlal and others

APPELLANT

Vs

Special Land Acquisition Officer, Bangalore

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 18, 30, 31

Citation : AIR 1996 Kar 171 : (1996) ILR (Kar) 560 : (1996) 5 KarLJ 334

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Mrs. Bhanu Ravinder, for the Appellant; K.P. Ashok Kumar, Government Advocate, for the Respondent

Judgement

1. Land measuring 1851.60 Sq. yards owned by the petitioners was acquired in terms of award No. LAC (C) 23/1983-84 dated 9-2-1987 made by the respondent. A total amount of Rs. 15,36,828.80 Ps. was determined and held payable to the petitioners as compensation for the property acquired to be shared by them equally. Out of the amount so determined a sum of Rs. 6,59,882/- is said to have been paid to the petitioners on 21-2-1994 thereby leaving a balance of Rs. 8,76,946.80 Ps. The petitioners' case in the present writ petitions is that even though the possession of the land was taken over on 22-2-1994 yet the balance amount of compensation due and payable to them under the award was not released in their favour thereby forcing the petitioners to file the present writ petition for a mandamus directing the respondents to release the balance amount of compensation in their favour with interest due thereon.

2. When this matter came up before me on 26-9-1995, Mr. K. P. Ashok Kumar, learned Govt. Advocate appearing for the respondent submitted that the amount of compensation payable to the petitioners having been received from the Corporation of the City of Bangalore only a day before i.e., on 25-9-1995, given

a short adjournment the amount in question would be disbursed to the petitioners after fulfilling the requisite formalities like obtaining an indemnity bond etc., from them. The matter was accordingly directed to be posted today to enable the respondent to do the needful after due compliance with the formalities, if any.

3. When the matter came up today, Mr. Ashok Kumar, learned Govt. Advocate for respondents instead of reporting disbursement of the amount of compensation; in terms of his submission made on 26-9-1995 filed a statement of objections on behalf of the respondent in which it is asserted that the present writ petitions are not maintainable as the petitioners have an alternate remedy open to them by way of a suit and praying that the petition may be dismissed on that account. Alternatively, it is urged that the payment of compensation amount in question could not be made to the petitioners in time since the beneficiary namely the Corporation of City of Bangalore had not deposited the said amount with the respondent and also because one Y. L. Krishna Murthy had filed a claim petition before the respondent on 15-4-1995. The said Sri Krishna Murthy is also said to have filed O. S. No. 10395/1994 which is presently pending trial in the City Civil Court Bangalore. It is also pointed out that the said Sri. Krishnamurthy and others had filed another petition on 15-2-1995 narrating the circumstances of the case and seeking proper directions.

4. The statement of objections further points out that the petitioners and Sri Y. L. Krishna Murthy had appeared before the respondent on 27-9-1994 and wanted the respondent to apportion the compensation amount between the petitioner and the said Sri. Krishnamurthy to which course the respondent is said to have disagreed. In the premises, the statement of objections filed by the respondent makes a prayer for the dismissal of the writ petitions.

5. I have heard the learned Counsel for the petitioners and Mr. Ashok Kumar learned Govt. Advocate appearing for respondents.

6. In so far as the objection as to the maintainability of this writ petition is concerned I find no substance in the same in view of the specific provision contained in Section 31 of the Land Acquisition Act, 1894, according to which the Collector is upon making of the award bound to tender payment of the compensation awarded by him to the persons interested and entitled to receive the same under the award unless he is prevented by some one or more of the contingencies contemplated under sub-section (2) of the said Section.

7. It is not the case of the respondent that any one of the contingencies envisaged by Section 31(2) has prevented him from making the payment of the amount held payable to the petitioners. His only defence is that a suit is pending in the Civil Court filed by Shri Y. L. Krishnamurthy in which a share in the compensation in question has been claimed by the plaintiff. It is however not disputed that there is no injunction issued in the said suit either against the petitioners restraining them from receiving the compensation or forbidding the

respondent from releasing the same in their favour. As a matter of fact the respondent is not even a party to the said suit. The mere pendency of the suit between Y. L. Krishnamurthy and the petitioners, therefore, does not bring the present case within the purview of Section 31(2) so as to justify the non-payment of the amount of compensation determined in favour of the petitioners by the Collector himself in terms of the award made by him. As per Section 12 of the Land Acquisition Act, 1984, an Award made u/s 11 of the Act when filed in the Collector's Office is final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested except to the extent otherwise provided by the said Act. The only provisions which can be called-in-aid for re-opening, the conclusive nature of the Award as to the matters referred to in Section 12 are Sections 18 and 30 of the Act, which envisage a reference to the Civil Court as to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. For either one of these references any person claiming a right in the compensation determined under an Award is required to make an application to the Collector. No such reference application is said to have been made by any one which could possibly justify the withholding of the payment of compensation determined, under the Award.

8. In terms of Section 31(2) of the Act in the event of any one of the contingencies referred to in the said provision, arising, the Collector is required to deposit the amount of compensation in the Court to which a reference is maintainable. Assuming therefore that the Collector had any justification to withhold the payment u/s 31(2) of the Act, he is not entitled to withhold the payment and retain the amount with him but is required to deposit the same in the competent Court. It is not however the case of the Respondent that he proposes to deposit the amount in the Court on account of any one of the contingencies referred to in Section 31(2) of the Act having arisen in the present case.

9. There is yet another aspect of the matter which can also not be lost sight of. In terms of the third proviso to Section 31(2), the payment of compensation to any person held entitled to receive the same does not affect the liability of the person so receiving the same to pay the amount received by him to the person lawfully entitled thereto. In other words, in case a competent Civil Court eventually holds that the person who was held entitled to receive the compensation under the Award, was not actually entitled to receive the same, the liability of any such person to pay the amount received by him to the person lawfully entitled to the same, remains unaffected. It is not therefore as though the payment of the compensation to the petitioners under the Award made in their favour would result in bringing about an irretrievable situation where the person lawfully entitled to receive the compensation may be rendered remedy-less or the Collector saddled with the liability to make payment of the amount

over-and-above the one made to the petitioner.

10. Mr. Kumar, however, relied upon two decisions, one of the High Court of Bombay in the case of Nilkanth Ganesh Naik v. Collector of Thana ILR(1897) Bom 802 and the other of the High Court of Madras in the case of Mantharavadi Venkayya v. Secretary of State for India in Council ILR (1903) Mad 535, in support of his submission that the present writ petitions are not maintainable and that the only remedy open to a person who has not received compensation determined in terms of an Award is by way of a Civil Suit. The judgment relied upon by Mr. Kumar do not support his submission. In the first of the two cases cited by Mr. Kumar, the question involved was whether an Award made by the Collector under the Land Acquisition Act could be enforced against a Collector by way of execution proceedings. A Full Bench of the Bombay High Court answered the question in the negative and held that the Act did not provide for or contemplate an Award for compensation being enforced against the Collector by execution proceedings and that there was no general law which enabled the Civil Court to enforce such a statutory liability by means of an execution proceedings other than by way of a suit. The Court observed that the ordinary mode of enforcing such an obligation was by way of a suit, unless the Legislature while creating the obligation to pay also prescribed any other means of enforcing the same. The judgment does not deal with the question as to whether the obligation enjoined upon the Collector u/s 31 tender the payment of the persons interested upon making of the Award u/s 11 of the Act, Could or could not be enforced by way of mandamus under Article 226 of the Constitution. The judgment obviously settles the legal position as the same existed prior to the promulgation of the constitution and therefore is no authority for the proposition that this Court cannot or ought not enforce such an obligation by an appropriate writ.

11. Equally misplaced is the respondents reliance upon the other judgment cited by Mr. Kumar in which the question involved was whether a suit for recovery of possession of land notified for acquisition was governed by Article 18 or Article 120 of the Limitation Act. The judgment does not have any relevance even remotely to the question as to whether a writ Court can enforce an obligation cast upon the Collector u/s 31 of the Act to make the payment of the amount of compensation held payable to an expropriated owner.

12. That apart the very fact that a suit for recovery of compensation determined in terms of an Award could also be filed by an erstwhile owner, does not necessary mean that this Court cannot in exercise of its writ jurisdiction enforce an obligation statutorily cast upon the Collector u/s 31 of the Act. The fact that an Award has been made in terms of Section 11 which is final in so far as the amount of compensation and the persons to whom it is payable clearly makes any investigation on facts by this Court unnecessary. It is not in dispute that the petitioners have been held entitled to the compensation determined under the Award. In the circumstances all that requires to be done is to find out whether there is any lawful justification for the Collector in not making the payment

determined under the Award and should the Court find that the refusal to pay the amount determined is based on a pretense of a defence, nothing can prevent this Court from issuing a mandamus to the Collector to discharge his statutory obligation by tendering the amount in question in terms of Section 31 of the Act.

13. The second limb of the respondents' case also appears to be wholly untenable viz., that Y. L. Krishnamurthy has filed objections/representations before him on 15-2-1995 and 15-4-1995. Any such objections would have had some relevance if the respondent had decided to make a reference as to the entitlement to receive compensation to the Civil Court. Admittedly, no such reference is made so far, nor is it the case of the respondent that he is actually contemplating the making of any such reference. That being so, I see no reason why the respondent should not have released the payment determined in favour of the petitioners in terms of the award in question.

14. Learned Counsel for the petitioner points out that the respondent has been deliberately forcing the petitioners to file writ petitions in this Court for getting the payment determined released in favour of the owners. He has referred to W. P. Nos. 3358/89, 154.15/90 and 15329/90 disposed of by this Court on 20-3-1992 and 17-6-1993 respectively in which in identical circumstances this Court has by a mandamus directed the respondent to release payment determined in favour of the owners in terms of the award. From the nature of defence set-up by the respondent as also the previous history of the case, it is apparent that the respondent has been deliberately and without any lawful justification obstructing the process of release of payment in favour of the persons who are rightfully entitled to the same. Besides there is nothing on record to show as to what steps did the respondent take over a long period of 13 years or so since the making of the award for securing the payment from the beneficiary namely the Corporation of the City of Bangalore. Mr. K. P. Ashok Kumar's only argument in defence is that the present incumbent of the Office has joined only three months back and therefore the delay in securing the payment from the Corporation could not be counted against him. I see little substance in this submission. Whether it is the present incumbent or his predecessors the respondent ought to have made a serious attempt to see that the payment in question was secured from the beneficiary and released to the rightful claimants expeditiously. Forcing a citizen to resort to proceedings in this Court for receiving something which has been legitimately held to be due and payable to him is depreciable. Even today, the payment received is said to be only representing the principal amount of compensation without the interest due thereon. Steps might have to be taken to secure the amount of interest payable to the petitioners which may mean yet another round of litigation if the attitude adopted by the respondent is any indication.

15. Mr. Ashok Kumar then argued that since the limitation for filing a suit for the recovery of the amount due to the petitioners had itself expired these proceedings could not be made use of for granting a relief to the petitioner which

was barred even under the general law of limitation. This argument to say the least is one made in despair and needs notice only to be rejected. No such plea has actually been taken in the statement of objections filed today on behalf of the respondent. Even otherwise I see no reason why the petitioners cannot be said to be suffering a recurring wrong on account of the in-action of the respondent in not releasing the payment which is legitimately due and payable to them. The objection therefore must be overruled.

16. In the result, I allow these writ petitions and by a mandamus direct the respondent to forthwith disburse to the petitioners the amount of compensation that remains unpaid out of the total amount of Rupees 15,36,828.80 ps together with interest due on the same. In case the interest amount is not yet received from the beneficiary of the acquisition namely Bangalore City Corporation the respondent shall take immediate steps to secure the same and disburse the amount so received at the earliest,

17. Keeping in view the conduct of the respondent and the tenacity with which he has stuck to his intransigence and prevarication in these proceedings, I hold the petitioners entitled to costs of these petitions assessed at Rs. 5,000/- (Rupees five thousand only).

18. Petitions allowed.