

(2015) 09 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 109537/2015 (GM-RES)

Jodharam

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Municipal Corporations Act, 1976 — Section 178-A, 178-A(1)

Citation : (2015) 09 KAR CK 0016

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Mahabaleshwar Hasinal and Vijay S. Chiniwar, Advocates, for the Appellant; M. Kumar, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—The grievance of the petitioner is that his property is being used up without acquiring it and without giving the compensation thereof. It is his case that the Hospet City Corporation is utilizing his land for the purpose of widening the roads.

2. Sri Mahabaleshwar Hasinal, the learned counsel appearing for the petitioner submits that nobody can be deprived of his private property without following the due process of law.

3. Sri Mrutyunjay Tata Bangi, the learned counsel appearing for the respondent Hospete City Corporation (hereinafter called "the Corporation") submits that the Comprehensive Development Plan shows that the property in question is earmarked for the road-widening. He submits that the large number of occupants on either side of the road have already vacated their properties to enable the Corporation to widen the roads. He also submits that some of the owners of the properties in question have not come before the Court; on the other hand some of the petitions are filed by the lessees/tenants/unauthorised occupants. He submits that if the petitioner is found to be the owner of the property in question

and if he is inclined to receive the transferable development rights, the Corporation would be anxious to sort out the issues with him.

4. The submissions of the learned counsel have received my thoughtful consideration. That the road-widening is a public purpose cannot be disputed at all. But, if the road-widening project has to be on the property belonging to the petitioner, then such property cannot be summarily occupied and utilized by the Corporation. It is trite that nobody can be deprived of his property without following the due process of law. The question that arises for my consideration is whether the road-widening is taking place using up the property belonging to the Corporation or belonging to the private owner. They are the disputed questions of facts. In the proceedings under Article 226 of the Constitution of India, it is not possible to deliver any finding on such factual controversies. Such disputes cannot be resolved without holding an enquiry. The decision on claim of the property by or against the Corporation can be obtained by raising the dispute before the Regional Commissioner invoking Section 178-A of the Karnataka Municipal Corporations Act, 1976 ("the said Act" for short). The provisions contained in Section 178-A(1) and (2) of the said Act are extracted hereinbelow:

"178-A. Decision of claims to the property by or against the Corporation.--(1) In any city to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only has been or shall be extended under any law for the time being in force, where any property is claimed by or on behalf of the Corporation, or by any person as against the Corporation it shall be lawful for the [Regional Commissioner of the concerned revenue region] after enquiry of which due notice has been given, to pass an order deciding the claims.

(2) Any person aggrieved by an order made under sub-section (1) may appeal to the Karnataka Appellate Tribunal, and the decision of the Tribunal shall be final"

5. I deem it necessary and just to relegate the aggrieved petitioner to the statutory remedy provided under Section 178-A of the said Act. The petitioner is directed to file his claims in support of the ownership of the property, of the buildings he has raised thereon, etc. before the Regional Commissioner within two weeks from today. Similarly, the Corporation will also file its claims, if it wants to take the position that the property in question belongs to it and in support of its allegations that the property is encroached by the private party. On examining the documentary evidence and after affording a reasonable opportunity of hearing to all the parties concerned, the Regional Commissioner shall pass the order on the ownership of property and the allied questions.

6. If the Regional Commissioner's order is not acceptable to any party, it is open to him to challenge the same before the Karnataka Appellate Tribunal.

7. If the Regional Commissioner returns the finding that a particular property, being used for road-widening purpose, is owned by the Corporation and not by any private party, any future dispossession or demolition may be carried out strictly in accordance with law and after issuing the notice to the occupants of

such properties.

8. In the matters where the Regional Commissioner returns the finding that any portion of the private land is being used up for the road-widening purpose, owners of such lands have to be compensated without any loss of time. The respondents shall have two options in the matter. They shall elect one of the two options indicated hereinbelow:

"(i) The Government of Karnataka shall immediately resort to the acquisition of lands under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. All the acquisition proceedings, including the passing of award and disbursement of the compensation, shall be completed within six months from the date of passing of the order by the Regional Commissioner holding that a particular private property is used up for and in the course of the road-widening.

(ii) If the above course is not resorted to by the Government of Karnataka for whatever reason, then the Regional Commissioner shall, within one month from the date of the time granted for complying with the above direction, pass an order determining the damages/compensation. If the quantification of the compensation-amount is not acceptable to any of the parties, they shall have the liberty of challenging the same before the competent civil court."

9. It is further made clear that whether the authorities resort to the route of compulsory acquisition of land or pass the order quantifying the damages/compensation, it shall also be open to the authorities to negotiate with the property-losers by offering the alternative property to them in lieu of cash-compensation. It shall also be open to the displaced persons to seek the benefits due under National Rehabilitation and Resettlement Policy, 2007 and also under schemes such as the Ashraya Scheme, etc. in the cases where they are applicable.

10. In passing this order, I am fortified by the Division Bench's judgment, dated 1.9.2014 passed in W.P. No. 21042/2011 and connected matters.

11. The Regional Commissioner shall dispose of the anticipated petition in accordance with law and as expeditiously as possible and in any case within an outer limit of ten weeks from the date of the filing of the anticipated petition. Further, to safeguard the interests of the petitioner between today, the date of the disposal of this petition and the date of the disposal of his anticipated petition before the Regional Commissioner, I direct the respondents not to dispossess the petitioner from the property in question or demolish any structure standing thereon for a period of 12 weeks.

12. This petition is accordingly disposed of. No order as to costs.