
(2014) 11 KAR CK 0109

In the Karnataka High Court

Case No : Writ Petition Nos. 44481, 44686 and 45366/2013

Jospeh Edwin Pinto

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6(1)

Citation : (2014) 11 KAR CK 0109

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Vijaya Krishna Bhat M., Ravishankar Shastry G. and Krishna Moorthy D, Advocate for the Appellant; S.V. Girikumar, AGA. and K.A. Ariga, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners in all these petitions are assailing the preliminary notification dated 25.09.2012 passed under Section 4(1) of the Land Acquisition Act ("the Act" for short) and also the final notification dated 29.08.2013 passed under Section 6(1) of the Act.

2. For the purpose of narration of facts, the case as pleaded in W.P. No.44481/2013 is referred. The petitioner therein claims to be the owner of the land bearing Sy.No.474/16 situate at Vitla Kasaba village, Bantwal Taluk, D.K. District measuring 0.01 acres consisting of commercial building. The property is situate within the jurisdiction of the fourth respondent herein. The manner in which the petitioner has purchased the property and has been enjoying the same has been referred to in the petition. In the connected petitions, the petitioners therein have also referred to the property enjoyed by them which is the subject matter herein and the manner of their ownership. Since the question for consideration would appear more in the nature of the legal contention, the averment on facts in the connected petitions are not adverted to herein as the ultimate consideration is with regard to the manner in which Section 5A enquiry was held and the order passed therein, which would be a common consideration

to all these petitions.

3. However, one aspect of the matter which requires to be noticed at the outset is that the date which had been fixed for the 5A enquiry was 16.11.2012. In the connected petitions viz., W.P. Nos.45366/2013 and 44686/2013, the objections at Annexure-C in both the petitions had been filed on 30.10.2012 and 15.11.2012 i.e., prior to the date that had been fixed for the enquiry. It is no doubt true that in W.P. No.44481/2013 the objections is dated 17.11.2012 that is subsequent to the date of enquiry. In the objection statement filed on behalf of the respondents, it has been contended that the objection of the said petitioner in W.P. No. 44481/2013 was received in their office on 19.11.2012. But since a common consideration is made it is the substance of the objection that is material.

4. Though the objections in all the three cases have been filed on different dates and a vehement contention has been raised by the learned counsel for the fourth respondent that as held by the Hon''ble Supreme Court in the case of Delhi Administration Vs. Gurdip Singh Uban and Others, , the grievance can be made only by a person who had filed objections prior to the date of the hearing, what cannot be lost sight in the instant case is that the order passed by the Land Acquisition Officer on 16.11.2012 is a common order in respect of all the petitions involved herein. Therefore, notwithstanding the fact that the objection in W.P. No.44481/2013 was filed after the date of hearing, the consideration would be similar in all these petitions more particularly in a circumstance where the petitioner therein has stated the circumstance under which he was forced to file objection on the next day. Therefore, if this aspect of the matter is kept in view and the objections as filed by the respondents in these petitions are taken note of, the petitioners had filed detailed objections indicating as to why their properties should not be included for the purpose of acquisition. The important aspect that they had raised for consideration is that the petitioners themselves had voluntarily given up the portion of their properties for a public cause as recent as in the year 2008 and had thereafter renovated their buildings by incurring huge expenses. They have further contended that the reason for which the acquisition is now proposed would not serve the purpose since the demolition of these three buildings alone would not achieve the need as contemplated by the respondents. The said objections which had been raised by the petitioners certainly required application of mind by the Land Acquisition Officer and thereafter a decision ought to have been taken.

5. While arriving at such conclusion, I have kept in view the observations made by the Hon''ble Supreme Court in the case of Raghbir Singh Sehrawat Vs. State of Haryana and Others, and in the case of Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, wherein the Hon''ble Supreme Court has held that the enquiry under Section 5A is not an empty formality, but would require application of mind to the objections that have been filed.

6. In that light, a perusal of the decision taken by the Land Acquisition Officer on

16.11.2012 impugned at Annexure-C to the petition (W.P. No.44481/2013) would disclose that except for stating that the objection raised is rejected for the reason that the acquisition is for a public purpose, there is no application of mind to the contentions which had been urged in the objection statement to come to the conclusion as to whether the acquisition should have been proceeded further and the final notification was to be issued. Since I have presently found that Section 5A enquiry held in the instant case was an empty formality without appropriate consideration, the proceedings from that stage would have to be redone and therefore, at this juncture, I see no reason to advert to the contentions raised assailing the preliminary notification issued under Section 4(1) of the Act as the contention in that regard would arise for consideration only if the Land Acquisition Officer on reconsideration re-affirms the position for the purpose of issue of final notification. Hence, the challenge to the preliminary notification is left open without referring to that aspect of the matter.

7. For the present, taking note of the fact that the order impugned dated 16.11.2012 is without application of mind and the final notification issued being the result of the same, the final notification dated 29.08.2013 impugned in all these petitions stand quashed. The decision dated 16.11.2012 of the Land Acquisition Officer is also quashed. Liberty is however reserved to the Land Acquisition Officer to reconsider the matter afresh. However, for the purpose of reconsideration there would be no need to issue fresh notice. The petitioners in these petitions shall voluntarily appear before the Land Acquisition Officer on 28.11.2014 at 3 p.m as the first date of appearance. The Land Acquisition Officer shall thereafter regulate the proceedings and pass orders afresh in accordance with law.

In terms of the above, the petitions stand disposed of.