

(2016) 02 KAR CK 0217

In the Karnataka High Court

Case No : Writ Petition Nos. 112501-112506/2014 (LA-KIADB)

K. Gangadhar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1), Section 28(2),
Section 28(3), Section 28(4), Section 3(1), Section 6(1)
Land Acquisition Act, 1894 — Section 6, Section 6(1)

Citation : (2016) 02 KAR CK 0217

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : T.M. Nadaf and R.M. Nadaf, Advocates, for the Appellant; K. Vidyavathi, AGA, for the Respondent

Final Decision : Allowed

Judgement

B. Veerappa, J.—1. The petitioners in the above writ petition have sought for a writ of certiorari to quash the preliminary notification dated 22.02.2015 issued under Section 28(1) of the Karnataka Industrial Area Development Act, 1966 (hereinafter referred to as "the Act", for short), published in Karnataka Gazette dated 22.02.2005, as vitiated by efflux of time and the order dated 07.08.2012, passed by the respondent No. 2 - KIADB, overruling the objection filed by the petitioners to proceed with the acquisition vide Annexures A and B.

2. It is the case of the petitioners that the properties purchased by the petitioners in various survey numbers and different extents are acquired by the Karnataka Industrial Areas Development Board (KIADB", for short) by issuing preliminary notification on 22.02.2005 and the name of the petitioners was not published in the preliminary notification and no notice was issued under Section 28(2) of the Act. The petitioners are in actual possession and using the land for agricultural purpose for their livelihood. The petitioners have no other source of income. The areas in which these lands are situated are not suitable for

acquisition for industrial purpose. In fact, the lands proposed to acquire belonging to these petitioners are not situated in single parcel and the lands are separated being isolated by Honnahalli Halla on the Western side, Honnahally main road to its southern side and chart road leading to APMC residential Bellary Urban Development Authority (BUDA) approved the layout acquired lands. The lands in question are not at all in any way near by the adjacent land already acquired.

3. It is further case of the petitioners that, the 2nd respondent issued final notification without notice to the petitioners and thereafter, the petitioners after coming to know the same, have filed W.P. Nos. 7415/2016 and 7539/2016, before this Court and this Court by an order dated 27.02.2012, allowed the writ petitions, by setting aside the impugned orders and the petitioners were given four weeks time from the date of receipt of copy of the order, to file objections before the competent authority and the competent authority was directed to consider the same after giving an opportunity of hearing to the petitioners and take appropriate decision in the matter, and the petitioners were also directed to appear before the Special Land Acquisition Officer on 09.04.2012 for further course of action in the matter. In pursuance of the said order passed by this Court, the petitioners filed objections on 09.04.2012, requesting the authorities to drop the proceedings. The respondents by an order dated 07.08.2012, have over-ruled the objections filed by the petitioners and proceeded to pass orders to initiate further proceedings. In spite of the order passed by the 2nd respondent over-ruling the objections filed by the petitioners, till today they have not issued final notification as contemplated under Section 28(4) of the Act.

4. The petitioners further contended that in similar circumstances, in respect of similarly situated persons like the petitioners, though the lands were acquired by the preliminary and final notification, subsequently, they have been de-notified, but in the case of the petitioners, the respondents have not taken any action till today nor issued any final notification under Section 28(4) of the Act. Hence the petitioners are before this Court for the relief sought for.

5. I have heard the learned Counsel for the parties to the lis.

6. Sri. T.M. Nadaf, learned Counsel for the petitioners, contended that, though the preliminary notification was issued as long back as on 22.02.2005, the same was quashed by this Court in W.P. Nos. 7415/2006 and 7539/2006 by order dated 27.02.2012 with liberty to the petitioners to file objections. Accordingly, the petitioners filed objections as long back as on 09.04.2012. Though the said objections were over-ruled by the respondents on 07.08.2012, till today, the respondents have not issued final notification under the provisions of Section 28(4) of the Act. Therefore, he contended that the very proceedings initiated by the authorities are vitiated by efflux of time. In support of his contention, he sought to rely on the judgment of the Division Bench of this Court in the case of H.N. Shivanna v. State of Karnataka reported in , KCCR-2013-4-2793 and sought to allow these writ petitions.

7. Per contra, Sri. Laxamanreddy Kurahatti for Sri. Veeresh R. Budihal, learned Counsel for the respondent No. 2 -KIADB, fairly submits that the KIADB has not issued any final notification as contemplated under Section 28(4) of the Act and not disputed the order passed by this Court on 27.02.2012. He also submits that the issue involved in the present case is covered by the decision of this Court in the case of H.N. Shivanna v. State of Karnataka (supra). The said submission is placed on record.

8. The learned HCGP for the respondent Nos. 2 and 3 sought to support the case of respondent No. 2.

9. I have given my anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire materials on record.

10. It is an admitted fact that the 2nd respondent issued preliminary notification under Section 28(1) of the Act on 22.02.2005 and final notification under Section 28(4) on 28.04.2005, without giving notice to the petitioners and without giving an opportunity of hearing to the petitioners. Therefore, the petitioners are constrained to file W.P. Nos. 7415/2006 and 7539/2006, challenging both the preliminary and final notifications. It is also not in dispute that this Court, after hearing both the parties, by its order dated 27.02.2012, set aside the final notification with liberty to the petitioners to file objections within four weeks before the competent authority and the competent authority of the KIADB was directed to consider the same after giving an opportunity of hearing to the petitioners and take appropriate decision thereafter. It is also an admitted fact that, all the petitioners filed objections on 09.04.2012 in terms of the order passed by this Court. Thereafter, the respondents over-ruled the objections by an order dated 07.08.2012 exercising powers under the provisions of Section 28(3) of the Act. It is also not in dispute that from 07.08.2012 to till today, the 2nd respondent has not issued final notification as contemplated under the provisions of Section 28(4) of the Act, as fairly conceded by the learned Counsel for the 2nd respondent.

11. This Court while considering the provisions of Section 3(1) and Section 28(4) of the Act, in the case of H.N. Shivanna v. State of Karnataka reported in , KCCR-2013-4-2793, relying upon the decision of the Apex Court in the case of P. Narayanappa, has held as under:

"24. The Apex Court in the case of P. Narayanappa dealing with this aspect has held as under at para-20:

"Learned Counsel for the appellant has next submitted that the notification under Section 28(1) was published on 10-12-2001 and the notification under Section 28(4) was published on 23-10-2003 and thus there was a delay of more than 1 year and 10 months in publication of the second notification. As already discussed, the scheme of the present Act is different and there is no similar provision like the one contained in the proviso to sub-section (1) for Section 6 of the Land Acquisition Act which lays down a period of limitation of one year for

making a declaration under Section 6(1) of the Act. In the absence of any specific provision to that effect in the Act, and time-gap being not so long, it is not possible to 54 hold that the notification under Section 28(4) of the Act is invalid.

From the aforesaid discussion, it is clear if a period is prescribed under the Act for issue of a final declaration as well as for passing of the award, if the final declaration is not issued and the award is not passed within the stipulated period, the entire acquisition lapses, unless it is shown by virtue of any order of stay or injunction issued by any Court, the authorities were precluded from completing the acquisition proceedings. It is by operation of law as contained in the statute. Merely because such a provision is not found in an enactment, it does not mean limitation is not a bar at all. If such a prescription is not there expressly in any enactment it is not possible to hold that such an acquisition has lapsed relying on the provisions contained in the Land Acquisition Act. In other words, the provisions of the Land Acquisition Act cannot be read into the Act or such similar statutes. But nonetheless in order to decide what is the reasonable time within which authorities 55 have to exercise their power either for issue of a final notification or for passing of the award is concerned, certainly the Parliament intendment as contained in this provision cannot be completely lost sight of. On the contrary, it acts as a guide. It expresses the will of the Parliament. It has to be given due weight. When this acquisition proceedings were delayed endlessly and land owners were deprived of just compensation under law and consequently the constitutional right was violated, the Parliament amended the Land Acquisition Act prescribing the time limit. According to the Parliament, one year is the reasonable time for passing of a final declaration and two years is the time for passing of an award. If within those periods the final declaration is not issued, the award is not passed, the whole acquisition lapses. The Act is enacted for industrial development which has to be done expeditiously. Such an industrial development results in generation of employment and economic growth of the State. If the land is required for such public purpose a special enactment was enacted for 56 speedy acquisition of land. Merely because the provisions contained in Section 6(1) and 11A is not Incorporated in this Act or after the Parliament amended the Land Acquisition Act in 1984, the State legislature did not think it fit to bring in similar provisions under the Act, it does not mean that the State Government can exercise its power for issue of a final declaration or passing of an award without any regard to time limit. It has to be done within a reasonable time. As held by the Apex Court in Ram Chand's case, two years is held to be a reasonable time within which a final declaration has to be issued, if there are no hurdles placed in the acquisition by the land owners or if there are no hurdles in law. If the final declaration is not issued within two years, certainly the land acquisition has to lapse, notwithstanding the absence of any specific provision in the Act as contained in the Land Acquisition Act. When we say it is two years or one year it does not mean on expiry of the said two years or one year, as calculated under the L.A. Act, the acquisition has to lapse.

It is roughly two years or one year. Few days 57 or months this way or that way should not matter. Except for this absence of mathematical precision in calculating the period, the substance has to be applied. The parliamentary intention in prescribing time limit under the L.A Act cannot be ignored. However, it all depends on the facts of that particular case, the conduct of the parties, the purpose for which the land is sought to be acquired and the problems faced by the acquiring authorities in concluding the acquisition. Therefore, it is not possible to accept the contention of the acquiring authority that in the absence of any specific provision under the Act, no such time limit can be imposed and the same is without any substance. Even in the absence of any such prescriptions expressly under the statute, having regard to the fact that the right to property is a constitutional right and the person whose land is sought to be acquired is entitled to compensation at the market rate, such a compensation has to be paid to him at the earliest and therefore, the power of acquisition should be exercised 58 within a reasonable time so that the person who lost the land is duly compensated at the earliest point of time."

12. Admittedly in the present case, the respondents have not issued final notification within a reasonable period as held by the Hon"ble Supreme Court as well as this Court till today, even after lapse of more than three years, nor taken possession of the lands in question from the petitioner till today.

13. In view of the same, the entire proceedings initiated by the 2nd respondent under Section 28(1) of the Act and the subsequent proceedings under Section 28(3) of the Act are vitiated.

In view of the aforesaid reasons, the writ petitions are allowed. The impugned preliminary notification dated 22.02.2005 and the order dated 07.08.2012 passed by the respondents vide Annexures A and B in the writ petitions, are quashed.

No order as to costs.