

(2013) 03 KAR CK 0061

In the Karnataka High Court

Case No : Writ Appeal No's. 5786-5788 of 2012 (LA-KIADB)

Karnataka Industrial Areas Development Board and The
Special Land Acquisition Officer Karnataka Industrial Areas
Development Board

APPELLANT

Vs

Nagarajappa, Jayaswamy, S. Maharudrappa and State of
Karnataka

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(4), 3(1)

Citation : (2013) 3 AKR 368 : (2013) ILR (Kar) 2631 : (2013) 5 KarLJ 662 :
(2013) 4 KCCR 2738

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S. Vijayashankar, A.G. Alongwith in WA Nos. 5786-5789/2012 and
1854-1870/2013 and Sri. P.V. Chandrashekar, in WA Nos. 5786-5788 and
5789/2012 and Sri. Basavarj V. Sabarad, in WA Nos. 5289/2012.
1854-1870/2013, for the Appellant; M. Shivappa, for M. Shivappa and Associates
for R1 to R.3 and R17 in WA Nos. 5289/2012. 1854-1870/2013 and Sri. Keshava
Reddy, AGA for R.4 in WA Nos. 5786-5788/2012 and R2, R18 in WA Nos.
5289/2012, 1854-1870/2013, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Challenging the legality and correctness of the order passed by the learned Single Judge in writ petition No. 45377/2011 and other connected writ petitions dated 28.06.2012 the present appeals are filed. We have heard the learned Advocate General Sri. S. Vijayashankar for the appellants and Sri. M. Shivappa, learned Senior counsel appearing for the respondents.

2. The facts leading to these appeals are as hereunder;

The writ petitioners were owners of certain agricultural lands situated in Modahalli Village in Kollegal Taluk. The Karnataka Industrial Area Development Board (hereinafter referred to as "Board" for short) issued a notification u/s 3(1)

of the Karnataka Industrial Area Development Act notifying 423.47 acres of land as industrial area. Simultaneously, a notification was also issued u/s 1(3) of the Act on 05.09.2009 and the same was also followed by another notification on the same day u/s 28(1) of the Act proposing to acquire the aforesaid lands for establishing a Sugar factory and a power generation unit by a company known as "M/s. Bannari Amman Sugar Limited" and a notification u/s 28(4) of the Act was issued on 24.04.2010 for acquiring 413.33 acres of land.

3. The petitioners and other land owners have consented for passing of a consent award u/s 29(2) of the Act, agreeing to receive a compensation of Rs. 4,50,000/- per acre in respect of dry lands and Rs. 5,00,000/- for the wet lands. Accordingly, possession of the land was taken by the KIADB from all the land owners and a notification u/s 28(3) of the Act was issued. Possession of the land was also taken over by the State Government and later the same was handed over to the Board. The Board inturn handed over possession of the land to the beneficiary M/s. Bannari Amman Sugars Limited.

4. After taking possession of the land for sugar factory, leveled the lands of the farmers and foundation stone function for construction of the factory was also laid. A notification was also issued u/s 29(2) of the Act as per advise of the Price Advisory Committee fixing the compensation as stated supra.

5. It is also the case of the writ petitioners that pursuant to the award, the beneficiary M/s. Bannari Amman Sugars Limited deposited the entire compensation payable to the farmers in respect of 423.47 acres of the land with the Land Acquisition Officer. The Land Acquisition Officer disbursed the compensation payable to the land owners to an extent of 80 acres. However, for the reasons best known to the respondents (who are the appellants herein) the compensation was not disbursed to the writ petitioners inspite of their repeated requests. In the circumstances, they filed the writ petitions to issue a writ of mandamus to the appellants herein to pay compensation amount awarded at Rs. 4,50,000/- in respect of dry lands and Rs. 5,00,000/- for wet lands in respect of acquired lands alongwith the interest accrued thereon.

6. The writ petitions were resisted by the appellants herein. The appellants did not dispute the acquisition of the lands of the petitioners. It was also admitted by the appellants that the Government after taking possession of the lands from the land owners inturn handed over to the Board and the Board inturn handed over the lands to the beneficiary M/s. Bannari Amman Sugars Limited. The appellants also admitted the beneficiary laying a foundation for construction of a factory building on the land acquired. The appellant also did not dispute the amount of compensation deposited by the beneficiary with the Board and Land Acquisition Officer in order to disburse the same to the land owners.

7. The appellants however contended that after completion of the acquisition proceedings in all respects and after handing over of possession of the land to the beneficiary and beneficiary performing the foundation laying ceremony, the

Department of Forest, Ecology and Environment, Government of Karnataka issued a notification on 24.01.2011 declaring an area of 359.10 sq. Kmts., as "Biligiri Ranga Temple Wild Life Sanctuary as Tiger Reserve Forest" and relying upon the notification dated 24.01.2011, the beneficiary addressed a letter to the State Government stating that it would not be possible for the beneficiary to utilize the land as no constructional activities can be carried by it on account of the said notification.

8. Based on the letter of the beneficiary and the notification dated 24.01.2011, the appellants contended that the appellants are not liable to pay the compensation to the writ petitioners even though their lands were acquired and acquisition proceedings were completed in all respects.

9. The learned Single Judge after considering the arguments advanced by the parties and considering the admitted facts, came to the conclusion that when once possession has been taken over from the land owners and a consent award is passed and when the possession of the lands has been taken over by the Government and the same having been handed over to the beneficiary M/s. Bannari Amman Sugars Limited, the appellants cannot deny the compensation payable to the petitioner since the acquisition proceedings have been completed in all respects.

10. During the course of arguments, the appellants also contended before the learned Single Judge that M/s. Bannari Amman Sugars Limited is also required to be made as a party to the proceedings. The said contention has been rejected by the learned Single Judge on the ground that no relief has been sought by the writ petitioners against the beneficiary and when once the beneficiary has deposited the entire compensation and when the land has been transferred to the beneficiary in all respects, it is the duty of the appellants to pay compensation as determined by the Price Appraisal Committee dated 28.07.2010. Accordingly, the petition was allowed directing the appellants to pay the compensation payable to the writ petitioners in accordance with law.

11. Aggrieved by the order of the learned Single Judge these appeals are preferred by the appellants.

12. Sri. S. Vijayashankar, learned Advocate General does not dispute the facts in these appeals. He admits that when once the acquisition proceedings are completed, possession of the land being handed over to the beneficiary, the appellants cannot contend that a compensation cannot be paid to the parties. However, he submits that based on the subsequent notification issued by the department of Forest, Ecology and Environment dated 24.01.2011 and on the request of the beneficiary, the appellants have refunded the amount deposited by the beneficiary to it and having refunded the amount to M/s. Bannari Amman Sugars Limited, these appeals are to be considered on merits only after hearing the beneficiary M/s. Bannari Amman Sugars Limited, as it would be difficult for the appellants to recover the amount refunded to the sugar factory. Therefore,

he requests the Court to issue notice to M/s. Bannari Amman Sugars Limited and direct the M/s. Bannari Amman Sugars Limited to re-deposit the amount to the appellants, so that the appellants can disburse the amount payable to the respondents herein. In the circumstances, he requests the Court to allow the appeals and set-aside the order of the learned Single Judge.

13. Per contra, Sri. M. Shivappa, learned Senior Counsel appearing for the respondents submits that when once the land has been vested with M/s. Bannari Amman Sugars Limited, thereafter on account of a notification issued by the Government dated 24.01.2011, if the beneficiary cannot make use of the land acquired for construction of a sugar factory, either the beneficiary or the appellants cannot find fault with the farmers who were compelled to loose their land on account of the acquisition proceedings and the beneficiary having levelled the land of the appellants and changing the nature of lands, the appellants cannot contend that they are not liable to pay the compensation in terms of the consent award even though the beneficiary had deposited the entire compensation.

14. He further submits that when acquisition proceedings are completed in all respects under the Karnataka Industrial Area Development Act and the Land Acquisition Act, there is no enabling provision for the appellants or the Government to set back the clock and issue a notification to denotify the lands. He further submits that the amount has been refunded by the appellants when the matter was pending before the learned Single Judge knowing fully aware that amount deposited by the beneficiary towards the compensation payable cannot be refunded to the beneficiary. For extraneous reasons, if the appellants have refunded the money to the beneficiary, the appellants cannot compel the writ petitioners to implead the beneficiary and seek a writ of mandamus to beneficiary to re-deposit the amount. According to him, either the Government or the appellants herein have committed illegality in refunding the amount to the beneficiaries. It is the look out of the Government and the appellants to recover the amount refunded to the factory in the manner known to law and the appellants cannot take shelter under the guise of pendency of these appeals or using the present proceedings as a lever to overcome their omissions and commissions. He further submits that unnecessarily the farmers were compelled to file the writ petitions and for more than 1 1/2 years, their legitimate compensation payable to them has been denied on account of the conduct of the appellants and the Government, only to favour the beneficiary. The manner in which the amount is refunded to the beneficiary would show the conduct of the appellants and hence the appeals are to be dismissed with heavy costs.

15. Having heard the counsel for the parties, what is to be considered by us in these appeals are;

i) Whether the appellants having acquired the lands of the writ petitioners and having completed the acquisition proceedings in all respects and having collected compensation from the beneficiary contend that they are not liable to pay the

compensation to the poor farmers.?

ii) Whether the appellants can insist this Court to issue notice to M/s. Bannari Amman Sugars Limited in order to direct M/s. Bannari Amman Sugars Limited to refund the amount which has been wrongly paid by the appellants for the reasons best known to them?

iii) Whether any error is committed by the learned Single Judge in order to interfere with the same?

16. Admittedly, acquisition proceedings are completed in all respects. When once the acquisition proceedings are completed in all respects, based on the notification dated 24.01.2011 treating the adjoining areas of the land acquired for Tiger Reserve Forest, the appellants cannot contend that they are not liable to pay the compensation. When once the land acquisition proceedings were completed and when the title has passed on to the beneficiary M/s. Bannari Amman Sugars Limited in all respects, whether M/s. Bannari Amman Sugars Limited can utilize the land for the purpose for which it was acquired at their instance is not the concern of the writ petitioners who lost their lands on account of the acquisition proceedings.

17. Learned Advocate General fairly concedes that there is no enabling provisions either under Karnataka Industrial Area Development Act or under Land Acquisition Act to delete the land from acquisition when acquisition proceedings are completed in all respects. When the beneficiary having taken possession of the land and deposited the entire compensation payable to the land losers on account of a subsequent notification, even if the beneficiary has addressed a letter to the Government or to the appellants stating that the lands cannot be utilized by the beneficiary for the purpose for which it was acquired, either the appellants or the Government under any circumstances could not have refunded the amount so deposited by the beneficiary. It is curious to know that the writ petitions were filed in the month of November 2011. The learned counsel for the appellants Mr. Sabarad submits that the amount so deposited by the beneficiary was returned by the appellant on 26.05.2012 five months after filing of the writ petitions. It is not the case of the appellants that they were not aware of the legal consequences. When the learned Advocate General admits that there is no provision for denotifying the lands, when once the acquisition proceedings are completed in all respects, we are at a loss to understand as to what prompted the Government to refund the amount of compensation to the beneficiary based on the request made by the beneficiary. If for any reason, mistake is committed either by the Government or by the appellants, it is for the Government and the appellants to recover the said amount from the beneficiary and for the mistake committed by the Government or the appellants they cannot compel this Court to issue notice to the beneficiary in order to see that the amount refunded by the appellants is re-deposited by the beneficiary to help the appellants. On the contrary, the conduct of the appellants or if any such direction is issued by the Government to refund the amount to the beneficiary, such act has to be curbed

by this Court and as such shall not be repeated henceforth in any other matters also. The appellants or the Government shall act only in the manner known to law and the same cannot be acted to help the beneficiary at whose instance the lands of the writ petitioners were acquired. Therefore, we are of the view that no notice is required to be issued to the beneficiary to enable the appellants to recover the amount. If on account of the wrong advise, if the appellants have refunded the amount, it is for the appellants to recover from the beneficiary.

18. Without complying with the orders of the learned Single Judge, the appellants have filed these appeals though there is no lis or cause of action for them. We are at a loss to understand what prompted the appellants to file these appeals when the appellants are required to deposit the amount and when they have no power to denotify the lands when the acquisition proceedings are completed. The only course open to the appellants was to disburse the compensation which was deposited by the beneficiary to the writ petitioners. Unnecessarily the appeals have been filed making the respondents to engage a Senior counsel and to spend lakhs of rupees on the litigation. The amount spent by the farmers on account of the act of the appellants, they have to compensate the farmers. In the circumstances, all the points formulated are held against the appellants. These appeals are dismissed with costs. We quantify the cost of each of the writ petitioners in a sum of Rs. 25,000/- both in the writ petitions and in these appeals at Rs. 25,000/- which shall be paid to each of them alongwith compensation payable to them. The compensation shall be paid to each of them alongwith the costs within a period of two months alongwith the interest accrued thereon and it is needless to state that the persons who lost their lands are entitled for compensation alongwith the interest @ 15% from the date of taking possession of the lands.