

(2019) 06 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 18214 Of 18217 Of 2014 (LA-KIADB)

Kempamma And Ors

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 3(1), 4, 4(1), 28(1), 28(4), 28(5)
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 5A(1), 50
Constitution Of India, 1950 — Article 14, 300A

Citation : (2019) 06 KAR CK 0032

Hon'ble Judges : S. sujatha, J

Bench : Single Bench

Advocate : S.K.V.Chalapathy, V. Sanjay Krishna, B.J. Eshwarappa, B.B.Patil, M.S.Narayan

Final Decision : Disposed Off

Judgement

1. The petitioners have challenged the notification dated 15.05.2007 as well as the notification dated 26.03.2008, issued by respondent No.1 under the provisions of Karnataka Industrial Area Development Act, 1966 (hereafter referred to as "the KIAD Act" for short).

2. The petitioners are claiming to be the absolute owners of all the piece and parcel of the land bearing survey No.117/2 measuring 32 guntas in

Kengeri village, Kengeri Hobli, Bengaluru South Taluk, Bengaluru district. It is contended that originally the land bearing survey No.117/2 totally

measuring 2 acres 32 guntas belonged to one Sri Dasappa, after his demise, the petitioners being the legal heirs succeeded to the said property. Out of

the 2 acres 32 guntas of land, 2 acres of land was alienated under the registered sale deed dated 30.03.2007 in favour of M/s.Good Earth Estates and

the balance 32 guntas of land has been retained by the petitioners for the benefit of the members of their family.

3. Sri S.K.V. Chalapathy, learned senior counsel for Sri V. Sanjay Krishna, learned counsel appearing for the petitioners submitted that the notification

under Sections 3(1) and 1(3) of the KIAD Act was issued on 15.05.2007 and published in the Karnataka Gazette on 17.05.2007 notifying an extent of

26 acres 8 guntas of land in Kengeri and Doddabele villages out of the total extent of the 29 acres for the purpose of establishment of industries. No

preliminary notification under Section 28 (1) of the said Act was issued with regard to the land in survey No.117/2, a portion of which is described

herein or in other words, the said notification related only to the lands in survey Nos.118, 119/1, 119/2 of Kengeri Village and survey No.8/1 of

Doddabele village. Survey No.117/2 was not included. However on misconception, objections were filed by petitioner No.1 - the Kathedar on

13.07.2007 on the advice given by the officials of the second respondent. Respondent Nos.1 to 3 have issued the preliminary notification under Section

28(1) of the KIAD Act in respect of the survey No.117/2 measuring 2 acres 32 guntas on 26.03.2008. However, the final notification dated

26.03.2008 was issued in respect of 26 acres 8 guntas. Again the notification under Section 21 of the General Clauses Act, 1897 was issued on

10.11.2008, notifying that the earlier notification issued under Section 4 of the KIAD Act is rescinded or dropped in respect of the lands measuring 26

acres 8 guntas, out of total extent of 29 acres. Surprisingly, respondent Nos.1 to 3 issued another notification dated 19.08.2009, under Section 21 of the

General Clauses Act, 1897 to the effect that the entire notification under Section 4 dated 10.11.2008, is ordered to be rescinded.

4. Learned counsel argued that no notice as required under Section 28(1) of KIAD Act was issued and no opportunity of hearing was provided to the

petitioners as per Section 3 of the KIAD Act. However, final notification has been issued on 09.05.2011 under Section 28(4) of the KIAD Act

notifying 32 guntas of land of the petitioners since SLAO (Special Land Acquisition Officer) recommended deletion of 2 acres of land in survey

No.117/2 of M/s. Good Earth Estates.

5. Secondly, it was submitted that invoking of Section 21 of the General Clauses Act, 1897, to rescind the notification dated 10.11.2008 issued under

Section 4 of the KIAD Act is ex-facie illegal. It is mandatory on the part of the respondents to provide an opportunity of hearing to the affected

parties as a right had accrued to the petitioners by virtue of the notification dated 10.11.2008 issued earlier under Section 21 of General Clauses Act.

Such an action of the respondents is opposed to the principles of natural justice, construed to be void-ab-initio and deserves to be set aside.

6. Nextly, it was argued that the recommendation of the SLAO for deletion of 2 acres and issuing final notification dated 09.05.2011 under Section

28(4) of the KIAD Act only to 32 guntas of the land of the petitioners is discriminatory in nature and infringes the fundamental rights of the petitioners

as contemplated under Articles 14 and 300A of the Constitution of India. It was further contended that the public purpose for which the lands were

acquired i.e., for setting up BWSSB project has been already completed and the project is functioning. No small pocket of land to the extent of 32

guntas is now required for acquisition. In support of his contentions, learned senior counsel has placed reliance on the following judgments.

1. Agra Development Authority Vs. Special Land Acquisition Officer and Others [(2001) 2 SCC 646];

2. Karnataka Road Development Corporation Limited, Bangalore Vs. Sri Mallaradhya and Another (ILR 2014 KAR 91);

3. S.B.Nagappa and Others Vs. State of Karnataka and Another (ILR 2001 KAR 1295) and

4. Union of India and Others Vs. Shiv Raj and Others with connected matter [(2014) 6 SCC 564]

7. Sri B.B.Patil, learned counsel for the respondent Nos.2 and 3 would submit that objections were filed by the petitioners on 13.07.2007 to the

preliminary notification dated 15.05.2007 as per Annexure R1. The objections filed by the petitioners do not restrict to Sections 1(3) and 3(1) of the

KIAD Act. Indeed, comprehensive objections filed by the petitioners has been considered by the respondents while issuing final notification under

Section 28(4) of the KIAD Act. The petitioners having participated in the acquisition proceedings, now have challenged the final notification issued

under Section 28(4) of the KIAD Act which is nothing but an afterthought. The discrepancy if any, found in issuing the preliminary notification on

26.03.2008 would not lead the petitioners in any advantageous position in order to challenge the notification issued. Reliance is placed on the judgment

of the Mysore Urban Development Authority by its Commissioner Vs. Veer Kumar Jain and Others reported in 2014 (1) Kar.L.J. 142 (SC) to

contend that the relief claimed by the petitioners even if it is assumed that the notification dated 19.08.2009 issued under Section 21 of the General

Clauses Act, 1897 is in violation of the principles of natural justice, it should be moulded appropriately so that the land owners should also be offered

an opportunity to put forth their grievances as well as beneficiaries. In order to serve the interest of justice, the notification issued under Section 4 of

the KIAD Act dated 10.11.2008, dropping the entire acquisition proceedings in respect of all the lands as well as the notification dated 19.08.2009,

issued under Section 21 of the General Clauses Act, 1897 requires to be set aside directing the State Government to consider the request of the land

owners as well as the beneficiaries and then decide the matter in accordance with law.

8. Sri M.S.Narayan, learned standing counsel for respondent No.4 - BWSSB, would contend that the petitioners are making hectic efforts to alienate

the lands in question i.e., 32 guntas of land after forming sites. The land in question are necessarily required for the project of BWSSB which is an

ongoing project.

9. I have carefully considered the arguments of the respective parties. Perused the materials on record.

10. The points that arise for consideration before this court are as follows:

a. Whether the notice under Section 28(2) of the KIAD Act was served on the petitioners?

b. Whether such a notice is mandatory in terms of Section 28(2) of the KIAD Act?

c. Whether providing an opportunity of hearing is mandatory under Section 28(3) of the KIAD Act?

d. What is the effect of the notification issued under Section 21 of the General Clauses Act, 1897?

e. Whether issuing a notification to acquire the lands to an extent of 32 guntas belonging to the petitioners proposing to drop 2 acres of land already

notified amounts to discrimination and is violative of Articles 14 and 300A of the Constitution of India?

11. It is apt to refer to Section 28(1) to (5) of the KIAD Act, which read thus:

28. Acquisition of land -

(1) If at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board, or for any other purpose

in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land.

(2) On publication of a notification under sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the

occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date

of service of the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and

person an opportunity of being heard, the State Government may pass such orders as it deems fit.

(4) After orders are passed under sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified

in the notification issued under sub-section (1), a declaration shall, by notification in the official Gazette, be made to that effect.

(5) On the publication in the official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from

all encumbrances.

12. It is also apt to refer to Section 5-A(1) of the Land Acquisition Act, 1894 which reads thus:

5-A(1) Any person interested in any land which has been notified under Section 4, sub-section(1), as being needed or likely to be needed for a

public purpose or for a company may, (within thirty days from the date of the publication of the notification), object to the acquisition of the land or of

any land in the locality, as the case may be.

13. A reading of this provision makes it clear that Section 28(2) is not akin to Section 5-A of the Land Acquisition Act, 1894. On comparison of these

provisions, it is manifestly clear that on declaration of the Notification in sub-section (1) of Section 28, service of notice upon the owner or where the

owner is not the occupier, on the occupier of the land by the State Government is sine-qua-non to proceed with the acquisition proceedings. Similarly,

on filing of the objections pursuant to the notice issued under Section 28(2) by the owner/occupier of the land or any other person interested in, it is

mandatory for the State Government to provide such person an opportunity of being heard and the same requires to be strictly complied with. Non

compliance of these provisions is not a mere procedural irregularity but vitiates the proceedings.

14. This Court in the case of Karnataka Road Development Corporation Limited, supra, placing reliance on the judgment of the Hon'ble Apex Court in

the case of Agra Development Authority Vs. Special Land Acquisition Officer and others reported in (2001)2 SCC 646, observed that, it is mandatory

for the Land Acquisition Authority to issue notice and give an opportunity to adduce evidence for the purposes of determining of the compensation

amount in compliance with Section 50 of the Land Acquisition Act, 1894.

15. In the case of Agra Development Authority, supra, it was admitted by the appellants therein that the appellants were aware of the proceedings but

however, no opportunity to adduce evidence in the proceedings was provided. In such circumstances, the Hon'ble Apex Court has held that the body

for whom the property is being acquired is to be given an opportunity to appear and adduce evidence for the purposes of determining the amount of

compensation despite the appellants being aware of the proceedings.

16. Hence, the arguments of the learned counsel for the respondents that the petitioners were aware of the proceedings in view of filing of the

objections as far back as 13.2.2007 and thus issuing of notice under Section 28(2) of the Act subsequent to the preliminary Notification dated

26.3.2008, does not hold any water. Any objections filed on 13.7.2007 could not be considered as the objections filed to the preliminary Notification

dated 26.3.2008, issued subsequent to filing of such objections.

17. In the case of Union of India Vs. Shivraj, supra, the Hon'ble Apex Court has categorically observed that the rule of audi alteram partem gives an

opportunity of hearing to the objector to convince the Land Acquisition Officer in as much as the land whether is required for the public purpose or not

specified in the Notification. Such proceedings should not be an empty formality and is a substantive right, which requires to be strictly adhered to,

having regard to the provisions contained in Article 300-A of the Constitution.

18. In the case of Mysore Urban Development Authority supra, referred by the learned counsel for the KIADB, the Hon'ble Apex Court was

dwelling upon the issue of cancellation Notification dated 22.7.2002 being

opposed to the principles of natural justice, in moulding the relief and to meet the ends of justice, withdrawing the de-notification dated 15.9.2001 was held to be invalid and was accordingly set aside and the matter was directed to be re-considered by the State after providing an opportunity of hearing to the land owners as well as the beneficiaries are concerned.

19. In the present case, it is not mere resting upon the Notification issued for cancellation of de-notification, further proceeds with the issue of Section 28(4) of the Act.

20. In view of the aforesaid judgments referred to supra and the relevant provisions of the KIADB Act as discussed above, this Court is of the considered view that the Notification issued under Section 28(4) of the Act sans complying with Section 28(2) and (3) of issuing notice and providing an opportunity of hearing, is ex-facie illegal and deserves to be set aside.

21. Similarly, the Notification dated 19.8.2009 issued under Section 21 of the General Clauses Act, 1897 suffers from the vice of arbitrariness in view of violation of the principles of natural justice. Hence, the Final Notification dated 9.5.2011 issued under Section 28(4) of the KIAD Act as well as the

Notifications dated 19.8.2009 and 10.11.2008 issued under Section 21 of the General Clauses Act, 1897 are quashed as far as the petitioners lands are

concerned. Respondent Nos.1 and 2 are at liberty to serve notice upon the petitioners in terms of Section 28(2) of the KIAD Act and on service of

such notice, the cause shown by the petitioners if any, by way of objections, has to be considered and an opportunity of hearing has to be provided as

per sub-section (3) of section 28 of the Act. All the rights and contentions of the parties are left open. After considering the objections filed by the

petitioners if any, the respondents shall take a decision in accordance with law in an expedite manner, in any event, not later than three months from

the date of filing of objections.

22. It is made clear that the petitioners shall co-operate for the expedite disposal of the proceedings, if be proceeded with by the respondent Nos.2 and

3 as aforesaid.

23. With the aforesaid observations and directions, writ petitions stand disposed of.