

(2015) 08 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition Nos. 76691 to 76718 of 2013 (LA)

Kichadi Sanjeevappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31(3), 31(4), 5-A

Citation : (2016) 1 AKR 259 : (2015) 6 KarLJ 333 : (2016) 1 KCCR 317

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

Bench : Single Bench

Advocate : Gode Nagaraja, Advocate, for the Appellant; Sriyuths Ravi V. Hosamani, Additional Government Advocate, C.V. Angadi and D.M. Bandi, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—The petitioners have called into question the preliminary notification dated 16-9-2011 acquiring 118.5 acres of land situated in several survey numbers of Halekota Village, Tekalakote Hobli, Siraguppa Taluk, Ballari District for constructing the water storage tank and the final notification dated 5-9-2012 in respect of the said lands. Sri Gode Nagaraj, learned Counsel for the petitioners submits that the petitioners are the poor agriculturists. If the lands in question are acquired, it would have the effect of depriving their solitary source of livelihood. He submits that the lands are fertile and irrigated. He submits that they are not suitable for the public purpose in question. He submits that the adjacent Government lands ought to have been utilised for the purpose of constructing the water storage tank. He further submits that based on the objections of some unconnected persons, Section 5-A enquiry is completed. The objections filed by the petitioners are not considered. He submits that even after the issuance of final notification the petitioners filed objections and requested the Government to withdraw these lands from acquisition. He submits that the petitioners belong to Scheduled Caste and Scheduled Tribe. He submits that the

impugned proceedings are not reflective of the application of mind. He submits that Section 5-A report itself is unsustainable, as the various objections raised by the petitioners are not suitably considered by the Land Acquisition Officer. In support of his submissions, he relied upon the following decisions.--

- (1) Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others,
- (2) Raghubir Singh Sehrawat Vs. State of Haryana and Others,
- (3) Usha Stud and Agricultural Farms Pvt. Ltd. and Others Vs. State of Haryana and Others,
- (4) Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another,
- (5) Kamal Trading Private Limited (now known as Manav Investment and Trading Company Ltd.) Vs. State of West Bengal and Others,
- (6) D.S. Chakrapani Gowda Vs. The Secretary, Revenue Department (L.A.), Government of Karnataka, The Deputy Commissioner, The Divisional Controller, Karnataka State Road Transport Corporation, Mangalore Division and Karnataka State Corporation,

2. Sri Ravi V. Hosamani, learned Additional Government Advocate appearing for the respondents 1 to 4 submits that the feasibility of lands in question for the purpose of constructing the water storage tank is examined by the technical experts. The lands in question are identified as they are on the elevated plane and the water is not required to be pumped up for its supply to Siruguppa. He submits that the acquisition proceedings do not suffer from any infirmity. He also relied upon this Court's decision in the case of Dr. V.S. Shukla, Dr. Anjela Geetha Shukla and Dr. C.R. Devendra Vs. National Highways Authority of India, The Union of India, The State of Karnataka and Special land Acquisition Officer and Competent Authority, to advance the submission that the Court cannot interfere with the choice of the land acquired for a public purpose, unless it is shown that the power is exercised with mala fides or is otherwise void.

3. Further, he has also relied on. the Division Bench judgment, dated 24-11-2014 passed in W.A. Nos. 5017 and 5018 of 2013, wherein the Single Judge upheld the acquisition of lands for the purpose of constructing a tank for providing drinking water to the people. He submits that more or less similar objections were raised in the said writ petition and that they were negated by the learned Single Judge. The Division Bench dismissed the writ appeals arising therefrom.

4. Sri C.V. Angadi, learned Counsel appearing for the respondent 5 submits that the project in question is for supplying the potable drinking water to the residents of the Siraguppa Town.

5. The submissions of the learned Counsel have received my thoughtful consideration. The only question that is required to be considered is whether the objections filed by the petitioners to the preliminary notification are considered

by the Land Acquisition Officer.

6. The petitioners objections that the lands are fertile and irrigated, that the petitioners do not have alternative lands, that the acquisition will cause hardship to them, that they belong to the Scheduled Castes and Scheduled Tribes are considered by the Land Acquisition Officer, Ballari. That there is an alternative Government land is not one of the objections taken by the petitioners. Even, if such an objection were to be taken in response to the preliminary notification, the outcome may have been the same. As held by the Apex Court in the case of Subhashgir Khushalgir Gosavi and others Vs. Special Land Acquisition Officer and others, , it is for the Government to take a decision and not for the Court to decide as to which place is more convenient; choice of location falls in the domain of the Government, which is being guided by the experts in the field.

7. At this juncture, Sri Gode Nagaraj submits that during the operation of the interim order of stay of dispossession, the award dated 14-12-2014 is passed. He submits that the petitioners have not received any award notice till now. He submits that the petitioners have come to know of the passing of the award only recently.

8. While the compulsory acquisition of land is required to be upheld in this case, it is also the Court's anxiety that the petitioners should not be confronted with the situation where they cannot seek just compensation, as they have not received the award notice and as the award is passed during the pendency of these writ petitions. I deem it necessary and just to give the liberty to the petitioners to make an application seeking reference of the matter invoking Section 18 of the Land Acquisition Act, 1894 to the Reference Court for the purpose of seeking enhancement of the market value, etc. Alternatively, I also reserve the liberty to the petitioners to make a representation, within 90 days, to the respondents 1 to 4 for the grant of alternative lands in lieu of cash compensation. Subject to the availability of the Government land for being granted to the land losing petitioners and in exercise of the power conferred by Section 31(3) and 31(4) of the said Act, the concerned authorities would consider the petitioners representation, if any. Negating the challenge to the impugned acquisition notifications but reserving the said liberties, I dispose of these petitions.