

(2015) 09 KAR CK 0134

In the Karnataka High Court

Case No : Writ Petition No. 107111/2015(GM-RES)

Kotturuswamiji

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 82, 82(1)

Citation : (2015) 09 KAR CK 0134

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

Bench : Single Bench

Advocate : Sriyuths S.S. Patil and Sanjay S. Chanal, Advocates, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—The petitioner's grievance is that 27 guntas out of the total extent of 3 acres 7 guntas at survey No. 295/3 of Gangavati village is used up for the purpose of widening the road from Gangavati to Siddikeri Basavapattana Road. The said land is neither acquired nor any compensation is paid thereof.

2. Sri Sanjay Chanal, the learned counsel appearing for the petitioner submits that even as per the survey report (Annexure-C1) 27 guntas of lands are encroached. He would therefore pray for a direction to the respondents to award the compensation to the petitioner.

3. Sri Ravi V. Hosamani, learned Additional Government Advocate appearing for the respondent Nos. 1 to 3 and 5 submits that the petitioner is not justified in filing one more writ petition in view of the filing of two writ petitions earlier viz. W.P. Nos. 82056/2013 and 105719/2014.

4. Sri Sharanabasava, learned counsel appearing for the respondent No. 4

submits that the petitioner's property is not at all encroached. He submits that on the widening of the road, the Government has handed over the road, after upgrading it, to the Municipality. The two survey reports indicate that the Government and the Municipality have not encroached any portion of the land belonging to the petitioner.

5. The submissions of the learned counsel have received my thoughtful consideration. That the road widening or road upgradation is a public purpose cannot be disputed at all. But nobody can be deprived of his property without following the due process of law. Whether the Government and the Municipality have used up any portion of the land belonging to the petitioner, whether the petitioner is really the owner of the land on which the road is upgraded, etc. are all the disputed questions of facts. In the proceedings under Article 226 of the Constitution of India, it is not possible to deliver any finding on such factual controversies. Such disputes cannot be resolved without holding an enquiry. The decision on the claim for the property by or against the Municipal Council can be obtained by raising the dispute before the Deputy Commissioner invoking Section 82 of the said Act. The provisions contained in Section 82(1) and (2) of the said Act are extracted hereinbelow:

"82. Decision of claims to property by or against the municipal council.--(1) In any municipal area to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the municipal council, or by any person as against the municipal council it shall be lawful for the Deputy Commissioner after enquiry, oft which due notice has been given to pass an order deciding the claim.

(2) Any suit instituted in any civil court after the expiration oft one year from the date of any order passed by the Deputy Commissioner under sub- section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order provided that the plaintiff has had due notice of such order."

6. I deem it necessary and just to relegate the aggrieved petitioner to the statutory remedy provided under Section 82 of the said Act. The petitioner is directed to file his claim in support of the ownership of the property, the buildings he has raised thereon, etc. before the Deputy Commissioner within two weeks. Similarly, the Gangavati Municipality will also file its claims, if it wants to take the position that the properties in question belong to it and in support of its allegations that the properties are encroached by the private parties. On examining the documentary evidence and after affording a reasonable opportunity of hearing to all the parties concerned, the Deputy Commissioner shall pass the order on the ownership of the property and allied questions.

7. If the Deputy Commissioner's order is not acceptable to any party, it is open to him to challenge the same before the civil court under sub-section 2 of Section 82 of the said Act.

8. If the Deputy Commissioner returns the finding that a particular property, being used for the road-widening purpose, is owned by the Municipality and not by any private party, any future dispossession or demolition may be carried out strictly in accordance with law and after issuing the notice to the occupants of such properties.

9. If the Deputy Commissioner returns the finding that any portion of the private land is being used for the road-widening purpose, its erstwhile owners have to be compensated without any loss of time. The respondents shall have two options in the matter. They shall elect one of the two options indicated hereinbelow:

"(i) The Government of Karnataka shall immediately resort to the acquisition of lands under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. All the acquisition proceedings, including the passing of award and disbursement of the compensation, shall be completed within six months from the date of passing of the order by the Deputy Commissioner holding that a particular private property is used up for and in the course of the road-widening.

(ii) If the above course is not resorted to by the Government of Karnataka for whatever reason, then the Deputy Commissioner shall, within one month from the date of the time granted for complying with the above direction, pass an order determining the damages/compensation. If the quantification of the compensation-amount is not acceptable to the petitioner, he shall have the liberty of challenging the same before the competent civil court."

10. It is further made clear that whether the authorities resort to the route of compulsory acquisition of land or pass the order quantifying the damages/compensation, it shall also be open to the authorities to negotiate with the property-loser by offering alternative property to him in lieu of cash-compensation. It shall also be open to the displaced person to seek the benefits due under National Rehabilitation and Resettlement Policy, 2007 and also under the Schemes such as Ashraya Scheme, etc, in cases where they are applicable.

11. In passing this order, I am fortified by the Division Bench's judgement, dated 1.9.2014 passed in W.P. No. 21042/2011 and connected matters.

12. The Deputy Commissioner shall dispose of the anticipated petition in accordance with law and as expeditiously as possible and in any case within an outer limit of ten weeks from the date of the filing of the anticipated petitions. Further, to safeguard the interests of the petitioner between today, the date of the disposal of this petition and the date of the disposal of his anticipated petitions before the Deputy Commissioner, I direct the respondents not to dispossess the petitioner from the property in question or demolish any structure

standing thereon for a period of 12 weeks.

13. This petition is accordingly disposed of. No order as to costs.