
(2016) 02 KAR CK 0273

In the Karnataka High Court

Case No : Writ Petition Nos. 30353 and 30476-30479 of 2015 (LA-KIADB)

Lakshman

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1), Section 28(4),
Section 30
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24

Citation : (2016) 02 KAR CK 0273

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Jayakumar S. Patil and Nishanth A.V., Advocate, for the Appellant; S.
Sunil Dutt Yadav, Special Counsel, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Advocate Shri Jayakumar S. Patil, appearing for the Counsel for the petitioners, the learned Special Counsel appearing for respondents No. 1 and 5, the learned Counsel for Karnataka Industrial Area Development Board (KIADB) - respondents No. 2 and 3 and the learned Counsel for respondent No. 4.

2. The petitioner claims to be the absolute owner of land bearing survey No. 23/1 measuring 1 acre 35 guntas and land bearing survey No. 23/2 measuring 19 guntas of Mallasandra village, Uttarahalli Hobli, Bangalore South Taluk and is said to have acquired the said land under a registered sale deed dated 22.11.2004. It was on a representation by the vendors that the land had been duly converted from agricultural to non-agricultural use and the petitioner has been in physical possession of the lands in question. It is only in the year 2015 that the petitioner has learnt in retrospect of a notification having been issued under Section 28(1) of the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the "KIAD Act", for brevity). It is thereafter that the petitioner had made

fervent inquiries as to the status of the acquisition proceedings and an endorsement dated 19.6.2015 has been issued by the third respondent to state that a notification as mandated under Section 28(4) of the KIAD Act was not issued in the said acquisition proceedings.

The petitioner has therefore approached this court claiming that Section 30 of the KIAD Act provides that the provisions of the Land Acquisition Act, 1894 (Hereinafter referred to as the "1894 Act", for brevity) shall mutates-mutandis apply. The 1894 Act having been repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement Act, 2013 (Hereinafter referred to as the "2013 Act" for brevity) having been reenacted, Section 24 of 2013 Act would indicate that if an award is not made prior to the commencement of the Act, the acquisition proceedings initiated earlier would lapse. And this is a further indication that in view of the inaction on part of the authorities under the KIAD Act, the acquisition would lapse. Even otherwise, the learned Senior Advocate would submit that since KIAD Act does not prescribe the time within which the final notification shall be issued under section 28(4) after the issuance of a notification under section 28(1), admittedly, the notification under section 28(1) in the present case having been issued in the year 1999 and final notification not having not been issued even as on this day, it would appear that the rule and the principle of law that where no time is prescribed for an authority to perform an act or for the Statute to operate, it would be construed that it should be within a reasonable time, especially, when the valuable right of property is involved as in the present case on hand. Therefore, when there is no reason or other impediment, which is cited by the State in not having issued the final notification under section 28(4), it is unreasonable for the petitioner to be kept in further suspense as to whether or not his land would be subject matter of acquisition and hence, he would submit that there should be a declaration as to the land of the petitioner having been abandoned and it should be so declared and the land be made available to the petitioner.

3. The Special Government Counsel however, would submit that the learned counsel for the petitioner has oversimplified the matter in question. The land in question has been notified for acquisition for the Bangalore Mysore Infrastructure Corridor Project and there is an agency appointed to implement the project and the arrangement between the State Government and the agency, prescribed that the lands were to be acquired under what was called "Framework agreement". Disputes having arisen as to whether certain lands were covered under the Framework agreement or not, the controversy has been brewing and is hanging fire. The matter is now pending before the Supreme Court whereby the State Government is to indicate such lands as are covered under the framework agreement and such land which would fall outside the framework agreement. Till such time, the controversy is resolved, it would not be possible for the State Government to take a firm decision on notifying the land for acquisition and completing the acquisition proceedings. It is in this background that the entire acquisition proceedings has been kept in abeyance. Further, the Supreme Court

also having passed interim orders, there is the third order passed by the Supreme Court, whereby there is a direction to the State Government not to denotify the lands till such time the controversy is resolved. Therefore, the State is left in a quandary as to taking any further action insofar as acquisition proceedings are concerned. The learned Special Government Counsel would request that the matter be postponed till such time the matter reaches finality before the Supreme Court.

The learned counsel has placed reliance on a decision of this very bench in *N. Rekha v. State of Karnataka*, 2014 (1) AKR 49, which was rendered in a circumstance where the lands were notified under section 28(1) and no further action had been taken and when large extents of land of the surrounding villages were denotified, the petitioner having approached for a direction that the State Government be directed to denotify the lands, this court had turned down on the ground that the petition was premature and therefore, a similar direction be issued in the present case on hand.

In the present case on hand, it is not the case of the petitioner that the lands be denotified. The petitioner being a subsequent purchaser seeks a declaration that the State has abandoned the land from the acquisition proceedings in view of the inaction on its part from the year 1999. Therefore, the ground on which the petition is filed is completely different from the manner in which a direction had been sought in the earlier petition.

4. The learned Counsel appearing for the KIADB would reiterate the objection that the petitioner being a subsequent purchaser after the notification was issued would not be in a position to question the acquisition proceedings in any manner. In this regard, he places reliance on a decision in *HMT v. Mudappa*, 2007 AIR SCW 1058, to contend that a preliminary notification could not be challenged and he should await the final notification. Further, to contend that a subsequent purchaser is not in a position to challenge the acquisition proceedings, reliance is placed on *Chandrashekar v. Administrative Officer*, 2012 SCC 133.

5. Insofar as the contention that a preliminary notification cannot be challenged is concerned, the challenge was brought soon after the notification was issued. Though in the said decision the Supreme Court has taken a view that a preliminary notification could not be challenged on the ground that the land was not acquired for the purpose contemplated under the Act, the same reasoning would not apply in the present case on hand since the petitioners are questioning the acquisition proceedings initiated in respect of the land, in respect of which, there was inaction for over two decades and therefore would stand on a different footing.

Insofar as the contention that the petitioner is not in a position to question the acquisition as being a subsequent purchaser, is concerned, the division bench in *Nagu Bai v. State of Karnataka*, ILR 2001 Kar. 1169, has clearly conferred such a right on a subsequent purchaser also to seek a declaration as to land having

been abandoned or scheme having been lapsed. Therefore, there is no dispute that apart from the preliminary notification, issued in June 1999, no further steps have been taken on one or other pretext. Even now, the counsel vaguely contending that there is controversy pending before the Supreme Court, which requires to be resolved for the respondent - State to take further action, would not be a justifiable reason for acquisition proceedings hanging fire for over almost two decades.

One other significant circumstance which would weigh in favour of the petitioner is that the lands have been consciously converted by the competent authority for non-agricultural purpose. This would also indicate that the competent authority was fully aware of the lands not being utilized for the purpose for which it was sought to be acquired and it is presumed that it is after verification that such conversion has been issued, since the Karnataka Land Revenue Act, 1964 itself contemplates that such verification shall be carried out before the change of user is permitted.

The petition is summarily allowed. Annexures - A and N stand quashed. The acquisition proceedings not having progressed from the year 1999, it is deemed that the State has abandoned the land in question from acquisition proceedings and it shall be available to the land owner for his use and occupation.