

(2015) 02 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition Nos. 43504/2013 and 44138-139/2013 (LA-KIADB)

M. Gajendra

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Industrial Areas Development Act, 1966 — Section 28
Land Acquisition Act, 1894 — Section 11A, 11-A

Citation : (2015) 02 KAR CK 0012

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : J.M. Rajanna Setty, Advocate, for the Appellant; Satyanarayana Singh, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—Petitioner has assailed Preliminary Notification issued under sub-section (1) of Section 28 and declaration and Final Notification issued under sub-section (4) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the KIAD Act" for the sake of brevity) dated 6/7/2010 and 9/9/2011 respectively (Annexures-D & E). Those notifications concerning lands bearing Sy. No. 142/1, measuring 1 acre 14 guntas; Sy. No. 142/2, measuring 1 acre 15 guntas and Sy. No. 142/3 measuring 13 guntas (hereinafter referred to as "the lands in question"), all situated at Singehalli Village, Vemagal Hobli, Kolar Taluk, Kolar District, belonged to petitioner. By the aforesaid notifications, respondent-Authorities sought acquisition, inter alia of the lands in question. Subsequent to issuance of Preliminary Notification dated 6/7/2010 proceedings were initiated under sub-section (3) of Section 28 of the KIAD Act, and an order was passed on 16/5/2011 and thereafter Final Declaration and Notification was issued on 9/9/2011.

2. Petitioner has assailed the acquisition notifications on two grounds: the first

being that no notice under sub-section (1) of Section 28 of the KIAD Act was issued to the petitioner and therefore, acquisition is vitiated insofar as the lands in question are concerned. The second ground is that the award has not been passed and therefore, there is non-compliance of Section 11-A of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act").

3. I have heard the learned counsel for petitioner and learned counsel for respondents as well as perused the material on record and original records.

4. Highlighting on the aforesaid two contentions, petitioner's counsel would submit that in the absence of any notice being issued to petitioner under sub-section (2) of Section 28 of the KIAD Act, petitioner was unaware of the impugned acquisition and that there being no opportunity to show-cause that the acquisition was unwarranted the same is illegal as far as petitioner's lands are concerned. He also contended that the award not being passed till date, the acquisition has lapsed in view of Section 11-A of the 1894 Act.

5. Per contra, learned counsel for respondent Nos. 2 and 3, on referring to the original records contended that the order dated 16/5/2011 passed under sub-section (3) of Section 28 of the KIAD Act, clearly states that petitioner had given his consent for acquisition and that he was only interested in getting a good compensation for the acquired lands. He also drew my attention to three communications made by petitioner dated 31/8/2010, 3/5/2013 and 31/8/2014 by which petitioner has sought compensation for the lands in question and in view of these communications, petitioner cannot assail the acquisition. In other words, it was contended that petitioner cannot approbate and reprobate, by on one hand seeking compensation for acquired lands and on the other by assailing the acquisition. He, therefore, contended that writ petition is not maintainable and may be dismissed in limine.

6. In this context, reliance was placed on a decision of the Division Bench of this Court in V.T. Krishnamoorthy Vs. State of Karnataka, , wherein placing reliance on an earlier judgment of this Court in W.A. No. 781/89 disposed on 6/11/1989, the Division Bench held that, it is well settled in law that where a person seeks compensation, he cannot maintain writ petition under Article 226 of the Constitution assailing the notifications. This is based on the doctrine of approbation and reprobation.

7. The main contention raised in these writ petitions is with regard to the award being belatedly passed and there being violation of Section 11-A of the 1894 Act. It is contended that in fact, in the instant case, no award has yet been passed and therefore, in view of there being noncompliance of Section 11-A of the 1894 Act, the acquisition has lapsed. It is noted that the impugned acquisition is under the provisions of the KIAD Act. Hon"ble Supreme Court in the case of M. Nagabhushana Vs. State of Karnataka and Others, has held that Section 11-A of 1894 Act does not apply to the provisions of the KIAD Act. Therefore, impugning the acquisition on that ground is without any merit.

8. In response, learned counsel for petitioner relied upon the decision of the learned Single Judge of this Court in the case of Sri Chaluve Gowda @ Chikkonu Vs. State of Karnataka, Karnataka Industrial Area Development Board and Special Land Acquisition Officer, Mysore, to contend that the award must be made within a reasonable period even though there is no time frame is fixed under the provisions of the KIAD Act and pass award as stipulated under Section 11-A of the 1894 Act. This Court has held that an award must be made within a reasonable time.

9. On perusal of the original records, it is noted that communication dated 31/8/2010 by the petitioner is prior to the issuance of declaration and final notification. The said communication is followed by an application dated 3/5/2013 signed by petitioner seeking compensation in respect of Sy. No. 142/1, measuring 1 acre 14 guntas. The first communication dated 31/8/2010 is in respect of Sy. No. 142/2 and 142/3 i.e., the lands in question. In the order dated 16/5/2011 passed under sub-section (3) of Section 28 of the Act, it is noted that on 31/8/2010, petitioner was present and has consented for the acquisition. No contra material has been produced to show that no notice was served on petitioner or for that matter, he did not appear before the third respondent-Authority on 31/8/2010. There is no reason to disbelieve what has been stated in the order dated 16/5/2011 passed under sub-section (3) of Section 28 of the Act. Therefore, it is held that the petitioner on being notified about the acquisition of the lands in question had appeared before the third respondent on 31/8/2010 and had consented for acquisition. In fact, this is supported by the subsequent communications issued by him to the third respondent.

10. With regard to the non-passing of award in terms of Section 11A of the Land Acquisition Act, 1894. In the instant case, petitioner wrote to the respondents with regard to determination and disbursement of compensation on 31/8/2010 and 3/5/2013 and the writ petitions assailing the notifications were filed on 18/9/2013, there has been no unreasonable delay in passing the award. Therefore, the aforesaid judgment has no application having regard to the facts of the present case.

11. There being no merit in the writ petitions, they are dismissed, but without any order as to costs.