

(2014) 11 KAR CK 0063

In the Karnataka High Court

Case No : Writ Appeal Nos. 50177-50178/2013 (LA-RES)

Marrof Khan

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 5A, 6(1)

Citation : (2014) 11 KAR CK 0063

Hon'ble Judges : D.H. Waghela, C.J.; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Veeranagouda, Advocate for the Appellant; Shivakumar R. Tengli, AGA, Advocate for the Respondent

Judgement

Ashok B. Hinchigeri, J.—These appeals are preferred impugning the learned Single Judge's order, dated 14.2.2013 passed in W.P. Nos. 80218/2012 and 80409/2012 (LA-RES).

2. The facts of the case in brief are that the lands in question measuring 4 acres 20 guntas along with other lands are acquired for the purpose of construction of drinking water storage tank for Manvi town. In this regard, preliminary notification, dated 14.7.2010 and final notification, dated 26.9.2011 came to be issued under Section 4(1) and 6(1) respectively of the Land Acquisition Act, 1894. The appellants unsuccessfully challenged the said notifications insofar as they pertain to their lands.

3. Sri Veeranagouda, the learned counsel for the appellants submits that no individual notice is ever issued to the appellants. They are not afforded an opportunity of hearing in the matter. He submits that the phot kharab lands belonging to the Government are available and that they can be utilized for the public purpose in question. There was no need on the part of the Government to resort to the compulsory acquisition of the lands in question.

4. To buttress his submission that the Section 5A report has to be prepared only after calling for the objections, giving an opportunity of hearing, considering all the materials placed and the objections raised by the land owners, he relies on the Apex Court's judgment in the cases of Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, , M/s. Kamal Trading Private Limited v. State of West Bengal and others reported in 2011 STPL (Web) 1052 SC and Gojer Brothers Pvt. Ltd. and Another Vs. The State of West Bengal and Others, .

5. Sri Shivakumar Tengli, the learned Additional Government Advocate appearing for the respondents submits that about 41 parties, who are the erstwhile owners of the acquired lands have not raised the challenge to the acquisition notifications. Out of the total acquired land measuring 79 acres 17 guntas, the resistance is only in respect of 4 acres 20 guntas. He submits that the records should reveal that an honest attempt was made to serve the individual notices on the appellants. As they have refused to receive the same, the respondents proceeded to complete the acquisition proceedings in accordance with law.

6. The submissions of the learned counsel have received our thoughtful consideration. The first question that falls for our consideration is whether the acquisition proceedings are liable to be invalidated on the ground of non-service of notice and not affording an opportunity of hearing in the matter. The notice calling for objections is prescribed only to enable the concerned party to file the objections to the preliminary notification. Once the concerned khatedhar or the interested persons files the objections, he cannot demand the invalidation of the acquisition proceedings on the ground of non-service of notice. In taking this view, we are fortified by the Division Bench's judgment of this Court in the case of M. Suresh Kumar and others v. The State of Karnataka and Others in W.A. Nos. 33-34/2011 and other connected appeals, disposed of on 5.9.2011.

7. Our perusal of the learned Single Judge's order reveals that the learned Single Judge, on the perusal of the records, has satisfied himself that the mandatory requirements are substantially complied with.

8. Even assuming that some of the requirements are not completely complied with, we are not persuaded to interfere in a matter of this nature. As rightly noticed by the learned Single Judge, the purpose of the impugned acquisition is the construction of a tank for providing drinking water to the people of Manvi town.

9. It is profitable to refer to what the Hon"ble Apex Court has to say in paragraph No. 10 of its decision in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, .

"10.....Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in

furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-?-vis the private interest while exercising the power under Article 226 -indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of noncompliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

10. The contention of the appellants that alternative lands belonging to the Government could have been utilized for the project in question is not acceptable. It is trite that the choice of location falls within the domain of the experts. In the case of Subhashgir Khushalgir Gosavi and others Vs. Special Land Acquisition Officer and others, , the Apex Court has expressed the considered view that the Court cannot give any finding on the plea that a particular place is convenient or not convenient for a particular purpose.

11. Further, it is also worthwhile to notice that the impugned acquisition notifications are for an extent of the land measuring 79 acres 17 guntas; the challenge is only in respect of 4 acres 20 guntas. In a more or less similar situation, the Division Bench of this Court in the case of Thimmappa and Another Vs. State of Karnataka and Others, has held that where the owners of small piece of acquired land have been challenging the acquisition proceedings for years and in respect of remaining piece of land, acquisition has become final, it is not advisable to set aside the acquisition in exercise of writ jurisdiction.

12. The learned Single Judge has upheld the validity of the acquisition proceedings for right reasons. We therefore dismiss these appeals. No order as to costs.