

(2014) 02 KAR CK 0272

In the Karnataka High Court

Case No : Writ Petition No"s. 49229 and 49311-49321 of 2012 (LA-RES) and
Writ Petition No. 51899 of 2012 (LA-RES)

M.R. Sudesh and Others

APPELLANT

Vs

Deputy Commissioner, Hassan, Assistant Commissioner-cum-
Land Acquisition Officer, Hassan and State of Karnataka,
Department of Revenue
 Sri. T. Mallesh Vs The State of
Karnataka

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 10 5A 9

Citation : (2014) 02 KAR CK 0272

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Madhusudhana R. Naik, for Shri. R. Subramanya in Writ Petition Nos. 49229 and 49311-49321 of 2012 LA-RES and Shri. S. Subhash, for M/s. Kumar and Kumar in Writ Petition No. 51899 of 2012 LA-RES, for the Appellant; D. Nagaraj, Additional Government Advocate for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of together as the same are filed in the same circumstances. The facts are as follows:-

The petitioners are said to be owners of individual residential sites at Holenarasipura Town, Hassan District. It is stated that the State had acquired certain lands under the provisions of the Acquisition of Lands for Grant of House Sites Act, 1972 (hereinafter referred to as the "House Sites Act", for brevity). The Town Municipal Council (TMC), in turn, is said to have formed a residential layout and the sites so formed were said to have been auctioned in the year 1985. The petitioners, and in some cases their vendors, being eligible to participate at the said auction, had been the successful bidders and were put in possession of the same. The properties stand in the names of the respective

petitioners in the records of the Town Municipality and the petitioners are paying tax in respect of the same.

It is stated that the State had issued a notification under the provisions of the Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act", for brevity), invoking the urgency clause and seeking to acquire the sites belonging to the petitioners, apart from other lands, for the purported purpose of construction of a "Mini Vidhana Soudha". The invocation of the urgency clause and the need for acquisition of the lands of the petitioners was questioned before this court by way of a writ petition in WP 3087/2007. The same was allowed by an order dated 17.2.2009.

The petitioners had then approached the Town Municipality seeking sanction of plan and building licenses. The authorities cited the earlier acquisition proceedings and feigned ignorance of its status, and issued an endorsement of having kept their applications in abeyance. This act of the Municipality was again the subject matter of writ proceedings in WP 7601-7604/2011 and other petitions. The petitions were allowed and the endorsements quashed by an order dated 14.7.2011. The Municipality was directed to reconsider the applications aforesaid.

In spite of the above direction, it is stated that the Municipality failed to comply. On the other hand, it is stated, that the Deputy Commissioner is said to have instructed the Municipality to resume the sites of the petitioners, on the ground that the terms on which the sites had been sold required the petitioners to construct houses within two years from the time of handing over possession. This was by a communication dated 12.7.2011. Consequently, a resolution was said to have been passed by the Town Municipal Council (TMC) to take steps to resume the sites and had issued a show cause notice to the petitioners to show cause as to why the sites ought not to be resumed. The petitioners are said to have questioned the said notices in another writ petition in WP 3422-3437/2012 and connected cases.

The petitioners had also initiated proceedings for contempt of court against the Municipality, for not having complied with the earlier direction to consider their applications for sanction of plan and building licenses. The Division Bench had made the following observation by an order dated 15.2.2012, in the said proceedings:

Considering the objections, we are of the view that in order to overcome the order passed in writ petition, the respondent-Deputy Commissioner, Hassan and also the elected members of the Municipal Council planned to issue notice to resume the sites, which were sold by the respondent-Municipal Council in favour of the complainants in a public auction conducted in the year 1985 on the ground that the building has not been constructed within two years.

We have also seen that the case of the petitioner is that the plan has not been sanctioned by the Town Municipal Council for obvious reasons.

and cannot be again acquired for another public purpose, even if it could be demonstrated that there was one. The persistence in issuing the notifications to acquire the land notwithstanding that the earlier notifications were quashed by this court, albeit that the same were not tenable in that, the urgency clause had been invoked without any such exigency being present.

It is contended that an area of 1 acre and 32 guntas of vacant land belonging to the TMC is available in the heart of the city and could be utilized for the purpose of constructing the Mini Vidhana Soudha. The same however, is said to be behind a cinema hall belonging to a political heavy weight, who according to the Senior Advocate is orchestrating the acquisition in order to avoid the possibility of the vacant land being utilized for any purpose as he apparently has designs over the same.

It is pointed out that the pre-determined and relentless pursuit to acquire the sites of the petitioners by any and all means is apparent from the circumstance that though there was an interim order directing the respondents to maintain status quo in WP 34433/2012, the State having proceeded to issue the notifications for acquisition, is indicative of the pulls and pressures brought on the authorities to usurp the sites of the petitioners at any cost.

It is pointed out that there is already a Mini Vidhana Soudha in existence in the town and there is vacant space available around the same. Even if a larger building is required, the same can be constructed in that very premises and hence, there is no need for the acquisition of the petitioners' lands.

It is urged that the Land Acquisition Officer (LAO), who is said to have forwarded a report recommending acquisition is hardly competent to justify the acquisition proceedings as it is the State Government which ought to justify the same in these proceedings. The affidavit in support of the Statement of Objections, of the LAO, is clinching evidence of the pre-determination of the State to acquire the land in question, blatantly and with unmasked impunity.

A large number of authorities are cited in support of the petition.

3. It is contended on behalf of the State that there is an urgent need to construct a building or buildings to house the several wings of the Taluk Office at Holenarasipur. In view of the ever increasing Schemes to be implemented for the benefit of the public at large-the present accommodation is grossly inadequate. The many departments, which are to work in close co-operation are presently housed in many rented premises and in congested places. It is in order to house all the various departmental offices in a single office complex-or the Mini Vidhana Soudha that the present acquisition proceedings have been initiated.

It is pointed out that this court while allowing the writ petition that had questioned the acquisition proceedings initiated in the year 2007, had observed that it would be open to the respondents to initiate fresh acquisition proceedings if they chose. It is thereafter, on the request of the PWD Department that the

present proceedings had been initiated.

It is contended that the petitioners who had filed their objections were heard and the signatures of the petitioners in the order sheet of the proceedings before the LAO is proof of the same. It is claimed that the LAO had sent his report to the government and the State having accepted the report had issued the final declaration in accordance with law. Further, the petitioners had been served with notices u/s 9 and 10 of the LA Act and though time was granted at their request to file objections, no objections were filed and hence the authority has proceeded to pass an award, which has been duly approved. It is at that stage that the present writ petition is filed.

In so far as the contention that there was vacant land available behind a cinema hall, measuring 1 acre and 32 guntas is concerned, it is stated that the same is inadequate for the proposed purpose and further that the land is presently being used as a play ground for the Government college.

It is stated that originally 116 sites had been formed out of the land acquired for purposes of forming sites. Out of which, an extent of 65,215.75 Square Feet had been acquired for the purpose of establishing a vegetable market and a multipurpose complex, vide notification dated 4.9.2010. The same had been challenged by the site allottees in writ proceedings in WP 38231-232/2010 and connected cases. The same had been dismissed on merits by order dated 3.1.2013. An appeal filed against the same is pending consideration in WA 536/2013.

It is stated that part of the lands that had been acquired under the House Sites Act was acquired for formation of a Bye-pass road and Railway Station and both acquisition proceedings are completed and the road as well the Railway station have been constructed. It is hence contended that it is but in the fitness of things that the acquisition proceedings of yet another portion that has remained vacant for almost three decades, when the petitioners were required to construct houses within two years from the date of allotment, should be upheld and the land be put to better public benefit.

The TMC has impleaded itself in these proceedings and has sought to justify the acquisition proceedings. However, as the possession of the land remains with the petitioners, the TMC, which may be the ultimate beneficiary, would have little say in the matter at this stage and hence the pleadings on its behalf are ignored.

In the light of the above facts and circumstances the two glaring circumstances that are evident are the following:

Firstly, though there are very serious allegations against a local politician, by the petitioner, (without naming him, except to name the cinema hall he owns) of being instrumental in orchestrating the acquisition proceedings with the active connivance of all the local authorities including the respondents. The involvement of the concerned officials of the respondents ought to have been denied at least

for the sake of form in the statement of objections. Unfortunately, there is no denial of such direct allegations, except a general denial of statements not traversed in the course of pleadings.

Secondly, a primary ground raised in challenge to the acquisition proceedings is the denial of opportunity of hearing at the stage of the enquiry u/s 5A of the LA Act. And there are contentions urged against the actions of the LAO, which according to the petitioners, was not in accordance with law and procedure. It is seen that Statement of Objections and Additional Statement of objections filed in these two petitions are supported by affidavits filed by the concerned LAO concerned. It is the same authority who is said to have forwarded the report prepared u/s 5A of the LA Act to the State Government. Hence, he was hardly competent to justify the acquisition proceedings on behalf of the State. For it is the objective satisfaction of the State Government, which is to be demonstrated in proceeding with the acquisition proceedings. This circumstance is all the more significant when the State Government has not chosen to produce the relevant records to disclose the reasons recorded by the State government in accepting the report filed by the LAO.

Even on facts, the denial of sanction of building plans on the ground that acquisition of the lands was afoot and even during the pendency of the writ petition challenging the said endorsement, the notification for acquisition having been issued, does disclose a possible orchestration of the proceedings with pre-determination as alleged by the petitioners.

In the result, the acquisition proceedings are found to be vitiated and accordingly, the writ petitions are allowed and the impugned annexures to the petitions are quashed.