
(2012) 08 KAR CK 0300

In the Karnataka High Court

Case No : Writ Petition No. 26184 of 2010 (Lb-Res)

M/s. Mysore I.T. Solutions Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 17
Land Acquisition Act, 1894 — Section 48 A

Citation : (2012) 08 KAR CK 0300

Hon'ble Judges : A S Bopanna, J

Bench : Single Bench

Advocate : Nanjunda Reddy for and Sri. Reuben Jacob, for the Appellant; DLN Rao for Sri B.M. Sudesh, for R3, Sri. Basavaraj Sabarad, for R2, Sri. N.B. Vishwanath, AGA. R1, 4 and R5, for the Respondent

Final Decision : Allowed

Judgement

A S Bopanna

1. The petitioner-company is assailing the order dated 26.03.2010 passed by the first respondent-State Government which is impugned at Annexure-A to the petition. By the said order, the first respondent has ordered that the second respondent Karnataka Industrial Areas Development Board ("KIADB" for short) shall cancel the allotment of land measuring 3 acres 5 guntas in Sy.No. 24 of Kadubeesanaballi village made in favour of the petitioner-company and to allot an extent of 2 acres 20 guntas out of the said land in favour of the third respondent-company. The facts in brief are that the petitioner-company which is engaged in the business of Software Solutions required lands for setting up Software Technology Park. Accordingly, the petitioner submitted the application to the KIADB. The said application of the petitioner was considered by the Single Window Clearance Committee ("SWC Committee" for short) on 20.03.2006. The same was communicated to the petitioner by the communication dated 01.04.2006 addressed by the Karnataka Udyogamitra. The petitioner had sought

for grant of 9 acres 09 guntas of land for the said purpose which was to be located in Sy.No.23/4 and 24 of Kadubeesanaballi. The said lands had been acquired by the Government under the KIADB Act. Insofar as the land situate in Sy.No.23/4, the landowners had questioned the acquisition in W.P.No.5081/2006 which was pending consideration. In that view, an extent of 3 acres 05 guntas which was available in Sy.No.24 was allotted in favour of the petitioner by indicating that the remaining extent of 1 acre 20 guntas would be allotted. The KIADB accordingly issued the allotment letter dated 18.01.2007 as per which the balance amount was required to be paid by the petitioner which was also complied and accordingly, the petitioner-company was put in possession on 28.05.2007. The lease-cum-sale agreement was thereafter executed on 04.07.2007. In the meanwhile, the petition filed by the land owners in respect of Sy.No.23/4 in W.P.No.5081/2006 was allowed. Since the petitioner was aggrieved by the same, they have questioned the order in W.A.No. 1495/2008 which is stated to be pending.

2. In this background, the third respondent-company on the other hand claim that they had purchased different extents of the land in certain survey numbers including an extent of 2 acres 20 guntas in Sy.No.24 which was acquired by KIADB and the extent of 3 acres 05 guntas which was allotted in favour of the petitioner consists of that extent of 2 acres 20 guntas. The third respondent therefore questioned the acquisition and allotment in favour of the petitioner-company by filing a writ petition in W.P.No.4149/2007. The said writ petition came to be dismissed on the ground that the third respondent was a subsequent purchaser after the acquisition. The third respondent therefore filed an appeal in WA No. 1556/2008 which also came to be dismissed. Hence, a SLP in SLP No.20055/2009 was filed. In the meanwhile, the third respondent approached the Government seeking that the property purchased by the third respondent be allotted to them. The request made by the third respondent is stated to have been considered subject to the condition that the third respondent would withdraw the SLP pending before the Hon'ble Supreme Court. In that view, the impugned order dated 26.03.2010 was passed whereby the allotment made in favour of the petitioner was ordered to be cancelled and an extent of 2 acres 20 guntas of the land out of the same be allotted in favour of the third respondent. It was also proposed that the petitioner be allotted land in any other place since their proposal has already been cleared by the SWC Committee. It is in that view the petitioner has questioned the said order in this writ petition.

3. The respondents have filed their objection statement and have sought to justify their action.

4. In the light of the same, I have heard Sri Nanjunda Reddy, learned senior counsel for the petitioner, Sri D.L.N. Rao, learned senior counsel for the third respondent and Sri Basavaraj Sabarad, learned counsel for the second respondent and perused the writ papers.

5. The gist of the contentions on behalf of the petitioner is that the land has been

acquired and has been handed over to the KIADB and when it has been allotted to the petitioner-company on the recommendation of the SWC Committee, the same cannot be subsequently withdrawn. The Government therefore has no jurisdiction either to pass the order of withdrawal or to direct the KIADB to do so. In the instant case, the challenge to the allotment made in favour of the petitioner has already failed in judicial proceedings. There is no analogous provision as contained in Section 48A of the Land Acquisition Act so as to withdraw the same as presently done. The whole exercise in the instant case is at the instance of the third respondent who has lost the litigation in challenging the acquisition and therefore, the procedure adopted is an ingenious method to over-reach the orders of the Court. Hence, there is legal malafide and favouritism. On execution of the lease-cum-sale agreement by the KIADB, the allotment has resulted in creating a right in favour of the petitioner which cannot be defeated without due process of law. In reply to the arguments of the respondents, it is further contended that the question of adhering to the time schedule indicated in the lease-cum-sale agreement would not arise while in principle, the entire extent of 9 acres 09 guntas was approved and in respect of the remaining extent, the petitioner is still pursuing his legal remedies to sustain the acquisition. Hence, at this stage, the extent allotted cannot be cancelled.

6. The gist of the contentions on behalf of the respondents is that the very approval of the SWC Committee will indicate that the project of the petitioner could be pursued only if the entire extent of 9 acres 09 guntas is available. In such circumstance, when the acquisition relating to Sy.No.23/4 has been set aside, the smaller extent in Sy.No.24 is only available. Hence, when the project of the petitioner cannot be implemented, the Government has kept this aspect in mind and has noticed that out of the land allotted to the petitioner in Sy.No.24, the third respondent had purchased 2 acres 20 guntas and if the same is made available to the third respondent, the third respondent can implement its project. Though the challenge to the acquisition by the third respondent was not entertained by this Court and when the matter was pending before the Hon''ble Supreme Court, the Government on noticing the above stated facts had imposed the condition to withdraw the SLP before the Hon''ble Supreme Court. In that view, an application for withdrawal was filed indicating all the details including the passing of the impugned order and the petitioner who was a party to the said SLP has not opposed the permission to withdraw. Therefore, the petitioners who have acquiesced to the action taken by the Government cannot challenge the same at this juncture. The impugned Government order is only in the nature of inter-departmental communication instructing the KIADB to issue notice and take steps. Therefore, the petition itself is premature. Alternatively, the said communication itself can be considered as a notice and the Government can take action after hearing the petitioner. It is also contended that even otherwise only one-third of the required extent was available with the petitioner and the petitioner has not utilised even the said extent of the land. That, in fact has resulted in violation of the terms in the lease-cum-sale agreement with KIADB

and even for that reason, the allotment would be liable for cancellation.

7. The contention on behalf of the KIADB is that the Government has the power to direct the KIADB as contemplated u/s 17 of the KIADB Act and the order of the Government is in the interest of industrialisation, as otherwise the said extent of land would not be put to use and the result of the litigation relating to acquisition cannot be awaited indefinitely by the petitioner. Therefore, the allotment in favour of third respondent would enable them to utilise the land to its potential.

8. In the light of the above, the point to be considered at the outset is whether the petition is premature as contended by the learned senior counsel appearing for the third respondent. In order to consider this aspect, a perusal of the impugned order dated 26.03.2010 (Annexure-A) no doubt indicates that the same is in the nature of a communication addressed by the Principal Secretary, Industries and Commerce, Government of Karnataka to the Managing Director, KIADB. However, a perusal of the contents would indicate that a decision has already been taken by the Government to cancel the allotment made in favour of the petitioner and to allot a portion of the said land to the third respondent. The said decision which is taken at the Government level is communicated to the KIADB and the tenor of the letter, more particularly the conclusion would indicate that the KIADB has no option but to carry out the direction and submit a report to the Government. In that backdrop, a perusal of the objection statement filed by the Government as well as the KIADB would disclose that they seek to justify the cancellation and the allotment to third respondent by referring to the power of the Government u/s 17 of the KIADB Act. The KIADB in fact accepts that it is bound by such direction. These aspects would indicate that there is a decision taken and all that remains is the implementation of the same by the KIADB which will result in the cancellation of the land allotted in favour of the petitioner. Therefore, in such circumstance, the allotment made to the petitioner after following due procedure if cancelled without compliance of due procedure it would certainly affect the right of the petitioner and the correctness or otherwise of such decision needs to be considered in the instant petition. As such, it cannot be accepted that the instant petition is premature.

9. As noticed, the impugned direction issued by the Government to the KIADB specifies that the allotment of 3 acres 05 guntas made in Sy.No.24 of Kadubeesanaballi in favour of the petitioner be cancelled and when it reverts to the possession of KIADB, an extent of 2 acres 20 guntas out of the said land be allotted in favour of the third respondent. In order to consider as to whether the Government could have unilaterally resorted to such a move, the manner in which the said land had been allotted in favour of the petitioner is also to be noticed. The undisputed position is that the said land in Sy.No.24 was acquired and was handed over to KIADB for forming the industrial layout for the purpose of allotment. The position that the land would be allotted on the recommendation of the State SWC Committee and in the instant case, the SWC Committee

considered the case of the petitioner and resolved to recommend to KIADB to allot 9 acres 09 guntas of land comprising in Sy.No.23/4 and Sy.No.24 cannot be disputed. The same was communicated to the petitioner as per Annexure-B. However, at that stage, only the land in Sy.No.24 measuring 4 acres 25 guntas was free from litigation. The same was available for allotment while the remaining extent in Sy.No.23/4 was under litigation inasmuch as the land owners had questioned the acquisition and W.P.No.5081/2006 was pending.

10. Accordingly, the KIADB by their letter dated 06.01.2007 (Annexure-B) allotted the extent of 3 acres 5 guntas in Sy.No.24 and called upon the petitioner to pay the amount of Rs.49,60,313/- as per the details furnished therein. Thereafter the allotment letter dated 18.01.2007 (Annexure-E) was issued and the possession of the land was given under the Possession Certificate dated 28.05.2007 (Annexure-G) and the Lease Agreement dated 02.07.2007 (Annexure-H) was executed. The said documents would indicate that the Karnataka Udyogamitra had taken a conscious decision to allot the lesser extent of the land available though a larger extent had been considered and approved and the KIADB has also allotted the land in accordance with the procedure. No doubt to constitute the total required extent of 9 acres 09 guntas, the remaining land situate in Sy.No.23/4 in respect of which the acquisition has been set aside is also required. In that regard, the petitioner has filed an appeal in WA No. 1495/2008. Therefore, the availability of the remaining extent would be known only after the legal proceedings come to an end. It is no doubt premature at this stage to hazard a guess as to whether the petitioners would be successful in their attempt to get the balance extent of land. That alone cannot be the consideration at this stage to cancel the allotment.

11. On the other hand, if the petitioners were to succeed therein and if the present action is allowed to sustain, the extent which has now been allotted after following the procedure but sought to be cancelled would not be available at that stage. Further, when the SWC Committee has approved the project and if the total extent of the land is not presently available and if the project is considered as an impossibility, the resolution passed by the Committee to allot the land in Sy.No.23/4 and 24 was to be reconsidered by the Committee to approve such other suitable land keeping in view the project, instead the Government through the Principal Secretary, Industries and Commerce, Government of Karnataka could not have taken the decision merely because the third respondent had made a request for allotment of the said land. The Government has directed the KIADB to allot the land to the third respondent and in that regard, a condition is imposed in the impugned communication dated 26.03.2010 to seek approval from SWC Committee which indicates that allotment has not followed the approval as per procedure but it is vice versa, contrary to procedure.

12. Further, as noticed, the property in Sy.No.24 was also acquired and the said acquisition in fact was questioned by the third respondent in W.P.No.4149/2007 and the very clearance granted by the SWC Committee dated 20.03.2006 and

the allotment made in favour of the petitioner herein also had been assailed. The third respondent herein had failed in the said writ petition which was carried in appeal in W.A.No. 1556/2008 which was also dismissed on 16.04.2009. In fact at that stage itself, it was known that only an extent of 3 acres 05 guntas as against the requirement of 9 acres 09 guntas had been allotted to the petitioner and despite the same, this Court had not interfered. Though the SLP was filed by the third respondent and when the same was pending, the third respondent has approached the Government and has secured the impugned order dated 26.03.2010. In view of the condition indicated therein, the third respondent no doubt has withdrawn the SLP. The contention of the learned senior counsel for the third respondent that the petitioner herein who was a party in the said SLP had not objected to the withdrawal despite knowing that it is being withdrawn in view of the order impugned herein and that should be considered as a conduct of having acquiesced to the said order, in my view, cannot be accepted. The reason being that the perusal of the order dated 23.09.2010 (Annexure-S) does not even indicate that leave is granted after listing the application for consideration and on hearing the petitioner herein. But, it would disclose that the SLP has been dismissed as withdrawn on oral request.

13. Yet another contention of the learned senior counsel for the third respondent that in any event, the petitioner has not proceeded to use even the extent of land which has been granted and therefore has violated the terms of allotment as contained in the relevant clauses of the lease-cum-sale agreement to obtain the approved plan and put up construction and therefore the cancellation is justified also cannot be accepted in the present case. The impugned order does not disclose that the cancellation is for the said reason. In fact, the order recommends allotment of the land to the petitioner in lieu of the present allotment in some other place. That apart the KIADB has not taken up such stand nor has any action been initiated at the instance of the KIADB in that regard. Further, the KIADB Act vide Section 34-B contemplates a procedure therefor which certainty has not been followed. Hence, the impugned order cannot be construed in that direction nor can that be a justification to sustain the impugned order.

14. On the other hand the impugned order discloses that the acquired land which is now not available with the KIADB is sought to be repossessed and a portion allotted to the petitioner is now directed to be allotted to the third respondent. To justify such action, the first respondent-Government in their objection have sought to contend in para-9 that since only 3 acres 05 guntas is available, independent road facility cannot be extended to that land for the benefit of the petitioner. This aspect of providing amenities, firstly is in the realm of KIADB. Secondly, the impugned order itself belies such contention as it would disclose that the Government on directing the KIADB to allot 2 acres 20 guntas of land to the third respondent has further directed that a road be formed for the remaining 1 acre 05 guntas and allot the same to some other industrialist or else to allot it to third respondent themselves if the formation of road is not possible. These

aspects would indicate that except to favour the third respondent, there is no other object.

15. The justification offered by stating that power is available to the Government u/s 17 of the KIADB Act also cannot be accepted in the present facts, when such direction has been issued relating to cancellation of allotment made to one allottee and thereafter allot the same land to another. The direction cannot be considered of general nature as provided but is a colourable exercise of the power which was available for a different purpose. For the same reason, the reliance placed on Regulation 13 of the Regulation 1969 by the Government in their objection statement also cannot be of any assistance. In the instant case, when right had accrued in favour of the petitioner in respect of the said extent of 3 acres 05 guntas, the same could not have been cancelled in an arbitrary manner. The Regulation referred does not provide such power when the land in question was in fact an allotted land and when it was not available with the KIADB for allotment. Hence, in such circumstance, the question of directing the Government to treat the order as a notice also would not arise when the contents of the order is clear and the same is sought to be justified by filing the objection statement. If there is any other procedure contemplated in law, it is for the respondents to follow such procedure and certainly not the one which it has resorted to at present. In the result the following:

ORDER

(i) The order dated 26.03.2010 bearing No. CI 553 SPQ 2008 (Part) passed by the first respondent impugned at Annexure-A stands quashed.

(ii) The writ petition is accordingly allowed.

(iii) Parties to bear their own costs.