
(2008) 04 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 9857 of 2006

M.V. Kasturi and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 48, 48 (1)

Citation : (2008) ILR (Kar) 3961 : (2009) 3 KarLJ 340 : (2008) 5 KCCR 3287

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; R.K. Hatti, Government Advocate for R1 and R2 and Ravivarma Kumar for M.R. Shailendra, for R3, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Malimath, J.—At the request of all the counsels appearing, the petition is taken up for final disposal.

2. The petitioners were the owners of a portion of the land bearing Sy. No. 49/1 totally measuring 15 acres, which was subsequently phoded as Sy. Nos. 49/1, 49/2 and 49/3 of Marlur Village, Kasaba Hobli, Tumkur District. The petitioners were the owners of 1 acre 21 1/2 guntas of the said lands. By virtue of a Preliminary Notification issued u/s 4(1) of the Land Acquisition Act, ("Act" for short) dated 6.8.1991 and the Final Notification dated 15.5.1992, the lands of the petitioners were acquired. Thereafter, the State issued a Notification u/s 48 of the Act on 2.8.1993, denotifying from acquisition the said lands. The third respondent herein, filed Writ Petition No. 44142/1993, questioning the order of De-notification, which came to be dismissed. The Writ Appeal filed against the said order was also rejected and consequently, the third respondent approached the Hon'ble Supreme Court, wherein, by the order dated 11.12.2000, the Hon'ble Supreme Court in the decisions *State Govt. Houseless Harijan Employees" Association v. State of Karnataka and Ors.* 2001 (1) SCC 610,

quashed the Notification issued u/s 48(1) of the Act.

3. On the other hand certain land owners, questioning the acquisition proceedings, filed Writ Petitions No. 20194-20223/2002, and the learned Single Judge, by the order dated 7.5.2002 dismissed the petition on the ground of delay and laches by reserving liberty to the petitioners therein to approach this Court for the purpose of seeking permission to make an application u/s 18(3) of the Act. Thereafter, the petitioners filed Writ Appeals No. 3361-3380/2002, wherein the appellate Court by order dated 30.8.2002, dismissed the Writ Appeals. The Hon"ble Supreme Court, by the order dated 1.11.2002, dismissed the Special Leave Petitions, which were filed against the order passed by the learned Single Judge and that of the appellate Court. Hence the acquisitions stood confirmed.

4. Also the erstwhile land owners had filed Writ Petitions No. 19968-97/2002, which were disposed off on 19.2.2003 vide Annexure-C with the following observations:

3. I find no reason to interfere with the proceedings relating to withdrawal of acquisition, since the said property reached finality.

3. It is submitted that the petitioners have now made the application before the State Government for withdrawal of the acquisition proceedings on the ground that they have invested very huge amount of money for development of the land and also on the ground that they have formed the layout after obtaining necessary permission from the concerned Authorities. Now, the grievance of the petitioners is that the said application has not been considered by the State Government. If the petitioners have made any such application seeking for withdrawal of the acquisition proceedings, the same may be considered by the State Government in accordance with law as expeditiously as possible. With this observation, writ petitions are disposed of.

5. In pursuance of the above order, the Revenue Minister passed an order dated 27.2.2004 vide Annexure-E, denotifying the lands from acquisition. Thereafter, an endorsement in reply was issued vide Annexure-A dated 21.9.2005 by the Deputy Secretary to Government to one Smt. Padma Murthy, who is not a party to this petition, stating that withdrawing from acquisition of the aforesaid lands does not arise and consequently it has been decided that the order of the then Revenue Minister dated 27.2.2004 cannot be given effect to.

6. In this petition, the petitioners seek for a writ of certiorari to quash the endorsement dated 21.9.2005 and further for a writ of mandamus to give effect to the decision of the Revenue Minister dated 27.2.2004.

7. Various orders of different Courts with reference to the acquisition of land have been referred to during the course of the arguments. But, however, the learned counsels have mainly addressed their arguments with reference to the order passed by the Revenue Minister and the impugned endorsement vide Annexure-A.

8. Sri. Ashok Haranahalli, learned Counsel appearing for the petitioners submitted that the order passed by the Revenue Minister is an order passed in pursuance of the directions issued by the learned Single Judge and hence there is no illegality in passing the same. He further submitted that the order of the Minister is an order of the State Government and consequently the said order has to be given effect to. He relied on the decisions *Tafcon Projects (I) (P) Ltd. v. Union of India and Ors.* (2004) 13 SCC 788 and *Fonseca Private Ltd. and Others Vs. L.C. Gupta and Others*, to canvass the said proposition. He further contended that the Deputy Secretary to the Government has no power or jurisdiction to issue the impugned endorsement. That the Deputy Secretary cannot sit in an Appeal over the order passed by the Minister and hence the endorsement deserves to be quashed.

9. On the other hand, Sri. R.K. Hatti, learned Government Advocate, appearing for the State, submitted that the State has taken possession of the said lands on 10.10.2002 and therefore the impugned order passed by the Revenue Minister on 27-2-2004 is opposed to facts and law and hence cannot be given effect to. He submitted that the order of the Minister is not sustainable since he had no power to pass the said order. He further submitted that in view of the findings arrived at, by the various Courts and also that of the Supreme Court with reference to the instant acquisition, the impugned endorsement vide Annexure-A has been issued. Therefore, Annexure-A is a reflection of the orders passed by the Courts and is in tune with the facts and circumstances and therefore no interference is called for with reference to Annexure-A. He accordingly prayed that the Writ Petition be dismissed.

10. Sri. Ravivarma Kumar, 1 earned senior Counsel appearing for the third respondent submitted that on the facts, circumstances and merits of the case, the Minister could not have passed the said order. That the order passed by the learned Single Judge in Writ Petition No. 19968 to 997/2002 on 19-2-2003 was a direction to the State Government to consider the representation and accordingly it was the State Government alone that could consider the representation. In the instant case, it is not the State Government, but the Hon''ble Minister, who has passed the order and hence the same is bad in law. He relied on the observations made by the Courts in various Petitions, to contend that not only were the acquisition proceedings upheld, but also that the order of De-notification was set aside. He further submitted that he was compelled to approach the Hon''ble Supreme Court of India by filing a Contempt Petition alleging disobedience of the order of the Hon''ble Supreme Court passed on 11.12.2000. That in the said proceedings, the respondent-State has filed an affidavit affirming the fact that the State has issued an order dated 17.4.2002 to implement the order of the Hon''ble Supreme Court to direct the Deputy Commissioner to take possession of the land and hand over the same to the complainants. That those necessary steps would be taken for implementation of the said order and strict compliance would be resorted to. Therefore, in view of the affidavit/undertaking filed by the State before the Supreme Court vide Annexure-G, the order passed by the

Minister is bad on facts and law and deserves to be quashed. He further placed reliance on the decisions on Article 166 of the Constitution regarding the conduct of business of the Government of a State and submitted that an order of a Minister is not an order of the Government. He placed reliance on the judgment of the Supreme Court Bangalore Development Authority and Ors. v. R. Hanumaiah and Ors. ILR 2005 Kar 5533; State of Karnataka v. Smt. A. Lakshmikutty and Ors. (1986) 4 SCC 632; J.P. Bansal Vs. State of Rajasthan and Another, and an unreported judgment dated 15.7.2005 passed by a learned Single Judge of this Court in Writ Petition No. 6073/2004 and connected matters. He submitted that it is the State Government alone and not the Minister who has power to pass an order. Consequently, all order passed by a Minister are not orders of the State Government. He referred to the Karnataka Government (Transaction of Business) Rules, 1977 to conclude that an order passed by a Minister, in-charge of a particular Department, is not an order passed by the Government.

11. Having heard the learned counsels appearing, I am of the view that the Writ Petition deserves to be dismissed for the following:

REASONS

12. The order passed by the Revenue Minister vide Annexure-E is an order for de-notifying the lands i.e., an order u/s 48 of the Land Acquisition Act. When possession of the lands have already been taken on 10.10.2002, the power u/s 48 of the Act cannot be exercised. The power u/s 48 of the Act can be exercised provided possession has not been taken. The Courts have time and again reiterated the powers, scope and gamut of Section 48 of the Act exercisable by the State. More-over, the Hon"ble Supreme Court has by virtue of the order dated 11-12-2000 reported in 2001(1) SCC 610, quashed the order of De-notification. Therefore, the State or its Minister could not have once again issued an order of De-notification u/s 48 of the Act. The order is, therefore, null and void. Being an order that is null and void, it operates from nativity, i.e., from the very inception as if the said order did not exist at all. The order passed by the Revenue Minister, under these circumstances, by attempting to over-ride the Supreme Court order is contemptuous. Such action needs to be condemned.

13. The Supreme Court in Civil Appeal No. 5015/1999 by the Judgment dated 11.12.2000 quashed the Notification issued u/s 48(1) of the Act. Thereafter the learned Single Judge in Writ Petition Nos. 19968-97/2002 by the order dated 19.2.2003, after referring to the said order passed by the Supreme Court, held that there is no reason to interfere with the acquisition proceedings relating to withdrawal of acquisition since the same has reached finality. However, it was observed that if the petitioners have made any such applications seeking for withdrawal from the acquisition, the same may be considered by the State Government in accordance with law as expeditiously as possible. It was therefore unnecessary to direct the State Government to consider the applications for withdrawal especially in view of the fact that the question of withdrawal from

acquisition was considered by the Supreme Court and by the order dated 11.12.2000 the order of withdrawal from acquisition was quashed. Therefore there was no question of any application by any person that could be considered for withdrawal from acquisition. Therefore in terms of the order passed by the Supreme Court quashing the order of denotification no application for the same cause could have been entertained. Therefore entertaining of the applications for withdrawal are bad in law.

14. By virtue of the order passed by the learned Single Judge dated 19-2-2003 in Writ Petition Nos. 19968 to 19997/2002 it was the State Government that was directed to dispose of the applications in accordance with law. In the instant case, by virtue of the said order the Minister has passed the order. The direction was to the State Government and not to the Minister. The Minister it appears has usurped the powers of the State Government while passing the said order.

The source and absence of power is writ large in the order passed by the Minister and therefore the order is unsustainable.

15. Part-I of the Karnataka Government (Transaction of Business) Rules, 1977, deals with allocation and distribution of business of the Government. Rule 6 therein, which is relied upon by the learned Counsel for the petitioner states that all businesses allotted to a Department shall be disposed of by, or under the general or special directions of the Minister in-charge. The learned Counsel for the petitioners submits that by virtue of this Rule, the Minister has passed the said order and hence it is an order of the State Government.

Rule 6 deals with allocation and distribution of business. The said rule is subject to the provisions with regard to consultation with other Department and submission of cases to the Chief Minister, the Cabinet and the Governor. It is therefore meant for the sole purpose of allocation and distribution of business of the Government and nothing more. It does not imply that by virtue of Rule 6 any order that is passed by the Minister in-charge is an order of the Government. In terms of Article 166 of the Constitution all executive actions of the State shall be in the name of the Governor and it is only then that it would become an order of the Government and the Government would be responsible for the same thereafter. In the instant case, there is no such authentication which would result in concluding that the said order of the Minister is an order of the Government.

16. The impugned endorsement issued by the Deputy Secretary is only an endorsement and not an order as contended. The contention of the learned Counsel for the petitioners that the Deputy Secretary cannot sit in appeal or act as an appellate authority over an order of a Minister needs to be accepted on principle. However, the impugned order is only an endorsement and not an appeal or an appellate order as contended by the learned Counsel for the petitioners. The endorsement states that in view of the orders passed by the Supreme Court in Civil Appeal No. 5015/1999 dated 11.12.2000 the possession of the acquired lands was handed over to the Society on 6.9.2002 and the

notification u/s 16(2) of the Land Acquisition Act was also issued on 10.10.2002. It is also stated that in view of these facts and the Judgment of the Supreme Court, the order of the then Revenue Minister cannot be given effect to. The endorsement is a reiteration of the facts involved in the case. It is neither an appellate order nor an order of the Government. It is purely an endorsement issued in reply to one Smt. Padma Murthy. Notwithstanding the fact that there is no material to show as to who Smt. Padma Murthy is and what application was made by her, the impugned endorsement cannot be interfered with.

17. The learned Counsel for the petitioners referred to Annexure-J i.e., the indemnity bond executed by respondent-3 to contend that in view of the same the possession of the Government is subject to the terms of the indemnity bond. Therefore, it is only on the basis of the indemnity bond that the possession of the lands was handed over.

The legality and enforceability of an indemnity bond cannot be gone into in a proceeding under Article 226 of the Constitution nor does it affect the factum of possession in pursuance of the notification u/s 16(2) of the Land Acquisition Act. The handing over of possession of the acquired lands is governed by the provisions of the Land Acquisition Act and not by contract between the parties. Respondent No. 3 being the beneficiary of the acquisition would therefore receive possession of the lands from the State Government and not from the land owners. It is therefore that the State Government that takes possession of the acquired lands from the owners.

18. It has been strongly urged by the learned senior Counsel Mr. Ravivarma Kumar appearing for respondent No. 3 that, time and again in the related petitions the Courts have come down heavily on the dilatory tactics adopted by the land owners which have consequently led to imposition of costs also on them. He therefore submitted that costs should also be levied in the present petition also.

Every land owner has a statutory right to defend his property against acquisition by the State as well as to challenge the exercise of the power of eminent domain. It cannot therefore be said that the petitioners should be riddled with costs on the basis of adopting dilatory tactics. Therefore, I do not find it just or proper to impose cost on the petitioners.

19. In order to determine the validity or otherwise of the impugned endorsement, it was necessary to delve into the correctness of the order passed by the Revenue Minister. In the process, I have come to the conclusion and held that the order passed by the Revenue Minister is an order that is void. In coming to this conclusion, I rely on the order passed by the Hon'ble Supreme Court Nawabkhan Abbaskhan Vs. The State of Gujarat, wherein it is held at paragraphs 19 and 20 of the judgment as follows:

19. ...So, the Court quashed it - not killed it then but performed the formal obsequies of the order which had died at birth. The legal result is that the

accused was never guilty of flouting an order which never legally existed.

20. We express no final opinion, on the many wide-ranging problems in public law of illegal orders and violations thereof by citizens, grave though some of them may be. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings....

In Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , the Hon"ble Supreme Court at paragraph-6 of the judgment has held as follows:

Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order such as public interest dictates and equity projects. "Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest....

In the process of the determination of a case, if glaring injustice emerges thereon, it would be a travesty of justice, if Courts refuse to interfere merely on the ground of lack of pleadings. Technicalities would therefore never come in the way of the Courts doing substantial justice. The Courts could therefore mould and reshape the relief sought for or require, in order to make them relevant in the particular exigencies of the case. The power under Article 226 is conferred on the High Court to reach injustice wherever it is found. Justice, would therefore also mean, interference where injustice prevails. The power under Article 226, therefore, needs to be exercised in such circumstances.

It is therefore appropriate that the order passed by the Minister being an order that is null and void, needs to be quashed.

For the aforesaid reasons I pass the following order:

(i) The order dated 27-2-2004 passed by the Revenue Minister bearing No. vide Annexure-E is quashed.

(ii) The Writ Petition is rejected.

No order as to costs.