
(2013) 11 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 10967 and 11526 of 2012

N. Rekha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 AKR 49

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; P.V. Chandrashekar, H.T. Narendra Prasad, Additional Government Advocate, R.V.S. Naik, King and Partridge and B. Rudra Gowda, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents. The petitioner claims to be the absolute owner of lands described in the schedule to the petition. The said lands were purchased under three sale deeds dated 25.8.2005, 7.11.2005 and 6.10.2006, This was pursuant to the permission granted by the fourth respondent as these lands were notified for acquisition u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as the "KIAD Act", for brevity). Though the lands were notified in the name of the petitioner's vendors, by way of abundant caution, that the petitioner sought permission and thereafter purchased the same.

It is the case of the petitioner that after having purchased the lands in the year 2005, in order to undertake further development and to deal with the lands, the petitioner had filed an application before the Jurisdictional Deputy Commissioner seeking particulars as to what further steps had been taken pursuant to the notification issued u/s 28(1) of the KIAD Act, to which, an endorsement had been issued on 21.7.2011, to state that no further steps had been taken. It is further stated that as per the Notification dated 25.3.2005, some of the lands which

found place in the preliminary notification u/s 28(1) of the KIAD Act as also under the notification issued u/s 3(1) of the KIAD Act, had been deleted and the State had withdrawn from acquisition in respect of those lands, namely, Survey No. 60 measuring 9 acres 20 guntas, Survey No. 61 measuring 8 acres 15 guntas, Survey No. 66 measuring 14 acres 13 guntas and Survey No. 67 measuring 13 acres 14 guntas, a total extent of 46 acres and 2 guntas. The petitioner has also drawn attention to such withdrawal from acquisition in respect of other lands in other villages, which were also proposed to be acquired for the very project which was undertaken. The petitioner claims to have developed a coconut garden in the land in question and she has been continuously using the same as agricultural land and a farmhouse has been constructed. The petitioner is in serious apprehension that the total extent of 2728.08 acres of land, which was originally notified under the preliminary notification has been withdrawn from acquisition and the petitioner's lands, which were the subject-matter of the very notification, have not been so considered for deletion and no further steps have been taken and therefore, is before this court, questioning the bona fides of the State in initiating acquisition proceedings and thereafter in not taking further steps in regard to the deletion of the lands from acquisition. In this regard, the petitioner had made an application and the State having issued an endorsement at Annexure-H, the present petition is filed.

Having heard Shri. V. Lakshminarayan, the learned Counsel for the petitioner at length, though several aspects are sought to be canvassed, the fact remains that no notification is issued u/s 28(4) of the KIAD Act, as on date.

2. Though the learned Counsel appearing for the KIADB would submit that an order has been passed as required u/s 28(3), which requires the State Government to thereafter issue a notification and publish the same in the gazette, the said exercise has not been completed and therefore, as on date, there is no notification issued u/s 28(4) of the KIAD Act.

The learned Counsel has also argued at length to contend that the project envisaged contemplated the acquisition of vast extents of land for the benefit of the sixth respondent, who has embarked on the Bangalore-Mysore Express Highway project in agreement with the State Government and in this regard, there is an agreement styled as the Framework Agreement, wherein the particulars of lands to be acquired for the purpose of the project are indicated.

It is the vehement contention of the counsel for the petitioner that the petitioner's lands do not figure in the said Framework Agreement. It is also the case of the petitioner that the sixth respondent has, on more than one occasions, declared that if any land does not figure in the Framework Agreement, it will not be subject-matter of acquisition for the project. If this be the position, the petitioner is entitled to an order of this court holding that the notification issued u/s 28(1) encompassing the lands which the petitioner holds, are outside the scope of acquisition. In this regard, the learned Counsel would take this court through the agreements entered into between the State Government and the

sixth respondent as well as other incidental documents to demonstrate that the petitioner's land is not at all contemplated as subject-matter of acquisition pursuant to Section 28(1). When it does not fall within the Framework Agreement, there is no possibility of the land of the petitioner being notified u/s 28(4) and hence the learned Counsel prays that the petition be allowed.

3. While the learned Counsel for respondent No. 6, Shri. R.V.S. Naik, would on the other hand, contend that the reference to the Framework Agreement and the contention that the petitioner's lands did not figure in the said Framework Agreement, is a broad statement, which does not reflect the true state of affairs. The Framework Agreement is as its nomenclature indicates a framework agreement and it does not contemplate the provision of details of lands that were sought to be acquired. What is indicated in the Framework Agreement is only the extent of lands in the respective villages spread over several villages, as mentioned therein. Therefore, reference to the Framework Agreement would not serve any purpose to the petitioner. Insofar the agreements are concerned, there are two agreements which require to be kept in view. There is an agreement in respect of the lands which are clearly government lands as between the sixth respondent and the State Government and there is also an agreement in respect of the private lands between the State Government and the sixth respondent, which contemplates the acquisition of lands for the project in particular villages. It is the private lands, which the petitioner concerns. There is no indication of the extent of each land owner's parcel of land or the details thereof. It is again the broad extent of land which is mentioned. Hence, the petitioner to claim that her land is not covered and could not be the subject-matter of acquisition proceedings, is not wholly correct. The admitted circumstance remains that the lands in question have been notified u/s 28(1) of the KIAD Act. The further proceedings that are required to be taken are by the State Government and the KIADB, for which the sixth respondent is not answerable. In any event, there cannot be any finality to the contention that the lands of the petitioner are not subject matter of the acquisition proceedings. It is a question of fact which cannot be addressed with reference to the documents that are produced before the court at this point of time. In the absence of the State having issued a notification u/s 28(4), there is no conclusion arrived at by the State Government as to whether or not, the petitioner's lands are required for the purpose of the project and whether the same are to be acquired. Therefore, the learned counsel would submit that the petition itself is misconceived and is pre-mature.

4. The learned Government Pleader, on the other hand, on behalf of the State, would point out that the petitioner is admittedly a subsequent purchaser and the permission granted to the petitioner was conditional, which clearly indicated that the petitioner would hand over the lands in question to the State Government if the occasion should arise. This being a blanket condition, there is no scope for the petitioner to question the power of the State Government and its authority to acquire the land, if it is so required for a public purpose and the project in question is undoubtedly for a public purpose and therefore, in the absence of any

further notification pursuant to Section 28(1) notification, the present petition is not maintainable, but is premature and is liable to be rejected.

Similar contentions are urged by the learned Counsel for the KIADB.

5. By way of reply, the learned Counsel for the petitioner would contend that notification u/s 28(1) having been issued at a remote point of time, if no further steps have been taken even to this day, it does not stand to reason that the petitioner should be kept in suspense indefinitely and therefore, by virtue of sheer lapse of time and the delay in the State completing the proceedings, the petition would have to be allowed and the acquisition proceedings be set at naught. Given the above rival contentions and the admitted facts and circumstances, whether it is still open for the State to issue a notification u/s 28(4) of the KIAD Act, is not a matter that could be considered at this point of time, for the State Government has not chosen to issue any such notification as on date and it is quite possible that the State Government may even withdraw from the acquisition proceedings at this point of time. Therefore, to declare that the proceedings are vitiated on account of the State Government not having issued a notification u/s 28(4), would be premature. Further, it is also possible that the State Government may issue such a notification with an acceptable explanation for the same. Since the State Government has not chosen to do so as on date, there is no warrant for a declaration as to whether the same would be invalid at this point of time. Since the petitioner's possession is not disturbed, as there is no threat of dispossession alleged by the petitioner and since the State Government has also not taken positive steps insofar as the acquisition proceedings are concerned, it cannot be said that there is cause of action, merely on the ground that several thousand acres of land, which were initially notified u/s 28(1) of the KIAD Act, have been deleted and therefore, the petitioner's lands also should be expressly deleted from the acquisition proceedings. That is a prayer that cannot be readily granted. For it would then require that the entire lands that are notified are also be so directed to be withdrawn from the acquisition proceedings. That exercise cannot be undertaken at this point of time having regard to the above situation.

Therefore, the petition is disposed of without prejudice to the case of the petitioner to challenge the acquisition proceedings, if the circumstances so warrant, at a later point of time. It is made clear that the points of law that are sought to be canvassed are not addressed in this petition.