

(2012) 08 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 15183 of 2008 and 1460 of 2009 (LA-KIADB)

N. Venkatesha Gowda and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2012) 6 KarLJ 672

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Siddamallappa for M/s. Mylaraiah Associates, for the Appellant;
Sriyuths R. Omkumar, Additional Government Advocate, M.I. Arun, Ms. Nalina
Mayegowda for M/s. Poovayya and Company, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Ms. Nalina Mayegowda, learned Counsel for fourth respondent-beneficiary of the land acquired by the respondents 2 and 3-board, submits that fourth respondent requires some technical skill on the part of the persons who are offered employment and if the petitioners are ready and willing to undergo ITI training, the cost of which will be met by the fourth respondent and fourth respondent is ready to sponsor the petitioners' candidature for undergoing industrial training and on successful completion of the training, fourth respondent is ready to absorb them in suitable jobs and offer them employment as and when vacancy available. In the above circumstance and in the wake of earlier orders of this Court dated 14-12-2010 and 30-6-2011, reading as under:

Order dated 14-12-2010

These petitions were admitted on 8-11-2010 for examination. Petitioners claim to be a displaced persons, in the sense they are owners of certain agricultural lands which had been compulsorily acquired by the 1st and 2nd respondents for the benefit of the 4th respondent-Private Industry viz., M/s. Volvo (India) Private Limited, for setting up its assembling unit in such acquired land in and around Yelachahalli Village, Hoskote Taluk, Bangalore Rural District.

2. Petitioners' grievance is that they are members of a family whose lands came to be acquired by the Board for the benefit of the 4th respondent-Industry, but in spite of their efforts for getting employment for their kith and kin in the 4th respondent-company notwithstanding such an assurance to the Board on behalf of the 4th respondent, when their lands were acquired under the acquisition proceedings; that their kith and kin will get employment with the beneficiary, did not work out to their benefit; that even after applying for affording them job opportunities to the members of the family, the 4th respondent-employer having not responded positively, have approached this Court for suitable relief.

3. The petitions were filed in the year 2008 and has been going on ever-since without culmination and this development was noticed by this Court as per the order dated 30-11-2010, which reads as under:

DVSKJ:

30-11-2010

W.P. No. 15183 of 2008 (LA-KIADB)

While Miss. Nirmala, learned Counsel for the petitioners submits that she is ready for arguments, Sri. Venkatesh Dodderi, learned Additional Government Advocate appearing for 1st respondent-State submits that the petition is opposed, but no statement of objections has been filed so far, though the petition is two years old.

2. This petition was admitted by issue of rule on 8-11-2010 and if any of the respondents are inclined to oppose the petition, for the prayer sought for, they are bound to reveal their stand by filing written statement of objections by an affidavit sworn to by an authorised and competent officer on behalf of the State or the Board.

3. However, Mr. Venkatesh Dodderi, learned AGA appearing for the State submits that in this case KIADB (Karnataka Industrial Areas Development Board) would defend the petition effectively, as there is not much role for the State Government etc.

4. Sri. Basavaraj Sabarad, learned Counsel appearing for the Board submits that statement of objections have already been filed, wherein it is indicated that the petition is not tenable and it is liable to be dismissed.

5. Miss. Nalina, learned Counsel appearing for the 4th respondent-M/s. Volvo (India) Private Limited, submits that the 4th respondent is the beneficiary of the acquisition proceedings and further submits that insofar as the 4th respondent-Industry viz., M/s. Volvo India Private Limited, is concerned it has been fulfilling its commitment under the agreement entered into between the company and the Board. It is not very definite or sure as to whether such commitment is fulfilled as Mr. Basavaraj Sabarad, learned Counsel appearing for the Board had submitted on earlier occasions that they have been writing letters to the 4th respondent urging upon them to abide by their obligations under the agreement

etc.

6. Be that as it may, when the State Government and its agency the KIADB embark upon acquisition of private lands in the name of public purpose but go about by choosing or identifying beneficiaries well in advance by the initiation of acquisition proceedings who are otherwise termed as industrialists and when either the State Government or the Board has thought it proper to enter into an agreement for the benefit of the land losers, it is the duty of the KIADB to ensure that the terms of the agreement are given effect to in letter and spirit by the beneficiary and that there should not be scope for complaint by persons for whose benefit the agreement has been entered into between the Board and the beneficiary of the acquired land.

7. Another justification given by the State Government for allotting the agricultural lands acquired by the Board from agriculturists for the purpose of formation of industrial areas and to give it to private industrialists is on the premise that such private industrialists not only bring in lot of investment, but also provide employment opportunities to members of the families of the uprooted land owners and further argument the revenue to the State Government.

8. Proof of the pudding is in the eating. Whether it is so or not can be examined only when a beneficiaries like the 4th respondent places before the Court the facts and figures relating to the number of job opportunities created by their industry, number of local persons employed and in what capacity and with what remuneration and when such industrialists also furnish the details of taxes paid by them to the State during the period of its industrial operations and as a result of production and sale of Industrial Products.

9. Miss. Nalina, learned Counsel appearing for the 4th respondent submits that the 4th respondent has been functioning since the year 1997 and it will take a couple of days to gather the information and place it before the Court and seeks a week's time accommodation.

List on 7-12-2010. Relevant information and figures to be placed before the Court by that time after simultaneously furnishing copies to the learned Counsel for other parties.

4. On the 7th of this month, an additional statement of objections is filed on behalf of the 4th respondent-M/s. Volvo (India) Private Limited.

5. The Karnataka Industrial Areas Development Board (KIADB) on its part has responded as per its statement of objections dated 8-11-2010 supported by the affidavit of Sri. B.V. Kumar, working as Secretary, Karnataka Industrial Areas Development Board, Bangalore, indicating that a letter dated 30-12-2009 received from the petitioners by the Board requesting for providing job opportunity, has been forwarded by the Board to the 4th respondent-Company along with the particulars of one Sri. Anil Kumar son of the 1st petitioner and this

communication to the 4th respondent had been followed by another letter dated 20-2-2010, as per Annexure-R4 to the petition, asking the 4th respondent to provide suitable employment to the families of the land losers etc. Examination in this petition being mainly with regard to the grievance of the petitioners, the members of the displaced families not being provided with job opportunity, the tenor of the KIADB in the statement of objections only indicates that it has acted only as a post-office by forwarding the representation of the petitioners to the 4th respondent.

6. Appearing on behalf of KIADB submission of Sri. Sabarad, learned Counsel, is that in fact the Board executed an absolute sale deed in favour of the 4th respondent following the lease-cum-sale agreement, which preceded the sale and it was only as part of the agreement that a condition on the 4th respondent -- beneficiary to give preference to the land owners and members of their family by providing jobs in the 4th respondent-company had been imposed and with the execution of the sale deed, the KIADB is not in a position to pressurise or coerce the 4th respondent to accede to the request of the petitioners, but can only keep forwarding the representations requests of persons like the petitioners to the 4th respondent etc.

7. So far as the State is concerned they are blissfully silent, and has maintained a sphinx like silence. Submission of Sri. Venkatesh Dodderi, learned AGA, is that the State has virtually no role to play, except for having issued notifications under the Act and it was to ensure that the Board acquired the private lands that were in the ownership of the petitioners and their predecessors for the benefit of the 4th respondent.

8. As to whether a person gets employment with a private company like the 4th respondent or not is not normally a matter for examination in writ jurisdiction. In fact a writ is not issued against a private company, but when a private company is a beneficiary of a largesse of the State and such largesse of the State is acquired by the State and the Board, by exercising its statutory power for compulsory acquisition of privately owned lands, every action of State and Board is amenable for scrutiny in the exercise of judicial review of administrative action by this Court.

9. In the present case, submission of Sri. Sabarad, learned Counsel for the Board is that acquisition though was for developing the acquired lands as an industrial area and for a public purpose, it so happens that the entire extent of land acquired under the notification has been exclusively allotted to the 4th respondent-Company. This development clearly indicates that acquisition of land was to the sole benefit of the 4th respondent multinational company.

10. If such is the factual position, it is obvious that the acquisition is purely for the exclusive benefit of the 4th respondent a Private Company. It is only because the State Government and the Board are also aware of this position, the colour of public purpose is sought to be painted into the acquisition proceedings by

claiming that such acquisition proceedings are justified in allotting/handing over acquired lands in favour of private companies but the acquisition will nevertheless be for a public purpose, for the reason that such companies not only generate employment opportunities to the local residents, but also ensures tax collection to the State Exchequer, when their transactions are subjected to taxation provisions, which generates revenue to the State.

11. Even if a private entrepreneur sets up its industry, it is neither for the benefit of the people of the State nor for providing revenue to the State Government. It is only for making profit for oneself. If at all, creation of job opportunities in the area and some revenue being generated to the State Government is incidental and that cannot be the main purpose of industrialists or business men, whoever starts industry or carries on industry, inevitably have to pay taxes and employing locals is always prudent business proposition as such work force is locally available at a very competitive cost.

12. This phenomenon of market force operating is sought to be made a virtue by the State Government to say acquisition of private lands for the benefit of such private companies is also a public purpose to justify such acquisition.

13. If one has to look into the object and purpose of creating the Board and the object behind the legislation, it becomes obvious that the main purpose of creating the Board, an expert body is to develop areas as industrial areas, suitable for industries for setting up new projects and to increase the productivity and in turn wealth of the nation. Transactions of the present nature and utilization of the statutory power by the State and the Board only projects that the Board is nothing more than a "Real Estate Agent" which has acquired private land by use of State Power/Statutory power and holding out assurances to the private owners, of a possible employment opportunity to the members of their family, but even in terms of the additional statement of objections placed before this Court by the 4th respondent, there is no indication as to how many members of land owners, who have lost their lands in the acquisition proceedings have been provided employment in the 4th respondent-Company.

14. It is very obvious that the land losers have not been benefited in the least, though there were assurances held out to them at the time of taking over of their lands and the attitude adopted by the Board as of now is nothing short of a gross irresponsible conduct, who want to wash off their hands after having acquired private lands and having handed over the lands to the 4th respondent-Company. Such conduct and attitude on the part of the Board clearly indicates that the Board is acting more like Real Estate Agents and it is not known for what consideration the State Government and the Officials of the Board are acting to use or rather misuse their statutory powers under the Land Acquisition Act, 1894.

15. The power of the acquisition of privately owned lands, by the State Government under the provision of law is a very drastic and draconean power to the detriment of the citizens of the State and it only when misuse of such power

is scrutinised by Courts with a degree of probity, there can be reduction in instances of misuse and abuse of power. Otherwise arbitrary exercise of power will become the order of the day to the great detriment of the citizens. If such developments are permitted by the constitutional Courts, who have a duty to ensure that the provisions of the constitution and statutory provisions are adhered to by state and public bodies, respected and is followed by the administration, by the Executive Wing of the State.

16. Smt. Nalina, learned Counsel for the 4th respondent, however, submits that the 4th respondent was under the impression the figures that were called to be furnished was only relating to employment opportunity to the locals and did not require to furnish the figures relating to the number of employees from the families of the displaced land losers and submits that given two days time, such figures will also be furnished to the Court.

List on 16-12-2010 for such purpose.

17. In the meanwhile, the KIADB is directed to place before this Court the details of the lands acquired by the Board in and around Bangalore City i.e. in Bangalore rural and Bangalore Urban Districts in the name of developing them for public purpose or for any other purpose and the outcome of such acquisition proceedings to be placed before this Court.

18. Such figures and data will be necessary to examine, the manner of functioning and the conduct of the Board, their Plans and Schemes to sub-serve the public interest.

19. The Board has been created under the Act as limb of the State Government and therefore also it is for the Government Advocate to appear and present the case.

Call on 16-12-2010 as stated above.

20. Registry is directed to furnish a copy of this order to Sri. Basavaraj Sabarad, learned Counsel for the Board.

Order dated 30-6-2011

Sri. M.I. Arun, learned Counsel for the respondent-Board while submits that an appeal in W.A. No. 241 of 2011 has been preferred against the order dated 14-12-2010 and no order has been passed in the appeal and it is still pending, also requests a week's time to place necessary material in terms of the order, and further submits that he is not fully conversant with the developments, as he is appearing for the board only on and after 8-6-2011.

In the order dated 14-12-2010, respondent-board was directed to place certain materials before the Court. It is for the board to place them before the Court, more so when the board is "State" within the meaning of Article 12 of the Constitution of India and whenever the writ Court is reviewing the conduct, action and the orders passed by such public body, changing Counsel now and

then neither changes the case nor make any new case and definitely not result in as many boards as are the Counsel or the cases.

The information called for from the board is to appreciate the manner of functioning of the board, a public body, whose function is otherwise open to scrutiny by members of public and other scrutinising bodies statutorily or otherwise.

On behalf of fourth respondent-M/s. Volvo India Private Limited, submission of Ms. Nalina, learned Counsel for fourth respondent is that as per the information available with the company, about 12 persons have been given employment on regular basis and about 7 persons on contract limited employment basis, who are all from the families of persons who have lost their lands in the acquisition proceedings by the State for the board. Ms. Nalina also submits that if the petitioners' children or members of their families are having commensurate qualifications for any available jobs in the company, they will definitely be considered on priority basis for offering jobs them.

It is for the petitioners to take note or advantage of this offer and to workout with the fourth respondent and if any possibilities, place them before the Court by next week, before which time the board is also permitted to place such additional information as desires to place or thinks it proper to place before the Court in response to earlier orders passed by this Court.

List for such purpose and for further hearing on 7-7-2011 at 2.30 p.m..

the first respondent-State Government and the second and third respondents-Board are hereby directed to ensure that the fourth respondent offers suitable jobs to the petitioners immediately on their successful competition of the industrial training.

Petitions are disposed of accordingly.