
(2015) 02 KAR CK 0158

In the Karnataka High Court

Case No : Writ Petition No. 67069/2009 (LA-KIADB)

Nandi Engineering Pvt. Ltd.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 28, 28(1), 28(2) & 3, 28(3)

Citation : (2015) 02 KAR CK 0158

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : V.M. Sheelvant, Advocate, for the Appellant; K. Vidyavati, AGA, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—The petitioner is a company registered under the Companies Act. A tender notification for formation of bypass road and truck terminal having been issued, the petitioner submitted tender along with the project report. The single window agency accorded approval to the project of constructing truck terminal at Dharwad. An agreement dated 15.11.2000, was entered by the Karnataka Industrial Areas Development Board (for short "the Board"), for acquiring 30 acres 5 guntas of land to set up Truck Terminal at Dharwad. The Board having instructed on 06.03.2003, to deposit 40% of the acquisition cost for issuing notification under Sections 3(1) , 1(3) and 28(1) of Karnataka Industrial Areas Development Act, 1966 (for short "the Act"), the deposit was made on 11.06.2004. A notification was issued under Sections 3(1) , 1(3) and 28(1) of the Act, on 28.09.2005, for acquiring 4 acres 27 guntas of land in Sy. No. 121/1+2. The Board having notified, on 25.04.2006, to deposit balance 60%, for issuing final notification under Section 28(4) , the amount was deposited on 26.06.2006.

2. Respondent No. 4 filed objections before respondent No. 2, against the

proposal for acquisition of land measuring 4 acres 27 guntas in Sy. No. 121/1+2. The 2nd respondent though found merit in the said objections, recommended the acquisition, vide Annexure-J. W.P. No. 5904/2006 filed challenging the notification issued under Section 28(1) was dismissed on 06.03.2007, with liberty to challenge the final notification under Section 28(4). Respondent No. 4 having submitted an application before respondent No. 1, an order dated 10.09.2008 was passed dropping the proposal of the acquisition and the same was notified on 11.09.2008, vide Annexure-S. This writ petition is directed against the said notification.

3. Sri V.M. Sheelvant, learned advocate, firstly contended that the 3rd respondent having notified and received the entire cost of acquisition from the petitioner and in view of the decision vide Annexure-J, there being no challenge to it, the decision arrived at on 10.09.2008 to drop the land from acquisition and the consequential notification issued vide Annexure-S is arbitrary and illegal. He submitted that in view of the correspondence which has taken place between the petitioner and respondent No. 3, the petitioner has legitimate expectation that the land will be acquired and possession delivered for implementation of the project. He further submitted that respondent Nos. 1 to 3 having undertaken to provide entire extent of 30 acres 17 guntas of land for the project, have illegally dropped the land, earmarked for truck terminal. Secondly, there is violation of principles of natural justice, since the petitioner was not granted with an opportunity of hearing. He submitted that the reasons having not been assigned to drop the acquisition proceedings in respect of the land in question, arbitrariness on the part of respondent No. 1 is writ large and that too, in the face of the recommendation of respondent No. 2 vide Annexure-J. He submitted that the petitioner having made huge investment and also taken the steps towards execution of the project, has been made to suffer for no fault of it and that the project, as was conceived and approved by the single window agency cannot now be implemented.

4. Smt. K. Vidyavathi, learned AGA, submitted that after detailed consideration of the record and finding that the report submitted under Section 28(3) is perverse, in that, despite the Special Land Acquisition Officer being satisfied about the objection raised by the land owner, had arbitrarily opined for continuation of the land acquisition process under Section 28(4), merely because of the reason that the beneficiary needs the land, the Government being satisfied that the land is not required for the purpose specified in the notification issued under Section 28(1), took the decision to drop the acquisition. She argued that the requirement of a hearing to the proposed beneficiary while recording satisfaction of the Government as per Section 28(4) having not been contemplated, the ground urged with regard to violation of principles of natural justice is devoid of merit. She submitted that the action of respondent No. 1, being in consonance with the power conferred under sub-Section (4) of Section 28 and there being neither any arbitrariness nor illegality, sought upholding of the notification, as at Annexure-S.

5. Sri P.N. Hatti, learned advocate for respondent No. 3, contended that in view of the delegation of power of the State Government, as per Rule 14, respondent No. 2 though found merit in the objection to the acquisition of land by respondent No. 4, submitted the report vide Annexure-J. He submitted that the Government being not satisfied that the land should be acquired for the purpose specified in the notification issued under sub-Section (1) of Section 28, has taken the decision on 10.09.2008, to drop the acquisition of the land of respondent No. 4 and has issued and published the notification vide Annexure-S. He submitted that the petitioner would be refunded the deposit made towards the tentative cost of the acquisition.

6. Sri V.P. Kulkarni, learned advocate for respondent No. 4, by taking me through the statement of objections filed, contended that there being neither any arbitrariness nor illegality in the order dated 10.09.2008, of respondent No. 1, the impugned notification is not liable to be interfered with. He submitted that, even in respect of large extent of the acquired land, possession of which was delivered to the petitioner, the project work of truck terminal has not even been initiated and that the land in question is not needed for the project. Learned counsel submitted that respondent No. 4 is using the property for industrial purpose and would suffer severe hardship in case of any interference with Annexure-S.

7. Perused the record and considered the rival contentions. Notification under Section 28(1) of the Act was issued on 28.09.2005, proposing to acquire the land in question, for the purpose shown therein. Respondent No. 4 filed objections vide Annexure-H. Respondent No. 2, though found merit in the said objections, perversely made the recommendation vide Annexure-J, for acquisition. W.P. No. 5904/2006 filed challenging the notification under Section 28(1) was dismissed on 06.03.2007, with liberty to challenge the notification under Section 28(4) of the Act, if issued. Respondent No. 1 passed order dated 10.09.2008, dropping the acquisition proceedings and as a consequence, issued and published the notification vide Annexure-S.

8. In the factual background and the rival contentions, noticed supra, the questions for determination are:

- (i) Whether impugned decision and the notification are arbitrary and illegal?
- (ii) Whether interference is called for on account of the petitioner having not been provided with an opportunity of hearing by respondent No. 1?

9. The questions are dealt with ad-seriatim.

10. Re: Question No. (i):

In order to appreciate the purport of Sub-Sections (1) to (4) of Section 28 of the Act, they are read together and are set out below:

"S. 28. Acquisition of Land.--(1) If at any time, in the opinion of the State

Government, any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land.

(2) On publication of a notification under sub-section (1), the State Government shall serve notice upon the owner or where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

(4) After orders are passed under sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section (1), a declaration shall, by notification in the official Gazette, be made to that effect."

11. The power exercisable under Section 28(3) was delegated to respondent No. 2, as per Rule 14 of the Karnataka Industrial Areas Development Rules, 1966. Respondent No. 2 having considered the objections of respondent No. 4, has found merit in the same, as is evident from Annexure-J. However, he having perversely recommended the acquisition of the land, an application was filed before respondent No. 1, to drop the acquisition proceedings. Sub-Section (4) of Section 28 empowers the Government to decide whether the land should be acquired for the purpose specified in the notification issued under sub-Section (1). Merely because the delegate, in exercise of power under sub-section (3), submitted a report vide Annexure-J, which is perverse, does not mandate that the property should be acquired. The word used in sub-section (3) is "may" in contra distinction with the word used "shall" in sub-section (4).

12. Sub-Section (4) of Section 28 specifically provides that after the orders are passed under sub-Section (3), where the Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-Section (1), a declaration shall, by notification in official gazette be made to that effect. Satisfaction of the Government after consideration of the report made under sub-Section (3), is undoubtedly a condition precedent to make a declaration by notification in the official gazette. Thus, there can be no acquisition under the Act, unless the Government is satisfied that the land proposed to be acquired is required to be acquired for the purpose as was intended in the notification issued and published under Sub-section (1) of Section 28 .

13. Scope of Sub-sections (3) and (4) of Section 28 having been considered in detail in N. Somashekar and Others vs. State of Karnataka and Others, 1997 (7) Kar. L.J. 410, it was held as follows:

"16. Two questions arise for consideration viz., (a) whether the scheme underlying Section 28 of the Act envisages the satisfaction of the State Government over and above the orders passed by its delegate under Section 28(3) and (b) whether any such satisfaction was recorded by the State Government in the instant case. Insofar as the first question is concerned, Section 28(4) itself provides a complete answer. According to that provision, after orders under sub-section (3) of Section 28 are passed, a declaration shall be notified in the Official Gazette be made about the acquisition of the land for the purpose mentioned in the preliminary notification if the Government is satisfied that such land is required for the specified purpose. The expressions "after orders are passed under sub-section (3)" and "where the State Government is satisfied" clearly show that the provisions of sub-section (4) do not envisage the issue of a final declaration by the Government as an inevitable consequence flowing from the rejection of the objections raised by the land owners by either itself or its delegate under Section 28 . The satisfaction of the Government is a requirement independent of the need and the power to consider and dispose of the objections filed by the interested persons. "Any other interpretation would render the provisions of sub-section (4) a superfluity. It is one of the cardinal principles of interpretation that the provisions contained in a statute should be so construed as not to render any part thereof redundant. The expressions noticed above appearing in sub-section (4) have therefore to be interpreted to mean that the Government must be independently satisfied of the need to acquire the notified land for the purpose mentioned in the preliminary notification, for otherwise the requirement of the Government being "satisfied" before the issue of any such declaration would be rendered wholly meaningless. The submission made by Mr. Ramachandra, that the issue of a declaration under sub-section (4) of Section 28 is not a mechanical act and that any such declaration can be validly made only if the Government have considered and been satisfied that the issue of any such declaration is necessary for the public purpose notified in the preliminary notification is accordingly upheld.

17. That brings me to the other aspect viz., whether the Government have in the instant case recorded their satisfaction before issuing the declarations. Two circumstances are in this regard relevant. The first and the foremost is that the declarations issued by the State Government themselves record the satisfaction of the Government that the lands mentioned therein are needed for the public purpose mentioned in the preliminary notification. There is a presumption of correctness in favour of the statement made in these declarations. The Supreme Court has in *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, , held that once the purpose is a public purpose, the satisfaction of the State Government as regards the need to acquire the land for satisfaction of that purpose cannot be questioned.

18. The 2nd and an equally important reason is that the official records produced by the Government Advocate amply demonstrate that the Government had in each case leading to the issue of a final declaration applied its mind and directed

issue of declaration on being satisfied that the land covered by the same was needed for a public purpose. The notes on the files that were put up for the orders of the Hon"ble Minister sufficiently show that the declarations came in consequence of a conscious decision and to issue the same and not as a matter of routine or mechanical exercise. Both these circumstances sufficiently demonstrate compliance with the requirements of the Section 28(4) of the Act."

(emphasis supplied)

14. In *Laxmanrao Bapurao Jadhav and another Vs. State of Maharashtra and others*, , Apex Court, while taking note of local amendment empowering the Authorized Officer to satisfy himself whether the land was needed for a public purpose, has held that it is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought. It has been made clear that the mere fact of empowering the Authorized Officer to inspect and find out whether the land would be adaptable for the public purpose, does not take away the power of the Government to take a decision ultimately.

15. In *Daulat Singh Surana and Others Vs. First Land Acquisition Collector and Others*, , Apex Court has held as follows:

"44. Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding public purpose. The Government has the sole and absolute discretion in the matter."

(emphasis supplied)

16. In the instant case, the Government being satisfied that the land is not required for the purpose specified in the notification issued and published under Sub-section (1) of Section 28 , has passed order dated 10.09.2008. The said order being relevant is extracted hereunder:

The Special Land Acquisition Officer while discharging his duties as delegated to him u/s. 28(2 & 3) of KIADB Act will don the role of a quasi judicial authority. If Special Land Acquisition Officers who have been entrusted with this important responsibility start taking the matters lightly, casually without proper application of mind, appreciation of facts then the effect of orders passed u/s. 28(3) of KIADB Act by such SLAO"s in such circumstances will be disastrous. Otherwise, I can not understand why the SLAO who has recorded that he is satisfied about the arguments advanced by the Land owner, and yet orders for continuation of the land acquisition process u/s. 28(4) of KIADB Act merely because of the reason that the beneficiary of the acquisition needs the land.

The order shows that there is clear and conscious application of mind and not an arbitrary or mechanical act. There is no flaw either in the decision making

process or the decision. Pursuant to the said order, respondent No. 1 has issued and published the notification in the official gazette, on 11.09.2008 i.e., Annexure-S. Thus, the impugned decision of the first respondent being well within its powers and the decision arrived, extracted supra, being with reference to the record of the case and there being a conscious decision to drop the acquisition and no malice having been alleged, I do not find any merit in the first contention urged by the learned advocate for the petitioner.

17. Re: Question No. (ii):

That the stages contemplated in terms of sub-Sections (5) and (6) of Section 28 having not arisen/reached, there is no merit in the contention that there is violation of principles of natural justice. Had the matter crossed the stage of sub-Section (4) of Section 28 i.e., the State Government being satisfied that the land should be acquired for the purpose specified in the notification issued under sub-Section (1) and a declaration by notification in the Official Gazette has been made to that effect and consequential vesting in terms of sub-Section (5), in view of the deposit of the tentative cost of acquisition, there would have been merit in the contention that the petitioner ought to have been granted an opportunity of hearing and there is violation of principles of natural justice. Keeping in view the nature of function required to be performed by the State Government in terms of sub-Section (4) of Section 28, I am of the considered view that the right of notice or hearing is not contemplated therein. Unless the land is acquired, in the manner contemplated under Section 28(4) of the Act, the petitioner cannot claim any legitimate expectation, merely on account of deposit of certain sum, as was indicated by respondent No. 3.

In the result, writ petition being devoid of merit is dismissed. Consequently, I.A. No. 1/2013, filed by respondent No. 4 is disposed of as having become unnecessary.

No costs.