

(2012) 03 KAR CK 0071

In the Karnataka High Court

Case No : Writ Petition No's. 38555 to 38558 of 2009 (LA-RES) and 1320 to 1330 of 2010 (LA-RES)

Oswald Vagas and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4), 28 (6)

Citation : (2012) 2 KarLJ 529

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Prasanna V.R, for the Appellant; Sriyuths K. Krishna, Government Advocate, P.D. Vishwanath and P.V. Chandrashekar, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The land bearing Sy. No. 132/5 measuring 1.92 acres situated at 62-Thokur Village, Dakshina Kannada originally belonged to one Jacob Vegas. He had two sons viz., Francis Vegas and Marian Vegas. After the death of Jacob Vegas, partition took place between the two sons of Jacob Vegas. After the partition, the aforesaid land has been divided into pieces and the same are numbered as Sy. No. 132/5P1, Sy. No. 132/5P2 etc., All the petitioners are either children or grandchildren of Francis Vegas and Marian Vegas. The land to an extent of 1.32 acres was sought to be acquired by the respondents by issuing preliminary notification u/s 28(1) of Karnataka Industrial Areas Development Act, 1966 on 7-9-1994. Said notification was gazetted on 5-10-1994. But the first respondent issued final notification u/s 28(4) of KIADB Act on 25-5-1997, which came to be gazetted on 25-7-1997. Prior to issuing final notification, the petitioners were notified. Petitioners 1, 3, father of petitioners 6 and 8 to 13 and mother of P.Ws. 14 and 15 have filed statement of objections. Copy of the statement of objections is produced at Annexure-R2. These writ petitions are filed questioning the acquisition notifications on the ground that the petitioners

were not notified in the matter and that the possession is not taken by the respondents.

Writ petitions are opposed by KIADB as well as respondent 3 who have filed statement of objections.

2. After issuing preliminary notification u/s 28(1) of the KIADB Act, the petitioners were notified. Petitioner 1-Oswald Vagas, petitioner 3-Ida Vegas (sister of petitioners 4 and 5), Albert Vegas-father of petitioners 6, 8 to 13 and Smt. Theresa D'Souza-14th petitioner have filed statement of objections. Petitioner 15 is the son of 14th petitioner. Thus it is clear that almost all the petitioners have filed statement of objections. Copy of the statement of objections is produced by KIADB at Annexure-R2 along with statement of objections. Virtually, in their statement of objections, the petitioners have not objected for acquisition at all. However, they have sought for compensation at the rate of Rs. 10 lakhs per acre. Thereafter the final notification came to be passed u/s 28(4) of the KIADB Act on 25-5-1997.

3. It is by now well-settled that once final notification is passed under KIADB Act u/s 28(4), the land acquired, vests absolutely with the acquiring authority. The acquiring authority may issue or may not issue notice u/s 28(6) of the Act. In the matter on hand, such a notice came to be issued on 26-7-2008 as per Annexure-P. Thereafter, these writ petitions came to be filed.

4. Since the petitioners had no objection for acquisition and as final notification was issued as back on 25-5-1997, it is not open for the petitioners to question the acquisition notification by filing these writ petitions in the year 2009. Moreover, as could be seen from Annexure-R2 produced along with statement of objections filed by respondent 3 (beneficiary under the acquisition), it is clear that the possession is already taken by the Engineer of KIADB, Mangalore on 18-9-2008. It is also brought to the notice of the Court by learned Advocate Sri P.V. Chandrashekar, appearing on behalf of KIADB that negotiations with regard to determination of compensation are already held and compensation is determined at the rate of Rs. 12 lakhs per acre. If the petitioners are agreeable to accept the said compensation, they may accept the same, otherwise the award shall be passed as per law.

In view of the above, this Court does not find any ground to interfere in the impugned acquisition notification both on merits and on the ground of delay and laches.

Accordingly, writ petitions stand dismissed on the ground of merits as well as on the ground of delay and laches.