

(2010) 12 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 14560-640 of 2010, Miscellaneous W. 81412, 81423, 81430, 81431 and 81447 of 2010

Padmaraj and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 343, 352, 365, 372
Land Acquisition Act, 1894 — Section 17, 4 (1)

Citation : (2011) ILR (Kar) 1763 : (2011) 4 KCCR 2826

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Amresh S. Roja, for the Appellant; Shivakumar Tengli, AGA for R1-4 and P. Vilaskumar, for R6, for the Respondent

Judgement

Ram Mohan Reddy, J

1. Petitioners either owners or tenants in possession of certain immovable properties located adjacent to the road from Jagat Circle to Humnabad Base in Gulbarga, aggrieved by the Notification dt. 21.3.2010 Annexure-A issued u/s 17 R/w Section 4(1) of the Land Acquisition Act, 1894, for short the "Act", proposing to acquire their properties, to with, for widening the road, on behalf of the 6th Respondent-Gulbarga City Municipal Corporation, for short "City Corporation", by the State, in exercise of eminent domain power, have presented these petitions.

2. It is the assertion of the Learned Counsels that in the year 2001 Respondents made an attempt to acquire their properties by issuing a Notification under the Highway Act for formation of Bidar-Srirangapatna Highway, which when called in question in W.P. 29360-386/2001 were disposed of by order dt. 9.10.2001 directing the Learned Counsels to file their objections which when done, though the Respondents withdrew the Notification, nevertheless by order dt. 18.12.2003 held that the Learned Counsels had encroached upon the road. That order when

called in question in a batch of writ petitions, this Court by order dt. 17.4.2004 allowed the petitions, observing that the "City Corporation" had failed to place cogent and satisfactory material to establish that the road width of Bhande bazaar and Kirana Bazaar was 50 ft. That order when carried in W.A.3081/2004 was dismissed by order dt. 22.8.2008, however permitting the "City Corporation" to proceed in the matter subject to compliance with the provisions of the Karnataka Municipal Corporations Act, 1976, for short "KMC Act". The order of the Division Bench, it is said is final and binding as between the parties since not challenged. The "City Corporation" having made efforts to demolish the properties of some of the Learned Counsels, approached this Court in another batch of writ petitions, whence by order dt. 20.10.2008 the writ petitions were allowed by directing the Learned Counsels to file their title deeds and other documents to establish that there was no encroachment on their part which the "City Corporation" was in turn directed to adjudicate upon and proceed under Sections 270, 271 or 288 of the "KMC Act". The "City Corporation" instead of complying with the said order, it is alleged, took coercive measures by issuing notices under Sections 343, 352, 365, 372 and 461 of the "KMC Act", insisting upon traders to obtain trade licences to carry on business in premises located from Thimmapuri circle to Jagat circle. It is further alleged that the Authorities of "City Corporation" hand in glove with the Police forced the shop keepers to close down their business for 48 hours, over which complaints when made to the Human Rights Commission, Bangalore, cognizance was taken and though enquiry is conducted is said to be pending. In addition, complaints when addressed to the Governor was responded to by communication to the Prl. Secretary, Urban Development Department directing the "City Corporation" to issue trade licences without resorting to coercive measures.

3. It is asserted that at the instance of the "City Corporation", the 2nd Respondent-State issued the Notification u/s 4(1) of the Act on 25.8.2009 Annexure-G proposing to acquire the Learned Counsels' properties, to which objections were filed u/s 5(A) of the "Act" contending that there was non-compliance with the provisions of the "Act" and was contrary to the reported opinions of the Apex Court in Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, , which it is alleged was not considered nor an enquiry held as contemplated by Section 5(A) of the Act. It is the further allegation of the Learned Counsels that the 2nd Respondent-State acting on the request of the "City Corporation" without continuing the proceedings pursuant to the Notification dt. 25.8.2009 Annexure-G u/s 4(1) of the Act, the State issued the composite Notification impugned invoking Sections 17 and 4(1) of the Act. According to the Learned Counsels, the "City Corporation" called for a meeting of all the traders carrying on business in the premises adjoining the said road on 3.4.2010 whence, the Learned Counsels were directed to give up 10ft of land without compensation and threatened to demolish the property if not acceptable. Hence these petitions to quash the Notification dt. 21.3.2010 Annexure-A.

4. Petitions are opposed by filing statement of objections dt. 8.7.2010 of the

"City Corporation", inter alia not disputing the facts set out in the writ petitions, though denying the allegations of highhandedness in the matter of closure of the shops for a period of 48 hours and insisting upon the traders including the Learned Counsels to obtain trade licences. In addition, it is stated that the "City Corporation" is not aware of the complaint lodged with the Human Rights Commission or with the Governor. It is asserted that the State Government, at the instance of the "City Corporation" invoked Sections 17 and 4(1) of the Act to issue Notification impugned. According to the "City Corporation" there is an extreme urgency to acquire the land for widening the roads, so as to benefit larger public and hence the need to dispense with the enquiry u/s 5A of the Act. It is further asserted that the existing road from Jagat circle to Humnabad base being very narrow movement of vehicles is slow and at times occasion traffic jams causing inconvenience and hardship to the travelling public and therefore, the need to widen the road by acquiring the properties on either side of the road. It is specifically averred that the Notification dt. 25.8.2009 Annexure-G is rendered non-existent in view of the Notification dt. 21.3.2010 Annexure-A. The State having exercised its power u/s 17 of the Act in the wake of the urgency, it is contended cannot be lightly interfered with.

5. The affidavit dt. 9.12.2010 of one Ravi Kiran Vanti, S/o Hanumanthrao Vanti, claiming to be the Spl. Land Acquisition Officer, Gulbarga Division is an undertaking to pay to the Learned Counsels-land losers the amount determined as market value of the acquired immovable properties, as early as possible, immediately after the final award, without further delay.

6. The State too has opposed these petitions by filing statement of objections dt. 30.8.2010, inter alia, not disputing the facts set out in the writ petitions while admitting the issue of Notification dt. 17.6.2000 though not for acquisition of the land for widening the road, but to remove the encroachments on the road. According to the State having received reports of abnormal increase inflow of vehicular traffic causing accidents and untoward incidents due to congestion and traffic jam, in particular on the four main roads of the city, the widening of the road in larger public interest was inevitable as well as imminent and therefore, the composite Notification Annexure-A invoking Sections 17 and 4(1) of the Act. The allegation that the Learned Counsels were coerced into obtaining trade licences is denied. Notices issued to traders for obtaining licences under the provisions of the KMC Act, was a routine manner. The enquiry before the Human Rights Commission, it is stated led to a favourable report and hence the allegations of the Learned Counsels, it is contended, are not sustainable. The meeting called by the "City Corporation" on 3.4.2010, it is asserted, was to convince the Learned Counsels and other traders over the public cause and seek their co-operation in the matter of acquisition of land for widening of the four main roads in the city in terms of the Government Order and not to create hurdles. The allegation that the Learned Counsels were threatened is denied. At paragraph 9, very strangely, it is averred thus:

It is submitted that, in order to overcome the difficulties being faced by the public and danger to their lives due to accidents occurred by the traffic, the Respondents have taken coercive steps to widen the existing road from Srirangapatna-Bidar. Hence the action of the Respondents in this regard by invoking Clause 17(1) of the Land Acquisition Act in the large public interest in accordance with law.

7. Respondents 2 to 4 have filed an additional statement of objections dt. 13.12.2010 inter alia reiterating the averments set out in the statement of objections. In addition, it is stated that by Official Memorandum dt. 29.11.2010, the 2nd Respondent divided the work of acquisition between Respondents 3 and 4, the Asst. Commissioner and the Land Acquisition Officer, Gulbarga, respectively, assigning to each of the two roads with necessary directions to complete the acquisition proceedings forthwith so as to carry out work of widening of the road at the earliest. The 2nd Respondent claims to have deposited Rs. Four crores as initial deposit towards compensation with the 4th Respondent-Spl.Land Acquisition Officer on 26.8.2010, lying idle, in view of the interim order of stay in these petitions. It is alleged that the Learned Counsels being aware of the reason for the acquisition, which is indisputable, have presented these petitions and obtained an interim order of stay so as to water down the urgency in the matter of acquisition.

8. Having heard the Learned Counsel for the parties, perused the pleadings and examined the Notifications, there can be no doubt that the Government is invested with a jurisdiction u/s 17 to issue a Notification to acquire immovable properties in case of emergency or urgent situations but at the same time that power of the State, it is consistently held cannot be exercised arbitrarily. Although it is canvassed by the Respondents including the Government Counsel, it was not for the court to go into the details of the circumstances which warranted the Government to invoke the emergency power, am afraid that contention must necessarily fail, since the action of the State is questioned by invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India. It is, for the State to explain and lay all materials before Court to establish the circumstances which warranted to invoke the emergency provisions.

9. The observations of the Apex Court in *Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another*, in the circumstances is apposite:

44. In our judgment, from the above case law, it is clear that normal rule for acquisition of land under the Act is issuance of Notification under Sub-section (1) of Section 4, hearing of objections u/s 5A and issuance of final Notification u/s 6 of the Act. Award will be made by the Collector, notice has to be issued to the land-owners or the person interested and thereafter possession can be taken. Section 17, no doubt, deals with special situations and exceptional circumstances covering cases of "urgency" and "unforeseen emergency". In case of "urgency" falling under Sub-section (1) of Section 17 or of "unforeseen emergency" covered by Sub-section (2) of Section 17, special powers may be exercised by

appropriate Government but as held by a three Judge Bench decision before more than four decades in Nandeshwar Prasad and reiterated by a three Judge Bench decision in Mukesh Hans, even in such cases, inquiry and hearing of objections u/s 5A cannot ipso facto be dispensed with unless a Notification under Sub-section (4) of Section 17 of the Act is issued. The legislative scheme is amply clear which merely enables the appropriate Government to issue such Notification under Sub-section (4) of Section 17 of the Act dispensing with inquiry u/s 5A if the Government intends to exercise the said power. The use of the expression "may" in Sub-section (4) of Section 17 leaves no room of doubt that it is discretionary power of the Government to direct that the provisions of Section 5A would not apply to such cases covered by Sub-section (1) or (2) of Section 17 of the Act.

45. In our opinion, therefore, the contention of Learned Counsel for the Respondent Authorities is not well founded and cannot be upheld that once a case is covered by Sub-section (1) or (2) of Section 17 of the Act, Sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections u/s 5A of the Act. Acceptance of such contention or upholding of this argument will make Sub-section (4) of Section 17 totally otiose, redundant and nugatory.

10. In the case on hand except saying that the four main roads in Gulbarga city are very narrow, congested and hence a need to widen the road, to pave way for easy flow of traffic and its management, less hazardous to the public in the form of accidents, the compelling urgency or emergency is not brought to the notice of the Court. Admittedly Gulbarga District has been in existence ever since the re-organisation of the State of Karnataka in the year 1956. It is no doubt the Court can take judicial note of the fact that there has been an increase in the manufacture and sale of different kinds of mechanical contraptions, easily available at affordable prices for the citizens which is the cause for traffic congestion in Gulbarga city. It is also a fact that the four main roads in Gulbarga city are not wide enough to bear the onslaught of vehicle population having an adverse effect of ecology and environment. But this phenomena has been in existence over number of years and it is not as if an immediate urgency arose only in the year 2009 when the Notification Annexure-A u/s 17 was issued. That need to widen the road was in existence prior to 2009 which cannot be disputed since the Notification dated 25.08.2009 Annexure-"G" was issued invoking Section 4(1) of the Act. If that is so, the question that arises is, was there special situation and exceptional circumstances of urgency and unforeseen emergency falling under Sections 17(1) and 17(2) of the "Act" for the State to invoke to dispense with the enquiry u/s 54 of the "Act"?

11. In my opinion, no extra-ordinary circumstances are made out, much less grave urgency to invoke Section 17 of the Act. It is elsewhere said that the provisions of Section 17 would come into play not in an ordinary emergency but when there is grave emergency wherein it is not possible to hold an enquiry u/s

5A of the Act. It is only in such grave emergency the State can invoke the emergency provision. The fact that a Notification u/s 4(1) was issued on 25.08.2009 Annexure-"G" and abandoned, coupled with the fact that the writ petitions were filed on 26.4.2010 and interim order is in force till date, would go to show that there is no emergency in the matter much less grave emergency.

12. Although right to property is not a fundamental right, nevertheless is a constitutional right entitling the land looser to compensation in case of acquisition under Article 300-A of the Constitution. Therefore, the provisions of the "Act" must be scrupulously followed.

13. Having regard to the facts and circumstances noticed supra, the request of the City Corporation to the State Government to invoke the emergency provision u/s 17 of the Act and dispense with the enquiry u/s 5A of the Act, in my opinion is unsustainable.

14. On the directions of this Court, the Learned Addl. Govt. Advocate, on instructions, submits that the Land Acquisition Officer, if directed, would consider the Learned Counsels' objections and hold an enquiry as required by Section 5A of the Act within 15 days from today and within 30 days thereafter would take action to conclude and issue Joint Measurement Certificate (JMC) followed by Notification u/s 6(1) of the Act. There after wards within 60 days, the award would be made and within a fortnight therefrom, payment of compensation would be effected to the Learned Counsels. According to the Learned Counsel the entire process upto the payment of compensation would be concluded on or before 15.4.2011.

15. In the light of submission of Learned Addl. Govt. Advocate and having regard to the finding recorded supra that there is no grave emergency to invoke Section 17 of the "Act", instead of quashing the Notification Annexure-A, the 4th Respondent-Spl. LAO is directed to consider the Learned Counsels' objections including those of persons similarly circumstanced, hold an enquiry in compliance with Section 5A of the Act and proceed therefrom to conclude the acquisition proceedings by framing the award and making payment of compensation on or before 15.4.2011, also in terms of the undertaking of Ravi Kiran Vanti, in the affidavit dt. 9.12.2010.

In the result, these writ petitions are ordered accordingly. Miscellaneous applications are rejected as unnecessary.