
(2015) 07 KAR CK 0331

In the Karnataka High Court

Case No : Writ Petition Nos. 108571-581/2014 (LA)

Prabhakar Rama Hegde and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 24, 4(1), 5

Citation : (2015) 07 KAR CK 0331

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : K. Vidyavathi, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J—The petitioners in these writ petitions have sought for quashing the preliminary notification dated 27.02.2013 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for short) and the final notification dated 11.06.2014 issued under Section 6(1) of the Act, acquiring the petitioners' land for the purpose of setting up sewerage water treatment plant at Baggon village.

2. The main grievance of the petitioners in these writ petitions is that, 01 acre 24 guntas of land belonging to the petitioners and other owners situated at Baggon village and 28 guntas and 10 acres of land situated at Manaki village were notified for acquisition under Section 4(1) of the Act. The main contention in the writ petitions is that, the petitioners are the owners holding interest in the land in question and they have no other lands for their livelihood. The properties are most valuable lands and situated within the city limits of Kumta Town and within 50 meters their respective houses are situated. If the sewerage water treatment plant is established at Baggon village, it will adversely effect the interest of the petitioners and other residents of the village. Initially, the respondents wanted to set up sewerage water treatment plant at Vannalli village. However, for the reason best known to the authorities, they have departed from their original plan

and taken decision to establish water treatment plant at Baggon village. The lands selected by the respondents are situated at a lower area. During the rainy season, this area and other paddy fields will submerge under the water. Though initially the respondents wanted to install a wet well at Baggon village, and the stored drainage water was to be pumped to the Vannalli village, subsequently they dropped the plan, without assigning any reason. Though the municipality recommended for the establishment of the sewerage water treatment plant at Vannalli village, at the last moment it was shifted to Baggon village. The acquisition of the lands is not for the public purpose. On the other hand, the acquisition of land and establishing sewerage water treatment plant would adversely effect the interest of the public. Though the petitioners have filed objections to the preliminary notification, without taking into consideration any one of the contentions raised in the statement of objections, the Deputy Commissioner mechanically recommended to the State Government for issue of final notification. The enquiry under Section 5(a) of the Act is not an empty formality. In the instant case, the procedure adopted by the respondents is quite contrary to the intendment of the Act. The State Government without examining the recommendation made by the Deputy Commissioner, mechanically accepted the recommendation and the report and issued declaration under Section 6(1) of the Act and issued notification, which is contrary to law.

3. Sri. J.S. Shetty, learned counsel appearing for the petitioners contended that, though the preliminary notification was issued on 27.02.2013 and which was gazetted on 28.03.2015 and published in two daily newspapers i.e., in Udaya Vani on 05.03.2013 and Karavali Munjavu on 08.03.2013, individual notice was issued to the petitioners on 05.06.2013, 19.06.2013, 21.06.2013 and 30.06.2013 and further, fixing the date of enquiry as 06.08.2013. Thereafter, final notification under Section 6(1) was issued on 11.06.2014 i.e., beyond one-year of issuance of 4(1) notification. Hence the final notification issued is contrary to law and acquisition proceedings has lapsed on the ground of period of limitation and it cannot be enforced. Further, under Section 5(a) of the Act, enquiry has been conducted, which is not in accordance with law and several contentions have been raised in the statement of objections. Pursuant to the notice issued by the respondents, some of the petitioners appeared on 06.08.2013 for 5(a) enquiry. The Land Acquisition Officer has not considered any of the objections. On the basis of the report submitted by the Land Acquisition Officer, the Deputy Commissioner recommended the same to the State Government. The State Government, without examining the report submitted by the Land Acquisition Officer as also the Deputy Commissioner, accepted the same and issued final notification. The final notification issued is beyond the period of one year. Further, the final notification is issued subsequent to coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. The procedure prescribed under Section 6 of the Act with regard to Social Impact and assessment of study has not been made. The public hearing as required under Section 5 of the Act is also not

made. In view of coming into force of the new Act, by repealing the old Act, the acquisition proceedings cannot be proceeded with. Establishment of sewerage water treatment plant is not required in the Kumta village, since it is on the shore of the sea, the water will flow naturally. Further the petitioners have also filed objection to the notification issued under Section 9 and Section 10 of the Act and raised so many objections and that objection is also not considered. The need for establishment of sewerage water treatment plant is not examined by the State Government and sought for quashing of the preliminary notification as well as final notification. In view of that, they have filed these writ petitions challenging the notification and sought for allowing the writ petitions.

4. The learned Government Advocate appearing for the respondents 1 to 3 filed statement of objections and contended that, the Government has taken a decision to establish the sewerage water treatment plant in 43 municipalities in the State. Kumta in Uttara Kannada District is one of the cities selected for the implementation of the underground drainage and sewerage water treatment plant. After studying the movement of the drainage water and population of Kumta city and in view of increase in the population, Government has sanctioned 3.5 crores to establish underground drainage and sewerage water treatment plant. The matter has been discussed in various level. Though initially a decision was taken to establish the plant at Vannalli village since it was at a higher level and free movement of drainage water was not there, and since Baggon village was in low lying area, to which there was free flow of drainage water and if the sewerage water treatment plant is established in the said place, the authorities found that Baggon village was very beneficial and without any high expenditure, sewerage water treatment plant could be established. Further, a decision is also taken to establish a wet-well at Manaki village, Vannalli and other two villages. Drainage water collected in the wet-well will be flown to Baggon water treatment plant, whereby using the sophisticated equipment, drainage water will be treated and the treated water will be used for the agriculture and floriculture and also for cleaning of the vehicles. In many municipalities, establishment of the sewerage water treatment plant was very successful. Accordingly, a decision was taken to establish a sewerage water treatment plant. On the recommendation made by the municipalities and also the 4th respondent to establish the under ground drainage and sewerage water treatment plant, the Government granted administration sanction and also permitted to issue Section 4(1) notification. Section 4(1) notification has been published on 27.02.2013, thereafter, it was gazetted on 28.03.2013 published in two newspapers on 05.03.2013 and 08.03.2013. Subsequently, it was published in Grama Chavadi of Buggona village on 11.06.2013 and mahazar has been drawn. The objection filed by the petitioner has been considered by the Land Acquisition Officer. Totally 1 acre 24 guntas of land situated at Baggon village and 0.28 guntas of land at Manaki village is sought to be acquired. Agricultural land bearing 142/1 measuring 4 guntas, land bearing No. 142/1, 4/2 measuring 13 guntas and land bearing No. 142/5 B measuring 9 guntas belonging to petitioner No. 1 was acquired; 1 gunta

and 2 annas of land belonging to the 2nd petitioner; 9 guntas of land belonging to the third petitioner; 3 guntas and 4 annas belonging to the 4th petitioner; 4 guntas and 4 annas of land belonging to the 5th petitioner; 1 guntas and 8 annas of land belonging to the 6th petitioner; 7 guntas and 8 annas belonging to the 7th petitioner; 11 annas of land belonging to 8th petitioner and 1 guntas and 14 annas of land belonging to the 9th petitioner were sought to be acquired. The extent of land sought to be acquired will not affect any of the petitioners. The entire extent of land has not been acquired, but only small portions of land that is necessary for establishment of underground drainage and sewerage water treatment plant has been acquired. Acquisition of land will not affect the petitioner. Apart from that the land is lying in the lower level area and in the rainy season, there would be water logging and the petitioners cannot cultivate the land. The land is not suitable for agriculture or for commercial purpose, hence, the same has been acquired for establishment of water treatment plant. Further, the report submitted by the Land Acquisition Officer has been considered in accordance with the Act since the land is required for the public purpose. Accordingly, Section 6(1) notification issued. The establishment of water sewerage treatment plant will not affect the residents of the said Baggon village. They are residing at more than 100 metres away from the proposed plant and hence sought for dismissal of the writ petitions.

5. The 4th respondent has filed statement of objection contending that Karnataka Urban Water Supply and Drainage Board is a statutory Corporation established under Karnataka Urban Water Supply and Drainage Board Act. The function of Board is to supply hygienic drinking water to urban population and to other areas and regulating the drainage facility keeping in view the health and hygiene of the people. As per the policy of the Government, to establish sewerage water treatment plant, the 4th respondent conducted survey and also movement of the drainage water. Initially, it took a decision to establish sewerage water treatment plant at Vannalli and establishment of two wet-well at Baggon and Manaki and other two places. Since Vannalli is at an elevated area, there is no free flow of drainage water and after examining the matter, Baggon village was found to be most suitable place for establishment of sewerage water treatment plant, since it is in a low lying area and very close to sea-shore, there will be free flow of water. Accordingly, a decision was taken in the public interest. In view of the open drainage system, it will create problems and mosquitoes in the city areas, decision has been taken to close the drainage and to provide free flow of drainage water to the wet well and from the wet-well it would be pumped to sewerage water treatment plant, where the water will be treated and cleaned and the said water would be used for agricultural and other purpose. Construction of sewerage water treatment plant will not effect any of the residents of the area and the new technology Sequential Batch Reactor is used for treatment of the drainage water, it will not emanate any bad smell in the said area. Establishment of sewerage water treatment plant is in the interest of the people of Kumta City and the residents will not be adversely affected. Further,

procedure prescribed has been followed by the Land Acquisition Officer as well as the State Government for issuing Sections 4(1) and 6(1) notifications and therefore, sought for dismissal of the writ petitions.

6. I have carefully considered the arguments addressed by the advocate appearing for the parties and perused the order impugned, the impugned notifications and other relevant records.

7. The records clearly disclose that in view of the decision dated 08.02.2010 taken by the State Government for establishment of underground drainage and sewerage water treatment plant in 43 municipalities, a sum of 3.5 Crore rupees was sanctioned for establishment of underground drainage and sewerage water treatment plant in Kumta Taluk. On the basis of the decision taken, the 4th respondent conducted survey with the assistance of Municipality and other authorities. The Town Municipality passed a resolution for establishment of underground drainage and sewerage water treatment plant and also agreed to provide the land for establishment of the treatment plant. After survey, initially, though the land at Vannalli was selected for establishment of water treatment plant, subsequently on verification of the areas, Vannalli was found to be situated in an elevated area, where there would be no free flow of drainage water, and hence taking into consideration that Baggon village is situated in a low lying area where there would be free flow of water, a decision was taken to establish the water treatment plant at Baggon village and a decision was also taken to establish a wet-well at Viveknagar, Ippadi village and other two places. From the said wet-well the drainage water will freely flow to the water treatment plant at Baggon village which is at low lying area. The decision for establishment of water treatment plant and wet well is taken on the basis of the report submitted by the experts. On the basis of feasibility report to establish the water treatment plant, the government has taken a decision to issue Section 4(1) notification to acquire 1 acre 24 guntas of land at Baggon village and 28 guntas of land at Manaki village. A Preliminary Notification issued on 27.02.2013 which was public in two daily newspapers on 05.03.2013 and 8.03.2013. Notices were issued on 09.06.2013 and 30.06.2015. The notification has been published at Baggon village office on 16.06.2013. On the basis of the report submitted by the land acquisition officer and approved by the Deputy Commissioner, the Government after verification for the report held that the land is needed for the establishment of sewerage water treatment plant for the public purpose and accordingly issued 6(1) notification on 11.06.2014. The Notification issued is within a period of one year. As stated earlier, the preliminary notification is issued on 27.02.2013 and the last mode of notice i.e. the chavadi notice is on 16.06.2013 and the final declaration has been made on 11.06.2014 i.e., within a period of one year of issuance of the preliminary notification. Subsequently, the award notice as required under Section 9(1) and 10 has also been issued and the petitioners have filed objection to the said notice. In view of the interim order granted in the writ petition, the respondents have not proceeded with the matter.

8. On verification of the original record, I find that the final notification issued is within one year of issuance of the preliminary notification. A reading of Section 4(1) makes it very clear that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification. In the instant case, out of 3 modes, the last mode i.e., the chavadi notice was published in Baggon village on 16.06.2013 and the final notification has been issued under Section 6(1) on 11.06.2014 within a period of one year of issuance of preliminary notification.

9. The next contention of the advocate appearing for the petitioner is that the land sought to be acquired for establishment of sewerage water treatment plant is not suitable, without examining the suitability of the land, without application of mind, the land situated at Baggon village has been selected for establishment of the plant cannot be accepted. Initially, a decision was taken to establish the sewerage water treatment plant at Vannalli area, however, said area was situated at a higher level and that drainage water would not freely flow to that area. Subsequently, the area in Baggon village was selected since it was situated in a low lying area and the drainage water would freely move to the said area, if the wet-well is established in the area. Accordingly, the engineers of the 4th respondent after examining the suitability of the land, selected Baggon village for establishment of treatment plant. The petitioner themselves admitted in the writ petitions that the Baggon village situated in a low lying area and during the rainy season, the paddy fields will submerge under the water. It is the competent authority to examine the suitability of the land. The petitioner has no say in the matter. The land is being acquired for public purpose. Hence, the said contention of the petitioner has to be rejected.

10. Further, the contention of the petitioner is that in view of coming into force of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act, 2013" for short), the respondents cannot proceed with the acquisition without following the procedure prescribed under the new Act. Though the preliminary notification was issued on 27.02.2013, the notification under Section 6(1) has been issued on 11.06.2014 i.e. after the Act, 2013 came into force. Hence, the procedure prescribed under the new Act has to be followed and the proceedings initiated by the respondent automatically lapses. The said contention also cannot be accepted. Admittedly, the preliminary notification is issued on 27.02.2013 and the notification under Section 6(1) is issued on 11.06.2013. In view of Sections 24, 113 and 114 of the New Act, the earlier proceedings is saved and such proceedings shall continue under the provisions of the said land acquisition act as

if the said act has not been repealed. In the instant case, the final notification is issued on 11.06.2014. The earlier proceedings will not lapse, such proceedings shall continue under the provisions of the said land acquisition act is if the said act has not been repealed. Hence, there is no substance in the said contention. Section 24 of the new Land Acquisition Act reads as under:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases:-- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

11. The further contention of the petition is that the objection filed to Section 4(1) notification has not been considered in accordance with 5A of the Act cannot be accepted. The objection raised to Section 4(1) notification is that land in dispute is agricultural land, the petitioners are entirely dependent on agriculture as source of their livelihood. In rainy season, the said land will submerge in the water. Further, if the sewerage water treatment plant established in the said area it will emanate bad smell. The said objection has been considered by the Land Acquisition Officer and over-ruled the objections holding that the land sought to be acquired is only a small extent varying from 2 to 8 guntas of land which will not adversely affect the interest of the petitioner. Further, the sewerage water treatment plant is being established in the public interest. The new technology utilised in the treatment plant will not emanate bad smell and that the treated water can be used for agricultural and other purposes. I find no infirmity or irregularity with the action of the respondents, since the authorities after considering the objections raised by the petitioners have over-ruled the same, recommended the matter to the Deputy Commissioner and the Deputy Commissioner in turn forwarded the said recommendation to the State Government. The State Government, after examining the matter in detail found that there is no substance in the objection raised by the petitioners and accordingly issued 6(1) notification and the procedure followed is in accordance with law.

12. Shri. J.S. Shetty, learned advocate for the petitioners relied upon the judgments of the Supreme Court reported in Ashok Kumar and Others Vs. State of Haryana and Another, AIR 2007 SC 1411 : (2007) 2 SCALE 258 : (2007) 3 SCC 470 : (2007) 1 SCR 1191 : (2007) AIRSCW 1779 : (2007) AIRSCW 5598 : (2007) AIRSCW 6758 : (2007) 1 Supreme 745 : (2007) 6 Supreme 437 , Devender Kumar Tyagi and Others Vs. State of U.P. and Others, (2011) 9 JT

390 : (2011) 9 SCALE 310 : (2012) AIRSCW 1340 and Bhatinda Improvement Trust Vs. Balwant Singh and others, AIR 1992 SC 2214 : (1991) 6 JT 135 : (1992) 101 PLR 181 : (1991) 2 SCALE 557 : (1991) 4 SCC 368 : (1991) 3 SCR 928 : (1991) 2 UJ 643 , to contend that if the 6(1) notification issued is beyond one year of the preliminary notification is nullity and the land acquisition proceedings automatically lapses. The said aspect has been dealt with while discussing the earlier contentions. The time of one year from the date of issuance of preliminary notification has to be calculated taking into consideration the last mode of issuance of preliminary notification. In the instant case the preliminary notification is issued on 27.02.2013, the last mode of which is on 16.06.2013 and the final notification under section 6(1) is issued on 11.06.2014 which is well within the period of one year. Hence, the judgments relied upon the petitioner are not applicable to the facts of the present case.

13. On the other hand, learned Government advocate relied upon the judgment reported in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, (1996) 9 AD 68 : AIR 1997 SC 1236 : (1996) 10 JT 452 : (1996) 8 SCALE 417 : (1997) 1 SCC 134 : (1996) 8 SCR 787 Supp : (1997) AIRSCW 1281 and contended that the court must be slow while granting injunction or stay of the proceedings in the larger interest. In view of the lands in question being acquired for public purpose and in the absence of any material to show that the purpose stated in the notification is not true or real, the Court cannot interfere. She relied on para 10 of the said judgment and contended that land is acquired for the public purpose for establishment of sewerage water treatment plant at Kumta taluk. In view of the increase in the population, the establishment of sewerage treatment plant is very much necessary, further even establishment of airport is held to be public purpose. Hence, public purpose should prevail over private interest. Hence sought for dismissal of the writ petitions.

14. On considering the arguments addressed by the parties, considering the law laid down by the Hon"ble Supreme Court, I am of the view that land sought to be acquired is for the public purpose i.e. for establishment of underground drainage and sewerage water treatment plant. In the land acquisition proceedings the Government has got power to acquire the land compulsorily from the individuals for public purpose. In the instant case, a small portion of land of 1 acre 24 guntas belonging to ten persons is acquired for the purpose of establishment of sewerage plant. The extent of acquired land is a very small portion. Acquiring very small portion of the land will not affect the interest of the petitioner. The intention of the Land Acquisition Act is for public purpose. The respondent authorities after following the procedure prescribed under law acquired the land and there is no infirmity or irregularity. Petitioner has not made out any grounds to interfere with the impugned notification. Accordingly, the writ petitions are dismissed.