
(1988) 01 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 14711 of 1987

R. Hanumanthappa and Son

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-1988

Acts Referred:

Citation : AIR 1988 Kar 329

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; S. Lakshminarayan, High Court Govt. Pleader and H.B. Narayan, for the Respondent

Judgement

1. The petitioner claiming to be the owner of the land bearing Survey No. 1306 measuring 5 acres and 16 guntas situate in Nanjangud Village, Nanjangud Taluk, Mysore District, has challenged the validity of, the acquisition proceedings initiated by the authorities both under the Land Acquisition Act, 1894 (in short the Act) as also under the Karnataka Acquisition of land for Grant of House Sites Act, 1972.(in short the House Sites Act). The facts are not in serious controversy and the only controversy is whether the petitioner had delivered possession of the land to respondent4/,Karnataka Housing Board consequent on the proceedings initiated under the Act.

2. The proceedings under the Act were initiated in the year 1975 by the issue of the preliminary notification u/s. 4 of the Act. It is not in dispute that the petitioner had filed its objections and those objections were over ruled paving way to the final notification us. 6(1) of the Act. This declaration was made on 28-4-1977. It is also not in dispute that the , petitioner was also served with the Award notices under S. 9 read with ,R. 9 of the Rules. But, the petitioner did not file its claim statement against the proposed award on the ground that that notice, did not give 15 days time for it to file its objections and so it called ,upon the Land Acquisition Officer to issue a fresh notice under S. 9 of the Act. But the fact remains that the petitioner was aware of the fact that the Land Acquisition

Officer had" proposed to make an award in respect of the acquisition of the land in question and he also intimated this fact to the petitioner by issuing a notice u/s. 9 of the Act read with R. 9 of the Rules. The records disclose that the Land Acquisition Officer made an award, though without hearing the, petitioner, and that award was also approved by the Deputy Commissioner as required under S. 12(1) of the Act. It transpires that some time in the year 1979 the notification u/s. 3(l) of the House Sites Act was issued by the Deputy Commissioner in respect of the very same land. But, the proceedings under the House Sites Act were Act completed by the authorities.

3. On these undisputed facts, the petitioner"s case is firstly that by issuing a preliminary notification ,u/s. 3(l) of the House Sites Act, "the earlier" proceedings. under the Act were abandoned and, therefore, the authorities could not have acquired the Petitioner"s" land by virtue of the final notification u/s. 6 of the Act and the award made u/s. 12 of the Act. Alternatively, the authorities have not taken possession of the land from the petitioner pursuant to the award u/s. 12 of the Act and respondent-4/ Housing Board could not have entered upon the petitioners land and constructed the houses for the purpose of distribution to weaker sections of the community.

4. The first contention of Sri. Sridharan, learned counsel for the petitioner, will have to be answered with

reference to the scheme of the Act. That necessarily raises the question of delay in approaching this Court, since the proceedings were initiated under the Act in the year 1977 which culminated in the award in the year 1979, and the same could not be challenged by the petitioner in the year 1987 after a lapse of 10 years unless there are adequate reasons which could compel the Court to take the view that .the petitioner had not slept over its right and had also not condoned the action taken by the authorities under the Act. Admittedly, the petitioner was aware of the award notice. The petitioner had also filed a revision petition before the State Government u/s. 15(a) of the Act and" that revision petition was dismissed by the State Government as is evident from Annex. "D" filed in the writ petition. That order of the State Government was made in the year 1977 and, therefore, there was no need for the petitioner to wait for the proceeding to be initiated under the House Sites Act in the year 1979 for, challenging the validity of the earlier acquisition proceedings. The earlier acquisition proceedings under the Act which were completed in the year 1979 could have been challenged by the petitioner in the year 1977 itself when the State Government rejected its revision petition by its order dt.15/17-3-1977 under Annex .D. Therefore, a heavy burden is cast on the petitioner to explain the delay in approaching this Court" for challenging the validity of the proceedings under the, Act. The only grievance the petitioner could make out in the proceedings under the Act is that it was not given sufficient notice as required u/s. 9 of the Act to file its claim statement. But, that grievance would not go to the root of the acquisition proceedings under the Act" and, therefore, it

is not possible for this Court to accept the contention of the learned counsel for the petitioner that the authorities had abandoned the proceedings under the Act by initiating fresh proceedings in the year 1979 under the House Sites Act.

5. Now I come to the proceedings under the House Sites Act. The case of the Government is that these proceedings did not relate to the land in question, but it related to a different land situated in the Yelwala

-village, Mysore Taluk. There appears to be some mistake about this assertion of the State Government. I have looked into the original gazette notification and it does not admit of, any doubt that the notification u/s. 3(1) of the House Sites Act was in respect of the very same land situate in Nanjangud village ,belonging to the petitioner. But, could it be said that all because the Government made a mistake by issuing a fresh notification under the House Sites Act, the earlier proceedings under the Act had been abandoned ? Records disclose that the award was made by the Land Acquisition Officer us. 12 of the Act and the Housing Board for whose benefit the land was acquired had deposited the compensation amount with the treasury. But the cheque for the compensation amount was returned to the Housing Board on account of some clerical mistakes in the Award. It is also not the case of the petitioner that the award made u/s. 12 of the Act had been withdrawn by the authorities on account of the fact that fresh proceedings have been initiated under the House Sites Act. It should be seen from the scheme of the Act that where the acquisition proceedings are initiated by the State Government they can withdraw the acquisition proceedings before the possession of the land is taken. That is provided u/s. 48 of the Act. There is no material forthcoming in the records to show, that the Government had indicated its desire to withdraw the acquisition proceedings initiated under the Act. In the circumstances, regard being had to S. 48 of the Act, it has to be held that the proceeding initiated under the House Sites Act is not a valid proceeding, and, therefore, neither the Government nor the petitioner could take the advantage of these proceedings in support, of their respective pleas in this case. These Proceedings, in my view, are null or void and it does not help the parties either way. It therefore follows that the petitioner has to succeed in this writ petition only by attacking the validity of the proceedings initiated under the Act. I have already held that the petitioner has not satisfactorily explained the delay of 10 years in approaching this Court nor has it challenged the validity of the preliminary or final notification issued under the Act.

6. However, one contention which requires to be noticed on behalf of the petitioner, i.e., whether the petitioner should be permitted to reopen the award made by the Land Acquisition Officer on account of the fact that it was not given a proper notice u/s. 9 of the Act. It was open to the petitioner to challenge that notice before the appropriate forum and seek redressal" against the said notice. What all the petitioner did was to ignore the notice and to call upon the Land Acquisition Officer to issue a fresh notice. The Land Acquisition Officer was not obliged to comply with the petitioner's demand since by making an award he

had made only a proposal as to the quantum of compensation payable to the petitioner and, that proposal was not binding on the petitioner and, therefore, no purpose would be served by reopening the award at this distance of time. So the proper order to make is that the Land Acquisition Officer should issue notice of the award u/s. 12(2) of the Act and on receipt of such intimation it is -open to the petitioner to seek a reference u/s. 18 of the Act. Accordingly, a direction shall be issued to the Land Acquisition Officer to intimate the petitioner about the making of the award and on such intimation -being received by the petitioner it is open to the petitioner to seek a reference to the civil Court for higher compensation as provided u/s. 18 of the" Act.

7. Now the 2nd contention for consideration is whether the Housing Board has taken possession of the land in question in the year 1981 as contended by it in the statement of objections and also in the counter affidavit filed for vacating the interim order. According to the Housing Board, possession, was taken tom the petitioner in the year 1981 and it has also built a number of Janatha houses with the financial assistance given by the Housing and Urban Development Corporation. The Housing Board has produced a number of photographs to establish the fact that a number of houses have come up in the land in question before the writ petition was filed. The photographs show that these houses have come up half way and before they could be completed, the petitioner has obtained an interim order from this Court. The petitioner apart from asserting that possession was not given to the Housing Board in the year. 1981 has not produced any material to show that it was in actual possession of the land in the year 1981. 1 had called upon the counsel for respyent-4 to produce the records to establish the fact that possession had been taken in the year 1981. The records disclose a letter dt. 12-1-1982 addressed by the Executive Engineer of the Housing Board to the Chief Engineer of the very same Board stating that an extent of 5 acres and 16 guntas in Survey No. 1306 Of Nanjangud village had been handed over to the Assistant Engineer, Karnataka Housing Board, No. 1, Sub-Division, Mysore, by the Revenue authorities for "taking up construction of SRHS quarters. The question of handing over possession is disputed; but this Court can only go by " the material on,, record. I am not in a position to disbelieve the photographs, produced by the Housing .Board in this regard. Even assuming for a moment that the Housing Board had not established that it had lawfully taken possession of the land from the petitioner, the very fact that a number of houses have come up in the land in question for the benefit of the weaker sections of the society should compel this Court to take the view that though there is "a bona fide dispute on the question of possession, that dispute by itself will not give a right to the petitioner to demolish the construction work undertaken by the authorities pursuant to the financial assistance given by the Housing and Urban Development Corporation. In the circumstances, the only relief" that the petitioner could get in this writ petition is to seek a reference to the Civil Court us. 18 of the Act for higher compensation.

8. Accordingly, this petition is partly allowed and there shall be a direction to

the ,Land Acquisition Officer to issue a notice to the petitioner u/s. 12 of the Act and, on receipt of such notice, it is open to the, petitioner to seek a reference of the award of the Land Acquisition Officer u/s. 18 of the Act, if it is aggrieved by the award made by the Land Acquisition Officer.

9. It is contended by the learned counsel for the petitioner that since respondent-4 has acted in a high handed manner" it should be saddled with the costs of this proceeding. Respondent-4 is the Housing Board and apparently it has put up the construction with a view to avail itself of the financial assistance given to it by the Housing and Urban Development Corporation. The very object of the Housing and Urban Development Corporation is to benefit the weaker sections of the community and hence even if respondent-4 had acted in a high handed manner, it was for the benefit of the weaker sections of the community and. therefore, I do not think that this is a fit case to award costs against respondent-4.

Parties to bear their own costs.

10. Order accordingly.