

(2015) 02 KAR CK 0401

In the Karnataka High Court

Case No : Writ Petition No. 201214/2015 (GM-KIADB)

Rajashekhar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1), 28(4), 30
Land Acquisition Act, 1894 — Section 11A, 11-A, 6, 6(1)

Citation : (2015) 02 KAR CK 0401

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Harshavardhan R. Malipatil, for the Appellant; Manvendra Reddy, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narayana Swamy, J.—The preliminary notification was issued on 13.5.2010. The said notification is sought to be quashed on the ground that within the statutory period, final notification was not issued and no award was also passed.

2. By Section 30 of the KIAD Act, it applies mutatis and mutandis, Sections 6 and 11-A of the Land Acquisition Act. Admittedly, the final notification is not issued within the statutory period and no award is also passed, Hence the learned counsel for the petitioner seeks to quash the preliminary notification.

3. The learned counsel for the respondent submits to dismiss the petition on the ground that it is the prerogative right of the respondent to issue final notification.

4. I heard both. This very question has been dealt in the decision of Sri Chaluve Gowda @ Chikkonu Vs. State of Karnataka, Karnataka Industrial Area Development Board and Special Land Acquisition Officer, Mysore, of the judgment read as follows:

"7. However, the question is no longer res integra. A Division Bench of the Court in W.A. Nos. 3189-3201 of 2010 (LA-KIADB) connected with W.A. Nos.

3202-30206 of 2010 (LA-KIADB) dated 20.11.2012 : (2013 (4) AKR 163) has addressed the very question and has held thus: "36. From the aforesaid discussion, it is clear if a period is prescribed under the Act for issue of a final declaration as well as for passing of the award, if the final declaration is not issued and the award is not passed within the stipulated period, the entire acquisition lapses, unless it is shown by virtue of any order of stay or injunction issued by any court the authorities were precluded from completing the acquisition proceedings. It is by operation of law as contained in the statute. Merely because such a provision is not found in an enactment, it does not mean limitation is not a bar at all. If such a prescription is not there expressly in any enactment it is not possible to hold that such an acquisition has lapsed relying on the provisions contained in the Land Acquisition Act. In other words, the provisions of the Land Acquisition Act can not be read into the Act or such similar statutes. But nonetheless in order to decide what is the reasonable time within which authorities have to exercise their power either for issue of a final notification or for passing of the awards is concerned, certainly the parliament intendment as contained in this provision cannot be completely lost sight of. On the contrary, it acts as a guide. It expressed the will of the Parliament. It has to be given due weight. When this acquisition proceedings were delayed endlessly and land owners were deprived of just compensation under law and consequently the constitutional right was violated, the Parliament, one year is the reasonable time for passing of a final declaration and two years is the time for passing of an award. If within those periods the final declaration is not issued, the award is not passed, the whole acquisition lapses. The Act is enacted for industrial development which has to be done expeditiously. Such an industrial development results in generation of employment and economic growth of the State. If the land is required for such public purpose a special enactment was enacted for speedy acquisition of land Merely because the provisions contained in Section 6(1) and 11A is not incorporated in this Act or after the Parliament amended the Land Acquisition Act in 1984, the state legislature does not think it fit to bring in similar provisions under the Act, it does not mean that the State Government can exercise its power for issue of a final declaration or passing of an award without any regard to time limit. It has to be done within a reasonable time. As held by the Apex Court in Ram Chand's case Ram Chand and Others Vs. Union of India (UOI) and Others, two years is held to be a reasonable time within which a final declaration has to be issued, if there are no hurdles placed in the acquisition by the land owners or if there are no hurdles in law. If the final declaration is not issued within two years, certainly the land acquisition has to lapse, notwithstanding the absence of any specific provision in the Act as contained in the Land Acquisition Act. When we say it is two years or one year it does not mean on expiry of the said two years or one year, as calculated under the L.A. Act, the acquisition has to lapse. It is roughly two years or one year. Few days or months this way or that way should not matter. Except for this absence of mathematical precision in calculating the period, the substance has to be applied. The parliamentary intention in prescribing time limit under the L.A. Act cannot be

ignored. However, it all depends on the fact of that particular case, the conduct of the parties, the purpose for which the land is sought to be acquired and the problems faced by the acquiring authorities in concluding the acquisition. Therefore, it is not possible to, accept the contention of the acquiring authority that in the absence of any specific provision under the Act, no such time limit can be imposed and the same is without any substance. Even in the absence of any such prescriptions expressly under the statute, having regard to the fact that the right to property is a constitutional right and the person whose land is sought to be acquired is entitled to compensation at the market rate, such a compensation has to be paid to him at the earliest and therefore, the power of acquisition should be exercised within a reasonable time so that person who lost the land is duly compensated at the earliest point of time".

"8. In the instant case, the Preliminary No-caption under Section 28(1) of the KIAD Act was passed on 15.6.2005 and the Final Notification under Section 28(4) of the Act was passed on 29.1.2007 and it is candidly admitted in the petition that though there was an attempt to arrive at a consensus with the land owners as to the quantum of compensation, there was no finality and the award is yet to be passed. Therefore, in the light of the law laid down by this Court, the inordinate delay in passing the Award vitiates the acquisition proceedings and accordingly the writ petition is allowed as prayed for. The impugned proceedings are quashed."

5. In view of the said provision and in the light of the judgment referred above, this writ petition is allowed. The preliminary notification in so far as Sy. No. 89 (89/1) to an extent of 3 acres 17 guntas situated at Sheik Roza Village, Tq. and Dist. Kalaburagi belonging to the petitioner is hereby quashed.