
(2014) 04 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition Nos. 24302 and 24303 of 2013 (LA-BDA)

S. Sundaraj

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136(3)

Land Acquisition Act, 1894 — Section 16(2)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2014) 4 KarLJ 388

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : G. Gangireddy, Advocate for the Appellant; Sriyuths D. Nagaraj, Additional Government Advocate and G.L. Vishwanath, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The petitioners claim under one B.M. Shamanna, who was the owner of land bearing Survey No. 55/4A measuring 37 guntas and 55/4B measuring 1 acre 20 guntas of Nayandahalli, Kengeri Hobli, Bangalore South Taluk. B.M. Shamanna is said to have died in the year 1977. The above land was notified for acquisition under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act", for brevity) as per a preliminary notification dated 22-2-1985, proposing to acquire the land for the purposes of M/s. ITI Housing Co-operative Society, Bangalore (hereinafter referred to as the "Society", for brevity). It, however, transpires that the name of Shamanna was shown in the said notification and not of his legal representatives. The petitioners, on coming to know of the same had filed objections, inter alia, contending that there was no prior sanction of a Scheme before initiating the acquisition. The Assistant Commissioner, who considered the objections, recommended that the proceedings be dropped. But the said recommendation

was ignored and a final notification is said to have been issued on 27-2-1986. In spite of the petitioners having raised a specific objection as to Shamanna's name being shown in the preliminary notification, it continued to be shown even in the final notification. The petitioners had challenged the said acquisition before this Court in writ proceedings in WP No. 18634 of 1992. The said writ petition was dismissed along with several other petitions filed by other landowners challenging the very acquisition, by an order dated 10-4-1996. It transpires that the Society had approached the Tahsildar, only in the year 2007 for change of mutation and Revenue records. The same is said to have been carried out. The petitioners on learning of this development, are said to have challenged the same in an appeal before the Competent Authority. The same is said to have been rejected. The petitioners are then said to have preferred a revision petition u/s 136(3) of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as the "KLR Act", for brevity). The said revision petition also having been rejected, the same had been challenged by way of a writ petition in WP Nos. 40742 to 40744 of 2012 and the same was withdrawn when it was observed by this Court that in the face of the petitioners after having challenged the acquisition proceedings, it would be incongruous to question the revenue entries. The petitioners are said to have initiated a civil suit in OS No. 26996 of 2012 seeking declaratory and injunctory reliefs against the Society. Though an ex parte order of temporary injunction had been granted, the same has been vacated subsequently on contest by the Society. The petitioners contend that they had not received a notice of the award dated 5-11-1988. But it is their case that after the order of temporary injunction was vacated by the Civil Court, the Society was trying to interfere with the possession of the petitioners and hence the present writ petition.

2. The respondent-Society has contested the petition and has raised preliminary objections to maintainability. It is contended that the challenge is to an award of the year 1988 and is hence hopelessly barred by delay and laches. It is secondly contended that the petition is also barred on the ground of res judicata, since the petitioner had earlier filed a writ petition in WP No. 15159 of 1986 and again in another writ petition in WP No. 18634 of 1992 on similar grounds questioning the award. Those petitions came to be dismissed on the ground that the petitioner had participated in the award proceedings and had sought for enhancement. And that the petitioners were precluded from challenging the acquisition. The orders of the learned Single Judge were confirmed in appeal. The petitioners had however, preferred yet another writ petition in WP Nos. 40742 to 40744 of 2012, it is stated that this Court took exception in the petitioners filing successive writ petitions on the same grounds, notwithstanding their rejection and had observed that it amounted to an abuse of process of the Court, at which the same were withdrawn unconditionally. It is hence contended that the petition be dismissed on the above grounds alone.

3. By way of reply, it is contended on behalf of the petitioners that though an award has been passed subsequent to the final notification of the year 1986, the

award amount has not been paid or deposited in the Civil Court. Neither has physical possession been taken of the land. It is hence contended that u/s 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "2013 Act", for brevity), as interpreted by the Apex Court in *Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki and Others*, Civil Appeal Nos. 877 to 894 of 2014, decided on 24-1-2014, the acquisition proceedings are deemed to have lapsed. In the above background, the petition is apparently barred as the petitioners have admittedly sought to challenge the acquisition proceedings, repeatedly, earlier. The contentions that the petitioners are in settled possession and hence cannot be dispossessed at this point of time, or that the compensation amount had not been paid or deposited and hence the acquisition proceedings have lapsed etc., are not tenable. It is not the case of the petitioners that the land in question is built up and that the petitioners are in occupation of any such structures, to claim settled possession. This in the face of material on record, such as a notification u/s 16(2) of the LA Act indicating that possession of the lands acquired may have been delivered to the Society. Nor is it tenable for the petitioners to claim that they have not been paid the compensation, apparently seeking to press into service Section 24(2) of the 2013 Act, on the presumption of the twin circumstances of the compensation amount not having been paid or possession of the land not having been taken. The petitioners on the other hand were admittedly aware of the award of the year 1988 and having remained dormant over the years are not justified in invoking the jurisdiction of this Court, for the fourth time, at this point of time.