
(2003) 08 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 1978 of 2003

S. Venkatasamappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Industrial Area Development Act, 1966 — Section 29, 30
Land Acquisition Act, 1894 — Section 11

Citation : (2003) ILR (Kar) 4496 : (2004) 1 KarLJ 239 : (2004) 3 KCCR 341 SN

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Ravivarmakumar, for the Appellant; Shashidhar S. Karamadi, GP for R1 and 3 and Ashok B. Hinchigeri, for R2 and 4, for the Respondent

Final Decision : Allowed

Judgement

Rangavittalachar, J.—The Karnataka Industrial Area Development Board - 2nd respondent herein had acquired 4 acres of land in Sy. No. 32, among other lands, situate at Anneshwara Village, Kasaba Hobli, Devenahalli Taluk for formation of international air port at Devanahalli. This land is claimed by the petitioner as belonging to him on the basis of various sale deeds and the entries in the revenue records apart from his name being notified in the preliminary and final notification as the Kathedar. However, the acquiring authority refused to pass any award. This action was question by the petitioner by filing W.P. 6001/2002. Learned Single Judge who heard the matter, by his order dated 21.9.2002, quashed the endorsement refusing to pass the award and directed the Special Land Acquisition Officer to conduct an enquiry and pass award in accordance with law. Pursuant to the order of this Court, the Land Acquisition Officer conducted an enquiry and passed an order on 24.12.2002 Annexure-A holding that the petitioner is not entitled to any compensation , on the basis of a letter written by the Deputy Commissioner. This order is questioned in this petition.

2. Sri Ravivarmakumar, learned Counsel appearing for the petitioner submitted that the Land Acquisition Officer though has held that petitioner has proved his title but, refused to grant any compensation solely on the ground that the Deputy Commissioner has addressed a letter to him stating that the genuineness of the original grant certificate - the basis of claim is itself suspect, without even giving an opportunity to the petitioner to explain.

3. Sri Ashok Hinchigeri learned Counsel for respondents 2 and 4 defended the order. He contended that having regard to the date on which the grant certificate was printed namely on 10.4.1965 whereas the grant is said have been made on 2.3.1962, it was sufficient to improbabilise the genuineness of the grant certificate which was the source of title for the petitioner. No further enquiry was needed in this regard.

4. He nextly submitted relying on the decision of the Madras, Andhra Pradesh and Calcutta High Courts, referred below:

The State of Tamil Nadu and Another Vs. P. Kanagamani and Others,
Ukhra Forest and Fisheries (P) Ltd. Vs. State of West Bengal and Others,
Afzal Bee Vs. The Special Deputy Collector and Others,
Jivandas Khimji Vs. Smt. Narbada Bai,

that the Land Acquisition Officer while passing an award exercises only "Administrative function" and not "quasi judicial function". As an agent of the Government, he makes an offer to the claimant and it is for the claimant to accept or reject the offer by taking the money or approaching the Civil Court u/s 18 of the Land Acquisition Act. Such an action of the Land Acquisition Officer is not amenable to Writ Jurisdiction.

5. Lastly, he submitted that if the petitioner is aggrieved by the award of the Land Acquisition Officer, he was to request the Land Acquisition Officer to refer the matter to a Civil Court for determination of his title to the property. He cannot approach this Court by-passing the said remedy.

6. In order to appreciate the rival contentions, it is necessary to refer to the relevant provisions of the Karnataka Industrial Area Development Act (for short "Development Act) and also the provisions of the Land Acquisition Act which has a bearing on the controversy. Chapter VII of the Development Act provides for acquisition and disposal of lands Section 29 of the said Act provides for payment of compensation for acquired lands. Section 29 (1-4) is extracted for ready reference:

Section 29 Compensation:

1. Where any land is acquired by the State Government under this Chapter, the State Government shall pay for such acquisition compensation in accordance with the provisions of this Act.

2. Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be paid in accordance with such agreement.

3. Where no such agreement can be reached, the State Government shall refer the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

4. On receipt of a reference under Sub-section (3) the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested therein to appear before him and state their respective interests in the said land.

7. Section 30 of the Development Act adopts the relevant provisions of the Land Acquisition Act (hereinafter referred to as the Acquisition Act) dealing with the conducting of enquiry and passing of the Award. It reads:

Section 30: Application of Central Act 1 of 1984:

The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under this Chapter.

8. By virtue of Section 30 of the Development Act, Section 11 of the Acquisition Act is made applicable. Section 11 of the Acquisition Act reads as under:

Section 11: Enquiry and award by Collector:

1. On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land on the date of the publication of the notification u/s 4, Sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf;

Provided further that it shall be competent for the appropriate Government to

direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

2. Notwithstanding anything contained in Sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

3. The determination of compensation for any land under Sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

4. Notwithstanding anything contained in the Registration Act 1908 (16 of 1908), no agreement made under Sub-section (2) shall be liable to registration under that Act.

9. Thus, by a conjoined reading of Section 29 of the Development Act and Section 11 of the Act, the Deputy Commissioner has to hold an enquiry regarding the entitlement of a person to claim and receive compensation. In the process of conducting an enquiry regarding the entitlement as held by the decision of the Andhra Pradesh High Court by Justice Chinnappa Reddy, as he then was, cited by the learned Counsel for the contesting respondent in *AFZAL BEE v. SPL. DEPUTY COLLECTOR AND ORS.* (supra), the Land Acquisition Officer has jurisdiction to decide even the question of title if it is raised before him. But, if he feels that the "question of title" is a complicated one, he may refer the matter to a Civil Court. The process of deciding the claim of the claimant necessarily carries with it the obligation of applying his mind to the material produced or available on record in a fair manner, fairness means that if the Land Acquisition Officer wants to use any adverse material or document adverse to the interest of claimant, it can only be done after drawing the attention of the claimant to the adverse material and soliciting his comments or objections, etc. By not doing so, he would be violating the elementary principles of natural justice. Similarly, while conducting the enquiry as stated above, the Land Acquisition Officer will be performing statutory functions and therefore, has to independently take a decision on the basis of records available before him and cannot act on the dictates of any authority however superior he may be.

10. Reverting to the facts of the case, Land Acquisition Officer while passing an award has noted that the Deputy Commissioner, Bangalore Rural District in his letter No. LND CR 1: 2001-02 dated 2.12.2001 addressed to him, has stated as follows:

UR Madhavarao's name appears in the RTC Volumes for the years 1968-73 in respect of two lands measuring 4 acres each. The details pertaining to one land can be seen at Sl.No. 52 of statement above. There is no doubt the genuineness

of that grant and subsequent transactions. However, claim in respect of the second piece of land is found to be fraudulent.

UR Madhava Rao is supposed to have got the second piece of land also by grant. In support of his claim the successor in title S. Venkataswamappa has produced a grant certificate purported to have been issued by the Tahsildar, Devanahalli Taluk on 2.3.1962. However, none of the land grant files described in pages 2 and 3 of this letter contains his name twice. When the land grant certificate dated 2.3.1962 produced by him was closely scrutinized it is found that, the grant certificate was printed in government press on 10.4.1965. When the form itself was printed in the year 1965, obviously, the grant certificate could not have been signed by the Tahsildar, Devanahalli Taluk on 2.3.1962/ So it is proved beyond doubt that the grant certificate produced by Venkataswamappa is a fraudulent one and the name was brought on the RTC fraudulently. So, the claim of successor in title namely S. Venkataswamappa for an extent of 4 acres is not tenable and so he is not entitled for compensation.

11. After noticing the said letter, he proceeds to hold that the documents of title like the sale deeds, produced by the petitioner and the entries in the record of rights clearly prove that the petitioner is the owner of the land but, pleads his helplessness in passing the award on the ground that the Deputy Commissioner has stated in his letter that the original grant is fraudulent.

12. No doubt the Land Acquisition Officer was entitled to rely on the original grant certificate as an independent material on record but then, he should have confronted the same to the petitioner and sought his explanation which procedure admittedly has not been done.

13. Secondly, when he felt that the petitioner had established title, he should have proceeded to decide the matter as a statutory authority should do, while exercising his statutory powers. He could not have held that he should act as per the dictates of the Deputy Commissioner. Such a procedure is totally unknown to the concept of statutory enquiry.

14. In so far as the contention of Sri Ashok Hinchigeri that the award passed by the Land Acquisition Officer is only in the nature of a proposal and is not amenable to writ jurisdiction of this court is concerned in the light of the discussions made above, it cannot be said that while holding an enquiry to decide the title of a claimant. Land Acquisition Officer performs an administrative act only.

15. Reliance on the decision of Madras High Court in STATE OF TAMIL NADU AND ANR. v. P. KANAGAMANI AND ORS. referred to in this regard is wholly misplaced. It only deals with the determination of market value while passing the award. According to the decision, "where a Land Acquisition Officer determines the market value of the acquired property and then he offers the same to the claimant, at that stage it partakes the character of an offer, which the claimant may accept or reject". That decision has no bearing to the question involved in

this case. Similarly, in *Roshanara Begum Vs. Union of India*, this question regarding the procedure to be followed by Land Acquisition Officer while holding an enquiry to ascertain the title of a claimant was not being considered.

16. The decision of Andhra Pradesh High Court reported in *AFZAL BEE v. SPL. DEPUTY COLLECTOR AND ORS.*, accords with the view I have taken. In the said decision as noted by me, the Court has held the Land Acquisition Officer is entitled to decide the title of a claimant which necessarily involves an enquiry.

17. In *UKHRA FOREST AND FISHERIES (P) LIMITED v. STATE OF WEST BENGAL AND ORS.*, the Calcutta High Court was never considering this question of the procedure the Land Acquisition Officer has to follow while holding the enquiry.

18. On the second objection that the award passed by the Land Acquisition Officer is purely administrative in character and not amenable to the jurisdiction of this Court, it is a well recognised principle of law that whenever a person is affected by the exercise of any statutory powers of a statutory authority, no matter by what name it is called, "administrative", "quasi-judicial" or otherwise, the principles of natural justice have to be followed before exercising such power (See the leading decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . Therefore, it is of no significance whether the award of the Land Acquisition Officer is termed as administrative.

19. On the last objection that the petitioner has an alternative remedy, as held by the Supreme Court in *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, that where an order is in violation of the principles of natural justice, the doctrine of alternative remedy as a restraint for exercising the power under Article 226 of the Constitution has no application, this is how the Supreme Court has expressed:

There are at least two well recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writ for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.

In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice.

20. Admittedly, in the case, the order of the Land Acquisition Officer relying on the grant certificate without even providing an opportunity to the petitioner to explain, being in violation of the principles of natural justice, even if the petitioner is said to have an alternative remedy, is no bar. The objection therefore, is over ruled.

21. In the light of the discussions made above, this petition is allowed. The order of the Land Acquisition Officer is quashed. Matter is remitted to his file with a

direction to re-inquire regarding the entitlement of the petitioner to claim compensation in the light of the discussions made above, after notice to him, within three months from the date of notice to the petitioner.

22. Sri Ravivarma Kumar, Counsel for the petitioner submits that the petitioners undertakes to appear before the Land Acquisition Officer without any notice form him, on 1.9.2003. Undertaking is recorded.