(2017) 03 KAR CK 0236

In the Karnataka High Court

Case No : 203349-203353 of 2014

SANTOSH & ORS APPELLANT

Vs

THE STATE OF KARNATAKA & ORS RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Land Acquisition Act, 1894, Section 30, Section 30, Section 30, Section 30, Section 31 (2), Section 31 (2), <a hre

Citation : (2017) 03 KAR CK 0236

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : SHIVAKUMAR KALLOOR, SHIVAPUTRA.S.UDBALKAR, B.B.PATIL, ? SHASHIKIRAN SHETTY, A.M.NAGARAL

Judgement

1. These petitions are filed challenging the Notifications issued under Section 28(1) and 28(4) of the Karnataka Industrial Areas Development Act, 1966 (for brevity ''the Act'') and to quash the Resolution passed by the 2nd respondent-KIADB thereby fixing the market value of the land acquired at Rs.12 lakhs per acre; Land is notified for the purpose of 5th respondent-Gulbarga Cement Company Limited/A Private Ltd., Company.

2. The petitioners are the owners in possession of various survey numbers of Kiranagi village in Gulbarga District. Their lands totaling about 71 acres is notified for acquisition. Arguments was addressed on both sides on merits of the case, however after conclusion of arguments a Memo dated 6.3.2017 was filed by the learned counsel for the petitioners Sri.Shivakumar Kalloor, in the Court Hall which reads thus: " In the above writ petitions, the petitioners are restricting their claim to the market value fixed by Advisory Committee with accrued interest (Annexure-G) as per Apex Court order. The petitioners may kindly be paid compensation amount as per the Advisory Committee Resolution Annexure-G Rs.16 lakhs with interest without prejudice to his rights questioning

acquisition, in the ends of justice."

3. In that view of the matter, now this Court is left with the following question: Whether the price fixed by the Advisory Committee is binding on the State, if not binding, which is the Forum for the petitioners to redress their grievance?

4. It is not in dispute between the parties that the Notification under Section 3(1) of the Act (Annexure-B) was published in the Gazette on 24.07.2012 declaring the several survey numbers of lands identified at Ferozabad, Somanathahalli and Kiranagi villages of Gulbarga Taluka, Gulbarga District as Industrial Area by the Ministry of Trade and Commerce. Notification under Section 28 (1) of the Act was also issued notifying proposal to acquire the above lands. Vide Annexure-D dated 21.08.2012 objections from the concerned/owners of the lands was called for under Section 29 (2) of the Act.

5. The petitioners herein filed their objection statements to the said Notification with the Special Land Acquisition Officer.

6. In pursuance of Section 29 (2) of the Act the Price Advisory Committee (for short ''Advisory Committee'') was constituted. The meeting of the Advisory Committee was held on 31.10.2013. To work out the market value of the lands by agreement of the beneficiary and the land owners. The Committee was headed by the District Commissioner, Members and Special Invitees and the SLAO as Conviner. After much deliberation the Deputy Commissioner announced that he would recommend 15 lakh rupees per acre and additional 1 lakh rupees in respect of the land laying within 100 meters from Jewargi9 Shahabad State High Way. However, said price was not acceptable to the land owners. In the 326th meeting of the Board held on 30.11.2013 it was recorded that compensation was agreed at the rate of rupees twelve lakhs per acre. Now the attack is on scaling down the compensation to 12 lakhs rupees per acre from 16 lakhs that too without notice to the petitioners.

7. Sri.Shivakumar.Kallur, learned counsel for the petitioners, submits that this is an Order passed behind the back of the petitioners. The petitioners have received notice from the 3rd respondent/S.L.A.O. to receive the compensation @ Rs.12 lakhs per acre which is not agreeable to them. In fact, the land value in the area is Rs.25 lakhs per acre since the land is situated abutting to the Highway. If the respondent is not agreeable to the consensus arrived in the Advisory Committee''s meeting i.e., Rs.16 lakhs per acre with interest, then the acquisition is deemed to have lapsed and fresh acquisition under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity ''The New Act, 2013) has to be initiated.

8. Learned counsel for the respondents No.2 and 3 Sri.B.B.Patil, submits that the Price Advisory Committee was constituted in terms of Section 29 of the Act and the Board has fixed the consent compensation at 12 lakhs rupees per acre. In case the petitioners are not agreeable to the consent compensation, the respondent is constrained to pass appropriate general award under the

provisions of the Act. As provided under section 29 of the Act, the Deputy Commissioner can enter into an agreement with the land owners, compensation shall be paid in terms of the agreement and it would be a consent award. In case there being no agreement, the Deputy Commissioner shall determine the compensation in accordance with law. In view of the judgment reported in Sri. C.V.Krishnareddy & others Vs. The State of Karnataka & others in W.P.Nos.16642-649/2012, the power to make an award and the power to give compensation are independently enshrined in the Act. In terms of Section 30 of the Act, the Land Acquisition Act 1894 shall mutatis mutandis shall apply in respect of the enquiry and award by the Deputy Commissioner, the reference to the court, the apportionment of compensation and the payment of compensation.

9. The incorporation of the Land Acquisition Act into the Act makes it a part of the Act. Repeal of the Land Acquisition Act 1894 has no bearing on the Act. In terms of section 28 (5) of the Act, with the issuance of Notification under Section 28(4), of the land has been vested in the State free of all encumbrances by operation of law. By drawing a general mahazar, possession of the land is taken over from the petitioners after issuing notice under section 28(6). Clearance under the Environment Protection Act has to be taken after the acquisition and before construction activity accordingly it is taken also. Hence, the writ petition may be rejected.

10. Sri. Shashikiran Shetty, learned counsel for the 5th respondent-Cement Company while seeking to sustain the notifications and the further steps taken in pursuance of the notifications submits that in terms of the Regulations under the Act prescribing clearance from various authorities of the State and Central Government, the respondent sought for requisite clearance from all the concerned Authorities to set up cement manufacturing industry. In terms of the judgment of the Apex Court in Om Prakash Vs. State of U.P. (1998)6 SCC 1 (para 30), in case majority of the land owners not contesting the acquisition, the entire acquisition proceedings cannot be faulted.

11. In the present case, out of 1821 acres proposed for acquisition in all 1410 acres is a consent acquisition and compensation is paid to the land owners. This respondent has deposited the entire compensation amount with the KIADB. A general award has to be passed by the respondents No.2 and 3 and compensation has to be disbursed to the land owners. In the event the land owners fail to receive the amount deposits shall be made in the Jurisdictional Civil Court.

12. Both sides have submitted their written arguments/synopsis of their written arguments also.

13. By their memo dated 06.03.2017 the petitioners are giving up their firm stand assailing validity of the acquisition. It is ok for them if compensation at 16 lakhs rupees per acre with interest is awarded and anything less than that, the acquisition proceedings is vitiated due to various factors. During the course of

the pendency of the proceedings the petitioners by way of an application dated 29.02.2016, alleged that ''5th respondent- Company does not want to set up Cement Factory and it wants to sell the whole project to one M/s. HEDLEBEGS Pvt. Co,. Ltd., and negotiation is entered with the said Company. When the 5th respondent does not want to implement its project it has no right to retain the lands. Another stroke on the acquisition proceedings is, acquisition of the land for the purpose of the single company is bad in view of the judgment of the Division Bench of this Court 2009 (5) AIR KAR (AR) (R) 343 A Janardhan Shetty and Another etc., vs Shantamma and Others etc., and Haribhau Siddappa Patil and others vs State of Karnataka Represented by the Secretary Department of Industry and Commerce and others 2013 (1) KCCR 491. It was the further ground of attack on the acquisition that some of the land owners not contesting the acquisition is not a ground to sustain the entire proceedings when it is found that acquisition was not for public purpose and the procedure was not in conformity with in the Act. (Placing reliance on 2013 (2) KCCR 1108 (DB) in the matter of Sri.Kakaral Ravi Kumar and others vs The State of Karnataka? and others)

14. The respondents No.2 and 3 have produced Annexure-R10/Clearance issued by Ministry of Environmental and Forests for setting up the project before the issuance of Final Notification.

15. It is shown vide Annexure ''R-13'' that after holding enquiry the S.L.A.O dropped proceeding in respect of 131.11G of land out of 1957.11G notified and proceeded with 180 acres of land for the establishment of proposed industry i.e., 3.5 million P.P.A. cement plant with 100 m.v. Thermal Power Plant. Vide Annexure-12 dated 11.10.2012, possession of the land notified is taken over by the revenue inspector under General Manager. Petitioners express ignorance about parting with possession of the land. Since it is a vast track of land symbolic possession is sufficient as held by the Apex Court in Delhi Development Authority in the case of Sukbir Singh and others with connected cases reported in 2016 SCC online SC 929 (Civil Appeal No.5811 of 2015) vide Annexure R-15 dated 21.05.2014 above lands vested with the government after possession is transferred to KIADB.

16. With regard to the apprehension expressed by petitioners that 5th respondent is taken over by ''Hidlebeg Burk'' Company etc., the counter from the 5th respondent is ''the 5th respondent is a subsidiary of Zuari Cements''. There is no change in the ownership of 5th respondent and it is parents company. The 5th respondent came to the fold of ''Hidlebeg Burk'' Cement group by virtue of acquisition that happened at international level. There is no fraud in the acquisition and no trading in the land is envisage. In fact provisions of the Act empowers KIADB to resume the land allotted to the 5th respondent if the land is not put in use to the purpose for which it was allotted (by written argument submitted on 03.03.2017).

17. With regard to the objection regarding compensation fixed by SLAO, the

submission on behalf of 5th respondent is, in respect of similar industries acquired during 2012-2013 and 2013-2014 the compensation was fixed at Rs.6 lakh per acre and in respect of acquisition of 2014-2015 in respect of Orient Cement it was Rs.6.5 lakh per acre and acquisition of 2014-2015 in favour of Lafarge Cement the compensation was fixed at Rs.9 lakh per acre.

18. The acquisition proceedings commenced in the year 2012. In view of the interim order operating in this case further proceeding is stayed though possession of the land is handed over to KIADB. The compensation at 12 lakhs per acre fixed by S.L.A.O. is double, to the compensation in the cases of acquisition in the close vicinity, and for similar industrial purpose.

19. It is the responsible statement made at the Bar that 5th respondent approached the government to set up cement industry, directly as permissible under provision of ''Karnataka Industries (FACILITATION) Act 2002''. They sought for 2475 acres, 400 acres for the Factory, 2075 acres for the mining of lime stone in various survey numbers of the villages. Though the same was approved by the State High Level Clearance Committee and the Government, the requirement of land was reviewed and reduced to 1821 acres from 2475 acres. It is thereafter KIADB was approached and a compensation is fixed at Rs.12 lakhs per acre. Already Rs.245.66 crores is paid by the 5th respondent to KIADB for acquiring the land. The farmers owning 1588 acres have received compensation and in respect of other 44 acres, compensation will be paid shortly. Thus 89% of the land owners have agreed and taken the compensation and only a balance of 189 acres is remaining. General Award is passed by KIADB for 110 acres on 12.1.2016. 74 acres of land is under stay by the Court. Clearance obtained by various Departments expired due to delay in acquisition and in view of the stay. The clearance from Railway Department State and other Government Agencies will expire very soon. The project provides employment to 400 to 450 individuals. The proposed cost of the project was Rs.1900 crores at the inception and it may enhance by Rs.2250 crores. The lands totally measuring 74 acres involved in the present cases is in the centre of the lands acquired. The plan of the factory and related installations have been finalized in terms of the technical planning.

20. There is nothing to disbelieve the submission of the respondent that 5th respondent approached the government under the Industrial Facilitation Act 2002 (For brevity ''Act 2002''). This is an act enacted to provide for the promotion of Industrial Development and facilitation of new investment to simplify the regulatory frame work by reducing procedure of requirement and rationalizing documents and to provide for investor friendly environment in the State of Karnataka. Under the above stated Act of 2002 State High Level Clearance Committee (Under Section 3) State Level Single Clearance Committee (Under Section 6) and District Level Single Window Clearance Committee (under Section 9) are contemplated. The State Level Single Clearance Window Committee considers the project proposal Under Section 3 (3) thus; (2) The committee shall

examine and consider the proposal is received from any entrepreneur relating to any Industrial and other projects to be set up in the state with an investment of rupees fifty crores and above in each case.

21. Thus, it is permissible and was legal also for the State High Level Clearance Committee to consider the proposal made by the single enterpriser/the 5th respondent.

22. Section 14 of the Act 2002 contemplates combined application form (CAF) and the committees noted supra dwell up on the proposal as per the said format and in case of acceptance of proposal direct the board (Industrial Area Development Board Established under Act as contemplated by sub section 2 of Act). As per the submission of the respondents the application forwarded by the State Level Single Window Clearance Committee was considered for acquisition of land and acquisition proceedings was initiated.

23. Another fold of contention that compensation has not been paid since the preliminary notification under Section 28 (2) of the Act was published on 21.08.2012 and the possession is not given by the owners, hence the acquisition proceedings is deemed to have been the lapsed by virtue of Section 29 and 30 "Fair Compensation and Transferee in Land Acquisition, Rehabilitation and Resettlement Act 2013". This legal issue is addressed by the Apex Court in the matter of SPECIAL LAND ACQUISITION OFFICER KIADB MYSORE AND ANOTHER VS. ANUSUYA BAI (D) BY LRS AND OTHERS. After a lucid and detailed discussion it is held that the new Act of 2013 is not applicable when the lands have been acquired under the provision of KIADB Act.

24. The petitioners are not disputing their participation in the meeting of Advisory Committee held by the Deputy Commissioner dated 31.10.2013 and the recommendation of the Committee at Rs.16 lakhs rupees per acre is acceptable to them, but for the Order of the SLAO in tapering the compensation to Rs.12 lakhs rupees per acre. Their contention that the SLAO who was one of the Member of the Committee had no authority to modify the Order of the Advisory Committee. The said order is at Annexure-H. The Advisory Committee passed resolution under section 29(2) of the Act: said provision reads thus: 29(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."

25. The advisory Committee is not a statutory body contemplated by Section 29 (2) of then Act. It is a body constituted to facilitate the intendment of Section 29 (2) of the Act. Under Section 29 (3) of the Act if no agreement can be reached, the State Government shall refer the matter 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.

26. Rule 14 of the Karnataka Industrial Areas Development Rules, 1966 (for short ''the Rules'') contemplates delegation of powers of the State Government

which reads thus: " 14. Delegation of powers of the State Government: The powers of the State Government under sub-section (2), (3), (6), (7) and (8) of Section 28 and Sub-section (1), (2) and (3) of Section 29 hereby delegated to the Asst. Commissioners in charge of Revenue Sub-divisions within their respective jurisdiction (or to the Special Land Acquisition Officers or the Additional Special Land Acquisition Officers in the Karnataka Industrial Areas Development Board with such jurisdiction as the State Government may specify from time to time: Provided that where such powers are delegated to the Special Land Acquisition Officer or the Additional Special Land Acquisition Officer, the Asst. Commissioner in-charge of the Revenue Sub-Division shall cease to exercise the powers in the areas within the jurisdiction of the Special Land Acquisition Officer or the Additional Special Land Acquisition Officer, as the case may be)."

27. The SLAO has not acted beyond his propriety in fixing the compensation at Rs.12 lakhs rupees per acre. It is not that the petitioners are out of relief. 28. In view of the interim stay granted in these cases, for the last three years, the matter is stalled on the mid day. If these petitions are taken to their logical end, the petitioners can approach the Deputy Commissioner with a request to refer the matter to the Civil Court for enhancement of compensation. In terms of Section 30 of the Act, the Land Acquisition Act 1894 shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to the court, the apportionment of compensation and the payment of compensation in respect of the lands acquired. Even if the petitioners do not appear before the Deputy Commissioner, he is obliged to deposit the compensation amount in the Civil Court as required by Section 31 (2) of the Land Acquisition Act, 1894. The petitioners can work out for their legitimate right, if so advised, before the Civil Court for enhancement of compensation amount. For the discussion supra petitions are rejected. Conveyance of the land in favour of 5th respondent shall be subject to the purpose for which it is acquired.

