

(2014) 09 KAR CK 0152

In the Karnataka High Court

Case No : Writ Petition No. 21042 of 2011 (LB-RES-PIL) and etc. etc

Shankar Rao

APPELLANT

Vs

The Commissioner, City Municipal Council

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipalities Act, 1964 — Section 268(2), 82, 82(1)
Karnataka Town and Country Planning Act, 1961 — Section 69

Citation : (2014) 4 AKR 758

Hon'ble Judges : D.H. Waghela, C.J; Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Aditya Sondhi, S.M. Chandrashekar, Sr. Advs., B.V. Nidhisree, Christopher, Cariappa and Co., Vishwanath H.M. and R.J. Bhusare, Advocate for the Appellant; M.B. Naragund, Sr. Adv., Sona Vakkund, R. Devdas, PGA, P.S. Malipatil, R.A. Patil, B.C. Jaka, Vilas Rao, M. More, S.S. Kumman, M.A. Samad Siddiqui, Gourish S. Khasampur and R.K. Ganure, Advocate for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The petitioners" grievance is over forcibly occupying and using up their properties for the road-widening purpose in Shahabad, a Town in Gulbarga District. It is their case that the respondent authorities, without resorting to the compulsory land acquisition proceedings and without paying any compensation, are occupying their properties situated on either side of the road. The respondent authorities are not even issuing notice to the occupants of the properties in question. Sri. S.M. Chandrashekar, the learned Senior Counsel appearing on behalf of the petitioners in W.P. Nos. 28457-28468/2002 and 28730-28749/2002, 1019/2008, 1121/2008, 40424/2008, 40425/2008, 40796/2008, 40797/2008, 81735/2009, 81737/2009 and 13477/2008 submits that there is no sanction in the master plan for the road-widening purpose. He submits that the bulldozing of the buildings only shows how barbaric the respondents" acts are. He submits that the respondent authorities are not treating the people as human beings. He requests the Court to issue general directions to the concerned authorities not to act arbitrarily and inhumanly in

these matters. He submits that the acquisition of land designated for a certain purpose is permissible under Section 69 of the Karnataka Town and Country Planning Act, 1961, only if the master plan provides for the same.

2. He generally submits that the property-owners have the supporting title deeds. Many of them have got the plans sanctioned before erecting the buildings. Even when they are in lawful possession of the properties belonging to them and developed by them, they are being dispossessed without following the due process of law. He submits that even if the owners and occupants of the properties in question file their claims, the concerned authorities may pass one line order holding that their claims are rejected or that they have encroached a portion of the road.

3. Sri. Aditya Sondhi, the learned Senior Counsel appearing for the petitioners in W.P. No. 21042/2011 submits that the property owners cannot be dispossessed without acquiring the land in a manner known to law and without issuing the necessary notice to the respective land owners/occupants for surrendering the possession. He also prays for a direction to the respondent authorities to rehabilitate the land-losers as per the National Rehabilitation and Resettlement Policy, 2007.

4. Sri. Christopher, the learned counsel representing M/s. Cariappa and Company for the petitioners in W.P. No. 19298/2011 submits that though the buildings are demolished, the owners are still in occupation of their properties. It is his fervent plea that they should not be dispossessed pending the enquiry.

5. Sri. M.B. Nargund, the learned Senior Counsel appearing on behalf of the City Municipal Council, Shahabad denies the allegations made by the petitioners' side. He submits that the road-widening project is in public interest. It is being taken up at the instance of the public of Shahabad Town. Many occupants have voluntarily surrendered their possession of the properties in question. He submits that 3/4th of the property owners are already allotted the houses under the Ashraya Scheme. He submits that the affected party may directly approach the District Court without paying any court fee, invoking Section 268(2) of the Karnataka Municipalities Act, 1964 ("the said Act" for short).

6. Sri. R. Devdas, the learned Principal Government Advocate submits that if the concerned parties file their claims before the Deputy Commissioner under Section 82 of the said Act, the Deputy Commissioner is bound to pass a speaking order. Urging this submission, he tries to allay the misgivings of the petitioners.

7. The submissions of the learned counsel have received our thoughtful consideration. That the road-widening is a public purpose cannot be disputed at all. The question that arises for our consideration is whether the road-widening is taking place using up the property belonging to the City Municipality of Shahabad or belonging to the private owners. This is a disputed question of facts. In the proceedings under Article 226 of the Constitution of India, it is not possible to arrive at any conclusion on such factual controversies. Such disputes cannot be

resolved without holding an enquiry. The decision on claim of property by or against the Municipal Council can be obtained by raising the dispute before the Deputy Commissioner invoking Section 82 of the said Act. The provisions contained in Section 82(1) and (2) of the said Act are extracted hereinbelow:

"82. Decision of claims to property by or against the municipal council. - (1) In any municipal area to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only, has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the municipal council, or by any person as against the municipal council it shall be lawful for the Deputy Commissioner after enquiry, of which due notice has been given to pass an order deciding the claim.

(2) Any suit instituted in any civil court after the expiration of one year from the date of any order passed by the Deputy Commissioner under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order provided that the plaintiff has had due notice of such order."

8. We therefore deem it necessary and just to relegate the aggrieved petitioners to the statutory remedy provided under Section 82 of the said Act. The petitioners are directed to file their claims in support of the ownership of the property, the buildings they have raised thereon, etc. before the Deputy Commissioner within two weeks from today. Similarly, the Shahabad Municipality will also file its claims, if it wants to take the position that the properties in question belong to it and in support of its allegations that the properties are encroached by the private parties. On examining the documentary evidence and after affording a reasonable opportunity of hearing to all the parties concerned, the Deputy Commissioner shall pass the order on the ownership of the property and allied questions.

9. If the Deputy Commissioner's order is not acceptable to any party, it is open to him/it to challenge the same before the civil court under sub-section 2 of Section 82 of the said Act.

10. If the Deputy Commissioner returns the finding that a particular property, being used for road-widening purpose, is owned by the Municipality and not by any private party, any future dispossession or demolition may be carried out strictly in accordance with law and after issuing notice to the occupants of such properties.

11. In the matters where the Deputy Commissioner returns the finding that any portion of the private land is being used for the road-widening purpose, owners of such land have to be compensated without any loss of time. The respondents shall have two options in the matter. They shall elect one of the two options

indicated hereinbelow:

(i) The Deputy Commissioner and the Government of Karnataka shall immediately resort to the acquisition of lands under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. All the acquisition proceedings, including the passing of award and disbursement of the compensation, shall be completed within six months from the date of passing of the order by the Deputy Commissioner holding that a particular private property is used up for and in the course of the road-widening.

(ii) If the above course is not resorted to by the Deputy Commissioner and the Government of Karnataka for whatever reason, then the Deputy Commissioner shall, within one month from the date of the time granted for complying with the above direction, pass an order determining the damages/compensation. If the quantification of the compensation-amount is not acceptable to any of the parties, they shall have the liberty of challenging the same before the competent civil court.

12. It is further made clear that whether the authorities resort to the route of compulsory acquisition of land or pass the order quantifying the damages/compensation, it shall also be open to the authorities to negotiate with the property-losers by offering alternative property to them in lieu of cash compensation. It shall also be open to the displaced persons to seek the benefits due under National Rehabilitation and Resettlement Policy, 2007, in cases where it is applicable, and also under the Ashraya Scheme of the State Government. These petitions are disposed of accordingly with no order as to costs.