
(2002) 07 KAR CK 0058
In the Karnataka High Court
Case No : Writ Petition No. 30558 of 2000

Smt. Andalamma	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11 A, 4 (1), 6 (1)

Citation : (2003) ILR (Kar) 1466 : (2002) 4 KCCR 2361

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Lawyers Inc, for the Appellant; H.B. Mahesh, High Court Government Pleader for Respondent - 1 and S.A. Nazeer, for Respondent - 2, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekaraiah, J.—The petitioner is the owner of the land measuring 3 acres 8 guntas in Sy. No. 30/1B of Madivala Village, Begur Hobli, Bangalore South Taluk. The said land was proposed to be acquired under a preliminary notification dated 26-11-1959 issued u/s 4(1) of the Land Acquisition Act (for short, "Act"). This was followed by the final notification dated 28-9-1965 issued u/s 6(1) of the Act.

2. I am told that the very land is the subject-matter of acquisition in the year 1965 for the purpose of Indian Institute of Astrophysics.

3. Though the final notification is of the year 1965, the Land Acquisition Officer has passed the award on 2-9-1969 and it is approved by the Deputy Commissioner on 5-9-2000. These facts are not disputed by the other parties.

4. The only question that arises for consideration is whether the acquisition proceedings have lapsed on the ground that no award has been passed within two years from the date of the final notification as required u/s 11A of the Act?

5. The learned Counsel for the petitioner submits that since the final notification is dated 28-9-1965 and the award has been approved on 5-9-2000, the entire acquisition proceedings would lapse u/s 11A of the Act.

6. In reply to this submission learned Counsel appearing for the second respondent-BDA submits that the award dated 2-9-1969 passed by the Land Acquisition Officer since approved by the Deputy Commissioner on 5-9-2000, the date of passing of the award were to be taken as 2-9-1969 as the approval dates back to the date of passing of the award by the Land Acquisition Officer and hence the proceedings would not lapse. It is further submitted on behalf of the BDA that since the petitioner has filed a claim petition claiming compensation she has no right to challenge the acquisition proceedings.

7. By way of reply the learned Counsel for the petitioner submits that even though the petitioner has filed a claim petition she is entitled for declaration to the effect that the proceedings would lapse as the proceedings had lapsed by operation of law and there is no award within two years from the date of the final notification.

Section 11A of the Land Acquisition Act reads as follows.-

"Period within which an award shall be made.--The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded".

From the reading of the section it is clear that if no award has been passed within the period of two years from the date of publication of the declaration, the entire proceedings for acquisition of land would lapse. If the final notification has been issued prior to the commencement of the Land Acquisition (Amendment) Act, 1984, there is a statutory duty on the authority to pass an award within two years from such commencement of the Amended Act. The explanation provides how to compute the period of two years for the purpose of considering whether the proceedings would lapse or not.

8. In the instant case the final declaration is dated 28-9-1965, whereas, the draft award passed by the Land Acquisition Officer is 2-9-1969. Even if this date is taken into account as the date of award, the award dated 2-9-1969 is after the expiry of two years from the date of the final declaration. If that is so, the entire proceedings would lapse. In view of this there is no reason to consider the other points raised by the learned Advocate appearing for the BDA.

The contention of the learned Counsel for the BDA is that the approval of the date of award by the Deputy Commissioner dates back to the date of passing of the award by the Land Acquisition Officer and is the relevant date for the purpose of calculating the limitation from the date of the final notification. I propose to consider the decision of the Full Bench of this Court in the case of Poornaprajna House Building Co-operative Society, Bangalore Vs. Bailamma @ Dodda Bailamma and Others, :

"In case the award is made and the sanction is granted by the Government within two years of the final publication of the notification u/s 6 then the signing of the award by the Land Acquisition Officer after the approval granted by the Government may not be necessary. In such a case approval would only be a formality to be observed and cannot be construed as an independent action on the part of the Government in replacing the award made by the Land Acquisition Officer. The question in such a case would be not when the approval was granted, but whether the approval has in fact been granted. In the present case the Land Acquisition Officer had determined the compensation payable for the lands acquired and has made a decision within a period of two years. Approval was granted by the Government within two years after excluding the period during which the stay was in operation. The date of grant of approval, though is a necessary step in the scheme of the Land Acquisition Act, is immaterial so long as the award is signed by the Land Acquisition Officer within the period of two years and also approval granted by the Government within two years".

From the reading of the above said decision it is clear that the passing of the award by the Land Acquisition Officer and the approval by the Government shall be within two years from the date of the final notification issued u/s 6(1) of the Act. In the instant case, admittedly, the date of award passed by the Land Acquisition Officer and the approval of the said award by the Deputy Commissioner are both beyond the period of two years from the date of final notification. Therefore, in my view, the above said decision has no assistance to the BDA.

9. Sri Nazeer, learned Counsel appearing for the BDA, nextly submits that since the petitioner has filed a claim petition claiming compensation she has no right to challenge the acquisition proceedings in view of the decision of this Court in the case of V.T. Krishnamoorthy Vs. State of Karnataka, .

10. The said decision has no application to the facts of this case. In the said decision the Division Bench of this Court has taken the view that the landowner having filed the claim petition claiming compensation, has no right to challenge the notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act. In the instant case, the prayer is for a declaration that the acquisition proceedings would lapse due to non-passing of the award within two years from the date of the final notification. From the reading of Section 11 of the Land Acquisition Act, it is clear that by operation of law, if no award has been passed within two years, the entire acquisition proceedings would lapse. If that is so,

whatever the law laid down by the Division Bench in- connection with the challenge to Sections 4(1) and 6(1) notifications on the ground of filing of the claim petition claiming compensation has no application, as stated earlier, to the facts of this case.

11. The final declaration in the case on hand is dated 28-9-1965, whereas, the award was passed by the Land Acquisition Officer on 2-9-1969 and the award was approved by the Deputy Commissioner on 5-9-2000 i.e., almost after 29 to 30 years from the date of passing the award. Even assuming that Section 11A of the Act is not in statute book, the State Government which acquired the properties is expected to pass the award within the reasonable time. If the Government fails to pass an award for a considerable length of time, any landowner could reasonably believe that the Government is not interested in acquiring the land as the same is not required for the purpose for which it was notified for acquisition. Therefore, I am of the considered view that if no award has been passed within a reasonable time, it is just and proper for the Court to declare the said proceedings as lapsed keeping in view the conduct of the acquiring authority. Hence, this is a fit case where a declaration is to be made declaring the acquisition proceedings as lapsed for the reasons stated above.

12. In the result, I pass the following order:-

Writ petition is allowed declaring the entire acquisition proceedings in respect of the land measuring 3 acres 9 guntas in Sy. No. 20/1B of Madivala Village, Begur Hobli, Bangalore South Taluk as lapsed.