

(2013) 12 KAR CK 0359

In the Karnataka High Court

Case No : Writ Petition No's. 12793-12794 of 2012 (LA-RES)

Smt. Hemavathi and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0359

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : P.B. Raju, for the Appellant; R.B. Satyanarayana Singh, Government Pleader for Respondent Nos. 1 and 2, Shri. K. Krishna, Advocate for Respondent No. 3, Shri. S.M. Chandrashekar, Advocate for Respondent Nos. 4, 5, 7 and 8 and served and unrepresented, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners and the learned counsel for the respondents. The facts, as stated by the petitioners, are as follows:

The petitioners, along with respondents 4 to 8, are said to be the co-owners of an extent of land measuring 1 acre 38 guntas and 4 guntas of A-Karab land classified under Rule 21(ia) of the Karnataka Land Revenue Rules, 1966, and more fully described in Schedule-A and also land measuring 1 acre 4 guntas and 26 guntas of A-Karab land in Sy. No. 15/4 of Benniganahalli Village, K.R. Pura Hobli, Bangalore East Taluk, which is described in Schedule-B herein. The petitioners are restricting their claim to lands described in Schedule-B.

2. The petitioners and the respondents 4 to 8 claim as legal heirs of Late Chennarayappa, who was the original owner of the land and he had two sons namely, Appalappa and Govindappa. The petitioners belong to Govindappa's branch and respondents 4 to 8 belong to Appalappa's branch. It is not in dispute that the said lands in Schedule-B were notified for acquisition by the respondents, as per notification dated 10/11/2008 under the provisions of the Land Acquisition Act, 1894 (LA Act, for brevity). Item No. 2 of the said

notification is in respect of the land in Sy. No. 15/4 in the name of Appalappa and Govindappa. The land had been acquired in favour of the third respondent and mutation had been effected in favour of the third respondent, as per mutation register entry MR No. 6/2009-10 and MR No. 10/2009-10. The beneficiary had deposited the compensation amount as on 4/10/2008 in case No. LAQ/SR/01/08-09. The same had not been paid to the petitioners or to the respondents 4 to 8. Respondents 4 to 8 had challenged the notification dated 10/11/2008 in W.P. Nos. 26752-754/09, which was dismissed on 19/4/2010, reserving liberty to the respondents 4 to 8, who were the petitioners therein, to approach the third respondent to make a claim to shift the foot over bridge, which was sought to be constructed over their land sought to be acquired. The acquisition had been complete and the compensation had been deposited. But the same, according to the petitioners, was not disbursed in their favour and therefore they had made a claim petition to the second respondent dated 26/8/2011, furnishing the title deeds in support of their claim. No further action was taken on their representation and it is in that background that the present petitions are filed, seeking a direction to the respondents to consider their representation and for payment of compensation.

3. The respondents have entered appearance and have resisted the petition. It is primarily the State Government, which has raised strong objection, as it was acquired by the State for the benefit of Bangalore Metro Rail Corporation, respondent No. 3. In the seven page statement of objections, where there is reference to earlier determination of compensation in respect of acquisition made in favour of Southern Railways and NGEF Limited, it is asserted that the petitioners are not entitled for any compensation as they have lost their right, title and interest in respect of the lands in question. However in paragraph-8 of the statement of objections, it is stated that consequent on acquisition of the petitioner's land for the Metro Rail Corporation, an award has been passed by the former Land Acquisition Officer, who had made payments to persons not entitled for the same and that having been noticed, action has been initiated by the Government to refer the matter to the Corps of Detectives, for an inquiry. However, no particulars were forthcoming as to the amount that is paid and the actual extent of land, in respect of which such compensation was paid.

4. It is in this background that it was opined that the State Government has not made out a case to resist the claim of the petitioners and therefore the Government Pleader, appearing on behalf of the State Government, had sought time to furnish better particulars and an additional statement of objections dated 20/11/2012, has been filed. In the said additional statement of objections, there is a contention that the lands in Sy. Nos. 15/2 and 15/4 were acquired in their entirety and the details of the same are sought to be referred to in a tabular form, indicating that lands in Sy. Nos. 15/2 and 15/4 were acquired in three installments, for the benefit of Railways, NGEF and Metro Rail Corporation, in the years 1962, 1980 and 2008, respectively. However, there are no details forthcoming, insofar as the land of the petitioners that was acquired for the

benefit of any of those three entities. In paragraph-4, there are particulars furnished as regards the compensation paid in respect of 16 guntas of land acquired in Sy. No. 15/4 in the name of Govindappa, who is the father-in-law of the present petitioner Nos. 1 and 2. There is also further reference to the enhanced compensation that was paid in favour of the said Govindappa, in respect of the same extent of land measuring 16 guntas, (which is incorrectly indicated as 14 guntas), in paragraph-4. In paragraph-5, the details of compensation paid to certain individuals, who, even according to the State, were not entitled to claim the compensation, are mentioned, who have received Rs. 64,37,314/-, each. It is these particulars which are referred to and reiterated in paragraphs 6 and 7 and it is further stated that as there is material to indicate that lands in Sy. Nos. 15/2 and 15/4 held by the ancestors of the petitioners and respondents 4 to 8, had already been acquired as afore stated, there is no substance in the claim of the petitioners. As the above statement of objections yet did not clarify as to what was the extent over and above 16 guntas of land in the name of Govindappa that was acquired, not having been clarified, notwithstanding the additional statement of objections, yet another additional statement of objections dated 14/12/2012 was filed. In the said additional statement of objections, it is claimed that insofar as the land bearing Sy. No. 15/2 is concerned, it is totally measuring 1 acre 38 guntas and apart from 4 guntas of kharab and there was total extent of 2 acres 2 guntas in respect of Survey No. 15/4 and therefore, it was 2 acres and 2 guntas in question.

The land in Survey No. 15/4 totally measured 2 acres 39 guntas, out of which 26 guntas was kharab land and by a notification dated 4.9.1962, the land in Survey No. 15/2 to the extent of 1 acre 16 guntas was acquired for the purpose of Railway Marshal Yard. The land bearing survey No. 15/4 to the extent of 28 guntas was acquired under the said notification and therefore, by notification dated 9.10.1980, the remaining extent of land in Survey No. 15/2, measuring 26 guntas, and 2 acres 11 guntas, including 26 guntas of kharab in survey No. 15/4, had been acquired for the benefit of the NGEF and possession had been handed over to the beneficiaries. The acquisition in respect of the above survey numbers being completed, the petitioners, it is stated, had no right of claim over the property in question. And it is thereafter that by notification dated 2.11.2008, that land in Survey No. 15/2, measuring 1 acre 38 guntas and 4 guntas of Kharab land and Survey No. 15/4, measuring 2 acres 39 guntas, including 36 guntas of kharab was acquired for the benefit of the Metro Rail Project. Even though the land was acquired earlier for the benefit of the Railways and NGEF, the revenue entries continued in the name of the ancestors of the petitioner as on the date of the issuance of the notification dated 2.11.2008 for the purpose of the Metro Rail Project and since their names were reflected in the RTC, their names have been shown in the notification. It is after issuing the final notification, the Land Acquisition Officer determined the compensation u/s 11 of the Land Acquisition Act, 1894 and an award was passed on 11.7.2010.

The Company Application in CA 330/2010 has been filed on behalf of the NGEF

before the Company Court in respect of the land in Survey No. 15/2 and also in respect of other land belonging to the NGEF. The Land Acquisition Officer has deposited a total sum of Rs. 59,50,52,640/- at the time of passing of the final award in respect of Survey No. 15/4. The Land Acquisition Officer, instead of paying the compensation in favour of the NGEF, had paid the amount in favour of six individuals namely, Narayana Swamy, Srinivas, Lakshamma, Varamahalakshmi, Parvathamma and Munilakshmamrma. The State Government, after having noticed the payment made in favour of persons, who were not entitled to any such amounts, initiated an inquiry against the Land Acquisition Officer and a criminal case is said to have been registered against him and the case has been referred to the Corps of Detectives and during the pendency of the inquiry, the then Land Acquisition Officer had expired and it is therefore, contended that the petitioners were not entitled to the said amounts.

However, inspite of the additional statement of objections filed on 14.12.2012, there is no material produced on record to indicate as to the total extent of land, which was in the name of Govindappa, having been acquired and compensation having been paid. From the material that is produced, as pointed out by the learned Counsel for the petitioners, the total extent of land that is acquired is only 16 guntas and the compensation paid as well as the enhanced compensation paid from time to time, is reflected from the annexures produced by the State Government. Therefore, the mere claim that the entire extent of land in Survey No. 15/2 and the land in Survey No. 15/4 has been acquired at various points of time and are ultimately acquired in favour of the BMRCL, which has in turn deposited the compensation amount does not substantiate the contention that the land which was earlier acquired in favour of NGEF has now been acquired for the benefit of BMRCL. That it is the said entity that would be entitled to the compensation amount is a contention taken in the absence of any material to indicate that any land, other than 16 guntas of land belonging to Govindappa, had been acquired and for which compensation has been paid. It cannot be said that the State Government has established its case as to there being no land available as belonging to the petitioners or their ancestors, which has been acquired and to which they are entitled for compensation. In the absence of any such material and notwithstanding any proceedings pending before the Company Court insofar as the claim made by the Official Liquidator who now represents NGEF, which is a company in liquidation, the petitioners, on the basis of the material that is available on record in these proceedings, would necessarily be entitled to the prayer as it can safely be said that the State Government has not been in a position to establish that the entire land belonging to the ancestor of the petitioners, namely, Govindappa, son of Chennarayappa has been acquired in its entirety, except 16 guntas of land out of the total extent held by them of 1 acre 30 guntas, including the kharab land of 26 guntas. Apart from 16 guntas, the remaining extent of land has certainly been acquired for the benefit of BMRCL and the BMRCL had already deposited the compensation amount. The State Government, for whatever reason, having disbursed it in

favour of third-parties, who were not entitled to the same and notwithstanding the contention that it may be NGEF, which may be entitled to such amount, the petitioners or their ancestors not having been paid any compensation in respect of the remaining extent of land after accounting for 16 guntas as aforesaid, are entitled to the compensation amount.

Accordingly, the respondents-1 and 2 are directed to consider the case of the petitioners and to disburse the compensation in respect of the land which has been acquired, for which, however, they have not been paid the compensation. Though it is shown as 2 acres and 39 guntas in the final notification at Annexure-A to the writ petition, the petitioners are restricting their claim to 1 acre and 30 guntas having regard to the earlier acquisition to the extent of 16 guntas. Respondents 1 and 2 are hence directed to expedite the disbursement of the compensation amount expeditiously, in any event, within a period of eight weeks from the date of receipt of a certified copy of this order.