

(2016) 04 KAR CK 0083

In the Karnataka High Court

Case No : Writ Appeal Nos. 1396-1401 of 2009 (LA-KIADB)

Smt. Janet Shakunthala Maben

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1)

Citation : (2016) 5 KantLJ 328

Hon'ble Judges : Mohan M. Shantanagoudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Sri. Clifton D. Rozario, Advocate, for the Appellant; Sri. E.S. Indires, HCGP, for the Respondent No. 1; Sri. Basavaraj V. Sabarad, Advocate, for the Respondent Nos. 2 and 4; Sri. K. Shashikiran Shetty, Sr. Counsel a/w Miss. Anuparna Bordoloi, Advocate,

Final Decision : Dismissed

Judgement

1. Feeling aggrieved by the order dated 4-2-2009 passed in Writ Petition No. 13006 of 2007 (KIADB) the unsuccessful writ petitioners have filed these intra-Court appeals.

2. The records reveal that the appellants are owners of certain portions of the lands bearing Sy. Nos. 22/1P3, 22/5, 22/7, 36/7, 126, 122/OP1, 18/5P2, 22/1P2, 22/2, 22/3, 22/4, 22/1P6, 36/3, 37/8, 37/9, 23/3, 28/7 and 28/15 situated at Santhur Village of Udupi Taluk; the said lands along with various other lands were sought to be acquired by the Karnataka Industrial Area Development Board ("KIADB" for short) by issuing notification (preliminary notification) dated 21-5-1998 under Section 28(1) of the Karnataka Industrial Areas Development Act, 1966 ("KIAD Act for short) for establishing "ash pond" for the purpose of storing ash generated out of a mega power project of 1015 Mega Watts established by Nagarjuna Power Corporation Limited (respondent 3 herein); totally an area of 509.76 acres was notified under the said preliminary notification dated 21-5-1998; notices were issued to all the landowners whose

lands were sought to be acquired; objections were filed by some of the landowners; after holding enquiry, the order came to be passed under Section 28(3) of the KIAD Act concluding that an area of 216.44 acres needs to be acquired; ultimately, the notification (final notification) under Section 28(4) of the KIAD Act was issued on 9-10-2006 confining the acquisition of lands to an extent of 132.36 acres; the lands of the appellants herein/writ petitioners also come within the said extent of 132.36 acres which are acquired under the final notification; the total extent owned by the appellants/writ petitioners involved in these writ appeals is 9.84 acres only; all other land losers who have lost lands to an extent of about 122 acres have given their consent for acquisition of the lands; the award was passed with the consent of such landowners and all such landowners who have lost their lands have accepted the compensation by consent.

However as mentioned supra, only these appellants questioned the acquisition notification by filing the Writ Petition No. 13006 of 2007. The learned Single Judge by the impugned order dated 4-2-2009 dismissed the writ petition and consequently confirmed the acquisition notifications. The order of the learned Single Judge is appealed in these writ appeals by the unsuccessful writ petitioners.

3. Heard Sri Clifton D. Rozario, learned Advocate for appellants 1 to 6 and learned Counsel for respondents.

3-A. Learned Advocate for the appellants submits that the notices are not issued to the appellants by the Land Acquisition Officer ("LAO" for short) before conducting the enquiry; the objections filed by some of the appellants are not considered by the LAO effectively inasmuch as he has not applied his mind to the facts of the case while rejecting the objections; while passing the order under Section 28(3) of the KIAD Act after conducting enquiry, the LAO has observed that the permission and clearance by the State and the Central Government Authorities will have to be taken by the beneficiary subsequently at the time of establishing the project; as a matter of fact, the beneficiary ought to have taken necessary permission or clearance from the State and the Central Government Authorities for establishing "ash pond" prior to initiation of acquisition proceedings.

Learned Counsel for the appellants submits that in the notification dated 14-9-1999 issued by the Ministry of Environment and Forests of the Central Government under Rule 5(3) of the Environment (Protection) Rules, 1986, it is clarified by the Central Government that every coal based thermal power plant commissioned subject to the environmental clearance conditions stipulating the submission of an action plan for full utilisation of "fly ash" shall, within a period of nine years from the publication of the said notification, phase out the dumping and disposal of fly ash on land in accordance with the plan. Thus according to the learned Counsel, no thermal plant is permitted to retain "fly ash" to any extent in the project area after nine years from the date of the said notification i.e., from

14-9-1999 and consequently the beneficiary cannot collect fly ash in its premises after 14-9-2008 (i.e., after nine years from 14-9-1999) and consequently the area which is sought to be acquired for the purpose of "ash pond" for dumping of Ash would not be necessary at all after 14-9-2008.

Relying upon the judgment of the Apex Court in the case of Karnataka Industrial Areas Development Board v. C. Kenchappa and Others, (AIR 2006 SC 2038). learned Counsel for the appellants submits that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that ecology and environment is not gravely impaired. He contends that since the Central and the State Government Authorities did not give any clearance prior to the preliminary notification, the process of acquisition should not have been started. He further submits that the preliminary notification is dated 21-5-1998 and the final notification dated 9-10-2006 and hence it is clear that the final notification is issued after eight years from the date of preliminary notification; such delay in issuing the final notification has remained unexplained and hence the final notification should not have been issued after long delay of eight years; that the Pollution Control Board has given consent for acquisition of 100 acres for establishing "ash pond", but the land which is acquired under the final notification is to the extent of about 132.36 acres. Consequently the excess area of 32 acres needs to be denotified inasmuch as the said area is not required for establishing ash pond. Lastly Mr. Clifton D" Rozario, in the alternative, submits that the appellants should be given more compensation in the form of damages because of the delay on the part of the authorities in issuing final notification.

4. Sri Clifton D. Rozario relying upon the judgments in Om Prakash and Another v. State of Uttar Pradesh and Others, (1998) 6 SCC 1. and Radhy Shyam v. State of Uttar Pradesh, (2011) 5 SCC 553. submits that the order under Section 28(3) of the KIAD Act is akin to the order to be passed under Section 5-A of the Land Acquisition Act, 1894; the said provision confers a valuable right in favour of a person whose lands are sought to be acquired; the hearing given to a person must be an effective one and not a mere formality; formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones; inquiry under Section 28(3) of the KIAD Act is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution of India though right to property has now no longer remained a fundamental right. He contends that the order passed by the LAO under Section 28(3) of the KIAD Act does not assign any reason for rejecting the statement of objections filed by the landowners. The said order is mechanically passed by the LAO without applying his mind as required under law.

5. Sri Shashi Kiran Shetty, learned Senior Advocate appearing on behalf of the 3rd respondent - beneficiary submits that an area of 132.36 acres is absolutely

required for the establishment of ash pond; having of ash pond to such an extent is absolutely necessary for thermal projects to carry on its activities. Relying on the "note issued by Central Electricity Authority, New Delhi in September 2010 relating to review of land requirement for thermal power stations", he submits that out of the total extent needed for establishing the thermal project, an area of 21.4% is needed for the purpose of having "ash pond"; more area for Ash disposal is needed, in case, if indigenous coal is used for thermal project; comparatively less area is needed for Ash disposal, in case, if the imported coal is utilised by the thermal project; since the 3rd respondent is generally using imported coal, it needs less area for Ash disposal and according to him, an area of 133 acres is sufficient and is absolutely necessary for having an "ash pond" looking to the fact that the beneficiary is producing 1015 Mega Watts of electricity as of now. He draws the attention of the Court to the fact that recently permission is granted to the 3rd respondent to produce about 1200 Mega Watts of electricity; that the notification dated 14-9-1999 relied upon by the appellants issued under Rule 5(3) of the Environment (Protection) Rules, 1986 is clarified further in another notification issued on 3-11-2009 in respect of storage of "fly ash" out of the total extent of 132.36 acres of land which is acquired under the final notification, the landowners of about 130 acres have already received compensation without any objection; they have consented for the amount of the compensation also; except appellants 3 and 6, all the other four appellants also have received compensation during the pendency of the appeals; that the appellants are virtually challenging the project itself and not the land acquisition for the project inasmuch as the appellants 3 and 6 herein are before the National Green Tribunal by raising various environmental issues against respondent 3. He further submits that the writ petitions filed by various land losers who have lost their lands for establishment of main thermal project are all dismissed by this Court; the reason for delay of eight years in passing the final notification is duly explained by respondent 3 in its statement of objections; looking to the reasons assigned by respondent 3, it cannot be said that the delay of eight years is unreasonable. He also submits that the clearances required for establishment of the project as well as "ash pond" are obtained by the 3rd respondent prior to 2005 itself; that the judgment in the case of C. Kenchappa has got prospective effect and the conclusion reached therein cannot be made applicable to the facts of this case inasmuch as the acquisition process was started in the year 1998 itself in the matter on hand; that the thermal project is commissioned in the year 2010 and from the said year, the electricity is being generated and 25% of the Karnataka State is being fed with the said electricity supply; no motive can be attached for the process of acquisition inasmuch as the land which is acquired finally is only to an extent of 132.36 acres though the preliminary notification was issued for an area of 509.76 acres. Lastly, he submits that the appellants cannot be paid higher compensation than the other land losers merely because they are fighting this litigation.

6. Sri Sabarad, learned Advocate appearing on behalf of the KIADB submits that

except appellants 3 and 6, all other four appellants have received the compensation; the appellants 1, 2, 4 and 5 have received the compensation without any protest as agreed among the KIADB, beneficiary and the land losers in the project. The four appellants mentioned supra have executed the agreements agreeing that they will not seek enhanced compensation by approaching the Civil Court, meaning thereby appellants 1, 2, 4 and 5 have consented for the acquisition notifications and award amount. Lastly, he submits that appellants 3 and 6 are owners to an extent of 2.72 acres only. Thus according to him, the litigation as of now is only with regard to 2.72 acres out of 132.36 acres which is acquired. Relying upon the documents maintained by the Board, he submits that the notices were issued to all the landowners including the appellants herein and most of them have filed their objections; only two of the appellants have appeared during the course of enquiry and the rest of the appellants did not care to appear during enquiry.

7. Learned Government Advocate also argued in support of the judgment of the learned Single Judge.

8. We have perused the entire material on record including the records maintained by the Acquiring Authority/Board.

It is clear from the records maintained by acquiring authority that the 1st appellant was served with notice through her daughter-in-law. The objections were filed by the 1st appellant. After the demise of the 1st appellant-Janet Shakunthala Maben, her legal representatives are brought on record in this appeal. During the pendency of this appeal, the legal representatives of the 1st appellant have received compensation from KIADB by executing an agreement consenting for award.

The 2nd appellant is also served with the notice. He has also filed statement of objections.

The 3rd appellant is also served with the notice and it has sent its objections through post.

Insofar as the 4th appellant is concerned, she is the owner of the land bearing Sy. No. 22/1D to an extent of 1 acre 56 guntas. The 3rd appellant is also the owner of another portion of very Sy. No. 22/1D. In this context, Sri Sabarad, learned Advocate appearing on behalf of the 4th respondent-KIADB submits that the notice to 4th appellant in respect of Sy. No. 22/ID is deemed to have been served inasmuch as the 3rd appellant is served, who is the owner of another portion of the very property. But, such submission cannot be accepted. Each land loser should be served with notice. However the fact remains that the 4th appellant has received the compensation without any objection during pendency of these appeals.

5th appellant was also served with the notice. He is also paid compensation.

In respect of the 6th appellant also, notice was served on him.

The copies of the notices served on appellants 1, 2, 3, 5 and 6 and the statement of objections filed by them are found in the records of KIADB. Sri Cliffton D" Rozario, learned Advocate for the appellants submits that there is some difference in the sub-divisions of the survey numbers mentioned in the notices. Such contention cannot be accepted at this appellate stage inasmuch as there are bound to be divisions and sub-divisions of survey numbers by passage of time. But the fact remains that those appellants knew that they are the owners of particular piece of land and have filed their statement of objections. As mentioned supra, appellants 1, 2, 4 and 5 have also received compensation during pendency of this appeal.

9. The order passed under Section 28(3) of the KIAD Act after enquiry clearly reveals that the 2nd appellant has appeared and submitted the documents relating to his ownership and he has prayed for compensation, which means practically the 2nd appellant has not even objected for acquisition even during the course of enquiry under Section 28(3) of the KIAD Act. The order under Section 28(3) of the KIAD Act further reveals that the notices were issued to the landowners/interested persons and mahazar was drawn in respect of the persons who have refused to receive the notices sent by post. Opportunity to the landowners/interested persons to file objections regarding the acquisition of the lands was offered on 30-1-1999 and 23-2-1999 at the Office of Santhur Mudarangadi Grama Panchayat Office. After giving opportunity to all the land losers, the enquiry came to be held and the order came to be passed under Section 28(3) of the KIAD Act. Thus we find that absolutely there is no violation of principles of natural justice.

There cannot be any dispute that the property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Section 28(3) of the KIAD Act. A public purpose, however, laudable it may be, does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. It is relevant to note that in the matter of Radhy Shyam urgency provision under Section 17(1) of the Land Acquisition Act was invoked and in that context, certain observations mentioned supra as contended by appellants" Advocate, are made by the Apex Court. However the law mandates that the land loser should be heard effectively before passing the order under Section 28(3) of the KIAD Act.

The submission of the learned Counsel for the appellants that the order under Section 28(3) of the KIAD Act is vague and cryptic cannot be accepted inasmuch as the order under Section 28(3) of the KIAD Act runs to about 28 pages and the same contains the details relating to issuing of notices to the landowners, inviting objections, particulars of the persons who have filed statement of objections, particulars of the persons who were present at the time of hearing and ultimately final order is passed. The LAO has adverted to the case of each of the land losers including certain appellants herein. The order passed under Section 28(3) of the

KIAD Act specifies the list of persons and the respective survey numbers and the extent of the land of the persons who received the notices personally. It also discloses as to how many persons have filed the statement of objections and as to how many persons have not objected for land acquisition. It is also mentioned in the very order that the beneficiary under the acquisition notification has to rehabilitate the displaced persons as per the State Government order dated 30-4-1997. After considering the statement of objections as required in law, the order under Section 28(3) of live KIAD Act is passed. Certain lands wherein the temple, prayer hall and the school were in existence are dropped from acquisition. Finally, the said order discloses as to the extent of the land and actual survey numbers which would be acquired under the final notification. The order dated 13-12-2000 passed under Section 28(3) of the KIAD Act discloses that the total area of 216.44 acres shall be acquired. On going through the order under Section 28(3) of the KIAD Act, we are of the clear opinion that the LAO has applied his mind as required in law to the facts and circumstances of the case and thereafter has passed the said order. The order under Section 28(3) of the KIAD Act passed by the LAO clearly depicts application of mind on the part of the LAO. At the cost of repetition, we observe that all the parties who were present at the time of oral hearing were heard and thereafter said order is passed.

10. It is not in dispute that the total extent notified under preliminary notification issued under Section 28(1) of the KIAD Act is 509.76 acres. After enquiry, an order came to be passed under Section 28(3) of the KIAD Act wherein it is decided to acquire 216.44 acres. Ultimately, in the final notification issued under Section 28(4) of the KIAD Act, only an area of 132.36 acres is acquired. It is also not in dispute that the total extent involved in these six appeals is 9.84 acres. Other landowners in respect of the remaining area of about 123 acres have consented for acquisition and award and have not questioned the acquisition notification. They have received the compensation as fixed between the parties with consent. So also it is not in dispute that appellants 1, 2, 4 and 5 have received compensation during the pendency of these appeals and they have also executed consent agreements with KIADB. The compensation paid to them is again based on the consent of the parties. Hence, only the appellants 3 and 6 have not received compensation and they are the owners of the land totally to an extent of 2.72 acres only.

11. It is also not in dispute that the possession of all the lands including the lands of the appellants, more particularly the lands of appellants 3 and 6 is taken long back by KIADB, which in turn has handed over the same to the 3rd respondent herein. It is also not in dispute that the thermal project is established and it has commenced working since the year 2010. From that year onwards, the electricity is being generated. Merely because the order under Section 28(3) of the KIAD Act, after holding enquiry, was passed in respect of 216.44 acres of land and that the final notification is issued for 132.36 acres of land, it cannot be said that the acquisition process is illegal. As mentioned supra, though the

preliminary notification was issued to an extent of 509.76 acres of land, the order under Section 28(3) of the KIAD Act was passed after due enquiry in respect of 216.44 acres of land. Ultimately, under the final notification an area of 132.36 acres only is acquired. These facts would clearly reveal that the land which is actually needed for the project is acquired and KIADB has not acquired only excess land than needed.

12. It is the contention of the appellants that though other land losers did not question the acquisition notifications, the appellants herein can challenge the acquisition. The non-questioning of notifications by other land losers would not debar the appellants herein from questioning the acquisition notifications.

There cannot be any dispute that one owner may challenge the acquisition, whereas the other owner may be satisfied with the acquisition and ask for compensation and even for enhancement of compensation. Merely because one person has accepted the compensation, the other person cannot be estopped from challenging the acquisition. Nobody can come in the way of the writ petitioners/appellants challenging the acquisition notification. However the petitions questioning the acquisition notifications will have to be decided based on the merits of each case. In the matter on hand, as mentioned supra, the total extent of land owned by the six appellants is 9.84 acres only and they have questioned the final notification under which total extent of 132.36 acres is acquired, which means the land losers who have lost their lands to an extent of 122 acres have not questioned the acquisition notification and they have accepted the amount of compensation by giving their consent. During the pendency of these appeals, except appellants 3 and 6, the remaining four appellants have also received compensation. Appellants 1, 2, 4 and 5 have executed separate agreements with the KIADB which show that they have accepted the compensation as agreed between the land losers and the KIADB. Appellants 3 and 6 are the owners to an extent of 2.72 acres only. It is not the case of the appellants that the entire land acquired to an extent of 132.36 acres is not utilised for the purpose of "ash pond". It is also not in dispute that the thermal power project is already commissioned and the electricity generation is being proceeded with since 2010. In view of the same, in our considered opinion, it is not open for the appellants to pray for denotifying their lands, more particularly when their lands are also already used for "ash pond" after taking possession of the same.

13. As mentioned supra, learned Advocate for the appellants relying upon the judgment in the case of C. Kenchappa submits that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that ecology and environment is not gravely impaired. It is also concluded by the Apex Court that the clearance from the Karnataka Pollution Control Board also needs to be obtained before the land is allotted for development. According to the appellants, these directions of the Apex Court ate

not followed in this case. The said submission cannot be accepted. The judgment in the case of C. Kenchappa was passed by the Apex Court on 12-5-2006. Such directions issued by the Apex Court will have prospective effect inasmuch as, it is clearly mentioned in paragraph 97 of the said judgment that "in future", before acquisition of lands for development, the guidelines need to be followed. But in the case on hand, the preliminary notification was issued as far back as on 21-5-1998; the enquiry was held after giving opportunity to the parties and an order came to be passed under Section 28(3) of the KIAD Act, on 13-12-2000. It is not in dispute that the Environmental Clearance Certificate in the matter on hand was obtained on 20-3-1997. The consent for establishment of thermal project by the Pollution Control Board was obtained on 31-8-2005. Apart from the same, majority of other requisite permissions were obtained by the beneficiary for the establishment of the thermal project prior to 2005 i.e., prior to issuing of the final notification. Ultimately, the final notification was issued on 9-10-2006, which means that almost majority of necessary permissions were taken by the 3rd respondent prior to the judgment of the Apex Court in the case of C. Kenchappa. Moreover, as observed by us, the dictum laid down by the Apex Court has prospective effect.

14. It is no doubt true that under the notification dated 14-9-1999 issued by the Ministry of Environment and Forests under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, it is necessary to conserve top soil and prevent the dumping and disposal of fly ash discharged from coal based thermal power plants on land. Every coal based thermal power plant commissioned subject to environmental clearance conditions stipulating the submission of an action plan for full utilisation of fly ash within the period of nine years from the publication of the notification, phase out dumping and disposal of the fly ash on land in accordance with the plan. The purport of the said notification is to prevent the dumping of the ash in the premises for years together in order to protect the environment. The entire ash will have to be disposed of within the period of nine years from the date of the said notification i.e., from 14-9-1999. Learned Counsel for the appellants relying upon the said notification submits that no ash can be dumped and preserved after nine years from 14-9-1999. Thus according to him, the ash cannot be dumped after 14-9-2008 and consequently no area is required for "ash pond" at all.

The said submission cannot be accepted inasmuch as certain area for "ash pond" is absolutely necessary for the thermal power project as is clear from the "note relating to review of land requirement for thermal power stations" issued by the Central Electricity Authority, New Delhi during September 2010. An area of 21.4% of land is required for establishment of ash pond" out of the total extent meant for establishing the thermal power plant, which means more than one-fifth of the total extent of the land required for thermal power project has to be earmarked for "ash pond".

15. The notification dated 14-9-1999 referred to supra is explained further by the

Ministry of Environment and Forests in another notification dated 3-11-2009. Under the notification dated 3-11-2009, the Ministry of Environment and Forests issued directions for restricting the excavation of top soil for manufacture of bricks and promoting the utilisation of fly ash in the manufacture of building materials and in construction activity within a specified radius of 100 kilometers from coal based thermal power plant. It is also clarified in the said notification that the term "fly ash" means and includes all categories or groups of coal or lignite ash generated at the thermal power plant and collected by Electrostatic Precipitator ("ESP" for short) or bag filters or other similar suitable equipments; bottom ash is the ash collected separately at the bottom of the boiler; pond ash is the mixture of ESP fly ash and bottom ash, but, for the purpose of notification dated 3-11-2009, the term "fly ash" means and includes all ash generated such as ESP ash, dry ash, bottom ash, pond ash and mound ash as the objective is to utilise all the ashes. Under the notification dated 3-11-2009, it is clarified that such fly ash should be utilised for manufacture of bricks, manufacture of building materials and for other construction activities within the specified radius of 100 kilometers from the thermal power plant. In that regard, it is clarified that the new coal based thermal power stations have to achieve the targets of fly ash utilisation as per Table III given below:

"Table III

SI. No.

Fly ash utilisation level

Target

(1)

(2)

(3)

1

At least 50% of fly ash generation

One year from the date commissioning.

2

At least 70% of fly ash generation

Two years from the date commissioning.

3

90% of fly ash generation

Three years from the date commissioning.

4

100% of fly ash generation

Four years from the date commissioning.

The unutilised fly ash in relation to the target during a year, if any, shall be utilised within next two years in addition to the targets stipulated for these years and the balance unutilised fly ash accumulated during first four years (the difference between the generation and utilisation target) shall be utilised progressively over next five years in addition to 100% utilisation of current generation of fly ash."

This means the "fly ash" which is generated under thermal project will have to be utilised and phased out regularly for the aforementioned purposes. Hence, it is but natural that certain quantity of ash would have to be stored for some period of time for the purpose of utilising the same for the brick industry and for manufacture of other building materials and for construction activities. It is also by now clear that fly ash is utilised for manufacturing cement also. It is needless to observe that certain time is required for getting the ash cooled for the purposes of transportation. In this view of the matter, the establishment of "ash pond" is absolutely necessary for the purpose of generation of electricity by the coal based thermal power stations like the 3rd respondent.

16. We have already mentioned in the preceding paragraphs that adjoining land was acquired for the purpose of establishing thermal power plant in question. The land losers in the said main project had approached this Court by filing the writ petitions challenging the acquisition of their lands and such writ petitions are dismissed and consequently the acquisition of lands for the purpose of main project is already confirmed in W.P. Nos. 23885 to 23892, 38730 and 38731 of 1999 disposed of on 9-12-1999. As mentioned supra, it is necessary to have the "ash pond" for the purpose of establishing main thermal power project. The land to an extent of 21.4% is absolutely needed (as prescribed by Central Electricity Authority) for the purpose of "ash pond" in order to establish the thermal power project.

17. Learned Counsel for the appellants as mentioned supra argued that the final notification is issued after eight years from the date of the preliminary notification and this period of eight years cannot be said to be reasonable time and the same has remained unexplained. In our considered opinion, the reason for such delay is properly explained by the 3rd respondent. The respondent 3 had obtained majority of statutory approvals by 1999-2000 to set up the power plant. Totally 69 clearances/approvals are obtained by the 3rd respondent from the Government of Karnataka and Government of India and various other departments. The list of clearances obtained by the 3rd respondent is produced along with the statement of objections at Annexure-R5. However the issue relating to the "Payment Security Mechanism" to be provided by the State Government against purchase of Power by Karnataka Power Transmission Corporation Limited was pending consideration before the State Government.

This Court in Writ Petition No. 406 of 2001, disposed of on 27-8-2001 directed the State Government to provide payment security mechanism to the 3rd respondent as per the earlier policy/promise so that project becomes bankable. The said order was challenged by the State Government in Writ Appeal No. 5892 of 2001. The Division Bench of this Court by its order dated 3-4-2002 directed the State Government to meaningfully reconsider the matter on the payment security mechanism. Accordingly, the State Government reconsidered the matter and passed the order on 16-2-2004 agreeing to provide security payment mechanism to make the project of the 3rd respondent bankable. Only after getting the clearance from the State Government relating to payment security mechanism, the process of acquisition continued. Thereafter respondent 3 obtained other clearances from the other Statutory Authorities including Pollution Control Board and after getting clearances from the Statutory Authorities, final notification came to be issued. Hence in our considered opinion, the delay in issuing final notification is not unreasonable as contended by the appellants, so also the delay is properly explained.

18. As mentioned supra, learned Advocate for the appellants submits that the Pollution Control Board has consented for acquisition of 100 acres of land for establishing "ash pond", but an area of about 132 acres is acquired under the final notification. It is no doubt true that the Pollution Control Board has given Consent for Establishment to M/s. Nagarjuna Power Corporation Limited to establish the Power Project of capacity 2 x 507.5 at Yellur and Santhur Villages of Udupi Taluk. The total extent of 650 acres was permitted for Thermal Power Project by Pollution Control Board and out of that, ash dump area is about 100 acres (which is less than 21.4% prescribed by Central Electricity Authority). It is mandated by the Pollution Control Board that respondent 3 shall provide "ash pond" in an area of 100 acres at Santhur Village and other conditions are also imposed. Looking to the tenor of permission granted by the Pollution Control Board, it appears that an area of 100 acres has to be compulsorily provided by the 3rd respondent for "ash pond". That does not mean that more area should not be provided for ash pond. There cannot be any dispute that the generation of Ash depends upon the user of the indigenous coal or imported coal. It is borne out from the records and it is not disputed that if indigenous coal is utilised, there will be more ash and consequently more area is required for "ash pond". If the imported coal is utilised for generation of electricity, then less ash will be generated and consequently less area is required for "ash pond". As is clear from the notification of the year 2009 mentioned supra, the fly ash including the bottom ash, pond ash, ESP ash, mound ash, slurry etc., will have to be utilised for brick industry, cement industry, welding material industry etc. Moreover, the Central Electricity Authority, as mentioned above, has prescribed for reserving 21.4% of the total area of project for having "ash pond". The Pollution Control Board has permitted to establish Thermal power project within an area of 650 acres. 21.4% of 650 acres would be about 139 acres, which means an area of 139 acres is to be reserved for "ash pond" as per Central Electricity Authority.

Under the impugned notification an area of 132.36 acres is acquired, which is less than the prescribed limit. Hence the argument of appellants Counsel, in this regard cannot be accepted. In view of the same, we are of the opinion that Counsel for respondent 3 (beneficiary under acquisition) is justified in arguing that Ash dumping area at least to an extent of 133 acres required. It also needs to be kept in mind that the generation of electricity may be expanded in future from time to time. In case if the capacity to generate electricity is expanded from time to time, it is but natural that more area for "ash pond" is required. There is no allegation whatsoever made by the appellants that acquired area is misutilised by respondent 3. On the other hand having regard to the material on record, it is clear that the entire area of 132.36 acres is utilised for "ash pond".

19. To find out the suitability of the land for establishing thermal power projects which are vital for the development of the country, the same are entrusted to the experts in the field. Obviously it comprises of persons having vast knowledge and expertise in the field of thermal power project and its maintenance. The Courts are not equipped to decide upon the viability and feasibility of the particular project. However the Courts can nullify the acquisition of the land in rare cases, wherein it is found that acquisition is contrary to the mandate of law and tainted due to mala fides. In the matter on hand, we do not find that establishment of "ash pond", which is very much necessary for the thermal project, is in violation of mandate of law. So also the existence of malice is not proved.

If the act of power generation is permitted in a thermal power plant, it is bound to give in result the by-products such as ash. If the plant has to run, certain arrangements relating to ash pipeline, discharge panel, ash dyke and proper disposal of the ash are necessary, otherwise entire functioning of the plant would be paralysed and the power production will go to nil causing great loss to the public at large.

20. We also do not find any ground to direct the respondents to give more compensation in the form of damages to the appellants. We have already clarified that all the land losers (except appellants 3 and 6) who have lost their lands under the acquisition notifications in question have received agreed compensation, which means uniform compensation was paid as agreed between the parties to all the land losers. The very quantum of compensation is paid to appellants 1, 2, 4 and 5 also during the pendency of the appeal. All such land losers including the aforementioned appellants have executed the agreements agreeing to receive compensation unconditionally, as consented. We have already noted that only the appellants 3 and 6 have not received compensation. Merely because appellants have not received compensation and are fighting the litigation, they cannot be paid higher compensation by way of damages. If any sympathy is shown in favour of appellants 3 and 6 or other appellants, it will be opening Pandora's box and all the land losers will have grievance and may once again approach seeking additional compensation before the concerned forum. Appellants 3 and 6 only cannot be paid the higher compensation inasmuch as if

paid, the same would violate the principles enshrined in Article 14 of the Constitution of India.

21. On reconsidering the entire material on record, we do not find any ground to interfere in the acquisition notifications as well as in the impugned order.

22. Accordingly, the writ appeals fail and the same stand dismissed.