

(2013) 09 KAR CK 0382

In the Karnataka High Court

Case No : Writ Petition No"s. 46380 of 2012, 50136-138 of 2012 and 50139 of 2012 (LA-KIADB)

Smt. Rajamma and Others

APPELLANT

Vs

State of Karnataka, Karnataka Industrial Area Development Board and The Special Land Acquisition Office Karnataka Industrial Area Development Board

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(3), 4

Citation : (2013) 09 KAR CK 0382

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : V. Anand, for the Appellant; B.B. Patil, for B.B. Patil and Assts. Advts. for R2 and 3 and Sri. H.T. Narendra Prasad, AGA for R1, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Abdul Nazeer, J.—The petitioners contend that they are the owners of the property bearing Sy. Nos. 56/1, 55/1 and 57/3, measuring 1 Acre 3 Guntas, 0-12 Guntas and 1 Acre 32 Guntas respectively, situated at Doddthogur village, Belgur Hobli, Bangalore South Taluk. Respondent No. 1 issued a notification dated 21.12.2000 u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "KIAD Act") proposing to acquire the lands. Notice was issued to the petitioners on 01.01.2001. Petitioners filed objections as per Annexure-D opposing the acquisition of lands for the reasons stated therein. This was followed by final notification dated 28.02.2004 at Annexure-F. Petitioners are calling in question the validity of the said preliminary and final notifications insofar as the aforesaid lands are concerned.

2. Respondent Nos. 2 and 3 have filed their statement of objections opposing the writ petitions. It is contended that the writ petitions have to be dismissed on the ground of delay and laches alone.

3. It is evident that out of the three survey numbers proposed for acquisition, the State Government has admittedly deleted two items of the land from acquisition u/s 4 of KIAD Act, namely Sy. Nos. 55/1 and 56/1. These writ petitions are confined to Sy. No. 57/3 measuring 1 acre 32 guntas.

4. Learned counsel for the petitioners would contend that the lands in question are the agricultural lands. Petitioners are solely depending on those lands for their livelihood. They are living in an ancestral house built on the said land. They are cultivating ragi crops and out of the said lands they are making their living. It is argued that respondent No. 3 has not considered the objections nor were the petitioners granted an opportunity of being heard as provided u/s 28(3) of the KIAD Act. The order at Annexure "R2" has been passed by respondent No. 3 in violation of the principles of natural justice.

5. On the other hand, learned counsel appearing for respondent Nos. 2 and 3 has sought to justify the final notification. It is argued that there is a long delay in filing the writ petitions. On this ground alone, the writ petitions are liable to be dismissed. Secondly, it is contended that objections have been considered by respondent No. 3 before proceeding to pass the order at Annexure "R2".

6. At this stage, learned counsel for the petitioners submits that several other land owners whose lands have been acquired under the same notification have challenged the acquisition proceedings. He draws my attention to the order of this Court passed in W.P. No. 36711/2003 disposed of on 08.12.2006 as also W.P. No. 15831/2012 disposed of on 21.08.2012. It is argued that this Court has quashed the final notification insofar as petitioners lands in those cases are concerned. It is contended that writ petition No. 15831/2012 was allowed on 21.08.2012. Petitioners have also filed the writ petitions in the year 2012. The respondents have accepted the order at Annexure-J passed on 21.08.2012. In the circumstances, the delay requires to be condoned as the petitioners are also similarly placed with the petitioners in W.P. No. 15831/2012.

7. I have carefully considered the arguments of the learned advocates made at the Bar and perused the materials placed on record.

8. It is true that the final notification was issued on 30.05.2001. These petitions are filed in the year 2012. One N. Yellappa Reddy had filed the writ petition in W.P. No. 15831/2012 challenging the acquisition of his land in the aforesaid survey number included in the same notification. This Court quashed the final notification in respect of his lands and the writ petition was allowed on 21.08.2012 and remanded the matter to the Special Land Acquisition Officer for fresh disposal in accordance with law. These writ petitions are also filed during the year 2012. Similar reasons have been assigned for the delay in these petitions as well. Therefore, the contention of the learned counsel for the respondent Nos. 2 and 3 with regard to delay and laches is rejected.

9. In response to the notice issued pursuant to the preliminary notification at Annexure-E, the petitioners have filed detailed objections as per Annexure-D. In

the objections, they have stated that the lands in question are agricultural lands. They are residing in an ancestral house constructed on the said land by predecessor therein title. They are depending on the said land for their livelihood. Petitioners are unemployed and depending on the agricultural products grown in the said land. They have raised several other contentions in the objections.

10. Respondent No. 3 has passed the order u/s 28(3) of the KIAD Act as per Annexure-R2. Perusal of the said order clearly indicates that respondent No. 3 has not applied his mind while passing the order. In paragraph 26 of the order, respondent No. 3 has stated that the petitioners have filed objections contending that they are cultivating lands. He has not taken note of any of the other objections filed by the petitioners. He has not even considered the objections. He has straightaway come to the conclusion that the lands are required for formation of an industrial area.

11. Section 28(3) of the KIAD Act, 1966 states that after considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

12. In *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, , the Apex Court was considering the meaning of the word "consider". It has been held thus:

The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally to think over, meditate on, give heed to, take note of, to think deliberately bethink oneself, to reflect" (vide *Shorter Oxford Dictionary*). According to *Words and Phrases - Permanent Edn: Vol. 8-A* to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; mediate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

13. This Court in the case of *D. Hemachandra Sagar and Another Vs. State of Karnataka and Others*, was considering the case relating to consideration of objections by the Bangalore Development Authority u/s 17(5) of the Act. It has been held as under:

A statutory Authority like BDA evolves its own procedure to consider the

representations filed by the owners in respect of the proposed acquisition. There is no hard and fast rule that the Authority itself should consider each of the representations before making appropriate orders. However, it is settled that the consideration of the representation by any Authority should be in the manner recognized by law. "Consideration of representation" postulates that the Authority concerned has thought over the matter by applying its mind to the relevant portion of the representations and may make its recommendation assigning reasons for such recommendation. Mere extracting the nature of objections and his remarks without assigning reasons is no consideration at all.

14. The Apex Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , was considering the scope of Section 5A of the Land Acquisition Act. It has been held as under:

The Land Acquisition Act is an expropriatory legislation. In such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. Section 5A of the Act confers a valuable and important right in favour of a person whose lands are sought to be acquired and having regard to the provisions contained in Article 300A of the Constitution it has been held to be akin to a fundamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

It has been further held as under:

The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the Court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5 and 6 of the Act must be read conjointly. The Court in a case, where there has been total noncompliance or substantial non-compliance of the provisions of Section 5A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Section 6(3) of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power, it must be done in a fair and reasonable manner.

15. In Raghbir Singh Sehrawat Vs. State of Haryana and Others, , the Apex Court was considering the acquisition of agricultural lands. In the course of the judgment, the Apex Court has observed that it is difficult, if not impossible, to appreciate as to why the State and its instrumentalities resort to massive acquisition of land and that too without complying with the mandate of the statute. The acquisition of agricultural land in the name of planned development

or industrial growth would seriously affect the availability of food in future. After independence, the administrative apparatus of the State has not spent enough investment in the rural areas and those who have been doing agriculture have not been educated and empowered to adopt alternative sources of livelihood. If land of such persons is acquired, not only the current but the future generations are ruined and this is one of the reasons why the farmers who are deprived of their holdings commit suicide. It has further observed that the authorities concerned are totally unmindful of the plight of those sections of the society, who are deprived of their only asset like small house, small industrial unit etc., They do not realize that having one's own house is a lifetime dream of majority of population of this country. Economically affluent class of society can easily afford to have one or more houses at any place or locality in the country but other sections of the society find it extremely difficult to purchase land and construct house. Majority of people spend their lifetime savings for building a small house so that their families may be able to live with a semblance of dignity. Therefore, it is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses by way of the acquisition of land in the name of development of infrastructure of industrialisation.

16. In the instant case, it is evident that respondent No. 3 has not considered any of the objections u/s 28(3) of the KIAD Act nor has he granted an opportunity of being heard. I am of the view that respondent No. 3 has to reconsider the matter. In the result, the writ petitions succeed and they are accordingly allowed in part. The order passed by respondent No. 3 at Annexure-R2 dated 18.04.2001 insofar as petitioners lands in Sy. No. 57/3 is concerned to an extent of 1 Acre 32 Guntas is quashed. Similarly, final notification at Annexure-F in respect of the said survey number is also quashed. The matter is remitted back to respondent No. 3 for fresh disposal in accordance with law and in the light of the observations made above. No costs.