

(2012) 06 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No's. 27720-27721 of 2010 (LA-K1ADB)

Smt Vanitha Rai by Her GPA Holder Sri. Arun Kumar Alva

APPELLANT

Vs

The Karnataka Industrial Areas Development Board

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 06 KAR CK 0083

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : C.M. Nagabushana, for the Appellant; B B Patil, For R1-R3 and Vijay Kumar Patil, HCGP For R4, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar

1. Petitioner is the owner of the land bearing Sy.No.64/1 to an extent of 3,45 acres. So also, she is stated to be the perpetual lease holder to an extent of 70 cents of converted land both situated at Mogur village, Gangi Mutt Grama Panchayat of Mangalore Taluk. The petitioner has constructed a residential house in Sy.No.64/1 and residing in the said house alongwith family members. Respondent Nos. 1 to 3 have acquired various properties for formation of industrial area under the provisions of KIADB Act. However, the land in Sy.No.64/1 belonging to the petitioner is stated to have not been acquired. Consequently, the petitioner is not aggrieved by the acquisition of the adjoining lands. But the grievance of the petitioner is that because of acquisition of adjoining lands for formation of industrial area/layout by respondent Nos. to 3, the petitioner does not have any approach to PWD road, inasmuch as, property of the petitioner is surrounded by all the acquired properties. The petitioner was getting access to PWD road by requesting adjoining land owners till filing of writ petition. However, of-late such adjoining land owners are not obliging the petitioner and consequently they have stopped the facility which was earlier given in favour of the petitioner for her ingress and egress. In view of the same,

the petitioner's property has become an island within the acquired properties without there being any access. Under these circumstances, she requested the respondent Nos. 2 and 3 to give her access to approach PWD road. The petitioner also contends that an area which would be utilized by KIADB for formation of road for petitioner's ingress and egress, would be compensated by petitioner by handing over equivalent area in favour of KIADB and consequently, KIADB will not lose an inch of land. Such a request is turned down by KIADB on 24.3.2010 by issuing an endorsement. The same is impugned in these writ petitions. It is contended by Sri. C.M. Nagabhusana, Learned Counsel for the petitioner that the impugned endorsement is liable to be quashed, inasmuch as, respondent No. 1 has proceeded merely on technicalities and has not looked into substance of the matter. He further draws the attention of the Court that the inaction on the part of respondent Nos. 1 to 3 has created hardship to the petitioner as she does not have access for PWD road.

Writ petition is opposed by Learned Counsel appearing on behalf of respondent Nos. 1 to 3 by filing statement of objections. Sri. B.B. Patil, Learned Counsel on behalf of respondent Nos. 1 to 3 submits that the petitioner ought to have made a mention at the time of acquisition itself so as to enable KIADB to carve out a road for the benefit of the petitioner. He submits that the adjoining areas are already acquired and industrial area is formed and third party rights are created. Thus, according to respondent Nos. 1 to 3, the petitioner has raised objection belatedly and consequently, such belated request cannot be accepted.

When the matter was posted before this Court for hearing on 3.4.2012, this Court directed the 4th respondent-jurisdictional Tahasildhar to visit the spot in order to find out as to whether the petitioners' property has approach road or not. Pursuant to the said order, the Tahsildhar visited the spot and has given report on 2.5.2012. He has also furnished the sketch drawn by him with the assistance of Taluka Surveyor. The report as well as sketch are produced before this Court alongwith memo dated 24.5.2012 by learned Govt. Advocate Sri. Vijaykumar A. Patil.

2. The report and the sketch prepared by the Tahsildhar clearly reveal that the petitioner's property bearing No. 64/1 is landlocked, inasmuch as, it does not have any access to PWD road. None of the four sides of the petitioner's property has got access to have ingress and egress. Therefore, it is impossible for the petitioner to utilize the property in question. In order to solve this human problem, formation of approach road is absolutely necessary on the part of the respondents. Though the KIADB has formed layout surrounding the petitioner's property, it is incumbent on the part of the first respondent board to provide access to the adjoining unacquired property, otherwise the property in question would become waste and consequently the interest of the petitioner would suffer. It is not open on the part of first respondent to wash off its hands by raising technical objections that adjoining properties are already acquired and layout is formed. While forming the layout itself, it was duty of the first respondent to

provide roads for the adjoining properties in order to have better enjoyment of the area.

The prayer of the petitioner prima-facie needs to be accepted, in view of the fact that the petitioner is not asking a portion of the acquired property for formation of road free of cost. On the other hand, the petitioner wants to have road by surrendering equal amount of area to KIADB. Hence, absolutely no injustice will be caused to KIADB, inasmuch as, it does not lose an, inch of area. In this context, the report of the Tahasildhar and the sketch annexed assumes importance. The Tahsildhar has clearly stated that the road which is proposed to be formed as intended by the petitioner would consume about 33.50 cents and the petitioner would hand over equal area of the land to KIADB i.e., 33.50 cents from out of his property i.e., Sy.No.64/1P.

After getting the report of the Tahasildhar and after hearing for some time, the matter was adjourned on two occasions earlier to this day with a view to find out as to whether respondent Nos. 1 to 3 are willing to accede to the request of the petitioner, keeping in mind, the report of the Tahsildhar. Unfortunately, the officers of KIADB have not turned up for giving instructions to Sri. B.B. patil, Learned Counsel.

At this stage, it is brought to the notice of the Court by Sri. C.M. Nagabhusana, Learned Counsel for the petitioner that the area on which road is proposed to be formed as pointed out by the petitioner is open and none of the adjoining areas are having building thereon and therefore there is no hurdle for formation of road.

Said submission has remained uncontroverted, because Sri. B.B. Patil, has not got instructions in that regard.

Be that as it may, this Court is of the view that the petitioner's grievance needs to be re-addressed as per law. The Tahsildhar by visiting the spot alongwith the jurisdictional Surveyor has prepared report and sketch. Said documents clearly reveal that the petitioner does not have any approach to her property from PWD road. The petitioner is ready to hand over equal portion of the area which would be lost by KIADB. Hence, no injustice or prejudice will be caused to anybody. On the other hand, if the road is formed, the petitioner would be able to utilise the property, otherwise, her property will be a waste, inasmuch as, she cannot utilise the property forever.

Therefore, respondent Nos. 2 and 3 are directed to reconsider the matter afresh in the light of the aforementioned observations and keeping in mind the report of the Tahasildhar as well as sketch. It is incumbent on the part of respondent Nos. 2 and 3 to provide access to her property from PWD road. Action shall be taken as early as possible, but not later than outer limit of three months from the date of receipt of this order.

With these observations, writ petitions stand allowed.