

(2014) 01 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 38341 of 2012 (LA-UDA)

Sri. C. Kantharaj

APPELLANT

Vs

The Special Land Acquisition Officer, The Commissioner and
State of Karnataka

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

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

Citation : (2014) 01 KAR CK 0015

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Subramanya Jois, for Shri. Chandrasahas, for the Appellant;
Madhusudan R. Naik for Shri. I.G. Gachichinamath, Advocate for Respondent
Nos. 1 and 2, Shri. R.B. Satyanarayana Singh, Government Pleader, for the
Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J

1. The petitioner claims as the absolute owner of land bearing Survey No. 50/1A of Nagavara village, Bangalore North Taluk. He is said to have acquired the same by way of a registered deed recording a family partition, dated 23.8.1961. The property is now said to be within the jurisdiction of the Bruhath Bengaluru Mahanagara Palike (Hereinafter referred to as the "BBMP" for brevity). It is stated that on the southern side of the above property, the Outer Ring Road (ORR) has been formed-connecting the road from Hebbal Fly-over to Krishnarajapuram. On the northern side of the property, the Karle Group of companies is said to be developing land measuring about 60 acres and are said to have formed a private road over land bearing Survey No. 59/2, 59/1 and 61/1 and required atleast 5 guntas of land of the petitioner's property, in order to access the Outer Ring Road. It is the petitioner's belief-that as he was not inclined to provide the required area of land, the said Karle Group had brought

influence to bear on the BBMP to initiate acquisition proceedings to acquire land for providing a road from Kempapura to the Outer Ring Road. Accordingly, a notification u/s 4(1) of the Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act", for brevity) dated 13.5.2011 was said to have been issued in that regard.

The above notification is said to have been issued in the name of the petitioner's grandfather, though the petitioner was the khathedar. He had hence made a representation highlighting the same and had raised an objection to the acquisition as it was not being acquired for any alleged public purpose. It was further pointed out there is an existing road on the northern side of the ORR, which could be conveniently connected through the land available on the western side of the petitioner's land, which is land held by the BBMP. And in fact, is more convenient, than a circuitous route over the petitioner's land. The petitioner has sought to demonstrate the same as per a sketch annexed to the petition at Annexure-G. However, the petitioner claims that he was not afforded any opportunity of a hearing, but a final declaration u/s 6 of the Act was made as per notification dated 10.5.2012. And during the pendency of this petition an award has also been passed, awarding a sum of Rs. 30.05 lakh in respect of the land.

It is contended that the intention of acquisition of the land was to provide a road connecting the Special Economic Zone from Nagawara Ring Road to Kempapura passing through Nagawara Tank Bund and hence it was proposed to acquire the subject land bearing survey No. 50/1A of Nagawara to the extent of 3266.98 square feet and 2178 square feet in land bearing Survey No. 158. However, it is the petitioner's case, that the road is being formed only over land bearing Survey No. 50/1A to 59/2 and of these lands excepting Survey No. 50/1A, all other lands belong to the Karle group who are said to be building an apartment complex facing Nagawara lake and the road is only for their primary benefit. This is further evident from the fact that the government has not made any budget allocation for the project and it is the said private group which is funding the project to the extent of formation of the above road is concerned. The petitioner also claims that as per the notification dated 22.8.2009, except for the formation of the road from chainage 0.00 K.M. to waste water weir of the Nagawara tank at chainage 0700 K.M., there is no indication that there was any proposal to acquire lands upto Kempapura in order to complete the project. It is in the above background that the writ petition is filed.

2. The respondents No. 1 and 2 have contested the petition and assert that the BBMP intending to form a 100 feet road connecting the ORR to Kempapura, had even before issuing a preliminary notification had explored the possibility of land owners being persuaded to offer their land voluntarily, in consideration of the issuance of the "Transferable Development Rights" (TDR)-this had been well received by land owners and there was said to have been a voluntary surrender of land extending over land in seven survey numbers. The petitioner however, is said to have turned down the offer. It is stated that the "petitioner's objections

to the acquisition have been considered, even though he was not shown as the exclusive khatedar of the property claimed by him. Hence his contention that he was not afforded a hearing is denied. It is also denied that the land is not required for a public purpose or that there was any unholy nexus with a private developer in the formation of the road.

It has been affirmed that there is no alternative land available for the formation of the road. It is also contended that to file the present petition, as his title has been questioned in a civil suit, in O.S. No. 7581/2001 before the City Civil court, Bangalore, which is pending consideration.

It is stated that the present dispute has completely brought the project to a halt and is the only bottleneck to an important link road that would provide a much needed convenience and relief to the public at large.

3. The learned Senior Advocate, Shri. Subramanya Jois, appearing for the counsel for the petitioner and the learned Senior Advocate, Shri. Madhusudhan Naik, appearing for the counsel for respondents 1 and 2 were heard at length.

From the material produced on record, it cannot be accepted that the formation of the road as detailed above, is only to benefit a developer, who is engaged in constructing an apartment complex in the vicinity.

The thrust of the argument on behalf of the petitioner was to the effect that the road to be formed does not serve any public purpose and even if it did, it was possible to form the same over land in the possession of the respondents themselves, which is in fact more conveniently located, and to avoid the petitioner's land altogether. There was a fervent plea that this court embark on an exercise of arriving at an independent finding in this regard by the appointment of an appropriate person or body to address the issue. There is no reason to doubt that the acquisition of land is for a public purpose. Even assuming that the petitioner is in a position to establish his title to the property, which again is disputed, the question whether there is an alternative area over which the road can be formed has indeed been addressed in the course of these proceedings. In this regard the respondents having been called upon to clarify whether there was indeed any such alternative land have placed on record the affidavit of its Executive Engineer, Road Infrastructure, Special Division, BBMP, Bangalore, wherein it is declared as follows.

2. I submit that the petitioner-Ms. filed the present writ petition seeking to quash the preliminary and final "notification. The petitioner has produced at Annexure-G a sketch prepared by himself contending that there is a alternative land available and in the map that is produced by the petitioner it goes to show it crosses through Lumbini Garden. Hence the question that arose was whether Lumbini Garden forms the property of Lake Development Authority or not.

3. I most humbly submit that the Government in order to protect the Lakes and also to develop and rejuvenate the lakes has established the Lake Development

Authority. The Lake Development Authority is headed by the chairman who is the Chief Secretary of the State. The Chief Executive Officer of the Lake Development Authority is empowered to take up such measures for the development of the Lakes. In this regard the public participation was also invited in developing the Lakes. Hence certain lease agreements were also entered in respect of Hebbal Lake, Nagavara Lake, Vengaihere and Agara Lakes etc., The lake in question in respect of Lumbini garden is the Nagavara Lake. The Lake Development Authority has entered into an agreement to develop and maintain the Nagavara Lake with Limbini Gardens Limited. A true copy of the said agreement is herewith produced as Annexure-R1. The entering into agreements by the Lake Development Authority was questioned before this Hon"ble Court in a public interest litigation i.e., by way of W.P. No. 817/2008 and other connected matters. The Hon"ble Division Bench of this Hon"ble Court after thoroughly examining as to whether the entering of the agreements is in the public interest or not was pleased to hold that such agreements are valid and further would help in development of lakes effectively. A true copy of the said order is herewith produced as Annexure-R2.

4. I most humbly submit that in view of the above stated facts, it is evident that the Nagavara Lake is under the control of Lake Development Authority and that the Lake Development Authority has entered into an agreement with the Lumbini Garden Limited, and this agreement is for a period 15 years. The Lake Development Authority has also issued a letter stating that the area belonging to it cannot be used for the purpose of road. A true copy of the said letter is herewith produced as Annexure-R3 and hence as per Annexure-R3 this land cannot be considered for the formation of road.

In spite of the above affirmation on record, it was insisted by Shri Jois that there is yet a possibility of avoiding the petitioner's land and that this court should yet examine the same.

In the opinion of this court there is no such circumstance warranting the negation of the contentions on behalf of the respondents. It is not prudent for this court to impose its own opinion or the opinion of the petitioner on the respondents, as to the feasibility or otherwise of the formation of the road in a particular manner. There are otherwise no irregularities or illegalities/apparent from the material on record. There is hence no merit in this writ petition and the same is dismissed.