

(2014) 01 KAR CK 0245

In the Karnataka High Court

Case No : Writ Petition No. 39411 of 2012 (LA-KIADB)

Sri Chaluve Gowda @ Chikkonu

APPELLANT

Vs

State of Karnataka, Karnataka Industrial Area Development
Board and Special Land Acquisition Officer, Mysore

RESPONDENT

Date of Decision : 18-01-2014

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 28(1) 28(4)
Land Acquisition Act, 1894 — Section 11 11A 6(1)

Citation : AIR 2014 Kar 40 : (2014) 2 AKR 41 : (2014) 2 KCCR 1612

Hon'ble Judges : Anand Byraredddy, J

Bench : Single Bench

Advocate : C.R. Gopalaswamy, for the Appellant; H.T. Narendra Prasad,
Additional Government Advocate for Respondent No. 1 and Shri K.B. Monesh
Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byraredddy, J.—The petitioner is said to be the absolute owner of the property bearing Sy. no. 41 measuring 1 acre and 33 guntas, at Pura village, Srirangapatna Taluk, Mandya District. It is stated that the land in Sy. no. 41 originally comprised of 5 acres and 25 guntas. It transpires that by virtue of a partition in the family, the petitioner has acquired the limited extent above. The remaining extent is said to be in the possession of the other members of the petitioner's family. The land is said to have been notified for acquisition under the provisions of the Karnataka Industrial Area Development Act, 1966 (Hereinafter referred to as "the KIAD Act", for brevity) and a preliminary notification u/s 28(1) of the Act is said to have been issued on 15-6-2005, under the same survey number allotted to his coparceners, and not only the land held by the petitioner but also the land in the hands of his family members is said to have been notified. The petitioner is said to have filed objections, to the effect that he has no other lands and the lands are well developed agricultural lands consisting of a garden and nursery and hence that the same be excluded.

However, the same were overruled and a notification u/s 28(4) of the KIAD Act is said to have been issued on 29-1-2007. However, it was found by the petitioner that though the lands of his brothers were similarly situated, the same had been specifically deleted from the acquisition proceedings. It is also the petitioner's case that the obvious reason was that there were extraneous considerations in the said lands having been given special consideration. It is said to be the circumstance, that immediately after the partition in the family, the other members of his family are said to have sold portions of the property falling to their share to one S.P. Ashok and another B.S. Aditya, respectively, who are said to have connections with highly influential individuals and had therefore ensured that the authorities dropped the said lands from acquisition to benefit the said purchasers and that there is no other reason that can be assigned to the action.

It is further contended that after issuance of the notification u/s 28(4) of the KIAD Act, no further steps had been taken to establish any industrial layout. It is hence contended that by virtue of Section 11 & 11A of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act" for brevity), would be attracted. Given the inordinate delay in making an award the entire proceedings would lapse.

2. The respondent KIADB has filed statement of objections to contend, inter alia, that the writ petition is hopelessly barred on the specific ground of delay and laches. That admittedly the acquisition proceedings has since attained finality as extracted hereunder:

The land belonging to the petitioner, subsequent to the issuance of the final notification, vests with the State, free from all encumbrances. The unexplained delay in challenging the notification is fatal to the Writ Petition and warrants dismissal. It is denied that the respondent had not considered the objections of the petitioner. It is pointed out that going by the petitioner's own showing, he was accorded all opportunity through the proceedings. It is further denied that the lands to an extent of 3 acres 22 guntas were sold to two persons named in the petition after the preliminary notification was issued in as much as by the petitioner's own showing, the Preliminary Notification was issued on 13.06.2005, and the final notification, was issued on 29.01.2007. The sale deeds as produced by the petitioner himself would reveal that they are effected on 23.04.2007 and 24.04.2007, which dates are much after the issuance of the final notification. In fact, various lands as culled out at Annexure-E are dropped from the acquisition proceedings by the respondent No. 1 and the contention of the petitioner is thus demonstrably farfetched.

It is further contended that, initially an extent of 64.021/2 acres were sought to be acquired through the issuance of the final notification. But the respondent No. 1 had agreed to acquisition of 421/2 acres only and had left out of the original acquisition process, an extent of 22.02 acres and accordingly, the acquisition was completed. As the petitioner's land was required for acquisition, the final notification as contemplated u/s 28(4) of the KIAD Act was issued and that it is a

mere coincidence that the lands adjacent to the petitioner's lands were left out of the acquisition process though they were a part and parcel of the same survey number in as much as in the various other survey numbers which were also acquired, a few parcels of land of the said survey numbers were left out of the acquisition process. This fact would in no manner invalidate the entire acquisition. It is denied that Section 11 of the Land Acquisition Act, 1894, *mutatis mutandis*, would apply to the acquisition as contemplated under the KIAD Act. The acquisition has not lapsed just because the award has not been passed in as much as there is no time limit specified to pass the award.

In the light of the above contentions, the points that would arise for consideration are:

a) Whether the acquisition proceedings are vitiated as being arbitrary in singling out the petitioner's property for such acquisition while exempting adjoining and similarly placed lands on alleged extraneous considerations.

b) Whether the delay in passing an award vitiates the acquisition proceedings even though the KIAD Act does not prescribe a time limit for the passing of an award.

In so far as the first point is concerned, as the allegation is a disputed question of fact the scope of enquiry and findings that could be arrived in these proceedings is limited. The material available is wholly inadequate even to hazard a guess as regards the allegations. It is hence answered in the negative.

In so far as the second point for consideration is concerned, there is admittedly a delay in passing the award. The defence pleaded as against the contention that the acquisition is vitiated on account of such delay is that the KIAD Act does not prescribe any time limit unlike under the Land Acquisition Act, 1894 and hence there is no infirmity.

However, the question is no longer *res integra*. A division bench of this Court in W.A. Nos. 3189-3201 of 2010 (LA-KIADB) connected with W.A. Nos. 3202-3206 of 2010 (LA-KIADB) dated 20.11.2012 has addressed the very question and has held thus:

36. From the aforesaid discussion, it is clear if a period is prescribed under the Act for issue of a final declaration as well as for passing of the award, if the final declaration is not issued and the award is not passed within the stipulated period, the entire acquisition lapses, unless it is shown by virtue of any order of stay or injunction issued by any Court, the authorities were precluded from completing the acquisition proceedings. It is by operation of law as contained in the statute. Merely because such a provision is not found in an enactment, it does not mean limitation is not a bar at all. If such a prescription is not there expressly in any enactment it is not possible to hold that such an acquisition has lapsed relying on the provisions contained in the Land Acquisition Act. In other words, the provisions of the Land Acquisition Act cannot be read into the Act or

such similar statutes. But nonetheless in order to decide what is the reasonable time within which authorities have to exercise their power either for issue of a final notification or for passing of the award is concerned, certainly the Parliament intendment as contained in this provision cannot be completely lost sight of. On the contrary, it acts as a guide. It expresses the will of the Parliament. It has to be given due weight. When this acquisition proceedings were delayed endlessly and land owners were deprived of just compensation under law and consequently the constitutional right was violated, the Parliament amended the Land Acquisition Act prescribing the time limit. According to the Parliament, one year is the reasonable time for passing of a final declaration and two years is the time for passing of an award. If within those periods the final declaration is not issued, the award is not passed, the whole acquisition lapses. The Act is enacted for industrial development which has to be done expeditiously. Such an industrial development results in generation of employment and economic growth of the State. If the land is required for such public purpose a special enactment was enacted for speedy acquisition of land. Merely because the provisions contained in Section 6(1) and 11A is not incorporated in this Act or after the Parliament amended the Land Acquisition Act in 1984, the State legislature did not think it fit to bring in similar provisions under the Act, it does not mean that the State Government can exercise its power for issue of a final declaration or passing of an award without any regard to time limit. It has to be done within a reasonable time. As held by the Apex Court in Ram Chand's case (Ram Chand and Others Vs. Union of India (UOI) and Others,), two years is held to be a reasonable time within which a final declaration has to be issued, if there are no hurdles placed in the acquisition by the land owners or if there are no hurdles in law. If the final declaration is not issued within two years, certainly the land acquisition has to lapse, notwithstanding the absence of any specific provision in the Act as contained in the Land Acquisition Act. When we say it is two years or one year it does not mean on expiry of the said two years or one year, as calculated under the L.A. Act, the acquisition has to lapse. It is roughly two years or one year. Few days or months this way or that way should not matter. Except for this absence of mathematical precision in calculating the period, the substance has to be applied. The parliamentary intention in prescribing time limit under the L.A. Act cannot be ignored. However, it all depends on the fact of that particular case, the conduct of the parties, the purpose for which the land is sought to be acquired and the problems faced by the acquiring authorities in concluding the acquisition. Therefore, it is not possible to accept the contention of the acquiring authority that in the absence of any specific provision under the Act, no such time limit can be imposed and the same is without any substance. Even in the absence of any such prescriptions expressly under the statute, having regard to the fact that the right to property is a constitutional right and the person whose land is sought to be acquired is entitled to compensation at the market rate, such a compensation has to be paid to him at the earliest and therefore, the power of acquisition should be exercised within a reasonable time so that the person who lost the land is duly

compensated at the earliest point of time.

In the instant case, the Preliminary Notification u/s 28(1) of the KIAD Act was passed on 15.6.2005 and the Final Notification u/s 28(4) of the Act was passed on 29.1.2007 and it is candidly admitted in the petition that though there was an attempt to arrive at a consensus with the land owners as to the quantum of compensation, there was no finality and the award is yet to be passed. Therefore, in the light of the law laid down by this Court, the inordinate delay in passing the Award vitiates the acquisition proceedings and accordingly the writ petition is allowed as prayed for. The impugned proceedings are quashed.