

(2012) 08 KAR CK 0339

In the Karnataka High Court

Case No : Writ Petition No"s. 14267-272 of 2012 (LA-BDA)

Sri H Chandra Reddy and Ors

APPELLANT

Vs

State of Karnataka and The Bangalore Development Authority

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 36, 48 (1), 48 (3)

Citation : (2012) 08 KAR CK 0339

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : D.L. Jagadeesh, for the Appellant; K.S. Mallikarjunaiah, HCGP for R1 and Sri. Sachin Kedilaya, Advocate for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri

1. The petitioners have sought a writ of mandamus to the respondents to act upon the draft notification (Annexure-H) for the withdrawal of their lands measuring 1 acre 3 guntas standing at Sy.No.79 of Arakere Village, Begur Hobli, Bangalore South Taluk from the acquisition. The facts of the case in brief are that the petitioners' lands along with the other lands were acquired for the formation of the B.T.M. VI Stage layout. The petitioners' adjoining lands measuring 9 guntas at Sy.No.78/1 and 2 acres 1 gunta at 78/2A were withdrawn from the acquisition proceedings vide notification, dated 28.02.2001 (Annexure-B). The petitioners vide their representations, dated 12.11.2002 and 06.07.2004 requested the respondent No.1 to delete their lands also from the acquisition proceedings, as they have their houses and as they are eking their livelihood from the agricultural operations on the lands in question. On the respondents showing inaction in the matter, the petitioners filed W.P.Nos.4359- 4364/2009 which came to be disposed of with a direction to the first respondent to consider the petitioners' said representations in accordance with law and keeping in mind

the recommendations/orders issued by the B.D.A. Pursuant thereto, the first respondent has taken a decision to delete the lands in question from the acquisition proceedings. The draft notification to be issued u/s 48(1) of the Land Acquisition Act, 1894 (the said Act" for short) is kept ready in September, 2009. It is the petitioners" grievance that the said notification is not being published

2. Sri. D.L. Jagadeesh, the learned counsel for the petitioners submits that the similarly placed lands are already withdrawn from the acquisition. Clinging on to the acquisition of the petitioners" land is violative of Article 14 of the Constitution of India. For advancing the contention that the State Government cannot adopt different standards for different people in the matter of withdrawal from the acquisition, he relies on the Hon"ble Supreme Court judgment in the case of Hari Ram and Another Vs. State of Haryana and Others, He submits that the actions of the State have to be fair and for legitimate reasons. He asserts that the possession of the lands in question continues to be with the petitioners and that there is absolutely no impediment in withdrawing the lands from the acquisition.

3. Sri K.S. Mallikarjunaiah, the learned Government Pleader for the respondent No.1 submits that the petitioners" representations, dated 12.11.2002 and 06.07.2004 would be considered in accordance with law.

4. On being specifically questioned as to how the other two lands came to be deleted from the acquisition proceedings on 28.02.2001, Sri K.S.Mallikarjunaiah submits that probably the actual and physical possession of the land may not have been taken place. He is not in a position to make any emphatic submissions without seeing the records.

5. It is trite position in law that the lands can be withdrawn from the acquisition any time before the possession is taken. Section 48(3) of the said Act reads as follows:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed-(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

6. Note 19 of the Additional Chief Secretary is as follows:

7. A perusal of the above note shows that the matter is under re-consideration, as the acquisition proceedings are completed. Section 16(2) of the said Act states that the fact of taking possession may be notified by the Deputy Commissioner in the Official Gazette and such notification shall be evidence of such fact,

8. While re-considering the matter as per Note No.19, the respondents are required to find out whether the possession of the land was really taken from the petitioners. Merely drawing the mahazar for taking the possession would not meet the requirements of law. The possession has to be actually and physically

taken.

9. The petitioners have produced some materials which prima-facie show that the possession is with them. They have produced Record of Rights (Annexure?F). in column Nos.9, 10 and 11 or in any other column for that matter of the Record of Rights, the name of the Government and/or the B.D.A. are not shown. There is no reference even to the issuance of the acquisition notification. On the other hand, in column No.12(2), the name of the father of the petitioner Nos. 1 to 4 and 6 is shown.

10. It is profitable to refer to the Hot-Cole Apex Court's judgment in the case of Prahlad Singh and Others Vs. Union of India (UOI) and Others, wherein it is held that no hard and fast rule can be laid down as to what act would be sufficient to constitute thQ taking of the possession of the acquired land,

11. Yet another aspect of the matter which cannot be lost sight of is that the petitioners' lands and their adjacent lands belonging to A.S.Srinivas and Munipapayya were acquired for the same purpose under the same notification. When the 16(2) notification in respect of the petitioners' land is said to have been issued on 30.08.1994, there is every likelihood of the similar notification being issued in respect of the lands of A.S.Srinivas and Munipapayya. If the possession of their lands was also taken on 30.08.1994, it is not fathomable as to how they could have been deleted from the acquisition proceedings. In the result, I allow these petitions by directing the respondent No.3 to find out whether the actual and physical possession of the petitioners' land was taken. If it is found that the possession was not taken, the respondent No.1 shall consider giving effect to the draft notification prepared in September 2010 (Annexure-H) in accordance with law. This shall be completed within three months from the date of the issuance of the certified copy of today's order. It is made clear that no opinion whatsoever is expressed on the merits of the claims of the petitioners. No order as to costs.