

(2010) 10 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 30337 of 2010

Sri Mallegowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) ILR (Kar) 4930 : (2011) 1 KarLJ 356 : (2011) 4 KCCR 420 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K. Sreedhar, for the Appellant; N.B. Vishwanath, AGA, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ Petitioners are thirty five in number and have all joined together in this joint petition, but nevertheless, paying separate court fee, for common cause claiming that they are all owners of certain parcels of land located in the villages of Kanchanahalli, Samudravalli, Kokkanaghatta, Pirurnanahalli of Hassan Taluk and District.

2. It is the version of the Petitioners that portions of their lands have been acquired by the Karnataka Industrial Areas Development Board [for short "the Board"] for the purpose of forming what is known as "special economic zone".

3. It is also the version of the Petitioners that they have been awarded compensation ranging from Rs. 50,000/- to Rs. 3,00,000/- per acre and that the present writ petition is to seek for suitable enhancement to determine and award compensation in favour of the Petitioners on par with the compensation as is awarded to other land owners in the same village and which compensation had been determined by the authority ranging from Rs. 8 lakhs to 9 lakhs; that such higher compensation had been determined by the authority in respect of the lands owned by some other persons in the very village, acquired during the years

2004 to 2008, but inspite of the farmers welfare committee known as "Sri Kadubasaveshwara Farmers" Welfare Agitation Committee, Hassan Tq. District" espousing the cause of the Petitioners for a better compensation in terms of the representation made to the Minister incharge of the Hassan District and also to many other authorities, nothing has developed in favour of the Petitioners and in such circumstances, the Petitioners are constrained to approach this Court for seeking suitable relief.

4. The prayers sought for by the Petitioners are as under:

"a) issue a writ in the nature of mandamus directing the Respondents to consider the case of the Petitioners for giving appropriate incentive such as share in the developed area or making them as partners in development / by giving employment to the eligible persons whose lands have been acquired for the purpose of creating special economic zone and also fixing proper compensation taking the village as one unit and pay appropriate compensation.

and

b) pass such other order or further orders, as this Hon"ble Court may deem just and expedient in the totality of the circumstances of the case including the award of the costs of this petition, in the interest of justice and equity."

5. Appearing on behalf of the Petitioners, submission of Sri K Sreedhar, learned Counsel is that Petitioners" lands are much more valuable; that the acquiring authority has been discriminating against the Petitioners vis-a-vis other land owners; that even while many other land owners in the very village have been favoured with compensation at the rate of Rs. 8,00,000/- to Rs. 9,00,000/- per acre, it is only the Petitioners who have been victimized by restricting compensation upto Rs. 3,00,000/- only as the higher limit, whereas some of the Petitioners have been given even lesser rate of compensation than Rs. 3,00,000/- per acre, and in such circumstances, it is just and necessary for this Court to issue a writ of mandamus compelling the Respondent - authority to determine and pay a better compensation in respect of the lands of the Petitioners also, at par with the compensation as had been determined in favour of many other similarly situated land owners owning lands in the village.

6. Mr. Sreedhar, learned Counsel for the Petitioners would also submit that when the Petitioners" land have been forcibly taken over by the public authority by paying a pittance of compensation and if the very lands are thereafter being sold for an astronomical price by the authority, in favour of persons proposing to set up their trading/manufacturing activities in the special economic zone, that should definitely be prevented and therefore in the alternative a writ of mandamus may be issued to the Respondent - Board at least to consider the Petitioners being compensated by returning to them some portion of their lands acquired by the authority now located within the "special economic zone".

7. It is also the submission that a prayer for making the Petitioners as partners in

development should also be examined and writ issued for such purpose and Respondents may be called upon at least to put forth their version before this Court for such possibilities.

8. A writ of mandamus can be issued; and it is the very settled legal position only, when an existing legal, statutory or constitutional right is denied to the Petitioners, if the Petitioners are denied the exercise of their right by an inactive public authority which has a corresponding duty to examine the application for exercising the right or a request of Petitioners having such a right.

9. A writ of mandamus is to compel the public authority to perform its duty in consonance with the provisions of the statute as the failure on the part of the public authority to perform this duty has resulted in denial of the right of the Petitioners. It is because of this position, constitutional courts are enabled to issue writs and writ in the nature of mandamus to compel a public authority to perform its public duty in a manner as is contemplated in law.

10. Insofar as entitlement for higher compensation in respect of lands of the landowners acquired for public purpose is concerned, provisions of law under which such lands are acquired itself provides for the procedure to enable such persons to claim better compensation. In such matters, there could be various disputed facts involved, there could be many related aspects which are required to be examined for the purpose of determining the entitlement for higher compensation and the parties should also be provided opportunity to let in evidence. It is precisely for this reason, the Karnataka Industrial Areas Development Act, 1966 contemplates a detailed procedure and, in fact, determination of this nature and responsibility is always entrusted to the civil courts as inevitably, it is a dispute of civil nature. In matters of this nature, a writ court is handicapped or ill equipped to examine the questions of proper or just entitlement of compensation. A writ court can issue a writ only if the circumstances justify for issue of the appropriate writ and not merely because the Petitioner approaches the court seeking for issue of any writ.

11. As to whether the Respondent - authority had compensated other landowners at a higher amount or otherwise is not a relevant aspect in the present context, particularly, as to under what circumstances it might have been done. Assuming that it has happened and if the authority has given a go by to procedure and statutory provisions, then obviously such deviation amounts to dereliction of duty on the part of the public authority and an illegality committed by the public authority and if it is also to the detriment of the public exchequer, it is a matter of grave concern.

12. The reputation of the officials of the Board has definitely taken a beating as in the wake of some recent developments and this Court taking judicial notice of the fact that the officials and others involved are under the scrutiny of the Karnataka Lokayukta - an institution set up to curb corruption in public places and to bring in a measure of order in the public administration and functioning of

the public authorities.

13. While a writ of mandamus can be issued only if a legal right is denied, the mere fact that a public authority has flouted some statutory provisions and has been conferring bounties or favouring some others cannot be a ground to direct or compel a public authority to confer such bounty in favour of all others also on the premise that extending a benefit to some and denying it to many others would amount to a hostile discrimination, violative of Article 14 of the Constitution of India.

14. In such situations, Article - 14 of the Constitution of India is not attracted is the settled principle as a wrong or illegality committed by a public authority cannot give rise to other persons to insist that the public authority should commit a like illegality or irregularity in their case also for the purpose of maintaining uniformity in their actions only for the purpose of meting out a like treatment to all persons in like situations. Article 14 of the Constitution of India is not attracted for invoking the principle of discrimination to compel the public authority by a writ of mandamus to commit a like illegality or infraction of the provisions of the statute, for the benefit of the writ seekers!

15. In any view of the matter, I am of the clear opinion that the Petitioners have not made out a case for issue of a writ of mandamus nor have shown before this Court any violation or denial of a statutory right which they had in their favour either statutory or constitutional which has been denied by the illegal/irregular action of the public authority. It is therefore a writ of mandamus cannot be issued as is sought for.

16. Submission of Sri Sreedhar, learned Counsel for the Petitioners for issuing notice to elicit the views of the public authority is not a submission that can be accepted for the reason that if such notice is issued to the public authority as to why it is not doing or performing in a like manner in respect of similarly situated persons it is nothing but a signal sent to the authority, virtually approving or endorsing its earlier illegalities.

17. A court of law is meant for correcting the public authorities when they go wrong they are reigned in properly and are put in place and are further restrained from embarking on such illegalities. A writ court will never compel a public authority to do a wrong. However, in the wake of the petition averments, I am of the view that this is also a fit matter where the active Karnataka Lokayukta should investigate, into the circumstances under which the Board had occasion to disburse higher compensation in favour of several persons to its whims and fancies and even when due procedure in accordance with the Karnataka Industrial Areas Development Act, 1966 or Land Acquisition Act, 1894 had not been followed and has been resorting to pick and choose method to favour some and to victimize others.

18. It is also for the State Government to evolve ways and means as to in what manner the poor land owners who inevitably become victims of such erratic

acquisition proceedings and are always thrown out of their lands and are left in the lurch are to be rehabilitated and are to be suitably compensated. But for this observation, no mandamus as sought for can be issued as this Court cannot compel the Government or the Board to act or perform any non-statutory duty or function.

19. It is also for the State Government and the Board to examine as to whether it is necessary to keep acquiring fertile agricultural lands in the name of development and for the so called "special economic zone" at the cost of losing valuable agricultural lands which can definitely contribute to the depletion of the food grain production and in turn may result in a possible disaster to the society as without food no one can live and a development without adequate food and nutrition is no development. It is for the State Government to bestow its attention in such areas.

20. While this writ petition is dismissed, the Registrar General of this Court is directed to forward a copy of this order along with such other papers as may be necessary to the Lokayukta for further investigation by the Lokayukta, to investigate the circumstances under which the Board has distributed phenomenal amounts by way of compensation in favour of some of the land owners located in Kanchanahalli, Samudravalli, Kokkanaghatta, Pirumanahalli of Hassan Taluk and within the District of Hassan and to take the investigation to its logical end if some illegalities have taken place and if some officials have misconducted themselves, to recommend suitable/commensurate action or to take such consequential action itself, if it is so empowered/enabled under the Karnataka Lokayukta Act, 1984.

21. The Registrar General is also directed to forward copies of this order to,

1. The Chief Secretary, Government of Karnataka, Vidhana Soudha, Bangalore-560 001
2. The Secretary, Department of Commerce and Industries, Government of Karnataka, Vidhana Soudha, Bangalore - 560 001
3. The Secretary to the Government, Department of Home Affairs, Government of Karnataka, Vidhana Soudha, Bangalore - 560 001