
(2011) 09 KAR CK 0127
In the Karnataka High Court
Case No : Writ Petition No. 24823 of 2011

Sri Munikempaiah

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (4), 28 (6)
Karnataka Land Revenue Act, 1964 — Section 56
Karnataka Land Revenue Rules, 1966 — Rule 19, 20, 36 (1)

Citation : (2012) 1 KarLJ 455

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

Bench : Single Bench

Advocate : J.C. Kumar, for Chandrashekar B.H, for the Appellant; R. Om Kumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The present writ petition brings out in a vivid manner as to how the State and its revenue officials have been misusing the power under the provisions of not only the Karnataka Industrial Areas Development Act, 1966 (for short "KIAD Act") but also powers under the provisions of the Karnataka Land Revenue Act, 1964 (for short "the KLR Act").

2. Writ Petitioner claims to be a person of 98 years and has interest in old Sy. No 76, new Sy. No. 76/1 measuring an extent of 2 acres 11 guntas at. Hemmigepura Village, Kengeri Hobli, Bangalore South Taluk.

3. The version of the Petitioner is that though he had acquired the extent of 2 acres 30 guntas in this survey number by way of inheritance and out of this extent, an extent of 10 guntas was acquired by the Karnataka Industrial Areas Development Board, which is not in dispute as it appears that in this survey number the State had acquired an extent of 1 acre 8 guntas of land including 3 guntas of kharab land which was spread over the extent of holdings in the name of three persons, namely, the Petitioner contributing 10 guntas of regular land

and 11/2 guntas of kharab, one Muniramaiah contributing 29 guntas of the main land and 11/2 guntas of kharab and Anr. Puttaiah contributing 6 guntas in all making 48 guntas as per the final notification issued u/s 28(4) of the KIAD Act in the year 2003 and it is also not in dispute that the respective land owners had in fact surrendered the notified extent of land in favour of the authorities after a joint survey and in pursuance of the notice issued u/s 28(6) of the KIAD Act as per mahazar drawn on 10.12.2003.

4. The present grievance of the writ Petitioner is that in the guise of doing or effecting corrections to entries in the revenue records, whether scope or extending of holdings that is available in the Sy No 76/1 of the village, authorities have passed the order dated 10-5-2011, passed by the technical assistant to the Deputy Commissioner and ex-officio deputy director of land records, passed an order purporting to be one under which the actual extent of holdings which had been recorded in the revenue records in respect of Sy No 76, which had been shown as 5 acres 14 guntas inclusive of 8 guntas of kharab land is sought to be increased to 5 acres 18 guntas and the actual extent of land excluding kharab land is sought to be enhanced to 6 acres 5 guntas from 5 acres 10 guntas and that in the wake of some adverse action by the revenue authorities, purporting to be on the basis of this order, which has been made subject matter in a revision petition before the special Deputy Commissioner in Revision Petition No 4 of 2011, filed u/s 56 of the KLR Act and that the Deputy Commissioner had granted an interim order, staying the operation of the impugned order of the DDLR as per his order dated 30-5- 2011, which has been rescinded without the notice of the Petitioner on 2-6-2011 and in the wake of such unilateral uncalled for action on the part of the second Respondent special Deputy Commissioner, Petitioner has approached this Court, apprehending further adverse action, particularly the revenue authorities are hand in glove with the officials of the KIADB, in favouring M/s Nandi Infrastructure Corridor Enterprise (NICE); that the writ Petitioner is apprehending highhanded action on the part of not only the revenue authorities and the officials of the KIADB but also by this private agency; that they are proposing to put up some compound walls in the land belonging to Petitioner and has, therefore, approached this Court seeking for the following relief:

(A) ISSUE a writ, order or direction in the nature of writ of certiorari quashing Armexure - A order dated 2.06.2011 passed by the second Respondent, in Revision Petition No. 4/2011-12 in respect of land bearing Survey No. 76 of Hemmigepura Village, Kengeri Hobli, Bangalore South Taluk.

(B) TO GRANT such other or further relief/s as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case, as an alternative remedy, including the cost of this Writ Petition, in the interest of justice and equity.

5. This Court had admitted this writ petition, though the matter was only one arising in the context of an interim order or modification of the interim order made by the revisional authority even during the pendency of the revision

petition before the second Respondent, by admitting the petition on 8-7-2011 and had directed the learned AGA, who was appearing for the Respondent-state and its officials, to produce relevant records before the court.

6. Thereafter the matter is being listed and getting adjourned on 26-7-2011, 28-7-2011, 8-8-2011, 11-8-2011 and only in the wake of the request for adjournment made by the learned AGA, this Court passed an order on 25-8-2011 to the following effect:

The facts in this writ petition and the manner in which the impugned orders are passed by the revenue authorities is a typical example of the manner of governance in the State, particularly, exercise of statutory powers by the revenue authorities, who are more guided or governed and influenced by private agencies than to adhere and function in accordance with the statutory provisions.

2. Writ Petitioner is complaining that though he has inherited an extent of 2 acres 30 guntas in Sy. No. 76/1 of Hemmigeपुरa Village and notwithstanding an extent of 10 guntas of land having been acquired by the Karnataka Industrial Areas Development Board and remaining extent of 2 acres 20 guntas remained in his possession and enjoyment the revenue authorities, particularly, the Tahsildar and the Deputy Director of Land Records have acted in a high handed, whimsical, arbitrary manner, was questioned by the Petitioner by filing a revision petition before the second Respondent - Special Deputy Commissioner, who though entertained the revision petition in revision petition No. 4/2011-12 and had initially granted an order of stay of the orders passed by the Tahsildar and the Deputy Director of Land Records, even before the issue of the stay order in favour of the Petitioner and at the behest of one person by name Srinath, said to be Manager or representative of M/s. Nandi Infrastructure Corridor Enterprise Limited (for short "the NICEL"), has gone back on the earlier interim order, has acted unilaterally purporting to vacate the interim order though said NICEL is not a party Respondent to the proceedings and even without said person joining the proceedings in a manner known or permitted in law, but being guided and influenced by the version of the said person, having vacated the interim order on 2.6.2011 (copy at Annexure-A) and having directed the further inquiry to be taken up on 30.7.2011 and in the meanwhile having directed the Deputy Director of Land Records to go ahead with the survey and fixation of boundary etc., has approached this Court which only shows the manner of arbitrary conduct on the part of the revenue authorities to the poor quality of governance by the public authorities, who are more guided by powerful private agencies than to protect the interest of poor, helpless, gullible individuals whose rights are trampled upon and public power and public duty meant to provide protection to people is on the other hand misused and abused to harm people and to favour powerful vested interest etc.

3. The State Government has through the Karnataka Industrial Areas Development Board it appears has acquired vast extents of private properties in the name of development, namely for setting up "Bangalore-Mysore

Infrastructure Corridor Project" and in the name of the project has been acquiring lands left and right, whether needed or not and in a rather suspicious manner without even disclosing the nature of the project as to how it is a public purpose, as to how the larger public purpose is subserved at the cost of large number of small private individual land holders etc.

4. The dispute in the present case is that in the name of ensuring the acquired land is given or left with the beneficiary, the authorities are taking high handed action to the detriment of the Petitioner and therefore the Petitioner has come to this Court for protection and relief is the submission of Sri Chandrashekar, learned Counsel for the Petitioner.

5. It is also submitted that though this Court had directed the Respondents to produce the records by issue of rule etc, what is available with the Sri R. Omkumar, learned Additional Government Advocate is not original records, but some extracts of the original records and particularly the original records known as pakka book is conspicuous by its absence and that alone can reveal the high handed action if any taken by the authorities etc.

6. On the other hand, Sri R. Omkumar, learned Additional Government Advocate with regard to the statement of objections, submits that the authorities are taking action well within their limits; that every action is enabled: that when the revision petition is still pending before the Special Deputy Commissioner, there is no need for this Court to examine the matter and urges for dismissal of the writ petition as it is premature etc.

7. The question is not one of the Respondents having power or otherwise, but the manner of exercise of statutory powers.

8. If some part of the Petitioner's land had been acquired for the purpose of being handed over to the Karnataka Industrial Areas Development Board and in turn to put in possession a private agency for development of the corridor project, the measurement of land with reference to revenue records all should have taken place at that time and not after said persons have been put in possession and the said private persons manipulating the authorities to the detriment of private citizens even when they have already been put in possession as per the Government records of the extent of land acquired etc., is nothing short of a gross dereliction of duty on the part of the public authorities and public authorities being manipulated by private persons to the detriment of the persons like the Petitioner.

9. There was absolutely no scope for the Tahsildar or the Deputy Director of land records to become active in respect of portion of the land that had already been acquired and handed over through public authorities and with reference to entries as are found in the revenue records of a period much anterior to the acquisition proceedings, namely, from the year 1940 onwards by a resurvey and redetermination of the boundaries in the year 2010 or 2011.

10. This is obviously an instance of colorable exercise of power to favour private persons by exercising statutory power by the Tahsildar and the Deputy Director of Land Records for improving upon the extent of land handed over to the possession of the private agency.

11. Be that as it may, as it is averred in the statement of objections that civil suit has also been filed, while disputes regarding possession of land by which person etc., can be taken care of by the civil court, the present writ petition is only for the purpose of examining the manner of exercise of statutory powers by the public authorities.

12. In fact, even the manner in which the Special Deputy Commissioner has vacated the interim order even before the stay order was communicated to the writ Petitioner and even at the behest of a person who was not a party to the proceedings, leaves much to be desired and it is therefore that the matter requires further examination.

13. Sri R. Omkumar, learned Additional Government Advocate is directed to secure and place the original records relating to the proceedings including pakka book and the Tahsildar and the Deputy Director of Land Records are also directed to appear before this Court with their records on 29.8.2011.

List on 29.8.2011.

and a further order on 29-8-2011, reading as under:

Sri R. Omkumar, learned Additional Government Advocate, is unable to place before the court either the original records or any supporting material to justify the revenue authorities getting active for changes in the revenue entries fixing the survey numbers, boundaries etc.

However, submission of Sri. R. Omkumar, learned Additional Government Advocate is that the authorities became active only due to a representation given by M/s. Karnataka Industrial Areas Development Board, for whose benefit the State had acquired the lands etc., and has placed before the court the file bearing No. (Urdu) 260/10-12),(Urdu) 13/11-12, and has drawn attention of the court to page 109 of this file.

A perusal of xerox copy of the letter only shows that this is a communication addressed to the Tahsildar. Bangalore South Taluk, Bangalore, in response to the notice No. TQ/PR-76/10-11 dated 12.10.2010 and 27.11.2010 and not original representation by the Board.

Sri. R. Omkumar, learned Additional Government Advocate, realizing this position, requests the matter to be called on 30.08.2011 for production of relevant original records.

List on 30.08.2011.

7. State government has filed its statement of objections on 11-8-2011 and it is

supported by an affidavit of Sri S Raja Naik, Deputy Director of Land Records, office of the Deputy Commissioner, Bangalore urban district.

8. The writ Petitioner produced the order dated 10-5-2011, subject matter of revision petition before the Deputy Commissioner along with a memo dated 8-7-2011.

9. Matter is being heard time and again and the state government has evinced great interest in stoutly defending this uncalled trivial matter, subject matter of which is not more than 9 guntas of land and it is the very assertive and vociferous submissions of Sri R Om Kumar, learned AGA that under the impugned order, if at all some favoured action is indicated in favour of the Petitioner and other landowners, as the total extent of holding in Sy No 76/1 is only sought to be increased by 4 guntas, which cannot be said to be detriment of the Petitioner in the first instance.

10. It is secondly contended that even as per the records and the documents available with the revenue authorities, who have been subsequently generated pursuant to a report of the surveyor, who has only conducted spot survey and has tallied the JMC sketch as per which NICE was put in possession of an extent of 1 acre 8 guntas of land, which had been notified and acquired by the authorities, it was factually found that NICE, the company which was in occupation of an extent of 1 acre 17 guntas of land i.e. an excess of 9 guntas and therefore this was required to be corrected and if the sketch which had been prepared earlier based on which the said beneficiary was put in possession was an extent of 1 acre 17 guntas and this was required to be corrected to show the correct extent of land by reducing an extent of 9 guntas and showing the extent of holding in favour of NICE as only 1 acre 8 guntas and a fresh sketch to depict this position and the holding was required to be drawn and the authorities have admitted only such action; that the action is fully supported by the provisions of Rule 19, 20 and 36(1) of the Karnataka Land Revenue Rules, 1966 (for short, Rules); that it is a valid, legal action and the action is taken with utmost bona fides at the instance of the beneficiary company, which had sought for measurement and fixation of boundaries and in such a request even the Petitioner had also joined and in the wake of such development, in the first instance, there is absolutely no cause of action for the Petitioner to approach this Court and on the other hand Petitioner is unnecessarily crying wolf that it is not a benefit action; that Petitioner is set up by some third persons and is a person with ulterior motive before this Court; that writ petition is without any bona fides and deserves to be dismissed in limine. In support of such submissions, Sri Om Kumar has also placed some records of the tahsildar, said to be relevant for the purpose of this case.

11. It is very strangely but nevertheless very stubborn submitted by learned AGA that in the instant case what had been acquired and handed over in favour of NICE though required to be an extent of 1 acre 8 guntas, but nevertheless it was identified by way of boundaries and sketch, they had been put in possession of a

larger extent of 1 acre 17 guntas and this was realized when the taluka surveyor conducted a fresh survey in the year 2011, which was also at the request of the Petitioner as well as a representative of NICE and during the course of the survey it was found that NICE (which is not a party to this writ petition) was actually in possession of a larger extent of land acquired as per the notification by 9 guntas and therefore steps being taken to rectify the revenue records and the sketch etc., in the wake of such discovery etc.

12. A memo is placed before the court today along with the following documents:

SL. No.

PARTICULARS

DATE

1.

Preliminary Notification Under Section 28(1) of KIAD Act 1966

19.12.1998

2.

Notice u/s 28(2) KIAD Act 1966

14.02.1999

3.

Proceedings u/s 28(3) of KIAD Act 1966

23.09.1999

4.

Final Notification u/s 28(4) of KIAD Act 1966

12.03.2003

5.

Notice u/s 28(6) of KIAD Act 1966

18.07.2003

6.

Spot Sketch with statement

10.12.2003

7.

Joint Measurement Sketch

14.08.2002

8.

Possessions Letter

9.01.2004

9.

Agreement

21.02.2004

10.

Affidavit

21.01.2004

11.

Receiptforhaving compensation received Rs. 7,87,500/-

21.02.2004

12.

Possessions Certificate

06.03.2004

13

Photographsof theSpot two number

and by drawing attention to the sketch at pages 11 and 12 of this document, learned AGA seeks to justify the action that the entire effort on the part of the revenue authorities is to ensure sketch is drawn to show holding of NICE is only 1 acre 8 guntas and excess land to an extent of 9 guntas is recovered.

13. However, Sri J.C. Kumar, learned Counsel for the Petitioner, on the other hand, submits that the entire action is one without bona fides; that the authorities did not take any action immediately after finding that the beneficiary NICE was actually in possession of an excess extent of 9 guntas beyond, but on the other hand have gone about to manipulate or create revenue records to somehow or other reduce the extent of holding in the possession of the Petitioner and other private holders; that it is sought to be shown that earlier measurements themselves were faulty; that such actions are being taken even without a reference or pursuant to pucca book, but are taking steps to change podi/tippani in respect of subject land without any reason or basis; that mala fide action on the part of Respondents is apparent and betrayed manner in which revisional authority has unilaterally vacated the earlier interim order at the instance of a person by name Srinath, a representative of NICE, who was not even a party to the proceedings, but nevertheless has been acting at the behest

of this person to the detriment of the Petitioner; that subsequent to the realization of the beneficiary company being in possession of excess extent, though no immediate action was taken, but on the other hand, the company in a highhanded manner has forced a compound wall to be put up in the land, which is in the possession and cultivation of Petitioner also; that the compound wall is virtually intersecting the land of the Petitioner has been put up and this was the reason why writ Petitioner had approached the revisional authority for relief to stay further action adverse to the interest of the Petitioner in the guise of implementation of the order of DDLR; that the revisional authority though had stayed further action, but at the behest of the beneficiary company subsequently having vacated that order, only shows that even the revisional authority has surrendered its judgment and decision to the private enterprising company; that the writ Petitioner apprehends that he will not get any relief before the revenue authorities and therefore is constrained to approach this Court for suitable relief.

14. It is also pointed out with reference to the very photo made part of the memo placed before and available at pages 21 and 22, that the compound wall now put up by the company is, on the face of it, well inside the private land of Petitioner and others; that in fact a part of the land that was under the cultivation of the Petitioner is also now separated by the compound wall; that construction of new compound wall clearly shows the ulterior motive and the highhanded action on the part of NICE and only because not only the revenue authorities but also the officials of KIADB are actively supported and acting to the whims and tunes of the private company and the Petitioner is constrained to approach this Court for relief etc.

15. Sri R Om Kumar, learned AGA, submits that the present action was justified as though the land was acquired and handed over to the possession of NICE way back in the year 2003 and sale deed has also been executed etc., but the authorities had experienced and found that there was serious resistance on the part of the villagers to form the express highway in the wake of the express highway interfering with the approach road to the villages from the areas across the express highway; that many approach roads to the villages have been cut off and without providing alternative way to the villages to have access to their lands and therefore it was realized that a bridge or fly-over is required to be constructed across the express highway to provide ingress and egress to the residents of the villagers in the neighbourhood of the express highway and it is in this background and particularly in the wake of some existing roads in the vicinity and to put up a bridge or fly-over to enable pedestrians and even vehicles to cross the express highway, the subject land was sought to be taken over by examining the old records and realizing that some mistake had taken place long back in the measurement and recording extent of Sy No 76/1; that the mistake was in actual addition and multiplication, while measurement was taken by yardstick of chain and anna etc., and if the measurement was properly taken the extent in Sy No 76/1 would get increased by four guntas, as is indicated in Annexure-II to the order dated 10-5-2011 (copy at Annexure-H to

the writ petition) etc., and the whole proposal being not in any way detriment to the interest of the Petitioner, but more productive to the interest of the Petitioner and the Petitioner should be dismissed.

16. Submission of learned AGA is totally bereft of merits, as bereft as the bona fides on the part of his clients -Respondent-revenue authorities.

17. If it is found that the land which had been notified and acquired under the acquisition proceedings of the year 1998 was not adequate for the full implementation of the project or purpose, duty of the state government is to go about in accordance with law. Adhering to the statutory provisions by acquiring additional land if so required and justified, but not to go about manipulating revenue records and conducting highhanded action, more so allowing private persons to take law into their own hands and such private persons having the backing and support of the entire revenue department, officials of KIADB and whom else is not known, to terrorizing the villagers and to put up compound walls anywhere and everywhere they like interfering with the lives and activities of persons like the Petitioners and by showing scan respect for the law.

18. It has been time and again made clear by this Court that writ court does not sit in appeal over the orders or actions of the administrative authorities. Writ court is not an appellate court. Examination is only within the scope of judicial review of administrative action as to whether the actions of the authorities are justified on the touchstone of the statutory provisions and also as to whether such authority and power is available, is being exercised by the authority in a proper manner for bona fide purpose and in accordance with procedure.

19. In the present case, the authorities in exercise of statutory provisions have, no doubt, acquired an extent of 1 acre 6 guntas of land in Sy No 76/1, way back in the year 1998, in the declaration of the year 2003, taking of possession or surrendering of possession and sale deed is also having executed in favour of NICE for this extent of land, have no business later on to get active to enable the private company to acquire or retain in possession of an extent more what was notified and acquired and handed over.

20. The fact that private company, it appears, filed a suit impleading only the writ Petitioner for a restraint order and obtained a restraint order against the Petitioner and which has forced the Petitioner to file Anr. suit in OS No 630 of 2011 to protect his interest and possession in the land, only indicates that the private company is active to the detriment of the persons like the Petitioners and apart from being a large powerful limited company with vast resources and if it is also backed by public authorities, there is absolutely no scope for protection to provide the affected citizen before the state. It is in such situation, persons who are affected in such manner who approach court. Law and judicial system and courts for protecting weak, gullible and helpless. The whole object of law is to provide support and assure the helpless and weak that they are also protected, will be given equal treatment and the law of jungle does not operate; that it is

not a situation of survival of the fittest, as propounded by Charles Darwin in the theory on Origin of Species but for a civilized manner of functioning in a society, law takes care and assures even such persons that protection; that law will protect weak from the tyranny of strong and powerful and it is the sacred duty of courts working under the judicial system to ensure that state and the public authorities do not take law into their own hands, muffle the voice of poor, weak and small men, but they are restrained from letting loose a reign of terror and weak is also protected.

21. Present examination is only in this background not because whether actions taken by Respondents is supported or otherwise by statutory provisions such as Rule 19 and other Rules, to which attention of the court was drawn by the learned AGA.

22. When once acquisition proceedings have been culminated and possession is taken and the beneficiary was also put in possession, acquiring authority has no business to interfere with the matter any further. Not even revenue authorities can either dispossess persons assuming that the person is in the occupation of an excess extent or the possession is an encroached area by other private persons and therefore was not justified etc., the subject matter of title is only a matter for civil courts to determine and at the instance of an affected and on receiving proper evidence and material adduced before the court and the revenue authorities cannot be permitted to let loose a reign of terror on private persons in the name of correcting entries in the revenue records etc.

23. Under the provisions of the KLR Act, the whole exercise of maintaining records relating to entries being made is to show the extent of land the survey number in respect of ownership, a corresponding change being made in the revenue records are all for the purpose of identifying the owners or khatedars to collect land revenue and nothing more. Revenue authorities neither confer title nor can take away title in lands. Likewise, can neither put in possession some persons who are not in possession nor dispossess persons who are in possession, revenue authorities enable other private persons indulge in such acts are only a highhanded and illegal manner and therefore are required to be restrained in an act in such a manner in the name of exercising their statutory powers.

24. It is, therefore, that the proceedings of the DDLR is required to be quashed by issue of certiorari as one totally lacking in bona fides and passed or taken for any bona fide purpose etc., but only for protecting even some illegal activities as conceded on record by the Respondent state by private persons, who is found as per the revenue authorities themselves in possession of land in excess of the actual extent acquired and handed over in their favour and on the other hand while the actual extent that is handed over in favour of persons was only 1 acre 8 guntas even as per the records.

25. The action by state and the authorities is totally without bona fides and

therefore writ of certiorari is issued, quashing order passed by DDLR, because of which revision petition does not survive any further and Respondents are restrained from taking action under the provisions of the KLR Act under the guise of correcting any revenue records or otherwise to the detriment of the Petitioner or persons like him for disturbing their possession in the subject land.

26. Citizens and the state can alike before courts and what applies to private persons equally applies to the state also. It is further made clear that actions in accordance with law only for any other pur(pose and rights and remedies of Petitioner or other persons who are not in any way affected by this Court order and such persons are at liberty to approach civil court to workout their rights and remedies in accordance with law.

27. In the result, this writ petition is dismissed, levying exemplary cost of ~10,000/- (Rupees ten thousand only) on the Respondent-state in favour of Petitioner. Cost to be deposited before this Court by the Respondent-state within four weeks from today, failing which, the registry is directed to issue a certificate in favour of the Petitioner for recovery of the cost, as though it is a decree passed by a civil court.