

(2012) 10 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No. 43759/201 (LA-KIADB)

Sri R. Kodandaraman

APPELLANT

Vs

Karnataka Industrial Areas Development Board and
Government of Karnataka

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (3), 28 (4)
Karnataka Land Revenue Act, 1964 — Section 136 (3)
Land Acquisition Act, 1894 — Section 30, 31
Penal Code, 1860 (IPC) — Section 419, 420

Citation : (2012) 10 KAR CK 0048

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : S. Subhash for M/s. Kumar and Kumar, for the Appellant; P.V. Chandrashekar, for R1 and R2 and Sri Nasrulla Khan, HCGP for R3 and R4, for the Respondent

Judgement

A.N. Venugopala Gowda

1. Petitioner was serving in Indian Army. He was awarded Vishisht Seva Medal. He retired from service on 31.01.1971, on attaining the age of superannuation. He had approached the State Government for grant of darkast land. He sought grant under special category, since he belonged to scheduled caste community Sanction was accorded as per Official Memorandum dated 06.11.1984, for granting of 3 acres of land in Sy. No. 6, situated at Singahalli, Jala Hobli, Devanahalli Taluk. A saguvali chit was issued on 02.02.1985. Mutation entry was carried out. Index of Lands and Record of Rights of the land, depict the name of the petitioner. State of Karnataka through Department of Commerce and Industries, issued a Notification under S. 28(1) of the Karnataka Industrial Areas Development Act, 1966 ("the Act" for short), proposing to acquire certain lands situated at Singahalli and other adjoining villages for industrial purposes". Petitioner's said land figured in the said Notification. Petitioner received on

14.08.2006, a notice under S. 28(2) of the Act and appeared before the Special Land Acquisition Officer (hereinafter referred to as SLAO) on 26.11.2007 for an enquiry under S. 28(3) of the Act. SLAO recorded the petitioner's statement and obtained the signature. The petitioner's name can be seen at Sl. No. 13 of the proceedings of SLAO dated 26.11.2007. Objection for acquisition of said land was overruled. The State Government issued final declaration on 25.09.2008 under S. 28(4) of the Act and acquired amongst other lands, the aforesaid land.

2. The Special Deputy Commissioner, Bangalore, had issued show cause notice to the petitioner, initiating proceedings in respect of the said land, under S. 136(3) of the Karnataka Revenue Act on 21.10.2007. The petitioner appeared before the said authority and put forth objections. The said authority, by an order dated 24.08.2009, dropped the said proceeding.

3. The petitioner having not received any communication from respondents 1 and 2, submitted a representation dated 20.09.2010 to the SLAO to pay the compensation. A reminder was sent on 25.02.2011. The SLAO issued an endorsement dated 03.03.2011, informing that the compensation amount was disbursed on 18.06.2010.

4. Shocked and surprised, petitioner filed a complaint with Ulsoor Gate Police Station on 09.03.2011, complaining that, some one has impersonated him before the KIADB and has received the compensation amount. Police registered a case on 10.03.2011. On 14.03.2011, the Commissioner of Police, Bangalore City, entrusted the case for investigation to CCB, Bangalore. On 28.05.2011, a news article appeared in Deccan Herald, English Daily, that police arrested the accused and recovered a sum of Rs. 52,00,000/-.

5. Petitioner submitted a representation dated 02.06.2011 to the SLAO, KIADB, seeking the payment of compensation. Another representation of the same date was submitted to the Chairman, KIADB, seeking payment of compensation. On 29.06.2011, petitioner addressed a letter to the Principal Secretary, Department of Commerce and Industries, seeking his intervention in the matter of payment of compensation. The Principal Secretary, Department of Commerce and Industries, directed the Chief Executive Officer, KIADB, to examine the matter. The request of the petitioner for payment of compensation in respect of the said acquired land was shown in the agenda notes prepared for the Board meeting. The KIADB in its 308th meeting held on 25.07.2011 passed a resolution to take action against the officials and to disburse the compensation.

6. Since the compensation amount was not paid, the petitioner filed this writ petition on 22.11.2011, to issue an appropriate writ or order (i) directing the respondents to pay the compensation amount with 18% interest per annum from the date of Notification for acquisition, till the date of payment, in respect of the said land; (ii) to pay a sum of Rs. 10,00,000/- as damages for having caused inconvenience and hardship to him; (iii) to direct the Central Bureau of Investigation, to investigate the complaint lodged with Ulsoor Gate Police Station

and to report to the Court for further orders and grant consequential benefits.

7. Writ petition was initially filed against KIADB and the Special Land Acquisition Officer - 2. Statement of objections was filed by the said respondents on 09.02.2012. On 17.04.2012, an application filed to implead the Joint Commissioner of Police (Crimes), CCB, Bangalore was allowed. Subsequently, taking into consideration the resolution passed by the KIADB on 25.07.2011 in its 308th meeting, Government of Karnataka was directed to be impleaded as 4th respondent. Respondents 1 and 2 filed additional statement of objections on 19.04.2012. On behalf of the 4th respondent, statement of objections was filed on 25.07.2012.

8. Undeniably, under the Official Memorandum dated 06.11.1984, sanction was accorded for grant of 3 acres of land in Sy. No. 6, situated at Singahalli in favour of the petitioner and saguvali chit was issued on 02.02.1985. The revenue records show the name of the petitioner as kathedar and cultivator of the said land. By issue of a preliminary Notification dated 07.08.2006 under S. 28(1) of the Act followed by a final Notification dated 28.09.2008 under S. 28(4) of the Act, the said property was acquired for industrial purposes. The market value was determined on 24.12.2008 by the Price Advisory Committee headed by the Deputy Commissioner.

9. The SLAO passed an order on 18.06.2010 to disburse the amount to one R. Kodandaraman. An agreement under S. 29(2) having been executed on 18.06.2010 along with an indemnity bond of the same date, by a person claiming to be R. Kodandaraman, a cheque for Rs. 1,86,00,000/- was issued in the joint names of R. Kodandaraman and K. Gopi, with Account No. 01006126/ Corporation Bank.

10. The petitioner was not paid the compensation amount. He was informed as per endorsement dated 03.03.2011 about the payment of compensation amount for acquisition of said land to R. Kodandaraman on 18.6.2010. Upon receipt of said endorsement, a complaint was lodged before the police and case was registered in Crime No. 50/2010 against the imposter R. Kodandarama, his son and other family members. The case having been entrusted to the CCB, in the course of investigation, Rs. 79,79,262/- in cash and title deeds in respect of a residential plot in Hoodi, worth about Rs. 15,00,000/-, allegedly purchased from ill-gotten money was seized. The investigation being complete, CCB filed the charge sheet which has been registered as C.C.No. 7808/2012 for the offences punishable under Ss. 419 and 420 IPC. In the circumstances, in my opinion, there is no need to direct the CBI to investigate the complaint lodged by the petitioner before the Ulsoor Gate Police Station. The CCB, which has investigated the case and filed the charge-sheet, should prosecute the matter in accordance with law.

11. Based on the representation of the petitioner, in its 308th meeting, KIADB has resolved as follows:

- a. To make necessary correspondence with the CCB Police to ascertain the amount of money recovered from the person who had wrongfully received the said compensation in respect of 3 acres of land Sy. No. 6/P of Singalli Village.
- b. To take immediate action to initiate criminal prosecution against Mr. R. Kodandarama S/o. Ramanswamy who had received the compensation from the KIADB.
- c. To take immediate action to initiate disciplinary action against the then incharge Special Land Acquisition Officer.
- d. To take initiative to receive the money recovered.
- e. To ascertain the validity of the claim of Sri R. Kodandarama (VSM) as regards to his title to the lands acquired and to disburse the compensation in accordance with law.

12. In pursuance of the said resolution, the Board sent a communication dated 21.03.2012 to initiate disciplinary action against the then Special LAO Sri N.R. Nagaraja. By a communication dated 5.6.2012, the Board was directed to frame draft charges against Sri N.R. Nagaraja. On 18.06.2012, the Board framed and sent the draft charges against the said officer, in pursuance of which, further action is stated to have been initiated against Sri N.R. Nagaraja.

13. Sri S. Subhash, learned advocate appearing for the petitioner vehemently contended that the petitioner's property having been acquired for public purpose, petitioner was not paid the compensation. He contended that there is violation of Articles 14, 21 and 300-A of the Constitution of India. He submitted that, on account of an unholy nexus between the then SLAO and the imposter, which is apparent from the mortal hurry with which the events have taken shape, on 18.06.2010, huge amount of compensation, in total disregard of the record of the case and also the provisions of the Act, was paid to an imposter and that the Board had also kept quiet and it is only when the petitioner complained before the police, on account of the investigation done, Rs. 79,79,262/- was recovered, apart from the title deeds of a residential property valued at Rs. 15,00,000/-, purchased out of the ill-gotten money. It was alleged that the decision of the SLAO in deciding to pay the compensation and in hurriedly disbursing the amount on 18.06.2010 is malafide, arbitrary, capricious, illogical and also whimsical. It was further alleged that the SLAO has ignored the provisions of the Act, the rules and also procedure. The decision taken and payment made to the imposter was only on account of the extraneous considerations which was unbecoming on the part of a statutory authority / civil servant. Learned counsel submitted that, despite the resolution passed in the 308th meeting of KIADB, further action has not been taken and the petitioner who is a senior citizen, also in the evening of his life, suffering from various ailments, has been made to run from pillar to post and in the circumstances, keeping in view the prayers made in this petition, appropriate writ or direction may be issued to pay the compensation amount forthwith to the petitioner.

14. Sri P.V. Chandrashekar, learned advocate appearing for the first and second respondents, on the other hand submitted that the Price Advisory Committee, headed by Deputy Commissioner, after negotiations and deliberations with the land owners, determined the compensation payable at Rs. 62,00,000/- per acre and on 15.06.2010, one R. Kodandaraman, S/o Ramaswamy, made a claim that he is the grantee of the land in question and submitted documents, which having been processed and a checklist having been prepared, based on the report submitted, the then SLAO, Sri N.R. Nagaraja, passed an order on 18.06.2010 and since the said R. Kodandarama and his son Sri K. Gopi executed an agreement and indemnity bond on 18.06.2010, an account payee cheque for Rs. 1,86,00,000/- was issued in their favour. Learned counsel submitted that, in view of the action taken by the police and based on the resolution passed by the Board in its 308th meeting, disciplinary action was proposed against Sri N.R. Nagaraja, the then SLAO, who took the decision and then disbursed the compensation. Learned counsel submitted that, an application was filed seeking release of the amount which was in the custody of the criminal court and the amount has now been invested in fixed deposit. Learned counsel further submitted that, the land in question is originally a Government gomal land and that the petitioner is claiming to be a grantee and that the Karnataka Public Lands Corporation Ltd. informed by a letter dated 10.04.2012, that W.P. No. 27346/2011 filed by it, was dismissed on 04.11.2011 and that it has directed the Tahsildar to initiate action under Rule 108-K of the Land Revenue Rules, 1966, to examine the validity of the grant and in the circumstances, the petitioner was not paid the compensation amount.

15. Sri Nasrulla Khan, learned High Court Government Pleader, appearing for respondents 3 and 4, made submissions in terms of statement of objections filed on 24.07.2012, to the writ petition.

16. Indisputedly, amongst other lands, land belonging to the petitioner, measuring 3 acres, forming part of Sy. No. 6 of Singahalli, Jala Hobli, Devanahalli Taluk, was acquired for industrial purpose, by issue of a preliminary Notification dated 07.08.2006 under S. 28(1) and a final Notification dated 25.09.2008 under S. 28(4) of the Act. There is no dispute that the petitioner had appeared before the SLAO in the enquiry held under S. 28(3) of the Act and the proceedings of the SLAO dated 26.11.2007, at Serial No. 13, makes a reference to the petitioner's claim.

17. S. 29 of the Act provides that, where the land is acquired by the State Government under Chapter VII (Ss. 27 to 31), the compensation for the land shall be paid in accordance with the provisions of the Act. S. 30 provides that the Land Acquisition Act shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of land acquired under Chapter VII. Provisions of the Land Acquisition Act are not applicable at the stage of acquisition of the land under the provisions of the KIAD Act, but

becomes applicable only in the matter of payment of compensation, on account of S. 30 of the KIAD Act (See Judgment in Spl. LAO, Dharwad Vs. State of Karnataka & Ors. 2009 (1) AIR Kar R 353).

18. Respondent No. 4 has not disputed the fact that the acquired land was granted to the petitioner. The proceedings initiated against the petitioner in respect of the said land, under S. 136, by the Deputy Commissioner was dropped and even W.P. No. 27346/2011 filed by the Karnataka Public Lands Corporation Ltd. was dismissed on 04.11.2011. Based on the representation submitted by the petitioner, the Government having directed the CEO of KIADB to take appropriate action in the matter, the matter having been taken up for consideration in the 308th meeting of the Board, a resolution, as aforementioned, was passed. It is clear from the said resolution that, compensation in respect of the acquired land was resolved to be disbursed to the petitioner after ascertaining the validity of the claim made by him as regards his title to the acquired land. Sri P.V. Chandrashekar submitted that an Award has not been passed. Keeping in view the provisions noticed supra and also the ratio of the decision reported in Spl. LAO, Dharwad Vs. State of Karnataka & Ors. 2009 (1) AIR Kar P. 353 (DB), the SLAO has statutory obligation to pass an award, since the petitioner has not entered into an agreement, resulting in a consent award.

19. If there is no rival claim, upon passing of award, the SLAO has to order payment of the compensation amount to the petitioner. In the event of there being a rival claim, the SLAO having no authority to decide as to the entitlement of the persons, has to make a reference to the Civil Court. In this connection, it is appropriate to notice the ratio of the decision in the case of Dr. G.H. Grant Vs. State of Bihar, , wherein it has been held as follows:

19. It was strongly pressed that under Sec. 31 of the Land Acquisition Act the Collector is bound to tender payment of compensation awarded by him to the persons entitled thereto according to the award and that implied that a right in the amount of compensation arises to the person to whom compensation is directed to be paid under the award, and, therefore, the only persons who can raise a dispute under S. 30 are those whose names are set out in the award. This contention stands refuted by the plain terms of S. 30. The collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation; he is primarily concerned with the acquisition of land. In determining the amount of compensation, which may be offered, he has, it is true, to apportion the amount of compensation between the persons known are believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation: the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation: that dispute has to be decided either in a reference under S. 18

or under S. 30 or in a separate suit. Payment of compensation, therefore, under S. 31 to the person declared by the award to be entitled thereto discharges the State or its liability to pay compensation (Subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under S. 30 or by a separate suit."

(Emphasis supplied)

The action of Sri N.R. Nagaraja, the then SLAO, in the matter of decision taken and also the payment of compensation of Rs. 1,86,00,000/- on 18.06.2010, is prima facie suspect. The alleged actions of Sri N.R. Nagaraja, which require deeper consideration, has not been examined, since, pursuant to the resolution of the Board in its 308th meeting, noticed supra, disciplinary action is stated to have been initiated, which is also clear from the statement of objections filed by the respondents. The disciplinary authority has to examine the allegations with expedition.

In the result, writ petition is allowed in part as follows:

(i) Respondent No. 2 is directed to pass an Award in respect of the acquisition of the three acres of land in Sy. No. 6 of Singahalli, Jala Hobli, Devanahalli Taluk, within a period of one month from the date of receipt of a copy of this order.

(ii) In the event of, there being any rival claim/s, the respondent No. 2 is directed to immediately make a reference under S. 30 of Land Acquisition Act to the jurisdictional Civil Court.

(iii) In case a reference is received, the jurisdictional Civil Court is directed to decide the reference in accordance with law, within a period of six months from the date of first appearance of all the parties. Contentions of all parties are left open for consideration and decision by the reference Court.

(iv) The Award amount received along with the order of reference, if any, be invested by the Civil Court in Fixed Deposit in any Nationalised bank and further order passed, depending upon the final outcome of the proceedings in the reference.

(v) The Principal Secretary, DP&AR, Government of Karnataka, is directed to finalise the disciplinary action initiated against Sri N.R. Nagaraja, the then SLAO, KIADB, with utmost expedition and within a period of six months from the date of receipt of a copy of this order and submit compliance to this Court. Needless to say that the disciplinary authority which is seized of the matter shall deal with it strictly on merits and in accordance with law.

No costs.