

(2012) 11 KAR CK 0136

In the Karnataka High Court

Case No : Writ Appeal No. 854 of 2007 (LA-KIADB)

Sri Ramachandrappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(4), 3(1)

Citation : (2013) 1 KCCR 133

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : L.S. Venkatakrishna, for the Appellant; K. Krishna, Additional Government Advocate for Respondent-1, Sri M.I. Arun for Respondents-2 and 4, M/s. Sundaraswamy, Ramdas and Anand and S. Sriranga for Respondent-3, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—This appeal is filed by the land owner challenging the order passed by the learned Single Judge who has declined to quash the notification issued for acquisition of his land. For the purpose of convenience, the parties are referred to as they are referred to in the writ petition.

2. The subject matter of this proceedings is 7 guntas of land in Sy. No. 3/1 situated at Yamalur Village, Bangalore East Taluk. The petitioner is the owner of the said land and he is also cultivating the said land. Annexure-A, the RTC for the year 2002-03 substantiates the said fact. The Government of Karnataka issued a notification u/s 28(1) of the Karnataka Industrial Area Development Board Act, 1966, for short, hereinafter referred to as the "Act", for acquiring 4 acres 15 guntas of land in Kempapura Village, Varthur Hobli. However the said acquisition proceedings were not proceeded further. Again on 12.12.2002, yet another notification came to be issued u/s 28(1) of the Act, notifying the petitioner's land, i.e., 7 guntas in Sy. No. 3/1 of Yamalur village and another 25 guntas of land in Kempapura village, in all 33 guntas. After service of notice of the

acquisition proceedings, the petitioner filed his objections on 15.03.2003 as per Annexure-D. It was specifically contended that the proposed road to be formed in the land notified for acquisition is not for the benefit of the public at large and it is for the benefit of owner of M/s. Harshavardhana Hotel, at whose instance the acquisition proceedings has been initiated. When the land bearing Sy. No. 18/4 situated on the Eastern side of his property was also notified which belongs to one P. Ramachandra Reddy, because of the influence brought by him, the said proceedings were dropped. He contended that he has grown coconut and other valuable trees in the land. The proposed acquisition causes immense hardship to him and his family. In view of the fact that acquisition is already dropped in respect of the land of P. Ramachandra Reddy, on the same grounds, they may drop the proposed acquisition in respect of the petitioner also.

3. After considering the said objections, the acquiring authority overruled the objections on the ground that the said land is required for industrial purpose and proceeded to issue notification u/s 28(4) of the Act on 07.08.2003. Thereafter a notice was issued on 20.08.2003 for assessing the value of the malkis found in the said land. It is thereafter, the petitioner preferred a writ petition challenging the said acquisition.

4. The third respondent M/s. Palmspring Resorts, filed an application to implead themselves in the said writ petition. In the application they have specifically stated that the land in question is being acquired to provide approach road for the 4 acres of land belonging to the impleading applicant which is behind the land in question. By suppressing the material facts and misleading the Court, the petitioner has obtained a stay in the above matter. Therefore as the said order adversely affects the rights of the impleading applicant, he wanted to be impleaded in the matter. Accordingly, he was impleaded.

5. The second respondent filed statement of objections contending that there is no legal impediment in the acquisition of the garden land for the purpose of industrial development. The land in question is acquired for the purpose of industrial development. Even if in a particular place where a single industry is established, the same would answer the definition of an "industrial estate" within Section 2(7) of the KIAD Act. The averment that the acquisition is resorted on the influence of the private entrepreneur and the price has gone up, is misleading. The allegation of use of utilization of public machinery for private purpose is denied. The failure of the industrial entrepreneurs to hold private negotiations with the petitioner, even if it is true, does not vitiate the acquisition. Therefore they sought for dismissal of the writ petition.

6. However the impleading applicant nor the Government filed any statement of objections.

7. The learned Single Judge held that the land in question is sought to be acquired for public purpose, namely industrial purpose. Objections were invited, considered and rejected. A perusal of the order considering the objections

discloses that there appears to be some dispute between the petitioner and one Ramachandra Reddy. Already suit is filed seeking declaration to set aside the sale and the same is pending. All these factual aspects of the matter and the fact that the land is sought to be acquired for public purpose, the petition does not merit any consideration. Therefore he dismissed the petition. Aggrieved by the said order, the present appeal is filed.

8. Sri. L.S. Venkata Krishna, learned Counsel appearing for the petitioner-appellant contends that from the material on record it is clear that the land is sought to be acquired for formation of the road and not for formation of an industrial area. That road is meant for access of the third respondent who is a private entrepreneur who is putting up a Hotel. In those circumstances, the initiation of acquisition proceedings under the Act is wholly misconceived and runs counter to the purpose for which the Act was enacted. It does not serve any public purpose and therefore it is vitiated. In fact the learned Single Judge has not properly appreciated the facts of the case and the scheme of the Act and committed a serious error in rejecting the writ petition.

9. The learned Government Advocate supporting the acquisition submitted that even though acquisition is for the formation of the road, it is for industrial purpose, which is permitted in law. Therefore he submits that challenge to the acquisition is without any substance and it requires to be rejected.

10. The learned Counsel appearing for Karnataka industrial Area Development Board, supported the said argument.

11. The learned Counsel appearing for the third respondent, the beneficiary of the acquisition, contended that he is setting up a Hotel in an area of 4 acres belonging to him. It has no access to the main road. This land is acquired for the purpose of providing access to the said Hotel, which is an industry. Therefore the acquisition of the land for the purpose of formation of road is for industrial purpose and the learned Single Judge was justified in rejecting the writ petition and no case for interference is made out.

12. The KIADB. Act, 1966 was enacted by the Karnataka Legislature for the orderly establishment and development of Industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for Industrial Development and establish a Board to develop such area and make available lands therein for establishment of Industries.

Section 2(6) of the Act, defines what an "Industrial area" means:

"Industrial Area" means any area declared to be an industrial area by the State Government by notification which is to be developed and where industries are to be accommodated; [and industrial instrumental facilities and amenities are to be provided) and includes, an industrial estate;

Industrial estate is defined u/s 2(7) as under:

Industrial estate" means any site selected by the State Government where factories and other buildings are built for use by any industries or class of industries;

Clause 7-a of Section 2 defines what industrial infrastructure facility" means:

Industrial Infrastructural facilities" means facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, Marketing, Technology parks and Townships for the purpose of establishing trade and tourism centers ;and any other facility as the State Government may by notification specify to be an industrial infrastructural facility for the purposes of this Act;

Section 3 of the Act deals with "Declaration of industrial areas", it reads as under:

Declaration of Industrial areas.-- (1) The State Government may, by notification, declare any area in the State to be an industrial area for the purposes of this Act.

(2) Every such notification shall define the limits of the area to which it relates.

13. The Act came into force from 26th day of May, 1966. However, Chapter VII of the said Act did not come into force from that date.

14. Sub-section (3) of Section 1 provides that Chapter II shall come into force in such area and from such date as the State Government may, from time to time, by notification, specify in this behalf. Chapter VII deals with acquisition and disposal of the land.

15. Under the scheme of the Act, first notification u/s 3(1) is to be issued declaring a particular area as an industrial area. It is thereafter, Chapter VII of the Act is to be made applicable by issuing notification u/s 1(3) of the Act. It is thereafter, preliminary notification u/s 28(1) of the Act is to be issued. Therefore it follows that first, the Government should specify a particular area as an industrial area. It is not incumbent on the Government to acquire entire area shown as industrial area by issuing notification u/s 28(1) of the Act. After specifying the area, depending upon the requirement, the Government has to issue notification u/s 1(3) of the Act, making Chapter VII of the Act applicable to that area, which is proposed to be acquired. It is thereafter, by way of notification u/s 28(1) of the Act, the land proposed for industrial development is to be acquired.

16. If we keep this scheme in the background, in the instant case, admittedly 7 guntas of land in Yamalur Village and 26 guntas of land in Kempapura Village is notified for acquisition. Thus, in all 33 guntas. 33 guntas of land is not sufficient for an industrial area. No industry can be set up in an area of 33 guntas of land. As is clear from the statement of the third respondent, the said land is acquired for the purpose of formation of a road to give access to his land measuring 4 acres where he intends putting up Resort/Hotel. Therefore this acquisition of land

is not for public purpose. It is not for setting up an industrial estate and not for establishment of industrial area, for which the Act is enacted. Acquisition proceedings are initiated under the Act for the purpose of providing road to a private entrepreneur.

17. The Apex Court in the case of State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, held as under:

By the long title the legislature made it clear that Great Eastern Hotel was acquired by the Act of 1980 for purpose of ensuring better facilities for boarding and lodging to the members of the public and for matters connected therewith. As held by the High Court the hotel which is a star hotel is meant for use by the affluent section of the society and not for general public. The term "members of the public" would mean occupants of the hotel, who can use the hotel on payment and not general public. Therefore, this is purely a commercial venture and there was no element of public purpose of public interest...

18. That was, a case where the State Government by invoking provisions of Great Eastern Hotel (Taking Over of Management) Act, 1980, the undertaking of the Company, i.e., the Great Eastern Hotel was taken over by the Government and transferred the undertaking of the Company to the Authority constituted u/s 5 of the Act. The occupants of the Hotel were sought to be evicted under the provisions of the said Act on the ground that it was meant for public purpose and the Apex Court held that the said Hotel is meant for affluent Section of the society and not for general public. It is purely a commercial venture and there is no element of public purpose or public interest. In the instant case, the beneficiary of the acquisition is not the public. The beneficiary of the acquisition is the third respondent who intends to set up a Resort/Hotel behind the land in question. There is no access to the main road. Therefore he has approached the authority and the Government to acquire the land in question to have access to the main road. Therefore this acquisition is meant for the third respondent and not for general public. The Hotel and the Resort which he intends to set up is not for common man or general public. It is meant for affluent people who wants to spend their week ends with their family. The State or the Authority cannot invoke provisions of the Act which is enacted with the object of establishment and development of industries in suitable areas in the State, so that there will be economic growth, employment opportunities to the locals. It is a clear case of fraud on the power of the Government in initiating the acquisition proceedings. It is colourable exercise of power. In that view of the matter, the acquisition cannot stand. Hence, we pass the following order:

Writ appeal is allowed.

The impugned order passed by the learned Single Judge is hereby set aside.

The notifications issued under Sections 3(1), 1(3), 28(1) and 28(4) of the Act are quashed.

Parties to bear their own costs.