

(2014) 01 KAR CK 0244

In the Karnataka High Court

Case No : Writ Petition No. 41586 of 2011 (LA-KHB)

Sri. Shivashankar Reddy

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Karnataka Housing Board Act, 1962 — Section 3
Land Acquisition Act, 1894 — Section 3(f) 3(f)(vi) 4(1) 6(1)

Citation : (2014) 01 KAR CK 0244

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : A. Nagarajappa, for the Appellant; H.M. Manjunath, Advocate for Respondent Nos. 2 and 3 and Shri. D. Nagaraj, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners and the learned counsel for the respondent. These writ petitions are disposed of by this common order, having regard to the issue involved being common.

Regarding W.P. 41586/2011:

The petitioner claims that land bearing Sy. No. 23/1 of Jigala Village to an extent of 27 guntas originally belonged to his father, the same having been allotted to him under a Partition decree, in a civil suit. His father was in possession and enjoyment of the same and in a partition between the petitioner's father and himself, the petitioner is said to have been allotted 11 guntas of land and claims to be in possession of the land and the revenue records also reflect the ownership and possession of the petitioner. It transpires that the second respondent had issued a notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act", for brevity), dated 14.06.2006, proposing to acquire the said land in respect of 20 guntas. The petitioner is said to have filed his objections to the same, namely that it was the only source of

livelihood for him and that he had constructed a building worth more than Rs. 10,00,000/- and an inquiry having been conducted on the basis of the same, the objections are over-ruled and a final notification having been issued dated 15.03.2008 u/s 6(1) of the LA Act, the present writ petition is filed.

Regarding W.P. No. 41585/2011:

The petitioner claims that land bearing Sy. No. 23/1 of Jigala Village to an extent of 27 guntas originally belonged to her father, the same having been allotted to him under a Partition decree, in a civil suit. Her father was in possession and enjoyment of the same and in a partition between the petitioner's father and herself, the petitioner is said to have been allotted 8 guntas of land and claims to be in possession of the land and the revenue records also reflect the ownership and possession of the petitioner. It transpires that the second respondent had issued a notification u/s 4(1) of the LA Act, dated 14.06.2006, proposing to acquire the said land in respect of 20 guntas. The petitioner is said to have filed her objections to the same, namely that it was the only source of livelihood for her and that she had constructed a building and is residing there with her family and that her father's samadi is also existing in the said land. An inquiry having been conducted on the basis of the same, the objections are over-ruled and a final notification having been issued dated 15.03.2008 u/s 6(1) of the LA Act, the present writ petition is filed.

Regarding W.P. No. 41587/2011:

The petitioner claims that land bearing Sy. No. 23/1 of Jigala Village to an extent of 27 guntas originally belonged to her father, the same having been allotted to him under a Partition decree, in a civil suit. Her father was in possession and enjoyment of the same and in a partition between the petitioner's father and herself, the petitioner is said to have been allotted 8 guntas of land and claims to be in possession of the land and the revenue records also reflect the ownership and possession of the petitioner. It transpires that the second respondent had issued a notification u/s 4(1) of the LA Act dated 14.06.2006, proposing to acquire the said land in respect of 20 guntas. The petitioner is said to have filed her objections to the same, namely that it was the only source of livelihood for her and that she had constructed a building and is residing there with her family and that her father's samadi is also existing in the said land. An inquiry having been conducted on the basis of the same, the objections are overruled and a final notification having been issued dated 15.03.2008 u/s 6(1) of the LA Act, the present writ petition is filed.

2. Of the several grounds urged, one of the grounds is to the effect that, there is no scheme framed prior to the acquisition of the land and therefore, the entire acquisition is vitiated and would also contend that this Bench has already taken a view in W.P. 21156/2012 c/w W.P. 6927-28/2012 disposed of on 09.01.2014 that, in circumstances where the land is acquired under the Land Acquisition Act, 1894, the KHB, as a local authority, can only acquire land pursuant to a Scheme

duly approved by the State Government, as contemplated u/s 3(f)(vi) of the LA Act. Since there is no scheme as such framed, the present petitions would have to be allowed, without having to address the other grounds that are raised in the writ petitions.

3. While the learned counsel for the respondents would submit that notwithstanding the view taken by this Court insofar as the need for a scheme being framed prior to the acquisition proceedings, the fact remains that a scheme has indeed been framed, duly approved by the State Government and which is produced as Annexure-R8 to the Statement of objections filed in the present petitions, and would submit that pursuant to the scheme, the land acquired has been formed into a layout and there has been substantial implementation of the scheme and therefore, to consider the challenge in the present petition which is filed in the year 2011, would undo the proceedings that have attained finality. Further, since third party interests have intervened, the challenge, even if it be on the footing that is in consonance with the view taken by this Bench, the delay in the challenge to the proceedings and the subsequent events, will have to be kept in view and therefore, seeks dismissal of the petition.

4. By way of reply, the learned counsel for the petitioners would submit that the question of delay in challenge to the proceedings would depend on the facts and circumstances of each case. Notwithstanding that the present petition was filed in the year 2011, as on the date of the petition, possession of the land in question had not been taken by the respondents pursuant to the acquisition proceedings. Since this Court was not inclined to grant any interim prayer, it is during the pendency of these proceedings that possession has been taken and therefore, the delay in the present case on hand cannot be said to be inordinate or working to the prejudice of the respondents. The primary requirement of a scheme preceding the acquisition proceedings, would vitiate the same and would therefore reiterate his prayer. Given the above circumstances, it has to be kept in view by this Court that notwithstanding the strength of the challenge, if the delay in bringing the petition is in circumstances where there has been substantial development and involvement of third party interests, or if the petition being allowed, would interfere with the effective implementation of the scheme, in its entirety, in that, the roads and other common areas to be formed of the Layout would be upset in the event of the petition being allowed. The court would proceed with circumspection in either assuming that there is delay which defeats the petition or in considering the prayer of the petitioners.

In the instant case on hand, it is candidly admitted by the respondents that there are no roads or other common areas of the layout which overlaps the petitioners' lands and that the land was to be acquired only for the formation of sites and it is also admitted that possession of the land was taken during the pendency of these proceedings. Therefore, while it may be that the entire acquisition would be affected if the acquisition was not preceded by a scheme, as laid down in the aforesaid decision of this Court, which has proceeded in the

following vein:

In so far as the second point for consideration is concerned, it is to be noticed that the provision of land for carrying out a housing Scheme by such a body as the KHB is a public purpose. And in defining the expression "public purpose" u/s 3(f) of the LA Act, clause (vi) provides thus:-

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

That Sub-section (4) of Section 3 of the KHB Act lays down thus:

(4) For the purpose of this Act and the Land Acquisition Act, 1894, the Board shall be deemed to be a Local Authority.

Therefore, the provision of land for a local authority can only be in respect of a Scheme duly approved by the Government. Therefore, there is no escaping the requirement of the existence of a Scheme duly approved by the government prior to the initiation of the acquisition proceedings.

x x x

Therefore, de hors the express requirement of a Scheme to be framed and approved by the State government, prior to the stage of execution of the project by KHB, as contemplated under the provisions of the KHB Act, as the compulsory acquisition of land for the execution of the Scheme, is in the manner provided under the LA Act, and KHB, as a local authority, can only acquire land pursuant to a Scheme duly approved by the State Government, as contemplated u/s 3(f) (vi) of the LA Act.

It should be accepted that the KHB intending to execute a Housing Scheme of its own, and not one sponsored by the Government, can proceed to acquire land for the execution of the project only in terms of the provisions of the LA Act; And as a local authority, is capable of acquiring land only in accordance with a Scheme duly approved by the State Government.

Admittedly, there is no Scheme, or any thing akin to a Scheme, duly approved by the State Government, that is placed on record to demonstrate that there was compliance with this compulsory requirement.

It would be in the fitness of things if the acquisition to the extent of the petitioners' lands, are held to be bad and if the petitions are allowed to the limited effect, the interest of the petitioners, the respondents, as well as such other third parties who are not parties to these proceedings, could be addressed.

Accordingly, the petition is allowed and the acquisition insofar as the petitioners' lands are concerned, are quashed.