
(2013) 11 KAR CK 0208
In the Karnataka High Court
Case No : Writ Petition No. 29390 of 2013

Sri. Somashetty	Vs	APPELLANT
The Karnataka Housing Board and Sri. Shivashankar Hiralal Phulse		RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 53A, 6(1)

Citation : (2013) 11 KAR CK 0208

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.V. Giridhar, for the Appellant; H.M. Manjunath, Advocate for Respondent Nos. 1 and 2 and Shri. Y.H. Vijaya Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondents. Notice of the application in I.A. 1/2013 having been served, counsel has entered appearance for proposed Respondent No. 3 who in turn is also heard. The petitioner is before this court seeking a direction to the respondents for disbursal of the compensation amount which is in deposit.

The petitioner was the owner of land in Sy. No. 54/p-p2 of Kalluru Naganahalli Village, Ilavala Hobli, Mysore Taluk, Mysore and it was notified for acquisition by Respondent No. 1, namely the Karnataka Housing Board under a notification dated 16.03.2011 which was followed by a declaration u/s 6(1) of the Land Acquisition Act, 1894 dated 18.10.2011. It transpires that one Shivashankar Hiralal Phulse, namely the third respondent who has been impleaded, claiming to be the holder of an agreement to sell, had instituted a suit on the file of the Court of the Senior Civil Judge, Mysore in O.S. No. 284/2011. The petitioner had entered appearance therein and had filed his written statement contesting the

suit and the suit is said to be pending. The petitioner had filed an application for payment of compensation as on 26.04.2013, in response to which the Respondent No. 2 had issued an endorsement at Annexure "G" where the second respondent has flatly refused to disburse the amount of compensation on the footing that the suit aforesaid is pending and that the compensation amount cannot be paid till the suit is disposed of. Being aggrieved by the said endorsement, the present petition is filed.

2. In the course of hearing, it was felt that the presence of Respondent No. 3 was necessary and therefore, the application having been filed and notice having been served, the counsel has entered appearance for Respondent No. 3 and therefore, the petitioner has also impleaded the said proposed respondent as Respondent No. 3. The question for consideration is, whether the Karnataka Housing Board is justified in denying the compensation payable in respect of the property acquired on the basis that there is a suit filed by an agreement holder seeking specific performance of contract against the petitioner. Since the lis between the petitioner and the Respondent No. 3 is a matter which the Karnataka Housing Board need not be concerned, as the right if any of the Respondent No. 3 in the property in question would necessarily fructify only if a decree had been passed in favour of the said respondent and the suit being at a nascent stage, would not be an impediment to disburse the amount of compensation. This however will not prejudice the third respondent from working out his rights and claims as against the petitioner independently either in the pending suit or in such other manner that the said respondent may choose to enforce his rights. In this regard, reliance is placed by the learned counsel for the petitioner on a decision of the Apex Court in the case of Sunil Kumar Jain Vs. Kishan and others, wherein in identical circumstances where an agreement holder claimed to be in possession of land and therefore claimed that by operation of Section 53A of the Transfer of Property Act, the said agreement holder in possession was entitled to compensation, has been negated by the Apex Court while holding that the dispute is to the title to receive the compensation and that it is settled law that an agreement of sale would not confer title and hence, an agreement holder even assuming that the agreement is valid, does not acquire any title to the property and further, it was noticed in that case that the agreement was subsequent to the notification issued u/s 4(1) of the Land Acquisition Act, 1894. In any event, as already stated, it is for the plaintiff in the pending suit to work out his remedies appropriately and it shall not be an impediment for the Housing Board to disburse the compensation in favour of the petitioner. The petition is allowed. Annexure-"G" dated 8.5.2013 is quashed. The respondent is directed to release the compensation forthwith, in any event, within a period of three weeks from the date of receipt of a certified copy of this order.