

(2014) 11 KAR CK 0123

In the Karnataka High Court

Case No : Writ Petition Nos. 38110/2013 and 9637, 9638, 9639, 9640, 9641, 9642, 18066-18067 and 44689/2014 (LA-BDA)

T. Ashwath Narayana

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Citation : (2014) 11 KAR CK 0123

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, Sr. Counsel for Shashidhara R., K.M. Nataraj, Sr. Counsel for Santosh S. Nagarale and Hemant R. Chandana Goudar, Advocate for the Appellant; S.V. Girikumar, AGA, K. Krishna, G. Lakshmeesh Rao, S.G. Hegde and I.G. Gachchinamath, Advocate for the Respondent

Judgement

A.S. Bopanna, J.—Petitioners in all these petitions are assailing the notification dated 30.12.2008 issued under Section 17(1) and (3) of BDA Act, 1976 in respect of the lands of the petitioners that have been included therein, proposing to form a layout called "Dr. K. Shivarama Karantha Layout."

2. The facts as pleaded in W.P. No. 9640/2014 is referred for narration of the facts so as to take note of the legal position in that background.

3. The petitioner therein is the owner of the property bearing No. 15/2B, measuring 1 acre 18 guntas in Sy. No. 31/1 measuring 011.08 guntas, Veerasagara Village, Yelahanka Hobli, Bangalore North Taluk. The petitioners in the other connected petitions have accordingly referred to the respective properties owned by them which have been included in the said notice.

4. The preliminary notification proposing acquisition having been issued on 30.12.2008, the same had not been proceeded further and concluded by issue of final notification even on the date of filing of this petition or thereafter till this day. In that view, the petitioners contend that the preliminary notification has

lapsed and therefore, they should be permitted to enjoy the property in accordance with law as they are entitled to do so.

5. The respondents have filed their separate objection statement in all these petitions. The contention put forth is that since large extent of the property had been notified for acquisition and process of enquiry as contemplated under Section 5-A of the Land Acquisition Act was held, there was delay in the process. It is further contended therein that the State Government at the first instance had directed the BDA to withdraw an extent of 257.20 acres of land from various villages from the process of acquisition. Subsequently, taking note of the decision rendered by this Court in the case of Junjamma and Others Vs. The Bangalore Development Authority and Others, and the case decided by the Hon'ble Supreme Court in the case of Bondu Ramaswamy Vs. Bangalore Development Authority and Others, had arrived at the conclusion that the extent of 446.07 acres is to be deleted from the process of formation of the layout. Since the said decision had raised a controversy inasmuch as the issue was raised, an in-house enquiry was held. The Government also initiated suo-moto enquiry vide Govt. Order dated 24.11.2012 and 19.01.2013. Since the proceedings therein were not concluded and no decision was taken by the Government, the further proceedings relating to the acquisition could not be completed.

6. Having made an attempt to explain the delay, it is their further case that since provisions of the Land Acquisition Act insofar as time limit for issue of final notification and passing of the award would not be applicable to BDA for quashing the notification since the acquisition is under the BDA Act. In addition to the said contention which has been put forth in all these petitions, an additional contention has been urged in the objection statement filed by the BDA in W.P. No. 9637/2014, wherein it is pointed out that a notice dated 03.05.2014 has been issued to the land owners/petitioners therein indicating the need for re-enquiry of the matter and therefore, the further proceedings would be taken pursuant to the notification. Hence, it is contended that the challenge made to the notification is not sustainable.

7. In the light of the rival contentions, I have heard Sri Madhusudan R. Naik, learned Senior Counsel for some of the petitioners and Sri K.M. Nataraj, learned Senior Counsel on behalf of other petitioners. I have also heard Sri G. Lakshmeesh Rao, Sri S.G. Hegde, Sri K. Krishna, Smt. Asha Kumbarigeri Mutt on behalf of Sri I.G. Gachchinamath learned counsel for the respondents in respective cases and perused the petition papers.

8. On the legal position as to whether the provisions as contained in the Land Acquisition Act insofar as the time period as fixed therein for passing the final notification and the award thereof could be imported into the BDA Act which has been raised by the respondents, a detailed consideration would not be necessary. This is due to the fact that the Hon'ble Division Bench of this Court while considering the matter in the case of Sri H.N. Shivanna and Others Vs. The State of Karnataka, Department of Industries and Commerce and Karnataka Industrial

Area Development Board has elaborately considered this aspect of the matter while taking note of the acquisition process which was being done under the KIAD Act wherein also no time limit has been prescribed. The Hon''ble Division Bench having accepted the position that there is no time limit fixed under the special enactment has also taken into consideration the observations made by the Hon''ble Supreme Court in the earlier cases under different circumstances and has declared the position that even though a time frame is not fixed in the special enactment under which the acquisition is being made, the reasonableness of the delay should be considered in the facts of a case and in that circumstance, a decision is to be taken, but unreasonable delay would not be permitted. While stating so, the Hon''ble Division Bench has also kept in view that even while considering such time frame, keeping in view the fact that the Land Acquisition Act prescribes a specific time frame even for the enactments, roughly the period of two years would be appropriate. Hence, on the legal aspect, the said decision would settle the issue. In the light of the judgment as rendered by the Hon''ble Division Bench, the explanation as put forth in the instant case needs to be taken into consideration.

9. As already noticed, the contention in an attempt to explain the delay is that at the first stage, the Government had directed deletion of an extent of 257.20 acres in different villages. Thereafter the Land Acquisition Officer taking note of the directions of this Court as well as the Hon''ble Supreme Court made in respect of the other layouts formed by the BDA had deleted an extent 446.07 acres. In that light, the contention is that the Government had ordered an enquiry through its orders dated 24.11.2012 and 19.01.2013 and the conclusion and decision therein is awaited. Even if the said explanation is noticed, from the date of the notification issued on 30.12.2008, about four years had lapsed even as on the date of the first Government Order dated 24.11.2012 and as on this day nearly six years has lapsed. If that be the position, the explanation as put forth for the long delay cannot be accepted at this stage since the deletion of 237.20 acres at the first instance based on the Government Order would have no relevance whatsoever for the proceedings to be held by the respondents through their Land Acquisition Officer in respect of the remaining extent. In fact, the contention as put forth in W.P. No. 9637/2014 indicating that a notice dated 03.05.2014 has been issued to the land owner therein would betray the first log of its contention as would only indicate that the Government order or the enquiry was not an impediment for the BDA. It could have proceeded in respect of the other lands notwithstanding the fact that the Government had initiated an enquiry since a notice has been issued presently despite the pending enquiry. I am of the said opinion for the reason that the respondents would contend that even as on today, the Government has not passed any orders pursuant to the enquiry initiated. If that be so, the explanation as put forth in the other petitions that they could not proceed with the acquisition due to that impediment, cannot be accepted.

10. Further, one other aspect which is also to be noticed in that regard is that the

first of the petitions which is being considered in this batch of the petitions was filed on 21.02.2014 and as on such date no further proceedings whatsoever had been held by the respondents and it is only thereafter the notice dated 03.05.2014 relied on in W.P. No. 9637/2014 has been issued. If that be the position, the respondents have only slept over the matter and the delay is due to their negligence, not for justifiable reason and for the first time when the notice was issued by this Court and a challenge was made to the notification, they are presently seeking to revive the issue by issuing notice.

11. If these aspects are kept in view and the reason for which the Hon'ble Division Bench was of the opinion that it should be done in a reasonable time would be more relevant herein since when the preliminary notification is issued, it is considered for all aspects including as a relevant date for the determination of compensation. Hence, the market value which subsisted in the year 2008 would be taken into consideration though even as during the year 2014 the acquisition process has not been completed. While saying so, it is also necessary to take note of another decision rendered by a learned Single Judge of this Court in the case of C.G. Gangadhar Vs. Mysore Urban Development Authority and Another, , which is under the Urban Development Authority Act, the provisions of which are similar to BDA Act. Therein, this Court has made specific reference to the several legal consequences that would follow when the preliminary notification is issued since the land owner would be precluded from dealing with the said property and yet he would be deriving only the benefit of the market value which was prevailing as on the date of the preliminary notification. Therefore, in a circumstance where in the instant facts the explanation as put forth for the long delay in proceeding further with the matter cannot be accepted, the decision as rendered by the Hon'ble Division Bench as also by the learned Single Judge in C.G. Gangadhar's case would squarely apply and the notification issued in the instant case would have to be held as lapsed as against the petitioners herein.

12. Though in W.P. No. 9640/2014, the petitioner has further prayed to issue mandamus to respondent No. 2 to give permission to develop the property and in that regard, the learned senior counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of T. Vijayalakshmi and Others Vs. Town Planning Member and Another, , at this juncture, I see no reason to issue any specific direction since in view of the declaration as made by this Court that the notification has lapsed, the landowners would be entitled to utilization of the property in accordance with law as if there was no acquisition proceedings and all such consequences would flow as per law.

13. In that view of the matter, the notification dated 30.12.2008 assailed in these petitions are held as having lapsed as against the lands of the petitioners referred to in each of these petitions which were included in the said notification.

In terms of the above, these petitions are allowed to that extent. No costs.