

(2015) 04 KAR CK 0013

In the Karnataka High Court

Case No : Writ Appeal No. 100024 of 2015 (KLR-CON)

Tayappa Ramappa Lamani

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Land Acquisition Act, 1894 — Section 4, 4(1), 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 11, 11(1), 11(4)

Citation : AIR 2015 Kar 182 : (2015) 4 AKR 677 : (2015) ILR Kar 3041

Hon'ble Judges : B.S. Patil and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : S.D. Rathod, for the Appellant; C.S. Patil, AGA, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—The short question that falls for consideration in this appeal is:

"Whether the Deputy Commissioner, Bagalkot, was right and justified in rejecting the application filed by the appellant seeking conversion of 3 acres 7 guntas and 8 annas of land situated at Bagalkot comprised in R.S. No. 148/3 on the ground that the land was proposed to be acquired as per the preliminary notification issued under Section 4(1) of the Land Acquisition Act, 1894?"

The only reason for rejection of the request for conversion of the land is that the land in question was proposed for acquisition by issuing a notification under Section 4(1) of the Land Acquisition Act, 1894 (Central Act No. 1 of 1894) as per the Gazette Notification dated and published on 22-11-2013.

2. The land has been proposed for acquisition to provide rehabilitation of the displaced persons on account of the probable submergence of the lands in Upper Krishna Project consequent upon the increase of the height of "Almatti" dam. It is also not in dispute that though the notification under Section 4(1) of the Land

Acquisition Act, 1894, has been published on 22-11-2013, so far final notification has not been issued. Indeed, the petitioner/appellant contends that the proposed acquisition has lapsed as no final declaration was issued within one year as required in law.

3. The appellant intended to convert the land for non-agricultural purpose as the land has become part of Bagalkot town. Therefore, he made an application under Section 95 of the Karnataka Land Revenue Act before the Deputy Commissioner seeking conversion of the land. The said application came to be rejected. The appellant challenged the order passed by the Deputy Commissioner in the Writ Petition before this Court and the learned single Judge has dismissed the writ petition holding that as the land of the appellant was proposed for acquisition for the purpose of relocating the displaced persons in the Upper Krishna Project, rejection of the application for conversion was just and proper.

4. Learned counsel for the appellant, placing reliance on the division bench judgment of the High Court of Mysore in W.P. No. 1300/1966 dated 30-6-1969 rendered in the case of K.K. Radhakrishna Nayar v. State of Mysore and others contends that issue of notification under Section 4(1) under the provisions of the Land Acquisition Act is no more than notifying a proposal for acquisition for the purpose stated in the preliminary notification and no one can be sure whether the preliminary notification would be culminating in a notification under Section 6 of the Land Acquisition Act and therefore the Deputy Commissioner could not have speculated on the course of acquisition proceedings while refusing permission for conversion.

5. Learned Government Advocate strongly supports the order of the Deputy Commissioner and the reasons assigned by the learned single Judge to contend that no useful purpose would be served by passing an order of conversion and by converting the land as the land would be eventually made use of for the purpose of rehabilitating the displaced persons.

6. We have carefully examined the contentions urged by the learned counsel for the parties.

7. On perusal of Section 4 of the Land Acquisition Act, 1894 (Central Act No. 1/1894) and Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act No. 30 of 2013) (for short "the New Act"), we find that in Central Act No. 1/1894, there is no prohibition disentitling the land owner to put his land for better use by seeking conversion after publication of 4(1) notification.

8. Sub-section (4) of Section 11 of the New Act states that "no person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed". It is also useful to refer to the two provisos appended to sub-section (4) of Section 11 which read as under:

"Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector."

9. Thus, it is clear that even under the New Act, there is no prohibition for the land owner to seek conversion of his land. What has been prohibited is entering into any transaction in respect of the land which is the subject-matter of notification under Section 11(1) or to create any encumbrances in respect of such land. In view of the above and keeping in mind, the language of the provisions contained under Section 4 of Central Act No. 1 of 1894, Section 11(4) of New Act and bearing in mind the judgment referred hereinabove, we are of the view that merely because the land has been notified by issuing a preliminary notification for acquisition, the Deputy Commissioner cannot reject the application filed by the appellant seeking conversion of the land for non-agricultural purpose. In fact, the said factor is not a relevant material to be taken into consideration for deciding the application filed under Section 95 of the Karnataka Land Revenue Act, seeking conversion.

10. The matter also does not fall under sub-section (3) of Section 95 as urged by the learned Government Advocate to enable the Deputy Commissioner to refuse permission on the ground that diversion of the land use was likely to defeat the provisions of law for the time being in force or is likely to cause public nuisance. No such ground is made out in the impugned order. Mere possibility of the land being acquired in future by issuing a final notification cannot deprive the land owner from seeking permission to convert the land for non-agricultural purpose.

11. Though it is contended by counsel for the appellant that the appellant is entitled for the benefit of deemed conversion of the land as provided under sub-section (4) of Section 95, we do not wish to express any opinion on this aspect. Accordingly, the appeal is allowed. The order passed by the Deputy Commissioner and also the order passed by the learned single Judge are set aside. The matter is remitted back to the Deputy Commissioner for fresh consideration of the application filed by the appellant seeking conversion of the land. The application shall be considered within a period of three months from the date of receipt of a copy of this order. No costs.