

(2008) 11 KAR CK 0064
In the Karnataka High Court
Case No : Writ Appeal No. 159 of 2006

The Special Land Acquisition Officer, Karnataka Industrial
Area Development Board

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1)
Land Acquisition Act, 1894 — Section 18 (1), 28 A

Citation : (2009) 1 KarLJ 102 : (2008) 5 KCCR 3497

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Basavaraj V. Sabarad, for the Appellant; Madhusudan R. Naik and D.N. Nanjunda Reddy, Sr. Advs. for B.B. Bajentri, for Respondents-2 to 5, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has been filed challenging the order dated 11-11-2005 passed by learned Single Judge, by which, W.P. No. 3264 of 2004 (Aravind and Others Vs. The Special Land Acquisition Officer, KIADB and Another, was allowed, the impugned communication therein was quashed and a direction was issued to pass an order as provided u/s 28-A of the Land Acquisition Act, 1894 ("L.A. Act" for short) and grant benefit of the award as per Annexure-K to the petition. Appellant was the 1st respondent in writ petition. Respondents 2 to 5 herein were the writ petitioners. Respondent 1 herein was respondent 2 in the writ petition.

2. This appeal illustrate a classic example as to how appellant and other concerned authorities subjugated the rights of villagers who consented for their agricultural land being acquired for development by the Karnataka Industrial Areas Development Board, the possession of which was taken decades back, but till now they are not only deprived of cultivation of their land and the proceedings

for payment of compensation being held up in the legal tangle thereby they are being coerced to accept the price fixed by the appellant, despite repeated cries for payment of just compensation in accordance with law.

3. Material facts which have led to the filing of this appeal are as follows:

Respondents 2 to 5 were the owners of 21 acres 28 guntas of land in Sy. Nos. 165/1 and 166 of M.T. Sagar Village, Hubli Taluk, which were proposed for acquisition by issue of a notification dated 28-6-1980 (Annexure-A) u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (for short, "the Act"). Two final notifications u/s 28(4) of the Act (Annexure-C and E), were issued on 6-12-1995 and 30-10-1997 and the said lands were acquired for the purpose of development by the Board. Before the acquisition by issue of said two notifications u/s 28(4) of the Act, certain payment was made by the Board to respondents 2 to 5. Respondents 2 to 5 submitted an application dated 10-11-2003 (Annexure-H) for payment of just and adequate compensation, which was rejected by the appellant on 22-11-2003 (Annexure-J) on the ground that they had already received compensation amount without any objection and as such, are bound by the agreement u/s 29(2) of the Act. Questioning the rejection and to permit the petitioners to seek a reference to Civil Court u/s 18(1) of the L.A. Act, present writ petition was filed.

4. The appellant/1st respondent, filed statement of objections to the writ petition, wherein the acquisition of the said lands under the aforesaid notifications was admitted. It was stated that for acquisition, compensation amount in parts was paid to writ petitioners, based on agreement, indemnity bond, voucher, consent letter, etc., on 24-5-1990, 23-4-1992, 14-9-1992, 10-3-1999 and 12-3-1999.

5. It was contended that, since compensation was settled by agreement and paid in terms of the agreement, it is not permissible to seek enhancement or reference u/s 18 of the Land Acquisition Act and hence, claim made based on the award dated 30-9-2002 passed by the Reference Court in LAC No. 58 of 1987 (Annexure-K) was untenable and even otherwise the said award was under challenge in M.F.A. No. 594 of 2003, and hence the writ petition is not maintainable.

6. Considering the record and rival contentions of both parties, learned Single Judge has that:

(i) Before the compensation amount is paid by agreement to landowners, Deputy Commissioner should determine the market value of their acquired lands as provided u/s 11 of the L.A. Act by taking relevant aspects as provided u/s 29 of the Act;

(ii) Before issue of notification u/s 28(4) of the L.A. Act, there is no question of determination of compensation amount towards acquired lands and payment of the same with agreement as provided u/s 29(2) of the Act and therefore there is

no agreement between the parties;

(iii) There is manipulation of certain record of KIADB to deprive the lawful entitlement of compensation amount to landowners on the basis of actual market value of their land, which is their statutory right and the same cannot be deprived by creating documents which is a fraud played on the landowners;

(iv) The files showed that, there is no determination of compensation amount on the basis of market value of the land to enter into agreements and Board could not have determined the compensation amount before the declaration u/s 28(4) of the L.A. Act;

(v) Under the provisions of the L.A. Act, apart from market value, landowners are entitled to statutory benefits which cannot be deprived to them merely because they entered into agreements before issue of notification u/s 28(4) of the L.A. Act and therefore the agreements cannot be construed as agreements as provided u/s 29(2) of the Act;

(vi) Annexure-B shows that, market value has been determined in the absence of petitioners and the same has not been signed by landowners and the action shows fraud on power which vitiates the proceedings and discredit the conduct of officials in discharge of their functions;

(vii) The stand taken by the Board that the petitioners are not entitled to the benefit u/s 29(2) of the Act, is untenable;

Consequently, the writ petition was allowed and direction was issued to grant the benefit of the award passed by reference Court at Annexure-K.

7. Sri Basavaraj V. Sabarad, learned Counsel for appellant contended that, the reasoning of learned Single Judge in the impugned order is perverse, arbitrary and contrary to law; that merely because payment had been made earlier to the issue of notification u/s 28(4) of the L.A. Act, it is incorrect to hold that there is no determination by agreement of compensation u/s 29(2) of the Act; that the findings relating to the maintenance of records etc. is incorrect. It was contended that, since no award was passed, there is no question of making a reference u/s 18 or determining the compensation u/s 28-A of the L.A. Act. He pointed out that, award passed by the Reference Court in L.A.C. No. 58/1997 (Annexure-K) was questioned in M.F.A. No. 594 of 2004, which was allowed in part and the compensation amount has been reduced and hence the direction issued is untenable. He contended that, quashing of the communication at Annexure-J and issue of direction to grant benefit of the aforesaid award of Reference Court is incorrect and that, learned Single Judge has failed to consider the matter in proper perspective and that the case of writ petitioners does not come under the purview of Section 28-A or Section 18 of the L.A. Act. Learned Counsel contended that, learned Single Judge has erred in deciding disputed question of facts, which is impermissible in exercise of the jurisdiction under Article 226 of the Constitution of India. Learned Counsel further contended that, the Act did not

impose any bar for payment and when the parties had agreed for certain amount of compensation, there was determination of compensation according to agreement and u/s 29 of the Act and hence the impugned order may be set aside.

8. Per contra, Sri Madhusudhan R. Naik, learned Senior Counsel appearing for respondents 2 to 4 contended that, without final notification being issued u/s 28(4) of the Act and the land being acquired by the Government, there was no provision for entering into any agreement u/s 29(2) of the Act. He contended that, officials of the Board have acted fraudulently, illegally and with material irregularity and their actions impugned in the writ petition is mala fide exercise of authority. He contended that the final notifications having been issued only on 6-12-1995 and 14-10-1997, the alleged agreement u/s 29(2) of the Act is illegal and void ab initio. He contended that, a perusal of the documents produced by the Board with regard to payment of compensation for the acquired land of writ petitioners, shows that the documents have been fabricated to suit the convenience of appellant. He contended that, documents have been manipulated, tampered and the actions are fraud on power. He contended that in respect of the adjacent properties acquired by the appellant under the very same notifications, Reference Court has passed award, which has been modified by this Court in an appeal and hence instead of multiplying the litigation, learned Single Judge was justified in moulding the relief and directing payment in terms of Section 28-A of the L.A. Act. For the purpose of moulding relief he relied upon the decision in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, .

9. Sri D.N. Nanjunda Reddy, learned Senior Counsel appearing for some of the other landowners, while reiterating the arguments addressed by Sri Madhusudhan R. Naik, also contended that the appellant and officials of the Board have resorted to illegal acts, have violated the statutory provisions and have committed fraud and hence, learned Single Judge is justified in allowing writ petition and in directing payment. He contended that, in the facts and circumstances of the case, illegality committed by appellant and its officials being apparent from perusal of the record produced in the Court, this Court should dismiss the writ appeal with exemplary costs. He made submissions in support of the findings recorded by the learned Single Judge in the impugned order.

10. We have perused the record of writ petition and also of the files of appellant with regard to payment made to respondents 2 to 5.

11. In order to examine the contentions advanced by learned Counsel for the parties, it is necessary to notice some of the provisions of the Act which are relevant for the decisions on the points which arise for consideration:

Section 28. Acquisition of land.- (1) If at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State

Government may be notification, give notice of its intention to acquire such land.

...

(4) After orders are passed under Sub-section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under Sub-section (1), a declaration shall, by notification in the Official Gazette, be made to that effect.

...

(5) On the publication in the Official Gazette of the declaration under Sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

Section 29. Compensation.- (1) Where any land is acquired by the State Government under this Chapter, the State Government shall pay for such acquisition compensation in accordance with the provisions of this Act.

(2) Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the State Government shall refer the case to the Deputy Commissioner for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

(4) On receipt of a reference under Sub-section (3), the Deputy Commissioner shall serve notice on the owner or occupier of such land and on all persons known or believed to be interested herein to appear before him and State their respective interests in the said land.

Section 30. Application of Central Act 1 of 1894.-The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under this chapter.

(emphasis supplied)

Section 29 provides that where the land is acquired by the State Government under Chapter VII (Sections 27 to 31), the compensation for acquisition shall be paid in accordance with the provisions of the Act. Section 30 provides that the provisions of the Land Acquisition Act shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and payment of compensation in respect of lands acquired under this chapter. It is important to note that the Land Acquisition Act is not applicable at the stage of acquisition of the land under the Act, but becomes applicable only in the matter of payment of compensation on

account of Section 30 of the Act.

12. At this stage itself it is necessary to notice Sub-section (2) of Section 11 of the L.A. Act, which reads as under:

11. (2) Notwithstanding anything contained in Sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(emphasis supplied)

13. Now, reverting back to the facts of the case which are not in dispute are that:

With an intention to acquire the land of the respondents 2 to 5 amongst others, notification dated 28-6-1980 (Annexure-A) u/s 28(1) of the Act was issued proposing to acquire the property for the purpose of development by the Board or for any other purpose in furtherance of the objects of the Act. Possession of 10 acres of land out of the said notified property of the respondents was taken on 23-5-1990. Another 10 acres of notified land was taken on 24-5-1990. Possession of 3 acres 28 guntas of notified land was taken on 23-4-1992 and 14-9-1992. A declaration acquiring an extent of 5 acres 26 guntas and 7 acres 33 guntas of land belonging to respondents 2 to 5 was issued u/s 28(4) of the Act and notified in the Official Gazette on 6-12-1995. Another similar notification in respect of 8 acres of land in Sy. No. 165/1 was issued on 30-10-1997.

14. In the meanwhile the certain payment was made to respondents 2 to 5 as noticed supra. The vouchers for payment signed by respondents 2 to 5 contain the writing as noticed by learned Single Judge in the impugned order. Acquisition of the land of respondents 2 to 5 made u/s 28(4) of the Act for the purpose of development by the Board is not under challenge and has become final. The dispute is only with regard to the payment of compensation for the acquired property. Respondents 2 to 5 claimed that they should be paid compensation on par with the award passed by Reference Court in favour of other landowners, whose lands were also acquired under the very same notification issued u/s 28(1). Appellant repudiated the claim contending that, the payment has been made in accordance with the agreement. Appellant admits that no award has been passed in respect of the acquired lands of respondents 2 to 5.

15. Considering the impugned order passed by the learned Single Judge, the rival contentions of the learned Counsel appearing for the parties and the record made available by the appellant for our perusal, the following points arise for our consideration:

(i) When does the compensation in accordance with the provisions of the Act becomes payable?

(ii) Can there be an agreement between the State Government and the person to be compensated earlier to the declaration and issue of notification u/s 28(4) of the Act in the Official Gazette?

(iii) Even if the amount of compensation has been determined by agreement between the State Government and the person to be compensated, is there a requirement to pass an award?

(iv) Whether learned Single Judge is justified in quashing Annexure-J?

(v) Whether learned Single Judge is justified in issuing direction to pass an order as provided u/s 28-A of the L.A. Act and grant the benefit of the award at Annexure-K?

16. We will deal with the aforesaid points hereunder in stratum:

16.1 Re. Point No. (i).-Sub-section (1) of Section 29 makes it apparently clear that, the State Government shall pay compensation in respect of land acquired by it under Chapter VII, compensation in accordance with the provisions of the Act. Sub-section (4) of Section 28 of the Act makes it abundantly clear that, the acquisition of land shall be complete with the issue of a declaration by the State Government by notification in the Official Gazette to the effect that the land is acquired for the purpose specified in the notification which was issued under Sub-section (1). After the publication in the Official Gazette of the declaration under Sub-section (4), the acquired land shall vest absolutely in the State Government free from all encumbrances, as provided under Sub-section (5). By virtue of Section 30 of the Act, provisions of the L.A. Act shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under Chapter VII of the Act. From the opening words of Sub-section (1) of Section 29, it is manifestly clear that, compensation becomes payable only after the land is acquired by the State Government in terms of the provisions under Chapter VII i.e., after following the procedure prescribed u/s 28(1) to (3) of the Act and upon the issue of declaration by notification in the Official Gazette made to that effect under Sub-section (4) of Section 28. Hence, it is clear that, the statute provides for payment of compensation only after the land is acquired by a declaration made by the State Government by issue of notification and its publication in the Official Gazette and not earlier, much less with the mere issue and publication in the Official Gazette, a notification u/s 28(1) of the Act. The intention of Legislature is clear and unambiguous. The proposal made u/s 28(1) notification may after consideration of objections/cause of the owner of the land or by the interested person and upon hearing may be dropped on account of diverse factors, such as, property being not fit for acquisition, property being involved in litigation or counter-claims, not required by the Board for the intended purposes etc., in which event, if any payment has been made in the meanwhile, will prove to be risky/prejudicial to the interest of State Government.

16.2 Re. Point No. (ii).-By virtue of Section 30 of the Act, in respect of the enquiry and award by the Deputy Commissioner, Section 11 of the L.A. Act becomes applicable and the procedure prescribed therein is required to be followed. Unless the land has been acquired in terms of Section 28(4) of the Act, law does not provide for any agreement between the State Government and the person to be compensated, since, without an acquisition of land, the State Government or the delegated authority in terms of Section 31 of the Act, has no power to enter into an agreement. The land can be acquired under Chapter VII of the Act for the purpose of development by the Board or for any other purpose in furtherance of the objects of the Board. The Board has not been empowered under the Act to purchase the land by agreement with landowners for the purpose of development or for any other purpose in furtherance of objects of the Act. The mode of acquisition of land for the purposes mentioned in the Act is only by having recourse to procedure stipulated under Chapter VII of the Act. It is well-settled position of law that, when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself and in not in derogation thereof. When the statute requires a certain thing to be done in a certain manner, it can be done in that manner alone, unless a contrary intention is to be found in the statute. The Act herein, requires the State Government/ Board in the matter of payment of compensation to act in accordance with the provisions made under Sections 29 and 30. In our view, it is not permissible to be State Government or its delegatee under the Act to act in derogation thereof. The authority under the Act, cannot perform any functions or carry on any acts, de hors the procedure prescribed under the Act. Entering into agreement either by the State Government or by its delegate with the person to be compensated, earlier to the acquisition of the property u/s 28(4) of the Act, is not permissible and cannot also be conceived, inasmuch as, the person has to be compensated only after the land is acquired and not with the mere proposal made u/s 28(1) of the Act.

16.3. Re. Point No. (iii).-In view of the applicability of the provisions of the L.A. Act with regard to the matters stated in Section 30 of the Act and also in view of Sub-section (2) of Section 11 of the L.A. Act, interested persons shall have to appear before the Deputy Commissioner, agree in writing in the manner provided, for the compensation to be paid and thereupon, Deputy Commissioner, without making any further enquiry, can make an award according to the terms of the agreement. That means, the authority has the statutory obligation to pass an award as contemplated u/s 11(2) of the L.A. Act which is known in the common parlance as "consent award". Sub-section (2) of Section 11 of L.A. Act contemplates the making of an award even in case where an agreement is reached between the State Government and the person to be compensated. Sub-section (2) of Section 29 of the Act provides for payment of amount of compensation determined by agreement between the State Government and the person to be compensated, in accordance with such agreement. Hence, we hold

that, in furtherance of the agreement between the State Government and the person to be compensated, the Deputy Commissioner is required to make an award under Sub-section (2) of Section 11.

16.4 Re. Point No. (iv).-Respondents 2 to 5 had submitted the representation dated 10-11-2003 (Annexure-H) with regard to the injustice suffered by them in the matter of payment of compensation for the land acquired. Reply to the said representation is Annexure-J. Learned Single Judge noticing the fact that agreement could not have been entered into prior to the acquisition of the land by issue of notification u/s 28(4) of the Act and the agreement is no agreement in the eye of law and consequently the stand taken in Annexure-J is untenable, has quashed the same. We have perused Annexure-J, from which, it is clear that the appellant contends that in view of the payment made on the basis of agreement in terms of Section 29(2) of the Act and in view of delivery of possession, the claim was disallowed. In view of our findings on points (i) to (iii) supra, learned Single Judge is justified in quashing Annexure-J. Since the actions of appellant in regard to the payment allegedly made u/s 29(2) of the Act, even prior to the issue of notification u/s 28(4) of the Act, i.e., land being acquired by declaration made and by issue of notification and it being published in the Official Gazette, the payment made in the absence of even making of an award, cannot be called as payment towards the acquisition of land. Hence, learned Single Judge is justified in quashing Annexure-J.

16.5 Re. Point No. (v).-In view of the fact that, there is no agreement as contemplated under law between the State Government and the persons to be compensated i.e., respondent 2 to respondent 5, arrived at in terms of Sub-section (2) of Section 11 of the L.A. Act and since indisputably the Deputy Commissioner has also not made an award according to the terms of any agreement, the appellant has legal obligation to make an award in terms of Section 11(2) of the L.A. Act. The award at Annexure-K passed by Reference Court was challenged by the appellant in M.F.A. No. 594 of 2003 wherein this Court has modified the said award and determined the market value in terms of the judgment and award dated 12-10-2007. Hence, the direction issued to grant the benefit of the award of Reference Court at Annexure-K, cannot be upheld and requires to be modified.

17. Section 28-A of the L.A. Act provides for redetermination of the amount of compensation on the basis of award of the Court. The said provision is applicable only if an award had already been made by the Deputy Commissioner and not otherwise. In the instant case, in view of the stand taken by the appellant that, no award has been passed in respect of the acquired land of respondents 2 to 5, Section 28-A has no application. The precondition for applicability of Section 28-A is that, there should be first an award made by the Deputy Commissioner, which having not been challenged by the person whose land was acquired, can seek redetermination of the amount of compensation on the basis award of the Court, made in respect of the other person whose land was also acquired under

the same notification, provided the application for redetermination is made within the prescribed period of 3 months. In view of the aforesaid facts and in the absence of an award, question of redetermination of the amount of compensation on the basis of the award of the Court at Annexure-K, does not arise.

18. In view of the above discussion, it is unnecessary for us to go into the tenability or otherwise of the reasons assigned by the learned Single Judge to allow the writ petition.

For the foregoing reasons, the impugned order passed by the learned Single Judge calls for modification and we pass the following:

ORDER

(i) Appeal is allowed in part. Order dated 11-11-2005 passed in W.P. No. 3264 of 2004 is modified.

(ii) Appellant is directed to make an award as per Section 11 of the L.A. Act, within a period of two months from today, keeping in view the observations made hereinabove and also in accordance with law.

In the circumstances of the case, there shall be no order as to costs.