(2005) 06 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 9146 of 2001

Thomas Patrao since deceased by his LR and Another APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 27-06-2005

Acts Referred:

General Clauses Act, 1897 — Section 21
Karnataka Industrial Area Development Act, 1966 — Section 1 (3), 27, 28, 28 (2), 28 (4)
Karnataka Land Reforms Act, 1961 — Section 44
Land Acquisition Act, 1894 — Section 16, 17, 48, 48 (1), 48 (2)

Citation : (2005) ILR (Kar) 4199 : (2006) 5 KarLJ 48 : (2005) 3 KCCR 2190

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; Nadiga Shivanandappa, HCGP for R.1, Basavaraj V. Sabarad, for R.2 and 4 and A.G. Holla, for P.D. Vishwanath, for R. 3, for the Respondent

Judgement

Abdul Nazeer. J.

1. In this case, the petitioner has sought for quashing the Endorsement dt 12.7.2000 (Annexure-A) and the resolution dated 18.5.2000 (Annexure-B) passed by the second respondent, resolving to re-grant the land in question to the petitioner.

2. Brief facts of the case are as follows;

Petitioner was the owner of about 10 acres of land at Sy.No. 58/1 of Kalavar Village, Mangalore Taluk, out of which certain extent of land was acquired by the State Government in the year 1992 for the benefit of the Karnataka Industrial Areas Development Board (for short ''Board''). The 4th respondent again proposed to acquire additional extent of 4 acres 38 cents of lands of the petitioner in the same survey number for the similar purpose. A Notification u/s 28(2) of the Karnataka Industrial Areas Development Board Act, 1966 (for short ''the Act), was issued to that effect. A Notice u/s 28(2) of the Act was issued to the petitioner calling upon him to file objections as per Annexure-C. Petitioner filed his objections to the said notice vide Annexure-D objecting to the acquisition of the said land. The objections were over-ruled and a declaration was issued as per Section 28(4) of the Act in the official gazette. Thereafter the petitioner requested for payment of compensation in respect of the said land. Respondent No. 4 has issued an endorsement as per Annexure-F stating therein that the compensation will be paid in due course. It is the case of the petitioner that though acquisition proceedings started in the year 1996-97, till this day compensation has not been paid. On account of this process, petitioner was deprived of the enjoyment of the schedule property and was prevented from making any improvement in the land. At this stage, the respondents have decided to drop the acquisition proceedings as per Annexure ''A'' and re-grant the land to the petitioner as per Annexure ''B''. The Petitioner has challenged the said action of the 4th and 2nd respondents respectively in this petition.

3. The second respondent has filed its objections. It is contended that after issuance of the declaration, the respondents have not taken possession of the land in question. The petitioner continues to be in possession of the said land. It is further contended that by the letter dated 3.3.1999 the petitioner had sought for deletion of some portion of the land from acquisition. Therefore, he is estopped from demanding the acquisition of the land. It is further contended that there are certain other legal heirs of late Alex Patrao, the Kathedar. They have filed a suit in O.S. No. 285/99 for adjudication of their claims in respect of the land, which is pending before the V Additional Civil Judge, Jr.Dn., Mangalore. The land in question was proposed to be acquired for the benefit of 3rd respondent-Company. The 3rd respondent has intimated that it does not require the land because the shape of the land will not serve its purpose and that the unauthorised construction on the land will raise the liability to pay compensation and further that the ownership of the land is in dispute. Similar objections are filed by the 3rd respondent.

4. Sri. K.M. Nataraj, Learned Counsel appearing for the petitioner submits that once the State Government has issued the declaration u/s 28(4) of the Act, lands vests with the State Government absolutely free of all encumbrances. Therefore, it was incumbent upon the State Government to pay compensation in accordance with Section 29 of the Act. It cannot drop the land from acquisition as has been proposed in Annexure ''A'', nor can it re-grant the land. The Petitioner is not willing for re-grant of the said land.

5. Sri. Basavaraj V. Sabarad, Learned Counsel for the Board submits that the land in question is not suitable for the purpose for which it was proposed to be acquired. Therefore, it has proposed for re-grant of the land. He further submits that if the Board does not want to go ahead with the acquisition, it can issue notification u/s 4 of the Act excluding the land from an industrial area. In this case, since declaration has been issued, it has proposed to re-grant the land.

6. Sri. A.G. Holla, Learned Senior Counsel appearing for respondent No. 3 submits that the land in question is not suitable for the 3rd respondent. Further, certain unauthorized constructions have come up on the said lands and the ownership of the land is also in dispute. Therefore, it has intimated the Board to withdraw from acquisition. He further submits that though on issue of declaration, title vests with the State Government, acquisition is complete only after taking possession. Therefore, the Board can drop acquisition proceedings before taking possession in accordance with Section 21 of the General Clauses Act.

7. The Karnataka Industrial Areas Development Act, 1966, is an Act to make special provision for securing the establishment of industrial areas in the State of Karnataka and to generally promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid. Chapter-II of the Act provides for declaration of Industrial areas and alteration of industrial area. Section 3 and 4 of the Act are as follows;

"3. Declaration of Industrial Areas- (1)

The State Government may, by notification, declare any area in the State of be an industrial area for the purposes of this Act.

(2) Every such notification shall define the limits of the area to which it relates.

4. Alteration of industrial area - the State Government may at any time, by notification, exclude from any industrial area, any area or include therein any additional area, as may be specified in such notification".

8. The above provisions empower the State Government by Notification to declare any area in the State to be an Industrial area for the purpose of this Act. Section (4) empowers the State Government by Notification to exclude from any industrial area, any area or include therein any additional area as provided therein.

9. Chapter-VII of the Act provides for acquisition and disposal of the land. Section 27 of the Act states that Chapter-VII applies to such areas from the date as have been notified by the State Government under Sub-section (3) of Section 1 of the Act. Section 28 of the Act provides for acquisition of land which is as follows;

"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, give notice of its intention to acquire such land.

(2) On publication of a notification under Sub-section (1), the State Government shall serve notice upon the owner of where the owner is not the occupier, on the occupier of the land and on all such persons known or believed to be interested

therein to show cause, within thirty days from the date of service of the notice, why the land should not be acquired.

(3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.

(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.

(6) Where any land is vested in the State Government under Sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with an order made under Sub-section (5), the State Government or any officer authorised by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary.

(8) where the land has been acquired for the Board, the State Government, after it has taken possession of the land, may transfer the land to the Board for the purpose for which the land has been acquired."

10. Section 29 of the Act provides for payment of compensation. It is as follows:

"It states that where any land is acquired by the State Government under this Chapter, the State Government under Chapter-VII, the State Government shall pay such acquisition compensation in accordance with the provisions of the Act".

11. Section 30 provides for application of Central Land Acquisition Land, in respect of the lands acquired under Chapter-VII of the Act.

"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 payment of compensation, in respect of lands acquired under this Chapter."

12. It is clear from the above provision that on publication of declaration under Sub-section (4) of Section 28 of the Act, land vests absolutely with the State Government. The question for consideration is when does the land-owner entitled

to claim compensation? In other words is he entitled to claim compensation after vesting u/s 28(4) of the Act or should he wait till possession is taken under Sub-section (6) and (7) of Section 28 of the Act.

13. As noticed above, the object of the K.I.A.D.B. Act is to make special provision for securing the establishment of industrial areas in the State and to generally promote the establishment and orderly development of industries therein and for that purpose to establish Industrial Areas Development Board and for purposes connected with the matters as aforesaid. The object of the Act cannot be achieved by mere vesting of the land with the State Government. The object of the Act can be achieved only when possession of the vested lands are taken by the State Government and transferred to the Board for orderly development of industries.

14. In Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others, the Apex Court has held that principal functions and powers of the Corporation constituted under Maharashtra Industrial Development Act which is in pari materia with KIADB Act, are to develop industrial areas and industrial estates by providing amenities, such as road, supply of water, electricity, etc. The development of industrial areas and industrial estates is intended to serve two objects. In the first place, there is to be orderly establishment and growth of industries. The second object is to secure dispersal of industries from the congested areas to the under-developed parts of State. This is possible only after acquiring of the land. Mere vesting of title of the property will not sub-serve the object of the Act.

15. It is true that land vests absolutely in the State Government on publication of the declaration and neither passing of the award nor taking of possession is necessary or is a condition precedent for vesting. Section 11A of the Land Acquisition Act is not applicable where the land vests with the State Government D.V. Lakshmana Rao v. State of Karnataka ILR 2001 KAR 638. Having regard to the scheme of the Act, acquisition is not complete without taking possession and compensation is not payable unless the acquisition is complete. After issuance of a declaration u/s 28(4) of the Act, there is a separate procedure provided for taking possession. Sub-section (6) of Section 28 states that after the vesting of the land, the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice. Sub-section (7) of Section 28 states that if any person refuses or fails to comply with an order made under Sub-section (5), the State Government or any Officer authorized by the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary. In Sub-section (8) of Section 28 it is stated that where the land has been acquired for the Board, the State Government, after it has taken possession of the land, may transfer the land to the Board for the purpose for which the land has been acquired. Section 29 states that where the

land is acquired by the State Government it shall pay compensation for such acquisition. Therefore, it is only after acquisition of the land, the land owner is entitled for compensation and not after vesting.

16. The word ''vest'' has several meanings with reference to the context in which it is used. For example Section 56 of the Provincial Insolvency Act, 1920 empowers the Court at the time of making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in the receiver". The property vests in the receiver for the purpose of administering the state of the insolvent for the payment of debts after realizing his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of Insolvency Act and the receiver has no interest of his own in the property. However, in cases contemplated by Sections 16 and 17 of the Land Acquisition Act property acquired becomes the property of the Government without any conditions or limitations either as to title or possession. The Legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.

17. Considering all these aspects, the Apex Court in Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, has held as follows;-

"It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or authority in whom it vests. It may vest in title, it may vest in possession or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the improvement Act, particularly Section 45 to 49 and 53 and 54A when they speak of certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

(Emphasis supplied)

18. In the case contemplated u/s 44 of the Karnataka Land Reforms Act, that the language employed is "stand transferred to and vest in the State Government". A Full Bench of this Court in the case of Mohammed Jaffar and Another Vs. State of Karnataka and Others, has held that vesting of the land in the Government is subject to vested right of a tenant to get occupancy right and for determination of right and conferment of occupancy by the Land Tribunal, a Statutory Authority established under Land Reforms Act.

19. Thus, the word "Vest" is a word of variable import as is evident from different Indian statutes. It has not got a fixed connotation meaning in all cases that the property is owned by the person or authority in whom it vests. The meaning of the word "vest" has to be understood in the context in which it is used. In the present case, though title vests with the State Government on publication of declaration, acquisition of the land is not complete without taking possession.

20. The word ''acquisition'' has not been defined in the Act. As stated above, the

main object of the Act is to promote the establishment and orderly development of industries in Industrial area. Without taking possession of the land, the industrial area cannot be established in such area. Therefore Section 3 provides for declaration of an area as an industrial area and in respect of the area declared as an industrial area, land can be acquired in terms of Chapter-VII of the Act. In Black''s Law Dictionary (7th Edition) the meaning assigned to the word ''acquired'' ''is to take possession or control of''. In Shorter Oxford English Dictionary one of the meanings assigned to the word ''acquired'' is ''to receive and to come into possession of''.

21. In Salubai Ramchandra and Others Vs. Chandu Saju and Others, it has been held that ''The word ''acquisition'' and the verb ''acquire'' have a definite meaning recognised in judicial pronouncements whenever used in a statute relating to property. The use of the word ''acquire'' necessarily postulates a change of relationship vis-a-vis thing or property, which is said to be acquired, and which was not existing before. The notion of ownership of property implies various component rights, viz., that of possession, enjoyment, destruction, alienation, exclusion and others incidental to the right of ownership.

22. In Radhabai Vs. State of Maharashtra and Others, the Bombay High Court has held that the word ''acquire'' is assigned its more generic connotation. It means to receive or to come into possession of, then in the context of transfer or partition, that word can be given its full meaning. It has been held as follows;

"If the word "acquire" is assigned its more generic connotation, namely, that it means to receive or to come into possession of, then in the context of transfer or partition, that word can be given its full meaning without any violence to the language used. The proper construction of the amended section should be to read the word "acquire" in a wider sense which it is capable of bearing in the context of the addition of the words "or partition ", and if so read, the whole meaning of the statute becomes clear."

Thus, the word ''acquire'' has to be given a meaning in the context. In the present context it postulates change of relationship in respect of the property in question. The State Government becomes the absolute owner of the vested property after taking its possession. The intention of the legislature is clear from the language employed in Section 29 of the Act. The compensation is payable to the land owner only after acquisition of the property. If the intention of the legislature was to pay compensation after vesting of the land, the legislature would have used the word "vested" instead of the word "acquired" in Section 29 of the Act.

23. Learned Counsel for the petitioner has relied on the decision of the Apex Court in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, for the proposition that once the land vests statutorily with the State Government, it will not revert back to the original owner by mere cancellation of the notification u/s 21 of the General Clauses Act. That was a case, where possession was taken

u/s 17 of the Land Acquisition Act. In that background the Apex Court has held as above. In the present case, possession is not taken when the property vests with the State Government. Therefore, this decision is not applicable to the facts of the present case.

24. Now the question is whether the State Government should be compelled to take possession of the land vested in it when it is no longer possible for the Government to effectuate the intended purpose of acquisition. In Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, the Apex Court has held that the State Government cannot be compelled to go ahead with the acquisition with the land when it has become unsuitable for its purpose. It has been held as follows:-

"If the Government is reluctant to go ahead with the acquisition in view of these genuine difficulties, it can hardly be blamed. We see no justification to direct the Government to acquire the land and embark on such a venture. We are also of the opinion that the fact that the Government exercised the power of withdrawal after the writ petition was filed does not spell mala fides, once the existence of circumstances, which, in our opinion, justified the Government''s decision to withdraw is acknowledged".

25. Having regard to the facts and circumstances of the case, I am of the view that though the land gets vested when the declaration was issued, the petitioner is entitled for compensation only after acquisition of the land is complete u/s 29 of the Act. The State Government cannot be compelled to acquire the land after its vesting when it was no longer possible to effectuate the intended purpose of acquisition. Till possession is not taken, the land owner is not entitled for compensation in respect of the notified lands.

26. That brings me to the question as to what is the right course to be adopted by the Board, to cancel the acquisition, when declaration has been issued and possession of the land is not taken. I have already held that acquisition is not complete till possession is not taken by the State Government. Section 21 of the Karnataka General Clause Act, 1899, lays down that whereby any enactment, a power to issue Notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. Section 30 of the K.I.A.D.B. Act makes it clear that provisions of the Land Acquisition Act are applicable only in respect of enquiry and Award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and payment of compensation in respect of the lands acquired under the Act. Therefore, Section 48 of the L.A. Act is not applicable to withdraw from acquisition where acquisition is made under the KIADB Act. Even under the L.A. Act, it has been held that Section 48(1) is not the only method in which the Government can withdraw from acquisition. Government can always cancel the Notification under Sections 4 and 6 by virtue of its power u/s 21 of the General Clauses Act and cancel the said notifications.

In State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, it is held thus:

"The argument that Section 48(1) is the only method in which the Government can withdraw from acquisition has no force because the Government can always cancel the notifications under Sections 4 and 6 by virtue of its powers u/s 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under Section. 7"

27. Thus, the State Government is competent to cancel the notifications issued u/s 28(2) and (4) of the KIADB Act by virtue of its power u/s 21 of the Karnataka General Clauses Act and this power can be exercised before taking possession of the lands. The State Government may also exclude that area from industrial area by issuing a notification u/s 4 of the KIADB Act.

28. In the present case, acquisition proceedings have commenced in 1996. Though possession was not taken, title of the property vested with the State Government. The Petitioner was prevented from making any improvement in the land. The Petitioner is not entitled to compensation as the lands are not ''acquired'' by the State Government. If acquisition of land under L.A. Act is withdrawn under Sub-section (1) of Section 48 of the L.A. Act, the owner/person interested is entitled for damages suffered by them together with all costs reasonably incurred by him in the prosecution of the proceedings. However, Section 48 of the L.A. Act is not applicable to the acquisition under K.I.A.D.B Act. The principle underlying Section 48(2) of the L.A. Act should be made applicable to K.I.A.D.B Act, instead of driving the land owner/person interested to Civil Court for claiming damages. The land owner/person interested is entitled for damages suffered by him together with all costs reasonably incurred by him in prosecution of the proceedings. Interest of justice will be met, if the Land Acquisition Officer is directed to assess the damages and costs accordingly.

29. The legal position emerges from the above discussion is as follows:-

(i) The land owner is not entitled for compensation on publication of declaration and vesting of the land with the State Government as provided in Section 28(4) and (5) of the Act. The owner is entitled to compensation only after acquisition of the land as provided u/s 29 of the Act.

(ii) The State Government is empowered to withdraw the land from acquisition before taking its possession by cancellation of the notification issued under Sub-section (2) and (4) of Section 28 of the Act in exercise of the power u/s 21 of the General Clauses Act.

(iii) In the event of State Government cancelling the notifications issued as above the land owner/person interested is entitled to damages suffered by him together with all costs reasonably incurred by him in the prosecution of the proceedings. The Land Acquisition Officer shall assess the damages and costs as is being done under Sub-section (2) of Section 48 of the L.A. Act.

30. In this case, the 3rd respondent has issued an endorsement as per Annexure ''A'' stating therein that a decision is taken to drop the acquisition proceedings. In Annexure ''B'', the 2nd respondent has resolved to re-grant the lands to the Petitioner. Since the State Government has already issued notification u/s 28(2) and (4) of the Act, the same has to be rescinded in accordance with Section 21 of the General Clauses Act. However, resolving to re-grant the land to the land owner is unsustainable and without authority of law.

31. In the result, I pass the following Order:

(i) The endorsement at Annexure ''A'' intimating the Petitioner that the K.I.A.D.B. has resolved to withdraw the land from acquisition is sustained. Liberty is reserved to the State Government to issue suitable notification u/s 21 of the General Clauses Act.

(ii) The resolution of the Board resolving to re-grant the land to the Petitioner is quashed.

Writ petition is disposed of accordingly. No costs.