

(2016) 06 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition Nos. 33742 to 33757 of 2015 (L.A.-BDA).

V. Krishna Murthy - Petitioner @HASH State of Karnataka and Others

Date of Decision : 28-06-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 48(1)

Citation : (2016) 6 KantLJ 509

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Sri. C.M. Nagabhushan for Sri. P.V. Chandra Shekar, Advocates, for the Petitioner; Sri. R.B. Sathynarayana Singh, Additional Government Advocate, for the Respondent No. 1; Sri. A. Lokanath, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J. - The petitioner has called into question the preliminary notification, dated 15-4-2002 (Annexure-A) and the final notification, dated 31-10-2002 (Annexure-B). He has also made an alternative prayer seeking a direction to the respondent 1 to release the petitioner's land from the purview of acquisition. He has also sought the relief of declaration that the acquisition proceedings in respect of the schedule properties have lapsed.

2. Sri C.M. Nagabhushan, learned Counsel for the petitioner submits that the total extent of the land covered by the impugned notification is 14 acres 22 guntas. Out of the said extent 3 acres 26 guntas are utilised for the formation of a road by the Bangalore Development Authority ("B.D.A." for short). The B.D.A. has passed a resolution on 20-7 2006 for the withdrawal of the unutilised land of 10 acres 36 guntas from the acquisition. He further submits that the Government was requested by the B.D.A. to issue the notification under Section 48(1) of the Land Acquisition Act, 1894 vide its letter, dated 22-6-2006 (Annexure-EI). He submits that once again the similar resolution was passed by the B.D.A. in its Board meeting held on 10-2-2010. The Government was informed of the passing of the second resolution also by the B.D.A. vide its letter, dated 8-4-2010

(Annexure-E2).

3. Sri Nagabhushan also brings to my notice the order sheet in LAC No. 125 of 2004 (Annexure-G) to show that even the amount deposited by the B.D.A. pursuant to the passing of the award is withdrawn along with the reference itself on the ground that it proposes to withdraw the land from acquisition.

4. Sri R.B. Sathyanarayana Singh, learned Additional Government Advocate appearing for the respondent 1 submits that the Government has already written a letter to the B.D.A. on 3-1-2011 seeking certain clarifications regarding the utilisation of the acquired lands. As no reply is received from the B.D.A., the Government has also sent a number of reminders to the B.D.A.

5. Sri A. Lokanath, learned Counsel appearing for the respondents 2 and 3 asserts that the possession of the land is already taken.

6. It is difficult to accept the submissions urged on behalf of the B.D.A. that the possession of the land measuring 10 acres 36 guntas is taken, for the following reasons;

(1) No possession mahazar whatsoever is produced.

(2) The very fact that in 2005 and 2010 the B.D.A. has passed the resolution for withdrawing the remaining extent of 10 acres 36 guntas from acquisition shows that the possession is not taken.

(3) It has also got the deposit and the reference returned to itself on the ground that it proposes to seek the withdrawal of lands from acquisition.

7. The facts of the case are not in dispute. That the petitioner's land measuring 3 acres 26 guntas is utilised by the respondents for the formation of the road is not in dispute. That for the remaining 10 acres 36 guntas no compensation is paid is not in dispute. That the BDA has already recommended to the Government for the withdrawal of the 10 acres 36 guntas by passing two resolutions (one on 22-6-2006 and the other on 10-2-2010) is also not in dispute. When the intended beneficiary of acquisition, B.D.A. itself does not want the lands, the Government cannot cling on to acquisition. There is another way of looking at the controversy. The acquisition is of 2002 vintage. The respondents cannot now, after 14 years of the issuance of the acquisition notification, be content by paying the compensation as per the market value which prevailed in 2002. The Apex Court in the case of *Tukaram Kana Joshi and Others through Power of Attorney Holder v. M.I.D.C. and Others*, 2012 AIR SCW 6343 has expressed the considered view that even under the valid acquisition proceedings there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest and to make payment of requisite compensation.

8. It may also be profitable to refer to the Apex Court's judgment in the case of *K. Krishna Reddy and Others v. The Special Deputy Collector, Land Acquisition*

Unit II, LMD Karimnagar, Andhra Pradesh, AIR 1988 SC 2123. The relevant portion of para 12 of the said decision are extracted herein below :

"12.....After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may, lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time....."

9. There is also a path breaking intervening development in legislation. The pre-independence Land Acquisition Act, 1894 is replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("New Act" for short). Section 24(2) of the said Act reads follows:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. - (1).....

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. Considering all these aspects of the matter and to meet the ends of justice, I pass the following order in two parts. I issue the following directions in respect of the acquired and utilised land of 3 acres 26 guntas:

(i) The petitioner shall submit a detailed representation to the B.D.A. within two weeks from today with the necessary supporting documents for the purpose of showing tire market value of the land in 2002.

(ii) On considering the representation and the documents to be produced by the

petitioner and on hearing the petitioner, the B.D.A. shall determine the compensation amount payable as per the new Act - 2013 Act.

(iii) If the B.D.A. gives alternative land in lieu of cash compensation it must indicate the value of the sites to the petitioner. It is open to the petitioner either to accept the offer of the B.D.A. or to accept the offer only in part, meaning the petitioner may take some alternative land in respect of the portion of the acquired land and insist for the payment of compensation in respect of the other portions of the acquired land.

(iv) If the petitioner is not satisfied with the order determining the market value of the property, it is open to him to challenge the same in appropriate proceedings and seek further enhancement of the amounts.

(v) The respondent-B.D.A. shall complete the enquiry and pass the order within two months from the date of the receipt of the anticipated representation.

11. The second part of the order is in respect of the land whose possession not taken over by the B.D.A. and which the B.D.A. itself does not want:

(i) Prayer (i) for quashing the impugned acquisition notifications is liable to be rejected on the ground of delay and laches and accordingly it is rejected.

(ii) Prayer (ii) for the release of lands from acquisition cannot be acceded to because there is no question of giving the mandamus to the respondents to withdraw the petitioner's lands from acquisition. It is trite that the acquisition of lands falls within the eminent domain of the State. This Court, in exercise of the powers under Article 226 of the Constitution of India, would not give a direction to the Government either to acquire or not to acquire the lands.

(iii) The third prayer for the relief of declaration that the acquisition proceedings have lapsed is required to be considered. The award came to be passed and the compensation amounts came to be deposited with the Reference Court. However, both the reference and the deposits are withdrawn by the B.D.A. from the Reference Court. The same is on the ground that the lands are being deleted from the acquisition proceedings. The B.D.A. has also passed two resolutions and requested the Government to withdraw the lands from acquisition by issuing the notification under Section 48(1) of the Land Acquisition Act, 1894. The resultant position is as good as not passing the award at all. However, there appears to be some dispute regarding the extent of the land utilisation. The petitioner shall produce the necessary documents in support of his claim of a definite extent of land not being utilised and not being required by the B.D.A. The B.D.A. shall arrive at the determination of the value as well as measurement of the said lands.

(iv) As the acquisition proceedings are not complete and the scheme is not implemented, I declare that the proceedings in respect of the petitioner's lands have lapsed and the provisions of Section 36 of the Bangalore Development Authority Act, 1976 and they become inoperative, insofar as they pertain to the schedule lands minus 3 acres, 26 guntas, subject of course, to the determination

of the exact extent of the land not utilised and not required by the B.D.A.

12. These petitions are accordingly disposed of. No order as to costs.