

(2010) 11 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 14771 of 2008 LA-KIADB

Valerian Veigas

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Citation : (2011) 1 KCCR 35

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Sanath Kumar, for the Appellant; Venkatesh Dodderi, for R1 and R2 and M.I. Arun, for R3, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Memo for retirement filed by Sri K.M. Nataraj, learned Counsel for the Petitioner who had filed power for the Petitioner earlier is ordered and on the strength of the "no objection certificate" issued by the earlier Counsel, now Sri Sanath Kumar, Advocate has filed power for the very Petitioner.

2. Registry is directed not to show the name of Sri K.M. Nataraj, Advocate as appearing for the Petitioner henceforth.

3. Petitioner is basically aggrieved, that certain rehabilitation benefits mooted by the Government of Karnataka to compensate landowners, who have lost their lands, which were acquired under the provisions of Karnataka Industrial Areas Development Board (KIADB) over and above the compensation to which they are entitled to, under this Act, is not extended to him, though the Petitioner has represented for extending such a benefit, in terms of a representation dated 31.7.2006 addressed to the Secretary, Government of Karnataka, Revenue Department, Vidhana Soudha, Bangalore.

4. Petitioner is seeking support from a certain Government of Karnataka proceedings, copy of which is produced as Annexure-C to the petition and in that background has sought for the following prayer :

issue a writ of mandamus or any other writ or direction, directing the Respondents to consider the Petitioner's representation at Annexure-A dated 31.7.2006 and extend him the Rehabilitation Benefits as announced by the first Respondent in its Government Order at Annexure-C dated 18.12.1992.

5. Notices had been issued to Respondents and Mr. Keshava Reddy, learned Additional Government Advocate was directed to take notice for Respondent Nos. 1 and 2. Mr. M.I. Arun, learned Counsel was directed to take notice for Respondent No. 3. The matter was directed to be listed in "B" Group as per order dated 2.12.2008 passed by this Court.

6. This matter which had been listed earlier before the Court in "B" Group category of cases had been directed to be listed along with W.P. Nos. 21597 - 98/2010, at the request of Mr. Sanath Kumar, learned Counsel for the Petitioners. In a separate order passed today W.P. No. 21597-98/2010 has been dismissed as being hit by delay and laches. This writ petition remains grouped with W.P. No. 6787/2007 as it is submitted by Mr. Sanath Kumar, that these two petitions are similar matters particularly, in the wake of a Government of Karnataka proceedings dated 18.12.1992, copy of which is produced as Annexure-C to the petition.

7. While the relief sought for by the Petitioner appears to be one, to which the Petitioner is either not eligible or entitled to in law particularly for seeking issue of a writ of mandamus, the conduct of the Respondents in not responding to the notices issued by this Court, before the issue of rule, leaves much to be desired, while the 1st Respondent - State of Karnataka and the 2nd Respondent -- the Deputy Commissioner, who are represented by the learned Additional Government Advocate who have not responded so far, nor have filed any counter.

8. Sri. Venkatesh Dodderi, learned Additional Government Advocate appearing for these two Respondents is unable to make any submission for want of instructions and submits that his file and writ petition papers do not contain copies of Annexures etc., which only betrays an evasive attitude of the learned Additional Government Advocate appearing on behalf of Respondent Nos. 1 and 2.

9. On behalf of 3rd Respondent - the Special Land Acquisition Officer, KIADB, statement of objections has been filed, which reads as under

Objections of Respondent No. 3

1. The writ filed by the Petitioners are not maintainable either in law or on facts and the same is liable to be dismissed in limine.

2. The lands at Sy. No. 3-19 measuring 4.47 acres was acquired by KIADB for industrial purposes. The land was to be allotted to one M/s. Nagarjuna Steel Company. As per the terms of the allotment envisaged, a rehabilitation scheme was formulated, for the benefit of the land losers, which was in addition to the compensation to be paid to them. However the allotment to M/s. Nagarjuna Steel

Company did not go through. Hence the rehabilitation package could not be implemented as envisaged.

3. Thereafter, KIADB has been allotting the lands so acquired to Other industries. The lands of the Petitioners are to be presently allotted to one M/s. Ruchi Soya Ltd. The said allottee has agreed to provide cash compensation in lieu of job for the displaced families which comes under the lands allotted to the said company. The cash has been determined at the rate of

Rs. 2,05,000/- per displaced family. The Petitioner will also be eligible for the same. The Petitioner is to receive the same through Assistant Commissioner, Mangalore.

WHEREFORE it is prayed that this Hon''ble Court be pleased to dismiss the writ petition in the interest of justice and equity.

and is affirmed by an affidavit of Sri. Krishnamurthy, Special Land Acquisition Officer, KIADB, Baikampady, Mangalore, now at Bangalore.

10. Submission of Sri. M.I. Arun, learned Counsel for the 3rd Respondent is that even as indicated in the statement of objections, the KIADB has already forwarded a sum of Rs. 2,05,000/- to the Government. However, particulars of such amount being made available to the Government is woefully lacking, nor the basis for arriving at the figure as compensation payable in favour of the Petitioner is also not forthcoming.

11. But what is more important is that the statement discloses a very sorry state of affairs in the functioning of not only the KIADB, but also the State Government, who it appears have only been acting to the detriment and peril of private landowners and for the benefit of existing Industrialists or industrial houses.

12. It is indicated in the statement of objections filed on behalf of the KIADB that the subject land measuring 4.47 acres in Sy. No. 3/19 was acquired by KIADB for industrial purposes and the land was allotted to one M/s. Nagarjuna Steel Company. It is also indicated that the terms of allotment envisaged a rehabilitation scheme whereunder the allottee beneficiary was to take care of the liability or make payment under rehabilitation scheme for the benefit of the land losers and it so happened that the allotment in favour of M/s. Nagarjuna Steel Company did not go through. It is indicated that this is the reason as to why the rehabilitation scheme in favour of the Petitioner could not be worked out and subsequently the Board has been allotting the lands so acquired (it is not clear as to whether this reference in plural to lands in question is in respect of 4.47 acres acquired or is exclusive of this extent, pieces of which are allotted to other aspirants for setting up industries etc., or it includes many such parcels of lands acquired by the Board with an understanding, particular industrialists or industrial houses which has not gone through and other industrialists or industrial houses etc.) but the subject land was to be allotted to one M/s. Ruchi

Soya Limited and this allottee has agreed to provide cash compensation in lieu of jobs for the displaced families and has been worked out in cash at a sum of Rs. 2,05,000/- (Rupees Two Lakhs Five Thousand only) per displaced family and that the Petitioner will also be entitled for the same; that the Petitioner is to receive the same from the Assistant Commissioner, Mangalore. In the wake of the statement of objections tiled by Mr. Arun, learned Counsel, submits that the Petitioner has to make an application to the Assistant Commissioner for payment of this amount in favour of the Petitioner. Submission of Sri Venkatesh Dodderi, learned Additional Government Advocate is also that Petitioner will have to make an application to the Deputy Commissioner of the District.

13. While the statement of objection filed on behalf of the 3rd Respondent does indicate that KIADB has worked out the compensation to be paid at Rs. 2,05,000/- (Rupees Two lakh five thousand only) and has already remitted the amount, it is obvious that the amount has not reached the Petitioner for one reason or the other.

14. Submission of learned Counsel for the State and the KIADB that the Petitioner has to file an application either to the Assistant Commissioner or the Deputy Commissioner is without any basis, as an application is envisaged, only if it is one required to be made in terms of any rules or either statutory provisions and either the learned Additional Government Advocate or the Counsel appearing for the KIADB have pointed out any statutory provisions under, which such an application is required to be made.

15. But more importantly, it discloses that the Government and KIADB either independently or in collaboration are willing to pay much more than what a landowner is entitled to, if such lands are acquired for public purpose and are styling that as rehabilitation package etc., but more importantly the power of compulsory acquisition of private lands for the public purpose, which is as determined by the State Government is being used for acquiring private lands in favour of private industrialists or industrial houses in the name of developing certain areas as industrial areas, but the beneficiary being identified before hand and such beneficiary also identifying a particular parcel of land, which he intends to make use for his developing the existing industry or setting up new industries etc.

16. It is not the Board or the State Government which has any plan for industrial development, but it is only helping private industrialists to either set up or to expand the existing industries and by using the statutory power for compulsory acquisition in the name of a public purpose. If ultimately, the purpose of acquisition is only to hold or ensure that a private existing industrialists or industrial houses is able to get lands at the price as is determined by the LAO, which though the Act envisage to be the market price, but more than what the market price is, particularly, when the valuation of the acquired lands get frozen on the date of issue of preliminary notification and that landowners being compensated only after the acquisition proceedings have been concluded, which

may be spread over several years, what actual compensation is paid to the landowners, several years after initiation of the acquisition proceedings is not the real or true compensation that reflects the market value of the land but always something less.

17. This appears to be a no win situation for the landowners and a win-win situation for the industrialists/industries for whose benefit and to favour whom the State Government and the KIADB appears to have gone about misusing and abusing the statutory powers under the Act, without realizing their role and responsibility under the provisions of this Act, but have blatantly misused and abused such power to the detriment of private landowners and to the great enjoyment of the private industrialists!

18. In a poor country like India, where agriculture is the major avocation for sustenance of the farmers, who constitute the majority of the population and are poor landowners, if they are deprived of even their livelihood, in the guise of public purpose and by (compulsory) acquisition proceedings, for which statutory powers are misused, it is nothing short of a disaster in this country and the citizens of this country are victimized and put to great suffering and loss by the concerned Government, which on the other hand has the duty to protect them and it is a great paradox; that while the Constitution speaks that our country is a Welfare State, the very State Government and its agencies and the bureaucratic the officials running the Government and such public authorities are even, while responding to the notices issued by this Court adopt a totally evasive attitude and do not come up with proper answer at all.

19. It reflects a very sorry state of affairs in the governance and is a matter for introspection; but that does not in any way either enlarge the responsibilities of this Court, nor the system of governance as envisaged under the constitution can be altered.

20. However it does not in any way confer additional powers on the Courts, but mandates the Courts to confine to the role of judicial review of administrative action. In a situation of this nature, even while a writ of mandamus may not be the proper writ that can be issued at the instance of the Petitioner in terms of the statutory provisions etc., the very statement of objections filed on behalf of the 3rd Respondent and the evasive and irresponsibly attitude displayed by the Government of Karnataka calls for a further scrutiny of their records, for this Court to understand the circumstances, under which the Government has come up with such a rehabilitation scheme and the back ground and the circumstances, under which the State Government has been exercising its statutory power under the Act for acquiring private lands to enable the KIADB to develop it as industrial areas for the benefit of private industries.

21. Therefore, rule is issued in this writ petition. The State Government as well as the KIADB are directed to make available the relevant records of all acquisition proceedings related to the Petitioner and what is referred to in the

statement of objections filed by the 3rd Respondent and if has already not filed proper statement, to file the same within a further duration of two weeks from today. Relevant records of the State Government as well as the KIADB to be made available before this Court.

List this matter for further hearing on 6.12.2010.