

(2015) 08 KAR CK 0216

In the Karnataka High Court

Case No : Writ Petition Nos. 75460-462/2013 and 22316-22330, 22358-22361, 22362-22366, 105263-105270, 105283, 105576, 105846 and 107572/2015 (GM-RES)

Vandana and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Municipal Corporations Act, 1976 — Section 178A, 178A(1)

Citation : (2015) 08 KAR CK 0216

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Senior Counsel for B.M. Patil, for the Appellant; M. Kumar, AGA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok B. Hinchigeri, J—The grievance of the petitioners in all these cases is that their properties are being used up without acquiring them and without giving the compensation thereof. It is their case that the Belgavi City Corporation is utilizing their lands for the purpose of widening the roads.

2. Sri Jayakumar S. Patil, learned Senior Counsel appearing for Sri B.M. Patil in W.P. Nos. 105576/2015, 105283/2015 and 105746/2015 submits that the properties in question belong to the petitioners. The petitioners cannot be deprived of them without following the due process of law. He submits that some of the petitioners had earlier filed W.P. No. 38646-647 of 2009. This Court by its order, dated 30.8.2012 (Annexure-F in W.P. Nos. 75460-75462/2013) disposed of the said writ petition, recording the submission made by the Additional Government Advocate on behalf of the National Highways Authority that there is no proposal to widen the road by demolishing the petitioners' buildings for the present. He has also brings to my notice, this Court's order, dated 23.01.1998

(Annexure-E in W.P. Nos. 75460-75462/2013). The said petition was filed by the vendor of the petitioner Nos. 1 to 4 in W.P. No. 75460-462 of 2013. This Court by its order, dated 23.1.1998 disposed of the writ petition by preventing the Government and the Belgavi City Corporation from interfering with the properties of the said persons without acquiring the same.

3. The learned Senior Counsel submits that the petitioner in WP No. 105576/2015 has also produced the title deed (sale deed) in support of her owning the property in question. On the other hand, there are no averments whatsoever in the statement of objections filed by the Executive Engineer, Public Works and Inland, Belgavi Division to the effect that the National Highways Authority or Belgavi City Corporation are the owners of the properties in question. He submits that there are no averments that the properties are acquired for the purpose of National Highways Authority. He submits that the attempt of the Executive Engineer and the National Highways Authority to bulldoze the structures standing on the lands in question cannot be justified viewed from any angle. If the Corporation or the National Highways Authority or the Government want to contend that they are owning the properties in question, their remedy would be to go to the civil court.

4. He also relies on the order passed by this Court dated 16.11.2011 passed in W.P. No. 27955/2009 and the order, dated 24/11/2011 in W.P. No. 43779/2011.

5. Sri R.M. Kulkarni, the learned counsel for the petitioners in W.P. Nos. 105263-270/2015 & 107572/2015 submits that even when the said petitioners purchased the property in question, the buildings were pre-existing. He submits that there is reference to the existence of the buildings in the sale deed itself.

6. Sri Kulkarni submits that pursuant to the order dated 22.2.2013 (Annexure-S) passed in W.P. Nos. 75779-75783/2013 and other connected petitions, the National Highways Authority has given up the road-widening on the properties in question.

7. Sri M. Kumar, the learned Additional Government Advocate submits that none of the petitioners have produced the title deeds in support of their claim that they own the properties in question. He submits that the properties in question belong to the National Highways Authority and that they are encroached by the petitioners. He submits that the petitioners are not justified in filing these petitions, as they involve disputed questions of fact. The petitioners' only remedy is to file the duly constituted civil suits.

8. Sri Jagadish Patil and Sri Arvind Kulkarni, the learned advocate appearing for the Belgavi City Corporation submit that the road-widening responsibility, which was earlier with the National Highways Authority, is now given to the Public Works Department's Executive Engineer. They submit that the road-widening involves the stretch of 600 mtrs. within the limits of Belgavi City Corporation. They submit that all the encroachers, including the petitioners, were orally called upon to vacate their encroachment. They have given their consent also to vacate

their encroachment. They submit that a large number of encroachers have already vacated. They submit that the width of the road in question as shown in the Comprehensive Development Plan is 36 mtrs. They submit that if the petitioners have any claims, they are to be filed before the Regional Commissioner under Section 178A of the Karnataka Municipal Corporations Act, 1976. They make their further submissions akin to the submissions made by Sri Kumar.

9. Sri Sachin S. Magadum, the learned counsel appearing for the National Highways Authority reiterates the submissions of Sri Patil and Sri Kulkarni.

10. The submissions of the learned counsel have received my thoughtful consideration. That the road-widening is a public purpose cannot be disputed at all. But, if the road-widening project has to be on the properties belonging to the petitioners, then such properties cannot be summarily occupied and utilized by the Corporation. It is trite that nobody can be deprived of his property without following the due process of law. The question that arises for my consideration is whether the road-widening is taking place using up the property belonging to the Corporation or belonging to the private owners. They are the disputed questions of facts. In the proceedings under Article 226 of the Constitution of India, it is not possible to deliver any finding on such factual controversies. Such disputes cannot be resolved without holding an enquiry. The decision on claim of the property by or against the Corporation can be obtained by raising the dispute before the Regional Commissioner invoking Section 178A of the Karnataka Municipal Corporations Act, 1976. The provisions contained in Section 178A(1) and (2) of the said Act are extracted hereinbelow:

"178-A. Decision of claims to the property by or against the Corporation.--(1) In any city to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only has been or shall be extended under any law for the time being in force, where any property is claimed by or on behalf of the Corporation, or by any person as against the Corporation it shall be lawful for the [Regional Commissioner of the concerned revenue region] after enquiry of which due notice has been given, to pass an order deciding the claims.

(2) Any person aggrieved by an order made under sub-section (1) may appeal to the Karnataka Appellate Tribunal, and the decision of the Tribunal shall be final."

11. I deem it necessary and just to relegate the aggrieved petitioners to the statutory remedy provided under Section 178A of the said Act. The petitioners are directed to file their claims in support of the ownership of the property, of the buildings they have raised thereon, etc. before the Regional Commissioner within two weeks from today. Similarly, the Corporation will also file its claims, if it wants to take the position that the properties in question belong to it and in support of its allegations that the properties are encroached by the private parties. On examining the documentary evidence and after affording a reasonable opportunity of hearing to all the parties concerned, the Regional

Commissioner shall pass the order on the ownership of property and the allied questions.

12. If the Regional Commissioner's order is not acceptable to any party, it is open to him/her/it to challenge the same before the Karnataka Appellate Tribunal.

13. If the Regional Commissioner returns the finding that a particular property, being used for road-widening purpose, is owned by the Corporation and not by any private party, any future dispossession or demolition may be carried out strictly in accordance with law and after issuing the notice to the occupants of such properties.

14. In the matters where the Regional Commissioner returns the finding that any portion of the private land is being used up for the road-widening purpose, the owners of such lands have to be compensated without any loss of time. The respondents shall have two options in the matter. They shall elect one of the two options indicated hereinbelow:

(i) The Government of Karnataka shall immediately resort to the acquisition of lands under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. All the acquisition proceedings, including the passing of award and disbursement of the compensation, shall be completed within six months from the date of passing of the order by the Regional Commissioner holding that a particular private property is used up for and in the course of the road-widening.

(ii) If the above course is not resorted to by the Government of Karnataka for whatever reason, then the Regional Commissioner shall, within one month from the date of the time granted for complying with the above direction, pass an order determining the damages/compensation. If the quantification of the compensation-amount is not acceptable to any of the parties, they shall have the liberty of challenging the same before the competent civil court.

15. It is further made clear that whether the authorities resort to the route of compulsory acquisition of land or pass the order quantifying the damages/compensation, it shall also be open to the authorities to negotiate with the property-losers by offering the alternative property to them in lieu of cash-compensation. It shall also be open to the displaced persons to seek the benefits due under National Rehabilitation and Resettlement Policy, 2007 and also under schemes such as the Ashraya Scheme, etc. in the cases where they are applicable.

16. In passing this order, I am fortified by the Division Bench's judgement, dated 1.9.2014 passed in W.P. No. 21042/2011 and connected matters.

17. The Regional Commissioner shall dispose of the anticipated petitions in accordance with law and as expeditiously as possible and in any case within an outer limit of ten weeks from the date of the filing of the anticipated petitions. Further, to safeguard the interests of the petitioners between today, the date of

the disposal of these petitions and the date of the disposal of their anticipated petitions before the Regional Commissioner, I direct the respondents not to dispossess the petitioners from the properties in question or demolish any structure standing thereon for a period of 12 weeks.

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