

(2015) 09 KAR CK 0124

In the Karnataka High Court

Case No : Writ Petition No. 47843 of 2014 (LA-RES)

Veena Mahesh

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 4(1), 48

Citation : (2015) 6 KarLJ 667 : (2016) 1 KCCR 263

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Jaykumar S. Patil, Senior Counsel and Mamammed Tahir A., Advocate, for the Appellant; Y.D. Harsha, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ram Mohan Reddy, J.—Petitioner-owner of building bearing Municipal Door No. 175 consisting of two floors put to use for commercial activity and located at P.B. Road, Davanagere measuring East to West 100 ft. and North to South 18 feet, alleging illegal action of demolition of the portion of the building, in a high-handed manner, by the State and its Public Works Department, respondents 1 to 6 and 9, has presented this petition for a direction to restore possession of the demolished portions of the building; pay compensation of Rs. 50 lakhs; declare the action as one without following the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation; and prohibit respondents from further demolition of portion of building existing without acquisition and for other appropriate reliefs. Petition is not opposed by filing statement of objections of the respondents. The Executive Engineer and the Deputy Commissioner arraigned as party respondents 4 and 6 though served, are absent and unrepresented.

2. Sri Jayakumar S. Patil, learned Senior Counsel for the petitioner is correct in

his submission that in paragraph 6 of the caveat petition Annexure-D filed by the 1st respondent-State of Karnataka indicates an admission of a fact that petitioner is one of the owners of the property located adjacent to old P.B. Road, which is sought to be demolished for widening the P.B. Road.

3. In the admitted facts, more appropriately the statements made in the caveat petition, Annexure-D stating that the 1st respondent, represented by its Public Works Department, is in the process of widening P.B. Road and that petitioner is likely to file a writ petition and obtain interim orders and therefore, the Executive Engineer be extended an opportunity of hearing before considering the relief for staying the action of widening the road, there is no more doubt that petitioner is the owner of the immovable property.

4. In the circumstances, it was for the respondent-State and its Authorities to have acquired the land, paid compensation, taken possession and thereafter gone about the process of widening the P.B. Road. Admittedly such a procedure is not followed, hence, violation of rule of law.

5. The answer to the claim of compensation of Rs. 50 lakhs claimed, requires an adjudication on disputed facts, of the value of the building, the extent of building demolished etc., and petitioner will have to prove every rupee claimed as damages.

6. The observation of the larger Bench of the Apex Court in *R.L. Jain by L.Rs. v. Delhi Development Authority and Others*, in the circumstances is apposite:

"In a case where landowner is dispossessed prior to issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues but vest with the landowner. It is fully open for the landowner to recover possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification it will be just and equitable that the Collector may also determine the rent or damages for the use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provision of Section 48 of the Act support such a course of action. For delayed payment of such amount appropriate interest at prevailing Bank rate may be awarded."

If regard is had to the statements made in the caveat petition admitting the fact that petitioner is the owner of the land adjoining the P.B. Road to be put to use for widening of the Road, coupled with the notice Annexure-E, through learned Counsel, as a response to the caveat petition, a duty was cast upon the respondents-State and its Authorities to be more responsive to the claims of the citizens over their private properties. Apparently, it is pointed out that a blatant violation of rule of law is committed by all the parties, despite notice. This is not only serious but also shocks the confidence of the Court over such Authorities

exercising power of demolition and taking over immovable properties. It is regretted that the State and higher Authorities in the Department of Public Works failed to initiate corrective steps against such illegal action of demolition of petitioner's building. Such conduct, it must be stated is deplorable.

In the result, this petition is disposed of directing the respondent-State and its Authorities to forthwith initiate proceeding for acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and determine not only compensation but also rent, damages and other such compensatory reliefs including loss caused to the petitioner, pay compensation and conclude the proceeding in any event within six months from today.