

(2010) 10 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No's. 32714 and 32792-32804 of 2010 (LA-UDA)

Veer Kumar Jam and Others

APPELLANT

Vs

The State of Karnataka and The Mysore Urban Development
Authority

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 KAR CK 0042

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

Bench : Single Bench

Advocate : Madhusudhan R. Naik for M/s. Anil Associates, for the Appellant; P.S. Manjunath, for C/R3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar

1. Writ petitioner claims to be a person who had acquired right, title and interest including possession in respect of different parcels of lands located in different survey numbers, in all measuring about 17 acres 21 guntas in terms of different sale deeds all dated 28.9.2001 [copy at Annexure-F series to the writ petition]. These lands were subject matter of acquisition proceedings at the instance of the Mysore Urban Development Authority [for short "the MUDA"] by issue of a notification u/s 17[1] of the Karnataka Urban Development Authorities Act, 1987 [for short "the Act"] way back in the year 1990 i.e., by the notification dated 15.3.1990.

2. The initiation of the proceedings by the MUDA had resulted in issue of a notification dated 25.4.1991 issued u/s 19[1] of the Act by the State Government declaring that the subject lands were required for public purpose. The proceedings so began in the year 1990 became subject matter of writ petition in WP No. 10621-629/1998 by many persons amongst whom figured the vendors of the petitioner and this court quashed the notification issued u/s 19[1]

and 19[2] of the Act alone only for the reason that the authority whether intentionally or otherwise failed to place relevant records before the court to satisfy the court that the land owners had been given an opportunity for hearing their objections, subsequent to the notification u/s 17[1] of the Act and directed that the authority may treat the final notification issued u/s 19[1] and 19[2] of the Act as notice for the purpose of sub-section [5] of section 17 of the Act. In this background, the matter went back before the acquiring authority and resulted in issue of another notification dated 4.10.1999 by the State Government under sections 19[1] and 19[2] of the Act.

3. It appears some persons who were affected by the acquisition proceedings and who were not happy with the same had moved the Government for excluding their lands from the purview of acquisition and met with success as the State Government came up with a notification dated 15.9.2001 [copy at Annexure-E] purporting to have been issued u/s 19[1] of the Act read with section 48[1] of the Land Acquisition Act, 1894, denotifying certain extents of lands from the purview of the notification in respect of which the State Government had already caused notification declaring that such lands were required for public purpose.

4. Significance of this notification is that the petitioner claims that when the lands which had been denotified and had become free from acquisition proceedings and were available and such lands had been purchased for his business/industrial purpose by investing quite some amount.

5. It appears the developmental authority which was not very happy with the State Government having come up with a notification withdrawing from the acquisition proceedings even without consulting the development authority for whose benefit and at whose behest the Government had issued notifications, made the Government wise that it was not desirable to withdraw from the acquisition proceedings and the Government perhaps either saw merit in this stand of the authority or for whatever other cause decided to act at the instance of the development authority and withdrew the withdrawal notification by a subsequent Government Order dated 22.7.2002 [copy at Annexure-G]

6. It was now the turn of the petitioner to seek redressal from this court as the lands purchased by the petitioner had again become subject matter of acquisition proceedings at the instance of MUDA and such grievance led to filing of writ petition No. 30425 of 2002. This court in terms of order dated 28.8.2007 found fault with the proceedings of the Government for withdrawal by the denotification, on the premise that such withdrawal was in violation of the principles of natural justice as the petitioner who had acquired ownership rights in the lands in the interregnum is not given an opportunity before causing the proceedings and the order dated 22.7.2002 and therefore this order was quashed, but reserved liberty to the Government to examine for taking fresh action after noticing the factual position as asserted by the petitioner vis-?-vis MUDA.

7. The order of the single Judge was made subject matter of appeal by the Development Authority by filing writ appeal No. 1995 of 2007, but the result was only a dismissal in terms of the order/Judgment dated 4.12.2007, but with the rider that the observations made in the course of passing of the order/Judgment by the court does not fetter the authority.

8. The development authority was still not very satisfied with the developments that took place in the context of Government's actions and carried the matter to the supreme court by filing SLP No.31132 of 2008 which was converted into civil appeal No. 2934 of 2010 resulting in the order dated 1.4.2010 [copy at Annexure-(sic)] where under the supreme court opined that not only withdrawal of the denotification, but the denotification that had been issued by the State Government u/s 17[5] of the Act read with section 48 of the Land Acquisition Act, 1894 are both bad in law and deserves to be quashed, but nevertheless directed the State Government to ascertain the claims, contentions and assertions of the petitioner vis-?-vis the development authority, particularly, on the aspect of the scope for exercising the power u/s 48 of the Land Acquisition Act 1894 by the State Government. Significance is that notification u/s 48 of the Land Acquisition Act, 1894 can be issued only if possession of the subject land had not been taken over by the acquiring authority as when once possession is taken over by the acquiring authority, even the State Government is without power to withdraw from the acquisition proceedings. It is during the examination of this position, some controversy has arisen as to whether the authorities had actually taken physical possession of the land etc., and during such examination it appears the petitioner had insisted on the authority who was conducting enquiry or proceedings for such purpose to look into certain documents which were relied upon by the petitioner which according to Mr. Madhusudhan R Naik, learned senior counsel appearing for the petitioner would indicate that the authority had not really taken possession of the subject lands from its owners in terms of the procedure established for taking possession of the lands meant to be acquired for a public purpose. It is the proceedings of the State Government dated 13.9.2010 where under certain request of the petitioner has been rejected in this background and through an unnecessarily elaborate order, particularly, by recording a finding that the petitioner had failed to establish that the authority had not taken possession of the land in accordance with the procedure contemplated and against which order the present writ petition is filed.

9. Petitioner also seeks to contend that the acquisition proceedings themselves are now obsolete and has lapsed as the proceedings initiated way back in the year 1990 cannot result in a developmental activity in the year 2010 which has not taken place so far and in support of the submission section 27[41 of the Act is relied upon.

10. Appearing on behalf of the petitioner, Sri Madhusudhan R Naik, learned senior counsel, submits that the manner in which the proceedings have been conducted, particularly, in ignoring material before the Government and

recording a finding to the effect that the petitioner has not established the factum of possession having not been taken from its erstwhile owners in accordance with law and procedure is a finding on the face of it not tenable; that it is virtually one ignoring material on record, tantamounts to perverse finding and as it affects the rights of the petitioner, this court should interfere even at this stage and therefore a writ of certiorari should be issued to quash the proceedings. Yet another ground urged is that the acquisition is lapsed and in terms of section 28[4] of the Act, having regard to the interval between the initial notification and the proceedings not having culminated till date.

11. The third respondent - MUDA has entered caveat through counsel Sri. P S Manjunath. Though no written objections have been filed on behalf of the MUDA, submission of Sri Manjunath, learned counsel for third respondent is that not all contentions urged in the writ petition had been taken before the Government; that it is not that the petitioner had insisted some material was to be looked into and it was not looked into, but it was contention urged for the first time before this court in this writ petition etc.,; that in the guise of challenging the proceedings of the Government, it is not open to the petitioner to question the legality of the acquisition proceedings itself in this writ petition.

12. With all the history behind this writ petition, the fact remains that the petitioner was not the owner of the subject lands on the date when the preliminary notification u/s 17[1] of the Act was issued. Petitioner, if at all, claims to have acquired some interest in the year 2001 immediately following on the heels of the Government coming up with a notification u/s 19[7] of the Act read with section 48[1] of the Land Acquisition Act, 1894 withdrawing from the acquisition proceedings certain parcels of land which was subject matter of the declaration notification dated 4.10.1999 issued under sections 19[1] and 19[2] of the Act.

13. It is to the misfortune of the petitioner that the withdrawal notification itself came to be further withdrawn by the Government by a further order dated 22.7.2002 and it is the version of the petitioner that in the interregnum the petitioner had acquired title to the subject lands and therefore if any affectation is to take place, that can only be after giving a proper opportunity to the petitioner etc.,

14. The scheme of the Land Acquisition Act, 1894 does not contemplate an opportunity to any and every person who may acquire some interest in the lands at some point of time. The nature of the proceedings is a compulsory take over of the lands, but a land owner is only entitled to seek compensation at market value. So long as the validity of the acquisition proceedings are not in issue, other aspects recede to the background as to whether the petitioner is the owner or his vendors were the owners earlier all fall into insignificance and ultimately the only question is as to whether who is entitled for receiving compensation.

15. Acquisition of private land for public purpose by compulsory take over of such

land itself is based on the principle that private interest has to yield in favour of public interest. Opportunity in such situations to a private owner is only to ascertain as to whether the person himself was owner or there are other competing interest with such person who is notified as owner and also to know as to the genuine difficulties, grievances etc., All those stages were over by the time the petitioner acquired interest in the land. If at all the petitioner is the owner of the land on this day entitlement in law is only to receive compensation and nothing more. The ground of violation of principles of natural justice etc., cannot enter into a situation of this nature as that is taken care of by the principle private interest has to yield to a larger public interest. So long as the declaration stands, the other contentions, particularly, as to whether the Government should denotify the land or should come up with fresh notification etc., are all matters which do not confer any right in favour of any person. No person has a right for seeking denotification.

16. Writ Court will examine in the exercise of judicial review of administrative action only if an action is taken, as to whether it is in consonance with the statutory provisions or otherwise. There is no judicial review of any action not taken!

17. There is no compulsion on the part of the court to compel the authority or the Government to come up with denotification nor can a writ of mandamus issued to the State Government to withdraw from acquisition proceedings. When such is the legal position, proceedings leading to denotification or otherwise is of no significance. Proceedings will have significance only if it results in some action. If notification u/s 48 of the Land Acquisition Act, 1894 should have been brought before this court, examination can be made on the touchstone of statutory provisions or as to whether power has been exercised in a bona fide manner or not. Such are not questions raised in this writ petition.

18. There is no scope for examining the impugned proceedings under Article 226 of the Constitution of India.

19. Therefore, the writ petitions are dismissed.

20. However, it is open to the petitioner as contended by Sri Madhusudhan R Naik, learned senior counsel appearing for the petitioner, to move the supreme court for pointing out violations, if any, committed by the Government or authority for suitable action before that court and such cannot be the scope of this writ petition, particularly, when this court cannot assume the jurisdiction of the supreme court for taking action for violation of any directions issued by the supreme court.