

(2010) 09 KAR CK 0150

In the Karnataka High Court

Case No : Miscellaneous Writ No. 1658 of 2010 in Writ petition No's.
22797-22818 of 2009 (LA-KIADB)

Venkatappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4)

Citation : (2011) 2 KarLJ 436 : (2010) 4 KCCR 3000

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

Bench : Single Bench

Advocate : Aswin Prabhu S., for Just Law, for the Appellant; Ashok Harnahalli Associates, for Respondent 1, 2, 4 to 6 and 11, P.V. Chandrashekar, for Respondent 3, M. Madhavachar, CGSC for Respondent 7, D. Nagaraj, for Respondent 8, King and Partridge, for Respondent 9, Narayanaswamy, for Respondent 10, C.K. Nandakumar, for Proposed Respondent 12, Aditya Sondhi, for proposed Respondent 13, Dhyan Chinnappa, for Crest Law Partners for proposed Respondent 14, K.S. Venkataramana, for proposed Respondent 15, K. Prasanna Shetty, for proposed Respondent 16 and Shreyas Jayasimha, for AZB and Partners, for proposed Respondent 17, for the Respondent

Judgement

D.V. Shylendra Kumar , J.—Writ Petitioners are 15 in number and claim to be the owners of different parcels of agricultural lands in and around Chikkathoguru village, Begur Hobli. Bangalore South Taluk, and have come up before this Court impleading the State--Respondent Nos. 1 to 11, seeking the following reliefs.

Issue a writ of mandamus or any other writ or order:

i) Directing the Respondents herein to delete the schedule lands of the Petitioners from the process of acquisition and issue appropriate notification thereof, and a) Alternatively, quash the notification No. Clause 196 SPQ 98 and CI 196 SPQ 98 dated 02.06.1989 and 29.01.2003 issued by the 2nd Respondent u/s 28(1), KIAD Act produced at Annexure C and C 1 and notification No. CI 196 SPQ 98 (P.II) and CI 196 SPQ 98 (P) dated 05.07.2003 and 08.04.2003 issued

by the 2nd Respondent u/s 28(4) of the KIAD Act, Annexure D & D1, respectively, in so as it applies to the Petitioners.

ii) Issue an appropriate writ, order or direction directing the Respondents herein not to take possession of the lands of the Petitioners.

iii) Declare that the lands required for the BMIC Project are that indicated in the letter of the Secretary, PWD, Government of Karnataka dated 03.06.1997 (Annexure Y)

iv) Direct the Respondents to pay cost of the litigation to the Petitioner and grant such other and further relief as this Hon'ble Court deems fit to grant.

2. Notice had been issued to the Respondents and status quo with regard to possession of the lands as on the date of the order dated 12.08.2009 was ordered, which reads as under:

Issue emergent notice with regard to Rule.

Both the parties are directed to maintain status quo with regard to the property in question.

3. Later, Respondents have appeared through their Counsel and Respondent No. 9--Nandi Infrastructure Corridor Enterprises Ltd., the beneficiary of the acquisition proceedings initiated by the State Government, have filed counter. Whereas, the other Respondents are keeping their options open, including the State Government.

4. It is at this stage, application for impleading additional Respondents, as many as six in number as Respondent Nos. 12 to 17 was filed by the Petitioners under Order I Rule 10 CPC read with Article 226 of the Constitution of India, in terms of the application dated 10.02.2010. The writ petition themselves had been filed on 03.08.2009. Notice had been issued to the proposed Respondents. Proposed Respondents have all been served and all of them are represented by their respective Counsel.

5. I have heard the learned Counsel Mr. Aswin Prabhu, appearing for the Petitioners, and the learned Counsel Mr. C.K. Nandakumar for proposed Respondent No. 12, Mr. Aditya Sondhi for proposed Respondent No. 13, Mr. Dhyan Chinnappa for proposed Respondent No. 14, Mr. K.S. Venkataramana for proposed Respondent No. 15, Mr. K. Prasanna Shetty for proposed Respondent No. 16, and Mr. Shreyas Jayasimha for proposed Respondent No. 17.

6. The Petitioners case and the relief is in the background that a public interest litigation in W.P. No. 2922/1997 had been presented before this Court by one Sri Somashekhara Reddy, an Engineer, mainly for seeking an inquiry into the manner and method of the State Government having entered into a Frame Work Agreement with Nandi Infrastructure Corridor Enterprises Ltd., and that having been preceded by some negotiations held at the international level, particularly during the visit of the Governor of Massachusetts in the United States of America

to the capital city of Karnataka and in the background of the two States having certain understanding and reciprocity as sister States in the counterpart countries. It appears there was a proposal for taking up joint projects purporting for the purpose of helping the development of Karnataka State and initially two American Companies and an Indian Company viz., M/s. Bharath Forge Limited, had come up with a project report This had resulted in an agreement being entered into between the Government of Karnataka and Nandi Infrastructure Corridor Enterprises Limited - Respondent No. 9, who had, it appears succeeded to the interest of consortium of companies and it was for questioning the legality of the agreement and the manner of entering into the same, that it calls for thorough examination by an agency like Central Bureau of Investigation, a Public Interest Litigation had been presented by the said Sri Somshekhara Reddy.

7. The writ petition, however, came to be dismissed in terms of the order dated 21.09.1998. But it is the version of the present Petitioners that certain observations had been made in the course of the order which is quite lengthy and elaborate and that the State Government having not adhered to the terms of the original Frame Work Agreement and having chosen to make deviations, such development had given cause for another public interest litigation being presented before this Court in W.P. No. 45334/ 2004. This writ petition which was heard by a division Bench of this Court had come to be disposed of in terms of the order dated 3.5.2005 and as per the version of the Petitioners, it reads as under:

37. 03.05.2005 - Order passed by this Court in PIL - W.P. 45334/2004:

i. All India Manufacturers" Association filed WP No. 45334/ 2004 before this Court seeking a writ of mandamus for implementation of the BMIC project as "Originally conceived and as per the Government order dated 20.11.1995" and findings in Somashekara Reddy's case. The said writ petition came to be allowed by the Division Bench of this Court (Vol. III, Annexure SS, Page 1404 of the writ petition). The Division Bench of this Court specifically directed implementation of the project "as originally conceived and upheld in H.T. Somashekara Reddy's case and to implement the FWA in letter and spirit" (Para 2, page 1497). This is in spite of NICEL placing the ODP and theme alignment in the Court records.

On 24.01.2005, NICEL filed an affidavit in the said writ petition making the following statement:

It is submitted that on account of modifications in the alignment of the Peripheral road and shifting of link road and township 1.....some variation/deletion/alteration/addition of land became necessary after detailed study and expedient and accordingly certain survey numbers in certain new villages were included in the scope, of acquisition"

Despite the same, the above direction was passed.

There is no Government order, nor new FWA incorporating such revised scope of

acquisition.

8. The sum and substance of the version of the Petitioners is that the State Government and the present beneficiary--the ninth Respondent were bound to carry out the directions as contained in the order dated 3.5.2005 passed by this Court in writ petition No. 45334 of 2004, but they are not adhering to the same, but are deviating to the detriment of the Petitioners, in as much as, if the State Government should have adhered to the original framework agreement, the Petitioners' land would not have come in for acquisition whereas the subsequent deviation as has now been done by the State Government has resulted in the Petitioners' land being acquired for the project whereas some others' land had been excluded from the ambit of acquisition though originally their lands also figured within the scope of the framework agreement.

9. It is averred that the writ Petitioners came to know of such developments only after the advent of the Right to Information Act, 2005; that they could discover a variety of frauds having been committed in the course of the ninth Respondent implementing the project; that the State Government and its agencies also are partners in such frauds; that at any rate such illegal activities having affected the Petitioners' interest, are before this Court seeking for relief by ensuring that the State Government and the ninth Respondent adhere to the original framework agreement and as noticed and mandated by this Court in terms of the order dated 3.5.2005 passed in writ petition No. 45334 of 2004.

10. Though the proposed Respondents did not figure as Respondents in the original petitions, they are now sought to be impleaded as additional Respondents with the plea that the development such as the proposed Respondents being the beneficiaries of the deviation of the scheme as they could save their lands was an information or knowledge which the Petitioners have become privy and have also become aware is a much later development and therefore subsequent application for impleading etc.

11. On behalf of the proposed Respondent No. 12, the beneficiary of independent acquisition proceedings who claim that they are neither necessary parties nor proper parties and Respondent No. 17 who claims that it is not beneficiary of any acquisition proceedings who had purchased the lands which perhaps had been subject matter of acquisition proceedings but which had been later given up and having purchased the lands at a point of time when it was not covered under any acquisition proceedings and such factual position having been fortified by "no objection certificate" issued by the Karnataka Industrial Areas Development Board - the third Respondent to these writ petitions which is also in no way concerned either with the writ Petitioners or outcome of the present writ petitions and therefore have strongly objected to their impleadment as party Respondent to these writ petitions.

12. Mr. Shreyas Jayasimha, learned Counsel appearing for the proposed Respondent No. 17 has very vehemently urged that the outcome of the present

writ petitions does not and cannot have any bearing on their transaction such as purchase of certain agricultural lands from its erstwhile owners; that lot of developments have taken place thereafter and at this point of time their interest cannot be affected in any manner and therefore insofar as they are concerned, the application for impleadment should be rejected.

13. Submission on behalf of the proposed Respondent No. 12 - by Sri Nandakumar, learned Counsel is also for rejection of the application insofar as the proposal for impleading it as a Respondent is concerned; that the subject lands which according to the Petitioners were forming part of the agreement have not been either handed over or allowed in favour of the proposed Respondent as forming part of the acquisition for the project under the framework agreement and therefore also the outcome cannot have any bearing; that this Respondent also has after the allotment of the land in their favour during the year 2002-03 [two parcels of land] have developed the lands considerably and the present writ petitions cannot have any affectation or bearing irrespective of its outcome, on the existing situation, as prevails in their lands.

14. Insofar as other proposed Respondents are concerned, learned Counsel appearing for them have submitted that while they may not be unnecessarily troubled, it is in the discretion of the Court to order the application either for impleadment or for rejection.

15. I have been taken through with some pleadings in the writ petitions, applications and the objections. I have bestowed my anxious consideration to the submissions made at the Bar.

16. The resistance for ordering the impleading application is only from the two Respondents i.e., Respondents 12 and 17 on the premise that they are neither necessary nor proper parties etc.

17. Writ litigation invoking the jurisdiction of the High Court under Article 226 of the Constitution of India is not necessarily in the nature of an adversary litigation. The jurisdiction is essentially one conferred under the Constitution of India on the High Court, for exercising the power of judicial review of administrative action and legislative actions. Examination by the Court is primarily is about the functioning of the State and its functionaries and not one for determining the rights and liabilities of private individuals.

18. It may be incidentally that the private individual who approaches the Court for relief complaining that the rights which the Petitioners have, has been in some manner affected by an adverse action on the part of the State or its functionaries. The examination primarily is to find out as to whether actions/orders of public authorities are in consonance with the legal or statutory provisions and the constitutional provisions. Rights of the Petitioners may be statutory or under the constitution. In such circumstances, the concept of adversary litigation per se cannot be invoked, particularly, within the concept of

necessary parties to a civil litigation, a litigation before a Civil Court where one party comes to the Court seeking for relief against another private individual, complaining that the right of the individual-Plaintiff is in some way affected by the action on the part of the Defendant.

19. In writ litigation, Petitioners, more often than not, are persons who bring a cause before the Court and the examination primarily is as to whether the Petitioners have locus in the context of the relief sought for and as to whether they are approaching the Court with any degree of bonafides or merely busy bodies misusing or abusing the process of the Court.

20. While in a public interest litigation writ petitions such scrutiny is deeper, but the concept of locus is enlarged to such an extent even a person who has no interest at all can also be Petitioner, to the extent of the PIL petition being a relator action petition, in the case of other writ petitions where individuals complain that the rights are affected, the mere assertion that they have some right and it is affected by the action of the State provides them the locus to bring the cause before the Court for relief. The examination is as to whether the relief sought for can be granted or not.

21. In this background, the persons who are responsible for the affectation i.e., the State and its officers are undoubtedly necessary parties to the writ petition. It may so happen that incidentally some other private citizens, companies etc., might have been benefited or had acquired some rights even prior to the examination by the Court and principles of natural justice requires that a fair opportunity should be given to all such persons who are likely to be affected before an order passed by this Court. It is to fulfil this requirement, even private parties who are not necessary parties to writ litigation are also impleaded and as to whether they are necessary or proper parties is always a question depending on the facts and circumstances of each case and the demarcating line being always blurred, there cannot be any hard and fast rule governing the question nor can a water tight compartment created!

22. Be that as it may, if the impression of the Petitioners is that the relief sought for is likely to affect the interest of some other private individuals also and therefore it is only fair that they are also given an opportunity by the Court and are required to be added as party Respondents, it is more in the nature of a proper party being added to the proceedings than a necessary party.

23. The examination of the correctness or legality of an order or action taken by public authority does not and cannot be dependent on the actions or the attitude or the conduct of private persons, and is an independent examination and the quality of the order passed by a public authority can neither be improved by private persons nor in any way sought to be fowled upon.

24. An opportunity having been given to the proposed Respondents to have their say in the matter and with the proposed Respondents 12 and 17 having filed statement of objections and their learned Counsel also having made submissions

for rejection of the application for the proposal to implead them as party Respondents and in the wake of the above discussion, if such Respondents are not keen in participating in the proceedings before this Court, they are not under any element of compulsion by an order of this Court to come and present their versions.

25. However, it is made clear that an order, if any, to be passed in the context of the relief sought for by the Petitioners in the present writ petitions, if can have a bearing or affectation on other private persons, that cannot be a consideration for giving rise to a cause of action in favour of such persons, who have consciously and advisedly opted, to keep themselves out of the present proceedings before the Court and that will be the outcome.

26. In the circumstances, while the application for impleadment in Misc. W. No. 1658 of 2010 is ordered only insofar as it relates to proposed Respondents 13, 14, 15 and 16 are concerned, the application for impleadment insofar as Respondent Nos. 12 and 17 is concerned, it is rejected.

27. However, Petitioners are required to be put on terms as they have invited additional persons who are private individuals to be added as party Respondents and the minimum that is required, to be ensured is that they are compensated for the cost of the litigation.

28. Therefore, application insofar as it relates to proposed Respondent Nos. 13,14,15 and 16 are concerned, it is ordered on terms awarding cost of Rs. 5,000/- in favour of each of the newly added Respondents. Cost to be paid to the additional Respondents within two weeks from today.

29. The newly added Respondents are given two weeks" time to file objections, if any, to the main petition within two weeks and with the learned Counsel appearing for the newly added Respondents submitting that they have already received copies of the writ petitions, it is open to the newly added Respondents and also the existing Respondents who might have hither to not filed their statement of objections to file counter/objections If any within two weeks.

30. List for further orders after two weeks.