

(2015) 10 KAR CK 0205

In the Karnataka High Court

Case No : W.P. Nos. 7909-7911/2015 (LA-KIADB), 48277-48297/2012 (LA-KIADB), 2665/2013, 4634/2013 (LA-KIADB), 25629/2013, 29689-91/2013(LA-KIADB), 9494/2013(LA-KIADB) and 10312-315/2013 (LA-KIADB)

V.S. Thiageswaran and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-10-2015

Acts Referred:

Constitution of India, 1950 — Article 12
Karnataka Industrial Areas Development Act, 1966 — Section 28, 28(1), 28(4), 28(5), 3(1)
Karnataka Town and Country Planning Act, 1961 — Section 14A(3)
Land Acquisition Act, 1894 — Section 4, 4(1), 6

Citation : (2015) 10 KAR CK 0205

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Jayakumar S. Patil, Senior Advocate and Pruthvi Wodeyar, Advocate, for the Appellant; K. Vidyavathi, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Since common questions of law and that of facts arise for decision making in these petitions, with the consent of the learned counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order.

2. The 1st petitioner in W.P. No. 2665/2013 the developer represented by proprietor, 2nd petitioner N.S. Mukunda, is said to have acquired a total extent of 4 acres 27 guntas of land in Sy. No. 178 of Shanmangala village, Bidadi Hobli, Ramanagara Taluk, Bengaluru District, under two separate sale deeds dated 17.6.2006 and 3.7.2006 (2 acres 24 guntas and 1 acre 33 guntas) jointly from Raja Iyengar, S/o Late Narayanappa along with his wife Rajamma and children, and jointly from one S.V. Krishna Murthy and Parathasarthi. s/o S.V. Krishna

Murthy, respectively, for valuable sale consideration, having obtained necessary permission from 3rd respondent-Bangalore Mysore Infrastructure Corridor Area Planning Authority (for short "Planning Authority") paid requisite development charges, obtained sanction of layout plan and thereafterwards conveyed sites, formed therein, for residential purpose. Petitioners in W.P. Nos. 7909-7911/2015; W.P. Nos. 48277-48297/2012; W.P. Nos. 25629/2013 called with 29689-691/2013; W.P. No. 9494/2013; and W.P. No. 10312-315/2012, amongst others, are purchasers of sites under several sale deeds executed on and after January 2010.

3. The developer and the purchasers of sites carved out of Sy. No. 178 aggrieved by the preliminary notification dated 31.1.1998 under Section 28(1) of the Karnataka Industrial Area Development Act, 1966 (for short "KIAD Act") and the final declaration dated 8.10.2007 under Section 28(4) of the "KIAD Act" have presented these petitions, inter alia challenging their legality and validity, asserting that the final notification issued nine years after the preliminary notification, not being within reasonable time of two years, the acquisition is stale and has lapsed. In addition, petitioners seek quashing of the letter of allotment in favour of M/s. Bosch Ltd., one of the respondents, allotting 3,89,450 Sq.M. in Bidadi Industrial Area, II Phase, Sector, Ramanagara Taluk, insofar as it relates to 4 acres 27 guntas. In the alternate, petitioners seek quashing of possession certificate issued by KIADB in favour of M/s. Bosch Ltd.

4. Learned counsel for M/s. Bosch Ltd. submits that a comprehensive statement of objections is filed in W.P. No. 9494/2013 opposing similar such reliefs as are claimed by petitioners-purchasers and seeks leave of the court to adopt the statement of objections. Memo filed in that regard is ordered.

5. According to M/s. Bosch Ltd., it was allotted land measuring 3,89,450 Sq.M. under possession certificate 21.10.2011 short by 15,350 Sq.M. since it had sought allotment of 4,04,800 Sq.M. of land in Sy. No. 178 and other survey numbers. That company, it is said, issued work orders to the EPC contractors based upon the approved plan and work is in full swing. The buildings approved for construction for industrial purpose in the allotted land, it is said, encompasses almost the entire land leaving no vacant land unutilized. It is the specific case of the company that exclusion of any extent of land from acquisition much less 4 Acres 27 guntas will affect the design of the project and any realignment would require re-working of the drawings/re-tendering of works occasioning heavy financial burden.

6. Petitions are also opposed by filing statement of objections of KIADB, inter alia, contending that after the initiation of proceedings for acquisition under the "KIAD Act", notification dated 31.1.1998 under sub-section (1) of Section 28 of the "KIAD Act" was issued for acquisition of large tracts of land including land in Sy. No. 178, while the notified khathedars none other than the vendors-in-title of the petitioner in W.P. No. 2665/2013 i.e. N.S. Mukunda, when served with notice, filed objections to the acquisition proceeding. The State Government having

considered the objections over-ruled the same and issued a final declaration by notification dated 4.10.2007, published on 8.10.2007 invoking Sub-section (4) of Section 28 of the "KIAD Act". According to KIADB, by operation of law, the land stood vested in the State, more appropriately, in terms of sub-section (5) of Section 28 of the "KIAD Act". In addition, it is stated that notification under Section 3(1) declaring the acquired lands as industrial area under "KIAD Act" was issued and not for the Bangalore Mysore Infrastructure Corridor Project as claimed by "Planning Authority" and in that regard, it is stated, clarification if any, obtained from the "Planning Authority" is of no consequence. It is asserted that petitioners being purchasers subsequent to the notification for acquisition, having not acquired right, title or interest cannot call in question the legality and validity of the acquisition notifications much less the proceedings or allotment in favour of M/s. Bosch Ltd.

7. Sri Jayakumar S. Patil, learned senior Counsel for petitioners-purchasers of sites submits that final declaration dated 8.10.2007 under Section 28(4) of the "KIAD Act" when not issued within a reasonable time of two years from preliminary notification dated 31.1.1998 under Section 28(1) of the "KIAD Act", the acquisition proceeding lapsed. It is the further submission of learned senior Counsel that the purchase of 4 acres 27 guntas of land by petitioner in W.P.2665/2013 under two sale deeds dated 17.6.2006 and 3.7.2006 much after expiry of reasonable period for issue of final declaration, petitioners have locus to question the legality and validity of the notifications, or alternatively, to declare acquisition has lapsed in the light of paragraph 15 of the decision of Division Bench in Smt. Nagubai and others v. State of Karnataka ILR 2001 KAR. 1169. It is next submitted that although application of M/s. Bosch Ltd. was for allotment of 1,00,000 Sq.M. of land, nevertheless, KIADB allotted 3,89,450 Sq.M. from out of which, 4 Acres 27 guntas in question is located at the extreme edge of the composite property, capable of being hived off and similar extent of land allotted alongside the boundary, from out of land in possession of KIADB. It is lastly submitted that the "Planning Authority" having obtained clarification from the Special Land Acquisition Officer attached to KIADB and in-charge of Bangalore Mysore Infrastructure Corridor Project, accepted the application of the petitioner in W.P.2665/2013, to accord sanction for development as well as the layout plan after collecting development charges following which released the sites for allotment/sale in favour of petitioners-purchasers, amongst others, expending large sums of money made over to the coffers to the State, both by way of development charges as well as stamp duty and registration fee on the deeds of conveyance etc., occasioning greater hardship to the petitioners if the extent of 4 acres 27 guntas of land is not withdrawn from acquisition.

8. Sri H. Srinivasa Rao, learned counsel for petitioner in W.P.2665/2013 while adopting the submissions of learned senior counsel for petitioners/purchasers, in addition submits, that the "Planning Authority" having extended a promise that 4 acres and 27 guntas of land in Sy. No. 178 was freehold and not subject to acquisition, in the light of clarification issued by Special Land Acquisition Officer,

Bangalore Mysore Corridor Project, followed by sanction of development plan and the formation of the layout, including change of land use from industrial area to residential use under Section 14A(3) of the Karnataka Town and Country Planning Act, 1961, there was no justification for KIADB to issue the final declaration to acquire the said land.

9. Sri Vivekananda, learned counsel for petitioners in W.P. No. 25629/2013, adopts the submission of the learned senior counsel for petitioners.

10. Sri P.V. Chandrashekar, learned counsel for KIADB submits that at the very threshold, petitions are liable to be rejected in the light of paragraph-18 of the decision of the Apex Court in V. Chandrasekaran and Another Vs. The Administrative Officer and Others, since petitioners being purchasers post acquisition notification dated 31.1.1998 acquired no right, title or interest in the immovable property in question. The original khatedars, it is submitted, having actively participated in the acquisition proceeding and not challenged the same at the earliest opportunity when the final declaration was issued on 8.10.2007, petitions also suffer from delay and laches. According to learned counsel, the decision in Nagubai's case, does not apply since under the "KIAD Act", no time limit is prescribed for issuing final declaration as has been done in the Land Acquisition Act, 1894 and further, does not provide for lapsing of acquisition proceeding as is available under Section 27 of the Bangalore Development Authority Act, 1975 as well as Karnataka Urban Development Authority Act. Learned counsel further points to the observations of the Apex Court in M. Nagabhushana Vs. State of Karnataka and Others, , that under Sections 28(4) and 28(5) of the "KIAD Act" vesting takes place by operation of law and therefore, it has nothing to do with framing of award which is factually different from Sections 4 and 6 of the Land Acquisition Act, 1894, requiring drawing of award within two years from the date of final declaration. According to learned counsel, the award having been made after the final declaration since notified khatedars did not receive compensation though notice was served, is deposited before competent civil court in accordance with the Land Acquisition Act, 1894. As regards, the submission to hive off 4 acres 27 guntas in Sy. No. 178, it is submitted despite exercise undertaken to identify alternate land for allotment to M/s. Bosch Ltd. no other industrial area is available adjoining the allotted land so as to constitute a composite property. The allotment of 3,89,450 Sq.M. of land, it is submitted, is in accordance with "KIAD Act" as well as the regulations framed thereunder.

11. Sri S.G. Pandit, learned counsel for the "Planning Authority" reiterates the averments set out in the affidavit filed in W.P.2665/2013 to submit that at the instance of the petitioner therein, claiming to be the absolute owner of land in Sy. No. 178, having obtained clarification from the Special Land Acquisition Officer, KIADB and attached to the Bangalore Mysore Infrastructure Corridor Project that the land was not subject matter of acquisition, led to formalities of according sanction for development to form a layout and change of land use from

industrial to residential. According to learned counsel several conditions were attached to the said sanction and the mistake of the Special Land Acquisition Officer cannot be held against the "Planning Authority".

12. Sri S.S. Naganand, learned senior Counsel for M/s. Bosch Ltd. submits that on and from the issue of notification under Section 3(1) declaring the area as an "industrial area" and the preliminary notification under sub-section (1) of Section 28 of the Act, the acquisition of land by a final declaration under sub-section (4) of Section 28 of the Act, followed by award and deposit of compensation determined, cannot be found fault with in the light of decision in *M. Nagabhushan*" case, *supra*, and regard being had to the decision of Full Bench of this Court in *Poornaprajna House Building Cooperative Society v. Bailamma @ Doddabailamma* ILR 1998 Kar. 1441, at para-28, recording a finding that purchaser has no right to challenge the acquisition, although entitled to claim compensation by virtue of sale made in his favour i.e. of right, title and interest of his predecessor, writ petitions deserves to be rejected at the threshold.

13. Learned senior Counsel further submits that an application though filed for allotment of 4,04,800 Sq.M. of land led to KIADB allotting 3,89,450 Sq.M., short by 15,350 Sq.M. of lands comprised in several survey numbers including Sy. No. 178, and the development of land for industrial activity having reached a stage where any change in the project and its construction activity would lead to hurdles and delay as well as was financial constraints, it is not advisable for KIADB to hive off 4 acres 27 guntas, though located at the extreme edge of the property. Learned senior Counsel hastens to add that if the KIADB is well advised it may allot 4 acres 27 guntas of land from out of its acquired lands elsewhere to the petitioners.

14. In the light of undisputed facts and the circumstances which have resulted in filing these petitions, in the first place, there can be no more doubt that petitioners did not acquire right, title or interest in the immovable property in Sy. No. 178 from and after the notification 31.1.1998 issued under sub-section (1) of Section 28 of the "KIAD Act" and on that score, petitioners cannot claim right to challenge acquisition proceedings as well as the notifications.

15. In *Chandrashekar*"s case *supra*, the Apex court at paragraph 18 observed thus:

"In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor"s title."

16. The Full Bench of this Court in *Poornaprajna House Building Co-operative Society*"s case, *supra*, at paragraph 28 observed thus:

"Writ Appeals No. 2090-2094 of 1993 arising out of Writ Petition Nos. 480 to 484 of 1993 have been filed by the purchasers of the lands after the issuance of notification under Section 4(1) of the Act. Now it is a well-settled proposition of law that a person who purchases the land subsequent to the issuance of the notification under Section 4(1) of the Act, cannot be said to be the owner. Such a purchaser has no right to challenge the acquisition itself, although he is entitled to claim compensation by virtue of sale made in his favour i.e., of right, title and interest of his predecessor. Reference may be made to the judgment of the Supreme Court in *Union of India v Shivkumar Bhargava and Others*. It was held that:

"The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition, and he alone will be entitled to allotment of alternative site. A person who purchases land subsequent to the notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right title and interest the predecessor had but, he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which notification under Section 4(1) was published. This was the view of this Court in another case while considering the Full Bench judgment of the Delhi High Court. Under these circumstances, the appeal is allowed. The respondent cannot be considered to be the owner as on the date of notification under Section 4(1) published in the Gazette. The direction given by the learned Single Judge is accordingly quashed. The writ petition stands dismissed. No costs".

Reference can also be made to the subsequent judgments of the Supreme Court in *Smt. Sneh Prabha v State of Uttar Pradesh and Another*, *Uttar Pradesh Jal Nigam, Lucknow, through its Chairman and Another v M/s. Kalra Properties Private Limited, Lucknow and Others*, and *Ajay Krishna Shinghal v Union of India and Others*. In the aforesaid judgments as well the Supreme Court has reiterated its view taken in *Shivkumar Bhargava's* case, *supra* and has held that the purchaser subsequent to the issuance of the notifications under Sections 4 and 6 has no right to challenge the acquisition proceedings. W.A. Nos. 2079/1993 and 2080-81/1993 are accepted on the additional ground and that the writ petitions filed by (now respondents) were not maintainable on their behalf challenging the acquisition proceedings although they would be entitled to claim compensation in place of the original owners."

17. Keeping in mind the aforesaid observations, it is needless to state that petitioners derived no manner of right, title or interest except to claim compensation over the acquisition of land in Sy. No. 178 and nothing more.

18. The submission of learned senior Counsel for petitioners that within reasonable time from 31.1.1998, final declaration was not issued, the entire acquisition became stale and lapsed, is noticed, only to be rejected. It is no doubt true that courts have held that in the absence of time limits for issue of final notification, reasonable time is two years from the date of issue of

preliminary notification, nevertheless, in the facts of this case, though final declaration is issued eight years after the preliminary notification, nevertheless, was followed by framing of award, deemed taking of possession and deposit of compensation in civil court while original notified khathedars nor the subsequent purchaser did not question the validity of acquisition proceedings at the earlier opportunity in the year 2007, therefore, acquiesced in the notification.

19. Even otherwise in Nagabhushan's case *supra*, the Apex Court observed that under Section 28(4) and 28(5) of the "KIAD Act", framing of award has nothing to do with the vesting of land by operation of law, as different from Sections 4 and 6 of the Land Acquisition Act 1894, requiring the drawing of award within two years from the date of final declaration.

20. The facts in Smt. Nagubai's case was applied in relation to the Land Acquisition Act 1894, more appropriately, over the failure to pass an award within two years of the final notification under Section 6, hence the acquisition lapsed. In the facts and circumstances of this case, with great respect the decision is inapplicable. Moreover the aforesaid decision of the Apex Court and the Full Bench of this court, having clearly set out that the purchaser post acquisition notification acquired no right, title and interest in the acquired property, petitioner/purchasers have no legal standing to question the acquisition nor claim a declaration that the acquisition lapsed under the "KIAD Act".

21. There is force in the submission of Sri S.S. Naganand, learned senior Counsel that hiving off of 4 acres 27 guntas from the total extent of land allotted to M/s. Bosch Ltd. would cause more hardship, in the light of sanction of building plan and the project having reached a stage where it is not possible to retract unless major changes are made in the project, more particularly, since the Hon'ble The Chief Minister inaugurated the Plant since commissioned. It is not as if the KIADB did not undertake an exercise to ascertain if petitioners could be accommodated elsewhere or that M/s. Bosch Ltd. could be allotted an extent of 4 acres 27 guntas on the boundary of the land allotted to it, since after such exercise, found no land available. It is however, open to the KIADB to consider, if appropriate, to allot to the petitioners before court, sites of dimension purchased under various sale deeds executed by the petitioner in W.P.2665/2013 so as to obviate the difficulties both in terms of securing site as well as finance, having paid consideration as well the stamp duty and registration fee, in addition to development charges made over to the Planning Authority.

22. Less said the better about the "Planning Authority". It seems to have no co-ordination with the Special LAO of Bangalore Mysore Infrastructure Corridor Project/KIADB. Had that exercise been done, these petitions were unnecessary. The clarification obtained by the developer when placed before the "Planning Authority", its statutory duty is to verify the correctness and validity of such clarification before embarking upon according sanction to the development plan and receiving development charges. The "Planning Authority" is statutorily constituted and therefore, is "State" for the purpose of Article 12 of the

Constitution and hence must show exemplary conduct.

23. Be that as it may. It is hoped that KIADB would not turn away the petitioners from their request for allotment of sites in any of the layouts formed by it in the vicinity or at any other location.

24. It is high time the State Government takes note of the situation and Sub-Registrars are issued necessary instructions not to register any kind of instrument relating to immovable properties subject matter of acquisition under any statute by State Government or its departments/functionaries so as to obviate the circumstances of nature brought before Court by reason of which huge sums of money are parted by ignorant and gullible purchasers of sites.

25. Liberty is reserved to the petitioners to seek refund of the stamp duty on the conveyance deeds since they are held to convey no title to immovable property. So also, liberty is reserved to the petitioners to recover from the Planning Authority the development charges paid towards sanction of layout plan.

26. In the result, petitions devoid of merit are rejected subject to the above observations.