

V. Prabhakar and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jun-04-2002

Reported in : ILR2002KAR3533; 2002(4)KarLJ470

Judge : Chandrashekaraiiah, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4(1) and 6(1)

Appeal No. : Writ Petition Nos. 399 to 408 of 2000

Appellant : V. Prabhakar and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : H.B. Mahesh, High Court Government Pleader for Respondents-1 and 3, ;Ashok Harnahalli, Adv. for Respondent-2 and ;Sri Anand S.N. Associates, Advs. for Respondent-5

Disposition : Writ petitions allowed

Judgement :

ORDER

Chandrashekaraiiah, J.

1. The petitioners are all owners of different bits of lands having purchased the same under the registered sale deeds of even dated 5-12-1996. The petitioners

made applications to the Corporation to transfer katha to their names on the strength of the sale deeds referred to above. As the Corporation had not taken any steps to consider their applications they had filed writ petition before this Court seeking certain direction. This Court directed the Corporation to consider the applications for transfer of katha.

2. At the instance of the Corporation the Special Deputy Commissioner issued a notification dated 18-6-1998 proposing to acquire the lands of the petitioners for the benefit of the Corporation to construct hospital, school and playground showing the name of the vendors of the petitioners as the owners of the land in question. The fact that the petitioners have purchased the property under registered sale deeds was well-within the knowledge of the Corporation since by that time the petitioners had made the applications along with the sale deeds for transfer of katha. If that is so, the Corporation, for whose benefit the land was proposed for acquisition, could have brought this fact to the notice to the Special Deputy Commissioner before issuing notification under Section 4(1) of the Land Acquisition Act. But, ultimately this preliminary notification was followed by the final notification dated 19-8-1999 under Section 6(1) of the Land Acquisition Act.

3. Learned Counsel for the petitioners submits that the entire acquisition proceedings are vitiated since the said proceedings have been initiated at the instance of the local MLA and local Corporator, as the petitioners refused to part with a portion of the land. The petitioners have also impleaded the local MLA and local Corporator as respondents 4 and 5 in these writ petitions. Respondent 4 though served remained absent. Respondent 5 is represented by the Counsel but he has not filed any counter disputing or denying the allegations made by the petitioners against him in the writ petitions. In the absence of any dispute or denial of the allegations made against respondents 4 and 5, the normal course is to accept the averments made by the petitioners regarding mala fides as the said allegations are deemed to have been admitted. The Corporation also has not filed any statement of objections disputing the said averment in these writ petitions. Even in the absence of statement of objections either by the Corporation or by respondents 4 and 5, I called upon the learned High Court Government Pleader to produce the records in order to satisfy myself regarding the above said allegations.

4. From the records, I find that the Corporation has passed resolution dated 25-1-1993 resolving to acquire the lands referred to above on the basis of the decision of the Standing Committee, dated 23-10-1992. After this resolution it appears the Corporation has moved the State Government for according approval to initiate acquisition proceedings. The Government had written a letter to the Corporation dated 11-6-1996 which reads as follows:

Sub: Acquisition of property Nos. 67, 67/1 and 67/2 on 3rd Main Road, Ramachandrapuram, Division No. 20.

Ref: Your letter No. L-1 PR 295/91-92, dated 2-2-1996.

With reference to your letter under reference on the above subject, I am directed to state that the resolution for acquiring the property Nos. 67/1 and 67/2 measuring 1900 sq. yards on 3rd Main Road, Ramachandrapuram in Division No. 20 for play field, hospital, school building, etc., was passed by the Bangalore City Corporation in its Council meeting dated 25-1-1993 which is pending for almost 3 years. It is not very sure whether the Corporation would still require this property to be acquired as their plans, priorities during these 3 years might have undergone several changes. However, Government hereby accord permission for acquiring the said land with a condition that the Corporation shall again examine this from the point of present need and priority and also the cost of acquisition vis-a-vis the benefits derived by the Corporation before it finally ventures to acquire.

Your's faithfully

Sd/-

(A.S. Gadvi)

Under Secretary to Government,

Urban Development Department.

From the contents of the letter it is seen that the Government had accorded permission to acquire the said land with a condition that the Corporation shall examine and consider their proposal with reference to the existing need. But, no

steps are taken by the Corporation to know whether really the lands in question are required for the purpose of acquisition. The Deputy Commissioner (Administration) of the Corporation had written a letter dated 1-9-1997 to the Special Deputy Commissioner stating that the local MLA and the local Corporator along with other residents are pressing for acquisition of these lands for construction of playground, hospital and school. From this it is seen that even though there was a proposal on an earlier occasion by the Corporation, the impugned initiation of proceedings for acquisition is at the instance of the local MLA and Corporator who have been impleaded as respondents 4 and 5. The petitioners have taken a specific contention that respondents 4 and 5 demanded them to part with a portion of the land sought to be acquired and since they refused to do so, they have instigated the Corporation authorities to acquire the land in question. This contention is supported by the contents of the letter written by the Deputy Commissioner (Administration), dated 1-9-1997 as found in the records produced by the learned Government Advocate. Respondents 4 and 5 as stated earlier have not filed any statement of objections either disputing or denying the said averments made by the petitioners in these writ petitions.

5. The land proposed for acquisition measures about 1589 sq. mtrs. which is little more than a quarter of an acre and less than half an acre. The purpose for which the acquisition is proposed is for construction of a hospital, school and playground. But, the Corporation as found in the records has not prepared any scheme or sketch showing the exact extent of land required for the construction of school, hospital and playground. Normally, nearby the hospital there will not be any school since it causes nuisance to the inmates of the hospital. Further, with this small bit of land no one can imagine that the purpose of construction of hospital, school and playground could be met with. From the entire records I find no material to show what would be the land required for the construction of the hospital, school and the playground.

6. The petitioners having come to know of the acquisition proceedings pursuant to the preliminary notification published in the local newspaper, filed objections objecting the acquisition. The erstwhile landowners also filed objections stating that they have already sold the said land in favour of the petitioners under

registered sale deeds. In their statement of objections the petitioners have clearly stated that the proposed acquisition is at the instance of the local MLA and the local Corporator. This specific allegation has not been denied by the Corporation which participated in the proceedings. The Deputy Commissioner who has been appointed as the Land Acquisition Officer, under Section 5-A of the Land Acquisition Act has also not considered the serious allegations made by the petitioners in their objections before him. Therefore, all these facts clearly disclose that the said acquisition by the Corporation is at the instance of the local MLA and the local Corporator and thereby the said acquisition proceedings are vitiated by mala fides.

Sri Ashok Harnahalli, learned Counsel for the Corporation, submits that as the Government has declared that the acquisition of land is for the public purpose in the final notification, this Court cannot go into it in order to ascertain whether there is any public purpose or not as the Corporation is required to use the said land for the same purpose or for any other purpose than the purpose for which it is acquired.

8. I am afraid that the contention of the learned Counsel that the land acquired for the public purpose could be utilised for the purpose other than the purpose for which it is acquired is justified. No doubt, if the purpose of acquisition of land ceased to exist after vesting, the land could be utilised for some other purpose as there is no provision for divesting. In the instant case the very case of the petitioners is that as on the date of preliminary and final notifications, no public purpose is existing so as to acquire the land in question. The very object of holding an enquiry under Section 5-A of the Land Acquisition Act is to know whether really any public purpose is existing so as to get the land acquired by the State Government. As the Corporation has not prepared any scheme or sketch to show what is the land required in order to establish or construct hospital, school and the playground in the area which is little more than a quarter of an acre, I am of the considered view, that the land is not required for the public purpose.

9. The Land Acquisition Officer in his report submitted to the State Government under Section 5-A of the Land Acquisition Act has not considered the objections

raised by the petitioners except stating that the area is in a residential locality. If that is so, it is not known whether the land in question is reserved or earmarked for civic amenity sites in C.D.P. or O.D.P. and the Corporation could use this land for construction of hospital, school and playground. From the records I also do not find that the substance of the preliminary notification has been notified in the locality. But this may not be a ground to annul the acquisition proceedings since the petitioners themselves have filed objections objecting acquisition.

10. Therefore, for the reasons stated above, I am of the considered view that the entire acquisition proceedings are vitiated.

11. Hence, I pass the following order:

Writ petitions are allowed with a cost of Rs. 1,000/- payable by the Corporation to each of the petitioners and Rs. 1,000/- each by respondents 4 and 5 to each of the petitioners.

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