

Aravind and ors. Vs. the Special Land Acquisition Officer, Kiadb and anr.

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Court : Karnataka

Decided On : Nov-11-2005

Reported in : ILR2006KAR922; 2006(3)KarLJ403

Judge : V. Gopala Gowda, J.

Acts : Karnataka Industrial Areas Development Act, 1966 - Sections 28(4), 29(2);
Land Acquisition Act - Sections 11, 18, 18(1), 23, 28A, 28A(3) and 30

Appeal No. : Writ Petition No. 3264/2004

Appellant : Aravind and ors.

Respondent : The Special Land Acquisition Officer, Kiadb and anr.

Advocate for Def. : R.K. Hatti, HCGP for R2 and ;Basavaraj V. Sabarad, Adv. for R1

Advocate for Pet/Ap. : B.G. Namitha Mahesh, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. The petitioners are the owners of 21 acres 28 guntass of lands in Sy. Nos. 165/1 and 166 of M.T. Sagar village in Hubli Taluk. The said lands had been acquired by the Karnataka Industrial Areas Development Board. Being not satisfied with the compensation paid, petitioners made representation as per Annexure-H seeking to pay proper market value for the acquired lands. The said request is rejected under Annexure-J dated 22-11-2003 on the ground that the amount has been paid as per the agreement under Section 29(2) of the Karnataka Industrial Areas Development Act, 1966 (here in after referred to as the Act'). Petitioners are seeking to quash the same and to permit them to seek reference under Section 18(1) of the Land Acquisition Act.

2. Statement of objections is filed on behalf of the first respondent justifying the impugned communication. The reason mentioned in the impugned communication is reiterated and prayer is made for dismissal of the writ petition.

3. The facts are not in dispute. The petitioners asserted that the amounts they received were mere advance and it was not towards full and final settlement of compensation amount in respect of their lands acquired for the benefit of KIADB as the same was not determined by the Deputy Commissioner as required in law. The amounts so received by the petitioners were without prejudice to their rights to collect market value of the lands acquired by the State, the above said fact were mentioned in the receipt when they have received the amounts from the KIADB. The petitioners have produced the document marked as Annexure-K, the order passed by the reference Court in LAC 58/ 1987 in respect of other lands of the same village which were notified in the Preliminary Notification along with the petitioners. The market value of those lands is fixed at Rs, 21,000/- per guntas and all other benefits as provided under the provisions of L. A. Act, such as additional market value at 12%, solatium at 30%, interest etc., Petitioners are claiming the same amount and benefits for which they are entitled in law in respect of their lands, which application was rejected by the first respondent by issuing the impugned endorsement marked as Annexure-J in this Writ Petition.

4. Mr. Basavaraj V. Sabarad, learned Counsel for the KIADB and Special Land Acquisition Officer relied upon the decision of the Apex Court reported in State Of

Karnataka v. Sangappa Dyavappa Biradar in support of his contention that since the petitioners received the amounts by executing agreements under Section 29(2) of the Act, they are not entitled to seek any more amount and other benefits under the provisions of L.A. Act. He seeks not to entertain the claim of the petitioners and prayed for dismissal of this petition.

5. The stand of the KIADB is wholly untenable in law and cannot be accepted for the following reasons:

a) Even though Section 29(2) of the Act states that the compensation shall be paid in accordance with the agreement in view of the fact that the agreement could not have been entered into by the parties before the acquisition of lands has become final by declaration of final notification, the rights of the land owners to claim proper market value for the acquired lands cannot be deprived of by the Board. In law, they are entitled for 1. : AIR 2005 SC2204 just compensation to be determined as provided under the provisions of L.A. Act. Before the compensation amount is paid by agreement to the petitioners/ landowners, the Deputy commissioners shall determine the market value of their acquired lands as provided under Section 11 of the L.A. Act by taking all relevant aspects as provided under Section 23 of the L.A. Act.

b) Under Section 30 of the Act, the provisions of L.A. Act are made applicable inter-alia for payment of compensation in respect of the lands acquired. Under Section 28-A(3) of the L.A. Act the petitioners are entitled to the market value of the lands to be determined by the reference Court.

c) The preliminary notification was dated 28-6-1980 (Annexure-A). But the final notifications are dated 6-12-1995 (Annexure-C) and 14-10-1997 (Annexure-E), after a lapse of 15 and 17 years respectively of publishing the Preliminary Notifications. The payments were not made in one stretch to the petitioners. In the objections statement filed by respondents it is seen that the payments made to the petitioners started on 24-5-1990 and ended on 12-3-1999 on various dates i.e. payment of Rs. 4,10,625 was made on 23/4/1992, payment of Rs. 1,36,875 on 14/9/1992 and payment of Rs. 15,80,000 on 12/3/1999. The second petitioner has raised the dispute regarding compensation amount under Annexure-D dated 9-9-

1997, when the agreed amounts were not paid in lump-sum, the spread-over payments made by the Board is undisputed fact and therefore it entitles the petitioners to seek the market value for their lands as on the dates of payments made and not at the older rate as contended by the Board. Before declaration of final notification as provided under Section 28(4) of the KIADB Act there is no question of determination of compensation amount towards the lands acquired and payment of the same with agreement as provided under Section 29(2) of the Act to the petitioners and therefore there is no agreement between the parties in respect of the compensation amount in terms of Section 29(2) of the Act.

d) One thing is clear that some manipulation is made in the original record of KIADB. According to the petitioners, they received the amounts under protest. Therefore, it could be easily gathered that the words 'Under Protest' on the payment vouchers have been erased by the official of the Board in order to deceive the petitioners and deprive their legitimate rights to receive the compensation amount on the market value. Even though the vouchers pertain to different dates as mentioned above are in the original file, the manipulation is made by the official of the Board in the same ink and in the same handwriting. This is also clear from the show-cause notice issued by the KIADB to the official which is found in the separate file. The manipulation of the original vouchers found in the record is made by the official of the Board to deprive the lawful entitlement of compensation amount by the petitioners on the basis of actual market value for their lands is their statutory right, the same cannot be deprived by the Board by creating documents which is not only fraud played upon the petitioners, but it reflects the conduct of the officials of the Board who are expected to be honest in discharge of their statutory duties towards the public in general and petitioners in particular.

e) From the original files it is seen that in the vouchers for payment of the amounts some hand written portion is erased and over-written as 'Handed Protect'. For the manipulation so made action is taken against the concerned official by name shi vanna. The same is in a separate file. The Court is not concerned about the result of the action taken. From the vouchers available in the original filed it is noticed that the endorsements made by the petitioners that they have received payments

under protest is erased by the official of the Board would clearly goes to show that there is no determination of compensation amount on the basis of market value of the lands to enter into agreement and they received the compensation amount, the Board also could not have determined compensation amount before the declaration of final notification for having acquired the lands of the petitioners.

f) Under the provisions of L.A. Act, apart from the market value, the land owners are entitled to additional market value, solatium, interest etc., Those benefits cannot be deprived of to the petitioners merely because they entered into agreements before the declaration of final notification and therefore the said agreements cannot be construed as agreements as provided under Section 29(2) of the Act, as the determination of compensation amount in respect of their lands could have been only after the final notification is published by the Government declaring the Acquisition of lands for public purpose in favour of KIADB.

g) As could be seen from Annexure-B, the market value is determined in the absence of the petitioners. Only the Special Deputy Commissioner of KIADB is mentioned at the end of the proceedings of the meeting. It is also not signed by him. Determination of compensation amount in respect of acquired lands of the petitioners under Section 29(2) of the Act is different from the payment of fixed amount to them under agreements vide receipts available in the original file before publishing the final notification as provided under Section 28(4) of the Act. In fact as could be seen from the original receipts the words mentioned that the amount received by them without prejudice to their rights has been erased by the officers of the KIADB which conduct of them has to be deprecated as the documents in the original file of the KIADB are fabricated by them with a deliberate intention to see that the petitioners shall not get their legitimate compensation amount in respect of their lands acquired for which they are legally entitled. The above said action is fraud on power, which vitiates their action and discredited their conduct as they are required to discharge their functions honestly and truly.

h) In the statement of objections filed by the respondents, it is stated that the judgment and award at Annexure-K passed by the reference court in respect of other land owners whose lands are acquired in the same notifications as that of

the petitioners has untenably stated that it has no application to the petitioners. The said stand of KIADB is wholly untenable in law, as the same is contrary to Section 28-A of L.A. Act. Under the said provision, entitlement of the owners of the lands acquired for public purpose to receive the determined compensation is guaranteed in law even though they have not got referred their claim to the reference court under Section 18 of the L.A. Act. In view of their recognized legal light of the petitioners a contention or stand cannot be taken contrary to the said statutory provisions of the L.A. Act by the Board so as to deprive the statutory rights of owners to receive their legitimate compensation amount in respect of their lands as has been determined in respect of similar lands by the reference court by considering all relevant aspects of the case and legal evidence placed on record by the owners.

6. For the reasons stated above, the contentions urged and the stand taken by the KIADB are liable to be rejected and the decisions pressed into service are not of any assistance to them as the facts of that case are entirely different in view of the undisputed fact that the amount is paid to the petitioners before the final notification was published for acquiring lands and compensation amount in respect of the lands is not determined in accordance with law and the endorsement made by the petitioners on the vouchers for having received amount would clearly go to show that they have not entered into agreement regarding compensation amount in terms of Section 29(2) of the Act.

7. Writ Petition is allowed and the impugned communication at Annexure-J is quashed. The first respondent is directed to grant the benefit of the Annexure-K to the petitioners within four months from today by passing the order as provided under Section 28-A of the L.A. Act.