

Shabeerabi and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jun-09-2011

Reported in : 2011(4)KantLJ339; 2011(4)KCCR3012

Judge : D.V. Shylendra Kumar

Appeal No. : Writ Petition No.7384 of 2010 (LA-RES) C/w Writ Petition No.13404 of 2007 (LA-RES) A/w Misc.W.No.12569 of 2010 In Writ Petition No.13404 of 2007 (LA-RES)

Appellant : Shabeerabi and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri. Manjunath

Advocate for Pet/Ap. : For the Petitioner: M R Hiremathad, Advocate – Absent. For the Respondent: R Omkumar, AGA for R1 and R2, K. Manjunath, Advocate for R3, RL. Patil, Advocate for M/s. Patil and Patil, Advocates – Absent, R. Omkumar, AGA for R1-R3, K. Manjunath,

Judgement :

(Prayer: This Petition is filed under Articles 226 and 227 of the constitution of India, praying to declare that the acquisition proceedings initiated by preliminary notification dt. 9.10.1997 issued by the R2 vide Anx-A and the final notification dt.30.4.1999 issued by the respondent vide 13, 98 marked as Anx-B have lapsed

and quash both the notification and etc.,)

1. Provisions of Land Acquisition Act, 1894 [for short, the Act], a statute of the bygone era, a relic of the past, which can play havoc with the lives and livelihood of land owners, particularly farming community in this country, has continued to rule roost even after our country became independent and has become republic, but the colonial concept of 'eminent domain' has plagued the citizens, has weighed heavily on the judges and courts and the power of compulsory acquisition of private lands in the name of public purpose has gone on merrily, in our country and more often than not such acquisition of private land being not necessarily for a public purpose, but in the name of a public purpose, private interest being catered and fed.

2. Acquisition of lands initially embarked for a specific purpose, which is a public purpose and with a definite scheme and project, lose their significance and teeth over a period of time, as the acquisition proceedings are sketched endlessly and what with matters being litigated before courts, stay orders being passed and thereafter a first appeal and then a second appeal, a further appeal to Supreme Court etc etc. A cat may have nine lives but in our country litigation lasts even generations together!

3. One poor victim in this quixotic world of acquisition of private lands in the name of a public purpose is the land owner, particularly as the rate of compensation in favour of a private land owner gets determined or freezes to be as it prevailed in the market on the date of issue of preliminary notification by the state government, which in the present case happened on 9-10-1997 as per notification issued under Section 4(1) of the Act. Then followed a declaration under Section 6 of the Act, which is popularly known as final notification, issued on 30-4-1999. However, it is not forthcoming as to when the awards were passed, but these writ petitions have been filed on the premise that awards had been passed beyond the period of two years from the date of issue of declaration and that on such premise a good number of writ petitions had come to be allowed by this court at the instance of other land owners whose lands also figured in the very notifications and therefore it is prayed that these writ petitions may be allowed.

4. On behalf of the petitioners, reliance is placed on the order dated 25-7-2001, passed by this court earlier in WP No 22438 of 2001 c/w WP No 22943 of 2001 followed by yet another earlier order dated 14-3-2011 passed in WP No 13855 of 2000, wherein as many as eight land owners have challenged the very notifications. This court, noticing as under:

IN WPs 22438 and 22943 of 2001

3. The said lands and several other lands were notified for acquisition for public purpose i.e., construction of a drainage water purification plant under the National Rivers preservation Scheme by a preliminary notification dated 09.10.1997 and final notification dated 30.04.1999. The petitioners have filed these petitions for quashing the said notifications in so far as their lands are concerned on the ground that the final notification was not issued within one year as required by Section 6 of the Land Acquisition Act 1984 and award was not made within two years from the date of final notification as required by Section 11-A of the Land Acquisition Act 1984. It is also contended that the extent of land sought to be acquired was shown to be more in the final notification than what was mentioned in the preliminary notification and no opportunity was given to the petitioners to prove their case.

5. The learned counsel for the parties submitted that the matters are covered by the decision of this Court in the case of G MAHALINGAPPA v. STATE OF KARNATAKA (W.P.No.13855/2000) decided on 14.03.2001. It is also not in dispute that the award has not been passed in regard to acquisition of lands even though more than two years have elapsed from the date of publication of the final notification.

6. In view of the above, these petitions are allowed in part and it is declared that the acquisition proceedings under Preliminary Notification dated 09.10.1997 (Gazetted on 17.11.1997) and Final Notification dated 30.04.1999 (Gazetted on 01.07.1999) have lapsed in so far as petitioners' lands are concerned.

In WP 13855/2000

5. A perusal of the preliminary notification and the final notification and the report of the respondent-authorities would clearly demonstrate that the declaration made under Sec.6 of the Act is in respect of lands not covered by a notification under Sec.4 of the Act. In my opinion, such acquisition is void-ab-initio and without jurisdiction, the reason being the additional area had no support of prior Sec.4 notification denying thereby the owners to file their objections under Sec.5A of the Act. This one ground is sufficient to set aside the final notification issued by the State Government in so far as the lands of the petitioners are concerned. That apart, a perusal of the report submitted by the respondents to the State Government u/s. 5A of the Act would also demonstrate that the respondents has not taken into consideration any one of the objections filed by the petitioners to the preliminary notification. This clearly demonstrate that there is total non-application of mind by acquiring authority.

6. In view of the above, in my opinion, petitioners are entitled to the relief sought for in this writ petition. Accordingly, the petition is allowed in part in so far as petitioners lands are concerned. The final notification to that extent is set aside. Liberty is reserved to the respondents to proceed with the acquisition of petitioners land, if they so desire, from the stage the defects are noticed by this Court. Petitioners are directed to appear before the respondent authorities on 27.3.2001 to receive further instructions in the matter. All the other contentions of both the parties are left open. Ordered accordingly.

allowed the writ petitions, quashed the impugned notifications of the years 1997 and 1999, but unfortunately for the other land owners and very fortunately for the state and the beneficiary, quashing was only to the extent of the respective petitioner's interest.

5. The present petitioners, inspired by these orders, have approached this court quite belatedly. In this background, a formidable defence taken on behalf of the respondents - state and Davangere mahanagara palike, which was joined as third respondent in these petitions on seeking for impleadment - is that these petitions are highly belated and are hit by delay and laches and are to be dismissed in limine.

6. It is also the submission of Sri R Omkumar, learned AGA that awards in the instant case had been passed within two years from the date of publication of Section 6 declaration and though this submission is not forthcoming in any counter filed on behalf of the state, it is sought to be buttressed by placing the original records for the perusal of the court.

7. Sri B K Manjunath, learned counsel for third respondent-mahanagara palike, on his part by drawing attention to the counter filed by this respondent, submits that while it is true that initial proposal for acquisition was to an extent of 56 acres of land and in view of various writ petitions having been allowed, now the available land is only to an extent of 23 acres 14 guntas, but it is now realized by the palike that even this extent of land is good enough for the proposed sewage treatment plant, in view of the advancement in science and technology and the project becomes viable or feasible even if this extent of land is acquired and as the land had already been notified for acquisition way back in the year 1997, there is no need for interference at this stage and therefore these writ petitions should be dismissed.

8. In this regard, it is significant to notice that the contents of the counter filed on behalf of the state government in WP No 13404 of 2007, in which only counter is filed by the state government. Para-5 of the counter, which is relevant, reads as under:

5. It is submitted that the said acquisition proceedings relating to Chikkabudhihal and Bethur villages have been dropped at the initial stage on the basis of the report submitted by the beneficiary. The beneficiary once again has given the proposal for the acquisition of the same lands, which were notified in the final notification dated 30.04.1999. After perusing the records, a report has been submitted to the deputy Commissioner stating that the acquisition proceedings have to be taken up afresh in respect of the lands notified in the final notification, which has been quashed by this Hon'ble Court in W.P.No.18755/2000 dated 14.03.2002, W.P.No.33089-90/2001, dated 31.8.2001, W.P.No.22438/2001, dated 25.7.2001 and W.P.No.22043/2001, dated 25.7.2001. Except the said lands, the acquisition proceedings in respect of other lands is unchallenged. As such taking

up of the acquisition proceedings once again is not permitted under law.

9. While it is true that the present writ petitions are after a considerable lapse of time and particularly the petition filed in the year 2010 is almost 10 to 11 years after the declaration, the question is as to what can be detriment or disadvantage to the respondents if court acts to entertain these petitions at this belated point of time.

10. In this regard, submission of Sri Omkumar, learned AGA and Sri Manjunath, learned counsel for the respondent-palike is that the available land is now found to be technically suitable and being in the vicinity of the existing treatment plant is most advantageously located, and therefore there should not interference by this court to examine the merits of these petitions.

11. May be so, but the larger question before this court is as to whether this court should permit such acquisition proceedings which began in the year 1997 to go on in the year 2011 or thereafter when nothing much has taken place in between and the date of passing of the award is not being placed before the court and is also not supported by any affidavit of the responsible officer and it being not the function of the court to browse through the records of the respondent-state, just because the officials of the state government and even their counsel are irresponsible not to place relevant facts and figures before the court, which again is a despicable practice that has developed in all government cases when state's interest is being defended before the court, which is most undesirable and which this court deprecates strongly, but the question is whether such a proceeding should be allowed to culminate when there is even no record or proof placed before the court that the land owners had been compensated at the earliest point of time in letter and spirit, to be precise, if the land owners had been compensated within immediate vicinity of passing of the award, which should have been within a period of two years from the date of issue of the declaration.

12. While it is quite possible and there is no impediment for the state government to issue fresh notifications for acquisition in favour of respondent-palike and if the state is so desirous, on examining the technical feasibility afresh but not to put up some patchwork as a valid defence for the State before this court.

13. Allowing such acquisition proceedings to continue will also result in the state being permitted to practice discrimination vis--vis those who were able to get out of the acquisition proceedings because of the orders passed by this court in the earlier writ petitions and those who either did not approach this court or have approached belatedly, being denied the relief on the ground of delay and laches and even on the ground that the available land being sufficient in the wake of the changed scenario on the technical side.

14. Such a situation results in state indulging in gross discrimination in the matter of payment of compensation to the land owners, also, as if the state government and the respondent-palike find some more land is required and is to be notified for acquisition afresh, such persons, though perhaps, figure in the earlier notifications while will be compensated at the market value as it prevails on the date of fresh notification to be issued under Section 4 of the Act, others like the petitioners will receive a lesser compensation, as the date for determination of market value gets pegged down on the date of issue of notification which was in the case of petitioners herein in the year 1997.

15. This court having a constitutional duty to ensure that the provisions of the Constitution, particularly Article 14 of the Constitution of India mandated against the state, all are strictly adhered to by the State Government and cannot permit such discriminatory act or even such possibilities coming into existence only because of belated filing of the present petitions.

16. In fact if it is found by this court at the earliest point of time in the year 2001 that the acquisition proceedings were void ab initio, the entire notification should have been quashed then and there and not in a piecemeal manner.

17. Be that as it may, the acquisition proceedings cannot be sustained, whether in respect of the present petitioners' lands or in respect of others, who, perhaps, have not approached this court and it can again result in the discrimination against the rest of the owners who are still left out in the guise of acquisition proceedings.

18. It is, therefore, these writ petitions are allowed, impugned notifications issued on 9-10-1997 and 30-4-1999 are quashed in their entirety by issue of a writ of

certiorari.

19. However, it is always open to the state to acquire such extent land if is available for any public purpose including for the purpose of setting up of a sewage treatment plant for the benefit of the citizens of Davanagere Town in accordance with law.

20. Writ petition allowed. Rule made absolute.

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