

Arunkumar and Others Vs. the State of Karnataka, by the Secretary to the Department of Industries and Commerce Government of Karnataka Vikasa Soudha and Others

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Court : Karnataka

Decided On : Apr-19-2012

Reported in : 2012(3)KCCR2206

Judge : Mohan Shantanagoudar, J.

Acts : [Constitution of India](#) - Articles 226, 227; Karnataka Industrial Areas Development Act, 1966 - Section 28(3)(4), 3(1); Petroleum and Minerals pipelines (Acquisition of Right of user in Land) Act, 1962 - Section 3, 6,; Land Acquisition Act - Section 5-A, 9, 10

Appeal No. : Writ Petition No. 5222 of 2012 (LA-BDA) & Writ Petition Nos. 6563-6564 of 2012 (LA-BDA)

Appellant : Arunkumar and Others

Respondent : The State of Karnataka, by the Secretary to the Department of Industries and Commerce Government of Karnataka Vikasa Soudha and Others

Advocate for Def. : Vijayakumar A. Patil; P.V. Chandrashekar; B.C. Sridhar, Adv.

Advocate for Pet/Ap. : Ms. A. Krishna Bhat and Associates, Adv.

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the [Constitution of India](#) praying to quash Annexure - H order passed by R-2 under Section 28(3) of the KIAD Act dated 8.9.2011 and Annexure-), final declaration issued under section 28(4) of the KIAD Act by the 1strespondent published in the Karnataka Gazette dated 7.12.2011 etc.,)

1. Petitioners have sought for quashing the order at Annexure-H dated 8.9.2011 passed under Section 28(3) of the Karnataka Industrial Areas Development Act, 1966 ('KIAD Act' for short) and Annexure-), final declaration dated 7.12.2011 passed under Section 28(4) of the KIAD Act. The petitioners have also sought for quashing the consequential notices issued pursuant to the final declaration.

2. Petitioners are the joint owners of the agricultural land bearing Sy.No.68 of Guddarangavvanahallim Kasaba hobli, Chitradurga taluk measuring 5 acres 16 guntas. On 24.7.2010 a notification under Section 3(1) of the KIAD Act was issued by the first respondent declaring the area of 1 acre 10 guntas out of Sy.No.68/1 of Guddarangavvana-halli, Kasaba hobli, Chitradurga taluk as an industrial area. On the same day, another notification under Section 28(1) of the KIAD Act was issued in respect of the very extent of 1 acre 10 guntas out of Sy.No.68/1 of Guddarangavvana-halli village, proposing to acquire the said land for the purpose of establishing terminal station for the benefit of GAIL (India) Limited. The final declaration was issued to the same extent on 3.12.2010 which came to be gazetted on 4.12.2010. The copy of the final declaration is produced at Annexure-D to the writ petition. The petitioners have approached this Court by filing Writ Petition No.8998/2011 (LA-KIADB) questioning the final declaration, which came to be allowed with a direction to the respondents to provide an opportunity of being heard to the petitioners. Thereafter the statement of objections is filed by the petitioners as per Annexure-F. The objections are overruled by the order of the Special Land Acquisition Officer, Karnataka Industrial Area Development Board (hereinafter referred to as 'KIADB') as per Annexure-H dated 8.9.2011. Subsequently, the final declaration was made once again on 7.12.2011, which came to be gazetted on the same day. Subsequently, the notices are issued as

per Annexure-K and K1 to the petitioners calling upon them to appeal before the Price Fixation Committee to have their say in the matter before proceeding to pass the Award. Questioning the acquisition notification and the order passed by the Special land Acquisition Officer overruling the statement of objections, these writ petitions are filed.

3. Mr. Krishna Bhat, learned advocate for the petitioners on going through the statement of objections filed by the petitioners before the Land Acquisition officer, submits that the petitioners have mainly raised three objections viz., the acquisitions made under the provisions of the KIAD Act is illegal inasmuch as the acquisition ought to have been made under the special enactment of the Central Government i.e., Petroleum and Minerals pipelines (Acquisition of Right of user in Land) Act, 1962 (hereinafter, referred to as the 'PMP Act'); the petitioners intend to use the land in question for tourism industry inasmuch as they want to establish a resort and that therefore it is not open for the respondents to take the right of the petitioners to start an industry in order to establish another industry by GAIL (India) Limited; the industrial area cannot be made in patches and it should have been vast extent and about 1 acre of land as acquired in this matter should not have been acquired for the purpose of a single industry.

The writ petitions are opposed by Sri P.V.Chandrashekar, learned advocate appearing on behalf of KIADB and Sri B.K. Sridhar, learned advocate appearing on behalf of Respondent No.3.

4. The records maintained by KIADS reveal that M/s GAIL (India) Limited is a Government of India undertaking. It has taken a decision to transport the LPG Gas through pipelines and hence the pipelines are being laid underground for the said purpose from Dabhol (Maharashtra) to Bangalore. If the gas is transported through pipeline underground, the same would result in reduction of vehicular traffic and that the gas would be made available to the distributors at an early date. In addition to the same, there will be no pollution in the atmosphere. By the said process, there will not be any admixture of other materials with the gas and consequent upon which the consumer would get pure LPG gas. In order to maintain flow of gas in an orderly manner and for security purposes, terminal

stations are being established by GAIL (India) Limited. Thus for the purpose of laying pipeline from Dabhol (Maharashtra) to Bangalore, the acquisition of right of user is made under the provisions of Sections 3 and 6 of the PMP Act inasmuch as the said Act empowers the Central Government to acquire the right of user of the land under which such pipelines are laid. As the pipes are laid underground, only the right of user will be acquired and ownership of the lands remains with the land owner. Under the provisions of the PMP Act, the Central Government has got right to acquire only the right of user of the land under which such pipelines are laid. There is no provision under the PMP Act to acquire land for setting up of terminal stations. In this view of the matter, the Central Government has to take assistance of the State Government or the KIADB, Bangalore for acquiring the property for the purpose of establishing terminal stations. The Karnataka State has enacted the special Act called the Karnataka Industrial Areas Development Act, 1966 in order to promote the establishment and orderly development of industries and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid. There cannot be any dispute that the establishment of terminal stations is nothing but establishing an industry. Therefore, for establishing such an industry, the Respondent No.3 has thought it fit to request Respondent Nos.1 and 2 to acquire the land for its purposes.

As aforementioned, it is relevant to note the relevant portions of the provisions of Sections 3 and 6 of the PMP Act:

3.) Publication of notification for acquisition:

(1) Whenever it appears to the Central Government that is necessary in the public interest that for the transport of petroleum or any mineral from one locality to another locality pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.

(2) xxx xxx

(3) xxx xxx

6.) Declaration of acquisition of right of user:

(1) Where no objections under sub-section (1) of section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section.

(2) On the publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances.

(3) xxx xxx

(4) xxx xxxx

5. From the aforementioned provisions, it is clear that whenever pipelines are to be laid underground, the right of user in the land has to be acquired under the provisions of the PMP Act. PMP Act does not empower the State to acquire the properties for the purposes of establishing terminal stations. Without establishing the terminal stations and without taking help of terminal stations, the gas cannot flow in an orderly and regular manner. In addition to the same, the third respondent has to safeguard not only the gas but also the public interest against

leakage etc., Therefore the terminal stations are being established at regular distances depending on the need. Generally terminal stations are established with the distance of 20 (twenty) kms. each. It is for the third respondent, who is the expert in the field to decide as to where the terminal stations are to be established. This court cannot sit as an appellate authority to substitute its decision to the decision taken by the expert in the said field. The Courts generally do not interfere with the expert's decision in such matters. Since this court finds that the third respondent has decided on merits based on fact situation as to where terminal stations are to be established, it cannot be said that the third respondent has taken action to acquire the land with mala fide intention.

Since there is no provision in the PMP Act to acquire the land for establishing terminal stations, the acquisition is rightly made under the provisions of the KIAD Act by the Respondents 1 and 2.

6. The contention of the petitioners' counsel that industrial area cannot be set up in patches is unacceptable. As could be seen from the acquisition notifications impugned in these writ petitions, it is clear that those notifications are issued in order to acquire certain patches of land for establishing terminal stations at regular intervals. For the purpose of having one terminal station, which may require about 2 to 3 acres, an area of thousands of acres cannot be acquired. The State Act nowhere prohibits Respondents 1 and 2 from acquiring the property in certain bits. The acquisition of land can be made in public interest only in respect of the needed land for establishing the industry.

7. The further objection of the petitioners is that the land was intended to be used for tourism industry by the petitioners and therefore it is not open for the respondents to take away their land to run industry with a view to establish another industry. Though such submission prima facie appears to be attractive, the same is not acceptable under the facts and circumstances of the case. As aforementioned, the project in question is fully in public interest. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. The court can take judicial notice of the fact that the Government of India is anxious to attract foreign

investments to the maximum extent. The nation proposes to compete with other developed countries economically. In this view of the matter, the supply of gas through pipeline is in tune with the aforementioned object of the nation. Instead of spending lot of manpower on transportation of gas that too at the risk of accidents, health hazards etc., the Central Government has thought it fit to transport the gas through pipeline as is being done in the developed countries. Thus even if the petitioners have got right to set up an industry, their individual interest has to be weighed with the public interest. The public interest is paramount. Therefore such an objection of the petitioners cannot be accepted moreso when the petitioners can be suitably compensated as per law.

8. Though Mr. Krishna Bhat is justified in submitting that certain of the objections raised by the petitioners in the statement of objections are not considered meticulously while passing the order at Annexure-H, in my considered opinion such lapse on the part of the Land Acquisition Officer cannot be taken benefit of by the petitioners having regard to the object for which the acquisition is being made. The Land Acquisition officer cannot be expected to pass orders under Section 5-A of Land Acquisition Act as if he is a Civil Court. The Court in such matters will have to find out as to whether the said authority has applied its mind to the facts of the case or not. If the Court finds that the objections are considered appropriately, then no interference is called for. In the mater on hand, the objections are found to have been considered though not meticulously like the Civil Court. It is brought to the notice of the Court that the laying of the pipes underground and establishing terminal stations is in fast progress and that the respondents are expecting to complete the task at an early date. In this view of the matter, as the project in question is in the interest o the nation, the petitioners' request for remand of the matter cannot be accepted. At this stage, it is relevant to note the observations of the Apex Court in the case of RAMNIKLAL N. BHUTTA - - VS - STATE OF MAHARASHTRA reported in AIR 1997 SC 1236, which read thus:

“10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic competitive in the world market. We are anxious to attract foreign direct investment to the maximum

extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in high Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Xxx xxx”

(emphasis supplied)

Even otherwise, merely because the petitioners have made out point, the final declaration cannot be quashed, particularly keeping in mind the public purpose for which the land is acquired.

9. It is interesting to note that the petitioners herein were represented before the Land Acquisition Officer through an advocate. As aforementioned, after considering the statement of objections, the final declaration was made. Thereafter notices came to be issued to the petitioners before taking possession of the property on 24.1.2012 and possession of the land is taken on 25.2.2012. Thereafter the proceedings started in relation to fixation of compensation. The notice was issued to the petitioners to appear in order to have their say with regard to compensation. At that point of time, the petitioners also participated in the proceedings alongwith their advocate on 3.1.2012 as is clear from Annexure-R4

produced alongwith the statement of objections by KIADB. The petitioners have then submitted that they oppose the acquisition. Since the petitioners did not agree for the acquisition, no further proceedings took place on that date. However on 6.2.2012 the enquiry was conducted by the Land Acquisition Officer under the provisions of Sections 9 and 10 of the Land Acquisition Act. On that date, learned advocate appearing on behalf of the petitioners are ready to give up and land in case if they are paid compensation of Rs.40,00,000/- to Rs.50,00,000/- per acre. The submission of the learned advocate is recorded in the proceedings sheet maintained by the Land Acquisition Officer on 6.2.2012. It is curious to note that the proceedings sheet is signed by the advocate appearing on behalf of the petitioners. Though the petitioners' advocate has filed a memo that the petitioners oppose the acquisition proceedings, as stated before the Land Acquisition officer, the petitioners were ready to forego their property in case sufficient compensation is paid. These facts clearly go to show that the petitioners are willing to forego the property in case they are given the more compensation.

Be that s it may, having regard to the totality of the facts and circumstances of the case stated supra, no interference is called for. Writ Petitions fail and accordingly dismissed.

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