

Writ Petition No. 59589/2014 (LA-KIADB)

Gregory Patrao v. Karnataka Industrial Area Development Board

2015 SCC OnLine Kar 5194

(BEFORE B.V. NAGARATHNA, J.)

1. Gregory Patrao S/o Late Thomas Patrao Aged about 45 years
  2. Mary Patrao W/o Late Thomas Patrao Aged about 72 years
  3. Fedrick Patrao, W/o Late Thomas Patrao, Aged about 57 years,
  4. Leena Patrao D/o Late Thomas Patrao Aged about 39 years
  5. Vincent Patrao S/o Late Thomas Patrao Aged about 35 years
  6. Felcy Patrao D/o Late Thomas Patrao Aged about 52 years
  7. Shanthi Patrao D/o Late Thomas Patrao Aged about 34 years,
- All are Residing at Uggedana House Kalavar Village & Post Mangalore Taluk-571 243 ..... Petitioners  
Sri. Sachin B.S., Advocate

v.

1. The Special Land Acquisition Officer, Karnataka Industrial Area Development Board Mangalore Division Baikampady Mangalore Dk-571 243.
2. The Mangalore Refinery & Petrochemicals Ltd. (MRPL) A Subsidiary of Oil and Natural Gas Corporation Limited Kuthethur Post Via Katipalla Mangalore, D.K-571 243 Reppesented by its Senior Manager ..... Respondents  
Sri. Basavaraj V. Sabarad, Advocate for R1  
Sri. Vijaya Krishna Bhat M., Advocate for R2

Writ Petition No. 59589/2014 (LA-KIADB)

Decided on February 10, 2015

ORDER

B.V. NAGARATHNA, J.:— Petitioners have assailed notice dated 08.12.2014 (Annexure 'A' to the writ petition). That notice has been issued pursuant to order dated 23.09.2014 passed by this Court in W.P. No. 26742/2013 and connected matters.

2. This writ petition has a checkered history. Respondent No. 1 had *inter alia*, sought acquisition of subject lands situate in Kalavaru Village, Mangaluru District, for the benefit of 2<sup>nd</sup> respondent - Refinery and Petro Chemicals Unit. Petitioners had assailed the acquisition in as much as the notifications issued under Sections 3(1), 1(3), 28(1) and 28(4) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as 'the Act', for the sake of brevity) were challenged in W.P. Nos. 35148-35157/2009. This Court, by order dated 09.03.2010, dismissed the writ petitions. It however observed that for the purpose of passing of the award, the date of preliminary notification must be construed as 03.03.2006. That order has attained finality. Thereafter, 1<sup>st</sup> respondent has taken steps to take possession of the subject lands under sub-sections (6) and (7) of Section 28 of the said Act. Though awards had been passed prior to disposal of the aforesaid writ petitions on 09.03.2010, 1<sup>st</sup> respondent passed fresh awards by construing the preliminary notification as one being issued on 03.03.2006. Since the 2<sup>nd</sup> respondent could not get actual possession of the subject lands, it approached this Court in W.P. No. 26742/2013 and connected matters seeking a direction to respondents in those writ petitions to consider their representations and to hand over actual vacant possession of the subject lands. This Court by order dated 23.09.2014, disposed the writ petitions by directing respondent No. 3 therein i.e., respondent No. 1 herein to consider representation of petitioner therein i.e., respondent No. 2 herein and hand over possession to

respondent No. 2 herein, provided the amount as awarded to land owners is paid to them. Pursuant to that order, 1<sup>st</sup> respondent has issued notice dated 08.12.2014, which is impugned in this writ petition.

3. I have heard learned counsel for petitioners and learned counsel for 1<sup>st</sup> respondent - KIADB and learned counsel for respondent No. 2 and perused the material on record.

4. During the course of submission, petitioners' counsel drew my attention to order dated 23.09.2014 passed in W.P. No. 26742/2013 and connected matters and contended that so long as the amount of compensation was not paid to owners of the subject lands, possession could not be taken by respondents herein and therefore, the impugned notice may be quashed. He drew my attention to various orders passed by this Court in so far as petitioners are concerned and contended that this Court may direct respondents to comply with the direction and observations issued by this Court in W.P. No. 26742/2013 and connected matters dated 23.09.2014 or in the alternative, to quash the impugned notice and grant relief to the petitioners.

5. Per contra, learned counsel for respondent No. 1 drew my attention to the fact that prior to order being passed by this Court in W.P. Nos. 35148-35157/2009 dated 09.03.2010, awards had been passed in respect of the subject lands and thereafter, fresh awards were passed keeping in mind the observations of this Court in the aforesaid writ petitions to construe the date of preliminary notification as 03.03.2006 and as and when awards have been made, compensation amounts have been deposited before the reference Court. In fact, petitioners herein have also withdrawn a portion of the amount and they have also sought permission for deposit of some of the amounts in the fixed deposit. He, therefore, contended that when once the amounts have been deposited before the concerned reference Court, there is compliance with order dated 23.09.2014 and that petitioners cannot now hold on to the subject lands and that there is no merit in this writ petition.

6. Learned counsel appearing for respondent No. 2 adopted those arguments and further contended that there has been a delay in handing over possession of the subject lands by petitioners herein and that in order to comply with the principles of natural justice, notice impugned in this writ petition was issued to them, whereas possession has already been taken in accordance with law under sub-sections (6) and (7) of Section 28 of the Act. He also contended that petitioners by filing this writ petition are only procrastinating the matter and there is no merit in this writ petition.

7. Details of the awards passed by 1<sup>st</sup> respondent and the amount deposited have been brought to my notice and same shall be considered later.

8. In response, learned counsel for petitioners brought to my notice the fact that petitioners had filed Misc. case No. 54/2012 before the Prl. Senior Civil Judge, Mangaluru, seeking a direction to 1<sup>st</sup> respondent to make a reference under Section 18 of the Land Acquisition Act, 1894 but their applications have been rejected on the ground that they are belated and hit by delay and laches and also on the ground that they had not filed an application under sub-section (1) of section 18 of the Land Acquisition Act, 1894 before the concerned Authority.

9. In response to this submission during the course of hearing, learned counsel for respondent No. 1 brought to my notice Annexure 'R3' dated 08.12.2014, which is a communication issued by 1<sup>st</sup> respondent to the concerned reference Court stating that in respect of Sy. No. 23/2 measuring 06 Acres 99 Cents, necessary steps would be taken as the awards have been passed and compensation has been deposited.

10. Having regard to the aforesaid factual matrix and submissions made by learned counsel, the point that arises for my consideration is as to whether, notice dated 08.12.2014 impugned in this writ petition would call for any interference.

11. From the detailed narration of facts, it becomes clear that petitioners in this writ petition were unsuccessful while impugning the acquisition of the subject lands which has been upheld by this Court by order dated 09.03.2010 in W.P. Nos. 35148-35157/2009. However, this Court in that order directed that the date of preliminary notification must be construed as 03.03.2006. Keeping those observations in mind, 1<sup>st</sup> respondent passed fresh awards and re-determined the compensation and considering that there were certain interse disputes between petitioners, compensation amounts are now deposited before the concerned reference Court

and it is for petitioners to either withdraw compensation amount under protest or seek enhancement of compensation. In that regard, what is relevant to be noted is Annexure 'R3' dated 08.12.2014, which is filed along with statement of objections of respondent No. 1. Although Annexure 'R3' is issued only in the year 2014 but keeping in mind that there were several litigations pending before this Court in the interregnum, in the interest of justice, Annexure 'R3' dated 08.12.2014 could be construed as a reference, made by respondent No. 1 to the concerned reference Court, in which event, the said Court would have to take cognizance of that reference and dispose it in accordance with law. In fact, in the applications filed by petitioners herein before the Civil Court, 1<sup>st</sup> respondent therein did not appear and was placed ex Parte. These facts could not be brought to the notice of the reference Court. Reference Court had dismissed applications filed by petitioners on the premise that they were belated and hit by delay and laches and that no application had been filed by petitioners seeking a reference for enhancement of compensation. The order passed by reference Court on 09.01.2015 in Misc. Case No. 54/2012, would not come in the way of petitioners now seeking enhancement of compensation. In that regard, details submitted by learned counsel for respondent No. 1 in so far as land bearing Sy. No. 23/2 measuring 06 Acres 99 Cents are as under: -

Sl. No	Award No. and date	Total extent of land for which award is passed A-C	Extent of land belonging to petitioners covered in the award A-C	Total amount to which petitioners entitled under the Award	Details of deposit made in Court with Cheque No.	Payment/FD details as per Court orders in LAC cases	Date of Reference to Civil Court u/s 18 of LA Act
1	2	3	4	5	6	7	8
1.	LAQ SR 10/93-94 dated 06.10.2009	11-56	6-99	Rs. 1,54,64,174/-	Ch. No. 584905 dated 21.12.2009 reference u/Ss.30 and 31 of LA Act made on 21.12.2009	Amount withdrawn by petitioners in proportion to their shares, from 14.06.2011 onwards in the Court in LAC.16/2009. Order sheet in LAC 16/2009 produced as (Annexure-R-1 with objections statement)	On request of petitioner/s reference u/s 18 of LA Act made on 8.12.2014 (Annexure -R-3 to statement of objections)

12. In the result, notice impugned in this writ petition would not call for any interference and therefore, this writ petition would have to be disposed by reserving liberty to petitioners to seek enhancement of compensation before reference Court, if they are so advised.

13. At this stage, learned counsel for petitioners states that some time may be granted for petitioners to vacate the subject lands, to which plea, learned counsel for respondents have objected. But, having regard to the disputes, which have been pending between the Parties and keeping in mind the previous order passed by this Court, petitioners are directed to vacate the subject lands on 10.03.2015. If by that date, they do not vacate or surrender possession of subject lands, then on 11.03.2015 or on any other date, respondents are permitted to take possession of the subject lands without issuance of any further notice.

14. With the aforesaid observations and directions, the Writ Petition is disposed.

15. In view of this order, order dated 09.01.2015 passed in Misc Case No. 54/2012 would have no efficacy and it stands vacated.

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