



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2023

R

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 61426 OF 2016 (LA-KIADB)

BETWEEN:

1. SRI. M V GURUPRASAD,
2. SMT NANDINI M GURUPRASAD,

...PETITIONERS

(BY SRI.VEERANNA G TIGADI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
COMMERCE AND INDUSTRIAL DEPARTMENT,
VIKAS SOUDHA, BANGALORE-560 001.
2. KARNATAKA INDUSTRIAL AREAS
DEVELOPMENT BOARD
III & IV FLOORS, KHANIJA BHAVAN,
RACE COURSE ROAD,
BANGALORE-560 001.
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER
& EXECUTIVE MEMBER.

Digitally signed
by CHETAN B
C
Location: HIGH
COURT OF
KARNATAKA



3. THE SPECIAL DEPUTY COMMISSIONER
K.I.A.D.B., III & IV FLOORS, KHANIJA BHAVAN,
RACE COURSE ROAD,
BANGALORE-560 001.
4. THE SPECIAL LAND ACQUISITION OFFICER-II
K.I.A.D.B. III & IV FLOORS, KHANIJA BHAVAN,
RACE COURSE ROAD, B
5. ANGALORE-560 001.

...RESPONDENTS

(BY SRI.SRIDHAR HEGDE, ADVOCATE FOR R1;
SRI. P V CHANDRASHEKAR, ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE NOTIFICATION DATED 09.01.2007 PUBLISHED IN THE KARNATAKA GAZETTE ON 10.01.2007 R/W THE CORRIGENDUM NOTIFICATION PUBLISHED IN THE KARNATAKA GAZETTE ON 5.6.2014 AT ANNEX-A AND B IN SO FAR AS THE PETITIONERS ARE CONCERNED.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The tone for this judgment can be set by adverting to the words of Saint Augustine (354 – 430 A.D.) in his book, *The City of God, Volume 1* (426 A.D):

"Without justice, what else is the State but a great band of robbers ...?"

2. Petitioners being the owners of lands in question are knocking at the doors of Writ Court grieving



against their acquisition vide Preliminary Notification dated 09.01.2007 issued under Section 28(1) followed by the Final Notification dated 17.05.2007 issued under Section 28(4) of the Karnataka Industrial Areas Development Act, 1966.

3. Learned counsel for the Petitioners seeks voiding of the acquisition on the following grounds that:

(i) His clients were already owners of the subject lands and therefore, their names ought to have figured in the acquisition notifications;

(ii) Petitioners vide Letter dated 09.01.2013 had requested the KIADB to pass the award and pay compensation; there has been a stony silence; payment of compensation is a precondition for sustaining acquisition;

(iii) Alternatively, the compensation should be paid to his clients under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013 (hereafter 2013 Act), especially when the KIADB has allotted the subject lands by charging a huge sum of Rs.7.5 Crore or so, that too after giving a rebate of 50% to the allottees;

(v) There is enormous delay unjustifiably brooked in making the payment of compensation, that militates against the spirit of Article 300A of the Constitution which guarantees right to property; till date no payment is made and nothing is stated about the same in the Statement of Objections filed by the KIADB.



4. After service of notice, the State has entered appearance through the learned AGA and the KIADB is represented by its Sr. Panel Counsel who has filed the Statement of Objections opposing the acquisition. Learned Panel Counsel contends that the acquisition having been completed by issuance of Final Notification on 17.05.2007, the lands have vested in the State and therefore, the same cannot be restored to the Petitioners. After the land owners notified the change of khatha pursuant to subject Sale Deeds, the Government has issued Corrigendum Notification on 05.06.2014 mentioning their names and because of the protocol process, there is some delay and now the payment of compensation will be made. So contending, they seek dismissal of Writ Petition.

5. Having heard the learned counsel for the parties and having perused the Petition papers, although this Court rejects challenge to acquisition of lands, it is inclined to grant indulgence in so far as non payment of compensation, following being the reasons:



(a) The 1st Petitioner bought 05 Acres & 01 Gunta of land in Sy.No.132 of Jonnahalli in Devanahalli Taluka by three registered Sale Deeds all dated 27.01.2007 and his name is mutated in the Revenue Records vide M.R. Nos.48, 49 & 50 of 2006-07 dated 22.03.2007. The 2nd Petitioner bought only 38 Guntas of land in Sy.No.66/6 of the same village vide two Sale Deeds both dated 23.12.2006 and his name came to be mutated in the Revenue Records vide M.R.No.43/2006-07 dated 14.04.2007 & M.R.No.60/2006-07 dated 21.04.2007. Thus, as on the date of Preliminary Notification i.e., 09.01.2007, names of the Petitioners had not figured as *khatedars* in the Revenue Records and therefore, the KIADB was justified in notifying the acquisition in the names of their vendors then, who were the *Khatedars*.

(b) The vendors had not filed Objections to the acquisition since they had lost ownership over the lands, by virtue of registered sale deeds, is true. However, Petitioners along with other land owners had filed their



Objections on 15.02.2007 vide Annexure – Q1, pursuant to the Notice dated 11.01.2007 issued by the SLAO himself under Section 28(2) of the 1965 Act. They had informed the KIADB about the land being adjacent to the village and also close to flying zone of International Airport at Devanahalli. No records are shown by the answering Respondents as to due and objective consideration of their Objections. Be that as it may.

(c) Petitioners by their Representation dated 09.01.2013 had requested the KIADB at least to pay the compensation for having taken their lands; a copy of this is produced by the KIADB itself as Annexure-R1 to its Statement of Objections. They had also sent the reminder dated 01.07.2014 & 03.07.2014. In fact, the Government issued a Corrigendum Notification dated 05.06.2014 mentioning their names and thereby entitling them to payment of compensation. However, compensation has not been paid even to this day. There is no plausible explanation as to why the payment of compensation is



withheld for decade and a half. It hardly needs to be stated that payment of compensation is essential when private property is acquired for public purpose; this mandate is 'in-built' in Article 300A vide *K.T PLANTATION vs. STATE OF KARNATAKA* (2011) 9 SCC 1. The following observations in *STATE OF BIHAR vs. MAHARAJADHIRAJA SIR KAMESHWAR SINGH* (1952) SCR 889 succinctly elucidate upon the jurisprudential basis for payment of compensation as a *sine qua non* for the acquisition as under:

"...obligation to pay compensation for the property so compulsorily acquired, is not an essential ingredient of the connotation of the term, eminent domain, but is an essential element for the valid exercise of that power payment. The obligation to pay compensation arises from the natural right of the individual who is deprived of his property by such acquisition as against the power of the Sovereign to take the property in exercise of its Sovereignty..."

In his 1792 essay on Property, published in the National Gazette, Madison, Chief Architect of the 5th Amendment, i.e., 'takings clause' of the U.S. Constitution, wrote:



"Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own."

(d) Petitioners property has vested in the State vide Final Notification dated 17.05.2007. The Government issued the Corrigendum notification dated 05.06.2014. They have filed the Writ Petition on 28.11.2016 and a Coordinate Bench directed issuance of notice on 16.01.2017. At least, after service of notice, the Respondent - KIADB ought to have woken up and arranged for payment of the payment of compensation. However, strangely it has filed its Statement of Objections dated 09.04.2021 seeking dismissal of the Writ Petition contending that they have already developed the land and allotted the same to several entrepreneurs, the Allotment Letters dated 09.05.2019, 18.05.2019 & 10.06.2019 have also been produced. Except saying that there are rival claimants for compensation, there is absolutely no justification whatsoever for withholding the payment even



when the Corrigendum Notification dated 05.06.2014 itself mentioned the names of Petitioners and not the Objectors.

The lands of the Petitioners have been allotted to the entrepreneurs at a price of Rs.2.5 Crore per acre, that too after giving a rebate of 50% of the Market Value. This Court is bewildered as to how the compensation lawfully payable has been withheld when it was obviously due for payment to the Petitioners.

(e) The government cannot act as a *robber* of citizens lands; taking away private lands for the purported public purpose *sans* compensation militates against the spirit of constitutional guarantee enacted u/a 300A, the fundamental right to property no longer being on the statute book, notwithstanding. It hardly needs to be stated that the State and its instrumentalities are constitutionally expected to conduct themselves with fairness & reasonableness in all their actions vide *RAMANA DAYARAM SHETTY vs. INTERNATIONAL AIRPORT AUTHORITY* AIR 1979 SC 1628. The conduct of



the Respondent - KIADB and its officials who answer the description of 'State' under Article 12 of the Constitution falls militantly short of the fairness standards expected of them.

(f) Lands of the Petitioners have been taken by acquisition process way back in the year 2007, is not in dispute; with Herculean task, the Petitioners got their names entered by virtue of Corrigendum Notification dated 5.6.2014. Preceding this & post this, several representations were given for payment of compensation. The sites formed in Petitioners lands on allotment have fetched Rs.7.5 Crore to the KIADB, that too, with the rebate of 50% of the market value; otherwise, it would been Rs.15 Crore, as already mentioned above. If there was a rival claim, compensation amount could have been parked in some interest earning deposits, relegating the parties to litigate. In the entire Statement of Objections, neither the State nor the KIADB has said anything about the compensation being payable to the Petitioners. The



KIADB and its officials being what they are, this did not happen; such a conduct reinforces the shackles of a feudalistic attitude from which the transformative character of our constitution seeks to liberate. Their action in not paying the compensation is not only grossly violative of property rights constitutionally guaranteed under Article 300A but gnaws at overarching objectives of a Welfare State ordained under the Constitution.

(g) The Apex Court in *RADHEY SHYAM vs. STATE OF UTTAR PRADESH*, (2011) 5 SCC 545 has observed as under:

"...while examining the land owner's challenge to the acquisition of land in a petition filed under Article 226 of the Constitution, the High Court should not adopt a pedantic approach, but decide the matter keeping in view the constitutional goals of social and economic justice and the fact that even though the right to property is no longer a fundamental right, the same continues to be an important constitutional right and in terms of Article 300-A, no person can be deprived of his property except by authority of law..."

This Court cannot deny justice that is eminently due to the aggrieved citizens by quoting some constitutional theories.



Justice Oliver Wendell Holmes in *DAVIS vs. MILLS*, 194 U.S. 451 (1904) had observed: "*Constitutions are intended to preserve practical and substantial rights, not to maintain theories ...*".

(h) There is force in the submission of learned counsel for the Petitioners that the compensation should be fixed on the principles broadly enacted in 2013 Act, because of the enormity of delay & callousness of the Respondents in unjustifiably withholding the payment of compensation for about a decade & a half despite receiving about Rs.7.5 Crore from the allottees of the sites with a rebate of 50% Market Value; otherwise, arithmetically speaking, it would have been Rs.15 Crore. He banks upon a Coordinate Bench decision in W.P.Nos. 108802/2016 c/w 107748/2014, 100762/2017 between *SHEENAPPA vs. STATE OF KARNATAKA* disposed off on 18.07.2022 directing payment of compensation under the 2013 Act. However, it is told at the Bar that this decision has been stayed by a Division Bench in W.A. No.100393/2022. Be



that as it may. Justice of the case warrants that the Petitioners be paid at least 50% of the compensation to be computed under the provisions of 2013 Act, along with solatium, interest & such other things. This Court hastens to add that, in special circumstances of the case and because of the stay of Coordinate Bench decision, the provisions of the 2013 Act are taken only for the purpose of determining/re-fixing the compensation amount on a normative basis till after & subject to decision in the Writ Appeal. It hardly needs to be stated that the Writ Courts being the custodians of Constitutional Rights of the citizens, have to individualize justice taking into account the facts & circumstances of the case at hands.

In the above circumstances, this Court makes the following directions:

- (i) This Writ Petition succeeds in part. Although challenge to the acquisition of the subject lands is negated, a Writ of Mandamus issues to the Respondent Nos. 2 to 4 to determine/re-fix the compensation at the rate of 50% to be computed under the provisions of Section 77 of the Right to Fair Compensation and Transparency in Land



Acquisition, Rehabilitation and Resettlement Act, 2013 along with solatium, interest & such other benefits.

- (ii) The Respondent Nos.2 to 4 are directed to pay to the Petitioners within eight weeks the amount of compensation to be determined as per the direction issued in the immediately preceding paragraph (i) with additional interest at the rate of 12% per annum to be computed from the date, the possession of subject lands was taken away from the Petitioners; and
- (iii) In the event, the Writ Appeal No.100393/2022 is dismissed, upholding the judgment of the Coordinate Bench in W.P.Nos.108802/2016 c/w 107748/2014, 100762/2017 between *SHEENAPPA vs. STATE OF KARNATAKA* disposed off on 18.07.2022, Petitioners shall be paid the compensation to be determined under the provisions of 2013 Act minus what is paid in terms of the above directions.
- (iv) The Respondent-KIADB shall pay to the Petitioners, the cost to be computed at the rate of Rs.25,000/- per Acre.

Time for compliance of all the above directions is three months. Should delay be brooked, Petitioners shall be paid an additional interest at the rate of 2% per *mensum* which may be recovered from the erring officials of the State/KIADB, in accordance with law.



This Court places on record its deep appreciation for the able research & assistance rendered by its official Law Clerk cum Research Assistant, Mr.Faiz Afsar Sait.

Before parting with this case, this Court expresses its deep anguish against the culpable action of Respondent-KIADB & its officials in putting the petitioner-land-losers to a great hardship & misery.

**Sd/-
JUDGE**

Bsv/cbc