

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.15121 OF 2018 (GM-KIADB)



BETWEEN :

M/S ACV AERO INDUSTRIES
NO.297, 19TH MAIN
M.C.LAYOUT, VIJAYANAGAR
BENGALURU-560 040
REPRESENTED BY ITS PARTNER
SMT. ANJINAMMA

... PETITIONER

(BY SHRI. S.S. NAGANAND SENIOR ADVOCATE FOR
SHRI. S. SRIRANGA, ADVOCATE)

[THROUGH VIDEO CONFERENCE]

AND :

1. THE STATE OF KARNATAKA
DEPARTMENT OF INDUSTRIES
AND COMMERCE, VIKASA SOUDHA
DR.AMBEDKAR VEEDHI
BENGALURU-560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY
2. KARNATAKA INDUSTRIAL AREAS
DEVELOPMENT BOARD
4TH & 5TH FLOORS, EAST WING
KHANIJA BHAVAN
RACECOURSE ROAD
BENGALURU-560 001
BY ITS CHIEF EXECUTIVE OFFICER

3. THE DEVELOPMENT OFFICER-III
& EXECUTIVE ENGINEER
KARNATAKA INDUSTRIAL AREAS
DEVELOPMENT BOARD
14/3, KIADB ZONAL OFFICE
CFC BUILDING
MAHARSHI ARVINDA BHAVANA
1ST FLOOR, NRUPATHUNGA ROAD
BENGALURU-560 001

... RESPONDENTS

(BY SMT. A.R. SHARADAMBA, AGA FOR R1;
SHRI. H.L. PRADEEP, ADVOCATE FOR
SHRI. BASAVARAJ V. SABARAD, ADVOCATE
FOR R2 & R3;
[THROUGH VIDEO CONFERENCE])

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED 07.02.2018 ISSUED BY THE R-2 VIDE ANNEX-Q AND DIRECT THE R-2 TO EXECUTE THE SALE DEED, IN RESPECT OF SIX ACRES OF LAND IN PLOT NOS.44 AND 43 PART OF BENGALURU IT PARK, IN SY. NO.101 OF AREBINNAMANGALAL VILLAGE, BENGALURU NORTH TALUK AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.11.2020 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

This is one another case of arbitrary treatment and breach of commitment by the State and State-owned Industrial Areas Development Board.

2. Heard Shri. S.S. Naganand, learned Senior Advocate for petitioner, Smt. A.R. Sharadamba, learned AGA for State and Shri. Basavaraj V. Sabarad, learned

Advocate for Karnataka Industrial Areas Development Board ('KIADB' for short).

3. Brief facts of the case are, KIADB issued a preliminary Notification dated August 7, 2006 and final Notification under Section 28(4) of the KIAD Act ('Act' for short) on September 25, 2008 to acquire lands which included 12 acres of land belonging to the petitioner (6 acres in Sy. No.101 and 6 acres in Sy. No.102 of Arebinnamangala village, Jala Hobli, Bangalore North Taluk). Petitioner challenged the acquisition in this Court in Writ Petition No. 14154/2008. KIADB offered to give 6 acres of land to the petitioner in Sy. No.101 subject to petitioner depositing Rs.3 Crores towards cost of development. By decision dated July 23, 2012, this Court has upheld the acquisition and directed KIADB to allot 6 acres in Sy. No.101 and permitted the Board to pass award in respect of 6 acres in Sy. No.102. It is directed that the award amount shall be adjusted towards cost of development. It is made clear that if the award amount were to be more than Rs.3

Crores, the differential amount shall be paid to the petitioner within one month from the date of the award. Similarly, if the award amount were to be less than Rs. 3 crores, petitioner has been directed to pay the difference amount to the Board.

4. On May 14, 2013, petitioner submitted a representation to execute Sale deed in respect of the land to be allotted to her. On June 5, 2013, KIADB gave a letter of allotment stating that petitioner was allotted 6 acres of land in plot No. 44 and part of plot No.43 in Bangalore IT Park. Petitioner was put in possession of the said plots. On December 31, 2013, KIADB executed a lease-cum-sale agreement in respect of the said plots.

5. In March 2014, in similar circumstances, KIADB executed Sale deeds in favour of one Shri. K.V.S. Prakash on March 27, 2014 vide Annexure - F1 and on December 31, 2013 vide Annexures- F2 & F3. Petitioner submitted another representation on September 8, 2014 and

requested the Board to execute Sale deed as was done in the other case. There was no response from the Board. On the other hand, on October 05, 2016, the Board called upon the petitioner to submit the building plans for approval within seven days there from and threatened to report the matter to the competent authority to initiate appropriate action as per the norms of the Board. Finally, on February 7, 2018, the Board issued a notice stating that petitioner had failed to utilize the land for the purpose for which it was leased. Petitioner was called upon to remedy the breach within a period of 90 days there from, failing which, the Board would terminate the lease and resume possession of the land.

6. Petitioner has presented this writ petition with a prayer to quash the notice dated February 7, 2018 and for a further direction to the Board to execute the sale deed in respect of 6 acres of land in plot No.44 in part of 43.

7. Shri. Naganand, submitted that parties are bound by the decision of this Court in W.P. No.14154/2008 wherein the Board has undertaken to give 6 acres of land subject to deposit of Rs. 3 crores towards cost of development. Notwithstanding this order, petitioner was compelled to accept the lease-cum-sale agreement. Petitioner having come to know at a subsequent point of time that in similar cases, the Board has executed Sale deeds, approached the Board with a request for execution of Sale deed. In breach of its offer before this Court to give 6 acres of land and in gross discrimination of similarly situated land owner, the Board has now sought to resume the land by invoking Clause 14 of the agreement. Accordingly, he prayed for allowing this writ petition.

8. Shri. Sabarad, for the Board, opposing the writ petition submitted that petitioner has not complied with the terms of lease-cum-sale agreement which is a concluded contract and petitioner cannot claim parity with other cases which are entirely different on facts.

9. I have carefully considered rival contentions and perused the records.

10. Undisputed facts of the case are, petitioner has challenged the acquisition of 12 acres of land in W.P. No. 14154/2008. The submission made on behalf of the Board in that writ petition reads as follows:

11. The writ petition has been disposed of with the following order:

"3. Sri V.Y.Kumar, the learned counsel for the respondent Nos. 2 and 3 submits that the petitioner would be given 6 acres of land at Sy.No.101 if he deposits a sum of Rs.3.00 crores towards the cost of development. He submits that the second respondent has already written to the petitioner's son to remit Rs.3.00 crores in respect of the 6 acres of land within 30 days"

"(i) The challenge to the acquisition proceedings is negatived. The impugned acquisition notifications are upheld.

(ii) Recording the statement of the respondent No.2, the respondent No.2 is directed to allot 6 acres of land at Sy.No.101 of Arebinnamangala Village to the petitioner.

(iii) The respondents shall pass the award in respect of the lands measuring 6 acres at Sy.No.102.

(iv) The award amount shall be adjusted towards the cost of development. If the award amounts are more than Rs.3.00

crores, the differential amounts shall be paid to the petitioner within one month from the date of the passing of the award. Similarly, if the award amounts are less than Rs.3.00 crores, the differential amounts shall be paid by the petitioner to the respondent No.2 within one month from the date of the passing of the award.

- (iv) As what is being demanded from the petitioner is only the cost of development and not the value of the land as such, the petitioner is not entitled to any compensation in respect of the land measuring 6 acres at Sy.No.101. As no compensation is being awarded in respect of the 6 acres at Sy.No.101, the respondents are not entitled to charge any amount other than the cost of development.

6. This petition is accordingly disposed of. no order as to costs."

12. In the case of K.V.S. Prasad, in whose favour the Board has executed Sale deeds was subject matter of writ appeal No. 1969/2007 which was disposed of as withdrawn. A copy of the Memo dated August 23, 2013 is relevant and it reads as follows:

"IN THE HIGH COURT OF KARNATAKA AT BANGALORE
W.A. NO.1969/2007

BETWEEN:

Sri. K.V.S. PRAKASH & Ors.

...APPELLANTS

AND:

State of Karnataka & Ors.

... RESPONDENTS

MEMO

The 1st appellant above named humbly submits as follows:

1. The Respondents/KIADB in their letter bearing No.IADB/HO/Allot/As2/4063/13-14 dated 15.06.2013 have confirmed to the 1st appellant Sri.K.V.S. Prakash, that the Karnataka Industrial Areas Development Board (KIADB) in its 323rd Board Meeting held on 25.05.2013 has resolved that in respect of 20 acres 02 guntas of land as was belonging to the appellants herein/which is now fully belonging to the 1st appellant, the KIADB, would allot developed lands to the 1st appellant at Harohalli itself and that initially they would allot 4 Acres of land for the industrial project of the 1st appellant at Harohalli 1st Phase industrial area itself and that the balance extent of land would be allotted to the 1st appellant (i.e. 16 Acres 02 Guntas) in Harohalli III Phase Industrial Area for industrial purposes, by collecting development charges as per Board norms from the 1st appellant, subject to the condition that the appellants withdraw the above appeal, forego compensation for the lands acquired, pay development charges for the extent allotted etc. The 1st appellant produces along with this Memo, a copy of the letter dated 15.06.2013 issued by the Chief Executive Officer of KIADB.

2. The 1st appellant submits that in terms of the Government Order dated 13.08.2007 and 13.05.2010, the 1st appellant being a land looser would be automatically entitled for the execution of absolute sale deeds by the KIADB in favour of the 1st appellant in

respect of the lands as would be allotted and sold by the KIADB to the 1st appellant, as mentioned in the letter dated 15.06.2013.

WHEREFORE, the appellants humbly pray that this Hon'ble Court be pleased to take the above Memo on record and permit the appellants to withdraw the above appeal, in the interest of justice and equity.

Sd/-
ADVOCATE FOR APPELLANTS

APPELLANTS
(K.V.S. PRAKASH)
For self and as GPA Holder of other Appellants)"

13. A careful perusal of the Memo shows that the Board had resolved to allot the land to K.V.S. Prasad. In paragraph No.2 of the said Memo it is stated that as per the Government order dated August 13, 2017 and May 13, 2010, land looser would be entitled for execution of sale deed by the Board.

14. The Board has also filed a Memo dated November 24, 2020 in this proceeding. The Memo reads as follows:

"In support of submissions made on 20.11.2020, it is submitted as follows.

- 1. Allotment made and sale deed executed in favour of KVS Prakash is as per the Government Policy contained in the Govt.*

order No.CI 417 SPQ 2007, Bangalore dated 13.10.2007 as modified by GO No.CI 495 SPQ 2008, Bangalore dated 13.05.2010 under which a land looser is entitled for allotment/land sharing at 9583 Sq. feet of developed land per acre in lieu of compensation. Following the above GO the Board has filed joint memo in WA No.1969/2007 as per Anneuxre-E2 agreeing to allot 21364.80 sq.mtrs (5-27 acres) of land for acquisition of 20 acres of land. Hence, the Respondent herewith produces copies of following GOs for kind consideration of the Hon'ble Court

- (a) Govt Order dated 13.08.2007 and
- (b) GO dated 13.05.2010

2. It is submitted that in the instant case 12 acres of land was acquired from the Petitioner. In the Writ Petition No.14154/2008 on the basis of SLSWCC recommendations they sought for allotment of 6 acres out of acquired land and also claimed compensation to be adjusted out of award amount. Hence, after clearance of the project by the SSLWCC, the KIAD has allotted 6 acres of land on lease cum sale basis by collecting the development charges adjusted out of compensation awarded.

2018 (15) SCC 99 (paragraph 54)
(ITC Limited Vs. Blue Coast Hotels Limited and Others)

3. Relief under Article 226 is discretionary and depends upon unblameworthy Conduct of the person seeking relief.

Bengaluru
Date:24.11.2020

Sd/-
Advocate for Respondents 2 & 3"

15. In paragraph No.1 of the Memo filed by the Board, it is conceded that as per the Government Policy in G.O. No. CI 417 SPQ 2007, Bangalore dated October 13, 2007, land looser is entitled for allotment of developed land in lieu of compensation.

16. In the same Memo, the Board has placed reliance on paragraph No.54 of ***ITC Ltd., Vs. Blue Coast Hotels Ltd. and Others***¹ wherein it is stated that a person who approaches with unclean hands or blameworthy conduct is not entitled for any relief.

17. In this case, admittedly, petitioner has not claimed compensation in respect of 6 acres of land and the Board has appropriated the compensation of Rs. 3 Crores towards cost of development of remaining 6 acres of land and refunded the excess amount to the petitioner. All that was expected of the KIADB which is an instrumentality of the State, is to simply execute a Sale deed and handover possession of 6 acres of land. Petitioner who has lost her

¹ (2018) 15 SCC 99

land and armed with a judgment of this Court in the previous round of litigation is again before this Court, challenging the unjust act on the part of the Board. Even after 8 years from the date of the order passed by this Court in W.P. 15154/2008, the petitioner has not been able to get title to her land. On the other hand, she is being threatened with resumption of land. If resumption were to be allowed, it would mean that petitioner would loose the entire land of 12 acres without any compensation. In addition, she has undergone the ordeal of litigation and pursual of matter with the Board since 2008.

18. Admittedly, the value of 6 acres of land was more than Rs. 3 crores of which, Rs. 3 crores has been appropriated by the Board. In lieu of accepting the terms contained in the order of this Court in W.P. No.14154/2008, had the petitioner simply accepted the compensation of more than Rs.6 crores for the entire land in the year 2008, perhaps she might have been saved by this ordeal and acquired land elsewhere.

19. Viewed from any angle, the conduct of the Board in the least to be said, is 'apprehensible'. This is a case of abuse of power, lack of good conscious, gross discrimination.

20. In view of the above, this petition eminently deserves consideration. Hence, the following:

ORDER

- (a) Writ petition is allowed.
- (b) Notice dated 07.02.2018 Annexure-Q is quashed.
- (c) The lease-cum-sale agreement dated 31.12.2013 (Annexure-D2) is quashed.
- (d) KIADB is directed to execute the sale deed in respect of plot No.44 and part of plot No.43 in Bangalore IT park forthwith.

(e) KIADB shall pay a cost of Rs.1,00,000/- (Rupees One lakh) to the petitioner.

Sd/-
JUDGE

SPS