

(2019) 09 KAR CK 0003

In the Karnataka High Court

Case No : Writ Appeal No. 15859, 15860 Of 2011 (La-Bda)

A. Chandrashekar

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Bangalore Development Authority Act, 1970 — Section 17, 27, 36
Land Acquisition Act, 1894 — Section 4(1), 5A(1), 5A(2), 6(1), 9, 10, 11, 11A, 14, 16,
17(1), 19(1), 235, 48, 48(1)

Citation : (2019) 09 KAR CK 0003

Hon'ble Judges : L.Narayana Swamy, J;R.Devdas, J

Bench : Division Bench

Advocate : Ashok Haranahalli, S S Mahendra, D N Nanjunda Reddy, K Krishna,
M N Seshadri, B C Venkatesh, M S Rajendra, C Narasimhachar, Gururaj B M, N M
Guruprakash, V Sukanya

Final Decision : Dismissed

Judgement

1. These appeals arise out of order dated 30.05.2011 in W.P.Nos.1222/2003.
2. The issue is whether the decision of a Co-ordinate Bench with respect to the very same parties, albeit with respect to different property, in the matter of Dr.A.Parthasarathy and Others Vs. State of Karnataka and Others, by its Principal Secretary, Urban Development Department reported in ILR 2017 KAR 3489, wherein the co-ordinate Bench held that the acquisition proceedings has lapsed after expiry of five years of the final declaration/notification under Section 19(1) dated 28.12.1982, is applicable to the facts and circumstances of these cases?
3. The lands in question are Sy.Nos.17, 25 and 28 of Bhoopasandra Village, Kasaba Hobli, Bangalore District. The extent of land in Sy.No.17 is 3 acres 7 guntas; 2 acres 30 guntas in Sy.No.25 and 3 acres 9 guntas in Sy.No.28. Preliminary notification under Section 17 of the Bangalore Development Authority Act, 1970 (for short 'BDA Act') was issued on 19.01.1978, whereas the final notification came to be issued on 28.12.1982. At different stages of the

acquisition, the appellant-landlords have filed writ petitions, the details of which may not be necessary at this stage.

4. On 09.02.2001, invoking powers under Section 48(1) of the Land Acquisition Act, 1894, a notification came to be issued by the State Government withdrawing the lands in Sy.Nos.25 and 28, in question from acquisition. However, by issuing a notification dated 21.03.2001, Gazetted on 22.03.2001, the order of de-notification was withdrawn. Consequently, W.P.Nos.13806/2001 & 14376/2001 were filed challenging the withdrawal notification dated 21.03.2001. By a common order dated 04.07.2001, the learned Single Judge quashed and set aside the order of de-notification dated 09.02.2011, as well as the withdrawal notification dated 21.03.2001 in W.P.Nos.11761-65/2001 and connected matters. The order of the learned Single Judge was affirmed by the Division Bench in W.A.Nos.4886-67/2001, by order dated 26.08.2002. However, the learned Single Judge had observed that de hors the withdrawal notification being quashed, the State Government was at liberty to consider the matter after hearing all the persons aggrieved, with a rider that the competent Civil Court declaring that possession was not taken from the landlords in 1984.

5. In the meanwhile, it appears that one Sri. G.Rajan, claiming to be the Power of Attorney holder of Sri. P.Anjanappa and Smt.Kempamma, the landlords, had filed W.P.Nos.29933-34/2000 questioning the acquisition proceedings, which came to be dismissed on 22.11.2000. In this regard, a Review Petition in Civil Petition No.493/2002 was filed by Sri.P.Anjanappa and Smt.Kempamma, on the ground that they had neither executed Power of Attorney nor authorized Sri G.Rajan to file the writ petitions. By order dated 09.04.2002 the Review Petition was dismissed granting liberty to initiate appropriate action against Sri G.Rajan.

6. Subsequently, the instant writ petition out of which these appeals arise, in W.P.No.1222/2003 was filed by the appellants herein seeking a declaration that the acquisition proceedings have lapsed after the expiry of five years, in terms of Section 27 of the BDA Act. The writ petition having been dismissed, the appellants are before this Court assailing the order passed by the learned Single Judge.

7. Sri Ashok Haranahalli, learned Senior Counsel, appearing for the appellants would submit that the writ petitions are not barred by res judicata. This submission is made in view of the learned Single Judge holding that the relief claimed by the petitioners cannot be granted as they are barred by res judicata. In this regard the learned Senior Counsel places reliance on a judgment of the Hon'ble Supreme Court in the cases of Hari Ram and Another Vs. State of Haryana and Others, reported in (2010) 3 SCC 621, and Anil Kumar Gupta Vs. State of Bihar and Others reported in (2012) 12 SCC 443, to buttress his contention that a person who is deprived of his land can challenge the acquisition proceedings at various stages. In the light of the said decision, it is submitted that the landlords have challenged the acquisition proceedings in various stages and the issues raised and answered are not one and the same. Therefore, it is

submitted that the writ petitions are not barred by res judicata.

8. The learned Senior Counsel would also point out that the earlier writ petitions pertain to Sy.Nos.25 and 28, whereas, as regards Sy.No.17, the writ petitions were filed for the first time. On this ground too, it was submitted that the learned Single Judge erred in not noticing the same and therefore, the view taken by the learned Single Judge is required to be set aside.

9. The learned Senior Counsel further points out from the order dated 04.07.2001 passed by the learned Single Judge in W.P.Nos.13806/2001 & 14375/2001 that the question of whether Bangalore Development Authority took possession of the lands in question has been kept open to be decided by the competent Civil Court. This submission has been made in view of the fact that the respondents tried to distinguish between the facts of this case, as regards possession, in respect to the factual matrix in the case of Dr.A.Parthasarathy and Others (supra).

10. On facts, it was also submitted that the respondent-BDA has formed layout in Sy.No.25 and a part of Sy.No.28, while no part of Sy.No.17 forms part of the layout and no allotment has been made by BDA. In this regard, attention of this Court was drawn to the joint memo dated 24.03.2005 signed and filed by the petitioner-landlords and the Bangalore Development Authority and the consequent order passed by the learned Single Judge in W.P.No.1222/2003, in the order dated 02.08.2005. While taking note of the joint memo, in terms of the resolution of the BDA dated 30.10.2004, the petitioner-landlords were agreeable to give up their rights in Sy.Nos.25 and 28 wherein the sites had been demarcated and allotted in favour of the allottees and the petitioner-landlords agreed to take a part of Sy.Nos.28 and 17 as agreed upon in terms of the memo. In view of the joint memo filed, permission was also granted to the petitioner-landlords to withdraw the suit in O.S.No.5061/2000. The learned Senior Counsel, further submitted that one of the writ petitions was filed by Sri G.Rajan and not by the appellant-landlords.

11. Per contra, Sri D.N.Nanjunda Reddy, learned Senior Counsel appearing for the respondent-BDA, submits that even Sy.No.17, was the subject matter of a writ petition filed by P.Anjanappa, in W.P.No.10186/1983. A challenge was raised to the acquisition of 2 acres 29 guntas in Sy.No.17, which came to be dismissed on 25.10.1988, with liberty to file application before the Screening Committee. It was also brought to our notice that O.S.No.5080/1988 was filed by P.Anjanappa in respect of Sy.No.17, measuring 2 acres 29 guntas, seeking relief of permanent injunction. The suit was dismissed on 31.03.1998. RFA No.298/1998 was preferred by P.Anjanappa and the appeal was allowed. However, it is submitted that in respect of Sy.No.17 the award was passed on 07.03.1998 and possession was taken on 04.09.2000.

12. The learned Senior Counsel draws the attention of this Court to the relevant paragraphs in the impugned order wherein, on the question of res judicata, the

learned Single Judge has observed that P.Anjanappa, the father of the appellant herein had filed writ petition No.10186/1983, which was dismissed by order dated 25.10.1988, observing that large number of writ petitions filed by the owners were dismissed. However, liberty was granted to the petitioner to take advantage of the Government order dated 12.10.1987 and make a representation before the Screening Committee, which was dealing with unauthorized constructions put up in the lands in question. Thereafter, BDA formed the layout and allotted sites to the applicants who had sought for allotment. It was also brought to our notice that in W.P.No.22472/1998, some of the allottees sought to prohibit the State and BDA from re-conveying Sy.No.17, 25 and 28 in favour of the landlords. In the said petition which was filed in the nature of Public Interest Litigation, order of status quo was passed. Similarly, W.P.Nos.11761-65/2001 and 11912-919/2001, were filed by some of the allottees. Writ petitions in W.P.Nos.3575-3579, 3973-3978 & 4032-4033 and 9410-9414/2001, were filed by persons who allegedly purchased portions of the land in question, claiming relief with regard to the land in question.

13. Sri. P.Anjanappa, had also filed W.P.Nos.16729 & 16730/1985, which came to be dismissed on 19.02.1988. Writ petitions in W.P.Nos. 29933-29934/2000, came to be dismissed on 22.11.2000. As noticed earlier, these petitions were filed by Sri.G.Rajan. It was vehemently contended that at least on two occasions, this Court has given categorical finding, as regards possession of the lands in question. It was further contended that due to the incessant litigation and several orders in the nature of directions to maintain status quo, temporary injunctions, etc., BDA was prevented from forming sites on a portion of the land in question. But, that would not render the scheme lapsed, since it is an admitted fact that the scheme has been substantially implemented.

14. Sri. M.N.Sheshadri, learned Senior Counsel, appearing for the respondent-allotees of sites, is vociferous in his submission that this is a clear case of abuse of the process of this Court. Heavy reliance is placed on the decision of the Hon'ble Apex Court in the following cases;

(1) Offshore Holdings Private Limited Vs. Bangalore Development Authority And Others, (2011) 3 SCC 139;

(2) Kalinga Mining Corporation Vs. Union of India, (2013) 5 SCC 252; and

(3) Beerbal Singh (Dead) Through Legal Representatives Vs. State of Uttar Pradesh and Others (2018) 13 SCC 675. to contend that successive writ petitions are not maintainable with respect to the same notification. It is submitted that the appellants are ill-advised to re-agitate the issues which have been decided by this Court, while this is the fifth round of litigation.

15. The learned Senior Counsel, on facts, submitted that the respondent allottees were allotted sites in the layout formed on the land in question, as far back as, in the year 2000. But, because of the pending litigation, the allottees were unable to put up constructions or have a roof over their head. It is submitted that at any

rate, it would be highly inequitable to grant the relief sought by the appellants, at this length of time.

16. Heard, Sri. Ashok Haranahalli, learned Senior Counsel for appellants, Sri. S.S.Mahendra, learned Additional Government Advocate for respondent No.1, Sri. D.N.Nanjunda Reddy, learned Senior Counsel for respondent Nos.2 and 3, Sri.M.N.Seshadri, learned Senior Counsel, for respondent Nos.4 to 18, 20 and legal representative of respondent No.19.

17. On the question of res judicata, the Hon'ble Supreme Court, in the case of Anil Kumar Gupta (supra) held that a person who is deprived of his land can challenge the acquisition proceedings at various stage. He can question the notification under Section 4(1) on the ground of violation of mandate contained therein like publication of the notification in the Official Gazette and/or (2) newspapers, failure of the Collector to cause public notice of the substance of the notification etc. He can challenge the declaration issued under Section 6(1) on the ground of non-compliance of Sections 5-A(1) and/or (2) or violation of the first proviso (ii) to section 6(1). In a given case, the land owner can also challenge the notification issued under Section 9 and the award passed under Section 11 on the ground that he had not been heard or that the acquisition proceeding are nullity. He can also challenge the award if it is not made within the period prescribed under Section 11-A. The vesting of land in the government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure.

18. On facts, it was found in that case that the land owner had filed a writ petition challenging the acquisition proceedings immediately after passing of the award and pleaded that the declaration issued under Section 6(1) was liable to be declared a nullity because of violation of the time limit prescribed in the first proviso (ii). In the earlier round of litigation, the land owner had approached the High Court seeking a mandamus to the respondents to vacate the land and hand over possession in view of the fact that the maximum period for temporary occupation of the land was three years, but without passing any order under Section 35 of the Land Acquisition Act, 1894, the State Government continued to occupy the land. Having found that cause of action being separate and distinct, the Hon'ble Supreme Court held that the second round of litigation could not be construed as barred by res judicata.

19. However, in Beerbal Singh (supra), the Hon'ble Supreme Court observed that the High Court had dismissed the previous writ petition after 15 years after hearing the learned counsel for the parties and that too on merits not in limine. The only ground raised in the previous writ petition was with respect to Section 17(1) which has been dealt with in the impugned order which was passed by the Division Bench of the High Court. The second writ petition urging for lapse of proceedings was held to be misconceived, ill-advised action and not available to be raised in the second writ petition.

20. As noticed in the beginning, the thrust of the argument of the appellants is based on a decision of a co-ordinate Bench, in the case of Dr.A.Parthasarathy, (supra), wherein the co-ordinate Bench held that the acquisition proceeding has lapsed after expiry of five years of final declaration/notification under Section 19(1), dated 28.12.1982. In this regard, it was pointed out from the said decision that this Court proceeded after giving a factual finding that BDA had not taken possession of the land. The factual position that emerges in the present case is a categorical finding given by the writ Court on more than one occasion, in W.P.No.16729 & 16730/1985, in the order dated 19.02.1988, it was held that notices under Section 9 and 10 of the Land Acquisition Act were issued and served on the land owners P.Anjanappa and Smt. Kempamma, on 25.02.1983; notice under section 11 and 14 was affixed on the door on 22.11.1983 (since Smt.Kempamma could not be served personally) and on 11.11.1983, it was served on P.Anjanappa's son. The award was passed on 19.05.1984 and possession was taken on 25.06.1984. At paragraph No.4, it was held, "these facts cannot be disputed as they are evident from the material on record".

21. In W.P.No.29933-34/2000, which was dismissed by order dated 22.11.2000, at paragraph No.20, in the highlighted portion, it was clearly held that insofar as Sy.Nos.25 and 28 are concerned, possession was taken in 1984 and therefore, there could be no de-notification. In W.P.Nos.13806/2001 & 14375/2001, which was disposed of on 04.07.2001, along with W.P.Nos.11761-11765/2001 and connected matters, His Lordship, R.V.Raveendran J., as he then was a Judge of this Court, while noticing that the land owners contended that they had not authorized Sri.G.Rajan to file any petition and therefore, the decision in W.P.Nos.29933-29934/2000 was not binding on them, the learned Single Judge proceeded to hold at paragraph No.23, that even if the said order dated 22.11.2000 in W.P.Nos.29933-29934/2000, is not taken into account, the position will be no different as the landlords had personally and directly filed writ petition in W.P.Nos.16729 & 16730/1985 challenging the very same acquisition and those petitions were also dismissed on 19.02.1988 on the ground that possession of the lands had been taken by the BDA in the year 1984. Consequently, it was held that the fact that the lands are vested with BDA as long back as 1984 is not open to question.

22. Therefore, it is clear that possession of Sy.Nos.25 and 28 was taken by BDA in the year 1984 itself and that question is not open for reconsideration. As regards Sy.No.17, as pointed out by the learned Senior Counsel appearing for BDA, the said land was also a subject matter in W.P.No.10186/1983. Subsequently, O.S.No.5080/1988, was filed by P.Anjanappa in respect of Sy.No.17, seeking relief of permanent injunction. The suit was dismissed on 31.03.1998. However, when RFA No.298/1998, was allowed and BDA was granted liberty to take possession in accordance with law, BDA thereafter passed an award on 07.03.1998 and took possession of Sy.No.17, on 04.09.2000.

23. At this juncture, it is also relevant to notice that in W.P.Nos.29933-34/2000,

one of the prayer with respect to Sy.Nos.25 and 28, inter alia was to declare that the scheme for development had lapsed under Section 27 of the BDA Act. In paragraph No.14, it was held that several litigations have come in the way of implementation of the scheme. Petitioners themselves filed O.S.No.1003/1998 and obtained a temporary injunction against BDA on 17.03.1998 and that injunction continued till 06.01.1998. Several purchasers from petitioners filed W.P.Nos.22043-047/1999, which was withdrawn only on 01.02.2000. The BDA has stated that there were other litigations also including a Public Interest Petition in W.P.No.22472/1998 which came in the way of implementation of the scheme. In fact, the purchasers from petitioners have admitted in W.P.Nos.22043-47/1999, that BDA Engineering staff were carrying out the work of road formation in these lands. Hence, the contentions that the scheme has lapsed under Section 27 of the BDA Act was rejected.

24. Though the learned Senior Counsel appearing for the appellants confined his arguments only with regard to the lapsing of the scheme, this Court cannot lose sight of the prayer made in the writ petition. Prayer No.1 and 2 is regarding Section 27 of the BDA Act. However, the other prayers pertain to de-notification under Section 48 of the Land Acquisition Act, subsequent withdrawal of the order of de-notification etc. As can be seen from the amended writ petition, three prayers in prayer No.iii (a) to (c) were added with the permission of the Court. This clearly shows that the petitioners sought to urge the very same issue which was considered and decided by the writ Court.

25. It is by now well settled that the doctrine of res judicata is attracted if an issue was raised and considered in the earlier round of litigation. On facts, as noticed earlier, the issue regarding de-notification under Section 48 of the Land Acquisition Act and the subsequent withdrawal of the order of de-notification was the subject matter in W.P.Nos.13806/2001 & 14375/2001. That issue having been raised and considered, the same cannot be permitted to be urged again in the instant writ petition. The issue regarding possession being taken by BDA, as noticed above, was raised and considered on three occasions viz., W.P.Nos.16729 & 16730/1985, W.P.Nos.29933-34/2000 and W.P.Nos.13806 & 14375/2001. The issue regarding lapsing of the scheme under Section 27 of BDA Act was raised and considered in W.P.Nos.29933-34/2000 and in W.P.Nos.13806 & 14375/2001. In the light of the discussions above and in consideration of the decisions of the Hon'ble Supreme Court, this Court is of the opinion that the prayer in the writ petition is barred by res judicata.

26. With respect to Sy.No.17, however, the issue regarding taking of possession or lapsing of the scheme was never raised or considered earlier. Therefore, as regards Sy.No.17, the prayer made in the writ petition is not barred by res judicata.

27. Now that we have arrived at a conclusion that the prayer in the writ petition, insofar as Sy.No.17 is concerned, remains to be considered, we proceed to answer the same.

28. We have noticed that when W.P.No.10186/1983 having been dismissed, the land owners filed O.S.No.5080/1988, seeking relief of permanent injunction in respect of Sy.No.17. The suit was dismissed on 31.03.1998. However, the appeal preferred by the land owners, in RFA No.298/1998 was allowed granting liberty to BDA to take possession in accordance with law. Subsequently, BDA passed an award on 07.03.1998 and took possession of Sy.No.17 on 04.09.2000. This position remains unchallenged. The decision in Dr.A.Parthasarathy's case (supra) is primarily based on the factual finding that possession of the lands therein remained with the land owners and that BDA was not inclined to utilize the land for the purpose of the scheme. In that view of the matter, since the finding of this Court on the question of possession being held against the land owners, the benefit of the decision in Dr.A.Parthasarathy's case (supra) shall not enure to the appellants herein.

29. The issue also requires to be considered from another angle. Sy.Nos.25, 28 and 17 form a compact block along with the adjoining lands wherein BDA has formed a layout. Since, we have already held that Sy.Nos. 25 and 28 are covered by the earlier decisions and in view of the application of the doctrine of res judicata and the scheme having been declared as substantially implemented, a declaration to the contrary with respect to Sy.No.17, is practically impermissible.

30. Another reason for which the prayer made by the appellants requires rejection is that Sy.No.17, which is a small portion in the midst of the layout/scheme, even if it were to be held that the scheme has lapsed with respect to the said land, the acquisition does not lapse. In Offshore Holdings Private Limited (supra), which was cited by the learned counsel for the respondents, the Hon'ble Apex Court has held that the provisions of Section 27 have a direct nexus with the provisions of Section 36 of the BDA Act, which provide that the provisions of the Land Acquisition Act, so far as they are applicable to State Act, shall govern the cases of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject-matter of execution under the provisions of the BDA Act. On a conjunctive reading of the provisions of Section 27 and 36 of the BDA Act, it was held that the scheme may lapse but the acquisition shall not. Upon the completion of the acquisition proceedings and when once the land vests in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act.

31. Even otherwise, the decision in Dr.A.Parthasarathy's case (supra) cannot be made applicable to the appellants herein since, the earlier pronouncement of this court is binding on the parties inter se. It is beneficial to notice the well settled proposition that even inter-parties, if the law laid down in a pronouncement is later overruled, as distinguished from it being reversed, its binding effect inter-parties is not set at naught. (See D.P.Sharma Vs. State Transport Authority, ILR 1987 (4) KAR 3255). Similarly, in Gorie Gouri Naidu Vs. thandrothu Bodemma

and others reported in (1997) 2 SCC 552, it was held that it is well settled law that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction decides the lis.

32. Viewed from any angle, the appeals fail. On the question of imposition of costs, as vehemently contended by the learned counsel for the respondents, no doubt, we have held that the prayer insofar as Sy.Nos.25 and 28 are concerned, are barred by res judicata and as a consequence, we may impose costs on the appellants for vexing the respondents more than once, however, since we have also concluded that insofar as Sy.No.17 is concerned, the doctrine of res judicata is not attracted, we give the benefit to the appellants and desist from imposing costs.

33. As a result, the appeals stand dismissed.

34. In view of disposal of the main matters, all pending interlocutory applications, do not survive for consideration.