

(2015) 09 KAR CK 0263

In the Karnataka High Court

Case No : Writ Petition Nos. 37453-37459/2014 (LA-BDA)

Anjaneyalu Prathipathi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0263

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : K. Suman, Advocate, for the Appellant; A.S. Ponnanna, AAG and Y.D. Harsha, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner, even according to the learned Counsel is the owner of the lands measuring 24 guntas in Sy. No. 1/2; 6 1/2 guntas in Sy. No. 1/2; 27 guntas in Sy. No. 6/5; 7 guntas in Sy. No. 7/2; 1 acre 20 guntas in Sy. No. 52; 18 guntas in Sy. No. 60 and; 36 guntas in Sy. No. 4 of Srirampura Village, Yelahanka Hobli, Bangalore North Taluk, having purchased the same under absolute sale deeds of even date 15.11.2003 Annexures "D" and "D1"; dated 23.01.2003 Annexure "D3"; 15.12.2003 Annexure "D4"; 15.12.2003 Annexure "D5"; 27.02.2002 Annexure "D6"; General Power of Attorney of 27 guntas in Sy. No. 6/5 Annexure "D2" and 11 guntas in Sy. No. 6/4 under Annexure "D7".

2. The preliminary notification dated 03.02.2003 is issued under Section 17(1) and (3) of the Bangalore Development Authority Act, 1976, while the final notification dated 23.02.2004 is under Section 19(1) of the said Act, which when directed to be redone in terms of the order in Civil Appeal No. 4097/2010, has led to the final notification dated 18.06.2014 Annexure "F".

3. Petitioner a purchaser of the land measuring 24 guntas out of 1 acre 8 guntas in Sy. No. 1/2 under the sale deed dated 15.11.2003 Annexure "D", 6 1/2 guntas

out of 24 guntas in Sy. No. 1/2 under sale deed dated 15.11.2003 Annexure "D1", 1 acre 20 guntas out of 2 acres 24 guntas in Sy. No. 52 under sale deed dated 15.12.2003 Annexure "D4" 18 guntas out of 2 acres 24 guntas in Sy. No. 60 under sale deed dated 15.12.2003 Annexure "D5". These purchases having been made post the preliminary notification, petitioner did not acquire right, title and interest in the said properties, in the light of the decision of the Apex Court in V. Chandrasekaran and Another Vs. The Administrative Officer and Others, .

4. Under the sale deed dated 23.01.2003 Annexure "D3", 7 guntas in Sy. No. 7/2 of Sriramapura Village is said to have been purchased from one Akkayamma W/o. Late Kasappa; another Mr. Venkataramanappa S/o. Late Kasappa; Muniyappa S/o. late Kasappa; Smt. Padma W/o. Muniyappa; Venkatarayappa S/o. late Kasappa; Smt. Bhagyamma W/o. Venkatarayappa; Narayanappa S/o. late Kasappa and Smt. Nirmala W/o. Narayanappa and under the sale deed dated 27.02.2002 Annexure "D6" executed jointly by J.S. Devaraj S/o. late J.M. Shamamma; Mrs. T.R. Saraswathy, W/o. J.S. Devaraj, and D. Arun Kumar S/o. J.S. Devaraj, purchased 36 guntas exclusive of 4 guntas of Kharab in Sy. No. 4 of Sriramapura ViUage.

5. The General Power of Attorney Annexure "D2" is in respect of land measuring 27 guntas in Sy. No. 6/5 and the other General Power of Attorney Annexure W is in respect of land measuring 11 guntas in Sy. No. 6/4, and 13 guntas in Sy. No. 6/5.

6. The assertion that under the General Power of Attorney, petitioner acquired right, title and interest, is no more available in the light of the larger Bench decision of the Apex Court in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, observing that a transfer of immovable property can be validly made only by registered sale deed, and not by General Power of Attorney.

7. In the preliminary notification Annexure "A" at Sl. No. 9 in respect of lands in Sriramapura Village, the name of the petitioner is shown as the khatedar amongst others in Sy. No. 7/2 totally measuring 1 acre 28 guntas, from out of which, an extent of 8 guntas is acquired, while the petitioner is said to have purchased 7 guntas in Sy. No. 7/2 under the sale deed dated 23.01.2003 Annexure "D3".

8. As regards the sale deed dated 27.02.2002 Annexure "D6", conveying 36 guntas in Sy. No. 4 of Srirampura Village, the names of J.S. Devaraj S/o. J.M. Shamamma, Mrs. T.R. Saraswathy W/o. J.S. Devaraj and D. Arun Kumar S/o. J.S. Devaraj, the vendors-in-title are not shown as the khatedars/anubhavdars at Sl. Nos. 5 and 6 in the preliminary notification, while what is recorded is "RTC Khayam, against Sy. No. 4/1" and "S.R. Govindappa, Bin, Ramaiah" in respect of Sy. No. 4/2 and the extents as 1 acre each.

9. If regard is had to the extent of 7 guntas in Sy. No. 7/2 of Srirampura Village with the boundaries as mentioned in the schedule to the sale deed dated 23.01.2003 Annexure "D3", what is not forthcoming is whether it constitutes a

part of 8 guntas of land from out of 1 acre 28 guntas which is sought to be acquired by the notification. Therefore, it cannot be said that petitioner is aggrieved by the notification.

10. As regards 36 guntas excluding 4 guntas of Kharab in Sy. No. 4, the Preliminary Notification does not make reference to Sy. No. 4 but Sy. Nos. 4/1 and 4/2, of which the khatedar is not the vendor-in-title of the petitioner and the extent in the said two survey numbers are said to measure 1 acre each and it is not known as to whether the lands purchased by the petitioner falls in Sy. No. 4/1 or Sy. No. 4/2.

11. Therefore, in the absence of relevant material constituting substantial legal evidence of the fact that land in Sy. No. 4 belonging to the petitioner is referable to lands measuring 1 Acre each in Sy. No. 4/1 and 4/2 in notification, it is too farfetched for the petitioner to contend that the preliminary notification has impinged upon his rights over the immovable property in question.

12. The same is the position in relation to the final notification dated 23.02.2004 Annexure "B".

13. In the final notification Annexure "F", as against land in Sy. No. 4/1 to an extent of 1 acre, neither the name of the petitioner nor his vendors-in-title are shown. Therefore, it is too farfetched to contend that land in Sy. No. 4 measuring 36 guntas, is in fact, acquired, since what is finally notified for acquisition is 1 acre in Sy. No. 4/1. As regards Sy. No. 7/2 the final notification reads 8 guntas out of 1 acres 28 guntas while disclosing the name of petitioner as well as his vendors- in-title. As noticed supra, in the absence of relevant material constituting substantial legal evidence that 7 guntas of land in Sy. No. 7/2 forms a part of 8 guntas of land which is acquired in the final notification, it cannot be said that petitioner is aggrieved by the final notification.

14. For the aforesaid reasons, the relief to declare as illegal the preliminary and final notification Annexure "F" and for a declaration that the acquisition of the lands in question has lapsed, are unavailable to the petitioner.

15. It is open for the petitioner to file an application to the Bangalore Development Authority, for benefits under the decision of the Apex Court in Bondu Ramaswamy Vs. Bangalore Development Authority and Others, , and if so done there is no reason to believe that Bangalore Development Authority would not consider the same and pass orders in accordance with law.

Petitions are rejected.