

(2014) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No"s. 26701-26711 of 2013 and W.P. 30822 of 2013 (LA-BDA)

B. Venkatesh and Others

APPELLANT

Vs

Bangalore Development Authority and Government of
Karnataka Urban Development Department

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Citation : (2014) 02 KAR CK 0008

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Nishanth A.V, for the Appellant; M. Karunakaran, Advocate for R-1 and R-2 and Sri. D. Nagaraj, AGA for R-3, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for petitioners and the learned counsel for the Bangalore Development Authority (BDA)-respondents 1 and 2, as well as the learned Government Advocate for respondent No. 3. The Petitioners claim that originally land bearing Sy. No. 14/1 measuring 3 acres 1 gunta, Sy. No. 14/2 measuring 1 acre 10 guntas and Sy. No. 15/2 measuring 1 acre 37 guntas of Kothanur Village, Bangalore South Taluk belonged to one Sri. Y.L. Basappa Reddy and Sri. Y.L. Rama Reddy. Sri. Y.L. Basappa Reddy is said to have died on 24.11.94 and Sri. Y.L. Rama Reddy died in the year 1996. There was a partition between Sri. Y.L. Basappa Reddy and Sri. Rama Reddy in the year 1975 and their family consisted of 60 persons and therefore further partition having taken place after the death of Sri. Y.L. Basappa Reddy in the year 1994, there were residential sites culled out of the lands detailed above and were allotted to various family members. It is claimed that the present petitioners claiming in different parcels of land had been allotted sites which are described in the body of the petition.

2. It is also stated that the very lands referred to above were notified u/s 17 of

the Bangalore Development Authority Act, 1976 (BDA Act) for formation of a layout called Jayaprakash Narayana Nagar VIII Stage, vide Notification dated 10.03.1989, and under final notification issued u/s 19(1) on 19.10.1994. It is also stated that Sri. Y.L. Basappa Reddy and Sri. Y.L. Rama Reddy had challenged acquisition proceedings in writ proceedings before this court in W.P. No. 4938/95 which was allowed and the final notification was quashed on the ground that there was no scheme framed as required u/s 18(3) of the BDA Act. Thereafter a final notification was yet again issued on 12.09.1997. Since no award followed after the said notification, the petitioners had made representations to the second respondent to regularize their occupation of sites. The Second respondent is said to have regularized the sites of petitioners on collection of the requisite fee. However, the second respondent thereafter had passed an award without notice to the petitioners, without considering the fact that the lands had been fully developed by them; as per awards dated 15.02.2010 in LAC No. 9/97-98 and LAC No. 12/97-98. The Petitioners claim that they are in possession and enjoyment of their property and in continuous enjoyment of the same. It is, however, stated that other members of the family had approached this court in earlier writ proceedings in W.P. 40202-214/2010 and the writ petition was decided on contest on merits by an order dated 27.09.2012. The present petition is brought on identical grounds as were urged in the earlier writ petitions by other members of the family namely that having regard to the sequence of events it is undisputed that though there were no orders of restraint by any court of law, the competent authority has proceeded to pass the awards more than five years after the final notification and therefore it is evident and it cannot be disputed that the scheme has not been implemented within five years as mandated u/s 27 of the BDA Act and therefore the scheme lapsed. It is on this short ground that the present petition is filed and reliance is placed on the decision of a Division Bench of this court in the case of Smt. Nagu Bai and others Vs. State of Karnataka reported in ILR 2001 Kar. 1169 which has been followed in the earlier decision of this court pertaining to other lands of the very family members of the petitioners and therefore the learned counsel would seek that there be a declaration as to the scheme having lapsed and to quash the acquisition proceedings consequently.

3. The learned counsel appearing for the BDA would vehemently oppose the petition and would contend that the interpretation of section 27 of BDA Act requires to be understood in the light of the view expressed by a Division Bench of this court in the case of M.B. Ramachandran Vs. State of Karnataka reported in ILR 1992 Kar. 174 and would contend that the petitioners are not entitled to raise any such challenge to the acquisition proceedings as they are not the land owners and there is no material produced to indicate that they are the legal representatives of the erstwhile land owners and from the very description of the parties, they are the family members of the erstwhile land owners and any subsequent purchaser is not in a position to challenge the acquisition proceedings and this is settled law as laid down in a catena of decisions.

4. Insofar as the contention that the scheme has lapsed by virtue of section 27 it is pointed out that in the light of the view expressed in the aforesaid decision in M.B. Ramachandran's case the computation of five years ought to be from the date of taking possession and it is canvassed that the possession had been taken in the year 2010 and therefore the present petition having been filed in the year 2013 seeking to quash the acquisition proceedings of the year 1988 is barred by delay and laches apart from the fact that the petition is brought by a subsequent purchaser and therefore the petition ought to be dismissed.

5. It is further contended insofar the decision sought to be relied upon by the learned counsel for petitioners, was clearly with reference to the Karnataka Urban Development Authorities Act and Land Acquisition Act, 1894 with particular reference to section 11A and therefore would have no bearing insofar as provisions of the BDA Act is concerned as it is a self contained Act and the ratio laid down therein cannot be extended to the interpretation or scope of the BDA Act and further that even if the award has been passed after a lapse of time there is no delay which is fatal to the acquisition proceedings and therefore seeks that the petition be dismissed.

6. In the light of the above contentions insofar as the identity of petitioners being questioned, if the petitioners claim to be owners of land and if they have approached the court on that basis, merely to deny that they have title to the land would not result in the petition being dismissed. Benefit of any order passed in this petition would only flow to the owners of the land. Therefore doubt sought to be cast on the identity of the petitioners when they claim to be members of the family of the erstwhile owners is not significant. However, the question whether the petitioners are subsequent purchasers and therefore not entitled to challenge acquisition is answered by the learned counsel for petitioner pointing out that the challenge is not so much to the acquisition, but to the scope and operation of section 27 which would come into play on the circumstances, which would attract the same, being apparent. When the admitted position being that the award has been passed more than five years after the final notification, would lead to the presumption that there was no implementation of the scheme or development of the land which is acquired in order to save the acquisition from the rigour of section 27. Section 27 would indicate that if the scheme has not been implemented within a period of five years from the date of final notification the scheme would lapse. Therefore on the face of it, it is demonstrated that the scheme has not been implemented. This position has been demonstrated as pointed out by learned counsel for petitioners in a earlier petition brought by the very members of the family of these petitioners and therefore the ground that subsequent purchasers are not in a position to challenge the acquisition may not be relevant as the petitioners are seeking a declaration that the scheme has lapsed by virtue of section 27.

7. Insofar as the contention that the decision in Nagu Bai's case is rendered with reference to the provisions of Karnataka Urban Development Authorities Act,

1987 or Land Acquisition Act, 1894 is misplaced, as the principle laid down therein was with reference to the locus standi of a subsequent purchaser to seek a declaration that the acquisition proceedings are invalid and would not be binding in view of the scheme under which the acquisition had been implemented had lapsed. This principle has been applied to the provisions of BDA Act particularly section 27 of BDA Act and therefore the contention that the said decision would not apply is not material. The further contention that even if there was delay in passing of the award it would not be fatal to the acquisition cannot also be accepted. As such a proposition cannot be reconciled with the tenor of section 27. Hence that contention is also not relevant. Hence the primary contention that the scheme under which the acquisition had been initiated has lapsed on account of non implementation in terms of section 27 of the BDA Act has to be upheld. Consequently the petitions are allowed. It is declared that the scheme under which the acquisition has been initiated has lapsed and further as a consequence thereof the acquisition proceedings initiated against land of the petitioners is invalid and stand quashed.