
(2014) 03 KAR CK 0183

In the Karnataka High Court

Case No : Writ Petition Nos. 10574, 22971 of 2012 (LA-BDA) and 571 of 2013 (LA-BDA)

Benaka Educational Society

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-03-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 16(2), 4(1), 48, 48(1)

Citation : (2014) 3 AKR 625 : (2014) 3 KarLJ 320

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Sriyuths T.A. Karumbaiah, Udaya Holla, Senior Advocate for Vivek Holla for M/s. Holla and Holla, Advocate for the Appellant; B.V. Shankaranarayana, Sri D. Nagaraj, Additional Government Advocate, Smt. S.B. Lakshmi and Sri G. Lakshmeesh Rao, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are disposed of by this common order as the issues that arise for consideration are identical.

Re: W.P. No. 22971 of 2012:

The petitioner claims as the absolute owner of land bearing Survey No. 117, measuring about 1 acre, situated in Jarakbande Kaval, Yeshwanthpur Hobli, Bangalore North Taluk. The petitioner claims to have acquired the same under a Will dated 24-3-2003. One, Yellappa was said to be the erstwhile owner of the same. He was said to have been granted the land by the State Government in the year 1967, by virtue of the fact that he belonged to the Bhovi community. The petitioner claims that as Yellappa had no legal heirs, the property was bequeathed to him on account of the petitioner having taken care of Yellappa during his last days. It is claimed that the ownership of the petitioner is reflected in the revenue records.

It is claimed that on 22-12-1977, a preliminary notification was issued under the provisions of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the "BDA Act", for brevity), proposing to acquire about 393 acres and 25 guntas of land around Jarakbande Kaval and other Villages, for the formation of the extension of the Mahalakshmi Layout. A final notification dated 20-9-1979 was issued, restricting the proposed acquisition to 270 acres and 1 gunta of land, including the land of the petitioner.

It is stated that an award was made in respect of the land of the petitioner only in the year 1985. It is also claimed that late Yellappa remained in possession even after the award was passed. After the death of Yellappa, on 23-8-2004, the petitioner claims to have been in continuous possession. It is claimed that a School in the name of Benaka English School was said to have been run on the said land -- the School was said to have been run in 12 AC Sheet roofed Buildings till the year 2007 and later shifted elsewhere.

(Late) Yellappa is said to have filed a civil suit in O.S. No. 3802 of 1995, on the file of the City Civil Court, Bangalore, against Bangalore Development Authority (BDA) and others, including the purported management of the said Benaka English School, as there was alleged interference with his land. It is further claimed that since Yellappa continued in possession long after the land had been notified for acquisition, he had made a representation, dated 8-11-2001, to the State Government to withdraw from the acquisition proceedings in respect of his land. A Committee of the State Government, known as a denotification Committee which was required to consider such representations is said to have obtained a report of the Executive Engineer (West) of the BDA. It transpires that in a report submitted by the said Engineer, it was indicated that a portion of the land was occupied by the Benaka English School and the remaining land was vacant. It was further stated that the BDA had not formed any layout over the said land. This is reflected in a letter dated 26-4-2003 by the BDA to the State Government. However, the denotification Committee is said to have taken a decision, rejecting the claim of Yellappa, on the ground that possession of the land had been taken of the land in question, though there was no development of the land.

It is stated that the petitioner who claimed ownership of the land by virtue of the bequest said to have been made in his favour by Yellappa, is said to have made a representation, dated 23-4-2007, again requesting the State Government to withdraw from the acquisition proceedings on the ground that he continued to be in possession of the land. Incidentally, while awaiting a response to his representation, the petitioner is said to have made enquiries by resorting to the provisions of the Right to Information Act, 2005 as to the status of the land. The BDA is said to have informed by letters dated 3-1-2008 and 4-1-2008, that the land was partly occupied by one Benaka English School and the rest was vacant and that no development had taken place over the same.

It is claimed that the State Government in turn, had made enquiries with the

BDA, as per letter dated 23-4-2008, as to the status of the land in order to consider the representation of the petitioner. On being informed of the situation, it is said that the State Government had, in exercise of power u/s 48(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act", for brevity) issued a notification dated 12-1-2010, withdrawing from the acquisition in respect of the land claimed by the petitioner. The same was duly endorsed in a communication to the petitioner, dated 25-1-2010.

In the meanwhile, a writ petition in the nature of public interest litigation is said to have been filed before this Court in W.P. No. 37938 of 2010, questioning among other things, the notification withdrawing from the acquisition proceedings insofar as the petitioner's land is concerned. During the pendency of the said petition, the State Government is said to have withdrawn from the acquisition proceedings, vide notification dated 8-2-2010. It is that which is under challenge in the present writ petition.

Re: W.P. No. 10574 of 2012:

Petitioner 1 is the Beneka English School, referred to in the first of these petitions. Petitioner 2 is said to be the president of the Society which is in the management of the School. The Society is said to be registered under the provisions of the Karnataka Societies Registration Act, 1960. Petitioner 2 is said to be the owner of 1 acre of land in land bearing Survey No. 1(117) of Jarakabande Kaval. He claims to have purchased the same from one Chinnanna, a grantee of the said land under a grant order dated 16-2-1967. It is stated that on the said land having been notified for acquisition, the petitioners are said to have made an application seeking that the lands may be exempted from the acquisition proceedings. On the basis of the said representation, the State Government is said to have obtained a report as to the status of the land from the second respondent. It is claimed that as it was reported that the school was being run in the land and that possession had not been taken pursuant to the acquisition proceedings and hence the report having recommended withdrawal from the acquisition proceedings. It is stated that State Government had accordingly issued a notification, dated 12-1-2010, u/s 48(1) of the LA Act, withdrawing from the acquisition. But pursuant to a writ petition by way of public interest litigation in W.P. No. 37938 of 2010, and even during the pendency of the same the State Government is said to have withdrawn the notification of withdrawal from acquisition, by a further notification dated 26-3-2011. It is that notification which is under challenge.

Re: W.P. No. 571 of 2013:

The petitioner claims to be the owner of a site bearing No. 21 in Survey No. 117 of Jarakabandekaval bearing khata No. 1244 and claims to have purchased the said site under a registered sale deed dated 19-12-2001 from its owner Yellappa and from the date of purchase, she claims to have been in possession and that she is paying taxes to the Bruhat Bengaluru Mahanagara Palike. The said land

was notified for acquisition by the State Government. However, at the instance of the owner, an extent of 1 acre of land was denotified from acquisition and the State Government had issued a notification u/s 48(1) of the Land Acquisition Act, 1894 on 12-1-2010. It is pursuant to the same that a writ petition in the nature of public interest litigation in W.P. No. 37938 of 2010 was filed, questioning the withdrawal from acquisition. Even during the pendency of the petition, a further notification was issued withdrawing the notification u/s 48(1) of the LA Act. The present petitioner was said to be a respondent in that said writ petition. Pursuant to the withdrawal of the notification u/s 48(1) of the LA Act by the State Government, the writ petition was dismissed as having become infructuous and liberty having been given to the parties to initiate such other proceedings as may be warranted, the present petition is filed.

The learned Senior Advocate, Sri Udaya Holla appearing on behalf of the learned Counsel for the petitioner, in the first of these cases, primarily contends that upon issuance of a notification under sub-section (1) of Section 48 of the LA Act, the only course open to the State Government is to initiate proceedings envisaged under the Act to acquire the land by issuing a notification u/s 4(1) of the said Act. It would certainly not enable the State Government to withdraw a notification issued u/s 48(1) of the LA Act, two years after it was issued as is the case in the present proceedings on hand. It is pointed out that even according to the BDA, the factum of having taken possession was not evidenced by a notification issued u/s 16(2) of the LA Act. There were no developmental activities on the land. The specific reason for issuing the notification u/s 48(1) of the LA Act was that there was a school being run on the land and that no development in the formation of any layout had taken place. In any event the petitioner was not heard before revoking the notification issued u/s 48(1) of the Act, which had certainly enured to his benefit.

2. The learned Counsel for the petitioner in the second and third of these petitions would adopt the contentions of Sri Holla. In the statement of objections on behalf of the respondents, it is reiterated that after the notification u/s 48(1) was issued, a public interest petition having been instituted questioning the same, even during the pendency of the same, the State Government chose to withdraw the earlier notification dated 12-1-2010 by the later notification dated 8-2-2012. And it is asserted that the petitioner is not enabled to question the same -- as such a measure is permissible in law as endorsed by the Supreme Court in the case of Bangalore Development Authority Vs. Vijaya Leasing Ltd. and Others, .

The said statement of objections is sought to be supplemented, a year later, by the respondents to further contend that the acquisition proceedings stood concluded as per details furnished in tabular thus:

It is thus sought to be emphasised that possession had been taken of the land in question and it is also sought to be pointed out that one of the petitioners (W.P. No. 10574 of 2012) has admitted that the school that was existing on the

premises had been shifted.

It is also sought to be pointed out that on an earlier occasion, one Yellappa, S/o. Chinnappa, had by an application dated 8-11-2001 had requested the State Government to withdraw from the acquisition proceedings. On the BDA having appraised the State Government of the factum of possession having been taken, the denotification Committee which was competent to address such requests had rejected the prayer. And hence sought to justify the impugned notification.

Further, even after the final arguments were concluded, an application has been filed seeking to produce additional documents, namely, the following:

- (i) Copy of memorandum of writ petition in W.P. No. 16001 of 1995 filed by Sri Yellappa, S/o. Chinnappa under whom the petitioner is claiming.
- (ii) Copy of order dated 4-10-1996 passed in W.P. No. 16001 of 1995 rejecting the writ petition with cost of Rs. 1000/- to be payable by the petitioner to the Bangalore Development Authority.
- (iii) Copy of letter dated 1-8-1988 addressed to BDA by Sri Yellappa, son of Chinnappa.

It is contended in the affidavit in support of the application that even though there is adequate material produced to establish the case of the respondents, it is further fortified by the fact that the pleadings in W.P. No. 16001 of 1995, filed by Yellappa, son of Chinnappa, under whom the petitioners are claiming. It is stated that the said petition was dismissed with costs on 4-10-1996.

In the above facts and circumstances and from an examination of the record, it is seen that the respondents seek to place reliance on a mahazar to claim that possession of the land had been taken. The said mahazar does not evoke the confidence of the Court. It is incomplete and significantly does not bear the signature of any occupant of the land, and there is no indication that any such occupant refused to affix his or her signature on the same. The further attempt on the part of the respondents to supplement the documents produced would also not advance the case of the respondents. The copy of the petition in W.P. No. 16001 of 1995 filed by Yellappa, does not disclose that the BDA had taken possession of the land in question. It appears that the petitioner therein is seeking to be restored in possession as against third-party encroachers. On the other hand, the acquisition proceedings are questioned on the ground that the owner's name is found neither in the preliminary or the final notification. There is no statement to the effect that BDA had taken possession. Further, the order dated 4-10-1996 passed in W.P. No. 16001 of 1995 states that the Assistant Commissioner had passed an order dated 29-4-1998 directing handing over of possession to Yellappa. Insofar as the letter dated 1-8-1988 said to have been written by Yellappa, states that possession had been taken by BDA on 20-6-1988, whereas the mahazar produced by the BDA states that possession had been taken on 4-7-1988. Further, in the letter said to have been written by

Yellappa, curiously requests that the compensation amount be sent to one Yellappa. The said letter cannot be held against the petitioners. The date on which BDA is said to have taken possession is stated differently in the mahazar, the letter dated 1-8-1988 and in the writ petition, W.P. No. 16001 of 1995. It is also evident that no notification u/s 16(2) of the LA Act had been issued.

In the above circumstances, when the State Government in its wisdom had thought it fit to withdraw from the acquisition proceedings on the basis of factual findings as to the feasibility of utilizing the land in question in the implementation of the scheme of development and having due regard to the acceptance of the claim of the occupants of the property being built up and being put to use for the purpose of running a school. The subsequent-notification seeking to reverse the earlier withdrawal, ostensibly on the opinion that the earlier decision was taken without reference to the physical possession of the land having been taken of the land in question, is a circumstance that ought to have been established with reference to unimpeachable material available on record. As seen from the material that is produced by the BDA, almost as an afterthought only to claim the possibility of possession having been taken, the notification nullifying the notification issued u/s 48(1) of the LA Act, issued two years after the same is not tenable and cannot be sustained.

Consequently, the writ petitions are allowed the impugned notification is quashed.