

(2014) 01 KAR CK 0209

In the Karnataka High Court

Case No : Writ Petition No. 19739 of 2001 (LA-BDA)

B.N. Siddalingappa Since deceased by his Legal
representatives (B.S. Bhavananda, G.S. Nanjegowda and
B.S. Chandrashekar)

APPELLANT

Vs

The State of Karnataka, The Bangalore Development
Authority and The Special Land Acquisition Officer for
Banashankari V Stage

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

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

Citation : (2014) 01 KAR CK 0209

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; H.T. Narendra Prasad,
Additional Government Advocate for Respondent No. 1 and Shri. K. Krishna,
Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—One Siddalingappa was said to be the absolute owner of land bearing Sy. No. 179 of Halagevaderahalli, Bangalore South Taluk, measuring about 7 acres and 14 guntas. He is said to have sold an extent of 2 acres and 20 guntas in favour of one Fr. Jacob Kollaparambil. It further transpires that the said extent which had been notified for acquisition under the provisions of the Bangalore Development Authority Act 1976, (Hereinafter referred to as "the BDA Act", for brevity) was deleted from the proceedings and the purchaser is said to have constructed a school therein. It is claimed that the petitioner has grown coconut trees and other trees and has developed a nursery in the remaining area. Though the lands of the petitioner had been notified for acquisition, the petitioner claims to have remained unaware of the same and that it was only after the final notification had been issued that he had filed objections to the acquisition. As he was not heard at that stage, he is said to have preferred a writ

petition before this court in WP 30078/1996, which came to be allowed on the ground that there was no prior sanction of a scheme by the State government in proceeding with the acquisition proceedings, vide order dated 4.6.1998.

2. It is the case of the petitioners, who are the legal representatives of late Siddalingappa, that the land was well developed as a nursery and hence there were representations made as on 24.7.1994, 25.8.1995 and 28.12.1998, seeking that the State Government withdraw from the acquisition proceedings in terms of a Government Circular of the year 1.1.1987, to the effect that lands which are developed as nurseries, ought to be kept out of the purview of the acquisition. The same had been kept pending without any consideration.

It is contended that even if it is claimed that there were subsequent acquisition proceedings, in the absence of a notification u/s 16 of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act", for brevity), the respondents ought to consider the case of the petitioners for withdrawal from the acquisition proceedings, as possession continues to remain with the petitioners.

3. Respondents 2 and 3 have filed statement of objections to contend that the acquisition proceedings have attained finality, in that, after the disposal of the aforesaid writ petition quashing the final notification of the year 1994, sanction was said to have been obtained on 12.9.1997 and a final notification was issued on 16.9.1997. An award is said to have been passed on 5.5.1998 and possession of the land is said to have been taken on 29.9.1999. And that the lands have vested in the State. Hence it is stated that the petition is liable to be dismissed.

4. In the year 2013, the petitioner has filed an application seeking amendment of the writ petition, the said application was heard along with the main petition and the respondents 2 and 3 have filed their objections to the same.

It is contended by the petitioner that the total extent of land notified for acquisition for formation of the Banashankari 5th Stage layout is concerned is 1851.39 acres. The final notification was for 1458.21 acres. However, possession was taken only in respect of 394.33 acres. A total extent of 205.18 acres has been dropped from the acquisition proceedings. And that there is no award made in respect of 493.08 acres of land. In so far as Halagavaderahalli is concerned out of 314.14 acres of land sought to be acquired, a notification u/s 16(2) of the LA Act had been issued only in respect of 37.17 acres. The petitioner has sought to produce detailed particulars of the above, as per documents annexed to the application. It is hence sought that there be a declaration that the scheme pertaining to Banashankari 5th Stage, pertaining to the land of the petitioners had lapsed, in terms of Section 27 of the BDA Act, in the respondent BDA not having substantially implemented the Scheme even as on date of the application.

5. The respondents have resisted the amendment to contend that the application is belated, as it has come 12 years after the petition was filed.

It is contended that the following sequence of events would indicate that there

was no infirmity in the acquisition proceedings, as sought to be alleged by the petitioners.

The father of the petitioners filed W.P. No. 30078/96 seeking for quashing of the preliminary notification and the Final Notification dated 9.5.1994. The said writ petition was decided on 4.6.1998 by following the decision reported in P. Krishnappa and Others Vs. State of Karnataka and Others, and the final Notification dated 9.5.1994 was quashed in respect of land in question reserving liberty to the respondents to take such steps as allowed in law to acquire the land again if they so desire. Liberty is also reserved to the father of petitioners to question the validity of the declaration if such a declaration had already been made by the Government after securing the sanction. The said order attained finality. In the said writ petition, W.P. No. 30078/1996 the preliminary Notification has been upheld and liberty was reserved to the father of the petitioners to challenge the final notification dated 16.9.1997. However, the petitioner's father has not challenged the said final notification dated 16.9.1997. Therefore the acquisition notifications attained finality. The further contention of the petitioner that the award was passed during the period when the stay order was in operation is not correct. In the aforesaid writ petition, interim order was granted against the dispossession and the Hon'ble Court has not stayed the further proceedings of the acquisition. The said writ petition was decided as aforesaid on 4.6.1998 with liberty to the petitioners' father to challenge the already issued final notification dated 16.9.1997. The award has been passed on 5.5.1998 and thereafter possession of the land in question has been taken on 29.9.1999. Therefore the contention of the petitioner that there is no acquisition proceeding as on today is incorrect. The further contention of the petitioner that the possession of the land in question has not been taken is also incorrect statement. As stated above the possession of the land in question has been taken on 29.9.1999 itself. After taking possession, the respondent Authority has issued Notification dated 4.5.2001 inviting tender for the formation of the layout in the land in question as per Annexure-H. In view of the interim order granted in the above case, the sites are not formed in the land in question.

And in so far as the contention that there has been no substantial implementation of the Scheme is concerned, it is stated as follows:

5. It is submitted that the averments made at para 3 of the above application is also not fully correct. The final notification has been issued for 1458.21 acres of land including the land in question. Out of that:

6. It is submitted that the averments made at para 4 of the application are not correct. In respect of the Halagevederahalli village is concerned, total notified area under final notification was 199.01 acres. Out of that:

7. It is further incorrect to state that since the Notification u/s 16(2) of the LA. Act dated 18.8.2009 was issued only for 350 acres of land, the possession of only 350 acres of land has been taken. Merely the notification u/s 16(2) of the

Act is issued only for 350 acres of land, it cannot be considered as only the possession of 350 acres of land was taken by the respondent. As held by the Hon"ble Courts drawing of Mahazar u/s 16(1) of the L.A. Act is sufficient for taking possession of the acquired land and notification u/s 16(2) of the L A. Act is not a mandatory.

6. In the light of the above and from a perusal of the material on record, the original claim of the petitioner was to the effect that the land in question is a well developed nursery and hence ought to be exempted from acquisition. The interim prayer seeking stay of the notification inviting tenders for formation of the layout, in so far as it pertained to the petitioner's land, was granted by this court and continues in force to this day. It is only recently in the year 2013, that the petitioner has sought to contend, by recourse to an application for amendment of the writ petition, that the respondents had failed to take possession of the land and had failed to implement the Scheme for formation of the layout.

It is already pointed out the father of the petitioner had challenged the final notification dated 9.5.1994 in Writ Petition No. 30078/1996, the same was disposed of on 4.6.1998 - quashing the final notification and affording liberty to the father of the petitioner to challenge the final notification dated 16.9.1997. That was never done. The notification has thus attained finality. The contention that an award had been passed pursuant to the notification dated 16.9.1997, as per award dated 5.5.1998, which had been done in the face of an interim order restraining dispossession, passed in the above writ petition in Writ Petition No. 30078/1996 and hence invalid. But it is pointed out that the interim directed stay of dispossession pursuant to the notification under challenge namely, 9.5.1994. It is on noticing that the same had been set at naught, the petition in Writ Petition No. 30078/1996 was disposed of with liberty to the petitioner's father to challenge any fresh declaration issued. The award that was passed pursuant to the fresh notification dated 16.9.1997 cannot therefore be said to be in violation of this courts order.

Though it is disputed that the respondent State has failed to take physical possession of the land in question, there is an equally strong assertion that possession had been taken as on 29.9.1999 itself. In any event any further development over the land by the respondents was prevented by virtue of the interim order operating in the present petition. Therefore it cannot be said that the contention as to the rigour of Section 27 of the BDA Act being attracted is tenable.

7. In this regard, the contention of the BDA is relevant. It is contended thus: That the final notification dated 9.5.1994 was issued in respect of the acquisition of the land for Banashankari 5th Stage layout, which was challenged by a large number of land owners. The said writ petitions were disposed of in the year 1996, with liberty to the BDA to consider the objections of the land owners and issue fresh final notification within one year. During the pendency of the said writ

petitions, by taking undue advantage of the interim orders, the land owners as well as the revenue site owners constructed unauthorized constructions. The respondent-Authority has formed the layout in the area which was free from litigation.

It is contended that Section 27 of the BDA Act will apply only when the Authority being in a position to implement the Scheme, has failed to do so. In view of large number of petitions filed challenging the final notifications and in view of the constructions having come up during the pendency of the petitions, the entire layout could not be formed in one stretch. The BDA has formed 1,346 sites and the same have been allotted to the general public and BDA has already spent more than Rs. 5,48,80,000/- for the implementation of the above layout. The BDA has formed the layout in the litigation free area and the layout work will be taken up on the disposal of the pending petitions. It is contended that in view of the pending litigation and in view of the built up area having come up during the pendency of the litigation, it was impossible for the Authority to execute the same with the stipulated period.

In the above background, as contended by the BDA in its statement of objections, in view of the pending litigation and in view of constructions having come up, it was not possible for the BDA to form the layout at one stretch and it has formed the layout in the litigation free area and the development work would be undertaken after the disposal of the pending petitions. In view of all of the above reasons, the writ petition is found to be devoid of merit and is dismissed.