

(2004) 01 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 12348 of 2000 and 36585 of 2001

Byrappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11 A, 16 (2), 4 (1), 6 (1)

Citation : (2004) ILR (Kar) 1950 : (2004) 2 KarLJ 515 : (2004) 2 KCCR 877

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : S. Sundarshan Reddy, in W.P. No. 12348 of 2000 and D.P. Shivaprasad, in W.P. No. 36585 of 2001, for the Appellant; L. Sridhar, Government Advocate for Respondents-1 and 2 and T.S. Amar Kumar, for Lawyers Inc. for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—As these two writ petitions are preferred challenging the very same award and the notification under Sections 4(1) and 6(1) of the Land Acquisition Act, they are taken up for consideration together, heard and disposed of by this common order.

2. The petitioner in W.P. No. 12348 of 2000 is one Sri Byrappa, S/o. Late Doddakempaiah. Whereas, the petitioner in W.P. No. 36585 of 2001, Smt. Kempamma is the wife of Muniyappa and daughter of Late Doddakempaiah. In other words, the petitioners are brother and sister.

3. Land bearing Sy. No. 218/1 measuring 2 acres 17 guntas was notified for acquisition by the first respondent u/s 4(1) of the Land Acquisition Act on 9-5-1988. The said lands were notified in the name of Munipujamma, the original owner of the said property. Doddakempaiah along with his daughter Smt. Kempamma purchased the aforesaid lands under a registered sale deed dated 14-5-1970. As the mutation entries had not been effected in their names, a notification was issued in the name of the previous vendor. After the final

notification, objections were filed on 14-2-1989 by the petitioners herein bringing to the notice of the authorities that they are the owners of the property and the notification is not issued in their names and also opposing the acquisition on several grounds. Overruling the aforesaid objections an award came to be passed on 31-3-1989 in favour of the said Munipujamma. After the passing of the award, notification u/s 16(2) of the Act was issued on 30-8-1989 which was published in the Gazette on 7-9-1989 stating that the possession of the lands has been taken on 28-8-1989. The petitioners challenged the said award before this Court in W.P. No. 25040 of 1990. This Court declined to quash the preliminary and final notification, but quashed the award passed in favour of Munipujamma and directed the Land Acquisition Officer to pass fresh award in the names of the petitioners. The said order came to be passed on 1-4-1991. Aggrieved by the said order of this Court the petitioners preferred a SLP before the Supreme Court which came to be dismissed on 16-2-1996 affirming the order passed by this Court. Subsequently, on 28-8-1989 the impugned award came to be passed in favour of the petitioners. After the passing of the award, the petitioners have preferred these two writ petitions challenging the award on the ground that as per Section 11-A, as the award is not passed within two years from the date of final notification, or at least from the date of the order passed by this Court, namely, 1-4-1991, the entire acquisition proceedings lapses. Therefore, not only they have sought for quashing of the preliminary notification, final notification and award, in the alternative they have sought for a declaration that the entire acquisition proceedings has lapsed.

4. After service of notice, the respondents have filed a detailed statement of objections. The respondents contend these writ petitions filed after the lapse of 8 years from the date of expiry of two years period from the date of writ petition, is to be dismissed solely on the ground of laches and delay in approaching the Court. It is specifically contended that in pursuance of the award passed on 31-3-1989, when possession has been taken on 28-8-1989 and when a notification is issued u/s 16(2) of the Act on 30-8-1989 which is duly published on 7-9-1989, the land has already vested with the Government and, therefore, the question of quashing the acquisition proceedings or holding that the acquisition proceedings has lapsed would not arise. Further, it is contended that after the Government took possession of the land it was handed over to the society, the third respondent herein, which has formed a layout in the lands acquired including the land in question. Annexure-R3 is the approved layout plan and sites have been allotted to various persons on the basis of the said layout plan. Annexure-R4 is the list of persons who are allottees of the said sites and sale deeds have been executed in favour of them which have been registered and they have been put in possession of their respective sites. Annexures-R5 to R10 are the copies of the sale deeds. Some of the purchasers have put up construction and are residing there with their family members and Annexures-R11 to R22 are the photographs produced evidencing the same. It is also contended though the petitioners challenged the acquisition proceedings in W.P.

No. 25040 of 1990 where also they sought for quashing of preliminary and final notification, the Court declined to grant the said relief and the SLP preferred against the said order dismissing the said writ petition was also dismissed by the Supreme Court and, therefore, it is not open to the petitioners to challenge the very same notification over again in this writ petition and this Court is precluded from quashing the said notification as the said question has already been decided and has become final. Therefore, they sought for dismissal of this writ petition.

5. Learned Counsel for the petitioner contended though possession of the land was taken in pursuance of an award passed on 31-3-1989 as the said award came to be set aside by this Court it cannot be said by virtue of the said possession, the property had vested with the Government. Secondly, he contended in view of the language employed in Section 11-A of the Land Acquisition Act, when once within two years from the date of final notification, the award is not passed, the entire acquisition proceedings lapse. In the instant case, at least the said two years has to be computed from the date of dismissal of W.P. No. 25040 of 1990 on 1-4-1991. In support of his contention he relied on a Constitution Bench judgment of the Supreme Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, wherein dealing with the notification under Sections 4(1) and 6(1) of the Act, it has been held that a bare reading of Section 6 of the Act as amended by Act 68 of 1984, leaves no manner of doubt that the declaration u/s 6 has to be issued within the specified time and merely because, the Court has quashed the concerned declaration an extended time period is not be provided. Explanation 1 specifically deals with exclusion of periods in certain specified cases. If it is held that limitation for 3 years for publication of declaration would start running from the date of receipt of order of High Court it would mean reading something into the statute which is not there, and in effect would mean legislation by the Court whereas, it is within the absolute domain of the Legislature. Further, it has been stated that, the purpose for providing the period of limitation seems to be avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification u/s 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification u/s 4(1). Therefore, it was held the prescription of time in that background is, therefore, preemptory in nature.

6. The learned Counsel for the petitioner also relied on the judgment of the Supreme Court in the case of Nutakki Sesharatanam Vs. Sub-Collector, Land Acquisition, Vijayawada and others, where it has been held when the mandatory requirement of a particular section is not followed, not complied with, it would render the acquisition bad in law and consequently if possession has been taken the same has to be returned to the appellant.

7. As against this, the learned Counsel for the society-third respondent relied on the judgment in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, where the Supreme Court has held as under.--

"Under the scheme of the Act, after the possession of the land was taken either u/s 17(2) or Section 16, the land stands vested in the State free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State. u/s 48(1) before possession is taken, the State Government is empowered to withdraw from the acquisition by its publication in the Gazette".

In coming to the said conclusion, the Supreme Court has relied on the judgment in the case of *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, which in turn had relied on an earlier judgment in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, where the question which arose for consideration was whether the notification u/s 4(1) and declaration u/s 6 gets lapsed if the award is not made within two years as envisaged u/s 11-A. Answering the said question, a Bench of three judges have held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdraw from acquisition that too before possession is taken. In coming to the said conclusion, the Supreme Court relied on the following passage in *Administrative Law* by H.W.R. Wade, 7th Edition at pages 342 and 343, where the question was whether violation of the mandatory provisions renders the result of the action as void or voidable.--

"The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however, void becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result".

8. Therefore, from the aforesaid judgment of the Supreme Court it becomes clear when once after initiation of acquisition proceedings under the Land Acquisition Act, after passing of the award possession is taken in accordance with law, the title of the property vests with the Government. After the title so vests, there is no provision in the Land Acquisition Act for divesting the said title. Though, Courts after quashing the entire proceedings may in a given case have the power to direct the Government to restore the possession of the land to the owner of the land it should be only by way of exception. Where third party

interests are intervened, where there is an inordinate delay by the petitioner in approaching the Court, where the entire character of the land is changed even in the event of the acquisition held to be void it would not be a proper exercise of discretion by the Court to direct the Government to restore possession. The aforesaid judgment in D.R. Laxmi's case, supra is rendered by a Bench consisting of three Judges of the Supreme Court who have held that the law laid down by the two Bench Judge of the Supreme Court in Nutakki Sesharatanam's case, supra, where it was held that if the requirements of Section 4 are not complied with, all proceedings had become invalid and possession was directed to be redelivered to the appellant is not correctly laid down and, therefore, the reliance on the aforesaid judgment by the petitioner is of no assistance to them.

9. In the instant case, the petitioners have challenged the acquisition proceedings by filing a writ petition in W.P. No. 25040 of 1990 after the award was passed and in pursuance of the award, the possession was taken by the Government and the land was vested with the Government. Though the petitioner was successful in getting the award set aside, this Court rejected the petition for quashing of the acquisition proceedings. In other words, notifications issued under Sections 4(1) and 6(1) were upheld. That order was upheld by the Supreme Court by dismissing Special Leave Petitions. Therefore, the notifications under Sections 4(1) and 6(1) have become final. It is in pursuance of the said notification the possession was taken by the Government and an award came to be passed on 31-3-1989. After taking over possession, the Government has handed over the land to the society who in turn have formed a layout, allotted sites to [the public,] executed registered sale deeds in their favour, put them in possession, who in turn have put up constructions and are living there with family members. Therefore, not only the character of the land has been completely changed, third party interests in the land have arisen and the land in turn has vested with the third parties. At this length of time, it is not possible to unsettle what has been settled over the years. Though the said award was set aside by this Court that does not have the effect of in any way affecting the vesting of the title in the Government. Therefore, in view of the law declared by the Supreme Court, in the absence of any provision under the Land Acquisition Act for restoring the possession of the land after it has vested with the Government and in the absence of any circumstances which would justify exercise of such power by this Court, I am of the view even though the award is passed after a lapse of two years and in contravention of Section 11-A of the Act it is not possible to quash the acquisition proceedings which have become final or declare that the acquisition proceedings as a nullity. Under these circumstances, I do not find any merit in these writ petitions. Accordingly, they are rejected.