

(2012) 12 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No"s. 35248-251 of 2011 and 35252-255 of 2011 (LA-Res)

C.S. Changappa and Others

APPELLANT

Vs

The State of Karnataka and Mysore Urban Development Authority

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17 (1)
Land Acquisition Act, 1894 — Section 16 (2)

Citation : (2012) 12 KAR CK 0049

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M. Sivappa, for Shri. Anil Kumar, for the Appellant; K.S. Mallikarjunaiah, Government Pleader for Respondent No. 1 and Shri. P.S. Manjunath, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy

1. The petitioners claim that they are residents of Nachanahalli of Srirampura Group Panchayath, Kasaba Hobli, Mysore and are allottees of sites formed by the said Panchayath. It is claimed that Survey No. 50 of Nachanahalli, measuring 1 acre 4 guntas, including 10 guntas of Kharab, which had earlier belonged to one Kullabhovi, was conferred on the Panchayath under Boodhanayagna. The Special Deputy Commissioner, Mysore, by order dated 20.2.1960, granted permission to the Panchayath to grant sites to the villagers. The record of rights for the years 1981 to 1986 and 2006-2007, showed that the lands were conferred under the "Boodhana Yagna". It is claimed that a sketch was prepared in respect of Survey No. 50. Pursuant to the order of the Special Deputy Commissioner, the Panchayath had passed a resolution dated 3.2.1975, to distribute the sites formed in Survey Nos. 50 and 167 of Nachanahalli village. Accordingly, the petitioners were allotted sites formed in Survey No. 50 and were issued Hakku

patras. The petitioners were in possession and enjoyment of the sites.

In the meanwhile, as there was interference by third-parties, the petitioners filed suits for injunction restraining such interference before the trial court, which were decreed by a judgment and decree dated 24.11.2001. Appeals were filed against the said judgment and decree and the same were dismissed, confirming the judgment and decree passed by the trial court holding that petitioners nos. 1 and 2 were owners in possession and enjoyment of site nos. 6 and 5, respectively.

2. When things stood thus, the second respondent-Mysore Urban Development Authority (Hereinafter referred to as the "MUDA", for brevity) issued a preliminary notification u/s 17(1) of the Karnataka Urban Development Authority Act, 1987 (Hereinafter referred to as the "KUDA Act", for brevity), proposing to acquire 34 guntas of land in Survey No. 50 of Nachanahalli Village for formation of Nachanahalli III Stage Extension in Mysore, during January 1992, and a final notification was issued on 3.8.1998. The names of persons from whom the land was acquired was not shown either in the preliminary notification or the final notification, except mentioning as "Bhoodhana Yagna" in the khatedar column.

It is claimed that the land is sought to be acquired without issuing any notice to the concerned, which is illegal and arbitrary and an award is also said to have been passed by the second respondent by issuing notice to the Tahsildar, on the basis of the entry in the revenue records, as "Bhoodhana Yagna".

It is in this background that the petitioners have filed these petitions, seeking to quash the preliminary and final notifications and to declare the acquisition-proceedings as being illegal and arbitrary.

3. The learned Senior Advocate, Shri M. Shivappa, while reiterating the above background, would emphasise that the respondents have completely overlooked the circumstances that the land bearing Sy. No. 50 of Nachanahalli was gifted by way of Bhoodhana Yagna, in favour of the Srirampura Group Panchayath, and this is reflected in the revenue records. The Group Panchayath, acting under the orders of the Deputy Commissioner, in order to provide sites to houseless persons, has formed a layout and house sites formed therein have been allotted in favour of the petitioners and others during the years 1975 and 1976 and Hakku Patras have been issued to such allottees, including the petitioners. The petitioners have thereafter been shown as the khatedars in the revenue records. They have been paying taxes in respect of the property. These events have been completely overlooked, in the authorities having issued acquisition notifications. When the RTC extracts even as of 2006-2007, reflected the land in question as Bhoodhana Yagna, the respondents were required to ascertain, for what purpose it was gifted as Bhoodana and the manner in which it has been utilized, which would have demonstrated that the petitioners in fact had been put in possession of the same. On the other hand, the respondent-authorities having proceeded as if the lands in question stood vested in the State on account of the lands being

shown as Bhoodhana Yagna, results in a denial of the right of the petitioners, which has accrued to them. It is also pointed out that when the Panchayath distributed the sites in favour of the petitioners and others, khatha was effected in the names of the petitioners, which was in respect of both Sy. No. 50 measuring 1 acre 4 guntas and Sy. No. 167 measuring 17 guntas. Insofar as the land in Sy. No. 167 in which sites were formed along with Sy. No. 40, the same has been excluded from the acquisition proceedings. This would also apply insofar as the land in Sy. No. 50 is concerned and hence, the same was not available for acquisition and hence, would contend that the petition would have to be allowed.

4. On the other hand, the learned counsel for the Respondent No. 2 would submit that the several lands of Nachanahalli were sought to be acquired for the formation of the Nachanahalli III Stage Layout. The land in Sy. No. 50 measuring 1 acre 4 guntas consisting of 34 guntas of cultivable lands and 10 guntas of kharab land, the second respondent had obtained the Record of Rights in respect of the lands in question and it was found in Column No. 9 thereof that the land was held under the Bhoodhana Yagna. As the law required the respondent to notify the persons whose names were found in the Record of Rights, and since the said respondent was not required to make any roving enquiry to find out the names of the persons, the preliminary notification had been issued indicating the khatedar as Bhoodhana Yagna, which implied that the land was donated under Bhoodhana Yagna to Shri Acharya Vinobha Bhave, to be utilized for the benefit of landless persons. Therefore, as on the date of the preliminary notification, it apparently was not granted to any person. If there was any such grant, the person's name would have been reflected in the Record of Rights. Incidentally, the preliminary notification was not only published in the official gazette, but also published in two local dailies having wide circulation in the city of Mysore. Therefore, any person interested in the land was enabled to file objections to the acquisition proceedings. The petitioners claiming to be living in the houses constructed on the lands in question, did not file any objections. However, one Hanumamma had filed a writ petition in W.P. No. 2148/1999 before this Court claiming that the land in Sy. No. 50 originally belonged to one Kulla Bhovi and she was claiming as a legal representative of the said Kulla Bhovi. Record of Rights were produced in respect of the land, which however did not indicate the name of Kulla Bhovi either in Column No. 9 or Column No. 12. It was the case of Hanumamma that the entries in the Record of Rights were incorrect and the same had been challenged before the Assistant Commissioner and their appeal had been rejected by an order dated 21.09.1992. Her further contention was that she was not notified of the acquisition proceedings and hence, the said petition was filed. That writ petition was dismissed by an order dated 26.02.1999 by a learned Single Judge of this Court holding that the petitioners had no right to challenge the acquisition proceedings. Aggrieved by it, an appeal in W.A. No. 3616/1999 was filed before a Division Bench, which appeal was also dismissed by a judgment dated 12.01.2000. After the disposal of the writ appeal,

possession of the lands were said to have been taken on 5.12.2000, which was duly notified in the official gazette u/s 16(2) of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act" for brevity).

The Division Bench had incidentally reserved a right, if any, of the appellant, which could be pursued in law and that such a right was not taken away by the disposal of the writ proceedings. No further proceedings were initiated. It is only in the year 2007 that a legal notice was issued by one Ganesh, S/o. late Ramaiah claiming under Kulla Bhovi, the original owner of the land and asserting that it was on 5.1.2004 that he had learnt of the land having been acquired and that it was without notice to him. This was totally contrary to the claim earlier made by Hanumamma who, along with Chikkamma and Dasamma had claimed that they were the legal representatives of Kulla Bhovi. Though there was no declaration by any Civil Court as to the right of such person to claim as a legal representative of Kulla Bhovi, proceedings are said to have been initiated before the Assistant Commissioner for rectification of the entries in the Record of Rights, which had been disposed of and the matter was remitted to the Tahsildar for an enquiry. Against the said order, a revision petition is said to have been filed before the Deputy Commissioner, Mysore District, who had set aside the order of the Assistant Commissioner, directing the Assistant Commissioner to pass fresh orders by an order dated 21.09.1992 and a fresh order appears to have been passed on 30.07.2006 holding that in view of the acquisition of the land, it was open for the legal representatives of Kulla Bhovi to claim compensation. In the course of these proceedings, there were spot inspections conducted by the Tahsildar and the Assistant Commissioner and it was placed on record that there were no structures to be found in the land in Sy. No. 50 and when development works were said to have been undertaken by Respondent No. 2, one Chikkamma claiming to be the legal representative of Kulla Bhovi had got issued a legal notice to state that this Court in a writ petition in W.P. No. 3696/1999, had held that the name of the original owner was not shown in the Record of Rights by mistake and the entry of the name Bhoodhana Yagna in the Record of Rights is a mistake and therefore, they had approached the revenue authorities for correction. This was an incorrect statement made by the said Chikkamma and no such order was in existence which was denied by Respondent No. 2. There was a further claim made by the first petitioner in his legal notice dated 4.2.2009 claiming that he had purchased site No. 6 from the Srirampura Group Panchayath on 12.02.2005 and that he had filed a Civil suit in O.S. No. 631/1999 on the file of the III Additional Civil Judge (Junior Division), Mysore, against Hanumamma, Dasamma and Chikkamma, restraining them from disturbing his possession of the suit property, which is said to have been decreed. The defendants therein had filed an appeal in R.A. Nos. 51, 53 and 57/2002, which was in turn dismissed by a judgment dated 1.09.2009. Hence, the first petitioner Changappa had claimed title and had issued notice that he would be constrained to seek protection against disturbance as against his possession by the Karnataka Slum Clearance Board, to which a reply had been sent, holding that

the lands in question had been acquired and no suit had been filed by Changappa.

5. It is contended that the entire claim of the petitioners that the land had been donated under Bhoodhana Yagna by Kulla Bhovi and that the Deputy Commissioner, Mysore District had permitted the Group Panchayath to form residential layouts, and to allot to persons eligible for allotment and that the petitioners had been allotted the said sites, is incorrect and without any basis. It is contended that the claim of the petitioners that the Deputy Commissioner had granted permission to the Village Panchayaths to utilize Sarkari Gomal land, Gundu Thoppu and Sarkari Karab land for formation of residential sites, is denied and reliance placed by the petitioners on Annexure-"A" to the writ petition, cannot be accepted on the face of it.

It is pointed out that at the relevant point of time, namely in the year 1960, the provision of law that reserved the land for Gomal was Section 39 of the Mysore Land Revenue Code. The Deputy Commissioner did not have any power of appropriation of the gomal land at that point of time and hence, could not have appropriated the same for formation of house sites. Incidentally, in the judgment and decree of the Appellate Court in R.A. Nos. 51, 53 and 57/2002, which are in relation to the very sites in question, there is an observation that during the course of the trial, the defendants had produced a newspaper report to the effect that distribution of house sites in Srirampuram Group Panchayath was fraudulent and in this connection, the erstwhile President of the Panchayath and others had been arrested. However, no further details were sought to be obtained in that connection, in those proceedings. Hence, the very genuineness of the letter dated 20.02.1960 in support of the contention that there was authorization to form house sites in the land donated under the Bhoodhana Yagna, cannot be accepted.

It is common knowledge that lands were donated spontaneously by landlords, on an appeal by Acharya Vinobha Bhave. However, there were no legal formalities observed in the transfer of lands and there was no formal procedure for utilization of the lands so donated. With a view to simplify the legal formalities necessary for transfer of the lands under the Bhoodhana Yagna, the State of Karnataka had enacted the Karnataka Bhoodhana Yagna Act, 1963, (hereafter referred to as the "Bhoodhana Yagna Act" for brevity), under which a Board was constituted for the purpose of managing the lands donated under the Bhoodhana Yagna. Section 24 of the said Act provides for the disposal of the land vested in the Board and therefore, the lands being utilized for the purpose of formation of the residential layouts and allotting it to the petitioners even before the Act had come into force, is not tenable. At best, the land donated under the Bhoodhana Yagna, would have been allotted only to landless persons for agricultural purposes, or could have been used for a community purpose and that the same having been donated for formation of house sites, is without any basis. The legislation for acquisition of lands for grant of house sites is the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972, (hereinafter referred to

as the "1972 Act" for brevity) and the said land in question was not the subject matter of the same. The claim of the petitioners that the Village Panchayath was in a position to form sites and allot the same without any formal transfer in favour of the Panchayath, is itself without any substance. As already contended by the respondents, as on the date of the preliminary notification, the land was shown as Bhoothana Yagna and the petitioners were neither shown as khatedars or anubhavdars and any such alleged formation of house sites and allotment in the year 1975, is without any basis. It is further pointed out that the Bhoothana Yagna Act of 1963 was repealed in the year 1982 and the repealing Act of 1982 has laid down that all lands under the Bhoothana Yagna which had not been distributed as on the said date, vested in the State Government and were to be disposed of in accordance with the provisions of the Karnataka Land Revenue Act, 1964, (hereinafter referred to as the "KLR Act" for brevity), and hence, seeks dismissal of the present petitions.

6. By way of reply, the learned Senior Advocate would insist that reference to proceedings initiated by other third parties cannot be binding on the petitioners. The lands having been shown as Bhoothana Yagna, did not indicate that the lands had vested in the State Government or in favour of a person or other legal entity and hence, the surmises on the part of the respondent in this regard, is not acceptable. The further claim of the Respondent No. 2 that the land has vested in the State Government, is not reflected in the revenue records and therefore, cannot be presumed the alleged acquisition proceedings had been taken without notice to the petitioners who claim to be in possession of the land and therefore, it is contended, would vitiate the entire proceedings. In the light of the above contentions, it is evident that the petitioners have not demonstrated any vested right. It is only their claim that they have been allotted sites by the Srirangapatna Group Panchayath in Nachanahalli village. Insofar as their contention that the land belonged to Kulla Bhovi, the same had been donated and was shown as Boodhana Yagna notwithstanding that sites had been formed and the lands had been allotted to the petitioners, is not under any known procedure of law. There is no material placed on record to indicate as to how the Panchayath was enabled to form such sites in agricultural land. The petitioners merely seeking to place reliance on the Panchayath records or the fact that the petitioners had been recognized as being in possession of the land in question, does not by itself confer a legal right on the petitioners. Admittedly, the petitioners apart from placing reliance on the Khatha certificate issued by the Panchayath, there are no documents disclosing the manner in which the Panchayath could assume ownership of the property in purportedly distributing the sites in favour of the petitioners. There are serious disputed questions of fact which cannot be held in favour of the petitioners, in the absence of cogent material as to the manner in which the land in question has been conferred on the petitioners. On the other hand, there is other material on record which the petitioners are not in a position to address and in the face of which the petitioners cannot claim to have acquired any possessory or other title in respect

of the suit property, especially since the same are claimed as vacant sites and there is no material placed on record to demonstrate the existence of any structures thereon. Therefore, the physical possession of the petitioners is also in serious doubt.

Accordingly, there is no merit in this writ petition, especially since the petitioners have approached this Court in the year 2011, on a self-serving claim that it is only when the possession of the petitioners was sought to be disturbed that there arose a cause of action. Having regard to the several persons who have earlier sought to lay claim over the land claiming in one capacity or the other, the petitioners' case also is without basis and on the face of it, the petitions are liable to be dismissed and are accordingly dismissed in the light of the above observations.