

(2011) 12 KAR CK 0238

In the Karnataka High Court

Case No : Writ Petition No"s. 8504-8509 of 2011 (LR-Res)

G. Rathnavathi Rao and Others

APPELLANT

Vs

Gopala Achari and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1), 6 (1), 9

Citation : (2011) 12 KAR CK 0238

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Ashok Harnahalli, for Sri. Manjunatha V., Sri. Rayappa and Manohar, for the Appellant; Shashidhar S. Karamadi, HCGP for R5 and 6 and Sri. Vyasa Rao K., for R 1, 2 and 4, for the Respondent

Judgement

Ajit J. Gunjal

1. The subject matter of this writ petition is an extent of 53 cents in Sy. No. 137/20A. According to the petitioner, the said land belongs to one Sri. Pattabirama Rao. One Smt. Saraswathamma entered into an agreement to sell in respect of this land with Pattabirama Rao. Suits were filed for enforcement of the agreement, in O.S. No. 185/1964 and 145/1965. The said suits were decreed on 30.11.1965 and in execution proceedings a sale certificate has been issued in favour of G. Keshava Rao, who is the legal heir of Saraswathamma.

2. One Devaki Achari, the mother of respondents 1 to 4 made an application in Form No. 7 for grant of occupancy rights. The said application, on contest has been granted. Incidentally, Pattabirama Rao has been shown as the owner of the land in question. The order passed by the Tribunal granting occupancy rights is passed in the year 1978. The petitioners are assailing the order passed by the Land Tribunal on the ground that they were not made parties to the proceedings and they were not aware of the same.

3. Mr. Ashok Haranahalli, learned Senior counsel appearing for the petitioners

vehemently submits that the order itself is nonest inasmuch as the said Smt. Saraswathamma or for that matter the petitioners were not made parties. He further submits that the land in question was acquired under the Land Acquisition Act.

4. Mr. Vyasa Rao K., learned counsel appearing for respondents 1, 2 and 4 submits that there is inordinate delay in filing the writ petition. He also submits that in the preliminary notification issued u/s 4(1) of the Land Acquisition Act, the legal heirs of the original applicant are also shown as the occupants and the owners of the land. He further submits that in the year 2004, the land in question has been partitioned amongst the family members and third party rights are created.

5. I have perused the order. Apparently, a perusal of the writ petition does not explain as to the inordinate delay. In fact the entire petition averments are silent in that regard. Even otherwise, it is to be noticed that it is not a case where the petitioners can claim that they were wholly unaware of the proceedings inasmuch as in the acquisition proceedings, which were initiated, it is noticed that the notification u/s 6(1) of the Land Acquisition Act was issued on 13.10.2008 and notification u/s 9 of the Act was issued on 31.05.2010. I am of the view that the petitioners cannot be heard to say they were wholly unaware of the proceedings. inasmuch as the names of the legal heirs of Devaki Achari was reflected in the Revenue records and also the notification which was issued u/s 9 of the Act. Therefore, when third party rights have been created, it is very difficult to accept the petition by putting back the clock by 32 years. Having said so, I am of the view that the petition does not merit-consideration. Hence, the following order:

Petitions stand rejected.

6. Mr. Shashidhar S. Karamadi, learned HCGP appearing for respondents 5 and 6 is permitted to file memo of appearance within four weeks.