

(2015) 01 KAR CK 0457

In the Karnataka High Court

Case No : Writ Petition Nos. 52635 to 52638 of 2014 (LA-RES)

Gangambika and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 16, 16(2), 17(4), 4

Citation : (2016) 1 AKR 220 : (2015) 2 KarLJ 446

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : Ian Lewis, for the Appellant; T.L. Kiran Kumar, Additional Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—Petitioners are stated to be children of deceased Rudramma. Petitioners have sought the following reliefs in these writ petitions:

"a. Issue a writ of certiorari, or any other writ, order or direction quashing the notification dated 30-3-1990 under Section 4(1) of the Land Acquisition Act, 1894, under the original of Annexure-A.

b. Issue a writ of certiorari, or any other writ, order or direction quashing the notification dated 9-5-1991 under Section 6(1) of the Land Acquisition Act, 1894, under the original of Annexure-B.

c. Issue a writ of certiorari, or any other writ, order or direction quashing the notification dated 11-9-1996 (wrongly dated as 11-9-1966) under Section 16(2) of the Land Acquisition Act, 1894, with respect to 1 acre 14 guntas, Survey No. 30, Shivanahalli Village, Yelahanka Hobli, Bangalore North Taluk, under the original of Annexure-D.

d. Issue a writ of certiorari, or any other writ, order or direction quashing the award passed by the 2nd respondent in No. LAC. 15/91-92, dated 8-9-1995 with

respect to 1 acre 14 guntas Survey No. 30, Shivanahalli Village, Yelahanka Hobli, Bangalore North Taluk, under the original of Annexure-C.

e. Issue a writ of certiorari, or any other writ, order or direction quashing the corrigendum amended notification dated 18-4-1994 under Section 6(1) of the Land Acquisition Act with respect to 1 acre 14 guntas Survey No. 30, Shivanahalli Village, Yelahanka Hobli, Bangalore North Taluk, under the original of Annexure-L.

f. Declare that the possession of the schedule lands are with the petitioners and restrain the respondents from dispossessing the petitioners from the schedule lands.

g. Pass such other orders as this Hon"ble Court may deem fit, in the facts and circumstances of the above case".

It is the case of petitioners that their mother, since deceased Smt. Rudramma was the owner of 2 acres 14 guntas of land in Sy. No. 30 of Shivanahalli Village, Yelahanka Hobli, Bangalore North Taluk. That in respect of Sy. No. 31, a preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act", for the sake of brevity) was issued on 30-3-1990. The said notification was followed by a declaration and final notification dated 9-5-1991 issued under Section 6(1) of the Act. In both the notifications, notified survey number was Sy. No. 31 and the name of the Khatedar was stated to be Smt. Rudramma, the mother of petitioners. Corrigendum notification was issued on 18-4-1994 indicating that the land proposed to be acquired from petitioners" mother was Sy. No. 30 and not Sy. No. 31. Thereafter, an award was passed on 8-9-1995. That award was in respect of Sy. No. 30 and the award was made in respect of the mother of petitioners, Smt. Rudramma. Subsequently, possession of the land i.e., Sy. No. 30 was taken and a notification under Section 16(2) of the Act was also issued. Petitioners" mother and others had impugned the acquisition in W.P. Nos. 28409 and 29410 of 1991. This is evident from the order of the learned Single Judge of this Court dated 3-1-2014 passed in W.P. No. 2664 of 2008 (LA-RES) Smt. Gangambika and Others Vs. The State of Karnataka and The University of Agricultural Sciences Employees House Building Co-operative Society, . The acquisition was quashed by the learned Single judge of this Court and upheld in the appeal. But, a review petition filed by the respondents was allowed and acquisition was upheld. W.P. No. 2664 of 2008 was filed by these petitioners assailing Government order dated 29-10-2007, notification dated 11-9-1996 issued under Section 16(2) of the Act and Mahazar dated 28-7-1995. Learned Counsel for petitioners states that the writ petition was dismissed and as against the order dated 3-1-2014 passed in W.P. No. 2664 of 2008, Writ Appeal Nos. 788 to 791 of 2014 are pending before the Division Bench. In the interregnum on 5-9-2014, the 2nd respondent has issued the endorsement, which is assailed in these writ petitions.

2. I have heard the learned Counsel for the petitioners and learned Additional Government Advocate, who appears for respondents 1 and 2 on advance notice

and perused the material on record.

3. During the course of submission, learned Counsel for petitioners contended that petitioners have been constrained to approach this Court assailing the acquisition of the land in question primarily because compensation has not been disbursed to petitioners. It is contended that despite filing of the earlier writ petitions, petitioners have a cause of action to assail the very acquisition as in the absence of disbursement of the compensation to petitioners, the entire acquisition is null and void insofar as petitioners are concerned. While drawing my attention to various documents annexed to these writ petitions, learned Counsel pointed out that initially what was notified under Sections 4(1) and 6(1) of the Act was Sy. No. 31, but the name of petitioners' mother was shown as against that survey number and thereafter, corrigendum notifications were issued stating that the acquisition was in respect of Sy. No. 30, which in fact, belong to petitioners' mother and award has also been made in the name of petitioners' mother. But the respondent-authorities have not disbursed the compensation to petitioners' mother or to the petitioners although the award was passed on 8-9-1995. Therefore, it is contended that when petitioners have been deprived of their just compensation for all these years, they are entitled to seek quashing of the very acquisition of their land.

4. Per contra, learned Additional Government Advocate while drawing my attention to order passed by this Court contended that petitioners have no right to once again approach this Court assailing the acquisition as the earlier writ petition filed by their mother, Smt. Rudramma has been unsuccessful inasmuch as the acquisition proceedings have been upheld. That the petitioners had every right to seek disbursement of the compensation once the award had been passed but they have not sought for disbursement of the compensation and on that ground, cannot seek quashing of the acquisition. It is contended that whatever reliefs petitioners have sought in the earlier writ petition, which is now at the appellate stage, would be taken up before the Appellate Court insofar as the challenge made to various Government orders and mahazar in the earlier writ petition are concerned. It is contended that petitioners have no right to once again approach this Court and reagitate their grievances, therefore, writ petitions may be rejected.

5. Having heard learned Counsel for the parties and on perusal of the material on record, it is noted that while initially in the preliminary as well as final notification, the land sought to be acquired was notified as Sy. No. 31 belonging to petitioners' late mother Smt. Rudramma. But a corrigendum was issued on 18-4-1994 to the effect that what was sought to be acquired was Sy. No. 30. In fact, an award has also been passed in respect of Sy. No. 30. The challenge made to acquisition has been turned down by this Court. Once again, petitioners cannot reagitate their grievances with regard to the validity of the acquisition. Prayer sought by petitioners insofar as the challenge to the acquisition is concerned is hit by the principles of res judicata and therefore, all those prayers

which have been made with reference to the validity of the notification cannot be once again agitated by petitioners in these writ petitions.

6. That apart, petitioners are assailing notifications dated 9-5-1991 and 11-9-1996 and the award dated 8-9-1995 and another notification dated 18-4-1994 after a period of two decades and writ petitions have to be rejected on the ground of delay and laches also by placing reliance on the judgments of the Hon"ble Supreme Court.

7. In this context, a plethora of decisions of the Hon"ble Supreme Court on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the Constitution of India cannot extend its hands to such persons who approach the Court after several years can be relied upon. In fact, the Apex Court has held in several decisions that stale claims ought not to be entertained by High Courts exercising writ jurisdiction under Article 226 of the Constitution of India. The recent decisions in that regard are as follows:

"(a) In a recent decision of the Apex Court in *State of Orissa and Another Vs. Mamata Mohanty*, , the consideration of an application where delay and laches could be attributed against a person who approaches in a writ petition is discussed by stating that though the Limitation Act, 1963 does not apply to writ jurisdiction, however, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches.

(b) In the case of *Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others*, , the Apex Court at para 53 has given the relevant considerations, in determining whether delay or laches in approaching the Writ Court under Article 226 of the Constitution of India. The same reads as follows:

"53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the Writ Court under Article 226 of the Constitution of India is now well-settled. They are: (1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That

representations would not be adequate explanation to take care of the delay". (c) Similarly, the Apex Court in the case of *Sawaran Lata etc. Vs. State of Haryana and Others*, has held that when the notification under Section 4 of the Land Acquisition Act, 1894 was issued in the year 2001 and the award was passed in the year 2004, writ petitions filed for quashing of the notification in the year 2009 have to be dismissed on the ground of delay as the litigants who dare to abuse the process of the Court in disregard of the law of limitation, delay and laches should not be encouraged.

(d) In *Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan and Others*, , when the acquisition proceedings were challenged 10 years after notifications were issued, the Apex Court held that the High Courts should not have entertained the writ petition particularly after passing of the award and that the High Court should have dismissed the writ petition at the threshold on the ground of delay and laches.

(e) In *Swaiika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, , the Apex Court has followed its earlier decisions in the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, by observing as follows:

"After the award under Section 11 of the Act was made by the Collector he is empowered under Section 16 to take possession of the land, if the possession was not already taken, exercising power under Section 17(4). Thereupon, the land shall vest absolutely in the Government free from all encumbrances. It is well-settled law that taking possession of the land is by means of a memorandum (panchnama) prepared by the Land Acquisition Officer and signed by panch witnesses called for the purpose. Subsequently, the Collector hands over the same to the beneficiary by means of another memorandum or panchnama, as the case may be. But in this case Section 91 of the BMC Act statutorily comes into play which would indicate that the Land Acquisition Officer while making award should intimate to the Commissioner, Municipal Corporation of the amount of compensation determined and all other expenses. The Corporation shall pay over the same to the Land Acquisition Officer". It was held that the writ petition had been filed after possession was taken over and the award had become final and therefore, the writ petition had to be dismissed on the ground of delay and laches.

(f) The order of the High Court dismissing the writ petition was confirmed by the Apex Court in *Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others*, as the filing of the writ petition was 9 years after the declaration was issued under Section 6(1) of the Act and the delay of 6 years after passing of the award and the delayed filing of the writ petition was a reason for refusing to entertain the prayer made in the writ petition. It was held that in a challenge made to the acquisition of land for the purpose of public purpose Courts have consistently held that the delay in filing the writ petition should be viewed seriously, if the petitioner fails to offer plausible explanation for the delay.

(g) Reference can also be made to another decision of the Apex Court in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, , wherein it has cautioned the High Court not to entertain the writ petitions where there is inordinate delay while exercising jurisdiction under Article 226 of the Constitution of India.

(h) Similarly, in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , it has been opined thus:

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to disturb unless there is reasonable explanation for the delay". (i) In fact in S.S. Balu and Another Vs. State of Kerala and Others, , it has been held that delay defeats equity and that relief can be denied on the ground of delay alone even though relief is granted to other similarly situated persons who approach the Courts in time.

(j) To a similar effect is the decision of the Hon''ble Supreme Court in A.P. Industrial Infrastructure Corporation Ltd. Vs. Chinthamaneni Narasimha Rao and Others, ."

8. The said decisions are squarely applicable to the facts of the present case. In the circumstances, writ petitions are rejected.