

(2014) 01 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No. 22025 of 2012 (LA-BDA)

H. Eraiah and H. Sanjeevaiah

APPELLANT

Vs

State of Karnataka, Bangalore Development Authority and
Special Land Acquisition Officer, Bangalore Development
Authority

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 16(2) 17(3A) 30 31(2)

Citation : (2014) 2 KarLJ 77

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R.L. Patil, for the Appellant; A. Lokanath, Advocate for Respondent Nos. 2 and 3 and Shri H.T. Narendra Prasad, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The petitioners are said to be owners of lands bearing Survey Nos. 2/1 and 6/2, measuring 24 guntas and 28 guntas, respectively, of Gankallu village, Kengeri Hobli, Bangalore. The same are said to have been converted for non-agricultural use as per orders of the competent authority, dated 3.8.2001.

The said lands are said to have been notified for acquisition under the provisions of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the "BDA Act", for brevity). A preliminary notification is said to have been issued as on 15.11.2000, proposing to acquire the same for the formation of the BSK VI Stage Layout. Though the petitioners claim to have filed objections, and which according to them, were not considered, a final notification u/s 19 of the BDA Act is said to have been issued on 21.8.2001. It is stated that under the very same notifications, another extent of land measuring 6 acres bearing Survey No. 88 is said to have been acquired, to which the petitioners had not objected and have

also said to have received the compensation paid under the award in respect of the same. It transpires that the petitioners had approached the State Government and made representations to spare the above lands from acquisition on the ground that there was a grave of a son of one of the petitioners, who had died an accidental death and therefore sought exclusion of the said land bearing Survey No. 2/1, in which the grave was situated. On the basis of the same, the second respondent had visited the spot at the instance of the first respondent, and had submitted a report to affirm that there were two houses, a bore well and a grave in land bearing Survey No. 2/1. And further that no award was passed nor possession was taken of the land in question. It was also reported that possession of the land in Survey No. 6/2 was taken on 24.1.2002 and that only 8 guntas of land was required out of the same for the purposes of forming a road and that the land had not been included in the layout plan.

A Committee, which is said to have been constituted to consider the withdrawal from acquisition of such parcels of land as were not required for the purposes of the layout, though may have been notified, is said to have deferred a decision in respect of the lands in question in spite of the fact that the same were reportedly not included in the layout plan. It was only on a further report being generated that it is said that the Committee had opined that land measuring 24 guntas in Survey No. 2/1 be de-notified and decided to reject the request for de-notification in respect of land in Survey No. 6/2. It is however, stated that the respondents have not issued any formal notification in respect of land in Survey No. 2/1, withdrawing from acquisition. Nor had they taken possession of the land in Survey No. 6/2. The said lands had not been utilized for the purposes of formation of the layout in any manner. Though it was claimed that an award was passed in respect of the land in Survey No. 6/2, the petitioners contend that no notice of any such award had been served on them. It is contended that they have been in uninterrupted possession of the lands to date.

It is in the above background that the present writ petition is filed.

2. The respondents have entered appearance and have filed objections denying the petition averments and it is asserted that subsequent to issuance of preliminary notification, the Bangalore Development Authority (BDA) had issued final notification on 21.8.2011 and pursuant to issuance of the final notification, the respondents had passed award in respect of the land bearing Survey No. 6/2 on 22.12.2001 and thereafter, the BDA had taken possession of the land bearing Survey Nos. 2/1 and 6/2 on 24.1.2002 and thereafter had transferred possession of the above, said lands to Technical Division on 24.1.2002 itself. That subsequent to taking possession of the land bearing Survey Nos. 2/1 and 6/2, the BDA had issued the notification u/s 16(2) of the LA Act. Subsequently, the respondent had deposited the award amount and has referred the matter to Civil Courts u/s 30 and 31(2) of the LA Act.

It is contended that subsequent to issuance of preliminary Notification, the BDA had issued final notification on 21.08.2011 and pursuant to issuing the final

notification, the respondents had passed an award in respect of the land bearing Sy. No. 6/2 on 22.12.2001 and thereafter the BDA had taken possession of the land bearing Survey Nos. 2/1 and 6/2 on 24.1.2002 and thereafter, had transferred the possession of the above said lands to Technical Division on 24.01.2002 itself.

Further, it is contended that subsequent to taking possession of the land bearing Survey Nos. 2/1 and 6/2, the BDA had issued a notification u/s 16(2) of the LA Act. Subsequently, the respondent had deposited the award amount and has referred the matter to Civil Courts u/s 30 and 31(2) of the LA Act. It is hence contended that the petition be dismissed.

The petitioners had, however, questioned the claim of the respondents on facts as none of the assertions of passing an award or taking possession had been with reference to any material, by way of a rejoinder.

It is thereafter that the respondents had sought to produce certain documents to establish that the acquisition proceedings had been completed in all respects, which were produced along with a memo dated 26.11.2013.

3. However, it is pointed out by the learned counsel for the petitioners that the documents sought to be produced by way of a memo unsupported by any affidavit of any officer of the respondent is not maintainable in law and is liable to be rejected. Annexure-R1 is supposed to be a mahazar taking possession of Sy. No. 6/2 measuring 29 guntas of Ganakallu village. On the face of it, Annexure-R1 cannot be acted upon because it is in a printed form and does not record whether the owner was present or not and is drawn mechanically. Four witnesses alleged to have signed cannot be identified, as no details are forthcoming. The names are simply scribbled and appear to be in the handwriting of one person. Such a mahazar cannot be taken as a fact of taking possession and the subsequent notification based on such a mahazar dated 8.5.2003 u/s 16(2) of the LA Act cannot also be accepted. The documents now sought to be produced cannot be believed because in paras 10 and 11 of the Statement of Objections, the respondent asserts to have taken possession of Survey Nos. 2/1 and 6/2 together on the same day and the notification u/s 16(2) also is factually incorrect because admittedly, in respect of Survey No. 2/1, neither an award is passed nor is possession taken. If possession were to be taken as contended, the first respondent could not have written to the second respondent as per Annexure-S dated 8.9.2011, to find out as to who is actually in physical possession of the land. The petitioner believes that the query is not answered by the respondents.

4. Since the respondents did not actually take physical possession of the lands in question, they were not able to implement the Scheme even to this day. The strong reason as to why they did not take actual possession is admittedly, Survey No. 6/2, according to their own document, did not form part of the layout. Though the respondents claim that 8 guntas of land was required for

formation of the road, no road as on today is formed. The latest photographs of Survey No. 6/2 taken on 22.11.2013 are produced herewith to demonstrate the same. The copies of the latest photographs are produced as Annexure-T.

It is important to note that under the same notification, Survey No. 88 of Hemmigeepura Village measuring 5 Acres, 24 Guntas which belonged to the first petitioner was notified, possession is taken, award is passed which is received by the petitioner and it is part of the layout. It cannot be believed that petitioner who co-operated in respect of Sy. No. 88 could not have co-operated insofar as Sy. No. 6/2 is concerned. The petitioners were not notified before drawing up of the so-called mahazar of possession because, the respondents have never taken possession.

5. In the light of the above contentions, it is seen from the record that the respondents claim that the layout in question has been formed and the Scheme is substantially implemented. It is not however, claimed by the respondents that the land of the petitioners, in question, has been utilized in the formation of the layout. Therefore, it would be necessary to examine whether from the material on record, it could be said that the respondents have indeed taken possession of the land in question.

On a plain examination of the Mahazar, under which the respondents claim to have taken possession of the lands, it is seen that as pointed out by the learned counsel for the petitioner, on the face of it, the same cannot be acted upon, because it is in a printed form and does not record whether the owner was present or not and is drawn mechanically. The four witnesses alleged to have signed cannot be identified, as no details are forthcoming. The names are simply scribbled and appeared to be in the handwriting of one person. Therefore, such a mahazar cannot be taken as a fact of taking possession and the subsequent notification based on such a mahazar dated 8.5.2003 u/s 16(2) of the LA Act cannot also be accepted.

The documents now sought to be produced cannot be taken note of as the respondent, in its Statement of Objections, asserts to have taken possession of Survey Nos. 2/1 and 6/2 together on the same day and the notification u/s 16(2) also is factually incorrect because admittedly, in respect of Survey No. 2/1, neither an award is passed nor is possession taken.

It is further evident that since the respondents did not actually take physical possession of the lands in question, they were not able to implement the Scheme even to this day. Though the respondents claim that 8 guntas of land was required for formation of the road, no road as on today is formed, which is evident from the latest photographs produced by the petitioners.

Coupled with this, it was reported more than once by the respondent's personnel themselves that the lands were not included in the layout plan. Therefore, if it can be said that the factum of taking of possession is in conformity with the established conditions that require to be met, which are succinctly set out by the

apex court in the case of Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, , as under:

- i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
- iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
- iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.
- v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

The further circumstance that the land in question is not utilized in any manner for the formation of the layout would attract Section 27 of the BDA Act, in that, though the Scheme of formation of the layout may have been substantially implemented, the pocket of land of the petitioners is left untouched and the Scheme would to that extent lapse.

Consequently, the writ petition is allowed, it is declared that the acquisition proceedings in so far as the subject lands are concerned are null and void for the reasons stated above.