

(2015) 03 KAR CK 0459

In the Karnataka High Court

Case No : Writ Petition No. 39865 of 2014 (LA-BDA)

Lakshmmamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 16(2)

Citation : (2015) 4 KarLJ 147

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

Bench : Single Bench

Advocate : Papi Reddy G., for the Appellant; Sriyuths T.L. Kiran Kumar, Additional Government Advocate, C.R. Gopal Swamy and T.N. Raghupathy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—Petitioners have sought a declaration in the following terms:

"(a) declare that the Preliminary Notification No. BDA/SALAO/03 PR/301/77-78, dated 3-11-1977, as Annexure-E issued by the respondent 2 and Final Notification No. HUD 35 MNJ 78, dated 13-11-1980 as Annexure-F issued by the respondent 1 to acquire the schedule property is lapsed or abandoned by holding that the right of the respondents, if any, over the schedule property was extinguished on account of the failure on the part of the respondents in discharging their statutory duties to follow the imperative legal procedure to pass an award, take over possession and utilize the schedule property for the purpose for which it was notified".

The said relief is in respect of the scheduled property comprising of land bearing Sy. No. 246/3 of Banaswadi Village, Krishnarajapuram Hobli, Bangalore East Taluk, measuring 1 acre 1 gunta, morefully described in the schedule given to the writ petition.

This writ petition has been listed to consider I.A. No. 1 of 15 for impleadment

and I.A. No. 2 of 15 for vacating interim order granted by this Court on 26-11-2014. Both those applications have been filed by Smt. Bhavya R. While considering those applications, I have heard learned Counsel for respective parties at length.

2. Petitioners claim to be the owners in possession and enjoyment of the scheduled land together with residential building, borewell and other structures. The said land was earlier part of Banaswadi Village, which land along with other lands were notified for acquisition by respondents by issuance of preliminary notification under Section 17(1) of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "BDA Act, 1976") by the second respondent-Bangalore Development Authority ("BDA" for short) for the purpose of formation of HRBR Layout and MBR Layout. Petitioners had filed objections to the proposed acquisition. Thereafter, declaration and final notification under Section 19(1) of the Bangalore Development Authority Act, 1976 was issued on 13-11-1980. Petitioners have sought a declaration that those notifications have lapsed insofar as the scheduled land is concerned, as no award has been passed in respect of the scheduled land and possession has also not been taken by the respondent-authorities.

3. I have heard learned Counsel for petitioners and learned Counsel for respondents as well as learned Counsel for impleading respondent and perused the material on record.

4. The main contention of petitioners' Counsel is that possession of the scheduled land has not been taken by the respondent-authorities and that issuance of notification under sub-section (2) of Section 16 of the Land Acquisition Act, 1894 is not conclusive of taking over possession of the scheduled land, as petitioners are in actual possession of the land in question. Even if a notification under sub-section (2) of Section 16 of the said Act was issued, no development of the scheduled land took place till the year 2005 and it is only in the year 2005 that the respondent-BDA sought to grant sites and that the petitioners have approached the Civil Court by filing O.S. No. 7088 of 2005, seeking relief of declaration and permanent injunction. Subsequent to dismissal of the said suit on 4-1-2013, petitioners had filed RFA No. 215 of 2013. On withdrawal of the said appeal on 20-2-2014, petitioners have sought the aforesaid reliefs which are maintainable in law.

5. Elaborating on the said submission, learned Counsel for petitioners placed reliance on certain decisions of this Court to contend that when respondent had not taken any steps to develop the scheduled land till issuance of notification, announcing auction of sites therein, the acquisition must be deemed to have lapsed. It is also contended that there is no material placed by the respondents to the effect that possession was taken by the respondents and that in the absence of taking over possession, acquisition has not been completed and for that reason, this Court must hold that acquisition has lapsed insofar as the scheduled land is concerned. He placed reliance on following decisions of this

Court:

(1) Vijaya Bank and Employees Housing Co-operative Society Ltd. Vs. Assistant Commissioner, Bangalore South Sub-Division and C. Subbaiah Raju, (2008) 218 CTR 466 : (2007) 3 KCCR 1626 : Vijaya Bank and Employees Housing Co-operative Society Ltd. Vs. Assistant Commissioner, Bangalore South Sub-Division and C. Subbaiah Raju, (2008) 218 CTR 466 : (2007) 3 KCCR 1626 ;

(2) Sri. R. Adhikesavulu Naidu and Others Vs. The State of Karnataka, The Commissioner Bangalore Development Authority and The Special Land Acquisition Officer Bangalore Development Authority, (2011) 5 KarLJ 524 ;

(3) Unreported decision in the case of Ashwathamma and Others v. State of Karnataka and Another, in W.P. No. 37277 of 2013, disposed on 29-1-2014;

(4) Unreported decision in the case of K.N. Anandarama Reddy v. State of Karnataka in W.P. No. 52989 of 2013, disposed on 29-1-2014.

and submitted that a similar order may be made in this writ petition also.

6. Per contra, learned Counsel for second respondent-BDA with reference to its statement of objections contended that after issuance of the declaration and final notification, award was passed on 29-10-1982 in the name of the petitioners with regard to scheduled land. Thereafter, possession was taken on 12-11-1982 and the fact of taking possession was notified by issuance of notification under sub-section (2) of Section 16 of the Land Acquisition Act, 1894 (Karnataka Amendment). That notification was gazetted on 15-3-1983, which is conclusive proof of the fact of having taken possession. Therefore, petitioners at this point of time cannot contend that acquisition is not completed. In fact, compensation has been deposited before the Civil Court and the petitioners have every right to withdraw the compensation amount, if not already withdrawn. He also drew my attention to the fact that petitioners had filed O.S. No. 7088 of 2005, which suit was dismissed by the Civil Court on the basis of the clear finding given therein, with regard to the fact that scheduled land was acquired by the respondents and after being unsuccessful in the suit and withdrawing the appeal arising therefrom, have now filed writ petitions at this point of time seeking a declaration which is not available to the petitioners. He therefore contended that the writ petitions may be dismissed.

7. Learned Counsel for impleading respondents also adopted the submissions of the learned Counsel for BDA. Learned Additional Government Advocate also supported the contentions of the learned Counsel for BDA and contended that there is no merit in these writ petitions. He placed reliance on the decision of this Court in K.C. Basavegowda and Others v. Seshappa Setty and Others ILR 1976 Kar. 1694, to contend that issuance of notification under sub-section (2) of Section 16 of the Act shall be evidence of the fact of taking possession.

8. Having heard learned Counsel for parties, the only point that arises for my consideration is as to whether the petitioners are entitled to the declaration as

sought for by them.

9. At the outset, it is noted that preliminary notification is dated 3-11-1977 and declaration and final notification is dated 13-11-1980. The second respondent-BDA in its statement of objections has stated that award was passed and approved on 29-10-1982 thereafter notices were issued to the interested persons on 6-11-1982, possession of the scheduled land was taken over on 12-11-1982 and notification under sub-section (2) of Section 16 of the Act was issued on 15-3-1983 and the same was published in the Karnataka Gazette on 20-10-1983.

10. Learned Counsel for petitioners contended that even if notification is issued under sub-section (2) of Section 16 of the Land Acquisition Act, 1894, it is necessary to prove that possession had been taken and that issuance of notification under sub-section (2) of Section 16 would not be conclusive proof of taking possession. Such a contention cannot be accepted for the reason that under sub-section (2) of Section 16 of the Land Acquisition Act, 1894 (Karnataka Amendment), it is clearly enunciated that the act of taking such possession may be notified by the Deputy Commissioner in the final gazette and such notification shall be evidence of such fact. Statutory presumption regarding conclusive proof of taking possession has been considered by a Division Bench of this Court in Sri M. Maridev and Others Vs. State of Karnataka, The Bangalore Development Authority and The Special Land Acquisition Officer, (2009) 3 KCCR 2199 and it has been held that non-issuance of notification under sub-section (2) of Section 16 would not vitiate the acquisition. But if the notification is issued under that sub-section, then it is conclusive proof of taking possession and the same would not suffer either from presumption or assumption that actual possession has not been taken from the owners or occupants of the land. Therefore in view of the dictum of the Division Bench of this Court, it has to be held that issuance of notification under sub-section (2) of Section 16 of the Act, which is after taking over of possession of the land sought to be acquired would be conclusive proof and that nothing more requires to be done or shown in order to evidence that fact. Therefore, in the instant case, when notification issued under sub-section (2) of Section 16 of the Act was published in the Karnataka Gazette on 20-10-1983, it must be held that possession of the scheduled land was taken and therefore the contention that acquisition has not been completed cannot be accepted.

11. That apart, what is necessary to be noticed in this writ petition is that when the notification for auction of the sites formed on the scheduled land was notified, petitioners rushed to the Civil Court by filing O.S. No. 7088 of 2005, seeking a declaration that they are the original owners of the scheduled land and for permanent injunction. The suit was contested by defendant namely BDA. The following issues were raised and answered in the suit:

"(1) Whether the plaintiffs prove that they are the owners of the schedule property?

(2) Whether the defendant proves that land measuring 1.18 acres in Sy. No. 246/3 of Basaswadi Village was acquired?

(3) Whether the plaintiffs are entitled to the declaration sought for?

(4) Whether the plaintiffs are entitled to the permanent injunction sought for?

(5) To what decree or order?

My findings on the above issues are as under:

1. In the negative.

2. In the affirmative.

3. In the negative.

4. In the negative.

5. As per final order".

12. One of the issues in the suit was as to whether the defendant-BDA had proved that the scheduled land had been acquired. While answering that issue, the Trial Court held that the scheduled land has been acquired and gave a categorical finding in that regard. The Trial Court dismissed the suit with costs. Though the petitioners filed RFA No. 215 of 2013 assailing the judgment and decree passed in the aforesaid suit, they did not prosecute the appeal and withdrew it. Though they had sought liberty to avail other remedies, no liberty was given to the petitioners to avail other remedies. In fact, the suit was dismissed and half of the Court fee was refunded after withdrawal of the appeal. Petitioners have filed this writ petition on 19-8-2014. The categorical findings given by the Trial Court vis-a-vis the acquisition proceedings and also findings given above in this writ petition would disentitle the petitioners to any declaratory relief as sought for by them.

13. The following decisions relied upon by the petitioners do not assist them in any manner:

(a) In Vijaya Bank Employees Housing Co-operative Society Limited's case, possession of the lands had not been taken over by the Deputy Commissioner and handed over to the beneficiary. The learned Single Judge hence held that the land did not vest with the State Government and the title of the landowner therein had not been divested. Therefore, the Tahsildar of the Taluk could not have mutated the name of the petitioner therein i.e. the beneficiary in the revenue records and the mutation had been rightly set aside by the Assistant Commissioner.

(b) In R. Adhikesavulu Naidu 's case, this Court noted that admittedly possession of the said land had not been taken over and the scheme had lapsed in terms of Section 27 of the B.D.A. Act. The land therein had never vested in the State Government and therefore it was held that the acquisition was in complete

and the scheme had lapsed.

(c) In W.P. No. 37277 of 2013, disposed on 29-1-2014 this Court noted that there was absence of material to demonstrate that BDA had taken possession of the land in question. That aspect was directly an issue in a civil suit before a Competent Court and a decree suffered by the BDA had remained unchallenged and had attained finality. Thus, BDA could not contend that possession had in fact been taken particularly in the absence of supporting material to establish the same. In the above premise, this Court had held that when possession had never been taken in time and there was no substantial development as required in law, it would imply that the scheme was deemed to have lapsed and it was so declared.

(d) Similarly, in W.P. No. 52989 of 2013 disposed on 29-1-2014, on facts it was held that possession had not been taken, as the mahazar was not drawn in accordance with law and the identity of the witnesses was dubious and signature of the Competent Authority was not forthcoming except for a rubber seal on the document, by which possession was sought to be taken. It was also not the case of the BDA therein, that a notification under Section 16(2) of the Land Acquisition Act, 1894 had been issued. In the above circumstances, this Court held that Section 27 of the BDA Act, was attracted and it was declared that the scheme had lapsed insofar as the land of the petitioner therein was concerned.

14. The facts in the aforesaid cases are totally distinct from the present case. As already noted, in the instant case, possession of the land in question was taken and a notification under Section 16(2) was issued on 12-11-1982, which was gazetted on 15-3-1983. Therefore, the land had stood vested with the acquiring authority. Therefore, at this point of time, petitioner cannot contend that there was a failure on the part of the respondents to pass an award and take possession of the land in question and therefore the acquisition had lapsed. The aforesaid judgments are not applicable to the present case. As stated earlier, the decisions relied upon by the petitioners do not assist them in any manner.

15. Petitioners have only indulged in forum shopping that too after issuance of the auction notification in the year 2005. In fact, petitioners have no grievance with regard to the manner or acquisition of the scheduled land, it is only declaratory relief which is sought in the year 2014 whereas the acquisition proceedings were completed as early as in the mid eighties. There is no merit in this writ petition. This writ petition is nothing but a speculative exercise. Therefore, writ petition is dismissed, however without any order as to costs. In view of the dismissal of the writ petition, application filed by the impleading respondents would not call for any orders and is to be filed.