

(2023) 01 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No. 42777 Of 2012 (LA-BDA)

Lakshmmamma & Others

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 23-01-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5, 5A, 6(1), 16(2)
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Constitution Of India, 1949 — Article 300A

Citation : (2023) 01 KAR CK 0035

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : K Shashikiran Shetty, M Sreenivasa, R Srinivasa Gowda, S P Shankar, G Lakshmeesh, T S Venkatesh

Final Decision : Dismissed

Judgement

Krishna S Dixit, J

1. Petitioners claiming to be the successors-in-interest of one Mr.L.Narasimhaiah, have filed this petition 17.10.2012 for laying a challenge to the 1985 acquisition of the subject land fairly described in the schedule.

2. Learned Sr. Advocate Mr.Shashi Kiran Shetty falters the acquisition arguing that: the land is not required for the purpose for which it is acquired because the earlier proposals for acquisitions have been already dropped and the Respondent-Society itself has said about non-requirement; it is a land granted to Scheduled Caste persons under the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and therefore, cannot be acquired casually; possession continues with the Petitioners till date and therefore, acquisition has lapsed u/s 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; the 8th Respondent-middlemen namely C.V.L.Shastry

was not their land owners attorney and he has not handed the compensation received from the government/society. So arguing, he seeks allowing of the Petition.

3. After service of notice, the State and SLAO have entered appearance through the learned AGA; the Respondent-BDA & its officials are represented by their Panel Counsel; the Respondent-Housing Society speaks through its Panel Advocate; the State and the BDA have filed their Statement of Objections opposing the Petition controverting the stand of Petitioners. The Panel Advocate for the Housing Society has filed a Memo offering to pay additional sum of compensation with interest for buying peace. All the advocates make vehement submissions in justification of the acquisition on merits, on enormous delay & latches and non-impleadment of allottees of the sites.

4. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court declines indulgence for the following reasons:

(A) AS TO DELAY & LATCHES:

(i) The subject acquisition process was initiated vide Preliminary Notification dated 16.01.1985 issued u/s 4(1) of the erstwhile Land Acquisition Act, 1894; the same was published in the Official Gazette on 21.01.1985; this was followed by Section 5 enquiry after due notice to the then khatedars; the Final Notification u/s 6(1) was issued on 14.02.1986 and it was gazetted on 28.02.1986; the award was passed on 12.08.1987; the government granted approval in December 1987; possession of the land was taken over by the government by issuing Section 16(2) Notification and later, the same has been delivered to the Respondent-Housing Society, which got the approved sanctioned plan and formed the layouts; the Society has executed & registered a Relinquishment Deed dated 5.6.1996 comprising the petition land in favour of BDA; all that would enure to the benefit of allottees of the sites in the layouts concerned; the petition is filed on 17.10.2012 and thus, there is an inordinate delay of more than a quarter century in approaching the court with no plausible explanation therefor.

(ii) The Apex Court and this Court have time & again frowned upon the belated challenges to the acquisition of lands, more particularly when such acquisitions are for the housing purposes, the population of the country having enormously bulged and the right to meaningful life and right to residence being the constitutional guarantees. In *Municipal Corporation of Greater Bombay vs. Industrial Development Investment Company Private Limited* (1996) 11 SCC 501, it is observed:

“29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the court should loathe to quash the notifications...

35. ...Such a belated writ petition, therefore, was rightly rejected by the learned

single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct.”

(iii) There is another finer aspect of the matter: the land in question under the provisions of the Bangalore Development Authority Act, 1976, has been relinquished in favour of BDA as part of the bargain in getting the approval to the layout plan; the said land along with civic amenities, etc., has to be retained as it is for the benefit of the residents of the layout, though such a layout has been formed in the land adjoining the same. Therefore, the contention of Mr.Shetty that the petition land has been retained intact without any development and therefore, can be restored to his clients, is factually incorrect & legally untenable. An argument to the contrary would militate against the statutory norms in accordance with which the private layouts are approved by the BDA, say to the extent of about 55% of the land, the remaining 45% being required to be kept for civic amenities, etc.

(iv) The contention of the Petitioners that twice the proposal for acquisition earlier has been dropped after considering the objections of the land owners and this land that was alienated in violation of 1978 PTCL Act, has been ordered to be restored and accordingly, it is given back by the Asst. Commissioner vide order dated 15.10.1999, are irrelevant in adjudging the delay & laches; so also, Petitioners injunctive suit in O.S.No.2963/2006 decreed on 24.09.2007; all they are clandestinely structured to defeat the statutory acquisition and to divest the title of the Society, to say the least, as rightly argued by learned AGA. It is more so because in the PTCL proceedings, the order of restoration specifically mentions about the proceedings collateral to the acquisition. It is not that the land owners are naive having no exposure to the outer world; they have fought umpteen number of court cases and the proceedings before the authorities. There is no reason as to why they did not challenge the subject acquisition within a reasonable time.

(B) AS TO DROPPING OF EARLIER ACQUISITIONS AND ITS EFFECT ON THE ACQUISITION IN QUESTION:

(i) Mr.Shetty is right in contending that the land owner Sri.L.Narasimhaiah had filed W.P.No.24011/1992 laying a challenge to the earlier acquisition. However, the BDA had stated that the subject land was not put in acquisition at all and therefore, the learned Single Judge stated ‘...hence, this petition cannot survive for consideration and it is liable to be dismissed’ vide judgment dated 4.2.1997. If the land owner could file such a petition way back in the year 1992 there being no Notification for the acquisition at all, it is un-understandable as to how he could keep quiet without laying a challenge to the subject acquisition proceeding made for the benefit of Respondent-Housing Society and not BDA. Even otherwise, in adjudging an acquisition, the fact that an earlier proposal has been dropped on consideration, pales into insignificance. What the court has to see is

whether what is challenged is in accordance with law or not and not the earlier abortive acquisition.

(ii) Petitioners predecessor Mr.L.Narasimhaiah had alienated the subject land dated 21.06.1983 by way of a thirty year lease in favour of a third party, in violation of the provisions of 1978 PTCL Act and thereafter, he got the same voided by obtaining the order dated 15.10.1999 in KSC.ST.3:96-97 at the hands of the Asst. Commissioner. He somehow secured a so called restoration of the land at the hands of the Tahasildar vide order dated 8.11.2000 at Annexure-P. The said order mentions about BDA having not acquired the land as is reflected in his W.P.No.24013/1992 disposed off on 4.2.1997. The entries have been mutated pursuant to restoration order, may be true. But what bewilders this court is that Mr.Narasimhaiah has not mentioned about the prior acquisition that is now put in challenge here though the same was fully accomplished by taking possession from the land owner and putting the same at the hands of Society which has got the approved plan after relinquishing the said land by a registered instrument. Why the registered instrument is not acted upon by the revenue authorities, leaves much to be imagined. The checkered history of the case only reminds this Court of 'Alice in Wonderland' by Lewis Carroll (1865).

(iii) The vehement submission of Mr.Shetty that the land owners had filed the civil suit and obtained an injunctive decree against the BDA by way of compromise, is not much relevant for adjudging the validity of the acquisition in question which eventually resulted into transfer of the subject land to the Society and the same being subsequently relinquished in favour of the BDA. There was no title issue and therefore, nothing has been stated about the title, be it of the Society or of the State or of the BDA. That being the position, much milk cannot be derived from the injunctive decree for invalidating the subject acquisition, as rightly argued by learned counsel for the Housing Society and the learned Panel Counsel appearing for the BDA. An argument to the contrary would result into undesirable consequences of divesting the title to the subject land in gross repugnance to the effect of acquisition that has been accomplished decades ago.

(C) AS TO C.V.L.SHASTRY BEING THE MIDDLEMEN AND NO GPA HAVING BEEN GIVEN TO HIM:

(i) The vehement submission of Mr.Shetty that the acquisition proceedings are vitiated because of involvement of the middlemen Mr.C.V.L.Shastry in the light of HMT House Building Cooperative Society vs. Syed Khader AIR 1995 SC 2244, is bit difficult to countenance. Reasons for this are not far to seek: firstly, no material is placed on record as to whether Mr.Shastry acted as the middlemen in influencing the acquisition process; in fact, even such a plea is not taken with material particulars. The ratio in the said decision therefore does not come to the aid of the Petitioners. Assuming otherwise, such a contention cannot be countenanced for invalidating an accomplished acquisition, challenge to which is laid after decades, more particularly, the third party interest having been created.

(ii) The contention of Petitioners that their predecessor Mr.L.Narasimhaiah had not executed any GPA in favour of Mr.C.V.L.Shastry, does not merit acceptance when decades have lapsed since the execution of alleged GPA and the GPA holder himself having executed the acknowledgement of receipt of the compensation amount. An offshoot argument that Mr.Shastry having received the compensation amount has not handed to the land owner, virtually amounts to admitting that he was the GPA holder and that he had received the compensation amount. An agent constituted by virtue of GPA having given consent to the acquisition in terms of the power reserved under the instrument, if has not handed the compensation to the land owner, that is no ground for invalidating the acquisition. It is a matter between the Agent and the Principal and it has nothing to do with acquisition proceedings in question.

(iii) The contention of the Petitioners that they or their predecessors had never executed any GPA in favour of anyone much less in favour of C.V.L.Shastry is difficult to countenance, there being no material particulars in the pleadings as to fraud & forgery. It has been well settled that the ground like fraud, fabrication & forgery should have all material particulars pleaded and in the absence thereof, the same does not avail.

(D) AS TO LAND BEING NOT REQUIRED FOR THE SOCIETY:

(i) The vehement submission of Mr.Shetty appearing for the Petitioners that the proposal for acquisition having been dropped twice earlier, there is really no requirement of the subject land for the benefit of the Society, is too farfetched an argument. Whether the land is required or not for a public purpose, is essentially a matter lying in the domain of the executive and a Writ Court cannot run a race of opinions, subject to all just exceptions into which argued case of the Petitioners does not fit. In fact, the contention that the BDA had dropped the acquisition earlier, runs counter to the observations made by a Coordinate Bench in W.P.No.24011/1992 filed by Mr.L.Narasimhaiah. What is observed in the judgment dated 4.2.1997 is that this land was not notified at all and therefore, the question of dropping acquisition does not arise.

(ii) The fact that earlier acquisition proposal vide Preliminary Notification dated 28.03.1978 of the subject land for the intended benefit of Bangalore University was dropped vide order dated 12.02.1980 after Section 5A enquiry, is not much relevant for adjudging the validity of the subsequent acquisition put in challenge. The Bangalore University did not need the land, is not a proof that the Respondent-Housing Society did not need it. What all factors enter the fray of decision as to requirement of the land, are not judicially assessable given the constraint which the courts inherently have. Admittedly, Mr.C.V.L.Shastry has given consent for acquisition and accordingly, the consent award has been passed and he has received the compensation too. It hardly needs to be stated that acquisition of private land for being allotted to Housing Society is treated as being for public purpose since housing problem has to be addressed consistent with constitutional aspirations.

(iii) The contention of Mr.Shetty that so much land was not required for the Respondent-Housing Society if accepted, would amount to the court taking the decision which under the statutory scheme, the government of the day has to take. The Society has relinquished the subject land in favour of the BDA as a matter of statutory requirement and it is a condition for securing the approval to the Layout Plan. It does not deviate from the concept of public purpose merely because no layout as such has been formed in the said land. What the Apex Court said in *Gulam Mustafa vs. State of Maharashtra* (1976) 1 SCC 800 as under is a complete answer to such a submission:

"Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration..."

(iv) The contention of Mr.Shetty that the Secretary of the Housing Society himself has given a letter dated 30.05.1994 addressed to Mr.Narasimhaiah that the possession of the land has not been taken over and the Society has no objection for leaving the land in favour of the owner, is bit difficult to accept. In fact, the very Society happens to be the contesting Respondent to the Petition which has filed an elaborate Statement of Objections more than justifying acquisition. The compensation for the acquired land has already been received by Mr.C.V.L.Shastry as admitted in the Petition itself. This apart, the Society's Resolution mentioned in the subject letter has not been placed on record nor any explanation is offered for not producing it, either. Therefore, much credence cannot be given to the letter allegedly issued by the Secretary. It is open to the Society and the Petitioners to prosecute the author of the letter if they so desire.

(E) AS TO 'LAND GRANTED TO SC/ST CANNOT BE ACQUIRED:

(i) A plea has been loosely taken up in the Petition that the subject land has been granted by the government to the members of Scheduled Caste and that the same having been alienated in favour of the grantee vide agreement dated 21.06.1983, has been restored to him by the Asst. Commissioner vide order dated 5.10.1997 and therefore, the same cannot be notified for acquisition, appears to be too farfetched an argument. The acquisition of private property for public purpose is recognized in all civilized jurisdictions. The fundamental Right to Property guaranteed u/a 19(1)(f) no longer avails as such after the 42nd Amendment to the Constitution. Article 300A although guarantees Right to Property, provides for acquisition in accordance with law. The erstwhile 1894 Act falls within the expression 'in accordance with law'. The compensation admittedly has been paid.

(ii) After all, the Petition land is a 'granted land' and not the land earned by Mr.L.Narasimhaiah by his toil. The instrument of grant or the law under which the

grant is made, does not prohibit compulsory purchase of the granted land in accordance with the Land Acquisition Act, 1894. Even private lands belonging to temples, churches & mosques are not exempt from acquisition. If earned property can be acquired, it sounds illogical that the property granted by the State cannot be acquired. Added, the acquisition of the land in question is made with the consent of the GPA holder of the land owner and the compensation has been paid. It is not that the State has snatched away the subject land without giving any money or for a song. The law relating to acquisition does not differentiate between the land owners on the basis of the caste/religion to which they belong, when it comes acquisition of their property for public purpose.

(F) AS TO FAIR STAND OF THE HOUSING SOCIETY IN OFFERING SOME MORE COMPENSATION:

(i) During the course of the argument, learned Panel Advocate appearing for the Respondent-Housing Society submitted that for buying peace, his client is ready & willing to pay to the Petitioners collectively the award amount with interest, once again, notwithstanding the receipt of compensation by Mr.C.V.L.Shastry, who happen to be the GPA holder of the land owner Mr.L.Narasimhaiah. He hastens to enter a caveat that this gesture on the part of his client should not be construed as an admission that the compensation amount has not been paid or that possession of the land has not been taken. This is absolutely fair & appreciable. At times, such a bargain becomes advisable so that the peace is bought and dispute is buried.

(ii) The counsel for the Housing Society on instruction from his client has filed the Memo dated 20.1.2023 to the above effect, which reads as under:

"The undersigned submits that though the Relinquishment Deed is executed in favour of BDA, respectfully heeding to the suggestions that came up in the course of Arguments, the 7th Respondent is willing to pay the amount awarded by LAO for acquisition of Two Acres of land from Petitioners, together with Bank's rate of interest, in the interest of justice & equity. This submission is made on instruction of party on Phone."

However, learned counsel on record appearing for the Petitioners submits that his clients are not ready & willing to accept this offer. Be that as it may.

In the above circumstances, this Writ Petition being devoid of merits, is liable to be dismissed, costs reluctantly having been made easy.