

(2015) 07 KAR CK 0038

In the Karnataka High Court

Case No : Writ Appeal Nos. 1522 of 2009, 3124 of 2014, 1490 of 2009, 4970 of 2014 and 1024 of 2014 (LA-BDA)

Lakshmi Malleables Private Limited

APPELLANT

Vs

G. Channarayappa and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 6 KarLJ 6

Hon'ble Judges : Subhro Kamal Mukherjee, Actg. C.J. and B.V. Nagarathna, J.

Bench : Division Bench

Advocate : Sriyuths H.T. Nataraja for H.T.N. Law Associates, G.S. Kannur, Kumar M.N. and Manjunath R., Advocates, for the Appellant; Sriyuths C.M. Nagabhushana, R. Devdas, Principal Government Advocate, M.N. Kumar, M.I. Arun, Additional Government Advocate, P. Subramanya, Rajendra M.S. for Vivek Holla, Pundikar Eshwara Bhat, H.T. Nataraj, A. Loknath, Subramanyam and K.C. Visweswaraiah, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, Actg. C.J.

1. Although these matters are appearing under the heading, "Hearing - Interlocutory Application", we have considered the matters at length because of long pendency of the matter. Bangalore Development Authority ("BDA" for short) issued a preliminary notification on July 15, 1982 for the formation of Nagarbhavi Layout.

Writ Appeal No. 1522 of 2009 has been filed by respondent 4 in Writ Petition No. 13028 of 2007 against order dated March 20, 2009 by the Hon'ble Single Judge.

2. The writ petitioners in Writ Petition No. 13028 of 2007 are the owners of 2 acres of land in Survey No. 103 at Nagarbhavi Village. They have impugned the award passed by the BDA on the ground that the acquisition proceeding got lapsed. This reveals as to how the provisions of Section 27 of the Bangalore

Development Authority Act, 1976 are misutilised by the owners to stall the formation of layouts.

The relief claimed against the appellant herein by the respondent-landowners, that is, petitioners 1 to 4 in the writ petition was to seek a declaration that allotment and issuance of possession certificates in respect of seven sites vide seven sale deeds dated November 7, 2007 were null and void.

3. Petitioner 1 in the writ petition had earlier filed Writ Petition No. 13042 of 1986, which was dismissed by order dated November 23, 1987. He had also filed Original Suit No. 5824 of 1989 before the City Civil Court, Bengaluru, against the BDA, which was also dismissed on January 9, 1996. One Muniveerappa, the adjoining landowner had filed Writ Petition No. 17707 of 1986, which was dismissed on March 8, 1991.

4. Writ Appeal No. 2361 of 1991 was dismissed on July 18, 1991, which arose out of Writ Petition No. 21563 of 1989 seeking regularization of unauthorized construction. The owners of the adjoining land, Muniveerappa filed Writ Petition No. 19532 of 2005 to declare that the acquisition proceeding had lapsed under Section 27 of the BDA Act. That writ petition was, also, dismissed on August 3, 2006.

5. In the second writ petition, the petitioner had challenged the acquisition proceeding stating that the scheme had lapsed. The writ petition was dismissed on the ground that the scheme had been substantially implemented.

6. It was contended that although the acquisition proceeding was initiated in the year 1982, but till 2003 the award was not passed. Consequently, the entire scheme got lapsed.

7. Section 27 of the BDA Act postulates that if the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative.

8. It is not that all the landowners had challenged the acquisition proceeding. We are informed that the layout has been formed. Therefore, we cannot hold that there was a dereliction of duty on the part of the authorities or failure on their part to execute the scheme substantially within five years from the date of publication of the Official Gazette and the declaration under sub-section (1) of Section 19 of the said Act. There was no failure to execute the scheme, but there were attempt to stall the scheme by the landowners. Several writ petitions were filed. A civil suit was instituted. We do not find that the authorities either failed or derelicted from duty in implementing the scheme.

9. We feel that the landowners are aggrieved as there has been a spiraling in price of land in the city of Bengaluru, but that cannot be a ground to permit them to stall the scheme for the formation of layout when the authorities have decided to form layout for the better interest of the society.

Despite the aforesaid facts, Hon''ble Single Judge has held that the acquisition proceeding had lapsed in respect of 2 acres of land in Sy. No. 103 belonging to respondents 1 to 4 herein and, consequently, declared the allotment made to respondent 4 as null and void. In view of the dismissal of the earlier writ petitions filed by respondents herein as well as the dismissal of the suit filed by respondent 1, the Hon''ble Single Judge ought not to have entered upon the merits of the matter and ought to have simply dismissed the writ petition.

10. We are of the opinion, with greatest respect to the Hon''ble Single Judge, it was not necessary for him to dwell upon the facts for the purpose of declaration that the scheme has lapsed when it has been proved that the landowners have made all attempts to stall the scheme. Therefore, the order impugned in Writ Petition No. 13028 of 2007, dated March 20, 2009 is set aside.

11. Writ Appeal No. 1522 of 2009 is allowed.

W.A. No. 1024 of 2014:

12. This appeal is filed by the BDA assailing order dated December 13, 2013 passed by the Hon''ble Single Judge in Writ Petition No. 46953 of 2013.

13. By that order, Hon''ble Single Judge has held that insofar as the land belonging to respondent 2 herein was concerned, the scheme has lapsed under Section 27 of the BDA Act.

14. Learned Counsel for the BDA has submitted that the impugned judgment would have to be set aside in view of the fact that respondent 2 (M. Muniramaiah) herein had earlier filed Writ Petition No. 19532 of 2005 along with his brother M. Gangadhar and by order dated August 3, 2006 that writ petition was dismissed.

15. In that writ petition, also, the very same declaration to the effect that the acquisition had lapsed was sought and the Hon''ble Single Judge of this Court had dismissed that writ petition, which order has attained finality.

16. The writ petition filed by the second respondent herein, in our view, has to be dismissed for the simple reason that the second respondent had filed a second writ petition on the same cause of action, which was not maintainable. The writ petition filed by the second respondent was hit by the principles of res judicata. Therefore, the order of the Hon''ble Single Judge dated December 13, 2013 passed in Writ Petition No. 46953 of 2013 is set aside and the appeal is allowed.

W.A. No. 3124 of 2014:

17. This writ appeal is filed by the BDA assailing order dated January 27, 2014 passed in Writ Petition No. 214 of 2014. By that order, Hon''ble Single Judge has followed order passed in Writ Petition No. 46953 of 2013 disposed of on December 13, 2013 and allowed the writ petition by holding that the scheme insofar as the land of respondent 2 herein is concerned had lapsed under Section

27 of the BDA Act.

18. Learned Counsel for the BDA has brought to our notice that respondent 2 herein along with his brother Muniramaiah M., had filed Writ Petition No. 19532 of 2005 before this Court and by order dated August 3, 2006, the Hon''ble Single Judge dismissed the writ petition. That order has attained finality. He, therefore, contended that the second respondent could not have filed one more writ petition seeking the very same relief, which he had sought in Writ Petition No. 19532 of 2005 along with his brother.

19. We are of the opinion that the Hon''ble Single Judge ought not to have entertained the said writ petition inasmuch as those petitioners earlier filed Writ Petition No. 19532 of 2005, and upon a contested hearing, the said writ petition, on the selfsame issue, was dismissed on August 3, 2006.

20. We are of the opinion that the filing of second writ petition was an abuse of the process of the Court to stall the scheme. Therefore, both the orders as aforesaid are set aside.

21. In view of the order passed in Writ Appeal No. 1024 of 2014, we dismiss Writ Petition No. 214 of 2014 and set aside the order passed therein by allowing this appeal.

W.A. No. 1490 of 2009:

22. In view of Writ Appeal No. 1522 of 2009 being allowed and the impugned order being set aside, this writ appeal is, also, allowed as the very same order of the learned Hon''ble Judge has been impugned in this writ petition.

23. The writ appeals are allowed.

24. We, however, make no order as to costs.

W.P. No. 4970 of 2014:

25. This writ petition is filed by certain persons assailing order dated August 3, 2006 passed in Writ Petition No. 19532 of 2005.

26. The aforesaid writ petition was filed by Muniramaiah M. and M. Gangadhar. By order dated August 3, 2006, Hon''ble Single Judge of this Court had dismissed the writ petition. It is significant to note that the petitioners in Writ Petition No. 19532 of 2005 have not assailed the order dated August 3, 2006.

27. In fact, they attempted to overcome that order by independently filing two different writ petitions, which in fact were not maintainable, but were allowed and by order passed in Writ Appeal Nos. 1024 and 3124 of 2014, we have dismissed the writ petitions filed by them for the second time and by setting aside the orders made in their favour.

28. In Writ Petition No. 19532 of 2005, Hon''ble Single Judge has noted the earlier proceedings filed by Muniveerappa, father of the petitioners therein, and

G. Channarasappa, as well as the suits filed by them came to be dismissed, and has, also, held that after the dismissal of the aforesaid matters, possession of the land was taken over by the BDA.

29. In the order under challenge, Hon''ble Single Judge has, also, held that the scheme has been implemented substantially by the BDA and that the process relating to taking possession of some portion of the land of the petitioners in Writ Petition No. 19532 of 2005 was obstructed because of the interim orders granted by various Courts including this Court and that the BDA cannot be blamed for the same. Therefore, Hon''ble Single Judge dismissed the writ petition. When the order dated August 3, 2006 has not been assailed by the petitioners, we do not see as to how the petitioners herein could assail that order. In fact, the writ petition filed by the petitioners in Writ Petition No. 19532 of 2005 was an abuse of the process of this Court and that was rightly dismissed by the Hon''ble Single Judge. We find no error in the impugned order. Hence, this writ petition is dismissed. However, we refrain from imposing cost in the matter.