

(2010) 11 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 37217 of 2009 LA-RES

Munivenkatamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Citation : (2010) 11 KAR CK 0034

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.E. Prabhu, for the Appellant; D. Vijayakumar, AGA for R1, R2, R11 and R12, Sri K.P. Asokumar, for R4, M/s. H.S. Somanath and Assts. Advocate for R5, Sri S.G. Pandit Advocate for R7, Sri Shaker Shetty, for R9, Sri K.R. Ananthamurthy and Smt. B.N. Sudha Advocate for R10 and R3, R6 and R8 are Served, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar

1. Writ petitioner claims to be legal heir of the original land owner in respect of Sy. No.66/1 measuring 14 guntas, Sy. No.66/5 measuring 26 guntas and Sy. No.67/3 measuring 24 guntas in Dommalur Village, Bangalore North Taluk, which it appears was subject matter of acquisition proceedings in terms of the notification issued by the State Government for the benefit of the third respondent - Amarajyothi House Building Cooperative Society Limited [for short "the society"].

2. The acquisition proceedings got concluded and the land acquisition officer after taking over possession of the subject lands notified for acquisition under this notification, had handed over possession of the same in favour of the third respondent - society.

3. It appears the third respondent had formed a layout and allotted many such sites in favour of its members and pursuant thereto, had executed sale deeds in

favour of members who have been allotted sites.

4. It is the version of some of such allottees of sites that thereafter they have put up construction with necessary permission of the municipal authorities and some of them have in turn sold the sites itself to third parties who claim that they are in possession and have made use of the sites in question for construction of residential or other buildings and some such sites either in favour of original allottees or subsequent purchasers from them have remained vacant also.

5. It is the version of the petitioner claiming as a legal heir of the original land owner whose name figured in the notifications issued by the State Government for acquisition proceedings that many such acquisitions made by the State Government for the benefit of private house building co-operative societies were all bristling with fraud and collusion amongst the authorities, the societies and middlemen who had acted as agents between the authorities and such societies holding out assurances to them that they will ensure some lands will be acquired by the state government for the benefit of such societies and they can in turn further develop the same and such societies had also taken public for a ride by extending membership to large number of persons and in one such case as noticed by the supreme court more than four thousand persons were given membership of the very third respondent - society which was more an act of fraud than for any bona fide purpose of forming a co-operative layout for the benefit of the members etc., and when such acquisition proceedings had been questioned before the High Court in proceedings under Article 226 of the Constitution of India, the High Court found as a fact that such acquisition proceedings are vitiated by ulterior considerations for which the provisions of the Land Acquisition Act, 1894 had been misused and that the role played by the middlemen had vitiated the entire acquisition proceedings due to fraud and deceit and the High Court had quashed many such acquisition proceedings pursuant to the notifications which had been called in question before the court by the respective land owners. Such an order is to be found in one of the reported Judgments of this court rendered in the case of "Narayana Reddy vs. State of Karnataka" reported in ILR 1991 KAR 2248.

6. It appears private co-operative societies who were miffed by the Judgment of the High Court, had carried the matter to the Supreme Court by seeking special leave and all such matters came to be disposed of by the Supreme Court in terms of its Judgment rendered in the case of "HMT House Building Co-Operative Society vs. Syed Khader reported in ILR 1995 KAR 1619 (SC).

7. While affirming the Judgment of the High Court rendered in the case of NARAYANA REDDY's case [supra] and similar Judgments, the supreme court went further in observing that the benefit of quashing such acquisition proceedings and the notifications issued for such purpose will also enure in favour of such of land owners who perhaps might not have chosen to question the legality of acquisition proceedings pursuant to the notifications in respect of

their lands and general direction was issued to the State Government, the acquiring authorities and officials functioning under the Land Acquisition Act, 1894 and also to provide co-operative house building societies to ensure that such land owners from whom possession had been taken over pursuant to the notification which had come to be quashed whether it actually questioned the legality of the notification or not are to be restored with land which had been taken possession from them and benefit of the Judgment rendered by the High Court has to be extended to even land owners who are not before the court.

8. It appears that nevertheless, the State and its officers were lethargic in implementing the general order and directions issued by the Supreme Court in respect of all such acquisition proceedings which had come to be found fault with the High Court and notifications for which purpose had been acquired and many land owners seeing inaction had represented to the authorities for implementation of the direction issued by the Supreme Court as contained in the Judgment of the Supreme Court in HMT's case [supra].

9. It appears that in respect of several land owners, the State Government and its officials became active and had restored possession of the land which had been taken possession of under the various notifications in their favour and it is the version of the present petitioner that on a representation made by the petitioner to the concerned authorities, the possession of the subject land has been restored in favour of the petitioner, but the sale deeds which had been executed by the private co-operative societies for whose benefit the acquisition proceedings had been initiated and executed in favour of their members which are all registered at the office of the jurisdictional Sub-Registrar have come in the way of full enjoyment of the restored property by the petitioner and a possible cloud on the title to the property and therefore has approached this court seeking for the following reliefs:

i. Declaring that the sale deeds executed by the 3rd Respondent Society to the Respondent No.4 to 6 & 10 and the sale deeds executed by the Respondent No.4 to 6 to 7 to 9 are null & void

ii. Issue a writ of mandamus directing the Respondent No. 10 & 11 to delete the entries made in its Registry in respect of the execution of the following sale deeds:

a) Sale Deed dated 27.02.1991 executed by the 3rd Respondent in favour of the 4th Respondent and registered as Document No.3850/90-91, Book No.1. Volume No.3070, Pages 51-52 registered on 04.03.1991 in the office of Sub Registrar, Shivaji Nagar and the Sale Deed 23.09.2009 executed by the 4th Respondent in favour of 7th Respondent having registration No. 560/2009-10 in Book No.1 Vide Annexure-M & R

b) Sale Deed dated 01.03.1991 executed by the 3rd Respondent in favour of the 5th Respondent and registered as Document No.3849/90-91, Book No.1, Volume No.3070, Pages 49-50 registered on 01.03.1991 in the office of Sub Registrar,

Shivaji Nagar and the Sale Deed 15.07.2004 executed by the 5th Respondent in favour of 8th Respondent having registration No.2026/2004-05 in Book No. 1 Vide Annexure-N & S

c) Sale Deed dated 21.06.1990 executed by the 3rd Respondent in favour of the 6th Respondent which is registered as Document No.837/90-91. Book No.1, Volume No.2994, Pages 7-8 in the office of Sub Registrar, Shivaji Nagar and the Sale Deed 29.08.2003 executed by the 6th Respondent in favour of 9th Respondent having registration No.3247/2003-04 in Book No.1 Vide Annexure-P & T

d) Sale Deed dated 10.05.2002 executed by the 3rd Respondent in favour of the 10th Respondent which is registered as Document No.532/2002-03 in Book No.1 in the office of Sub Registrar, Shivajinagar vide Annexure-(sic)

10. Submission of Sri Prabhu, learned counsel for the petitioner is that the developments leading to the present factual position is not in dispute; that when once the acquisition proceedings are quashed or even when similar notifications under which acquisitions were made in favour of private co-operative societies have all been found fault with, in terms of the law declared and directions issued by the supreme court in its Judgment in HMT's case [supra] and such benefit automatically enures to the other land owners also whose lands had been acquired under different notifications for the benefit of private cooperative housing societies and when once the state government itself had taken action for restoring possession of such lands which had been acquired by the state government under different notifications in favour of the different private co-operative societies which all have been found fault with by the supreme court in general, whether or not such notifications had been challenged by the land owners either before this court or before the supreme court and when the Government itself had taken such action for restoration, it is also the duty of the Government to ensure that such land owners who had clear title to the property earlier should be restored with clear title to the property and as the state government is not very active for such purpose, it has become necessary for the petitioner to approach this court to seek for declaration of clear title to the property in the wake of such developments and particularly when petitioner has been restored with possession of the subject lands etc., and it is therefore that the present writ petition for the reliefs as noted above.

11. It is also the submission of Sri Prabhu, learned counsel for the petitioner that unless such sale deeds are cancelled by positive action by any of the authorities, the benefit which has been restored to the land owners in terms of the Judgment of the Supreme Court will be frustrated and therefore such relief may be granted in favour of the petitioner even in writ jurisdiction as either action or inaction everything is on the part of the State and its functionaries.

12. Sri Prabhu, learned counsel for the petitioner places reliance on the Judgment of the Supreme Court in the case of S. Vasudeva Vs. State of

Karnataka and others, to submit that even a particular notification issued for the purpose of acquisition of land has been quashed by the court, then the benefit should enure to the benefit of all land owners and that the transactions if had taken place in the interregnum and documents executed by the persons for whose favour acquisition proceedings have been initiated, have all become inoperative and therefore submits that on the ratio of this Judgment, the sale deeds which had been executed by the third respondent - society in favour of respondents 4 to 10 will become inoperative and such declaration can be granted by this court even in writ jurisdiction.

13. Submission of Sri D Vijayakumar, learned Additional Government Advocate appearing on behalf of the State Government is that relief sought for in the writ petition is one which is more proper for the petitioner to approach the civil court than to seek such relief in the writ jurisdiction and that the writ petition should be dismissed.

14. Appearing on behalf of the fourth respondent, submission of Sri K P Asokumar, learned counsel, with reference to the statement of objections on behalf of this respondent is that in the first instance, the subject notification under which the land in question had been acquired from the predecessor in title of the petitioner was subject matter of writ petition before this court in writ petition Nos.3838-3845 of 1995 [copy produced as Annexure-R1 to the counter filed on behalf of seventh respondent] and with the dismissal of the said writ petitions which is not taken up further in appeal or otherwise, the matter gets concluded, but even otherwise the notification if is not quashed by this court, no consequence enure in favour of the original land owners and therefore there is no merit in the writ petition.

15. It is also submitted that a declaration as sought for in the writ petition is not one that can be granted within the scope of Article 226 of the Constitution of India, but if at all can be made subject matter of the civil suit. It is submitted by Sri K P Asokumar, learned counsel for the fourth respondent that the character of the land has undergone a vast change from the date of the acquisition proceedings and the date when possession was taken over from the original land owners and at this point of time, when even a civil suit cannot be filed seeking for declaration, it is *afortiori* so that such a relief cannot be granted in writ jurisdiction.

16. Sri S G Pandit, learned counsel for the seventh respondent while supports this submission and adopts the same for the benefit of the seventh respondent, specifically points out to Annexure-R1 produced along with the statement of objections on behalf of this respondent that if the land owners similarly situate to the present writ petitioner had questioned the legality and had failed, there cannot be a different result in favour of other land owners which is because they had not questioned the legality of the notification before this court etc.,

17. It is not in dispute that the legality of the acquisition proceedings,

particularly, notifications under which the subject lands had been acquired from predecessors in title of the petitioner has not been found fault with nor it is positively opined by this court and the supreme court that it is bad etc. However, submission of Sri Prabhu, learned counsel for the petitioner is that, notwithstanding the general declaration given by the supreme court in HMT's case [supra], will enure to the benefit of such land owners who had not questioned the acquisition proceedings also and therefore while the writ petitioner can seek such relief based on the Judgment and even further if the state government on its own and taking cue from the Judgment of the supreme court decided to go back from the acquisition proceedings and restore the subject land to the original land owners and in fact had already so restored in favour of the petitioner, the mere fact that the petitioner had not sought for quashing of the notification under which acquisition proceedings had been initiated cannot come in the way of the petitioner getting such relief and the relief as sought for has to be automatically extended in favour of the petitioner for the reason that the entire development is due to the action of a public authority and not due to any private action etc.

18. It is the submission of Sri Prabhu, learned counsel for the petitioner that based on the Judgment of the division Bench of this court in the case of "Amar Jyothi House Building Co-Operative Society Ltd., vs. The Special Land AC(sic) Uision Officer and Others in writ appeal No. 6017-6018 of 1997 rendered on 18.9.1998 which came to be dismissed by this court, the division Bench has observed that in the wake of the Judgment of the supreme court rendered in HMT's case [supra], there is no scope for granting any relief in favour of the society and the society cannot come in the way of land owners reaping the benefit of the Judgment of the supreme court rendered in HMT's case [supra] and therefore when this division Bench has observed so, the ratio of such Judgment rendered by the division Bench in this case automatically enures to the benefit and has to be applied by this court while examining the case of the petitioner and therefore the relief sought for should be extended to the petitioner on the strength of the ratio available in the Judgment of the division Bench of this court rendered in "Amar Jyothi House Building Co-Operative Society Ltd. vs. The Special Land AC(sic) Uision Officer and Others.

19. Several other contentions which are not of importance are also urged by Sri Prabhu, learned counsel for the petitioner to counter submissions made by the respondents 4 and 7 etc.

20. The fact remains that notification under which subject lands were notified in the name of the predecessor in title of the petitioner for acquisition proceedings has not been quashed either by this court or the supreme court. That apart, the relief sought for being one relating to a civil right in respect of the property, such a relief is not one which is required to be examined by this court in writ jurisdiction under Article 226 of the Constitution of India.

21. Writ jurisdiction is not exercised for declaring private rights in properties in

favour of individuals or private persons, but is essentially a jurisdiction for judicial review of administrative and legislative action. It is not meant for declarations in favour of private persons or citizens in respect of their rights in properties etc. More so, when a declaration of the title involves examination of contentions to be urged by parties against whom a declaration is sought for and which are contentious. It is neither prudent nor practical for this court to examine such aspects apart from the constitutional impropriety of the writ court granting relief for declaring property rights in favour of individual persons in writ jurisdiction. Writ petition is also hit by laches being in respect of a stale cause.

22. Viewed from any angle, I am of the definite opinion that the relief sought for whether the petitioner is entitled to or otherwise is not one that can be exercised nor is required to be examined in writ jurisdiction. If there is no administrative action in respect of which judicial review is sought for there is no question of examining the writ petition for further relief under Article 226 of the Constitution of India.

23. It is for these reasons, writ petition is dismissed without issuing rule, but without prejudice to the rights and remedies if any petitioner may have elsewhere as per law to work out such rights and remedies.