
(2010) 11 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No's. 15764 and 22748 of 2009

Nena Lal G.M.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17 (1)

Citation : (2011) 3 KarLJ 91

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

Bench : Single Bench

Advocate : R. Karan Boraiah, for K. Shashikiran Shetty, for the Appellant;
Sriyuths Venkatesh Dodderi, A.G.A., B.V. Muralidhar, P. Guruprasad, G. Shankar
Goud and Shama for Basavaraj V. Sabarad, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—These two writ petitions by the same person is in the context of as many as three notifications that had been issued at different points of time, namely, notification dated 23-2-1989 issued by the Deputy Commissioner, Bangalore, for the purpose of acquiring 11 guntas of land in Sy. No. 57/7, Srigandhadakaval Village, Yeshwanthpur Hobli, Bangalore North Taluk, a second notification dated 17-6-2005 by the State Government for the purpose of acquiring the said land to enable formation of a ring road and construction of a bridge by the Government and yet another notification dated 4-4-2009 issued u/s 17(1) of the Bangalore Development Authority Act, 1976 by the Bangalore Development Authority, for the purpose of formation of outer ring road and the Petitioner claiming ownership in all to an extent of 33 guntas of this survey number in terms of a sale deed said to have been executed by Channa Narasimhaiah on 19-8-1980.

2. The contention of the Petitioner is that his ownership of an extent of 3 guntas of land in the said survey number has been unauthorisedly encroached upon by the officials of the Bruhat Bangalore Mahanagara Palike for the purpose of

developing a treatment plant to process sewerage flowing in Vrushabhavati river at Bangalore city, but have not either compensated the Petitioner for utilisation of the Petitioner's land, but more importantly have come up with another Writ Petition No. 15764 of 2009 for like relief in respect of 12 guntas of land in the very survey number and for a good measure has sought for directions to the Bangalore Development Authority to allot alternative land in favour of the Petitioner of an extent of 75% of the land in the ownership of the Petitioner which has been acquired by the Bangalore Development Authority.

3. Notices had been issued to the Respondents.

4. The second Respondent in W.P. No. 22748 of 2009-Bruhat Bangalore Mahanagara Palike is represented by Sri Muralidhar, learned Counsel and has filed its statement of objections.

5. Similar is the stand taken by the Bruhat Bangalore Mahanagara Palike in W.P. No. 15764 of 2009 wherein the Petitioner has contended that another 12 guntas of land in his ownership has also been so misused by the Bruhat Bangalore Mahanagara Palike, but the Bruhat Bangalore Mahanagara Palike in their counter denying such misuse, but asserting that land used by them was in the ownership of the State Government and had been handed over to the Bruhat Bangalore Mahanagara Palike by the officials etc.; that the Bruhat Bangalore Mahanagara Palike has not encroached on any part of the land in the ownership if any belonging to the Petitioner.

6. While submission of Sri Guruprasad, learned Counsel for the third Respondent-Bangalore Development Authority in W.P. No. 15764 of 2009 is that the authority had compensated the Petitioner in a sum of Rs. 22,17,294/- towards the industrial shed and has remained blissfully silent about other prayer sought for by the Petitioner, namely, for providing an alternative site to the Petitioner in lieu of his land acquired for the purpose of the Bangalore Development Authority.

7. Likewise in W.P. No. 22748 of 2009, Shama, learned Counsel for the third Respondent-Bangalore Development Authority, while submits that she is not instructed with regard to the possibility of providing an alternative site to the Petitioner, submission insofar as the relief regarding direction to conduct a joint survey etc., is concerned, such relief the Petitioner should seek before the Civil Court and not before this Court.

8. I have heard Sri Karan Boraiah, learned Counsel for the Petitioner and other Counsel who have appeared for the Respondents.

9. Sri Karan Boraiah, learned Counsel for the Petitioner would submit that while the Petitioner is not provided compensation in respect of the land portion, but has only been compensated with building area in 10 guntas of land acquired by the Bangalore Development Authority in the year 2005 and therefore writ of mandamus should be issued to the authority to compensate the Petitioner for the value of the land, insofar as silence of the authority for granting an alternative

site is concerned, submits that the authority itself had passed a resolution in its proceedings in its meeting held on 5-8-2009 to the effect that the authority being aware of the acquiring extent of 30 guntas belonging to the Petitioner is inclined to grant an alternative land to the Petitioner and seeks permission of the Court to place before the Court said to be copy of the resolution dated 5-8-2009.

10. Sri Guruprasad, learned Counsel appearing for the authority points out that it is not a resolution, but a note put up by the Assistant Executive Engineer of the Authority which is neither a resolution nor binding on the authority, but some note put up by some lower level official does not have much significance to bind the authority etc.

11. Insofar as the quantum of compensation is concerned, while a writ of mandamus is not sought for, for compensating the Petitioner on the premise that no award is passed etc., if the award is passed in favour of the Petitioner, it is open to the Petitioner to execute the award and realise the amount in accordance with law and Writ Court cannot be made use of for such purpose to be used as Executing Court to implement the awards.

12. Insofar as the prayer or request for allotment of alternative site is concerned, a writ of mandamus cannot be issued by this Court for the simple reason that the Petitioner has no legal right to seek for such allotment of alternative site in the absence of any enabling statutory provisions.

13. Even assuming for argument sake, the authority has passed a resolution to this effect, this Court will not issue a writ of mandamus to compel the authority to implement any of the resolutions as the resolutions may be passed by the authority for whatever purpose and reasons, but it does not have a statutory effect.

14. In any view of the matter, none of prayers sought for in the two writ petitions can be granted by this Court nor Petitioner is entitled for seeking such relief on the touchstone of any statutory or constitutional provisions.

15. It is therefore, while these writ petitions are dismissed, Petitioner is reserved liberty to work out his other rights and remedies elsewhere in accordance with law.

16. However, the manner in which the officials of the Bangalore Development Authority appear to have paid compensation in a sum of Rs. 22,17,294/- in favour of the Petitioner in terms of the award appears to be a suspect payment for the reason that industry or shed said to have been valued at this amount is one on the bank of Vrushabhavati river and there cannot be any private ownership of lands in the vicinity of a river and if at all the river and the surrounding land will be in the ownership of the State Government and not in any private ownership. The figuring of the Petitioner's name in the revenue records is the only basis for either the Deputy Commissioner or the Land Acquisition Officer attached to the Bangalore Development Authority passing

awards in favour of the Petitioner and there appears to be some collusive developments for compensating the Petitioner and even to allot an alternative land in favour of the Petitioner in respect of the lands said to have been acquired from the Petitioner, only on the basis of the entries in the revenue records, whether or not, the lands originally belonged to the Petitioner, but claiming ownership under sale deed of the year 1980 and even as to whether the vendor himself had such title to the land are all matters which are suspicious and requires further investigation and for such purpose, the matter is referred to the Karnataka Lokayukta with a direction to investigate into this matter and to recommend suitable action to the State Government.

17. The Registrar General of this Court is directed to make available copy of this order along with other relevant papers to the Karnataka Lokayukta for proceeding further in the matter at its end.