

(2002) 06 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 9378 to 9383 of 2000

O.V. Narasimha Setty and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17, 19, 36
Constitution of India, 1950 — Article 226, 227

Citation : (2002) ILR (Kar) 4968 : (2003) 2 KarLJ 432 : (2002) 4 KCCR 2294

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : N.D.R. Ramachandra Rao, for the Appellant; H.B. Mahesh, High Court Government Pleader for Respondent-1 and S.A. Nazeer, for Caveator Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekaraiah, J.—The petitioners are the owners of certain extent of land in Survey Nos. 9, 10 and 11 situate at Vaddarapalya Village, Uttarahalli Hobli, Bangalore South Taluk and land in Survey Nos. 85, 86/1 and 86/2 situated at Uttarahalli, Bangalore South Taluk. The said lands were proposed for acquisition by preliminary notification dated 29-12-1988 u/s 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "the Act 1976"). This notification was followed by a final notification dated 16-9-1997 issued u/s 19 of the Act. These notifications were challenged by the petitioners in W.P. Nos, 37735 to 37743 of 1997 before this Court. This Court dismissed the said writ petitions by order dated 17-6-1998 reserving liberty to the petitioners to work out their rights, if any, under the Government Order No. HUD 341 MMX 95, dated 17-11-1995. The order passed by this Court in the above said writ petitions was affirmed by the Division Bench in Writ Appeal No. 3334 of 1998 connected with Writ Appeal Nos. 5244 to 5251 of 1998.

2. After the disposal of the writ appeals, the petitioners filed applications on

3-3-1999 before the BDA, in view of the observations made by this Court in W.P. Nos. 37735 to 37743 of 1997, seeking permission to utilise the land for group housing or for formation of sites. Copy of the said representations is produced as Annexure-K1 and K2. Subsequently, the petitioners have made two other representations on 23-3-1999 and 21-4-1999 produced as Annexure-L and M1 respectively. Meanwhile, petitioner 1 had filed W.P. No. 15793 of 1999 before this Court seeking for a direction to the BDA, to hear and dispose of the representation dated 3-3-1999. The said writ petition was disposed of on 6-5-1999 with a direction to the BDA to consider the representation dated 3-3-1999.

3. The learned Counsel for the BDA submits that the BDA was not aware of the said order till the receipt of notice in these petitions as there was no notice served on BDA in the above said writ petitions. From the order passed by this Court, I find the Government Pleader, one Smt. Prabha Murthy represented the respondents. The Government Pleader, in the High Court, normally will not represent the BDA as the BDA has got its own panel of Advocates to represent its interest. Therefore, even assuming that the Government Pleader has represented the BDA, in my opinion, the BDA having not been served with any notice by this Court was not aware of the order of this Court till the notice has been served in these petitions.

4. The petitioners in these petitions have sought for quashing of the final notification dated 16-9-1997 issued by the State Government u/s 19 of the Act 1976 and has also sought for quashing of order dated 12-5-1999 (Annexure-A) under which the representations of the petitioners have been considered and rejected by the BDA. In addition the petitioners have also sought for a declaration that the alleged acquisition proceedings initiated by the BDA under Annexure-E are without authority of law and for other reliefs.

5. The learned Government Pleader, appearing for the State submits that once the notifications under Sections 17 and 19 of the Act 1976 are declared to be valid by dismissing the writ petitions filed by the petitioners and has reached finality consequent on the dismissal, of the writ appeals filed by the petitioners, the matter cannot be re-agitated once again by way of filing another writ petition under Articles 226 and 227 of the Constitution of India. It is further submitted that the petitioners are not entitled for a declaration sought for in the writ petitions as the proceedings initiated under the Act 1976 has already reached finality.

6. Sri S.A. Nazeer, learned Counsel for the BDA submits that since the BDA has considered the applications/representations dated 23-3-1999 and 21-4-1999 which are similar to the representation dated 3-3-1999, it cannot be said the request of the petitioners for consideration of the said representation has not been considered by the BDA, whether the order of this Court passed in W.P. No. 15793 of 1999 was within the knowledge of the BDA or not.

7. It is nextly submitted by the learned Counsel for the BDA, that the petitioners are not entitled for any relief under the Government Order dated 17-11-1995 since the same has no application since the BDA has already passed an award and taken possession of the land in question.

8. Sri N.D.R. Ramachandra Rao, learned Counsel appearing for the petitioners submits that the principles of resjudicata has no application to the facts of this case and therefore, it is still open for the petitioners to challenge the very notifications which were impugned in the earlier writ petitions. He further submits that since the BDA Act, 1976 provides for acquisition of land, in the eye of law there is no acquisition of the petitioners' land and therefore the acquisition is liable to be quashed.

9. On these rival contentions the following points arise for consideration.--

(1) The validity of the notifications issued under Sections 17 and 19 of the BDA Act, having been declared as valid and has reached finality, is it open for the landowners again in a second round of litigation to challenge the validity of the said notifications?

(2) Whether the BDA is justified in rejecting the applications/representations of the petitioners for releasing the land for group housing?

(3) Is there no acquisition as contended by the learned Counsel for the petitioners on the ground of the BDA Act, does not provide for any acquisition?

(4) To what relief the petitioners are entitled?

10. Point No. (1).--The petitioners had filed W.P. Nos. 37735 to 37743 of 1997 before this Court challenging the validity of the notifications issued under Sections 17 and 19 of the Act 1976. The said writ petitions were dismissed holding the said notifications as valid by an order dated 17-6-1998. This order was confirmed by the Division Bench in W.A. Nos. 3334 and 5244 to 5251 of 1998. It is in the submission of Sri N.D.R. Ramachandra Rao, that since the above said writ petitions were dismissed on the ground of delay and laches there is no decision on merit and therefore it cannot be said the proceedings have reached finality.

11. No doubt, the said writ petitions were dismissed on the ground of delay and laches. The consequence of dismissing the said writ petitions on the ground of delay and laches is to the effect that the notifications impugned in the said writ petitions are valid in law. If that is so, the validity of the very same notifications cannot be re-agitated in a subsequent proceedings firstly, on the ground of principles of constructive res judicata and also under Order 2, Rule 2 of the CPC. No doubt, the said writ petitions were dismissed on the ground of delay and laches. This dismissal is a bar to initiate fresh proceedings on the same cause of action and therefore the petitioners cannot re-agitate the same in any subsequent proceedings.

12. Sri N.D.R. Ramachandra Rao, learned Counsel submits that the present writ petitions are on the basis of a new cause of action consequent on rejection of his applications/representations seeking permission for group housing and for formation of sites. No doubt, the rejection of the request of the petitioner for group housing is a cause different from the cause of action that was the subject-matter in the earlier writ petition. But in the instant case, the petitioners have not confined their writ petitions insofar as it relates to the rejection of their applications/representations. But, this rejection will not give the petitioner a cause of action to challenge the notifications issued under Sections 17(1) and 19(1) of the Act 1976 as the rights of parties have been concluded in the earlier proceedings. Therefore, to this extent the remedy for the petitioners to challenge the validity of the notifications which were impugned in the earlier writ petitions is barred.

13. Point No. (2).--The petitioners have made the applications/representations on 3-3-1999 for permission to release the land for group housing. Subsequently also they made two other applications/representations on 23-3-1999 and 24-1-1999. The BDA in the impugned endorsement has considered and rejected the applications/representations made by the petitioners on 23-3-1999 and 21-4-1999, but there is no reference insofar as the application/representation dated 3-3-1999. The contents of the application/representation dated 3-3-1999 are similar to the contents of the applications/representations dated 23-3-1999 and 21-4-1999. If that is so, only because there is no reference to the representation dated 3-3-1999, it cannot be said that the rejection of the request of the petitioner for group housing is not correct.

14. The Government Order dated 17-11-1995 is only a notification for releasing certain land by the BDA for the purpose of group housing. Under this Government Order the permission is to be granted at the discretion of the Appropriate Authority. The refusal to grant permission will not create any right in favour of the landowner.

15. The acquisition of land pursuant to the notifications issued under the Act 1976 is for the purpose of implementation of the scheme which received the approval of the State Government as required u/s 18(8) of the Act, If that is so, it is the duty of the BDA to implement the scheme as approved by the State Government. It is not the case of the petitioner or BDA that the said land has been acquired for the purpose of releasing the same in favour of the landowner for the purpose of group housing. Under these circumstances, any release of the land under the above said Government Order virtually defeat the implementation of the scheme approved by the State Government. Therefore, the Government Order, if any, which are inconsistent or interferes with the implementation of the scheme framed by the BDA which received the approval of the State Government is liable to be ignored. Further, the above said Government Order does not create any right either in favour of the landowner or impose any duty on the BDA to release the same as it is opposed to the very object of Act 1976. The object of

the Act 1976 is for the development of the City of Bangalore and the areas adjacent thereto and for the areas connected therewith. The BDA framed the scheme which received approval of the Government u/s 18(3) of the Act 1976 and thereafter final notification has been issued declaring the lands are required for implementation of the scheme. When such being the case, the land acquired for the purpose of implementation of the scheme is to be utilised for the very purpose for which it is acquired and it shall not, in the normal course, be diverted for any other purpose. The order of the State Government dated 17-11-1995 cannot be said to be a direction issued u/s 65 of the BDA Act. u/s 65, the State Government may issue directions to the authority if it is of the opinion that it is necessary or expedient for carrying out the purpose of this Act. The purpose of acquisition under the Act is to implement the scheme as approved by the State Government keeping in view the development of the City of Bangalore. If that is so, the Government Order cannot be termed as a direction issued u/s 65 of the BDA Act, as it results in interference with the scheme framed by the BDA and ultimately approved by the Government. Under these circumstances, it is advisable to the State Government to withdraw the notification as it has not been issued keeping in view the object of the enactment which is in force.

16. The BDA by its endorsement dated 12-5-1999 has rejected the request of the petitioners for releasing the land for group housing. The reasons assigned by the BDA is to the effect that pursuant to the final notification, an award has been passed u/s 11 of the Land Acquisition Act, and thereafter possession has also been taken from the landowners and therefore, the said Government Order has no application. Under the Government Order, the BDA may release certain land for the purpose of group housing provided the acquisition proceedings are not complete and possession of the land has not been taken. In the statement of objections filed by the BDA, it is stated an award has been passed on 8-7-1998 and 2-8-1999 and possession has been taken under five mahazars. The learned Counsel for the petitioners submits that the said awards are not awards in the eye of law and therefore possession continues with the petitioners. Under the scheme of the Land Acquisition Act, draft award passed by the Land Acquisition Officer who is a Deputy Commissioner appointed u/s 3(c) of the Land Acquisition Act, becomes an award on receiving the approval of the State Government. In the instant case since there is an approval of the State Government to the draft award passed by the Land Acquisition Officer, it becomes a valid award and therefore it cannot be said that there is no award in the eye of law. The possession of the lands in question have been taken under five mahazars dated 8-7-1998 and 2-8-1999. There is no reason to disbelieve this fact. Further, the learned Counsel for the BDA has produced the photographs at the time of arguments for my perusal to show that layout has already been formed. He has further stated that during the pendency of the writ petitions sites have been allotted to the applicants pursuant to the notification calling for applications for allotment of sites. Therefore, in my opinion when acquisition proceedings have been completed consequent on passing of the award and taking possession the

lands had vested with the BDA. If that is so, the Government Order has no application and therefore the BDA is justified in rejecting the applications/representations of the petitioners for releasing of the land for group housing. No doubt, this Court has directed the BDA to afford an opportunity of hearing to the petitioners before passing an order on the applications. When the facts disclose that possession has already been taken and the land has vested with the BDA, even if an opportunity is given to the petitioners, it would not change the decision of the BDA. Therefore, I hold affording opportunity of hearing is only an empty formality.

17. Point No. (3).--The learned Counsel for the petitioners submit that there is no acquisition of land of the petitioners in accordance with law and therefore the petitioners are entitled for a declaration to the effect that there is no acquisition of land of the petitioners. It is submitted that the petitioners have got a constitutional right to possess and enjoy the property under Article 300-A of the Constitution of India and that right shall not be deprived of by resorting to the provisions of the Land Acquisition Act. Article 300-A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. In the instant case what is to be examined is whether the land of the petitioners has been acquired under any law or not. The BDA has issued a preliminary notification u/s 17 of the Act 1976 proposing to acquire the land. This was followed by a final notification issued u/s 19 of the Act, declaring the land is required for a public purpose. After this declaration it is for the State to acquire the land as provided under the provisions of the Land Acquisition Act, since the provisions of the Land Acquisition Act are made applicable insofar as the acquisition of the land is concerned.

18. According to the learned Counsel for the petitioners, the BDA Act does not provide for acquisition of land and therefore any acquisition under the Land Acquisition Act, is no acquisition in the eye of law. He further submits that there is no delegation of power to the authorities of the BDA and therefore, the alleged acquisition, if any, is invalid. Under the scheme of the Act 1976, what is required is only a declaration, whether the land is required for a public purpose or not by issuing a notification u/s 19 of the Act. Section 36 of the Act 1976 provides that the acquisition of land otherwise than by agreement shall be regulated by the provisions, so far as they are applicable to the Land Acquisition Act. If that is so, after the declaration that the land is required for a public purpose, acquisition proceedings takes place only under the Land Acquisition Act. In the instant case, the Land Acquisition Officer has passed the award and thereafter possession also has been taken and consequent on the taking over of possession land has been vested with the State Government and thereafter with the BDA. If that is so, the petitioners are not right in contending that there is no acquisition.

19. Hence, I hold that there is no substance in any of the contentions of the learned Counsel for the petitioners and accordingly the said contentions are rejected.

20. For the reasons stated above, writ petitions are dismissed. Rule issued is discharged.