

**(2010) 10 KAR CK 0039**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 7010 of 2009**

Smt. Bharathi

APPELLANT

Vs

The State of Karnataka, Housing and Urban Development Department, The Commissioner, Bangalore Development Authority, The Special Land Acquisition Officer, Bangalore Development Authority and The President, Poorna Pragna House Building Co-operative Society

RESPONDENT

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**Date of Decision :** 23-10-2010

**Acts Referred:**

Bangalore Development Authority Act, 1976 — Section 17 (1), 17 (3)

**Citation :** (2010) ILR (Kar) 5399 : (2011) 2 KarLJ 375

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

**Bench :** Single Bench

**Advocate :** Sandhya Prabhu, for P. Krishnappa and K. Bhanu Prasad, for the Appellant; Venkatesh Dodderi, AGA for R1 and Prashanth, for Lawyers Inc for R4, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.V. Shylendra Kumar, J.—Writ Petitioner claims to be the owner in possession and enjoyment of a land comprised in Sy No. 36, measuring 36 acres 13 guntas, including 13 guntas of putkharab, situated in Vaddarapalya village, Uttarahalli hobli, Bangalore south taluk, in terms of a registered sale deed dated 27-2-2004 [copy at Annexure-A to the writ petition], purchased from one Thimmaiah @ Kariyappa. It is averred in the petition that this particular piece of land was earlier bearing Sy No. 8/D and it was later mutated and given the new number as Sy No. 36 in the year 1944 and in support of this, the Petitioner has produced a copy of the phodi extract as Annexure-B to the writ petition.

2. Petitioner's grievance in the present writ petition is that the state government in terms of endorsement dated 13-5-2008 [copy at Annexure-K to the writ petition] directed the Bangalore Development Authority [BDA] for making bulk allotment of different extents of land as indicated below, in favour of fourth

Respondent-house building cooperative society:

3. Petitioner has sought for quashing of this endorsement/direction made by the government contending that in so far as the subject land in Sy No. 8 of Vaddarapalya village, in which BDA had sought to acquire an extent of 35 acres 26 guntas in terms of preliminary notification dated 6-4-1989 [copy at Annexure-E to the writ petition] issued under Sub-sections (1) and (3) of Section 17 of the Bangalore Development Authority Act, 1976 [for short, the Act] and a declaration issued by the state government on 9-5-1994 [copy at Annexure-F to the writ petition], while the interest acquired by the Petitioner under the sale deed dated 27-2-2004 is in Sy No. 36 corresponding to old No. 8D of the village and that old Sy No. 8D or present Sy No. 36 being not subject matter of acquisition proceedings, the order/direction made by the government directing the authority to make bulk allotment in favour of fourth Respondent inclusive of the land not acquired by it is per se bad in law and affects the interest of the Petitioner and therefore deserves to be quashed.

4. Notices had been issued to the Respondent including fourth Respondent, for whose benefit Annexure-K order had come to be passed. By mistake, as this Court had directed the government advocate to take notice for the authority and its officials also, and Sri Venkatesh Dodderi, learned AGA, appearing for the state seeks to submit that his appearance is only for the state government and separate appearance may have to be caused for the authority etc. Be that as it may be submission can be considered if it is necessary. Sri Prashanth for M/s. lawyers inc, Advocates, appears for the fourth Respondent.

5. I have heard Ms. Sandhya Prabhu, learned Counsel for the Petitioner, Sri Venkatesh Dodderi, learned AGA appearing for first Respondent and Sri Prashanth, learned Counsel for fourth Respondent.

6. Statement of objections has been filed on behalf of the fourth Respondent. It is pointed out that the Petitioner, if at all, claims interest in the subject land, whether it was subject matter of acquisition or otherwise, only through a sale deed of the year 2004, whereas the acquisition proceedings were initiated in the year 1989 itself and therefore cannot claim any right or interest over and above the acquisition proceedings.

7. It is also pointed out that the fourth Respondent in fact has filed a civil suit to protect its possession and title by claiming interest in the subject land under Annexure-K, through OS No. 5092 of 2004 on the file of City Civil Court, Bangalore and the suit is now pending adjudication before the civil court.

8. Sri Venkatesh Dodderi, learned AGA submits that the subject land, directed to be allotted in favour of fourth Respondent did form part of the lands purchased by the fourth Respondent from private owners, but later had been made subject matter of acquisition proceedings by BDA at the request of the members of fourth Respondent-society; that small extents of land acquired under the notification was directed to be released in favour of fourth Respondent, as is

clear from the order itself and therefore this writ petition has no merit and it is to be dismissed.

9. A perusal of Annexure-B - copy of phodi extract does not necessarily indicate that any part of the land corresponding to Sy No. 8 has been given a new number as Sy No. 36. In fact Annexure-B indicates that the new Sy No. 36 is corresponding to old Sy No. 4 and not 8.

10. Though the learned Counsel for the Petitioner seeks to draw attention of the court to the xerox copy of the extract and submits that as mentioned in the original handwritten copy of phodi extract, it is stated/mentioned as RS No. 8; that perhaps is either a mistake or deliberate effort on the part of the Petitioner to project the Kannada numeral (sic) numeral "8" in Indo-Arabic numeral and it is definitely not Kannada numeral 8, which is written differently as (sic).

11. Be that as it may, assuming all averments in the writ petition are correct at their face value, even then the legal position is that the government also, cannot allot or direct any authority to allot any land which is not in the ownership of the state government or not in the possession of an authority.

12. Proceedings had been initiated way back in the year 1989 and the extent of land acquired in Sy No. 8 is as much as 35 acres 26 guntas. It is only an extent of 1 acre out of this extent which is sought to be reallocated in favour of fourth Respondent as per the order at Annexure-K. If as asserted by the Petitioner, the land did figure within this survey number, then the Petitioner cannot put forth any claim, for right, title or interest in the subject land, as Petitioner has purchased the land in the year 2004, after the issue of even final notification. Writ Petitioner does not/cannot acquire any right at all in this land in this state of affairs and therefore there is nothing further which the Petitioner can question before this Court with regard to the legality or validity of the government order at Annexure-K, as the Petitioner has no locus to seek for the relief of quashing this order.

13. Petitioner appears to be more a speculator and if at all has misused/abused the process of this Court, by filing the present writ petition even when the Petitioner is not able to establish any definite right, title or interest in the subject land. If the Petitioner has any interest in the land other than one covered by the notification, it is always open to the Petitioner to defend such interest on the basis of title and possession before a civil court. Petitioner has not resorted to such a course of action hitherto and on the other hand is facing civil litigation initiated by the fourth Respondent, which even reflects on the bona fides of the Petitioner to prosecute this writ petition.

14. The conduct of the Petitioner does not behove of a bona fide litigant before this Court. The Petitioner has no locus to question the endorsement/order at Annexure-K, but has only come up with a make-believe case even by misleading and misrepresenting this Court.

15. This petition only deserves to be dismissed as one without any merit and it is accordingly dismissed levying cost of Rs. 5,000/- [Rupees five thousand only] on the Petitioner, in favour of the fourth Respondent.

16. Cost to be deposited before this Court within four weeks from today and on such deposit, the registry is directed to permit the fourth Respondent to draw the amount. If the cost is not deposited within the stipulated time, registry is directed to issue a certificate in favour of fourth Respondent to realize the amount before a civil court though it is a decree passed by a civil court.

17. Writ petition dismissed.