

(2010) 09 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 12511 of 2008

Smt. Nanjamma and Galappa

APPELLANT

Vs

The State of Karnataka and Bangalore Development Authority

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 48

Citation : (2011) 4 KarLJ 8 : (2011) 3 KCCR 2014

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

Bench : Single Bench

Advocate : K.S. Desai and Harsha Desai, for the Appellant; H. Venkatesh Dodderi, AGA for R1 and L. Umakanthan, for R2, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petition by persons who had claimed benefit under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Land) Act, 1978 [for short, SC/ST Act], though had, in violation of the terms of allotment, certain parcels of land that had been alienated and was ultimately successful in the year 2008 to get back the land, but in the meanwhile the subject land having been notified for acquisition for a public purpose viz., for development as a urban residential layout by the Bangalore Development Authority [BDA] under the scheme known as Nagarabhavi I Stage located now within the municipal limits of Bruhat Bengaluru Mahanagara Palike;

2. The Petitioners, who are legal heirs of original grantee one Gali Hamima, in whose favour the subject land had been granted as a person belonging to scheduled caste community, have come up with this writ petition with the following prayers:

a) Quash by issue of Writ of certiorari the Endorsement No. BDA/Vibhuswa/A4/PR/ 674, date 11.01.2008 issued by the its Special land Acquisition Officer (Annexure-J).

b) Issue a Writ in the nature of mandamus, directing the Respondents to withdraw the actuation proceedings in respect of the Petitioners land viz., Sy. No. 46 (Old), 120 (New), measuring 2 Acres situated at Nagarabhavi Village, YeshwathpurdHobli, Bangalore North Taluk with a further direction to Respondents to reconvey land to Petitioners, in the interest of justice.

c) Issue such other appropriate Writ/Order/Direction as deemed fit, in the interest of justice.

3. Notice had been issued to Respondents - state of Karnataka and BDA. They have been served and represented by Sri H Venkatesh Dodderi. learned AGA and Sri L Umakanthan, Advocate respectively. Neither Respondent has filed any statement of objections.

4. Sri K S Desai, learned Counsel for the Petitioners, would very vehemently urge that the scheme which had come to be initiated by issue of preliminary notification u/s 17 of the Bangalore Development Act, 1976 [for short, the BDA Act] on 12-8-1982, which was followed by final notification dated 16-8-1985 and a further official memorandum approving the award indicating the quantum of compensation payable to the land owners on 18-9-1987, are all actions bad in law; that the acquisition proceedings invariably get voided in voew of the provisions of Section 4 of the Act and therefore relief as sought for in this petition should be granted to writ Petitioners.

5. It appears that possession of the subject land was taken on 6-7-1991 not from the Petitioners but from persons who were in possession viz., persons in whose favour the Petitioners or their predecessor-in-title had sold the land and who were such purchasers or their legal heirs.

6. While the acquisition proceedings were in progress, it appears, the lis between the Petitioners or their predecessor-in-title and the alienees were proceeding simultaneously and it appears to have attained finality only in terms of the order dated 16-6-2008, passed by the Deputy Commissioner in appeal affirming the order of the Assistant Commissioner in the second round of litigation, setting aside the sales and restoring the land to the original grantee or his legal heirs, free from all encumbrances.

7. It is thereafter that the Petitioners have given a representation to the Commissioner, BDA praying for restoration of the subject land in their favour, as, according to them, the scheme mooted way back in the year 1985 has not been implemented in so far as the Petitioners' land is concerned. That request made through the representation vide Annexure-H to the writ petition having been negatived by the officials of the BDA as per endorsement dated 11-1-2008 [copy at Annexure-J to the writ petition), the present writ petition before this Court with the prayers as extracted above.

8. Submission of Sri K.S. Desai, learned Counsel for the Petitioners, is that the scheme is virtually one which has taken to have been abandoned and has even

otherwise lapsed, as the full scheme is not implemented within five years from the date of final notification and therefore it automatically lapses in terms of Section 27 of the BDA Act and therefore there was no way for the commissioner to reject their representation for restoration of the land.

9. Sri Desai would also urge that the Petitioners have also represented to the government and even if the commissioner could not have rescind from the acquisition proceedings and could not have restored the land, it is for the government to consider, as the government has such powers and the state government having not disposed of the representation, a writ of mandamus at least should be issued to the state government to dispose of the representation; that the state government has such powers and for such possibilities in terms of Land Acquisition Act, 1894.

10. Appearing on behalf of the state, submission of Sri. Venkatesh Dodderi, learned AGA. is that with the possession of the land having already been taken by the authorities way back in the year 1991, there is no possibility of initiating proceedings u/s 48 of the LA Act and it is therefore the state government will not be in a position to take any action positively in favour of the Petitioner and therefore the pending representation by itself cannot be the criterion for either issue of a mandamus or for allowing this petition.

11. Sri. L. Umakanthan, learned Counsel for the second Respondent-BDA would submit that the scheme in fact has been implemented substantially and it is only in respect of such parcels of land which were under litigation and in respect of which BDA was helpless from taking action for implementation of the scheme, the scheme is not yet effectuated; that with the litigation between the Petitioners and the purchasers even as admitted in the writ petition being before several authorities under the SC/ST Act, no blame can be laid at the door steps of BDA; that BDA would implement the scheme in respect of the land of the Petitioners also; that the order passed by the authorities under the SC/ST Act was for restoration of the ownership of the land on the Petitioners.

12. The subject land was originally granted as a parcel of agricultural land to enable persons belonging to weaker sections of society to have a source of livelihood, as otherwise such persons in the society were never capable of owning a land of their own, which they could cultivate for earning their livelihood.

13. It is to enable such socially depressed and exploited class of persons that the scheme for grant of government lands in favour of persons belonging to such socially backward community had been put in action even from pre-independence days. The purpose and object of SC/ST Act, enacted in the year 1978, was to ensure that such persons in whose favour revenue land had been granted do not lose the land out of sheer ignorance or poverty or for any other reason, and if they had alienated the land in violation of terms of grant, then, the very purpose of grant of land itself being defeated, legislature stepped in to ensure that such alienations were all voided and the authorities like Assistant

Commissioner functioning under the Karnataka Land Revenue Act, was empowered to enquire into the matter to ensure restoration of the land to the original grantee or to legal heirs, if the original grantee was no more alive.

14. Under the provisions of SC/ST Act, a piece of social welfare legislation, alienation made long prior to the coming into force of the Act have all been voided, if the transfer was in violation of the conditions of grant and such lands restored to the original grantees or their progeny.

15. The present case is one such example of the benefit under the Act ultimately reaching the heirs of original grantee only in the year 2008, but the litigation has again proved to be futile for the Petitioners, as in the meanwhile the land had been notified for acquisition for development purpose by BDA and the acquisition ultimately frustrating not only the orders passed by the Assistant Commissioner and as affirmed by the Deputy Commissioner, but also the very object of the Act

16. The fact remains that in so far as the Petitioners' land is concerned, the scheme has not yet been implemented and as per the original grant, as submitted by the learned Counsel for the Petitioners, the extent was about two acres.

17. That the purpose and object of the acquiring authority being essentially to form residential plots, and the land now being within the vicinity of the Bangalore city, there was no way of the Petitioners resuming cultivation of the land to eke out their livelihood and in the absence of such a possibility, perhaps, the only other possibility is that Petitioners should be provided with at least a roof over their heads and if the condition and capacity of the present heirs of the original grantee should be looked at, the possibility of Petitioners getting a roof over their head is again rather bleak, as Petitioners may not be capable of either acquiring a site or building house on the site.

18. With the state government coming up with many beneficial schemes to rehabilitate and enable socially backward and exploited classes of society and in the peculiar circumstances of the present case, it will be in the fitness of things that the development authority instead asking the Petitioners to collect the compensation that it had already awarded, ensure that the Petitioners are re-granted or provided with a house site of the measurement of not less than 40 x 60 feet and a dwelling unit is also constructed on the site at the cost of BDA with a plinth area of not less than 100 square metres of reasonably good quality construction (to ensure that the roof does not cave in on the heads of the inhabitants) and to utilize the rest of the area for carving out sites of like dimension to be allotted to persons who are entitled for it in accordance with the provisions of the BDA Act and the Rules framed thereunder, without diverting any of such sites to any special category or out of turn allotment.

19. BDA is directed to implement this order and ensure that the Petitioners are put in possession of the building and hand over the possession of the same within a period of one year from today. BDA is also relieved of paying any cash

compensation, as was payable to the land owner of the extent of 2 acres acquired earlier, as the house on a site measuring 40 x 60 feet is in substitute of the compensation which the Petitioners are otherwise entitled to in law for acquiring two acres of their land.

20. Ordered accordingly. Rule issued. Writ petition is disposed of in the above terms.