
(2016) 03 KAR CK 0323

In the Karnataka High Court

Case No : Writ Appeal No. 16454 of 2011 (LA-RES) and Writ Appeal No. 16453 of 2011.(LA-RES)

Smt. Rajamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 13, Order 3 Rule 2, 11
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 23, 50

Citation : (2016) AIR(Karnataka) 152 : (2017) 1 AirKarR 398

Hon'ble Judges : Subhro Kamal Mukherjee, CJ. and Ravi Malimath, J.

Bench : Division Bench

Advocate : H.S. Dwarakanath, Advocate, for the Appellant; D. Nagaraj, AGA, for the Respondent No. 1 to 3; R.V. Jayaprakash, Advocates, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, C.J.—The Government decided to acquire a vast tract of land for the benefit of a housing co-operative society. Initially, the name of the housing co-operative society was National Tuberculosis Institute House Building Co-operative Society. Subsequently, however, the nomenclature was changed to National Technological Institutions Employees' House Building Co-operative Society.

2. Before the Hon'ble single Judge, by filing the present writ petitions, notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, the 1894 Act] were challenged, alleging that they were vitiated by fraud and colourable exercise of jurisdiction.

3. The Hon'ble single Judge, by a lengthy judgment, dismissed the writ petitions, recording that there has been suppression of material facts and the challenge was an abuse of the process of acquisition. It was recorded that there was an

earlier litigation touching upon the very acquisition proceedings, wherein the points raised in the present writ petitions were finally dealt with.

4. When the notification under Section 4 of the 1894 Act was issued, the landowners executed general power of attorneys in favour of a person, namely Mr. P. Krishna Rao. The following statement in the power of attorney is very important for deciding the issue in these appeals:

.... Whereas, we are in need of money for purchase of lands elsewhere and, hence, we have received a sum of Rs. 62,500/- [Rupee sixty-two thousand and five hundred only] from our attorney, which is approximately calculated to be the amount payable as compensation money from the Government/Land Acquisition Officer. Our attorney is, therefore, hereby authorised to receive the said compensation money from the Government/Land Acquisition Officer, and, also, to receive any further or any enhanced amount payable to us. We, hereby, renounce all our claims in respect of the compensation that may be awarded in respect of the schedule land and the attorney holder is empowered to hand over the physical possession of the land to the concerned Land Acquisition Officer...

5. Our understanding of the document is that the landowners had accepted the amount mentioned in the general power of attorneys executed by them as full and final settlement of their claims and they relinquished their rights whatsoever in the lands in question in favour of the power of attorney holder.

6. The power of attorney holder appeared before the Land Acquisition Officer and consent awards were passed in relation to an extent of 5 acres, 20 guntas of land including pot kharab land of 2 guntas.

7. However, there has been a general award in relation to 1 acre, 30 guntas of land.

8. It is on record that the possession of the lands was received by the Land Acquisition Officer in exercise of power under sub-section (2) of Section 16 of the 1894 Act, in 1991-1992. Thereafter, the possession of the lands was delivered to the housing society on November 5, 1992.

9. Mr. H.S. Dwarakanath, learned advocate for the appellant-writ petitioners, strenuously argues that the entire acquisition proceedings is lapsed in terms of the provisions of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short, the 2013 Act].

10. Sub-section (2) of Section 24 of the 2013 Act contemplates that where an award under Section 11 has been made five years or more prior to the commencement of 2013 Act, but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed.

11. We are unable to accept the contention of Mr. Dwarakanath, as there is

material to show that the possession of the lands was obtained by the authorities and delivered to the beneficiary.

12. Mr. Dwarakanath invited our attention to the contents of the general power of attorneys and submits that there was no stipulation authorising the power of attorney holder to agree for a consent award.

13. We regret, we cannot accept the said contention. From the statements in the general power of attorneys, it clearly reveals that the landowners have relinquished their rights whatsoever in favour of the power of attorney holder. The receipts of Rs. 62,500/- [Rupees sixty-two thousand and five hundred] only and Rs. 40,500/- [Rupees forty thousand and five hundred] only by the appellants in Writ Appeal No. 16453 of 2011 and Writ Appeal No. 16454 of 2011 respectively, were in full and final settlement of their claims.

14. Thus, when the general power of attorney holder was authorised to deliver the possession of the lands in favour of the Land Acquisition Officer and the power of attorney holder was entitled to receive the compensation, to which the landowners relinquished their rights, he has, certainly, got a right to give consent to pass an award by arriving at a settlement with the authorities concerned.

15. Mr. Dwarakanath submits that the housing society has engaged a middleman and therefore it is enough to hold that the entire acquisition proceedings was vitiated by fraud and colourable exercise of power.

16. We have gone through the statement of the general secretary of the housing society. Our understanding of the matter is that the housing society has appointed an agency/manager, as there were a large number of members in the housing society and to facilitate delivery of possession of the sites formed in the layout by the housing society. There was no indication whatsoever to show that there was exchange of money for the purpose of proposal of the acquisition.

17. Mr. Dwarakanath submits that initially the beneficiary for which the notification under Section 4 of the 1894 Act issued was National Tuberculosis Institute House Building Co-operative Society, but on the date of issuance of notification under Section 6 of the 1894 Act, the name of the beneficiary was changed to National Technological Institutions Employees' House Building Co-operative Society. Thus, the acquisition is bad.

18. The change of nomenclature of the beneficiary cannot cause any hindrance in the acquisition process. The beneficiaries are the employees of the organisation and they wanted to form a layout for the purpose of their housing. Therefore, the acquisition proceedings, in our view, cannot be lapsed due to change in the nomenclature of the beneficiary.

19. Mr. Dwarakanath further, submits that for the purpose of acquisition, a three-man committee was constituted and in spite of an adverse report submitted by the committee against the fourth respondent housing society, the notification under Section 6 of the 1894 Act was issued. Therefore, the acquisition is bad.

20. We believe that all these points are no longer available to the appellants-writ petitioners, as earlier there were writ petitions being Writ Petition Nos. 14493 and 14498 of 1993, challenging the very notifications issued under Sections 4 and 6 of the 1894 Act and the said writ petitions were rejected by judgment and order dated January 11, 1999.

Thereafter, a public interest litigation was filed in the year 1999, challenging the acquisition. That was also rejected.

21. There was an appeal against the judgment and order dated January 11, 1999 in Writ Appeal No. 4602 of 1999, which was also, dismissed by judgment and order dated June 28, 2000.

22. In the circumstance, these subsequent writ petitions, challenging the very same notifications, filed in the year 2011, were rightly held to be not maintainable. In writ proceedings, assuming for the sake of arguments, the principle of res judicata as indicated in Section 11 of the Code of Civil Procedure, 1908 is not applicable, the principle akin to that is certainly applicable.

23. We understand the tenacity of the landowners to stall the acquisition, but we cannot encourage such tenacity in the court of law.

24. We feel that the Hon''ble single Judge was right in dismissing the writ petitions by imposing costs.

25. We do not find any merit in the writ appeals. Therefore, the appeals are dismissed.

26. There will, however, be no order as to costs.