

(2011) 12 KAR CK 0290

In the Karnataka High Court

Case No : Writ Petition No's. 42792-42799 of 2011 and Writ Petition No. 42800 of 2011 (LA-BDA)

Smt. Rathnamma and Others

APPELLANT

Vs

State of Karnataka, Bangalore Development Authority and Bruhat

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 48, 48 (1)

Citation : (2011) 12 KAR CK 0290

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; K.S. Mallikarjunaiah, HCGP for R-1, Sri Udaya Holla, for Sri Gurudev Gachchinamath, Advocate for R-2 and Sri I.G. Gachchinamath, Advocate for R-3, for the Respondent

Judgement

Ashok B. Hinchigeri

1. W.P. Nos. 42792-42799/2011 and 42800/2011 and W.P.Nos.42831-42834/2011 are clubbed, heard together and are being disposed of by this common order, as the questions of facts and law involved are one and the same.

2. Although these matters are listed in the orders category, they are taken up for final disposal with the consent of the learned advocates appearing for the parties in these cases.

3. The petitioners have raised the challenge to the notification, dated 4.11.2011 issued by the Government withdrawing the earlier de-notification (notification, dated 12.1.2010 issued u/s 48(1) of the Land Acquisition Act, 1894 withdrawing the lands in question from the acquisition). The lands covered by both the batches of writ petitions totally measure 5 acres (2 acres 20 guntas in each batch of petitions) at Survey No. 251 of Halage Vaderahalli, Kengeri Hobli, Bangalore South Taluk. The narration of the facts is with reference to

W.P.Nos.42792-42799/2011 and 42800/2011. The preliminary notification proposing to acquire the lands, in question and other lands for the benefit of the respondent No.2 for the formation of BSK V Stage Layout was issued on 29.12.1988. The first petitioner purchased the land on 27.9.1991. The final notification, dated 9.5.1994 was published in the gazette., dated 18.5.1994. The award was passed on 4.9.1996. However, the award amounts were neither disbursed to the land owners nor deposited with the Reference Court. On 12.1.2010 the Government issued the de-notification. The Government confirmed the same to the BDA vide its letter, dated 26.5.2010. The de-notification was published in the gazette on 10.6.2010. Thereafter, the petitioner got the lands converted from agricultural to non-agricultural purpose paying conversion charges. The conversion order is issued on 20.7.2010. Subsequently, the petitioner Nos.2 to 8 purchased the lands in question from the petitioner No.1. The petitioner Nos.2 to 8 have been paying the property tax, the khata extracts are standing in their names, they have got the plan sanctioned and they have been putting up the constructions in accordance with the sanctioned plan. The petitioner Nos.2 to 8 have already constructed the apartment consisting of five floors. When thus stood the state of affairs, the respondent No.1 issued the notification, dated 4.11.2011 withdrawing the de-notification.

4. Sri V. Lakshminarayana, the learned counsel for the petitioners submits that the entire extent of the acquired land measuring 46 acres 35 guntas in Halage Vaderahalli is withdrawn from the acquisition. The petitioners' lands form part of the same. He submits that there is no justification for giving the discriminative treatment to the petitioners.

5. The learned counsel also submits that based on the de-notification, the petitioner Nos.2 to 8 have purchased the lands, have invested enormous amounts of money for developing the lands. He submits that they have not violated any law. He submits that none of the petitioners are put on any notice, much less being afforded with an opportunity of hearing in the matter before issuing the impugned notification. He has also relied on the judgment of the High Court of Punjab and Haryana in the case of Hari Ram and Another Vs. State of Haryana and Others, . The relevant paragraph of the said judgment is extracted hereinbelow:

13. Section 48 of the Act empowers the Government to withdraw from the acquisition of the land provided possession has not been taken. The said power is given to the Government by a statutory provision and is not restricted by any condition except that such power must be exercised before possession is taken. The statutory provision contained in Section 48 does not provide for any particular procedure for withdrawal from acquisition.

6. Sri K.S. Mallikarjunaiah, the learned High Court Government Pleader appearing for the respondent No.1 submits that the Government has issued the impugned notification only on the second respondent BDA bringing to its notice that the status-quo order was operating as on the date of the issuance of the de

notification. With due deference to the Civil Court's interim order of status-quo, the Government has restored the status-quo ante by withdrawing the de-notification.

7. The learned Government Pleader fairly submits, on being asked by the Court as to whether the award amounts are deposited by the second respondent BDA, in the negative.

8. Sri Udaya Holla, the learned Senior Counsel appearing for Sri Gurudev Gachchinamath for the respondent No 2 submits that the matter may be remanded to the Government, as the impugned notification does not appear to have been passed after affording an opportunity of hearing to the petitioners. He submits that in respect of the portions of the lands on which no construction has come up, the notification withdrawing the de-notification is supportable.

9. The submissions of the learned counsel have received my thoughtful consideration. The only question that falls for my consideration is whether the impugned notification withstands the scrutiny of law. My answer is in emphatic "no" for the following reasons:

a) The impugned notification is issued in flagrant violation of the principles of natural justice. It is true that if the notification withdrawing the land from the acquisition is to be revoked, the land owners are to be given an opportunity of hearing in the matter.

b) I do not find any change in the circumstances between 12.1.2010 (date of de-notification) and 4.11.2011 (date of issuing the impugned notification). The justification sought to be advanced with reference to the granting of the interlocutory order of status-quo by the Civil Court is absolutely unacceptable. In O.S.No.4378/2008, the Civil Court granted an interim order of status-quo on 21.7.2008. This order was subsequently modified on 30.7.2008. The defendants were directed not to demolish the structures on the lands in question till further orders. The Civil Court however permitted the defendants to proceed with the formation of the layout in the lands in question. The subsequent modification is only in the nature of liberty or permission; it cannot be construed as a direction to the Government or BDA to maintain the status-quo.

c) It is not in dispute that the possession of the lands in question is not taken. As per Section 48(1) of the Land Acquisition Act, 1894 land can be withdrawn from the acquisition any time before its possession is taken.

d) It is also not in dispute that although the award is passed 15 years ago on 4.9.1996, the award amounts are neither disbursed to the khatedars nor deposited with the Reference Court.

e) No cogent or satisfactory explanation is forthcoming from the Government as to why the earlier decision of de-notification is reversed.

f) Some of the petitioners have acted on the de-notification by getting the lands

converted from agricultural purpose to non-agricultural purpose by paying enormous conversion fee, by incurring the fabulous cost on construction, etc. Now by virtue of the impugned notification, the respondents cannot get the lands in question by paying the award amounts, the determination of which is based on the market value as on the date of the issuance of the preliminary notification on 29.12.1988.

g) The respondent No.2 has shown lethargy and inaction in the matter of implementation of BSK V Stage Layout. The whole scheme appears to have lapsed.

h) When all other lands covered by the same preliminary notification are withdrawn from the acquisition, there is no justification for reviving the acquisition proceedings only in respect of the lands in question. That the de-notification in respect of the remaining 40 acres of land belonging to other khatedars has been left undisturbed is not in dispute. There cannot be any discrimination in the matter of dropping the acquisition proceedings.

10. For all the aforesaid reasons, I quash the impugned notification, dated 4.11.2011. All the proceedings consequential to the issuance of the impugned notification stand quashed. Needless to observe that if the lands in question are required for a public purpose, it is always open to the respondents to resort to fresh acquisition proceedings.

11. These petitions are accordingly disposed of. No order as to costs.