

(2010) 11 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 10824-10825 of 2009

Smt. Savithramma, Sri. R. Subba Raju Both represented by
GPA Holder Sri. K.M. Abdul Hakim Saheb and Sri.
Venkateshalu APPELLANT

Vs

The State of Karnataka, The Commissioner Bangalore
Development Authority and The Addl. Land Acquisition
Officer, Bangalore Development Authority RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 17 (1), 17 (3)
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 4 KCCR 2489

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

Bench : Single Bench

Advocate : K. Suman, for P1 and P2, Narasimhan, for Crest Law Partners for P3, for the Appellant; Venkatesh Dodderi, AGA for R1 and Uttam, for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—These writ petitions are stale petitions hit by delay and laches. Petitioners' claim interest in land measuring an extent of 5 acres 16 guntas in Sy No. 136 and 1 acre 22 guntas in Sy. No. 138/4 located in Kadugondanahalli Village of Kasaba Hobli, Bangalore North Taluk. Such lands were subject matter for acquisition under the provisions of the Bangalore Development Authority Act, 1976, (hereinafter referred to as "the BDA Act") in terms of preliminary notification issued u/s 17 (1) and (3) of the BDA Act, dated 29.05.1978, copy at Annexure-A to the petition and final notification u/s 19 (1) of the BDA Act, dated 28.04.1985, copy at Annexure-B to the petition.

2. It is the case of the Petitioners that BDA had passed a resolution on 30.07.1988, copy at Annexure-C to the petition, resolving to give up the subject lands belonging to the Petitioners from the scope of acquisition for the reason

that though awards had been passed in respect of these lands also, physical possession had not been taken by the BDA, from the owners, but on representation was received from one Sri. T.M. Munishamappa said to be power of attorney holder and on such representation and under such circumstances, the notification was denotified in respect of land measuring an extent of 5 acres 16 guntas in Sy No. 136 and 1 acre 22 guntas in Sy. No. 138/4. It is the version of the Petitioners that the resolution was followed by a letter addressed to the Secretary to the Government, Housing and Urban Development Department by communicating the same as per the letter dated 28.1.1989 signed by the Commissioner, BDA, as per Annexure D to the petition.

3. It is the further version of the Petitioners that though the lands originally stood in the name of one Rangaiah, on and after his demise on 5.8.1981, the 1st Petitioner - wife and 2nd Petitioner - son of said Rangaiah have pursued the matter before the authority and 2nd Petitioner had been apprised by the Bangalore Development Authority (BDA) that the request of the 2nd Petitioner for permission to develop the lands under "Group Housing Scheme" will be considered favourably, after the Petitioners submit necessary material and records as indicated in communication dated 6.02.1997 addressed to the 2nd Petitioner by the BDA as per Annexure E.

4. It is also contended by the Petitioners that the efforts of the Petitioners bore fruits by the Government issuing Government Order dated 17.11.1995 according approval to the proposal of the BDA and also indicating that depending upon the nature of the project to be taken up by the Petitioners certain percentage of the land area should be earmarked for development activity in favour of the Low Income Group persons etc.

5. However, this aspiration of the Petitioners it appears was short lived, even as narrated in the petition, as this Government Order, which was subject matter of writ petition came to be quashed by this Court at the behest of a public spirited person, who had convinced this Court that the BDA could not pass such a resolution nor could have accorded approval for such a scheme as it was not in their power etc.

6. In the meanwhile, Petitioners claim that they were made to run from pillar to post for making efforts not only for developing the lands for the purpose of "Group Housing Scheme" but also for making efforts, to get the land legally released from the purview of acquisition proceedings by the Government issuing the enabling notification under the provisions of Section 48 of the Act.

7. It is in this background the present writ petitions on the premise that while such were the developments, nevertheless, the officials of the 2nd Respondent - BDA have caused interference affecting the interest of the Petitioners in taking possession of the lands, particularly by high hand action as on 8.4.2009, as averred in paragraph 17 of the petition which reads as follows:

17. Under the circumstances, as there is an imminent threat of forcible

dispossession, which the BDA made it obvious by sending their officials/ engineers to the lands of the Petitioners on 08.04.2009 to measure the lands. The Petitioners have therefore forthwith filed the above writ petition by invoking the writ jurisdiction under Articles 226 and 227 of the Constitution of India, as they have no alternative efficacious remedy and urges the following as main grounds in support of the prayer

The aggrieved Petitioners have therefore, approached this Court with the following prayer.

i. to declare that the acquisition proceedings initiated by the Respondents 1 and 2 as per preliminary notification bearing No. High Court/PETITIONER/ALAO/12/78-79 dated 29.05.1978 published in the Karnataka Gazette dated 21.09.1978 i.e. Annexure-A and the final notification No. HUD 567 MNX 84 dated 28.02.1985 published in the Karnataka Gazette on June 6 1985 i.e., Annexure-B, in respect of the lands in Sy. No. 136, measuring 5 Acres 10 guntas and Sy. No. 138/4 measuring 1 Acre 22 Guntas, situated at Kadugondanahalli Village, Kasaba Hobli Bangalore North Taluk, insofar as it relates to Petitioners; are concerned only has lapsed and/or abandoned on account of non utilization of the lands by the BDA for more that three decades;

ii. to award costs and grant such other relief(s) as this Hon''ble Court deems fit and expedient in the circumstances of the case, in the interests of justice and equity

8. Notice of these petitions had been issued to the Respondents and the Government Advocate was directed to take notice for the 1st Respondent - State and Sri Basavaraj V. Sabarad, learned Counsel had been directed to take notice for Respondent Nos. 2 and 3 on the very day. However, on 16.6.2009 learned Counsel Sri K.M. Nataraj, had entered appearance and henceforth his name was directed to be shown in the cause-list.

9. In the meanwhile, an application Misc.W. 9547/2009 for impleading appears to have been filed for impleading the applicant as 3rd Petitioner, which was entertained and ordered by this Court on 9.10.2009.

10. Be that as it may, while the interim order passed on 20.4.2010 reads as under:

HNNDJ:

20/04/2010

Both the parties are hereby directed to maintain status-quo till the next date of hearing.

List these matters immediately after vacation.

No further development seems to have taken place and the 1st Respondent - the State of Karnataka, 2nd Respondent -The Commissioner, BDA, and 3rd

Respondent - The Addl. Land Acquisition Officer, BDA, have blissfully remained silent without caring to file counters either on the factual situation as averred in the writ petition or to point out any legal position on the merits of the petition.

11. It is in this state of affairs the petition is listed today before the Court in "B" Group category of cases. I have heard Sri. Suman, learned Counsel and Sri. Diwakar learned Counsel appearing for Petitioners 1 and 2 and Sri. Narasimhan, learned Counsel appearing for Petitioner No. 3, Sri. Venkatesh Dodderi, learned AGA for 1st Respondent - State and Sri. Uttam, learned Counsel for Respondents 2 and 3.

12. Even after hearing elaborate submissions made by Sri Suman, learned Counsel for the Petitioners, I find these writ petitions are while hopelessly hit by delay and laches are also not one for eliciting the discretion of this Court in the exercise of the jurisdiction under Article 226 of the Constitution of India and it to be dismissed only on the ground delay.

13. Sri Uttam, learned Counsel appearing for Respondents 2 and 3 submits that as per the records of the BDA possession of the subject lands had been taken from the Petitioners as on 7.08.2008 in terms of the Mahazar drawn on that day etc., but no original records is placed and while that cannot be characterized as a dereliction of duty, as these writ petitions have not even been admitted by issue of rule, the absence of the counters by the 2nd and 3rd Respondent is conspicuous. Many factual averments are made in the writ petitions and if it is not countered, it has to be taken that such factual assertions of the Petitioners is conceded by the Respondents. Such is the law declared by the Supreme Court in terms of the judgment in the case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, in situations where Respondent/s do not file a counter to deny or dispute a factual averment made even in a writ petition.

14. On the other hand, Sri Uttam, learned Counsel for the Respondents 2 and 3, submits that the officials of the Respondent-authority had taken physical possession of the subject land even as on 7-8-2008 in terms of the records available at the office of the authority [no such records in the original are either placed before the court nor has the authority filed any written statements to indicate this factual position] or to counter the assertion on the part of the Petitioners that they are still in physical possession of the subject land is either wrong or incorrect.

15. Submission of Sri Venkatesh Dodderi, learned AGA appearing for the first Respondent-state is that even while no counter is filed, it is open to the learned advocate for the authority to submit that the writ petition is to be dismissed on the ground of delay and laches, as the possession of the land has already been taken over by BDA, neither the government nor any other authority can rescile from the acquisition proceedings and it is because this position was realized, the principal secretary to government in the department of urban development had addressed a letter to the commissioner, BDA on 23-2-2008 [copy at Annexure-J

to the writ petition], eliciting necessary factual information and the view of the commissioner to submit the government as to whether the subject land and the surrounding lands as indicated in the sketch have been taken possession of by the BDA and as to whether a notification had been issued u/s 16(2) of the Act for such purpose and such information was elicited in the wake of the request/representation submitted by Sri Ramalinga Reddy, a former minister, to the governor of the State and enclosing a copy of such a representation and its annexures etc., for the purpose of examining the question as to whether acquisition proceedings in respect of subject land can be dropped etc.

16. However, submission learned AGA is that the government is only awaiting reply till date, but no reply has been received by the government in response to this communication. Learned AGA submits that he is not conversant nor instructed as to whether the letter had been followed up by the government for securing a reply from the commissioner.

17. While the manner in which the Respondents have conducted themselves and have responded to the notice issued by this Court calling upon them to respond as to whether rule can be issued to examine this matter further leaves much to be desired by them remaining blissfully silent as though both the state government and the development authority are not accountable to respond to the notices issued by this Court but have shown a degree of irresponsible, impertinent conduct, many factual averments are sought to be countered in terms of submissions made before the court by the learned Counsel appearing for the first Respondent-state and Respondents 2 and 3 - development authority and its land acquisition officer.

18. An oral submission to counter a factual assertion made by the Petitioners, affirmed and supported by oath of the power of attorney holder of the Petitioner, is no good in law, even in terms of the law declared by the Supreme Court.

19. Added to such irresponsible conduct and non-production of any record before this Court, which, at least, could have bailed out the Respondents for supporting oral the submission made by their counsel, that also not having been done, though the matter is pending before this Court for the past more than 11/2 years and the Respondents remained blissfully silent, this conduct and attitude only creates a suspicion as to the bona fides of the conduct of the Respondents in defending such matters on behalf of the state and public authorities in either a diligent or proper manner or even in terms of available defences available to the Respondents. It is suffice to say that the conduct and the response of the three Respondents leaves much to be desired and if such is the response to the notices issued by this Court, it is rather doubtful as to the quality of the governance the state government is providing to the citizens of the state!

20. Even drawing attention of the court by Sri Dodderi, learned AGA, to Annexure-J, in itself speaks a story and ineptness or incompetence of the state government as if a letter addressed by the principal secretary of the government,

department of urban development, does not elicit a commensurate response from the commissioner, BDA for as long a period as 2 years 8 months or more, it not only demonstrates the ineffectiveness of such letters written by principal secretary but also the impertinent or irresponsible or even an haughty attitude on the part of the commissioner, BDA.

21. The entire thing appears to be in a real mess and in this state of affairs, with no coordination existing between the state government and its agencies such as BDA and its officers, no wonder that the Respondents have failed to place correct factual position before the court and have been blissfully keeping quiet, towing a line of evasion!

22. Such conduct on the part of the Respondents only creates a further suspicion as to whether the officials manning the state government are really keen and desirous of defending the interest of the state, which is the highest public body in the state or as to whether they are more in collusion with the Petitioners and such silence before the court is only to enable the Petitioners to get relief sought for in the writ petition more due to default on the part of the Respondents!

23. What is examined in a writ petition while is undoubtedly the action of the state and its agencies, which partake the character of "state" within the meaning of Article 12 of the Constitution of India and it is judicial review of administrative action and suspect or gullible action on the part of the state government, while can be found fault with and the court quashing the same, if so warranted, by issue of a writ of certiorari, it does not mean that any rights are conferred on any person approaching court for relief in writ jurisdiction.

24. Petitioners, if have any right, constitutional, statutory or otherwise, can only sustain those rights before the court and cannot either augment such rights or acquire new rights by orders passed in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

25. While the action on the part of the Respondents and the conduct on their part and later their inaction would, to some extent favour the Petitioner by creating a situation that the factual assertion made in the writ petition perhaps, would have accepted for want of denial or counter, the present writ petitions are one which is woefully hit by delay and laches, for the simple reason that the relief sought for on the touchstone of Section 27 of the Act, reading as under:

27. Authority to execute the scheme within Jive years: Where within a period of five years from the date of the publication in the official gazette of the declaration under Sub-section (1) of Section 19, the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative.

is further based on the ground that the scheme mooted by the development authority is a failed scheme, in the sense, a scheme which has substantially failed for implementation and therefore Section 27 of the Act operates.

Petitioners have not placed any material before the court to indicate that the scheme has substantially failed in its implementation nor any such pleadings found in the petition. On the other hand, submission of Sri K Suman, learned Counsel for the Petitioners, is that in so far as the Petitioners' lands are concerned, the scheme has failed due to non-implementation, particularly in the wake of the assertion on the part of the Petitioners that they have still remained in possession of the subject land.

26. Whether the Petitioners are in possession, as asserted by them, or as to whether the Respondent authority has taken possession of the land as claimed by their learned Counsel is a disputed aspect, as even oral submissions are made on behalf of the Respondents 2 and 3 that they have taken possession and on behalf of the first Respondent-state, learned AGA is not in a position to assert one way or the other, in the absence of a specific reply to the communication under Annexure-J and the situation or scenario is shrouded in mystery, hazy and is unclear, it is hazardous for this Court to venture to record a finding on such a hotly disputed question of fact in writ jurisdiction.

27. But, more importantly, the petitions are woefully hit by delay and laches vis-a-vis the prayer sought for based on Section 27 of the Act that the scheme lapsed if it is not substantially implemented within a period of five years from the date of publication of a declaration by the state government that the subject land was required for a public purpose and if so the cause of action for invoking Section 27 having arisen five years from the date of publication of Annexure-B dated 28-4-1985 notification, i.e. the cause of action for seeking any relief before a court arose five years thereafter i.e. on 29-4-1990, these writ petitions filed in respect of such a cause of action which arose in the year 1990 only in the year 2009, i.e. 19 years after the lapse of the arising of cause of action, and is therefore woefully hit by delay and laches.

28. Though the learned Counsel for the Petitioners has submitted that the promise held out by the state government and the resolution of the BDA itself in the first instance that they are seeking approval of the state government for withdrawing from acquisition proceedings etc., encouraged the Petitioners for a possible relief at the hands of the authority or the state government and therefore did not think it proper to approach this Court for relief and that the officials of the authority going back on such promises and precipitating action by interfering with the possession of the subject land by the Petitioners in or around the year 2009 was the cause for presenting the present writ petitions, but the relief sought for being based on the cause of action which definitely arose even as per the pleadings in the petition in the year 1990, all subsequent events are not of much significance, as the Petitioners, if at all, are fence sitters and not seeking for relief at the right time and are definitely careless and negligent in seeking relief before writ court.

29. Writ jurisdiction under Article 226 of the Constitution of India is a discretionary jurisdiction and relief in this jurisdiction is only in favour of a bona

fide person who approaches court diligently and for a rightful relief. It is only when a relief is available to be granted in law one gets relief in writ jurisdiction and not based on sympathy, equity or such allied considerations. A writ Petitioner has to make out a legal ground for seeking relief on the touchstone of constitutional provisions or statutory provisions. Relief is not based on other considerations.

30. In this state of affairs, I am of the clear opinion that irrespective of the conduct or inaction on the part of the Respondents, writ Petitioners are not entitled for any relief in the exercise of discretionary jurisdiction by this Court and while this writ petition is only to be dismissed, that does not absolve the state government from its inaction, irresponsible conduct and virtually showing disrespect to the notice issued by this Court.

31. Such action on the part of Respondents 1 to 3 is strongly depreciated and it is only hoped that henceforth at least the state government and its officers and its agencies like a public authority as second Respondent evince commensurate response to the notices issued and improve their performance to function in an efficient manner advantageous to the citizens of the state and the least that has to be done in the present writ petitions against the Respondents for having put the Petitioners through this ordeal for about one year, is to mulct the state government and the second Respondent-BDA with costs of ` 25,000/- [Rupees twenty five thousand only] each, which is to be paid by way of exemplary costs levied on them for their gross inaction bordering on possible collusion with the Petitioners to ensure that relief which otherwise the Petitioners may not get before a writ court, is obtained by them!

32. Cost to be paid by the first Respondent-state and the second Respondent-BDA by depositing the amount before this Court within four weeks from today and on such deposit, the amount to be disbursed in favour of Petitioners 1 and 2 alone in equal proportion. On the failure of the Respondents 1 and 2 to deposit the cost within the stipulated time, the registry is directed to issue a certificate in favour of Petitioners 1 and 2 to enable them to recover a sum of ` 25,000/- [Rupees twenty five thousand only] each as though it is a decree passed by a civil court.

33. Ordered accordingly. Writ petitions stand dismissed.