

(2007) 01 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 12086 of 2006

Smt. Sharadamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 16 (2), 17 (1), 17 (5), 27, 48 (1)

Citation : (2007) 5 KarLJ 200

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Vijayashankar for Y.R. Sadashiva Reddy, for the Appellant; R. Sridhar Hiremath, A.G.A. for Respondent 1, S.V. Angadi, Respondent 2 and K.G. Raghavan, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—The earlier proceedings prior to filing of this writ petition had a chequered career. The facts germane for the disposal of this writ petition can be succinctly stated as follows.-

The petitioners claim that they are the owners of the lands in question, i.e., Sy. No. 14/6B measuring 37 guntas and Sy. No. 12/5B measuring 23 guntas of Thavarekere Village which according to them was of the ownership of one late S.K. Venkateshappa. According to the petitioners, at the time of issuance of preliminary notification for acquisition, the name of late S.K. Venkateshappa, husband of first petitioner was shown as registered kathedar. After the acquisition, the lands vested with the Bangalore Development Authority (for short, "the Authority") and the same was allotted by them to the third respondent-Society along with certain other lands.

2. The undisputed facts are that the lands in question along with some other lands was notified for acquisition for a public purpose, for formation of Byrasandra Thavarekere Madivala (BTM) Layout (for short, BTM Layout")

pursuant to preliminary notification dated 19-9-1977. The said notifications were issued under Sub-section (1) of Section 17 of the Bangalore Development Authority Act, 1976 (for short, "the Act"). Suffice it to say that notices of the acquisition were served on the original kathedar, i.e., S.K. Venkateshappa. Objections were invited, filed and rejected and a final notification was issued. It is not in dispute that an award was passed on 13-10-1981 in respect of Sy. No. 12/5B. The notice of the said award was duly served on S.K. Venkateshappa, the original kathedar. But however, he did not file any objections, nor did he seek a reference, seeking enhancement. Incidentally it is to be noticed that no Malkies or structures were found in the lands in question, when the Special Land Acquisition Officer inspected on 29-11-1979. Suffice it to say that the possession of the land was taken on 11-12-1981. Mahazir was also drawn. A notification u/s 16(2) of the Land Acquisition Act, 1894 (for short, "the LA Act") was issued on 19-4-1982 and possession of Sy. No. 12/5B was taken on 11-12-1981. Sy. No. 14/6B did not substantially stand on a different footing and an award was passed on 26-3-1980. The notice of the said award was served on the original Kathedar S.K. Venkateshappa on 15-11-1975 but he did not lodge any claim for enhancement. Incidentally there were no structures or malkies on the lands in question and the possession was taken on 26-7-1989. Notification u/s 16(2) of the LA Act was issued on 4-2-1982. Possession was taken and handed over to the concerned department of the authority.

3. The petitioners notwithstanding these proceedings and the award notice having been served on the original kathedar, questioned the acquisition proceedings in W.P. No. 12195 of 1990. The petitioners obtained an interim order of dispossession. But however, on an application made by the authority, bringing it to the notice of the Court that an interim order is obtained by suppression of material facts, the interim order granted was vacated by the learned Single Judge observing" thus:

In view of the statement of objections of respondent 2 stating that the notice u/s 17(5) was served on the kathedar and as a matter of fact objections were filed by the Kathedar/L.Rs of the Kathedar in view of the issuance of subsequent notices under Sections 9, 10 and 11 of the Bangalore Development Authority Act and also taking into consideration that the Kathedar/L.Rs of Kathedar have subsequently appeared in the Civil Court in LAC No. 126 of 1992 seeking compensation, LA. No. IV for vacating stay by second respondent is allowed, stay vacated.

4. The petitioners filed an application LA. No. VI for recalling the said order but however, it was observed thus:

Since the order dated 15-3-1993 has been passed after hearing both the sides, LA. No. VI for recalling the order dated 15-3-1993 is rejected.

5. The order passed by the learned Single Judge in the aforesaid writ petition was the subject-master of writ appeal in W.A. No. 724 of 1993. The writ appeal

was dismissed by the Division Bench observing that:

The reasoning assigned by the learned Single Judge to vacate the interim order was that the petitioners are the claimants before the Civil Judge in LAC No. 126 of 1992 for higher compensation and therefore the interim order of stay could not be justified, thus holding, he vacated the interim order of stay.

The Division Bench did not find fault with the reasoning given by the learned Single Judge while vacating the interim order. The said writ petition was subsequently withdrawn by the petitioners herein and it was dismissed as withdrawn without seeking liberty to file a fresh petition. In the meantime, the first respondent issued denotification of the lands in question u/s 48(1) of the Act. The said denotification proceeding was questioned by the third respondent in W.P. No. 27729 of 1994. The learned Single Judge rejected the said writ petition confirming the denotification. Respondent 3, aggrieved by the said order preferred W.A. No. 289 of 1997 (Bank Officers" Co-operative Housing Society Limited Vs. State of Karnataka and Others, . The Division Bench of this Court, having regard to the circumstances prevailing, during the course of the proceedings, was of the opinion that the notification, denotifying the lands in question is liable to be set aside and has accordingly quashed the said notifications.

6. Another reason which compelled the Division Bench in granting the relief to the third respondent was that there was suppression of material facts all throughout. The said order passed in the writ appeal was questioned by the petitioners before the Apex Court in SLP No. 7120 of 2003 and the Apex Court dismissed the said SLP in limine even without notice to the other side.

7. There are one set of facts which would relate to the acquisition and denotification of the lands in question. Another set of facts which are germane for the disposal of the writ petition are that since there was dispute regarding as to the entitlement of compensation, the matter was referred to Civil Court. In the said reference proceedings, the present petitioners filed an application I.A. No. II on the ground that they are interested persons inasmuch as, the original kathedar, i.e., husband of the first petitioner had purchased the land in question pursuant to registered sale deed dated 27-1-1975 and since there was serious dispute as to the entitlement of compensation, the matter was referred to the learned Civil Judge in LAC No. 126/92. The tenor of the application was that the whereabouts of the original Kathedar Venkateshappa was not known, he was not heard at all and first petitioner claiming to be the widow and petitioners 2 and 3 to be the children of the original kathedar, they were entitled to the amount and they were willing to execute an indemnity bond.

8. The learned Civil Judge rejected the said application on the ground that the petitioners were not able to prove that indeed the original Kathedar Venkateshappa had died and they are entitled to come on record as the L.Rs. Incidentally, it is to be noticed that it is not disputed before me that the said

order passed by the learned Civil Judge has attained finality. In this background, one will have to see whether the petitioners are entitled for the reliefs which they have sought.

9. In this writ petition, the petitioners are questioning the preliminary and final notifications dated 19-9-1977 gazetted on 29-9-1977 and 7-2-1979 gazetted on 9-3-1978 respectively on the ground that the allotment of the land in question in favour of respondent 3 is accentuated by fraud and violations of the terms and conditions of the sale and all consequential reliefs which flow from the main relief.

10. Mr. Vijay Shankar, learned Senior Counsel appearing for the petitioners does not dispute the factual aspect of the matter but would base his contentions on three premise,-

(i) The bulk allotment in favour of the petitioner which is to the extent of 33 acres cannot be considered to be bulk allotment as contemplated u/s 38-B of the Act and since there is a bulk allotment in favour of the third respondent by the authority in the absence of any prior approval by the State, the same is hit by proviso to Section 38-B of the Act;

(ii) The scheme having not been completed within 5 years from the date of approval, the same would lapse;

(iii) That notwithstanding the fact that there is some delay in approaching this Court in questioning the acquisition, since two new grounds are raised delay should not defeat the right.

11. Mr. KG. Raghavan, learned Senior Counsel appearing for respondent 3, apart from what has been stated in the statement of objections and elaborating his contentions on the factual aspects of the matter and also the previous proceedings, would counter the contentions of the petitioners inter alia contending that the proviso to Section 38-B regarding approval of the bulk allotment is not at all applicable to the case on hand, inasmuch as even before the introduction of Section 38-B, the allotment had taken place pursuant to Annexure-R4 produced along with the statement of objections of respondent 3. He would also contend that the petitioners having failed in challenging the acquisition proceedings, cannot once again be permitted to question the same all over again as the same has attained finality. He would also submit that indeed the notification denotifying the lands in question having been set aside by the Division Bench and having been confirmed by the Apex Court, the acquisition proceedings would automatically stand revived. He would also submit that since there is an inordinate delay of 28 years in questioning the acquisition, the said delay would assume importance in the present context.

12. Mr. S.V. Angadi, learned Counsel appearing for the second respondent-authority would submit that the proviso to Section 38-B of the Act is not at all applicable. He would also submit that the petitioners having lost their battle on all fronts cannot be permitted to reagitate the same cause again.

13. Mr. Sridhar Hiremath, learned Additional Government Advocate appearing for the first respondent submits that the matter having been concluded in Writ Appeal No. 289 of 1997, the petition is liable to be dismissed.

14. I have given my anxious consideration to the contentions of the learned Counsel appearing for the parties.

15. Insofar as the applicability of Section 38-B of the Act is concerned, it is necessary to notice certain provisions which would relate to the bulk allotment. Section 38-B was inserted by Act No. 17 of 1994. Prior to the insertion of Sections 38-B and 38-C, there was no provision under the Bangalore Development Authority Act for allotting the land in bulk to the applicants. Under the said provisions, certain categories are mentioned to whom bulk allotment is to be made. What is relevant for our purpose is Clause (iv) wherein a bulk allotment could be made in favour of a Housing Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. Indeed, the proviso to Section 38-B would indicate that prior approval of the Government is a prerequisite condition before any bulk allotment is made in any of the categories listed when Section 38-B was inserted by Act No. 17 of 1994. It is essential for us to look into the Amending Act. Sections 38-B and 38-C were inserted by Section 5 of the Act No. 17 of 1994, which would read as under:

5. Insertion of new Sections 38-B and 38-C.--After Section 38-A of the principal Act, the following shall be deemed to have been inserted with effect from the Twentieth day of December, 1975,

The validation of bulk allotment which was done after 20th December, 1975 are saved. It is necessary to note the wordings of Section 8 of the Amending Act.

Notwithstanding anything contained in any law or any judgment, decree or order of any Court or other authority, any bulk allotment of land by way of sale, lease or otherwise by the authority after the Twentieth day of December, 1975, and before the commencement of this Act, in favour of:-

(i) ...

(ii) ...

(iii) ...

(iv) any Housing Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959),

are saved.

Apparently, the insertion of Section 38-B has been given retrospective effect inasmuch as it is deemed to have been on the statute from 20th December, 1975. The lease-cum-sale to the extent of 30 and odd acres was executed in favour of respondent 3 by respondent 2 on 13-1-1983. Annexure-R5 is a document which would disclose that the possession of the land in question was

handed over to the third respondent on 22-1-1983. The claim of the petitioners that they continue to be still in possession of the lands in question cannot be accepted in view of Annexure-R5. In the lease-cum-sale executed by respondent 2 in favour of respondent 3, schedule would disclose that Sy. Nos. 12 and 14 of Thavarekere, Bangalore South Taluk measuring 30 acres to the extent of 1,21,407 sq. mtrs. has been handed over. Possession certificate would also disclose that an extent of 30 acres has been handed over. What is relevant is Annexure-R5B produced by respondent 2. Annexure-R5B is a statement of lands allotted to respondent 3 Society in Sy. Nos. 12 and 14 of Thavarekere Village out of the BTM Scheme. The lands in question are Sy. Nos. 14/6B and 12/5B. Apparently, under Annexure-R5, the area from Sy. Nos. 14/6A to 14/6Z and 12/5B has been handed over to the third respondent. This would conclusively prove that even before Section 38-B of the Act was put on statute book, an extent of 30 acres was granted in favour of respondent 3. Section 5 of the Amending Act would clearly disclose that it is with retrospective effect, which would necessarily mean that the said provision is on statute from 20-12-1975. In the circumstances, the allotment in favour of respondent 3 is deemed to have been validated. Consequently, the said contention that in the absence of any prior approval of the State Government the bulk allotment could not have been done, cannot be accepted.

16. Insofar as the second contention regarding the non-implementation of the scheme u/s 27 of the Act is concerned, it is to be noticed that pursuant to the sale deed executed in respect of the remaining land excluding the lands in question, the respondent 3 has substantially put the scheme in execution inasmuch as constructions have come about. Even the entire area for which the vast extent of land was acquired, i.e., BTM Layout, the scheme has already been executed. In fact, the execution of a scheme u/s 27 of the Act and what is substantial execution of the scheme, had fallen for consideration in three decisions.

17. A Division Bench ruling of this Court in the case of Bangalore Development Authority Vs. Dr. H.S. Hanumanthappa, , was of the opinion that release of some portion of land does not lead to the conclusion that the action is illegal, when there is no seriousness to implement scheme and the acquisition proceedings must fall, it has observed thus:

10. ...The Section 27 provides that in case the authority fails to execute the scheme substantially within a period of 5 years from the date of publication of the notification under Sub-section (1) of Section 19 of the Act, then the scheme shall lapse. The plain reading of the section makes it clear that the scheme can lapse provided the authority fails to execute the scheme substantially. The expression "fails to execute the scheme" clearly indicates that the section will attract only in cases where the authority is in a position to implement the scheme and then fails to do so. It was pointed out on behalf of the authority that several writ petitions were filed in this Court to challenge the publication of the

notifications and the acquisition proceedings and in view of the interim orders granted in those petitions restraining the authority from proceeding further with the scheme and the acquisition, it was impossible for the authority to execute the scheme within the stipulated period of five years prescribed u/s 27 of the Act. The Counsel for respondent 1 very rightly did not dispute that several petitions were filed and stay orders were issued. In these circumstances, it is difficult to appreciate how it can ever be suggested that the scheme has lapsed because the authority had failed to execute the scheme. It must also be noted that the provisions of Section 27 prescribes that the failure of the authority to execute the scheme must be in respect of the substantial part of the Scheme.

18. An identical view is taken by another Division Bench in the case of Krishnamurthy Vs. Bangalore Development Authority, :

4. On the scope of Section 27 of the Bangalore Development Authority Act, 1976, a Division Bench of this Court has considered the same and explained to the effect that for the scheme to lapse u/s 27, there must be dereliction of duty or failure on the part of the Authority to execute the scheme specifically within 5 years from the date of publication in the Official Gazette and a declaration u/s 19(1) of the Act. The two conditions to be fulfilled to attract the provisions of this section are, there must be failure to execute the scheme i.e., there must be dereliction of statutory duties without justification and not a mere delay in execution of the scheme. Secondly, substantial execution in the context depends on the magnitude of the scheme and the nature of the work to be executed. Though burden is upon the BDA to furnish material to the Court to show that there is substantial execution on the matter, it is for the appellant to place necessary material before the Court to show that there has been dereliction of statutory duties and not mere delay in implementing the scheme. No such foundation has been laid out on that aspect to point out there is delay on the part of the Bangalore Development Authority.

19. Another factor which requires to be taken note of is that insofar as this small bit of land comprising of 1 acre and odd, the third respondent could not take possession inasmuch as the petitioners had questioned the acquisition proceedings in an earlier writ petition in W.P. No. 12195 of 1990. It is to be noted that there was an interim order granted by this Court regarding stay of further proceedings. Incidentally, the said interim order was vacated later on, which is confirmed in writ appeal. Subsequently, the said land was denotified which was once again the subject-matter of another proceedings in W.P. No. 27729 of 1994 and W.A. No. 289 of 1997. The writ appeal was eventually disposed of on 11th March, 2003 which was once again carried in appeal to the Apex Court in SLP No. 7120 of 2003. The said SLP was dismissed on 2-5-2003 and the sale deed was executed, a copy of which is produced at Annexure-L in favour of respondent 3 on 29-8-2005. Consequently, it does not lie in the mouth of the petitioners to say that on the failure on the part of respondents 2 and 3, the scheme would lapse u/s 27 of the Act.

20. This takes us to the next question regarding the delay. Incidentally, it is to be noticed that the petitioners have been questioning the acquisition proceedings right from day one. It is to be noticed that the lands belonging to the original kathedar was notified for acquisition, statement of objections were filed, an award was passed and notice of the award was served on the original kathedar. Since there was some dispute regarding the apportionment of the compensation, the matter was referred to the Civil Court under Sections 30 and 31 of the LA Act. In the said proceedings, the original kathedar was not traced. Consequently, the present petitioners filed an application to come on record as L.Rs. The said application was dismissed doubting the death of original kathedar and also it was doubted whether the petitioners were the L.Rs of the original kathedar. Consequently, the said application was rejected. The said order has attained finality. A copy of the said order is to be found at Annexure-R1 produced by respondent 3. Not having been satisfied with this, the petitioners questioned the acquisition proceedings before this Court. It was pointed out by the authority that indeed the petitioners' predecessor, namely, the original kathedar, had participated in the proceedings and it was not open for them to question the acquisition proceedings. The learned Single Judge took a serious note of the lapse on the part of the petitioners in not disclosing the same in the writ petition, vacated the stay in the writ petition and dismissed the writ petition which has been confirmed in a writ appeal. The denotification was also set aside by the Division Bench. In fact, it is to be noticed that in the present proceedings also the petitioners have nowhere stated that they had questioned the acquisition proceedings at earlier point of time. In fact, the order passed by the Division Bench in W.A. No. 289 of 1997 disposed of on 11-3-2003, copy of which is produced at Annexure-H would conclusively seal the fate of the petitioners. The challenge to the acquisition proceedings is after a lapse of close to 30 years. Much water has flown under the bridge after the issuance of preliminary notification inasmuch as third party rights are created and an allotment has already taken place in favour of the third respondent, who in turn has allotted the lands to their members. It is useful to extract the observations made by the Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, :

5. ...The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

(emphasis supplied)

21. On the question of delay, it is needless to say that the delay in approaching the Court would defeat any rights. Delay defeats equity. The relief under Articles 226 and 227 of the Constitution is a discretionary relief. A relief is always granted and an Olive branch is always extended to a person who comes to the Court at the earliest point of time with clean hands, but not to a person who allows the grass to grow under his feet and who wakes up like a Rip Van Winkle and comes to the Court and ask for relief after thirty years. Indeed, the action of the petitioners in filing this writ petition lacks bona fide, inasmuch as, they have been questioning and trying to thwart the acquisition proceedings in one form or the other at every stage. The Apex Court in the case of *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , while dealing with delay in filing the writ petition, challenging the notifications has observed thus:

. This Court has repeatedly held that writ petition challenging the notification issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attach the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting a premium on dilatory tactics.

22. The decision which are relied upon by Mr. Vijaya Shankar, learned Senior Counsel appearing for the petitioners has no application. The first of the decision in the case of *Vijaynagar Industrial Workers' Housing Co-operative Society Limited, Bangalore Vs. State of Karnataka and Another*, , would relate to a resolution passed by the Bangalore Development Authority which is an internal affairs, no right has accrued to the petitioner-Society so as to enforce the same against the Bangalore Development Authority. That is not the case on hand. In fact the respondents are not relying on any internal correspondence inter se between the first respondent and the second respondent. The facts would stand slightly on a different footing inasmuch as the allotment having taken place in the year 1983 and the insertion of Section 38-B of the Act having been come into effect from 20-12-1975, the said decision is not applicable.

23. Insofar as another ruling in *W.A. No. 9913 of 1996* disposed of on 16-3-1998 which would relate to delay in approaching the Court, this Court was of the opinion that since no adequate and reasonable opportunity of hearing was given to the appellant therein, the statutory right has been deprived, hence the acquisition proceedings were quashed. However, that is not the case here. It is not a case where the petitioners were not aware of the acquisition proceedings. In fact, the original katheddar had filed his objections which were later forwarded and much water has flown under the bridge after the issuance of final notification. If the petitioners have approached this Court questioning the acquisition way back in the year 1990, it cannot be said that they were denied an opportunity to question the acquisition.

24. The Apex Court in the case of Hari Singh and Others Vs. State of U.P. and Others, was loath to upset the acquisition proceedings when there was a delay of only 2 1/2 years as under:

Constitution of India, Article 226 --Writ petition-- Laches --Notification Land Acquisition Act --Writ petition challenging its validity filed after 2 1/2 years-- Petition is liable to be dismissed Land Acquisition Act, 1894 (1 of 1894), Sections 4 and 17.

25. In fact, the petitioners are repeatedly coming to this Court in one form or the other questioning the acquisition. It appears the petitioners want to cling on to the property at any cost. The decisions which are sought to be relied upon by the petitioners are not applicable to the case on hand.

26. The explanation offered by the petitioners that the right accrued to them to institute the present proceedings only after the sale deed was executed in favour of the third respondent cannot be accepted. In fact, these contentions questioning the acquisition on the ground of applicability of Sections 38-B and 27 of the Act were always available to them at an earliest point of time and having not availed them is deemed to have been waived. This Court would certainly insist that the objections regarding acquisition on these two grounds should have been taken as soon as the parties were prejudiced which would entitle him to object. That has not been done. If the petitioners know of the acquisition and they let the proceedings to continue without protest, they are held to have waived the questioning of the acquisition and the said acquisition cannot be challenged at a later point of time. This rule will have to be strictly applied to writ of certiorari unless it is specifically shown that the petitioners had no knowledge of the acquisition. They have not chosen to question the same at the earliest point of time which would necessarily mean that the petitioners have waived their right to question the acquisition on the ground that the respondents have not obtained prior sanction from the Government and also non-implementation of the scheme within the stipulated period.

27. Consequently, I am of the view that the petitioners are not entitled for any of the reliefs which are sought. Writ petition stands rejected. Interim order granted, if any, stands vacated.

Cost quantified at Rs. 10,000/- payable by the petitioners and to be deposited with Karnataka Legal Services Authority.

Mr. Sridhar Hiremath, learned Additional Government Advocate is permitted to file memo of appearance within four weeks.