

(2015) 11 KAR CK 0316

In the Karnataka High Court

Case No : W.P. Nos. 49216-49217/2014 (LA-KHB)

S.N. Ladhani

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Karnataka Housing Board Act, 1962 — Section 33(2), 4
Land Acquisition Act, 1894 — Section 16(2), 48(1)

Citation : (2015) 11 KAR CK 0316

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Rajeswara P.N., Advocate, for the Appellant; K. Vidyavati, AGA, for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner admittedly purchased 31 guntas of land in Survey No. 6/1 of Allalasandra Village, Yelahanka Hobli, Bangalore North Taluk, under a Sale Deed dated 28.8.1996 executed by Y.V. Munirajappa. The said land, including other lands, totally measuring 106 acres, were proposed for acquisition by the State Government, under Preliminary Notification dated 6.4.1989 and Final declaration dated 25.3.1991, followed by Notifications under Section 48(1) of the Land Acquisition Act, 1894, denotifying a total extent of 52 acres and 20 1/2 guntas.

2. Petitioner claims, the Division Bench of this Court in Writ Appeal No. 3464/2012 preferred by the Housing Commissioner, Karnataka Housing Board, calling in question the order dated 25.9.2012 passed in Writ Petition No. 38086/2002, instituted by one T. Narayana Reddy, in respect of 2 acres 26 guntas in Survey No. 8/2 and 26 guntas in Survey No. 8/7 of Allalasandra village, were dismissed by order dated 12th June 2015, inter alia, recording a finding that the scheme for the acquisition of the land was not formulated though a prerequisite for going ahead with the acquisition of the land under Section 33 (2) of the Karnataka Housing Board Act, 1962, and therefore, petitioner is

entitled to the benefit of a declaration that the land belonging to the petitioner suffers from the prerequisite of formulation of a scheme and hence the acquisition lapsed.

3. Petition is opposed by filing statement of objections inter alia not denying the aforesaid facts. Nevertheless, advancing a plea that consequent upon the preliminary and final notifications, possession of 31 guntas of land was taken under a Notification issued under Section 16(2) of the Land Acquisition Act, 1894, and an award passed, while the amount determined as compensation was not paid to the land owner -Y.V. Munirajappa. In addition, it is stated that, several land losers filed writ petitions and obtained interim orders of stay of acquisition proceedings which led to the difficulty in implementing the scheme. Lastly it is stated that, in the light of the decision in Govt. of Andhra Pradesh & others v. Kollutla Obireddy & others (2005 Vol.6 SCC 493), holding that after lapse of 23 years, questioning the validity of the acquisition proceeding did not arise. A larger Bench of this Court in Poornaprajna House Building Co-operative Society, Bangalore Vs. Bailamma @ Dodda Bailamma and Others, , more appropriately at Paragraph-28, it is submitted, recorded a finding that a purchaser post-acquisition notification is disentitled to question the validity of the acquisition proceedings, except to receive compensation.

4. Learned counsel for the parties reiterate their respective pleadings. In addition, learned counsel for the petitioner points to the decision of the Division Bench in Writ Appeal No. 3464/2012 recording a finding that there was no scheme formulated a prerequisite for going ahead with the acquisition proceeding under Section 33 (2) of Karnataka Housing Board Act, 1962, which judgment when carried in SLP. No. 28602/2015 by the Karnataka Housing Board, was dismissed by order dated 2.11.2015 of the Apex Court, and therefore, is final and binding.

5. Sri Basavaraj V. Sabarad, learned counsel for Karnataka Housing Board does not deny the factum of dismissal of SLP. No. 28602/2015 and the finding of the Division in Writ Appeal No. 3464/2012.

6. It is no doubt true that in V. Chandrasekaran and Another Vs. The Administrative Officer and Others, , the Apex Court at Paragraph-18 observed that a person who purchases land subsequent to issue of Section 4 Notification is not competent to challenge the validity of the acquisition proceeding on any grounds whatsoever for the reason that the Sale Deed executed in his favour does not confer upon him any title and at the most, he can claim compensation on the basis of his vendor's title. On that score the petition deserves to be rejected, but in the light of the finding that a scheme was not formulated before the acquisition, hence violative of Section 33 (2) of the Karnataka Housing Board Act, 1962, in Writ Appeal No. 3464/2012 filed by the Karnataka Housing Board, in respect of the same notifications for acquisition, it is needless to state that the acquisition proceedings from its inception held to be a nullity, in the circumstances the sale of 31 guntas in Survey No. 6/1 of Allalasandra village by

Y.V. Munirajappa, the notified khatedar, in favour of the petitioner cannot be said to be either illegal or has no right, title and interest over immovable property.

7. In that view of the matter and keeping in mind the observations of the Division Bench that the schemes were not formulated as a pre-requisition for the acquisition of the land, there is no necessity to reiterate the very same finding in respect of land measuring 31 guntas belonging to the petitioner. Suffice it to notice that the scheme when held to be a nullity, 31 guntas of land in question is declared not acquired.

Writ Petitions are ordered.