
(2016) 02 KAR CK 0160

In the Karnataka High Court

Case No : Writ Petition No. 58156/2014 (LA-BDA)

Sreeramappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Citation : (2016) 2 KantLJ 442

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Aditya Sondhi, Senior Counsel for Omkar Kambi, Advocate, for the Appellant; B.P. Radha, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Counsel, Shri Aditya Sondhi, appearing for learned counsel for the petitioners and the learned counsel appearing for the BDA.

2. The facts of the case are that the father of petitioner No. 1, Erappa, son of Basappa, was the khatedar in respect of the land bearing Sy. No. 81/2 of Arekere village, totally measuring 01 acre 26 guntas and that he is said to have inherited the same and was in settled possession. After the death of Erappa, petitioner No. 1, who had succeeded to the property and petitioner Nos. 2 to 6, who are the children of petitioner No. 1, are in joint occupation of the land. The RTC reflects the name of the petitioner from the year 1973-74 onwards till the date of the petition and continue to show the land as held by the father of petitioner No. 1.

3. The Bangalore Development Authority (BDA) in order to form a layout under a Scheme known as "Byrasandra - Tavarekere - Madivala VI Stage" had issued a notification under Section 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the "BDA Act", for brevity) dated 08.09.1987 proposing to acquire an extent of 805 Acres of land comprising of two villages, namely, Arekere and Hulimavu and petitioner's land was notified at Sl. No. 358

of the said notification at Annexure "A". The final notification under Section 19 of the BDA Act at Annexure "B" was issued on 28.07.1990, whereby the extent of land proposed to be acquired was reduced to 562.34 acres. The large extent of over 240 acres was left out of the acquisition. However, the petitioner's land was included in the final notification.

4. Erappa is said to have died in the year 1982, but the RTC continue to reflect his name and the petitioners have continued to be in physical possession of the land. It is the grievance of petitioners that they were not heard in the process of notifying the lands and that they had put up certain small structure over the land in question since the year 1986 and since there was interference with their possession by the BDA, they had filed a writ petition in W.P. No. 18839/1994 before this Court and there was an interim order staying dispossession. The petition, however, was dismissed ultimately on the ground of delay and laches. That petition was filed only on the ground that no notice was issued to them and that the notifications had been issued by the BDA without affording them an opportunity of hearing. It is the case of the petitioners that no further steps had been taken by the BDA for a long time though it is stated that possession was taken of the land in question on 22.03.1994 and that proceedings had been drawn up in that regard as per the mahazar at Annexure "E", which is vehemently denied by the petitioners and it is claimed that the said mahazar is a nebulous document, which is mechanically prepared to reflect such taking over of physical possession and in fact, petitioners have continued to be in possession and that there are buildings put up on the said land under their occupation and hence, the mahazar cannot be accepted at all. From a plain examination of the mahazar, it is evident that it is a document, which lacks material particulars and cannot be relied upon as a document evidencing taking over of possession in the manner known to law and therefore, it is contended that any further steps taken by the BDA on the premise that the actual physical possession of the land in question has been taken after passing of an award is wholly without basis and certainly reliance can be placed on the material documents that are cited in support of such a contention.

5. It is pointed out further that insofar as the acquisition proceeding itself is concerned, even according to the material produced by the BDA itself, out of the total extent of 388 acres 98 guntas of land in Hulimavu village and 174 acres 25 guntas of land in Arakere village, which were originally notified, the admitted status of development of the layout is to the extent of 31 acres 02 guntas in Hulimavu and 07 Acres 20 guntas in Arakere village. This would plainly indicate that there is no substantial implementation of the Scheme. The learned Senior Advocate would submit that this would attract the rigour of Section 27 of the BDA Act and therefore, Section 36 of the BDA Act under which the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act", for brevity) are made applicable, would no longer be available to further the acquisition proceedings. Consequently, he would submit that not only the Scheme would lapse, but also the acquisition and would cite several orders of

this Court in respect of other items of land in the ambit of the same village, which had been acquired and were the subject matter of notifications, which have been set at naught and hence, would seek that the present petition be allowed.

6. Whereas the learned counsel for the BDA would vehemently oppose the petition and would submit that the contention that there has been no substantial implementation of the Scheme with reference to the extent of land that has been formed into layout and the remaining extent that is yet to be formed into a layout, is not on account of any want of diligence on the part of the BDA and on account of litigation pending and the interim orders, which have prevented the BDA from proceeding with the formation of the layout. This would absolve the BDA of any such wanton delay in implementing the Scheme and therefore, mechanical application of Section 27 of the BDA Act would not be available to the petitioners merely by referring to the extent of land that may have been developed into layout. Further, he would also point out that the taking over of possession is evidenced by the material documents, which are casually sought to be brushed aside as being nebulous documents. The law requiring the procedure to be followed in taking over of possession has been complied with. The issuance of Gazette notification under Section 16(2) of the BDA Act is also placed on record and hence, the question of the petitioners claiming that the physical possession of the land in question has not been taken is not available to the petitioners. He would submit that there has been implementation of the Scheme and even if physical possession has not been taken after passing an award and deposit of the compensation amount before the competent Civil Court, the question of the Scheme having lapsed, would not arise and even if the Scheme can be said to have lapsed, the acquisition does not lapse as laid down by the Supreme Court in the case of *Offshore Holdings Private Limited v. Bangalore Development Authority and others* (, (2011) 3 SCC 139) and would therefore, submit that the petition be dismissed.

7. The learned Senior Advocate, by way of a reply, would point out that the claim of the respondents as to the notification under Section 16(2) of the BDA Act having been issued is denied. The said notification does not pertain to any item of land other than the petitioners' alone. There is no reference to this in the statement of objections of the BDA and it has sprung a surprise on the petitioners and cannot be looked into or considered as being a genuine document. Though it is claimed as a Gazette notification, the learned Senior Advocate would point out that it does not appear to be a Gazette notification. Further, the contention that the mahazar at Annexure "E" is a document, which is in accordance with law, is also not tenable. A Division Bench of this Court in writ appeals, W.A. Nos. 5752-5756/2012 connected with W.A. Nos. 6828-6832/2012 disposed of on 28.10.2015, while addressing the findings of a Single Judge as to the genuineness or the credence that could be given to such a document, has observed as follows:

"The first question that falls for my consideration is, whether the possession of the land is taken by the Government from the petitioners? My answer to this question is emphatically "no", for the following reasons:

(a) The perusal of the records reveals that the things are not done in a manner known to law. The mahazar on which all reliance is placed is deficient in more than one respect. It contains the signatures of five persons, but their names, much less their addresses, are available.

(b) The alternative portions like (i) the petitioners were present/not present (ii) BDA has taken over the possession/the owners have handed over the possession (iii) malkies are existing/not existing are retained as they are. The non-applicable portion is not even struck off. The mahazar prepared is in the cyclostyled form. It is hard to give any credence to such a mahazar.

(c) No acknowledgments for having served the copy of the mahazar on the petitioners is produced. It is also not the case of the respondent BDA that the notice calling upon the petitioners to handover the possession was sent under RPAD.

The facts in the case before the Apex Court in the case of Tamil Nadu Housing Board (supra) were different from the facts of the present case and as such, the ratio laid down in the said judgment would not be applicable to these cases. Possession of land so notified for acquisition has to be taken in a proper and valid manner. The findings recorded by the learned Single Judge, that there was no independent witness which had signed the mahazar, nor the names and addresses to show the identity of the alleged witnesses was given, would be sufficient to show that the "mahazar" was not prepared in a valid and legal manner. The same was done in a mechanical manner on a cyclostyle form, and the learned Single Judge has rightly held that "it is hard to given any credence to such mahazar". Learned counsel for respondents has also not denied the fact that no notice was ever given to the appellants for handing over possession and straight away the "mahazar" had been prepared, the authenticity of which is extremely doubtful."

Therefore, he would submit that perusal of the so called mahazar dated 22.03.1994 at Annexure "E" would disclose that it lacks material particulars and cannot be relied upon as a genuine document evidencing the actual taking over of the physical possession. The reference to Offshore Holdings (Supra), wherein the Apex Court has held that even if the Scheme should lapse, the acquisition would not lapse, is without reference to Section 36 of the BDA Act or the effect thereof. In the present case on hand, any such reference to Offshore Holdings (supra) is misplaced as evidently no possession has been taken. Therefore, not only the Scheme would lapse, but also the acquisition. Hence, he would submit that the petition be allowed.

8. In the above circumstances, if on a plain examination of the extent of land that has been acquired and developed into a layout by the BDA, it is plausible to

safely conclude that the Scheme has not been substantially implemented. The further contention of the BDA that one impediment was the large number of litigated matters, where there were orders of stay, which prevented the BDA from speedy implementation of the Scheme, is not supported by any material and in that view of the matter, the question of the Scheme not having been implemented substantially would have to be taken as a fact, in which event, the Scheme would lapse in terms of Section 27 of the BDA Act and consequently, Section 36 of the BDA Act is no longer applicable, which would render the provisions of the LA Act no longer available to thwart the BDA Act.

9. Further, the claim of the BDA as to physical possession of the land in question having been taken, is largely mired in doubt. On examination of Annexure "E" at page No. 66 of the paper book, which is the mahazar, which is said to have been drawn out on taking physical possession, the same does not indicate that there was representation by the owners of the land and there are names of four persons, who were said to have been present, namely, Venkatappa, Seenappa, Papaiah and Thamanna. But there is no parentage of these persons indicated nor their addresses shown in the mahazar. Except for these names, it is not even clear whether they have signed the document. It appears that they were not aware of the contents of the document even if they were present. The idea of having documents to evidence a particular incident or occasion such as taking over of possession is, if called in question and if it is to be established, it should be possible for the person relying upon that document to produce the persons named therein as witnesses. In the present case on hand, if Venkatappa, Seenappa, Papaiah and Thammaiah are to be traced, it is not possible to identify any such person, who had actually witnessed the mahazar. Therefore, it would straightaway be termed as a nebulous document. This is a cyclostyled document with blanks filled up and an important event like taking over of physical possession of valuable land should be proved by a better document and not documents such as these, which Court had repeatedly opined that such documents cannot be considered as evidence of taking over of possession. Consequently, it cannot be said that physical possession is proved to have been taken on the face of it. Therefore, the Scheme not having been implemented and there being no acceptable proof of having taken possession of the land in question, not only has the Scheme lapsed, the acquisition has also lapsed.

Consequently, the petition is allowed. The impugned Annexures are quashed.