

(2012) 10 KAR CK 0077

In the Karnataka High Court

Case No : Writ Petition No's. 41698-702 of 2010 (LA-UDA)

Sri. B.R. Viswanath and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 17, 27
Land Acquisition Act, 1894 — Section 4 (1), 6 (1)

Citation : (2012) 10 KAR CK 0077

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; A. Ravishankar, Advocate for Respondent No. 2, Shri. H.T. Narendra Prasad, Government Pleader for Respondent Nos. 1, 4 to 6 and Shri. A. Nagarajappa, Advocate, for the Respondent

Judgement

Anand Byrareddy

1. The petitioners claim to be in joint possession of lands in Survey Nos. 498 measuring 4 acres 14 guntas, 509 measuring 2 acres 30 guntas and 511 measuring 2 acres 4 guntas of Hiremagalur, Chikmagalur Taluk. The petitioners have jointly filed this petition as they have a common interest. The lands in question were said to belong to Shri Kanave Veerabhadreshwara Temple and Shri Malleshwara Temple. The same were inam lands covered under the provisions of the Mysore Religious and Charitable Inams Abolition Act, 1955 (Hereinafter referred to as " the Act" for brevity).

2. The petitioners claim that their predecessors were in actual possession and cultivation for 40 years prior to the petition and that one Badarinarayana was cultivating the lands from 1964 to 1969. Since he had defaulted in payment of rent, the leasehold rights of the lands were auctioned and one Rudrappa, the predecessor of the petitioners, was the highest bidder and the lands were leased in his favour by an order dated 3.3.1970 and registered sale deeds were

executed. The petitioners had sought for grant of occupancy rights in respect of the lands and had approached the Land Tribunal, Chikmagalur in that regard. Badarinarayana also filed applications. The Land Tribunal, by order dated 5.5.1985 rejected the applications on the ground that it had no jurisdiction. An appeal was filed before the Land Reforms Appellate Authority, which confirmed the order passed by the Land Tribunal. The petitioners had then approached this court by way of a revision petition in LRRP 2572/1988. This court, by order dated 15.10.1998, remanded the matter to the Deputy Commissioner, Chikmagalur in the light of a decision of this court in Shri Kudli Shringeri Mahasamsthanam vs. State of Karnataka, ILR 1992 Kar. 1827. The Deputy Commissioner, by his order dated 13.7.1999 rejected the claim of the petitioners and granted occupancy rights in favour of the legal representatives of Badarinarayana, who had died by them. Aggrieved by the same, the petitioners preferred an appeal before the Karnataka Appellate Tribunal and a compromise petition was filed before the Tribunal, whereby the respondents conceded that the appeal could be allowed. By its order dated 13.8.2001, the Tribunal allowed the appeal and occupancy rights were conferred in favour of the petitioners. The Deputy Commissioner by his order dated 9.4.2002 granted occupancy rights. But, insofar as the land in Survey No. 511 measuring 2 acres 4 guntas was concerned, the Deputy Commissioner had observed that the land had been acquired by the Chikmagalur Urban Development Authority (Hereinafter referred to as " the CUDA" for brevity) and therefore, the compensation amount was to be paid to the Malleshwara Temple. Being aggrieved by that portion of the order, the petitioners preferred an appeal before the Karnataka Appellate Tribunal and as on the date of the petition, the said appeal was pending before the Tribunal.

During the pendency of the proceedings, the respondent State had issued Preliminary and Final Notifications under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 (Hereinafter referred to as " the LA Act" for brevity) in respect of the land in Survey Nos. 498, 509 and 511, dated 12.1.1990 and 23.3.1991, respectively. The petitioners claim that the proceedings were without notice to them and were a nullity. The petitioners' father Rudrappa had died on 10.7.2004. It is stated that the CUDA had brought the lands in Survey Nos. 498 measuring 38 guntas to public auction by notification dated 23.10.2010, out of the total extent of 4 acres 16 guntas. The auction was conducted on 9.11.2010 and the property was sold at Rs. 2906/- per square metre. The auction conducted by the respondent based on the acquisition was a nullity. The petitioners claim that they are in possession and enjoyment of the property and have cultivated areca nut in the said land in question. The respondents being aware of the petitioners being in possession of the lands is evident from a letter dated 12.6.2002, addressed by the CUDA to the Deputy Commissioner referring to the grant of occupancy rights and regrant of the land in favour of the petitioners. The petitioners had remained unaware of the acquisition proceedings and therefore have approached this court immediately on learning of the same.

3. The learned Counsel for the petitioners in the above background contends that

the petitioners have been granted occupancy rights, except the land in Survey No. 511, in respect of which, there is an appeal pending before the Karnataka Appellate Tribunal. However, the regrant order insofar as other items of land are concerned, confers fresh rights on the petitioners and deprives the State of any claim over the same and those rights cannot be nullified by the acquisition proceedings, which was initiated in the year 1990. The invocation of Section 17 of the LA Act was impermissible, since the acquisition was for the purpose of a Housing Scheme and therefore, could not have been invoked.

It is further contended that in terms of Section 27 of the Karnataka Urban Development Authority Act, 1987 (Hereinafter referred to as "the KUDA" for brevity), a Scheme, in any event, has to be implemented within five years and hence the acquisition proceedings were not binding. The extent of 38 guntas or 3845.91 Square Metres, which has been brought to auction, could not be considered as a single site to be brought to auction by the CUDU on "as is where is" basis. When the same consisted of areca nut garden and was in the possession of the petitioners, without taking possession of the same, the acquisition proceedings were never completed and therefore, the petitioners seek appropriate orders.

4. The petition is resisted by the respondent-CUDA and it is contended that under Preliminary Notification dated 15.3.1990, the State had desired to acquire in all 135 acres of land including the aforesaid land in Survey Nos. 498, 509 and 511 for the formation of a residential layout. The land in Survey No. 498 belonged to Kanive Rudreshwara Devara and the land in Survey Nos. 509 and 511 belonged to Malleshwara Devaru. These among other lands were acquired for a public purpose. The acquisition proceedings are complete in all respects. In any event, the present writ petition is restricted to the aforesaid three items of land.

The second-respondent had formulated a scheme for residential layout and sanction was obtained in respect of the same from the State Government and the Scheme was implemented including the said items of land, except an extent of 38 guntas of land in Survey No. 498, which was retained by the CUDU as reserve land. The second respondent had called for applications from the general public to allot lands and sites were allotted. The list of allotment made by the authority is produced as Annexure-R.4 to the statement of objections and that some of the allottees had constructed houses and are presently living in the township thus formed. The sites have been allotted in the subject lands also, except an extent of 38 guntas, as already stated.

It is contended that it was proposed to auction the reserve land of 38 guntas and it was notified in the newspapers on 23.10.2010. Pursuant to which, a public auction was conducted on 9.11.2010, where 32 members of the public participated and the sixth respondent became the successful bidder and the auction purchaser namely, the seventh respondent withdrew the bid for reasons best known to him and consequently 38 guntas of land continued to be in the

hands of the second respondent till date. In meanwhile, parallel proceedings were before the Deputy Commissioner, Chikmagalur with respect to occupancy rights in respect of the land in Survey Nos. 498, 576, 511 and 577. Pursuant to the order of this court in LRRP 2572/1998, the Deputy Commissioner had passed an order dated 13.7.1999 dismissing the claim of the applicant Rudrappa and conferring the occupancy rights in favour of Savitramma and her children. Aggrieved by the same, the claimants had preferred an appeal before the Karnataka Appellate Tribunal and a compromise was entered into and the legal representatives of Rudrappa were granted the following extent of lands:-

The compromise was accepted by the Tribunal and the matter was remanded to the Deputy Commissioner, Chikmagalur to pass appropriate orders. The Deputy Commissioner confirmed the occupancy rights, by his order dated 9.4.2002 as follows:-

It was further observed that an extent of 2 acres 4 guntas in Survey No. 511 has been acquired by the second respondent and compensation payable was directed to be paid to Malleshwara Devalaya Trust. The petitioners had preferred an appeal before the Karnataka Appellate Tribunal insofar as that part of the order is concerned. By the time the order dated 9.4.2002 was passed by the Deputy Commissioner, the acquisition of the lands in Survey Nos. 498, 509 and 511 were already completed and compensation was deposited. Therefore, the land having vested in the State, the petitioners have no right in the lands on the basis of occupancy rights granted by the Deputy Commissioner and that the Scheme has been implemented and the land has been allotted as sites to various persons, who in turn have constructed their houses. The lands have lost their identity and are no longer available for any purpose barring the land to the extent of 38 guntas in Survey No. 498 and that the land is firmly in the possession of the second respondent and the petitioners cannot claim possession of the same. The second respondent has also produced photographs to demonstrate the development over the said extent of 38 guntas.

Petitioner No. 1 had filed a original suit in O.S. 472/2010 on 8.11.2010, before filing the present writ petition for the relief of permanent injunction with respect to 38 guntas of land. The said suit is pending adjudication. The second respondent has contested the suit. In that suit, the first petitioner has specifically pleaded that he is one of the aspirants for a site and that the second respondent did not provide him the form for making necessary application and since there was no order of temporary injunction, the petitioner has surreptitiously filed the present petition, claiming altogether a different cause of action. There is no claim for ownership in the said civil suit. In that light of the matter, the petitioners cannot claim any relief in the present proceedings. The photographs produced by the petitioners insofar as the extent of 38 guntas are misleading and do not pertain to the subject property. There is no provision under the KUDA Act, for withdrawal of the acquisition proceedings and therefore seeks dismissal of the writ petition.

The learned Counsel also places reliance on the following authorities in support of his contentions:

1. Virender Chaudhary Vs. Bharat Petroleum Corporation and Others, ,
2. Northern Indian Glass Industries Vs. Jaswant Singh and Others, ,
3. Sawaran Lata etc. Vs. State of Haryana and Others, ,
4. State of Kerala and others Vs. M. Bhaskaran Pillai and another, .

In the light of the above, the petitioners had admittedly claimed under one Rudrappa. The Preliminary and Final Notifications are of the year 1990 and 1991 and even if Rudrappa's name was reflected in the revenue records as a cultivator, the fact that Rudrappa died in the year 2004 is stated by the petitioners themselves. Therefore, the primary contention of the petitioners that they were not placed on notice of the acquisition proceedings is a self-serving claim. Secondly, the acquisition proceedings having completed in all respects, is evidenced by the documents that are available on record. In which event, the land is vested in the State and therefore, the question of the petitioners seeking to challenge the acquisition proceedings in this writ petition of the year 2010 is barred by delay and laches. The admitted circumstance that parallel proceedings for regrant of the land has ended in a compromise between the petitioners and the legal representatives of Badarinarayana is subsequent to the acquisition proceedings. At best, the petitioners may be in a position to claim compensation in respect of the lands in question and are certainly not entitled to question the acquisition proceedings on the several grounds that are urged. The nebulous stand of petitioner No. 1 in the civil suit said to have been filed by him also would defeat the bona fides of the petitioners. In any event, this court does not rule out the petitioners' claim for compensation, except to declare that the petitioners are not entitled to question the acquisition proceedings at a remote point of time, after the same has attained finality.

Accordingly, the petition stands disposed of.