

**(2013) 12 KAR CK 0297**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 17421-17432 of 2012 (LA-BDA) c/w Writ Petition No's. 2513, 2942-2946 and 18362 of 2013

Sri H.C. Muthappa Reddy Represented by General Power of Attorney Holder and Others

**APPELLANT**

**Vs**

The State of Karnataka, The Commissioner, Bangalore Development Authority and The Executive Engineer Bangalore Development Authority <BR> Smt. Chitra, Represented By Special General Power of Attorney Holder and Others Vs State of Karnataka, The Commissioner, Bangalore Development Authority and Deputy Commissioner of Land Acquisition, Bangalore Development Authority <BR> Sri Venkataswamy Reddy, Sri Muttappa Reddy and Sri Purushotham Represented by General Power of Attorney Holder Sri C. Shivappa Vs State of Karnataka, Bangalore Development Authority and The Executive Engineer, Bangalore Development Authority

**RESPONDENT**

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**Date of Decision :** 16-12-2013

**Acts Referred:**

**Citation :** (2013) 12 KAR CK 0297

**Hon'ble Judges :** Anand Byrareddy, J

**Bench :** Single Bench

**Advocate :** Madhusudhan R. Naik, for Sri M.R. Rajagopal, for the Appellant; H.T. Narendra Prasad, AGA for R1 and Sri V.Y. Kumar, Advocate for R2 and R3, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Anand Byrareddy, J.—Heard the learned Senior Advocate Shri Madhusudhan R. Naik appearing for the learned counsel for the petitioners and the learned counsel for the respondents. These petitions are disposed of by this common order, having regard to the facts and circumstances. In W.P. 174211-17432/12, the petitioners claim the lands bearing Sy. No. 45 measuring 3 acres 4 guntas, Sy. No. 46/1 measuring 3 acres 13 guntas, Sy. No. 50/3 measuring 4 acres 21

guntas, Sy. No. 51/1 measuring 1 acre 19 guntas Sy. No. 50/2 measuring 1 acre 10 guntas of Hulimavu Village, Begum Hobli, as belonging to the petitioners and their family members. The petitioners claim originally under one Muniyappareddy, son of Muniswamappa and that on his demise, they claim as his legal heirs under a registered partition deed dated 20/5/1948, whereby the properties have been allotted to each of these petitioners, in respective shares.

2. In W.P. 2513/13 and 2942-2946/13, the first and second petitioners are said to be owners in possession of land bearing Sy. No. 21/1c1 measuring 22 guntas, the third petitioner claiming to be the owner in possession of land bearing Sy. No. 21/1c1 measuring 22 guntas and claim to have succeeded to the property by way of inheritance. The fourth petitioner is said to be the owner in possession of the land bearing Sy. No. 21/1c3 measuring 8 guntas, the fifth petitioner is said to be the owner of land in Sy. No. 21/1c4 measuring 17 guntas and the sixth petitioner is said to be the owner of land in Sy. No. 21/1c6 measuring 16 guntas of Hulimavu Village, Begur Hobli.

3. In W.P. 18362/13, the petitioners are said to be the owners of land bearing Sy. No. 47/1 measuring 3 acres 7 guntas, which originally belonged to one Smt. Thippakka and she had acquired the same through sale deed dated 18/3/1940 and the petitioners are claiming the same by inheritance.

4. It transpires that all the above lands were the subject-matter of acquisition proceedings, in the State having issued a notification u/s 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the BDA Act), for the purposes of formation of the Byrasandra-Tavarekere-Madivala 6th Stage Layout (BTM 6th Stage Layout) dated 8/9/1987, gazetted on 11/2/1988. The final notification u/s 19(1) of the BDA Act was issued on 28/7/1990 and it was gazetted on 28/7/1990 itself. The validity of the acquisition proceedings was sought to be questioned in writ proceedings before this court in W.P. No. 19128/90 and connected cases. The petitioners were also before this court in that batch of petitions. The same were disposed of by a common order dated 10/9/1996. Though this court justified the acquisition, there were directions issued insofar as the land of the petitioners were concerned, where it was claimed that there were structures in existence and that the same could be excluded from the acquisition proceedings, if the land was subject to such development, as claimed, and the petitioners who claimed such developed lands, were granted liberty to make representations which were to be considered by the respondent-BDA and the State, in due course.

5. It transpires, that the notification u/s 16(2) of the Land Acquisition Act, 1894 (LA Act, for brevity) was issued in respect of the lands which were taken over by the acquiring authority, on 8/7/1991 and further notification u/s 16(2) of the LA Act, was also issued on 8/4/1994 as well as on 31/5/1994. It is significant to notice that these notifications did not include the lands belonging to the several petitioners. Therefore, it is emphasized, in each of these petitions, that there is no evidence of possession having been taken of the respective lands of the

petitioners.

6. It is further pointed out that out of the scheme envisaged, the acquisition of 388 acres 9 guntas of Hulimavu village and 174 acres 25 guntas of Arakere village. However, it was the case of the acquiring authority that the land was acquired and a layout formed over an extent of 31 acres 2 guntas of Hulimavu Village and 7 acres 20 guntas of Arakere village, of the entire notified lands. This is as per the statement provided by the competent authority, which is part of the record. It transpires that the petitioners applied for conversion of the land for non-agricultural use, in view of the fact that further proceedings were not taken, insofar as the lands of the petitioners were concerned and that was duly granted by the competent authority on 12/4/2005, insofar as the petitioners in W.P. 18362/13, are concerned.

7. It however transpires that notice u/s 12(2) of the LA Act was issued on 19/12/2006, in respect of the lands of the present petitioners. This was subject to challenge by way of a writ petition in W.P. 18847/06. The same was disposed of along with several other petitions, also challenging the said award notice, in the backdrop of the circumstance that the earlier order passed in W.P. 21139/90, requiring the acquiring authority to consider the respective representations of the petitioners, who were the petitioners in the earlier round had never been considered and no order had been passed. This court, by a common order dated 19/8/2008, allowed the petitions, quashed the notice dated 19/12/2006 and directed that, without consideration of the representations of the petitioners, as was already directed by this court in W.P. 21139/90, the issuance of notice u/s 12(2) of LA Act, was irregular and therefore directed that the representations of the respective petitioners be disposed of, before proceeding further with the acquisition proceedings.

8. It is the common ground of the petitioners that pursuant to the said order in W.P. 18847/06 dated 19/5/2008, the respondents having not taken further steps, the petitioners being apprehensive of being summarily dispossessed of the lands in their possession, are before this court seeking to question the very acquisition proceedings on the ground that, by virtue of long lapse of time and possession of the lands never having been taken and award not having been passed in the eye of law, the scheme formulated, in the first instance, would have lapsed, insofar as the petitioners' lands are concerned, having due regard to Section 27 of the BDA Act and accordingly seek that the proceedings be quashed insofar as the petitioners' lands are concerned and to declare that the scheme formulated, on the basis of which the acquisition was initiated, has lapsed and is not applicable to the lands of the petitioners.

9. It is in this vein that the petitions are filed and the learned Senior Advocate would seek to substantiate the facts and circumstances and the sequence of events in this regard, in contending that the legal position is well settled, as in a catena of decisions relating to the very acquisition and the formulation of the layout namely BTM 6th Stage Layout, this court, has held that, if the acquiring

authority has failed to pass an award and to take possession of the land, after a long lapse of time, the scheme would have lapsed and is no longer relevant insofar as the lands which were notified, of those petitioners. Copies of those orders are produced and it is contended that the petitions be summarily allowed.

10. However, the learned counsel for the respondent-BDA, in support of the objections filed in one of these petitions namely W.P. 18362/13, would contend that it is incorrect and misleading to claim that no award has been passed and possession has not been taken of the lands in question and secondly, even if the layout has not been formed over the alleged lands in question, the acquisition insofar as the lands are concerned, would not lapse as the lands would have vested in the State and even if the scheme is said to have lapsed, the question of the petitioners claiming hold over the lands, is not tenable and having regard to the long lapse of time after which, the acquisition is sought to be declared as null and void, is not maintainable and the petitions would have to be dismissed on the ground of delay and laches.

11. The learned Government Advocate would add to the said objections by pointing out that an award is passed after due notice under Sections 9 and 10 of the LA Act and it is not disputed that a notice u/s 12(2) was issued in the first instance, dated 19/12/2006 and it was that notice, which was under challenge in the earlier proceedings and notwithstanding the notice having been set at naught, the award which has attained finality, is not set aside and therefore it ought to be presumed that once an award has been passed, the proceedings are complete and challenge made to the proceedings after long lapse of time, is therefore not maintainable and the learned Government Advocate would insist that the award stands.

12. However, in the facts and circumstances of the case, the sequence of events would indicate that there is hardly a substantial development of the layout, as suggested. Out of a 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, admitted status of development of the layout is to the extent of 31 acres 2 guntas in Hulimavu Village and 7 acres 20 guntas in Arakere Village and therefore the contentions that there is substantial implementation of the scheme, is not acceptable.

13. Secondly, the question whether the award has been passed in respect of the lands of the present petitioners, is concerned, can also not be accepted for, it is the admitted fact that the award notice issued u/s 12(2) of the LA Act, dated 19/12/2006, had been set aside by this court in W.P. 18847/06 with a specific direction that, without consideration of the pending representations of the petitioners, no further steps could be taken assuming that the representations has been considered pursuant to the direction of this court notice, sought to have been issued, rejecting the representations of the petitioners and reiterating the notice u/s 12(2) of the LA Act. This is not forth coming from the record and there is no assertion, either by the counsel for the BDA or the Government Advocate,

that any such order has been passed or a notice u/s 12(2) of the LA Act, has been issued. Without communication of the award said to have been passed, it cannot be claimed that the award has attained finality and that there can be no challenge to the award upon such finality having been attained. Thirdly, it is also not on record that physical possession of the lands in question have been taken. Section 16(2) notifications issued on various dates in respect of various parcels of land, admittedly do not include the lands of the petitioners. Therefore on the question whether there was an award in respect of the lands in question or whether possession had been taken in respect of the lands in question, would both have to be answered in the negative. If no possession has been taken, the lands having vested in the State, would not be a possession that would follow. Therefore, if the lands have not been acquired and possession has not been taken, the implementation of the scheme over the lands in question, is also not possible. Accordingly, the scheme would certainly have no application to the lands in question and even if it did, the scheme not having been implemented substantially and possession of the lands not having been taken, neither it could form part of the acquisition, nor the State claim that the land vested in the State Government. Consequently the petitions are allowed and the acquisition proceedings, insofar as the lands of the petitioners are concerned, are set at naught and it is declared that the scheme in respect of the lands of the petitioners, have lapsed and would have no application, as on date.