

(2013) 01 KAR CK 0215

In the Karnataka High Court

Case No : Writ Petition No. 20009 of 2010 (LA-RES)

Sri. Kareshannaiah

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : (2013) 01 KAR CK 0215

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : D.L. Jagadeesh, for the Appellant; K. Krishna, Additional Government Advocate for Respondents 1 to 3, 7 and 8, Shri I.G. Gachchinamath, Advocate for Respondents 5 and 6, Shri Shanmukappa, Advocate for M/s. Kesvy and Company for Respondent No. 4, Shri D.R. Ravishankar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the respondents. The petitioner is said to be the owner of land bearing Survey No. 17/2, measuring about 2 acres 17 guntas, and claims to have purchased the same under a sale deed dated 27.12.2004 from one Krishnappa, son of Pentigappa and his family members.

It is the case of the petitioner that the State proposed to acquire lands for the benefit of the REMCO (BHEL) Housing Building Co-operative Society Limited, the fourth respondent herein, to an extent of 58 acres 37 guntas of Pattanagere village, Kengeri Hobli, Bangalore South Taluk, which acquisition proceedings were challenged by one Neelakantaiah and other land owners in writ petitions before this court in WP 16444 to 17841 of 1987 before this court. The writ petitions were allowed and the acquisition proceedings were quashed and the proceedings having finally culminated in a SLP before the apex court in SLP 3011-19/1995 and the apex court having confirmed the quashing of the acquisition proceedings, there was a direction to the State, that the lands in question were to be restored

to the possession of the respective land owners on their refunding the compensation amount, which may have been received by them in the acquisition proceedings. This was by a common judgment of the apex court. It transpires that the lands were restored to the erstwhile land owners in line with the direction of the apex court.

2. However, it is the allegation of the petitioner that the fourth respondent-Society in utter disregard of the orders by which it was bound and in contempt thereto, had proceeded to distribute and allot sites to the so-called beneficiaries, which made the Secretary to the Government, Revenue Department, Government of Karnataka, to issue show-cause notices to the said Society as well as the Special Land Acquisition Officer, seeking an explanation as regards the violation of the orders of this court as well as the apex court, in proceeding to deal with lands which were to be restored to the respective land owners. The Land Acquisition Officer, therefore, had addressed the local authority to restrain the fourth respondent from putting up unauthorized construction on the land in question. It is the further claim of the petitioner that the vendor of the petitioner, namely, Krishnappa had, in turn, repaid the amount of compensation that he had received pursuant to the order passed by the apex court in the Special Leave Petition. The land in question had been handed over to the Special Land Acquisition Officer as on 22.7.2005 and an order was passed in this regard, which is at Annexure-F to the writ petition. It is also stated that Neelakantaiah, the original writ petitioner and other land owners, who had challenged the acquisition proceedings had moved the apex court in contempt petitions in Contempt (Civil) nos. 224-226/2005, wherein the State Government and the Deputy Commissioner, Bangalore Rural District had represented the State and an affidavit of the Deputy Commissioner was filed stating that the lands in question were restored to their possession in the year 1997 and that the RTC in respect of the lands also stood in the name of the land owners. In spite of the Principal Secretary, Revenue Department having instructed the Deputy Commissioner to strictly comply with the order of the apex court and to restrict unauthorized construction as well as the local Police being directed to provide protection to the land owners and restrain any unauthorized construction of third-parties, who were illegally claiming possession thereof and the exchange of correspondence between the various authorities in this direction, it is the petitioner's complaint that in active collusion by the/Society with the erstwhile owner of the property, held by the petitioner, there was a purported transfer in favour of a third-party, who had put up construction in the face of the directions of the apex court and this court and the several authorities also being directed to prevent any such unauthorized construction. Therefore, the petitioner is before this court, seeking implementation of the orders passed as regards the acquisition proceedings and the consequent direction to restore the lands to its owners.

3. The respondent-Society has filed statement of objections seeking to justify its position, namely, that notwithstanding the orders of the apex court, the erstwhile land owners including the owner of the land claimed by the petitioner, had

voluntarily executed "declaration-cum-ratification" deeds, admitting the actions and events, whereby the Society has taken possession of lands and dealt with the same in favour of third-parties. The Society had also filed a civil suit in respect of certain lands, which were voluntarily sold in favour of the Society by the land owners, including Krishnappa, who is said to be the vendor of the present petitioner in O.S. No. 16366/2005, which had resulted in a compromise petition and a decree thereof dated 1.8.2005 and in that background, the petitioner claiming to be the erstwhile owner of the land, who was entitled to possession of the same, is not forthcoming from the record.

4. It is sought to be pointed out that the acquisition proceedings were taken out in the name of Krishnappa, who is said to be the vendor of the petitioner and it is to him that the State Government had handed over the land in question and since he has voluntarily come forward to execute a ratification deed in favour of the present Society, the allotment made in favour of such third-party by the Society is in order and therefore, the same could not be questioned.

The State Government, in turn, would also reiterate that the land has been handed over to a person, who was the notified khatedar and the dispute as between the petitioner and respondent no. 4 would have to be independently worked and the State having acted in terms of the record available, cannot be faulted and the allegations are therefore without any basis.

The learned Counsel for the petitioner, by way of rejoinder, would reiterate that the petitioner having purchased being a positive direction by this court as well as the apex court to hand over the land to the erstwhile owners, the Society seeking to contend that the land owners had come forward voluntarily and had executed a ratification deed, which is neither registered nor a transaction contemplated in law, is not a transaction, that can be taken note of in holding that the Society has acted in accordance with law. The land in question having been transferred in favour of the petitioner under a registered sale deed, the revenue records also standing in the name of the petitioner, cannot be overlooked in contending that the land has been handed over to Krishnappa, who had no right in the land as on the date that the same was handed over, since the sale deed was of the year 2004 whereas the State claims to have handed over possession in the year 2005 and hence it is not tenable for the respondents to contend that they have acted in accordance with the directions issued by this court or the apex court.

Given the above facts and circumstances, though the petitioner may have purchased the property no doubt in the year 2005, insofar as the acquisition proceedings are concerned, it is not in serious dispute that the petitioner's name was not reflected in the acquisition proceedings and it was Krishnappa, the vendor of the petitioner, whose name was shown and if there has been mischief committed by the said vendor acting on the basis of the acquisition proceedings, which only disclosed his time, it is for the petitioner to independently work out his rights as against such vendor or the Society, who may have acted equally

fraudulently in allotting the land in question in favour of a third-party, to seek appropriate remedies insofar as invalidating any such transactions or in seeking to recover possession of the land. Therefore, the petitioner having proceeded bona fide in seeking the reliefs before this court, could not be precluded from filing a suit, if he is so advised, even at the present point of time, in seeking appropriate reliefs before a competent civil court.

The petition stands disposed of in terms as above.