

(2012) 10 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 25169-25177 of 2010 (LA-RES)

Sri. Lakshmaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Citation : (2012) 10 KAR CK 0024

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Udaya Holla, for Shri. Hareesh Bhandary. T, for the Appellant; T.S. Amar Kumar, Advocate for M/s. Lawyers Inc., Advocates for Respondent No. 2, Shri. Vishnu D. Bhat, Advocate for Respondent No. 6 and Shri. K.S. Mallikarjunaiah, Government Pleader for Respondent Nos. 1, 3, 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy

1. The petitioners 1 to 3 are said to be brothers residing at Ganigara palya, Hosahalli, Bangalore South Taluk. They claim to be the owners of land in Survey No. 3/2 measuring 8 acres 20 guntas and Survey No. 4/1A2 measuring 2 acres 34 guntas, at Hosahalli. Petitioners 4 to 6 claim to be the legal heirs of one Muniswamy who owned land in Survey No. 1/2, measuring 1 acre 9 guntas of the same village.

The second respondent is said to be a house building co-operative society established under the Karnataka Co-operative Societies Act, 1959 (Hereinafter referred to as "the KCS Act", for brevity).

It is stated that the lands of the petitioners was the subject matter of acquisition proceedings initiated for the purpose of acquiring land for the purpose of allotting the same to the society to enable it to form a housing layout. The preliminary notification was issued on 23.9.1988 and the final declaration was issued on

11.10.1989, under the provisions of the Land Acquisition Act, 1894 (Hereinafter referred to as " the LA Act" for brevity).

The petitioners are said to have challenged the proceedings in a writ petition in WP 32426/1993 before this court. The said petition, however, was said to have been withdrawn. It is further stated that since the society failed to take any steps to develop the layout even after a lapse of two years, the petitioners are again said to have filed another petition in WP 42556/1995, which is said to have been dismissed with certain observations. The petitioners had also filed civil suits and claim their possession to have been protected by orders of temporary injunction granted therein.

It is contended that the Society having failed to obtain sanction of a layout plan over the years was disabled from proceeding with its objective and therefore the petitioners are said to have approached the State Government seeking denotification of their lands. It is claimed that the Government had sought for a report on the status of the lands and that the Land Acquisition Officer by his report dated 7.11.2007 had stated that the lands continued in the possession of the petitioners. The Bangalore Development Authority is also said to have submitted a report dated 11.4.2008, to state that the layout plan in respect of the proposed layout of the society, had not been sanctioned. In spite of those reports, the State Government not having taken any steps, the petitioners are said to have filed writ petitions in WP 14975/2008 and WP 12752/2009, respectively, which were said to have been disposed of by orders dated 2.12.2008 and 5.5.2009, respectively, directing the Government to consider the representations of the petitioners.

Pursuant to the above, the Government obtained reports from the Deputy Commissioner, who submitted a report dated 26.8.2009, the Special Land Acquisition officer had submitted a report dated 1.8.2009.

Curiously, a report submitted by the Registrar of Co-operative Societies as regards the affairs of the Society is said to have stated that the Society had formed 515 sites in the layout proposed and that sale deeds had also been executed in favour of the allottees. It was also ascertained from the District Registrar of such sales. That a copy of one such sale deed which was obtained by the petitioners disclosed a recital that the BDA had accorded sanction of plan of the layout as on 11.7.1992, which according to the petitioners is blatantly false, as it is plainly contrary to the reports by several authorities that there was no progress at all in the formation of the layout.

The Government had, on the basis of the several reports received by it, issued a show cause notice to the Society calling for an explanation. But did not take any further action against the Society. In the meanwhile an endorsement is issued to the petitioners that there is no need to consider the case of the petitioners seeking denotification. It is in the above back ground that the present writ petition is filed.

2. The learned Senior Advocate Shri Udaya Holla, appearing for the counsel for the petitioner, contends the State Government has failed to take note of the gross irregularities in the Society having proceeded in gross violation of several restrictions under which it was placed. It is pointed out that though a Three Man Committee, appointed to enquire into gross irregularities involving several societies, had ultimately recommended that acquisition proceedings for the benefit of certain Societies could be proceeded with, only as on 20.1.1989, the acquisition in respect of the respondent society was commenced with the issuance of the preliminary notification as early as 23.9.1988, when there was a clear embargo.

It is also pointed out that the Society had proceeded to allot and convey sites in the proposed layout, even without there being a sanction of the layout plan. Further, in the face of the circumstance that physical possession of the lands not having been taken, as found by the Special Land Acquisition officer in his report, the entire records of the society are apparently cooked up to suit its ends.

It is canvassed that the Society has enrolled ineligible members and has sold the sites in the layout in their favour. This amounts to fraudulent diversion of land acquired for a public purpose and is an entirely fresh ground available to the petitioners to question the acquisition.

It is contended that the Society had entered into an agreement with an agent to act as a middle man to facilitate the timely completion of the acquisition proceedings by the State Government, for a consideration. Such a transaction having been declared as a fraud on the power of the State, time and again by the apex court, the learned Senior Advocate would submit that the acquisition would fail on that one ground alone.

3. The Bangalore Development Authority (Hereinafter referred to as "the BDA" for brevity) has entered appearance and has contended that the lands in question had been acquired and possession of the same had been handed over to the Society as on 9.11.1992 and further that the Authority had resolved to approve the residential layout plan-in favour of the Society, but the work order and approved layout plan had not been released.

4. On behalf of the Society, it is contended that the petitioners having unsuccessfully challenged the very same acquisition proceedings in the earlier writ petitions, as admitted by the petitioners and this court having found that possession is handed over to the Society, it would pre-suppose the land having vested in the State and hence the question of the acquisition proceedings having lapsed or the petitioners being entitled to an order of denotification does not arise.

It is further pointed out that the petitioners having availed of sites in the layout formed by the society, apart from having received compensation from the Society have suppressed the said circumstance. The execution of the sale deeds in favour of the petitioners would clinch the issue that the possession of the

lands was no longer with the petitioners.

It is contended that the acquisition proceedings having been concluded in all respects with the society having been handed over the lands as early as the year 1992, the present petition seeking to challenge the same at this remote point of time is not only futile but is liable to be rejected summarily as being barred by delay and laches.

It is contended that In so far as the several reports and other orders of the government referred to by the petitioners to demonstrate that the petitioners continue in possession of the lands are not relevant, as the same are generated immediately preceding the petition, when the society had taken possession of the land in the year 1992 itself. The Society has produced documents to evidence the factum of having formed sites in the layout and having sold the same to its allottees.

5. In the above circumstances, the main thrust of the argument canvassed by Shri Holla was as regards the Agreement said to have been entered into with a middle man by the Society, whereby the said agent was to influence the state government and its machinery to take steps in the acquisition proceedings and to expedite the same and in respect of which the agent was paid huge sums of money. This, it is contended is opposed to public policy and hence the acquisition proceedings would have to be quashed as it would be vitiated as being a fraud on the power of the State Government.

It is also contended that the writ petition cannot be rejected either on the ground that the petitions filed by the petitioners earlier, having been rejected the present petition would not be maintainable, or that the petition is barred by delay and laches. It is contended that it is well established that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata. It is also contended that if the acquisition proceedings are demonstrably a colourable exercise of power delay cannot be a ground to dismiss the writ petition.

The following authorities are cited in support of the above propositions.

1. Narayana Ready vs. State of Karnataka, ILR 1991 Kar. 2248,
2. HMT House Building Co-operative Society vs. Syed Khader, ILR 1995 KAR. 1962,
3. Mrs. Behroze Ramyar Batha vs. Special Land Acquisition Officer, ILR 1991 KAR. 3556,
4. Royal Orchid Hotels Limited and another vs. G. Jayarama Reddy and others, 2011 (1) SCC 608,
5. Vyalikaval House Building Co-operative Society vs. V. Chandrappa and others, ILR 2007 KAR 1810,

6. Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers, ,
7. Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, ,
8. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ,
9. Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Others, ,
10. Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, .

6. On the other hand, the learned counsel for the Society would point out that the main ground of attack is that involvement of a middle man engaged by the Society, vitiates the acquisition proceedings as held in a series of decisions of the apex court, the latest being in the decision cited above, Bangalore City Co-operative Housing Society Limited, supra.

The learned counsel would firstly point out that the petitioners had raised this very ground in their earlier petition in WP 42556/1995, disposed of on 5.2.1998. Even though that petition had been disposed of on other preliminary objections raised by the respondent society, the petitioners allowed the dismissal of the petition to attain finality and hence the petitioners are precluded from raising the same ground, albeit on the specious plea that they recently have come into possession of a copy of a more detailed agreement entered into by the Society with the agent, engaged by it to influence the state government and its machinery to take steps in the acquisition proceedings. It is pointed out that the allegation however, is the same as was raised in the earlier petition and hence makes little difference. In this regard the learned counsel would place reliance on a large number of authorities to contend that such a plea is barred by the principle of res judicata.

It is next pointed out that the in so far as the line of decisions referred to and followed in Bangalore City Co-operative Housing Society case could only be applied if the challenge to the acquisition had been made without delay and if there was an acceptable explanation for the delay if any. This is spelt out by a Division bench of this court in WA 1944-1946/2011 and connected cases, M.K. Thyagaraja Gupta and others v. State of Karnataka, decided on 18.6.2012. In the case on hand, there is no explanation by the petitioners to justify a renewed challenge on the same ground raised unsuccessfully 14 years earlier and having failed. The contention that fraud unravels all would also not be applied in such a case, as held by the above Division bench.

Reliance is also placed on other authorities to support the contentions that the power to withdraw from the acquisition is available to the State government only if possession of the land has not been taken, as otherwise, the land would have vested absolutely in the State, free from all encumbrances and there is no scope to withdraw from the acquisition. And the established position that though there

is no limitation prescribed to invoke the writ jurisdiction of this court, there is a rule of practice based on sound and proper exercise of discretion and each case must be dealt with on its own facts.

7. By way of reply, Shri Holla, contends that reliance placed on the Division bench judgment of this court to distinguish the decision of the apex court in Bangalore City Co-operative Housing Society, supra, is not tenable for the following reasons :

The possession of the lands had been taken in the case decided by the Division Bench, whereas possession was not taken in the case on hand as evidenced by Annexure G and Annexure E to the writ petition. It is also sought to be pointed out that the Division Bench has not differed with the proposition that fraud would vitiate the acquisition proceedings even if there was delay provided there is an explanation. In the instant case the petitioners were not armed with the copy of the agreement between the Society and the middleman which has only recently come into their position. The " fraud " that is referred to by the Division bench is the fraud unearthed by the GVK Rao Committee and not the "fraud" of the nature referred to in HMT case or the Bangalore City Co-operative Housing Society case. In the present case on hand, the nature of fraud is akin to HMT, supra and therefore, vitiates the acquisition proceedings, notwithstanding the delay if any. Secondly, the GVK. Rao report was in the public domain, whereas the agreement in the case on hand was a confidential document and not available to the petitioners. The suppression of that document by the Society is certainly fraudulent. It is also contended that the delay is certainly explained by the petitioners.

In the light of the above facts and circumstances and the rival contentions, it may be seen that the petitioners admit the earlier proceedings initiated by them. Significantly, the petitioners had raised a specific ground as regards the acquisition proceedings being vitiated by fraud, which is recorded in the order dated 5.2.1998, as follows:

Secondly, on the ground that the entire proceedings for initiation of acquisition of the land in question is void in law in view of the fact that there was an agreement dated 25-5-1985 entered into between the petitioners and the contractor M/s Bangalore Engineering Contractors, a copy of which has been produced as Annexure-E. elaborating the second submission of Sri Rao pointed out that the agreement entered into between the petitioner and M/s Bangalore Engineering Contractors shows that the entire acquisition proceedings were initiated at the instance of the said contractor who had acted at the instance of the 4th respondent Society." In support of the second submission Shri Rao relies upon the decision of the Supreme Court in the case of HMT House Building Cooperative Society v. Syed Khader, ILR 1995 Kar. 1962

That petition having been dismissed, had attained finality. It was open for the petitioners to have pursued the above ground either by seeking review of the

order of dismissal or by filing an appeal against the order. Therefore the petitioners seeking to renew a challenge on the basis of the same transaction by reference more detailed documentation is not maintainable on the principle of res judicata. The petitioners' explanation as regards the delay with reference to discovery of fresh material is not acceptable.

The contention of the society that the petitioners have availed of sites in the layout" formed by it, which have been conveyed to them under sale deeds and that they have also availed of compensation, has not been denied by the petitioners by filing any rejoinder. This would lead to a presumption that the possession of the land in question had been taken by the State and handed over to the Society for it to be in a position to execute the sale deeds in favour of the petitioners. Further, if the above position is accepted, the question of the land being denotified, would not arise at all.

In the light of the above, the endeavour on the part of Shri Holla to identify the distinguishing features between the aforesaid Division bench decision and the case on hand would not also advance the case of the petitioners.

In the result, no merit can be found in the case of the petitioners and the petitions are accordingly dismissed.