

(2018) 04 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition Nos.18314 of 2014, 19020 of 2014

Sri. S kaleel and Ors @APPELLANT@Hash The State of Karnataka and Ors

Date of Decision : 11-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Bengaluru Development Authority Act, 1976 — Section 27, 16(2), 19(1)
Land Acquisition Act, 1894 — Section 36

Citation : (2018) 04 KAR CK 0009

Hon'ble Judges : VINEET KOTHARI, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioner-Sri. S. Kaleel, S/o late Noorsab has filed these writ petitions in this Court against the Respondents-State of Karnataka and Bangalore

Development Authority on 15.04.2014 challenging the land acquisition by the Respondent-BDA under Section 27 of the Bengaluru Development

Authority Act, 1976 for development of a Scheme known as J.P.Nagar 8th Phase, Bengaluru.

2. The petitioner-Sri. S. Kaleel is said to have expired on 11.10.2015. An application-IA No.3/2017 has been filed by the present petitioner for taking

his Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors legal representatives on record a/w

I.A.No.2/2017 for condonation of delay and I.A.No.1/2017 for setting aside abatement. The same are allowed, as prayed.

3. The petitioner-Sri. S. Kaleel has challenged the said land acquisition initiated by the Preliminary Notification dated 23.03.1988 and Final Notification

dated 19.10.1994 by the Respondent-State on the ground that the Scheme framed by the Respondent-BDA known as J.P Nagar 8th Phase,

Bengaluru has not been implemented within the stipulated period of five years and therefore, the same has lapsed and consequently, the land of the petitioner deserves to be restored back to the petitioner.

4. Upon issuance of Notices, the Respondent- BDA has filed Statement of Objections in this Court today supported by the Affidavit of one

Dr.B.K.Kamath, Special Land Acquisition Officer "BDA, wherein it is stated that out of total 945 acres and 29 guntas of Date of Order: 11-04-2018

W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors land for the said Scheme, J.P.Nagar 8th Phase Layout, possession

was taken only for 380 acres 17 guntas of land, out of which layout has been formed for 217 acres and 6 guntas of land and 2229 sites, 5 civic

amenity sites, 3 parks and play grounds have been developed. The remaining area could not be developed because of pendency of various Court cases

etc. But the BDA has contended before this Court that the said Scheme was thus substantially implemented and therefore, the same cannot be

deemed to have lapsed and failed in terms of Section 27 of the said Act and consequently, the present writ petition filed by the petitioner deserves to

be dismissed.

5. The Respondent-BDA has also brought to the notice of this Court in paragraph Nos.8 to 10 of the said Statement of Objections that several writ

petitions and civil suits have been filed by the petitioner or their legal representatives or GPA holders or other connected Date of Order: 11-04-2018

W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors persons at various points of time, details of which are given in

paragraph Nos.8 to 10 of Statement of Objections and some of the litigations are still pending. Paragraph Nos.8 to 10 of the said Statement of

Objections is quoted below for ready reference:-

8. It is submitted that aforesaid Sri.P.Dattananda Prabhu and 5 others filed W.P.No.2719-2724/2002 in respect of the land in Sy.No.36/1 of

Kothanur Village, the said writ petition as disposed of on 19.04.2002 directing the BDA to consider the representation of the petitioners therein and to

pass order. The petitioner herein made representation dated 02.04.2009 to the State Government to de-notify the land in Sy.No.36/1 which was

rejected on 30.07.2009. Thereafter, the petitioner filed O.S. No.8633/2010 for permanent injunction in respect of the land in Sy.No.36/1 of Kothanur

Village which came to be dismissed. The petitioner and others have filed W.P. No.27188-27195/2011 seeking for quashing of the preliminary and final

notifications Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors which is pending.

Thereafter, Sri. Mohammed Farooq K and Mohammed Saleem K, sons of the petitioners have filed W.P.No.46031/2016 seeking for declaration to

declare the scheme has lapsed and a direction to collect betterment taxes in respect of land in Sy.No.36/1 measuring 2 acres 30 guntas which is

pending. In the said writ petition, it was mentioned that the petitioner herein was dead. One Smt. Sumithra Devi, D/o Munivenkataswamy filed suit

O.S.No.8236/2016 for declaration of ownership in respect of land measuring 2 acres 30 guntas in Sy.No.36/1 of Kothanoor Village and for injunction

against the notified Khatedar, Sri.Ramaiah, Smt.Venkatamma, Rajanna, BDA and LR's of the petitioners herein i.e., Farooq, Saleem and Feroz which

is pending.

9. It is submitted that the petitioner as a GPA holder of Smt. Seethamma, A. Krishna Reddy and M. Hanumaiah filed suit in O.S.No.3164/2004 for

injunction in respect of the property in Sy.No.36/2, 36/3 and 36/8 Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs.

State of Karnataka & Ors of Kothanoor village which was dismissed. The petitioner has made an application on 24.7.1999 seeking for permission to

develop the land under Group Housing Scheme as per Govt. Order 17.11.1995 in respect of Sy.No.30, 31/8, 36/1 to 5, 36/6A, 36/6B, 36/7 and 36/8 of

Kothanoor Village. BDA has rejected the said request on 3.6.2000. Thereafter, the petitioner has filed suit in O.S. No.6423/2005 for injunction in

respect of the land in Sy.No.36/6A, 36/3, 36/2 of Kothanur Village which was also dismissed. The petitioner filed one more suit O.S.No.8808/2010 as

a GPA holder of Smt. B.R.Rukkamma in respect of Sy.No.36/6A of Kothanur Village measuring 1 acre 14 guntas of land which was also dismissed.

Apart from that one Smt. Nanjamma and Nagaraja Reddy filed claim petition claiming compensation in respect of land measuring 1 acre 25 guntas in

Sy.No.36/8 of Kothanur village. Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors

10. It is submitted that Sri.Adhikeshavalu and others have filed writ petition in WP No.28101-108/2010 seeking for lapsing of the above scheme in

respect of 3 acres 06 guntas of the land in Sy.No.30 of Vaddarapalya village. The learned single Judge by the order dated 27.7.2011 declared that the

entire scheme has been lapsed. BDA has filed writ appeal in W.A.No.15015-15024/2011. The Honâ??ble Division Bench has stayed the order dated

27.07.2011 passed in the above writ petition and the appeal is pendingâ??.

6. Learned Counsel for the petitioner further urged that since the Scheme has not been implemented, the land of the petitioner in Sy.No.36/1 in

Kothanur Village, Uttarahalli Hobli-1, Bengaluru South Taluk, Bengaluru measuring 2 acres 30 guntas in Schedule-A property and Schedule-B

property in Sy.No.36/6A, 36/B, 36/2, 36/8 in Kothanur village, Uttarahalli Hobli-1, Bengaluru South Taluk, Bengaluru ad Date of Order: 11-04-2018

W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors measuring 1 acre 15 guntas, 38 guntas, 1 acre 25 guntas

respectively. Therefore, the said acquisition should be deemed to have been lapsed.

7. Having heard the learned counsel for the parties and upon perusal of the materials placed on record, this Court is satisfied that the present writ

petition filed on 15.04.2014 not only suffers from gross delay and latches but was also nothing but an abuse of process of law in the chain of several

litigations filed not only by the present petitionerâ??s family members but also other connected persons of the same land with different survey

numbers representing sub-division of same land, projecting them as different cause of action for that limited parcel of land, though the entire Sy.No.36

comprising of all such different sub-divisions was notified in the Preliminary Notification for acquisition and even Final Notification and possession

notices Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors under Section 16(2) of the Act

vide Annexure-J under Section 16(2) of the Act dated 09th February 2012.

8. Section 27 of the Bengaluru Development Authority Act, 1976 reads asÂ under:-

27. Authority to execute the scheme within five years.-Where within a period of five years from the date of the publication in the Official Gazette of

the declaration under sub-section (1) of Section 19, the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of

Section 36 shall become inoperativeâ??.

9. The said provisions clearly provides that, if within a period of 5 years from the date of publication of declaration under Section 19(1) of the Act in

the Official Gazette, the Authority fails to execute the Scheme â?? substantiallyâ??, the Scheme shall lapse and provisions of Section 36 of the said

Act, which applies the provisions of the Land Acquisition Act, 1894 to the acquisition under the provisions of Bengaluru Date of Order: 11-04-2018

W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors Development Authority Act, 1976, shall become in-operative. The

words â??substantially implemented or executedâ?? is undoubtedly a question of fact and it will depend upon the facts of each case whether a

Scheme notified by the BDA under Section 19(1) of the Act has been substantially executed or implemented or not within a period of five years from

the Gazette Notification.

10. The petitioner has not placed any material on record to establish this fact whether the scheme has been â??substantiallyâ?? implemented or not

and except the bald averments made in the writ petition that the Scheme has not been implemented, nothing more is done.

11. On the contrary, the Statement of Objections filed by the Respondent-BDA as narrated above clearly reflects that the said Scheme â??J.P.Nagar,

8th Phaseâ?? has been substantially implemented inasmuch as 2229 Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel

Vs. State of Karnataka & Ors sites, 5 civic amenity sites, 3 parks and play grounds over 217 acres 6 guntas of land out of 380 acres and 17 guntas of

land of which possession was taken by Respondent-BDA for developing the said Scheme stands implemented and executed.

12. Therefore, prima facie there is no basis to believe the bald averments of the petitioner that the Scheme was not executed or implemented

substantially within the meaning of Section 27 of the Act.

13. The conduct of the petitioner in the litigation with regard to the said land acquisition also appears to be reprehensible. The enlisted civil suits and

writ petitions in paragraph Nos.8 to 10 of the Statement of Objections quoted above prima-facie reflects that the petitioner, his family members, GPA

holders or connected people have constantly misused the process of the Courts, this Court as well as subordinate Courts by filing civil suits and writ

petitions challenging the Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of Karnataka & Ors very same land

acquisition making a failing effort to block the development of the said Scheme by the Respondent-BDA without deliberately projecting a

comprehensive picture of the litigation and the acquisition and without making any enquiry with the Respondent-BDA itself before approaching Courts

of law as to what has happened to the said Scheme. Such litigation, frivolous to say the least, with uncanny and unaware intervention by the Courts

can cause serious prejudice to the development by the public bodies under the Land Acquisition Act supported by the relevant statutes. Such litigation,

therefore, deserves to be put aside with proper firmness, by imposing costs.

14. From the facts and legal position narrated above, this Court does not find any force in the present writ petition filed by the petitioner and the same

deserves to be dismissed with cost of `50,000/-, to be Date of Order: 11-04-2018 W.P.Nos.18314/2014 & 19020/2014 Sri. S.Kaleel Vs. State of

Karnataka & Ors paid by the petitioner to the Respondent-BDA, within 3 months.