

(2011) 12 KAR CK 0359

In the Karnataka High Court

Case No : Writ Appeal No. 519 of 2011 (LA-BDA) and WA No's. 5264-72/11 (LA-BEA)

The Bangalore Development Authority

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 162 (), 6

Citation : (2011) 12 KAR CK 0359

Hon'ble Judges : Vikramajit Sen, Acting C.J.; A.S. Bopanna, J

Bench : Division Bench

Advocate : Ashwin S. Halady, for the Appellant; B. Veerappa, AGA for R1, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, Ag. C.J.

1. There is a delay of 89 days in preferment of this appeal. It is contended that the matter was in discussion and consideration and hence the delay in filing the appeal.

2. One of the reasons which prevailed for the learned Single Judge to dismiss the writ petition was the lapse of 25 years in the issuance of notification under Sec. 16(2) of the Land Acquisition Act. This aspect of the case cannot be ignored.

3. We have heard the matter in detail. Learned counsel for the appellant Bangalore Development Authority contends that the learned Single Judge has fallen in error in as much as, he had failed to keep in mind that the provisions of Sec. 6 of the Act did not close the door to the Bangalore Development Authority. This is for the reason that moratorium of one year is strictly applicable only after the amendment carried out to the Land Acquisition Act. In case where, the preliminary notification had been published prior to the amendment on 24.09.1984 the proviso clarifies that, three years time would be applicable. In

this respect, learned counsel for the appellant is correct.

4. However, the learned Single Judge had kept the other factors in mind. The first is that, the contention of the Bangalore Development Authority is that as on 15.11.1976, possession of the lands in question had been taken by the Bangalore Development Authority. However, awards were passed on 26.09.1978. So far as the learned Single Judge was concerned, the relevant Mahazar did not inspire confidence for the reason that structures had been constructed on the site and the notification under Sec. 16(2) which in effect is recognizing the fact of taking possession is in the year 2000 i.e. almost 25 years from the date of the alleged Mahazar. Reliance had been placed on D. Narayanappa Vs. The State of Karnataka and Others, . The learned counsel for the Bangalore Development Authority submits and not without substance that the ratio of that Judgment has been diluted by the decision of the Full Bench dated 14.02.2011 in WP No. 10709/2009 (LA-BDA) in the case of Sri S.M. Kannaiah vs. State of Karnataka. So far as the Full Bench decision is concerned, clarification which was made was that if the possession had been indisputably taken, the construction carried out by the erstwhile owners subsequent thereto, would not endure to their benefit since re-possession would itself have been illegal and the manner and status of possession was decided. The position in the case in hand is that, the learned Single Judge in writ jurisdiction, had found the claim of the Bangalore Development Authority of taking possession in 1976, to be incredulous and unbelievable. It has also been noted, till 2005, the Bangalore Development Authority had not taken any action against the petitioner. In these circumstances, the learned Single Judge could not be faulted for granting the reliefs in the impugned order.

5. The third aspect of the case is that, the notification under Sec. 16(2) has been issued after a lapse of 25 years from alleged date of Mahazar taking possession. This delay goes to the root of the matter since the exercise of eminent domain requires urgent action, otherwise, the acquisition will smack of expropriation keeping in view the facts emerging therein. There is an inordinate and unexplained delay in conformity with Sec. 16(2) of the Land Acquisition Act and that too without establishing the fact of possession. For this reason also, the impugned order cannot be faulted. We however, hasten to clarify that we had to state that possession had not been taken by the Bangalore Development Authority in the case in hand since adequate proof had not been furnished in this regard.

6. We now revert to the question of condonation of delay. Keeping in perspective the unexplained and extraordinary delay of 25 years mentioned above, the delay of almost three months in filing this Appeal assumes grave proportion. It discloses, the Bangalore Development Authority does not find any urgency in the matter. Therefore, even though we find in this case that sufficient grounds have not been disclosed for condoning the delay, since the matter has been heard on merits, the appeals are dismissed on that score. There shall be no order as to

costs.