

(2012) 08 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No's. 46909 to 46919 of 2011 (LA-BDA) connected with
Writ Petition No's. 46921 to 46935 and 45835 to 45845 of 2011

V. Munikrishnappa and Others

APPELLANT

Vs

Bangalore Development Authority, Bangalore and Another

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 48 (1)

Citation : (2012) 6 KarLJ 558

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Udaya Holla, for Sri. R. Nataraj, for the Appellant; M. Karunakaran
and Sri. M.N. Ramanjaneya Gowda, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—As these petitions involve similar questions of facts and law, they are clubbed, heard together and are being disposed of by this common order. The petitioners' grievance is that even when the second respondent-Land Acquisition Officer ("LAO" for short) has submitted the report recommending the deletion of the lands from the acquisition and further even when the first respondent has already passed a resolution accepting the said report, the respondent 1 is not issuing the necessary endorsements to the effect that the lands are deleted from the acquisition.

2. The facts of the case in brief are that the petitioners' lands measuring 22 guntas at Survey No. 67, 24 guntas at Survey No. 73/1, 1 acre 16 guntas at Survey No. 73/2, 30 guntas at Survey No. 81/1, 20 guntas at Survey No. 81/5, 27 guntas at Survey No. 108/1, 10 guntas at Survey No. 108/2, 20 guntas at Survey No. 108/3, 20 guntas at Survey No. 108/4, 12 guntas at Survey No. 108/5, 10 guntas at Survey No. 108/6, 8 guntas at Survey No. 111/2, 14 guntas at Survey No. 112, 12 guntas at Survey No. 128/1, 1 acre 1 gunta at Survey No. 128/3, 1 acre 13 guntas at Survey No. 23, 20 guntas at Survey No. 34/5, 1 acre 24 guntas at Survey No. 86, 2 acres 7 guntas at Survey No. 28/1 were the

subject-matter of the compulsory acquisition of lands for the formation of Arkavathi Layout. The petitioners and the other land owners had impugned the acquisition proceedings by filing the writ petitions. The learned Single Judge in Sharadamma and Others Vs. State of Karnataka and Others, a batch of the writ petitions quashed the acquisition notification. Aggrieved by the learned Single Judge's order, the respondents and others had filed W.A. Nos. 2624 and 2625 of 2005 The Commissioner, Bangalore Development Authority and Another Vs. State of Karnataka and Another, before the Division Bench. The Division Bench allowed the appeals filed by the BDA and the Government, but with the following directions insofar as the land owners are concerned:

D. x x x x x

(i) All the petitioners who are the land owners who are seeking dropping of the acquisition proceedings insofar as their respective lands are concerned, on the ground that: (a) their lands are situated within green belt area; (b) they are totally built up; (c) properties wherein there are buildings constructed by charitable, educational and/or religious institutions; (d) nursery lands; (e) who have set-up factories; (f) their lands are similar to the lands which are adjoining their lands but not notified for acquisition at all, are permitted to make appropriate application to the authorities seeking such exclusion and exemption and producing documents to substantiate their contentions within one month from the date of this order.

It is made clear that the BDA shall consider such request keeping in mind the status of the land as on the date of preliminary notification and to exclude any developments, improvements, constructions put up subsequent to the preliminary notification and then decide whether their cases are similar to that of the land owners whose lands, are notified for acquisition, notified and whose objections were upheld and no final notification is issued.

In the event the BDA comes to the conclusion that the lands of those persons are similarly placed, then to exclude those lands from acquisition.

3. The aforesaid judgment was challenged before the Apex Court. The Apex Court, by its judgment in the case of Bondu Ramaswamy Vs. Bangalore Development Authority and Others, affirmed the direction of the Division Bench subject to the following directions and clarifications:

160. In view of the foregoing, we affirm the directions of the Division Bench subject to the following further directions and clarifications:

(i) xxxxx

(ii) In regard to Villages of Venkateshapura, Nagavara, Hennur and Challakere where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self-contained layouts. The acquisition thereof

cannot be justified on the ground that these small islands of acquired land, could be used as a stand-alone park or playground in regard to a layout formed in different unconnected lands in other villages. Similar isolated pockets in other villages should also be dealt with in a similar manner.

(iii) x x x x x

(iv) x x x x x.

4. The petitioners submitted the representation to the respondents seeking the deletion of their lands from the acquisition. The second respondent-LAO held the enquiry on the petitioners' representations and recommended the deletion of the lands from the acquisition vide his order, dated 29-10-2010 as far as the first 16 items of the lands are concerned. The Board of the BDA, in its meeting held on 23-11-2010 passed a resolution on the Subject No. 432 of 2010 accepting the recommendations of the LAO. In respect of the last 2 items of the lands, the Board of BDA resolved to go on with the acquisition proceedings but by excluding the land on which the RCC constructions have come up. A copy of the said resolution is found at Annexure-F. However, the Board of BDA in its meeting held on 18-12-2010 confirmed the earlier resolution except the lands mentioned in Format No. 2. It is in Format No. 2 that the lands in question are enumerated. As no final decision was being taken, this Court issued the interim direction on 28-3-2012 in W.P. Nos. 45835 to 45845 of 2011 for placing the subject before the next meeting of the BDA. Pursuant thereto, the subject was placed before the Board in the meeting held on 16-5-2012. In the said meeting, a resolution was passed to reject the recommendations of the second respondent-LAO in respect of the 16 items of lands. The reasons for rejecting the recommendations are that the deletion of the lands in question would affect the comprehensive development and contiguity of Arkavathi Layout adversely.

5. Sri. Uday Holla, the learned Senior Counsel appearing for Sri. R. Nataraj for the petitioners submits that the minutes of the meeting of BDA do not require confirmation. The moment a resolution is passed by the Board of BDA, it becomes effective and valid. He submits that there is no provision in the BDA Act or the regulations framed thereunder requiring the Board to get its earlier resolution confirmed in a subsequent meeting. Relying on this Court's decision in the case of Karnataka Bank Ltd. Vs. A.B. Datar and others, he submits that the decisions once arrived at do not need the confirmation.

6. In the case of Raosaheb Kakade Vs. The State of Maharashtra and others, falling for consideration under Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, the Division Bench of Bombay High Court has held that confirmation is not an opportunity for reconsideration by the same body. Confirmation of the minutes is a verification of the facts as to what actually happened in the last meeting. He read out para 7 of the said judgment, which is extracted hereinbelow:

7. Confirmation of the minutes, as is understood in the law of meetings, is a

verification of the facts as to what actually happened in the last meeting. Whether the resolutions passed have been correctly recorded; where it is a practice to record the gist of the discussion then whether the discussion is rightly recorded and while confirming the minutes of the earlier meeting, the presiding authority shall read out the minutes and will ask the members whether this is the true account of the happenings at the last meeting. Confirmation is not an opportunity for reconsideration even to the same body. Shackleton on The Law and Practice of Meetings has quoted a judgment in *Rex. v. York, Mayor of*, (1853) 1 E and B. 594 and said thus:

Decisions once arrived at do not need confirmation and the practice adopted by some authorities of "confirming" minutes has no legal significance. The word "confirm" sometimes means "verify", it is commonly used in that sense at meetings of public bodies, who confirm the minutes of their last meeting, not meaning thereby that they give them force but merely that they declare them accurate.

Thus, confirmation of the minutes of an earlier meeting is a declaration that the minutes have been accurately written. It does not give them additional force again by considering or reconsidering the merits of the resolution. We, therefore, find that the Standing Committee has no authority to pass the resolution, which is impugned in this writ petition. The Resolution No. 53 of the meeting of the Standing Committee dated 1st October, 1997 is hereby quashed to the extent of deleting the Resolution No. 48 passed in meeting of 5th September, 1997.

7. Nextly, the Senior Counsel submits that the consideration of the petitioners' cases for deletion of their lands from the acquisition has to be strictly in the letter and spirit of the Division Bench's judgment in the case of Commissioner BDA and of the Apex Court's judgment in the case of Bondu Ramaswamy. It is not open to the respondents to bring in some other factors like contiguity to reject the application of the petitioners. He submits that the impugned resolution virtually borders on contumacy.

8. He submits that when the similarly placed lands are already recommended to be deleted from the acquisition proceedings, the respondent 1 is not justified in resolving to cling on to the acquisition of the lands in question. He read out para 147 of the Apex Court's judgment in the case of Bondu Ramaswamy, which is extracted hereinbelow:

147. Alternatively, if a common factor can be identified in respect of other lands which were deleted, and if the petitioner's land also has that common factor, relief can be granted on the ground that the authority had adopted the common factor as the criterion in the case of others and therefore adopting the same yardstick, the land of petitioners also should be deleted. These principles may be kept in view while implementing direction in para 105-D(i)(f) of the judgment of the Division Bench of the High Court.

9. He read out the last portion of the Division Bench's direction contained in para

161-D(i). The same reads as follows.--

In the event the BDA comes to the conclusion that the lands of those persons are similarly placed, then to exclude those lands from acquisition.

10. The learned Senior Counsel submits that the BDA is showing the hostile and vindictive attitude only because the petitioners have approached this Court.

11. Per contra, Sri. M.N. Ramanjaneya Gowda, the learned Counsel for the respondent in W.P. Nos. 45835 to 45845 of 2011 submits that the placing of the matter before the Board of BDA in its meeting held on 16-5-2012 is only pursuant to this Court's interim direction issued on 28-3-2012. He submits that no regulations governing the procedure for the meetings of the Board of BDA are framed. It has been the consistent practice of the BDA to place the resolutions of the earlier meeting in any of the subsequent meetings and seek the ratification and confirmation of the same. He submits that as the lands in question form a contiguous block, they are required for the formation of Arkavathi Layout. According to him, the Board of BDA has passed the resolution rejecting the recommendations made by the LAO for the deletion of the lands from the acquisition.

12. Sri. M. Karunakaran, the learned Counsel appearing for the respondents in Writ Petition Nos. 46909 to 46919 of 2011 and 46921 to 46935 of 2011 has raised a threshold bar to the maintainability of these petitions. He submits that the ultimate decision in the matter of withdrawal of the lands from the acquisition is to be taken by the Government. For the reasons best known to the petitioners, the State Government is not made a party. He submits that no decision is taken as far as the lands covered by the said petitioners are concerned. He asserts that once the possession is taken from the petitioners, there is no provision in the BDA Act to re-convey the lands. For urging this submission, he relies on the judgment of the Division Bench of this Court in the case of Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, He also relies on the Division Bench's judgment of this Court in the case of Smt. Rane Govindram Hassanand, represented by her Attorney Holder and Mr. N. Balakrishna Vs. The Chief Secretary of Karnataka, Government of Karnataka and Others wherein it is held that the land once vested in the State cannot be divested.

13. In the course of rejoinder, Sri. R. Nataraj, the learned Counsel for the petitioners submits that the possession of the lands in question is with the petitioners only. In fact, they have constructed a good number of buildings. As the possession is not taken, the land is not vested in the Government, so contends Sri. Nataraj.

14. The submissions of the learned Counsel have received my anxious consideration. The Government appointed the 4 LAOs to examine and pass appropriate orders on the landowners' request for the withdrawal of the lands from acquisition in compliance with the guidelines/directions issued by the

Division Bench in the case of Commissioner, BDA and by the Apex Court in the case of Bondu Ramaswamy. The second respondent-LAO held the spot-inspection and on holding the enquiry has submitted the report recommending the deletion of the 16 items of lands from the acquisition. Such a report cannot be rejected lightly. I am not saying that the second respondent-LAO's report binds the Board of BDA, but there have to be sound reasons for taking a different view than the view taken by the LAO. If the LAO has made any recommendations, which is not in keeping with the letter and spirit of the Division Bench's judgment and of the Apex Court's judgment, the first respondent is well-within its limit to reject them either in entirety or in part. In the instant case, the perusal of the Board's resolution, dated 23-11-2010 and 16-5-2012 reveals that no such reasons are assigned for taking the decision.

15. As per the Apex Court's judgment in the case of Bondu Ramaswamy, the common factor or the same yardstick has to be applied for all the applicants for the deletion of their lands from the acquisition. If "A"s lands are deleted for a reason and if the same reason exists in the case of "B"s lands, "B" cannot be discriminated against. Similarly placed persons cannot be treated dissimilarly. The Division Bench in the case of Commissioner, BDA at the end of Para 161-D(i) has stressed this point.

16. I am also not inclined to throw out these petitions on the slender ground that the earlier resolution passed on 23-11-2010 is not confirmed by the Board of BDA held in its subsequent meetings. The BDA Act does not contemplate such a procedure and it is not in dispute that no regulations are framed governing the procedural aspects. The confirmation of the earlier proceedings may be a general practice, but the same cannot be used to review or reconsider the earlier decision. It is more or less by way of verification for ensuring that the resolution drafted and placed on the resolution book is accurate.

17. It is also doubtful if the Board of BDA can reject its earlier resolutions. The scheme as contained in Section 65B of the BDA Act is that the Commissioner of BDA is required to submit all the resolution copies to the Government. Thereafter the Government may suo motu suspend or cancel the BDA's resolutions either in whole or in part. If the BDA's resolutions are to be revised, modified or revoked, it has to make further representation to the Government in the matter. The provisions contained in Section 65-B of the BDA Act read as follows.-

65-B. Submission of copies of resolution and Government's power to cancel the resolution or order.--(1) The Commissioner shall submit to the Government copies of all resolutions of the authority.

(2) If the Government is of opinion that the execution of any resolution or order issued by or on behalf of the authority or the doing of any act which is about to be done or is being done by or on behalf of the authority is in contravention of or in excess of the powers conferred by this Act or any other law for the time being in force or is likely to lead to be breach of peace or to cause injury or annoyance

to the public or to any class or body of persons or is prejudicial to the interests of the authority, it may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act after issuing a notice to the authority to show cause, within the specified period which shall not be less than fifteen days, why.-

(a) the resolution or order may not be cancelled in whole or in part; or

(b) any regulation or bye-law concerned may not be repealed in whole or in part.

(3) Upon consideration of the reply, if any, received from the authority and after such inquiry as it thinks fit, Government may pass orders cancelling the resolution or order or repealing the regulation or bye-law and communicate the same to the authority.

(4) Government may at any time, on further representation by the authority or otherwise, revise, modify or revoke an order passed under sub-section (3).

18. For all the aforesaid reasons, I allow these petitions holding that the resolutions, dated 18-12-2010 and 16-5-2012 are unsupportable and unsustainable and direct the respondent 1 to place its resolution, dated 23-11-2010 before the State Government without any further delay. Ultimately it is for the Government to take a call on the issue taking into account the resolution of BDA and the provisions contained in Section 48(1) of the Land Acquisition Act, 1894. Needless to observe that if the possession of the land is already taken from the petitioners, the question of withdrawing the lands from the acquisition would not arise at all. I do not propose to give any direction to the State Government, as the Government is not a party to these proceedings. No order as to costs.