

(2014) 05 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 36564 of 2012 (LA-Res)

V. Sreenivasaiah

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5, 6

Citation : (2014) 4 KarLJ 119

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ashok Haranahalli, Senior Advocate for Subramanya R, Advocate for the Appellant; Sriyuths D. Nagaraj, Additional Government Advocate, T.S. Amar Kumar for Lawyers Inc. and M.B. Prabhakar, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—It is the case of the petitioner that he is the absolute owner of the agricultural lands in question bearing joint khata in Sy. No. 1/1A measuring 5 acres 30 guntas and in Sy. No. 1/3 measuring 4 acres 31 guntas situated at Hosahalli Village, Uttarahalli Hobli, Bangalore South Taluk, Bangalore. It is stated that the fifth respondent, namely, the Ex-servicemen House Building Co-operative Society Limited (hereinafter referred to as "the Society", for brevity) is registered under the Karnataka Co-operative Societies Act, 1959, in the year 1973. It is stated that the Society had passed a resolution dated 23-12-1983, to enter into an agreement with the sixth respondent and to pay an advance amount of money, to enable him to expedite the proposed acquisition proceedings in respect of lands which were identified by the Society and in respect of which the sixth respondent was again enabled to negotiate on behalf of the Society with the landowners. The petitioner's father was one such landowner who had unwittingly affixed his signature to a purported agreement of sale in respect of the petitioner's land in question. The petitioner has alleged that the Society did not consist of genuine ex-servicemen and that it was only a front to acquire land in the name of a public purpose and to later deal with the same as real estate for the benefit of a few. And that the sixth respondent was

an agent whose engagement in the process as a go between for the Society and the State Government was illegal and a fraud on power.

2. The State Government having woken upto the large scale illegalities committed by several such House Building Societies, such as the Society herein, had on 18-6-1985 issued directions that acquisition of land for any Housing Society could only be pursuant to a housing scheme and could be acquired only through the Bangalore Development Authority.

Since the above measure did not discourage the Housing Societies and their agents to refrain from illegal activity, the State Government had constituted a Three-Man Committee, to address the genuineness of the membership of Housing Societies and to determine the extent of land required by such societies. It was found by the said Committee that the present respondent-Society had only 179 members as on 30-6-1984. It was also found that the Society had entered into an agreement with the sixth respondent which was not legal. This and other irregularities unearthed in respect of innumerable societies, warranted the conduct of an inquiry by the GVK Rao Committee which was said to have been constituted on 10-3-1988, by the State Government.

It is contended that notwithstanding the inquiry that was initiated, a preliminary notification is said to have been issued u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act", for brevity), dated 23-9-1988, which according to the petitioner was at the instance of the sixth respondent in active collusion with the third and fourth respondents. In this regard, the Society had even amended the agreement with the sixth respondent to pay him enhanced consideration for his services, as per an agreement dated 3-11-1988.

The second respondent is said to have issued the final notification u/s 6 of the LA Act, dated 11-10-1989, without indication of the same being for a public purpose.

These blatant irregularities were highlighted in the report submitted by the GVK Rao Committee. The Society-fifth respondent finds place in the report as one having indulged in serious and grave irregularities. It was recommended that the acquisition proceedings in favour of the Society by the State Government be dropped.

But the said report was not implemented. Hence, the Chief Minister had directed the concerned authorities to stop all acquisition proceedings in favour of Housing Societies as per an order dated 17-1-1990, till the GVK Rao Committee Report was implemented.

It transpires that the petitioner's father died and as per order dated 24-3-1990, the petitioner's name stood mutated in the revenue records in respect of the lands in question. In spite of the same, it is contended that the fourth respondent had proceeded to pass a draft award on 26-3-1990, without prior approval of the Government, in the name of the father of the petitioner. There was no notice to the petitioner.

In the light of the GVK Rao Report, an order dated 30-3-1990 was passed by the seventh respondent directing all House Building Societies including the respondent-Society not to allot any sites to its members in view of the Rao report. In spite of the same, it is alleged by the petitioner that certain documents were fabricated by the respondent 6 to make it seem that the lands in question had been handed over to him on 23-1-1991. The said respondent is also said to have withdrawn the compensation amount in respect of the land on that basis: This modus operandi had been adopted: in respect of several items of land sought to be acquired for the respondent-Society. It transpires that the mutation entry in respect of the lands in question stood changed in the name of the Society by an order dated 25-1-1993, without the knowledge of the petitioner.

The rampant illegalities committed by the authorities and Housing Societies, compelled the State Government to issue a direction u/s 65 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "the BDA Act", for brevity) to the seventh respondent to verify the genuineness of membership of Housing Societies, including the respondent-Society and to thereafter consider sanction of any layout plan, as per order dated 25-9-1993. It is stated that there was no such sanction obtained for any layout plan, by the respondent-Society.

The petitioner states that in view of the above glaring irregularities and illegalities, the petitioner had approached this Court in a writ petition in W.P. Nos. 35685 and 35686 of 1995, challenging the acquisition proceedings. It transpires that the petition was summarily dismissed on the ground of delay and laches, by an order dated 28-1-1997. On a motion made by the petitioner, by a further order, it is claimed by the petitioner, that the learned Single Judge had clarified that the matter was not addressed on merits and that the ground of fraud raised by the petitioner was kept open.

3. Incidentally, the jurisdictional Assistant Commissioner is said to have initiated suo motu proceedings under the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as "the PTCL Act", for brevity) on 28-10-1996 in respect of the petitioner's lands. However, the same were dropped by an order dated 31-3-1997. Though an appeal against the same was allowed and the Assistant Commissioner was directed to decide the matter afresh, it was again dropped by an order dated 30-10-2001. The petitioner is said to have filed an appeal again. The same was dismissed on 26-4-2004. The same had been challenged by way of a writ petition in W.P. No. 27298 of 2004 before this Court, which was dismissed on 1-12-2009. The dismissal was affirmed in appeal in W.A. No. 369 of 2009 by judgment dated 22-6-2009. A SLP filed before the Supreme Court also is said to have been summarily dismissed by an order dated 25-4-2011.

It is stated by the petitioner that the seventh respondent has endorsed that there has been no verification of the genuineness of the respondent-Society's membership. Similarly, the BDA is said to have endorsed that it has not sanctioned any layout plan of the Society nor has issued any work order to carry

out the implementation of layout formation. The fourth respondent had also endorsed that there was no housing scheme approved prior to the acquisition proceedings being initiated.

It is stated that the State Government which was not able to contain the illegal activity of the housing societies and their agents, had constituted a 17 Members Committee under the Chairmanship of one A.T. Ramaswamy, to enquire into the illegal use of acquired lands, which had submitted its interim report as on 26-7-2007, confirming the illegal use of lands.

It is stated that notwithstanding the glaring irregularities as aforesaid and notwithstanding the fact that physical possession of the land was not taken and no layout was formed over the same, the fifth respondent is said to have executed a relinquishment deed dated 23-2-2012 in favour of the eighth respondent without forming any roads, parks and open spaces etc., in total violation of Section 32(7) of the BDA Act. It is pointed out that a relinquishment deed could be executed only after completion of formation of the layout and after release of the last batch of sites by the BDA. This has not been complied with. It is the case of the petitioner that he is sought to be illegally evicted from the land pursuant to the invalid relinquishment deed executed as aforesaid. It is in the above background, that the present writ petition is filed.

4. The petition is contested by the fifth respondent-Society to contend that the land bearing Sy. No. 1/1A measuring 5 acres 30 guntas and land bearing Sy. No. 1/3 measuring 4 acres 31 guntas are situated at Hosahalli Village, Bangalore South Taluk, Bangalore District and that the said lands are subject-matter of acquisition proceedings initiated by the Government of Karnataka under the provisions of the LA Act. Further, it is contended that one Mr. Thimmaiah who is said to be the paternal uncle of the petitioner was the notified khatedar of the lands in question at the time of initiation of acquisition proceedings, i.e., on 23-9-1988 and that the said Thimmaiah had challenged the acquisition proceedings initiated by the Government of Karnataka in favour of the fifth respondent in W.P. No. 30782 of 1992. The said writ petition came to be dismissed by this Court vide order dated 7-9-1993.

It is further stated that the petitioner had then filed a writ petition before this Court in W.P. Nos. 35685 and 35686 of 1995 and that in the said writ petitions, the petitioner once again had challenged the acquisition proceedings in respect of the lands in question raising all the contentions raised in this petition, including the question of fraud, applicability of the judgment of the Supreme Court in H.M.T. House Building Co-operative Society Vs. Syed Khader and others, , engagement of middlemen and also the findings of the G.V.K. Rao Report. The said writ petitions were also dismissed on the ground that the petitioner has acquiesced in the acquisition proceedings and had consented for passing of the award and on the ground of inordinate delay and laches.

It is further contended that in the year 2004, the petitioner had filed another

W.P. No. 27298 of 2004 before this Court questioning the rejection of this claim for restoration of land under the PTCL Act and the said petition came to be dismissed vide order dated 1-12-2008. Aggrieved by the same, the petitioner had challenged the said order before a Division Bench of this Court in W.A. No. 369 of 2009, which appeal came to be dismissed vide order dated 22-6-2009. The said order passed by the Division Bench was challenged in Special Leave (Civil) Petition No. 10641 of 2011 before the Supreme Court, which also came to be dismissed vide order dated 25-4-2011. Further, it is stated that after the order passed by the Supreme Court in SLP No. 10641 of 2011, the petitioner has again filed the present writ petition reiterating the same grounds urged in the earlier petitions filed before this Court and before the Supreme Court.

It is the contention of the learned Counsel for the fifth respondent that this petition is liable to be dismissed on the ground that the filing of this petition is an abuse of the process of the Court and on the grounds of *res judicata* and constructive *res judicata* and also on the ground of delay and laches, as the petitioner has not tendered any explanation regarding the delay in filing this petition at this point of time.

It is further submitted that the ground regarding the validity of the impugned acquisition proceedings and the allegation of the activities of the fifth respondent-Society not being within the parameters prescribed under law, are contentions which cannot be considered by this Court, having regard to the earlier petitions filed on the same ground and orders passed thereon. It is further submitted that the acquisition proceedings initiated by the Government of Karnataka is in accordance with law whereby possession of the lands in question had also been handed over to the fifth respondent on 7-3-1991 and the fifth respondent in turn has also formed a layout and had allotted sites to its members. He has also produced the list of sites allotted to its members.

It is the further contention of the fifth respondent that the award passed regarding the lands in question was a consent award and on that ground also, the petition is not maintainable in law. The petitioner having received the compensation without any protest, is therefore, estopped from challenging the acquisition proceedings at this point of time. Further, it is submitted that the contention of the petitioner that the transfer of land to the fifth respondent being null and void and is lapsed as per Section 5 of the LA Act and u/s 27 of the BDA Act, is wholly misconceived and without any basis. And the further contention that there is no vesting of lands and the Scheme has lapsed and thereby the acquisition is inoperative, is also without any basis and is liable to be rejected. He further submits that even assuming without conceding that certain directions issued by the Government have not been followed or conditions imposed on sanction plan have been violated, the same would not result in invalidation of the acquisition proceedings. Further, in view of the suit in O.S. No. 526 of 1997 filed by the fifth respondent against the petitioner, his cousin Mr. Mohan Kumar as well as his uncle one Thimmaiah restraining them from interfering with the possession

of the fifth respondent also having been decreed vide judgment dated 22-3-2003, the contention of the petitioner that he is in possession of the lands in question is misconceived and is liable to be rejected. The further contention of the petitioner that this Court had kept open for the petitioner to challenge the acquisition proceedings on the ground of fraud in W.P. Nos. 35685 and 35686 of 1995, is also misplaced and false, since in the said writ petition, this Court had merely that "the writ petition is dismissed on the ground of delay and laches without expressing any opinion that the documents produced support the contention of fraud in any manner", whereby it is clear that no liberty was reserved on the petitioner to challenge the acquisition proceedings on the ground of fraud. Hence, the fifth respondent prays for dismissal of the petition on the above grounds.

5. The learned Senior Advocate, Sri Ashok Haranahalli, appearing for the Counsel for the petitioner while reiterating the above facts, would contend that the glaring circumstance of the absence of a prior approval of the State Government in the acquisition of lands by the Society through the medium of an agent engaged under an agreement, would clearly vitiate the acquisition proceedings. He places reliance on the following authorities in this regard:

1. H.M.T. House Building Co-operative Society Limited's case;
2. The Vyalikaval House Building Co-Op. Society by its Secretary Vs. V. Chandrappa and Others, ;
3. Bangalore City Cooperative Housing Society Ltd. Vs. State of Karnataka and Others, .

It is contended that the fact the petitioner or his predecessor in title had filed writ petitions earlier and that the same had been dismissed on merits, would not bar the present petition filed on the ground of fraud and that the said circumstance would not act as res judicata or constructive res judicata. If the acquisition is sought to be sustained with reference to what are demonstrably fraudulent transactions - the principle of finality of litigation or res judicata would never be a defence. In this regard the learned Senior Advocate places reliance on the following authorities:

4. V. Gunda Reddy Vs. The Secretary Department of Revenue and Others, ;
5. Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, ;
6. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,
7. Meghmala and Others Vs. G. Narasimha Reddy and Others, .

Similarly, when there are pleas of fraud or colourable exercise of power raised and demonstrated, the defence that the petition may be barred by delay and laches is not applicable. Reliance is placed on the following decisions in this regard:

8. G. Jayaram Reddy Vs. State of Karnataka and Others, ,

9. Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, ;

10. ILR 2013 Kant 3061 .

It is also contended that the landowner is not precluded from questioning the acquisition proceedings independently at different stages and on many grounds. Reliance is placed on the following decision of the Apex Court in this regard.

11. Anil Kumar Gupta Vs. State of Bihar and Others, .

It is sought to be emphasised that notwithstanding the claim on behalf of the Society that physical possession had been delivered of the land in question, it is claimed that the petitioner has retained possession of the land to this day and it is hence contended that it cannot be construed that the land vested with the State Government and that the land is liable to be restored to the owner. This is especially so when the State has not chosen to file any pleadings to refute the claim of the petitioner. Reliance is placed on the following authorities in this regard.

12. Meenakshi Thimmaiah and Others Vs. State of Karnataka and Another, ;

13. Muniyamma Vs. State of Karnataka Dept. of Urban Development, ;

14. Prahlad Singh and Others Vs. Union of India (UOI) and Others, ;

15. Raghubir Singh Sehrawat Vs. State of Haryana and Others, ;

16. Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, .

Though the learned Senior Advocate has strongly urged the above contentions drawing sustenance from the observations and opinions expressed in the above authorities, the grounds sought to be urged are merely an enlarged and stronger version of the very grounds urged on behalf of the petitioner in earlier petitions, the seeming nuances sought to be highlighted to demonstrate that the petitioner is not precluded from urging the said grounds for consideration anew, especially with regard to circumstances that are alleged to have been glossed over earlier or may be not presented in the right perspective, in the opinion of this Court is no justification to entertain the present petition. The petitioner is precluded from bringing this petition in the face of his earlier challenge, on more than one occasion, on similar grounds.

The petition is accordingly dismissed.