

(2012) 09 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 860 of 2009 (LA-BDA) Connected with Writ Petition No. 14074 of 2008 (BDA)

Venkataswamy and Others

APPELLANT

Vs

The Bangalore Development Authority, The State of Karnataka and Adhyayana Vidya Trust (R)
 Adhyayana Vidya Trust Vs Bangalore Development Authority and Others

RESPONDENT

Date of Decision : 22-09-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11 A, 6

Citation : (2012) 09 KAR CK 0047

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K.S. Desai in Writ Petition No. 860 of 2009 LA-BDA and Shri. Mahesh R Uppin in Writ Petition No. 14074 of 2008 BDA, for the Appellant; Basavaraj V Sabarad, Advocate for Respondent No. 1, Shri. Mahesh R Uppin, Advocate for Respondent No. 3 and Shri K.S. Mallikarjunaiah, Government Pleader for Respondent No. 2 in Writ Petition No. 860 of 2009 (LA-BDA), for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. The petitioners in W.P. No. 860/2009 claim as joint owners of land in survey no. 42/47 of Mallathahalli, Yeshwanthpur Hobli, Bangalore North Taluk, measuring about 2 acres. The said land is claimed to have been granted to one Jutta Bhovi in the year 1953. He was said to be the father of the first petitioner, the father-in-law of the second petitioner and the grand-father of the other petitioners. The legal representatives of Jutta Bhovi are said to have initiated 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"), against one M. Mahadev, who had purchased the said lands in contravention of the above Act. He was ordered to be evicted and the lands resumed, as per the order dated 15-2-1993 passed by the

Assistant Commissioner, Bangalore Sub-Division. On an appeal against the said order, the matter had been remitted to the Assistant Commissioner for a fresh enquiry. Again, by an order dated 29-8-1997, the Assistant Commissioner had reiterated the order of eviction. The same was confirmed in appeal as per order dated 1-7-2002, by the Special Deputy Commissioner, Bangalore District. A Writ petition filed against the said order, in W.P. No. 12622 / 2003 was dismissed on 2-7-2003. The petitioners therefore claim to be in possession of the land after the above proceedings attained finality.

2. It is claimed that the Bangalore Development Authority (Hereinafter referred to as "the BDA", for brevity) had proposed to acquire the land in question, along with other lands for the purpose of formation of the Sir. M. Vishveshwaraiah Nagar Further Extension Layout. A Preliminary notification dated 9-4-2003 is said to have been issued showing the petitioners as the khathedars of the land in question. They, however, claim that they have not been served with notice of the same. This is followed by a final notification issued u/s 19(1) of the Act, dated 10-9-2003.

There were said to be a series of writ petitions challenging the said acquisition proceedings, the petitioners had also filed a petition in W.P. No. 3827/ 2004. Those petitions were disposed of, upholding the acquisition, by an order dated 6-6-2006. However, this court had issued certain directions to the BDA to consider the cases of land owners whose lands could be exempted from the acquisition. The petitioners' application in this regard to the BDA was rejected.

It is contended that having regard to the fact that the competent authority was required to make an award within two years from the date of publication of the final notification, in terms of Section 11A of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act" for brevity), the acquisition proceedings in the present case on hand have lapsed. It is elaborated as follows:

The final notification in respect of the petitioners' lands was issued on 9-9-2003. It was published in the Gazette on 10-9-2003. The writ proceedings were initiated by the petitioners challenging the acquisition as on 21-1-2004. All the writ petitions challenging the acquisition were disposed of on 6-6-2006. The award is said to have been passed on 10-6-2008 and duly signed on 11-6-2008. The award is approved on 16-6-2008 by the competent authority. It is hence contended even providing for the time consumed by the writ proceedings challenging the acquisition, the Award was made beyond the period of two years and hence the acquisition had lapsed.

Even otherwise it is contended that possession of the land never having been taken by the BDA, from the petitioners, the land has never vested with the BDA.

It is also contended that the BDA had, by a Resolution dated 4-8-2008, allotted 14 guntas of the petitioners' lands in favour of a Trust, Adyayana Vidya Trust and had also executed a sale deed dated 22-9-2008 in its favour. It is contended that the BDA has no such power to convey the property either by sale or exchange.

As the BDA had failed to form sites in the said land, the said allotment and transfer in favour of the said Trust, is violative of Section 38B of the BDA Act. The transfer is also not preceded by the prior approval of the State Government. The allotment cannot even be characterized as bulk allotment as there is no compliance with the prescribed Rules.

The learned counsel for the petitioners hence seeks that reliefs be granted as prayed for.

3. On the other hand, the learned counsel for the BDA contends the petition is barred by delay and laches. Even on merits, it is sought to be pointed out that the restoration order was passed in favour of the petitioners only on 2-7-2003, whereas the preliminary notification had been issued on 9-4-2003 itself.

It is contended that the BDA has implemented a Scheme called "Sir M.V. Layout" in Bangalore North Taluk and it was proposed to take up a scheme for formation of further layout under the same name. Pursuant to the resolution dated 17.1.2003, notification u/s 17(1) of the BDA Act was issued on 8.4.2003 and it was published in the Karnataka Gazette dated 9.4.2003 proposing to acquire an extent of 773.18 acres land in Mallathalli, Gidadakonenahalli, Herohalli villages of Yeshwanthpur Hobli, Bangalore North Taluk. The notices as required u/s 17(5) of the Act were issued to all the land owners notified in the notification. In addition, it was published in the leading newspapers for the information and notice of the general public and such of the persons who could not be served in person due to non-availability etc., to file objections. In the case on hand i.e., Sy. No. 42 of Mallathalli, the total extent of land is 89 acres 17 guntas and out of that an extent of 44 acres 5 guntas was notified. As regards the land in question Smt. Nanjamma, wife of Chinnanna, Venkataswamy, son of Chinnanna were the notified khatedars. Since they were not available in the place or village where the land was situated, the service of notice was effected by affixture. Either in response to service or paper publication, no objections were filed by any of the petitioners. After enquiry and taking note of conversion of land by some land owners for non-agricultural purposes development of revenue layouts and built-up areas, the BDA, at its meeting held on 28.6.2003 decided to exclude such area and issue the final notification in respect of available vacant land to an extent of 13.17 acres i.e. Part-I (4.10 acres), Part-II (5.07 acres), Part-III (3 acres) and Part IV (1 acre). The land in question is Government land and had to be notified only because of claims of individuals as grantees/persons in unauthorised occupation etc. Out of the finally acquired extent certain portion has been utilised for road formation/road widening, to make a proper approach road to SMV Layout. The award has been passed on 16.6.2008 and approved by the competent authority to an extent of 5 acres 10 guntas coming in part I and IV. The possession of 4 acres 10 guntas which was vacant was taken and handed over to Engineering Section on 9.7.2008. The possession of remaining extent of 1 acre is not taken as yet because of unauthorised constructions. It is contended that writ petition No. 16133/2004, and several connected cases challenging

acquisition of land under this Scheme were disposed of by this Court vide order dated 6.6.2006, upholding the acquisition subject to the observations and directions contained in the order, in respect of revenue site holders and land owners. Against the said order, Smt. Muniyamma, owner of a part of land in this Sy. No. measuring 2 acres had filed writ appeal No. 1330/2006 and an order of status quo has been passed in respect of her land. Hence the extent remaining is 2 acres 10 guntas.

The third respondent is a registered public charitable trust with objects, inter alia, of improving the educational and socio-economic conditions etc., of Scheduled Castes, Scheduled Tribes and Other Backward Classes. The land in Survey No. 67, Herohalli village is gomala. As per Government Order No. RD 237 LGB 94 dated 8.8.2000 an extent of 1.20 acres in Sy. No. 67 of Herohalli village had been granted by the Government subject to payment of Rs. 8,31,710/- to the said Trust. But, the BDA had acquired an area of 19 acres out of Sy. No. 67 for formation of Further Extension of SMVL under the notifications produced as Annexures - B and C to the writ petition. An extent of 28 guntas belonging to the third respondent is part of the acquired area of 19 acres in Sy. No. 67 of Herohalli and the said extent has been utilised for formation of the aforesaid layout. It is said that out of the land granted by the government to the third respondent, the remaining extent was occupied by a private party. Therefore, the third respondent had approached the Government stating that the BDA and private party were in occupation of the land granted to the Trust by the government in Sy. No. 67 of Herohalli. Therefore, Government held a meeting presided over by the Principal Secretary, Revenue Department, Government of Karnataka on 1.4.2008 and the BDA explained that it had utilised the land for formation of layout. Therefore, it was decided by the Government that the BDA should compensate for the land acquired by allotting a civic amenity site or by giving alternate land, to be identified by BDA to the third respondent. It was further decided that the Special Deputy Commissioner, Bangalore shall identify 32 guntas of alternate land in the nearby area in the same village and submit a proposal to Government to grant. Pursuant to this direction and approval of the Government, the Authority considered the matter in its meeting held on 4.8.2008 and after deliberations it was decided to allot 14 guntas of land free of cost to the third respondent in lieu of their land in Sy. No. 67, Herohalli. Based on this resolution, necessary conveyance deed was executed in favour of the third respondent on 22.09.2008. The possession of the allotted land has also been handed over to the third respondent -Trust and now they have submitted a representation dated 16.09.2008 stating that they should be allotted the remaining 14 guntas of land as directed by the Government. In this regard, they have filed Writ Petition No. 14074/2008 seeking allotment of further 14 guntas. In the remaining extent, the authority has formed sites.

It is contended that the petitioners are not entitled to make any claim in respect of land vested in the BDA after acquisition. Though opportunity was given, no objections were filed to the acquisition because by then they had not become

owners of the land due to pendency of the PTCL proceedings. The W.P. No. 161333/2004 (Smt. Shantha vs. BDA) and connected writ petitions challenging the acquisition for further extension of SMV Layout were disposed of by this Court on 6.6.2006. The petitioners had filed W.P. No. 3827/2004, which was clubbed with the said writ petitions. As far as land owners are concerned, the Court was pleased to pass the following order:

All the petitioners who are the land owners/converted site owners (duly converted for non-agricultural use of land, in accordance with law), who are seeking dropping of the acquisition proceedings insofar as their respective lands/sites are concerned, on the ground that: (a) their lands are situated within green belt area (b) they are totally built up; (c) converted for non-agricultural use; (d) garden and recognized nursery lands" (e) who have built hospitals, educational institutions and factories; (f) who have not been served with the notice of acquisition and (g) who are in doubt about the inclusion of their land in the notification are permitted to make appropriate application to the authorities seeking such exclusion and exemption and producing documents to substantiate their contentions within three months from the date of this order.

It is made clear that the authority 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 objections were upheld and in respect of those lands no final notification is issued.

In the event the authority comes to the conclusion that those persons are similarly placed and are covered by the resolution of the BDA dated 28.06.2003 in subject No. 177/2003, then to denotify their lands/sites, built up portion and exclude them from acquisition.

Petitioners who are interested in availing this benefit shall make appropriate application within 90 days from the date of this order and thereafter, the authority shall give notice to those persons, hear them and pass appropriate orders expeditiously.

Till the aforesaid exercise is undertaken by the Authority on the applications filed by the petitioners either for allotment of site or for de-notifying or exemption sought for are considered their possession shall not be disturbed and the existing construction shall not be demolished. After consideration of the application in the light of the aforesaid direction, the authorities are at liberty to proceed with the acquisition.

Thus, the petitioners in the writ petitions were given 3 months time to make an appropriate application seeking exclusion of their land on the grounds mentioned in the order. Hence, if the petitioners fell under any of the categories stated in the order, it was open to make representations. Since their case did not come under any of the categories, they had not submitted any application. Insofar as

the averment in Para-5 of the writ petition that the petitioners had approached the BDA on 14.1.2006 for de-notification to permit them to retain the land as per Annexure-"D", it is contended that after careful verification, no such representation is found received by the BDA. The petitioners had not produced any acknowledgement for having submitted Annexure-D. Hence, it is disputed that they have made any representation as per Annexure-D. As regards the endorsement produced as Annexure-E, it is contended that this endorsement was not issued in response to the alleged representation at Annexure. D. This endorsement was issued in response to the petitioners' application under the Right to Information Act seeking certain details. A copy of the application made by Sri. Venkataswamy bin Chinnanna on 14.11.2006 is produced as Annexure.R2. The petitioners are falsely contending that the endorsement was issued in response to Annexure-D.

The contention of the petitioners regarding lapse of the acquisition proceedings on account of the award not having been passed within 2 years as required u/s 11A of the LA Act, it is submitted that the writ petitions challenging the acquisition were disposed of by this Court on 6.6.2006. The award in respect of the acquired land has been passed and approved on 16.6.2008. The provisions of Section 11A of the LA Act are not applicable to the acquisition of lands under the BDA Act. As held by the Apex Court, the BDA Act is not an Act for acquisition. It is an Act for the establishment of an Authority for systematic and planned development of Bangalore City and areas adjacent thereto. It has also been held that acquisition of land is only incidental to such objectives and the application of the provisions of the LA Act under Sections 6 and 11A as amended and inserted by the Central Amendment Act, 1984 to the proceedings under the BDA Act, is excluded. Hence, the said contention is untenable and liable to be rejected.

The third respondent was granted land in Sy. No. 67 of Herohalli for establishment of educational institutions by the Government. But the said land was utilized for formation of Sir M.V. Layout by BDA, but no compensation was paid. Therefore, the Government in its meeting held on 1.4.2008, has approved allotment of alternate land in favour of the said trust. The allotment in favour of the third respondent cannot be considered as bulk allotment. It is contended that u/s 38B of the BDA Act, it is permissible to make allotment of land by way of lease, sale or otherwise of any land which belongs or is vested in the BDA or acquired by it for the purpose of any development scheme to a Trust, created wholly for a charitable educational institutions or other purposes. This power is available to the BDA notwithstanding anything contained in the Act Development Scheme sanctioned under this Act.

It is contended that the authority, in fact, had passed a resolution on the basis of the approval of the Government on 1.4.2008 and decided to allot 14 guntas of land in Sy. No. 42 of Mallathalli vide resolution No. 501/2008 dated 4.8.2008. The said resolution is within the powers of the authority and in accordance with law. Therefore, there is no illegality or want of jurisdiction in allotting the said

land in favour of the third respondent. The authority has already executed a deed of conveyance in favour of third respondent. The contentions of the petitioners are contrary and are liable to be rejected. The possession of the land was taken and handed over to the Engineering Section on 9.7.2008 itself. Hence, there is no occasion to quash the resolution or the sale deed executed in favour of the third respondent.

It is further contended that the petitioners have no locus standi to file this writ petition. The acquisition of the land was completed in accordance with law long back and the possession of the land was also taken and handed over to the Engineering Section of BDA and it has vested in the BDA free from all encumbrances. The first petitioner is not a notified khatedar, so also the fourth and fifth petitioners. The names of the second and third petitioner were shown in the notification and the other petitioners have not agitated the matter at any point of time. However if they are entitled for compensation, they may make a claim for compensation since the award is already passed.

4. The learned counsel appearing for the third respondent contends as follows:

The third respondent is a registered Public Charitable Trust. It is established with an object of improving the educational and socio-economic conditions and strengthening culture and values in education for scheduled castes and scheduled tribes and other backward classes namely denotified tribes, nomadic tribes and semi-nomadic tribes and other objects for the benefit of the public in general and SC, ST and Backward classes in particular. It has established and is managing educational institutions at Mandya, Malavalli and Bangalore. The third respondent with an object of establishing a school for the Scheduled caste and Scheduled Tribe students, made a representation to the Deputy Commissioner seeking allotment of land in Bangalore. The Government by considering the request of the third respondent granted its permission to allot 1 acre 20 guntas of land in Survey No. 67 of Herohalli village, Yeshwanthpura Hobli, in favour of the third respondent for a market value of Rs. 5 Lakh per acre, as per Annexure-"R1" The Deputy Commissioner by his letter dated 14.9.2000 directed the third respondent to deposit Rs. 8,31,710/- being the market value of the said land and also the conversion charges. Annexure-"R2" is the copy of the said letter. Accordingly, the third respondent paid the said entire amount to the Government.

Though the third respondent paid the entire amount as demanded above, the Government was not able to hand over vacant possession of the land, as it was found that, 28 guntas of the land was acquired and occupied by the BDA and it has utilized the same for the formation of extended Sir. M. Visweshwaraiah Layout, and the remaining 32 guntas of land was occupied by some private persons. In view of the said fact, the Principal Secretary to Government (Revenue Department) called a meeting of the officers on 1.4.2008. In the said meeting, it was decided that the BDA should compensate for 28 guntas of land acquired by it by either allotting a Civic amenity site or by giving an alternate

land to be identified by the BDA and the Special Deputy Commissioner, Bangalore, has to identify the remaining 32 guntas of land in the nearby area in the said village and submit proposal to the Government for grant to the third respondent.

The BDA, contrary to the above said direction of the Government, called a meeting on 4-8-2008 under subject No. 501/2008 to grant 28 guntas of land, in Survey No. 42., Block-I of Mallathalli, Yeshwanthpura Hobli, Bangalore North Taluk (extended layout of Sir. M. Visweshwaraiah Nagara), out of the land measuring 4 acre 10 guntas with the following boundaries:

East: 80 Feet Road

West: Remaining portion of the land in the same Sy. No. belonging to other owners.

North: Remaining portion of the land in the same Sy. No. belonging to other owners.

South: Remaining portion of the land in Block No. 1 measuring 4 acres 10 guntas in respect of which the award is passed.

Annexure "R-4" is the copy of the survey sketch identifying the said portion. But the BDA, contrary to the decision taken in Annexure "R-3" to which it was also a party, passed a resolution on 4.8.2008 resolving to grant only 14 guntas of land instead of 28 guntas of land. Annexure "R-5" is the copy of the extract of the said resolution and accordingly it has issued the allotment letter dated 19.9.2008, and issued possession certificate dated 22.9.2008 and also executed a registered Sale Deed, marked as Annexure "R-6".

The third respondent is intending to establish a nursing college, for the benefit of the Scheduled caste and Scheduled Tribe students with all infrastructure like, sufficient school building, play ground, library and etc., The land measuring 14 guntas granted by the BDA is insufficient to establish the same with all the infrastructure. The decision taken by the BDA to allot only 14 guntas of land is contrary to the direction issued by the Government. Hence, the third respondent made a representation dated 16-9-2008, to the BDA to allot the remaining adjacent 14 guntas of land to the land which is already granted. Annexure "R-7" is the copy of the said representation. Till today, the BDA has not taken any steps to allot the remaining adjacent 14 guntas of land in favour of the third respondent. Hence, the third respondent filed W.P. 14074/2008 (BDA) seeking mandamus to the BDA to allot the said adjacent land in favour of the third respondent. In the said writ petition, this Court was pleased to issue emergent notice to the BDA and the said writ petition is still pending.

During the pendency of the above said writ petition, the petitioner has come up with the present writ petition by making all false and untenable allegations. The present writ petition filed by the petitioner is not maintainable under law and facts and the same is liable to be dismissed in limine.

Admittedly, the petitioners have filed Writ Petition No. 3827/2004 challenging the acquisition of the lands in question. The said writ petition along with the other connected writ petitions came to be disposed of by this Court by an order dated 6.6.2006. This Court, while disposing of the said writ petitions, has given liberty to all the land owners who are not served with the notices to make appropriate applications to the authorities seeking exclusion and exemption of their lands from acquisition within three months from the date of the said order, if their land falls under any one of the categories mentioned in the said order. The petitioners are not eligible to seek exemption and exclusion of their lands from acquisition since their case will not come under any one of the categories mentioned in the said order. It appears that, the petitioners have not made any representation pursuant to the order passed by this Court, seeking exemption/exclusion of their land from acquisition. Therefore, the third respondent submits that, the challenge to the acquisition of the lands in question are concerned, has become final, and the petitioners are not entitled to re-agitate the same in the above writ petition.

The learned counsel would further contend that the connected writ petition be allowed with an appropriate direction to the BDA to convey the remaining extent of 14 guntas of land, which has been long delayed.

In the light of the above, the vehement denial of the petition averments as to the acquisition proceedings having attained finality with reference to the sequence of events and material documents by the respondents is not refuted by the petitioners by way of any rejoinder.

The petitioners have essentially challenged the Award, pursuant to the acquisition proceedings as being beyond the time prescribed under the Statute. The challenge is also to a resolution passed by the BDA in respect of the sale of land made in favour of the third respondent.

In so far as the first ground of challenge is concerned, it is not in dispute that there was an earlier challenge to the acquisition in writ proceedings in WP 3827/2004 and several other matters, which were disposed of by an order dated 6-6-2006. In terms of the said order, the petitioners were required to make an appropriate representation seeking exemption of their land from acquisition if the said land fell in any of the categories referred to in the above said order. It is denied by the BDA that there was any representation made by the petitioners. This is not seriously refuted by the petitioners.

In so far as the contention of the Award being beyond a period of two years and hence being opposed to Section 11A is concerned, it is pointed out that the question is settled by the apex court, which has held that the said provision would not be attracted to acquisition proceedings under the provisions of the BDA Act.

The circumstances leading up to the decision to convey land in favour of the third respondent is adequately explained by the respondents to demonstrate that the

same cannot be said to be illegal.

Accordingly, the writ petition in WP 860/2009 is hereby dismissed.

The writ petition in WP 14074/2008 is allowed. Respondent no. 1 is directed to expedite the allotment of the remaining extent of 14 guntas of land, which is said to be adjacent to the land already granted to the petitioner in Survey No. 42 of block no. 1 of Mallathahalli, Yeshwanthpur, Bangalore North Taluk, in any event, within a period of eight weeks, if not earlier, from the date of receipt of a certified copy of this order.