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Court : Karnataka

Decided On : Feb-20-2014

Judge : Anand Byrareddy

Appeal No. : Writ Petition Nos. 42692- 42693 of 2012 & 9367 of 2013

Appellant : Dr. Pushpavathi and Others

Respondent : State of Karnataka, Represented by Its Principal Secretary and Others

Judgement :

(Prayer: These Writ Petitions filed under Articles 226 and 227 of Constitution of India, praying to quash the notification dated 3.2.2003 issued by the 2nd respondent issued under sub Section 17[1] and [3] of Section 17 of Bangalore Development Authority Act vide Annexure-K and also notification dated 23.2.2004 issued under Section 19[1] of the Bangalore Development Authority Act vide Annexure-L in so far as they relate to site No.49 and 50 formed out of land in former survey No.5 of Geddalahalli Village, K.R.Puram Hobli, Bangalore South Taluk and etc;)

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. It is the case of the petitioners that the first petitioner had acquired title to sites bearing Nos.49 and 50, formed out of land which was converted for residential purpose, bearing Survey No.5 of Geddalahalli village, K.R.Puram Hobli, Bangalore South Taluk, under a sale deed dated 31.3.1992, executed by one Swaminathan through his general power of attorney holder. It is stated that the land bearing Survey No.5 of Geddalahalli village, totally measuring 6 acres 19 guntas was agricultural land belonging to A.V.Nanjundaiah, who acquired title by virtue of the order of re-grant made by the Assistant Commissioner, Bangalore South Division, by order dated 24.5.1971. Pursuant to the re-grant, the revenue entries were effected in his name followed by entries in the RTC. The copies of which are furnished. A.V.Nanjundaiah, as absolute owner, held sought permission from the competent authority to alienate the land, which was granted by order dated 13.9.1973 and accordingly, Nanjundaiah sold the land in favour of Swaminathan under a registered sale deed dated 31.10.1973. The revenue entries were then made in favour of Swaminathan and Swaminathan, as the absolute owner, had approached the Tahsildar seeking permission to divert the user of the land from agricultural to industrial. The Tahsildar, Bangalore South Taluk had granted a Conversion Certificate dated 12.5.1975. In the year 1991, Swaminathan again approached the competent authority seeking permission to change the user of the land from industrial to residential purposes in so far as an extent of 5 acres 35 guntas of land was concerned. The Deputy Commissioner, Bangalore District, by an Official Memorandum dated 11.9.1991 accorded approval in that regard. Upon obtaining conversion, Swaminathan is said to have formed a layout and allotted residential sites of different dimensions, which was duly approved by the Narayanapura Village Panchayat. It is then that the first petitioner purchased two sites in the layout, as already stated.

The Assistant Commissioner, Bangalore North Sub- Division is said to have initiated proceedings under Section 79A and B of the Karnataka Land Reforms Act, 1961 (Hereinafter referred to as the 'KLR Act', for brevity) against Swaminathan, alleging violation of the aforesaid provisions insofar as the land having been purchased was agricultural land and as a non- agriculturist, he could not have purchased the same. However, the proceedings were misconceived, as already pointed out, the concerned had obtained change of land user as on the

date of the purchase. The Assistant Commissioner ignored the same and had initiated proceedings under the aforesaid provisions.

The first petitioner was blissfully unaware of the proceedings having been initiated and had continued in possession of the sites, by which time, the Assistant Commissioner had issued an order of forfeiture resuming the lands to the State. It is thereafter that the proceedings were initiated under the provisions of the Bangalore Development Authority Act,, 1976 (Hereinafter referred to as the "BDA Act"., for brevity), for formation of a proposed layout in an area comprising of 3000 acres, spread over 14 villages, known as "Arkavathi Town or Layout" and in furtherance of the Scheme, a Preliminary Notification under Section 17(1) of the BDA Act dated 3.2.2003 was issued. This was substituted by a further preliminary notification, which was published in the Official Memorandum dated 16.9.2003, proposing to acquire about 3839 acres and 12 guntas spread over 16 villages. Thereafter, a final notification in terms of Section 19(1) of the BDA Act was issued dated 23.2.2004. The first petitioner, along with other persons, was shown to be not notified under the acquisition notifications issued and it was indicated as 'Sarkari Pada' and it is thereafter that there were challenges to the acquisition proceedings.

The first petitioner however, was not in a position to indicate how the lands could be claimed by her and how it was treated as government land and it is in the course of investigation of the manner in which the lands were sought to be shown as government lands, that the petitioner had learnt in retrospect of the sequence of events.

It is thereafter that the first petitioner found that the wife and children of Swaminathan, who was no more, had questioned the proceedings initiated under Section 79-A and B, by recourse to a writ petition in WP 22059/2005 and the petitioner had obtained a certified copy of the order. It is after learning about the writ petition, that the petitioner took steps to file an appeal before the Karnataka Appellate Tribunal questioning the order of forfeiture insofar as her sites were concerned. The writ petition filed by Swaminathan's wife and children was allowed by order dated 23.7.2008 and the order passed by the Assistant Commissioner

was quashed.

In the meanwhile, it transpires that insofar as the writ petitions, filed by several land owners and other site owners questioning the acquisition proceedings initiated, were all disposed of by a common order dated 15.4.2005 and the acquisition notifications were quashed. The BDA had challenged the order before a Division Bench in appeal, which was allowed by an order dated 25.11.2005 upholding the acquisition. On the other hand, the appeal filed by the present first petitioner before the Karnataka Appellate Authority in appeal No. 1053/2005 was allowed and the order passed by the Assistant Commissioner insofar as her lands were concerned, was set aside. So also, the appeals filed by persons who had purchased sites in the layout formed by Swaminathan were allowed.

3. It is the further case of the petitioners that, being aggrieved by the judgment of a Division Bench sustaining the acquisition, the persons, who had lost their lands, had approached the apex court by filing a Special Leave Petition and leave having been granted, the appeals were heard and decided on 5.5.2010, whereby the judgment of the division bench of this court came to be confirmed and there were certain directions and clarifications issued which are as follows:-

"(a) In so far as the site owners are concerned they are entitle to the following reliefs:-

(1) The site owners/writ petitioners shall register themselves as the applicants for allotment under the BDA (Allotment of Sites) Rules 1984 within a period of 2 months from today (extendable by another one month by BDA if sufficient cause is shown). The petitioners will have to pay the registration fee. They need pay initial deposit as their sites have been acquired and they have agree not to receive the compensation in regard to sites under this agreement.

(2) The petitioners shall file application for allotment of sisters w BDA within three months from today in the prescribed forms stating that they are applicants who were the petitioners m these writ petitions. The petitioners shall file their documents with BDA within a period of 2 months TO enable the BDA to verify the same.

(3) The BDA will treat them as applicants entitled to priority in allotment and allot each of them sites measuring 30' X 40' in the Arkavathi layout or in any other nearby layouts in Bangalore at the prevailing allotment prices subject to petitioner satisfying the twin requirements for allotment under BDA (Allotment of sites) Rules 1984, that they must be residents of Bangalore (10 year domicile) and should not be owning residential property in Bangalore.

(4) If there are rival claimants for compensation in regard to the plots claimed by the petitioners and if the ownership of the petitioners in regard to their respective sites which have been acquired is not disputed, BDA shall calculate the compensation payable to the petitioner and give credit to the same by adjusting the same towards the allotment price for the sites to be allotted and call upon the petitioner to pay the balance. The petitioner shall be given six months time for making payment (to enable petitioners to know the amount of compensation which they will be entitled and to ascertain how much balance they should pay).

(5) If there are rival claimants in regard to survey numbers or the sites or if any petitioner's sites are challenged, BDA shall make reference in regard to the compensation in regard to such sites/and land in question, to the Civil Courts under Section 30 of the Land Acquisition Act, 1894 and the petitioners will have to sort out the matter before the reference court. In that event, such petitioners will have to pay full allotment price within the time stipulated without seeking adjustment of compensation for the acquired site.

(6) If any of these petitioners does not fulfil the requirements for the allotment under allotment rules, their cases may be considered for allotment of 20' X 30' sites as per the Rules containing incentive scheme for voluntary surrender of lands for the purpose of the said scheme, such petitioners will be deemed to have voluntarily surrendered the sites.

(7) The above scheme will be available only those who are owners as consequence of execution of registered sale deeds in their favour prior to date of preliminary notification (and not to CPA/Agreement holders).

16. As stated supra, thought like Hon 'ble Supreme Court confirmed the order of the Division Bench of this Hon'ble Court by its order dated 5.5.2010 issued the following directions and clarifications which reads thus:-

(i) In regard to the acquisition of lands in Kempapur and Srirampura, BDA is directed to reconsider the objection to the acquisition having regard to the fact that large areas were not initially notified for acquisition, and more that 50% whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of acquired lands has become illogical and impractical, and if so, whether the balance a; ea also should be deleted from acquisition. If BDA proposes to continue the acquisition, it shall file a report within four months before the High Court so that consequential order could be passed.

(ii) In regard to villages of Venkateshpura, Nagawara, Hennur and Challakere where there are several very small packets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small packets should also be deleted if they are suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired lands, could be used as a standalone parks, or playground in regard to a layout formed in different unconnected lands in other villages. Similar isolated packets in other villages should also be dealt with in a similar manner

(iii) The BDA shall give options to each writ petitioner whose land has been acquired for Arkavathi layout.

(a) To accept allotment of 15% of the land acquired from him, by way of developed plots in lieu of compensation (any fractions in excess of 15% may be charged prevailing rates of allotment) or

(b) In case where the extent of lands acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied within the quantum), allotment of a plot measuring 30'X40' for every half an acre land acquired at the prevailing allotment price.

(4) Any allotment made by BDA either by forming layouts or by way of bulk allotments, will be subject to the above."

Therefore, it is the case of the petitioner that by virtue of the above directions, the second respondent was under the obligation to take a decision. Though the first petitioner herein had not challenged the acquisition proceedings as she was never a party to those proceedings and since there were other orders, as already stated, wherein the lands held by the petitioner were shown as government land and it is only after the said dispute was resolved by virtue of the appeals filed by the petitioners having been allowed, that the petitioner is in a position to question the acquisition proceedings. Therefore, pursuant to the directions, issued by the apex court, the petitioner had made a representation to the second respondent, to withdraw from the acquisition insofar as her sites were concerned.

The second respondent having chosen to ignore the representation of the petitioner and the petitioner being under threat of dispossession, has now preferred these petitions.

4. The learned Counsel for the petitioners would contend that in the eye of law, the sites belonging to the petitioner were never the subject matter of acquisition, as she was not the notified owner and the lands, though indicated as government lands at the time of issuance of the notifications, by virtue of subsequent proceedings that have been initiated, is no longer shown as government land and the petitioner's title stands perfected by virtue of the subsequent events and therefore, the acquisition proceedings cannot be completed insofar as the petitioner's lands are concerned without appropriate steps being taken in that regard. The learned Counsel would further submit that by virtue of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Hereinafter referred to as the 'Act', for brevity), having come into force from 1st January 2014 and by virtue of Section 24 of the Act, which has come in for interpretation by the apex court in a recent judgment in *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others* dated 24.1.2014 in Civil Appeal No,877/2014, the Supreme Court has taken the view in interpreting Section 24 of the Act as follows

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1).

Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed.

On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 ACT then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act."

The learned Counsel would point out that on two counts namely, that possession of land has not been taken and that compensation has not been paid, as there is no award passed in favour of the petitioner and as laid down by the Supreme Court, it would have to be held that the proceedings are deemed to have lapsed.

5. The learned Counsel for the BDA has filed statement of objections resisting the petition and would submit that without reference to the various allegations and claims made in the present petitions, the same would have to be rejected on the face of it, on the ground of delay and laches.

It is contended that the acquisition notifications were subject matter of challenge by several land owners and the same has attained finality in the acquisition having been upheld. Therefore, the present petitioner seeking to contend that the acquisition proceedings are an infirmity in the petitioner's lands never having been acquired, is misleading. Admittedly, as on the date of the notifications, the land was shown as government land and therefore, the question of acquisition did not arise and it is for this reason that the implementation of the Scheme insofar as the

lands that were acquired, has been implemented without reference to the petitioner. That is the reason as to the lands claimed by the petitioners has not been proceeded with insofar as the passing of the award or taking possession is concerned. Admittedly, it is vacant land and hence, there is no infirmity insofar as the acquisition notifications are concerned. Secondly, it is contended that though petitioner no.1 has narrated that petitioners 2 and 3 have been impleaded in this petition, it is only to afford them a semblance of right, as apparently they claim to be purchasers of the land in question subsequent to the notifications and hence would have no right to question the acquisition proceedings, on any ground whatsoever. Further, the acquisition proceedings having been advanced, any order in favour of these petitioners, who have no right to challenge the acquisition, would impede the implementation of the Scheme. And since the respondent BDA has been overrun with several cases being lodged against the acquisition proceedings and the implementation of the Scheme, the present petitions being entertained, would result in a miscarriage of justice and therefore, the learned Counsel seeks dismissal of the petitions.

6. By way of reply, the learned Counsel for the petitioners would contend that it is not denied that as of the date of the issuance of the notifications, the land was indicated as government land. However, the entry in so far as the description of the lands having been caused illegally, was subject matter of challenge and the said illegality having been set at naught in the petitioners having been rightfully declared as the owners, the defective title, if any, stands cured and it would enure to the benefit of the petitioners, which in the eye of law, the respondents cannot ignore.

It is further pointed out that even if it could be said that the land was shown as government land and therefore, further proceedings as regards the passing of the award and taking of possession was found unnecessary, the fact remains that the petitioner has been armed with the title to the property and that any such controversy as regards the land being government land having been clarified, the petitioner is in a position to assert possession over the land in question. Further, if the petitioner is to be dispossessed of the land in question, it can only be in accordance with law and cannot be disturbed by reference to the acquisition

proceedings, as the case of the petitioner has been taken note of even by the apex court and there is a direction to consider the petitioner's case and in respect of which, a representation having been made, the BDA has not chosen to answer the same.

If the present pleadings of the BDA are an indication of the manner in which the petitioner's case could be considered, it is contended that the final notification having been issued in the year 2004 and the scheme not having been implemented, even to this day, in so far as the land of the petitioners, it could be said that the scheme has lapsed insofar as the petitioner's land is concerned and even if the scheme has been implemented in part over the lands that have been acquired, it cannot be denied that it has not been substantially implemented and even on that count, the entire scheme would lapse. Hence, the learned Counsel would submit that at least insofar as the petitioner's land is concerned, since the scheme has not been implemented and no further proceedings are taken to deprive the petitioner of her possession in accordance with law, it ought to be declared that the Scheme has lapsed by virtue of Section 27 of the BDA Act.

Insofar as the contention that petitioners 2 and 3 are subsequent purchasers and have no right to challenge the acquisition proceedings along with petitioner no.1 is concerned, this aspect of law is no longer *res Integra*, as the division bench of this court in *Smt.Nagu Bai vs. State of Karnataka*, ILR 2001 KA.R.1169, has laid down that there is no bar for such a subsequent purchaser to seek declaration as to the Scheme having lapsed.

Consequently, since the BDA has not chosen to reply to the petitioner's representation and in view of the above sequence of events and the circumstances of the case, it would be just to declare that the acquisition insofar as the sites belonging to the petitioners, of which petitioner no.1 was the erstwhile owner, is lapsed by virtue of Section 27 of the BDA Act. Accordingly, the acquisition proceedings insofar as they pertain to said sites of the petitioners stand quashed.