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Court : Karnataka

Decided On : Jan-12-2015

Judge : The Honourable Mrs. Justice B.V. Nagarathna

Appeal No. : Writ Petition Nos. 57217-57222 of 2014 (LA-BDA)

Appellant : A. Venkatesh and Others

Respondent : The State of Karnataka, Urban Development Department and Others

Judgement :

(Prayer: These writ petitions are filed under Articles 226 and 227 of the Constitution of India praying to declare that the acquisition proceedings in respect of the schedule properties under the preliminary notification issued by R-2 dated 11.4.1989 at Ann-b, and the final notification dated 22.7.1991 issued by R-1 vide Ann-c, has lapsed by efflux of time of over 23 years and the possession of the said lands having till date continued to remain with the petitioners thereby directing the schedule lands remain outside the purview of the aforementioned notifications.)

1. Petitioners have assailed preliminary notification dated 11.04.1989 and final notification dated 22.07.1991 issued by respondent No.1 and have contended that the acquisition has lapsed by efflux of time as possession of the lands have not

been taken.

2. Learned counsel appearing for the petitioners contended that the land bearing Sy.No.9 measuring 1 acre 22 guntas and land comprised in Sy.No.8/33 measuring 6 guntas situate at Konanakunte Village, Uttarahalli Hobli, Bangalore South Taluk (hereinafter referred to as "the scheduled lands") originally belonged to Late Anniahappa who had purchased the same. On his death, Smt. Jayamma and petitioners herein have succeeded to his estate. The said lands have been partitioned amongst the members of the family in O.S.No.9583/2007. It is stated that the scheduled lands have fallen to the share of petitioners. That O.S.No.9583/2007 was filed for the relief of partition and separate possession and preliminary decree has been passed by the City Civil Court, Bangalore City, against which RFA No.266/2012 was filed. In the said appeal, the dispute was settled between the family members and the compromise decree has been drawn up. That scheduled lands were proposed for acquisition for formation of the layout named "Jayaprakash Narayananagar 9th Phase" and preliminary notification dated 11.04.1989 was issued by respondent No.2. Thereafter, final notification was issued on 22.07.1991. According to the petitioners, subsequently possession has not been taken. Therefore, they contend that the acquisition has lapsed and therefore, they have challenged the acquisition notifications.

3. I have heard the learned counsel for the petitioners and perused the material on record.

4. It is noted that with regard to there being infirmity in the acquisition notifications, the petitioners have not stated any grounds as such. Merely because, the possession of the lands have not been taken, the petitioners cannot assail the acquisition notifications. That apart, the acquisition notifications have been assailed after a period of 23 years. There is gross delay in assailing the acquisition at this length of time. Therefore, writ petitions have to be rejected only on the ground of delay and laches.

5. In this context, a plethora of decisions of the Hon'ble Supreme Court on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the Constitution cannot extend its hands to such persons who

approach the Court after several years can be relied upon. In fact, the Apex Court has held in several decisions that stale claims ought not to be entertained by High Courts exercising writ jurisdiction under Article 226 of the Constitution of India. The recent decisions in that regard are as follows: -

a) In a recent decision of the Apex Court reported in 2011 AIR SCW 1332 [State of Orissa and Anr. V. Mamata Mohanty] the consideration of an application where delay and laches could be attributed against a person who approaches in a writ petition is discussed by stating that though the Limitation Act, 1963 does not apply to writ jurisdiction, however, the Doctrine of Limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches.

b) In the case of Shankar Co-op. Housing Society Ltd. v. M.Prabhakar and Ors. [2011 AIR SCW 3033J, the Apex Court at para 53 has given the relevant considerations, in determining whether delay or laches in approaching the writ court under Article 226 of the Constitution of India. The same reads as follows;

"53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 225 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be

decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay."

c) Similarly, the Apex Court in the case of Sawaran Latha and others v. State of Haryana and others [2010(4) SCC 532J has held that when the notification under Section 4 of the Land Acquisition Act, 1894 was issued in the year 2001 and the award was passed in the year 2004, writ petitions filed for quashing of the notification in the year 2009 have to be dismissed on the ground of delay as the litigants who dare to abuse the process of the Court in disregard of the law of limitation, delay and laches should not be encouraged.

d) In Tamil Nadu Housing Board, Chennai v. M.Meiyappan and Others [2010 AIR SCW 7130], when the acquisition proceedings were challenged 10 years after notifications were issued, the Apex Court held that the High Courts should not have entertained the writ petition particularly after passing of the award and that the High Court should have dismissed the writ petition at the threshold on the ground of delay and laches.

e) In Swaika Properties (P) Limited and another v. State of Rajasthan and others [2008 (4) SCC 695], the Apex Court has followed its earlier decisions in the case of Municipal Corporation of Greater Bombay v. The Industrial Development Investment Co. Pvt. Ltd. and others [(1996) 11 SCC 501] by observing as follows:

"After the award under Section 11 of the Act was made by the Collector he is empowered under Section 16 to take possession of the land, if the possession was not already taken, exercising power under Section 17(4). Thereupon, the land shall vest absolutely in the Government free from all encumbrances. It is well settled law that taking possession of the land is by means of a memorandum (Panchnama) prepared by the Land Acquisition Officer and signed by Panch witnesses called for the purpose. Subsequently, the collector hands over the same to the beneficiary by means of another memorandum or panchnama, as the case may be. But in this case Section 91 of the BMC Act statutorily comes into play which would indicate that the Land Acquisition Officer while making award should intimate to the Commissioner, Municipal Corporation of the amount of compensation determined and all other expenses. The Corporation shall pay over

the same to the Land Acquisition Officer."

It was held that the writ petition had been filed after possession was taken over and the award had become final and therefore, the writ petition had to be dismissed on the ground of delay and laches.

f) The order of the High Court dismissing the writ petition was confirmed by the Apex Court in *Banda Development Authority, Banda v. Motilal Agarwal and others* [(2011) 5 SCC 394], as the filing of the writ petition was 9 years after the declaration was issued under Section 6(1) of the Act and the delay of 6 years after passing of the award and the delayed filing of the writ petition was a reason for refusing to entertain the prayer made in the writ petition. It was held that in a challenge made to the acquisition of land for the purpose of public purpose Courts have consistently held that the delay in filing the writ petition should be viewed seriously, if the petitioner fails to offer plausible explanation for the delay.

g) Reference can also be made to another decision of the Apex Court reported in (1996) 6 SCC 445 in the case of *State of Rajasthan and Others v. D.R.Lakshmi and others*, wherein it has cautioned the High Court not to entertain the writ petitions where there is inordinate delay while exercising jurisdiction under Article 226 of the Constitution of India.

h) Similarly, in the case of *The Municipal Council, Ahmednagar and anr. v. Shah Hyder Beig and ors.* [(2002) 2 SCC 48], it has been opined thus:-

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to disturb unless there is reasonable explanation for the delay."

i) In fact in *S.S.Balu and others v. State of Karnataka* [(2009) 2 SCC 479], it has been held that delay defeats equity and that relief can be denied on the ground of delay alone even though relief is granted to other similarly situated persons who

approach the courts in time.

j) To a similar effect is the decision of the Hon'ble Supreme Court in Andhra Pradesh Industrial Infrastructure Corporation Ltd. V. Chinthamaneni Narasimha Rao and others [(2012) 12 SCC 797].

6. The aforesaid decisions are squarely applicable to the facts of the present case.

In the result, writ petitions are rejected on the ground of delay and laches.

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