

Chikkanna and Others Vs. The State Of Karnataka and Others

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Court : Karnataka

Decided On : Aug-02-2014

Judge : A.S. Bopanna

Appeal No. : W.P.Nos. 49502, 56493-494, 56495-499 of 2013 (LA-UDA) c/w W.P.Nos.56764-765, 42799, 46989-994, 233 & 2920-2928 of 2013 & 17360-362 & 17363-370 of 2014 (LA-UDA)

Appellant : Chikkanna and Others

Respondent : The State Of Karnataka and Others

Judgement :

(Prayer: These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Quash The Endorsement Dtd.4.9.2013 Vide Annex-L and Direct The R2 and R3 To Allot Sites To The Petitioners In Accordance With The Incentive Scheme Of The R3 Dtd.22.10.1990 and 29.01.1994 Vide Annex-F and G.

These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Call For Records In Lac No.207/2005-06 On The File Of The Respondent and Quash The Endorsements Dated 27.12.2012 Passed By The Respondent No.2 Vide Annexures-D And E.

These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Call For Records In Laq(5) Cr 179/92-93 On The File Of

The R-2 And R-3 and Quash The Endorsements Dtd.4.9.2013 Passed By The R-2 And R-3 Vide Annx-F1 To F3 And Etc.

These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Call For Records In Lac(2)96/94-95 On The File Of The R-2 and 3 and Quash The Endorsements Dt.4.9.2013 Passed By The R-2 and 3 Vide Annx-F To The W.P. And Etc.)

These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Set Aside The Endorsement Dt.25.5.2013 Issued By The Commissioner, Muda And Produced At Annx-F As Illegal And Quash The Same And Direct The Muda To Allot The Sites As Per Rule 3 And As Per Their Entitlement.

These Writ Petitions Are Filed Under Articles 226 and 227 Of The Constitution Of India, With A Prayer To Quash The Impugned Endorsement Dt.23.8.2012 Issued By R-3 Vide Annx-D1 To D7 To The Writ Petition and Direct R-2 and 3 To Grant A Site To Each Of The Petitioners In Terms Of The Representations Given By The Petitioners Vide Annx-C1 To C7 Annexed To The Writ Petition.)

1. Learned Government Advocate to accept notice for respondent No.1. He is permitted to file memo of appearance in four weeks.

2. In all these petitions, the petitioners are assailing the endorsements issued to them, whereby the respondents have indicated to the petitioners that they are not entitled to allotment of the 'incentive sites' in the layout formed by the respondents. The petitioners are therefore seeking for issue of mandamus to the respondents to allot sites to them as per the 'incentive scheme' dated 22.10.1990 and 29.01.1994.

3. For the purpose of narration of facts, the case as put forth by the petitioners in W.P.No.49502/2013 and connections petitions is taken as the lead petition. The petitioners therein claim to be the owners of the property bearing Sy.No.119 measuring 5 acres 15 guntas situate at Basavanahalli Grama, Kasaba Hobli, Mysore Taluk. The manner in which the property was came to be owned by the petitioners has been adverted to. The property was acquired by the respondents

through the notification dated 10.12.1992 for formation of the layout known as "Vijayanagar IV Stage, II Phase". The petitioners contend that since they have been deprived of their property by acquisition, in addition to the compensation paid in that regard, they are entitled to 'incentive sites' provided under the scheme as referred to above.

4. The petitioners in the other petitions refer to the details of the survey numbers and ownership of their properties which have been acquired and right claimed is in similar manner. But, it is necessary to notice that in W.P.Nos.56764-765/2013 and W.P.No.42799/2013, the acquisition is of the year 1984 and compositely in respect of all the properties involved in these petitions, the acquisition is for "Vijayanagar 1st to 4th Stage". Considering that the ultimate relief as sought by the petitioners is for allotment of 'incentive sites' in respect of the properties that had been acquired from them, the petitions are taken up together and disposed of by this common order.

5. Respondent-Mysore Urban Development Authority ('MUDA' for short) has filed its objection statement in each of these petitions. It is contended that the petitioners herein are not entitled to the allotment of sites under the said Resolution dated 22.10.1990. It is their case that the petitioners belatedly at this stage are seeking allotment of sites. In addition, the legal position on these aspects of the matter is contended and primarily, the respondents contend that in cases where there has been challenge to the acquisition or the land owners have sought enhancement of compensation, the said Scheme cannot be made applicable, more particularly in a circumstance the 'incentive scheme' is for the purpose of allotment of sites as an incentive to the land owners who surrendered their property without resorting to such litigations. The manner in which certain other cases had been considered by this Court has also been referred to with reference to the writ petitions number as has been indicated in the objection statement. Though a detailed objection statement is filed, I have not thought it fit to refer to each of the contentions urged therein, since it has also been brought to my notice that the similar issue had arisen for consideration in several cases earlier and this Court has taken note of similar contentions put forth by the respondent into consideration and thereafter appropriate orders have been passed therein.

6. In the light of the rival contentions, all that is necessary to be considered in these petitions is as to whether the endorsement as issued by the respondent-MUDA would be justified? If it is found that the same is not justified, whether necessary direction needs to be issued for allotment of sites in favour of the petitioners? Insofar as the manner in which the said incentive scheme dated 22.10.1990 is to be applied, the same had arisen for consideration before this Court in W.P.Nos.15648-650/1995 which were disposed of on 04.03.1998. In the said proceedings, this Court has negatived the contention of the respondent-MUDA that the 'incentive sites' would be available only to those persons who have not assailed the acquisition proceedings and have not sought for enhancement of compensation.

7. Subsequent thereto, in several cases this Court has directed consideration of request of the applicants/land losers for grant of 'incentive sites' based on the acquisition that had been made for formation of the layout. Such directions had been issued to consider allotment of sites either in the same layout if available or in the subsequently formed layout of the respondent-MUDA. From among the said decisions, what is also necessary to be noticed is that in W.P.No.14342/2010, this Court had an occasion to consider the matter after noticing all the decisions rendered on this issue, both on behalf of the land losers and also the decision which had been relied upon by the learned counsel for the respondent-MUDA. This Court while disposing of the said writ petition on 26.04.2013 after taking note of all the decisions had arrived at the conclusion that notwithstanding the subsequent resolution passed by the respondents on 31.03.2012, the benefit available under the 'incentive scheme' which prevailed in the year 1990 would be available to the persons whose lands had been acquired much earlier to the presently relied Resolution since it was for the respondents themselves to make available the benefit which was in vogue.

8. It would be appropriate to extract paragraphs 9 and 10 of the said order, which sums up the issue since this Court after taking into consideration the rival contentions had arrived at the conclusion that the contention put forth by the respondents cannot be accepted.

"9. Even if the father of the petitioner was not aware of the decision rendered by this Court, the respondents being the statutory authorities were required to keep in view the law declared by this Court while considering their resolution dated 22.10.1990 and necessary action should have been taken.

The instant position cannot be considered as adversarial litigation inasmuch as the citizen, who has lost the land to enable the respondents to form the layout was only seeking for the benefit of their resolution which had been passed by them and the respondent being a statutory authority also had a duty towards the citizen. When this Court had interpreted the resolution to indicate the entitlement and had rendered a decision that the persons similar to that of the petitioner were entitled to the allotment of site, it was incumbent on the respondents themselves to have allotted the site as per the decision when a request was made and therefore the endorsement dated 25.07.2001 was palpably contrary to law to the very knowledge of the respondents. Hence, the same cannot be held against the petitioner at this juncture to arrive at a conclusion that the benefit cannot be granted to the petitioner. If this aspect of the matter is kept in view, the position in the year 2009 when the petitioner made the representation cannot be treated as independent of the position which existed as in the year 2001. Therefore, even the endorsement issued in the year 2009 was contrary to the view expressed by this Court.

10. It is no doubt true that the respondents contend that the statutory provisions were made in the year 1994. That was also the position, when the decision referred above was rendered in the year 1998 in similar set of circumstance. If at all the same is to be looked into in the background of the subsequent resolution passed by the respondents dated 31.03.2012, the same would be possible when it would be a different situation on facts evolving therein and would not apply to the instant facts. Furthermore, the reliance placed by the respondents on the resolution dated 31.03.2012 (Annexure-R.2) also cannot be made applicable to the instant facts of the case since as already noticed, in the instant case, the acquisition was of the year 1984, the resolution granting the benefit of allotment of sites was in the year 1990 and the present resolution dated 31.03.2012 withdrawing the resolution of the year 1990 cannot be made applicable to the facts

of the instant case since I have already noticed that the petitioner's father himself had a right for allotment of the site in the year 2001 itself which had been wrongfully denied. Keeping all these aspects of the matter in view, the claim as made by the petitioner would have to be considered as similar to the claim which had been made by the petitioners in writ petition No.15648-50/1995 disposed of 04.03.1998 and the benefit which was granted to the petitioners therein would be available to the petitioner herein."

In that view, the endorsement issued therein was quashed and a direction had been issued to the respondents to consider the case of the petitioner for allotment of sites and the petitioner therein was permitted to file a representation in that regard. Since in the said case, all aspects of the matter had been considered and a direction had been issued and in that circumstance, since as already noticed, the acquisition in the instant case is of the years 1984 and 1992 respectively, the petitioners herein also would be entitled to a similar relief.

9. At this juncture, the other aspect which also arises for consideration of this Court is to prevent the petitioners and the respondent-MUDA from litigating perpetually on one pretext or the other relating to the same issue. The concern has arisen due to the past experience brought to the notice that despite the direction, the request of the petitioners would be negated on the ground that the sites are not available in the very same layout or in the adjoining layouts and the land losers also are to be blamed as they continue to seek allotment in the same area where their land was acquired. To put an end to such litigation, this Court sought for additional details from the respondents to find out as to whether any sites are presently available and classification of those sites so that an appropriate direction could be issued.

10. Learned counsel for the respondent-MUDA has filed a memo indicating the details of the extent of the property acquired, sites formed and different categories under which it has been reserved. In the said memo, it is pointed out that the sites presently available in "Vijayanagar IV Stage, II Phase" are 905 sites which have been formed after reducing the size of the earlier formed 50' x 80' sites. The respondents have however indicated the said available sites are classified as

'stray sites'. It is further contended that the 'stray sites' are to be sold by auction. A Government Circular dated 24.11.2000 is produced along with the memo indicating different categories of sites that are to be reserved in a layout. Among the categories indicated, one such category is for allotment by the Government under its discretionary quota for which 10% has been reserved. At this stage, there is no dispute that in view of the decision rendered by this Court in W.P.No.11102/2008, the Government has also informed the Urban Development Authorities that no proposal for allotment of discretionary sites be made. I have referred to this aspect of the matter to indicate that in the Circular relied on, the 10% of the sites reserved which would have been otherwise allotted under the said category would also be available to the Urban Development Authority for the purpose of allotment.

11. Be that as it may, in the instant case, the fact that there are 905 sites in the "Vijayanagar IV Stage, II Phase layout" is the admitted position. The respondent-MUDA however contends that the said sites being treated as the 'stray sites' would have to be auctioned and the same would not be available for allotment. To the said extent, Rule 6 of the Karnataka Urban Development (Allotment of Sites) Rules, 1991, is relied on to indicate that the 'stray sites' are to be sold in the manner as directed by the Government. The definition is referred to indicate that the 'stray sites' would mean, such sites that would be available to the Urban Development Authority on cancellation of the allotment or sites which have been thereafter formed on modification of the original layout.

12. Even if this aspect of the matter is kept in view and though the provision contained in Rule 6 indicates that the 'stray site' is to be disposed of in the manner as directed by the Government is kept in view, it would not preclude a direction from the Court in exceptional circumstances to allot such 'stray sites' to serve the ends of justice. In that light, if the present facts as already noticed is kept in perspective, the petitioners herein are the land losers in respect of the acquisitions which had been initiated in the year 1984 and 1992 respectively. This would disclose that from the first acquisition, three decades have passed by and from the second acquisition, more than two decades have passed by and the petitioners are yet to receive their due. If this aspect is also taken into

consideration and the location of the property which was acquired from the petitioners is taken note of and in that light, the "Vijayanagar IV Stage II Phase" layout wherein presently such sites are available is taken note, the said sites though in some cases would be in the same layout where it has been acquired, in other cases it would be in the adjoining layout which would also meet the requirement. In such circumstance, certainly this would have to be considered as exceptional circumstances where the sites available in "Vijayanagar IV Stage II Phase", though classified as 'stray sites' would have to be considered for the purpose of allotment to the petitioners.

13. Hence, in such circumstance, apart from directing the respondents to consider the case of the petitioners for allotment of sites as per their entitlement, the respondents are also directed to allot such sites to the petitioners herein from among 905 sites which is brought to the notice of this Court as available in "Vijayanagar IV Stage II Phase" and categorized as 'stray sites'. Insofar as the value that is payable for the site by the petitioners, this Court has already indicated in the order dated 26.04.2013 in W.P.No.14342/2010 that the prevailing allotment value is payable as contained in paragraph 11 of the said order which would be applicable to the case of the petitioners herein as well.

14. In that view, the respective impugned endorsement in these petitions stand quashed. The respondent-MUDA is directed to allot sites to the petitioners in accordance with the 'incentive scheme' in the manner as indicated above.

15. To enable such consideration, the petitioners shall now make a representation along with a copy of this order and the supporting documents to the Commissioner-MUDA within four weeks from the date of receipt of a copy of this order. The Commissioner- MUDA shall pass appropriate orders in accordance with law and in accordance with the observations made herein and intimate the same to the petitioners as expeditiously as possible but not later than a period of three months thereafter.

16. Needless to mention that the further process with regard to allotment of sites shall also be completed thereafter. It is made clear that the representation to be made, shall be by the notified Khatedars or represented jointly by the legal

representatives as one unit in the event of death of the notified Khatedar. All orders to be passed by the Commissioner-MUDA would be in favour of the notified Khatedars or the legal representatives as a single unit and any internal family arrangement can only be amongst the family members themselves in such entitlement of one unit as a whole. The Commissioner-MUDA shall not be obliged to consider the representation, if separate claims are made.

In terms of the above, these petitions stand disposed of.

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