

Dr. A. Parthasarathy and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Oct-28-2015

Judge : Vineet Saran & the Honourable Mrs. Justice S. Sujatha

Appeal No. : Writ Appeals Nos. 5752-56 of 2012 c/w 6828-32 of 2012 (LA BDA)

Appellant : Dr. A. Parthasarathy and Others

Respondent : State of Karnataka and Others

Judgement :

(Prayer: Writ Appeals are filed under S.4 of the Karnataka High Court Act, 1961 praying to set aside the order dated 4.11.2011 in WP 35517-21/2009 passed by the learned Single Judge.)

1. In these two set of appeals “ one filed by the land owners, being WAs 5752-56/2012 and the other set being WAs 6828-32/2012 filed by the Bangalore Development Authority (for short BDA), the challenge is to the judgment of the learned Single Judge dated 4.11.2011 passed in WPs 35517/21-2009. The writ appeals filed by land owners are being treated as the leading appeals.

The brief facts of the case are “

The appellants are the owners of property being Sy.No.4 of Boopasandra Village, Kasaba Hobli, Bangalore North Taluk. The question in the present appeals relates to acquisition of 2 acres 32 guntas of land of the said survey number. By a

preliminary notification issued on 19.1.1978 under Section 17(5) of the Bangalore Development Authority Act, 1976 (for short BDA Act), 131 acres 33 guntas of land (including the land of appellants) was notified to be acquired by the BDA. Then on 28.12.1982, a declaration under Section 19(1) of the BDA Act was issued, whereby only 108 acres 17 guntas of land was notified for acquisition. Thus, 23 acres 16 guntas land was excluded from acquisition in the final notification. Then on 30.10.1984, BDA had notified and released 35 acres 36 guntas of land from acquisition. As per admitted position of parties, out of total 108 acres 17 guntas land finally notified for acquisition on 28.12.1982, till date only 13 acres 34 guntas land has been utilized by the acquiring body i.e., the BDA. The details in this regard, as provided by BDA and reproduced in the judgment of learned Single Judge, are as follows:

BANGALORE DEVELOPMENT AUTHORITY, BANGALORE DETAILS OF FURTHER EXTN. OF RMV 2ND STAGE SCHEME

Name of Layout:	Further Extn. RMV 2nd Stage
Date of P N:	19.01.1978
Date of F N:	28.12.1982
Extent as per P N:	131 acre 33 gunta
Extent as per F N:	108 acre 17 gunta
Name of the village in the Layout:	Bhoopasandra, Kasaba Hobli
Possession taken Including govt. land and Handed over to Engineering Section:	69 acre 28 gunta
Total Extent denotified:	35 acre 28 gunta
Total extent which Court cases pending:	20 acre 23 gunta
Total extent which Layout formed:	13 acres 34 gunta
Total Site formed:	234 Nos.

Total site allotted:	132 Nos.
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Executive Engineer
BDA, RT Nagar

Bangalore 560 032

Assistant Executive Engineer

No.3, North Sub-Division

Bangalore Development Authority

Bangalore 560 032

Award was passed by the Special Land Acquisition Officer on 18.9.1986 but admittedly, the amount was deposited by the BDA only on 27.8.2009, which was after 23 years of passing of the award. The mahazarwith regard to taking possession of the land in question was prepared on 6.10.1986, and notification under Section 16(2) of the Land Acquisition Act with regard to possession, was published on 20.7.1987. Resolution is said to have been passed by BDA on 24.9.1992 requesting the State Government to denotify the lands in Sy.No.4 belonging to the appellants to the extent of 2 acres 32 guntas, from the acquisition proceedings. However, no further steps in this regard was taken by the State Government. On 13.1.1993, BDA issued endorsement stating that it had no objection on the appellants developing the land in question for residential use. In response to an information sought by the first appellant under the Right to Information Act, the Additional Land Acquisition Officer of the BDA issued a communication on 20.3.2008 disclosing the details of land left out from acquisition proceedings in question.

The case of the appellants is that they had been in continuous possession of the land in question, and had been paying regular taxes up to the year 2006-07, and it was only in the year 2009, when the officials of the BDA tried to demolish the constructions raised on the said Sy.No.4 belonging to the appellants, and had actually demolished a portion of the construction, that the appellants filed WPs

35517-35521/2009, in which an interim order was granted restraining respondents from demolishing the constructions. It is also the case of the appellants that the Bangalore Mahanagara Palike had sanctioned the building plan in respect of schedule property as late as on 18.6.2008. Learned Single Judge, after recording a categorical finding to the effect that possession of land (Sy.No.4) had not been taken by BDA from the appellants, and also after noticing that the amount under award was deposited by BDA after 23 years of passing of the award; that major portion of the land so acquired had already been denotified; that layouts were not formed on nearly ninety percent of the land notified to be acquired and in fact, the scheme of the BDA had been implemented only to the extent of about 13 acres 34 guntas land, and the remaining had not been utilized, passed the following order while disposing of the writ petitions:

The ends of justice would be met by my directing the first respondent to consider the respondent's resolution dated 24.9.1992 (Annexure G) for the issuance of the notification under Section 48(1) of the Land Acquisition Act for the withdrawal of the schedule property from the acquisition. The consideration shall be meaningful and by taking into account the following facts:

(a) As many as 35 acres, 36 guntas out of 108 acres 17 guntas are already deleted from the acquisition proceedings. The respondent No.1 shall examine whether the excluded lands and the lands covered by these petitions have the same features including the locational features. If the adjacent lands are deleted from the acquisition proceedings, the respondents would not be justified in going on with the acquisition of the lands in question.

(b) Out of 108 acres, 17 guntas of land, only 13 acres, 34 guntas are utilized towards the implementation of the scheme.

(c) The respondent No.1 shall make an assessment as to whether there is still any need for the retention of the petitionersland in the acquisition proceedings in view of the fact that nearly three decades have elapsed since the issuance of the final notification. The circumstances to which the detailed references are made hereinabove are clearly indicative of the possession of the land not being taken over by the respondents.

(d) The respondents shall take a decision within an outer limit of three months from the date of the issuance of the certified copy of today's order. Until such time that the Government takes a decision in the matter, all the parties shall maintain the status-quo.

Aggrieved by the said order, land owners as well as the acquiring body " BDA have filed these two sets of appeals.

We have heard Sri Ashok Haranahalli, learned Senior counsel along with Sri R Subramanya, learned counsel for appellants/land owners in the first set of appeals who are respondents in the second set of appeals, as well as Sri V B Shivakumar, learned counsel appearing for the BDA/respondents in the first set of appeals and appellants in the second set of appeals. We have also heard Sri T Vedamurthy, learned counsel appearing for the respondent State and have perused the records.

Submission for the appellants/land owners primarily is that clear findings with regard to possession of the appellants over the land in dispute; late deposit of the awarded amount; and that the scheme had not been substantially implemented, had all been recorded by the learned Single Judge. There was thus no justification for the matter being relegated to the State Government under Section 48 of the Land Acquisition Act for taking a decision in the matter, as according to the appellants, in light of the findings recorded, the prayer for quashing the notification ought to have been granted. It is submitted that such prayer ought to have been granted in view of the fact that in three other writ petitions (being WPs 9200-9230/2011 and connected matters decided on 10.2.2012; WPs 15146-148/2011 decided on 5.11.2012 and WP 27383/2012 decided on 11.12.2013), which all related to the same land acquisition proceedings, the writ Court had quashed the notification with respect to the lands of the petitioners therein, and the same have become final since the BDA has itself issued No Objection Certificate to the owners of such land for raising construction on their land. It is thus contended that firstly, certain lands were selectively denotified from acquisition initially by exempting more than 23 acres of land in the final notification, and then by denotifying another more than 35 acres of land by a separate notification and then, by the BDA

accepting the judgment of the learned Single Judge in certain cases where acquisition proceedings have been quashed, but contesting the same in the case of appellants who own merely 2 acres 32 guntas of land. It has been vehemently argued, that in view of the fact that the scheme under which initially 131 acres of land was notified and ultimately about 108 acres of land was acquired, but only 13 acres 34 guntas land has been utilized under the scheme, would clearly show that the scheme has not been substantially implemented and thereby, provisions of Section 27 of the BDA Act would be attracted.

Per contra, Sri Shivakumar, learned counsel for the acquiring body / BDA has submitted that even though the scheme may not have been fully implemented, but since possession of the land had been taken and notification in that regard had been issued under Section 16(2) of the Land Acquisition Act, the acquisition proceedings had been concluded as completed. In response to a query made by the Court as to why the scheme for the entire land which was acquired could not be implemented, learned counsel for the acquiring Body had initially submitted there were injunction orders granted, but later, when the learned counsel could not show any injunction orders, he submitted that there were certain suits and writ petitions pending because of which the full implementation of the scheme could not take place, even though there was no interim order passed. He has further submitted that possession was taken on the basis of a valid mahazar prepared by the BDA, and the finding recorded in that regard by the writ court is not justified in law. In support of his submission that actual physical possession need not be taken in the case of land acquisition proceedings, learned counsel has relied on the decision of the Apex Court rendered in the case of Tamil Nadu Housing Board Vs A Viswam “ AIR 1986 SC 3377.

From the facts of this case we can conclude that more than 131 acres 33 guntas of land was initially notified for acquisition, whereas in the final notification only 108 acres 17 guntas of land was notified. The land used for implementing the scheme was to the extent of 13 acres 34 guntas, which comprised barely 12% of the land finally notified for acquisition. The BDA has not been able to place on record any valid reason for not proceeding to implement the scheme with regard to the land beyond 13 acres 34 guntas. Land was initially notified for acquisition in the year

1978 which is more than three and a half decades back. The award, though passed in 1986, was not complied with by the BDA, as admittedly the compensation so awarded (particularly in the case of the appellants) was deposited after twenty three years, in the year 2009. All this clearly shows the non-seriousness of the BDA in implementing the scheme for which acquisition of a vast tract of land was made by it.

From the above, it is clear that the Authority did not have intention of implementing the scheme over the entire portion of land which was acquired, but it had done so only to create a land bank, which is not the purpose for which Development Authorities have been created. If this is permitted, then any Development Authority can misuse the land acquisition proceedings by notifying and acquiring large tracts of land which may be in hundreds, or even thousands of acres, for future development, which may be proposed to be carried out even after three, four or five decades, and deposit the compensation at the rate as on the date of notification which may be awarded by the Special Land Acquisition Officer, and deposit the same after several years, as in the present case, it is after thirty one years of the initial notification for acquisition, and twenty three years even after the award had been passed. The Development Authorities are not in the business of land dealing, as the purpose is different, which is proper development of cities, which may include providing of residential accommodation to citizens, but not create a land bank by way of compulsory acquisition of land, thereby depriving the legitimate owners of land for profiteering purpose by BDA. In the present case, nearly 90% of the land so notified to be acquired, has remained unutilized for more than three and a half decades. The possession of the land belonging to the appellants is said to have been taken in the year 1986 under a mahazar which cannot be relied upon, and we have no reason to disturb the finding of fact recorded by the writ Court in this regard, in para 27 of its judgment, which was on perusal of the original record and is reproduced below:

The first question that falls for my consideration is, whether the possession of the land is taken by the Government from the petitioners? My answer to this question is emphatically no', for the following reasons:

(a) The perusal of the records reveals that the things are not done in a manner known to law. The mahazar on which all reliance is placed is deficient in more than one respect. It contains the signatures of five persons, but their names, much less their addresses, are available.

(b) The alternative portions like (i) the petitioners were present/not present (ii) BDA has taken over the possession/the owners have handed over the possession (iii) malkies are existing/not existing are retained as they are. The non-applicable portion is not even struck off. The mahazar prepared is in the cyclostyled form. It is hard to give any credence to such a mahazar.

(c) No acknowledgments for having served the copy of the mahazar on the petitioners is produced. It is also not the case of the respondent BDA that the notice calling upon the petitioners to handover the possession was sent under RPAD.

The facts in the case before the Apex Court in the case of Tamil Nadu Housing Board (supra) were different from the facts of the present case and as such, the ratio laid down in the said judgment would not be applicable to these cases. Possession of land so notified for acquisition has to be taken in a proper and valid manner. The findings recorded by the learned Single Judge, that there was no independent witness which had signed the mahazar, nor the names and addresses to show the identity of the alleged witnesses was given, would be sufficient to show that the mahazar was not prepared in a valid and legal manner. The same was done in a mechanical manner on a cyclostyle form, and the learned Single Judge has rightly held that it is hard to give any credence to such mahazar'. Learned counsel for respondents has also not denied the fact that no notice was ever given to the appellants for handing over possession and straight away the mahazar had been prepared, the authenticity of which is extremely doubtful.

Besides this, the other facts as noticed by the writ court, are also very relevant and have not been disputed by the parties. The appellants had been depositing betterment charges and property tax relating to the land in question till the year 2007. The building plan on the schedule property had also been sanctioned by the

concerned authority. The BDA itself had passed a resolution on 24.9.1992 to denotify the lands of Sy.No.4 belonging to the appellants, from acquisition. The Joint Director of Town Planning of the BDA had also, on 13.1.1993, certified that there existed residential building, with wells and pump house as well as trees standing on the said land. The said Authority also stated that the BDA would have no objection in the land being developed by the appellants for residential purpose. The BDA had gone to the extent of passing a resolution requesting the State Government to denotify the acquisition of Sy.No.4 belonging to the appellants. All this would clearly go to show that possession of the land remained with the appellants and that BDA was not inclined to utilize the land of the appellants to the purpose of its scheme.

From the facts, it is also clear that since the BDA had failed to execute the scheme substantially, as it could utilize only about 12% of the land notified for acquisition within five years from the publication of the declaration under Section 19(1) of the BDA Act. In our view, in the facts of the present case, the provisions of Section 27 of the BDA Act would be applicable and thus, provisions of Section 36 of the BDA Act providing for applicability of certain provisions of the Land Acquisition Act would become inoperative.

In such facts, we are of the opinion that relegating the appellants/land owners to the State Government under Section 48 of the Land Acquisition Act, when the provisions of the Land Acquisition Act themselves had become inapplicable, would be unreasonable. This we say so also because in three other writ petitions, (details given hereinabove) the proceedings of the land acquisition (with regard to acquisition of land under the same notification) had been quashed and have become final.

In view of the aforesaid, we are of the opinion that the writ petitions filed by appellants praying for a declaration that the acquisition proceedings in respect of the schedule property being Sy.No.4 of Bhoopsandra Village, Bangalore North Taluk, had lapsed after expiry of five years of the final declaration/notification under Section 19(1) dated 28.12.1982, ought to have been granted by the writ Court.

Accordingly, the first set of appeals (WPs 5752-56/2012) filed by land owners are allowed to the extent that it is declared that the acquisition proceedings initiated by preliminary notification dated 19.1.1978 and thereafter, by passing of declaration under Section 19, on 28.12.1992, are declared to have lapsed after expiry of five years from 28.12.1992. The first set of appeals stand allowed to the extent indicated above. The second set of appeals (WPs 6828-32/2012) are dismissed.

There shall be no order as to costs.

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