

Bylamarappa and Others Vs. Bangalore Development Authority and Others

Bylamarappa and Others Vs. Bangalore Development Authority and Others

SooperKanoon Citation : sooperkanoon.com/1177869

Court : Karnataka

Decided On : Jun-16-2015

Judge : Ram Mohan Reddy

Appeal No. : Writ Petition No. 53202 of 2013 & WP Nos. 16236-16247 of 2014 (LA-BDA)

Appellant : Bylamarappa and Others

Respondent : Bangalore Development Authority and Others

Judgement :

(Prayer: These writ petitions are filed under Articles 226 and 227 of Constitution of India praying to direct the respondents to execute a sale deed in respect of site measuring 30 x 40 ft. as per the entitlement of the petitioners in Sy.No.1/14 out of the extent of 20 guntas acquired by the Bangalore Development Authority for formation of further extension of Sri.M. Visveswaraiah layout covered under final notification dtd.9.9.2003 within the time limit that may be fixed by this Hon'ble court under the BDA (incentive scheme for voluntary surrender of land) Rules, 1989 and etc.,)

1. Heard on I.A.1/2015. Learned counsel for parties are ready, to put-forth their arguments.
2. Petitioners lost their land measuring 20 guntas out of 22 for a developmental scheme formulated by respondent- Bangalore Development Authority during the

year 2004. Being aggrieved by the said acquisition of land under the Bangalore Development Authority Act, 1976, petitioners filed a writ petition, whence, this Court directed consideration of their application by the BDA for allotment of site in lieu of acquisition of land. That order when complied with by the BDA, the impugned endorsement was issued declining petitioners' request on the premise that they had not voluntarily delivered possession of the property so as to be entitled to the benefits under Bangalore Development Authority (Incentive Scheme for Voluntary Surrender of lands) Rules, 1989.

3. Although Sri S.Shivanand, learned counsel in his usual form would submit that an illegality is perpetuated against the petitioners, nevertheless, that is countered by Sri I.G.Gacchinamath, learned counsel for the BDA who submits that delivery of possession not being voluntary, a requirement under the Incentive Scheme, is disentitled to the relief, in addition that 2 guntas of land from out of 22 were not acquired since petitioners were in occupation as there was a residential house and therefore, are disentitled for the relief at the hands of the court. *f*

4. Sri.S.Shivanand, learned counsel would draw the attention of the Court to the order dated 18th July, 2005 in W.A.No.3100/2003 between BDA and Thimmarayappa and another, whereunder, the Division Bench considered a relevant fact that there was nothing on record to show that BDA had put the land loser on notice under Section 9 of the Land Acquisition. Act, 1894 and therefore, the question of surrendering possession of land, voluntarily, to BDA did not appear to have arisen and on that score, entitled the land loser to the benefits of Rule 3 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984. According to learned counsel, petitioners too, are entitled to the benefit extended to a land losers in the aforesaid decision.

5. To a question of the court as to whether there was any factual matrix laid in either the earlier writ petition or the present petition over failure on the part of BDA to issue notice under Section 9 over voluntary surrender of land, learned counsel was candid in his submission that such a plea was not raised. If that is so, then the decision rendered in W.A.No.3100/2003, on facts, is inapplicable.

6. Regard being had to the facts noticed supra, and the fact that the petitioners had challenged the legality and validity of the acquisition proceedings, m writ proceedings and unsuccessful, are not entitled to the benefits of the Incentive Scheme.

7. The endorsement issued to the petitioners does not call for interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution. Petitions devoid of merit, are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com