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Court : Karnataka

Decided On : Mar-08-2017

Judge : B.S. Patil

Appeal No. : W.P. Nos. 37184-200 of 2016 (BDA)

Appellant : Munianjanappa and Others

Respondent : Bangalore Development Authority, Rep. by its Commissioner

Advocate for Pet/Ap. : Mr. C.H.Jadhav

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to direct the Respondents to execute Sale deed in so far as Petitioner Schedule Properties which was allotted by the Respondents to the Petitioner vide Annx-A to A15 and etc.)

1. These writ petitions are filed seeking a writ of mandamus against respondents - Bangalore Development Authority (for short, 'BDA'), the Executive Engineer, BDA and the State of Karnataka represented by its Principal Secretary, Department of Urban Department, to execute sale deed as regards the petition schedule properties which have been allotted in favour of the petitioners by the respondents vide Annexures-A to A15 as per allotment orders dated 09.02.2016, 11.02.2016

and 15.03.2016. In all, 15 sites totally measuring around 39,289 WP 37184-200/2016 square feet have been allotted as alternative land by the BDA in favour of the petitioners.

2. The allotment was made in lieu of utilization of land to an extent of 36 guntas comprised in Sy. No.84/1 of Valagerahalli village, Kengeri Hobli, Bengaluru South Taluk. The said 36 guntas of land belonging to the 1st petitioner was utilized by the BDA for the purpose of Gnanabharathi Layout.

3. It is not in dispute that while acquiring the lands for the purpose of Gnanabharathi Layout, the extent of 36 guntas comprised in Sy. No.84/1 of Valagerahalli belonging to petitioners was not acquired. This is evident from the averments made in paragraph 8 of the statement of objections filed by the BDA. Therefore, in lieu of utilization of un-acquired 36 guntas of land belonging to the petitioners, respondent-BDA allotted 15 sites of different dimensions. However, as BDA did not execute registered sale deeds in favour of the petitioners in respect of the sites allotted, petitioners have been constrained to approach this Court seeking direction in this connection.

4. During the pendency of the writ petition, BDA has cancelled the allotment of sites allotted in favour of the WP 37184-200/2016 petitioners on the ground that in view of the report submitted by Shashidhar committee to the Government and the direction issued by the State Government noticing irregularities committed in allotment of alternative sites in cases where BDA had utilized the lands of private citizens for formation of layouts and roads in different layouts including in Gnanabharathi Layout, the BDA had taken a decision to cancel the allotments made in its meeting held on 02.06.2016. A copy of the decision taken in the meeting dated 02.06.2016 has been produced along with the statement of objections at Annexure-R1. Thereafter, the BDA has cancelled the allotment of sites vide order dated 24.08.2016 which is produced at Annexure-F. As a result of this development, petitioners have got their writ petition amended laying challenge to the order canceling the allotment.

5. The contention of the learned Counsel for the BDA is, that since the State Government has issued a direction to cancel the allotment of alternative sites,

BDA has cancelled the same. It is also contended by the BDA that the value of the land as obtained on the date of award passed in respect of similarly WP 37184-200/2016 placed persons whose lands were acquired in the year 1989 would be determined and paid by way of compensation.

6. Per contra, learned Senior Counsel Mr. C.H.Jadhav appearing for the petitioners points out that having illegally utilized the land belonging to the petitioner, BDA has constructed commercial complex in a portion of the land and has been deriving rents, thus enriching itself at the cost of the petitioners. He submits that BDA has to abide by its decision to allot the sites and a direction be issued to the BDA to execute registered sale deeds. He further points out that if at all the BDA has any difficulty in executing the registered sale deeds, it is the obligation of the BDA to pay the market value of the land as it obtains today by acquiring 36 guntas of land belonging to the petitioners and determine and pay compensation payable for the same.

7. Having heard the learned Counsel for both parties, I find that it is not at all in dispute that 36 guntas of land belonging to petitioners has been utilized by the BDA without acquiring the same. BDA having realized that the said land belonging to the petitioners was illegally utilized without resorting to the process of acquisition, allotted sites in certain developed WP 37184-200/2016 layouts as alternative land. BDA has now cancelled the allotments on the ground that in respect of many such allotments illegalities had been committed as found by a committee appointed in this regard, known as Shashidhar Committee.

8. However, in the case of the present petitioners, it is not pointed out how the petitioners were responsible for securing such illegal allotment of alternative sites. Unless, petitioners were responsible for securing such illegal allotment of alternative sites, it cannot be said that allotment made by the BDA in favour of the petitioners was vitiated. At any rate, petitioners cannot be deprived of their rightful claim over the property or its value. Unfortunately, petitioners have been deprived of their right over their property and have been forced out of possession since 1996 when award was passed in respect of acquisition of other lands.

9. BDA has been utilizing the land since 1996 and it has not paid even a single paisa to the petitioners. Though a promise was held out and was indeed translated into reality by allotting alternative sites, sale deeds are not executed so far. BDA has only forced the petitioners to litigate so as to get relief in respect of WP 37184-200/2016 of their own property which is taken over by the BDA without adopting due process of law. In such circumstances, the BDA has only two options, either it has to execute the sale deeds in respect of the sites which have been allotted in favour of the petitioners or if there is any practical difficulty in executing the registered sale deeds, it has to acquire the land viz., 36 guntas comprised in Sy. No.84/1 of Valagerahalli village and pay compensation in terms of the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'New Act of 2013'), based on the market value that is prevalent as on the date of acquisition (issuance of preliminary notification).

10. The contention of the BDA that the value as obtained on the date of passing of the award in respect of the other acquired lands would be determined and paid cannot be accepted. Hence, the following order.

11. Writ petitions are allowed. The cancellation of allotment of sites vide Annexure-F is quashed. The BDA is directed to execute the sale deeds in respect of sites allotted vide Annexures-A to A15, within a period of three weeks from the date of receipt of a copy of this order, or in the alternative, if WP 37184-200/2016 there is any practical difficulty to execute the sale deeds, to notify the land measuring 36 guntas comprised in Sy. No.84/1 of Valagerahalli village, Kengeri Hobli, Bengaluru North Taluk, for acquisition and pay compensation at the present market value prevalent as on the date of acquisition (issuance of preliminary notification) in terms of the New Act of 2013, within a period of six months from the date of receipt of a copy of this order.