

Mrs Peddakka Vs. The Bangalore Development Authority

Mrs Peddakka Vs. The Bangalore Development Authority

SooperKanoon Citation : sooperkanoon.com/1194641

Court : Karnataka

Decided On : Aug-17-2017

Judge : B.S.Patil

Appeal No. : WP 43879/2016

Appellant : Mrs Peddakka

Respondent : The Bangalore Development Authority

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE17H DAY OF AUGUST 2017 BEFORE THE HON'BLE MR. JUSTICE B.S.PATIL WRIT PETITION NOS.43879 - 43881 OF2016(BDA-) MRS. PEDDAKKA W/O. LATE MUNIYAPPA @ MUNIYA AGED ABOUT65YEARS NAGADEVANAHALLI VILLAGE GNANA BHARATHI POST BANGALORE SOUTH TALUK BANGALORE - 560 056. MR.PEDDANNA S/O. LATE MUNIYAPPA @ MUNIYA AGED ABOUT45YEARS NAGADEVANAHALLI VILLAGE MARIYAPPANA PALYA GNANA BHARATHI POST BANGALORE SOUTH TALUK BANGALORE - 560 056. BETWEEN:

1.

2.

3. MR.M.RAMAIAH S/O. LATE MUNIYAPPA @ MUNIYA AGED ABOUT 43 YEARS NAGADEVANAHALLI VILLAGE GNANA BHARATHI POST BANGALORE SOUTH TALUK BANGALORE - 560 056. ... PETITIONERS (BY SRI.B.M. IRISHAD AHMED, ADV.) AND:

1. THE BANGALORE DEVELOPMENT AUTHORITY CHOWDAIAH ROAD, KUMARA PARK WEST BANGALORE - 560 003 REPRESENTED BY ITS COMMISSIONER.

2. 2 THE STATE OF KARNATAKA REP. BY ITS PRINCIPAL SECRETARY DEPARTMENT OF HOUSING & URBAN DEVELOPMENT VIKAS SOUDHA BANGALORE - 560 001. (BY SRI BIPIN HEGDE, ADV., FOR R1; Sri VIJAYAKUMAR A.PATIL, AGA FOR R2) * * * ... RESPONDENTS THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO ALLOT 100 [16879.5 SQ.FT]. OF ALTERNATIVE LAND IN A WELL DEVELOPED COMMERCIAL AREA TO THE PETITIONERS EXCLUDING THE EXTENT OF LAND ALREADY ALLOTTED AND ETC. THESE PETITIONS COMING ON FOR

ORDER

S, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These writ petitions are filed seeking a direction to the first respondent-BDA to allot alternate land of equal dimension in well developed commercial area in addition to what has been already allotted as per Annexures-H and J, allotment letters, both dated 11.01.2016 so as to make it commensurate with the total extent of land lost by the petitioners by way of illegal and unauthorized occupation of the same by the BDA for formation of road. 3 2. Facts which are not in dispute, stated in nutshell are: petitioners owned 2 acres 2 guntas of land in Sy.No.63, Nagadevanahalli, Bengaluru South Taluk, which comprised of coconut, tamarind, mango, guava, chikoo and jack fruit trees. An extent of 15 guntas of land out of the said survey number was taken unauthorisedly and illegally by the BDA for formation of a connecting road between Magadi main road and Mysuru road. Out of 15 guntas, an extent of 6 guntas of land was B-karab land. Thus, remaining 9

guntas of land was the land which absolutely belonged to the petitioners and it was illegally occupied by the BDA for formation of the road during the year 2011. Petitioners have approached the BDA seeking grant of alternate land of equal measurement. The BDA passed a resolution dated 16.01.2012 in resolution No.4/2012 to allot alternate land. Accordingly, Annexures - H and J, allotment letters, both dated 11.01.2016 were issued.

3. As per Annexure-H, allotment letter, an extent of 3.99 guntas of land was allotted out of Sy.No.207 of Kacharakanahalli Village. As per Anneuxre-J, allotment letter, 4 site No.429 formed in HBR1t stage, 2nd block, measuring 12x18 meters was allotted.

4. However, on the ground that the State Government had issued a direction against such allotments on 15.4.2016 based on the report submitted by Dr.Shashidhar Committee, notice was issued to petitioners by the BDA informing them that allotment made in their favour had been revoked and petitioners had to return the said allotment letters. Petitioners had submitted a reply ddated 20.07.2016 objecting the stand taken by the BDA. They requested the BDA to sustain the allotment and execute sale deed and also to allot remaining extent of land so as to make up 100% for the loss sustained by them and also pay special damages as had been ordered in some of the cases by this Court. The said representation is produced at Annexure-M. The first respondent/BDA has not taken any steps on the representation submitted. Hence, petitioners are before this Court. 5 5. Petitioners have sought for issuance of possession certificate and execution of sale deed in respect of 3.99 guntas of land in Sy.No.207, Kacharakanahalli Village and site No.429 situated at HBR1t stage, 2nd Block measuring 12 x18 meters and also for a writ of mandamus directing the first respondent to allot additional land to make up 100% alternate land equal to what petitioners had lost along with the damages for the loss suffered by them with effect from 2011, when they were dispossessed from the land.

6. Learned Counsel for the BDA has filed statement of objections.

7. There is no denial of the fact that the land of the petitioners was utilized without acquisition. There is also no denial of the fact that allotment of vacant land

measuring 3.99 guntas in Sy.No.207 of Kacharakanahalli village and site No.429 situated at HBR1t stage, 2nd block measuring 40x60 was made in favour of petitioners based on the resolution passed by the BDA to allot only 50% of alternate land. 6 However, learned Counsel for the BDA tries to sustain the action of the BDA in revoking the orders of allotment on the ground that based on the report submitted by Dr.Shashidhar Committee, the State Government had issued a direction to the BDA on 15.04.2016 to revoke such alternate allotment. According to the learned Counsel for the BDA, as per the report submitted by Dr.Shashidhar Committee, the land owners are only entitled for compensation and not for alternate land.

8. Upon hearing learned Counsel for all the parties, I find that entire action of the BDA is highly illegal and arbitrary and contrary to Articles 300 (A) and 31(A) of the Constitution of India and tantamounts to depriving the statutory and human rights of the petitioners.

9. The Apex Court in the case of *Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and others* reported in (2013) 1 SCC353 has categorically held that the right to property has been now 7 considered to be not only constitutional or a statutory right but also a human rights. Observations made in paragraphs 8, 9 and 10 of the said judgment are usefully extracted hereunder: their 8. The appellants were deprived of immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property ceased to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, v. State of Gujarat*, it has been held as follows: (SCC P627 para

48) 48. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There [is]. no deprivation without [due]. sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

The right to property is now considered to be 9. not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature 8 of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension.(Vide Lachhman Dass V. Jagat Ram, Amarjit Singh V. State of Punjab, State of MP V. Narmada Bachao Andolan, State of Haryana V. Mukesh Kumar and Delhi Airtech Services (P) Ltd. V. State of UP.) that emerges In the case at hand, there has been no 10. acquisition. The question for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

10. In paragraph - 20 of the said judgment, paragraph 12 of the judgment in K.Krishna Reddy and Others Vs. Special Dy. Collector (LA), reported in (1988) 4 SCC163has been referred and extracted, which reads as under: 20. While dealing with the similar issue, this Court in K.Krishna Reddy V. Collector (LA), held as under: (SCC p.167, para

12) 9 12. . After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility

of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. 11. In paragraph 22 of the above judgment, the Apex Court has concluded as under: 22. Be that as it may, ultimately, good sense prevailed, and learned senior counsel appearing for the State came forward with a welcome suggestion stating that in order to redress the grievances of the appellants, the respondent-authorities would notify 10 the land in dispute under Section 4 of the Act within a period of 4 weeks from today. Section 6 declaration will be issued within a period of one week thereafter. As the appellants have full notice and information with respect to the proceedings, publication in the newspapers either of the notification or of the declaration under the Act are dispensed with. Notice under Section 9 of the Act will be served within a period of 4 weeks after the publication of Section 6 declaration and award will be made within a period of three months thereafter. The deemed acquisition proceedings would thus be concluded most expeditiously. Needless to say, the market value of the land in dispute will be assessed as it prevails on the date on which the Section 4 notification is published in the Official Gazette. Payment of compensation/award amount will be made to the claimants/persons interested immediately thereafter, along with all statutory benefits. The appellants shall be entitled to pursue the statutory remedies available to them for further enhancement of compensation, if so desired.

12. In the instant case, it is highly disturbing that the statutory body like BDA should indulge in such an illegal act of taking over the land belonging to a citizen without initiating 11 acquisition proceedings. What is worst is that the BDA does not bother even to remedy the grievance of the person who has been deprived of his property. Even when it has salvaged the situation offering him 50% of the land compared to what was taken over, on the ground that offer made was in respect of the land potentially situated including one site measuring 40x60, the same was not acted upon because of the intervention of the State Government stating that such

sites could not be allotted in favour of any individuals who had been deprived of his land. As a result, as of now petitioners have been deprived of even the benefit of the allotment made to them during the year 2011. Why petitioners should be allotted only 50% and not 100% is not satisfactorily explained by the BDA. Indeed petitioners have pointed out that in several cases the alternative allotment has been made either at 75% or at 100%. Certain judgments have been relied upon by the petitioners.

13. In paragraphs 45 and 46 of the writ petitions, petitioners have given details of the orders passed by this 12 Court in several writ petitions, whereunder this Court has held that similarly situated petitioners therein have been held entitled for 75 to 80% of alternate land in addition to damages etc. Petitioners have also urged that in the instant case, they are entitled for 100% alternate land. Petitioners have produced along with application- IA No.1/2017 seeking disposal of the writ petitions, order passed by the Division Bench of this Court on 1st July 2015 in Writ Appeal Nos.1146/2015 and 1218-1219/2015 in the case of B.K.Srinivasamurthy and Others Vs. Bangalore Development Authority, wherein direction has been issued in similar circumstances to allot 100% alternate land that is, to say equal extent of land compared to the one illegally occupied by the BDA. Another judgment in W.P.Nos.37184-200/2016 dated 8th March 2017 is also made available along with the interim application contending that equal extent of land in the form of sites was ordered to be allotted and sale deeds were executed in favour of the land owners who had been illegally deprived of the same. Even in the said case, the BDA had sought to cancel allotment made on the ground that 13 Government had issued a direction based on the report submitted by Dr.Shashidhar Committee. But this Court taking note of the illegal act of the BDA to salvage the situation so also to restitute the petitioners therein, for the loss sustained by them for no fault on their part has ordered for execution of sale deed. A perusal of the said judgment discloses that facts in the present case are similar.

14. It is pointed out by the learned Counsel for the petitioners that by reference to Annexure-P4 produced along with the IA, in yet another case of one Mirle Varadaraju @ Boregowda as per the direction issued by the High Court in W.P.No.46259/2013 dated 16.9.2014, 100% land, which was commensurate with

the land illegally occupied by the BDA was resolved to be given along with damages in favour of the deprived land owners.

15. Taking into consideration the entire facts and circumstances of the case, it is clear that excluding 6 guntas of karab land, petitioners have been deprived of 9 guntas of land which was located abutting the road and was situated in 14 a developed area viz., Nagadevanahalli, Bangalore South Taluk. Petitioners have been deprived of the same since 2011. As the BDA has un-authorisedly and illegally utilized the same, it has to compensate the petitioners and indeed restitute them in all respects which would certainly include damages for utilization of the land, apart from putting them back in the same position in which petitioners would have been had their land was not utilized. Petitioners have been robbed off their valuable assets in the form of immovable property. Such an action by an instrumentality of the State is unconceivable and incomprehensible. It shocks the conscience of all law abiding citizens. This is a case of clear violation of Article 21 of the Constitution. Such acts of misfeasance and malfeasance if not dealt with firmly will breed disrespect for governance for the rule of law and the role of the Courts. It will be a slur on the system and rudely shake the confidence and trust of the citizen in our justice system as well. To say the least the BDA has abused its power. It has used its muscle power to encroach upon the property of the petitioners. Petitioners have been denied their 15 legitimate rights to utilize their land and put it to best possible use for their well being and for the economic well being of their family.

16. In the facts of the present case, they cant be denied benefit of allotment of 100% alternate land. Already 3.99 guntas of land in Sy.No.207 of Kacharakanahalli village has been allotted. This is not a site but a land. In addition, one 40x60 site bearing site No.429, HBR1t Stage has been allotted. There is no justification to contend that this allotment will be equal to the value of the land utilized. In the facts of the present case, BDA has to allot the remaining 50% land in any other developed area which will be equal to the land utilized in its value, location and potentiality. The land and site already allotted could be set off against 50% of the land utilized + the loss and damage sustained by petitioners. Towards the remaining 50% the BDA shall allot alternate land of equal value.

17. Hence, these writ petitions are allowed. As per the allotment made of 3.99 guntas of land in Sy.No.207 of 16 Kacharakanahalli Village and site No.429, HBR1t Stage measuring 40 X60, the BDA shall put the petitioners in possession by issuing possession certificate and shall also execute registered Sale Deed within a period of 30 days from today. In respect of balance 50% of the land, BDA is directed either to allot another equal extent of land or pay compensation in terms of the prevailing market rate as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for which BDA shall issue a notification acquiring the land within 30 days from today and pass an award within 30 days thereafter. The BDA shall pay costs of this proceeding in a sum of Rs.25,000/-. Sd/- JUDGE SA/PKS

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