

The Commissioner Vs. State Of Karnataka

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Court : Karnataka

Decided On : May-22-2023

Judge : Alok Aradhe and Anant Ramanath Hegde

Appeal No. : WA 129/2021

Appellant : The Commissioner

Respondent : State Of Karnataka

Judgement :

- 1 - WA No.129 of 2021 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF MAY, 2023 PRESENT THE HON'BLE MR JUSTICE ALOK ARADHE AND THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE WRIT APPEAL No.129 OF2021(LA-BDA) IN WRIT PETITION NO.47449 OF2018(LA-BDA) BETWEEN:

1. THE COMMISSIONER, BENGALURU DEVELOPMENT AUTHORITY, T CHOWDAIAH ROAD, KUMARA PARK WEST, BENGALURU -560 020.

2. THE ADDITIONAL LAND ACQUISITION OFFICER, BANGALORE DEVELOPMENT AUTHORITY, T CHOWDAIAH ROAD, KUMARA PARK WEST, BENGALURU-560 020. APPELLANTS (BY SRI. G LAKSHMEESH RAO, ADVOCATE) AND:

1. STATE OF KARNATAKA, REPRESENTED BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF URBAN DEVELOPMENT, M S BUILDING, BENGALURU-560 001.

2. SRI T GANGAIAH SINCE DECEASED BY HIS LR'S (a) SMT.KEMPAMMA, W/O T GANGAIAH, AGED ABOUT 75 YEARS, RESIDING AT No.271, - 2 - WA No.129 of 2021 BHIMANAKUPPE, RAMOHALLI, BANGALORE SOUTH, BENGALURU - 560 060. (b) SRI.G.LAKSHMIKANT, S/O T GANGAIAH, AGED ABOUT 52 YEARS, RESIDING AT No.307 BHIMANAKUPPE, RAMOHALLI, BANGALORE SOUTH, BENGALURU-560060. (c) SMT.G.REKHA, W/O R. SRINIVAS, AGED ABOUT 48 YEARS, RESIDING AT NO.10/6A, 11TH CROSS, NEAR BDA PARK, 3RD PHASE, GIRINAGAR, BANGALORE SOUTH BANASHANKARI III STAGE, BENGALURU - 560 085. (d) SRI.G.UMASHANKAR, S/O T/GANGAIAH, AGED ABOUT 55 YEARS, RESIDING AT 307/271, BHIMANAKUPPE, RAMOHALLI, BANGALORE SOUTH, BENGALURU-560060. (e) SRI. MAHESH G, S/O T. GANGAIAH, AGED ABOUT 47 YEARS, RESIDING AT No.271, DODDAHALADAMARA ROAD, BHIMANAKUPPE, RAMOHALLI, BANGALORE SOUTH, BENGALURU-560060. (f) SMT.PADMAVATHI, W/O M.MANJUNATH, AGED ABOUT 54 YEARS, RESIDING AT No.238, - 3 - WA No.129 of 2021 7TH MAIN, KALYAN HOUSING SOCIETY, HAMPINAGAR, BANGALORE NORTH, BENGALURU - 560 104. (CAUSE TITLE AMENDED AS PER COURT

ORDER

DATED:

23. 03.2023) RESPONDENTS (BY SMT.NAMITHA MAHESH, B.G AGA FOR R1, SRI RAJESWARA P N, ADVOCATE FOR R2 (A-F)) THIS WRIT APPEAL IS FILED U/S 40 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED

ORDER

DATED 22/10/2020 PASSED BY THE LEARNED SINGLE JUDGE, IN WP NO.47449/2018 BY DISMISSING THE SAID WRIT PETITION. THIS APPEAL, COMING ON FOR PRELIMINARY HEARING THIS DAY, ALOK ARADHE J.,

DELIVERED THE FOLLOWING:

JUDGMENT

This intra Court appeal emanates from an order dated 22.10.2020 passed by the learned Single Judge of this Court in a Writ petition preferred by respondent No.2 (hereafter referred to as 'the land owner'). By the said order learned Single Judge has quashed the endorsements dated 18.08.2018 and 20.08.2018 issued by the State Government under Section 48 of the Land Acquisition Act, 1894 and the writ petition has been allowed. In order to appreciate the grievance of the appellant, relevant facts need mention, which are stated infra.

2. The land owner was the owner of the land bearing Sy.No.95/1, measuring 1 acre 30 guntas situated at - 4 - WA No.129 of 2021 BheemanaKuppe Village, Kengeri Hobli, Bengaluru South taluk and in the part of the aforesaid land, a brick factory is built. In the aforesaid land in addition to other lands were acquired for formation of Nadaprabhu Kempegowda residential layout. Accordingly, preliminary notification dated 21.05.2008 was issued under Section 17(1) and (3) of Bangalore Development Authority Act, 1976 (hereinafter for short referred to as 'the Act'). Thereafter, final notification dated 18.08.2020 under Section 19 of the Act measuring 1 acre 23 guntas out of the land held by the land owner. The land measuring 1 acre 30 guntas was notified for acquisition.

3. The land owner challenged the validity of the notification issued under Section 17 and 19 of the Act dated 21.05.2008 and 18.08.2018 respectively, in the writ petition namely W.P.No.4287/2012. In the aforesaid writ petition, Bangalore Development Authority (hereinafter referred to as 'the authority') was also impleaded as respondent. Learned Single Judge of this Court by order dated 21.04.2014 disposed of the writ petition in the following terms:

"the learned Senior Advocate Shri Jayakumar S Patil, appearing for the Counsel for the respondent - - 5 - WA No.129 of 2021 Bangalore Development Authority, files a memo, which reads as follows:- MEMO The respondents 2 and 3 respectfully submits that in view of the status report of the Schedule Property in the above Writ Petition there is a Brick Factory in the name and style of "Beershwara Table Bricks" which is registered on 1989. Accordingly, the case of

the petitioner along with the report of the Land Acquisition Section, proposal will be sent to the Government for appropriate action. In view of the same the above writ petition may be disposed off, in the interest of justice and equity". In view of the memo, it is now for the State Government to pass appropriate orders. The State Government to pass orders. The State Government shall expedite consideration and shall pass orders on or before 30th June 2014, failing which, it shall be deemed that the lands are withdrawn from the acquisition proceedings. The petition stands disposed of.

4. Admittedly, it is not in dispute that the State Government did not consider the prayer of the land owner within the time limit set out by the Court in the aforesaid order. Subsequently, nearly after a period of four years by an endorsement dated 18.08.2018, the claim made by the land - 6 - WA No.129 of 2021 owner under Section 48 of the Act, seeking denotification of the land, was rejected. The land owner challenged the endorsement dated 18.08.2018 and 20.08.2018 in a writ petition which has been allowed by the learned Single Judge. In the aforesaid factual background this appeal arises for our consideration.

5. Learned counsel for the authority submitted that the order dated 21.04.2014 passed by the learned Single Judge in W.P.No.4287/2012 is a nullity and therefore the issue with regard to its validity can be set-up even in the co-lateral proceeding. It is further submitted that the order dated 21.04.2014 passed by the learned Single Judge has been passed in contravention of the mandate contained in Section 48 of the Act. It is also urged that the learned Single Judge ought to have appreciated that only on a small portion of land brick factory was built and no other structures were situated on the land. It is therefore contended that the learned Single judge erred in quashing the endorsement issued by the State Government. In support of the aforesaid submission reliance has been placed on the decision of Hon'ble Supreme Court in the case OF HARSHAD CHIMAN LAL MODI VS DLF UNIVERSAL LTD AND ANOTHER', (2005) 7 SUPREME COURT CASES 791 On - 7 - WA No.129 of 2021 the other hand learned counsel for the land owner has supported the order passed by the learned Single Judge.

6. We have considered the rival submission made on both sides and have perused the records. The moot question, which arises in this intra court appeal is whether the order dated 21.04.2014 passed in W.P.No.4287/2012 which is admittedly not been challenged by any of the parties to the said writ petition is a void order?.

7. It is also pertinent to note that even a void order or a decision which is rendered between the parties cannot be said nonexistent in all the cases and in all the situation and such an order, will operate inter-parties until it is successfully challenged in a higher Forum. Mere use of word "void" is not determinative of its legal impact. The word "void" is relative has a relative rather than an absolute meaning. It only conveys the idea depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise.[See: STATE OF KERALA VS M.K.KUNKIHAMAN', (1996) 1 SCC435.

8. An order or a decree cannot be said to be without jurisdiction and hence a nullity, if the court passing an order has - 8 - WA No.129 of 2021 usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to label it as nullity. Where a court lacks inherent jurisdiction in passing a decree of making an order, the order passed by such court would be without jurisdiction, non est and void ab initio. [See: RAFIQUE BIBI VS. SAYED WALIUDDIN', (2004) 1 SCC287and BALVANT N VISWAMITRA AND OTHERS', (2004) 8 SCC706.

9. The order passed by the learned Single judge at first blush appears, in contravention of Section 48 of the Land Acquisition Act, 1894, as the Competent authority to deal with the claim for denotification as a State Government. However, even if the aforesaid order can be termed as one, in contravention of Section 48 of the Act, the same would not be rendered abinitio void. Even otherwise an illegal order passed in contravention of a statutory mandate cannot be said to be ab initio void.

10. The order dated 21.04.2014 therefore, cannot be termed as void and it binds the authority which has neither chosen to seek modification of the same. Thereafter, sofar - 9 - WA No.129 of 2021 reliance placed by the learned counsel

for the appellant in the case of Harshad Chiman Lal Modi vs DLF Universal Ltd supra is concerned, suffice to say that the aforesaid decision of Hon'ble Supreme Court dealt with an issue of territorial jurisdiction of the Court. Therefore, the same is has no application to the facts of the case.

11. The order dated 21.04.2014 binds the authority, as a necessary corollary, the impugned endorsements dated 20.09.2018 and 18.08.2018 cannot be sustained in the eyes of law. For the aforementioned reasons, we concur with the conclusion arrived at by learned Single Judge. In the result, the appeal fails and is hereby dismissed. Sd/- JUDGE Sd/- JUDGE GVP List No.:

1. SI No.:

3.

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