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Court : Karnataka

Decided On : Mar-30-2000

Reported in : 2001(2)KarLJ302

Judge : Ashok Bhan and ;V.G. Sabhahit, JJ.

Acts : Bangalore Development Authority Act, 1976 - Sections 32;

Appeal No. : Writ Appeal No. 1547 of 2000

Appellant : A.R. Subarao and Others

Respondent : The Bangalore Development Authority, Bangalore and Another

Advocate for Def. : Sri N.K. Patil, Adv. and ;Sri A. Nagarajappa, Additional Government Adv.

Advocate for Pet/Ap. : Sri A. Krishna Bhat, Adv.

Judgement :

Ashok Bhan, J.

1.Appellant filed the writ petition challenging the legality of the order Annexure-A, dated 27-3-1997 passed by the Commissioner of Bangalore Development

Authority in LAC No. 619/86-87 seeking quashing of the said order and a direction to reconsider the representation of the appellant dated 5-8-1996 in terms of the Government Order dated 7-11-1995 bearing No. HUD 341 MNX 95, and as per order passed in W.P. No. 30490 of 1996, dated 21-11-1996. Single Judge dismissed the writ petition by the impugned order. Aggrieved by the order of the Single Judge present appeal has been filed challenging the order of the Single Judge and the order passed by the Commissioner, BDA-Annexure-A.

2. In the petition it was averred that late Venkatanarayanappa predecessor in interest of the appellants owned land measuring 17 acres 12 guntas in Sy. No. 15 of Hatralakunte Village, Begur Hobli. He built a tank on the aforesaid survey number and the land was called as 'Bandekere'. By a Gazette notification dated 25-12-1986 Sy. No. 15 of Hatralakunte Village was notified for acquisition by the respondent for a scheme framed by the BDA. Along with Sy. No. 15 other properties of the appellants in Sy. Nos. 8, 9, 10, 11 and 16 were also notified. That the Government did not pass any award in respect of the land in Sy. No. 15 and no compensation was paid. Without passing an award and without paying the compensation, the authorities tried to take possession of the land in 1992. Appellants filed W.P. Nos. 19399 to 19401 of 1992 in this Court which came up for preliminary hearing on 1st of July, 1992, This Court passed an interim order staying the dispossession of the appellant from the land. The aforesaid interim order remained in force till the disposal of the writ petition on 5-11-1996. On a statement made by the Counsel for the appellant the writ petitions were dismissed reserving liberty with them to file a fresh petition if necessary.

3. It is further averred that on 17-11-1995 the State of Karnataka issued a Government Order Annexure-E, by which release of property notified for acquisition for the purpose mentioned therein was allowed to be permitted by the BDA in favour of the owners of the land. The three below mentioned schemes were approved:

(a) In case where the land has been notified by Bangalore Development Authority, but acquisition proceedings are not completed and the land has not vested in BDA, the owner of the land may, if he so desires, be permitted to develop the land

for formation of sites or for Group Housing. Where the landowner on his own or with the assistance of a developer takes up Group Housing Projects, he shall give 12% of the total built area to the BDA. In case, if he forms sites on such land, he should handover 30% of the sites so formed to the BDA.

(b) If the private developers/owners who desire to form sites on the land owned by them but not covered under land acquisition process may be permitted to do so subject to earmarking of 25% of the total sital area for E.W.S. and L.I.G. These sites should be made available to deserving persons identified by BDA at affordable prices.

(c) Where private developers go in for Group Housing projects, their proposals shall include construction of L.I.G./M.I.G. II and H.I.G. I and II type houses. The cost of the L.I.G./M.I.G. I houses should be so priced that it should be affordable land made available to the deserving persons. The allotment of these will have to be in conformity with the BDA Allotment Rules and the number of such L.I.G. and M.I.G. houses should not be less than 25% of the total number of houses proposed to be built up.

4. It is also stated in the order, that the benefit of the Government Order is available in respect of the land for which acquisition proceedings are not completed and where the land is not vested in the BDA. It was contended that in view of the interim order passed in W.P. Nos. 19399 to 19401 of 1992 on 1st of July, 1992 which was in force till 5-11-1996, the acquisition proceedings in respect of Sy. No. 15 were not complete and the land had not vested in the BDA.

5. Pursuant to the Government Order dated 17-11-1995, Annexure-E appellant gave a representation to the Commissioner, BDA, dated 5-8-1996 for considering the release of the extent of 17 acres 12 guntas in Sy. No. 15 for Group Housing purpose by a joint venture of the appellants with the developers. It was proposed in the application that proposal for Group Housing in the land will be prepared and submitted to the BDA. As the representation filed by the appellants was not considered for a long time they filed W.P. No. 30490 of 1996 seeking a writ of mandamus requiring the BDA to consider the representation given by them on 5-8-1996 in the light of Government Order dated 17-11-1995 and to pass appropriate

orders. On 21-11-1996, W.P. No. 30490 of 1996 was disposed of by the Court by recording the submission made by the Counsel for the BDA that the representation of the appellants shall be considered within 90 days from the date of order. Status quo regarding possession was ordered to be maintained in case the possession had not been taken over already by the BDA. According to the appellant as on the date of the order dated 21-11-1996 the possession of property in Sy. No. 15 had not been taken from the appellants.

6. After the disposal of the writ petition W.P. No. 30490 of 1996, the Deputy Commissioner-cum-Land Acquisition Officer of the BDA sent a letter dated 20th February, 1997 for certain documents. Petitioner sent a reply on 17th of March, 1997 stating that all the documents were earlier given to the Special Land Acquisition Officer, BDA and requested for perusing those documents. However, on 21st July, 1997, after enquiry when the appellants learnt that those documents were not traced by the Deputy Commissioner, BDA, the appellants submitted another set of documents including the judgment in R.S.A. Nos. 971 and 1117 of 1971, dated 3-4-1974. The endorsement acknowledging the receipt of those documents was taken. The correspondence exchanged between the parties has been attached as Annexures with the writ petition.

7. Commissioner of BDA by his order Annexure-A after recording the fact that judgment in R.S.A. Nos. 971 and 1117 of 1971, dated 3-4-1974 was available, rejected the representation filed by the petitioner by recording the following reasons:

'There is nothing to show that, applicant has got necessary entries made in the revenue records pursuant to said order. The applicant has not filed any documents like Pahani, Khata, Tax Paid Receipt to conclusively establish that, he is the owner of the above land and documents already filed by him do not conclusively establish his ownership. Since the title of the applicant to the above land is doubtful, his representation dated 5-8-1996 to permit him to take up Group Housing in the above land as per G.O. dated 17-11-1995 cannot be considered on merits. Accordingly, request of Sri A.R. Subba Rao contained in the representation dated 5-8-1996 is rejected'.

8. Appellants filed the writ petition with the allegation that the order passed Annexure-A was not a speaking order inasmuch as it had failed to take into consideration relevant material which was already on record showing that the appellant was still in possession of the land in dispute; relevant documents which were produced by the appellants had been referred to by the High Court in its judgment in the second appeal. In the second appeal High Court had recorded a finding that the appellants were the owners in possession. Even this finding was not taken note of by the Commissioner, BDA. The order passed by the Commissioner was illegal and unsustainable as it had been passed without application of mind.

9. In the statement of objections filed by respondent 2 it has averred that the order Annexure-A has been passed in accordance with law; that the preliminary and final notifications notifying the land for acquisition had been issued; possession was taken and a letter was written to the Deputy Commissioner to handover the land in question for the formation of Hosur-Sarjapura road layout. The layout has been formed and sites had been demarcated and allotted to the general public. The question of considering the request of the petitioner for permission to take up the Group Housing in the land in dispute in the circumstances could not be granted. This fact has been denied by the appellants.

10. Learned Single Judge dismissed the writ petition by holding that the appellant did not have an absolute/conclusive right to get the permission to develop the land by the Government Order Annexure-E, dated 17th of November, 1995. The only right which the appellant had, was for the consideration of the representation. It was within the discretion of the authority to grant or to refuse the permission. That the landowner did not have any legal right to compel the authority to grant permission for developing the property. The other fact which was noticed by the Single Judge is that it had been brought to his notice that the Government Order Annexure-E, dated 17th of March, 1995 under which the appellants had made representation for permission to develop had been quashed by this Court. If that is so, there could not be any order in favour of the appellant as the Government Order itself is not in existence.

11. Counsels for the parties have been heard at length.

12. We agree with the finding of the learned Single Judge to the extent that the appellant does not have an absolute right to get the permission to develop the land under the Government Order. The only right which vests with him is to get his representation considered and it is in the discretion of the authority to grant or not to grant the permission. But the discretion is not absolute and cannot be exercised whimsically de hors any reasons. Here is a case where the records were before the authority and not a word is whispered by the authority in respect of the records. The authority did not make any effort to understand the judgment of this Court in R.S.A. Nos. 971 and 1117 of 1971. The averments of the appellant that he had placed all these documents before the Commissioner has not been controverted. Authority itself has stated that the judgment in R.S.A. Nos. 971 and 1117 of 1971 were available in the record. The suit culminating in R.S.A. No. 971 of 1971, was filed by the appellants for permanent injunction restraining the respondents (not BDA but private parties) from interfering with their possession and enjoyment of the suit lands which included Sy. No. 15 as well. The Court of first instance decreed the suit of the appellants as prayed for. On appeal the Additional Civil Judge set aside the decree passed by the Court of first instance insofar as it pertained to the land in Sy. No. 15. On consideration of the entire evidence on the record, High Court recorded a finding that the appellants had prima facie established their title. Possession follows the title and therefore the appellants were also in possession of the suit land in Sy. No. 15 as on the date of the suit. It was held:

'The Court below has held that question of possession hinges largely on the question of title. That is undoubtedly so. As I have come to the conclusion that the plaintiffs have prima facie established their title, it follows that the plaintiffs were also in possession of the suit land Sy. No. 15 on the date of the suit. As the plaintiffs have established that they are in lawful possession of the suit land Sy. No. 15 on the date of the suit, they are entitled to succeed'.

13. No doubt the finding recorded by the High Court is a prima facie finding. It was open to the Commissioner to come to the conclusion that the possession had

been taken from the appellant on any date subsequent thereto. But, for that, reasons had to be recorded with reference to the record. The Commissioner should have taken a serious note of this finding and decided the matter with full application of mind after taking into consideration the revenue records which had been referred to in the judgment as well as placed on his file. Commissioner failed to notice any of the documents which had been placed on record and failed to appreciate the import of the judgment given by this Court.

14. The other reason given by the learned Single Judge is that the Government Order Annexure-E, dated 17th of November, 1995 had been quashed by this Court. Contention of the Counsel for the appellant is that the High Court in W.P. Nos. 8804 to 8815 of 1996, dated 31st of August, 1998 had quashed Clauses (b) and (c) of the Government Order dated 17th of November, 1995 only. The case of the appellant was under clause (a) of the Government Order which had not been quashed by the High Court. We have perused the order passed by the Single Judge in W.P. Nos. 8804 to 8815 of 1996 and find force in this contention. In that petition Single Judge had quashed the Government Order insofar as clauses (b) and (c) were concerned. The challenge in the said writ petition was to clauses (b) and (c) only and not to clause (a). The Division Bench while upholding the judgment of the Single Judge in those writ petitions (W.A. Nos. 2248 to 2259 of 1999) had also referred to clauses (b) and (c) of the Government Order only and not to clause (a). It was observed by the Division Bench that it agreed with the reasoning adopted by the Single Judge holding that clauses (b) and (c) of the Government Order are unsustainable in view of the law laid down by the Supreme Court in *Jilubhai Nanbhai Khachar v State of Gujarat*, and by this Court in *Belgaum A.G. v Planning Authority, Hubli-Dharwad and Another*. Admittedly, the appellants had filed the application for permission under clause (a) and not under clauses (b) and (c). In view of this, the order passed by the Single Judge, that the Government Order was not in force any longer is unsustainable in law.

15. For the reasons stated above, the appeal is accepted. Order of the Single Judge is set aside. Writ petition is allowed. Order Annexure-A passed by the Commissioner, BDA is quashed and the case remitted back to respondent 1 to reconsider the application filed by the appellant dated 5-8-1996 in accordance with

law and in the light of the documents made available by the appellants.

16. All pleas available to the parties are left open. The Commissioner shall be at liberty to take into consideration any anterior or subsequent events which might have taken place including the taking over of the land by the BDA for formation of sites and its distribution while considering the application filed by the appellants for grant of permission to develop the land, We are observing this firstly because in the statement of objections filed by the respondents stand taken is that possession has already been taken and after framing the layout sites have been allotted and secondly to avoid any resultant inconvenience which may be caused to hundreds of allottees who might have been allotted the sites after the formation of the layout, in case such layout has been formed and sites allotted. Anything observed in this order be not taken as a finding on merits. The Commissioner, BDA shall proceed to decide the case in accordance with law and without taking the findings to be on the merits of the dispute. No costs.

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