

Ashit Shetty and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Dec-03-2001

Reported in : 2002(3)KarLJ240

Judge : Chandrashekaraiyah, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 3(C), 16, 16(2) and 48(1); Bangalore Development Authority Act, 1976 - Sections 17(1), 19(1) and 27

Appeal No. : Writ Petition Nos. 9517, 9518, 10856 to 10873 and 10875 to 10892 of 1999 (BDA) and 20696 of 2000 (BD

Appellant : Ashit Shetty and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : B.N. Prasad, High Court Govt. Pleader, ;S.A. Nazeer, ;V.G. Dharma Kumar, ;B. Krishnaswamy, ;S.V. Shastry, ;M.S. Varadarajan, Advs. and ;K. Gopal Hegde, Adv. in W.P. Nos. 9517 and 10875 to 10892 of 199

Advocate for Pet/Ap. : Gopal Hegde, Adv. in W.P. No. 20696 of 2000 and ;Ravivarma Kumar, Adv. for ;Sri Setty and Hegde Associates

Disposition : Petitions dismissed

Judgement :

ORDER

Chandrashekaraiah, J.

1. W.P. Nos. 9517, 10875 to 10892, 9518 and 10856 to 10873 of 1999 are filed by the persons claiming to be erstwhile landowners of the land in Survey Nos. 20 and 21 of Boopasandra Village seeking for review of the order dated 23-9-1996 passed by this Court in W.P. No. 37719 to 37725 of 1S92, W.P. Nos. 3216, 3217, 11001 and 23205 of 1993, W.P. Nos. 32221 of 1992, W.P. Nos. 15718 and 6254 of 1996.

2. W.P. No, 20698 of 2000 is filed by the purchasers of sites in the above said survey numbers seeking for quashing of allotment of sites made in favour of contesting respondents by the Bangalore Development Authority, hereinafter referred to as the 'BDA'.

3. The facts in this case are as follows:

The State Government issued the notification dated 19-1-1988 proposing to acquire land measuring 3 acres in Survey No. 20 and 3 acres 4 guntas in Survey No. 21 of Boopasandra Village. This notice was followed by a final notification dated 29-4-1992 issued under Section 19(1) of the BDA Act. Thereafter, the Land Acquisition Officer passed an award dated 25-4-1994 determining the market value of the lands in question. The case of the B.D.A. is that after passing of the award, the State Government has taken possession of the land and handed over the same to the B.D.A. on 24-10-1987. The fact of taking possession has also been notified by the State Government by issuing a notification dated 16-7-1988 under Section 16(1) of the Land Acquisition Act published in the Official Gazette dated 3-11-1988. Thereafter, at the instance of some persons who are said to be the landowners, the State Government issued a notification dated 27-8-1992 under Section 48(1) of the Land Acquisition Act withdrawing the acquisition proceedings in respect of the above said two survey numbers. This notification was questioned by the persons claiming to be the allottees of the site by the B.D.A. on the ground that the Government has no power to withdraw the acquisition proceedings after taking over possession under the provisions of the Land Acquisition Act in W.P. Nos. 37719 to 37725 of 1992 and other connected matters. The said writ petitions were allowed by this Court by order dated 23rd September, 1986 quashing the notification issued under Section 48(1) of the Land

Acquisition Act. This order has made the petitioners to come to this Court by way of these present writ petitions for review of the order passed in the above said writ petitions as they were not parties in the writ petitions referred to above. From the order passed by this Court in Writ Petition Nos. 37719 to 37725 of 1992 and other connected matters, it is seen that Jamiya Masjid who is claiming to be the owner of these survey numbers, as seen from the records, is made a party. If this Jamiya Masjid is a party in the said writ petitions, they cannot maintain these writ petitions as it was open for the said Masjid to challenge the order passed in the said writ petitions by way of an appeal if it is aggrieved of the said order. Therefore, so far as the Jamiya Masjid is concerned, the Writ Petition seeking for review of the order passed in the Writ Petition Nos. 37719 to 37725 of 1992 is liable to be dismissed.

4. The petitioner in Writ Petition No. 9517 of 1999 is claiming to be the owner of the land in Survey No. 20. His name has not been shown as owner as seen from the notifications issued under Sections 17(1) and 19(1) of the Act. The name of this petitioner is also not shown in the notification issued under Section 48(1) of the Land Acquisition Act. From this notification it is seen that the withdrawal of acquisition proceedings is not for the benefit of Syed Bashit who is petitioner in Writ Petition No. 9517 of 1999.

5. Sri Ravivarma Kumar, learned Counsel appearing for the petitioner submits that the writ petitions filed by the allottees challenging the notification issued under Section 48(1) of the Act were not maintainable and therefore this Court had committed an error in quashing the acquisition proceedings at their instance. Further, it is submitted that the order passed in the said writ petitions since has affected interest of the petitioner in respect of the land in question without even impleading him as a party, he has a right to seek for review of the order. It is further contended that pursuant to the award passed by the Land Acquisition Officer the State Government has not taken possession of the land and handed over the same to the B.D.A. and therefore the State Government is well-within its power in withdrawing the acquisition proceedings.

6. The learned Government Pleader appearing for the State Government submits that since the physical possession of the land has not been taken over by the

State Government and also in view of the fact that some constructions had come up, the State Government in exercise of the power under Section 48(1) has withdrawn the acquisition proceedings.

7. Sri S.A. Nazeer, learned Counsel appearing for the B.D.A. submits that the State Government after passing of the award dated 25-4-1994 has taken possession from the landowners on 24-10-1987 and has handed over the same to the B.D.A. for the purpose of implementation of the scheme. It is further submitted that after taking over possession, the Government has in fact issued the notification under Section 16(1) of the Land Acquisition Act which evidences the fact of taking possession from the landowners and therefore after the issuance of notification by the State Government under Section 16 ought not to have taken steps to withdraw the acquisition proceedings. The learned Advocates appearing for the allottees adopted the argument of the learned Counsel for the BDA.

8. The learned Counsel Sri K. Gopal Hegde appearing for the petitioner in Writ Petition No. 20696 of 2000 submits that the State Government has now acquired about 131 acres of land for the implementation of the scheme framed by the B.D.A. but ultimately in respect of large extent of land, the State Government has withdrawn the acquisition proceedings invoking the powers of Section 48(1) and therefore, the acquisition proceedings would lapse as there is no substantial implementation of the scheme. In all other respects, Sri Gopal Hegde has adopted the argument of Sri Ravivarma Kumar, the learned Counsel appearing for the petitioners in other cases.

9. In reply to this submission, the learned Counsel for the BDA submits that the non-implementation of the scheme as framed is not due to the withdrawal of acquisition proceedings in respect of other lands but due to the various litigations by the erstwhile landowners and therefore the acquisition proceedings would not lapse under Section 27 of the Act. He further submits that the petitioners in all these writ petitions have not sought for declaration whether the acquisition had lapsed consequent on not executing the scheme as required under Section 27 of the Act and therefore, it is not open for them to urge said ground in these writ petitions. Further, it is neatly contended that in the absence of any challenge to the

notifications issued under Sections 17(1) and 19(1) of the Act in these writ petitions, it is not appropriate for the petitioners to contend that the BDA was not right in allotting the sites in question in favour of the applicants who sought for allotment of the sites.

10. On these rival contentions, I propose to deal with the points urged by the petitioners with reference to the records.

11. In order to ascertain whether the Government has taken possession pursuant to the award, I directed the learned Advocate appearing for the BDA to produce the records. Pursuant to the direction, the learned Counsel for the BDA has produced the records. From the records, I find that the Land Acquisition Officer who is the Deputy Commissioner appointed under Section 3(c) of the Land Acquisition Act had taken possession from the landowners on 24-10-1987 under a panchanama. On the very same day, the Deputy Commissioner has handed over the possession to the BDA. Subsequently, the State Government issued a notification dated 16-7-1988 under Section 16 of the Land Acquisition Act stating the possession of the land has been taken over from the landowners. The consequence of taking possession by the State Government has resulted in vesting of the land in the State Government under Sub-section (2) of Section 16. The notifications so issued is to be taken as an evidence of fact of taking possession of the land. By reading the panchanama drawn up by the BDA and the notification issued under Section 16 of the Act, it is clear the State Government has in fact taken possession of the same from the landowners after passing of the award.

12. In order to know that in view of the notification published by the State Government under Section 16 of the Land Acquisition Act what made the State Government to withdraw the acquisition proceedings, I called upon the learned Government Pleader to produce the records. Pursuant to the said direction, the learned Government Pleader has produced the records. From the records, the Deputy Secretary for Housing and Urban Development has made a note at paras 25 and 26 which reads as follows:

Ultimately, the note of the Chief Minister reads as follows:

Reading of it, it is clear the Chief Minister was of the view that the possession taken by the BDA is only a paper possession. This note of the Chief Minister is inconsistent with the very notification issued by the State Government under Section 16 of the Land Acquisition Act. From the panchanama referred to above, it is seen the State Government had in fact taken possession from the landowners and thereafter handed over the same to the BDA. Therefore, from these materials I am of the view that the State Government was not right in exercising the power under Section 48(1) of the Act withdrawing the acquisition proceedings. In the instant case, the possession was taken. Consequently, the land vested in the State Government. Therefore, the State was not right in exercising the power under Section 48(1) of the Act.

13. Sri Ravivarma Kumar, learned Counsel appearing for the petitioners contended that the allottees of the sites by the B.D.A. have no locus standi to maintain the writ petition challenging the proceedings of withdrawal of acquisition. It is an admitted fact that after the acquisition, the B.D.A. formed the layout and the sites were allotted in their favour much earlier to the issuance of the notification under Section 48(1). The allottees being the persons interested as their rights were affected by issuing a notification withdrawing the acquisition proceedings have every right to maintain the writ petition challenging the withdrawal of acquisition proceedings. Therefore, the contention raised by Sri Ravivarma Kumar regarding the maintainability on the ground of locus standi is liable to be rejected and it is accordingly rejected,

14. Sri Gopal Hegde, learned Counsel appearing for the purchasers of sites after the denotification submitted that since the scheme framed by the B.D.A. has not been implemented substantially, the proceedings of acquisition would lapse. Consequent on handing over possession of land by the Government to the B.D.A. the land came to be vested in the B.D.A. The writ petitions filed by some of the landowners challenging the very notifications issued under Sections 17(1) and 19(1) in respect of the above said lands along with other lands also came to be dismissed by this Court upholding the validity of the acquisition proceedings. Thereafter, the B.D.A. no doubt could not take effective steps for the implementation of the scheme in respect of certain lands either on account of

denotification or on account of pending litigations. Therefore, no laches could be attributed to the B.D.A. on the ground that there is no substantial implementation of the scheme. Further, the petitioners also have not produced any acceptable evidence or materials to show the scheme as framed by the B.D.A. has not been substantially implemented. Therefore, for all these reasons it cannot be said that the acquisition proceedings had in fact lapsed.

15. Before the issuance of the notification under Section 48(1) of the Land Acquisition Act withdrawing the acquisition proceedings, the petitioners have filed original suits in the Civil Court for an injunction. The said suits were dismissed as withdrawn subsequent to the issuance of the notification under Section 48(1) of the Act. Original Suit No. 8403 of 1996 filed by Syed Bashit's wife and children have prayed for a permanent injunction in respect of the very lands in question. I am told that the said suit is pending consideration. The petitioners such as Syed Bashit and Jamiya Masjid had filed writ petitions in Writ Petition Nos. 19259 and 19260 of 2001 before this Court seeking for a direction to implement the order dated 6-2-1996. The said writ petitions were disposed off by this Court by order dated 29th May, 2001. Para 6 of the said order reads as follows:

'Firstly, it is doubtful whether these writ petitions are maintainable. Lands bearing Survey Nos. 20 and 21 claimed by petitioners have already been acquired and, vested in the Bangalore Development Authority and B.D.A. has formed a layout and allotted sites to third parties. Once the lands vest in B.D.A., petitioners have no interest in the land and they have no locus standi to contend that persons who were allotted sites in Survey Nos. 20 and 21 should be allotted sites in Survey Nos. 25 and 26. Further no petition can be filed seeking a direction to respondents to allot to the allottees alternative sites, without impleading the allottees who have acquired a right in their respective sites in Survey Nos. 20 and 21, by virtue of their allotment'.

This finding has been recorded by this Court on the petitions filed by Syed Bashit and Jamiya Masjid who are the petitioners in these petitions. If that is so, the said finding is binding on them. This order I am told is allowed to be final. If that is so, it is impermissible for this Court to record any finding inconsistent with the finding

already recorded in the earlier proceedings which is binding on the petitioners. Therefore, for all these reasons I am of the considered view the petitioners have no right whatsoever so as to seek either for cancellation of allotment or for review of the order passed in the earlier proceedings.

16. The petitioners have instituted the proceedings one after the other and prevented the B.D.A. from executing the scheme as framed by it. Further, the allottees are also, though they were allotted sites somewhere in the year 1987 onwards, virtually prevented from putting up any construction on the sites allotted to them. We are in the year 2001 i.e., after the lapse of many years from the date of allotment, the cost of construction of the building have enormously increased. Therefore, in my opinion, it is a fit case to dismiss the writ petitions with heavy costs on the petitioners. Hence I pass the following order:

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