

Rasool Sheriff Vs. Bangalore Development Authority, Bangalore

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Court : Karnataka

Decided On : Feb-09-2000

Reported in : ILR2000KAR3315; 2000(4)KarLJ253

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; [Land Acquisition Act, 1894](#) - Sections 4, 6, 11-A, 12 and 17(4); [Constitution of India](#) - Article 226

Appeal No. : Regular First Appeal No. 119 of 1997

Appellant : Rasool Sheriff

Respondent : Bangalore Development Authority, Bangalore

Advocate for Def. : Sri N.K. Patil Adv.

Advocate for Pet/Ap. : Sri M.S. Purushothama Rao, Adv.

Judgement :

1. This first appeal arises from the judgment and decree dated 24-6-1996 passed by Sri A. Mohan Ram, XIV Additional City Civil Judge, Bangalore, in O.S. No. 1762 of 1990 (Rasool Sheriff alias Basha v Bangalore Development Authority, by its Commissioner). The plaintiff had claimed among others the following relief i.e., to declare the preliminary Notification No. BDA/SALAO/C4/PR(s) 131/7778. dated 19-9-1977 and final Notification No. HUD 3 MNJ 78, dated 7-2-1978 published in

the Karnataka Gazette, dated 9-3-1978 as null and void and not binding. The Trial Court dismissed the suit taking the suit to be not maintainable for the declaration of nullity sought against the notification of acquisition in view of the decision of their Lordships of the Supreme Court in the case of State of Bihar v Dhirendra Kumar and Others. The plaintiff having felt aggrieved from the dismissal of the suit has come up in appeal.

2. I have heard Sri Purushothama Rao, learned Counsel for the appellant and Sri N.K. Patil for the respondent.

3. The learned Counsel for the appellant contended that when the notification, according to the plaintiff, is null and void ab initio, the Civil Court can declare the document to be null and void. There is no specific bar against the Civil Court's jurisdiction to proceed with the suit.

4. These contentions of the appellant's Counsel have hotly been contested by the learned Counsel for the respondent. The learned Counsel for the respondent contended that firstly the Supreme Court has declared the law in the case of Dhirendra Kumar, supra, on the subject and that law is binding and therefore, decision of the Trial Court cannot be said to suffer from error of law. He further submitted that the suit itself was not maintainable against the Government as the notification issued by the Government had been challenged and the Government was a necessary party to the suit and necessary party not having been impleaded, the suit could be dismissed on that ground.

5. I have applied my mind to both the contentions.

No doubt Section 9 of the Civil Procedure Code is widely worded. Section 9 of the Civil Procedure Code reads as under.-

'Section 9. Courts to try all civil suits unless barred.--The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred'.

The Explanations (I) and (II) of this section are not very material for our purpose. The jurisdiction of the Civil Court under Section 9 is no doubt wide, but is subject

to the exceptions provided in the section itself and exception is with respect to the suits the cognizance of which is either expressly or impliedly barred. Their Lordships have considered the question and opined that the jurisdiction is impliedly barred. In paragraph 3, while considering this question, their Lordships observe,

'3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under Section 6, the public purpose gets crystallized and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11-A now prescribes limitation to make the award within 2 years from the last date of publication envisaged under Section 6 of the Act. In an appropriate case, where the Government needs possession of the land urgently, it would exercise the power under Section 17(4) of the Act and dispense with the enquiry under Section 5-A. Thereon, the State is entitled to issue notice to the parties under Section 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under Section 12. Thus, it could be seen that the Act is a complete Code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the Civil Court to take cognizance of the case under Section 9 of Civil Procedure Code stands excluded, and a Civil Court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable'.

6. A perusal of this case per se reveals that according to their Lordships of the Supreme Court, the jurisdiction of the Civil Court is impliedly barred and it is barred by necessary implication. On behalf of the appellant, no case has been cited to show that either this decision of the Supreme Court has been overruled or there is any larger Bench decision of the Supreme Court rendering contrary to the decision of the Supreme Court in the case of Dhirendra Kumar, supra.

7. In this view of the matter, in my opinion, there is no good ground to interfere with the judgment and decree of the Trial Court. Apart from that there is no doubt, as contended by the respondent also, as the notification issued by the Government had been challenged 7-2-1978 which was issued under the orders of the Governor, the State Government is a very necessary party to the suit and it not having been impleaded, even that ground may also be considered as a good ground to dismiss the suit. As the suit is rightly held not maintainable, it has rightly been dismissed and appeal is devoid of merits and it is hereby dismissed. This decision should not be taken as the decision on the merits of the plaintiffs case.

8. The learned Counsel for the appellant prayed that permission to file the writ petition may be granted. There is no question of granting any such permission. The party may act on the advice of his Counsel if any remedy is available.