

Krishnamurthy Vs. Bangalore Development Authority

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SooperKanoon Citation : sooperkanoon.com/381711

Court : Karnataka

Decided On : Dec-11-1995

Reported in : ILR1996KAR1258

Judge : Rajendra Babu and ;Padmaraj, JJ.

Acts : Bangalore Development Authority Act, 1976 - Sections 27; [Land Acquisition Act, 1894](#) - Sections 11A; Land Acquisition (Amendment) Act, 1984

Appeal No. : W.A. No. 1450 of 1992

Appellant : Krishnamurthy

Respondent : Bangalore Development Authority

Advocate for Def. : H.B. Datar, Sr. Adv. with H. Thipperudrappa, Adv. for R-1 and R-3 and ;K.V. Narayana, Adv. for R-4

Advocate for Pet/Ap. : S. Ramaswamy Iyengar, Adv.;S.V. Jagannath, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Rajendra Babu, J.

1. This Appeal is directed against an order made by the learned Single Judge in a Writ Petition challenging the acquisition of land comprised in Sy. No. 150/1P

measuring 2 acres 02 guntas situate in Doddigunta Village, Kasaba Hobli, K.R. Puram Taluk, Bangalore District. The Preliminary Notification was published on 2.6.1978 in the Karnataka Gazette on 29.6.1978 by the Bangalore Development Authority (BDA) for formation of a layout for further expansion of scheme between Old Madras Road and Banaswadi Road. A Final Notification was issued on 30th September 1980 which was published in the Gazette on 9.10.1980. The Award in respect of the acquisition of land was passed by the Special Land Acquisition Officer, BDA on 3.5.1990. Three contentions were urged by the petitioner - appellant that the award having not been passed within two years from the date of the publication of the Final Notification, the entire acquisition proceedings have lapsed in view of Section 11A of the Land Acquisition Act. Secondly, the Scheme has lapsed in view of Section 27 of the Bangalore Development Authority Act inasmuch as the respondents have not completed the Scheme in the period prescribed thereto. Thirdly, it was contended that the appellant has not received any notice after making the award or for delivering of possession and inasmuch as taking possession of land for formation of layout is illegal and violative of Article 300A of the Constitution.

2. Learned Counsel for the respondents urged before the learned Single Judge that there are laches on the part of the appellant in approaching the Court inasmuch as Final Notification had been issued on 30th September, 1980 and the appellant had notice of those proceedings in the year 1981 itself. He had not approached this Court for nearly 12 years and there is laches on his part. This contention on behalf of the respondents was accepted by the learned Single Judge who dismissed the Writ Petition. Hence, this Appeal.

3. In this Appeal, learned Counsel for the appellant submitted that the appellant was not challenging the land acquisition as such but non-compliance of Section 27 of the Act and effect of Section 11A of Land Acquisition Act read with Section 36 of the Bangalore Development Authority Act. It is the submission of the learned Counsel that the possession of the lands were not taken till late, a couple of months before the appellant approached this Court and when there was total inaction on the part of the BDA in implementing the Scheme, the appellant need not approach this Court earlier when there was no threat of dispossession of the

land. It is therefore, contended that the Learned Judge has misdirected himself in dealing with this matter only with reference to laches on the part of the petitioner-appellant in challenging the acquisition of the land.

4. On the scope of Section 27 BDA Act, a Division Bench of this Court has considered the same and explained to the effect that for the scheme to lapse under Section 27 , there must be dereliction of duty or failure on the part of the authority to execute the scheme specifically within 5 years from the date of publication in the official Gazette and a declaration under Section 19(1) of the Act. The two conditions to be fulfilled to attract the provisions of this Section are, there must be failure to execute the scheme i.e., there must be dereliction of statutory duties without justification and not a mere delay in execution of the scheme. Secondly, substantial execution in the context depends on the magnitude of the scheme and the nature of the work to be executed. Though burden is upon the BDA to furnish material to the Court to show that there is substantial execution on the matter, it is for the appellant to place necessary material before the Court to show that there has been dereliction of statutory duties and not mere delay in implementing the scheme. No such foundation has been laid out on that aspect except to point out there is delay on the part of the BDA.

5. More over, that period of 5 years lapsed in the year 1985. As to why the petitioner-appellant kept quiet for 7 years is un-understandable. However, the learned Counsel for the appellant sought to urge that there being no immediate threat of dispossession of the land, he did not approach this Court. That explanation will not carry the appellant far because there was acquisition of the land and steps were being taken in that regard. Appellant cannot merely state that the acquisition Notification issued seeking to acquire the land in question can be wished away by urging that by lapse of time it will disappear while he should have attacked the same within a reasonable time after the lapse of 5 years. We do not think 7 years delay in that regard would be appropriate or reasonable. Therefore, the view taken by leaned Single Judge in our opinion, is perfectly justified. Therefore, this Appeal could be dismissed on laches alone. Apart from that, we have pointed out that there is no material forthcoming in this case to show that there is dereliction of duty on the part of the BDA in not implementing the scheme

to attract the provisions of Section 27 of the Act. The next ground urged on behalf of the appellant that Section 11A of the Land Acquisition Act is applicable to the facts of the case is not at all tenable in view of the Decision of this Court in WA 321-322/ 1989 disposed of on 6.10.1989, G. Narayanaswamy Reddy v. State of Karnataka and Ors. wherein it was held that Section 36 does not enable to hold that Section 11A of the Land Acquisition Act which was introduced into that Act in 1984 would govern the acquisition under the BDA Act. Identical view has been taken by the Supreme Court in STATE OF MAHARASHTRA AND ANR. v. SANT JOGINDER SINGH KISHAN SINGH AND ORS., AIR 1995 SC 2188. It is stated therein that the plea that since the award has not been made within 2 years from the date of publication under the Maharashtra Act under Section 126(2) thereof by operation of Section 11A of the Central Act, the Notification published under Section 125 of the Act shall be deemed to have been lapsed and the authorities are devoid of jurisdiction to proceed further is not tenable. The rationale adopted by Their Lordships is that wherever the Legislature intended to apply specific procedure or the fetters in exercising the power under the Central Act, it did not specifically. After the Central Act 68/1984 came into force no steps had been taken by the State Legislature to amend the Act introducing or incorporating Section 11A of the Central Act as part of the Act. Since the Legislature has incorporated specific provisions of the Central Act, the necessary conclusion is that Legislature did not intend to unspecific the provisions of the Central Act for exercise of power under the Act- If the Legislature would have merely adopted the Central Act, subsequent amendment to that Act made under 68/1984 Act would have been applicable per se. That is not the position in this case, In that view of the matter, we find the other contentions also untenable. We find absolutely no merit in this Appeal.

Appeal is Dismissed.