

Chayadevi Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-14-1988

Reported in : ILR1988KAR3125; 1988(2)KarLJ444

Judge : Balakrishna, J.

Acts : Bangalore Development Authority Act, 1976 - Sections 17(5); [Constitution of India](#) - Article 226; Land Acquisition Act

Appeal No. : W.P. Nos. 4101 of 4102 of 1986

Appellant : Chayadevi

Respondent : State of Karnataka

Advocate for Def. : B.J. Somayaji, Adv. for R-1 and ;A.J. Sadashiva, Adv. for R-2

Advocate for Pet/Ap. : M. Ranga Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Balakrishna, J.

1. These Writ Petitions are preferred against the acquisition proceedings in pursuance of the preliminary notification of acquisition dated 19-9-1977 and the

final notification of acquisition dated 7-2-1978 published in the Karnataka Gazette dated 9-3-1978 ending with 9-3-1983.

2. The material facts are these:

The respondents initiated the land acquisition proceedings in respect of the lands belonging to the petitioners described in detail in the schedules to these Writ Petitions besides other lands for the purpose of formation of a layout called Byrasandra-Thavarekere-Madivala Scheme (for short 'B.T.M. Scheme'). The preliminary notification of acquisition dated 19-9-1977 was published in the Official Gazette dated 29-9-1977. The final notification of acquisition dated 7-2-1978 was published in the Official Gazette dated 9-3-1978.

3. The lands of the petitioners are covered by these acquisition proceedings. According to the petitioners, the implementation of the entire B.T.M. Scheme ought to have been completed before 9-3-1983 and that the respondents have no jurisdiction to continue the land acquisition proceedings or the implementation of the scheme beyond 9-3-1983. The grievance of the petitioners is that the respondents are proceeding with the acquisition in violation of law.

4. I have heard Sri M. Ranga Rao, the learned Counsel for the petitioners, Sri B.J. Somayaji, the learned High Court Government Pleader for respondent No. 1 and also Sri A.J. Sadashiva, the learned Counsel for respondent No. 2 B.D.A.

5. Arising out of the contentions urged and a perusal of the impugned notifications as also the material on record, the following points arise for consideration :

'(1) Whether the respondents have no jurisdiction to continue the acquisition proceedings beyond a period of five years from the date of the publication of the final notification; and

(2) Whether the acquisition proceedings are vitiated for non-compliance with the requirement of statutory notice to the petitioners.

6. At the outset, it may be stated that the respondents have not filed any statement of objections rebutting the allegations of fact made by the petitioners in these Writ

Petitions.

7. It is feasible to refer to the relevant provisions of the Bangalore Development Authority Act, 1976 ('the Act' for short). Section 27 of the Act provides:

'27. Authority to execute the scheme within five years :- Where within a period of five years from the date of the publication in the official Gazette of the declaration under Sub-section (1) of Section 19, the Authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative.'

8. What the above section postulates is that the scheme should be substantially completed within the prescribed period of five years commencing from the date of the final notification. The question is whether there has been a substantial compliance with the requirement of law.

9. In *G. NARAYANASWAMY REDDY v. THE STATE OF KARNATAKA AND ANR.*, SLP(c) No. 294 of 1985, the petitioner had questioned the validity of the acquisition proceedings under which the land belonging to him was acquired and taken over by the Government for the purpose of utilising it for the same B.T.M. Scheme of the Bangalore Development Authority. The notice under Section 12 of the Land Acquisition Act, 1894 was served on the petitioner after the publication of the preliminary notification and the revenue records showed that the possession of the land was taken on 15-6-1983. The petitioner had questioned the acquisition proceedings on the ground that there was a non-compliance with the provisions of Section 27 of the Act inasmuch as there was non-execution of the scheme to a substantial extent within five years from the date of the final notification and that, therefore, the acquisition proceedings became void and unenforceable. It was, therefore, contended that the petitioner was entitled to retrieve possession of his land. However, on consideration of the facts of the case, the Supreme Court held that the contention of the petitioner was unsustainable and the High Court was right in rejecting the petition. It was also observed that the Act does not say that the lands which have been acquired should be handed over to the original owners if the scheme is not executed substantially within 5 years.

10. In IRWIN COELHO AND ORS. v. STATE OF KARNATAKA AND ORS., W.P.No. 21849 of 1986 DD 2-4-1987, it was held that the Writ Petition was barred by laches and was therefore liable to be dismissed.

11. In KANTHAMMA AND ORS. v. STATE OF KARNATAKA AND ORS., 1984(2) KLJ 271 a Division Bench of this Court held that the words 'substantial execution' in the context depends upon the magnitude of the scheme and the nature of the work executed and remains to be executed. In the very nature of the project in question, it is almost impossible for the High Court to embark upon an enquiry on the contention raised. The Court, as observed by the learned single Judge, would be slow to interfere with such public projects.

12. It was contended on behalf of the B.D.A. that a total extent of 1703 Acres were acquired under the scheme and after the formation of the lay-out, the houses have been constructed and, therefore, there is a substantial compliance with the requirements of Section 27 of the Act.

13. These facts are not disputed by the learned Counsel for the petitioners. It is, therefore, difficult to accept the contention of the petitioners that there is non-compliance with the requirement of Section 27 of the Act and I, therefore, hold that there is no merit in that contention.

14. The more important question urged by the learned Counsel for the petitioners is with regard to non-compliance with the mandatory provision of law which contemplates statutory notice to be served on the petitioners before the authorities proceed to acquire the lands of the petitioners under the scheme. In short, it is strongly contended by the learned Counsel for the petitioners that under Section 17(5) of the Act, a statutory notice is mandatory and should be served on the petitioners before the authorities proceed to acquire the lands of the petitioners. Section 17(5) of the Act reads as follows:

'During the thirty days next following the day on which such notification is published in the Official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue

assessment on any building or land which is proposed to be acquired in executing the scheme or regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.'

15. There can be no doubt about the fact that the statute makes it imperative that a notice should be issued and served on the petitioners in accordance with Section 17(5) of the Act and the averment of the petitioners that no such notice was issued and served on the petitioners, has gone unrebutted on record. Specific allegations of fact have to be presumed to be true unless they are disputed by the party which chooses to contradict such allegations. In the instant case, as already mentioned, there is no denial of this allegation of fact. There is no material on record to hold that the statutory requirement was complied with. The mandate of the Legislature expressed in Section 17(5) of the Act does not make an exception to the B.D.A. in the facts and circumstances of this case. Therefore, I am inclined to hold that there is non-compliance with the mandatory requirements of Section 17(5) of the Act.

16. It was sought to be made out by the learned Counsel for the B.D.A. that the petitioners have not chosen to raise any plea in this regard in these Writ Petitions. However, on a perusal of the memorandum of Writ Petitions, I find in para-10 to the following effect :-

'.....The petitioners were not aware of the impugned Land Acquisition proceedings. The first petitioner has not received any notice of any kind from the respondents so far, even though she was the Kathedhar prior to the date of the preliminary Notification. The II petitioner also has not been issued any notice in connection with the so called land acquisition proceedings. However, she was served with a Court notice for the first time in LAC No. 1985 on the file of the XVI Additional City Civil Judge, Bangalore City. That notice stated that the second petitioner was required to appear before the Court on 7th January 1986.....'

In the light of the specific pleading afore mentioned, it cannot be said that no specific plea has been taken in this regard by the petitioners.

17. The learned Counsel for the B.D.A. pointed out that the Writ Petitions having been filed in 1986 whereas the final notification of acquisition was published on 9-3-1978, are barred by laches. It was also contended that at this distance of time it would not be reasonable to accept the argument of the petitioners that they had no knowledge of the acquisition proceedings for want of statutory notice in view of the fact that the petitioners should be deemed to have had knowledge of the acquisition because a number of houses have come into existence in the extensive area of land acquired, after the formation of a lay-out. In S.L.P. (C) No. 8192 of 1987, the Supreme Court has held that on the question as to who is in actual possession of the land is in dispute and that it is very difficult for the Court to find out whether the petitioner had lost possession of the land or was still in possession of the land.

18. In S.L.P. (C) No. 294 of 1985, it is apparent that the notice under Section 12 of the Land Acquisition Act, 1894 was served on the petitioner and that the revenue records showed that the possession of the land was taken on 15-6-1983.

19. In the instant case, the submission of the petitioners is that they are still in actual possession of the lands in question and they have not yet been divested of their possession.

20. Merely because a number of houses have come up in the vast area of land acquired by the B.D.A. under the scheme, it cannot be said that the B.D.A. is absolved of the statutory obligation which is mandatory in nature of complying with the requirements of Section 17(5) of the Act.

21. It was pointed out by the learned Counsel for the B.D.A. that in the case of HARI SINGH v. STATE OF U.P., : [1984]3SCR417 the Supreme Court has held that a Writ Petition challenging the validity of acquisition proceedings filed after 2 1/2 years is liable to be dismissed for laches and. therefore, the same principle should be applied to the instant case also. In the said decision, what was under consideration was acquisition proceedings under the Land Acquisition Act. The Supreme Court observed :-

'It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act.'

The acquisition proceedings in the instant case are under the Bangalore Development Authority Act and the provision relating to service of statutory notice on the petitioners is in substance to be from the notice envisaged under the Land Acquisition Act, Under the B.D.A. Act service of statutory notice on the petitioners is mandatory and any other means of publication cannot be a substitute for the kind of notice envisaged in the special statute viz., the B.D.A. Act. Therefore, the principle laid-down in : [1984]3SCR417 is distinguishable in view of the difference not only on facts but also in law:

Regarding the question of law, reliance placed on the decision in Writ Petition No. 21849 of 19862 is of no avail to the B.D.A. since there is little analogy between the case cited and this case.

22. In the facts and circumstances of the case and in the absence of material to the contrary on record, I am of the opinion that the delay in approaching this Court deserves to be condoned.

23. For the reasons stated above, these Writ Petitions are allowed and the impugned acquisition proceedings in pursuance of the preliminary notification dated 19-9-77 and final notification dated 7-2-1978 are quashed in so far as these Writ Petitions are concerned confined to the lands described in the schedule to these Writ Petitions and belonging to them. There shall be no order as to costs in the circumstances of the case.