

Chairman, Bda Vs. Shivanna

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Court : Karnataka

Decided On : Mar-30-1992

Reported in : ILR1992KAR1504; 1992(3)KarLJ96

Judge : Rama Jois, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1; Karnataka High Court Rules, 1959 - Rule 5; Writ Proceedings Rules, 1977 - Rule 39; Bangalore Development Authority Act - Sections 17(1) and 17(5)

Appeal No. : C.P. Nos. 144 and 144A of 1989

Appellant : Chairman, Bda

Respondent : Shivanna

Advocate for Def. : S.R. Karisidda Devaru, Adv. for R-1, ;Govt. Adv. for R-2, ;Harikrishna S. Holla, Adv. for R-3, ;C.M. Basavarya, ;B.C. Thiruvengadam, ;Billappa Jagadeesh Mundargi, ;V.A. Mohanarangam and ;G.V. Govindar

Advocate for Pet/Ap. : H.B. Datar, Sr. Adv. for ;N.S. Srinivasan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Rama Jois, J.

1. The facts of this Review Petition show how inadvertance, negligence and dereliction of duty on the part of the Advocate appearing for a public authority and the officers of the Authority could create enormous problems for it and complicate an otherwise simple matter, causing considerable amount of inconvenience and hardship to large number of people.

2. Brief facts of the case giving rise to the presentation of the Review Petition and which are necessary for the disposal of the Review Petitions are as follows:-

(i) By Notification dated 3rd January, 1977, the Bangalore Development Authority ('B.D.A.' for short) published a Scheme under Section 17 of the Bangalore Development Authority Act, 1976 (herein- after referred to as 'the Act') for formation of Gokul II Stage Rajamahal Vilas II Stage Lay Out. The development scheme covered an area of 1,334 acres 12 guntas of land situate in 8 villages including Mathikere, Chikkamarenahalli and Dyavasandra villages in Bangalore North Taluk, The Notification was published in the official gazette on 24-2-1977. The Final Notification under Section 19 of the Act dated 2-8-1978 acquiring the land for the purposes of the scheme was published in the official gazette on 31st August 1978, Awards were passed on various dates. Thereafter, according to the BDA possession of the lands were also taken over and handed over to it for the formation of the lay out, in particular.

(a) Possession of 9 acres 4 guntas of land in Sy. No. 1/1 of Chikkamaranahalli village was taken on 30th July 1981 and a notification to that effect in terms of Section 16(2) of the Land Acquisition Act was published on 4-2-1982 and was published in the gazette;

(b) Possession in respect of 7 acres 32 guntas in Sy. No,44 of Chikkamaranahalli village was taken on 6-5-1982 and a notification under Section 16(2) of the Land Acquisition Act was issued on 2-9-1983;

(c) Possession of the lands in Sy. Nos. 28 and 34/1 of Dyavasandra village measuring 4 acres 35 guntas and possession of 14 guntas of land in Sy. No. 125/1

of Mathikere village was also taken in or about the same time in accordance with law.

(ii) After the possession was taken W.P.No. 29276/1981 was presented by the Writ Petitioner Shivanna challenging the legality of the acquisition of the following items of lands:-

Village

Sy.No.

ExtentA-G

1)Mathikere

48/1

1 - 18

48/8

-- 1

48/9

- 2

125/1

- 14

Total

1-35

2)Chikkamarenahalli

1/1

9-4

7-32

Total

16-36

The total extent of land, acquisition of which was challenged in the Writ Petition was 18 acres 31 guntas. The relevant portion of the prayer made in the Writ Petition reads:-

'a) Issue a Writ of Certiorari quashing the impugned preliminary notice vide bearing No. A-3/PR.511/SLAO/76-77 dated 3-1-1977 and also the final notification bearing No. HUD 39 MNJ 78 dated 2-8-1978 issued at the instance of Respondents 1 and 2 and published by the III respondent in Karnataka Gazette dated 31st August 1978 which is produced at Annexure-A, as null and void as it relates to the lands of the petitioner.' (iii) W.P.No. 29355/1981 was presented by Smt. Sunandamma. In the said Writ Petition, she challenged the legality of the acquisition of 4 acres of land in Sy. No. 28 and 35 guntas of land in Sy. No. 34/1 of Dyavasandra village. The total extent of the lands in respect of which the acquisition was challenged in this Writ Petition was 4 acres 35 guntas.

(iv) The two Writ Petitions were disposed of by Bopanna, J., by a common order dated 27th July, 1984. The main ground of challenge to the acquisition in the Writ Petitions was that after the publication of the Scheme as required under Section 17 of the Act, no individual notice as required under Sub-section (5) of Section 17 of the Act was issued to the petitioner and therefore the acquisition was illegal. No statement of objection was filed on behalf of the Bangalore Development Authority controverting the submission made in the Writ Petition to the effect that no individual notice in terms of Sub-section (5) of Section 17 of the Act was issued. In the circumstances, the Court proceeded on the basis that no individual notice was issued and therefore there was contravention of Section 17(5) of the Act. In the result, the learned Judge proceeded to allow the Writ Petitions and quash the impugned notifications. The relevant portion of the Judgment reads:-

'2. These Writ Petitions are disposed of by a common order since a common point arises for consideration in these petitions.

3. The grievance of the petitioners in these Writ Petitions is that the impugned notifications are violative of the mandatory requirement of Section 17(5) of the Bangalore Development Authority Act, 1976 (in short the Act) read with the provisions of Sections 4 and 6 of the Land Acquisition Act.

4. The petitioners had purchased the lands in question some time in the year 1961 and they had applied for conversion of these lands some time in the year 1962. Their applications before the Deputy Commissioners were pending consideration at the relevant time. However, it transpires that the 1st respondent-Authority in pursuance of the scheme prepared under Section 17 of the Act had sought the acquisition of these lands by the impugned notifications. The grievance of the petitioners is that they were not aware of the scheme nor were they called upon to file their objections against the proposed acquisition and that apart, to the best of their knowledge, their lands had been excluded from the scheme for development of 'RAJAMAHAL VILAS SECOND STAGE LAY OUT' Bangalore. In support of this assertion they have also filed the sketch of the said layout as Annexure-L in W.P.29365/81. Section 17(5) of the BDA Act reads as under:-

'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 in 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.' The preliminary notification issued by the BDA, which is produced as Annexure-H in W.P. 29335/1981 only says 'that all persons interested in the said lands are hereby warned not to obstruct or interfere with any Surveyors or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said lands by sale,

lease, mortgage, assignment, exchange or otherwise or any outlay or improvements made therein without the sanction of the Deputy Commissioner Bangalore District, Bangalore after the date of publication of the notification shall be disregarded by the Officer Assessing compensation for such parts of the said lands as may be finally acquired.' The said notification does not provide for filing the objections by the petitioners against the proposed acquisition. Therefore, the said notification, on the face of it, is bad in law. Though these Writ Petitions were filed in the year 1981, the BDA has not chosen to file any return controverting the averments made by the petitioners in these Writ Petitions. In the circumstances, I will have to proceed on the basis of the averments made by the petitioners that they were not served with the notice as required under Section 17(5) of the B.D.A. Act. Further, their assertion that the lands had been excluded from the scheme of the 'RAJAMAHAL VILAS SECOND STAGE LAY OUT', Bangalore is also well founded in the absence of any return by the B.D.A. However, the High Court Government Pleader for the State Government submitted that the petitioners have not satisfactorily explained the delay in filing these Writ Petitions, The petitioner in paragraph-II of Writ Petition No. 29335/1981 has explained the delay in approaching this Court and that apart in view of the fact that the entire acquisition proceedings were wholly without jurisdiction since the BDA had not complied with the mandatory requirements of Section 17(5) of the 8DA Act read with Sections 5 and 6 of the Land Acquisition Act, the impugned proceedings are liable to be quashed.

5. Accordingly, these Writ Petitions are allowed, the impugned notifications are quashed reserving liberty for the authorities to initiate fresh proceedings, if so advised, in accordance with law.'

(Underlined by me)

(v) As stated earlier in the Writ Petitions, the Writ petitioners, had challenged the legality of the acquisition of the lands belonging to them on the ground personal to them i.e. that they were not served with the notice as required under Section 17(5) of the Act, But while allowing the writ petitions, the Court quashed the entire final notification and the preliminary notification regarding acquisition which covered

1,334 acres 12 guntas of land without restricting the quashing only to the petitioners' lands.

(vi) Within about a month after the disposal of the Writ Petitions, an application was filed on 20-8-1984 praying for recalling the order. In the affidavit filed in support of the application, it was stated that the learned Counsel, who was appearing for the B.D.A. had moved for an adjournment before the learned Judge and the same had been granted orally, but by oversight the matter was subsequently taken up when the learned Counsel for the B.D.A. was not present and was disposed of without hearing the learned Counsel for B.D.A. That application came to be posted before the Court after about one year on 5-8-1985. Strangely, the Counsel who was appearing for the B.D.A. even after the final order in the Writ Petitions was made, quashing the entire acquisition failed to act in a diligent manner and remained absent when the application came up for orders on 5-8-1985. The application was dismissed for default on that date. Thereafter, another application was filed on 2-9-1985 praying for restoring the application dated 20-8-1984, in which there was a prayer for recalling the order made in the Writ Petition. There appeared to be no limit for the negligence and dereliction of duty on the part of the Counsel for the B.D.A. The application was dismissed on 16-9-1985 on the ground that the Advocate was absent.

(vii) Thereafter the Counsel for the B.D.A, did nothing to repair the damage caused, for nearly three years. It was only on 1 -8-1988 C.P. No. 144/1989 was filed by the BDA under Order 47 Rule 1 of the C.P.C. praying for review of the order made in W.P. No. 29726/1981, entrusting the matter to another Counsel. In the affidavit filed in support of the application for condonation of delay in filing the Review Petition, the lapses on the part of the Counsel who appeared for the B.D.A. earlier were set out and it was further stated that all the papers relating to the case were sent to the B.D.A. some time in 1988 without appraising the B.D.A. of all the facts and circumstances of the case. The Review Petition was posted before Bopanna, J., and he admitted the Review Petition on 13-4-1989 on which date he made the following order:-

'Learned Counsel for the respondents is absent though he was personally served with the notice of I.A. No. 1 on 21-2-1989. The order in W.P. was made without hearing the learned Standing Counsel for the B.D.A. Since the then Standing Counsel for the B.D.A. Mr. S. Shivaswamy is no more in the panel of Counsel, when the Writ Petition was posted for hearing, I did not have the benefit of the arguments for the B.D.A. In the circumstances, delay in filing the C.P. is condoned, I.A. No. 1 is allowed.

Post the C.P. for admission in the usual course.

In the meanwhile, respondent-1 shall not alter the nature of the land so as to prejudice the rights of the B.D.A'

The Review Petition was not disposed of till the date on which Justice Bopanna retired. Thereafter, by the order of Hon'ble the Chief Justice, the Review Petition came to be posted before me, and I admitted the petition on 19-6-1989. However, it was posted for hearing only on 18-1-1991. Then I noticed another serious procedural lapse on the part of the present Counsel for the B.D.A., in that though the order quashing the entire acquisition was passed on two Writ Petitions, viz., W.P. No. 29726/81 and W.P. No. 29355/81, only one review petition was filed, in the circumstances, I made the following order: -

'This Review Petition is filed praying for reviewing the order made in Writ Petition 29728/1981 by which the Notification issued by the Bangalore Development Authority under Section 17 of the B.D.A. Act acquiring large extent of lands for the purpose of Development Scheme was quashed.

The ground urged in the Writ Petition is that in the Writ Petition the B.D.A. could not file statement of objection and place the records and to demonstrate that there was no merit in the Writ Petition and therefore, the order should be set aside as it causes serious prejudice to public interest and the Writ Petition be disposed of after giving an opportunity to the B.D.A. to file statement of objection and to place all relevant records.

As can be seen from the order of the learned Judge allowing the Writ Petition, there were serious laches on the part of the B.D.A in not filing the statement of objection and contesting the case.

Even after having suffered such an order, there is no abatement in the laches on the part of the B.D.A. What is surprising is even though the order dated 27th July 1989 was passed in two Writ Petitions viz. 29726/81 and 29355/81 only one review petition is filed and there is a prayer for reviewing the order passed by this Court on 27-7-1984 in W.P. 29726/81.

Even if this Review Petition were to be allowed, it would be of absolutely no use for the B.D.A for the reason the order passed by this Court in W.P. 29355/81 on 27-7-1984 (common order passed in the two Writ Petitions) remains and as result the order of this Court quashing the entire acquisition notification would still stand.

Apart from the laches in filing only one Review Petition, it should also be pointed out that the petitioner in Writ Petition 29355/81 was one Sunandamma and she is not even made a party to this Review Petition.

When this infirmity was pointed by the Court, the learned Counsel for the petitioner requested for time to do the needful.

Matter is adjourned by four weeks.'

(Underlined by me)

3. Thereafter, I.A. 4 was filed praying for impleading Smt Sunandamma, petitioner in W.P. No. 29355/1981 as a respondent to the Review Petition, I.A. 5 praying for amendment of the Review Petition by adding an additional prayer to review the order made in W.P. No. 29355/1981 also and I.A. 3 for condonation of delay in presenting I.As. 4 and 5 were made. On 29-5-1991 notice was ordered on the applications and after service of notice on Sunandamma and after hearing the parties the applications were allowed on 25-11-1991 and the C.P. was directed to be posted for final hearing.

4. The learned Counsel for the Writ petitioners submitted that though Sunandamma is made a party to the Review Petition, the B.D.A. should have filed two separate Review Petitions. Sri H.B. Datar, learned Senior Counsel appearing for the B.D.A submitted that as a common order had been passed on the Writ Petitions, one Review Petition was filed. He, however, stated that this may be treated as two Review Petitions in the two Writ Petitions and the Review petitioner would pay the deficit court fee. In the circumstances, in the interest of justice, the Petition is treated as two Review Petitions (C.P. 144 of 1989 and C.P. 144-A of 1989) and the petitioners are directed to pay the deficit court fee within two weeks.

5. Now I shall refer to number of I.As. filed for impleading. After the disposal of the Writ Petitions and the delay in filing as well as disposal of the Review Petition, taking advantage of the quashing of the acquisition, number of transactions of sale of lands, which are the subject matter of acquisition under the impugned notification have taken place and those who have acquired such interest have filed the applications. The particulars of the persons who have filed the application are as below:-

(a) I.A. 7 is filed by M/s. Nikhil Construction Company on 7-12-1991 claiming to have purchased 2 acres of land in Sy. No. 1/1 and 35 guntas in Sy. No. 44 on 17-6-1991 from one Smt. Sonnamma, who is stated to be the Sister-in-law of Shivanna, the Writ petitioner in W.P. No. 29726/1981, who had already filed a suit in O.S. No. 3356/1984 before the City Civil Court seeking injunction against the B.D.A. not to interfere with her possession of the said piece of land.

(b) I.A. 8 is filed by the aforesaid Sonnamma claiming to be the owner of land measuring 3 acres 9 guntas and stating that she had sold the lands to M/s. Nikhil Construction Co. on 7-12-1991.

(c) I.A. 9 is filed by Smt. Aswathamma and Y.N. Srinivas on 25-2-1992 claiming to be the owners of Sy. Nos. 26/3 26/5 of Chikkamarenahalli village measuring 4 acres 8 guntas, though they had not challenged the legality of the acquisition at any time earlier.

(d) I. As. 10 and 11 are filed by Dr. K. Savithri on 3-3-1992 praying for impleading herself and one Rupa Shenoy as parties to the Review Petition. They claimed to have purchased a site formed in Sy. No. 1/1 of Chikkamarenahalli measuring 49' x 30'.

(e) I.A. 12 is filed by one B.C. Chandrappa claiming to have purchased a site from Smt. Sunandamma, petitioner in W.P. No. 29355/ 1981 formed out of Sy. No. 34/1 measuring 60' x 70' on 25- 6-1990.

(f) I.A. 13 is filed by Smt. Rafique Begum on 3-3-1992 claiming to have purchased site Nos. 18 and 21 formed out of Sy. No. 1/1 of Chikkamarenahalli village under a sale deed dated 13-10-1980 i.e. subsequent to 6-9-1980 on which date the possession of the lands have already been taken by the B.D.A.

(g) I.A. 14 is filed by one M.N. Keshavaraju claiming to have purchased site No. 19 formed out of Sy. No. 34/1 of Dyavasandra village from Smt. Sunandamma on 1-10-1980, which was also subsequent to the issue of final notification by the B.D.A. and the taking of possession by the B.D.A. of the lands on 6-9-1980.

6. Sri Lakshmi Tathachar has got himself impleaded as respondent stating that site bearing No. 540 in R.M. Vilas Extension II Stage was allotted to him by the B.D.A on 12-6-1988 which lay in Sy. No. 1/1 of Chikkamarenahalli village, the acquisition of which by the B.D.A. has been quashed by the order made in the Writ Petitions.

7. Sri H.B. Datar, learned Senior Counsel for the petitioner-B.D.A., submitted that the order of this Court passed on the two Writ Petitions should be reviewed as it suffers from patent errors of law, namely,

(1) Actually the notice under Sub-section (5) of Section 17 of the Act had been issued but the Court had proceeded on the basis that there was no compliance with the provisions of Sub-section (5) of Section 17 of the Act and therefore the acquisition was illegal.

(2) Even assuming that there was non-compliance with Sub-section (5) of Section 17 of the Act, this Court could have quashed the acquisition notification only in so

far it related to the lands belonging to the two Writ petitioners, and that the entire notification acquiring 1,334 acres 12 guntas of land could not have been quashed.

(3) Even if there was non-compliance with Sub-section (5) of Section 17 of the Act, the only final notification should have been quashed, that too only in so far it related to the lands belonging to the Writ petitioners and the B.D.A. should have been directed to proceed to issue individual notice as required under Section 17(5) of the Act to the petitioners and to proceed in accordance with law, from the stage at which the illegality was found to have been committed.

8. Sri Karisidda Devaru, learned Counsel for the Writ petitioner Shivanna raised a preliminary objection to the effect that as the order on the Writ Petitions was passed by Bopanna, J., and he has since retired from service, Review Petitions cannot be heard and decided by another Judge in view of the ratio of the Decision of the Supreme Court in *DEVARAJU PILLAI v. SELLAYYA PILLAI*, : AIR 1987 SC1160 . The Judgment on which the learned Counsel relies reads:-

'We are afraid that the order of the High Court which is under appeal cannot stand a moment's scrutiny. The question in this case was whether a certain document of title was a deed of settlement or a will. The learned single Judge of the High Court sitting in Second Appeal considered the document and held that it was a deed of settlement. He noticed that, apart from the deed being styled as a deed of settlement and registered as such, one of the recitals in the document was that the disposition was irrevocable. On an application being filed for review of the judgment of the learned single Judge, another learned single Judge of the High Court the Judge who heard the Second Appeal not being available - virtually sitting in Judgment over the Decision of the learned Judge who decided the Second Appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned single Judge was not entitled to do. If the party was aggrieved by the judgment of the learned single Judge sitting in Second Appeal the appropriate remedy for the party was to file an appeal against the judgment of the learned single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned single Judge who entertained the application totally exceeded his jurisdiction in allowing

the review and upsetting the judgment of the learned single Judge, merely because he took a different view on a construction of the document. These appeals are, therefore, allowed with costs. The Judgment of the learned single Judge in Second Appeal No. 1048 of 1966 is restored. Appeals allowed.'

The learned Counsel submitted that in view of the above Decision, no other Judge other than the Judge, who decided the Writ Petition can hear and decide the Review Petition.

8. The contention urged by the learned Counsel and his submission that in the above Decision the Supreme Court has laid down that no Judge other than the Judge who made an order can review it is totally misconceived. What the Supreme Court has held in the above Decision is, when the question decided by the Judge who decided the second appeal was as to whether a document was a will or a deed of settlement and on consideration of the recitals in the document, the Judge had come to the conclusion that it was a deed of settlement, the only course open to the party aggrieved by such a finding was, to prefer an Appeal and not a Review Petition. In that case what had happened was another Judge before whom the Review Petition was posted consequent on the retirement of the Judge, who decided the matter originally, proceeded to hear the Review Petition as if he was hearing the original matter and decided the very question in a different manner and held that the document was a will. The Supreme Court held, the Judge who heard the Review Petition exceeded his jurisdiction. There can be no doubt that even if the same Judge who had decided the matter originally had heard the Review Petition and did so, it would also be a clear case of exceeding the jurisdiction and power conferred on the Court under Order 47 Rule 1. The said Judgment is no authority for the proposition that only the Judge who decided the matter, in the first instance, alone can hear a Review Petition presented under Order 47 Rule 1 of the C.P.C. and if for any reason he is unavailable, no Review Petition lies, as sought to be made out by the learned Counsel.

9. I am really amazed by the assertion of the learned Counsel to the effect that the Supreme Court has laid down such a law in the said Decision, though the Judgment is clear and no such view is expressed therein. Order 47 Rule 1 of the

C.P.C. which provides for review of a Judgment reads:-

'1. APPLICATION FOR REVIEW OF

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