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Court : Karnataka

Decided On : Jul-23-2003

Reported in : ILR2003KAR3667

Judge : Chandrashekaraiyah, J.

Acts : Karnataka Urban Development Authority Act, 1987 - Sections 17(1), 19(1) and 27

Appeal No. : W.P. No. 31712/2002

Appellant : Chikkaboraiah

Respondent : State of Karnataka, Rep. by Its Secretary, Department of Urban Development Authority and ors.

Advocate for Def. : H.C. Shivaramu, Adv. for R2 and ;H.B. Narayana, HCGP for R1 and R3

Advocate for Pet/Ap. : T.A. Karumbaiah and ;P.C. Vinitha, Advs.

Disposition : Writ petition allowed

Judgement :

ORDER

Chandrashekaraiyah, J.

1. The petitioner is the owner of the land measuring 6 acres 17 guntas in Sy. No. 109/1A of Bogadi village, Kasaba Hobli, Mysore Taluk. The said land was proposed for acquisition along with other lands for the formation of Bogadi extension by issuing a notification dated 25.06.1987 under Section 17(1) of the Karnataka Urban Development Authority Act, 1987 (hereinafter referred as 'Act'), This was followed by a final notification dated 25.06.1988 issued under Section 19(1) of the Act. Thereafter, an award was passed on 11.01.1989, but possession was not taken immediately after passing of the award. The petitioner has no grievance so far as the acquisition is concerned in view of his own letter written by him to the 2nd respondent-Development Authority. The petitioner is aggrieved of the acquisition proceedings only because there is an unreasonable delay in taking possession for the purpose of implementing the scheme. In the case on hand, the award was passed on 11.01.1989 and the award notice was also issued on 13.09.1991. After the passing of the award and after issuance of notice of award, the possession of the land of the petitioner was taken only on 23.03.2002 i.e., almost after a lapse of more than 13 years from the date of passing of the award. It is also submitted by the learned counsel for the petitioner that though an award was passed, compensation was not paid to the petitioner. On these facts, the petitioner has filed this Writ Petition seeking for a declaration that the acquisition proceedings had lapsed consequent on not implementing the scheme within five years from the date of the final notification.

2. Section 27 of the Karnataka Urban Development Authority Act reads as follows:

'27. Authority to execute the scheme within five years,-

Where within a period of five years from the date of 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 in-operative.'

By reading of the above said Section, it is clear that the scheme that has been framed by the Authority is required to be executed substantially within five years

from the date of the notification issued under Section 19(1) of the Act. As stated earlier a notification under Section 19 was issued on 25.06.1998, If that is so, even though the State Government has acquired large extent of land including the land of the petitioner for the purpose of executing the scheme framed by it, the State Government ought to have taken possession immediately after the issuance of the notification under Section 19(1) of the Act for the purpose of execution of the scheme. In the instant case, for a period of more than 13 years, the Government or the Authority has not taken any steps to take possession of the land in question. From this, it is seen that every land owner reasonably believed that the Authorities are not interested in taking possession of the land for the purpose of executing the scheme. Even otherwise, when the notification issued under Section 19(1) is of the year 1988 at least, the State Government would have taken possession of the land of the petitioner within five years along with the other lands and would have taken steps to execute the scheme. In the instant case, as the State Government had not taken steps to take possession for a period of 14 years from the date of the final notification, I am of the view that so far as the land of the petitioner is concerned, the acquisition proceedings had lapsed.

3. Sri. H.C. Shivaramu, learned Counsel appearing for the petitioner relied upon the decision in the case of KANITHAMMA v. STATE OF KARNATAKA, ILR 1984(2) KAR 1494 and the decision of the division Bench in the case of M.B. RAMCHANDRAN v. STATE OF KARNATAKA, ILR 1992 KAR 174 and submitted that if the Authority has taken steps to execute the scheme, within five years from the date of the final notification, that itself is sufficient to hold that there is substantial execution of the scheme and therefore, there is no lapse of acquisition proceedings. In the above said two decisions, it is held that for the scheme to lapse, there must be proof regarding the failure on the part of the Authority to execute the scheme substantially within five years from the date of the publication of notification under Section 19(1) of the Act in the Official gazette. The Division Bench has also held that the B.D.A. could execute the scheme only after the possession has been obtained and the possession could be obtained only after the award is passed. In the instant case, the award was passed on 11.01.1989 and there is no order preventing the 2nd respondent or the State Government from taking possession of the land from the land owner. The very object of introducing

Section 27 of the Act is to execute the scheme immediately after the publication of final notification. In the instant case, though the award is of the year 1989, possession has not been taken for over a period of more than 13 years. From this, it is seen that there is negligence and dereliction of duty on the part of the Officers of the State Government and the Authority. Further, when they have not taken any steps to take possession within five years from the date of the final notification, it can be reasonably presumed that the Authority does not require the land in question for the purpose of execution of the scheme. Therefore, in my opinion, the above said decisions are of no assistance to the respondents as there is an unreasonable delay on the part of the respondents in taking possession of the land from the land owners.

4. I can also take Judicial notice of the fact that the land value, as on the date of taking possession, has increased so much and it would be much more than the interest which would have been earned if the amount of compensation awarded to the petitioner had been it is deposited in the Nationalized Bank. Therefore, in view of the unreasonable delay on the part of the respondents in taking possession, I hold that in so far as the petitioner's land is concerned, the acquisition proceedings had lapsed.

5. Sri Shivaramu, learned Counsel appearing for the petitioner submitted that the petition is liable to be dismissed on the ground of delay and laches. According to him, the final notification is of the year 1988, the award is of the year 1989 and the award notice was served on the petitioner in the year 1991 whereas this Writ Petition is filed in the year 2002 and therefore, this petition is liable to be dismissed on the ground of delay and laches. The petitioner is not aggrieved of the notifications issued under Section 17(1) and 19(1) of the Act. In fact, the petitioner himself had written a letter to the Authorities to take possession of the land and to pay compensation immediately after the passing of the award. But, in respect of this letter, the 2nd respondent has not taken any steps to take possession of the land for over more than thirteen years from the date of passing of the award. It is only this unreasonable delay on the part of the respondent in taking possession has made the petitioner to come to this Court for a declaration that the acquisition proceedings have lapsed on the ground that there is no execution of the scheme

so far as the land of the petitioner is concerned. Therefore, there is no delay at all in filing this Writ Petition by the petitioner immediately after taking possession of the land by the respondents and therefore, this Writ Petition cannot be thrown out on the ground of delay and laches. In the result, I pass the following order:

Writ Petition is allowed declaring that the acquisition proceedings, initiated pursuant to Annexure 'C' in so far as the land of the petitioner is concerned, had lapsed.

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