

Vishwas U. Lad Vs. the Commissioner, Bangalore Development Authority and ors.

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SooperKanoon Citation : sooperkanoon.com/387191

Court : Karnataka

Decided On : Sep-01-2009

Reported in : 2009(6)KarLJ682

Judge : P.D. Dinakaran, C.J. and ;V.G. Sabhahit, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 48(1); [Constitution of India](#) - Article 226

Appeal No. : Writ Appeal No. 1560 of 2008

Appellant : Vishwas U. Lad

Respondent : The Commissioner, Bangalore Development Authority and ors.

Advocate for Def. : B.V. Vidyulatha and ;C.G. Veena, Adv.

Advocate for Pet/Ap. : V. Lakshminarayana, Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Sabhahit, J.

1. This appeal is filed by the petitioner in W.P. No. 7454 of 2008 being aggrieved by the order dated 25-9-2008 wherein the learned Single Judge has dismissed the writ petition.

2. The appellant herein filed W.P. No. 7454 of 2008 seeking for declaration that the action of the respondents 1 and 2-Bangalore Development Authority (hereinafter called 'the BDA') in issuing notice dated 19-4-2008 as per Annexure-F to the writ petition and all consequential acts/proceedings thereto leading to the demolition of the building on the schedule site on 24-5-2008 as illegal and non est in law and to restore the status quo and to order for an investigation be conducted by the independent agency.

3. It is the contention of the petitioner that he is the owner in possession of the site bearing No. 486 situated in Corporation Ward No. 72 (previously having HASB Katha No. 408) located in Sy. No. 8/2, 7th Main, situated at Motappana Palya, K.R. Puram Hobli, Bangalore East Taluk, Bangalore. The said property was purchased by the petitioner under the registered sale deed. The property originally belonged to one Muniraju alias Doddamuniyappa who registered the partition deed. He died intestate on 13-6-1976 leaving behind his wife-Akkayamma and two daughters-Smt. M. Gowramma and Smt. M. Jyothi and two sons-Sri M. Govindaraju and Sri M. Babu and after the death of Muniraju, the wife and children succeeded to the property of Muniraju alias Doddamuniyappa have executed a power of attorney in favour of Ramathilaka to deal with the schedule property. The said Ramathilaka sold the schedule property to one Michael S. Lobo under a registered sale deed dated 11-10-1996. Katha was transferred to his name in the books of the Corporation and he was paying the taxes. Lobo sold the property in favour of M/s. Lakshmi Enterprises, the vendor of the petitioner under registered sale deed dated 15-12-2000, katha was transferred to the name of the petitioner's vendor. The petitioner purchased the schedule property from M/s. Lakshmi Enterprises on 16-9-2004 as per Annexure-A to the writ petition. It is the further case of the petitioner that the said Lobo appeared to have filed some objections before the BDA in respect of site bearing No. 3798 as per Annexure-K to the writ petition and BDA gave an endorsement stating that under the impression that site No. 3798 is formed in Sy. No. 7/1 they had auctioned the property, now they came

to know it is not so and therefore, they have recalled the said sate and on a similar information given by the BDA, the Corporation made the katha in the name of Lobo. The petitioner after purchase of the property got the katha transferred, obtained a sanctioned plan from the Corporation and also put up a construction and the BDA initiated action, demolished the existing construction and thus evicted the petitioner from the property. Being aggrieved by the same, writ petition is filed seeking for the above referred reliefs.

4. The writ petition was resisted by the respondent-BDA contending that site bearing No. 3798 formed out of a hall area in Sy. No. 5 of Dookanahalli Village situated in between Sy. No. 5 of Dookanahalli Village and Sy. No. 8/2 of Thippasandra Village notified for acquisition along with certain other lands for a public purpose, for the formation of a layout called HAL II Stage. Preliminary notification dated 28-11-1959 was gazetted on 11-2-1960 and final notification dated 26-9-1960 was gazetted on 13-10-1960. Award was passed on 13-2-1965 and possession was taken on 15-4-1969. The compensation was enhanced by the Court and enhanced compensation is also paid to the owner. Insofar as land in Sy. No. 8/2 is concerned, as the area was built up no award was passed. The Government has not issued any notification either deleting Sy. No. 8/2 or denotifying the same from acquisition under Section 48(1) of the [Land Acquisition Act, 1894](#). It was further contended that Smt. Akkayamma filed O.S. No. 1102 of 1992 against the BDA and the third respondent for a decree of permanent injunction on 17-2-1992. The said suit was contested and dismissed on 24-3-2004 holding that Smt. Akkayamma failed to prove her alleged possession of the property in question and Smt. Akkayamma has also filed one more suit O.S. No. 5030 of 1990 against Vyaykumar, the allottee of the said site No. 3797, BDA and others claiming title to site No. 3797 and contending that the said site is a part of Sy. No. 8/2 of Thippasandra Village. The temporary injunction sought for was rejected by order dated 6-12-1990 against which she filed M.F.A. No. 2385 of 1995 before this Court which was also dismissed. Subsequently, the suit itself was dismissed on 16-11-2006. It is further averred that Akkayamma filed one more suit in respect of site No. 3790 against the allottee Vijayakumar which came to be dismissed after contest. In the said judgment based on the Commissioner's report the Court recorded a finding that sites 3790 to 3798 are formed in Sy. No. 5 and

none of those sites are part of Sy. No. 8/2 and the said judgment has become final and therefore, BDA contended that none of the predecessor in title of the petitioner had any title to the property nor possession over the same and the title of the petitioner is traced to Sy. No. 8/2. Sy. No. 8/2 was the subject-matter of acquisition as far back as on 26-9-1960 when final notification was issued and sale deed executed in favour of the petitioner is after 44 years from the date of preliminary notification and in view of the finding in the said suit, petitioner has not safeguarded any title to the property. It is further averred that Site No. 3798 was sold in public auction since it was a corner residential site by notification dated 2-9-1987, auction was held on 13-9-1987, third respondent was the highest bidder in the said auction. Registered auction sale agreement was executed in his favour on 20-9-1990. Possession was given on 24-10-1990 putting the third respondent in possession of the property. Therefore, petitioner has no manner of right, title or interest over the land in question and writ petition is liable to be dismissed.

5. The third respondent in the writ petition also contested the writ petition by filing statement of objections reiterating the averments made in the statement of objections filed by the BDA regarding auction of Site No. 3798 in his favour of public auction. The learned Single Judge after hearing the learned Counsel for the parties by order dated 25-9-2008 held that in view of the above said material on record there is disputed question of fact which has arisen for determination in the writ petition cannot be decided under Article 226 of the [Constitution of India](#) and it has to be decided by Competent Civil Court and this is not a case for exercise of the extraordinary and discretionary jurisdiction of this Court under Article 226 of the [Constitution of India](#) and if still petitioner feels that he has a right to be protected, it is open to him to approach a Civil Court to adjudicate his rights which is the proper forum and workout his remedy, in accordance with law and accordingly, dismissed the writ petition.

6. Being aggrieved by the dismissal of the writ petition by order dated 25-9-2008, writ petitioner has preferred this appeal.

7. We have heard the learned Counsel appearing for the appellant, learned Counsel appearing for respondent 3 and the learned Counsel appearing for the

respondents 1 and 2.

8. Learned Counsel appearing for the appellant reiterated the grounds urged before the learned Single Judge and submitted that the petitioner was in settled possession of the property and the construction put up by him could not be demolished by the BDA and therefore, the learned Single Judge ought to have allowed the writ petition and was not justified in dismissing the writ petition with liberty to the petitioner to approach the Civil Court for working out remedy in accordance with law.

9. Learned Counsel appearing for respondent 3 and the learned Counsel appearing for respondents 1 and 2 reiterated the grounds urged in the objections statement and argued in support of the order passed by the learned Single Judge.

10. We have considered the contentions of the learned Counsel appealing for the parties and scrutinised the material on record.

11. The material on record would clearly show that the petitioner who has purchased the property under a registered sale deed dated 16-9-2004 from M/s. Lakshmi Enterprises. Sri Muniraju alias Doddamuniraju even as per the averments made in the writ petition was the owner of the said property, said Muniraju died on 13-6-1976 and thereafter his wife-Akkayamma and children executed power of attorney in favour of one Ramathilaka who executed sale deed in favour of Michael S. Lobo under registered sale deed dated 11-10-1996. The sale Lobo sold the property to M/s. Lakshmi Enterprises who in turn sold the property in favour of the petitioner on 16-9-2004 as per Annexure-A to the writ petition. The question as to whether the site bearing No. 3798 is formed in Sy. No. 7/1 or 8/2 of Thippasandra Village or as to whether the said site is formed out of Sy. No. 5 and effect of finding given in the suit filed by Akkayamma against the owner of the Site No. 3197 that the said sites 3790 to 3798 are formed in Sy. No. 5 and not in Sy. No. 8/2 and also the question as to whether the predecessor in title of the petitioner had valid title to the schedule property in view of the contention of the BDA that the said site 3798 has been auctioned in favour of the third respondent since it was a corner site and possession of the property has been handed over to the third respondent are all disputed questions of fact which may be decided only

after enquiry by recording the evidence of the parties and this Court in exercise of the writ jurisdiction under Article 226 of the [Constitution of India](#) cannot go into the said disputed questions of fact and the matter has to be resolved by Competent Civil Court after recording evidence of the parties and has to resolve the disputed question of fact and having regard to the above said facts, learned Single Judge has rightly held that the disputed questions of fact about the title of the predecessor in title of the petitioner and also consequential title of the petitioner and the title of the third respondent in respect of the schedule property has to be gone into a full dressed trial before the Civil Court and does not call for interference in exercise of writ jurisdiction of this Court under Article 226 of the [Constitution of India](#).

12. Having regard to the above said material on record, it is clear that the impugned finding of the learned Single Judge is justified and does not suffer from any error or illegality as to call for interference in this intra-Court appeal. Accordingly, we hold that there is no merit in this appeal and pass the following order:

The writ appeal is dismissed.