

The Commissioner, Mysore and anr. Vs. R. Vasudeea Murthy and ors.

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Court : Karnataka

Decided On : Jun-07-2011

Judge : J.S. Khehar; H.G. Ramesh, Jj.

Acts : [Land Acquisition Act 1894](#), - Section 48 (1)

Appeal No. : WA No.209 of 2011 (LA-RES)

Appellant : The Commissioner, Mysore and anr.

Respondent : R. Vasudeea Murthy and ors.

Advocate for Pet/Ap. : Shri. P.S. Manjunath. Adv

Judgement :

1. A preliminary notification was issued on 19.12.1991 seeking to acquire the land in Sy. No. 146/6 of Dattagalli village, Mysore. Thereafter, a final notification to acquire 02 acres 12 guntas of land in the said village was issued on 10.12.1992. The aforesaid land was acquired by the Mysore Urban Development Authority (hereinafter referred to as 'the MUDA') which took possession of the acquired land on 26.08.1997. Immediately thereafter, the MUDA carved cut sites on the acquired land and allotted the same to the general public.

2. By an order of the government dated (8.08.1999), 01 acre 35 guntas of land, out of acquired land of 02 acres 12 guntas was ordered to be denotified by the State Government, in exercise of its power under Section-48 (I) of the [Land Acquisition](#)

[Act 1894](#), in other words, 01 acre 35 guntas of land was released from acquisition. The de-notification order dated 18.08.1999 was gazetted on 13.09.1999. When the position stood thus, respondent no.1 purchased the denotified land on 30.08.1999. The controversy raised in the instant writ appeal pertains to the rights and title acquired by respondent no.1. consequent upon his purchase of 01 acre 35 guntas of land, from the original land owner on 30.08.1999.

3. Despite the fact that the government, vide its order dated 18.08.1999. had denotified 01 acre 35 guntas of land, out of 02 acres 12 guntas of land originally acquired, the MUDA addressed a series of communications to the State Government, informing the State government, that the aforesaid denotification order dated 18.08.1999 was passed while transgressing of the authority vested in the State government under section-48 (1) of the Land Acquisition -Act 1894. In this behalf, the State government was informed by the MUDA. that possession of the acquired land having been taken on 26.08.1997, whereupon, sites having been carved out and allotted to the general public, it was no longer open to (the State government to release the said land from acquisition proceedings, in exercise of the power vested in it under section-48 (1) of the Land Acquisition Act 1894 on 18.08.1999. In so far as the letters addressed by the MUDA to the State government are concerned, our attention was also drawn to communications dated 16.11.1999 and 04.05.2000. In response to the aforesaid communications addressed by the MUDA, the State government, through a letter dated 07.08.2000. the State government required the MUDA to acquire equal, suitable, alternative land (as against the released land measuring 01 acre 35 guntas), and handover the same to the land owners. Despite the aforesaid letter dated 07.08.2000, learned counsel contends that the MUDA stuck to its guns, and again informed the State government through a communication dated 19.09.2000, that the government could not have passed the denotification order dated 18.08.1999. The response of the MUDA was rebutted by the State government through two letters dated 21.10.2000 and 25.08.2001, wherein the State government required the MUDA to obey the directions issued to it by the State government on 07.08.2000. Yet again, the MUDA. through a communication dated 11.09.2001, required the State government to revoke the government order dated 18.08.1999, in addition thereto,, it was stated, that only if the aforesaid order was annulled by

the State government, the MUDA would be in a position to comply with the government order by providing equal, suitable, alternative land to the land owner. Yet again, the State government reiterated its position depicted in its letter dated 07.08.2000. by responding to the communication of the MUDA (dated 11.09.2001) by requiring the MUDA to obey the earlier order of the government. At this juncture, the State government reiterated the aforesaid directions through its letter dated 16.10.2001.

4 Independently of the ongoing communications exchanged between the State government and the MUDA, writ petition no. 19988/2001 was filed by an individual who had been allotted a site by the MUDA over the acquired land In writ petition no. 19988/2001. the petitioner had impugned the denotification order dated 18.08.1999 issued by the government. The aforesaid challenge raised by the petitioner in writ petition no. 19988/2001 was accepted on 15.06.2004 by this court, restiHandy, the de-notification order dated 18.08.1999 issued by the State government under section-48 (1) of the Land Acquisition Act 1894 came to be set aside by this Court. This Court passed the aforesaid order on the premise that the State government had no power and authority to release the acquired land, possession whereof had already been taken (consequent upon the initiation of acquisition proceedings).

5. It is not a matter of dispute, that In compliance with the direction issued by the State government, the MUDA., handed over an alternative plot measuring 01 acre 35 guntas of land to the first respondent. At this juncture, it would be relevant to indicate that respondent no.1 had not received any compensation at the hands of the MUDA. Consequent upon the acquisition of 02 acres 12 guntas of land, out of which, respondent no.1 became the owner of 01 acre 35 guntas as far back as on 30.08.1999. Since the said land was granted to respondent no. 1. consequent upon the order of denotification dated 18 08.1999, and since this Court, while allowing writ petition no. 19988/2001, had set aside the order of de notification dated 18.08.1999. the MUDA issued a show cause notice to the petitioner/respondent no.1, informing him that he should re-deliver the land allotted to him, in lieu of the land which was acquired by the MUDA. Respondent no.1, responded to the show cause notice dated 04,08.2004 with his reply dated 09.09.2004, Finding no merit in

the reply filed by the respondent no.1, the MUDA, vide its order dated 25.09.2004 resumed the land allotted to the respondent no.1, in lieu of the acquired land.

6. The resumption order dated 25.09.2004 passed by the MUDA came to be assailed at the hands of respondent no. 1. through Writ Petition no.43448/2004. A learned Single Judge of this Court allowed the aforesaid writ petition on 02.09.2010. The learned Single Judge, while allowing the aforesaid writ petition, arrived at the conclusion, that the alternative allotment of land measuring of acres 35 guntas in Survey no.80/1 would vest in the respondent no.1. and that respondent no.1 was already in possession of the same.

7. The solitary issue canvassed at the hands of Seamed counsel for the appellant before us, is based on the fact that the land in question was transferred to the respondent no.1. on account of denotification order dated passed by the State government dated 18.08.1999. de-notifying the land earlier acquired by the MUDA, and since the government order dated 18.08.1999 had been set aside, the respondent no.1 was not entitled to have the benefit of alternative land. It is sought to be repeatedly reiterated, that the MUDA continued to protest against the denotification order dated 18.08.1999, by addressing one communication after another to the State government, informing it, that the order dated 18.08.1999 passed by the State government for release of 01 acres .35 guntas of acquired land was not in consonance with the provisions contained under Section 48 (1) of the Land Acquisition Act 1894. The submission of learned counsel for the appellant is to the effect, that at the most, respondent no.1 would be entitled to compensation of land measuring 01 acres 35 guntas, of which he acquired ownership on 30.08.1999.

8. We have given our thoughtful consideration to the submissions advanced by learned counsel for the appellant. In our view, it does not lie in the mouth of the appellant to raise any of the instant issues. If the appellant being very much aware of the fact, that the de notification order dated 18.08.1999 was not in consonance with the provisions of Section-48 (1) of the Land Acquisition Act 1894. it would not have merely addressed communications to the State government, but would have initiated the judicial process to ensure that the statutory provisions were complied

with. The communication dated 1.09.2001 addressed by MUDA to the State government., denudes/precludes it to claim any right as against respondent no.I, inasmuch as, through the aforesaid communications, the MUDA informed the State government to annul the de-notification order dated 18.08.1999 and thereupon, it would obey the government's direction and provide equal, suitable, alternative land to respondent no.1. In other words, the appellant was agreeable to provide equal, suitable, alternative land to the respondent no.], subject to revocation of de notified order dated 18.08.1999. After this Court, by its order dated 15.06.2004 (passed in writ petition no. 19988/2001) quashed the de-notification order of the State government dated 18.08.1999, in terms of the letter of MUDA dated 11.09.2001. the MUDA had no business to question the commitment made by it, namely, to obey the order of the State government after the annulment of the de-notification order dated 18.08.1999, that too after the de-notification order of the government dated 18.08.1999 had been quashed by this court on 15.06.2004. Thus, the onus lies on the shoulders of the appellant to transfer equal, suitable, alternative land, in terms of the direction of the State government to the respondent no.I. Now that equal, suitable, alternative land has been transferred in the name of respondent no.I. the question is whether the MUDA., can retrieve the same. It may have been justifiable to seek return of the land allotted to the respondent no.I. only if it had paid compensation to respondent no.I. in lieu of 01 acre 35 guntas of land, which it had acquired During the course of hearing, lean-cu counsel for the appellant acknowledges, that over 01 acre 35 guntas of land owned by respondent no.1. MUDA had eahced out sites and allotted them to the general public. It is, therefore, not a matter of dispute, that the appellant has already put to use 01 acre 35 guntas of land owned by respondent no.I. despite non-payment of compensation to respondent no.I. in lieu thereof. What has been given by the MUDA to respondent no. 1 is only equal, suitable, alternative land, that, in our view, would constitute adequate compensation payable to respondent no. 1 for acquiring 1 acre 35 guntas of his land.

Having arrived at the aforesaid conclusion, we are satisfied, that learned Single Judge was fully justified in accepting the prayer made by respondent no. i, so as to set aside the order dated 25.09.2004 passed by the appellant.

For the reasons recorded hereinabove, we find no merit in the instant writ petition which is accordingly dismissed.

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