Chikkasiddappa and anr. Vs. the State of Karnataka and ors.

Chikkasiddappa and anr. Vs. the State of Karnataka and ors.

SooperKanoon Citation : sooperkanoon.com/928745

Court : Karnataka

Decided On : Jul-02-2012

Judge : S. Abdul Nazeer, J.

Acts : Constitution Of India - Articles 226, 227; Bangalore Development Authority Act, 1976 - Section 38-C; Bangalore Improvement Act, 1945; urban Land (Ceiling and Regulation) Act, 1976 - Section 4; Land Acquisition Act - Section 16

Appeal No. : Writ Petition Nos.24245-246 of 2011

Appellant : Chikkasiddappa and anr.

Respondent : The State of Karnataka and ors.

Advocate for Def. : K.S. Mallikarjunaiah; Bipin Hegde; A.V. Nishanth, Advs.

Advocate for Pet/Ap. : M.S. Varadarajan, Adv.

Judgement :

(Prayer: These writ petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the impugned endorsements as per Annexures A and B and etc.)

1. In these cases, the petitioners have challenged the validity of the endorsements at Annexures A and B dated 8.2.2011 and 11.5.2011 respectively, whereby their applications for reconveyance of site No.244-A, West of Chord Road, First Stage,

First Block, Industrial Town, Rajajinagar Extension, Bangalore, has been rejected.

2. The petitioners contend that they had purchased the aforesaid site under a registered sale deed dated 1.7.1974 from one Smt.Girija Devi. The said site was formed in Sy.No.115/3, Saneguruvanahalli, Yeshwanthapura, Bangalore North Taluk. The entire Sy.No.115/3 was included in the reconveyance scheme formulated by the erstwhile CITB as per its resolutions dated 26.12.1974 and 25.3.1975. Therefore, the petitioners made applications requesting the 2nd respondent to reconvey the site in question in their favour. Since the said applications were not considered, they filed a suit O.S.No.744/1992 on the file of the XXVII Additional City Civil Judge, Bangalore City, for a direction to the respondents to reconvey the site. The suit was decreed and the 2nd respondent was directed to consider the applications of the petitioners for reconveyance in accordance with law. In response to the said direction, the 2nd respondent called for a report from the Surveyor, who had reported that site No.86-F, Industrial Town, Rajajinagar, has been allotted to one Sri. Venkatagiri Gowda on 13.8.1974. A sale deed dated 7.8.1992 in respect of the said site was also executed by the BDA in his favour. Site No.86-F, allotted to Venkatagiri Gowda, corresponds to or includes the site in question. After the death of Venkatagiri Gowda, his son Venkataramaiah had succeeded to the said property. The 3rd respondent has become the owner of the said site after the death of his father Venkataramaiah. It is contended that the father of the 3rd respondent was the Personal Secretary to the then Chairman of the BDA and that at his behest, the Surveyor had furnished a false report.

3. Sri. M.S. Varadarajan, learned Counsel for the petitioners, submits that the petitioners had purchased site No.244-A under a deed of sale dated 1.7.1974 from Smt. Girija Devi. The said site was formed in Sy.No.115/3, Saneguruvanahalli, Yeshwanthapura, Bangalore North Taluk. The said survey number was included in the reconveyance scheme formulated by the erstwhile CITB. Therefore, the BDA ought to have reconveyed the site in favour of the petitioners under Section 38-C of the Bangalore Development Authority Act, 1976 (for short the BDA Act). Alternatively, it is contended that though the land was acquired before the purchase of the site by the petitioners, they are entitled for reconveyance on the

principle of feeding the grant by estoppel embodied in Section 43 of the Transfer of Property Act, 1882. It is further contended that site No.86-F was allotted in favour of the grand father of the 3rd respondent. The petitioners are seeking reconveyance of a different site bearing No.244-A. The report submitted by the Surveyor that the site No.244-A corresponds to site No.86-F is false and on that basis, the 2nd respondent should not have rejected the applications of the petitioners.

4. Sri. Bipin Hegde, learned counsel for the 2nd respondent, submits that Survey No.115/3 of Saneguruvanahalli, Yeshwanthpur, Bangalore North Taluk, was acquired by the State Government for the benefit of the then CITB. Final notification was issued on 9.3.1971 and possession was taken thereafter. After vesting of the land with the CITB, the petitioners have purchased site No.244-A from Smt. Girija Devi under a deed of sale dated 1.7.1974. Smt. Girija Devi had no saleable interest in the site. After the formation of the layout, the site was renumbered as No.86-F, which was allotted in favour of Sri. Venkatagiri Gowda, the grand father of the 3rd respondent, on 7.8.1992. Therefore, the petitioners have no legal right to claim the reconveyance under Section 38-C of the BDA Act.

5. Sri. Nishanth, learned counsel appearing for the 3rd respondent submits that site No.86-F was allotted in favour of Sri. Venkatagiri Gowda, the grand father of the 3rd respondent on 13.8.1974. Thereafter, the BDA had executed the sale deed in respect of the said site in favour of his grand father on 7.8.1992. After the death of his grand father, his father Venkataranmaiah became the owner and after the death of his father, he has been in possession and enjoyment of the site as the owner thereof.

6. Having regard to the contentions urged, the first question for consideration is whether the petitioners are entitled for reconveyance of the site in question?

7. Section 38-C of the BDA Act, 1976, provides for power of authority to make allotment in certain cases. It states as under:

(1) Notwithstanding anything contained in this Act or in any other law or any development scheme sanctioned under this Act, or City of Bangalore Improvement

Act, 1945 where the Authority or the erstwhile Board of Trustees for the improvement of the City of Bangalore has already passed a resolution to reocnvey in favour of any person any site formed in the land which belong to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of the development scheme, the Authority may allot such site by way of sale or lease in favour of such person subject to the following conditions:

(a) the allottee shall be liable to pay any charges as the Authority may levy from time to time; and

(b) the total extent of the site allotted under this section together with the land already held by the allottee shall not exceed the ceiling limit specified under Section 4 of the urban Land (Ceiling and Regulation) Act, 1976.

(Emphasis supplied by me)

8. It is clear that for an allotment/lease of the site under this Section, the erstwhile CITB should have passed a resolution to reconvey in favour of any person any site formed in the land which belong to them or vested in or acquired by them for the purpose of any development of scheme on the ground that it is not practicable to include such site for the purpose of development of the scheme. In order to understand the meaning of the expression re-convey employed in the Section, we have to first understand the meaning of the word convey. The word convey has several meanings with reference to the context in which it is used. The vesting of the land in the Government takes place after making of the award followed by actual taking possession under Section 16 is that the Land Acquisition Act. The effect of Section 16 is that the land vests in the Government free from all encumbrances when the competent authority takes possession. On such vesting, all encumbrances come to an end. In this context, he meaning of the word convey has to be understood as the transfer of property from the owner to the Government and thereafter to the CITB. To re-convey is to convey back. For reconveyance, the applicant should have a pre-existing right in the site to be re-conveyed.

9. In GURUKRUPA COOPERATIVE HOUSING SOCIETY LIMITED VS. BANGALORE DEVELOPMENT AUTHORITY (ILR 2005 KAR 2808), this Court was considering the charges payable by the allottee of the site to the BDA under the reconveyance scheme. It has been held that reconveyance presupposes that the person was the owner of the land that was acquired. In reconveyance, the allottee has a pre existing right. Therefore, in case of reconveyance when the site or land is reconveyed to the original owner, all that the BDA is entitled to is the development charges and the charges for the amenities which are given to such land. It cannot be the prevailing rate as in the case of an allotment of site. Therefore, any charges mentioned in Section 38-C(1)(a) cannot be the allotment rate of a site to an allottee for the first time. It is to be necessarily less than that and the cost of the land is to be excluded.

10. In BANGALORE DEVELOPMENT AUTHORITY AND OTHERS VS. R. HANUMAIAH AND OTHERS 2005 AIR SCW 4881, the Apex Court was considering allotment of a site under Sec.38-C. It has been held as under:

Section 38-C only authorises the BDA to allot a site in a development scheme to a person whose land had been acquired. It does not give any power to the BDA to re-convey the land or a part of the land by withdrawing the acquisition itself.

(emphasis supplied by me)

11. Admittedly, the site in question was sold by Smt. Girijia Devi in favour of the petitioners after its vesting with the State Government and thereafter with the CITB. When the sale deed dated 1.7.1974 was executed by Smt. Girijia Devi, she had no saleable interest in the said property. Hence, the petitioners do not get any right, title or interest, whatsoever through the sale deed. The petitioners had no pre existing right in the property. The CITB has not passed any resolution to reconvey the site in favour of the petitioners. Had they purchased the property before issuance of the preliminary notification, an application for allotment of the site on the basis of a resolution to reconvey the site would have been maintainable. I am of the view that they are not entitled for reconveyance/allotment of the site in question.

12. That brings me to the next question as to whether the petitioners are entitled for reconveyance of the site on the principle of feeding the grant by estoppel embodied in Section 43 of the TP Act? Section 43 of the said Act states as under:

43. Transfer by unauthorised person who subsequently acquires interest in property transferred:- Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

13. This section embodies the rule of estoppel by deed. In cases falling under this Section, the estoppel rests on the representation made by the transferor that he is authorised to transfer, which representation turns to be erroneous. But when the truth of the matter is known to both, there can be no estoppel. Thus, for applying the principles of feeding back, it is necessary that there must be fraudulent or erroneous representation by the transferor in relation to his title and the transferee must have agreed on it and subsequently, a title is acquired by such transferor. In that case, transferor cannot be held to allege anything contrary as against any person who acts on that representation. Before this principle is applied, it has to be found out whether, in fact, transferee has been misled and whether there was any erroneous fraudulent representation and the transferee has acted on it.

14. In JUMMA MASJID, MERCARA VS. KODIMANIANDRA DEVIAH AND OTEHRS (AIR 1962 SC 847), the Apex Court has held that Section 43 embodies a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation. It is immaterial whether the transferor acts bonafide or fraudulently in making the representation. It is only material to find out whether in fact the transferee has been misled. For the purpose of the section, it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make a representation and the transferee has acted on it.

Where the transferee knows as a fact that the transferor does not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application.

15. In RAM BHAWAN SINGH AND OTHERS VS. JAGDISH AND OTHERS [(1990) 4 SCC 309], the Apex Court has held that when a lessor erroneously represents that he is authorised to lease a property and creates a lease of it and afterwards acquires that property, the lessee is entitled to have the property from the lessor. This principle has no application if the transfer is invalid.

16. In the instant case, it is not the case of the petitioners that because of the fraudulent or erroneous representation made by Smt. Girijia Devi, they have purchased the property. They are not even entitled to seek restoration of interest in the property because their transferor had not acquired any interest in the property under the reconveyance scheme. Therefore, it is futile to contend that the petitioners are entitled for reconveyance/allotment of the site under the principle of feeding the grant by estoppel.

17. The contention of the petitioners that the site allotted in favour of the grand father of the 3rd respondent is different from the one claimed by them under the reconveyance scheme, needs to be rejected at the threshold. When the petitioners do not have any right to seek allotment under Section 38-C, it is unnecessary to decide as to whether the site allotted to the grand father of the 3rd respondent is different from the site claimed by them. There is no merit in these writ petitions. They are accordingly dismissed. No costs.