

A. Gopal Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Apr-12-2012

Judge : Mohan ShantanaGoudar, J.

Acts : Bangalore Development Authority Act BDA 1976 - Sections 17, 19, 16(2)

Appeal No. : Writ Petition No.31746 of 2011 (BDA)

Appellant : A. Gopal

Respondent : State of Karnataka and Another

Advocate for Def. : K.S. Mallikarjunaiah; Shankaranarayana Rao, Adv.

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

Judgement :

1. Petitioner has sought for declaration that the entire proceedings initiated by the second respondent under Sections 17 and 19 of the Bangalore Development Authority Act, 1976 are null and void in respect of the petitioner's land bearing Sy.No.55/6 of Hennur village, Kasaba Hobli, Bangalore measuring 120 feet x 480 feet. He has also sought for direction to the respondents to consider the case of the petitioner for denotification of the land bearing Sy.No.55/6 of Hennur village, Kasaba Hobli, Bangalore.

2. The records reveal that Sy.No.55/6 of Hennur village measures about 2 acres 18 guntas. According to the petitioner, he is the owner of the said property. The entire Sy.No.55/6 along with various other properties same to be acquired by the respondents for formation of H.B.R. Layout by issuing preliminary notification dated 27-6-1978 and the final notification dated 8-1-1985. After about 10 to 12 years, it seems Karnataka Dalith Action Committee gave a representation for denotifying the aforementioned property measuring 2 acres 18 guntas. The BDA passed a resolution as per Annexure-D on 26-4-1997 deciding to drop the acquisition proceedings insofar as it relates to the area occupied by the temple and two residential sites abutting the temple. However, the State Government has not taken any decision in the matter thereafter, which clearly goes to show that the resolution of BDA is not approved by the State Government till this date. Subsequently also it seems the representations are made by the office-bearers of the Karnataka Dalith Action Committee. Since no action is taken based on such representation, this writ petition is filed.

3. According to the petitioner, a temple is situated over the property in question and that he is residing in the house situated adjoining the temple. During the course of arguments, Sri Bhagwath, learned Advocate appearing on behalf of the petitioner submits that the petitioner would be satisfied if the area comprised of the temple and the house of the petitioner are denotified.

4. Since the petitioner has approached this Court after about more than 23 years and as the possession is said to have been taken in respect of the property in question, there cannot be any specific order relating to denotification. It is well-settled that if the possession of the acquired land is taken, there is no question of denotifying the same.

Be that as it may, the question as to whether the temple exists in the land in question or not is a pure question of fact which should be looked into by the respondents.

5. Sri Bhagwath, learned Advocate for the petitioner further submits that the preliminary as well as final notifications were issued in the name of Muneshwaraswamy temple and not in the name of the petitioner's father

Appayanna. This question cannot be gone into at this stage in this writ petition after long lapse of about 23 years from the date of the proceedings.

6. The submission made on behalf of the petitioner that the scheme was not substantially implemented also cannot be accepted inasmuch as HBR layout has already been formed and the sites are allotted. Since the scheme is substantially implemented, the acquisition proceedings cannot be declared as null and void.

However, the assertion of the petitioner that the temple exists in the property in question needs to be considered by the respondents based on the fact situation. If the Muneshwaraswamy temple exists on the land in question, the prayer of the petitioner with regard to saving of the temple needs to be considered by the respondents. However, the prayer of the petitioner in respect of denotification of Sy.No.55/6 cannot be acceded to inasmuch as the scheme is substantially implemented and possession of the land is taken and notification under Section 16(2) is also issued. Moreover the petitioner cannot pray for unsettling the settled matter.

In view of the above, the following order is made:

Petition stands dismissed with a direction to the respondents to consider the prayer of the petitioner to save only the Muneshwaraswamy Temple, if he same situated in Sy.No.55/6 of Hennur Village, Kasaba Hobli, Bangalore as per law.

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