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Court : Karnataka

Decided On : Jan-12-2011

Judge : The Honorable Mr. Justice V.G. Sabhahit & the Honorable Mr. Justice B. Manohar

Appeal No. : WA.NO. 5961 of 2003 (LA-UDA)

Appellant : The Mysore Urban Development Authority and Another

Respondent : Chikkaboraiah and Others

Advocate for Pet/Ap. : For the Appellants: P.S. Manjunath, Advocate. For the Respondent: R1 - T.A. Karumbaiah, Advocate, R2 - K. Krishna, AGA.

Judgement :

1. This Appeal is filed by the second and third respondents in W.P.No. 31712/2002 being aggrieved by the order passed by the learned single Judge dated 23-7-2003 wherein the learned Single Judge of this Court has allowed the writ petition declaring that acquisition proceedings initiated pursuant to Annexure - C insofar as the land of the petitioner is concerned, had lapsed.

2. The writ petition was filed by the first respondent herein who died on 11-2-2008 during the pendency of this appeal and his L.Rs. have been brought on record, contending that the preliminary notification dated 25-6-1987 was issued proposing

to acquire the land belonging to the petitioner comprised in Sy.No, 109/1A measuring 6 acres 17 guntas of Bogadi Village, Kasaba Hobli, Mysore Taluk. Thereafter, final notification was issued on 25-6-1988 and award has also been passed on 11-1-1989. However, possession, of the land of the petitioner has not been taken and therefore, the scheme has not been implemented insofar as the petitioner is concerned and therefore, it has lapsed under the provisions of Section 27 of the Karnataka Urban Development Authority Act, 1987 (Hereinafter referred to as the 'Act').

3. The petition was resisted by the respondents contending that there is substantial compliance of the scheme for formation of residential sites and allotment of sites and merely because possession of the property of the writ petitioner has not been taken, the acquisition would not lapse insofar as it relates to the land of the writ petitioner and therefore the writ petition has to be dismissed.

4. The learned Single Judge after considering the contentions of learned counsel for the parties, passed the following order:

“Writ petition is allowed declaring that the acquisition proceedings initiated pursuant to Annexure-C insofar as the land of the petitioner is concerned, had lapsed.

Being aggrieved, second and third respondents have filed this appeal.

5. We have heard the learned counsel appearing for the appellants and learned counsel appearing for the respondents.

6. The learned counsel appearing for the appellants reiterated the arguments made before the learned Single Judge and submitted that there is substantial compliance with the scheme and he has filed the particulars along with an affidavit of the commissioner as per the direction issued by this Court on 20-10-2010 and he has also made available the allotment register for perusal of this Court. Therefore, he submits that scheme is not lapsed under Section 27 of the Act and further submitted that possession of the land of the writ petitioner has also been taken and having regard to the provisions of Section 27 of the Act, the order

passed by the learned Single Judge is erroneous and arbitrary and the said order is liable to be set aside.

7. The learned counsel for the respondents argued in support of the order passed by the learned Single Judge. He submitted that possession of the property belonging to the petitioner measuring 6 acres 7 guntas has not been taken and the scheme has not been implemented within five years from the date of final notification and therefore, declaration given by the learned Single Judge is justified.

8. We have given our careful consideration to the contentions of learned counsel appearing for the parties and scrutinized the material on record.

9. The material on record would clearly show that final notification was passed on 25-6-1988. Section 27 of the 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.”

It is clear on perusal of the above said provisions of Section 27 of the Act that entire scheme will lapse if there is no substantial compliance in executing the scheme and the order passed by the learned Single to the effect that scheme has lapsed only insofar as it relates to the land of the petitioner is clearly contrary to the provisions of Section 27 of the Act. It is well settled that in view of the decision of this Court in W.A. Nos. 2106/2007 C/w 1944/2007. Decided on 28-1-2008 (K Sathyanarayana, Since Dead by his LRs vs State of Karantaka and Others), merely because there is dispute about taking possession and implementing the scheme insofar as the land of the writ petitioner is concerned, scheme will not lapse as the scheme would lapse when there is no substantial implementation of the scheme. Having regard to the particulars filed along with the affidavit of the Commissioner of the appellant-authority and having regard to the allotment register which is produced, we are satisfied that there is substantial compliance

with the scheme as the layout has been formed, allotment of civic amenity sites have been made and sites of various dimensions have been formed in an area of 240 acres out of 260 acres. Therefore, the order passed by the learned Single Judge cannot be sustained and liable to be set aside. Accordingly, we pass the following:

ORDER

The writ appeal is allowed. The order passed by the learned Single Judge in W.P.No. 31712/2002 dated 23-7-2003 is set aside and W.P. No.31712/2002 is dismissed.

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