M. Seebaiah and Others Vs. the State of Karnataka Represented by Its Principal Secretary and Others

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Court : Karnataka

Decided On : Mar-29-2012

Judge : The Honourable Chief Justice Mr. Vikramjit Sen &Amp; the Honourable Mrs. Justice B V Nagarathna

Appeal No. : Writ Petition No. 37111 of 2010 (LA-BDA) & Order On IA- 1 of 2011 in Writ Petition No. 36340 of 2009 (GM-BDA)

Appellant : M. Seebaiah and Others

Respondent : The State of Karnataka Represented by Its Principal Secretary and Others

Advocate for Pet/Ap. : For the Petitioners: N. Devadas, Senior Counsel for R. S. Hegde, H. Subramanya S. Jois, Senior Counsel, K. C. Shanta Kumar, Advocates. For the Respondents: R1 - R. Devdas, AGA, R2 – B. V. Shanakaranayana Rao, R3 - Subramanya S. Jois, Senior Counsel,

Judgement :

1. Succinctly stated, the Bangalore District and Bangalore Rural District Co-operative Central Bank Employees' Co-operative Society Limited (Petitioner-Society for brevity), claiming to be the beneficiary of the subject acquired land, has preferred Writ Petition No. 36340/2009 seeking a mandamus to direct Respondent

No.2 Bangalore Development Authority (BDA for short) to execute the Deed of Conveyance and to deliver physical possession of the land comprised in Survey No. 78 of Nagarabhavi village to an extent of five acres (hereinafter referred to as 'subject land'), and to quash Resolution No. 14/10 dated 12.01.2010 whereby, the BDA withdrew its earlier decision to make bulk allotment of the subject land ostensively because the Petitioner-Society had failed to deposit the requisite amount. The BDA intends to grant some alternate land to the Petitioner-Society. On the Other hand, the legal representatives of the original landowner late Muniyappa (henceforward 'impleading applicants') have preferred Writ Petition No. 37111/2010 seeking the quashing of Notification dated 19.10.2010 by which the earlier Denotification dated 02.06.2010 has been withdrawn by the State Government. These writ petitions are pending adjudication.

2. Interlocutory Application No. I/2011 in Writ petition No. 36340/2009 has been filed for impleadment of (i) Sri M Seebaiah, (ii) Smt Shanthamma, (iii) Smt Bhagyamma, (iv) Sri M Narayanappa and (v) Sri M Mohan, claiming to be the legal representatives of the original landowner, late Muniyappa. The case disclosed by the impleading applicants, as averred in the impleadment application, is that they are the owners of the lands in Survey No. 78 of Nagarabhavi village, Bangalore North Taluk and that they are pursuing the Denotification of their land to an extent of 5 acres 13 guntas. However, it appears that a similar impleadment application had been filed by them in Miscellaneous Writ No. 1810/2010 on 16.02.2010 which was rejected by the Order dated 11.03.2010 on the grounds that the Applicants had no subsisting right, title or interest in the property in question. While rejecting the said application for impleadment, our learned brother, S Abdul Nazeer J had inter alia observed as follows:

"7.) Material on record clearly establishes that the writ petition filed by Smt. Huchamma, the mother of the applicants has been dismissed by this Court. The appeal filed by the applicants challenging the said order has also been dismissed by a Division Bench of this Court. The Civil Appeal filed by the applicants has also been dismissed by the Apex Court holding that possession of the land has already been taken over by the State Government. Whether the applicants are entitled for bulk allotment of the land or not to be decided in the writ petition after hearing the

parties. In fact, the writ petitions filed by the applicants in W P Nos 34023 to 34027/2009 seeking a direction to the State Government to notify the Denotification order said to have been passed by the Chief Minister of Karnataka dated 16.10.2009 has been withdrawn by the applicants on 05.03.2010. It is also necessary to note that the applicants had filed a writ petition in No. 5779/2010 for quashing the communications dated 06.01.1999 and 25.03.2000 issued by the State Government to the BDA and the notice dated 08.09.2000 issued by the BDA to the petitioner informing it that the State Government has accorded approval to make bulk allotment of the land in question. The said writ petition has been dismissed on 9.3.2000. It is not necessary to hear the applicants for deciding the question in controversy in this writ petition as they do not have any right, title or interest in the property in question. Therefore, applicants are neither necessary nor proper parties to this writ petition. The application Misc. W No. 1810/2010 is accordingly rejected".

3. Despite the dismissal of an identical application seeking their impleadment, the present application has nevertheless been filed purportedly predicated on the Denotification of the subject land by the State Government on 02.06.2010 by withdrawing the preliminary Notification dated 12.08.1982. The said Denotification had been challenged by the Petitioner-Society in Writ Petition No. 21349/2010; during its pendency, the State Government had issued Notification dated 19.10.2010 withdrawing its earlier Denotification dated 02.06.2010 (which is the subject matter of Writ Petition No. 37111/2010 filed by the impleading applicants). In the interregnum, the learned Single Judge had directed that all the three Writ Petitions viz., W P No. 36340/2009 and W P No. 21349/2010 (filed by the Petitioner-Society), and W P no. 37111/2010 (filed by the impleading applicants) be placed before the Division Bench for further decision and the Petitioner-Society was permitted to be impleaded as party respondent in W P No 37111/2010.

4. In the meanwhile, a memorandum dated 11.10.2010 was filed by the State Government-Respondent No. 1 in W P No. 21349/2010 seeking the dismissal of that Writ Petition. A similar memorandum was also filed by the Petitioner. These motions met with stiff opposition from the impleading applicants despite which, by the Order dated 24.08.2011 the Division Bench (Chief Justice and Ashok B

Hinchigeri, J) allowed the motion and consequently W P No. 21349/2010 was disposed of as having been rendered infructuous. The Order reads as follows:

“A memo dated 10.11.2010 has been filed at the hands of respondent no. 1 for the dismissal of the writ petition. A perusal of the memo reveals, that the Denotification order dated 02.06.2010 which was impugned in the writ petition, had since been withdrawn, by a subsequent notification dated 19.10.2010. The same factual position has been reflected in paragraph-10 of the statement of objections filed on behalf of the respondent no. 1.

2.) Since the impugned notification dated 02.06.2010 has been withdrawn by a subsequent notification dated 19.10.2010, **we are satisfied,** that the instant writ petition has been rendered infructuous. Same is accordingly disposed of as having been rendered infructuous.

3.) In view of disposal of main petition itself, Misc W. 6039/11 does not survive for consideration’’. (emphasis added by us)

Manifestly, the opinion of the Court that W P No. 21349/2010 had been rendered infructuous has not been assailed by the impleading applicants and hence has attained finality. Arguably, this opinion of the Division Bench will operate as res judicata on the aspect of the withdrawal of the Denotification assuming finality inasmuch as it had become infructuous. We are reminded of the enunciation of law in State of Punjab versus Amar Singh, AIR 1974 SC 994 in which their Lordships approved the view that a person who had not been impleaded could, with the leave of the Court, file and prosecute an appeal ‘’if he be prejudicially affected by a judgment and if it would be binding on him as res judicata under Explanation 6 Section 11 of the CPC’’. In the lis in hand, the impleading applicants and petitioners in W.P. No 37111/2010 were duly impleaded and were present when Misc. W. 6039/11 was held not to survive.

5. In the proceedings before us on 19.03.2012 were persuaded to favoured the opinion that the dismissal of earlier Writ Petition No. 21349/2010 by the Division Bench would operate at least as constructive res judicata in so far as W P No. 37111/2010 is concerned. As the learned Senior Counsel for the impleading

applicants submitted that he was not prepared on this subject, we acceded to his request for an adjournment and that is how the matter stands before us today.

6. Our attention has been drawn to the several Proceedings oth3er than these three writ petitions [WP No. 36340/2009, WP No. 21349/2010 and WP No. 37111/2010].**Firstly,**a preliminary notification dated 12.08.1982 followed by final notification on 16.08.1985; award dated 12.05.1998 was published and physical possession of the subject land was taken over by the Bangalore Development Authority on 30.06.1988. Writ Petition No. 27671/2000 was filed by the impleading Applicants which was dismissed by the learned Single Judge on 16.01.2004. The prayer in this writ petition was for quashing of the Award dated 12.05.1988, declaring that it had lapsed and become null and void and unenforceable, on account of delay. By a detailed order, our learned brother, Justice N Kumar J, had dismissed the said Writ Petition on 16.01.2004 resulting in preferment of Writ Appeal No. 2945/2004 which was also dismissed on 15.12.2004 which culminated in filing Civil Appeal No 175/2009 (in SLP (Civil) No. 2173/2005) which was dismissed by the Apex Court on 14.01.2009. The Review Petition R P No. 420/2009 in C A No. 175/2009 filed by the impleading Applicants also came to be dismissed on 09.09.2009. **Secondly,** as we have already mentioned, an identical application in Miscellaneous W No. 1810/2010 for impleadment was filed by the impleading Applicants on 16.02.2010 and the same was dismissed on 11.03.2010. **Thirdly,** the impleading applicants had also filed Writ Petition No. 4243/2009 praying for a direction to the Respondents including the State of Karnataka and the Bangalore Development Authority to decide their Representation under Section 48 of Land Acquisition Act for Denotification/withdrawal from the acquisition proceedings of the subject land. Our learned brother, Justice Mohan Shantanagoudar noted that the dispute had already been considered in Writ Petition No. 27671/2000; thereafter in the resultant Writ Appeal No. 2945/2004 and by the Honourable Supreme Court in Civil Appeal No. 175/2009. We think it appropriate to reproduce the conclusion in the said Judgment, as it clarifies the abuse of judicial process which the impleading Applicants have committed and continued to perpetrate:

“The aforementioned facts clearly reveal that the petitioners have lost possession of the land in the year 1988 itself and therefore, their prayer for de-notifying the land in question to an extent of 5 acres 13 guntas cannot be considered. Further, the petitioners being unsuccessful in challenging the acquisition proceedings before this Court and the Apex Court in an earlier round of litigation and have suffered series of orders, once again approached this Court by raising almost very grounds as were raised in the earlier round of litigation. The petitioners cannot be allowed to reopen the very issues after having lost their case up to the Apex Court. As aforementioned, the Apex Court has also specifically ruled that the possession is taken by the BDA on 30th of June 1988. Hence, in view of the vesting of the land in favour of 2nd respondent-Authority, any unauthorized or illegal construction which might have come up in the acquired land cannot come to the rescue of the petitioners for contending that they are in possession of the acquired lands. In this regard the contention of the respondents that the construction have come up subsequent to the interim order granted by the Courts in the earlier round of litigation, assumes importance.

In view of the above, the prayers as sought for in the writ petition cannot be granted and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed.”

Undeterred by the dismissal of W P No. 4243/2009, Writ Appeal Nos. 1642-46/2009 were filed by the impleading applicants. By a detailed order dated 26.05.2009, the Division Bench dismissed the appeal resulting in filing SLP (civil) Nos 14930-14934/2009 which were also dismissed on 17.08.2009. **Fourthly,**yet another futile litigation had been initiated by one of the applicant namely, M Narayanappa in the Court of XXVII Additional City Civil Judge, Bangalore City in O S No. 911/2009 in which an application under Order-XXXIX Rule-1 and 2 of CPC for grant of temporary injunction was filed. The Civil Court dismissed the said application on 18.06.2009 holding inter alia, that “the plaintiff is guilty of suppression of material facts and when plaintiff’s possession is not legal over the suit schedule property, I do not think he will be put to any hardship and inconvenience, if the order of T.I is not granted”. **Fifthly,** Writ Petition Nos. 34023-

27/2009 came to be filed by the the impleading applicants seeking direction to the State of Karnataka to notify the Denotification Order passed by the Chief Minister dated 16.10.2009 and the same was withdrawn by the Applicants on 05.03.2010; leave for, filing fresh petitions was neither prayed for nor granted.**Sixthly,** again Writ Petition No. 5779/2010 was filed by the impleading Applicants praying for quashing the letter dated 06.01.1999 which directed BDA to implement the bulk allotment of the subject land in favour of the Petitioner-Society. Our learned brother S Abdul Nazeer J, dismissed the said writ petition on 09.03.2010 and concluded the Judgement in these words:

"10.) The SLP filed by the petitioners in SLP Nos 14930-934/2009 was dismissed by the Apex Court on 17.08.2009. In the suit on O S No 911/2009 filed by M Narayanappa, one of the petitioners herein, the Civil Court has rejected the prayer for grant of an order of injunction. Thus, it is clear that the possession on the lands has already been taken by the State Government and handed over to the BDA long ago. In the circumstances, question of withdrawing the land from acquisition at this stage does not arise. If that is so, question of passing an order by the Chief Minister withdrawing the land from acquisition does not arise. Therefore, the petitioners cannot maintain this writ petition seeking a direction to the official-respondents not to make bulk allotment of the land in favour of the 3rd respondent because they do not have any subsisting right, title or interest in respect of the lands in question. It is relevant to note that this is not a public interest litigation espousing the cause of the public. Therefore, I am not inclined to entertain this writ petition and it is accordingly dismissed.

11.) It is hereby clarified that dismissal of this writ petition should not be understood as expressing any opinion on the merits of the claim of the 3rd respondent seeking bulk allotment of land in one way or the other. The said question is left open for consideration in the writ petition filed by the 3rd respondent in W P No 36340/2009 which is pending before this Court".

Mercifully, from the standpoint of misutilisation of scare Court time, the above order seems not to have been appealed further.

7. In view of the undisputed facts narrated above, it is manifestly clear that the challenge of the landowners/impleading applicants to the acquisition of their land had attained finality, culminating inter alia, in Civil Appeal No. 175/2009 (in SLP Civil) No. 2173/2005) and Special Leave to Appeal (Civil) Nos. 14930-14934/2009. Therefore, the challenge in so far as it relates to acquisition proceedings cannot be permitted to be reagitated ad nauseam by the impleading Applicants in any other proceedings including Writ Petition No. 37111/2010. It is also important to recall the judicial findings to the effect that consequent upon the acquisition of the subject land having attained finality, the original landowners/Applicants did not have any locus standi to challenge the acquisition or interfere in the controversy. We are constrained to say this for its abiding relevance so far as the Applicants' locus standi to challenge the withdrawal of the Denotification is concerned. The acquisition having become final, the impact and repercussion of the withdrawal of the Denotification dated 02.06.2010 by a subsequent notification dated 19.10.2010 would be felt either by the Petitioner-Society or the BDA, and by no other entity.

8. We shall now analyze Alka Gupta - versus Narendra Kumar Gupta (2010) 10 Supreme Court cases 141. The parties therein had agreed to sell the share in certain property in which each was an equal partner. However, only a part of the sale consideration had been received and therefore, a suit for the balance amount was filed and decreed. Subsequently, a suit for rendition of accounts of the ;partnership firm came to be filed in which one of the issues that arose was "whether the suit was barred by the principles of res judicata."On this question, their Lordships enunciated the law thus -

"20.) Plea of res judicata is a restraint on the right of the plaintiff to have an adjudication of his claim. The plea must be clearly established, more particularly where the Bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same. In this case, there was no plea of constructive res judicata, nor had the appellant-plaintiff an opportunity to meet the case based on such plea.

21.) Res judicata means “a thing adjudicated”, that is an issue that is finally settled by judicial decision. The Code deals with res judicata in Section 11, relevant portion of which is extracted below (excluding Explanations I to VIII):

“11.) Res judicata - No court shall try any suit or issue in which the matter directly and substantially is issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.

22.) Section 11 of the Code, on an analysis requires the following essential requirements to be fulfilled, to apply the bar of res judicata at any suit or issue:

(i) The matter must be directly and substantially in issue in the former suit and in the later suit.

(ii) The prior suit should be between the same parties or persons claiming under them.

(iii) Parties should have litigated under the same title in the earlier suit.

(iv) The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.

(v) The court trying the former suit must have been competent to try the particular issue in question.

23.) To define and clarify the principle contained in Section 11 of the Code, eight Explanations have been provided. Explanation I states that the expression “former suit” refers to a suit which had been decided prior to the suit in question whether or not it was instituted prior thereto. Explanation II states that the competence of a court shall be determined irrespective of whether any provisions as to a right of appeal from the decision of such court. Explanation III states that the matter directly and substantially in issue in the former suit, must have been allegedly by one party or either denied or admitted expressly or impliedly by the other party.

Explanation IV provides that:

“Explanation IV - Any matter which might and ought to have been made a ground of defense or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit”.

24.) Explanation III clarifies that a matter is directly and subsequently in issue, when it is alleged by one party and denied or admitted (expressly or impliedly) by the other. Explanation IV provides that where any matter which might and ought to have been made a ground of defense or attack in t he former suit, even if it was not actually set up as a ground of attack or defense, shall be deemed and regarded as having been constructively in issue directly and subsequently in the earlier suit. Therefore, even though a particular ground of defense or attack was not actually taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defense which ought to have been raised, but not raised, whereas Order 2 Rule 2 of the Code relates to reliefs which ought to have been claimed on the same cause of action but not claimed.

25.) The principle underlying Explanation IV to Section 11 becomes clear from Greenhalgh versus Mallard (1947) 2 ALL ER 255 (CA):

“….it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that itwould be an abuse of the process of the court to allow a new proceeding to be started in respect of them”.(emphasis supplied)

26.) In Direct Recruit Class II Engg. Officers Association versus State of Maharashtra (1990) 2 SCC 715,a Constitution Bench of this Court reiterated the principle of constructive res judicata after referring to Forwarding Construction Co. versus Prabhat Mandal (1986) 1 SCC 100 , thus: (Direct Recruit Class II Engg. Officers Association versus State of Maharashtra (1990) 2 SCC p. 741, para 35)

“35.) …. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defense”.

In the instant case, the High Court has not stated what was the ground of attack that the appellant-plaintiff ought to have raised in the first suit but had failed to raise, which she raised in the second suit, to attract the principle of constructive res judicata. The second suit is not barred by constructive res judicata”.

9. Further, in the case of Forward Construction Co. and others versus Prabhat Mandal and others, AIR 1986 SC 391, the Apex Court held that in view of Explanation-IV to Section 11, it could not be said that earlier judgment would not operate as res judicata as one of the grounds taken in the subsequent petition was conspicuous by its absence in the earlier petition. According to the Apex Court, an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided an incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defense. The aforesaid observations are very aptly applicable having regard to the pleas raised before this Court in the first instance and the nature of pleas which have been raised in the present writ petition with regard to the issue of denotification.

10. We first consider the question as to whether W P No. 37111/2010 is barred from adjudication by the principles of res judicata, inasmuch as the impleading Applicants who are the petitioners in that writ petition, are fully aware that one of the grievance of the Petitioner-Society was that the State Government was not justified in denotifying the acquired land which had been allotted to it. That was also the central/primary question in W P Nos 34023-27/2009, in which the impleading applicants had prayed that the State Government be directed “to notify the Denotification Order Passed by the Chief Minister of Karnataka dated 16.10.2009”. That Writ Petition was dismissed as withdrawn pursuant to a memo

filed in that regard, by the petitioners therein i.e., the impleading Applicants. The position that obtains today is that the challenge to the acquisition of the subject land has been conclusively repulsed and therefore they have lost locus standi in all matters pertaining to this acquisition. The prayer for notifying the Denotification has been withdrawn, further cementing the acquisition, giving further finality to the said loss of locus standi.

11. We are of the considered view that the impleading applicants are neither necessary nor proper parties to the questions involved in the proceedings in W P No 36340/2009 and consequently, IA-I/2011 is liable to be dismissed. For these very reasons W P No 37111/2010 is also not maintainable. We hold this opinion mindful of the Orders of the Division Bench comprising V G Sabhahit and B Manohar J.J. permitting the withdrawal of Writ Appeal Nos 1666/2010 and 1742/2010 along with Misc W 1156/2011 and Misc W 11068-69/2010 while reserving leave to prosecute W P No 37111/2010.

12. The matter cannot be left without considering the appropriateness of imposing costs. Detailed arguments were addressed before us spanning two days and these presents have exhausted several hours (post Court hearing time) in checking upon the deluge of litigation even after the acquisition attained finality. The annuals of litigation manifest the multiplicity of proceedings that have already been initiated at the hands of the impleading applicants and petitioners in W P No 37113/2010. The same very issue is sought to be reagitated nay regurgitated by filing application seeking impleadment in W P No 36340/2009 in which petitioner-Society seeks implementation of the bulk allotment of land already made in their favour. The same position obtains even in so far as W P No. 37111/2010 is concerned.

13. In M Nagabhushana versus State of Karnataka, (2011) 3 Supreme Court cases 408, in a startlingly similarly situation, Their Lordships held, in the context of principles of res judicata, that it is in the interest of State that there should be an end to litigation; that a malicious litigant should not succeed in vexing his opponent by repetitive suits and actions resulting in the weaker party to relinquish his rights; and that to prevent such jural anarchy, doctrine of res judicata has been evolved

over the years. Even if a penumbra exists, the Court should not feel restricged or hampered merely on technical Rules in applying the principles of res judicata; that the adjudication by a competent Court must be final, even in so far as incidental or connected litigation is concerned. It is great relevance that their Lordships considered it necessary and expedient to impose cost of Rs. 10,00,000/- to be paid by each of appellants in that lis in favour of the Karnataka High Court Legal Services Authority. The relevant and penultimate paragraph reads thus:

“39.) This Court, therefore, dismisses this appeal with costs assessed at Rs. 10 lakhs, to be paid by the appellant in favour of the Karnataka High Court Legal Services Authority within a period of six weeks from date. In default, a proceedings will be initiated against the appellant on a complain by the Karnataka High Court Legal Services Authority by the appropriate authority under the relevant Public Demand Recovery Act for recovery of this cost amount as arrears of land revenue.”

This very approach has also been adopted in Vasanth Sreedhar Kulkarni - versus - State of Karnataka (2012) 1 Supreme Court Cases 138.

14. IA-I/2011 in W.P. 36340 as well as Writ Petition no 37111/2010 filed by the impleading applicants are dismissed with costs of Rs 1 lakh on each of the impleading applicants and petitioners in W.P.No.37111/2010, payable to the Karnataka State Legal Services Authority within six weeks from today. In default, proceedings shall be initiated by the Karnataka State Legal Services Authority for recovery of the costs as arrears of land revenue.