SUPREME COURT OF INDIA

P.K. Kalburqi

Vs.

State of Karnataka & Ors.

C.A.No.6162-63 of 1999

(B.P. Singh and S.H. Kapadia, JJ.)

02.08.2005

JUDGMENT

B.P. Singh, J.

1. These appeals by special leave are directed against the judgment and order of the High Court of Karnataka at Bangalore of 2-4-1998 in Writ Appeals Nos. 3939-40 of 1997. The appellant before us was the appellant before the High Court as well. The writ petitions giving rise to the appeals were filed by the Davangere Urban Development Authority, Respondent 2 herein challenging the notification published in the Official Gazette dated 22-12-1994 whereby a portion of the land acquired in the year 1979 for the formation of residential layout in the city of Davangere was released from acquisition.

2.The question which arises for consideration before us is whether, in the facts and circumstances of the case, the Government was justified in releasing a portion of the land from acquisition. While the appellant contends that the lands notified for acquisition and belonging to the appellant were not taken possession of by the State, it is contended on behalf of the Development Authority that possession of the lands in question was taken on 6-11-1985.

3.The High Court has recorded its reasons and reached the conclusion that in fact possession of the lands in question was taken by the Government on 6-11-1985. The appellant has challenged the correctness of this decision.

4. The impugned notification was issued after exchange of correspondence between the officials of the State of Karnataka culminating in the order of the Hon'ble Minister for Urban Development and Wakfs. The Hon'ble Minister took the view that the file did not disclose that actual possession of the lands had been taken. This conclusion was reached on the basis that symbolic possession does not amount to taking actual possession. Thus, the Hon'ble Minister was of the view that since actual possession of the lands had not been taken, the Government could withdraw from acquisition at any time. Consequently, he directed that the

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lands in question may be denotified. Pursuant thereto a gazette notification was issued on 3-12- 1994 and was published in the Karnataka Official Gazette on 22-12-1994.

5. It is argued before us that the learned Judge who allowed the writ petitions and the Division Bench which dismissed the appeals preferred by the appellant have erroneously held that possession of the lands in question was taken on 6-11-1985. This submission was made on the basis of an affidavit filed by the Special Land Acquisition Officer in an earlier proceeding before this Court on 6-2-1986 wherein he had stated that the appellant herein was refusing to receive the award, and therefore possession of the lands proposed to be acquired had been taken except the lands of the appellant herein. However, this assertion in the counter-statement made by the Special Land Acquisition Officer is said to be based on his personal knowledge. The record of the case, however, gives a different picture. The P K-Kalburqi V. State Of Karnataka See a order produced before us is not accurate ThP tra]nsIatlon of the aforesaid received earlier by this Coin SSS ^!fThglnal/ecord whioh had been though the appellant was evading to receive tL ^ reC°rded that eve" USA, possession could still be taken and that ^ had g0ne awa-v t0 date. This is the order recorded In Z w ession taken on that Acquisition Officer We ZTto unZrZ Zl u™ °f ** SPeciaI L™d b affidavit to thecomrary before this Corn™ 6-^1986 "‘" ^ a”

6. Moreover, the Hon’b/e Minister who passed the order of deaotificatioo of the lands in question sought to make a distinction between symbolic possession and actual possession and proceed to pass the order on the basis ti/mdM/Sfml/IfOfffctiw [hat symbolic possession did not amount to actual possession, and that thepower to witidraw from tie ecqufs/tion cou/d be exercised at any time before “actual possession” was taken. This view appears to be contrary to the majority decision of this Court in Balwant Narayan Bhagde v. M.D. Bhagwad, wherein this Court observed that how such possession would be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken, and as was pointed out by this Court in the aforesaid decision, such possession would amount to vesting the land in the Government. Moreover, four acres and odd belonging to the appellant was a part of the larger area of 118 acres notified for acquisition. We are, therefore, satisfied that the High Court has not committed any error in holding that possession of the land was taken on 6-11-1985. Even the order of the Minister on which considerable reliance has been placed by the appellant indicates that possession of the lands was taken, though symbolic.

7. Our notice has also been drawn to Annexure R-6 wherein the Special Land Acquisition Officer has stated that the interested person i.e. the appellant herein, is entitled to interest under Section 34 from the date of taking possession of the lands i.e. from 6-11-1985. The total compensation including the interest payable up to 31-7-1987 was found to be Rs 10,54,782.96. This letter clearly establishes the fact that even while calculating the interest payable, the authorities calculated on the basis that possession was taken on 6-11-1985. This

is also an important piece of evidence, inter alia, supporting the case of the Development Authority that possession was actually taken on 6-11-1985.
1 (1976) 1 SCC 700 : 1975 Supp SCR 250

8. It was then argued before us, relying on amendment of Section 16 of the Land Acquisition Act by Mysore State Act 17 of 1961, that since the fact of taking possession of the lands in question was not notified in the Official Gazette it was not permissible for the High Court to take the view that possession had been taken, in the absence of such a notification. We have carefully perused sub-section (2) inserted by Mysore Act 17 of 1961 which reads as follows:
"(2) The fact of such taking possession may be notified by the Deputy Commissioner in the Official Gazette, and such notification shall be evidence of such fact."

9. A plain reading of the said section would indicate that the power conferred on the Deputy Commissioner is enabling in nature, and if such a notification is issued it shall be evidence of the fact that possession w'as taken, though not conclusive. Such a notification would be a piece of evidence which may establish that possession of the lands was in fact taken. It is not as if in the absence of such a notification the Court cannot consider the other evidence on record which has a bearing on this question. We are, therefore, satisfied that the High Court was right in coming to the conclusion that possession of the lands was taken by the State and there was therefore no authority in the State Government to issue a notification denotifying the lands under Section 19(7) of the Karnataka Urban Development Authorities Act, 1987.

10. The learned counsel appearing for the Board contended before us that a notification could have been issued under this provision only by the Development Authority, and not by the State, though with the prior approval of the State Government. However, it is not necessary to go into this question.

11. We, therefore, find no merit in these appeals which are accordingly dismissed.

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