SUPREME COURT OF INDIA

Commissioner, Bangalore Development Authority

Vs

K.S. Narayan

Civil Appeal No. 8307 of 2002 With C.A. Nos. 8310/2002, 8308/2002. 8315/2002, 8311/2002, 8312/2002, 8314/2002, 8313/2002, 8309/2002

(G. P. Mathur and L. S. Panta, JJ)

11.10.2006

JUDGMENT

G. P. MATHUR, J.

The issue involved in these appeals, by special leave, is identical and, therefore, they are being disposed of by a common order. For the sake of convenience facts of Civil Appeal 8307 of 2002, which has been filed challenging the judgment and decree dated 14.6.2001 passed by Karnataka High Court in R.F.A. No. 406 of 2001, shall be stated.

2-3. The respondent K.S. Narayan filed Original Suit No. 5371 of 1989 in the court of City Civil Judge, Bangalore, praying that a decree for permanent injunction be passed against the defendant Bangalore Development Authority, their agents and servants restraining them from interfering with the plaintiff's possession and enjoyment of the plaint scheduled property and from demolishing any structure situate thereon. The case of the plaintiff in brief is as follows. The plaintiff purchased the property in dispute bearing No. 46, situated in Banasawadi village, K.R. Pura Hobli, Bangalore South Taluk from S. Narayana Gowda by means of a registered sale deed dated 17.6.1985. The erstwhile owners of the property had obtained conversion certificate from the Tehsildar and the property is situated in a lay out which is properly approved by obtaining conversion for non-agricultural use from the competent authority. The plaintiff applied for mutation entries and the same was granted in his favour", The property in dispute was not covered by any acquisition proceedings as neither notice of acquisition had been received nor any award regarding the said

property had been passed. The defendant had no right, title or interest over the property but it was trying to dispossess the plaintiff from the same on the ground of alleged acquisition. The plaintiff issued a notice to the defendant on 11.7.1989 calling upon it not to interfere with his possession and enjoyment of the property in dispute but no reply had been received. It was pleaded that the cause of action to file the suit arose on 11.7.1989, the date of the noticer and also when the defendant tried to dispossess the plaintiff from the disputed property.

4. The suit was contested by the defendant Bangalore Development Authority on the ground inter alia that the plaintiff was not the owner of the property in dispute. S. Narayana Gowda, who is alleged to have executed the sale deed in favour of the plaintiff on 17.6.1985, had no right, title or interest over the property in dispute and he could not have conveyed any title to the plaintiff. It was further pleaded that the disputed land had been acquired by the Bangalore Development Authority after issuing preliminary and final notifications in accordance with Bangalore Development Authority Act and the possession had also been taken over and thereafter it was handed over to the Engineering Section on 22.6.1988 after completion of all formalities. The award for the land acquired had already been made and the compensation amount had been deposited in civil court under Sections 30 and 31(2) of the Land Acquisition Act. It was specifically pleaded that it was the defendant Bangalore Development Authority which was in possession of the plaint scheduled property on the date of filing of the suit and, therefore, the suit for injunction filed by the plaintiff was not maintainable and was liable to be dismissed.

5. The parties adduced oral and documentary evidence in support of their case before the trial court. The learned XIII Additional City Civil Judge, Bangalore, decreed all the ten suits by the judgment and decree dated 30.1.1991. The Bangalore Development Authority, the appellant herein, preferred ten appeals against the judgment and decree of the trial court before the Karnataka High Court. The High Court held that though the plaintiffs had filed the suit claiming to have title and possession over the property in dispute but in fact their possession over the plaint scheduled property on the date of the suit was not established. The plaintiffs had not claimed any relief for delivery of possession over the property. The High Court accordingly allowed the appeal, set aside judgment and decree of the trial court and remanded the suit for fresh decision with liberty to the plaintiffs to apply for amendment of the plaint for which purpose one month time was granted. It was further mentioned in the order that if the plaintiffs did not apply for amendment within one month the trial court shall dismiss the suit. However, if the plaintiffs applied for amendment of the plaint, the defendant in each suit shall be given opportunity of filing further written statement and thereafter the suit shall be disposed of in accordance with law.

6. After remand of the suit to the trial court the plaintiffs applied for amendment of the plaint. In the amendment application it was pleaded that the plaintiffs were owner in possession of the property but they were dispossessed on 22.6.1988. It was also pleaded that the defendant had dispossessed the plaintiffs from the plaint scheduled property without taking proceedings for acquisition of the land and as such their dispossession was wholly illegal. The relief clause was also amended and it was prayed that it may be declared that the plaintiffs are owner of the property and a decree for possession be passed in their favour directing the defendant to deliver back the possession of the plaint scheduled property to them. The amendment application was filed on 31.8.2000. The defendant Bangalore Development Authority filed an amended written statement and the principal pleas taken therein were that the suit was barred by limitation and the land in dispute having been

validly acquired and possession having been taken over, the suit was liable to be dismissed. It was further pleaded that the defendant was in possession and enjoyment of the property since 22.6.1988 and the predecessors of the plaintiffs had also taken part in proceedings for determination of compensation and making of award before the Special Land Acquisition Officer. After the pleadings had been amended 'he suits were tried by learned XVI Additional City Civil and Sessions Judge, Bangalore. The parties did not adduce any further evidence and relied upon the evidence which had been adduced earlier. The trial court, relying upon the decision of this Court in Laxmi Chanel v. Gram Panchayat, Kararia held that validity or otherwise of the acquisition proceedings cannot be questioned before the civil court and accordingly dismissed the suits.

7.Feeling aggrieved by the judgment and decree of the trial court the plaintiffs preferred appeals before the High Court under Section 96 of Civil Procedure Code. The High Court held that the names of the plaintiffs who were the lawful owners of plaint scheduled property were not at all notified and as two basic requirements of a valid acquisition of property were not satisfied, the acquisition was not binding upon the owners of the property. It was held that plaintiffs were not covered by the notification which had been issued regarding acquisition of the property and, therefore, the civil court was competent to entertain the suit. After recording a finding that no notice had been served upon the plaintiffs, it was held that the acquisition proceedings were invalid. The appeals were accordingly allowed and the suits were decreed as prayed. Thus a decree for declaration of title and also for possession was passed in favour of the plaintiffs.

8. We have heard Mr. Altaf Ahmed, learned senior counsel for the appellants and Mr. S.N. Bhat learned counsel for the respondents.

9. The acquisition proceedings in question had been taken under the Bangalore Development Authority Act, 1976 (hereinafter referred to as the Act). The relevant provisions regarding acquisition are Sections 17 and 19 of the Act, which are being reproduced below: -

"17. Procedure on completion of scheme:-

(1) When a development scheme has been prepared, the authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.

(2)A copy of the said notification shall be sent to the corporation which shall, within Thirty days from the date of receipt thereof, forward to the authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3)The authority shall also cause a copy of the said notification to be published in the Official

Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the Office of the Corporation and in such other places as the authority may consider necessary.

(4)If no representation is received from the corporation within the time specified in sub-section (2), the concurrence of the corporation to the scheme shall be deemed to have been given.

(5)During the thirty days next following the day on which such notification is published in the Official Gazette the authority shall serve a notice on every person whose name appears in the assessment list of the Local Authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the authority proposes to recover betterment tax requiring such person to show cause within Thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notice shall be signed by or by the order of the Commissioner and shall be served.

(a) By personal delivery of if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building;

(b) By leaving the same at the usual or last known place of abode or business of such person; or

(c) By registered post addresses to the usual or last known place of above or business of such person.

19. Upon sanction, declaration to be published giving particulars of land to be acquired.-

(1)Upon sanction of the scheme, the Government shall publish in the Official Gazette declaration stating the fact of such sanction and that the land proposed to be acquired by the authority for the purposes of the scheme is required for a public purpose.

(2)The declaration shall state the limits within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(3)The said declaration shall be conclusive evidence that the land is needed for a public purpose and the authority shall, upon the publication of the said declaration, proceed to execute the scheme.

(4)If at any time it appears to the authority that an improvement can be made in any part of the

scheme the authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6) forthwith proceed to execute the scheme as altered.

(5)If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the authority shall not, without the previous sanction of the Government, proceed to execute the scheme as altered.

(6)If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the scheduled referred to in clause (e) of sub-section (1) of Section 18, the provisions of Sees. 17 and 18 and of sub-section (1) of this section shall apply to the part of the scheme so altered in the same manner as if such altered part were the scheme."

10. The provisions of Sections 17 and 19 are somewhat similar to the provisions of Sections 4 and 6 of the Land Acquisition Act. Sub-section (5) of Section 17 of the Act mandates that after the publication of the notification in the Official Gazette the authority shall, during the period of next thirty days, serve a notice on every person whose name appears in the assessment list of the Local Authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment of any building or land which is proposed to be acquired in executing the scheme or in regard to which the authority proposes to recover betterment tax. The person on whom the notice is served is entitled to raise objection regarding the proposed acquisition within thirty days.

11. It is not in dispute that the notification under Section 17 was published on 26.5.1984 and the notification under Section 19 was published on 23.10.1986. The award was made on 26.5.1988 and thereafter possession was taken over by the Bangalore Development Authority on 22.6.1988. The High Court has observed that the plaintiff K.S. Narayan purchased the property from Doddanna in the year 1964. This is clearly wrong as the specific case of the plaintiff in paragraph 3 of the plaint is that he purchased the property from S. Narayana Gowda on 17.6.1985. It is, therefore, obvious that the plaintiff purchased the property more than one year after the notification under Section 17 of the Act had been published. In fact the plaintiffs in all the ten suits purchased the plaint scheduled property some time in the year 1985. The date of purchase of plaint scheduled property by the plaintiffs in the ten suits is mentioned in the first judgment of the High Court remanding the matter to the trial Court. Thus, there was no occasion for serving any notice upon the plaintiffs as required by sub-sec. (5) of Section 17 of the Act as their names could not have appeared in the assessment list of the Local Authority or in the land revenue register at the relevant time. Therefore, the whole basis on which the High Court held the acquisition proceedings to be invalid is erroneous and cannot be sustained.

12. The other point which requires consideration is whether a civil suit is maintainable to challenge the acquisition proceedings. This question is no longer res integra. In two decisions of this Court it has been clearly held that the civil court cannot go into the question of validity or otherwise of the notifications issued under Sections 4(1) and 6 of the Land Acquisition Act. In State of Bihar v. Dhirendra Kumar[. 0.] it was held as under: -

"3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publication envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under Section 6, the public purpose gets crystallized and becomes conclusive. Thereafter, the State is entitled to authorize the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11A now prescribes limitation to make the award within 2 years from the last date of publication envisaged under Section 6 of the Act. In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power under Section 17(4) of the Act and dispense with the enquiry under Section 5-A. Thereon, the State is entitled to issue notice to the parties under Section 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under Section 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Sec. 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable."

Same view was taken in Laxmi Chand v. Gram Panchayat, Kararia (supra) and the relevant portion of paras 2 and 3 of the report is being reproduced below: -

"It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken it stands vested under Sec. 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the Constitutional Courts, viz., the High Court and the Supreme Court under their plenary power

under Articles 226 and 136 respectively with self-imposed restriction on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court."

13.It may be pointed out that the trial court dismissed the suit relying upon the decision of this Court in Laxmi Chand v. Gram Panchayat, Kararia (supra). The High Court distinguished the aforesaid decision by observing as under: -

"The ratio would be applicable when only the person aggrieved is covered by the notification directly or as nominee. However, when a person is not covered by the notification and without reference to him any notification issued would not be binding and in a such situation it would not prevent the aggrieved person from approaching the civil court. It is a salutary principle that the decree rendered in a civil proceedings binds the parties to the proceedings and the persons claiming through them. This principle would equally apply to the proceedings under the Land Acquisition Act."

14.In our opinion the view taken by the High Court is wholly erroneous. It is not the case of the plaintiffs that the plaint scheduled property is not covered by the notification issued under Section 17 of the Act. As a matter of fact, there is no dispute that the land regarding which the suits have been filed is covered by the notification. The main ground on which the suits have been filed is that the notice as required by sub-section (5) of Section 17 of the Act was not served upon the plaintiffs. The plaintiffs are claiming title to the property and are seeking the relief of possession on the ground that the notification has been rendered invalid on account of non service of notice upon them under sub-section (5) of Section 17 of the Act. The plaintiffs are clearly assailing the validity of the acquisition proceedings. It is not their case that the plaint scheduled property is outside the purview of the land regarding which he notification under Section 17 had been issued. The ground for assailing the notification, namely, that notice under subsection (5) of Section 17 of the Act was not served upon the plaintiffs and its effect could only be examined in a writ petition filed under Article 226 of the Constitution before the High Court and not by the civil court. The judgments and decrees passed by the High Court are, therefore, clearly illegal and have to be set aside.

15. In the result the appeals succeed and are hereby allowed. The judgments and decrees passed by the High Court, which are subject-matter of challenge in the present appeals, are set aside and the decrees passed by the trial court on 29.3.2001 dismissing the suits are affirmed. No order as to costs.