SUPREME COURT OF INDIA

KN Aswathnarayana Setty (D) Tr. LRs.

Vs.

State of Karnataka

(Dr. B.S. Chauhan and S.A. Bobde JJ.)

02.12.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. These petitions have been filed against the judgment and order dated 24.10.2011, passed by the High Court of Karnataka at Bangalore in Writ Appeal No.1421 of 2008 etc. affirming the judgment of the learned Single Judge dated 17.4.2008 passed in Writ Petition No. 11502/2006, by which and whereunder the court had quashed the order dated 27.2.2004, passed by the Revenue Minister, Government of Karnataka de-notifying the suit land from acquisition.

2. Facts and circumstances giving rise to these petitions are:

A. That a preliminary notification under Section 4(1) of the Land Acquisition Act 1894 (hereinafter referred to as 'Act 1894') was issued in respect of huge chunk of land including Survey No.49/1 admeasuring 15 Acres on 6.8.1991 for the benefit of the State Government Houseless Harijan Employees Association (Regd.) (hereinafter referred to as 'Society'). In respect of the same land declaration under Section 6 of the Act 1894 was issued on 15.5.1992.

B. At the behest of the then owners of the suit land the Government de-notified the land from acquisition vide order dated 5.8.1993 issuing notification under Section 48(1) of the Act 1894.

C. Aggrieved the respondent no.3-Society challenged the said order of de-notifying the land from acquisition by filing Writ Petition which was

dismissed by the learned Single Judge. The said order was also affirmed by the Division Bench dismissing the Writ Appeal preferred by the Society. The Society approached this court by filing special leave petitions which were entertained and finally heard Civil Appeal No. 5015/1999 etc. and this court vide judgment and order dated 11.12.2000 quashed the order dated 5.8.1993 de-notifying the suit land from acquisition.

D. During the pendency of Civil Appeal No.5015 of 1999 etc. filed by the respondent-society, the present petitioners purchased the suit land in the years 1997-1998 and approached the Government of Karnataka to de-notify the said land from acquisition. As their application for release was not dealt with by the Government, they preferred Writ Petition Nos.19968-97 of 2002 etc. before the High Court for directions to the Government to release the land.

E. The High Court vide judgment and order dated 19.2.2003 disposed of the said writ petition, directing the Government to decide their application in accordance with law expeditiously. In pursuance of the High Court order, the Government of Karnataka issued notice to all concerned parties and against all the parties the Hon'ble Revenue Minister passed an order dated 27.2.2004, directing to de-notify the land from acquisition.

F. The order dated 27.2.2004 was not complied with as the Deputy Secretary to the Government of Karnataka raised certain objections and made an endorsement dated 21.9.2005 that the matter had attained finality after being decided by this Court and possession of the land had already been taken and handed over to the respondent-society on 6.9.2002, much prior to the order passed by the Hon'ble Minister.

G. The present petitioners filed Writ Petition No.11502 of 2006 etc. before the High Court to quash the endorsement dated 21.9.2005 made by the learned Deputy Secretary, Government of Karnataka. The writ petition stood dismissed on 17.4.2008 in terms of the judgment of the same date in a similar case, i.e. Writ Petition No.9857 of 2006 (M.V. Kasturi & Ors. v. State of Karnataka & Ors.).

H. Aggrieved, petitioners preferred a Writ Appeal No. 1421/2008 which has been dismissed by the impugned judgment and order. Hence, these petitions.

3. Shri Kailash Vasdev, learned senior counsel appearing for the petitioners submitted that the courts below have committed an error in dismissing the case of the petitioners as the courts failed to appreciate the legal issues. This Court set aside the order of de- notification dated 5.8.1993 on a technical ground as the order of de- notification was passed without hearing the respondent-society for whose benefit the land had been acquired. Thus, there could be no prohibition for the State to de-notifying the land from acquisition after hearing the concerned parties. More so, the Hon'ble Minister had competence to deal with the acquisition proceedings and thus the finding recorded by the High Court about his competence is perverse. More so, as there was no interim order of this court in Society's appeal, petitioners could purchase the land. Hence, these petitions should be accepted.

4. Per contra, Shri Rama Jois and Shri K.N. Bhat, learned senior counsel for the respondents have opposed the petitions contending that this Court has set aside the order dated 5.8.1993 de-notifying the land from acquisition not only on the ground of violation of principles of natural justice but also on merits as it had been held by this Court that there was no justification for de-notifying the land. The present petitioners are purchasers of land subsequent to notification under Section 4(1) of the Act 1894, and they could not purchase the land at all. In view of the fact that the appeal filed by the respondent no.3 against the order dated 5.8.1993 was pending before this Court, doctrine of lis pendens would apply. Thus, the petitions are liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

> The facts are not in dispute. At the time of purchase of the suit land by the present petitioners the matter was sub-judice before this Court and if the order of de-notification dated 5.8.1993 stood quashed, it would automatically revive the land acquisition proceedings meaning thereby the notification under Section 4 and declaration under Section 6 resurfaced by operation of law. In such a fact-situation, it is not permissible for the present petitioners to argue that merely because there was no interim order in the appeal filed by the respondent no.3, petitioners had a right to purchase the land during the pendency of the litigation and would not be bound by the order of this Court quashing the de-notification of acquisition proceedings.

6. Doctrine of lis pendens is based on legal maxim 'ut lite pendente nihil innovetur' (During a litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act 1882. The principle of 'lis pendens' is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property pendente lite. [Vide : K. Adivi Naidu & Ors. vs. E. Duruvasulu Naidu & Ors., (1995) 6 SCC 150; Venkatrao Anantdeo Joshi & Ors. vs. Malatibai & Ors., (2003) 1 SCC 722; Raj Kumar vs. Sardari Lal & Ors., (2004) 2 SCC 601; and Sanjay Verma v. Manik Roy & Ors., AIR 2007 SC 1332).

7. In Rajender Singh & Ors. v. Santa Singh & Ors., AIR 1973 SC 2537, while dealing with the application of doctrine of lis pendens, this court held as under:

> "The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree."
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> (See also: T.G. Ashok Kumar v. Govindammal & Anr., (2010) 14 SCC 370).

8. In view of the above, we are of the considered opinion that it is not permissible to say that in case the petitioners had purchased the suit property during the pendency of the appeal filed by respondent no.3 before this Court, the petitioners are not bound by the final orders of this Court.

9. By operation of law, as this Court quashed the de-notification of acquisition proceedings, the proceedings stood revived. In V. Chandrasekaran & Anr. vs. The Administrative Officer & Ors., JT 2012 (9) SC 260, this Court considered the right

of purchaser of land subsequent to the issuance of Section 4 notification and held that any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any one to encumber the land acquired thereunder." The alienation thereafter does not bind the State or the beneficiary under the acquisition. In fact, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person-interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. Thus, the purchaser cannot challenge the acquisition proceedings. While deciding the said case this court placed reliance on a very large number of its earlier judgments including Leela Ram v. Union of India & Ors., AIR 1975 SC 2112; Smt. Sneh Prabha etc. v. State of Uttar Pradesh & Anr., AIR 1996 SC 540; Meera Sahni v. Lieutenant Governor of Delhi & Ors., (2008) 9 SCC 177; and Tika Ram & Ors. v. State of U.P. & Ors., (2009) 10 SCC 689.

10. The law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor’s title.

11. In order to meet the menace of sale of land after initiation of acquisition proceedings, various States enacted the Acts and making such transfers as punishable, e.g., The Delhi Lands (Restrictions on Transfers) Act, 1972 made the sales permissible only after grant of permission for transfer by the authority prescribed therein. In absence of such permission if the sale is made in contravention of the statutory provisions it is a punishable offence with imprisonment for a term which may extend to 3 years or with fine or with both. Therefore, we do not see any cogent reason to accept any plea taken by the petitioners that they could purchase the suit land even subsequent to Section 4 notification.

12. We do not find force in the submission made by Shri Kailash Vasdev, learned senior counsel that this Court had quashed the de- notification of acquisition proceedings only on technical ground as the respondent-society was not heard.

This Court in State Govt. Houseless Harijan Employees Association v. State of Karnataka & Ors., AIR 2001 SC 437 held as under:

"71. From all this, the ultimate position which emerges is that the acquisition in favour of the appellant was properly initiated by publication of the Notification under Section 4(1) and by the declaration issued under Section 6. The withdrawal of the acquisition under Section 48(1) was vitiated not only because the appellant was not heard but also because the reason for withdrawal was wrong. The High Court erred in dismissing the appellant's writ petition. The decision of the High Court is accordingly set aside. The impugned Notification under Section 48(1) is quashed and the appeal is allowed with costs." (Emphasis added)

13. There is ample evidence on record to show that possession of the suit land had been taken on 6.9.2002. In such a fact-situation, question of de-notifying the acquisition of land could not arise. Thus, the order dated 27.2.2004 could not be passed. There cannot be a dispute in law that upon possession being taken under Section 16 or 17 of the Act 1894, the land vests in the State free from all encumbrances. Thus, in case possession of the land has been taken, application for release of land from acquisition is not maintainable. Once the land is vested in the State free from encumbrances, it cannot be divested. (See: LT. Governor of H.P. & Anr. v. Sri Avinash Sharma, AIR 1970 SC 1576;Satendra Prasad Jain & Ors. v. State of U.P. & Ors., AIR 1993 SC 2517; Mandir Shree Sitaramji alias Shree Sitaram Bhandar v. Land Acquisition Collector & Ors., AIR 2005 SC 3581; and Smt. Sulochana Chandrakant Galande v. Pune Municipal Transport & Ors., AIR 2010 SC 2962).

14. In view of the above, we do not think it necessary to examine the other issues raised in the petitions particularly, the competence of the Hon'ble Minister to deal with the matter.

15. The petitions are devoid of any merit and are accordingly dismissed. However, it is made clear that the petitioners shall be entitled to compensation as determined under the provisions of the Act 1894.