

SUPREME COURT OF INDIA

Hubli-Dharwad Urban Development Authority

Vs.

Shekhargowda Chennabasannagowda Phakirgowdar (Since Deceased) & Anr.

C.A.No.9934 of 2016

(Anil R.Dave and L.Nageswara Rao,JJ.,)

03.10.2016

JUDGMENT

L.Nageswara Rao,J.,

SLP (C) No.20826 of 2010

1. Leave granted. Respondent No. 1 filed Writ Petition No. 12564 of 2006 in the High Court of Karnataka for quashing the preliminary Notification dated 06.02.2002 issued under Section 17(3) of the Karnataka Urban Development Authority Act, 1987 (hereinafter referred to as 'Act) and final declaration under Section 19 (3) of the Act dated 27.11.2003. The said Notification pertained to acquisition of 54 acres and 39 guntas which included 2 acres and 36 guntas in Survey No. 311/A/1 in Byridevana Koppa Village, Hubli Taluk belonging to the First Respondent. The said Writ Petition was allowed by a judgment dated 02.04.2009 against which Writ Appeal No. 6258 of 2009 was filed by the Appellant. A Division Bench of the High Court dismissed the Writ Appeal by a judgment dated 24.03.2010. Aggrieved by the said judgment, the Appellant has approached this Court by filing this Appeal.

2. The First Respondent filed the Writ Petition stating that his family owns 2 acres and 35 guntas in Survey No. 311/A/1 in Byridevana Koppa Village, Hubli Taluk in which there were bore wells, cattle sheds, residential houses and standing trees. It was averred in the Writ Petition that a Notification under Section 17(3) of the Act was issued on 06.02.2002 but no notice was personally served on him. It was also stated in the Writ Petition that a Notification under Section 19(1) of the Act was issued on 07.10.2003 which was published in the Karnataka Gazette on 17.11.2003. It was stated in the Writ Petition that the First Respondent was not aware of the publication in the Gazette and that the Notification issued under Section 17 and the declaration issued under Section 19 of the Act were not served upon him. He was also unaware of the award proceedings. The First Respondent further stated in the Writ Petition that he came to know about the preliminary Notification only in August, 2005 when the officials of the Appellant visited the site and informed him about the acquisition. The First Respondent also stated in the Writ Petition that immediately after he came to know about the acquisition proceedings he approached the authorities and found that no layout was

prepared and finalized. The First Respondent averred in the Writ Petition that the preliminary Notification under Section 17(3) of the Act was prepared without complying with the provisions of Section 15(1), 16 and 17 (1) of the Act. He further stated that due to non service of the notice, he lost an opportunity to file his objections. On the basis of the averments mentioned above, the First Respondent sought for quashing of the Notification issued under Section 17(3) and the declaration issued under Section 19(3) of the Act.

3. The Appellant filed its Statement of Objections in Writ Petition No. 12654 of 2006 in which it was stated that there were no structures on the acquired land and possession of the said land was taken on 02.09.2005. A Notification under Section 16(2) of the Land Acquisition Act, 1894 was published in the Gazette on 22.12.2006. It was also stated that personal notice was issued to the First Respondent on 11.09.2001 but he refused to receive the notice on 13.09.2001. The said notice was also published in Samyukta Karnataka Daily Newspaper on 26.07.2001 and Vijaya Karnataka Daily Newspaper on 27.07.2001. It was further averred that the First Respondent was aware of the Notification under Section 19(1) of the Act dated 07.10.2003 which is evident from the fact that he gave an application dated 30.01.2004 for dropping the acquisition proceedings. The said application was rejected on 28.02.2004. According to the Appellant, the acquisition Notification issued under Section 17(3) and the declaration issued under Section 19(3) of the Act were issued after complying with the relevant provisions of the Act and that interference by the High Court was unwarranted.

4. By a judgment dated 02.04.2009, a learned Single Judge of the Karnataka High Court allowed the Writ Petition by holding that the objections filed by the First Respondent were not considered before issuance of the final declaration and that the First Respondent was in possession of the land. The learned Single Judge recorded a finding that the property in question is situated in a corner of the layout and the scheme was not implemented in respect of the land belonging to the First Respondent.

5. The Division Bench confirmed the judgment of the learned Single Judge by holding that a perusal of the record indicated receipt of objections which were not considered by the Appellant. The Division Bench held that only a xerox copy of the original Mahazar drawn at the time of taking possession was produced in the Court. The Division Bench rejected the submission of the Appellant that possession of the land was taken. The Division Bench further found that the scheme remained unimplemented in respect of the land in dispute.

6. Mr. Basavaprabhu S. Patil, learned Senior Counsel appearing for the Appellant submitted that the findings of the High Court are contrary to the record. He submitted that the question of consideration of objections of the First Respondent did not arise as the averments in the Writ Petition are to the effect that he was not aware of the acquisition proceedings till the middle of August, 2005 and that he lost an opportunity of filing his objections. He took us through the minutes of the meeting of Hubli-Dharwad Urban Development Authority dated 06.02.2002 in which the recommendation for acquisition of the land was approved. The total land under acquisition for development of a housing scheme was shown as 54 acres and 39 guntas. An extent of 2 acres 36 guntas in Survey No. 311/A/1, belonging to the First

Respondent forms part of 54 acres and 39 guntas. It was stated in the said minutes that the objections submitted by the land owners/interested persons were considered. It was clearly mentioned in the said minutes that the objections of farmers and interested persons in respect of lands admeasuring 32 acres and 28 guntas were examined by a one man committee. The First Respondent's land was not part in the said land of 32 acres and 28 guntas. He also referred to the draft award dated 31.01.2005 in which the names of 13 persons who filed their objections were mentioned. The name of the First Respondent was not found therein.

7. Mr. Patil submitted that the authority considered all the objections that were filed by the landholders. The High Court went wrong in holding that the objections filed by the First Respondent were not considered. It was also submitted by Mr. Patil that the Mahazar that was produced by the Appellant before the High Court clearly showed that possession was taken. He also submitted that the Notification under Section 16(2) of the Land Acquisition Act, 1894 is conclusive proof of possession being taken by the authority. According to Mr. Patil, the judgment of the High Court suffers from apparent errors and is liable to be set aside.

8. Mr. Balaji Srinivasan, Advocate appearing for First Respondent submitted that the High Court was right in holding that the objections filed by the Respondent were not considered by the authorities. He also submitted that the landowners are in possession of the land even now. According to him, the High Court rightly refused to consider the xerox copy of the Mahazar produced by the Appellant to show that possession was taken. He further submitted that the scheme was not implemented in respect of the land in dispute. Pursuant to the liberty given by this Court, the First Respondent filed his written submissions in which he stated that there is a farm house along with a cattle shed on the land. A leave and licence agreement dated 16.12.2009 was filed along with written submissions to show that a mobile tower is erected on the land. The Respondent further stated in the said written submissions that the legal heirs of the original Respondent furnished their Statement of Objections dated 29.08.2001 to the Counsel. The said objections did not receive any consideration by the authorities. The Respondent is still in possession of the land which is not integral to the housing scheme. The Respondent submits that the judgment of the High Court be upheld.

9. The High Court quashed the Notification dated 05.02.2002 and declaration dated 27.11.2003 for the reasons that the objections filed by the landowners were not considered before issuance of the final declaration, that the possession of the land was not taken by the authorities and that the scheme was not implemented in respect of the property in question. The First Respondent pleaded in the Writ Petition that he was not aware of the Notification issued under Section 17(3) and the declaration issued under Section 19(3) of the Act. It was further averred in the Writ Petition that he was deprived of an opportunity of filing objections as notice was not given to him personally. We find force in the submission of Mr. Patil that the question of consideration of the objections which were not filed does not arise. In view of the findings recorded by the High Court that a perusal of the record disclosed that objections were filed by the Respondent and were not considered, we summoned and examined the relevant

record carefully. The minutes of the meeting of Hubli-Dharwad Urban Development Authority held on 06.02.2002 was filed as Annexure P-2 along with the written submissions of the Appellant. The recommendations of the Chairman of the Hubli-Dharwad Urban Development Authority for acquisition of lands of Byridevana Koppa Village were discussed in the said meeting. The First Respondent's land was part of the total extent of 54 acres and 39 guntas of land which was sought to be acquired for the housing scheme. It was stated in the minutes that objections filed by the landowners/interested persons of the lands included in the Notification issued under Section 17(3) of the Act were considered by the Chairman of the Hubli-Dharwad Urban Development Authority. It is clear from the said minutes that out of 19 blocks of land which were acquired, landowners of only 10 blocks filed their objections which were considered. Survey No. 311/A/1 does not find place in the said 10 blocks. A draft award dated 31.01.2005 was also placed on record by the Appellant in which the names of the landholders/ landowners whose lands were acquired and who filed objections were given. The Respondent's name does not find place in the said list of persons who had submitted their objections. The High Court has committed an error in holding that the First Respondent filed his objections which were not considered.

10. Admittedly, the land was acquired for a housing scheme. It was submitted by the Appellant that plots have already been allotted. The land belonging to the First Respondent has been earmarked for civic amenities. In view of the interim order of status quo passed by the High Court on 13.09.2006, no development could take place on the land. The High Court ought not to have held that the Appellant was responsible for non-implementation of the scheme qua the land of the Respondent. It was submitted by the Appellant that the land is very much needed for development of civic amenities.

11. A Panchnama was filed by the Appellant to show that possession of the land was taken on 02.09.2005 in the presence of five Panchas. A Notification under Section 16(2) of the Land Acquisition Act, 1894 was published in the Karnataka State Gazette on 21.12.2005. It is no more res integra that a Notification issued under Section 16 (2) of the Land Acquisition Act, 1894 shall be evidence of the fact that possession was taken, though not conclusive. The prevaricating stands taken by the First Respondent about the possession of the land does not help his cause. On 30.01.2004, the power of attorney holder of the First Respondent submitted a representation to the Chairman of the Hubli-Dharwad Urban Development Authority requesting for exemption of the land from acquisition. He stated in the said representation that he was running a ginning factory on the said land. He also stated that he employed 40 workmen for whose housing the land was needed. The said representation was rejected by the Commissioner, Hubli-Dharwad Urban Development Authority on 28.08.2004 by stating that the acquisition proceedings were at a final stage and so the request cannot be acceded to. In the written submissions filed by the Respondent, it is stated that a farm house along with a cattle shed and a mobile tower exist on the land. Some photographs and a lease agreement have been filed in support of the said averments. The submission made by the First Respondent regarding the non-consideration of his objections is contrary to the pleading in the Writ Petition. The First Respondent is also guilty of taking contradictory stands in the matter of possession. We see no reason to doubt the Panchnama evidencing taking over of possession. In addition, the Notification under Section 16(2) of the Land Acquisition Act,

1894 was published in the Gazette. Any attempt made by the First Respondent to show that he is still in possession is of no avail.

12. In view of the above, the judgment of the High Court is set aside and the Appeal is allowed.