SUPREME COURT OF INDIA

H.N.Jagannath

Vs.

State of Karnataka

C.A.No. of 2017

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

06.12.2017

JUDGMENT

Mohan M.Shantanagoudar, J.,

SLP(Civil) No.33813 of 2011

1. Leave granted.

I. The judgment dated 19.04.2011 passed by the High Court of Karnataka at Bangalore in writ appeal no. 1575 of 2007 (LA-BDA) is called into question in this appeal. By the impugned judgment, the Division Bench though did not interfere with the Judgment passed by the learned Single Judge in writ petition no. 49357 of 2004 dated 15.03.2007, disposed of the Writ Appeal observing that respondent no. 4 herein (appellant before the Division Bench) should work out its remedy in the suit in accordance with law and if a suit is filed, the said suit shall be considered without being influenced by the observations made in the course of the Judgment passed by the learned Single Judge. Thus, the Division Bench virtually relegated the parties to the civil court once again by granting permission to respondent no. 4 to approach the civil court.

2. This matter is a classic example as to how a litigant before the Court takes disadvantage of the process of law and the court by repeatedly tapping the doors of the courts for almost the same relief, after losing legal battles on a number of occasions.

3. Records reveal that the Bangalore Development Authority (hereinafter "BDA") respondent no. 12 herein, issued notification dated 16.11.1977 under Section 17(1) of BDA Act (almost similar to Section 4(1) of the Land Acquisition Act, 1894) proposing to acquire a vast extent of land in two villages, namely Leggere and Jaraka Bande Kaval. The purpose of acquisition was to form a residential layout called "Extension of Mahalakshmi Layout" (also called Nandini Layout). An extent of 393 acres 25 guntas in survey no. 1 of Jaraka Bande Kaval village out of the total extent of 519 acres 37 guntas was also notified. The preliminary notification included the land belonging to respondent no. 4 located in survey no. 1 of Jaraka

Bande Kaval village measuring 25 acres 20 guntas. The preliminary notification was published in the official gazette on 22.12.1977. The final declaration dated 30.08.1979 (gazetted on 20.09.1979) was issued under Section 19(1) of the BDA Act (almost similar to Section 6(1) of Land Acquisition Act). On 04.06.1985, the Additional Land Acquisition Officer passed an award in respect of the land measuring 127 acres 21 guntas in survey no. 1 of Jaraka Bande Kaval Village including the land in dispute (the land belonging to respondent no. 4) measuring 25 acres 20 guntas. It was noted by the Additional Land Acquisition Officer that respondent no. 4 had filed a petition before him in response to the notice issued under Sections 9, 10 & 11 of the Land Acquisition Act. The award dated 04.06.1985 mentioned supra passed by the Additional Land Officer was approved by the Government of Karnataka on 19.09.1986 and consequently the award amount was deposited by BDA in the Court.

4. Respondent no. 4 herein had filed a suit for injunction in respect of the disputed property (which was also acquired as mentioned supra), before the 10 th Additional City Civil Judge, Bangalore in O.S. No. 10488 of 1985 against BDA on 28.06.1985. The Trial Court passed an ex-parte order of injunction in favour of respondent no. 4 on 20.06.1985. After passing the award, the possession of the land in question was taken on 23.09.1986; a panchanama was drawn evidencing taking of possession. Subsequently the Trial Court by its order dated 01.10.1986 modified its earlier ex-parte interim order of injunction and permitted BDA to form a road. On 31.10.1986, BDA handed over possession to its engineering section for the formation of the road. A notification under Section 16(2) of the Land Acquisition Act was issued on 20.11.1987 disclosing the factum of taking of possession of the land including the land in question. Respondent no. 4 chose to withdraw the suit in O.S. No. 10488 of 1985 on 30.01.1989 without seeking any liberty to file afresh suit. The Trial Court's order reads thus:

> "Memo filed not pressing the suit. Suit dismissed. No costs."

5. However, respondent no. 4 filed another suit for permanent injunction against BDA for protecting its alleged possession, before 13th Additional City Civil Court, Bangalore in O.S. No. 3551 of 1989. In the said suit also, the order of temporary injunction was granted on 10.07.1989 in favour of respondent no. 4 herein. However, the Trial Court by its order dated 08.03.1990 modified the order of temporary injunction earlier granted, on an application filed by BDA and confined the order of injunction only to existing structures. The civil court while modifying the order of temporary injunction as mentioned above has noted in paragraph 6 of its order that BDA has acquired the property and has taken the possession of the property. It is also observed that the title vests with BDA. When the facts stood thus, respondent no. 4 filed writ petition no. 17040 of 1991 (after a delay of 10 years from the date of the final declaration) challenging the preliminary and final acquisition notifications. The learned Single Judge by his order dated 28.08.1991 dismissed the said writ petition on the ground of delay and laches. Against such dismissal, the respondent no. 4 filed writ appeal no. 2798 of 1991 before the Division Bench of the High Court, which also came to be dismissed on 25.11.1991. Respondent no. 4 did not stop at that stage. It approached the High Court once again by filing writ petition no. 31007 of 1992 praying for a direction to the State Government to consider its representation for de-notification and for re-conveyance of the

land. The High Court by its order dated 09.12.1992 disposed of the writ petition with the observation that the government will hear and dispose of the representation of respondent no. 4 herein in accordance with law. The State Government by its order dated 15.02.1993 rejected the representation of respondent no. 4. Challenging such order of dismissal by the State Government, respondent no. 4 filed writ petition no. 33996 of 1993 which also came to be dismissed on 09.02.1996. Respondent no. 4 in the meanwhile had approached the High Court of Karnataka by filing writ petition 25719 of 1994 praying for a direction against BDA not to form the road in the land in dispute. The said writ petition came to be dismissed as withdrawn on 02.07.1996.

6. In the meanwhile, the State Government by its order dated 17.11.1994 had permitted respondent no. 4 to run a school situated on the land in question. However, the government by its order dated 29.04.1997 modified its earlier order dated 17.11.1994. Thereafter respondent no. 4 filed yet another writ petition (5th writ petition before the High Court) being writ petition no. 1071 of 1998 to implement the government order dated 17.11.1994. On being objected to by BDA, the petition came to be dismissed on 05.10.1999.

7. Respondent no. 4 filed yet another suit for injunction, i.e. O.S. No. 16147 of 1999 (3rd suit). The said suit came to be dismissed for default. Thereafter, the respondent no. 4 once again approached the High Court of Karnataka by filing Writ petition no. 49339 of 2004 (6th Writ Petition) for the following reliefs.

a) The scheme formed by BDA for residential layout lapsed under Section 27 of the BDA Act.

b) Lay-out plan is illegal.

c) There was no vesting of land in BDA.

d) Allotment of sites to various allottees including the appellants herein petitioners was illegal.

The learned Single Judge of the High Court dismissed the writ petition on 15.03.2007 by specifically noting that the possession was taken by BDA, layout was formed, and sites are carved out and distributed to the allottees who were put in possession of the sites. The appellants herein are all allottees of the sites (who are 43 in number). The learned Single Judge also noticed that the allottees have put up constructions and are residing in their respective houses constructed on the sites allotted. The learned Single Judge further noticed that the contentions taken and reliefs prayed for by respondent no. 4 though they were available for respondent no. 4 to be urged earlier, were not urged by it and therefore, the said prayers are barred by Order 2 Rule 2 of C.P.C. Respondent no. 4 filed writ appeal no. 1575 of 2007 before the Division Bench questioning the judgment of dismissal by the learned Single Judge in writ petition no. 49339 of 2004. The Division Bench by its impugned judgment as mentioned supra, though did not interfere in the order passed by the learned Single Judge, proceeded to grant the liberty to respondent no. 4 to work out its remedy in

civil court once again. The Division Bench has strangely observed that in case the suit is filed, the same is to be considered without being influenced by the observations made by the learned Single Judge. Thus, the Division Bench though did not interfere in the order passed by the learned Single Judge, has virtually ignored all the aforementioned facts, including successive judgments made by the civil court as well as the High Court of Karnataka in six writ petitions including the one in writ petition 49339 of 2004, and has virtually kept open all the questions including the question of title and possession, which means that the Civil Court is directed to go into the validity of the acquisition notification, award proceedings and the factum of taking of possession by BDA pursuant to acquisition proceedings.

8. The learned Counsel Shri S. N. Bhat appearing on behalf of the appellants/allottees of sites contends that the Division Bench has erred in giving liberty to respondent no. 4 to file a civil suit which would throw open a fresh round of litigation in respect of the acquisition made as far back as 1977-79; the appellants and other similar allottees have constructed houses on the plots and have been residing therein for decades; the matter of acquisition has attained finality and has come to a definite rest; the Division Bench is not justified in reviving the dispute which had long been given a legal quietus after a series of litigations. Lastly he submits that it was not open for the Division Bench to unsettle the settled state of affairs involving thousands of persons who are purchasers of the plots.

9. The learned Counsel for respondent no. 4, per contra, contended that the Division Bench is justified in granting liberty to it to approach the civil court afresh inasmuch as the possession of the property still remains with respondent no. 4; respondent no. 4 is running an orphanage and a school for poor children; since the possession of the property is not taken by BDA, the disputed property is entitled to be held by respondent no. 4 as the owner thereof. In other words, the argument in favour of respondent no. 4 is that the disputed property in question needs to be de-notified in favour of respondent no. 4 and possession should continue in its favour and hence the Division Bench is justified in granting permission to respondent no. 4 to file a Civil Suit afresh by raising all the contentions as are available in law.

10. It is not in dispute that the property in question along with other properties was acquired by the BDA in accordance with law by issuing notifications under Section 17(1) and 19(1) of the BDA Act as far back as in the year 1977 and in the year 1979. The BDA has formed and allotted the sites. Most of the allottees have constructed houses and are residing peacefully. However, respondent no. 4 still contends that possession has remained with it and therefore the acquisition needs to be set aside and that the land should be de-notified. As detailed supra, respondent no. 4 has already approached the civil court thrice and High Court on six occasions. Whenever the suits are withdrawn, respondent no. 4 has not sought any liberty to approach the civil court once again. Thus, it was not open for respondent no. 4 to approach the civil court repeatedly for the very reliefs. Consistently, the civil court on three occasions has negatived the contention of the appellant.

11. Even when respondent no. 4 approached the High Court of Karnataka by filing the writ petitions and writ appeals, it has failed. Futile attempts have been made by respondent no. 4

only to see that the allottees are harassed and to keep the litigation pending. After the final notification, an award was passed and compensation was deposited. Possession was taken and the same was evidenced by the Panchanama prepared as far back as 23.09.1986. Notification under Section 16(2) of the Land Acquisition Act was issued on 20.01.1987 disclosing the factum of taking possession of the land in question. Attempt made by respondent no. 4 for getting the disputed land de-notified has also failed as far back as 15.01.1993, when the State Government has rejected the representation of respondent no. 4 seeking de-notification. The writ petition filed by respondent no. 4 challenging such order of dismissal of the representation was also dismissed. Despite the same, respondent no. 4 is pursuing the matter by filing writ petition after writ petition. It is a clear case of abuse of process of law as well as the Court.

12. We do not find any reason to interfere in the finding of fact rendered by the learned Single Judge that possession was taken by BDA on 23.09.1986. There is nothing to be adjudicated further in respect of the title or possession of the property. The title as well as the possession of the property has vested with the BDA for about more than 30 years prior to this day and sites were formed and allotted to various persons including the appellant herein. In the light of such voluminous records and having regard to the fact that respondent no. 4 has been repeatedly making futile attempts by approaching the courts of law by raising frivolous contentions, the Division Bench ought not to have granted liberty to respondent no. 4 to approach the civil court once again for the very same relief, for which it has failed earlier. In view of this, learned counsel for the appellant is justified in contending that the Division Bench has completely erred in reviving the dispute which had long been given a legal quietus after a series of litigations. The Judgment of the Division Bench, if allowed to stand, will unsettle the settled state of affairs involving hundreds of allottees of sites who have constructed the houses and are residing therein. The impugned judgment of the Division Bench virtually sets at naught a number of judgments rendered by the civil court as well as the High Court in the very matter (and was given without any reason much less a valid reason).

13. The Division Bench has erroneously conferred jurisdiction upon the civil court to decide the validity of the acquisition. This Court has repeatedly held in a number of judgments that, by implication, the power of a civil court to take cognizance of such cases under Section 9 of the CPC stands excluded and the civil court has no jurisdiction to go into the question of validity under Section 4 and declaration under Section 6 of the Land Acquisition Act. It is only the High Court which will consider such matter under Article 226 of the Constitution. So, the civil suit, per se is not maintainable for adjudicating the validity or otherwise of the acquisition notifications & proceedings arising therefrom. This Court in the case of *Bangalore Development Authority vs Brijesh Reddy & Anr*[1]. while considering the acquisition notifications issued under BDA Act observed thus:

> "It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case under Section 9 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, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 26 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power."

A similar view is taken by this Court in other cases. The Judgments of this Court in *Laxmi Chand & Ors. vs Gram Panchayat, Kararia & Ors*[2]. *Shri Girish Vyas vs State of Maharashtra* [3]*State of Bihar vs Dhirendra Kumar & Ors*[4]., *Commissioner, Bangalore Development Authority vs K. S. Narayan*[5] *& Commissioner, Mutha Associates & Ors. vs State of Maharashtra* [6]considered the acquisition proceedings relating to the lands which were acquired either under the provisions of the BDA Act or under the Land Acquisition Act. In all these judgments, similar question arose i.e. as to whether the civil court had jurisdiction to decide the validity of the acquisition notifications or not.

14. Having regard to the discussion made supra, in our considered opinion, it is a clear case of contempt committed by respondent no.4 by repeatedly approaching the courts of law for almost the same relief which was negatived by the courts for three decades. However, we decline to initiate contempt proceedings and to impose heavy costs, under the peculiar facts and circumstance of this case.

15. It is to be noted that the Division Bench has given liberty to respondent no. 4 to work out his remedy in a civil suit without even setting aside the findings of the learned Single Judge and the findings rendered in the judgments passed by the Civil Court and the High Court of Karnataka in a number of matters (mentioned supra). In our opinion the Division Bench of the High Court of Karnataka has in a casual manner relegated the parties to the civil court to work out their remedies in the suit which is to be instituted afresh by respondent no. 4. Thus, the said conclusion of the Division Bench of the High Court is not sustainable in law. Accordingly, the judgment and order dated 19.04.2011 passed by the Division Bench of the High Court of Karnataka at Bangalore in writ appeal no. 1575 of 2007 (LA-BDA), and consequently the order dated 15.07.2011 (wherein certain corrections are made subsequently) of the Division Bench in Misc. Writ petition no. 7549 of 2011 are set aside. The Judgment of the Learned Single Judge in the Writ Petition Number 49357 of 2004 stands restored. Appeal is allowed.

Judgment Referred.

[1]*(2013) 3 SCC 0066*
[2]*(1996) 7 SCC 0218*
[3]*(2012) 3 SCC 0619*
[4]*(1995) 4 SCC 0229*
[5]*(2016) 8 SCC 0336*
[6]*(2013) 14 SCC 0304*