SUPREME COURT OF INDIA

Mysore Urban Development Authority

Vs.

K.M.Chikkathayamma

C.A.9182-9188 of 2018

(Abhay Manohar Sapre and S.Abdul Nazeer,JJ.,)

07.09.2018

JUDGMENT

Abhay Manohar Sapre, J.,

SLP(C) No.24560-24566 of 2018

1. S.L.P(C)No.…….(D.No.31403 of 2017) are directed against the final judgment and order dated 09.11.2016 passed by the High Court of Karnataka at Bengaluru in W.A. Nos. 899/2016 and 982-987 of 2016 whereby the High Court dismissed the appeals filed by the appellant herein and, in consequence, upheld the judgment dated 10.03.2016 of the Single Judge in W.P.Nos.38868-38874/2015 which had allowed the writ petitions filed by the respondents herein.

2. So far as S.L.P.(C)No (D.No.30522/2017) are concerned, these are] directed against the final judgment and order dated 20.10.2016 passed by the Division Bench of the High Court of Karnataka in W.A. Nos. 6829-6830 of 2013 which arise out of the order dated 10.10.2013 of the Single Judge passed in writ petition Nos.27994/2001 and 18756/2001.

3. Leave granted.

4. In order to appreciate the issues involved in these appeals, few relevant facts need mention infra.

5. The appellant-Mysore Urban Development Authority (hereinafter referred to as "MUDA") was the respondent whereas the respondents herein were the writ petitioners before the High Court.

6. In exercise of the powers conferred under Section 17 (1) of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "The Karnataka Act"), the MUDA issued a notification No. LAQ 66/91-91 dated 19.12.1991 on completion of one development scheme prepared under Section 15/16 of the Karnataka Act.

7. By this notification, the MUDA proposed to acquire the large area of the land along with other adjoining lands situated in Dattagalli village (Karnataka). The notification was published in the official State gazette on 26.12.1991. The State Government vide its order dated 27.01.1992 approved the scheme framed by the MUDA under Section 18(3) of the Karnataka Act and issued final notification No.VaNaE 833 MIB 92 on 10.12.1992 mentioning therein that the lands in question are needed for public purpose, viz., "formation of Dattagalli extension". This was followed by an award passed by the Special Land Acquisition Officer (SLAO) on 27.01.1994 wherein he determined the compensation payable to the landowners. This was followed by issuance of notices to the land owners under Section 12 (2) of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act") calling upon the land owners to deliver possession of their respective lands. The MUDA then issued a notification on 18.09.2000 as required under Section 16 (2) of the LA Act. In between, there was one litigation but it is not necessary to mention the same in detail.

8. In 2001, the respondents (writ petitioners) felt aggrieved by the acquisition proceedings and filed writ petitions questioning the legality and correctness of the notification dated 19.12.1991 and consequential notifications issued thereafter in the High Court of Karnataka at Bangalore. The MUDA and State contested the writ petitions on several factual and legal grounds.

9. By order dated 15.12.2003, the Single Judge allowed the writ petitions and quashed the entire acquisition proceedings inter alia on the ground that there was a delay on the part of the MUDA in taking possession of the acquired land and hence the acquisition proceedings are rendered illegal.

10. The MUDA felt aggrieved and filed intra Court appeals before the Division Bench out of which these SLPs arise. In the appeals, the writ petitioners as respondents, filed an application (I.A. No.11 of 2016) and prayed therein for dismissal of the MUDA's appeals as having rendered infructuous. It was contended that the MUDA has resolved on 02.07.2016 to drop the lands in question from the acquisition proceedings and, therefore, in the light of such decision having been taken, there is no need to examine the legality and correctness of the order of the Single Judge impugned in the appeals on merits.

11. By impugned order in both the matters, the Division Bench dismissed the appeals as not pressed and withdrawn. The order impugned dated 09.11.2016 reads as under:

> "An application is moved by the respondents seeking for dismissal of the writ appeals on the ground that the Mysore Urban Development Authority (for short "MUDA") decided, in their Board meeting on July 2, 2016, to drop the lands covered by this litigation from the acquisition process. A copy of the resolution is annexed to the application.
>
> 2. After hearing Mr. Uday Holla, learned senior advocate appearing for the respondents and Mr. P.S. Manjunath, learned advocate appearing for the

appellants, we have got a clear indication that the authorities have decided not to proceed with the writ appeals.

3. Therefore, the writ appeals are dismissed as withdrawn.

4. It shall be open to the authorities to proceed further in the matter. We, however, express no opinion."

12. It is against this order, the MUDA has felt aggrieved and filed the present appeals by way of special leave before this Court.

13. Heard learned counsel for the parties.

14. Mr. Dushyant Dave, learned senior counsel appearing for the appellant (MUDA) essentially made two submissions.

15. In the first place, learned counsel contended that the Division Bench erred in dismissing the MUDA's appeals as withdrawn.

16. According to him, there was neither any basis nor ground much less justification to dismiss the MUDA's appeals "as not pressed". It was urged that in fact the Division Bench was under legal obligation to decide the appeals on merits.

17. In the Second place, learned counsel contended that the resolution dated 02.07.2016 relied on for dismissal of MUDA's appeals, "as not pressed" was wrongly interpreted by the Division Bench. Learned counsel pointed out that the resolution dated 02.07.2016, if read properly, does not show that any express decision was taken to withdraw the appeals or that any decision was taken to drop the lands in question from the acquisition proceedings.

18. Learned counsel further submitted that even otherwise the MUDA was not competent to take such decision without obtaining the sanction of the State Government as provided under Section 19 (7) of the Karnataka Act.

19. Learned counsel pointed out that neither the MUDA and nor the State Government ever intended to withdraw from the acquisition proceedings as is clear from the letter dated 26.06.2018 of the State Government and the letter dated 14.11.2017 of the Commissioner. It was urged that these letters indicate that both i.e. the State and the MUDA wanted to pursue the appeals on merits since inception before the High Court as also in this Court.

20. Learned counsel urged that in the light of these submissions, impugned order in both the matters are not legally sustainable and the matter be remitted to the Division Bench for deciding the appeals on merits in accordance with law.

21. In reply, Mr. Mukul Rohtagi and Mr. Gopal Subramanian, learned senior counsel for the respondents (writ petitioners) while supporting the reasoning and the conclusion arrived at by the Division Bench contended that no fault could be noticed in the impugned order.

22. It was their submission that firstly, the Government did not choose to file any appeal against the order of the Single Judge and, therefore, the MUDA had no independent locus to pursue the matter in appeals; Secondly, the MUDA having resolved to wriggle out of the acquisition proceedings, the Division Bench was justified in dismissing the appeals as not pressed; Thirdly, there was, therefore, no need to decide the appeals on merits; and lastly, after the dismissal of the appeals, the respondents (writ petitioners) altered their position in relation to the lands in question by spending substantial money and, therefore, this is not a fit case to entertain the special leave to appeals under Article 136 of the Constitution.

23. The short question, which arises for consideration in these appeals, is whether the Division Bench was right in dismissing the appeals "as not pressed".

24. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned counsel for the appellant.

25. In our opinion, the Division Bench should have decided the appeals on merits in accordance with law.

26. On perusal of the resolution dated 02.07.2016, Government letter dated 26.06.2018 and the letter dated 14.11.2017 of the Commissioner and further keeping in view the relevant provisions of the Karnataka Act, we are of the view that the appeals filed by the MUDA could not have been dismissed "as not pressed". In other words, the High Court should have dismissed the respondents' application (I.A.No.11/2016) as being misconceived and decided the appeals on merits in accordance with law.

27. In our opinion, neither there was any express prayer made by the MUDA and nor it could be inferred from the document relied on by the Division Bench at the instance of respondents (writ petitioners) for forming an opinion "not to press the appeal". In other words, the opinion formed by the High Court for dismissing the appeals "as not pressed" had no basis. Such dismissal, in our view, certainly deprived the MUDA of their right to prosecute the appeals on merits.

28. A right of appeal is a valuable right of a litigant. He is entitled to prosecute this right as it enables him to seek adjudication of the issues on merits, which are subject matter of the appeal by the Appellate Court. He can, however, forgo such right but it has to be done with express authority and free will. The respondents, however, cannot compel the appellant to give up the right of prosecuting the appeal unless the respondents are able to show any express provision in law in that behalf or valid reasons acceptable in law which deprive the appellant from prosecuting his grievance in appeal.

29. If the appellant is a juristic entity created under the Act, they have to ensure strict compliance of the relevant provisions of the Act under which they are created coupled with ensuring compliance of relevant provisions of the Code of Civil Procedure for forgoing their right to prosecute the appeal on merits.

30. If, for some reasons, there are two rival groups in a juristic entity, one prays for withdrawal and the other insisting for hearing the appeal then it is the duty of the Court to first resolve this issue in the light of the relevant provisions of law and then proceed to decide the appeal accordingly. Similarly, when such prayer is made at the instance of the respondent and is opposed by the appellant, the same has to be dealt with strictly in accordance with law by the Appellate Court.

31. The submissions urged by the learned senior counsel for the respondents (writ petitioners), which are detailed supra, have no merit.

32. In our opinion, any act done by the parties in relation to the subject matter of the appeals after the impugned order, cannot be pressed into service to support the impugned order. In other words, the legality and correctness of the impugned order has to be examined in the light of reasoning contained in the impugned order and not on the basis of the acts done by the parties subsequent to the passing of impugned order. It is for this reason the acts done by the party subsequent to passing of the impugned order are of no relevance for deciding the present appeals.

33. In view of the foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the Division Bench in the impugned order.

34. The appeals thus succeed and are accordingly allowed. Impugned order in both the matters are set aside. The writ appeals out of which these appeals arise are accordingly restored to their original numbers. The High Court is requested to decide the appeals on merits in accordance with law.

35. We make it clear that we have not applied our mind to the merits of controversy having formed an opinion to remand the case to the High Court. The High Court would, therefore, decide the appeals without being influenced by any of our observations.

36. We also make it clear that any step(s), if claimed to have been taken by the respondents (writ petitioners) subsequent to the impugned order, the same would not, in any way, influence the High Court while deciding the appeals on merits.

37. The parties are at liberty to claim refund of their money, if they claimed to have paid/deposited with the appellant in relation to the subject matter of the appeals.