
(1993) 06 KAR CK 0024

Karnataka High Court

Case No: Writ Petition No"s. 6446 to 6456 of 1989 and 5490 to 5494 and 27338 of 1991

Thore Salappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: June 8, 1993

Acts Referred:

- Bangalore Development Authority Act, 1976 - Section 18, 63

Citation: (1993) ILR (Kar) 3072 : (1993) 4 KarLJ 552

Hon'ble Judges: Shivaprakash, J

Bench: Single Bench

Advocate: U.L. Narayana Rao, Vighneshwar S. Shastri and Javaji Srinivasalu, for the Appellant; N.K. Patil and H. Thipperudrappa, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shivaprakash, J.

These Writ Petitions arise out of the same set of facts in respect of sites in the Layout formed by the second respondent in Sy.Nos. 174 and 175 of Ketamaranahalli, now known as "Further extension of Mahalakshmi Layout". W.P. Nos.5490 to 5494 of 1991 and W.P. 27338/91 are filed by the allottees of the sites. W.P. Nos. 6446 to 6456 of 1989 are filed by respondents 3 and 4 challenging the validity of the allotment of the sites by the second respondent.

2. The parties are referred to hereinafter by their respective positions in W.P.Nos. 5490 to 5494 of 1991.

3. The facts of the case in brief are as follows: The aforesaid two Sy.Nos. measuring 26 acres 25 guntas were notified for acquisition under Notification dated 25-3-1975 issued u/s 16(1) of the City of Bangalore Improvement Act, 1945 for extension of Mahalakshmi

Layout. The said Preliminary Notification was followed by the Final Notification dated 15-7-1977 published in the Karnataka Gazette dated 4-8-1977. Out of the above 26 acres 25 guntas of land, 8 acres 16 guntas was owned by the third respondent and 3 acres was owned by respondent-4. The fourth respondent is a subsidiary of the third respondent Company. Apart from respondents 3 and 4, there were others who owned certain extent of land notified for acquisition.

4. W.P.No. 7239/83 was filed by two persons seeking quashing of the aforesaid Notification. By order dated 30-7-1986 a learned single Judge of this Court after examining the original records found that several persons had voluntarily surrendered possession of the land owned by them and such surrender of land was accepted by the Assistant Engineer of the second respondent and that an award was passed on 8-5-1987. The relief sought in the said Writ Petition was mainly on the ground that the Scheme formulated by the second respondent under the provisions of the Bangalore Development Authority Act, 1976, (for short "the B.D.A. Act") had lapsed on the allegation that the Scheme had not been substantially executed in five years from the date of publication of declaration under Sub-section (1) of Section 19. In the said Writ Petition it was also contended that possession taken by the second respondent in pursuance of voluntary surrender did not amount to taking possession in the eye of law, and that if taking of possession has to be legal it must have been taken only in accordance with the provisions of the Land Acquisition Act, that is, in terms of Section 16 of the said Act. This Court in the aforesaid Writ Petition rejected both the contentions. This Court held after taking note of the fact that in the entire area of 26 acres 25 guntas, 198 sites ought to have been formed but only 170 sites had been formed by then and that the sites formation was completed prior to the year 1982, and that the second respondent had paid Rs. 8,22,005/- to a certain Company for the formation of the layout and that a sum of Rs. 3,48,000/- had been paid by the second respondent on 4-1-1982 towards water supply and Rs. 76,000/- towards underground drainage and, therefore, the Scheme had been substantially executed and that there had been "no failure to execute the Scheme substantially".

5. On the question of taking possession, this Court held that the parties having voluntarily delivered possession which was accepted by the second respondent cannot complain that taking of possession was illegal. The Court observed that "if the dictum of "volentia non fit injuria" is applied, the petitioners having consented to a thing cannot complain of the injury; they having waived their right cannot complain of infringement." The Court rejected the contention that taking possession following voluntary delivery of possession by the parties is not taking of possession in accordance with law. On that basis the Court held that once possession is taken and the land has vested in the Government, it is not possible to withdraw from the acquisition of the land in purported exercise of the power u/s 48 of the Land Acquisition Act, 1894.

6. In the instant case, the fact that respondents 3 and 4 have voluntarily delivered possession of the land cannot be disputed in view of Annexure-T dated 18-8-1978, which

is a copy of the Mahazar drawn at the time of taking possession of the land belonging to respondents 3 and 4. The said Mahazar is signed by Mr. Balagopal who was an Advocate acting for respondents 3 and 4. It discloses that possession to an extent of 6 acres 7 guntas of land was delivered to the second respondent on 18-8-1978.

7. In W.P.Nos.5490 to 5494 of 1991 and W.P.No. 27338/91, the petitioners question the validity and legality of the order dated 27-12-1990 passed by the first respondent. The said order is made, purporting to be in exercise of the power u/s 63 of the Bangalore Development Authority Act, 1976 (B.D.A. Act for short) on a petition presented by respondents 3 and 4. The operative portion of the impugned order reads thus:

"In view of the above foregoing reasons and considering the totality of circumstances, the balance of convenience lies in favour of the petitioners and hence the petitions filed by the petitioner are allowed with the relief sought for by them as enumerated in para 10(m) above."

Para 10(m) of the order is extracted below:

"Para 10(m)- While on the subject, it would not be out of place to recount the reliefs sought for by the petitioners" namely:

- (i) Those residential buildings which have already come up should not be disturbed and they should be provided with reasonable passage preferably on BDA land;
- (ii) In lieu of these sites lost to the petitioners' company, the petitioners should be given equivalent land compensation in adjoining lands as suggested by BDA to the Government in HUD Department in some of its earlier letters. In case sufficient land is not available to be given as land compensation to the petitioners, then cash compensation should be given as agreed to by the BDA in its resolution No. 964 dated 29-3-88.
- (iii) The petitioners should be permitted by the BDA to protect their lands by fencing or by putting compound wall;
- (iv) Direction should be issued to BDA u/s 48(1) of the Land Acquisition Act to drop acquisition proceeding in respect of the lands of petitioners in Survey Numbers 174, 175 of Kethamaranahalli, Mahalakshmi Layout Further Extension in so far as the extent of lands, where residential buildings have not been constructed as on today.
- (v) The petitioners should be exempted from payment of development charges and the BDA should be directed not to collect these charges as it has been already collected from the beneficiaries etc."

8. Section 63 of the B.D.A. Act reads thus:

Section 63 - Revision - (1) The Government may call for the records of any proceedings of the Authority or any officer subordinate to the Authority for the purpose of satisfying itself as to the legality or propriety of any order or proceedings and may pass such order with respect thereto as it thinks fit.

(2) The Authority may call for the records of any proceedings of any officer subordinate to it for the purpose of satisfying itself as to the legality or propriety of any order or proceedings and may pass such order with respect thereto as it thinks fit.

(3) No order under Sub-section (1) or Sub-section (2) shall be made to the prejudice of any person unless she has had an opportunity of making representation."

9. The question that arises for consideration is whether the first respondent could pass the impugned order invoking the provisions of Section 63 of the B.D.A. Act.

10. Sri. U.L. Narayanarao, learned Counsel appearing for the petitioners submitted that the so called Revision Petitions presented by respondents 3 and 4 were totally misconceived and could not have been entertained by the first respondent since there was no question of the first respondent satisfying itself as to the legality or propriety, of any order or proceedings of the second respondent. He submitted that formation of Mahalakshmi Layout and its further extension was pursuant to the Development Scheme sanctioned by the first respondent u/s 18 of the B.D.A. Act and upon sanction the lands have been acquired and therefore, allotment of sites by the second respondent pursuant to the formation of the layout in accordance with the sanctioned Scheme cannot be the subject matter of revision u/s 63 of the B.D.A. Act. Besides, the Scheme having already been implemented which has been upheld by this Court in W.P. 7239/83, which Decision has been upheld in Writ Appeal No. 2159/86 and the Supreme Court having dismissed the Civil Miscellaneous Petition No. 28633/86 preferred against the said orders, the action of considering the validity and legality of the said Scheme and the formation of the layout, by the first respondent was presumptuous. The learned Counsel contended that the first respondent in exercise of its power of revision cannot undo the Scheme sanctioned by it u/s 18 of the B.D.A. Act

11. The first respondent has narrated in detail in the impugned order, the history of the acquisition, the various Resolutions of the B.D.A., the civil litigation between the parties, the amount invested by respondents 3 and 4 for the development of "100% Export Oriented Fruit Processing Factory" on the land in question, the number of employees working for respondents 3 and 4 and the violation of the provisions of "Comprehensive Development Plan" in the formation of the Layout in question.

12. Sri T.S. Ramachandra, learned Counsel for respondents 3 and 4 contended that voluntary delivery of possession of the land does not amount to taking of possession in terms of Section 16 of the Land Acquisition Act, 1894 and therefore, the first respondent is at liberty to withdraw from the acquisition under the provisions of Section 48 of the

Land Acquisition Act, 1894.

13. In so far as taking of possession of the lands is concerned, the same is concluded and is not open to debate in view of the Decision in Writ Petition No. 7239 of 1983 which has become final with the dismissal of Writ Appeal No. 2159 of 1986 and Civil Miscellaneous Petition No. 28633 of 1986 by the Supreme Court. The fact remains that the validity and legality of the Notifications acquiring the lands have not been challenged by respondents 3 and 4 because of any infirmity in the acquisition proceedings. All that is challenged by respondents 3 and 4 in W.P.Nos. 6446 to 6456 of 1989 is the validity of allotment of sites made in favour of the petitioners by the second respondent mainly on the ground that possession of the lands in which the sites are situated is still with respondents 3 and 4 and therefore agreement-cum-sale deeds executed by the second respondent in favour of the petitioners do not create any legal right in their favour.

14. In this context, I may also notice the prayer in W.P.No. 8442 of 1986 filed by respondent-3, which was disposed of by this Court on 14-2-1991. The prayer reads thus:

"Wherefore, it is prayed that this Hon"ble Court be pleased to call for records relating to the acquisition of the land in Sy.Nos. 174 and 175, Ketamaranahalli village, Bangalore North Taluk, and to declare that the scheme has lapsed u/s 27 of the Act and the provisions of Section 36 of the Act shall become inoperative and to issue a writ of certiorari or any other writ, order or direction as the case may be quashing Annexures "A" & "B", namely, the preliminary notification dated 25-3-1975 and final notification dated 15-7-1977 and further restraining respondents from implementing the scheme and meddling with the property mentioned in the schedule below in any manner affecting the interest of the petitioner in the interest of justice. Or in the alternative to issue a writ of mandamus directing the respondents to reconvey the land mentioned in the schedule below in favour of the petitioner in the interest of justice."

Copy of the Writ Petition is marked as Annexure "AB".

15. In the said Writ Petition, respondent-3 has stated as follows at para 2.

"2..... pursuant to the said request and to enable the respondents to take steps to reconvey the land as per the promise made by it, the petitioner Company handed over possession of land measuring 6 acres and 7 guntas of land out of 8 acres 16 guntas in the above Survey Numbers on 18-8-1978. The sketch showing the portion handed over to the respondents is produced herewith and marked as Annexure "H"."

16. In view of the clear stand taken by respondent-3 itself in the previous Writ Proceedings, regarding delivery of possession, it is impermissible for respondent-3 now to contend, whatever be the legalism, that possession voluntarily delivered did not amount to taking of possession in terms of Section 16 of the Land Acquisition Act, 1894 and therefore the first respondent is at liberty to withdraw from the acquisition of the lands in question under the provisions of Section 48(1) of the said Act.

17. The provisions of Section 63 of the B.D.A. Act empower the first respondent to call for the records of any proceedings of the respondent-2 or any officer subordinate to the Authority for the purpose of satisfying itself as to the legality or propriety of any order or proceedings and to pass such order with respect thereto as it thinks fit.

18. In the instant case the allotment of sites made by respondent-2 in favour of the petitioners, under the impugned order is jeopardised, since it is indicated at para (m)(iv) that "Direction should be issued to B.D.A. u/s 48(1) of the Land Acquisition Act to drop acquisition proceedings in respect of the lands of petitioners in Sy.Nos. 174 and 175 of Kethamaranahalli, Mahalakshmi Layout. Further Extension in so far as the extent of lands, where residential buildings have not been constructed as on today." The petitioners have not as yet constructed buildings in the sites allotted to them. Respondent-2 has not granted permission for construction to some of the petitioners though they have sought such permission. Some of the petitioners have filed Writ Petitions seeking direction to respondent-2 to give them licences. In some Petitions directions have been given by this Court.

19. The first respondent has completely overlooked the fact while passing the impugned order, that the sites in question are situated in a Layout which is part of the Development Scheme sanctioned by the first respondent itself u/s 18 of the B.D.A. Act. It was pursuant to that Scheme the lands in question have been acquired and layout formed. Therefore, there was no question of the first respondent examining the legality or propriety of any order or proceedings of the second respondent u/s 63 of the B.D.A. Act. The sanction of Scheme by the first respondent is a statutory function and it cannot be nullified in purported exercise of revisionary power u/s 63 of the B.D.A. Act.

20. There is one more reason for striking down the impugned order. The impugned order has been made long after the Scheme has been implemented and sites allotted and possession delivered to the petitioners and others. In SHIVAPPA VEERAPPA MASUR v. SHRIMAN MAHARAJ NIRANJAN JAGADGURU MALLIKARJUNA MURUGARAJENDRA SWAMIJI AND ANR. 1978 (1) KARLJ 479 a Division Bench of this Court while considering the power of revision u/s 70A of the Bombay Public Trusts Act 1950 has ruled thus:

"Shri S.G. Sundara Swam, learned Counsel for the appellant, did not contend that there is any period of limitation prescribed for aggrieved persons to approach the revisional authority u/s 70A of the Act. But he strenuously contended and in our opinion rightly that even in the absence of limitation, the power of revision should be exercised within a reasonable time as ruled by the Supreme Court in [The State of Gujarat Vs. Patil Raghav Natha and Others](#), and [S.B. Gurbaksh Singh Vs. Union of India \(UOI\) and Others](#), . In Patel Raghav Nath's case, the Supreme Court considering whether the revising authority could exercise the power of revision where no period of limitation had been prescribed under the Bombay Land Revenue Code held thus:

"11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

In S.B. Gurubaksh Singh's case, the Supreme Court while considering the exercise of revisional power in the absence of period of limitation under the Sales Tax Act held thus:

"15. Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."

It is seen from the above ruling of the Supreme Court that the power of revision even in the absence of a period of limitation prescribed by the relevant statute, is required to be exercised by the appropriate revising authority within a reasonable time and that any unreasonable delay in the exercise of the power of revision will affect the validity, of the order of the revising authority. As to what is a reasonable time depends upon the facts and circumstances of each case."

21. Therefore, even assuming that the second respondent had the power to act u/s 63 of the B.D.A. Act, the impugned order is liable to be set aside on the ground that the same has not been made within reasonable time.

22. In the result, I make the following order:

(i) Rule made absolute in Writ Petition Nos. 5490 to 5494 and 27338 of 1991;

(ii) The impugned order dated 27-12-1990 in No. HUD.411. MNX.88 is set aside and the same shall have no effect whatsoever;

(iii) W.P.Nos. 6446 to 6456 of 1989 are dismissed.

(iv) The petitioners in W.P.Nos. 5490 to 5494 and 27338 of 1991 are entitled to costs. Advocates fee Rs. 2000/-.