

Commissioner, Bangalore Dev.Auth.& ... vs Brijesh Reddy & Anr on 8 February, 2013

Equivalent citations: 2013 AIR SCW 2378, 2013 (3) SCC 66, 2013 (4) AJR 277, 2013 (2) AIR KANT HCR 714, AIR 2014 SC (SUPP) 60, (2013) 1 WLC(SC)CVL 379, (2013) 119 REVDEC 247, (2013) 3 MAH LJ 880, (2013) 4 KANT LJ 66, (2013) 2 MAD LJ 742, (2013) 3 JCR 43 (SC), (2013) 2 SCALE 306, (2013) 2 MAD LW 807, (2013) 2 LANDLR 165, (2013) 3 CIVLJ 509, (2013) 97 ALL LR 474, (2013) 2 MPLJ 535, (2013) 1 ICC 230, (2013) 3 PUN LR 136, (2013) 124 ALLINDCAS 167 (SC), (2015) 1 MPHT 41, (2013) 2 RECCIVR 444, AIR 2013 SC (CIVIL) 1429

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Bench: P. Sathasivam, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

1

2 CIVIL APPEAL NO. 1051 OF 2013

3 (Arising out of SLP (C) No. 25851 2005)

The Commissioner, Bangalore
Development Authority & Anr.

.... Appellant (s)

Versus

Brijesh Reddy & Anr.
Respondent(s)

....

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the judgment and final order dated

27.07.2005 passed by the High Court of Karnataka at Bangalore in R.F.A. No. 947 of 2003 whereby the High Court allowed the first appeal filed by the respondents herein and remitted the matter to the trial Court for fresh disposal.

3) Brief facts:

(a) On 28.09.1965, a notification was issued by the State Government proposing to acquire several lands including the suit land being Survey No. 23/10 of Ejipura measuring 22 guntas for formation of Koramangala Layout. The original khatedars, who were notified were one Papaiah, Thimaiah, Patel Narayan Reddy, Smt. Rathnamma, Smt. Perumakka (Defendant No.3 in the suit), Munivenkatappa and Chikkaabbaiah, the husband of 3rd defendant. After holding an enquiry, the Land Acquisition Officer passed the award on 07.09.1969. Thereafter, 10 guntas of land held by Smt. Rathnamma was taken possession on 28.11.1969 and the remaining 12 guntas held by defendant No.3 was taken possession on 22.07.1978 and then handed over the entire land to the Engineering Section. The layout was formed, sites were allotted to the intending purchasers.

(b) According to the respondents herein, they purchased 12 guntas of land under a registered sale deed dated 15.11.1995 from Perumakka-3rd defendant in the suit. Originally the said land belonged to Chikkaabbaiah – husband of 3rd defendant. Chikkaabbaiah mortgaged the said property to Patel Narayan Reddy on 26.02.1985. Thereafter, the said property was re-conveyed in favour of Chikkaabbaiah. After the death of Chikkaabbaiah, his wife Perumakka, (3rd defendant in the suit) was the absolute owner and in possession of the property.

(c) When the Bangalore Development Authority (in short “the BDA”) tried to interfere with the possession of the suit property, 3rd defendant in the suit filed O.S. No. 10445 of 1985 for injunction and obtained an order of temporary injunction on 15.06.1985 which was in force till 22.05.1994. Ultimately the said suit was dismissed on the ground that before filing of the suit, statutory notice had not been given to the BDA. Thereafter, another suit being O.S. No. 2069 of 1994 was filed by the third defendant on the file of the Civil Judge, Bangalore and the same was dismissed as withdrawn on 14.06.1995 with liberty to file a fresh suit.

(d) In the meantime, the respondents herein purchased the suit land from the third defendant under a registered sale deed on 15.11.1995. After the purchase of the land, the respondents were put in possession. When the BDA tried to interfere with the possession of the respondents herein, they filed a petition being W.P. No. 41497 of 1995 before the High Court, ultimately the said petition was dismissed as withdrawn by the respondents herein with a liberty to file a fresh suit.

(e) Thereafter, the respondents herein filed a suit being O.S. No. 4267 of 1996 on the file of the Court of the XVI Addl. City Civil & Sessions Judge at Bangalore for permanent injunction. By order dated 18.06.2003, the trial Court dismissed the said suit as not maintainable.

(f) Challenging the said order, the respondents herein filed first appeal being R.F.A. No.947 of 2003 before the High Court. By impugned order dated 27.07.2005, the High Court allowed the appeal and remitted the matter to the trial Court with a direction to dispose of the same after permitting the plaintiffs to adduce evidence on merits.

(g) Aggrieved by the said order, the appellants have preferred this appeal by way of special leave.

4) Heard Mr. Altaf Ahmed, learned senior counsel for the appellants and Mr. G.V. Chandrashekar, learned counsel for the respondents. Discussion:

5) The only point for consideration in this appeal is whether a civil court has jurisdiction to entertain a suit when the schedule lands were acquired under the land acquisition proceedings and whether the High Court was justified in remanding the matter to the trial Court without examining the question with regard to the maintainability of the suit?

6) It is seen from the plaint averments in O.S. No. 4267 of 1996 that the plaintiffs purchased the suit schedule property from the third defendant under a registered sale deed dated 15.11.1995 and since then they are in exclusive possession and enjoyment of the same. Since other details are not necessary for our purpose, there is no need to traverse the entire plaint allegations.

7) The third defendant, who filed a separate written statement supporting the case of the plaintiffs, had asserted that she did had the right, interest and title in the schedule property and she possessed every right to transfer and alienate it in favour of the plaintiffs. On the other hand, the BDA and its officers/defendant Nos. 1 and 2, in their written statements, specifically denied all the allegations made by the plaintiff. According to the BDA, the suit schedule property which forms part and parcel of Survey No. 23 of 2010 of Ejipura, totally measuring 22 guntas was notified for acquisition for the formation of Koramangala Layout. In their statements, they specifically pleaded that the notification came to be issued on 28.09.1965. The original khatedars who were notified were one Papaiah, Thimaiah, Patel Narayan Reddy, Smt. Rathnamma, Smt. Perumakka (D-3), Muni Venkatappa and Chikkaabbaiah, the husband of D-3. The Land Acquisition Officer, after complying with the provisions of the Land Acquisition Act and after holding enquiry passed an award. It is further stated that 10 guntas of land held by Smt. Rathnamma was taken possession on 28.11.1969, remaining 12 guntas held by defendant No.3 was taken possession on 22.07.1978 and thereafter, handed over the entire land to the Engineering Section. It is also stated that as a follow-

up action, the lay out was formed, sites were allotted to the intending purchasers. According to defendant Nos. 1 and 2, the entire land vested with them and the so-called purchase now alleged by the plaintiff from Defendant No. 3 on 15.11.1995 is bad and in any event, not binding on the defendants. It is also stated that the persons who purchased the sites were issued possession certificates, khata was changed, khata certificates were issued, building licences were issued and there were constructions in the said site. Pursuant to the same, they had paid tax to the authority concerned. Accordingly, it is asserted that the plaintiff was not in possession on the date of filing of the suit. Before the trial Court, in order to substantiate the defence, the defendant Nos. 1 and 2 have produced copies of the Gazette Notification with respect to the acquisition of the said land. The award passed by the Land Acquisition Officer has also been produced and taken on record. The perusal of the discussion by the trial Court shows that the plaintiffs have not disputed the contents of those documents, even otherwise it cannot be disputed.

8) Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:

“9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.” From the above provision, it is clear that Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Civil Court with regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away. An objection as to the exclusion of Civil Court’s jurisdiction for availability of alternative forum should be taken before the trial Court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice.

9) In State of Bihar vs. Dharendra Kumar and Others, (1995) 4 SCC 229, the core question was whether a civil suit is maintainable and ad interim injunction could be issued where proceedings under the Land Acquisition Act, 1894 was taken pursuant to the notice issued under Section 9 of the Act and possession delivered to the beneficiary. On going through the entire proceedings initiated under the Land Acquisition Act, this Court held as under:

“3. ... We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil Court has no jurisdiction to go into the question of validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable...” After holding so, this Court set aside the finding of the trial Court that there is a prima facie triable issue. It also held that the order of injunction was without jurisdiction.

10) In *Laxmi Chand and Others vs. Gram Panchayat, Kararia and Others*, (1996) 7 SCC 218 while considering Section 9 of the Civil Procedure Code, 1908 vis-à-vis the Land Acquisition Act, 1894, this Court held as under:

“2. ... It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.”

11) In *Commissioner, Bangalore Development Authority vs. K.S. Narayan*, (2006) 8 SCC 336, which arose under the Bangalore Development Authority Act, 1976, was similar to the case on hand, this Court held that a civil suit is not maintainable to challenge the acquisition proceedings. In that case one K.S. Narayan filed Original Suit No. 5371 of 1989 in the Court of the City Civil Judge, Bangalore, praying that a decree for permanent injunction be passed against the defendant - Bangalore Development Authority, their agents and servants restraining them from interfering with the plaintiff's possession and enjoyment of the plaint scheduled property and from demolishing any structure situate thereon. The case of the plaintiff is that the plaintiff purchased the property in dispute bearing No. 46, situated in Banasawadi village, K.R. Pura Hobli, Bangalore, South Taluk from S. Narayana Gowda by means of a registered sale deed dated 17.06.1985. The erstwhile owners of the property had obtained conversion certificate from the Tahsildar and the property is situated in a layout which is properly approved by obtaining conversion for non-agricultural use from the competent authority. The plaintiff applied for mutation entries and the

same was granted in his favour. The property in dispute was not covered by any acquisition proceedings as neither notice of acquisition had been received nor any award regarding the said property had been passed.

The defendant had no right, title or interest over the property but it was trying to dispossess the plaintiff from the same on the ground of alleged acquisition. The plaintiff issued a notice to the defendant on 11.07.1989 calling upon it not to interfere with his possession and enjoyment of the property in dispute. The suit was contested by the defendant - Bangalore Development Authority on the ground inter alia that the plaintiff was not the owner of the property in dispute. S. Narayana Gowda, who is alleged to have executed the sale deed in favour of the plaintiff on 17.06.1985, had no right, title or interest over the property in dispute and he could not have conveyed any title to the plaintiff. It was further pleaded that the disputed land had been acquired by the Bangalore Development Authority after issuing preliminary and final notifications in accordance with the Bangalore Development Authority Act and the possession had also been taken over and thereafter it was handed over to the engineering section on 22.06.1988 after completion of all formalities. The award for the land acquired had already been made and the compensation amount had been deposited in the civil court under Sections 30 and 31(2) of the Land Acquisition Act. It was specifically pleaded that it was the defendant - Bangalore Development Authority which was in possession of the plaint scheduled property on the date of filing of the suit and, therefore, the suit for injunction filed by the plaintiff was not maintainable and was liable to be dismissed.

12) It is relevant to note that in the above decision, the acquisition proceedings in question had been taken under the Bangalore Development Authority Act, 1976 and the provisions of Sections 17 and 19 are somewhat similar to the provisions of Sections 4 and 6 of the Land Acquisition Act, 1894. After noting out all the details, this Court allowed the appeals and set aside the decision rendered by the High Court.

13) 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 civil Court to take cognizance of the case under Section 9 of 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 226 and this Court under Article 136 with self imposed restrictions on their exercise of extraordinary power.

14) No doubt, in the case on hand, the plaintiffs approached the civil Court with a prayer only for permanent injunction restraining the defendant Nos. 1 and 2, i.e., BDA, their agents, servants and any one claiming through them from interfering with the peaceful possession and enjoyment of the schedule property. It is true that there is no challenge to the acquisition proceedings. However, in view of the assertion of the BDA, in their written statements, about the initiation of acquisition proceedings ending with the passing of award, handing over possession and subsequent action etc., the said suit is not maintainable. This was rightly concluded by the trial Court. For proper

compensation, the aggrieved parties are free to avail the statutory provisions and approach the court concerned. All these aspects have been clearly noted by the trial Court and ultimately rightly dismissed the suit as not maintainable. On the other hand, the learned Single Judge of the High Court though adverted to the principles laid down by this Court with reference to acquisition of land under the Land Acquisition Act and Section 9 of CPC committed an error in remanding the matter to the trial Court on the ground that the plaintiffs were not given opportunity to adduce evidence to show that their vendor was in possession which entitles them for grant of permanent injunction from evicting them from the scheduled property without due process of law by the defendants. In the light of the specific assertion coupled with materials in the written statement about the acquisition of land long ago and subsequent events, suit of any nature including bare injunction is not maintainable, hence, we are of the view that the High Court is not right in remitting the matter to the trial Court for fresh disposal.

15) Having regard to the fact that the acquisition proceedings had been completed way back in 1960-70, the plaintiffs who purchased the suit land in 1995 cannot have any right to maintain the suit of this nature particularly, against defendant Nos. 1 and 2, namely, the BDA. The High Court clearly erred in remanding the matter when the suit was not maintainable on the face of it. The High Court failed to take note of the fact that even in the plaint itself, the respondents herein/plaintiffs have stated that the suit land was acquired and yet they purchased the suit land in 1995 and undoubtedly have to face the consequence. The possession vests with the BDA way back in 1969 and 1978 and all the details have been asserted in the written statements, hence the remittal order cannot be sustained.

16) In the light of the above discussion, the impugned judgment dated 27.07.2005 passed by the High Court in R.F.A. No. 947 of 2003 remitting the matter to the trial Court is set aside and the judgment dated 18.06.2003 of the trial Court in O.S. No. 4267 of 1996 is restored.

17) The appeal is allowed with no order as to costs.

.....J. (P. SATHASIVAM)J. (JAGDISH
SINGH KHEHAR) NEW DELHI;

FEBRUARY 08, 2013.
