

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 24TH DAY OF JANUARY 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

WRIT APPEAL NO.7196 of 2012 (LA-RES)

BETWEEN:

THE MINISTRY OF COMMUNICATIONS
EMPLOYEES HOUSING SOCIETY LIMITED
NO.419, I FLOOR, 12TH CROSS
SADASHIVANAGAR
BENGALURU-560 008
NOW REPRESENTED BY ITS
PRESIDENT SRI. D. NAGABHUSHANAM.

.. APPELLANT

(BY SRI. H.N. SHASHIDHARA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT
VIDHANA SOUDHA
BENGALURU- 560 001.
2. THE SPECIAL DEPUTY COMMISSIONER
BANGALORE DISTRICT
BENGALURU-560 009.

3. THE SPECIAL LAND ACQUISITION OFFICER,
III FLOOR, PODIUM BLOCK,
V.V. TOWERS, BENGALURU- 560 001.
4. SMT. PUSHPA JAIN,
WIFE OF LATE L.P. JAIN
AGE ABOUT 78 YEARS,
RESIDING AT NO.17, ALI ASKAR ROAD,
BENGALURU- 560 052.

.. RESPONDENTS

(BY SRI. LAKSHMINARAYANA, AGA FOR RESPONDENTS 1 TO 3.
SRI. D.N. NANJUNDA REDDY, SR.COUNSEL FOR
SRI M.S. SHYAM SUNDAR, ADVOCATE FOR RESPONDENT
NO.4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION NO.973 OF 2008 (LA-
RES) DATED 04/10/2012.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 11.11.2019, COMING ON FOR
PRONOUNCEMENT, THIS DAY, ASHOK S. KINAGI, J.,
DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the order dated 04.10.2012 passed
by the Learned Single Judge in Writ petition No.973 of
2008, in allowing the Writ petition, respondent No.4,
Housing Society has filed this writ appeal.

2. Brief facts of the case are that the petitioner is the absolute owner of property bearing Sy.No.14/2 measuring 4 acres 32 guntas of Kodigerahalli, Yelahanka Hobli, Bangalore North Taluk. The petitioner has purchased the said land under two registered sale deeds dated 30.01.1982 and 12.02.1982 from one Survarna daughter of late Dr. Sunderraj. Pursuant to the purchase of the said land, mutation entries were effected in the name of the petitioner from the year 1981-82. The two items of property are contiguously situated and the petitioner had developed the same and grown coconut trees which were about 25 years old as on the date of the petition and had erected a compound wall all around the property.

3. That on 04.03.1982, the Bangalore Development Authority (hereinafter referred to as the 'BDA', for short) issued an endorsement endorsing

that the land in question belonging to the petitioner is not under acquisition. Thereafter respondent Nos.1 to 3 have acquired the land of the petitioner vide notification dated 28.04.1983. Final notification was issued by the respondents on 28.02.1985, wherein, in the said final notification, the name of the previous owner is shown as the owner but not the name of the petitioner. The petitioner made an application before respondent No.2 for conversion of land in question for residential purposes. Respondent No.2 passed an order for conversion and the petitioner paid a sum of Rs.3,76,638/- on 26.06.1996 being the conversion fee in respect of the property in question.

4. That the notification was issued under Section 4(1) of the Land Acquisition Act 1894 (hereinafter referred to as the 'LA' Act proposing to acquire the land of the petitioner and others. The petitioner has given no objection to the said proposal

and sought for exemption in the matter of payment of development charges and by virtue of the resolution of the City Municipal Council (hereinafter referred to as the 'CMC' for short), Byatarayanapura, Bangalore, now included under Bruhat Bengaluru Mahanagara Palike (hereinafter referred to as the 'BBMP', for short). 4th respondent is claiming the property of the petitioner challenging that the land in question was acquired for the benefit of the 4th respondent and 4th respondent submitted a layout plan to the BDA for approval. The petitioner came to know of the acquisition of his land by respondent Nos.1 to 3 for the benefit of 4th respondent. The petitioner got issued a legal notice to the BDA and also to the Town Planning Authority of BDA requesting them not to approve the plan submitted by the 4th respondent in respect of the land in question. 4th respondent gave a reply to the legal notice issued by the petitioner.

5. The grievance of the petitioner is that the respondents have not issued any notice to the petitioner nor conducted an enquiry before acquiring the land as per the provisions of the LA Act. A portion of the land in question belongs to the petitioner. The petitioner aggrieved by the notification issued by respondent Nos.1 to 3 insofar as it relates to 23 guntas in Sy.No.14/2 of Kodigerahalli, Yelahanka Hobli, Bangalore North Taluk, filed Writ Petition No.973 of 2008 before this Court.

6. 4th respondent entered appearance and filed statement of objections contending that the land was acquired and final notification was issued in the year 1985 and the petitioner has approached this Court after a lapse of more than two decades. The acquisition proceedings have culminated in the land vesting in the State and possession having been handed over to the 4th respondent in the year 1992,

the acquisition proceedings cannot be subject to challenge in the writ petition. Further contended that, the revenue entries in respect of the land measuring 23 guntas in Sy.No.14/2 has already been effected in the name of the 4th respondent. Hence, sought for dismissal of the writ petition.

7. The learned Single Judge, after considering the entire material on record, has allowed the writ petition and quashed Annexurs-N and P. 4th respondent aggrieved by the order passed in Writ Petition No.973 of 2008 dated 04.10.2012 has filed this writ appeal.

8. Heard the arguments of the learned counsel for the parties and perused the records.

9. It is not in dispute that the petitioner purchased 2 acres 18 guntas of land including 8

guntas of kharab in Sy.No.14/2 of Kodigerahalli, Yelahanka Hobli, Bangalore North Taluk, under a registered sale deed dated 30.01.1982 and also purchased another 2 acres 18 guntas of land including 8 guntas of kharab in Sy.No.14/2 of Kodigerahalli, Yelahanka Hobli under the registered sale deed dated 12.02.1982. The name of the petitioner is appearing in the revenue records in column Nos.9 and 12(2) based on the aforesaid registered sale deeds. The petitioner submitted an application for conversion of agricultural land into residential purpose. The authorities, after due enquiry, passed an order dated 19.07.1996 converting the land into residential purpose and the petitioner paid a sum of Rs.3,76,638/- being the conversion fee in respect of the property in question. Earlier, the land in question was within the jurisdiction of CMC, Byatarayanapura. Now by virtue of the Government order, it is included

in BBMP. That on 26.04.1983 the 2nd respondent issued a notification under Section 4(1) of the LA Act proposing to acquire Sy.Nos.14/1, 14/2 and 14/3 situated at Kodigerahalli, Yelahanka Hobli, showing the name of the vendor of the petitioner in the notification. In fact, as on the date of issuance of notification, name of the petitioner is appearing in the revenue records. In spite of it, respondent No.2 has wrongly shown the name of petitioner's vendor in the notification. Further, without following the procedure prescribed under Section 5(A) of the LA Act, proceeded to issue a final notification under Section 6 of the LA Act. Thus, the procedure adopted by respondent Nos.1 to 3 is not in accordance with the provision of the LA Act. As the acquisition proceedings were initiated in the name of a wrong person and the name of the petitioner was not shown in the acquisition proceedings, the petitioner had no

opportunity to file objections and to participate in the hearing. The acquisition proceedings initiated by respondent Nos.1 to 3 is behind the back of the petitioner and the 2nd respondent has failed to consider the same even during the year 1996 while according permission for conversion of agricultural land into residential purposes and collecting conversion fee of Rs.3,76,638/- from the petitioner. The said fact clearly establishes that respondent Nos.1 to 3 have played fraud on the petitioner in acquiring the land of the petitioner. The petitioner has proved that respondent Nos.1 to 3 have played fraud on the petitioner. If fraud is established, the entire proceeding stands vitiated. The learned Single Judge, after considering the entire material on record, has rightly held that the acquisition proceeding is completely surrounded by suspicious circumstances.

In our opinion, the learned Single Judge was justified in allowing the writ petition.

10. In the light of the above discussion, we do not find any ground to interfere. Hence, we proceed to pass the following:

ORDER

The writ appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

kmv