

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY 2021

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.28218/2018 (BDA)

BETWEEN:

SMT. S SUMITHA
AGED ABOUT 45 YEARS
W/O SRI.K NARASIMHAIAH
R/AT NO.31/1A, 10TH CROSS
2ND STAGE
KENGARI SATELLITE TOWN
BANGALORE-560 060.

... PETITIONER

(BY SRI.H.C.SUNDARESH, ADV. FOR
SRI. JAGAN MOHAN M.T., ADV.)

AND:

THE COMMISSIONER
BANGALORE DEVELOPMENT AUTHORITY
T. CHOWDAIAH ROAD
KUMARA PARK WEST
BANGALORE-560 020.

... RESPONDENT

(BY SRI.M.R. VANAJA, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS FROM THE RESPONDENT; DIRECT TO THE RESPONDENT BDA TO ALLOT AN ALTERNATE LAND OR SITE MEASURING 40 X 120 FEET IN GNANABHARATHI LAYOUT OR

KENGERI SATELLITE TOWN, BANGALORE, IN LIEU OR ROAD ILLEGALLY FORMED BY THE RESPONDENT BDA IN AN EXTENT OF 40 X 120 FEET IN THE SCHEDULE PROPERTY BELONGING TO THE PETITIONER, WITHOUT ACQUISITION PROCEEDINGS AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner is before this Court under Article 226 of the Constitution of India praying for the following reliefs:

(a) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent-BDA to allot an alternate land or site measuring 40 x 120 feet in Gnanabharathi Layout or Kengeri Satellite Town, Bangalore, in lieu of road illegally formed by the respondent-BDA in an extent of 40 x 120 Feet in the schedule property belonging to the petitioner, without acquisition proceedings;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent-BDA to remove the sites demarcating stones marked as 350, 351, 352 and 353 in an

extent of 60 x 120 feet in the schedule property, illegally laid by the respondent-BDA officials, without acquisition proceedings;

(c) Issue a writ of prohibition, restraining the respondent-BDA and its subordinates from allotting Site Nos.351, 352 & 353 in the schedule property to anybody else; and

(d) Issue a writ of prohibition, restraining the respondent-BDA and its officials from interfering and disturbing the petitioner's peaceful possession and enjoyment of the Schedule Property in any manner.

2. Heard the learned counsel Sri.H.C.Sundaresh for Sri.Jagan Mohan M.T., learned counsel for the petitioner and Smt.M.R.Vanaja for respondent-BDA.

3. The petitioner claims that she is the owner in possession of 11 guntas of land in Sy.No.31/1B of Valagerehalli village, Kengeri Hobli, Bangalore South Taluk. She acquired the same under the Will dated 15.07.1994

executed by one Sri.M.Krishnappa, father-in-law of the petitioner. It is the case of the petitioner that one Munishamappa purchased 31 guntas of land in Sy.No.31/1B of Valagerehalli Village, Kengeri Hobli under a registered sale deed dated 24.04.1943 (Annexure-A) and subsequently, in the family partition, the land in question has fallen to the share of M.Krishnappa, father-in-law of the petitioner.

4. The respondent-BDA issued preliminary notification dated 19.01.1989 for acquisition of land for formation of Gnanabharathi Layout. The petitioner's land to an extent of 31 guntas in Sy.No.31/1B of Valagerehalli village was also notified in the said preliminary notification. Thereafter, final notification dated 19.01.1994 was issued wherein the entire land of 31 guntas in Sy.No.31/1B was acquired. It is submitted that the above said final notification dated 19.01.1994 was the subject matter before this Court in the writ petition and this Court quashed the said final notification dated 19.01.1994. Thereafter the respondent-BDA issued

fresh final notification dated 06.10.1997, which is placed on record as Annexure-L. In the final notification, it is stated that the petitioner's land to extent of 31 guntas in Sy.No.31/1B of Valagerehalli village was not acquired by the BDA. But, it is submitted that without acquiring the land in question under final notification dated 06.10.1997, the respondent-BDA utilized the entire extent of 31 guntas of land in Sy.No.31/1B of Valagerehalli village for formation of sites and road. As the respondent-BDA formed sites and disturbed the possession of the petitioners in the year 2017, the petitioner made representation to the respondent-BDA as per Annexure-M dated 28.03.2017, not to allot site Nos.350, 351, 352, 353 formed in Sy.No.31/1B and to protect the possession of the petitioner. Thereafter, it is submitted that the petitioner has also made another representation on 19.06.2018. The present writ petition is filed on 03.07.2018.

5. Learned counsel Sri.H.C.Sundaresh appearing for the petitioner contends that the petitioner has derived right, title

and ownership over the schedule property by virtue of Will dated 15.07.1984 executed by her father-in-law Sri.M.Krishnappa. Even though the land in Sy.No.31/1B measuring 31 guntas was notified under the preliminary notification dated 19.01.1989, the land was not acquired under final notification dated 06.10.1997, as such, the respondent-BDA could not have utilized the land of the petitioner for formation of sites and road. Further, the learned counsel would submit that without acquiring the land, utilization of the petitioner's land is wholly illegal. It is submitted that the petitioner would be entitled for alternate site or alternate land in lieu of the land utilized by the respondent-BDA. Therefore, the petitioner had submitted representation which is not considered by the respondent-BDA.

6. Per contra, Smt.M.R.Vanaja, learned counsel appearing for respondent-BDA submits that neither the name of the petitioner nor her father-in-law Sri.M.Krishnappa is shown as

kathedar in respect of the land measuring 31 guntas in Sy.No.31/1B of Valagerahalli village and as such, the petitioner would not be entitled for any relief. Further, the learned counsel would point out that no material is placed on record to demonstrate that the petitioner is the lawful owner of the land in question. It is also submitted that the representation for the first time is said to have been submitted on 28.03.2017/Annexure-M nearly 20 years after the final notification. There is delay on the part of the petitioner and no bonafide in the petition. Therefore she prays for dismissal of the writ petition.

7. Having heard the learned counsel for the parties and on perusal of the writ petition papers, I am of the view that the petitioner would not be entitled for any relief sought for by her in the instant writ petition.

8. One would be entitled for a writ of mandamus, if one establishes the legal right and corresponding duty on the part

of the respondent-authority to perform such legal duty. In the case on hand, the petitioner has failed to establish her right and corresponding legal duty on the respondent-BDA. The petitioner has not placed on record any cogent evidence or material to remotely indicate her ownership and possession of the land in question i.e., Sy.No.31/1B to an extent of 11 guntas. The petitioner claims that she is the daughter-in-law of one Sri.M.Krishnappa and Sri.M.Krishnappa is the son of Munishamappa who had purchased the land in question under Annexure-A sale deed. The petitioner has placed on record the unregistered Will dated 15.07.1994 to say that her father-in-law Sri.M.Krishnappa has bequeathed the property to an extent of 11 guntas in her favour and the said M.Krishnappa died on 22.10.1995. Curiously, out of 31 guntas of land which is claimed to be belonging to one Sri.M.Krishnappa, only 11 guntas appears to have been bequeathed in favour of the petitioner under Annexure-E/Will dated 15.07.1994. What is the status of remaining 20 guntas of land in Sy.No.31/1B of Valagerehalli Village and whether

any one has claimed compensation or alternate site is not forthcoming from the material on record. Learned counsel for the petitioner is also not in a position to submit anything in that regard. No document of transfer of khatha is placed on record. There is no document or material to establish that the petitioner is the daughter-in-law of one M.Krishnappa. Unless the petitioner establishes her title over the property to an extent of 11 guntas in Sy.No.31/1B of Valagerehalli village, the petitioner would not be entitled for any relief.

9. According to the petitioner herself, the final notification was issued on 06.10.1997. The respondent-BDA had utilized the unacquired land of 31 guntas in Sy.No.31/1B of Valagerehalli Village for formation of sites and formation of road. Though final notification in respect of the land in question was published on 06.10.1997, the petitioner, for the first time made representation to the BDA only on 28.03.2017 and filed the writ petition on 03.07.2018. There is inordinate delay of 20 years in making representation and also in

approaching this Court. Delay defeats the right of a person.
The petition suffers from delay and laches.

10. For the reasons stated above, the writ petition stands rejected.

It is open for the petitioner to establish her right and avail the remedy in accordance with law.

Sd/-
JUDGE

mpk/-*
CT:bms