UMA SHANKAR & ORS. A

v.

R. HANUMAIAH SINCE DECEASED THROUGH HIS LRS. & ORS.

(Civil Appeal Nos. 2576-2593 of 2017) B

MAY 12, 2017

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Land Acquisition Act, 1894 – ss. 4 and 48 – Land acquisition – De-acquisition of land – On facts, issuance of notification dated 14.10.2009 by the State Government for de-acquisition of land in favour of the owner-respondent – Permissibility of – Held: State Government committed contempt of this Court while issuing the said notification – It was not permissible exercise in view of the dictum binding on all the parties – In view of inter parties judgment of this Court, there was no scope left to de-acquire the property under the provisions of s. 48 – Notification was totally void, illegal and conferred no right to respondent – Thus, no hearing to be given to respondent in the matter – Notification dated 13.11.2009 was rightly issued cancelling the previous notification dated 14.10.2009 as there could not be any de-acquisition of the land – Order passed by the High Court is set aside since the High Court did not look into the binding precedent of this Court – Precedent. C D E

R. Hanumaiah v. Bangalore Development Authority and Ors. **(2002) 10 SCC 221;** *Muniyappa v. Bangalore Development Authority* **ILR 1992 Kant 125**; *Bangalore Development Authority and Ors. v. R. Hanumaiah and Ors.* **(2005) 12 SCC 508 : [2005] 3 Suppl. SCR 901 – referred to.** F

Case Law Reference

(2002) 10 SCC 221	**referred to**	**Para 4**
ILR 1992 Kant 125	**referred to**	**Para 4**
[2005] 3 Suppl. SCR 901	**referred to**	**Para 5**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2576-2593 of 2017. H

A From the Judgment and Order dated 10.12.2014 of the High Court of Karnataka at Bangalore in Writ Appeal Nos. 3051-67 of 2012 (LA-BDA) and Writ Appeal No. 3492 of 2013

WITH

C. A. Nos. 2594-2611 of 2017.

B

Sanjay Parikh, Ms. Ninni Susan Thomas, Pukhrambam Ramesh Kumar, Uday Manaktala, Avhinav Trehan, S. K. Kulkarni, Ms. K. Kulkarni, Ankur S. Kulkarni, Advs. for the Appellants.

Naveen Chawla, V. Anand, T. Mahipal, Rohit Sharma, Rounak C Nayak, V. N. Raghupathy, Advs. for the Respondents.

The follwoing Order of the Court was delivered:

ORDER

1. These appeals are directed against the judgment and order D passed by the High Court of Karnataka at Bangalore in Writ Appeal Nos. 3051-3067 of 2012 and Writ Appeal No. 3492 of 2013, dated 10.12.2014.

2. Shocking state of affairs is reflected in the judgment of the High Court of Karnataka. The lands had been acquired by issuance of notification under Section 4 of the Land Acquisition Act, 1894 (for short, E "the Act") on 26.11.1959.

3. A declaration under Section 6 of the Act was issued on 28.09.1965 and award was passed on 29.11.1966. The amount of compensation was paid and possession of the land was taken in the year 1975. Some incumbents sought for relief as regards to enhancement of F compensation amount by filing reference under Section 18 of the Act. On 26.06.1969 a resolution was passed by City Improvement Trust Board (CITB), Bangalore to re-convey an extent of 8 acres, 21 guntas of the total land acquired to R. Hanumaiah. Another resolution was passed by CITB on 19.04.1972 modifying its earlier resolution and agreeing to G re-convey 6 acres 20 guntas and 42 Sq.yards in favour of R. Hanumaiah with some riders. After formation of site R. Hanumaiah filed petition before the High Court of Karnataka seeking mandamus directing the Bangalore Development Authority (BDA)to re-convey 6 acres and 20 guntas and 42 Sq. yards of land as per resolution of CITB dated 19.04.1972.

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4. The learned Single Judge of the High Court of Karnataka dismissed the Writ Petition No. 15487 of 1987 summarily at the admission stage. The Writ Appeal filed by R.Hanumaiah was also dismissed summarily. Thereafter, R.Hanumaiah approached this Court by way of filing appeal (R.Hanumaiah Vs. Bangalore Development Authority and Ors.), (2002) 10 SCC 221 decided on 31.01.2001. This Court vide aforementioned judgment accepted the appeal and remitted the matter to the Division Bench of the High Court to re-consider the matter on merits, in view of the contentions raised on behalf of R. Hanumaiah in a judgment in Muniyappa vs. Bangalore Development Authority, ILR 1992 Kant 125 in which the High Court had taken the view that re-conveyance was permissible.

5. The Division Bench after remand of the matter considered the matter afresh and set aside the judgment of the learned Single Judge relying upon Muniyappa's case (supra). Aggrieved by the same, BDA preferred the appeal before this Court (Bangalore Development Authority and Ors. vs. R. Hanumaiah and Ors.),(2005) 12 SCC 508, decided on 03.10.2005. This Court had allowed the appeal, set aside the judgment under appeal. While dealing with the matter this Court had held that power of re-conveyance could not be exercised after vesting of the land with the State Government under provisions of Section 48 of the Act. The following discussion was made by this Court in the aforesaid decision :

> "46. The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government.
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> 47. The High Court also erred in holding that land acquisition process and the vesting process became incomplete since the land owners were asked to re-deposit the amount of compensation. High Court failed to take notice of Section 31 of the Land Acquisition Act. Section 31 contemplates that on making of an award under Section 11 the Collector shall tender amount of

A compensation awarded by him to the person interested and entitled thereto according to the award and shall pay to them unless prevented by any one or more of the contingencies mentioned in the subsequent clauses. None of those contingencies arose in the present case. Thus, once the amount was tendered and paid the acquisition process was complete. After making the award under Section 11 the Collector can take possession of the land under Section 16 which shall thereupon vest absolutely in the Government free from all encumbrances. In the instant case, after making the payment in terms of the award, possession was taken. The acquisition process stood completed. The subsequent development will not alter the fact that the acquisition was complete.

48. This brings us to the last contention raised by the counsel for the respondent. Respondent placed on record copy of the letter No.UDD/260/2005 dated 12.7.2005 addressed by the Principal Secretary to the Government, Urban Development Department, Bangalore to the Commissioner, Bangalore Development Authority, Bangalore. This letter was addressed by the Urban Development Department with reference to Chief Minister's note No.CM/SCM-2/49/BDA/05 dated 5.7.2005. The letter reads as under:-

"With reference to the above subject the copy of the note under reference is enclosed along with this Letter and the subject is self explanatory.

I have been directed to inform you that in the light of the order of the Hon'ble Chief Minister, an extent of 6 acres 20 guntas of Land should be re-conveyed to Sri. R. Hanumaiah in accordance with the decision rendered by the High Court of Karnataka in Writ Appeal No.727/1989, dated 9/10.7.2001, you should take necessary action immediately and send a report to the Government regarding the action taken."

49. The Bangalore Development Authority sent their reply contending inter alia that the directions issued by the Chief Minister were contrary to law and the third party rights had set in and therefore, not capable of being implemented. Thereafter, there has been no communication from the office of the Chief Minister to the BDA.

50. The letter was written on behalf of the Government in purported exercise of its power under Section 65 of the Act which reads: A

"65. *Government's power to give directions to the Authority*- The Government may give such directions to the authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the authority to comply with such directions." B

51. We do not agree with the contention raised by the counsel for the respondent that the directions issued by the Chief Minister through his note were binding on the BDA or that the BDA was bound in law to re-convey the land in terms of the directions issued in the impugned judgment. It has not been shown that the Chief Minister was authorised to issue the directions to the BDA to re-convey the land. Under Section 65 the Government can give such directions to the authority which in its opinion are necessary or expedient for carrying out the purpose of the Act. It is the duty of the BDA to comply with such directions. Contention that BDA is bound by all directions of the Government irrespective of the nature and purpose of the directions cannot be accepted. Power of the Government under Section 65 is not unrestricted. Directions have to be to carry out the objective of the Act and not contrary to the provisions of the Act. The Government can issue directions which in its opinion are necessary or expedient for "carrying out the purposes of the Act". C D E

52. Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting the BDA is for the development of the city and improve the lives of the persons living therein. The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Direction issued by the Chief Minister run counter to and are destructive of the purpose for which the BDA was created. It is opposed to the object of the Act and therefore, bad in law. Directions of the Chief Minister is to re-convey the land in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ F G H

A Appeal No.727 of 1989. Since we are setting aside the impugned judgment, the BDA as per directions issued by the Chief Minister cannot re-convey the land to the respondent in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ Appeal No.727 of 1989.

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55. It is not in dispute that Section 48 of the Land Acquisition Act would apply to the acquisitions made under the 1976 Act and in that view of the matter the State could exercise its jurisdiction for re-conveyance of the property in favour of the owner thereof only in the event possession thereof had not been taken. Once such possession is taken even the State cannot direct re-convey the property. It has been accepted before us that Section 21 of the General Clauses Act has no application but reliance has been sought to be placed on Section 65 of the 1976 Act which empowers the Government to issue such directions to the authority as in its opinion are necessary or expedient for carrying out the purpose of the Act. The power of the State Government being circumscribed by the conditions precedent laid down therein and, thus, the directions can be issued only when the same are necessary or expedient for carrying out the purpose of the Act. In a case of this nature, the State Government did not have any such jurisdiction and, thus, the Bangalore Development Authority has rightly refused to comply therewith.

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58. Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day to day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution of India.

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61. We accept this appeal and set aside the judgment of the High Court as well as the directions issued by the State Government on the asking of the Chief Minister vide letter dated 12th July, 2005 to the BDA to re-convey the land measuring 6 acres, 20 guntas and 42 Sq. Yds. to the 1st Respondent. The judgment under appeal is set aside and that of the Single Judge is restored. The writ petition is dismissed except to the extent that the 1st respondent would be entitled to re-claim the amount of compensation along with interest as indicated in the earlier paragraphs. Parties shall bear their own costs."

This Court concluded the matter by aforesaid decision which was binding on all concerned.

6. Thereafter, as total misadventure, Writ Petition (C) No. 26826 of 2005 was filed by R. Hanumaiah in which ignoring the mandate of this Court, the learned Single Judge of the High Court of Karnataka passed an order on 10.06.2009 to give representation to the Government for de-acquiring 6 acres 20 guntas for which there was absolutely no room. The direction was in violation of decision of this Court in the same matter and such a petition ought not to have been entertained by the High Court for a moment. However, the direction was given to the Government to decide the representation. The said direction was stayed in the Writ Appeal filed by the BDA vide dated 12.06.2009.

7. On 14.10.2009 in gross violation of the judgment rendered by this Court, notification for de-acquisition was issued by the Government of Karnataka. Consequently, the BDA as well as R. Hanumaiah withdrew the legal proceedings. In the meantime, land had already been allotted to Uma Shankar & Ors, appellants in the appeals before us. They questioned the de-acquisition made under Section 48 of the Act by way of WP(C) Nos. 32919-32922 of 2009. The Status quo was ordered on 12.11.2009. However, the Government realized its blatant mistake and withdrew the notification dated 14.10.2009 on 13.11.2009. The withdrawal of the notification on 13.11.2009 of de-acquisition was questioned by R. Hanumaiah by way of filing WP(C) No. 21186/2010. The Writ Petition was dismissed by the High Court of Karnataka vide order dated 20.04.2012 rightly and relying upon the judgment of this Court in 2005 directing that de-notification itself was not permission.

A 8. The Division Bench of the High Court, set aside the judgment and order passed by the Learned Single Judge;quashed the notification dated 13.11.2009 and directed the State of Karnataka to reconsider the matter afresh by giving opportunity to R. Hanumaiah as well as the BDA.

B 9. We have heard learned counsel for the parties at length. We are of the considered opinion that it was total misadventure and rather contempt of this Court was committed by the State Government while issuing notification dated 14.10.2009 of de-acquisition of land in favour of R. Hanumaiah. It was not permissible exercise in view of the afore-mentioned dictum binding on all the parties. Even the conduct of the C then Chief Minister was adversely commented upon by this Court in the decision rendered in 2005. In view of *inter parties* judgment of this Court, there was no scope left to de-acquire the property under the provisions of Section 48 of the Act. Thus, it was wholly impermissible exercise and notification issued on 14.10.2009 was totally void, illegal D and conferred no right to R. Hanumaiah. Thus no hearing was required to be given to R. Hanumaiah in the matter and there was no scope left to issue such illegal notification which was in violation of the law laid down by this Court in the same case. The notification dated 13.11.2009 was rightly issued cancelling the previous notification dated 14.10.2009 as there could not be any de-acquisition of the land.

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10. Thus, the impugned judgment and order passed by the High Court is set aside. The High Court ought to have mentioned the decision of this Court of 2005 which was relied upon by the learned Single Judge. The High Court has not taken care to look into the binding precedent of this Court. It was not at all proper and legal course adopted by the High F Court to decide the matter and linger issue on violation of decision of this Court.

11. The appeals are, therefore, allowed with cost of Rs. 5,00,000/- (Rupees Five Lakhs only) to be deposited by Lrs. Of respondent No. 1 with the Supreme Court Advocate-on Record Association within two G months from today and compliance be reported to this Court.

12. Since this Court had directed the amount to be deposited with 9% interest, we are informed by learned counsel on behalf of BDA that the said amount had been deposited on 02.12.2005 with the concerned Court. As per the provisions contained in Section 31 of the Act, since

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the amount had been deposited, it is open to the Legal representatives to withdraw the same. The liability of BDA for interest ceases after the date of deposit of compensation in the Court. A

Nidhi Jain

Appeals allowed.