

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

W.A. NO.4121 OF 2017 (LA-BDA)

IN

W.P.No.18196 OF 2014 (LA-BDA)

BETWEEN:

1. THE BANGALORE DEVELOPMENT AUTHORITY
SANKEY ROAD, BANGALORE 560003.
2. SPECIAL LAND ACQUISITION OFFICER
BANGALORE DEVELOPMENT AUTHORITY
BANGALORE 560003.

APPELLANTS 1 AND 2 ARE BEING THE
DIFFERENT SECTION OF THE SAME
AUTHORITY BOTH ARE REP. BY ALAO.

... APPELLANTS

(BY MR. GURUDAS S. KANNUR, SR. COUNSEL FOR
MR. GOWTHAMDEV C. ULLAL, ADV.,)

AND:

1. THE PRINCIPAL SECRETARY
REVENUE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE 560001.

SRI. NARAYANA REDDY
S/O LATE VENKATASWAMY REDDY
AGED ABOUT 73 YEARS
(SINCE DECEASED REPRESENTED BY LRS).

2. SMT. H.G. RATHIDEVI
W/O LATE NARAYANA REDDY.
3. B.N. RAMA REDDY
S/O LATE NARAYANA REDDY.
4. SMT. B.N. ANUPMA
D/O LATE NARAYANA REDDY.
5. SRI. B.N. LOKESH REDDY
S/O LATE B.N. NARAYANA REDDY.

... RESPONDENTS

(BY MR. S. RAJASHEKAR, AGA FOR R1
MR. K. SURESH DESAI, ADV., FOR R2-R5)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER PASSED IN
THE WRIT PETITION 18196/2014 DATED 25/02/2016.

THIS W.A. COMING ON FOR HEARING, THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

JUDGMENT

In this intra court appeal the appellants have assailed
the validity of the order dated 25.02.2016 passed by the
learned Single Judge, by which writ petition preferred by

respondent Nos.1(a) to 1(d) has been allowed and then preliminary notification dated 21.03.1977 as well as final notification dated 14.05.1980 issued under the Bangalore Development Authority Act, 1976 (hereinafter referred to as 'the Act' for short) have been quashed.

2. Facts giving rise to filing of this appeal in nutshell are that original respondent No.1 viz., Narayana Reddy said to be owner of an agricultural land bearing Sy.No.345 measuring 3 acres and 23 guntas situated at Banaswadi Village, K.R.Puram Hobli, Bangalore East Taluk. The aforesaid land as well as several other lands were required for formation of a layout between Banaswadi Road and Hennur Road commonly known as HRBR Layout. A preliminary notification dated 21.03.1977 was issued. Thereafter, a final notification was issued on 14.05.1980.

3. Admittedly, father of original petitioner viz., Sri.D.Venkataswamy Reddy had filed a writ petition viz., W.P.No.11976/1984 seeking to give effect to the resolution for de notification of the land. The said writ petition along with other connected writ petitions was dismissed by a bench

of this court by an order dated 14.09.1988 and it was held as follows:

Accordingly, these petitions are dismissed with a direction to the BDA as made in paras 13 and 14 above. Whether the petitioners would be entitled to higher compensation in a matter to be considered by the authorities under Section 18 of the land acquisition Act if the petitioners make a proper representation before the authorities constituted under the provisions of the Land Acquisition Act and if such representations are within time.

Parties to bear their own costs.

4. It is also not in dispute, the father of the original petitioner filed a writ petition viz., W.P.No.14757/1986, in which challenge was made to the validity of the notifications dated 21.03.1977 and 14.05.1980. The aforesaid writ petition was dismissed by learned Single Judge of this court vide order dated 06.08.1986. The said order reads as under:

Heard.

The preliminary notification is issued on 21.03.1977 and final notification is issued on 12.06.1980. Large extents of the land in the

neighbourhood are also acquired petition suffers from delay and laches.

W.P. rejected.

5. Thereafter, the original petitioner viz., late Narayan Reddy again filed a writ petition viz., W.P.No.18196/2014, in which once again preliminary as well as final notifications dated 21.03.1977 and 14.05.1980 were challenged. Admittedly, the original writ petitioner in the aforesaid writ petition did not disclose the fact that his father had previously filed writ petitions viz., W.P.No.11976/1984 and W.P.No.14757/1986. The appellants also did not bring to the notice of the learned Single Judge the factum of filing two previous writ petitions by the father of the original writ petitioner.

6. The learned Single Judge by an order dated 26.02.2016 inter alia held that neither the award has been passed nor possession has been taken. It was further held that scheme was not substantially implemented as required under Section 27 of the Act within five years from the date of the final notification and therefore, the scheme has lapsed. It

was further held that the contention that the writ petition filed by the original petitioner suffer from delay and laches is untenable as the scheme has lapsed. The impugned notifications dated 21.03.1977 and 14.05.1980 were quashed and the writ petition was allowed. In the aforesaid factual background, this appeal has been filed.

7. Learned Senior counsel for the appellant submitted that the original petitioner was guilty of suppression of facts and the writ petition filed by the original petitioner suffered from delay and laches. It is further submitted that the writ petition filed by the original petitioner was barred by res judicata as in the writ petition filed by the father of original petitioner, the validity of impugned notifications was upheld. It is also contended that the original petitioner cannot claim any benefit on the principle of negative equality and no legal right accrues to the original petitioner even if in some cases in which adverse orders have been passed against the appellants, it may not have preferred an appeal. However, it is fairly submitted that the land owners are entitled to just and fair compensation. In

support of aforesaid submissions, reliance has been placed on decision of the Supreme Court in '**INDORE DEVELOPMENT AUTHORITY VS. MANOHAR LAL**', (2020) 8 SCC 129 and '**FULJIT KAUR VS. STATE OF PUNJAB AND ORS.**', (2010) 11 SCC 455.

8. On the other hand, learned counsel for respondents 1 (a) to (d) submitted that the earlier writ petitions filed by the father of the original petitioner did not pertain to Sy.No.345. It is further submitted that neither award has been passed by the authority nor possession of the land in question has been taken. It is also urged that order passed in W.P.No.9761/2015 passed in case of a similarly situate land has not been challenged. It is further submitted that the order passed by the learned Single Judge does not call for interference. In any case, the land owners are entitled to just and fair compensation. In support of aforesaid submissions, reference has been made to division bench decision of this court in **BANGALORE DEVELOPMENT AUTHORITY VS. STATE OF KARNATAKA AND OTHERS**,

**W.A.NOS.4426/2016 AND CONNECTED MATTERS
DATED 08.12.2017.**

9. We have considered the rival submissions made on both sides and have perused the record. In the instant case, as stated supra, the preliminary notification was issued on 21.03.1977, whereas final notification was issued on 14.05.1980. The writ petition was filed after an inordinate delay of 34 years from the date of issuing the final notification, for which no explanation has been offered. It is trite law that discretionary jurisdiction to deal with a prayer for quashing the land acquisition proceeding, in a writ petition which suffers from inordinate delay and laches have to be exercised with great circumspection. [SEE: **'MUNICIPAL CORPORATION OF GREATER BOMBAY VS. INDUSTRIAL DEVELOPMENT INVESTMENT CO. PVT.LTD. & ORS. (1996) 11 SCC 501, 'MUNICIPAL COUNCIL, AHMEDNAGAR & ANR. VS. SHAH HYDER BEIG & ORS.', (2000) 2 SCC 48, 'JASVEER SINGH AND ORS. VS. STATE OF UTTAR PRADESH AND ORS.,' (2017) 6 SCC 787].** However, in the instant case, no

explanation has been offered by the original petitioner for filing a writ petition after an inordinate delay of 34 years. However, Single Judge has without assigning any cogent reason has held that the delay is immaterial as scheme in question has already lapsed. The aforesaid finding cannot be sustained and therefore, on this ground alone, the order passed by the learned Single Judge cannot be sustained. It is held that the writ petition filed by the original petitioner suffer from inordinate delay and laches.

10. This court vide judgment dated 21.06.2021 in W.A.3487/2016 inter alia held that the scheme in question has not lapsed. The relevant extract of the judgment reads as under:

*It is also pertinent to note that proceeding under Section 27 of the Act would lapse only if two conditions are satisfied viz., failure to execute the scheme by dereliction of statutory duties without justification and substantial execution of the scheme depending upon the scheme. [See: '**KRISHNAMURTHY VS. BANGALORE DEVELOPMENT AUTHORITY**', **ILR 1996 KAR 1258**]. The respondents have*

neither produced any material before the learned Single Judge to show dereliction of duty nor the learned single Judge has recorded a finding that the scheme could not be implemented on account of dereliction of duties on the part of officers of the respondent. Therefore, the finding that scheme under Section 27 of the Act has lapsed cannot be sustained.

For the aforementioned reasons, the finding recorded by the learned Single Judge that the scheme has been lapsed cannot be sustained.

11. It is trite law that principles of constructive res judicata and res judicata apply to writ proceeding. [See: **'DARYAO VS. STATE OF U.P', AIR 1961 SC 1457, VIRUDHUNAGAR STEEL ROLLING MILLS LTD. VS. GOVERNMENT OF MADRAS', AIR 1968 SC 1196 AND 'SHANKAR COOPERATIVE HOUSING SOCIETY LTD. V.M. PRABHAKAR AND OTHERS', (2011) 5 SCC 607 AND STATE OF KARNATAKA VS. ALL INDIA MANUFACTURER'S ORGANISATION', AIR 2006 SC 1846.** In the instant case, admittedly, the father of the

original petitioner had filed the writ petition challenging the validity of preliminary and final notification dated 21.03.1977 and 14.05.1980 which was dismissed by learned Single Judge by an order dated 06.08.1986. Thus, the original petitioner who claims title in respect of property in question through his father is bound by the decision of previous writ petition and cannot be permitted to agitate the validity of the impugned notifications dated 21.03.1977 and 14.05.1980 again on the principle of res judicata. Thus, the challenge to the aforesaid notification is barred by principles of res judicata.

12. The petitioner is guilty of suppression of material facts and has not approached the court with clean hands. Therefore, the discretionary jurisdiction under Article 226 of the Constitution of India, which is equitable and extraordinary cannot be exercised in favour of the original petitioner. [See: '**SHRI.K.JAYARAM AND ORS. VS. BANGALORE DEVELOPMENT AUTHORITY AND ORS.**' **2021 SCC ONLINE SC 1194**].

13. It is well settled in law that even if some similarly situate persons have been granted benefit inadvertently or by mistake, the same does not confer any legal right on the original petitioner to claim similar relief. [See: **'CHANDIGARH ADMINISTRATION AND ANR. VS. JAGJIT SINGH AND ANR.'**, AIR 1995 SC 905]. Therefore, even if some land owners may have been granted the benefit, inadvertently by the authority, the same would not confer any legal right on the original petitioner to claim the similar benefit.

14. However, as has been fairly stated by learned Senior counsel for the appellant that respondents 1(a) to 1(d) are entitled to just and fair compensation. It is therefore, directed that the appellants shall take steps within a period of six weeks to determine the compensation payable to respondents 1(a) to 1(d) and shall make payment of the amount of compensation as is permissible in law.

For the aforementioned reasons, the judgment passed by learned Single Judge is quashed and the appeal is accordingly disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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