

ITEM NO.103

COURT NO.3

SECTION IVA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 711 OF 2011

OFFSHORE HOLDINGS P.LTD.

Appellant (s)

VERSUS

BANGALORE DEVT,AUTHORITY & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 15/09/2011 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Appellant(s) Mr. A.K. Ganguly,Sr.Adv.
Mr. T.V. Ratnam,Adv.

For Respondent(s) Mr. S.Kulkarni,Adv.
Mr. M. Gireesh Kumar,Adv.
Mr. Ankur S. Kulkarni,Adv.

UPON hearing counsel the Court made the following
O R D E R

In terms of the signed order, this appeal is allowed, the judgment of the Single Judge and division bench are set aside and the writ petition is remanded to the High Court for considering the prayer for quashing the preliminary and final notifications dated 3.1.1977 and 2.8.1978 on grounds other than section 11A of Land Acquisition Act. It is made clear that nothing stated in the judgment shall be construed as an expression of any opinion on the merits of the matter. The High Court is requested to dispose of the matter expeditiously.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.711 OF 2011

OFFSHORE HOLDINGS P.LTD.

Appellant

VERSUS

O R D E R

This appeal relates to the validity of acquisition of an extent of one acre and two guntas in Sy.No.9/2, Lottegollahalli village, Bangalore North Taluk earlier owned by Uttanallappa, Munishamappa, Munihanumaiah, N. Ramaiah and Hanumaiah. Certain lands in the said village including Sy.No.9/2 were acquired by the State Government for formation of Gokul Second Stage, Rajamahal Vilas 2nd Stage Layout by the Bangalore Development Authority ('BDA' for short) under preliminary notification dated 3.1.1977 and final declaration dated 2.8.1978 issued under sections 17 and 19 of the Bangalore Development Authority Act, 1976 ('BDA Act' for short). The land owners (Uttanallappa, Munishamappa, Munihanumaiah, N. Ramaiah and Hanumaiah) gave a representation to BDA, not to proceed with the acquisition in regard to the said land on the ground that the entire area was built up. The land owners also filed W.P.No.16065-16069 of 1987 in Karnataka High Court, challenging the acquisition.

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2. BDA at its meeting dated 28.6.2008, passed a resolution to de-notify the said one acre two guntas in Sy.No.9/2 of Lottegollahalli Village, Kasaba Hobli, Bangalore North Taluk, in favour of Uthanallappa and four others. In view of the said resolution, the writ petitioners who had challenged the acquisition, filed the following Memo before the High Court on 22.9.1988 for withdrawal of their writ petitions :

"The petitioners have challenged the acquisition proceedings relating to the land

comprised in S.No.9/2 measuring 2 acre 34 guntas, out of 3 acres 7 guntas, together with constructions, grapes garden including residential constructions and farm houses, situate at Lottegollahalli village, Kasaba Hobli, Bangalore North Taluk, which are produced for being acquired for the purpose of Gokul Second Stage, Rajamahal Vilas, II stage, Layout. The petitioners having represented before the Bangalore Development Authority, the Bangalore Development Authority have resolved to denotify the lands and to drop the acquisition proceedings and in view of the decision so taken by the Bangalore Development Authority, the petitioners do not propose to prosecute the above writ petitions and hence, the petitioners may kindly be permitted to withdraw the writ petition and dispose of the writ petition accordingly as not pressed in the interests of justice."

(emphasis supplied)

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3. When the said memo came up for consideration before the High Court on 22.9.1988, the writ petitioners and BDA were represented by their counsel. The High Court having perused the Memo filed by the land owners, passed the following order dated 22.9.2008:

"Learned counsel for the petitioners files a Memo seeking the leave of the Court to withdraw the petitions. Memo placed on record. Leave granted. Rejected as withdrawn."

4. Thereafter the Deputy Commissioner (Land Acquisition) of the BDA issued the following endorsement dated 11.3.1991 to one of the land owners namely N.Ramaiah:

"ENDORSEMENT

This is to inform Sri N. RAMAIAH that land bearing Sy.No.9/2 of Lottegollahalli Village, Kasaba Hobli, Bangalore North Taluk, measuring 1 Acre 02 Guntas was notified for acquisition vide No.HC/A3/PR/LAQ/76-77 dated 3.1.1977 and by Final Notification No.HUD/39/MNJ-78 dated 2.8.1978.

Subsequently these lands were de-notified from acquisition vide subject No.1084 dated 28.06.88 as these lands were comprised of several buildings. Hence there is no acquisition proceedings.

Sd/-

5. Acting on the said endorsement that the land was not under any acquisition and the earlier resolution to denotify the land, the land owners sold the said land (given different numbers in the revenue records) to the appellant under seven registered sale deeds executed between 22.5.1995 to 30.6.1998. The appellant also obtained sanction of plans for the purpose of construction in the said land from the BDA.

6. In the meanwhile, BDA forwarded its proposal to de-notify the said land measuring one acre two guntas, to the State Government in pursuance of its resolution dated 28.6.1988. The State Government appears to have sent a reply dated 16.2.1993 requiring a fresh proposal to be submitted to the State Government, as the old proposal had been closed. BDA did not however make any fresh proposal. On 31.12.1997, the Bangalore Development Authority passed a resolution withdrawing the earlier resolution dated 28.6.1988. Thereafter, an award was made by the Land Acquisition Officer on 9.3.1998.

7. Subsequently, BDA withdrew the sanction and directed the appellant not to proceed with the construction. Feeling aggrieved, the appellant filed a writ petition (W.P.No.41352 of 2001) before the High Court for quashing the following:

- (a) The resolution dated 31.12.1997 passed by BDA withdrawing the earlier resolution dated 28.6.1988.

(b) The preliminary notification dated 3.1.1977 and final declaration dated 2.8.1978 in so far as the disputed land (one acre two guntas in Sy.No.9/2) is concerned.

8. The appellant urged several contentions. The first was that the enormous delay in completing the acquisition proceedings, rendering the acquisition void. Second was that the award was not made within two years of the publication declaration or two years of the commencement of Land Acquisition (Amendment Act), 1984. The third was that the land was withdrawn from acquisition and BDA had confirmed that the land was not subject to any acquisition. The fourth was that the respondents were estopped from withdrawing the resolution dated 28.6.1988 as there was an assurance to drop the acquisition in view of the entire area being constructed area. A learned Single Judge of the High court, by order dated 25.1.2007 dismissed the writ petition. The writ appeal filed by the appellant was also dismissed on 16.10.2008 and the said order is challenged in this appeal by special leave.

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9. One of the contentions urged by the appellant was that having regard to Section 11A of the Land Acquisition Act, 1894, the award dated 9.3.1998 was passed nearly 20 years after the final notification and more than fourteen years after the date of amendment to the Land Acquisition Act, 1894, by Amendment Act of 1984, was null and void. This case was referred to a Constitution Bench to consider the said contention. The reference was answered by the Constitution Bench of this Court, by order dated 18.1.2011 (reported in Offshore Holidays Private Limited vs. Bangalore Development Authority & Ors. - 2011 (3) SCC 139) holding that

section 11A of Land Acquisition Act, 1894 is inapplicable to acquisitions under the BDA Act. After negating the said contention, the Constitution Bench has directed the matter to be placed before the regular bench for disposal. Accordingly the matter is listed for disposal after considering the other contentions.

10. Learned counsel for the appellant submitted that the appellant's predecessors-in-title had challenged the acquisition relating to 1 acre 2 guntas in the year 1987, inter alia on the ground that the entire area was built up area and therefore it should be exempted; that

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the said writ petition was withdrawn in view of the resolution dated 28.6.1988 by the BDA that the said land would be de-notified; and that the Memo of withdrawal filed by the appellant's predecessors-in-title (on the ground that the BDA had resolved to denotify the land) was not opposed by the counsel for BDA, and as a consequence High Court dismissed the writ petition as withdrawn. It was pointed out that BDA had also issued an endorsement on 11.3.1991 confirming that the land was not subject to any acquisition proceedings. He therefore submitted that when BDA subsequently altered its stand and proceeded on the basis that its earlier resolution dated 28.6.1988 was not valid and that the endorsement dated 11.3.1991 issued by its Deputy Commissioner (Land Acquisition) was also not valid and consequently withdrew the resolution dated 28.6.1988 on 31.12.1997, the appellant was prevented from exercising its ownership rights, and therefore became entitled to revive the challenge to the acquisition. It was submitted that in these circumstances, the appellant had challenged not only the withdrawal resolution of BDA dated 31.12.1997, but also revived the challenge to the

acquisition notifications dated 3.1.1977 and 2.8.1978 in its writ petition filed in the year 2001.

It is pointed

out that neither the learned Single Judge nor the Division Bench has examined the validity of the said

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notifications dated 3.1.1977 and 2.8.1978 and the High court ought to have considered the validity thereof in

the context of the earlier writ petitions in W.P.No.16065 to 16069 of 1987 filed by its predecessors-in-title.

11. We find considerable force in the aforesaid contention. The High Court has not considered the prayer relating to validity of the acquisition notification dated 3.1.1977 and final declaration dated

2.8.1978. It has only considered the validity of the

withdrawal resolution dated 31.12.1997 and related issues. The earlier writ petitions (W.P.Nos.16065-

16069/1987) were withdrawn by the land owners on the representation by the BDA that the land had been de-

notified and acquisition was dropped; BDA subsequently

confirmed on 11.3.1991 that the land in question was not subject to acquisition; and the appellant claims that it

purchased the land acting on the said representations by

BDA. Therefore, when subsequently BDA withdrew the earlier resolution, interests of justice requires that

the appellant, as the successor-in-interest of the land-owners who had earlier filed the writ petitions should

have an opportunity to revive and pursue the challenge to the acquisition. Therefore, when the Writ Petition

No.4135/2001 was filed by the appellant challenging the

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notifications dated 3.1.1977 and 2.8.1978, the said challenge ought to have been considered to be a revival

of the earlier challenge under W.P.No.16065-16069/1987

and High Court ought to have decided the same.

12. The learned counsel for BDA submitted that a purchaser, after the date of preliminary notification has no locus standi to challenge the acquisition. The principle is correct, but does not apply to the facts in this case. The appellant apparently purchased the land after BDA had represented that there was no acquisition in regard to the land in question and that it was denotified/withdrawn from acquisition. Even if the 'withdrawal' or 'denotification' was without authority of law, a bonafide purchaser who stepped into the shoes of the original owners, can still challenge the acquisition itself, as the earlier challenge to the acquisition was withdrawn in view of the specific representation held out by BDA.

13. In view of the above, we allow this appeal, set aside the judgment of the Single Judge and division bench and remand the writ petition to the High Court for considering the prayer for quashing the preliminary and final notifications dated 3.1.1977 and 2.8.1978 on grounds other than section 11A of Land Acquisition Act.

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We make it clear that nothing stated above shall be construed as an expression of any opinion on the merits of the matter. We request the High Court to dispose of the matter expeditiously.

.....J.
[R.V. RAVEENDRAN]

.....J.
[A.K. PATNAIK]

.....J.
[RANJANA PRAKASH DESAI]

NEW DELHI
SEPTEMBER 15, 2011