



CNR: KAHC010117532021

NC: 2026:KHC:44379
RFA No. 306 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 306 OF 2021 (INJ)

BETWEEN:

1. BENGALURU DEVELOPMENT AUTHORITY
REP BY ITS COMMISSIONER,
T. CHOWDAIAH ROAD,
KUMAR PARK WEST,
BENGALURU 560020

...APPELLANT

(BY SRI. M N RAMANJANEYA GOWDA.,ADVOCATE)

AND:

1. SRI AKBAR
S/O. SRI. S A AHAMED,
R/AT NO. 210,
BEHIDN H P PETROL BUNK,
80 FEET ROAD,
HRBR LAYOUT,
3RD BLOCK,
BENGALURU 560043

...RESPONDENT

(BY SRI.B.V.RAMA MOORTHY., ADVOCATE)

THIS RFA IS FILED UNDER SEC.96 R/W ORDER XLI RULE 1 OF OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 19.07.2016 PASSED IN OS.NO.4310/2011 ON THE FILE OF THE XLI ADDITIONAL CITY CIVIL JUDGE, AT BENGALURU, DECREERING THE SUIT FOR PERMANENT INJUNCTION.TIME BARREDCF SUFFICIENTIA 1/2021 FOR CD IN FILINGIA 1/2021



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FILED UNDER SEC.5 OF THE LIMITATION ACT., PRAYING TO CONDONE THE DELAY OF 1253 DAYS IN FILING THE ABOVE APPEAL IN THE INTEREST OF JUSTICE AND EQUITY. IA 2/2021 FOR STAY IA 2/2021 FILED UNDER ORDER XLI RULE 5 R/W SEC. 151 OF CPC., PRAYING TO TO STAY THE OPERATION AND EXECUTION OF THE JUDGMENT AND DECREE PASSED IN OS.NO.4310/2011 DATED 19.07.2016 PASSED BY THE HONBLE XLI ADDITIONAL CITY CIVIL JUDGE AT BENGALURU (CCH.42) IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

This RFA by the defendant/ Bengaluru Development Authority¹ represented by its Commissioner, under order XLI Rule 1 of CPC, assailing the Judgment and Decree dated 19.07.2016 passed by the XLI Addl. City Civil Judge, Bengaluru (CCH-42)² in O.S.No.4310/2011.

2. The Trial Court under the impugned Judgment and Decree, passed the following:

¹ The BDA, for short

² The Trial Court, for short



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"ORDER

The suit of the plaintiff is decreed.

The defendant, his henchmen, servants, agents, officials of anybody claiming through them either permanently restrained from interfering with the peaceful possession and enjoyment of the suit schedule property or to dispossess him from the suit schedule property until he is evicted in due course of law.

Under the circumstances of the case, no order as to costs.

Draw decree accordingly."

3. The parties are referred to as per their ranking before the Trial Court.

4. Facts germane to file the present appeal are as under:

4.1 The plaintiff filed the suit in O.S.No.4310/2011 for the relief of permanent injunction restraining the defendant, his henchmen, servants, agents, officials or anybody claiming through them either from interfering with his peaceful possession or enjoyment



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of the suit schedule property or to dispossess him from the suit schedule property.

4.2 The suit schedule properties have been morefully described as schedule 'A' and 'B' properties in the plaint schedule, which are as under:

SCHEDULE "A" PROPERTY

All that piece and parcel of the property being residential house built in portion of site No.1, katha No.184/196/1, House list katha No.1357, property No.97/3, situated at Chelekere village, K.R.Puram hobli, Bangalore east taluk, formerly Bangalore south taluk, Ward No.25, Bangalore measuring East to West 60 feet and North to South 30 feet in all totally measuring 1800 sq.feet and bounded on;

East by : 60 feet road

West by : Private Property

North by : 40 feet road,

South by : Remaining portion of House site No.1, from today onwards belongs to Sri.S.Akbar.

The schedule property consists of two square AC sheet roofed house, the walls are built with brick and cement, red oxide flooring, the jungle wood used for door and windows, with electricity facility and also compound wall including borewell and pump.



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SCHEDULE B PROPERTY

All that piece and parcel of the property being residential house built in portion of site No.1, katha No.184/196/1, house list katha No.1357, property No.97/3, situated at Chelekere village, K.R.Puram hobli, Bangalore east taluk, formerly Bangalore south taluk, now this property comes under the jurisdiction of Bruhath Bangalore Mahanagara Palike, Ward No.25, Bangalore measuring East to West 60 feet and North to South 105 feet in all totally measuring 600 sq.feet and bounded on;

East by : 60 feet road,

West by : Private property

North by : Remaining portion of house site No.1, from today onwards belongs to Sri.S.Akbar

South by : House site No.2

The schedule property consists of two square AC sheet roofed house, the walls are built with brick and cement, red oxide flooring, the jungle wood used for door and windows, with electricity facility and also compound wall including bore well and pump.

AS PER THE PLAINTIFF:

4.3 It was the claim by the plaintiff before the Trial Court that, originally the suit schedule properties belonged to one Ashfaq Ahamed, Ehsan Ahmed Sharief and Irshad Ahmed sharief. They had executed a General Power of attorney in favor of Sri.J.Janakiram and



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Sri.C.Raju. Acting under the GPA, the above said persons sold the suit schedule property to Smt.Asha.S and executed two registered Sale Deeds dated 18.02.1993 in respect of 'A' and 'B' suit schedule properties. Smt.Asha, in turn, sold the said property in favor of the plaintiff under the registered Sale Deed dated 11.04.2011. Subsequent to purchase, the plaintiff got his name entered in the records of BBMP and is paying taxes to the concerned authorities.

4.4 Earlier, in view of certain disputes between the plaintiff and one K.R.Mariyappa and R.Saraswathi, in respect of 'B' schedule property, in so far 2,400 Sq.ft out of 3,000 Sq.ft is concerned, a suit was filed in O.S.No.4166/2012, which subsequently ended in compromise, wherein the plaintiff given up 2,400 Sq.ft out of 3,000 Sq.ft and retained 10 X 60 i.e., 600 Sq.ft in 'B' schedule property. The southern side of the boundary in the suit schedule property,



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accordingly showing that the properties belonging to K.R.Mariyappa and R.Saraswathi, which is portion of the suit schedule 'B' property, sold in their favor.

4.5 As the matter stood thus, on 18.04.2011, the officials of the BDA made an attempt to interfere with plaintiff's peaceful possession and enjoyment of the suit schedule property, which made him to issue notice under Section 64 of the Bangalore Development Authority Act.

4.6 The plaintiff further submitted that, the officials of the defendant and the demolition squad, time and again visited the suit schedule property, posing threat to demolish the property, which has constantly creating apprehension in the mind of the plaintiff that, the defendant would attempt to demolish the suit schedule property and dispossess him. In view of such an eminent threat, the plaintiff had no other go



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than to institute the present suit. Accordingly, filed the suit seeking injunction against the defendant.

AS PER THE DEFENDANT:

In response to the notice, the defendant appeared and claimed as under:

4.7 At the outset, it was contended that, the plaintiff has not complied with the mandatory provisions under Section 64 of the BDA Act. There is no cause of action for the suit. It is specifically contended that the land ad-measuring 35 Guntas in Sy.No.97/3 of Chelekere Village, Krishnarajapuram Hobli, Bengaluru South Taluk along with other lands were notified for formation of layout called 'Scheme between Banaswadi road and Hennur road' (HBR), vide Preliminary Notification dated 05.05.1977 published in the Karnataka Gazette dated 21.03.1977, later acquired the said lands along with other lands vide Final Notification dated 12.06.1980, published in the



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Karnataka Gazette dated 14.05.1980, including the suit schedule property carved out on the said lands.

4.8 It was contended that, the original kathedar and Anubhavadar by name Sri.Heggappa S/o.Muniyappa as per the RTC and other revenue records was notified in the Preliminary Notification as well as Final Notification, the land acquisition case was held, and award was passed in the Land Acquisition case No.620/1980-81 dated 24.10.1986 vide Notification No.BDA/ALAI/LA 3/297/91-92 dated 09.07.1991 and as per the Award the lands vested with BDA free from all encumbrances from the date of taking possession vide order dated 24.10.1986, under Mahazar regarding taking of possession.

4.9 The plaintiff having no manner of right, title or interest over any portion of the land in Sy.No.97/3 of Chelekere Village, Krishnarajapuram Hobli, Bengaluru South Taluk, measuring 35 Guntas (but whereas the



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suit schedule properties are shown as house properties constructed over the said lands) has filed the false and frivolous suit for unlawful gain. Even according to the plaintiff, the vendor as well as plaintiff, purchased the property subsequent to the Preliminary as well as Final Notification. In that view of the matter, the land stood vested after Final Notification and taking possession under Section 16(2) of the Land Acquisition Act and under a mahazar and award came to be passed in respect of the lands, the vendor's vendor had no right in law to convey the property.

4.10 It was further contended that, a perusal of the plaint averments clearly show that the plaintiff was subsequent purchaser, after vesting of the land, has no manner of right, title and interest in the property to continue in possession of the property and in view of the documents that, possession having been taken, the contention of the plaintiff that, he is in



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possession of the property is far from truth. The plaintiff had suppressed these true and material facts before the Court and thus, he is guilty of '*supressio vari and suggestion falsi*', and sought to dismiss the suit.

4.11 Based on the above pleadings, the Trial Court framed following:

ISSUES

1. *Whether the plaintiff proves that he is in possession of the suit schedule property as on the date of the suit?*
2. *Whether the plaintiff further proves that the alleged interference by the defendant with his possession?*
3. *Whether the plaintiff is entitled for the relief sought for?*
4. *What decree or order?*

4.12 The plaintiff, in order to prove his case, examined himself as PW.1 and two witness M.S.Narayanamurthy and Thomas Sebastian as PW.2 and PW.3 respectively, and got marked 59 documents as Ex.P1 to P59. On the other hand, the



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defendant neither adduced oral evidence nor produced documents, to support its case.

CONCLUSION OF THE TRIAL COURT:

4.13 The Trial Court on the basis of pleadings, evidence both ocular and documentary, proceeded to decree the suit, answering Issues No.1 to 3 in the Affirmative, in favor of the plaintiff, on the premise that the plaintiff, apart from examining himself as PW.1, examined two witnesses, who have supported his case. Further that, though the defendant contended that the suit schedule properties being portion of Sy.No.97/3 and Sy.No.97/4 acquired for the purpose of the formation of layout called 'Scheme between Banaswadi road and Hennur road' (HBR), under Preliminary as well as Final Notification, has not produced any documents to substantiate the said contention.



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4.14 The Trial Court further observed that, except the suggestion in the cross-examination with reference to the Preliminary as well as Final Notification, the defendant has neither examined any of its officials, nor produced any documents to rebut the evidence of the plaintiff. Accordingly, decreed the suit, restraining the defendant, his henchmen, servants, agents, officials of anybody claiming through them, permanently from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property or to dispossess him from the suit schedule property 'until he is evicted in due course of law'. It is this Judgment and Decree, passed by the Trial Court, is called in question in this appeal by the BDA.

(emphasis supplied)

5. Heard, Ms. Deepti Ayathan, learned counsel appearing for the appellant/ defendant/ BDA and



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Sri.B.V.Rama Moorthy, learned counsel appearing for the respondent/ plaintiff.

6. Ms.Deepti Ayathan, with all vehemence submits that the Preliminary Notification as well as Final Notifications are gazette and once they are gazetted, it becomes a public notice to everyone. Admittedly, as per the plaint averments, the property has been conveyed in favor of the plaintiff's vendor in the year 1993 i.e., obviously, subsequent to the Preliminary as well as Final Notification and passing of the award in the Land Acquisition case way back in the year 1991.

6.1 Learned counsel further contended that in the year 1986 itself, the BDA has taken possession of the property under a Mahazar and by issuing Section 16(2) Notification. All are public documents of acquisition. The Trial Court only on the count that, the defendant has not rebutted the evidence led on behalf of the plaintiff and his witnesses by producing



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documents, held that the plaintiff has proved his case and decreed the suit, stating that, the dispossession shall not be done otherwise than in due course of law. She submits that the relief granted itself shows that the land belongs to the Government under the Notifications. Since the Notifications were gazetted, the Trial Court ought to have taken judicial notice of the said documents. The Preliminary as well as Final Notifications are definitely earlier to the Sale Deed, which is clear from the averments in the plaint.

6.2 Learned counsel further contended that, in view of Final Notification gazetted, subsequently taking possession of the property under Mahazar and issuing notification under Section 16(2) of the Land Acquisition Act, pre-supposes that, the lands stand vested with the BDA free from all encumbrances, much earlier to the transactions stated in the plaint. In that view of the matter, no rights were available either to the original owners or the GPA holders to



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convey further under the doctrine of '*nemo dat quod non habet*'. The Trial Court has failed to consider these aspects of the matter and committed serious error in law in decreeing the suit, granting the relief of permanent injunction with further direction not to dispossess the plaintiff otherwise than in due course of law.

6.3 In order to support her contention, learned counsel placed reliance on the Judgment of the Hon'ble Supreme Court in ***INDORE DEVELOPMENT AUTHORITY VS. MANOHARLAL AND OTHERS***³, to contend that the Hon'ble Supreme Court in the said Judgment has held that, any possession despite the notification of acquisition is that of a rank trespasser and not more than that. In that view of the matter, the BDA being the owner of the property under the Notifications, suit itself is not maintainable against the BDA and sought to allow the appeal.

³ AIR 2020 SC 1496



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7. In contrast, Sri.B.V.Rama Moorthy, submitted that though the BDA has stated regarding Notifications, both Preliminary as well as Final, passing of award, and taking of possession, however no documents were produced before the Trial Court. Learned counsel further contended that the BDA has not taken any pain to examine any of its officials, except putting certain questions in the cross-examination. In that view of the matter, the Trial Court after considering the evidence and documents on record, decreed the suit as prayed for.

7.1 He further submits that the coordinate Bench of this Court in several appeals of this nature, dismissed the appeal, however with a liberty to take re-course for taking possession in due course of law. He relied on one of such Judgments, in the case of ***THE COMMISSIONER, BDA VS. K.P.SHAMANNA AND OTHERS***⁴ and sought to dismiss the appeal.

⁴ RFA No.947/2005, disposed of on 05.01.2023



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8. Having heard the rival submissions, I have perused the entire appeal paper as well as the Trial Court record.

9. To the specific query of this Court as to, *'Whether the relief granted by the Trial Court is in the nature of absolute injunction or is confined only to protection against forceful dispossession, and whether the plaintiff is in appeal against the grant of such relief, which is not in consonance with the relief sought in the plaint?'*, learned counsel Sri.B.V.Rama Moorthy, submits that though the Trial Court decreed the suit of the plaintiff by restraining the defendant from interfering with his peaceful possession and enjoyment of the property, the said relief is subject to a rider that, the plaintiff shall be evicted only in accordance with due process of law. He further submits that, the plaintiff has not preferred any appeal against the said rider and has accepted the same.



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10. Having considered the said submission, this Court is of the considered view that, in view of the law laid down by the Hon'ble Supreme Court in **INDORE DEVELOPMENT** (supra) that, even if a possession of the person continued in the property despite the notification, is nothing but a rank trespasser and not more than that.

11. The Hon'ble Supreme Court in **INDORE DEVELOPMENT** (supra), in reference to vesting and divesting, which starts with paragraph No.136 and concludes at Paragraph No.148, has held as under:

*"148. A similar view has been taken in **MARKET COMMITTEE V. KRISHAN MURARI AND PUTTU LAL V. STATE OF U.P.** The concept of "vesting" was also considered in **FRUIT & VEGETABLE MERCHANTS UNION V. DELHI IMPROVEMENT TRUST.** Once vesting takes place, and is with possession, after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State."*

12. The Hon'ble Supreme Court further, in paragraph No.258, has held as under:



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"258. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the 1894 Act that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the State becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner."

13. In the case on hand, the BDA had issued both Preliminary and Final Notification in the year 1977 and 1980 respectively, possession of the property had been taken in 1986 under mahazar & issuance of 16(2)



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Notification, passed award in the Land Acquisition case No.620/1980-81 dated 24.10.1986 vide Notification No.BDA/ALAI/LA 3/297/91-92 dated 09.07.1991 in the name of original kathedar and Anubhavadar.

14. As seen from the averments stated in the plaint, the vendor of the plaintiff, purchased the property in the year 1993, which is much after the Notifications. The plaintiff has purchased the property from his vendor in the year 2011. In view of Notifications, Preliminary as well as Final, acquiring the land, there is no much dispute with the fact that the land stood vested with the Government in respect of the suit schedule property. The Trial Court has failed to consider this aspect of the matter. The notifications gazetted are notice to General Public and the Trial Court ought to have considered the same taking judicial notice in respect of acquisition proceedings which is an exercise of power by the State under its exclusive domain. The relief granted itself clearly shows that this



aspect of the matter is not seriously disputed by the plaintiff.

15. The Division Bench of this Court in W.A.No.2074/2025 disposed of on 08.06.2026 in **BDA Vs. CHENNAKESHAHA AND OTHERS**, relying on the earlier Division Bench Judgment of this Court, has clearly held that a subsequent purchaser even cannot maintain a proceedings against the acquisition. Admittedly, there is no challenge to the acquisition either by the original owner or the plaintiff, even if any, the same is not maintainable, once the land stood vested with the Government long before the execution of Sale Deed by the alleged GPA holders in favor of vendor of the plaintiff, as they had no right, title and interest so also the possession to convey the property under the doctrine of '*nemo dat quod non habet*', i.e., no one can pass better title than what he has. Once the land is held to be vested, it becomes the property of BDA. The BDA being the State instrumentality



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is at liberty to take re-course under the provisions of law to seek possession of the lands in accordance with the law.

16. The coordinate Bench of this Court in the case of ***THE COMMISSIONER, BDA VS. K.P.SHAMANNA AND OTHERS*** (supra) has held that the BDA can initiate appropriate proceedings to recover the possession of the property in accordance with the law. In that view of the matter, the order passed though stating that the suit is decreed, but the ultimate relief is not to take action otherwise in due course of law.

17. In view of law declared by Hon'ble Supreme Court in ***INDORE DEVELOPMENT*** (supra), the possession of the plaintiff being as that of a rank trespasser, it is left to the BDA to take appropriate action to evict him from the property and take possession in accordance with the law available to the BDA under various acts as the property being a Government property.



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18. Accordingly, the appeal stand ***disposed of***, with aforesaid liberty to the BDA.

19. Given the facts and circumstances of the case, no order as to costs.

20. In view of disposal of the appeal, pending interlocutory applications, if any, stand disposed of.

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
List No.: 2 Sl No.: 18