2024 INSC 678

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9731-9732 OF 2024

LAKSHMESH M. ... APPELLANT

VERSUS

P. RAJALAKSHMI (DEAD BY LRS.)
AND ORS. ETC.ETC. AND ORS. ... RESPONDENTS

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. These two Appeals have been preferred against the final judgment and order dated 05.12.2014 by the High Court of Karnataka at Bengaluru in RFA Nos. 902 of 2008 and 887 of 2008 (hereinafter referred to as the 'impugned judgment'). While disposing of these Regular First Appeals against the judgment and order dated 31.03.2008 passed by XII Addl. City Civil and Sessions (CCH No. 27) Judge at Bengaluru in O.S No. 5634 of 1980, by the common impugned order, the High Court while upholding the Trial Court judgment decreeing the suit and holding that the

Appellant/Plaintiff is the lawful owner of the suit property, has further held that site allotted to Defendant No. 20 (Respondent No. 27 in Civil Appeal No. 9731 of 2024 and Respondent No. 01 in Civil Appeal No. 9732 of 2024) is not the part of Sy. No. 305/2. Furthermore, the High Court has held that Defendant Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24 (Respondent Nos.1 to 13 in Civil Appeal No. 9731 of 2024 and Respondent Nos.10, 12, 13, 14, 15, 17, 18, 19, 20, 22, 24, 28 and 29 in Civil Appeal No. 9732 of 2024) are entitled to receive 30 per cent of the amount of compensation payable in respect of ten sites situated on the suit property.

2. Aggrieved by the abovesaid findings and directions, the Appellant/Plaintiff has preferred these two Appeals. For ease of reference, the parties are referred to by their original position before the Trial Court. The limited questions for consideration before this Court are as follows:

   i. Whether the High Court by its impugned judgment is correct in holding that the Appellant/Plaintiff has failed to establish that

the site allotted to Defendant No.20 is not part of Sy. No. 305/2.

ii. Whether the High Court by its impugned judgment is correct in holding that ten allottees (Defendant Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24) are entitled to receive 30 per cent of amount of compensation payable in respect of the ten sites, in spite of holding that the Appellant/Plaintiff is the lawful owner of the suit property and is entitled for full rights over the same.

3. Before proceeding further, it is pertinent to provide a brief factual overview of the case at hand. To elaborate, the Appellant/Plaintiff brought forward O.S. No. 5634 of 1980 to seek a court declaration affirming his title over 1 acre and 12 guntas of land situated in Sy No. 132/2, Kempapura Agrahara Inam village, Bangalore City. The suit also aimed to secure possession of the land and obtain a mandatory injunction against Defendant No.20, specifically to remove any constructions erected on the suit property. In addition to Defendant No.20, the suit involved a total of 23 other defendants.

4. It is relevant to mention here that Kempapura Agrahara village was an Inam village, and the land stood vested in the State in terms of the provisions contained in Mysore (Personnel & Miscellaneous) Inams Abolition Act, 1954 with effect from 01.02.1959. Consequently, all jodidars retained interests corresponding to their respective shares. Among them was one Smt. B.C. Subbalakshmamma, who held 1/7th share in the village. Pursuant to an application submitted by her to the competent authority, Smt. B.C. Subbalakshmamma was granted occupancy rights for 1 acre and 3 guntas of land in Sy No. 132/2, vide order dated 09.12.1969. Although the initial mutation was sanctioned in her name, the Tehsildar, following an on-site inspection, adjusted the records to reflect the actual area in her possession. As a result, a revised mutation order dated 20.05.1972 was passed, updating the record to 1 acre and 12 guntas in Sy No. 132/2 in her name. The land was subsequently renumbered as Sy No. 305/2, with a measurement of 1 acre and 12 guntas. The Appellant/Plaintiff, Lakshmesh M. acquired this land (hereinafter referred to as 'the suit property')

from Smt. B.C. Subbalakshmamma through a registered sale deed dated 10.06. 1975.

5. After the Appellant/Plaintiff acquired the suit property, the Defendant No. 1, REMCO Industrial Workers House Building Cooperative Society Limited (Respondent 14 in Civil Appeal No. 9731 of 2024 and Respondent 2 in Civil Appeal No. 9732 of 2024), and its members attempted to take forcible possession of the same. The Defendant No.1-Society claimed rights over 4 acres and 2 guntas within Sy No. 305. A survey was conducted by the Police based on a complaint moved by the Appellant/Plaintiff which indicated that the claims of Defendant No.1-Society over suit property are unfounded. Aggrieved thereby, Defendant No.1-Society filed a suit seeking permanent injunction. Although a temporary injunction was initially granted, the possession of the land remained with Defendant No.1-Society.

6. In such circumstances, the Appellant/Plaintiff filed O.S. No. 5634 of 1980, a suit for declaration of his title over the suit property and the consequential reliefs of mandatory injunction and possession. This suit was partly decreed on 30.10.1986 declaring the

title of the Appellant/Plaintiff over 1 acre and 3 guntas of the suit property, but the relief of possession as sought was dismissed on the ground that the sale deed did not detail the land in question as the declaration of possession of Smt. B.C. Subbalakshmamma was 1 acre and 12 guntas. Suit of declaration for recovery of possession from out of the scheduled property which measured 1 acre and 12 guntas was to be resorted to by the Appellant/Plaintiff.

7. Aggrieved by the judgment and decree dated 30.10.1986, the Appellant/Plaintiff preferred RFA No.747 of 1986 whereas Defendant No.1-Society preferred RFA No.191 of 1987. The Regular First Appeal as preferred by the Appellant/Plaintiff was allowed and that of the Defendant No.1-Society was dismissed. The result thereof was that the suit of the Appellant/Plaintiff was decreed.

8. Subsequently, Defendant No.1-Society preferred Civil Appeal Nos.992-993 of 1997 before this Court (correcting a typographical error in the impugned judgment, referring to the years of the Appeals as 2007 instead of 1997). By Order dated 28.08.2003,

this Court allowed the said Appeals and remanded the case to the Trial Court with directions to consider the effect of the order granting occupancy rights in favour of one Muniyappa on the subsequent grant dated 09.12.1979. The Court further ordered the Trial Court to identify the land covered by both grants by framing necessary issues and providing an additional opportunity to both parties.

9. The suit being OS No.5634 of 1980, as remanded by this Court was decreed on 31.03.2008, and the Appellant/Plaintiff was declared as the owner of the scheduled property to the extent of 1 acre and 3 guntas in Sy No.305/2. He was also held entitled to get possession of the same. The Respondents/Defendants preferred appeals against this judgment and decree before the High Court of Karnataka at Bengaluru. The Defendant No.1-Society preferred RFA No.882 of 2008, Defendant No.20 preferred RFA No.887 of 2008 and Defendants Nos.9, 10(a), 11(a), 12, 13, 14, 16, 18, 23 and 24 preferred RFA No.902/2008.

10. The High Court vide the impugned judgment dated 05.12.2014 upheld the judgment passed by the Trial

Court in OS No.5634 of 1980 and dismissed the appeal preferred by the Defendant No.1-Society, i.e. RFA No.882/2008. However, RFA No.887 of 2008 preferred by Defendant No.20 was allowed. The High Court set aside the judgment and decree so far as it pertained to the land allotted to Defendant No.20, declaring that the site allotted to Defendant No.20 was unrelated to the scheduled suit property.

11. Regarding RFA No.902 of 2008, the High Court determined that Defendants Nos. 9, 10(a), 11(a), 12, 13, 14, 16, 18, 23, and 24 (hereinafter referred to as 'private Defendants') were entitled to receive 30 per cent of the compensation for the acquired portion, proportionate to the sites allotted to them in the suit property. This amount was to be distributed proportionately among these private Defendants. Consequently, the High Court partly allowed their appeals based on the above terms.

12. The Appellant/Plaintiff has brought forward these Appeals in response to the impugned judgment passed by the High Court.

13. It is the contention of the learned Senior Advocate for the Appellant/Plaintiff that the High Court has failed to appreciate that Defendant No.20 has not stepped into the witness box to put forward his claim with regard to the allotment of the land in his favour. He further contends that the grant of relief to Defendant No.20 in these circumstances is unsustainable.

14. This contention of the learned Senior Advocate for the Appellant/Plaintiff cannot be accepted as the specific plea of Defendant No.20 that the site allotted to him does not form part of Sy No.305/2, but formed part of Sy No.305/3 has not been disputed by the Appellant/Plaintiff. Even the courts below have not returned a finding holding that the site allotted to Defendant No.20 and the construction made thereon by him is part of Sy No.305/2. Since the Appellant/Plaintiff has failed to establish that the site allotted to Defendant No.20 was part of Sy No.305/2, the High Court has rightly set aside the findings of the Trial Court to the said extent. No interference thus on this aspect is called for in the present Appeal(s).

15. The learned Senior Advocate for the Appellant/Plaintiff has further challenged the grant

of relief equal to 30 per cent of the amount of compensation payable in respect of the sites which were allotted to the private Defendants by asserting that for the fault of Defendant No.1-Society, the Appellant/Plaintiff cannot be held liable, nor can he be forced to share the amount of compensation. The liability, if any, would be of Defendant No.1-Society of which these private Defendants were members. It has further been asserted by him that the possession and construction, if any, carried out by these private Defendants was at their own risk and peril. After the High Court had held the Appellant/Plaintiff to be the absolute lawful owner of the suit property, being entitled to full rights over the same, these private Defendants cannot be held entitled to receive compensation payable in respect of the sites built on the suit property. Once it has been held that the Appellant/Plaintiff is the owner of the suit property merely because these private Defendants are in possession of the sites built on the scheduled property, they would not be entitled to any compensation for the land acquired for the Metro Rail Project.

16. Another expostulation which has been put forward by the learned Senior Advocate for the Appellant/Plaintiff is that the compensation was neither asserted nor claimed by these private Defendants at any stage and, in fact, the same was not even argued what to say of taking a ground in the appeal which has been preferred by the said private Defendants before the High Court. Under such circumstances, a portion of the compensation made payable for the acquisition of the suit property of which the Appellant/Plaintiff is the absolute owner, is unacceptable and unsustainable in law.

17. On the other hand, the learned Senior Advocate for the private Defendants submits that the factum of possession and construction on the suit property by the private Defendants is not disputed. Once they are in possession of the sites built on the land in question and that too as per the allotment made by Defendant No.1-Society, they have rightly been granted the benefit of compensation which is a portion of the amount payable for the acquisition of the suit property for the Metro Rail Project. Support has, therefore, been made with regard to the grant of compensation.

18. We have carefully considered the submissions made by the learned Senior Advocate for the parties but are unable to accept the stand as has been sought to be projected by the learned Senior Advocate for the private Defendants.

It is not in dispute that till date, no claim whatsoever has been projected either in the appeal before the High Court or before any other competent authority for the grant of compensation for the land having been acquired. The judgment as has been passed by the High Court affirming the ownership and title of the suit property in favour of the Appellant/Plaintiff has not been challenged by any of these private Defendants. The said judgment and the findings recorded therein have attained finality. In the absence of any claim with regard to their entitlement to compensation for the land acquired, the relief granted by the High Court in the appeal is not sustainable. Given the lack of pleadings, evidence on record, and submissions made at the time of hearing before the High Court, the judgment passed by it granting 30 per cent of the amount payable by way of compensation in respect of the ten sites in possession of the private Defendants, deserves to be set aside.

The Appellant/Plaintiff is entitled to receive the full amount payable in respect of acquisition of the suit property for the Metro Rail Project.

19. In the light of the above, the Civil Appeal No.9732 of 2024, titled as Lakshmesh M. v. C.N. Rangaraju (since dead) by LRs. stands dismissed.

20. The Civil Appeal No.9731 of 2024 titled as Lakshmesh M. v. P. Rajalakshmi (since dead) by LRs., is hereby allowed. The portion of judgment awarding 30 per cent of the compensation amount for the sites allotted to the private Defendants by Defendant No.1-Society concerning the suit property is set aside. However, the private Defendants are at liberty to seek any remedy as may be available to them under the law for compensation, if they choose to do so.

21. There shall be no orders as to costs.

..... J.
(ABHAY S. OKA)

..... J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 11, 2024.