

2022 PLRonline 1429504, 2022 SCeJ 1418

SUPREME COURT OF INDIA

M.R. Shah J. B.V. Nagarathna J.

Bangalore Development Authority v. N. Nanjappa and another — Respondent
Civil Appeal Nos. 6996-6997 of 2021
06.12.2021

Civil Procedure Code, 1908 Order 21 Rules 97, 99 and 101 - Impleadment in execution proceedings - Therefore, as per Order XXI Rule 101 CPC, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 CPC and relevant to the adjudication of the application shall have to be determined by the Court dealing with the application - For that a separate suit is not required to be filed. Order XXI Rule 97 is with respect to resistance/obstruction to possession of immovable property. [Para 5.1]

The appellant, BDA, claims that it is the absolute owner of the land in question and that possession of the said land has been handed over to the Engineering Section. Accordingly, the application submitted by BDA for impleadment in the execution proceedings and objections against the granting of possession to the decree holder should have been adjudicated upon by the Executing Court by impleading BDA as a party in the execution proceedings. Even though a substantive suit has been filed by the BDA against the decree holder and the judgment debtor, and is pending, Order XXI Rule 101 CPC necessitates resolving the question of BDA's right, title, or interest in the property before settling the execution proceedings. Therefore, the orders dismissing the applications filed by BDA for impleadment in the execution proceedings and the obstruction application passed by the Executing Court and High Court, respectively, are unsustainable and warrant quashing.

Mr. S. K. Kulkarni, Advocate, Mr. M. Gireesh Kumar, Advocate, Mr. Ankur S. Kulkarni, Advocate, Ms. Uditha Chakravarthy, Advocate, for the Appellant; Mr. Rameshwar Prasad Goyal, Advocate, Mr. Rajesh Mahale, Advocate, for the Respondent.

JUDGMENT

M.R. Shah, J. - Feeling aggrieved and dissatisfied with the impugned judgment and order dated 21.03.2016 passed by the High Court of Karnataka at Bengaluru in Writ Petition Nos. 37943-37944/2015 (GM-CPC), by which the High Court has dismissed the said writ petitions preferred by the original applicant - Bangalore Development Authority (for short, 'BDA) and has confirmed the order passed by the Executing Court dismissing the applications filed by BDA under Order XXI Rule 97 CPC in Execution Case No. 2713/2012 filed by respondent No.1 herein (decree holder) against respondent No.2 herein (judgment debtor), the BDA has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

That land admeasuring 01 acre 15 guntas (disputed land in question) in Survey No. 12/2 of Geddalahalli Village was acquired by BDA in the year 1977 under Section 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as the '1976 Act'). A final notification came to be issued in respect of the said land vide notification dated 02.08.1978 under Section 19 of the 1976 Act. Award came to be passed vide award dated 12.06.1981 awarding compensation of Rs.17,393.75. According to the appellant - BDA, possession of the acquired land was taken over by the Government as per the mahazar

dated 16.07.1981 and was handed over to the Engineering Section of BDA. Thereafter, a notification under Section 16(2) of the Land Acquisition Act, 1894 came to be issued on 01.04.1982 evidencing the factum of taking possession of the acquired land. It appears that after a period of approximately 17 years and after vesting of the acquired land in question in favour of BDA, respondent no.1 herein entered into an agreement of lease with respondent no.2 herein in respect of part of the land in question vide agreement of lease dated 16.08.1999. That respondent no.1 herein thereafter filed a civil suit being O.S. No. 3797/2000 against respondent no.2 herein before the City Civil Court, Bangalore for ejection. It is to be noted that in the said suit, the appellant-BDA was not arrayed as a party.

2.1 The Trial Court vide judgment and decree dated 20.03.2008 dismissed the said suit. However, by judgment and order dated 13.06.2012, the High Court allowed the Regular First Appeal No. 468/2008 filed by respondent no.1 herein and consequently decreed the suit filed by respondent no.1 herein. Respondent No.2 herein challenged the judgment and order passed by the High Court before this Court by way of special leave petition, which came to be dismissed by this Court vide order dated 11.02.2013. Thereafter, respondent no.1 herein -decree holder filed Execution Petition being E.P.No. 2713/2012. It appears that having come to know of the judgment and decree passed by the High Court allowing the appeal, the appellant-BDA filed a suit being O.S. No. 2070/2013 before the City Civil Court, Bangalore, seeking a declaration that the lease agreement between respondent no.1 herein-decree holder and respondent no.2 herein - judgment debtor vide agreement of lease dated 16.08.1999 in respect of the suit schedule property is null and void and also prayed for permanent injunction to restrain respondent no.1 herein-original landowner-decree holder from executing the decree passed in O.S. No. 3797/2000.

2.2 BDA also filed two applications under Order XXI Rule 97 read with Section 151 CPC in the execution proceedings for impleadment and for deferring the execution proceedings till disposal of suit filed by it being O.S. No. 2070/2013. The aforesaid two applications filed by BDA came to be rejected by the Executing Court vide common order dated 29.01.2015 mainly on the ground that there was no material on record to show that pursuant to the acquisition, the BDA had taken possession of the said land and therefore the BDA cannot obstruct or object to the execution of the decree passed by the competent Court.

2.3 Feeling aggrieved and dissatisfied with the common order passed by the Executing Court rejecting the applications filed by BDA under Order XXI Rule 97 r/w Rule 101 CPC, the obstructor-BDA filed two writ petitions before the High Court being Writ Petition Nos. 37943-37944/2015. By the impugned judgment and order, the High Court has dismissed the aforesaid two writ petitions. Hence, the present appeals are at the instance of the obstructor-BDA.

3. Learned counsel appearing on behalf of the appellant-BDA has vehemently submitted that while rejecting the applications filed by BDA to implead BDA in the execution petition as obstructor, both, the High Court as well as the learned Executing Court have misread and misinterpreted Order XXI Rule 97 r/w Rule 101 CPC.

3.1 It is submitted that for raising the obstruction/objection to the decree which is sought to be executed, the obstructor need not be in possession and it is enough that the obstructor claims title with respect to the said property. Though in the present case it is the case of BDA that possession was handed over by Government to BDA- Engineering Section.

3.2 It is submitted that in the present case as such the property/land in question has already been acquired by BDA and even the award was also declared way back on

12.06.1981 and even according to BDA the possession of the land in question was already taken over and was handed over to the Engineering Section and thereafter even notification under Section 16(2) of the Land Acquisition Act, 1894 was also issued vesting the suit land absolutely with BDA and thereafter collusively and/or illegally respondent no.1 herein entered into agreement of lease with respondent no.2 herein.

3.3 It is submitted that as such in the present case even the substantive suit filed by BDA being O.S. No. 2070/2013 to declare the agreement of lease between the decree holder and judgment debtor is null and void is pending. It is submitted that therefore the Executing Court ought to have allowed the impleadment application filed by BDA, who claims the title on the basis of the acquisition of the land under the 1976 Act.

3.4 It is further submitted that Order XXI Rule 97 and Rule 101 CPC are to be read together. It is submitted that as per Order XXI Rule 101, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Executing Court dealing with the applications. It is further submitted that while raising an obstruction/objection to the execution of the decree, the obstructor need not prove his/its possession but when it claims right, title or interest in the suit property, the same is required to be determined, decided and/or adjudicated upon by the Executing Court in such an application.

3.5 Making the above submissions, it is prayed to allow the present appeals.

4. Learned counsel appearing on behalf of the respondents have tried to support the orders passed by the High Court as well as the Executing Court. It is submitted that according to the decree holder -original landowner, the actual possession of the land in question has not been taken over by BDA and the possession of the land in question is with the judgment debtor - respondent no.2 herein, which is required to be handed over to respondent no. 1 herein - decree holder, pursuant to the judgment passed by the High Court. It is submitted that the Executing Court rightly rejected the applications filed by BDA under Order XXI Rule 97 CPC. It is submitted that as rightly observed by the Executing Court and confirmed by the High Court that though the land in question might have been acquired, unless and until the possession by the obstructionist is established and proved, such an application under Order XXI Rule 97 CPC is liable to be dismissed and the same was rightly dismissed by the Executing Court and is rightly confirmed by the High Court.

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the BDA is claiming right, title or interest in the land in question being acquired under the provisions of the 1976 Act. It is required to be noted that the lease agreement between the decree holder and the judgment debtor is subsequent to the acquisition of the suit land. Therefore, it is the case on behalf of the appellant - BDA that such a transaction is null and void once the suit land for which the lease agreement was executed was acquired under the provisions of the 1976 Act. Moreover, the award was also declared and a notification under Section 16(2) of the Land Acquisition Act evidencing taking over possession of the land by BDA was also published. Therefore, when the appellant-BDA which has submitted the obstruction/objection in the execution proceedings filed by the decree holder against the judgment debtor with respect to suit land which was acquired by BDA and when the BDA claims right, title or interest in the suit property, such obstruction/objection was required to be adjudicated upon by the Executing Court while considering the application/obstruction under Order XXI Rule 97 or Rule 99 CPC. At this stage, Order XXI Rule 97 and Order XXI Rule 101 CPC are required to

be referred to and which read as under:

“97. Resistance or obstruction to possession of immovable property - (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

2. Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

101. Question to be determined - All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

5.1 Therefore, as per Order XXI Rule 101 CPC, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 CPC and relevant to the adjudication of the application shall have to be determined by the Court dealing with the application. For that a separate suit is not required to be filed. Order XXI Rule 97 is with respect to resistance/obstruction to possession of immovable property.

6. In the instant case, it is the specific case of the appellant - BDA that pursuant to the acquisition of the land in question, the BDA has become the absolute owner and the said land is vested in the BDA and possession was already taken over by the BDA and the land was handed over to the Engineering Section. Therefore, the applications submitted by BDA for impleadment in the execution proceedings and the obstruction against handing over the possession to the decree holder were required to be adjudicated upon by the Executing Court by impleading the BDA as a party to the execution proceedings. Though, in the present case, a substantive suit being O.S. No. 2070/2013 filed by the BDA against the decree holder and the judgment debtor to declare the lease agreement as null and void is pending, irrespective of the same, considering Order XXI Rule 101 CPC, the question relating to right, title or interest of the BDA in the suit property was required to be adjudicated upon by the Executing Court.

6.1 In view of the above, the order passed by the Executing Court dismissing the applications filed by the BDA for impleadment in the execution proceedings and/or dismissing the obstruction application, and the impugned order passed by the High Court, are unsustainable and the same deserve to be quashed and set aside.

7. Accordingly, the present appeals succeed. The impugned judgment and order passed by the High Court dated 21.03.2016 dismissing the writ petitions filed by the appellant herein - BDA and order dated 29.01.2015 passed by the Executing Court dismissing the application filed by BDA for impleadment as well as dismissing obstruction application are hereby quashed and set aside. The appellant is permitted to be impleaded in the execution proceedings. The Executing Court is directed to implead the appellant herein - BDA in the execution petition and thereafter adjudicate upon the obstruction/objection raised by BDA including the question relating to right, title or interest claimed by BDA in the suit land on the basis of the acquisition of the suit property/land acquired under the provisions of the

1976 Act, in exercise of powers under Order XXI rule 97 r/w Rule 101 CPC. The aforesaid shall be completed within a period of six months from the date of receipt of a copy of this judgment.

8. The instant appeals are allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.