



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 18<sup>TH</sup> DAY OF JUNE, 2024**

**R**

**PRESENT**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**AND**

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

**WRIT APPEAL NO. 1918 OF 2016 (LA-BDA)**

**BETWEEN:**

1. BANGALORE DEVELOPMENT AUTHORITY  
BY ITS COMMISSIONER  
KUMARA PARK WEST,  
T. CHOWDAIAH ROAD,  
BANGALORE-560 020.
2. THE SPECIAL LAND ACQUISITION OFFICER  
BANGALORE DEVELOPMENT AUTHORITY,  
T. CHOWDAIAH ROAD, KUMARA PARK WEST  
BANGALORE-560 020.

APPELLANTS 1 & 2 ARE BEING  
THE DIFFERENT SECTION OF THE SAME  
AUTHORITY, BOTH ARE REPRESENTED BY ITS  
ADDL. LAND ACQUISITION OFFICER.

...APPELLANTS

(BY SRI. K KRISHNA.,ADVOCATE)

**AND:**

1. SMT. BHAGYALAKSHMI  
W/O. M.V. NAGARAJU,  
AGED ABOUT 48 YEARS,  
RESIDING AT NO.2/117, 7<sup>TH</sup> MAIN ROAD,  
1<sup>ST</sup> CROSS, 1<sup>ST</sup> STAGE, B.T.M. LAYOUT,  
BANGALORE-560 029.





2. THE STATE OF KARNATAKA  
REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY,  
URBAN DEVELOPMENT DEPARTMENT,  
4<sup>TH</sup> FLOOR, VIDHANA SOUDHA,  
BANGALORE-560 001.

...RESPONDENTS

(BY SRI. S R SHIVAPRAKASH., ADVOCATE FOR R1;  
SMT. A D SANGEETHA., ADVOCATE FOR  
SRI. SPOORTHI HEGDE., HCGP FOR R2)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 2835-2837/2016 DATED 23/04/2016.

THIS WRIT APPEAL, COMING ON FOR ORDERS THIS DAY,  
**KRISHNA S DIXIT.J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This intra court appeal by the BDA & its SLAO seeks to call in question a learned Single Judge's order dated 23.04.2016 whereby the acquisition process came to be set at naught in the light of the order made by another learned Single Judge in W.P.No.32186/2010 (LA-BDA) & connected cases between Sri R.Shankaran vs. State of Karnataka & others, disposed off on 11.07.2014. However, a Coordinate Bench of this Court in W.A.No.1783/2014 & connected appeals had stayed the above order and therefore, no relief could have been



granted to the writ petitioner. The said Writ Appeal subsequently came to be allowed vide order dated 22.02.2024 and the lead judgment dated 11.07.2014 itself has been set at naught.

2. Learned counsel appearing for the appellants further submits that the subject lands were ordered to be left out from the acquisition process vide Denotification dated 29.09.2010 without notice to his clients. He concedes that it was gazetted duly. Subsequently, the government vide order dated 19.10.2010 rescinded the Denotification on the ground that the appellant, a stakeholder was not heard in the matter. This rescinding order was not gazetted, for reasons best known to the government, although such a course gives rise to certain speculations. He in all fairness submits that in view of a Coordinate Bench voiding the lead judgment dated 11.07.2014, the impugned order passed in terms thereof, needs to be set aside and matter be remitted to the government for consideration u/s 48(1) of the erstwhile Land Acquisition



Act, 1894 inasmuch as the land owners were not heard in the matter before rescinding the Denotification. He hastens to add that the appellants being the buyers post rescinding order vide sale deed dated 1.12.2011, they do not have any locus at all.

3. Learned HCGP appearing for the government maintains equi-distance between the appellants on the one side and the private respondents on the other. Learned counsel appearing for the private respondent argues that her client had acted upon the Denotification dated 29.09.2010 and after making due enquiry, bought the land with no notice of order rescinding the Denotification. She further submits that this rescinding order was never gazetted, nor published in any newspaper nor was publicized by attaching a copy thereof to a village chawdi. So contending, he repels the submission of Panel Counsel for the appellants that the private respondent do not have locus standi to lay a challenge to the rescinding order of Denotification. She makes submission in justification of the



impugned order and the reasons on which it has been constructed.

4. Having heard the learned counsel for the parties and having perused the appeal papers, we are inclined to grant limited indulgence in the matter as under and for the following reasons:

(A) The Preliminary Notification for the acquisition of the lands in question admeasuring 4,043 Acres & 31 Guntas in various villages was issued for the formation of Nadaprabhu Kempegowda layout in Bangalore. Petition lands comprise of 2 Acres & 10 Guntas in Sy.No.45/2 and 2 Acres & 33 Guntas in Sy.No.40/1 of Challaghatta village. The objections were filed by the interested persons to the proposed acquisition that was followed by the issuance of Final Notification. However, a learned Single Judge of this Court in a batch of cases in W.P.No.32186/2010 between Sri.R.Shankaran vs. The State of Karnataka and etc., had handed the judgment dated 11.07.2014 quashing the acquisition of the entire land which did not include the land



comprised in this appeal. In terms of said judgment, the impugned order also has been made quashing acquisition of the two pieces of lands belonging to the private respondent. However, the lead judgment dated 11.07.2014 itself has been set at naught by the Coordinate Bench vide order dated 22.02.2024 in W.A.No.1783/2014 & connected appeals. We fail to understand how the learned Single Judge would have allowed the writ petition in terms of a judgment of another learned Single Judge of this court when that judgment was stayed by the Division Bench on 18.08.2014 in W.A.No.1783/2014 & other connected matters. Of course, this question now pales into insignificance, the very lead judgment itself having been set at naught in the said writ appeal. Be that as it may.

(B) It is relevant to reproduce the operative portion of the judgment dated 22.02.2024 rendered by the Coordinate Bench in W.A.No.1783/2014 & connected appeals. It is elaborate and merits reproduction so that



whatever benefits has been granted to the land owners can be sought for by the private respondents herein at the hands of the BDA and the government, keeping in view the parameters fixed in the said judgment:

**"ORDER**

*i) The above appeals filed by the BDA are allowed;*

*ii) The order dated 11.7.2014 passed by the learned Single Judge in WP No.32186/2010 and other connected writ petitions is set aside. The orders passed in writ petitions which are decided placing reliance on the order dated 11.7.2014 passed in WP No.32186/2010 and other connected writ petitions are also set aside;*

*iii) The preliminary notification bearing No.BDA/COMMR/DC(LA)/ALAO/158/2008-2009, Bangalore, dated 21.5.2008 and the final notification bearing No. UDD 51 MNX 2010, Bangalore, dated 18.2.2010 issued for acquisition of lands for the formation of the "Nadaprabhu Kempegowda Layout" are upheld subject to the following conditions:*

*a) With regard to the land owners (excluding the site owners):*

*i) All the land owners/writ petitioners who are seeking for dropping of their lands from acquisition on the ground that their lands are (1) nursery lands; (2) situated within green belt; (3) totally built up; (4) that the buildings are constructed by religious/charitable*



*educational institutions; (5) that similar adjoining lands have been either left out from acquisition or de-notified, are permitted to make an application to the BDA seeking for dropping of their lands from acquisition by producing all such material that they deem fit/necessary in support of their applications within 3 months from today;*

*(ii) The BDA shall consider each of the said application/s keeping in mind the status of the lands as on the date of the preliminary notification and without taking into consideration any developments/improvements/constructions made subsequent to the preliminary notification;*

*iii) The BDA shall complete the exercise of considering the applications of the writ petitioners and deciding on the same within an outer limit of six months from today;*

*iv) The BDA, upon consideration of the applications shall intimate the writ petitioners about its decision;*

*v) If the BDA is of the opinion that the acquisition will have to be proceeded with, the BDA is at liberty to proceed further in accordance with law;*

*b) Insofar as the site owners who have not made an application as contemplated in para (iii)(a) hereinabove:*

*i) They shall register themselves for allotment under the BDA (Allotment of Sites) Rules, 1984 within three months from today by paying the registration fee. However, payment of initial deposit by them is exempted. The necessary*





*documents along with the said applications are also to be filed to enable the BDA to verify the same;*

*ii) The BDA shall treat the applicants as being entitled for priority allotment and allot each of them a site measuring 30x40 feet in the Nadaprabhu Kempegowda Layout at the prevailing allotment prices subject to the applicants satisfying the dual requirements of allotment under the Rules that they must be the residents of Bengaluru (for 10 years) and should not be owning any residential property in Bengaluru;*

*iii) In case the applicants/writ petitioners do not fulfill the requirements for allotment under the Rules, 1984 they may be considered for allotment of 20x30 feet sites as per the Bangalore Development Authority (Incentive Scheme for Voluntary Surrender of Land) Rules, 1989;*

*c) Insofar as the owners of residential sites who form part of a layout and who have sought for dropping their lands from acquisition in accordance with para (iii)(a) hereinabove, the BDA shall consider the same having regard to the observations made at para 66 hereinabove. If the BDA rejects their applications, the site owners who have first filed applications pursuant to para (iii)(a) hereinabove, shall be entitled to a further period of one month after the decision as contemplated therein is intimated to opt to and apply in the manner as contemplated in para (iii)(b) hereinabove.*

*iv) Till the aforesaid exercise directed to be undertaken by the BDA and the applications*



*filed by the writ petitioners, either for allotment of sites or for dropping of the lands from acquisition are considered, their possession shall not be disturbed and the existing construction shall not be demolished.*

*v) In view of the allowing of the above appeals, pending interlocutory applications, if any, stand disposed of.*

*No costs."*

(C) There is one more aspect to the matter: the Denotification was issued on 29.09.2010 in exercise of power availing u/s 48(1) of the 1894 Act. This was done without notice to the appellants herein who happen to be the beneficiaries of acquisition. Law is now well settled that the beneficiaries need to be heard before halting the acquisition process once for all inasmuch as such a Denotification would make land owners title cloud free as if there was no acquisition process. This view gains support from the Apex Court decision in *UNION OF INDIA vs. PARSHADI & OTHERS, 2003 (69) DRJ 751*. Incidentally, it needs to be mentioned that the said Denotification was duly gazetted. Strangely, matter did not end here. The



government issued an order dated 19.10.2010 whereby, the Denotification dated 29.09.2010 came to be rescinded, obviously at the instance of appellant-BDA. This order was passed behind the back of the land owners and that it was not gazetted unlike the Denotification. Acting on the Denotification, the owners of the land sold the same and those who had no notice of rescinding, bought the same. No material is produced before us that the writ petitioner who happens to be the private respondent herein, bought the subject lands knowing fully well about the rescinding order. Presumption of notice would arise in respect of gazetted orders and conversely, no presumption would arise of such notice where gazetted orders are rescinded by orders that are not gazetted. That being the position, the argument that those who bought the land subsequent to rescinding of Denotification have no locus standi to maintain a writ petition, is liable to be rejected, especially when they entered into transaction after reasonable enquiry.



(D) It has now been well settled vide decision of the Apex Court in **MUDA vs. VEER KUMAR JAIN & OTHERS, (2010) 5 SCC 791** that Denotification of acquisition of lands has to be gazetted so that those who are stakeholders in the acquisition may lay a challenge thereto. On the similar line, the orders that rescind the Denotification also should be gazetted and duly publicized, so that the unscrupulous land owners would not prey the potential buyers on the basis of Denotification and keeping them in darkness of orders rescinding the Denotification. An argument to the contrary would imperil the interest of innocent buyers of the lands in acquisition which were otherwise denotified, but later there is a cancellation of such Denotification. All this being said, we are inclined to remit the matter to the government for the fresh consideration as to whether these lands should be excluded from the fray of acquisition inasmuch as Denotification was issued without hearing the appellant-BDA and subsequently, the same was cancelled by the rescinding order that was made without hearing the land



owners. Only this course of remand would bring about a just result to the stakeholders. It is also open to the respondent-buyers of the subject lands to take benefit of the Division Bench judgment which we have referred to above, if their claims fit into the parameters prescribed therein. Other terms & conditions mentioned in the said judgment govern their claim.

In the above circumstances, this appeal succeeds and the impugned order of the learned Single Judge is set at naught with the following directions:

[i] a writ of certiorari issues quashing both the Denotification order dated 29.09.2010 and the Rescinding order dated 19.10.2010; matter is remitted to the portals of Government for consideration afresh as to whether the subject lands are liable to be denotified from acquisition;

[ii] the above exercise has to be accomplished after due notice to both the appellant-BDA and the respondent-buyer of the subject lands and that all contentions of the parties are kept open.

[iii] The above remand needs to be disposed off within an outer limit of three months, failing which adverse



presumptions may be raised against the functionaries of the Government/BDA.

[iv] It is also open to the respondent-buyer of the subject lands to work out his remedies at the hands of government/BDA in terms of aforesaid Writ Appeal judgment dated 22.02.2024 and that the conditions of said judgment do apply *mutatis mutandis*.

The Registry shall send a copy of this judgment immediately by Speed Post to the Chief Secretary, Government of Karnataka, Vidhana Soudha, Bengaluru-560001, for information and needful action. He shall issue an appropriate Circular at the earliest so that all Government Orders that denotify the lands from acquisition and the subsequent Government Orders that rescind such Denotification are duly published in the official gazette and further, they shall be made a part of the Property Records.

**Sd/-  
JUDGE**

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JUDGE**

Snb/  
List No.: 1 Sl No.: 13