



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 38467 OF 2016 (LA-BDA)

BETWEEN:

K SRINIVAS MURTHY
SON OF LATE M.KRISHNAPPA
AGED ABOUT 49 YEARS,
#42,7TH CROSS,
CAMBRIDGE LAYOUT
HALASURU
BANGALORE-560008

...PETITIONER

(BY SRI.RUBEN JACOB, SENIOR COUNSEL FOR
SRI. PAWAN KUMAR M.N., ADVOCATE)

AND:

1. THE BANGALORE DEVELOPMENT AUTHORITY
T.CHOWDAIAH ROAD
KUMARA PARK WEST
BANGALORE-20
REP BY ITS COMMISSIONER
2. SPECIAL ADDITIONAL LAND ACQUISITION OFFICER
BANGALORE DEVELOPMENT AUTHORITY
T.CHOWDAIAH ROAD
KUMARA PARK WEST
BANGALORE-20
3. DEPUTY COMMISSIONER
LAND ACQUISITION OFFICER, BDA





T.CHOWDAIAH ROAD
KUMARA PARK WEST
BANGALORE-20

...RESPONDENTS

(BY SRI.UNNIKRISHNAN.M., ADVOCATE FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH ENDORSEMENT DATED 01.06.2016 ISSUED BY 2ND RESPONDENT IN NO.1.6.2016 IN NO.BEM.APRA/V.AA.BHOO.SWA.AA379/2016-17 AS PER ANNEXURE-D AND ETC.

THIS WRIT PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a. *Issue a writ in the nature of certiorari to quash endorsement dated 1.6.2016 issued by 2nd respondent in No.1.6.2016 in No.1.6.2016 in No. BEM.APRA/V.AA.BHOO.SWA.AA379/2016-17 as per Annexure-D;*
- b. *Issue a writ in the nature of mandamus directing the allotment of extent of 2178 sq.ft of developed sital area;*
- c. *Direct the respondents to pay compensation of Rs.50,00,000/- to the petitioners;*
- d. *Pass such other orders as may be deemed appropriate under the circumstances of the case, in the ends of justice and equity.*



2. The petitioner's father was the owner of the property bearing Sy.No.35/4 of Halasuru village, Bangalore North Taluk measuring an extent of 11 guntas which was acquired for the purpose of formation of HAL IV Stage layout by the erstwhile City Improvement Trust Board (CITB) under preliminary notification dated 21.09.1967. Subsequent thereto, a final notification was issued on 16.10.1972. It is contended that by issuance of a notification under Section 48(1) of the Land Acquisition Act, 1894, the acquisition of the said property was withdrawn on 9.10.1976. However, the BDA has forcefully formed a layout in the said 11 guntas of land and as such, the father of the petitioner had filed W.P. No. **81100/1997** seeking cancelation of the sale made by the BDA as there is no acquisition of his property. The writ petition came to be disposed of on 19.08.1997 on the basis of the submission made by the BDA that auction sites were actually part of



Sy.No.30 and not carved out of Sy.No.35/4 belonging to the father of the petitioner. In view thereof, the petitioner's father was given liberty to approach the Civil Court.

3. Thereafter the petitioner's father sought survey of the lands and after such survey, he had approached the BDA with representation dated 2.06.2000 categorically stating that auctioned land was forming part of Sy.No.35/4 and requested for alternate land to be allotted. The BDA did not accept the same. In view thereof, the petitioner and his brother had filed W.P.No.13017-18/2011 and this Court while disposing of the writ petition observing that 11 guntas had been utilised out of Sy.No.35/4 had directed the BDA to consider the allotment of alternate developed land equivalent to 50% of unauthorizedly utilised property in terms of the Circular dated 19.11.2009.



4. Subsequent thereto the BDA admitting that 7 guntas of land had been utilised had agreed to allot property equivalent of 3½ guntas in compliance with the order passed by this Court and had thereafter allotted certain sites in HSR Layout. The petitioner is before this Court contending that it is only a partial compliance of the order passed by this Court inasmuch as total extent of petitioner's land was 11 guntas whereas the BDA has admitted formation of sites only for 7 guntas leaving a balance of 4 guntas.
5. Pursuant to the filing of the above petition and after the matter being heard for some time, this Court had directed the BDA to produce the layout plans as originally sanctioned to ascertain the location of the property and as such, said sanction plans have been produced. It is however the submission of Sri.Unnikrishnan that layout has not been formed as



per the sanction plan and there are certain variations and final plan is not on record of the BDA.

6. An affidavit dated 22.07.2022 has been filed by the Addl. Land Acquisition Officer, BDA Dr.R.S.Basanti stating that it is only 7 guntas of land belonging to the petitioner which is utilised for formation of road and an extent of 4 guntas was not utilised or used for the layout or any purposes and same continues to be in possession of the petitioner. It is further stated that the petitioner has been compensated in the form of 3½ guntas of developed land and insofar 4 guntas of land is concerned, the BDA has nothing to do with the same since it has at no point of time exercised domain or ownership over the said extent and the RCC buildings which have come up over the said 4 guntas of land could be encroachment for which BDA is not liable since the onus of protecting the land lies on the petitioner.



7. It is in that background that it is stated in the affidavit that the petitioner is not entitled for any compensation in respect of 4 guntas of land since it has not been notified for acquisition nor utilised for any purpose.
8. The facts of the matter having been afore-stated, the CITB, predecessor of the BDA having formed HAL IV Stage and admittedly used 7 guntas of land belonging to the petitioner for formation of layout, it would be a fraud played by the BDA on this Court and the petitioner by contending that 4 guntas of land has not been utilised by the BDA and that the onus of protecting the said 4 guntas of land is on the petitioner. The BDA having the audacity to contend that 7 guntas of land have been utilised for the formation of road without acquisition, has the further audacity to contend that 4 guntas of land has to be protected by the petitioner. Such a conduct on part of the BDA, more particularly the Addl. Land



Acquisition Officer who has filed an affidavit to that effect, to say the least, is obnoxious.

9. The BDA being a statutory Authority is required to act in terms of the applicable statute and the BDA had no business in the first place to make use of a land of a private citizen for formation of layout without acquisition. The Addl. Land Acquisition Officer having admitted utilisation of 7 guntas of land for formation of the road and having also made available 3½ guntas of developed land in lieu thereof cannot skirt from the responsibility of making submissions as regards the balance 4 guntas.
10. A perusal of the sanction plan, though Sri.Unnikrishnan, learned counsel submits that actual layout has not been made as per the sanctioned plan indicates that the location where the land of the petitioner is situate there are certain sites which have been formed, there is no land around the property of the petitioner which has been shown as



vacant without a site being shown thereon. The entire land being covered by either road or a site with a particular site number, it does not now lie for the BDA to state that the said land has not been utilised and/or that the BDA has nothing to do with the same since it has at no point of time exercised domain or ownership to the extent of land or further contend that the onus lies with the petitioner. When the statutory authority like the BDA has forcefully, unauthorisedly, without sanction of law encroached upon and formed a road on a private property, it cannot be expected of a citizen like the petitioner to protect the same and for the BDA to contend that onus of protecting the same would lie on the petitioner. As such, separate directions are being issued in relation thereto.

11. In view of the fact that a layout has been formed on the land of the petitioner either by using the same as road or a site, there cannot be a contention raised by



the BDA that proportionate developed land would not be allotted to the petitioner. The petitioner would be entitled to the benefit of the Circular dated 19.11.2009 in respect of 4 guntas of land also and not being limited to 7 guntas of land. Needless to state that the petitioner would be entitled to 2 guntas of developed land in lieu thereof in any layout subsequently formed to that of HAL IV stage. Hence, I pass the following:

ORDER

- i. The writ petition is allowed;
- ii. The endorsement dated 1.06.2016 issued by respondent No.2 in No.BEM.APRA/V.AA.BHOO.SWA.AA 379/2016-17 at Annexure-D is hereby quashed. Mandamus is issued directing the respondent-BDA to allot developed land equivalent to 2 guntas of land in any layout formed subsequent to HAL IV Stage;
- iii. The respondents are directed to make payment of cost of Rs.Five lakhs to the petitioner. The same to be recovered from all officers who are at default;



- iv. The Commissioner, BDA is directed to initiate such action as may be necessary against such persons and pass orders after following due procedure and file status report within a period of six weeks from the date of receipt of certified copy of this order.
- v. Though the above petition stands disposed, registry to relist on 27.02.2023 for compliance.

**Sd/-
JUDGE**

LN
List No.: 1 Sl No.: 41