



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2023

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BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 4897 OF 2023 (LA-KIADB)

BETWEEN:

1. MRS. T G SHANTHAMMA,
W/O LATE RUDRAIAH H.V.
AGED ABOUT 72 YEARS,
2. MR. UMASHANKAR B.R.
S/O LATE RUDRAIAH H.V.
AGED ABOUT 55 YEARS,
3. MR. DINESH KUMAR B.R.
S/O LATE RUDRAIAH H.V.
AGED ABOUT 50 YEARS,
4. MRS. USHA H.R.
D/O LATE RUDRAIAH H.V.
AGED ABOUT 49 YEARS,
5. MR. PRASANNA H.R.
S/O LATE RUDRAIAH H.V.
AGED ABOUT 48 YEARS,

ALL ARE RESIDING AT NO.805/A, 2ND CROSS,
GOKULA 1ST STAGE, 2ND PHASE, MATHIKERE,
BENGALURU - 560 022.

(BY SRI. GIREESHA KODGI.,ADVOCATE)

...PETITIONERS

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY,





DEPARTMENT OF COMMERCE AND INDUSTRIES,
VIKASA SAUDHA, DR. AMBEDKAR ROAD,
BENGALURU - 560 001.

2. KARNATAKA INDUSTRIAL AREA DEVELOPMENT BOARD
SPECIAL LAND ACQUISITION OFFICER OFFICE-2,
NO.39, SHANTHI GRUHA,
BHARATH SCOUTS AND GUIDES BUILDING,
4TH FLOOR, PALACE ROAD,
BENGALURU - 560 001.
REPRESENTED BY ITS SPECIAL
LAND ACQUISITION OFFICER,
3. DEPUTY COMMISSIONER
LAND ACQUISITION OFFICER,
K.I.A.D.B. NO. 45,
5TH FLOOR, KHANIJA BHAVAN
BENGALURU RURAL DISTRICT - 560 001.
4. THE MALLESWARAM CO OPERATIVE BANK LTD.,
NO.102, 7TH CROSS, EAST PARK ROAD,
MALLESWARAM, BENGALURU - 560 003.

...RESPONDENTS

(BY SRI. R SRINIVASA GOWDA., AGA FOR R1;
SRI. P V CHANDRA SHEKAR., ADVOCATE FOR R2 & R3;
NOTICE TO R4 IS D/W , V.C.O DATED 13/03/2023)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
DIRECT THE R-2 TO RELEASE AT LEAST 50 PERCENT AS AD-
INTERIM COMPENSATION TO THE PETITIONERS FOR
ACQUIRING THE LAND IN SY.NO. 207, SITUATED AT
HULIKUNTE VILLAGE, DODDABELAVANGALA HOBLI,
DODDABALLAPURA TALUK AS PER ANNEXURE-A AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING
IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Petitioners being the owners of land in question are knocking at the doors of writ court with the following principal prayer:

" (a) Issue a Writ of mandamus directing the Respondent No.2 to release at least 50% as ad interim compensation to the petitioners for acquiring the land in Sy.No.207, situated at Hulikunte Village, Doddabelavangala Hobli, Doddaballapura Taluk as per Annexure-A. in the ends of justice and equity."

Shorn of the textual prayers, learned counsel for the Petitioners submits that his clients would be satisfied if they are permitted to alienate or encumber the subject property which is notified for acquisition under the provisions of Karnataka Industrial Areas Development Act, 1966 since the funds are urgently needed for the medical treatment of some of them who are suffering from the hereditary terminal disease i.e., cancer of varying stages. He highlights the predicament of his clients because of the long durations ordinarily an acquisition of the kind would take for its accomplishment.



2. Learned AGA appearing for the State opposes the Petition contending that by very nature, the acquisition process of the kind would take a pretty long time for its fructification; till the land vests in the State pursuant to acquisition, no compensation can be awarded nor any *ex gratia* payment be made; thus, the land owners have to inevitably wait, and at times a bit longer than usual since huge lands are preliminarily notified for acquisition. He also highlights that law abhors any transaction being made in respect of the property once the Preliminary Notification is issued under Section 28(1) of the Land Acquisition Act, 1894.

3. Learned Panel Counsel appearing for the KIADB has filed the Statement of Objections with appreciable hurry regard being had to the urgency involved in the matter; he resists the writ petition contending that it is not possible to expedite the acquisition process since there is a lot of resistance and agitation from other land owners; added there are issues with the link road to be formed for



the project in contemplation; even otherwise this acquisition is being comprehensively reviewed at the hands of higher ups and therefore the petitioners have to wait. He too tells that there is no provision in the 1966 Act to pay interim compensation pending completion of the acquisition process.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to permit alienation or encumbering of a part of the subject property for the following reasons:

I. AS TO INTERRELATIONSHIP BETWEEN CONSTITUTIONAL RIGHT TO PROPERTY AND OTHER FUNDAMENTAL FREEDOMS IN PART III:

(a) The right to life & liberty guaranteed under Article 21 of the Constitution of India has seen manifold expansion from *precedent to precedent*. The fact that the said right is recognized as a basic human right, even under United Nations' Conventions, needs no mentioning. Steadily, law has marched from April to May and June of its life, i.e., from *A.K.GOPALAN*¹ to *PUTTASWAMY*².The

¹ AIR 1950 SC 27



observations of the Apex Court in *FRANCIS CORALIE MULLIN vs. THE ADMINISTRATOR, UNION TERRITORY OF DELHI*³

"... a Constitutional provision must be construed, not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the Constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person..."

(b) After 44th Constitutional Amendment of 1978, the right to property has been relegated from Part III to Part XII, although it is secured by Article 300A, apparently with a lesser degree of efficacy. Even though, the right to property is no longer a fundamental right and was never a

² (2017) 10 SCC 1

³ AIR 1981 SC 746



natural right, it has to be accepted that without property, practically other rights become illusory vide *LALA RAM vs. JAIPUR DEVELOPMENT AUTHORITY*⁴. The Apex Court in *TUKARAM KHANA JOSHI vs. MIDC*⁵ has observed that depriving a poor farmer of his immovable property is a violation of Article 21 of the Constitution. When property owned by an individual happens to be his only source of livelihood, right to such a property partakes the character of a '*fundamental right*' and to that extent its owner can seek refuge under the ever expanding umbrella of Article 21. It needs no research to know that there are several fundamental freedoms that are constitutionally guaranteed under Part-III and they have been essentially founded on the *institution of private property*. In other words, when the exercise of a particular fundamental right, say Article 19(1)(a) or 19(1)(g) substantially depends upon what an individual owns as property, unreasonably curtailing the rights of ownership such as right to alienate, encumber, etc, transcends the violation of Article 300A and lands in

⁴ (2016) 11 SCC 31

⁵ (2013) 1 SCC 353



the prohibited area, namely Part III, to which State cannot gain entry. Thus, breaching property rights may amount to violation of the fundamental right to freedoms guaranteed under Part III of the Constitution.

(c) What the jurist of yester decades Mr. H. M. Seervai⁶ writes has been pertinently reproduced below:

"... Art.19(1)(f) which conferred on citizens the right to acquire, hold and dispose of property formed part of a group of articles under the heading 'Right to Freedom'. It requires no elaborate argument to demonstrate that property is intimately connected with the right to freedom. Article 31 appeared under the heading 'Right to Property'; for the right to freedom conferred by art. 19(1)(f) would be worth little if the property when acquired could be taken away by law. Hence Art. 31 provided that private property could be acquired only for a public purpose and on payment of 'compensation' (later called 'amount'). There is nothing in the Statement of Objects and Reasons to show that Parliament no longer looked upon the right to acquire hold and dispose of property as part of the Right to Freedom. The retention of Art 19(1) (a) to (e) and (g) is a clear indication to the contrary...."

Further, Art, 19(1)(a) confers on every citizen the right to freedom of speech and expression, which right includes the freedom of the press – a right which is basic to democracy. But a press needs a building or buildings to house it and movable

⁶ H.M. Seervai, 'Constitutional Law of India', Fourth Edition, Volume II, pp 1359, 14.13 – 14 (2010)



property to work it, so that without the right to acquire, hold and dispose of property, there can be no freedom of the press. And the same is broadly true of the fundamental right conferred by Art. 19(1)(c) – the right to form associations or unions – for normally the working of associations and unions involves the right to acquire, hold and dispose of property. What then is the effect of deleting Art. 19(1)(f), which conferred the right to acquire, hold and dispose of property and of deleting Art. 31 which provided for the acquisition of property for a public purpose on payment of compensation (later called 'amount')..."

(d) It is relevant to note that the protection of certain property rights guaranteed by the Second Proviso to Article 31A (1) is founded on the above idea in the sense that, a small agricultural land upon which the livelihood of a person depends, cannot be a subject matter of acquisition under a law that does not provide for the payment of compensation on par with its market value. This protection to the citizen remains as a substantive disability of the State, notwithstanding the repeal of Articles 19(1)(f) or 31(2) since the Second Proviso to Article 31C(1) engrafts an '*independent provision*' as observed by the Apex Court in *MAHAJAN vs. STATE OF*



MAHARASHTRA⁷; and there is no such constitutional assurance in respect of other lands. The words esteemed jurist of yester decade, Dr. D.D.Basu⁸ are aptly reproduced below:

"3. Under the 2nd Proviso - the person whose land is 'acquired' is entitled to 'compensation' being not less than the market value of the land, provided (a) such land is comprised in an estate which is being acquired; (b) it is under his personal cultivation; and (c) the quantum of land so held by him is within the ceiling limit of holding prescribed by the competent Legislature...

4. ... The underlying idea of this Proviso is that a person who is cultivating land within the ceiling limit personally, which is the source of his livelihood, should not be deprived of that land under any law protected by Article 31A unless compensation at the market rate is given..."

II. ACQUISITION OF PRIVATE PROPERTY FOR PUBLIC PRUPOSE AND PAYMENT OF COMPENSATION:

(a) Acquisition of public property by the State in exercise of eminent domain is a sovereign power that asserts, either temporality or permanently, its dominion over any portion of the soil of the State for public purpose.

⁷ (1977) 2 SCC 548

⁸ D.D. Basu, 'Shorter Constitution of India', Fifteenth Edition, Volume I, pp 525 - 26, 2013



The corollary of such acquisition is the payment of adequate compensation for the acquired land. Though Article 300A does not, in so many words, include such a '*right to compensation*', it is '*in built*' vide *K.T PLANTATION vs. STATE OF KARNATAKA*⁹. Overarchingly, such a duty to provide compensation arises from the fact that ours is a Welfare State wherein the institution of private property is constitutionally recognized.

(b) If the petitioners are not permitted to encumber or alienate the subject property which is their only source of income, from which the required medical treatment can be hopefully bought, they may fall prey to the predatory disease of the kind; thus, the long pendency of acquisition process itself would imperil their life unless some '*exit strategy*' is worked out within the frame work of law consistent with the requirement of justice of the times, in which petitioners are placed by the conspiracy of circumstances beyond their control. In the exceptional circumstances of this case, denying relief to terminally

⁹ (2011) 9 SCC 1



ailing citizens, especially when their property in question is the only means of holding the body & soul together, by securing medical treatment, would render the constitutional guarantee to life a mere farce. To put it in the words of late Antonin Scalia of U.S. Supreme Court, the Constitution will be nothing more than a '*parchment guarantee*'. Therefore, petitioners need to be permitted to alienate or encumber a reasonable portion of the property that is still in the initial process of acquisition so that they can keep their life boat afloat.

III. AS TO CONSTITUTIONAL RIGHT TO PROPERTY AND PERMISSIBILITY OF ALIENATION OF PROPERTY NOTIFIED FOR ACQUISITION:

(a) Where the life of citizen depends upon a certain property and the same is being taken away in an acquisition process though lawfully launched, the delayed accomplishment of the said process and the delay that would eventually brook in the payment of compensation till such accomplishment happens, in the given circumstances of the case, would metaphorically amount to taking away the '*oxygen mask*' from the gasping patient



in the Intensive Care Unit (ICU). If the right to life is violated when means of livelihood is taken away, in the light of *OLGA TELLIS v. BOMBAY MUNICIPAL CORPORATION*¹⁰, restraining a person from alienating his property for raising of funds required for medical treatment of a terminal disease, is nothing short of that. The writ courts being the custodians of constitutional rights of the citizens have to individualize justice by striking a golden balance between the competing claims of individuals & the State. Otherwise, a Constitution would be a mere compendium of theories with no connect to the living law of the people. It is pertinent to recall the observations of Justice Oliver Wendell Holmes in *DAVIS vs. MILLS*¹¹, which reads:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories ..."

(b) Though it is true that once the land is put in acquisition process by the issuance of Preliminary Notification, normally, no transactions to the prejudice of

¹⁰ (1985) 3 SCC 545

¹¹ 194 U.S. 451 (1904)



acquisition can be entered into by the owners thereof.

What V.G.Ramachandran¹², writes as to land owner's rights post acquisition notifications, is pertinently reproduced below:

"Under the scheme of the Act, neither the notification under Section 4 nor the declaration under Section 6 nor the notice under Section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein. Section 16 makes it clear beyond doubt that the title to the land vests in the Government only when possession is taken by the Government. Till that point of time, the land continues to be with the original owner and he is also free (except where there is specific legislation to the contrary) to deal with the land just as he likes, although it may be that on account of the pendency of proceedings for acquisition intending purchasers may be chary of coming near the land. So long as possession is not taken over, the mere fact of a notification under Section 4 or declaration under Section 6 having been made does not divest the owner of his rights in respect of the land or relieve him of the duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Government any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safeguard the

¹² V.G.Ramachandran, 'Law on Land Acquisition and Compensation', Eighth Edition, Eastern Book Company, p 188 – 189, (2000)



interests of the original owner of the land. It is in view of this position, that the owner's interests remain unaffected until possession is taken, that Section 48 gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no irreparable prejudice is caused to the owner of the land, and if at all he has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefore under Section 48(2). The issuance of notice under Section 4 does not debar the owner of the property to sell it.."

(c) The Karnataka Legislature has enacted Karnataka Land (Restriction on Transfer) Act, 1991, is true. Section 4 of the Act reads as under:

"Regulation of transfer of lands in relation to which acquisition proceedings have been initiated.- No person shall, except with previous permission in writing of the competent authority, transfer, or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the Scheme in relation to which the declaration has been published under Section 19 of the Bangalore Development Authority Act, 1976 or section 19 of the Karnataka Urban Development Authorities Act, 1987."

The provision mentioned above restrains alienation of any land or part thereof which is put in acquisition under the



provisions of the Bangalore Development Authority Act, 1976 or the Karnataka Urban Development Authorities Act, 1987. It is also conditioned by the land being in any urban area. The prohibition is also not absolute in the sense that the transfer can be effected with previous permission of the competent authority. However, the case of petitioners remains miles away from this enactment inasmuch as the process of acquisition is not under any of the two Statutes enlisted therein but it is indisputably under the provisions of the Karnataka Industrial Areas Development Act, 1966. Indisputably, acquiring huge lands under the special legislations like the 1966 Act involves a cumbersome & tardy procedure and by its very nature, the acquisition process of the kind would take a long time for its fructification as has been observed in W.P.No.61426/2016 (LA-KIADB) between *SRI.M.V.GURUPRASAD & ANOTHER VS. STATE OF KARNATAKA & OTHERS*, disposed off on 10.02.2023.



IV. AS TO LIKELY PREJUDICE TO PUBLIC INTEREST IF PROPERTY NOTIFIED FOR ACQUISITION IS ALIENATED OR ENCUMBERED:

(a) This Court is at loss to know as to what material prejudice would be caused to the acquiring body, if the land preliminarily notified for acquisition is transacted with. If it is an absolute transfer like the sale, exchange or gift, the transferee takes the property subject to the result of culmination of acquisition process. So does, a transferee like the lessee or the mortgagee. This Court in W.P.No.18206/2022 between *M/S D C B BANK LIMITED VS. THE ASSISTANT COMMISSIONER* disposed off on 16.03.2023 has already held that where the mortgage land is acquired, the doctrine of substituted security becomes invocable and the mortgage attaches to the compensation payable for acquisition, although the acquired land goes encumbrance free. Thus, by transfer of the land in acquisition process, would not in any way prejudice the interest of State or the beneficiary of acquisition. It hardly needs to be stated that ownership being a bundle of rights, the right to transfer unless



interdicting by the law does avail to the owner of a property unhindered, of course subject to all just exceptions. No law or a Ruling is cited at the Bar to the contrary.

(b) Learned counsel for the Petitioners submits that his clients have availed loan from the 4th respondent-Cooperative Bank in a sum of Rs.53,45,228/- way back in December 2021 and that the repayment schedule is being disbursed because of accrual of interest and non-servicing of the debts, the property caught up in acquisition being the cause, may be true. However, it is a matter between the banker & the customer and therefore, petitioners have to work out their remedy with the banker only who may in the circumstances of the case take a lenient view of the matter by elongating the space of installments or the like, consistent with the extant RBI guidelines.

V. AS TO COURT RENDERING A DECISION NOT TO STATE ITS PRECEDENTIAL VALUE:

(a) The submission of learned Sr. Panel Counsel appearing for the KIADB that permitting the land owners



to transact with the lands in acquisition process, would create a bad precedent and therefore, the Court should clarify that this judgment shall not be used as a precedent in other cases, is bit difficult to countenance and reasons for this are not far to seek: A decision is liable to be subjected to a process of interpretation. The phrase '*the ratio decidendi*' of a case may mean either the rule that the Judge who decided the case, intended to lay down and apply to the facts or the rule that a later Court concedes him to have had the power to lay down. There is a distinction between the *ratio decidendi*, i.e., the Courts own version of the rule of the case, and the true rule of the case, to wit what it will be made to stand for by another later Court. Ordinarily, the Court rendering a decision, does not itself state the precedential value of such a decision; it is for the later court before whom such a decision is cited, to consider whether it has the binding characteristics of a *ratio decidendi*. Of course, when it comes to the highest arbitral tribunal of the land, different consideration may weigh, as it happened when majority of



the Judges in KESAVANANDA¹³ formulated the propositions emerging from the decision. Added, there are issues of '*parity in treatment*' in the sense that the like cases have to be decided alike and as a corollary to this, similarly circumstanced litigants cannot be denied the relief which others have been granted.

In the above circumstances, this writ petition is allowed in part; petitioners are permitted to alienate or encumber 50% of the property in question now put in acquisition process, subject to the following conditions:

- (i) The petitioners shall inform in writing the intending buyers or lenders about the property being in the acquisition process that may take its own time for fruition;
- (ii) The petitioners shall not have objection for the acquisition of the property in question and therefore their buyers/lenders too shall not have the right to challenge the same;
- (iii) The buyers/mortgagees shall have right to claim compensation or its enhancement, should acquisition of the property be accomplished in due course and in the case of delayed acquisition, to lay a claim for interest;

¹³ AIR 1973 SC 1461



(iv) Petitioners shall inform in writing to the State & to the KIADB the names of buyers/lenders and shall also furnish a certified copy of registered conveyance or the loan papers as the case may be immediately after such a transaction is accomplished.

(v) Nothing observed hereinabove shall otherwise affect the ongoing acquisition process and rights of the parties.

Costs made easy.

This Court places on record its deep appreciation for the able research & assistance rendered by its official Law Clerk cum Research Assistant, Mr.Faiz Afsar Sait.

**Sd/-
JUDGE**

Bsv