

IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH

DATED THIS THE 29<sup>th</sup> DAY OF NOVEMBER 2013

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

WRIT PETITION Nos.82948-955/2013(LA-KIADB)

**BETWEEN:**

1. PUSHPAVATHI  
W/O LATE URVAGONDA RAMACHANDRAPPA,  
AGE: 60 YEARS,  
OCC: AGRICULTURIST,  
R/O: 3RD WARD NEAR POLICE  
QUARTERS, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY.
2. K RAGHUVeer S/O K VENKATESHAPPA,  
AGE: 43 YEARS, OCC: AGRICULTURIST,  
R/O: 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY.

PANCHAPPA CHAKRASALI  
SINCE DECEASED BY HIS LRS.,

3. KUMBAR NEELAMMA W/O LATE  
KUMBAR PANCHAPPA,  
AGE: 65 YEARS, OCC: AGRICULTURIST,  
R/O: 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY.
4. KUMBAR BASAVARAJ S/O LATE KUMBAR PANCHAPPA,  
AGE: 40 YEARS, OCC: AGRICULTURIST,  
R/O: 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY.
5. KUMBAR NAGARAJ S/O LATE KUMBAR PANCHAPPA,  
AGE: 38 YEARS, OCC: AGRICULTURIST,

R/O: 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY.

6. KUMBAR MANJUNATH S/O LATE KUMBAR PANCHAPPA  
AGE: 36 YEARS, OCC: AGRICULTURIST,  
R/O. 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY
7. KASLI SOMAPPA S/O KASLI ANKLAVVA  
AGE: 42 YEARS, OCC: AGRICULTURIST,
8. KASLI HANUMANTHA S/O KASLI ANKLAVVA  
AGE: 38 YEARS, OCC: AGRICULTURIST,
9. KASLI KENCHAPPA S/O KASLI ANKLAVVA  
AGE: 36 YEARS, OCC: AGRICULTURIST,
10. KASLI ANKLESH S/O KASLI ANKLAVVA  
AGE: 30 YEARS, OCC: AGRICULTURIST,

Petitioners no.7 to 10 are

R/O. 5TH WARD, MADAKARI NAYAKA NAGAR,  
POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY

11. H. MANJUNATH S/O H. BASAVARAJ  
AGE: 50 YEARS, OCC: AGRICULTURIST,  
R/O. 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY
12. H. BASAVARAJ S/O H. LINGAPPA  
AGE: 72 YEARS, OCC: AGRICULTURIST,  
R/O. 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY
13. H. SIDDAMMA W/O H. BASAVARAJAPPA  
AGE: 66 YEARS, OCC: AGRICULTURIST,  
R/O. 4TH WARD, POST: MARIYAMMANAHALLI,  
TQ: HOSPET, DIST: BELLARY
14. K. PUTTAMMA W/O BASAVARAJAPPA  
AGE: 50 YEARS, OCC: AGRICULTURE,  
R/O. DANAYAKANAKERE,

TQ: HOSPET, DIST: BELLARY

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE) ... PETITIONERS

**AND:**

1. THE STATE OF KARNATAKA  
DEPARTMENT OF COMMERCE AND  
INDUSTRIES, M.S.BUILDING, BANGALORE  
BY ITS SECRETARY
2. THE DEPUTY COMMISSIONER  
BELLARY DISTRICT, BELLARY
3. THE SPECIAL LAND ACQUISITION OFFICER  
KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD,  
PLOT NO.33/A 1ST FLOOR  
LAKANAHALLI INDUSTRIAL AREA  
DHARWAD
4. M/S B.M.M ISPAT LTD.,  
NO.114, DANAPUR VILLAGE,  
TQ: HOSPET, DIST: BELLARY  
BY ITS GENERAL MANAGER
5. THE TAHASILDAR  
TQ: HOSPET, HOSPET,  
DIST: BELLARY

... RESPONDENTS

(BY SRI. K.S. PATIL, HCGP FOR R1, R2 AND R5.  
SRI. P.N. HATTI, Advocate. FOR R3.  
SRI. R.M. KULKARNI, Advocate FOR R4. )

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED:19/03/2012 ISSUED BY THE RESPONDENT NO.1, VIDE ANNEXURE-G AND THE NOTIFICATION DATED:19/04/2011 ISSUED BY THE RESPONDENT NO.1, VIDE ANNEXURE-H ONLY IN SO FAR IT PERTAINS TO PETITIONERS AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS, THIS DAY,  
THE COURT MADE THE FOLLOWING:

**ORDER**

I.A.2/13 is filed for vacation of interim order granted by  
this Court on 26/09/2013.

2. The petitioners state that they are the owners in possession of their respective agricultural lands. Respondent No.1-Government of Karnataka, Secretary to Department of Industries and Commerce issued a notification under Section 28(1) of the Karnataka Industrial Area Development, Act, 1966(hereinafter to as the 'Act') expressing its intention of acquiring the land in an extent of 3490.22 acres. Before issuing the said notification, a notification under Section 3(1) was issued. Petitioners submitted their objections to the said acquisition stating that the lands in question are required by them for their livelihood and that sub-section (3) of Section 28 of the Act which mandates that objections have to be considered and an opportunity of being heard is to be afforded, is not complied and hence, the respondents have violated the provisions of the Act. Further, to the notices issued under sub

section (6) of section 28 of the Act intimating the owners of the land to surrender the land in view of declaration issued under sub-section 5 of section 28 of the Act, some of the petitioners are refusing and protesting for taking over possession of the land. Even today, the petitioners are in possession of respective lands in question. Learned counsel in support of his submission relied on the Division Bench judgment of this Court in the case of Haribhau Siddapa Patil and Others Vs. State of Karnataka represented by its Secretary, Department of Industries and Commerce and Others reported in 2013(1) KCCR 491(DB) and also another judgment of this Court in the case of Sri. Kakaral Ravikumar and Others Vs. The State of Karnataka represented by its Commissioner for Industries Development and Director of Commerce and Industries, Bangalore and Others reported in 2013(2) KCCR 1108(DB).

3. Learned counsel for respondent No.3 files statement of objections and as per the direction he places the original records. It is his statement that he has not violated the provisions of the Act. Notices were issued to the petitioners

intimating them to file objections if any and in response to that they have filed objections. Objections have been considered and the petitioners have been heard. He has referred to Annexure R-1 the proceeding dated 04/10/2010 in KIADB/LA/B/ /2010-2011 and consideration has been referred to at each of page. Hence, it is submitted that the contention of the petitioners that they are not heard has to be rejected. Secondly, for the purpose of sub-section (5) of Section 28 of the Act, he submits that notices were issued to the petitioners to surrender the land in question and many of them have surrendered the land. Under such circumstances, the Special Land Acquisition Officer is the authorised officer under Rules 14 of the Karnataka Industrial Areas Development Rules, 1966 and possession was taken under sub-section (7) of Section 28 of the Act. Under the circumstance, he submits that the entire proceedings are in accordance with the provisions of law and there is no violation and as submitted by the petitioners the lands in question are virtually not an irrigated land but a barren land covered by hillock and acquisition was in the public interest thereby

providing direct employment to 4600 persons and indirect employment to 46000 persons.

4. Learned counsel for respondent No.4 files statement of objections. His primary objection is to dismiss the petition on the ground of delay and laches. Proceeding was initiated by issuing notification under Section 28(1) of the Act by the Government of Karnataka and it was Gazetted notifying objections from the concerned owners of the land within a statutory period of 30 days. Secondly, objections filed were addressed to the Tahsildar, Deputy Commissioner and Assistant Commissioner to KIADB who are not the authorized officers. Looking at the objections, it could be seen that the objections were filed beyond the statutory period and even at the time of proceedings for hearing, the said objection has been considered. Secondly, final notification was passed on 19.04.2011 and possession has been handed over and construction work is on, whereas this petition was filed on 11<sup>th</sup> September 2013 after lapse of about 2 years. The said delay has not been explained. Hence, on this preliminary ground itself, this petition has to be

dismissed. The fourth respondent, after obtaining sanction from the concerned authorities i.e. State Pollution Control Board and permission of the Government to lift water from the Tungabhadra dam, it has also invested Rs.2135 crores. At this juncture, petition should not be entertained which opposes the public interest for which the industry has been put up. Similar writ petition was made challenging the acquisition proceedings in Writ Petition No.64558/2011 between Iyali Kashinath and The Secretary to Government and others wherein this Court dismissed writ petition confirming the order in favour of the respondent No.4. He also produced the photographs as per Annexures R-20 to show that the land in question is not virtually an agricultural land and it is hilly, rocky area.

5. Learned Government Pleader submits to dismiss this petition and supported the notification issued under Section 28(1) of the Government of Karnataka.

6. I have heard the learned counsel for the parties.



7. This petition was filed on 19<sup>th</sup> September 2013. Earlier, similar two petitions were filed by the aggrieved persons challenging the very same notification and the said writ petitions came to be dismissed by confirming the acquisition. This Court in the earlier two writ petitions accepted the notification issued by the Government of Karnataka and confirmed the entire proceedings holding that the proceedings are in accordance with the provisions of the Act, I do not find any good reason to interfere with, when the petitioners have not placed any new reasons, grounds or circumstance.

8. Under this circumstance, I concur with the reasons assigned by this Court in the earlier writ petitions and hold that no ground is made out for interference by this Court and petitions are devoid of merit and hence, are to be dismissed.

9. Secondly, there is inordinate delay in approaching this Court. Notification dated 03/04/2010 and final notification 19/04/2011 should have been challenged at an earliest point of time i.e., within the reasonable time. Reasonable time varies

from case to case. In the present case, reasonable time would be a month or couple of months. But this petition is filed after an inordinate delay of 2 years and 5 months and this delay has not been explained. Though the learned counsel makes an attempt to explain the delay, but the same is not a sufficient cause. Each days delay is not explained. The petitioners being fully aware of the notification, approached this Court with the delay of 2 years and 5 months and non explaining the reasons for condonation of delay is nothing but suppression of facts. Accordingly, on this ground also, petitions are liable to be dismissed. Accordingly, dismissed.

10. Grounds urged by the learned counsel for the petitioners that they are not heard as per sub-section(3) of Section 28 of the Act is also rejected for the reason that pursuant to issuance of notification, proceedings were taken up in which the concerned land losers were present and their objections were heard and taken on record by the SLAO. Hence hearing took place as required under sub-section(3) of Section 28 of the Act and reasons have been assigned in the order sheet

for rejecting the objections filed by the petitioners. Learned counsel relied on sub section (7) of Section 28 of the Act which states that authorized officer under Article 14 of the KIADB Rules, can use force for the purpose of taking possession but that does not mean to use that force inevitably. It is for him to take all appropriate steps for possession which includes force. Force is not used does not mean that possession is not taken. Learned counsel submits that mahazar has taken place and land has been transferred to 4<sup>th</sup> respondent. The judgment relied upon by the learned counsel for the petitioners is examined and I find that the same has no relevance for the purpose in the instant case.

11. In respect of taking possession of the land, the Hon'ble Supreme Court in the case of M. NAGABHUSHANA v. STATE OF KARNATAKA AND OTHERS reported in AIR 2011 SC 1113, at paragraph 34 to 47 has held thus:

“34. If we compare the provisions of Sections 28(4) and 28(5) of KIAD Act with the provisions of Sections 4 and 6 of the said Act, we discern a substantial difference between the two.

35. In order to appreciate the purport of both Sections 28(4) and 28(5) of the KIAD Act, they are to be read together and are set out below:

“28. Acquisition of land –

xxx

- (4) After orders are passed under sub-section(3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under Sub-section(1), a declaration shall, by notification in the official gazette, be made to that effect.
  
- (5) On the publication in the official Gazette of the declaration under sub-section(4), the land shall vest absolutely in the State Government free from all encumbrances.”

36. The appellant has not challenged the validity of the aforesaid provisions. Therefore, on a combined reading of the provisions of Sections 28(4) and 28(5) of the KIAD Act, it is clear that on the publication of the notification under Section 28(4) of the KIAD Act i.e., from 30/03/2004, the land in question vested in the State free from all encumbrances by operation of Section 28(5) of the KIAD Act, whereas the land acquired under the said

Act vests only under Section 16 thereof, which runs as under:

“16. Power to take possession:- When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances”

37. On a comparison of the aforesaid provisions, namely, Sections 28(4) and 28(5) of the KIAD Act with Section 16 of the said Act, it is clear that the land which is subject to acquisition proceeding under the said Act gets vested with the Government only when the collector makes an award under Section 11, and the Government takes possession. Under Sections 28(4) and 28(5) of the KIAD Act, such vesting takes place by operation of law and it has nothing to do with the making of any award. This is where Sections 28(4) and 28(5) of the KIAD Act are vitally different from Sections 4 and 6 of the said Act.”

12. In the light of the judgment of the Supreme Court, taking possession under sub-section (7) is only supplementary to sub section (5) of Section 28 of the Act and possession has been taken by issuing notice to the concerned and possession taken after the same is surrendered to respondent no.3.

13. In the light of the above circumstances and mainly on the ground of delay, which is unexplained, I am not inclined to interfere with the acquisition proceedings. Accordingly, interim order stands vacated. Consequently, petitions stand dismissed.

SD/-  
JUDGE.

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