

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA

DATED THIS THE 31ST DAY OF JULY, 2013

BEFORE

THE HON'BLE MR.JUSTICE MOHAN .M. SHANTANAGOUNDAR

WRIT PETITION NOS.102018-102033/2013 (LA-RES)

BETWEEN:

1. Channappa Sangappa Bhati,
S/o Sangappa Bhati,
Age: 46 Years, Occ: Agriculture,
2. Sadashivappa Hanamant Bellubbi,
S/o Hanamant Bellubbi,
Age: 45 Years, Occ: Agriculture,
3. Sangayya Adivayya Gajendimath,
S/o Adivayya Gajendimath,
Age: 48 Years, Occ: Agriculture,
4. Irayya Sidalingayya Mathapati,
S/o Sidalingayya Mathapati,
Age: 34 Years, Occ: Agriculture,
5. Smt. Radhabai Krishnachari Purohit,
W/o Krishnachari Purohit,
Age: 72 Years, Occ: Agriculture,

6. Vijaykumar Tammarao Desai,
S/o Tammarao Desai,
Age: 30 Years, Occ: Agriculture,
7. Chandrappa Hanamantappa Badiger,
S/o Hanamantappa Badiger,
Age: 50 Years, Occ: Agriculture,
8. Sangaraj A.Desai,
S/o Annarao Desai,
Age: 38 Years, Occ: Agriculture,
9. Sukhadev Revanappa Uppar,
W/o Revanappa Uppar,
Age: 32 Years, Occ: Agriculture,
10. Irappa Chandrappa Uppar,
S/o Chandrappa Uppar,
Age: 40 Years, Occ: Agriculture,
11. Hashim Akbarkhan Mulla,
S/o Akbarkhan Mulla,
Age: 35 Years, Occ: Agriculture,
12. Basayya Karibasayya Kambi,
S/o Karibasayya Kambi,
Age: 53 Years, Occ: Agriculture,
13. Malakajappa Sangappa Kotagi,
S/o Sangappa Kotagi,
Age: 76 Years, Occ: Agriculture,
14. Shantavva Gurusiddappa Bagi,
W/o Gurusiddappa Bagi,
Age: 55 Years, Occ: Agriculture,

15. Mallappa Kenchappa Giddappagol,
S/o Kenchappa Giddappagol,
Age: 46 Years, Occ: Agriculture,
16. Shivappa Maleppa Paragond,
S/o Maleppa Paragond,
Age: 45 Years, Occ: Agriculture,

All are Residents of Kolar village,
Tq: Basavan-Bagewadi,
Dist: Bijapur-586101.

...Petitioners

(Sri Jeevan J.Neeralgi & Sri Sudarshan M. Advocates)

AND:

1. Government of Karnataka
Represented by its Secretary
Department of Revenue,
M.S.Building,
Bangalore-560001.
2. Special Land Acquisition Officer,
Upper Krishna Project. Alamatti,
Tq: Basavan-Bagewadi,
Dist: Bijapur.
3. The General Manager (L.A.),
Upper Krishna Project,
Navanagar, Bagalkot,
Dist: Bagalkot-587101.

... Respondents

(By Sri Manvendra Reddy, Government Advocate)

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue appropriate writ, order or direction quashing the circular bearing No.RD/137/AQW/2001, dated 12.5.2004 and 17.6.2003 issued by the respondent No.1 vide Annexure-E and etc.

These Writ Petitions coming on for Orders this day, the Court made the following:

ORDER

The question involved in these writ petitions are fully covered by the judgment of this Court in the case of **SADASHIVAIAH AND OTHERS V. STATE OF KARNATAKA AND OTHERS** reported in **ILR 2003 KAR 5088**, wherein it has observed thus:

“15. Therefore, it becomes clear if the land falls within the category of 21(2)(a) it is not a government land, it belongs to the ownership of the petitioners. If it falls under 21(2)(b) then it belongs to the government and

the petitioners cannot have a claim over the said land. However, when the petitioners claim that the said land falls within 21(2)(a) and therefore they are entitled to the compensation LAO proceeds on the assumption that it falls within section 22(1)(b) and therefore they are not entitled to compensation as it belongs to the government and accordingly he has declined to pass any award. It is not in dispute that before arriving at such a conclusion the LAO has not given an opportunity to the petitioners in the enquiry under Section 11 of the Act to substantiate their contention. Without any such enquiry, without affording an opportunity to the petitioners he proceeds on the assumption that the said Kharab land falls within 22(1)(b) and therefore petitioners have no claim, as such he has declined to pass the award. On that ground also, the impugned orders passed by the LAO cannot be sustained and is liable to be set aside.

Hence, I pass the following order:

Writ petitions are allowed. The impugned order dated 02.11.2000 in W.P.Nos.7440 and 9155-9204/2001, Annexure-J; 02.11.2000 in W.P.Nos.26275-26277/2001, Annexure-G; 22.12.2001 in W.P.Nos.5998-6000/2002, Annexure-J; 21.10.2001 in W.P.No.18488/2002, Annexure-J; 4.12.2001 in W.P.No.18427/2002, Annexure-F and 26.03.2002 in W.P.No.18231/2002, Annexure-T are hereby quashed. The Land Acquisition Officer is directed to hold an enquiry under Section 11 of the Act and to pass award setting out the true extent of the land acquired, the compensation payable for the said land and then if he is of the opinion the claimants are not the owners of the said land, the said land belongs to the government to apportion the compensation accordingly. If any request is made by the petitioners for reference under Section 18(1) of the Act within the time prescribed under law then to make a reference under Section 18(1) of the Act to the

Civil Court for adjudication. Parties to bear their own costs.”

2. The above dictum is squarely applies to the facts of this case. From the above it is clear that the word ‘pot kharab’ mean and have reference to a land which is included in an assessed survey number but which is unfit for cultivation. Every pot kharab land does not belong to government. For the purpose of assessment, the uncultivable portion of the land or phut kharab portion of the land is excluded from consideration on the ground that it is cultivable. But it does not cease to belong to the owner of the survey number.

3. If the land falls within the category of 21(2)(a) of Karnataka Land Revenue Rules, it is not a government land, it belongs to the ownership of the petitioners. If it falls under 21(2)(b) then it belongs to

the government and the petitioners cannot have a claim over the said land. Petitioners' claim is that the land falls within the Rule 21(2)(a) of the Rules and therefore, they are entitled to compensation.

Be that as it may, the Land Acquisition Officer is not justified in rejecting the claim of the petitioners without referring to the aforementioned dictum of this Court. The aforementioned judgment of this Court in the case of **SADASHIVAIAH AND OTHERS V. STATE OF KARNATAKA AND OTHERS** reported in **ILR 2003 KAR 5088** has been followed by this Court in number of judgments i.e., in W.P.No.18451/2007 and W.P.No.20029/2005 etc. The very dictum is applicable to this case.

4. Accordingly, the following order is made:

ORDER

The impugned endorsement at Annexure-D stands quashed. The Land Acquisition Officer is directed to hold an enquiry under Section 11 of the Land Acquisition Act and to pass award setting out the true extent of the land acquired and the compensation payable for the said land. While deciding the matter, the Land Acquisition Officer shall verify as to whether the land falls under Rule 21(2)(a) or Rule 21(2)(b) of the Karnataka Land Revenue Rules and thereafter, the decision shall be taken.

Accordingly, the writ petitions stand ***disposed of***.

**Sd/-
JUDGE**

swk