

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30th DAY OF SEPTEMBER 2015

BEFORE

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

WRIT PETITION NO. 24496 of 2015 (GM-CPC)

&

WRIT PETITION NO. 28489 OF 2015

BETWEEN:

ZHAPHRIN D'SOUZA
AGED ABOUT 68 YEARS,
S/O. LATE INAS D'SOUZA,
R/AT MILAGIRIS HOUSE,
SANTHEKATTE- KALYANAPURA,
UDUPI TALUK AND DISTRICT.

....PETITIONER

(BY SRI. K. CHANDRASHEKAR ACHAR, ADVOCATE)

AND:

1. THE LAND ACQUISITION OFFICER,
AND ASSISTANT COMMISSIONER,
KUNDAPURA,
UDUPI DISTRICT-567 101.

2. THE COMPETENT AUTHORITY,
NH-17/66 AND
ASSISTANT COMMISSIONER,
KUNDAPURA,
UDUPI DISTRICT-567101.

...RESPONDENTS

(BY SMT. ANITHA. R. HCGP., FOR RESPONDENTS)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 23.04.2015 PASSED IN IA. NO. I AND IA. 2, IN THE CASE OF LAC. NO. 101/2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, UDUPI VIDE ANNEXURE-L AND TO DIRECT TO RELEASE THE COMPENSATION AMOUNT TO THE PETITIONER IN LAC. NO. 101 OF 2013 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM UDUPI.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING.

ORDER

For the second time, the petitioner is before this Court. On earlier occasion, the petitioner had filed writ petition No.7827 of 2015 seeking writ of mandamus to direct the Principal Senior Judge and CJM, Udupi to take up enquiry in IA. No.1 dated 05.07.2014

and IA. No.4 dated 19.12.2014 and decide the same on priority, by alleging that the compensation awarded to him has remained unpaid. By an Order dated 24.03.2015, the said writ petition was allowed, by directing the Reference Court to decide the said applications expeditiously at any rate within six weeks from the next date of hearing. The learned judge of the Reference Court, having passed a cryptic order on 23.04.2015 vide Annexure-L, feeling aggrieved, the petitioner-claimant has preferred this writ petition.

2. I have heard Shri. K. Chandrashekar Achar, learned counsel for the petitioner and Smt. Anitha, learned High Court Government Pleader for the respondents and perused the papers.

3. The respondents, after determining the compensation amount payable for the land acquired for the purpose of widening of NH-17 (now NH-66)-Kundapura to Surathkal, have deposited a sum of **₹35,29,929/-** . The petitioner claims that the property bearing Sy. No.181/1C, measuring 12 cents (239 square meters),

situated at Puttur Village was the subject matter of acquisition. Consequent upon the reference made under Section 3-H (4) of the National High Ways Act 1956, the compensation amount of **₹35,29,929/-** was deposited on 12.11.2013 in the Reference Court in LAC. No. 101 of 2013. Notices have been issued to the petitioner and six others. Since the application filed by the petitioner for disbursement of the compensation was not considered by the Reference Court, the petitioner had preferred the said writ petition.

4. In disregard of the observations made in the order of this Court, cited supra, the learned Judge of the Reference Court has passed the impugned orders, on IA Nos. 1 to 4. On perusal of the impugned orders it is seen that that there is non-consideration of the case of the applicants, as stated in IA Nos. 1 to 4. The impugned order is cryptic and a non-speaking order. It appears that only to adhere to the time bound direction, the impugned order has been passed. What was required is the lawful

consideration of the grievance of the party and not mere disposal of the interim applications within the time stipulated by this Court, only to show compliance. The impugned order being bad in law cannot be sustained.

5. Since there are other claimants, whose names appears in the notice issued by the Reference Court vide Annexure-L, it is not possible for this Court to decide the said IA Nos. 1 to 4, in this writ petition, in exercise of writ jurisdiction under Article-227 of the Constitution. However, interest of justice would be met, if the matter is remitted to the court below for reconsideration of IA Nos. 1 to 4 by keeping in view the order passed by this Court in W.P.No.7827 of 2015 dated 24.03.2015.

In the result, the writ petitions are allowed. The order dated 23.04.2015 passed on IA Nos. 1 to 4 in LAC No.101 of 2013 on the file of the Principal Senior Civil Judge and CJM Udupi vide Annexure-L is set aside. The learned trial Judge is directed to reconsider IA Nos. 1 to 4 and pass order in accordance with law by

keeping in view the observations made by this Court in the order dated 24.03.2015 passed in W.P.No.7827 of 2015. IA Nos 1 to 4 be decided expeditiously, but not later than 30.11.2015.

Furthermore, as an interim measure, the Reference Court is directed to immediately invest the amount in deposit, in a fixed deposit, in any nationalized bank, initially for a period of six months and pass further orders with regard to renewal or otherwise of the deposit, depending upon the outcome of the consideration and the orders to be passed on IA Nos. 1 to 4. In case the petitioner is held entitled to the payment of the amount invested in a fixed deposit, the interest accrued thereon, shall be paid to the petitioner or any other claimant, as the case may. Cases of the other claimants shall also be considered simultaneously.

Sd/-
JUDGE.

VR.