

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2020

BEFORE

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.69273-69277/2010 (LA-RES)

Between:

1. Shankrappa s/o Fakkirappa Mensinkai
Age 57 years, Occ: Secretary,
2. Gangavva w/o Rachappa Mensinkai,
Age 40 years, Occ: Household work.
3. Dyavappa s/o Fakirappa Mensinkai
Age 70 years, Occ: Agriculture.
4. Mallappa w/o Fakirappa Mensinkai
Age 65 years, Occ: Agriculture.
5. Shivabayavva w/o Basavaraj Sarathi
Age 45 years, Occ: Household work
All are residents of Pattadkal, Tq: Badami
District: Bagalkot.

Petitioners

(By Sri. H.M.Dharigond, Adv.)

And

1. The State of Karnataka
Represented by its Secretary, Department of Revenue,
M.S.Building, Bangalore-01.

2. The Deputy Commissioner,
Bagalkot District, Bagalkot.
3. The Assistant Commissioner,
Bagalkot Sub Division, Bagalkot.
4. The Tahasildar,
Badami Taluka, Badami, Dist: Bagalkot.
5. The Conservation Assistant
Archaeological Survey of India,
Badami Circle, Badami.

Respondents

(R.1 & 4 by Sri. V.S.Kalasurmath, HCGP)
(R.5 by Sri. M.B.Kanavi, Advocate)

This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the entire acquisition proceedings culminating in issuing the preliminary Notification by respondent No.2 dated 18.2.2010, vide Annexure-F and also quash an endorsement dated 6.12.2010 issued by 3rd respondent vide Annexure-L.

This petition coming on for hearing, this day, the Court made the following:

ORDER

1. The petitioner is before this court seeking for a certiorari to quash the acquisition proceedings initiated through preliminary Notification by respondent No.2 dated 18.2.2010 in No.

RB:LAQ:Cr:122/2009-2010 as also endorsement dated 6.12.2010 issued by respondent No.3 under No.LAQ/SR-13/09-10.

2. The petitioner is stated to be the owner of various lands at Pattadkal village in Badami Taluka, Bagalkot District. Respondent No.2 had issued preliminary Notification under Section 4(1) of Land Acquisition Act simultaneously invoking the urgency clause under Section 17(1) (4) of the Act, dispensing with the enquiry under Section 5(a) of the Act to acquire the lands belonging to the petitioners and several others for the purpose of rehabilitation of the villagers due to submergence of Pattadkal village. Hence by acquisition of the above said lands and certain other lands, around 600 houses situated earlier in Pattadkal village would be shifted to the property proposed to be acquired.
3. Sri. H.M.Dharigond, the learned counsel for the petitioners would submit that, such acquisition is not

permissible in as much the said lands cannot be used for the purpose of construction, being barred under Ancient Monuments and Archaeological Sites and Remains (amendment and validation) Act, 2010. Hence, though the petitioner has not been issued notice, had approached this court on coming to know of the proposed acquisition in WP No. 62693-97/2010, wherein this court by order dated 17.8.2010 directed the petitioner to file objections to the preliminary notification, which was to be considered by the respondents within 30 days thereafter. The petitioner filed objections on 13.9.2010 bringing the above and other facts to the notice of respondent No.2. However, respondent No.3 rejected the objections filed vide endorsement dated 6.12.2010 stating that the property was being acquired for public purpose.

4. Sri. H.M.Dharigond, the learned counsel for the petitioners further submits that the purpose for which the acquisition is to be made is prohibited under law,

no purpose would be served by continuation of the acquisition proceedings and as such both preliminary notification as also the endorsement dated 6.12.2010 rejecting the objections filed by the petitioner are required to be quashed.

5. Per contra, Sri. V.S.Kalasurmath, learned HCGP appearing for respondents 1 to 4 would submit that, all the procedure required under the Act have been followed, the land is acquired for the purpose of rehabilitating the villagers whose land had submerged and the said land is required for the purpose of construction of 600 houses to rehabilitate over 600 families who have been displaced from Pattadkal village.
6. Sri. M.B.Kanavi, the learned counsel for respondent No.5 Archaeological Survey of India would support the case of the petitioners in as much as by submitting that the land proposed to be acquired is within 300 meters of Pattadkal Ancient Monuments, construction

of 600 houses cannot be carried out on the lands proposed to be acquired. He further submits that, even for rehabilitation purpose, construction cannot be permitted by Archaeological Survey of India and no construction can be carried out without proper permission of Archaeological Survey of India.

7. Sri. V.S.Kalasurmath, learned HCGP submits that, in pursuance of the order of this court, the respondent No.4 had conducted a joint survey on 11.3.2011 and submitted a report. In terms thereof, he submitted that the land at Sy. No. 141 is outside 300 meters from protected monument and therefore he contends that respondent can put up the construction in the said survey number.
8. Heard Sri. H.M.Dharigond, the learned counsel for the petitioners, Sri. V.S.Kalasurmath, the learned HCGP appearing for respondent No.1 and 4, Sri. M.B.Kanavi, learned counsel for respondent No.5 and perused the records.

9. There is no dispute that, some of the lands proposed to be acquired fall within 300 meters distance of the protected monument. In terms of the sketch, it is seen that a narrow portion of land in Sy. No. 132, 141 and the portion of Sy. No. 142, 133, 131 and 147 would be available for the use since they are situated beyond 300 meters. It is also seen that, those lands fall between two protected monuments.
10. Though these lands may not come within the restricted area under Ancient Monuments and Archaeological Sites and Remains (amendment and validation) Act, still they would come between two protected area which could have an impact on the monuments which have been in existence for thousands of years. Therefore, I am of the considered opinion that, the acquisition cannot be permitted on the ground that, some of the lands did not fall within the prohibited area or regulated area and or certain lands are situated beyond the prohibited and

regulated area. It is to be taken note that 600 houses are to be constructed for rehabilitation of villagers. Even shifting the houses in that gap between two monuments will have an adverse impact on the preservation of the protected monuments. The respondents cannot take advantage that some of the lands being situated beyond 300 meters of restricted area. It is surprising that the State has come with a proposal where they want to shift the village and reconstruct the village in between protected monuments. The state ought to have considered the alternative lands which are not situated in any protected area so as to shift the entire village at one place rather than in the middle of two protected monuments.

11. Taking into account the above facts, though some of the lands which are subject matter of the present writ petition are situated beyond the regulated area, I am of the considered opinion that the acquisition

should not be permitted. Therefore, notification dated 18.2.2010 bearing No. RB:LAQ:Cr:122/2009-10 (Annexure-F) in so far as the lands of the petitioner is concerned is required to be quashed and is therefore quashed. Consequently, the endorsement dated 6.12.2010 issued by 3rd respondent under No.LAQ/SR-13/2009-10 (Annexure-L) is quashed.

12. Accordingly, petition is allowed.

SD/-
JUDGE

SKK