

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 30TH DAY OF JUNE, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

WRIT PETITION NO.204512/2019 (LA-RES)

BETWEEN:

Chandrakanth S/o Shankerrao
Age: 54 years, Occ: Agriculture
R/o Bhavanibijalgaon, Tq. Aurad &
Dist. Bidar – 585 443

... Petitioner

(By Sri Jairaj K. Bukka, Advocate)

AND:

1. The State of Karnataka
Rep. by its Prl. Secretary
Dept. of Revenue
M.S.Building, Bangalore – 02
2. The Commissioner
Dept. of Public Instruction
Bangalore – 02
3. The Additional Commissioner
Dept. of Public Instruction
Kalaburagi Division
Kalaburagi – 585 104
4. The Deputy Commissioner
Bidar – 58 401

5. The Assistant Commissioner
Bidar – 585 401
6. The Chief Executive Officer
Zilla Panchayat, Bidar – 585 401
7. The Tahsildar
Tq. Aurad, Dist. Bidar – 585 443
8. The Deputy Director
Dept. of Public Instruction
Bidar – 585 401
9. The Executive Engineer
PWD, Bidar – 585 401

... Respondents

(By Smt. Anuradha M. Desai, Govt. Adv.)

This writ petition is filed under Articles 226 and 227 of the Constitution of India, praying to issue a writ of mandamus, directing respondent Nos.1, 2, 4, 6 & 8 to consider the petitioners representation as per Annexure-D and issue a direction to the respondents to initiate the land acquisition process of Land Sy. No.1 Hissa 4 measuring 9 Acres 25 Guntas situated at Bhavanibijalgaon, Tq. Aurad & Dist. Bidar forthwith and pass such order or direction to pay the compensation in which this Court deems fit in the circumstances of the case within the outer limit of two months with all consequential benefits.

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

ORDER

This writ petition is filed seeking a writ of mandamus to the respondents to acquire the land standing at Sy No.1/4 measuring 9 Acres 25 Guntas situated at Bhavani Bijalgaon, Tq. Aurad, Dist. Bidar.

2. Sri Jairaj K. Bukka, learned counsel appearing for the petitioner has submitted that the land in question belongs to the petitioner. On the said land, the Government has constructed the Government School and Public Road. He further submitted that the school has been constructed unauthorisedly without acquiring the land and without paying any compensation to the petitioner. Hence, the petitioner has given a representation to the respondent authority vide Annexure-D, requesting to acquire the land and pay the compensation. Since no action has been taken, the petitioner has approached this Court.

3. Learned Government Advocate appearing for the respondents has submitted that the buildings on the land in question have come up long ago. The school building has been constructed in the Government land for public purpose. Since there is a delay in filing this writ petition, the petition is liable to be rejected.

4. Heard the learned counsel for the parties and perused the writ papers.

5. The construction of the buildings for the schools is for public purpose only. But if such buildings have to come up on a private property, the Government has to either compulsorily acquire the private land and pay the compensation thereof or purchase them or take them on outright sale basis or lease basis etc. The allegation of the petitioner is that the said school has been constructed on the private property belongs to the petitioner. The same has been denied by learned Government Advocate.

6. However, this Court would not give any direction to the Government to compulsorily acquire the land in question, even if their possession is taken illegally, because the compulsory acquisition of the lands falls within the eminent domain of the State. This Court, in exercise of its power conferred by Article 226 of the Constitution of India would not give a direction to the Government either to acquire or not to acquire the lands compulsorily.

7. If the Government has occupied the private lands without resorting to the compulsory acquisition of lands, it is liable to pay the damages/occupation charges/compensation. The Government cannot justify its illegal occupation with reference to the length of its occupation on the ground that the buildings are constructed some decades ago. In this case, since the Government has denied that it is a private property, it is not in dispute that the representation submitted by the

petitioner vide Annexure-D dated 26.09.2019 is pending before the respondents and the same is not considered.

8. Under these circumstances, considering the facts and circumstances of the case, the ends of justice would be met by my passing the following order:

- (i) The Deputy Commissioner/respondent No.4 herein is directed to hold the enquiry to ascertain whether the land in question belongs to the petitioner or his predecessor-in-title or the Government. If, on enquiry, he comes to the conclusion that the land in question belongs to the petitioner or his predecessor and that the Government has occupied and put up construction thereon without their consent, the Deputy Commissioner shall either recommend to the Government for the compulsory acquisition

of the land or pass the order awarding the occupation charges/compensation/damages.

- (ii) This shall be done by the Deputy Commissioner within six months from the date of receipt of a certified copy of this order.

With these observations, the writ petition is disposed of.

Sd/-
JUDGE

LG