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**(1987) 06 KAR CK 0014**  
**In the Karnataka High Court**  
**Case No : W.P. No. 36007/82 etc**

Abdul Majeedh and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 09-06-1987

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17(4)

**Citation :** (1987) 2 KarLJ 198

**Hon'ble Judges :** M. Rama Jois, J

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## Judgement

Rama Jois, J.-All these writ petitions have been presented questioning the legality of the notification issued under sub-sec. (1) of S. 4 of the Land Acquisition Act and orders made under sub, sec. (4) of S. 17 of the Act to the effect that the provisions of sub-sec. (4) of S. 17 of the Act shall not apply to the acquisition as also the notification issued by the State Government under sub-sec. (1) of S. 17 directing taking possession of the land by the Special Deputy Commissioner, Shimoga.

2. The facts of the case in brief are as follows:

On 25th August, 1982 a notification under sub-sec. (1) of S. 4 of the Land Acquisition Act was issued proposing to acquire the lands belonging to these petitioners as specified in the notification. Paragraph 3 of the said notification issued by the Deputy Commissioner reads:

"In accordance with the directions issued by the Government of Karnataka, Revenue Department, Bangalore in their order No. RD 100 AQS 82, dated 24th August, 1982 and in exercise of the powers conferred under sub-section (4) of section 17 of the said Act, Government of Karnataka have conveyed their approval to invoke the provisions of emergency clause viz., the provisions of sub-section (4) of section 17 of the L.A. Act 1894 (Central Act of 1984) as amended by Karnataka Act 17 of 1961, for the acquisition of the land detailed below and also directed that the provisions of Section 5(A) of the said Act shall not apply to the acquisition of the lands specified in the schedule below."

By a subsequent notification the Government invoked the powers under sub-sec. (1) of S. 17 and directed the Special Deputy Commissioner to take possession of the land on the expiry of 15 days from the date of publication of notice under sub-sec. (1) of S. 9. Questioning the legality of the said notification, in respect of the lands belonging to the petitioners, the petitioners have presented these petitions.

3. Learned counsel for the petitioners contended that the invoking of the provisions under sub-Sec. (4) of S. 17 and dispensing with the right to file objections under S. 5A of the Act was invalid as the notification in question does not state the urgency which required the Government to invoke its special powers under sub-Sec. (4) of S. 17 and to dispense with the normal procedure of providing opportunity to the land owner to file objections.

4. Learned counsel submitted that the power of sub-Sec. (4) of S. 17 could be exercised only in the Case of real urgency and further the existence of such urgency should be referred to in the notification itself and in its absence the acquisition has to be declared illegal. Learned counsel pointed out that in the notification issued under Sec. 4(1), r/w. S. 17 of the Act, extracted earlier, no urgency which compelled the exercise of power under sub-sec. (4) of S. 17 has been related and, therefore, the notification was liable to be quashed. In support of his contention, learned counsel referred to the judgment of the Supreme Court in *Dora Phalauli v State of Punjab*, AIR 1979 SC 1954 in which the Supreme Court held that the urgency which necessitated the exercise of extraordinary power under sub-sec. (4) of S. 17 must be set out in the Government Order and in its absence the notification issued under S. 4 dispensing with the filing of the objections and hearing under S. 5A of the Act should be declared illegal.

5. Learned counsel for the State submitted that the exercise of the power by the Government under sub-sec. (4) of S. 17 of the Act in the present case was on account of real urgency and the said urgency has been expressly stated in the order of the Government by which a direction was issued for dispensing with the enquiry under S. 5A of the Act. He produced the copy of the letter of the government under which direction was given to the Special Deputy Commissioner to dispense with the requirement of S. 5A of the Act. The said letter reads:

"SUB: Acquisition of lands for grant of sites to the flood affected persons of Shimoga City-Invoking the Emergency Clause under Section 17(1) of Land Acquisition Act-Reg:

I am directed to invite reference to your letter No. A5/LAQ/SR/10/82-83, dt. 23-8-82, on the subject mentioned above and to state that Government are pleased to convey approval to acquire land required for grant of sites to the flood affected persons by invoking urgency clause.

The provision of Section 5-A are dispensed with as per sub-section 4 of Section 17 of Land Acquisition Act.

You are requested to issue notification under Section 4(1) read with Section 17(1) of Land Acquisition Act and finalise the proceedings on TOP PRIORITY."

The above letter is the direction issued by the Government under sub-sec. (4) of S. 17 of the Act read with sub-sec. (1) of S. 17, directing to dispense with the requirement of S. 5A of the Act in respect of the acquisition in question. The direction expressly states the urgency namely that it was to provide sites to the flood affected persons.

6. Learned counsel appearing for the Municipal Corporation, Shimoga submitted that immediately prior to the issue of the direction there has been an unprecedented flood in Tunga river as a result of which large number of houses in Shimoga City in low-lying areas were washed away and immediately thereafter the Municipal Council passed a resolution stressing about the necessity of taking immediate steps to provide sites to the displaced persons and it was in that situation the Special Deputy Commissioner addressed a letter to the Government on 23-8-82 requesting the Government to take steps for acquisition of the land for the purposes of providing sites to the flood victims and in view of the urgency the Government gave the aforesaid direction on the very next date on 24-8-82 itself. Learned counsel also pointed out that the direction was only issued in respect of the lands which are agricultural lands, according to the particulars furnished in the notification, in respect of which the power under sub-sec. (1) of S. 17 could be invoked by the Government.

7. Learned counsel for the petitioner, however, submitted that in view of the ratio of the judgment in *Dora Phalualuli v. State of Punjab*, AIR 1979 S.C. 1594 the particular urgency which necessitated the invoking of the power under sub-sec. (4) of S. 17 should be indicated in the notification itself and if not the notification would be illegal.

8. Government Notification issued in the said case, which is extracted in the judgment, reads: Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action under S. 17 shall be taken in this case on the ground of urgency and provisions of S. 5A will not apply in regard to this acquisition. It is the above direction of the Government which was held invalid in the aforesaid decision on the ground that the particular urgency, which necessitated the invoking of the powers under the Act, was not set out in the Government direction.

9. In the present case, as stated earlier, it is the Deputy Commissioner who issued the notification under S. 4(1) of the Act after the receipt of Government direction dated 24-8-82 under sub-sec. (4) of S. 17 of the Act. In the notification the Deputy Commissioner has expressly stated that the requirement of S. 5A has been dispensed with by the direction issued by the Government on 24-8-82. The direction issued by the Government is extracted earlier. Unlike in the case of *DORA PHALAUULI*, in which the direction issued by the Government did not mention any particular urgency for the exercise of power under S. 17(4), the

direction issued by the Government in the present case expressly refers to the urgency namely the requirement to provide sites to the persons affected by the floods. The contention of the petitioners would have been unexceptionable if the Government had only directed with the dispensing of the hearing under Section 5A without referring to any urgency, for, in that event the ratio laid down in the said decision would have been attracted.

10. Sri Krishna Bhat, learned Counsel appearing for one of the petitioners, contended that acquisition of the lands for grant of house-sites or formation of lay-outs cannot be considered as a valid urgency for purposes of invoking the power under Sub-Sec. (4) of Section 17 of the Act and dispensing with the valuable right of hearing. In support of this, learned Counsel relied on the decision in *Narayan v State of Maharashtra* (A.I.R. 1977 S.C. 183). But, in the present case, the acquisition is not for formation of lay-outs and distribution of sites in the normal course which could be done leisurely and which occupies considerable time. This is a case in which large number of families were uprooted consequent on the washing away of their dwellings by floods and there was an immediate necessity of providing house-sites to the displaced persons. Therefore, there is no analogy between the said case in which the land was acquired for forming of layouts and distribution of sites in the usual course.

11. In the result, I make the following:

ORDER

The writ petitions are dismissed. No costs.