

(2014) 05 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 10071 of 2012 (LA-UDA)

Arathamma

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 163
Karnataka Town and Country Planning Act, 1961 — Section 69, 78(1), 78(4), 81(D), 81D
Karnataka Urban Development Authorities Act, 1987 — Section 15, 27, 78
Land Acquisition Act, 1894 — Section 11, 11A, 11-A, 3(f)(vi), 3(h)

Citation : (2014) 3 AKR 602 : (2014) ILR 3208 : (2014) 4 KarLJ 74 : (2014) 3 KCCR 2585

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ashok Haranahalli, Senior Advocate for Shri. Manmohan P.N, Advocate for the Appellant; H. Anantha, Government Pleader for Respondent Nos. 1 and 3, Shri. P.S. Manjunath and Shri. T.P. Vivekananda, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The petitioners are said to be owners of land bearing survey No. 264 measuring 6 acres 5 guntas at Hinkal, Kasaba hobli, Mysore Taluk and district. The said property is claimed to have been acquired by one Monda @ Thammaya, son of Venkata. The said property is said to have been mutated as "beellu" in the revenue records, as per Order dated 28.4.1988. Prior to the said date, the RTC in respect of the property is said to have reflected the name of Monda. The petitioners claim as the legal heirs of Monda.

The second respondent is said to have issued a notification dated 1.4.1981 proposing to acquire the property bearing Survey No. 264 measuring 6.05 acres for the purpose of formation of a residential layout, Vijayanagar extension. In the notification, the name of the father of Monda, namely, Venkatasubbaiah was said

to have been shown. And within brackets "beellu" was said to have been mentioned. The said notification was said to have been followed by a final notification dated 29.3.1984. The third respondent is said to have passed an award dated 21.4.1986. It is also stated that the above notifications were issued without obtaining prior sanction of the State government. It is however, indicated that there was a sanction granted as on 3.6.1999.

2. It is claimed that the petitioner has continued in possession of the property and that the fourth respondent has not taken possession of the land in question till date. This fact is claimed to be evident from the circumstance that there is a request made by the fourth respondent to the Deputy Commissioner to hand over possession of the land, as on 22.8.2003. The petitioners claim to have been unaware of the acquisition proceedings all along and sought for restoration of their name in the RTC. The Assistant Commissioner, Mysore, is said to have issued a direction in that regard, by his order dated 5.11.2011. The petitioners claim that it is only recently that the petitioners became aware of the acquisition proceedings and have immediately initiated these proceedings.

3. The learned Senior Advocate, Shri Ashok Harnahalli, appealing for the counsel for the petitioner, contends that the property is in the possession of the petitioner and the respondents have till date not developed the property by taking possession of the same. The respondents have failed to execute the Scheme by developing the property within the stipulated period. That even after a lapse of 28 years, the land has not been developed and the Scheme has hence lapsed.

That the fourth respondent has obtained sanction from the government after issuing the final notification. The sanction was accorded by the Government in the year 1989 whereas the acquisition notification was issued in the year 1984. The respondents could not have issued the final notification even before obtaining the sanction from the government. The subsequent sanction could not validate the acquisition notification.

It is contended that the preliminary notification was issued by the City Improvement Trust Board (CITB), Mysore, without reference to any provision of law. However, in paragraph 3, thereof, reference is made to the provisions of the Land Acquisition Act, 1894. The final notification, on the other hand, has been issued by the first respondent under the provisions of the Mysore Urban Development Authority Act, 1902 (Hereinafter referred to as the "MUDA Act", for brevity). The said notifications issued under two different enactments and by different authorities are clearly bad in law.

It is contended that the second respondent is a "local authority" as per Section 3(h) of the LA Act. The said provision reads as under:

(h) The expression "Local Authority" includes the Town Planning Authority and City Improvement Trust Board. (See State amendment with effect from 24-8-1961)

Section 3(f)(vi) of the LA Act requires prior approval of the Government for carrying out any Scheme. There is no prior sanction in the instant case. The acquisition is hence not sustainable.

4. Alternatively, it is contended, that as per Sections 14(1) of the City of Mysore Improvement Act, 1903 (Hereinafter referred to as the "CMI Act", for brevity), the Board may draw-up detailed Schemes subject to the control of the Government. Section 14(3) provides that the Government may require the Board to take-up Improvement Schemes for work and execute it, as may be specified by the Government. Section 15 provides the particulars to be provided in an Improvement Scheme. Section 16 deals with the procedure for completion of the Scheme. It states that upon completion of the Scheme, the Board shall draw-up a note and forward the same to the President of the Municipal Council, who shall in turn, forward it to the Government. Section 16(1)(b) provides for publication of the Notification during three consecutive weeks in the Mysore Gazette and in the Office of the Deputy Commissioner and in such other places, as the Board may consider necessary. Section 16(2) provides that the Board shall serve notice to every person, whose name appears in the Assessment List. Section 16(3) provides the mode of serving a notice on a person. Section 17 provides that on compliance with the above provisions and after considering representations if any, the Board shall apply to the Government for sanction of the Scheme. Section 17(2) provides the particulars required to be furnished along with the application for sanction. Section 18 provides that on receipt of sanction of the Government, the Chairman shall forward the declaration of Notification under the Signature of the Secretary to the Government, to the effect that the land is required for a public purpose. Section 18(1)(b) provides for publication of the notification.

Section 22 deals with acquisition by Agreement. Section 23 provides that when the acquisition is otherwise than by Agreement, the same shall be regulated by the provisions of The Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act", for brevity). It further provides that the publication of declaration u/s 18 shall be deemed to be a publication of declaration u/s 6 of the LA Act. Section 23(3) provides that for the purpose of Section 50(2) of the LA Act, the Board shall be deemed to be a Public Authority. Section 23(4) of the CMI Act provides that after the land vests with the Government u/s 16 of the Act, the Deputy Commissioner shall upon payment of cost of acquisition and any further costs, transfer the land to the Board and the land shall there upon vest with the Board.

It is contended that there is no room for doubt that it is only upon sanction of the Scheme, that the Board can acquire the property and that the provisions of the LA Act are applicable for the purpose of acquiring land. In the present case, there is no sanction prior to acquisition and as such, the entire proceedings are bad in law. Further, it is claimed that no notice was served on Monda nor was his name shown in the notifications impugned. And that the procedure prescribed under the aforesaid provisions was not followed.

It is also contended that Section 15 of the Karnataka Urban Development Act, 1987 (Hereinafter referred to as the "KUDA Act", for brevity) deals with the drawing up of the Scheme by the Authority. Section 16 provides for particulars of the Scheme and Section 17 deals with the procedure on completion of the Scheme. Section 18 deals with the Sanction of the Scheme and Section 19 deals with the publication of declaration of the land to be acquired upon the sanction of the Scheme. Section 27 provides that the Scheme shall lapse if the Scheme is not substantially executed within a period of five years. Section 35 provides for acquisition by Agreement and Section 36 provides that the LA Act shall be applicable for acquisition otherwise than by Agreement. Section 69 incorporates Section 81(D) of the Karnataka Town and Country Planning Act, 1961 (Hereinafter referred to as the "KTCP Act", for brevity) and declares that the Urban Development Authority shall be the "Planning Authority" for the local planning area. Section 78(1) states that on issuance of a notification constituting an Urban Development Authority, the CMI Act shall cease to be applicable in such urban area. Section 78(4) provides that any action taken under the Acts referred to above shall be deemed to have been done in the corresponding provisions of the KUDA Act and shall continue if it is enforced accordingly. Therefore, both under the provisions of the CMI Act and the KUDA Act, prior sanction of the Scheme is a mandatory requirement and in the absence of such sanction, the acquisition is unsustainable.

It is further contended that it is pertinent to note that even according to the second respondent, the State Government by its order dated 22.3.1984, had granted sanction only in respect of 100 acres for the formation of First Stage of Vijayanagar Layout and further by order dated 29.3.1984, it has stated that the compensation should be paid only in respect of area required for the First Stage. Therefore, it is patent that the property in question which is situated in Third Stage, Vijayanagar, could not be acquired by the second respondent and the government had refused to issue sanction for the area in question. It is only much after the final notification that sanction was granted in respect of this area.

It is contended that the RTC in respect of the property during the relevant period showed the name of Monda (1976 to 1980 and 1980 to 1986). However, the notifications impugned do not show the name of Monda. The property was categorized as "beellu" in the year 1987-88 and the Tahsildar by order dated 28.4.1988 restored the "beellu". The said order was not given effect to and hence, the Assistant Commissioner, by order dated 5.11.2011, directed implementation of the order dated 28.4.1988. Hence, the petitioners are deprived of their rights to oppose the acquisition in as much as they were not aware of the inclusion of their lands in the notification. The failure to show the name of Monda in the notification is in violation of the mandatory requirements of law and in this regard, reliance is placed upon the judgment of the Supreme Court in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, and *Om Prakash Sharma and others Vs. M.P. Audyogik Kendra Vikas Nigam and others*, 2005 (10) SCC 306 (para. 5) - and it is contended that for all of the above

reasons, the petition be allowed.

5. On the other hand, the learned counsel for the respondent No. 2, Shri P.S. Manjunath contends as follows:

The writ petition filed by the petitioners seeking to challenge the final notification of the year 1984 is liable to be dismissed on the ground of delay and laches alone, without going into the merits of the matter.

Without prejudice to the above preliminary contention, it is stated that the contention of the petitioners that the name of the original landlord, namely, Monda @ Thammaiah was not shown in the acquisition notification, is incorrect. Since the original land owner had not paid the land revenue to the Government, the Government had passed orders forfeiting the land to the Government designating the lands in question as "beellu", as per Section 163 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the KLR Act", for brevity). Therefore, the question of showing the name of the husband of the first petitioner did not arise. However, the name of the father of Monda @ Thammaiah, who was at one point of time, the khatedar, before the land was forfeited to the Government, has been shown in the preliminary notification as well as in the final notification.

As per the documents produced by the petitioners themselves, the "beellu" has been restored to the name of Monda, son of late Venkata on 28.04.1988. If the petitioners were aggrieved by the acquisition notification issued in the year 1984, the petitioners ought to have challenged the acquisition notification in the year 1988 itself. The petitioners have not taken any steps whatsoever since 1988. For the first time, an order has been passed on 05.11.2011 by the Assistant Commissioner, Mysore Sub-Division to enter the names of the petitioners in the records of rights by removing the word "beellu". The contention of the petitioners that only upon the order dated 05.11.2011 passed by the Assistant Commissioner, the petitioners came to know about the acquisition notification, is incorrect. The petitioners are residing in Mysore and they were all aware of the initiation of acquisition proceedings in the year 1984 itself. According to the petitioners themselves, the beellu was restored in the year 1988. If the petitioners were aggrieved by the acquisition proceedings, they should have approached the court immediately. If the cause of action for challenging the acquisition proceedings arose in the year 1988, it is not explained as to why the petitioners had kept quiet for nearly 24 years to challenge the acquisition proceedings.

The contention of the petitioners that the final notification was issued on 29.03.1984 and the award has been passed on 21.04.1986, two years from the date of final notification and therefore, the acquisition has lapsed u/s 11-A of the LA Act, is without any merit. Section 11A has been inserted in the Land Acquisition Act, 1894 by Act 68 of 1984 prescribing the period, within which the Collector shall make an award u/s 11, namely, within 2 years from the date of

publication of the declaration. If the award is not passed within the said period, the provision stipulates that the acquisition shall lapse.

The proviso to Section 11A stipulates that if the declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement. The date of commencement of the Amendment Act was on 24.09.1984. The final notification issued in the present case on 29.03.1984. Therefore, acting on the proviso to Section 11A, the Collector was required to pass an award within two years from 24.09.1984. In the present case, the award has been passed on 21.4.1986, that is well within two years from the date of commencement of the Amendment Act, namely, 24.09.1984. Therefore, the contention of the petitioners that the award is not passed within a period of two years from the date of final notification and therefore, the acquisition proceedings has lapsed is untenable. In the case of *Munithimmaiah Vs. State of Karnataka and Others*, , the apex court has held that Section 11A of the LA Act has no application to the acquisition proceedings initiated under the special enactments, like Bangalore Development Authority Act, 1976, KUDA Act, City Improvement Boards Act, etc.

The petitioners have not stated in the petition, the date on which the Government passed orders to treat the land in question as "beellu". Merely showing the land in the preliminary notification as "beellu", the presumption would arise that even before the issuance of preliminary notification, the land in question was treated as "beellu" for non-payment of the land revenue. Therefore, on the date of issuance of preliminary notification, neither Venkatasubbaiah nor Monda, Son of Venkata were the owners of the lands in question. Therefore, the authority had rightly shown in the acquisition notification as "beellu". If the notified kathedari, prior to the issuance of the preliminary notification, had any objections to the proposal for acquisition, had an opportunity to oppose the acquisition proceedings. However, he had not done so.

It is further contended that one T. Rajashekara and Smt. T. Parvathamma, son and wife of Late Thammaiah had also claimed ownership over the land in question. They had claimed that T. Thammaiah had purchased the lands in question at a Court auction in OS No. 19/1959. In this regard, Sri T. Rajashekara and Smt. T. Parvathamma had submitted a representation dated 23.05.1990 to the Authority. The Special Land Acquisition Officer had issued an endorsement to Shri T. Rajashekara and Smt. T. Parvathamma on 22.09.1992, referring to the communication of the Deputy Commissioner that in the revenue records, the land is shown as "beellu" and there is no provision for removal of the said entry and therefore it is not possible to pay the compensation to them.

Further, the villagers of Hinkal had submitted a representation to the authority pointing out that the land measuring 6 acres 6 guntas in Survey No. 264 had been acquired and the same is designated for a public purpose, namely, a play ground. And that, some persons, with the support of the local politicians, were trying to grab the land in question.

And further, that Neelakantappa and others had filed a writ petition styled as public interest litigation before this Court in W.P. No. 20956/2002 seeking a direction to the respondent to utilize the land in question for the purpose for which it was reserved in the Comprehensive Development Plan (CDP) and in the layout plan. The allegation in the said petition was that, the fifth respondent one Javarappa, had encroached upon the land in question, which is a civic amenity site and which is reserved for playground and open space in the CDP. In spite of the representations, the respondent Nos. 2 to 4 had not taken any steps. In the said writ petition, statement of objections had been filed on behalf of respondent Nos. 2 and 3 stating that as per the revised CDP, a portion of land in Sy. No. 264 has been reserved for a civic amenity and the same had been fenced to prevent unauthorized occupation or use by anybody. The efforts of the fifth respondent to occupy the said land unauthorizedly was prevented by them with the help of police and that a complaint had also been lodged against the fifth respondent and that they had taken all steps to protect the land in question and they would continue to protect the same and ensure that the land is utilized for the purpose for which it was reserved in the CDP. Recording the said submission, the writ petition was disposed of. After the passing of the order in the aforesaid writ petition, the respondent had addressed a letter dated 16.7.2003 to the Deputy Commissioner, Mysore District stating that since the land in question is reserved as "beellu" and the same was yet to be restored to the original land owner and therefore the land was deemed to belong to the Government and the Authority had included the said land in the layout plan and had also passed an award in respect of the land in question. Since the land in question was acquired by the Authority and an award had been passed for a sum of Rs. 98,670/-, the Authority was ready and willing to deposit the amount to the Government or at the rate prescribed for grant of land under the Land Grant Rules.

In response to the said letter, the Deputy Commissioner is said to have written a letter dated 31.7.2003, directing the respondent to deposit the compensation amount along with interest to the Government Treasury and take steps in terms of the order passed in the public interest litigation to utilize the land in question for the purpose for which it was designated in the layout plan. Thereafter, there had been much correspondence between the Deputy Commissioner and the authority with regard to the quantum of compensation to be deposited in respect of the land in question.

That on 27.5.2009, the Deputy Commissioner had addressed a letter to the respondent, directing the deposit of the market value of the land to the Government, referring to the instructions of the Government dated 18.2.2009 to take further steps in the matter.

It is stated that the Authority, through a letter dated 16.11.2009, expressed its inability to pay the present market value offering several reasons and requested the Deputy Commissioner to appraise the Government and obtain permission for deposit of the compensation amount in terms of the determination of market

value by the Reference Court in respect of one of the items of land acquired under the very same notification. Acting on the said request, the Deputy Commissioner addressed a letter to the Principal Secretary, Revenue Department seeking further instructions regarding the amount of compensation to be paid by the Authority to the Government.

6. It is contended that the above circumstances would clearly establish that the petitioners had not demonstrated their ownership over the lands in question and since the petitioners had not proved the ownership of the land, the writ petition filed by them is liable to be rejected. The petitioners claim that Monda @ Thammaiah was the owner of the land and that they had succeeded to the estate of Monda @ Thammaiah and therefore, has become the owners of the lands in question. It is observed that the RTC extracts produced by the petitioners at Annexures-A to A2 are not admitted by the respondent. The copy of the RTC which finds a place in the records of the Authority, which has been produced by Shri T. Rajashekara discloses that in the years 1981-82, 1982-83 and 1983-84 in column No. 9 it is shown as "beellu" and in column No. 12 it is described as "no cultivation". If that was so, the RTC produced by the petitioners at Annexure-A1 the name of Monda @ Thimmaiah could not have been shown. It is an admitted fact that for non-payment of revenue, the land was reserved as "beellu" and therefore in column Nos. 9 and 12 there cannot be an entry regarding possession and cultivation. In that view of the matter, the petitioners had failed to prove their ownership over the lands in question and consequently cannot challenge the acquisition proceedings at this distance of time.

It is further contended that the State Government through the Deputy Commissioner, Mysore District was claiming ownership over the lands in question on the ground that the land is "beellu", whereas the Deputy Commissioner, in turn, was contending that "beellu" is not restored and the Government is the owner of the land. Therefore, the document at Annexure-B produced by the petitioners had to be proved to establish that "beellu" has been restored. Annexure-B is not an order, but is an Official memorandum which indicates that in view of payment of arrears of land revenue, the katha of the land has been restored in the name of kathedar.

7. As per the contention taken in the public interest litigation referred to supra, the land in question has been designated for a public purpose, namely, a play ground and open space and the said land is absolutely necessary for the Authority to utilize the same for the purpose for which it is designated. Assuming that the petitioners are in a position to prove their ownership of the land in question as against the Government, they could at best be entitled to the compensation already determined by the Land Acquisition Officer along with all statutory benefits. The order, if any, for restoration of the revenue entries, would only entitle the land owner to seek compensation and would not enable a challenge to the acquisition proceedings. Since on the date of issue of preliminary notification, final notification and on the date of passing of the

award, neither the petitioners nor the predecessors of the petitioners were the owners of the lands in question, they were not entitled to challenge the acquisition proceedings on any grounds.

8. In so far as the contention of the petitioners that the Scheme has lapsed for non-compliance of Section 27 of the KUDA Act is concerned, this court had already held that the Scheme has been substantially implemented, in the following cases:

1. W.P. No. 6207/2005 - K. Sathyanarayana, since deceased by his Legal Representatives Vs. State of Karnataka and others disposed of on 17.09.2007.

2. W.A. No. 2106/2007 connected with W.A. No. 1944/2007 - K. Sathyanarayana, since deceased by his Legal representatives vs. State of Karnataka and others, disposed of on 28.1.2008.

3. W.P. No. 23558/2005 - Smt. Sathya Seshadri and others Vs. State of Karnataka and others, disposed of on 23.06.2009.

In so far the contention that there is no sanction of the Scheme by the State Government is concerned, a Division Bench of this Court has already held in H.N. Basavaraju Vs. State of Karnataka, W.A. No. 3451/2010 and others disposed of on 8.4.2011 that the State Government had accorded approval for the Scheme on 22.03.1984 at three stages and there is a sanction for the entire Scheme.

The contention of the petitioners that the authority has not executed the Scheme within a period of five years from the date of final notification is concerned, the respondent places reliance upon the decision of a Division Bench in the case of A. Krishnamurthy (since deceased) by LRs. Vs. B.D.A. and others reported in 1996(3) KLJ 506, wherein it has been held as follows:

On the Scope of Section 27, B.D.A. Act, a Division Bench of the Court has considered the same and explained to the effect that for the scheme to lapse u/s 27, there must be dereliction of duty or failure on the part of the authority to execute the scheme specifically within 5 years from the date of publication in the official gazette and a declaration u/s 19(1) of the Act. The two conditions to be fulfilled to attract the provisions of this section are, there must be failure to execute the scheme i.e., there must be dereliction of statutory duties without justification and not a mere delay in execution of the scheme. Secondly, substantial execution in the context depends on the magnitude of the scheme and the nature of the work to be executed. Though burden is upon the BDA to furnish material to the Court to show that there is substantial material before the Court to show that there has been dereliction of statutory duties and not mere delay in implementing the scheme. No such foundation has been laid out on that aspect except to point out there is delay on the part of the BDA.

Moreover, that period of 5 years lapsed in the year 1985. As to why the petitioner-appellant kept quiet for 7 years is un-understandable. However, the learned Counsel for the appellant sought to urge that there being no immediate

threat of dispossession of the land, he did not approach this Court. That explanation will not carry the appellant for because there was acquisition of the land and steps were being taken in that regard. Appellant cannot merely state that the acquisition notification issues seeking to acquire the land in question can be wished away by urging that by lapse of time it will disappear while he should have attacked the same within a reasonable time after the lapse of 5 years. We do not thin 7 years delay in that regard would not be appropriate or reasonable. Therefore, the view taken by the learned Single Judge in our opinion, is perfectly justified. Therefore, this appeal could be dismissed on latches alone. Apart from that, we have pointed out that there is not material forthcoming in this case to show that there is dereliction of duty on the party of the BDA in not implementing the scheme to attract the provisions of Section 27 of the Act.

Further, the contention of the petitioners that the possession of the land in question is not taken by the respondent and the petitioners are in possession of the land is incorrect. Admittedly, till the year 2011, the names of the petitioners were not shown in the RTC, and only on the basis of the order passed by the Assistant Commissioner, the petitioners claim that they are in possession. The Assistant Commissioner has passed the orders without the knowledge of the acquisition proceedings and the correspondence by the office of the Deputy Commissioner with the respondent regarding the payment of compensation. Therefore, based on the order passed by the Assistant Commissioner and the entry in the RTC for the year 2011-2012, it cannot be held that the petitioners are in possession. Therefore, the petitioners are put to strict proof of the fact regarding possession. Assuming that the petitioners are in possession even today, there is no prohibition for the respondent to take possession even now, as the authority has already passed the award. Since the Government has claimed ownership, the respondent is corresponding with the Deputy Commissioner for transfer or delivery of possession of the land for utilization for the purpose for which the same is designated in the layout plan.

9. In the light of the above rival contentions the following points would arise for consideration:

- a. Whether the petition is barred by delay and laches?
- b. Whether acquisition proceedings are vitiated on account of:
 - i) The preliminary notification being issued under the CMI Act, whereas the final notification being issued under the KUDA Act.
 - ii) The notifications issued in respect of the acquisition of land not indicating the names of the predecessors of the petitioner.
 - iii) The award having been passed - beyond a period of two years from the date of the final notification.
 - iv) The land though was treated as "beellu" as on the date of the notifications for acquisition, on account of non-payment of land revenue, was however directed to

be restored to the owner by an order dated 28.4.1988.

v) The want of prior approval of the Government for carrying out the Scheme in respect of which the acquisition proceedings were undertaken, in terms of Section 3(f)(vi) of the LA Act?

c. Whether the Scheme has lapsed in terms of Section 27 of the KUDA Act, in so far as the petitioner's land is concerned?

Point a.: The writ petition filed in the year 2012, seeks to question the validity of the acquisition proceedings pursuant to preliminary and final notifications dated 1.4.1981 & 29.3.1984, respectively. On the face of it, the petition appears to be barred by delay and laches.

The explanation offered by the petitioner is to the effect that the RTC extracts in respect of the land in question for the relevant period namely, 1976 to 1980 and 1980 to 1986 - indicated the name of Monda, the predecessor of the petitioner. However, the impugned notifications did not indicate his name. According to the petitioner the land may have been categorized as "beellu" in the year 1987-88. But the jurisdictional Tahsildar had, by an order dated 28.4.1988, directed restoration of the entry in favour of Monda - which however was not implemented immediately. It is claimed that the petitioner woke up to the situation only subsequently and hence had taken appropriate steps resulting in the Order passed by the Assistant Commissioner, dated 5.11.2011, directing the implementation of the Order dated 28.4.1988 of the Tahsildar. It is hence claimed that the acquiring authority has overlooked a mandatory requirement of placing the land owner on notice of the acquisition proceedings and that as the predecessor of the petitioner as well as the petitioner, were in the dark of the said proceedings, there is no delay in presenting the petition.

However, contrary to the contentions canvassed by way of oral arguments, the pleading in the petition itself is that the land in question was shown as "beellu" even in the preliminary notification of the year 1981. It is not demonstrated from any material to the contrary that the land was treated as "beellu" only during the year 1987-88. And if admittedly there was an Order by the Tahsildar - directing restoration of the land in favour of the Owner, in the year 1988 - it would follow that the preliminary & final notification being issued, treating the land as "beellu" cannot be faulted. It is also to be noticed that the award was also passed in the year 1986 itself.

There is no explanation offered by the petitioner as to the total inaction on her part in seeking implementation of the Order dated 28.4.1988, till the year 2011, when the petitioner appears to have approached the Assistant Commissioner in this regard. In any event it is not clear as to how the petitioner can claim any advantage even with reference to the Order dated 28.4.1988 by the Tahsildar, when the acquisition proceedings had progressed as aforesaid.

Therefore in the absence of a plausible explanation justifying the delay in filing

the writ petition, the same has to be dismissed as barred by delay and laches.

In view of the above finding, the consideration of the legal contentions is rendered otiose. However, even on merits - the points framed for consideration would all have to be answered against the petitioner, except for one contention. But on account of the inordinate delay in filing the present petition, the same is rendered academic, it is a point which has not been raised in earlier proceedings pertaining to the very acquisition proceedings, brought by other petitioners before this court, nor is it met or answered by the respondent Authority, in these proceedings.

Point b. (i): Having regard to the tenor of Section 78 of the KUDA Act, there is no legal infirmity on account of the notifications being issued under the two Acts, in respect of the same acquisition proceedings.

Point b. (ii): As noticed already, it is not in dispute that the land was shown as "beellu" in the revenue records as on the date of the preliminary and final notifications and also as on the date of the award. There is no infirmity to be found on that count.

Point b. (iii): It is noticed that the final notification is dated 29.3.1984 and the award has been passed on 21.4.1986, beyond two years from the date of final notification. If Section 11A of the LA Act is applied, the acquisition is deemed to have lapsed. However, Section 11A has been inserted in the LA Act by Act 68 of 1984. The said Amendment Act commenced with effect from 24.9.1984. The proviso to Section 11A stipulates that if the declaration has been published before the commencement of the Amendment Act, the award shall be made within a period of two years from such commencement. Therefore, the award in the present case on hand has been passed well within time.

Point b. (iv): As already opined, while discussing Point a. hereinabove, no advantage can be derived by the petitioner with reference to the Order of the Tahsildar dated 28.4.1988. The petitioner may at best claim compensation in respect of the land if it is established that the petitioner claims under the original land owner.

Point b. (v): The acquisition of land for the purpose of carrying out any housing Scheme by a local authority would be a public purpose only if there was a prior approval of such proposed acquisition by the appropriate government. The above proposition is self evident from a reading of Section 3(f)(vi) of the LA Act. The same is reproduced hereunder for ready reference.

3(f): the expression "public purpose" includes-

.....

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or with the prior

approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

10. Whether the City of Mysore Improvement Trust Board, the predecessor of KUDA could be considered as a "local authority" for purposes of the LA Act, is not in doubt having regard to the definition of "Local Authority" contained in Section 3(h) of the LA Act read with Karnataka Act No. 17 of 1961, with effect from 24.8.1961. The same is reproduced for ready reference.

3(h). The expression "local authority" includes a town-planning authority and a City Improvement Trust Board.

And the KUDA would also be a "local authority" as the successor-in-interest of the CMITB. It would also qualify as the "local authority" by virtue of being the Planning Authority for the concerned Urban Area, as defined u/s 81D of the KTCP Act. Section 81D is reproduced hereunder for ready reference:

81-D. Consequences to ensure upon the Constitution of the Urban Development Authority. Notwithstanding anything contained in this Act, with effect from the date on which the Urban Development Authority is constituted under the Karnataka Urban Development Authorities Act, 1987 the following consequences shall ensure.-

(i) the Urban Development Authority shall be the Planning Authority for the local planning area comprising the urban over which the Planning Authority for the City or town and jurisdiction immediately before the date on which the Urban Development Authority is constituted;

(ii) the Urban Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act in the urban area as if it were a Planning Authority constituted for the city or town;

(iii) the Planning Authority in the urban area shall stand dissolved and upon such dissolution.-

(a) anything done or any action taken (including any appointment, notification, order, scheme or bye-law made or issued), any commencement certificate or permission granted by the Planning Authority shall be deemed to have been done, taken, made, issued or granted under the provisions of this Act by the Urban Development Authority and continue to be in force until it is superseded by anything done or any action taken, any appointment, notification, order, scheme, or bye-law made or issued, commencement certificate or permission granted by the Urban Development Authority under the provisions of this Act;

(b) all obligations and liabilities incurred, all contracts entered into, all matters and things engaged to be done by, with or for the Planning Authority shall be

deemed to have been incurred in to, or engaged to be done by, with or for the Urban Development Authority;

(c) all property movable and immovable and all interests of whatsoever nature and kind therein vested in the Planning Authority shall with all rights of whatsoever description used enjoyed or possessed by the Planning Authority, vest in the Urban Development Authority;

(d) all suits, prosecutions and other legal proceeding instituted for which might have been instituted by or against the Planning Authority may be continued or be instituted by or against the Urban Development Authority.;

It is not in dispute that there is no Scheme framed and duly approved by the State Government, before initiation of the acquisition proceedings for provision of land to implement the housing scheme of the erstwhile Trust Board, before issuing the preliminary notification dated 1.4.1981.

Therefore, it can be said that the above contention goes to the root of the matter, but stops there on account of the delayed discovery of the infirmity and does not result in uprooting the acquisition proceedings. It has been found by this court that the implementation of the housing scheme has been duly approved from time to time, albeit in stages and that the same has been substantially implemented, as opined in the following cases:

1. W.P. No. 6207/2005 - K. Sathyanarayana, since deceased by his Legal Representatives Vs. State of Karnataka and others disposed of on 17.09.2007.
2. W.A. No. 2106/2007 connected with W.A. No. 1944/2007 - K. Sathyanarayana, since deceased by his Legal representatives vs. State of Karnataka and others, disposed of on 28.1.2008.
3. W.P. No. 23558/2005 - Smt. Sathya Seshadri and others Vs. State of Karnataka and others, disposed of on 23.06.2009.

In that, sites having been formed and allotted to third parties, who in turn have probably constructed their houses therein - it would result in a miscarriage of justice to put the clock back at the instance of the petitioner. Hence the said contention though tenable, is negated.

Point C.: As already stated - an opinion has been formed by this court that the Scheme has been substantially implemented and hence the said contention is negated.

In the result the petition is dismissed.