
(1980) 07 KAR CK 0018
In the Karnataka High Court
Case No : WP 345/1978

B.L. Somanna

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 02-07-1980

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 128(4)
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1980) 2 KarLJ 286

Hon'ble Judges : K. Bhimiah, J

Judgement

1. These writ petitions under Art. 226 of the Constitution of India, raise identical questions of law and facts. Therefore, they are disposed of by a common order.

2. In these writ petitions the petitioners have sought for the relief of quashing the acquisition proceedings commencing with the Government Notifn. No. RD 132 AQT 67 dated 18th Decr. 1967 issued under S. 4(1) of the Land Acquisition Act 1894 (Cen. Act 1 of 1894) (to be hereinafter referred to as the Act), and all the consequential proceedings taken thereupon including the Notification in No. RD 334 AQT 70 dated 5th Dec. 1970 issued under S. 6(1)(a) of the Act, acquiring the lands in S. Nos. 48 and 49 of Batawadi village in Kasaba Hobli, Tumkur Taluk.

3. The petitioner in W.P. 345 of 1978 is the owner of an extent of 149" x 40" of land in S. No. 48 of Batawadi village. The petitioner in W.P. No. 11933 of 1978 is the owner of an extent of 44" x 160" of land in S. No. 48 of Batawadi village. The Petitioner in W.P. No. 11934 of 1978 is the owner of an extent of 75" x 32" of land in S. No. 48. The petitioner in W.P. No. 11935 of 1978 is the owner of an extent of land measuring 108" x 40" in S. No. 49 of Batawadi Village, having been purchased by her husband.

4. The State of Karnataka acquired an extent of four acres of land in S. No. 48 and six acres of land in S. No. 49 of Batawadi village, for the purpose of construction of police quarters in the aforesaid notifications.

5. All these petitioners purchased, these sites (lands) prior to the notification under S. 4(1) of the Act. The Land Acquisition Officer served the notice on the original owner who had sold the lands in those two survey numbers. No notice was served upon these petitioners or any of the purchasers of the sites (lands) in those two survey numbers as required under S. 4(1) of the Act. Thus they were denied of the opportunity of filing their objections to the acquisition of the land in those survey numbers as the notifications were thus issued without notice and without hearing the petitioners.

6. The report as required under S. 5A of the Act, without the petitioners being served with notice and heard was sent to the Government of Karnataka. Upon receipt of the report the State of Karnataka directed the Deputy Commissioner of the district to proceed under S. 6(1)(a) of the Act, as the lands were needed for a public purpose the writ petitioner in W.P. 345 of 1978 for the first time received a notice some time in the month of July, 1977 from the Land Acquisition Officer, Tumkur, that her presence was required at the spot in order to determine the compensation in respect of certain acquisition proceedings. Then she came to know about her land being acquired for purposes of construction of police quarters. She obtained a Gazette copy of notification during the last week of that month. The writ petitioners in the other writ petitions came to know about the acquisition of their lands from the writ petitioner in W.P. No. 345 of 1978 in the month of September 1978. They learnt that the acquisition proceedings had been completed and their lands were also included along with the land of the writ petitioner in W.P. No. 345 of 1978, which was acquired. But they had not handed over possession. Since the preliminary notification and the final notification have become final and no appeal is provided by law against those notifications they have approached this Court by way of these writ petitions under Art. 226 of the Constitution of India.

7. The respondents have not filed any statement of objections controverting the assertions made by the petitioners in all these four writ petitions. The petitioners in W.P. Nos. 11933 to 11935 of 1978 filed I.A. No. 3 for permitting them to file additional statement of the writ petitions. Similarly, I.A. No. 1 was filed by the petitioner with the same prayer in W.P. No. 345 of 1978. These I.As were ordered to be heard along with the main petition. The 2nd respondent filed statement of objections to the I.As against acceptance of additional statement in the writ petitions. Both the I.As were ordered to be heard along with these writ petitions. Since some valid grounds are raised in these I.As in support of the writ petitions the objections taken by the respondent are overruled and I.A. No. 3 in W.P. Nos. 11933 to 11935 of 1978 and I.A. No. 1 in WP No. 345 of 1978 are allowed in the interest of justice and the petitioners were permitted to file additional statement in all the four writ petitions.

8. It is not disputed that these petitioners were not served with any notice, thereby they were denied of the the opportunity to file their objections

9. In the additional statement filed by the petitioners, the petitioners have stated

that they are the owners of the lands bearing S. Nos. 48 & 49 of Batawadi village, having purchased the same from its original owner for purposes of constructing houses. They have stated that they have no sites apart from the sites in question. They purchased these sites long prior to the issue of the preliminary notification under S. 4 of the Act. The lands are still in their possession. The lands in dispute are not at all required for the purposes of construction of police quarters as made out in the notification. The petitioners are all poor people having only sites in their possession and they will be deprived of their right to construct residential houses if these acquisition proceedings are proceeded with. In the notifications issued by the 2nd respondent the names of the petitioners were not mentioned and published although they acquired right of ownership long prior to the preliminary notification and that they were real owners of the lands. They have also stated that the police department does not require the lands in S. Nos. 48 and 49 for purposes of construction of police quarters, as they had already constructed police quarters elsewhere. And in the land acquired for purposes construction of police quarters on a previous occasion, they have left open a large area. There is no bona fide in the present acquisition proceedings and the lands acquired for purposes of police quarters were not sufficient for the purpose.

10. In a statement of objection the 2nd respondent has controverted the assertions made by the petitioners. It is stated that 11 acres and 16 guntas of land comprised in S. Nos. 321/2, 321/3, 321/4, 39/3 and 39/4 of Batawade village were acquired for public purpose to wit for construction of police quarters and possession of the same was also handed over to the police department in the year 1949. About 108 quarters have been constructed already on the aforesaid land and the constructed quarters have also been in occupation of the police staff for the last several years and the land left over could be utilised for construction of another 8 to 10 quarters. That land is being used as a playground and open area by the children of the occupants of the aforesaid quarters. Further, the details of the quarters needed for the District Police Force are stated. On taking over of the possession of the land in S. Nos. 48 and 49 Police Club building has been constructed upto lintel level, and the construction of the remaining quarters is yet to be started. There is denial of want of bona fides in, the acquisition proceedings. The petitioners were not served with notice regarding acquisition as their names were not found in the revenue records, but wide publicity was given as to the substance of the notification issued under S. 4(1) of the Act. If really the petitioners were interested in the land in question, they could have filed their objections before the Land Acquisition Officer within the stipulated time. Since they have failed to do so, they have no locus standi to Challenge the validity of the acquisition proceedings under Art. 226 of the Constitution of India.

11. The learned counsel for the petitioner, firstly contended that the preliminary notification under section 4(1) of the Act and the final notification under S. 6(1) of the Act were issued after considering the report made under S. 5A (2) of the

Act, which was sent without an opportunity of being heard given to the petitioners. Therefore, he urged that the entire acquisition proceedings were vitiated.

Secondly, he contended that the petitioners purchased these lands before the date of preliminary notification under S. 4(1) of the Act, to put up construction as they have no house to live and they were under the law entitled for notice under Sec. 4(1) of the Act. Thirdly, he contended that the petitioners were still in possession of the lands purchased by them and that the lands are no more required for public purpose for which they were acquired for the reasons:

(1) The lands acquired in 1947 for the purpose of Police quarters is not fully utilised and there is still land available.

(2) Though the lands were acquired in the year 1967, the notification was issued on 5-12-1970 and the respondents have not put up any construction whatsoever except putting up a building for police club to the lintel level which remains incomplete. According to him the acquisition lacks bona fides, besides there exists no public purpose.

Lastly, it is contended that the lands were acquired for the purpose of construction of Police quarters on the ground of security and isolation, which is no more available in view of the fact that civilian quarters, educational institutions and industrial buildings have come up very close to and around the land acquired within these ten years and further private building activities are still going on around the lands acquired. Thus the lands have become unfit to provide security and isolation to police quarters.

The learned Government Advocate refuted all these contentions and submitted that notices as required by law were served on the khatedar whose name was found in the revenue records. Therefore, there was sufficient compliance with the requirements of law. He further dissented from the other contentions raised on behalf of the petitioners.

12. Therefore the questions for decision are:

(a) Whether the violation of the provisions of S. 5A of the Act has vitiated the entire acquisition proceedings.

(b) Whether the public purpose for which the lands in S. No. 48 and 49 are acquired still exists.

(c) Whether the acquisition proceedings are bona fide.

(d) Whether the delay in filing the writ petitions disentitles the petitioners from seeking the relief asked for.

Now taking the first contention relating to the non-compliance with the provisions of S. 4(1) of the Act and 5(1) and 5A(2) of the Act, it is necessary to consider whether there is the non-compliance, if so it has vitiated the acquisition

proceedings. As already stated neither the petitioners nor the other persons who purchased the sites in these two survey numbers were notified in the Gazette Notification issued under S. 4(1) of the Act. On the other hand the original khatedars who had no interest in the land have been notified in the notifications issued under S. 4(1) and 6(1) of the Act. But the say of the 2nd respondent in the course of the statement of objections filed against I.A. No. 1 is that the petitioners were not served with notice regarding the acquisition as their names were not found in the revenue records, but wide publicity was given to the substance of the notification issued under S. 4(1) of the Act. Thus the blame is placed upon the petitioners for non-compliance with the provisions of S. 4(1) of the Act.

13. Elaborating this contention the learned Government Pleader submitted in his arguments that the purchasers were not served with notices, since they did not get their names mutated in the revenue records. He further urged that the original owners who were served with notices had filed their objections and those objections were considered before sending the report under S. 5A (2) of the Act. Hence according to him there is no non-compliance with the requirement of law.

14. Mr. B.M. Krishna Bhat learned Advocate for the petitioners in W.P. Nos. 11933 to 11935 of 1978 in answer to this argument, placing reliance upon the provisions of S. 128 (4) of the Karnataka Land Revenue Act, 1964 (to be shortly called the "Land Revenue Act") argued that it is mandatory under sub-Sec. (4) of Sec. 128 of the Land Revenue Act, that on the registration of sale deed the registering authority shall make a report of the acquisition of right to the prescribed officer and it is enjoined on the prescribed officer to enter in the register of mutations of every report made to him under sub-sec (4) of S. 128 of the Land Revenue Act. The relevant portion of sub-sec. (4) of S. 128 of the Land Revenue Act, says: "that unless the person liable to pay the registration fee also pays to the registering authority such fees as may be prescribed for making the necessary entries in the record of rights and registers referred to in Sec. 129; and on the registration of such a document the registering authority shall make a report of the acquisition of the right to the prescribed authority."

15. S. 129 of the Land Revenue Act says:

"129(1) The prescribed officer shall enter in the Register of Mutations every report made to him under subsection (1) of Section 128 or received by him under sub-section (2) or sub-section (4) of the said Section."

It is nobody's case that the petitioners had not paid at the time of registration of the petitioners' sale deeds the prescribed fee for making entries in the record of rights and the registers referred to in S. 129 of the Land Revenue Act. If that was so, the non-compliance of the aforesaid provisions of law by the prescribed officer, has resulted in the omission to mutate the names of the petitioners in the record of rights.

16. The learned Government Pleader contended that under sub-sec. (1) of S. 128

of the Land Revenue Act it was open to the petitioners who acquired the ownership to report orally or in writing their acquisition of such right to the prescribed officer of the village within three months of the date of such acquisition and the said officer shall at once give written acknowledgement on the receipt of the report to the person making it, and therefore, urged that the petitioners have failed to act under S. 128(1) of the Land Revenue Act. This argument ignores the second proviso to S. 128 of the Land Revenue Act, which says:

"Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the prescribed officer."

17. Upon a reading of the provisions of law quoted above, it is manifest that it was mandatory on the part of the registering authority to make a report and it was mandatory on the part of the prescribed officer to enter in the register of mutations of any such report received from the registering authority. Thus there was no obligation in law cast upon the petitioners to report to get their names entered in the mutation registers. Therefore, the respondents cannot find fault with the petitioners when there is non-compliance by the registering authority and the prescribed officer to act under Section 128(4) and S. 129(1) of the Land Revenue Act. The failure on the part of the registering authority to report and the prescribed officer to enter in the mutation register the names of the petitioners has caused great injustice to the petitioners who had acquired the sites in those two survey numbers upon payment of valuable considerations and has resulted in the denial of opportunity of getting the notices served upon them under Sec. 4(1) of the Act to file their objections for consideration under S. 5A of the Act. The respondents cannot be allowed to take advantage of their laches especially when the purchasers are deprived of their property right.

18. Now the next question for consideration is whether the notice under S. 4(1) of the Act, which is mandatory was given in accordance with the provisions contained therein. The legal requirement is publication in the Gazette and public notice of the substance of such notice be given at convenient places in the locality.

19. The entire acquisition record is placed before the Court by the Government Advocate. It is carefully perused. There is no order-sheet maintained with regard to the order passed by the Land Acquisition Officer for causing public notice to be given of the notification issued under S. 4(1) and (2) of the Act. But the order-sheet at page 214 dated 30-12-1970 starts with the proceedings for acquisition sanctioned under Sec. 6 of the Act; Individual notices and public notice along with spare copies of the notifications were sent to the Tahsildar for service and publication. The last date for filing claim statement fixed to 28-1-1971. Barring this note in the order-sheet there is no reference in the entire record, much less there is an order-sheet which discloses that the, Acquisition Officer caused public notice of the substance of notification to be given at convenient places in the

locality. There is also no duplicate copy of the notice in the record evidencing the service of notification on the owner or the occupier of the land, though in some of the reports reference has been made by the Land Acquisition Officer to this effect. Noting and jottings in the records maintained by the Land Acquisition Officer cannot replace the mandatory requirements of the record contemplated under S. 4 and 5A of the Act. Strict compliance of these provisions is necessary. Even without such service of notice some of the purchasers of sites filed their objections and they have all been rejected as belated. There is no duplicate copies of notices served at least on the Khatedars whose names were shown in the notification issued under S. 4(1) of the Act.

30. In *Kkub Chand v. State of Rajasthan*, (1966) 1 SCR 120, the Supreme Court has enunciated the law on giving public notice of substance of notification under Section 4 of the Act, at convenient places in the locality. It reads:

"The statutory intention is therefore clear, namely, that the giving of public notice is mandatory. If so, the notification issued under Section 4, without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void"

In that case, in 1957 the Government of Rajasthan published a notification under Section 4 of the Rajasthan Land Acquisition Act, 1953, to the effect that the appellants' land was needed for a public purpose. The public notice of the substance of the notification to be given by the Collector at convenient places in the locality, as required by S. 4(1), was however not given. In January 1958 and February 1959, notifications under Ss. 5(2) and 6 respectively of the Act, were published in the local Gazette. Thereafter, the officer originally appointed by the Government to perform the functions of a Collector under the Act continued the acquisition proceedings, in spite of a Government notification of June 1959, whereby another officer was appointed to perform the functions. The appellants filed objections questioning, his jurisdiction and stopped taking part in the proceedings. On 11th December, 1959, after making ex-parte enquiries, the officer made an award and on 27th June 1960, he made a second award superseding the first. The appellants came to know of the awards in September 1960. In October 1960, they filed a petition under Art. 226, challenging the validity of the proceedings on the ground, inter alia, that the requirement of the giving of the public notice under S. 4(1) at convenient places of the locality was mandatory and as it was not complied with, the entire acquisition proceedings were void. The High Court accepted the contention. While deciding that case, the Supreme Court held that the provisions of S. 4(1), requiring public notices was mandatory and non-compliance with it was fatal to the entire acquisition proceedings.

21. It is asserted in the affidavit by way of counter to I.A. No. I filed by the respondent that wide publicity had been given as to the substance of the notification issued under S. 4(1) of the Land Acquisition Act. But this assertion is not supported by any document either in the form of a note in the order-sheet by

the Land Acquisition Officer or actual publication or any direction for causing publication to be given in the course of the order-sheet. As already pointed out no order-sheet has been maintained to evidence the steps taken by the Land Acquisition Officer from the first step of acquisition of lands in question under S. 4(1) of the Act.

22. In the same affidavit it is admitted that the petitioners were not served with any notice regarding the acquisition of lands in question since their names were not found in the revenue records. But the Index of Lands copy found in the record of the Acquisition Officer shows that their names have been mutated beginning from the year 1966-67 upto 1970-71. Further, they were shown to be the occupiers of the sites purchased from S. Nos. 48 and 49. Neither, the petitioners nor the other purchasers whose names were found entered in the Index of Lands were served with notices, though these were persons admittedly interested in the land. As required under S. 5A(2) of the Act, these petitioners and other purchasers of the sites were denied the opportunity of being heard. The report as required under sub-sec (2) of S. 5A of the Act, which is mandatory was not communicated to them. It is not disputed that the petitioners and other purchasers of the sites in that area were residents of Tumkur town and some mahazars which have been drawn up disclose that they were done at some other place. Further, as already pointed out they were in actual possession of the sites purchased by them and it was therefore incumbent upon the Land Acquisition Officer to serve them with notices individually as required under Rule 3 of the Karnataka Land Acquisition Rules, 1965 (to be called the "Rules"). This rule has not been complied with. Thus, it is clearly established that there is noncompliance with the mandatory provisions of S. 4(1) and 5A(2) of the Act, and therefore the entire acquisition proceedings have been vitiated.

23. It is well settled that proceedings under S. 5A of the Act, are quasi judicial and not wholly executive.

24. V.G. Ramachandran on "Law of Land Acquisition and Compensation" in 6th Edi. Vol. I, at page 188 with reference to decided cases has stated thus:

"An enquiry under S. 5-A, has a two-fold purpose. It is intended to instruct the mind of the Government to decide whether any particular land is needed for a public purpose or for a company. Secondly, it is also meant to act as a safeguard against any ill-informed action on the part of Government. Since it is left to the subjective satisfaction of the Government to decide whether any particular land is needed for a public purpose or for a company, the law has provided the safeguard of an enquiry so that there may be proper and adequate material for the Government to arrive at a decision. The enquiry also enables the persons interested to show how acquisition of the land in question will not serve the public purpose stipulated or that there was no public purpose at all involved in the matter".

It is clear from what has been excerpted above that the enquiry is intended to

enable the persons interested to show how the acquisition of land in question will not serve the public purpose stipulated or that there was no purpose at all involved in the matter. Where the provisions of S. 5A have not been complied with the declaration made by the State Government under S. 6, is without jurisdiction and even if the act of the Deputy Commissioner and the State Government is administrative act, if it was made in violation of the mandatory provisions of S. 5A, it is without jurisdiction and the High Court has power under Art. 226 of the Constitution to interfere even in the case administrative orders which are made in defiance of mandatory provisions of law and without any jurisdiction (see *Radha Raman v. State of U.P.*, AIR 1964 All. 700).

25. From the foregoing, it is clear that there is non-compliance of provisions of S. 4(1) and 5A (2) of the Act" vitiating the entire acquisition proceedings. The acquisition proceedings are liable to be struck down.

26. Adverting to the existence of the public purpose for acquisition of the lands in S.Nos. 48 and 49, Mr. Krishna Bhat, learned advocate for the petitioners argued that the lands acquired for the same purpose in the year 1947 have not been fully utilised and the land is still available there. He further argued that though the lands in the instant case were acquired in the year 1967 and the respondents throughout maintained that they had taken possession of the lands in question have not been able to put up any construction of police quarters except putting up a building for police club upto the lintel level. He urged that this conduct on the part of the acquiring authority lacks bonafides. He further submitted that the public purpose for which the lands were acquired has become non-existent. He urged that in the area in which S. Nos. 48 and 49 are situated civilian quarters, educational institutions and industrial buildings have come up very close to and around the lands acquired and the building activities are still going on from the past ten years. It is submitted that the lands have become unfit to provide security and isolation to police quarters.

27. The learned Government advocate was not in a position to dissent from the assertions made by Mr. Bhat. One can take judicial notice of the fact that Tumkur town, though was a small town ten to fifteen years back educationally, industrially and commercially is growing with leaps and bounds. The learned Government Advocate also conceded the assertion made by the learned advocate for the petitioners with regard to building activities coming up in that area. The acquisition of land in S. Nos. 48 and 49 at Batawada village was proposed for the following reason which is clear from a letter addressed by the Superintendent of Police Tumkur to the Deputy Commissioner, which reads as under:

"A large number of the police staff numbering 80 (3 S.Is, 2 ASIs, 30 HCs and 45 PCs of Civil, DAR and Wireless) at Tumkur have not been provided with Government Quarters. Most of them Armed Reserve Men (Old M.A.R.P.) who cannot even get accommodation in the town and are forced to live in hutments which are literally hovels. The land in in possession of the Police Department in the existing DAR lines on Bangalore Dharwar Road near Batawadi village is

insufficient for the construction of additional quarters. In addition to this there is no Armed Reserve Head-Quarters, no Bell of Arms, no stores for ammunition and Tear-gas material and there are no garages for 2 vans and six jeeps. Thus, additional accommodation for all these items for which security and isolation is needed, is very badly needed."

28. It may be at that time these two lands needed for police quarters satisfied the conditions of security and isolation. But at present these two factors have vanished and all the requirements enumerated in paragraphs excerpted above will need a place other than the one in question. Security and isolation are primary factors for housing the police force. It may be undesirable for the police to get mixed up with civilian quarters. The activities of the police must not be open to the public gaze. Therefore the factors which guided the officers to acquire these two lands for the purpose of constructing police quarters have vanished into thin air and the land has become now unsuitable for the purpose. Thus, as rightly contended by Mr. Krishna Bhat, the purpose for which the acquisition was proposed 13 years ago ceased to exist.

29. There is merit in the contention that the acquisition lacked bona fides. It is the case of the respondents, they took possession of the land nearly eight years ago, but they have not so far put up any single construction of police quarters in that area. Further, it is really amusing that they have put up in a corner a building for police club. Thus the police club has precedence over the needs of the police force.

30. The learned Government Advocate was unable to state at the Bar whether any Budget allotment was made by the State Government for constructing these quarters during any one of the financial years from 1972 till today. Further, it is an admitted fact that the land measuring 11 acres 16 guntas comprised in S. Nos. 321/2, 321/3, 321/4, 39/2 and 39/4 of Batawada village was acquired for construction of police quarters and possession was taken in the year 1949. About one hundred and eight quarters have been constructed already on the aforesaid land. Mr. Krishna Bhat, argued that vast area in these survey numbers remains vacant and that would be sufficient to construct quarters for the police officials. According to the Assistant Commissioner's affidavit the land left over could be utilised for construction of eight to ten quarters. But at the same time he has conceded in his counter affidavit that this land is used as a play-ground by the children and the occupants of the aforesaid quarters. There is no means of knowing from the record the exact extent of vacant land available in that area. However, there is substance in the contention of Mr. Krishna Bhat, that the land which was acquired before, has not been fully utilised for the purpose for which it was required. Having regard to all these circumstances it is clear that the acquisition of lands in S. Nos. 48 and 49 appears to be arbitrary and fanciful, besides it lacks bona fides as the acquisition is not real but colourable as can be gleaned from the records.

31. Acquisition of land for providing suitable accommodation for Government

servants is undoubtedly a public purpose. It is also true that the welfare of the police force is important from the point of view of providing security and protection to their citizens. At the same time in a welfare state the welfare of the citizens is also of paramount consideration. In the instant case nearly sixty-five persons purchased small bits of lands before the proposed acquisition to provide themselves with suitable accommodation for the members of their family. Those persons are being deprived of their small bits of lands purchased after payment of consideration. It may not be fair to acquire plots and ask them to go to distant places from Tumkur town and purchase lands to construct house for residential purpose in view of poor transport facilities in that growing town. On the other hand, if the construction of quarters for the police are made little away from Tumkur town the problem of transport will not arise since the department is provided with transport facilities at the Government cost. As stated earlier, construction of police quarters out-side the heart of the town of Tumkur will effectively provide security and isolation to the police force.

32. According to S. 6(3) of the Act, the declaration made by the Government shall be conclusive evidence that the land is needed for a public purpose. The report called for under S. 5-A of the Act, and the notification under S. 4, to hear objections would give special status to the statutory authority to decide the public purpose. However, the position of the Court is to see if the procedure had been followed by the Government to come to the conclusion whether the acquisition is bona fide, real and not colourable. For the reason already set out above, the acquisition borders on want of bona fide.

33. The learned Government Advocate, vehemently contended that there is an inordinate delay in challenging the notifications in question by way of these writ petitions. He argued that the petitioners were aware of the proceedings and that they have failed to take the legal remedy from the year 1972 to 1978 and, therefore, on the ground of lache of delay the writ petitions are liable to be dismissed.

34. It is not disputed that under S. 15-A of the Act, an application was made to Government and that there was a general stay by the Government by its order dated 25-7-1972 and the said stay was vacated on 21-3-1974. In WP No. 345 of 1978 as per Ext-D notice was issued to the petitioner asking her to be present for payment of compensation. Ext-D, is dated 21-7-1977. Thereafter, the writ petition came to be filed on 5-1-1978. In the meanwhile, it is not disputed that the purchasers including the petitioners submitted several memorandums to Government, which remained unanswered by the Government. The petitioners thus remained with the hope that their representations would bear fruit. It is not pointed out by learned Government Advocate that any endorsement on their representation was given to these petitioners or any of the purchasers. Therefore these writ petitions do not suffer from the latch of delay.

35. However, this Court in *M. Subbannanaik v. State of Mysore*, (1965) 1 Mys.L.J. 269 while dealing with the question of delay has observed thus:

"However, in these cases what is complained of is the violation of fundamental rights of the petitioners to hold property. Therefore the question of delay is not very material."

Therefore the contention of the learned Government advocate that this Court should decline to exercise its discretion in favour of the petitioners as the petitioners did not seek relief at the hands of this Court at the earliest possible opportunity remains without any substance.

36. For the reasons stated above the following order is passed:

(a) The acquisition commencing with the preliminary notification No. RD 132 AQT 67 dated 18th December 1967 issued under Section 4(1) of the Land Acquisition Act 1894 (Central Act 1 of 1964) and the final notification No. RD 334 AQT 70 dated 5th December 1970. issued under Section 6(1) (a) of the Act, are hereby quashed.

(b) Further the respondents are directed to select some other land or lands which will effectively provide security and isolation for the construction of the quarters for the police force.

(c) Further, it is directed that the respondents shall not institute fresh acquisition proceedings to acquire the land in survey Nos. 48 and 49 of Batawadi village, Kasaba Hobli, Tumkur District.

37. In the result, rule made absolute and the writ petitions are allowed. In the peculiar circumstances of the case parties to bear their own costs.