
(2004) 01 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 20666 of 1998

Hanumegowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Land Acquisition Act, 1894 — Section 4 (1)

Citation : (2005) 1 KCCR 277

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : D.L.N. Rao, for Vaishali Hegde, for the Appellant; L. Sridhar, High Court Government Pleader for Respondents 1 and 2 and Mahantesh S. Hosmath, for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The subject matter of these acquisition proceedings is land bearing Sy. No. 144 of Karadakere Village of Maddur Taluk, Mandya, measuring 1 acre 3 guntas. It is not in dispute between the parties that Petitioner-Hanumegowda and his family members are the owners of this land. It is also not in dispute that the said Hanumegowda had sold 10 guntas of land in the said survey number in favour of the third Respondent-trust. After sale of the extent of the land he has retained 1 acre 3 guntas. The sale of the said 10 guntas was by a registered sale deed dated 5.4.1989 for a consideration of Rs. 10,000.00.

2. The case of the Petitioner is, in the later part of the year 1994 Respondents 3 and 4 began to encroach upon the land bearing Sy. No. 144 accompanied by threat of force. The fourth Respondent was a member of the Parliament belonging to the Congress Party, which was then ruling the State, had all powers at his command and began to put up constructions on the land belonging to the Petitioner. The Petitioner objected to this illegal, unauthorized and highhanded action of the fourth Respondent, but his efforts proved futile. The Petitioner and

his brothers instituted a suit O.S. 277 of 1994 on the file of the Court of Civil Judge, Mandya, for permanent injunction and the suit is pending. In the meanwhile, the Deputy Commissioner, Mandya, issued a notification in the Karnataka Gazette dated 15.12.1994 notifying the proposed acquisition of one acre three guntas of land in Sy. No. 144 of Karadakere Village. Annexure-A is the said notification. The said notification was issued by the Deputy Commissioner and though it is stated that the State Government was satisfied about the proposed acquisition it was contended that the State Government was neither consulted nor the State Government directed the Deputy Commissioner to acquire the land.

3. The said notification shows that the third Respondent as the owner in possession of the land to be acquired and it is also shown that the said land consists of canteen building, toilet, water tank and Pravesha Dwara and the compound wall. The Petitioner was served with the notice on 29.12.1994 and he filed his objection statement on 9.1.1995 objecting to the acquisition. Annexure-B is the copy of the statement of objections. The Petitioner contends as the said acquisition is made in purported exercise of the power conferred under the Land Acquisition Act for a public purpose which includes a charitable trust as defined u/s 3 of the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Act 17 of 1961), the Petitioner challenged the said preliminary notification by preferring a Writ Petition before this Court in W.P. No. 4241 of 1995 contending that in view of the Land Acquisition Act, 1898 (sic 1894) having been amended by 1984 Amendment Act, the Land Acquisition (Extension and Amendment) Act, 1961 is no longer in the statute book as such the acquisition could not be for a charitable trust. The said matter was referred to a Division Bench of this Court which negated the contentions of the Petitioner and held there is no repugnancy between the Karnataka Act and the Land Acquisition Act as amended by 1984 Act. It also negated the second ground of attack of 4(1) notification, namely it was vague. In so far as the contention that the purpose for which it is acquired is not a public purpose is concerned, as no final notification had been issued, the objections of the Petitioner was yet to be considered by the acquiring authority, the Court declined to go into the said question and reserved the liberty to the Petitioner to challenge the final notification if his objections are overruled. It is submitted that in the aforesaid Writ Petition, the Petitioner had also challenged the notification on the ground of colourable exercise of power. The said question was not considered by this Court. Aggrieved by the said order of this Court passed on 5.6.1997, the Petitioner preferred a SLP before the Supreme Court. The said SLP was clubbed with other connected matters from Karnataka where the question involved was, whether the power conferred under the Karnataka Act to the Deputy Commissioner is repugnant to the Land Acquisition Act after the Amendment Act, 1984. A Division Bench of this Court had held to be repugnant. The Supreme Court reversed the said finding and held there is no repugnancy. No other question was gone into by the Supreme Court. Consequently, the Petitioner's SLP was also rejected.

4. After dismissal of the Writ Petition by this Court on 5.6.1997, notice was ordered to the Petitioner to appear in a 5A enquiry under the Act. Petitioner engaged a Counsel, filed his objections and contested the claim. The Land Acquisition Officer after considering the entire material on record over-ruled the objections of the Petitioner and recommended for acquisition. Accepting the said recommendation, a final notification came to be issued on 27.3.1998. Aggrieved by the said act of issuing a final notification, the Petitioner preferred this Writ Petition on 6.7.1998. This Court after entertaining the Writ Petition did not grant any interim order and only ordered emergent notice. In view of the same, the acquisition proceedings proceeded further. The Land Acquisition Officer issued a notice to the Petitioner under Sections 9 and 10 of the Act calling upon him to appear before him in an enquiry to be conducted before passing an award. On receipt of such notice, the Petitioner's brother K.H. Ningaiah appeared before the Land Acquisition Officer on 6.7.1998. He filed the written objections as per Annexure-D contending that as the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 has been struck down and it has been held that the acquisitions made under the Act are without jurisdiction, he has no authority to make an award. It was also stated that they moved the High Court in this regard and requested to postpone the proceedings. The Land Acquisition Officer noted the presence of the said Ningaiah, received the statement of objections filed by him which was signed by his brother, the Petitioner herein and he also recorded what is styled as "statement" which is in the nature of a questionnaire in the prescribed form which contains 13 columns. The said Ningaiah has answered all the questions put to him by the Land Acquisition Officer which is recorded. Item No. 13 was as to any other information. In reply to the same he stated that the case is pending in Supreme Court, High Court and Civil Court. Thereafter, the case was adjourned to the statement of the third Respondent who was not present on that day and subsequently a statement is recorded and the acquiring authority proceeded to pass the award on 30.7.1998. The said award appears to have been approved on 5.8.1998. On 10.8.1998 notice of the award u/s 10(2) of the Act has been issued which was served on the Petitioner on 12.8.1998. It is contended that on 13.8.1998 possession of the land was taken and on the very same day the Government has handed over the possession to the third Respondent. After receipt of the award notice, the Petitioner filed an application in this case on 23.8.1998 requesting the Court to stay all further proceedings and bringing to the notice of the Court that authorities are proceeding further in the matter. On 24.8.1998 notice was ordered on the said application and on 13.10.1998 as no objections were filed by the Respondent this Court directed the parties to maintain status quo in respect of the land in question as the same exists on that day, which order was continued from time to time and ultimately the said order was extended until further orders.

5. The State has filed its statement of objections, in fact narrating what has been stated above. What is of importance is, the allegations made by the Petitioner in the Writ Petition to the effect the exercise of power of eminent domain in the

present case is a clear case of colourable exercise of power and the facts stated in support of the said plea was not traversed.

6. Respondents 3 and 4 have filed a detailed statement of objections along with documents. There also they have reiterated the entire proceedings which have transpired till the date. However, it is the specific case of Respondents 3 and 4, that the brother of the Petitioner K.H. Ningaiah, who is co-owner appeared before the Land Acquisition Officer in award proceedings and claimed the compensation of Rs. 12 Lakhs per acre. After the passing of the award they have not filed any reference application. Therefore, they have accepted the market value as the correct value. Once the owner of the land seeks compensation and after passing of the award does not challenge the award, he has no right to challenge the acquisition proceedings. Secondly, it was contended in pursuance of the award passed after issuing notice to the Petitioner on 13.8.1998 Land Acquisition Officer came to the spot, conducted a mahazar, took possession of the land from the Petitioner and then handed over the possession to Respondents 3 and 4. Thereafter, the third Respondent has applied to the revenue authorities for mutating their names in the revenue records and accordingly authorities have mutated their names in the mutation register and consequently entries have been made in the record of rights in the name of the third Respondent in respect of the aforesaid land. Similarly, katha has been made out in the name of the third Respondent. As the Petitioner has not informed this Court about the dismissal of the SLP before the Supreme Court for suppressing the same the Writ Petition itself is to be rejected with exemplary costs. As the Petitioner has wrongly mentioned he is the owner of Sy. No. 144 also petition is to be dismissed with exemplary costs. As the Petitioner has not come to the Court with clean hands, the petition has to be dismissed with exemplary costs of Rs. 50,000.00. What is surprising is, though the Petitioner has made the fourth Respondent eonomini party to the proceedings and allegations are made against him as being the person who is behind this acquisition and when it is asserted that it is a colourable exercise of power by the State at the instance of the fourth Respondent those allegations are not traversed in the statement of objections.

7. On these pleadings the learned Counsels appearing for the parties submitted their arguments. In the course of arguments a reference was made to the documents secured by the learned Government Advocate in respect of the acquisition proceedings. They also made reference to the written statement filed by Respondents 3 and 4 in O.S. No. 277 of 1994 in the Civil Court. Documents were produced showing the constructions which are put up on the land in question. An additional statement of objections is also filed reiterating the earlier stand.

8. Sri D.L.N. Rao, the learned Counsel appearing for the Petitioner, submitted three points for consideration by this Court:

(i) Firstly, he contended that the acquisition is vitiated on the ground of mala fides this being a case of colourable exercise of power by the Government.

(ii) Secondly, he contended in view of the 1984 amendment to the Central Act, the definition of "public purpose" contained in Section 3(f) of the State Act has no leg to stand.

(iii) Thirdly, he contended even if it is to be held that the acquisition is for a public purpose, the explanation to the said definition clearly sets out what should be the purpose for which acquisition is to be made under the heading "public purpose" and not beyond and in the instant case when the acquisition is done for a religious purpose it would not constitute a public purpose and, therefore, the acquisition is void.

9. Countering this argument, learned Counsel for Respondents 3 and 4 submitted when once the Petitioner and his brother appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 12 Lakhs for the land acquired, it is not open to them to challenge the acquisition proceedings. Therefore, on that short ground this petition is liable to be dismissed. Secondly, it was contended the fourth Respondent against whom allegations of mala fides are made admittedly was not a member of the Parliament on the day the notification was issued. The entire records now made available and which is before the Court do not disclose any correspondence made by him either to the Deputy Commissioner or to the Government seeking acquisition of this land. Moreover, after sale of 10 guntas of land, the Petitioner agreed to sell the remaining extent of land in the presence of Panchayatdars orally. In pursuance of the said arrangement possession was handed over. After taking possession Respondent 3 has put up constructions, such as school buildings, temple, lavatories, canteen, compound wall, etc., and the Petitioner did not protest when those constructions were made. Only at the instance of some misguided elements the Petitioner is now going back on his word, refusing to execute the sale deed and is coming in the way of the acquisition proceedings. In this background, the case of mala fides or colourable exercise of power is not made out. It was also contended the said plea is not taken before the acquiring authorities. The said plea was taken in the earlier proceedings before this Court and the said plea was reagitated before the Supreme Court when those Courts have not considered the same, the said ground is not available to the Petitioner in this Writ Petition. It was contended, the Amendment Act, 1984 to the Central Act would not have the effect of annulling the provisions of the Karnataka Act as contained in Section 3(f) where charitable purpose has been held to be a public purpose under the Act. Admittedly the acquisition is for the benefit of a charitable trust which is admittedly running an educational institution apart from carrying on other activities and, therefore, it cannot be said that the acquisition is vitiated. Lastly, it was submitted as the acquired land has already been used for a noble cause, such as construction of temples, construction of a school, a hostel, canteen, etc., it is inequitable to quash the acquisitions at this stage. Therefore, seen from any angle, there is no substance in the Writ Petition, accordingly it is liable to be dismissed.

10. Learned Government Advocate appearing for Respondents 1 and 2 supported the arguments of the learned Counsel for Respondents 3 and 4 and contended the records made available discloses that the proceedings are initiated, conducted and concluded in accordance with law and, therefore, no ground for quashing the proceedings is made out.

11. From the aforesaid facts and the rival contentions the points that arise for my consideration are as under:

(i) Whether the acquisition proceedings are vitiated on the ground that it is a case of colourable exercise of power by the authorities concerned ?

(ii) Whether the definition of "public purpose" as defined u/s 3(f) of the Karnataka Act which includes charitable purpose runs repugnant to the definition of "public purpose" as defined in the Central Act as it stands after the amendment Act, 1984.

(iii) Whether "public purpose" as defined u/s 3(f) of the Karnataka Act is to be confined to the purpose which are mentioned in the Explanation to the said definition and not beyond?

12. Re. Point No. i: Whether in a particular case the purpose for which the land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final.

13. Bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power. The action is bad where the true object is to reach an end different from the one for which the power is entrusted. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the Court calls it a colourable exercise and is undeceived by illusion. Fraud on power voids the order if it is not exercised bona fide for the end designed. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act. Dealing with this colourable exercise of power this Court in the case of Shivaram Udupa Vs. Sharada Achar and Others, has held as under:

21. In other words what is to be demonstrated is firstly, that the land which is sought to be acquired do not achieve the object for which it is acquired. Secondly, it should be shown by such exercise of power the owner of the land is

sought to be deprived of his valuable right to property under the colourable exercise of power which is vested in the Government under statute. Thirdly, such a power is exercised by the Government at the behest of some human agency who is inimical towards the landowner who yields (sic wields) enormous power with the Government and lastly, the ultimate object of such exercise of power is not in furtherance of a public cause but in furtherance of a private cause, to wreck (sic wreak) vengeance against the owner of the land. If all these things are pleaded with full particulars and if it is traversed by opposite party denying the same, acceptable material has to be placed on record to substantiate the said plea and the human agency to whom the mala fides are alleged should not only be made party to such proceeding but he should have an opportunity to put forth his version and then on an appreciation of these materials if the Court comes to the conclusion that the ultimate object sought to be achieved by acquisition is not public purpose but private purpose then the Court would be fully justified in quashing such acquisition proceedings on the ground of colourable exercise of power...

14. Bearing in mind the aforesaid principles we have to look into the material on record which is produced before the Court by way of pleadings, documents and the record made available to the Court by the learned Government Advocate. In so far as plea of mala fides or colourable exercise of power is concerned in the petition it is categorically stated as under:

that Respondents 3 and 4 began to encroach upon the land bearing Sy. No. 144 accompanied by threat of force. Fourth Respondent was a member of the Parliament belonging to the Congress Party which was then ruling the State, had all powers at his command and began to put up constructions on the land belonging to the Petitioner. The Petitioner objected to the same. When his efforts proved futile, he was constrained to file a suit in O.S. No. 277 of 1994 on the file of the Court of Civil Judge, Mandya. Further, it is stated in para 4 the land is sought to be acquired in favour of a trust of which the fourth Respondent is the moving figure. In para 8 it is stated that third and fourth Respondents having trespassed over the land of the Petitioner and put up unauthorised construction have sought the helping hand of State to acquire the land. The notification refers to the existing canteen, main gate and compound wall. What was constructed by force, is sought to be regularized by acquiring the land belonging to the Petitioner. The fourth Respondent has no compunction in resorting to illegal methods and to take recourse to law by using his political connections. The right to appropriate private property to public uses cannot be exercised for extraneous purposes. The right to eminent domain does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation where the public interest will in no way promoted by such transfer. The exercise of power of eminent domain the present case is a clear colourable exercise of power. Hence, the same is liable to be quashed.

15. In the Writ Petition the person against whom those allegations are made is

added as the fourth Respondent. A detailed joint statement of objections is filed by Respondents 3 and 4. In so far as the allegations referred to supra constituting mala fide exercise of power or colourable exercise of power those allegations are not traversed in the statement of objections. Same is the position in so far as Respondents 1 and 2 are concerned and they have also not chosen to traverse these allegations.

16. Only when these allegations are traversed and denied the question of the Petitioner proving those allegations by acceptable evidence would arise. At the same time I am not suggesting merely because those allegations are not traversed that by itself is sufficient for this Court to hold that those pleas are established. Even though it has been held in several judgments of the Supreme Court and this Court coupled with the principles embodied under Order VIII, Rule 5 CPC when allegations of fact which are not specifically denied, it is deemed to have been admitted, it is always necessary and in particular when the allegation pertains to mala fides for the Court not to draw such inference and be rest content with the same. Therefore, I have looked into the material on record to find out notwithstanding those allegations are not denied whether the material on record supports the said allegations.

17. The trust deed of the third Respondent-Bharathi Education Trust discloses that in a meeting held on 11.5.1985 of the Executive Meeting of the Bharathi Education Trust, society registered, a decision was taken to empower the fourth Respondent who was a MLA at that time who was the President of the third Respondent trust to implement the resolution, appointing the fourth Respondent as the Chairman of the Trust and he has been given full powers to implement the objects with which the trust was constituted. Therefore, it becomes clear that the fourth Respondent is the President of the third Respondent. It is not in dispute he was a member of the Parliament. Annexure-R8 produced along with statement of objections of Respondents 3 and 4 discloses at the request of the third Respondent, the Deputy Commissioner of Mandya District has granted 7 acres 2 guntas of gomal land in Sy. No. 143 in pursuance of a Government Order dated 5.7.1993 of the third Respondent for the purpose of constructing a Kalyan Mantap, bus stand, for growing trees, at the rate of Rs. 31,400.00 per acre and what was collected from the Respondent was 50%, namely Rs. 15,700.00. Before such grant in the year 1993 the third Respondent had purchased 10 guntas of land in the adjoining Sy. No. 144 from the Petitioner for a consideration of Rs. 10,000.00. Though the third Respondent purchased only 10 guntas from the Petitioner in Sy. No. 144 they are claiming the entire extent of 1 acre 3 guntas under a oral sale. They further contend possession was delivered under the aforesaid oral sale and they have put up constructions in the said land. When the Petitioner refused to execute the sale deed and filed a suit O.S. No. 277 of 1994 against the third Respondent to protect the property from encroachment in the Written Statement in O.S. No. 277 of 1994 it has been categorically stated as under:

The Defendant having realised that the Plaintiffs would not convey the land as agreed to by them, gave a petition to the Deputy Commissioner, Mandya, as per Annexure-N for acquisition of the suit property whose extent is 0.26 guntas and the extent of 0.27 guntas in all 1 acre 3 guntas. The Deputy Commissioner, Mandya, recommended to the State Government for the acquisition of 1 acre 3 guntas. The Government of Karnataka, accepting the recommendation of the Deputy Commissioner, was pleased to acquire the negotiated area in LAW (1) CR 202 of 1994-95 dated 21.10.1994 published in the Official Gazette notification dated 15.12.1994 as per Annexure-O u/s 4(1) of the Land Acquisition Act. The sketch prepared as per Annexure-P and the mahazar drawn as per Annexure-Q are also produced herewith. The Plaintiffs are aware of the above facts and after evading notices by the L.A.O in the beginning have received the notices subsequently.

18. As the Petitioner challenged the preliminary notification dated 15.12.1994 by filing a Writ Petition before this Court and there was an interim order of stay of further proceedings, the authorities were precluded from proceeding further in the matter. The Petitioner got reprove. When the Writ Petition was dismissed on 5.6.1997 5A enquiry was held and on 27.3.1998 final notification has been issued. Though the said notification was challenged before this Court by filing this Writ Petition as there were no interim orders granted by this Court there was no prohibition for the acquiring authority to proceed further in the matter. But, what is of importance is the speed with which the acquisition proceedings have proceeded. After issue of a notice under Sections 9 and 10 of the Land Acquisition Act for the Petitioner to appear before the Court on 6.7.1998 the statement of the said Ningaiah was recorded, though he requested for postponing the hearing on the ground as the law stood on that date the Karnataka Amendment Act had held to be repugnant to the Central Act as amended by 1984 Act and that proceedings are pending in the Supreme Court, in the High Court and in the Civil Court. The case was adjourned to record the statement of Respondent No. 3 to 29.7.1998. Though the statement of the said Ningaiah is recorded in the prescribed form by the acquiring authority on 29.7.1998, no such statements were recorded on behalf of the third Respondent who was represented by its Secretary B.M. Nanje Gowda who was present on that day. The order sheet shows his statement is recorded. In fact, the Land Acquisition Officer has not recorded any statement. The statement of B.M. Nanje Gowda is contained in the letter head of Bharathi Education Trust (Registered) which is typed, probably brought after typing by the said Secretary to the Land Acquisition Officer. All that the Land Acquisition Officer has done is he has put his signature and seal below the words "Nanna Samakshama" which is typed. It is thereafter not heeding to the request of the Petitioner to postpone the case, within three days on 30.7.1998 award has been passed. Within five days thereafter award is approved by the Government. Within five days thereafter notice of the award u/s 10(2) was issued which was served within two days, i.e. 12.8.1998 and on the very next day possession is said to have been taken after

drawing a mahazar by the Government from the Petitioner and on the same day handed over to the third Respondent. In fact, the Parliament taking note of the latches and delay on the part of the authorities in issuing final notifications and passing award had to amend the Land Acquisition Act by insertion of provisions prescribing a time limit within which the final notifications have to be issued and awards are to be passed. If the authorities were to function in the way done in this case, the amendment was wholly unnecessary. Though the particulars of mala fides have to be pleaded specifically and established to the satisfaction of the Court, it is not that easy either to plead the particulars or to adduce evidence, especially when powerful persons act behind the scene with full legal advise, it is not that easy to have documentary evidence to substantiate a plea of colourable exercise of power. It is there the Courts have to draw their experience on men and matters, the way in similar instances the authorities have acted, coupled with the material on record to come to the conclusion that this plea of colourable exercise of power or mala fides is established or not. When a citizen's property is sought to be acquired by invoking the doctrine of eminent domain, law provides for the same. No one can have any objection. But, the very same law states it should be in accordance with law. It is here in finding out whether this power has been exercised bona fide for a public purpose and what is the object sought to be achieved by acquiring this land assumes importance. However, laudable the object may be, if the land is to be acquired for the said object even then law is to be respected and law is to be followed. Ends cannot be justification for the means.

19. In this background if we analyse the aforesaid material on record what is glaring is the fourth Respondent admittedly was a member of the legislative assembly and a member of the Parliament, a politician wielding enormous power in the area. He is the President of the third Respondent-society. The preliminary notification is dated 15.12.1994. Six months prior to the aforesaid notification, the Deputy Commissioner of Mandya District has granted 7 acres 2 guntas of gomal land in Sy. No. 143 in pursuance of the Government Order dated 5.7.1993 to the third Respondent for the purpose of a Kalyan Mantap, Bus Stand, for growing trees. When the third Respondent was already in possession of 7 acres 2 guntas of land, acquisition of 1 acre 3 guntas of land belonging to the Petitioner six months thereafter do not show factually the need of the land to be acquired. The said notification showed that in the land which is notified for acquisition, there is a canteen building, toilet, water tank, praveshadwara and the compound wall. Therefore, it is obvious all these constructions are put up by the third Respondent without having title to the property, without obtaining any permission or license from any competent authority. It is a clear case of encroachment and putting up unauthorized constructions. After putting up such constructions now such persons who have no respect for the law are seeking indulgence of this Court and pleading equity before this Court to deprive a citizen of a valuable right to the immovable property. As the Petitioner was no match for Respondents 3 and 4 he could not withstand the onslaught, he could not prevent

encroachment, trespass but he approached the Court for an order of injunction. Obviously that remedy appears to be not of much assistance to the Petitioner. In the said proceedings a written statement is filed. the specific case pleaded is that the Petitioner sold 10 guntas of land under a registered sale deed for a consideration of Rs. 10,000.00 in the very same survey number on 5.4.1989. The Petitioner agreed to sell the remaining extent of land and also gave possession of the land to the third Respondent. Because he went back on the promise, refused to execute the sale deed, disputes have arisen between the Petitioner and the third Respondent. If what the Respondent contends is true they have a remedy in law to file a suit for specific performance against the Petitioner and even to get possession if possession is not delivered. Instead of resorting to that legal remedy available to them, the mode adopted is to acquire the land covered under the so called agreement by way of acquisition under the provisions of the Land Acquisition Act. Therefore, the irresistible inference that could be drawn from these undisputed facts are the proposed acquisition is not for any public purpose or a charitable purpose as notified but to regularize the encroachment and the unauthorized constructions already put up. They have resorted to these acquisition proceedings using the clout the fourth Respondent had in the Government in approaching the Government for acquisition. It is in that context when we look at the speed with which the acquisition proceedings was completed makes it abundantly clear that role the fourth Respondent has played from the inception till the conclusion of the acquisition proceedings. Even when the matter was pending before this Court taking advantage of the fact that there was no interim order the authorities have proceeded to pass the award, take possession, hand over possession to the third Respondent with a lightening speed. In substance when the Petitioner refused to sell this land to the third Respondent-society, the third Respondent has encroached his land, put up illegal constructions, and when suit was filed asserting his right, the encroachment and illegal constructions are sought to be saved by misuse of official power under the provisions of the Land Acquisition Act. That is not the object sought to be achieved by the Land Acquisition Act. The Land Acquisition Act is not meant for any such purposes. Therefore, it is clear the power is exercised by the State not for the fulfillment of a legitimate object. The exercise of power to regularize the encroachment or an illegal construction by a person who has no respect for law is a case of exercise for considerations which are outside those for promotion of which the power is vested the Court. Under these circumstances, I am of the firm view nothing more is required to prove the plea of mala fides and colourable exercise of power by the mighty State against this helpless, hopeless villager. When the Petitioner is knocking at this Court for justice, it is not a solace to him to be told that his land has been utilised or needed for construction of a temple, canteen, a school, for public purpose and he should forego the same in the larger interest of the public by exercise of equitable jurisdiction of this Court. Under these circumstances, it is a clear case that the land is acquired for a private purpose under the garb of a public purpose. The action is bad as the true object of this acquisition proceedings is to reach an end different from the one for which

the power is entrusted, goaded by extraneous considerations, but irrelevant to the entrustment. In this context it is appropriate to refer to the observations of Benjam Disraeli where he has stated: "I repeat...that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist. Fraud on power voids the order if it is not exercised bona fide for the end designed". Therefore, the acquisition proceedings initiated for acquiring the Petitioner's land is vitiated on that account and is liable to be quashed. Accordingly, it is quashed.

20. In so far as the contention that the Petitioner appeared before the Land Acquisition Officer and sought compensation for the land acquired would disentitle him to challenge the acquisition is concerned, the said argument is based on their wrong assumption. The material on record discloses in pursuance of a notice issued under Sections 9 and 10 of the Land Acquisition Act, the Petitioner's brother one Ningaiah has appeared before the Land Acquisition Officer on 6.7.1998. He filed the written objections as per Annexure-D contending as the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 has been struck down, the authority has no jurisdiction to make an award. In the said objections it is also stated that the Petitioner has moved the High Court in this regard and requested for postponement of the proceedings. The Land Acquisition Officer noted the presence of the said Ningaiah, received the statement of objections filed by him which was signed by his brother, i.e. the Petitioner herein. Thereafter, he questioned the said Ningaiah regarding the facts of the case and has entered the answers in the prescribed form which contains 13 columns. When he was questioned what is the market value of the land which is acquired, Ningaiah has stated it is around Rs. 12 Lakhs. When he asked for any other information as stipulated in Form No. 13 of the prescribed form he stated the case challenging the acquisition is pending in the Supreme Court, High Court and the Civil Court. On the basis of this material it is contended that the Petitioner claimed a compensation of Rs. 12 Lakhs and, therefore, it is not open to him to challenge the acquisition. The Petitioner did not claim the compensation of Rs. 12 Lakhs. On the contrary he made his intention clear by saying that the acquisition is being challenged, the matter is pending in the Supreme Court, High Court and the Civil Court and he sought for postponement of the proceedings. Therefore, I do not find any substance in the said contention.

21. In view of my finding on point No. 1, it is unnecessary to go into point Nos. 2 and 3 raised above. Hence, I pass the following order:

22. Writ Petition is allowed. The preliminary notification dated 15.12.1994 vide Annexure-A, the final notification dated 27.3.1998 published in the official gazette on 27.4.1998 and the award which was passed during the pendency of these proceedings and the mahazar showing that the possession has been taken are all hereby quashed. Respondents 3 and 4 are directed to pay costs of Rs. 5,000.00 to the Petitioner.