

(1997) 07 KAR CK 0066

In the Karnataka High Court

Case No : Writ Appeal No's. 75 and 95 of 1996 and 4630 of 1995

Kanaka Gruha Nirmana Sahakara Sangha

APPELLANT

Vs

Kota Srinivasa Murthy (Since Deceased) by L.Rs. and Others

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 39 (a)

Land Acquisition Act, 1894 — Section 4 (1), 5 A, 6, 6 (1-A)

Citation : (1997) ILR (Kar) 2211 : (1998) 1 KarLJ 227

Hon'ble Judges : R.P. Sethi, C.J.;S.R. Bannurmath, J

Bench : Division Bench

Advocate : M/s. Vagdevi Associates, Sri T.S. Ramachandra, Sri B.K. Manjunath and Sri M. Rapanna, Sri A.V. Sreenivasa Reddy, Additional Government Advocate, for the Appellant;

Judgement

R.P. Sethi, CJ.

1. Aggrieved by the Notification dated 29-3-1986, issued under sub-section (1) of Section 4 and the Notification dated 4-5-1987 issued under sub-section (1) of Section 6 of the Land Acquisition Act, 1894 (hereinafter called the Act), the appellants and some others filed Writ Petition Nos. 7837, 8113 and 8958 of 1987, which were heard together and disposed of vide the order impugned in these appeals. Writ Appeal Nos. 4630 of 1995 and 95 of 1996 have been filed by some of the owners of the land and Writ Appeal No. 75 of 1996 by the Society which was impleaded as a party respondent in the writ petitions. The landowners have submitted that instead of remanding the case to enquire into the objections filed by them, the learned Single Judge should have allowed the writ petitions by quashing the impugned notifications, whereas the appellant-Society has prayed for setting aside the order of the learned Single Judge passed in Writ Petition No. 7837 of 1987 and dismissal of the afore-said writ petitions. It has to be noted that Writ Petition Nos. 8113 of 1987 and 8958 of 1987, were totally dismissed by the learned Single Judge. It is further to be noted that the landowners who were the petitioners in Writ Petition No. 8958 of 1987 have not preferred any appeal

against the order of the learned Single Judge.

2. The facts necessary for adjudication of the pleas raised in these appeals are that the lands, the subject-matter of litigation in the aforesaid three writ petitions, were notified vide notification issued under sub-section (1) of Section 4 of the Act, proposing to acquire the same for the purpose of forming a lay out by the respondent-Housing Co-operative Society. Pursuant to the publication of the notifications, the writ petitioners filed their objections before the Special Land Acquisition Officer who, after holding an enquiry, submitted the records for consideration of the State Government. The respondent-State, thereafter, condoned the delay in filing the report u/s 5A of the Act vide its order dated 25-4-1987 and issued declaration u/s 6(1-A) of the Act on 5-5-1987. The impugned notifications were challenged mainly on the grounds that.--

"(i) There is no prior approval of the scheme of the 4th respondent by the Government as prescribed by Section 3(f)(vi) of the Act.

(ii) The preliminary notification was issued by the second respondent in violation of Section 4(1) of the Act and the third respondent has not considered each and every objections filed by the petitioners nor made any recommendation to the Government. The order over-ruling the objections of the petitioners and directing issue of a declaration is violative of Section 5-A(2) of the Act and, therefore, the declaration is vitiated.

(iii) The acquisition for the Society in question is not for a public purpose as the lands in question were acquired for distribution of sites to persons who are ineligible to become members of the society".

The learned Single Judge had held that the acceptance of recommendations of the three-member committee by the Government was sufficient to infer that there was a prior approval of the State Government. It was further held that in view of the directions of the Government to the Deputy Commissioner to initiate acquisition proceedings for the benefit of the respondent-Housing Co-operative Society, it could be presumed that the Government was satisfied regarding the need to acquire the lands for the society before issuing preliminary notification under sub-section (1) of Section 4 of the Act. The contention of the writ petitioners that the acquisition of the property for the benefit of the respondent-Housing Co-operative Society was not an acquisition for public purpose was also repelled. Writ Petition Nos. 8113 of 1987 and 8958 of 1987 were dismissed on the ground that as the landowners therein had filed claim applications claiming compensation, they were estopped from challenging the acquisition proceedings in view of the judgment of this Court in V.T. Krishnamoorthy Vs. State of Karnataka, .

3. It is contended on behalf of the appellants-landowners that the whole of the acquisition proceedings are liable to be quashed inasmuch as the provisions of Section 3(f)(vi), Section 4(1) and Section 6(1) of the Act have not been complied with. It is contended that the owners have been deprived of their land without

compliance of the mandatory provisions of law and for the benefit of a Housing Co-operative Society, the members of which were not entitled to the grant of land. It is submitted that the respondent-Government has not applied its mind before directing the acquisition of the property and that the provisions of the Act as extended to the State of Karnataka vide Act No. 68 of 1984 had been completely ignored.

4. Prior to 24-9-1984, when the Land Acquisition (Amendment) Act, 1984, was enforced, the acquisition of lands in the State of Karnataka were governed by the Land Acquisition (Mysore Extension and Amendment) Act of 1961. The Central Act was applied to the whole of India except the State of Jammu and Kashmir vide Central Act No. 68 of 1984. Section 1 of the Central Act was amended and for the words, figures and letters "the territories which, immediately before the 1st November, 1956, were comprised in Part-B States; and", the words "the State of Jammu and Kashmir" were substituted. Various sections of the Principal Act were also amended in their application to the areas to which the Act was extended. In Section 3, clause (f) dealing with the expression "Public Purpose" was substituted with a new provision. In sub-section (1) of Section 4 of the Principal Act, after the words "any public purpose", the words "or for a Company" were inserted. Section 5A was amended by substituting the words "within thirty days from the date of publication of the notification" for the words "within thirty days after the issue of the notification". In sub-section (1) of Section 6 of the Principal Act, the first proviso was substituted and Explanations inserted. Section 11 was renumbered as sub-section (1) of that section and proviso to the said sub-section were inserted. Sub-sections (2), (3) and (4) were added. New Section 11A was inserted providing period within which the award could be made. Section 13A was added making a provision for correction of clerical errors etc. New Section 15A was inserted authorising the appropriate Government to call for the records for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceeding with authority to pass such orders or issue such directions in relation thereto as may be deemed fit. Some amendments were made in Sections 17 and 19 also. Sub-section (1-A) was inserted in Section 23 of the Act. Section 25 was substituted providing that the amount of compensation awarded by the Court should not be lower than the amount awarded by the Collector. A proviso was also added to Section 28 and a new Section 28A was inserted providing redetermination of amount of compensation on the basis of the award of the Court. Sections 34, 38A, 39, 40, 45 and 46 were amended under the changed circumstances. Section 51A was added providing for acceptance of certified copy of a document registered under the Registration Act. Section 30 of the Amending Act dealt with the transitional provisions.

5. The learned Counsel appearing for the appellants has vehemently argued that u/s 3(f)(vi) of the Act, land could be acquired for public purpose if it was shown that the appropriate Government had satisfied itself that the land was being acquired for a Co-operative Society or for a local authority or for a Society

registered under the Societies Registration Act. It was obligatory upon the Appropriate Government to record satisfaction that the land in any locality was needed or was likely to be needed for any public purpose or for a Company. It is submitted that as the Appropriate Government has not exercised its power or recorded its approval or sanction in terms of Section 3(f)(vi) and Section 4(1) of the Act, the whole of the acquisition proceedings being contrary to law were liable to be quashed. It is contended that notification under sub-section (1) of Section 4 was issued by the Special Deputy Commissioner and not by the Appropriate Government, and the same being without jurisdiction, could not be made basis of acquisition of the land for the purpose of respondent-Housing Society. The learned Counsel appearing for the respondents has, however, half-heartedly argued that as under the Land Acquisition (Mysore Extension and Amendment) Act of 1961, the Deputy Commissioner is also the Appropriate Authority for the purpose of sub-section (1) of Section 4, the notifications could not be termed to be without jurisdiction.

6. It has to be noted that prior to 24-9-1984, the Act was applicable to the whole of India except the territories which immediately before the 1st of November, 1956 were comprised in Part B States. Such Part-B States were abolished on 1st of November, 1956 and only the States and the Union Territories came into existence as detailed in the First Schedule of the Constitution. By amending sub-section (2) of Section 1, the Act was extended to the whole of India except the State of Jammu and Kashmir, as noted earlier. The extension of the Act including to the State of Karnataka impliedly repealed the State Act dealing with the land acquisition. Assuming for the sake of argument that the State Act was not repealed even impliedly, it has otherwise to yield and give way to the Central Act-Acquisition of land is covered by Entry 42 of List III of the Seventh Schedule. Being a subject covered under the Concurrent list, it has to give way to the Central Act in view of the provisions of Article 254 of the Constitution which provides that if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by the Parliament, the law made by the Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State shall to that extent of repugnancy, be void. The Supreme Court in *Kanthimathy Plantation Private Limited v State of Kerala and Others*, dealt with such a situation in relation to the law of acquisition in the State of Kerala before the amendment of the Central Act vide Act No. 68 of 1984. The Apex Court held.--

"The Legislative Entry for acquisition and requisitioning of property is 42 in List III of the Seventh Schedule. Previously, Entry 33 in List I and Entry 38 in List II, of the Seventh Schedule dealt with acquisition and requisitioning in the respective fields. But by the Seventh Amendment of the Constitution in 1956 those two entries from Lists I and II were omitted and Entry 42 in the Concurrent List was inserted. The Amending Act of 1984 had been made in exercise of legislative power vested in the centre by Entry 42 in the Concurrent List. There was a State Act in Kerala known as the Kerala Land Acquisition Act of

1961 which dealt with acquisition and that had been legislated on the basis of the same Entry 42. Under the Amendment Act of 1984, the Land Acquisition Act of 1894 was subsequently amended. Five new provisions were inserted, twenty-one sections were substantially altered, one section was substituted and another was omitted. The Act of 1984 extended the Land Acquisition Act of 1894 to the whole of India excepting the State of Jammu and Kashmir. The provisions were substantially different from the provisions in the Kerala Act. In view of the fact that the Land Acquisition Act of 1894 was extended to the whole of India excepting one State, the Land Acquisition Act. of 1894 became applicable to the State of Kerala and in view of the repugnant provisions, in terms of Article 254 of the Constitution the Kerala Act stood repealed. There is no provision made in the Amending Act to indicate repeal of the State Law but application of Article 254 is automatic to situations where it is applicable and by the operation of the Article, the State Act stood repealed and the Central Act became applicable. That such is the actual position is not challenged by Counsel for the appellant. In fact, in the notes submitted to this Court that position appears to have been accepted".

A Constitutional Bench of the Apex Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, , had earlier held:

"It is not disputed that under the proviso to Article 254(2), the Parliament can repeal the law made by the Legislature of a State and that Parliament can repeal the repugnant State law whether directly or by necessary implication. Assuming that Parliament in the present case by enacting the Amending Act repugnant to the State law with respect to the same subject-matter i.e., nationalisation of road transport, impliedly repealed the State Law, would it have the effect of effacing the scheme already made? If there was a repeal, the provisions of Section 6 of the General Clauses Act of 1897 are directly attracted, the relevant part of Section 6 of the General Clauses Act reads:--

"Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not.--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder".

The express words used in clause (b) certainly take in the scheme framed under the repealed Act. It was a thing duly done under the repealed Act".

There is, therefore, force in the submissions of the learned Counsel for the appellant-landowners that after the applicability of the Central Act, the powers of acquisition were to be exercised strictly in accordance with the Central Act by the authorities specified therein and by none else. Realising such a settled position of law, the learned Counsel appearing for the respondents have relied upon

Annexure R-1 to submit that in effect and essence, the Appropriate Government had exercised the powers and that the Deputy Commissioner, the Collector, had only performed his duties as cast upon him under Part II of the Act. It is contended that the satisfaction recorded is that of the Government and not of the Collector or the Deputy Commissioner. Presumably, having in his mind Annexure R-1, the learned Single Judge also held.--

"..In view of the direction of the Government to the Deputy Commissioner to initiate acquisition proceedings for the benefit of the 4th respondent-Society, I do not think that there is any substance in the contention of Sri Ramachandra and accordingly it is rejected".

7. It is acknowledged position of law that the statutes which encroached on the rights of the citizens, whether as regards person or property, are subject to strict constructions and are required to be interpreted, if possible, so as to respect such rights. In case of any ambiguity, the construction which is in favour of the citizen should be adopted. The Privy Council in *Inglewood Pulp and Paper Company Limited v New Brunswick Electric Power Commission*, held that the accepted rule of interpretation of the statute is that the law should not be interpreted to result in deprivation of the property to the owners without adequate compensation unless the intention to do so is made clear. The case of acquisition for a purpose contemplated under Article 39(b) of the Constitution may be different. As the Land Acquisition Act is of expropriatory character depriving the citizen of his property, the provisions of the Statute conferring power to compulsorily acquire lands, are required to be strictly construed. The Supreme Court in *Khub Chand and Others Vs. State of Rajasthan and Others*, , held the provisions of Section 4 of the Act being mandatory, the violation of the same rendered the acquisition proceedings void.

8. Public purpose in relation to acquisition for a Co-operative Housing Society would include:

""..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, 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".

The land in dispute had been intended to be acquired for the respondent Co-operative Society for which the prior approval of the Appropriate Government was necessary in terms of Section 3(f)(vi) of the Act. Such approval is admittedly not on the record. Similarly before initiation of action by the Collector u/s 4 of the Act, it is necessary that the land intended to be acquired should appear to the Appropriate Government to be needed for any public purpose in terms of Section 3(f)(vi) of the Act. After the public purpose is determined in terms of

Section 3(f)(vi) and sub-section (1) of Section 4 of the Act, the Collector is required to take follow up action by publication of the notice --and holding of the enquiry in terms of the procedure prescribed under Part II of the Act.

9. While defending their action, the respondent-State in the instant case, had stated that the land was sought to be acquired for the respondent-Co-operative Society for which the preliminary Notification No. LAQ. SR. 17/85-86, dated 20-3-1986 was published in the Karnataka Gazette on 24-4-1986 and public notice was given on 7-5-1986. It is submitted that the declaration of the Government dated 4-5-1987 was published in the Gazette on 5-5-1987. It was contended that the final notification being within time was legal and valid. The respondents claimed to have followed all the provisions of law and rules in the matter of acquisition of land.

10. In their reply, the respondent-Housing Co-operative Society submitted that with a view to provide sites to its members, who were site-less, it requested the State Government to acquire the land in Sy. Nos. 19/2, 26 and 29 of Kadirenahalli Village in Bangalore South Taluk. At the direction of the State Government, the Assistant Registrar of Co-operative Societies, Bangalore II Circle, verified the requirement of the members of the Society and recommended to the Revenue Department that the extent of land in the above mentioned survey numbers were required by the Society. The State Government placed the above matter before the committee of three members for scrutiny. The three member committee approved and cleared the proposal for the acquisition of the aforesaid survey numbers for the benefit of the respondent-Society. The State Government conveyed its approval for initiating the proceedings for acquisition of the aforesaid lands for the benefit of the Society by its order dated 14-11-1985, as per Annexure R-1. Thereafter the Special Land Acquisition Officer called upon the respondent-Society to deposit the costs of acquisition for initiating the proceedings for acquisition. A sum of Rs. 3,00,000/- was stated to have been deposited on 5-6-1985. The Special Deputy Commissioner, Bangalore, issued notification u/s 4(1) of the Act, on 20-3-1986 proposing acquisition of lands. The writ petitioners were stated to have objected to the acquisition of land. After affording them the opportunity of being heard, the Special Land Acquisition Officer recommended to the Government for acquisition of the land. The State Government was also alleged to have overruled the objections of the writ petitioners and issued directions for taking further proceedings in the matter vide order dated 25-4-1987 which was followed by a Notification dated 4-5-1987 issued u/s 6 of the Act acquiring the above mentioned lands. The proceedings for determination of compensation were initiated by the Special Land Acquisition Officer. The writ petitioners were stated to have filed their claim statements before the Special Land Acquisition Officer, who completed the proceedings for determination of the award and submitted the same to the Divisional Commissioner on 28-9-1988 for approval. The Divisional Commissioner approved the Award and conveyed his approval to the Special Deputy Commissioner. The Special Deputy Commissioner directed the society to deposit the balance amount

of Rs. 10,70,728/- towards cost of acquisition of the lands. The respondent-Society is stated to have collected the money from its members and deposited the same with the Special Land Acquisition Officer on 15-7-1988. By filing the writ petitions the Society was prevented from taking possession of the land. The acquisition proceedings are stated to have been initiated and concluded in accordance with law.

11. Prior approval in terms of Section 3(f)(vi) and satisfaction in terms of sub-section (1) of Section 4 of the Act by the Appropriate Government is mandatory, the violation of which would render the acquisition proceedings void. The word "appears" used in Section 4 of the Act would mean "seems", "probable", "necessary" and "has reason to believe". The word "approval" means to show, demonstrate, confirm, sanction and ratify. In the context the word "appears" as used in sub-section (1) of Section 4 of the Act would be equivalence of the word "satisfy" which means "to give enough to", "to be enough for", "to fulfil the conditions of", "to meet the requirements of", "to free from doubt", "to convince". It is, therefore, evident that before initiating action for the purpose of acquisition, the Appropriate Government has to record its approval and only after such an "approval" within the meaning of Section 3(f)(vi) of the Act or "satisfaction" within the meaning of Section 6(1) of the Act is recorded by the Appropriate Government, the follow up action of publication of preliminary notification, hearing of objections and declaration of land being required for public purpose, etc., as required under Part II of the Act shall be initiated and concluded.

12. In this connection, the respondents have relied upon the communication dated 14-11-1985, Annexure R-1 by which the approval of the Government to initiate acquisition proceedings is stated to have been conveyed to the Special Deputy Commissioner (Collector). The approval contemplated under sub-section (1) of Section 4 of the Act is with respect to the need of the land for a public purpose and not the initiation of acquisition proceedings. The follow up action is required to precede the approval of the Government regarding the need of the land for a public purpose. In order to ascertain whether the Government had in mind the purpose for which the land was needed for acquisition, a reference to the contents of Annexure R-1 is necessary. It reads.--

"I am directed to convey the approval of the Government to initiate acquisition proceedings by issuing 4(1) notification in respect of lands measuring 3 acres, 03 guntas as recommended by the Official Committee in Sy. Nos. 19/2, 26 and 29 of Kadirenahalli Village and Sy. No. 29/3 of Konanakunte Village, Bangalore South Taluk, in favour of Kanaka Gruha Nirmana Sahakara Sangha, Bangalore".

The communication cannot be termed to be the approval or satisfaction of the Government regarding the need of the land sought to be acquired for a public purpose within the meaning of Section 3(f)(vi) of the Act. Unless a specific need is approved by the Government the follow up action in the form of Annexure R-1 could not be initiated. Annexure R-1 cannot be termed to be the satisfaction

either in terms of Section 3(f)(vi) or sub-section (1) of Section 4 of the Act. On a perusal of the statement of objections filed on behalf of the respondents, it transpires that the State Government had abdicated its powers in favour of a Committee and after the report of the Committee was received, Annexure R-1 was issued without recording satisfaction, approval or requirement of the land being needed for a public purpose. As the owners of the lands were intended to be deprived of their property, the respondents were under an obligation to strictly and punctually abide by the mandate of law and not to deal with the case casually as appears to have been done in the instant case. The purpose of providing house sites to the needy intending members of the society is no doubt laudable but under the cloak of such a proclaimed purpose no one could be permitted to deal with the property of the citizen in a casual manner apparently with the object of conferring benefits upon others for the reasons which, though not stated, yet can be deduced and presumed. The Supreme Court in *H.M.T. House Building Co-operative Society Vs. Syed Khader and others*, , dealt with the scope of Section 3(f)(vi) of the Act and emphasized that the prior approval of the Appropriate Government as contemplated under the Act was not just a formality. The Apex Court declared:

"According to us, in Section 3(f)(vi) the expression "housing" has been used along with educational and health schemes. As such the Housing Scheme contemplated by Section 3(f)(vi) shall be such Housing Scheme which shall serve the maximum number of members of the Society. Such Housing Scheme should prove to be useful to the public. That is why the Parliament while introducing a new definition of "public purpose" said that any scheme submitted by any Co-operative Society relating to housing, must receive prior approval of the Appropriate Government and then only the acquisition of the land for such Scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforced, every Housing Co-operative Society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under Part VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the Appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the Appropriate Government for a Housing Scheme of a Co-operative Society".

13. The notification u/s 4(1) of the Act was admittedly issued by the Collector (Special Deputy Commissioner) wherein it was specifically stated:

"Whereas, it appears to the Special Deputy Commissioner, Bangalore District, Bangalore, that the lands specified in the schedule are likely to be needed for the public purpose for the Kanaka House Building Society, Bangalore (South), Avalahalli".

The Collector had not even referred to Annexure R-1, while recording his satisfaction. The land in dispute "appeared" to be needed by the Special Deputy Commissioner and not by the Government. The respondents have also not placed

on record any document to show that prior approval in terms of Section 3(f)(vi) of the Act was granted by the Government. Annexure R-1 cannot be deemed to be a substitute of the powers required to be exercised u/s 3(f)(vi) and sub-section (1) of Section 4 of the Act. Any action taken in pursuance to Annexure R-1 cannot be termed to be either legal or valid. Consequential proceedings initiated by the Collector under the Act with respect to the property of the appellants in Writ Appeal No. 95 of 1996 being void, are required to be quashed.

14. Writ Petition Nos. 8113 and 8958 of 1987 were dismissed only on the ground that as the owners therein had filed claim applications praying the payment of compensation, they were not entitled to challenge the acquisition proceedings in view of the judgment of this Court in V.T. Krishnamoorthy's case, supra. In that case the Court relied upon its earlier judgment in Writ Appeal No. 781 of 1989, decided on 6-11-1989, wherein it was held.--

"This is clearly a case in which writ petition itself is not maintainable because admittedly he had filed an application claiming compensation for the land in question. It is well-settled law that where a person asked for compensation he cannot maintain a writ petition under Article 226 of the Constitution of India, vide 70 Calcutta Weekly Notes, page 1100. Therefore, we agree with the view taken by the learned Single Judge and dismiss the writ appeal".

Referring to the judgment of the Supreme Court in Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai, , this Court held that the landowner cannot be permitted to approbate and reprobate. Though reference was made to the phrase "without prejudice" it was not noticed as to whether the owners had claimed compensation "without prejudice" to the rights available to them under the Law and the Constitution.

15. The phrase "without prejudice" has been held to mean an action or order not on merits. Such a conduct would not debar adjudication of the rights which may be available to a citizen under the law of the land. While interpreting such a phrase it is necessary for the Court to give full and complete effect to the exact words keeping in view the peculiar facts and circumstances of the case and not to draw a sweeping conclusion merely from the fact that some amount was claimed in the acquisition proceedings. The Supreme Court, in Ashwani Kumar Dhingra Vs. State of Punjab, , specifically held that when the compensation awarded in pursuance of the award is accepted under protest, the owner is not deprived of his right to seek reference u/s 18 of the Act. Merely because a person has applied for payment of compensation, though specifically stating that the amount was being claimed without prejudice to his rights, it would not deprive him from agitating his rights available to him under the law and the Constitution. In Krishnamoorthy's case, supra, this Court was not dealing with a matter where a person had challenged the proceedings after filing the claim application reserving liberty to agitate his rights in accordance with law. The aforesaid writ petitions could, therefore, not have been dismissed only on this ground.

16. In Writ Petition No. 8113 of 1987, the landowners in their application had challenged the acquisition on the ground of the alleged violation of Section 6 of the Act as, according to them, the final notification had not been issued within a period of one year from the date of publication of the preliminary notification u/s 4(1) of the Act and in that context they stated that the entire proceedings were liable to be dropped. It was specifically stated:

"However, without prejudice to the right of the claimant as stated above, the claimant claims compensation for the land acquired at Rupees five lakhs per acre in view of the raising of the land values round about Bangalore City and the acquired land having acquired potential value for building purposes".

The right to challenge the acquisition proceedings was not waived. The petitioners also did not acquiesce in the action of the respondents so far as the acquisition proceedings were concerned. Writ Petition No. 8113 of 1987 could not, therefore, be dismissed merely on the ground that the landowner had filed application claiming compensation despite reserving their right to challenge the acquisition proceedings.

17. No writ appeal had been filed by the landowners who had filed Writ Petition No. 8958 of 1987, which clearly shows, establishes and proves that they had acquiesced the action of the respondents despite the fact that the acquisition was without jurisdiction. Being satisfied with the acquisition proceedings and after having received the compensation, the writ petitioners in Writ Petition No. 8958 of 1987 did not file an appeal within the time specified under law. This judgment of ours would not confer any right upon the said writ petitioners to reopen the case or re-agitate the matter by way of appeal or any other proceedings.

18. Under the circumstances, Writ Appeal Nos. 95 of 1996 and 4630 of 1995 are allowed by setting aside the order of the learned Single Judge. Rule is issued by quashing the impugned Notification dated 29-3-1986, vide Annexure-A insofar as it relates to the land of the appellants. All consequential proceedings relating to the acquisition of the aforesaid lands shall stand quashed subject to the petitioners depositing the amount of compensation received by them along with interest calculated at the rate of 15% p.a. from the date of payment of the amount. The amount of compensation along with interest and other benefits if any shall be refunded within two months. In case the amount of compensation along with interest and other amounts if any is not paid back to the respondent State within the time specified, these appeals shall be deemed to have been dismissed and the acquisition proceedings held revived and upheld.

19. Writ Appeal No. 75 of 1996 shall stand dismissed.

20. The appellants in Writ Appeal Nos. 95 of 1996 and 4630 of 1995 are also entitled to costs which are assessed at Rs. 5,000/-.