
(2023) 03 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No. 53151 Of 2014 (LA-RES)

Nagappa Since Dead, Rep By His Lrs

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 30-03-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 11A
Constitution Of India, 1949 — Article 300A

Citation : (2023) 03 KAR CK 0083

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : T A Karumbaiah, R Srinivasa Gowda

Final Decision : Allowed

Judgement

Krishna S Dixit, J

1. Petitioners are knocking at the doors of writ court for assailing the acquisition of their land admeasuring 1 Acre & 13 Guntas in Sy.No.28/2 of Allanahalli village, in H.D.Kote Taluk, Mysore District. Learned counsel appearing for the petitioners vehemently argues that the acquisition has lapsed u/s.11A of the erstwhile L.A. Act, 1894, the award having not being passed within the statutory period and possession also having not being taken. He also points out that no compensation, either, has been paid to his clients. In support of his submission he banks upon decision of Apex Court in MARIYAPPA & OTHERS vs. STATE OF KARNATAKA & OTHERS, AIR 1998 SC 1334.

2. After service of notice, the respondents have entered appearance through the learned AGA and resist the writ petition making submission in justification of the impugned acquisition. Learned AGA tells the court that the records of acquisition proceedings are missing and efforts to retrieve the same have failed. However, he asserts that the acquisition has been duly accomplished, by taking possession of the property for the public purpose and compensation too has been paid.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

(a) Right to property is constitutionally guaranteed under Article 300A as has been discussed by the Apex Court in *K.T. PLANTATIONS vs. STATE OF KARNATAKA*, (2011) 9 SCC 1. Although it is open to the State to take private property by due acquisition process, the payment of compensation is a sine qua non subject to all just exceptions into which argued case of the petitioners does not fit. Acquisition of private agricultural land is a serious matter. Those who seek to sustain acquisition have to show the cogent material as to the same having been accomplished in due process. The case of the petitioners that no award has been passed nor possession has been taken nor compensation is paid, cannot be disbelieved in the absence of minimum evidentiary material lending credence to the contention to the contrary.

(b) Learned counsel for the petitioners is more than justified in submitting that this acquisition having been initiated vide Preliminary Notification dated 24.08.1981 under the provisions of the Karnataka Acquisition of Lands for Grant of House Sites Act, 1972, Sec.11A of 1894 Act is applicable vide decision of the Apex Court in *Mariyappa supra*, this Court has no option but to hold the acquisition as having lapsed by operation of law. Under Section 11A of the Land Acquisition Act, 1894, if the land is not acquired within the stipulated time, then the whole proceedings in acquisition comes to an end, and thereby the owner of the land would be entitled to retain his land which appears to be the superior right that the owner's right to get the compensation for acquisition of his land vide *GIRNAR TRADERS vs. STATE OF MAHARASHTRA*, (2007) 7 SCC 555.

(c) Learned counsel for the petitioners is also justified in pointing out that till date names of his clients continue in the Revenue Records long after initiation of the acquisition proceedings and that the subject land is not required for the purpose for which it is notified, since there is other land earmarked for the said purpose. The respondents have not filed the Statement of Objections controverting petition averments either.

In the above circumstances, this writ petition succeeds and a Writ of Certiorari issues quashing the impugned acquisition notifications and it is declared that the subject property is freed from acquisition process, that has otherwise lapsed.