

**(2015) 06 KAR CK 0290**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 16039 of 2015 (LA-KIADB)

Nagaraj Rao

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 30-06-2015

**Acts Referred:**

Karnataka Industrial Areas Development Act, 1966 — Section 28(2), 29, 29(2), 30  
Karnataka Land Revenue Act, 1964 — Section 127, 128, 129  
Land Acquisition Act, 1894 — Section 18

**Citation :** (2015) 06 KAR CK 0290

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** Prithvi Raj B.N., for the Appellant; Y.D. Harsha, AGA, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ram Mohan Reddy, J.—Petitioner claims to be the owner of 2 acres 16 guntas in Sy. No. 111 of Cheeluru village, Kanakapura taluk mortgaged in favour of one Thayamma when subject matter of O.S. 176/90 instituted by the petitioner for redemption of mortgage was allowed by Judgment and decree dated 21.9.2000. Smt. Thayamma though carried the same in RA 62/2000 before the Appellate Court was confirmed by dismissal of the appeal on 6.10.2003. FDP 5/2004 when instituted led to an order dated 25.3.2006 directing Thayamma to deliver possession of the mortgaged redeemed property.

2. In the meanwhile, according to the petitioner, the respondent-Karnataka Industrial Areas Development Board, for short "KIADB" issued a preliminary notification dated 25.10.2006 under the Karnataka Industrial Areas Development Act, 1966, for short "KIAD Act" whereunder the aforesaid immovable property was proposed to be acquired for a public purpose i.e. "Harohalli Industrial Area, Stage No. 3". Thereafterwards the final notification dated 2.2.2010 Annexure-F was issued and at Sl. No. 100 the name of Thayamma was shown against the

immovable property belonging to the petitioner. Petitioner asserts that possession of the said property was taken over by the KIADB sometime during December, 2012, preceding which a letter dated 10.8.2012 was addressed by the KIADB to Tahayamma calling upon her to extend her consent for acquisition of the land on payment of compensation of Rs. 39 lakhs per acre. It is the further assertion that though no consent award was passed, nevertheless, a general award dated 30.12.2013 Annexure-A was passed, whereunder, at Sl. No. 100 compensation was determined at Rs. 11,55,166/- for the land in question, belonging to the petitioner, which was deposited with the Civil Judge (Sr.Dn) at Kanakapura. Hence this petition for the following reliefs:

"i) Issue a writ of certiorari or any other writ quashing the General Award dated 30-12-2013 passed by the 3rd respondent-Spl.L.A.O at Annexure-A in so far as the petitioner's land in Sy. No. 111 of Cheelur village, Maralavadi Hobli, Kanakapura Taluk (at Sl.no. 100) is concerned;

ii) Direct the 3rd respondent-Spl. L.A.O. to deposit the compensation amount as fixed in the Consent Award u/sec. 29(2) of KIAD Act before the Civil Judge (Sr.Dn) at Kanakapura;

-Or in the alternative -

iii) Direct the 3rd respondent-Spl. L.A.O. to consider the representation given by the petitioner on 24-2-2015 (at Annexure-R) and pass suitable orders expeditiously;

iv) Pass such other writ, order or direction as this Hon"ble Court may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

3. The first submission of the learned counsel that notice was issued to Thayamma and not to the petitioner and therefore, did not have an opportunity to put-forth his say over the acquisition proceedings deserves rejection. In almost similar circumstances, the Apex Court in Ahuja Industries Ltd. Vs. State of Karnataka and Others, AIR 2003 SC 3519 : (2003) 3 JT 566 : (2003) 3 SCALE 623 : (2003) 5 SCC 365 : (2003) 3 SCR 351 : (2003) AIRSCW 2043 : (2003) 3 Supreme 232 observed that notice to owner and occupants as per revenue records or their representative in terms of Section 28(2) and (4) of the Karnataka Industrial Areas Development Act 1966 was held sufficient and that a subsequent purchaser not getting his name entered in revenue records as owner/occupant based on Sections 127, 128 and 129 of the Karnataka Land Revenue Act, 1964 held could not complain of non service of notice on him nor about the failure to grant a hearing to him. In the present facts of the case supra, it is needless to state that petitioner, did not, pursuant to the Judgment and decree dated 21.9.2000 in O.S. 176/1990 or Order dated 25.3.2006 in FDP 5/2004 represent to the revenue authorities under Section 128 of the Karnataka Land Revenue Act, 1964 for change of entries in the revenue records and therefore, is estopped from contending that no notice was issued to him.

4. The second contention that the letter dated 10.8.2012 Annexure-H issued by the KIADB addressed to Thayamma calling upon the said person to extend her consent for drawing up a consent award at the rate of Rs. 39 lakhs per acre and therefore, petitioner should be extended that benefit is yet another specious plea. It is not as if the petitioner was not aware of the acquisition of large extents of land as can be noticed from the Final Notification, which includes petitioners land. Being a farmer in possession of the land, it is highly improbable to assume that he had no knowledge of the acquisition proceedings. Petitioner ought to have been circumspect and vigilant in the matter of extending consent by drawing an agreement under Sub-section (2) of Section 29 of the KIAD Act so as to ensure determination of compensation by agreement between the State Government and the petitioner and to draw a consent award. Admittedly there was neither an agreement nor a consent award hence there can be no challenge to the general award Annexure-A determining compensation at the rate of Rs. 11,55,166/- for the petitioner's land on the ground of illegality or arbitrariness.

5. The next submission that petitioner be extended the benefit of an agreement by way of consent under Sub-section (2) of Section 29 of the Act so as to draw a consent award for compensation at the rate of Rs. 39 lakhs per acre, at this distance of time is unavailable to the petitioner in the light of the general award having been passed on 30.12.2013. Petitioner not vigilant in the matter of making a representation to the Special Land Acquisition Officer for making a reference under Section 18 of the Land Acquisition Act, 1894 to the Reference Court for a decision over enhancement of compensation, if petitioner was aggrieved by the quantum of compensation, since Section 30 of the KIAD Act makes the Land Acquisition Act, 1894 apply mutatis mutandis in respect of enquiry and award by the Deputy Commissioner, the reference to court, the apportionment of compensation and the payment of compensation, in respect of lands acquired therein.

6. The last of the submission that the decision of a learned Single Judge in W.P.41534/2014 and connection petition in the case of Alumelamma and another v. State of Karnataka and others DD 10.9.2014 Annexure-T is identical, and therefore petitioner is entitled to the very same relief, in my considered opinion, is a misunderstanding of the learned counsel. Facts obtaining in the said Judgment as has been set out in paragraph 3 states thus:

"3. The case of the petitioners is that since there was an agreement with regard to acquisition, the compensation should have been granted as provided under Section 29(2) of the KIAD Act by agreement and not by a general award as has been presently made. Xxxxx".

(emphasis supplied)

7. The facts of this case do not disclose any agreement for acquisition of the land and therefore, the decision of the learned Single Judge, on facts, has no application to this case. That submission too stands rejected.

The petition devoid of merit, rejected.