

(2003) 03 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No's. 1564-1572 of 2003

Narayana Setty and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17 (4), 30, 31, 5 A

Citation : (2003) ILR (Kar) 3206 : (2003) 3 KCCR 154 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : R.N. Narasimhamurthy, for N.K. Gupta, for the Appellant; T.R. Subbanna, for S.N. Keshavamurthy, for R4 and K. Shantharaj, HCGP for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Kumar, J.—The subject matter of these acquisition proceedings is land bearing Survey No. 114/2 measuring 10 Acres 15 Guntas situated at Krishnarajapura, Krishnarajapuram Hobli, Bangalore South Taluk, Bangalore District (hereinafter referred to as "the schedule property"). The said land originally belonged to one Sri Subbaiah Setty. On his death, his legal heirs have succeeded to the estate. However, in the revenue records, the name of Subbaiah Setty continues. Therefore, in the proceedings initiated for acquisition, only the name of subbaiah Setty finds a place. The first petitioner is the grand son of Subbaiah Setty. He has preferred these Writ Petitions purporting to represent the estate of deceased Subbaiah Setty. The petitioners 2 to 9, claims to be the owners of either small bits of land or small houses situated in and around the schedule property. All of them have joined together in these proceedings to challenge the acquisition of the schedule property on various grounds.

2. The schedule property was notified for acquisition by the second respondent for the purpose of establishment of Kaveri IV Stage Sewerage Treatment Plant

(for short referred to as "S.T.P."). The preliminary notification was issued on 28.5.1999 as per Annexure-X. Having regard to the urgency, Section 17(4) of the Land Acquisition Act (hereinafter referred to as the "Act") was invoked dispensing with the enquiry contemplated u/s 5-A of the Act. However, the first petitioner filed his statement of objections opposing the acquisition. After considering the objections, overruling the same, final notification came to be issued on 11.4.2000 as per Annexure-Y. Thereafter, notices under Sections 9 and 10 of the Act were issued on 3.6.2000 to the first petitioner, who was duly served with the same on 10.6.2000. The petitioner and four other persons - claimants of the schedule land, appeared before the Land Acquisition Officer and claimed compensation for the land acquired at the rate of Rs. 40 lakhs per acre. The Land Acquisition Officer, after an enquiry, passed an award on 21.10.2000 awarding a sum of Rs.1,45,29,267-69 as the compensation which has been approved by the Government on 4.9.2001. As there was dispute regarding apportionment and to the title of the property, he referred the matter to the Civil Court under Sections 30 and 31 of the Act and deposited the compensation amount. Subsequently, possession of the schedule land has been taken on 2.11.2001. The claimants before the Land Acquisition Officer, including the petitioner, not being satisfied with the award of compensation have filed an application u/s 18 of the Act seeking reference to the Civil Court for enhancement of compensation. These facts are not in dispute.

3. The brief background of these acquisition proceedings are relevant for the proper appreciation of the facts. There was/is several public out cry and demand to keep the tanks/lakes in and around Bangalore free from all sorts of pollution and contamination of water and stop the health hazard. Public Interest Litigations were initiated in this regard. It was alleged in those public litigations that there is pollution of water and air due to the fact of not regulating the flow of open drainage water and also sewerage discharged from the residential localities, particularly of hutment areas of the Bangalore City. The entire sewerage is flowing to all the tanks within the Bangalore City and adjoining to Bangalore City causing air pollution which is disastrous to the residents of the City and due to emission of polluted air and consuming unhygienic water is causing great hardship to the residents of Bangalore City.

4. After hearing all the concerned and following the law laid down by the Supreme Court in the case of Virender Gaur and Others Vs. State of Haryana and Others, , those batch of Writ Petitions were allowed by a Division Bench of this Court on 27.7.1999 issuing certain directions. The relevant directions which are relevant for the purpose of this Case are as under:

(1) to divert the entire open drainage water through drainage channels either through underground or open drainage to be cleanly maintained to a particular place which is not a tank or public place and they have to establish the sewerage treatment plants to treat the said water before use for irrigation or gardening purposes;

(2) To see that the entire water discharged from the slum areas is diverted to flow through underground channels to a particular place where it will be cleansed by sewerage plants;

(3) To take steps not to allow any polluted water or any open air polluted water or underground drainage water to flow into the tanks in the Bangalore City and surrounding the Bangalore City and to make arrangements to divert such water to a particular place where it can be cleansed by sewerage plants and used for industrial, agricultural and gardening purposes; and

(4) to take steps to protect all the tanks and to maintain the tanks earlier to damage and see that the drainage water is not stored in the tank without being polluted by flow through underground, open air and sewerage water into it.

These directions were issued in W.P. No. 33645/98 and connected matters on 27.7.1999 by the Bench of this Court presided over by the Chief Justice.

5. In compliance with the aforesaid directions issued by this Court, the fourth respondent - B.W. S.S.B., in consultation with the Government and local authorities, proposed seven numbers of sewerage treatment plants in and around Bangalore under Cauvery Water Supply Scheme IV stage, Phase 1, which includes 7 City Municipal Council and one Town Municipal Council (Kengeri). S.T.P. at K.R. Puram is one among them. In these area, there is no under ground drainage facilities and residents of the locality are using soak pit for domestic sewerage and salvage is left out in the open drain thereby letting the same directly to the Vengayanakere (K.R. Puram lake). It is in this background, the Technical Consultants of the fourth respondent selected the schedule property for construction of S.T.P. at K.R. Puram. It is only after obtaining the necessary technical opinion as to the feasibility of the land the acquisition proceedings were initiated. As the establishment of S.T.P. was urgent, had to be completed within a short span of time and the project has to be completed on a war footing, emergency clause u/s 17(4) of the Act was invoked. Thereafter, the fourth respondent called for Global Tender for construction of 20 MLD STP at the schedule property. After processing the tenders, the work has been awarded to M/s. G.S.J. Envo Limited, New Delhi, at a cost of Rs.14,09,79,015/- Plus Japan Yen 15000.000. The tender period being 730 days starting from 1.4.2002 and the completion date is 30.3.2004 and the work is in full swing. Time is the essence of contract, if there is any delay on account of the Board, it has to reimburse the contractor heavily. The compound wall is already been erected surrounding the area in question and the civil structures are coming up. The Board has already paid mobilisation advance of Rs. 2.65 crores to the contractor and Rs. 80 lakhs of advance for the work done. The materials such as cement, steel etc., stored at the site works out at Rs. 50-60 lakhs and that contractor has already carried out the work of about 1.5 crores. Daily 150-200 workers are working to the site. The total amount spent by the fourth respondent in the project till date is about Rs. 5,36,58,546/-. The photographs have been produced by both the parties showing the stage of construction. The Karnataka State

Pollution Control Board ("K.S.P.C.B." for short) has granted its consent for establishment of the said S.T. P. on 17.10. 2000, subject to the conditions mentioned therein. Broadly, these facts are also not in dispute.

6. The grievance of the first petitioner is, though the schedule land was notified for acquisition on 28.5.1999 by invoking the emergency clause u/s 17(4) of the Act dispensing with enquiry u/s 5-A of the Act, foundation stone for the work was laid only on 27.11.2002, nearly after 2 1/2 years, and therefore, invoking emergency clause was not justified as there was no emergency. As such, the entire acquisition proceedings is vitiated and as such, the final notification and the award passed are liable to be quashed.

7. The first petitioner, in common with the remaining petitioners contend, the sewerage plant is sought to be established in a residential area contrary to the provisions of Comprehensive Development Plan ("C.D.P." for short) which is impermissible under law. Further they contend, establishment of sewerage plant in a residential area would adversely affect the quality of life of petitioners who have their residential houses next to the schedule land and also affects the quality of other residents in the locality. The setting up of Sewerage Water Cleaning Workshop/ Unit would be a health hazard and it would cause irreparable injury to the petitioners and other residents of the area. The project is a serious threat to the health of the petitioners and their family members and also to the public, on account of environmental hazardous-waste such as ignitable, corrosive, reactive and toxic and exposure of the same will kill the humans or hormones resulting in dangerous health problem and the hazardous waste contaminates ground water sources across several area and the exposure of the same leading to the dreadful and dangerous diseases like Cancer, Liver Failure, Slow Growth and development and other variety of diseases. Therefore, they are seeking a declaration that the schedule land is unsuitable for establishment of a S.T.P. Project. Further the contend, the fourth respondent has not taken any permission from Bangalore Metropolitan Region Development Authority (hereinafter referred to as "B.M. R.D.A.") to undertake the establishment of the sewerage plant and, therefore, they cannot be permitted to establish the sewerage plant.

8. The respondents, meeting those contentions, has stated that the emergency provision was invoked to acquire the land as the said project has to be completed on or before 25.3.2004 in view of the directions issued by this Court in the Public Interest Litigations referred to supra and, therefore, no malafide could be alleged as they have started the project. They contend that they have not contravened either C.D.P. or Zoning Regulations. In the C.D.P. of K.R. Puram, no specific area is earmarked in the said plan. The C.D.P. is silent as to the location of "Utilities and Services" and the same can be provided in any area including residential areas as it is not prohibited either in C.D.P. or Zonal Regulations. Such S.T.Ps. are also located in other residential areas and there is no objection from any of those residents. The said S.T.P. is one of the civic amenities and is intended to

serve the public interest. It is established to ensure proper sewerage lines without affecting the health of the residents of the locality and , therefore, they submit that there is no violation of C.D.P. in establishing the sewerage plant. In so far as allegation regarding health hazard is concerned it is contended that the domestic sewerage will be treated to the standards specified by K.S.P.C. B. so as to avoid the same to the K.R. Puram tank (Vengayanakere) directly without being treated. They contend that the domestic sewerage will not contain any hazardous toxic and poisonous solid. The ground water will not be polluted. At present, the untreated sewerage from surrounding areas are directly let into K.R. Puram tank which would have already started the ground water contamination. The sewerage from the houses through the house connections will be collected by using the closed and buried pipes and linked to the nearby manholes provided with covers. Thereafter, it would be flowed by gravity through an engineered underground drainage system up to the plant. That all the sewerage being collected and transported through the closed underground drainage system using RCC pipes ensuring no leakages. The technology selected for the plant is one of the standardized treatment process called "UP flow Anerobic Sludge Banket Reactor" which has been installed in more than 25 places in the country. The gas will be treated to the standards and disposed of safely as per the K.S.P.C.B. regulations. The gas will be collected and flared at level as directed by the K.S.P.C.B. in the consent. The plant is being constructed with RCC structures with necessary linings and materials for ensuring no leakage/seepage of the liquid into the ground. Hence, the possibility of ground water contamination does not arise. The treated sewerage will be discharged into the tank as per the referred content. The said water so let into the tank would be useful for agricultural, gardening and would be eco-friendly. Therefore, they have contended that absolutely there is no substance in any of the allegations made in the proceedings and prayed for rejection of the Writ Petitions.

9. Sri R.N. Narasimhamurthy, learned Senior Advocate appearing for the petitioners, submitted as under:

(a) that the acquisition of the schedule land by invoking emergency clause as contained u/s 17(4) of the Act is not proper as the events speak for themselves that there was absolutely no justification for invoking the emergency clause. What had to be shown in urgency to the elimination of enquiry u/s 5-A of the Act and the very fact that the final notification was issued nearly one year after the preliminary notification and the foundation stone was laid nearly after 2 1/2 years of the preliminary notification would clearly demonstrate that there was no justification for invoking the emergency clause and depriving the petitioner of an opportunity of being heard. As such, the entire acquisition proceedings is liable to be quashed on that short ground;

(b) that in the C.D.P. in the "Residential Zone" , there is no provision for setting up of the S.T.P. On the contrary, there is a specific reference in the "Light Industrial Zone" and in "Utilities and Services" thus excluding it from the

"Residential Zone" and, therefore, the establishment of the S.T. P. in a residential area is totally prohibited;

(c) that Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985 ("B.M. R.D.A. Act" for short) mandates that without prior permission of the Authority constituted under the said Act, no Authority or person shall undertake any development within the Bangalore Metropolitan Region. Therefore, when the fourth respondent has not obtained any such permission from the said Authority, the establishment of a S.T.P. should not be permitted; and

(d) that establishment of a S.T. P. in a Residential Zone results in air pollution, water pollution and, therefore, hazardous to the residents of the locality and all the petitioners having their residents in and around the schedule property are directly effected thereby and, therefore, they have a right to prevent the establishment of the S.T.P.

10. Repealing the aforesaid submissions, Sri T.R. Subbanna, learned Senior Counsel appearing for the fourth respondent, submitted as under:

(a) that the preliminary notification was issued on 28.5.1999 for which the first petitioner admittedly has filed his statement of objections and overruling the said objections, final notification came to be issued on 11.4.2000. Notice was issued to the first petitioner, which was duly served. He has preferred a claim petition claiming Rs. 40 lakhs per acre. Award has been passed. Thereafter, application is made for reference to Civil Court for higher compensation. After all these, it is too late in the day for the first petitioner to challenge the acquisition proceedings on the ground of he not being granted an opportunity to oppose the acquisition of invoking emergency clause. There is enormous delay and laches in approaching the Court. As such, on that short ground, these Writ Petitions are liable to be rejected.

(b) that similarly, in so far as petitioners 2 to 9 are concerned, the work was commenced on 1.4.2002, compound wall has been erected all round the schedule property, the excavation of the land has been done, substantial civil construction has been put up and the construction activity is going on from 1.4.2002 and merely because the foundation laying ceremony was conducted on 27.11.2002 which was an official function, they cannot plead ignorance about these facts and even on that date though they have made a representation to the Government to stop the work, they have approached this Court only on 14.1.2003 by preferring these Writ Petitions, by which time substantial construction has progressed to the tune of Rs. 5 crores and odd. As such, their Writ Petitions are liable to be dismissed on the ground of delay and laches.

(c) that though in the Comprehensive Development Plan the "Utilities and Services" are provided, actually in the plan prepared there is no mention about the "Utilities and Services; as there is no prohibition in the C.D.P. for setting up of a S.T.P. in a residential zone which is a public utility which is meant for the benefit of the public. There cannot be any objection for setting up the plant on

that ground;

(d) that u/s 10 of the B.M.R.D.A. Act, against the order of the Authority, an appeal is provided to the Government and, therefore, Government is the final Authority. In the instant cases, Government has sanctioned the setting up of S.T.Ps and only the Governmental Agencies are involved in the same and, therefore, on the ground of not obtaining of permission under the said provision, the fourth respondent cannot be prevented from setting up of S.T.P., and

(e) that the petitioners are proceeding on the assumption that setting up of a S.T.P. would result in environmental problems on amount of environmental hazardous-waste such as ignitable, corrosive, reactive and toxic and exposure of the same will kill the humans or hormones and it contaminates ground water sources and exposure of the same would lead to the dreadful and dangerous diseases, which is wholly misconceived. The fourth respondent is not dumping any hazardous, toxic and liquid wastes, the purpose of setting up of S.T.P. is to treat the domestic sewerage from the surrounding areas and after treatment it will be discharged into the tank which would be useful for agriculture, horticulture and such other purposes and, on the contrary, it would be for the benefit of the public and, therefore, he submits, there is no substance in any of the contentions urged and, accordingly, the Writ Petitions are liable to be dismissed.

11. In view of the aforesaid facts and rival contentions, the following points arise for my consideration:

(i) Whether the acquisition proceedings are vitiated for invoking the emergency clause contained in Section 17(4) of the Act, whereby the first petitioner was deprived of an opportunity of being heard as contemplated u/s 5-A of the Act and there was no justification for invoking such emergency clause?

(ii) Whether the petitions are liable to be dismissed on the ground of delay and laches?

(iii) Whether establishment of a Sewerage Treatment Plant in a residential area is hazardous to the health of the people residing surrounding the said plant and whether it would result in air and water pollution to them?

(iv) Whether the establishment of a Sewerage Treatment Plant in a Residential Zone is contrary to the C.D.P? and

(v) Whether the establishment of a S.T.P. without the prior permission of B.M.R.D.A. is illegal?

12. Regarding Point Nos. (i) and (ii):

As these two points are interconnected, they are taken up together for consideration. The schedule land was notified for acquisition for establishment of S.T.P. by publishing a notification u/s 4(1) of the Act. As the schedule land was needed to put up the S.T.P. urgently, Section 17, which deals with powers in case

of urgency, was invoked. Consequently, as contemplated u/s 17(4) of the Act, in the said notification it was directed that the provisions of Section 5-A shall not apply. In spite of dispensing with enquiry u/s 5-A, the first petitioner filed his statement of objections to the acquisition proceedings contending that the schedule land is not useful for the purpose for which it is sought to be acquired and, secondly, contending that the schedule land is situated in the residential zone and a S.T.P. cannot be established in a residential Zone and, therefore, acquisition proceedings have to be dropped. The record discloses, though no notice of an enquiry was served on the petitioner, the Land Acquisition Officer considered his objections, overruling the same, submitted his report to the Deputy Commissioner who on consideration of the objections of the petitioner and the report, issued the declaration under Sections 6(1) of the Act on 11.4.2000. Subsequently, notices u/s 9 and 10 of the Act were issued to the first petitioner and other legal heirs on 3.6.2000. Who were all, served on 10.6.2000. Thereafter, they appeared before the Land Acquisition Officer and filed their claim statement claiming compensation at the rate of Rs. 40 lakhs per acre. In fact, they engaged an advocate who represented them in those proceedings. The Land Acquisition Officer, on consideration of their claim petitions and after holding such enquiry, has passed an award awarding a sum of Rs. 1,45,29,267.69 as compensation for the land acquired. Being not satisfied with the said compensation, petitioner and other claimants have filed an application u/s 18 of the Act requesting the Land Acquisition Officer to refer the matter to the Civil Court for determination of the Market value payable. The award came to be passed on 21.10.2000 which is approved on 4.9.2001 and the possession of the property has been taken on 2.11.2001. The Contractor to whom the work of constructing the S.T.P. was entrusted has started the work on 1.4.2002, though foundation-laying ceremony was conducted on 27.11.2002. The Writ Petitions are filed on 14.1.2003.

13. In respect of their contention, learned Counsel for petitioners drew my attention to the judgment of the Supreme Court in the case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , where the Hon"ble Supreme Court has held as under:

"40. In the case before us, the public purpose indicated is the development of an area for industrial and residential purposes. This, in itself, on the face of it, does not call for any such action, barring exceptional circumstances, as to make immediate possession, without holding even a summary enquiry u/s 5A of the Act, imperative. On the other hand, such schemes generally take sufficient period of time to enable at least summary inquiries u/s 5A of the Act to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5A of the Act."

Relying on the aforesaid judgment, it was contended, having regard to the time

consumed from the date of issuing of preliminary notification till the date of final notification, passing of the award, taking of possession and starting the work, it clearly demonstrates that there was no urgency in acquiring the land. The urgency, which is to be demonstrated, is for dispensing with enquiry u/s 5-A of the Act and not for the public purpose for which the land is acquired. In this background, the entire acquisition proceedings is vitiated, in view of the aforesaid law declared by the Supreme Court.

14. In the case of NARAYAN GOVIND GAVATE,(supra) the Supreme Court was dealing with a case of acquisition of land for development and utilization of the same for residential and industrial area. Therefore, the very nature of such schemes of development did not appear to demand such urgent action as to the elimination of summary enquiry u/s 5-A of the Act. However, in the said case, the mind of the Commissioner, as reflected from the records, was not made available to the Court to show the urgency. It is in that context, it was held, in the absence of any proof produced, the Court had no option except to uphold setting aside of the acquisition of the land.

15. However, in the case of State of U.P. Vs. Smt. Pista Devi and Others, where urgency provisions were invoked to acquire the land for housing schemes, the Supreme Court has held as under:

"In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5-A of the Act."

16. However, the Supreme Court dealing with acquisition of land for setting up of S.T.P. in the case of Jai Narain and Others Vs. Union of India and Others, has held as under:

"5. xxxxx The power u/s 4 of the Act can be exercised when it appears to the Government that the "land in any locality is needed or is likely to be needed for any public purpose." It is no doubt correct that the expression "is needed" indicates the existing need whereas the expression "is likely to be needed" refers to the future need. When the later expression is used in the notification u/s 4 of the Act it may be suggestive of the fact that there may not be emergency to acquire the land, but the question of urgency cannot be determined solely by the expressions used in the notification u/s 4 of the Act. The emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The Courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. When a notification u/s 4 of the Act uses the expression "is likely to be needed" it may be necessary, in a given case, to

examine the records or the attendant circumstances to satisfy that there was material before the Government justifying the Order u/s 17, dispensing with the provisions of Section 5-A of the Act. If the public purpose on the face of it shows that the land is needed urgently, that by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act.

10. xxxxx xxxx xxxx

"Treatment of sewage is of utmost importance for health and for supply of pure water to the citizens of Delhi. Any delay in this respect is health-hazard and cannot be tolerated."

xxxxx xxxxx xxxxx

12. xxxxxx It is of utmost importance and urgency to complete the construction of the STP's in the city of Delhi. The project is of great public importance. It is indeed of national importance. We take judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provisions of the Act were rightly invoked. Xxxx"

17. In view of the aforesaid authoritative pronouncement of the Supreme Court directly dealing with acquisition of land for setting up of S.T.P., it cannot be said that invoking of Section 17(4) is illegal on the facts of this case.

18. Therefore, it follows for invoking the emergency clause, in the first place the land should be needed for a public purpose and secondly the emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The Courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. If on the day of issue of notification invoking emergency clause, the land is needed urgently and justified, the delay in completing the acquisition proceedings would not vitiate the acquisition. That may be one of the factors, which may be taken note of when such acquisition is challenged. However, reason for delay in completing the acquisition also should be taken note of. Ultimately if the land is put to use for the purpose for which it is acquired, even the said factor pales into insignificance and would become totally irrelevant and it would not vitiate acquisition.

19. Even otherwise, the facts set out above disclose that the petitioner and his family members have virtually acquiesced with the acquisition proceedings. First petitioner did file objections raising the very same grounds which he has raised in these Writ Petitions. Objections were considered, overruled, and thereafter a final declaration came to be made. After final declaration, notices were issued under Sections 9 and 10 of the Act. The first petitioner did not move his little finger after service of the said notice to challenge the acquisition proceedings, as by that time itself merely one year had lapsed from the date of preliminary notification. But, on the contrary, he preferred a claim petition claiming a sum of Rs. 40 lakhs as compensation per acre and participated in the enquiry. After the

award is passed, being dissatisfied with the amount of compensation paid, he makes an application u/s 18 of the Act requesting the Land Acquisition Officer to make a reference to the Civil Court for award of higher compensation. Therefore, it is clear that the first petitioner reconciled to the fact that the schedule land is required for a public purpose for setting up of S.T.P. and he was only interested in getting a just compensation for the land acquired. Thereafter, possession is taken from him on 02.11.2001. There is no murmur on this account. On 1.4.2002 the Contractor starts the construction work, no voice is raised against the same. It is only when an official foundation ceremony was arranged on 27.11.2002, he along with others, appears to have made a representation to the Government, seeking stopping of the project. Even thereafter he waits for nearly two months before the present Writ Petitions are filed, by which time the entire land is enclosed by a stone compound, earth was excavated, substantial civil work had been under taken at a cost of Rs. 5 crores and odd. Therefore, this conduct of the first petitioner in acquiescing with the acquisition proceedings, coupled with the fact he stood by as a mute spectator when the construction is being proceeded with on a war footing, is estopped from challenging the acquisition on the ground of emergency clause being wrongly invoked and certainly disentitles him to the discretionary relief at the hands of this Court. Any interference by this Court at this stage would cause serious public prejudice and, therefore, challenge to the acquisition should fail on this ground alone. In this regard, learned Counsel for respondents relied on the judgment of the Supreme Court in the case of Hari Singh and Others Vs. State of U.P. and Others, , where it has been held that a Writ Petition filed in July 1982 questioning the notification issued in January 1980 after delay of nearly 21/2 years is liable to be dismissed on the ground of laches only as it is likely to cause serious public prejudice. He also relied on another judgment of the Supreme Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, where it has been held that after the award is passed no Writ Petition can be filed challenging the acquisition notice or against any proceeding there under. Not only the length of time but the concept of approbation and reprobation would come into operation disentitling the petitioner to the reliefs sought for. The High Court though no doubt has the discretionary power under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6, still when all steps are taken in the acquisition proceedings have become final, award has been passed and possession has been taken, the Court should be loath to quash the notifications.

20. Under these circumstances, being aware of the purpose of the land acquired, having acquiesced in the acquisition, he has approached this Court with these Writ Petitions nearly after 21/2 years. Therefore, the petitions not only lacks bonafides but is also liable to be dismissed on the ground of delay and laches. The petitioners 2 to 9 though assert their private rights independent of the first petitioner, it is clear from the way things have happened, they are fighting the battle on behalf of the first petitioner. Admittedly, they are residents of the

locality where the S.T.P. is being set up. When the construction work commenced on 1.4.2002, they did not move their little finger to object to the same. They appears to have opened their eyes only on 27.11.2002, when the foundation stone was officially laid for the said work. The photographs produced by them as well as by the respondents clearly demonstrates that the land acquired has been surrounded by the compound wall, the excavation of the land has been done substantially and even civil work has been commenced and nearly more than a sum of Rs. 5 crores has been already spent. As the work is in progress on a war footing and the entire project has to be completed in 730 days, there is a considerable delay in approaching this Court by ways of these Writ Petitions. Not only it lacks bonafides, they have also acquiesced in setting up of the S.T.P., and delay and latches stares at their face. Under these circumstances, these Writ Petitions filed by these petitioners are also liable to be dismissed solely on the ground of acquiescence, delay and latches as held by the Supreme Court in the case of HARI SINGH AND OTHERS vs STATE OF U.P. AND OTHERS (supra), as any interference in the acquisition proceedings at this stage would result in serious public prejudice.

21. The next ground for challenging the acquisition is, the purpose of acquisition is to set up an S.T.P. which can only be established in a Light Industrial Zone or in Utilities and Services and the land which is sought to be acquired is situated in Residential Zone and, therefore, they contend that the acquisition is vitiated. I do not find any substance in the said contention. The C.D.P. provides regarding the use of the land. All that it prohibits is a particular land which is earmarked in the C.D.P. for a particular use cannot be used for other purposes except by obtaining the necessary change of land use. It does not deal with acquisition. The land to be acquired for a public purpose need not be earmarked in the C.D.P. for being used for such purpose, before the State decides to acquire the same. To uphold the acquisition what is to be demonstrated is the public purpose. After acquisition necessary permission for change of land use can be obtained in accordance with law. The user of the land in the C.D.P. do not put any fetters on the power of the State to acquire the land. There is no prohibition contained under the Karnataka Town and Country Planning Act, 1961, or the C.D.P. which is framed under the said Act, prohibiting acquisition of land. In fact, the Supreme Court, dealing with a similar situation in the case of S.S. Darshan Vs. State of Karnataka and others, has held as under:

"11. The last submission of learned Counsel for the appellant is that the user of the acquired land shown in the master plan being different, there cannot be a conversion of the user except in accordance with the provisions for making the change in the land use. It is not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the land Acquisition Act, 1894. This argument also had no merit."

Again the Supreme Court in the case of JAI NARAIN referred to supra has held as under:

"Whatever may be the user of the land under the Master plan and the Zonal Development Plan, the State can always acquire the same for public purpose in accordance with the law of the land."

Therefore, acquisition of agricultural land, which is shown in the C.D.P. within the Residential Zone for the purpose of setting up a S.T.P. which had to be in the Light Industrial Zone or Utilities and Services, would not vitiate the acquisition on that ground.

22. Regarding Point No. (iii):

This Court earlier had an occasion to consider the said question in the case of Capt. M.V. Subbarayappa Vs. Bharat Electronics Employees Co-operative House Building Society Ltd., where it has been held as under:

"The location of a S.T.P. will result in better use of the civic amenities and it will also remove the water pollution and prevent it for all time to come and consequently the residents of the locality will be free from water pollution and also the bad smell that is being now emitted by reason of pollution of water in the tank consequent to discharge of sewerage water from all the three extensions into it. The location of the sewerage treatment plant about 1 or 2 Kms. away from the civic amenity site in question would not in any way help the residents of the locality because pollution of water in the tank into which the sewerage water is being now discharged from all the four extensions will continue."

23. It is not in dispute that the acquired land is adjoining the Vengayanakere (K.R. Puram lake). The sewerage water was let into the said tank, as a result of which the water in the tank got polluted. It was emanating bad smell. The entire ground water in and around the tank got polluted. Which in turn affected agriculture and horticulture and also lead to health problems to the residents of the locality. But in the proposed S.T.P., instead of sewerage water being led into the tank directly, the sewerage water will be led into the S.T.P. first, there the water is purified and then the water is again led into the tank. Before deciding to establish the S.T.P. in the acquired land, the permission of the Pollution Control Board has been taken. The S.T.P. is one of the civic amenities and is intended to serve the public interest. Domestic sewerage will be treated to the standards specified by the Pollution Control Board so as to avoid the same being let to K.R. Puram tank (Vengayanakere) directly without being treated. The domestic sewerage will not contain any hazardous toxic and poisonous solid. The ground water will not be polluted. The sewerage from the houses through the house connections will be collected by using the closed and buried pipes and linked to the nearby manholes provided with covers. It would be flowed by gravity through an engineered underground drainage system up to the plant. Thus, it ensures no leakages. The technology selected for the plant in one of the standard treatment process called "Up flow Anaerobic Sudge Banket Reactor" which has been installed in more than 25 places in the country. The gas will be treated to the

standards and disposed of safely as per the regulations. The gas will be collected and flared at level as directed by the Pollution Control Board. The plant is being constructed with RCC structures with necessary linings and materials for ensuring no leakage/seepage of the liquid into the ground. Therefore, there is no possibility of ground water contamination. The treated sewerage will be discharged into the tank. The water so let would be useful for agriculture, gardening and would be eco-friendly. A sewerage treatment plant in the aforesaid circumstances has to be necessarily in a Residential Zone and adjoining the tank. Therefore, the apprehension of the petitioners that the establishment of a S.T.P. in a Residential Zone would be a health hazard to the residents, in particular to the petitioners, is misconceived and is based on imaginary apprehension unsupported by any scientific investigation. Therefore, the establishment of a S.T.P. in a Residential Zone is not hazardous to the health of the people residing surrounding the said plant and it would not result in air and water pollution.

24. Regarding point Nos. (iv) and (v):

When the Writ Petitions are liable to be dismissed on the ground of acquiescence, delay and laches, the petitioners have no right or locus standi to challenge the setting up of a S.T.P. on the ground it contravenes C.D.P. or no prior permission obtained under the B.M.R.D.A. Act. However, even on merits, there is no substance in the said challenge. In the C.D.P., in the Residential Zone, there is no provision made for setting up of S.T.P. On the contrary, in the Light Industrial Zone, there is a reference to sewerage and garbage disposal plants. Similarly, in the Utilities and Services, there is a reference to treatment plants, drainage and sanitary installations including treatment plants. Relying on these entries in the C.D.P., it was contended that S.T.P. cannot be established in the acquired land, which is shown within the Residential Zone. In support of the said contention, learned Counsel for petitioners relied on a judgment of the Division Bench of this Court in the case of Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another, where it has been held as under:

"The Development plan prepared under the Planning Act, 1961 would be for the benefit of the public. The Corporation authorities who are the trustees of the public interest, must strictly observe the norms and conditions of the Development Plan. The authorities owe a duty to rate payers to protect the interest of the public while administering the planning law. They cannot afford to ignore the social responsibilities underlining the planning law. They shall not favour an individual at the cost of the general public and to the detriment of their interest. They shall never issue licence to construct buildings contrary to the zoning Regulations. If they give licence to construct a building contrary to the permitted land use or contrary to the prevailing zoning Regulations, they should be held responsible for their lapses. Indeed they are accountable to the public when they act against the interest of the public."

(underlining by me)

He also relied on a judgment of this Court in the case of B.R. Baliga and Others Vs. Town Municipal Council, Udupi and Another, where it has been held that:

"every change of land use and every development, even if done by a municipality, should be in conformity with the ODP and CDP, as the case may be. If the development or change of land use is to be made contrary to the ODP or CDP, the planning Authority, may with the previous approval of the State Government, allow such changes in the Land use or development as provided u/s 14-A of the Act. It is therefore necessary that the first respondent should approach for necessary changes in the CDP in accordance with law. Without such a change in the land use or development, it is not permissible for the first respondent to proceed with the construction. If the Chief Architect of the State is the author of the plans, in case of any violation of the ODP or CDP or Town planning Act which need change in the land use or development, the written permission of the planning Authority has to be obtained. The approval given by the State Government is nothing but administrative sanction for incurring the expenditure which cannot be construed as approved in accordance with law, replacing the functions of the planning Authority u/s 14."

Therefore, it was contended that even though S.T.P. is set up by the B.W.S.S.B. which is the statutory authority, they have to obtain written permission for change of land use from the Planning Authority and then only they can set up S.T.P. in the Residential Zone. Having not complied with this legal requirement, further construction should not be permitted.

25. Per contra, on behalf of the respondents, it was contended, the Supreme Court in the aforesaid JAI NARAIN's case repelling a similar contention has held as under:

"13. So far as the second contention raised by Mr. Vashisht, the same is mentioned to be rejected.

Whatever may be the user of the land under the Master plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STP's is to protect the environment, control pollution and in the process maintain and develop the agricultural green."

26. This Court in the case of CAPT. M.V. SUBBARAYAPPA vs BHARAT ELECTRONICS EMPLOYEES CO-OPERATIVE HOUSE BUILDING SOCIETY LTD., (supra) dealing with somewhat similar situation, held that:

"a sewerage treatment plant intended to serve public interest falls in Clause (vi) of the definition and , therefore, held that a S.T.P. can be set up in a civic amenity site which would be necessarily in a Residential Zone."

Therefore, it was contended, setting up of a sewerage plant in the Residential Zone, does not contravene the provisions of C.D.P.

27. A literal interpretation of C.D.P. would lead to the conclusion that in the Residential Zone C.D.P. does not expressly provide for setting up of S.T.P. and it has to be either in the light Industrial Zone or in the Utilities and Services. If the respondents want to set up S.T.P. in a Residential Zone, all that they are required to do is to seek for necessary permission from the planning Authority u/s 14-A of the Karnataka Town and Country Planning Act, 1961. Having regard to the requirement of such S.T.P. in public interest and the location of the acquired land adjoining the tank, there should not be any difficulty in obtaining such change of land use. As on today, no such permission is obtained. It is not a case where public are agitated over a private individual putting up a construction contrary to C.D.P., which, if permitted, would endanger the interest of public at large. It is in that context, the observations made by the Division Bench of this Court in SHANTA's case (supra) is to be understood. The authorities owe a duty to rate payers to protect the interest of the public while administering the planning law. They cannot afford to ignore the social responsibilities underlining the planning law. They shall not favour an individual at the cost of the general public and to the detriment of their interest.

28. Therefore, if a construction is to be put up in public interest in discharge of the social responsibilities by a statutory authority for the benefit of rate payers which is not against the public interest or detriment to the public interest, merely because a formal permission is not obtained, the action of the statutory authority cannot be struck down on that ground. It does not mean that the statutory authorities are above law. They are also bound to follow the law. If due to compulsion, to obey an order passed by a Division Bench of this Court, when a project like S.T.P. is to be implemented on a war footing within a time frame, if the authorities have ignored the statutory requirement and have proceeded with the construction, as the said act of the statutory authority is not tainted with any malafide or oblique motives and on the contrary it is honest, bonafide and is in public interest, the proper course to be adopted is as in the case of B.R. BALIGA (Supra), the authorities should be permitted to make a formal application to the planning Authority and obtain necessary permission for change of land use, so that this defect is removed. Therefore, I do not find any substance in this contention.

29. Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985 categorically states notwithstanding anything contained in law for time being in force, except with the previous permission of the Authority, no authority or person shall undertake any development within the Bangalore Metropolitan Region of the types as the Authority may from time to time specify by notification published in the official Gazette. In pursuance of this provision, a notification came to be issued on 15.3.1996 specifying types of developmental works, which requires the prior permission of the Authority. Schedule-I to the said notification gives the types of developments. Clause 5 deals with sewerage treatment plants and solid waste disposals. Therefore, it was contended, the fourth respondent has not obtained the previous permission of the Authority to

establish the S.T.P. and, therefore, the same cannot be permitted. In fact, Section 20 of the B.M.R.D.A. Act deals with penalty for breach of the provisions of the Act. It provides for imprisonment and also imposition of fine. In addition to the same, the Act provides for demolishing of the structures constructed without the prior permits of the Authority. Relying on that, it was contended, the construction of S.T.P. is not to be permitted and the existing construction is directed to be pulled down.

30. In the instant case, in pursuance of the directions issued by the Division Bench of this Court in the Public Interest Litigation, the Government as well as the fourth respondent is setting up the S.T.P. in the acquired land. It is for the benefit of the public. Merely because they have not obtained the prior permission, the said construction cannot be prevented or construction put up so far could be ordered to be pulled down. Having regard to the circumstances under which the proposed work is undertaken, the urgency of the matter and the amount already invested, coupled with the fact that the first petitioner did not move his little finger immediately after such construction being taken up, the proper course to be adopted is to permit the fourth respondent to seek necessary permission from the Authority so that the requirement of Section 10 of the B.M.R.D.A. Act is also complied with.

31. The aforesaid discussions makes it clear, the first petitioner, having acquiesced in these proceedings has made an unsuccessful attempt to stop progress of S.T.P. with the found hope of getting back his property. The fact of he being served with the notice under Sections 9 and 10 of the Act, the factum of passing of the award and his application for reference to the Civil Court, are all deliberately suppressed by the first petitioner in these Writ Petition which disentitles him to any relief before this Court. It is clear from the material on record, he has set up petitioners 2 to 9 to join hands with him in presenting these petitions. Thus, he has engineered this entire litigation to stop the establishment of the S.T.P. By interim order granted by this Court, the time bound construction has been seriously hampered and, consequently, public interest has suffered. Therefore, the first petitioner is liable to pay exemplary cost. Therefore, under the circumstances stated above, I pass the following:

ORDER

The Writ Petitions are dismissed. Rule is discharged. The first petitioner is directed to pay a cost of Rs. 10,000/-.