

---

**(2017) 05 KAR CK 0023**  
**In the Karnataka High Court**  
**Case No : 25370 of 2010**

Ozone Urbana Infra Developers Private Ltd.

APPELLANT

Vs

Tahsildar and others

RESPONDENT

---

**Date of Decision :** 19-05-2017

**Acts Referred:**

<a href=3949>Companies Act, 1956</a>, <a href=3949-23>Section 23 (1)</a> -  
(1) In these articles-  
<a href=5345>Karnataka Land Revenue Act, 1964</a>, <a href=5345-39>Section  
39</a>, <a href=5345-33>Section 33</a>, <a href=5345-28>Section 28(1)</

**Citation :** (2017) 05 KAR CK 0023

**Hon'ble Judges :** B. Veerappa

**Bench :** SINGLE BENCH

**Advocate :** Kiran V. Ton, C.M. Poonacha, T.S. Mahatesh

---

## **Judgement**

1. The petitioner filed the present writ petition for a writ of certiorari to quash the notice dated 24.07.2010 made in No. LND.CR.148/2010-11 passed by the first respondent Tahsildar as per Annexure - D and for a direction to respondent to carry out a joint survey regarding the allegations of encroachments made by them and determine the said question after following the procedure as contemplated by the Karnataka Land Revenue Act, 1964.

2. It is the specific case of the petitioner that the petitioner company was duly incorporated under the Companies-Act, 1956, on 13.01.2006. The name of the said company was changed as " Ozone Urbana Land Developers Private Ltd." , by a resolution duly passed under Section 21 of the Companies-Act, 1956. The Government of India accorded approval and issued certificate to that effect under the provisions of Section 23 (1) of the Companies-Act, 1956.

3. The petitioner company "Mfar Infrastructure Developers (P) Ltd." purchased various lands that was duly converted to non-agricultural residential purposes at Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru Rural District. The ownership of the lands purchased by the petitioner vests with the petitioner

company in view of change of name of Mfar Infrastructure Developers (P) Ltd. as stated supra.

4. The thing stood thus, the first respondent/Tahsildar issued impugned notice on 24.07.2010 notifying the petitioner that it has encroached 4 acres 4 guntas of land in Sy.No.90 of Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, which belongs to the State Government and to vacate and hand over the possession of the same within 15 days from the date of receipt of notice. According to the petitioner he has received the notice on 29.07.2010. In response to the said notice the petitioner filed replies on 05.08.2010 and 09.08.2010 as per Annexures - E and F and specifically stated that notice issued by the Tahsildar and sketch lacks clarity in respect of identity of the land and alleged encroachment. The sketch annexed along with the notice does not pertain to Sy.No.90 and therefore the petitioner company requested the Tahsildar to pin point the location and identify the Government land, which they are claiming to be encroached by the petitioner, reserving liberty to the petitioner to file objections and also requested the Tahsildar from initiating any action under Section 39 of Karnataka Land Revenue Act, 1964, until the information sought for is provided.

5. It is the specific case of the petitioner that he has not encroached any Government land in Sy.No.90 as alleged in the notice. He is the owner of the land bearing Sy.No.106 and other lands measuring 4 acres 12 guntas purchased under a registered Sale Deed and same was converted from agricultural to non-agricultural residential purpose and the Deputy Commissioner accorded permission on 10.08. 2007, etc. Therefore, he is before this Court.

6. The State Government filed objections and denied the entire averments of the writ petition and specifically contended that Sy.No.90 measures 4 acres 4 guntas belongs to the State Government. The petitioner has encroached the said land. After coming to know the same, the Tahsildar as Magistrate, has issued notice, called upon the explanation and also contended that the very writ petition filed by the petitioner is not maintainable against show-cause notice and further contended that as could be seen from the sketch produced at Annexure - D1 clearly depicts that there is an encroachment of 4 acres 4 guntas in Sy.No.90 with reference to extent marked in the said sketch is true and admitted facts. The Sy.No.90 originally measures 113 acres and the land was granted to various persons and State Government retained 4 acres 4 guntas, which has been encroached by the petitioner. Therefore, sought for dismissal of the writ petition.

7. The petitioner by filing rejoinder to the statement of objections filed by the first respondent/ Tahsildar on 25.03.2017 specifically contended that the notice issued by the Tahsildar without conducting any enquiry, without providing an opportunity to the petitioner being heard as contemplated under Section 67(2) read with Section 33 of the Karnataka Land Revenue Act, 1964, thereby violating the principles of natural justice and specifically contended that the very Tahsildar who issued show-cause notice has conducted survey of Sy.No.90 of

Kannamangala Village, Kasaba Hobli, Devanahalli taluk, in pursuance of the directions issued by the Deputy Commissioner on 08.10.2010. The Tahsildar after conducting survey has submitted a report on 15.03.2011 and specifically stated that the persons who encroached the land in Sy.No.90 at Sl. No.(iii), which clearly depicts that the petitioner company has encroached 21 guntas and the same was acquired by the KIADB by issuing notifications. Along with the rejoinder the petitioner also produced the preliminary notification under Section 28(1) and final notification 28(4) of KIADB Act. It is also not disputed that original Sy.No.90 specifically given new number as 154, the same is clearly depicted in preliminary notification dated 22.10.2009 at Sl. No.15 that 21 guntas are acquired by the KIADB, the same was also followed by the final notification issued on 13.05.2010. At Sl. No.15 under "Khathedaarara Hesaru and Anubhavadharara Hesaru-column names shown is as "Sarkari Gomala" acquisition of land" 21 guntas. The said material fact that acquiring 21 guntas of unauthorized possession of petitioner is not disputed by the State Government. Hence, the petitioner filed the writ petition for relief sought for.

8. I have heard the learned counsel for the parties to the lis.

9. Sri. Kiran V. Ron, learned counsel for the petitioner reiterating the ground urged in the writ petition has contended that the show-cause notice issued by the first respondent Tahsildar on 24.07.2010 without following the procedure as contemplated under the provisions of Section 67(2) read with 33 of Karnataka Land Revenue Act, and the same is liable to be quashed. He further contended that the very Tahsildar, who issued the Notice as per Annexure - D, has conducted the Mahazar on 15.03.2011 in pursuance of directions issued by the Deputy Commissioner and found that encroachment of the land in Sy.No.154 original Sy.No.90 measures 21 guntas was in unauthorized possession of the petitioner has been acquired by the KIADB in the year 2009 and followed by final notification in the year 2010. The Tahsildar has not passed any orders till today, in spite of the objections filed by the petitioner on 05.08.2010 and 09.08.2010, because of the negligence on the part of the Tahsildar, unnecessarily petitioner is driven before this Court. The material on record clearly depicts that the very report submitted by the Tahsildar clearly indicates that though 21 guntas was in unauthorized possession of the petitioner, has been acquired by KIADB, the same is not disputed by the State Government in the objections filed before this Court on 16.03.2016. Therefore, it clearly indicates that there is a dereliction of duty on the part of first respondent/Tahsildar, who issued notice. Therefore, he sought to allow the said writ petition.

10. Per contra, Sri. T. S. Mahantesh, learned AGA sought to justify impugned notice and contended that though the Tahsildar issued notice on 24.07.2010 and subsequently very Tahsildar conducted a mahazar of S.No.90 (New No. 154) and found that petitioner was in unauthorized occupation of 21 guntas, he is unable to justify the action of the Tahsildar that the very land acquired by KIADB in the year 2009 itself, even before issuing notice to the petitioner, the same has not

been verified by the Tahsildar before issuing notice. Therefore, he sought to dismiss the writ petition.

11. Having heard the learned counsel for the parties, the only point that arises for consideration is, "Whether the Tahsildar is justified in issuing notice on 24.07.2010 to the petitioner in the facts and circumstances of the case"

12. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the material on record carefully.

13. It is the specific case of the first respondent/State Government that the petitioner encroached 4 acres 4 guntas in S.No.90 of Kannamangala Village, which belongs to State Government. Therefore, Tahsildar issued show-cause notice as per Annexure - D. Petitioner by reply dated 05.08.2010 and 09.08.2010 specifically stated that he has not encroached any land as alleged and there is no proper identification of the encroachment alleged by the respondent and specifically contended that before issuing notice, the Tahsildar has not followed the procedure as contemplated under Section 67 (2) read with Section 33 of Karnataka Land Revenue Act. Though the objections filed is long back in the year 2010, even after lapse of 7 years, the respondent/ Tahsildar has not passed any orders till today. It is also not in dispute that the Deputy Commissioner by an order dated 08.10.2010 directed the first respondent/Tahsildar to carry out a fresh survey in S.No.90 (New No. 154) of Kannamangala Village and submit a report.

14. In pursuance of the directions issued by the Deputy Commissioner, the first respondent/Tahsildar issued notice to all the persons including the petitioner and submitted report on 15.03.2011. In respect of encroachment made by the persons at Sl. No.(iii), 21 guntas in S.No.90 of Kannamangala Village is found to be in unauthorized possession of the petitioner. The petitioner by filing rejoinder produced notifications issued under Section 28(1) and 28(4) of Karnataka Land Revenue Act, which clearly depicts that at Sl. No.15, S.No.154 clearly indicates that under " Khathedaarara Hesaru and Anubhavadharara Hesaru-column names shown is as "Sarkari Gomala" , " acquisition of land- 21 guntas. The same is also followed by final notification dated 13.05.2010 at Sl. No.15. The said land has been acquired by KIADB for benefit of petitioner company " Ozone Urbana Land Developers Private Ltd." The said notification issued by the KIADB on 22.10.2009 and 13.05.2010 is not disputed by the respondent nor filed any objections to the rejoinder.

15. Sri. Narayanaswamy, the present jurisdictional Tahsildar, is present before this Court, after verifying the rejoinder he has not disputed the fact that original S. No.90 (New No. 154) 21 guntas was in unauthorized possession of the petitioner, has been acquired by the KIADB in the years 2009 and 2010 as per notification issued produced along with rejoinder which clearly depicts that the petitioner has not encroached 4 acres 4 guntas as alleged in the notice dated 24.07.2010. The said fact is not disputed by the respondent and the present

Tahsildar, who is present before this Court. In view of the same, the notice issued by the first respondent/Tahsildar is without following the procedure as contemplated under the provisions of Section 67(2) and Section 33 of Karnataka Land Revenue Act and without any basis the same cannot be sustained.

16. The material on record clearly depicts that before issuing the impugned notice by Tahsildar on 24.07.2010, he has not verified the records, even though as per his report dated 15.03.2011, 21 guntas found to be in unauthorized possession of petitioner. Report clearly depicts that the notifications have already issued to acquire the same by KIADB. The same is evident by the notifications issued under Section 28(1) and 28(4) of Karnataka Land Revenue Act produced along with rejoinder dated 22.10.2009. Therefore, the impugned notice issued by the first respondent/Tahsildar to the petitioner is without any basis and same is liable to be quashed. For the reasons stated above, the point raised in the writ petition has to be answered in the negative, holding that the Tahsildar is not justified in issuing the impugned notice to the petitioner.

17. For the reasons stated above, the writ petition is allowed. The impugned notice dated 24.07.2010 issued by the Tahsildar is quashed. Learned A.G.A. is permitted to file memo of appearance within two weeks.

Petition allowed.