

(2007) 04 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 2173 of 2006

R. Raghu

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 21 Rule 94, 151, 47
Karnataka Land Revenue Rules, 1966 — Rule 47, 48

Citation : (2007) 5 KarLJ 458

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Sainath and Sudindranath, for the Appellant; Anjan Begane, Power of Attorney Holder, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—Tills writ petition is filed to quash Annexure-G notice bearing No. TQMPR(K) 332/2005-06 and all oilier actions and proceedings contemplated thereunder.

2. The case of the revision petitioner is that he purchased petition schedule property in a court, auction on 19.4.2003 in respect of the agriculture land bearing survey No. 67 situated at Agara Hobli, Kengeri Hobli, Bangalore south taluk, to the extent of a) 0.36 guntas, b) 1 acre 24 guntas and c) 3 acres, in all 5 acres 20 guntas. To that effect sale certificate has been issued under Order 21 Rule 94 of CPC by the Prl.Dist. & Sessions Judge, Bangalore Rural District, in Ex.Case No. 33/2000 (Misc. No. 52/96). The boundaries mentioned in the sale certificate is East by lands of Smt. Anusuya N. Singh and Rajam, West by: BWSSB Road and North by: lands of Smt. Asha, South by lands of Smt. Bhanumathi.

3. The further case of the writ petitioner is that the 5th respondent with the influence and support of the third respondent has caused illegal notice Annexure-G through the fourth respondent to carry out the survey of survey No. 67 which

is the land purchased by the petitioner in court, auction. The notice issued under Rule 49 of the Karnataka Land Revenue Rules and Rules 47 and 48 to survey the entire village for the purpose of introduction of record of rights in respect of the entire village after preparation of the preliminary records in respect of the entire village. The fourth respondent at the instigation of the third respondent is attempting to illegally make survey of the schedule property in order to illegally alter the boundaries shown in the sale certificate. If they succeed in their attempt the petitioner will be put to irreparable loss and injury. Hence this petition.

4. After service of notice the 5th respondent filed objections to the main petition as well as the interlocutory applications contending that the writ petition filed is wholly misconceived and not maintainable in law and facts. The notice at Annexure "G" issued for the purpose of carrying out the survey No. 67 purchased by Veda Vignana Mahavidya Peetha in the court auction therefore the petitioner cannot challenge the said order. It is open to the petitioner to file objections before the authorities and without even filing objection he has approached this Court which is not maintainable. Moreover the petitioner is not an auction purchaser to file the above writ petition. Therefore, he has no locus standi to file this writ petition. Hence, the writ petition is liable to be dismissed on this ground at the threshold itself. Notices were issued under the provisions of the Karnataka Land Revenue Act by a surveyor. When there is a remedy under said Act the petitioner has no locus standi to file such a writ petition under Articles 226 and 227 by invoking extra ordinary jurisdiction. On this count the writ petition, is liable to be dismissed. The survey is intended to earmark the boundaries of the land survey No. 67 which is on contiguous block along with various other survey numbers owned by 5th respondent, therefore, such action cannot be stayed at the instance of the petitioner and the writ petition is not maintainable and the petitioner has suppressed the true facts.

5. It is further contended by the respondent No. 5 that he is the owner of the land bearing No. 67 i.e., schedule property and he is entitled to be in possession and enjoyment of the same and he has not parted with possession in favour of any individual including the petitioner. He formed a company along with two others for the purpose of carrying on business. He stood as a guarantor for the loan availed by the company in which he was the director, therefore, KSFC without following the procedures contemplated u/s 31 of the State Finance Corporation Act. He is residing outside Bangalore city i.e., in USA and he was not aware of either filing of Misc. 52/96 or any other proceedings taken by the KSFC and he has no knowledge about the passing of the final order in Misc. 52/96 by the District Judge. So also the execution case No. 33/00 based on the orders passed in the miscellaneous 52/96. When the notice was served on him in the Execution case, he came to know of the orders passed by the trial court, he instructed the advocate to enter appearance and file objection opposing the execution case orders passed against him. The trial court without following the procedures prescribed under Order XXI CPC and Karnataka Civil Rules of Practice

sale was ordered. The petitioner's being a trustee was participated in the auction held on 16.4.2003 which is not an agriculturist and not entitled to purchase the land which is the subject matter of the writ petition. The court found that the offer made by the trust of the petitioner was very low and in spite of that it has accepted the sale on 19.4.2003. Within 15 days of acceptance of the sale, writ petitioner did not make any payment of the entire amount therefore, the sale itself has become void on various counts and the same has been challenged by the KSFC and which is pending. The 5th respondent has also filed an application under Order XXI Rule 90 CPC for setting aside the sale on various counts. But his application came to be rejected by the trial court by an order dated 16.1.2006, therefore he challenged the rejection of his application in W.P. 1723/06 (GM-CPC) before this Court. This Court granted an interim order dated 10.2.2006 as per Annexure-R1. This writ petitioner on the guise of the sale certificate was not only making claim in respect of land survey No. 67 was also making claim in respect of entire extent of the land belonging to the respondent as if he has purchased the entire land measuring 19 acres 25 guntas. The writ petitioner and his henchmen, by using the order passed on I.A.7 on 16.1.2006, trying to encroach the entire land belonging to the 5th respondent. To that effect he has filed a complaint Annexure-R2. This fact has been informed to the petitioner that no possession has been given by the Court and that he has not made any application seeking possession from the court, therefore he cannot make a claim over it. Therefore, the 5th respondent requested the Deputy Commissioner to identify the land survey No. 67 and the entire extent of the land as survey numbers are of one compact, block wherein he was in possession of the property which includes the land survey No. 67, 70, 71 and 179. Therefore, to grab the entire land survey No. 67 he has filed this writ petition. Since, the petitioner is not an agriculturist qualifying the qualification u/s 79A and 79B of the Karnataka Land Reforms Act. In view of the fact that, the writ petition filed by the petitioner is pending the same cannot be stayed by this Court. There is no handing over of possession of the land said to have been purchased by the petitioner, in court auction. The petitioner is yet to take possession by making application under Order XXI Rule 94 CPC. The petitioner who claims to the swamiji is indulging in illegal act of claiming to be taking possession of the property when the courts are already there for implementing the orders.

6. It is farther contended by the respondent No. 5 in his statement of objection, that a false statement has been made by the petitioner that this respondent has put up a compound abutting the BWSSB road. The trial court passed an order on I.A.7 restraining him from taking possession of the farm house which is located in survey No. 71. Without participating in the survey proceedings this writ petition came to be filed by the petitioner to grab the entire property situated in survey No. 67. The petitioner has not right to claim over the survey No. 67. Therefore, prays for dismissal of the writ petition.

7. When the matter was reserved for order the petitioner herein filed I.A.II/06 u/s 151 CPC read with Rule 21 of the writ proceedings Rules bringing to the notice

of the court that the alleged survey sketch attached to the gift deed is a forged document.

8. The third respondent filed objection to I.A.2/06 filed by the petitioner opposing the same on various grounds.

9. Heard the arguments of the learned Counsel for the writ petitioner and the respondents.

10. It is argued by Sri Sainath, learned Counsel for the petitioner that the petitioner has purchased in all 5 acres 20 guntas in a court auction in Ex.Case No. 33/2000 (Misc.Case No. 52/96) and the petitioner being the highest bidder. The respondent No. 5 being a judgment debtor No. 1 has filed I.A.4 seeking for setting aside the sale of property on the ground of material irregularities and illegalities committed in publishing and conducting the said sale which has been rightly dismissed the I.A. by the Prl.Dist. Judge by order dated 16.4.2006, therefore, after losing the battle before the civil court the respondent No. 5 has come up with the theory that the petitioner has no locus standi to purchase the property in court, auction. And that the petitioner has not filed any application under Order XXI Rule 95 CPC, the learned Dist. Judge while dismissing I.A.4 and 8 filed by the respondent No. 5 are came to be dismissed, whereas I.A.7 filed by the petitioner came to be allowed. Therefore, respondent No. 5 with the collusion of the respondent No. 3 and other respondents got issued the notice through survey No. 4 to obstruct the possession and enjoyment of the land purchased by the writ petitioner. Survey No. 67 is a separate property and the KSFC who brought for sale by filing Misc.Case No. 52/96 and the learned Dist.Judge rightly considered all the materials and this Court has rightly granted interim order of stay of the operation of the notice issued by the 4th respondent of Annexure-G. That the petitioner is a trustee and he has rightly participated in the court auction and purchased the same. There is no need to carry out the survey in respect of the entire block consisting of survey No. 66, 67, 70, 79 and 179.

11. It is farther contended by the learned advocate for petitioner that if the respondents disputes the identity of the property purchased in court auction the identity of such property has to be decided by the executing court under XXI Rule 97. In this behalf the learned Counsel for the petitioner has relied on decision rendered by this Court in case of Syed Nazeer Ahmed Vs. B. Saifulla Khan and Another, He has also argued that the issuance of sale certificate to the auction purchaser by the court and the purchaser's title become complete and his right to possession unimpeachable as against the parties. In this behalf counsel for the petitioner relied on decision rendered by the High Court of Madras reported in the case of Pethaperumal Ambalam Vs. Chidambaram Chettiar through property guardian, P.E. Eapen, . He has also relied on another decision rendered by this Court reported in Manager, Vijaya Bank Vs. Regional Provident Fund Commissioner and Others, The commissioner being the Statutory authority the power to be exercised by him should be traceable to one or the other provisions of the Act, and if the court finds that particular power exercised by

him is ultra vires the Act, the court would be justified in stepping in and nullifying such actions. Therefore it is contended that the action of the fourth respondent in issuing annexure-G is null and void. Further he has also relied on another decision of Allahabad High in the case of Anand Prakash and Another Vs. Assistant Registrar, Co-operative Societies and Others, , wherein it has been held that

In speaking of an ordinary citizen we do not speak of any action being ultra vires to an ordinary citizen whatever is not expressly forbidden by the law is permitted by the law. It is only when the law has called into existence a person for a particular purpose or has recognised its existence-such as the holder of an office, a body corporate etc.- that the power is limited to the authority delegated expressly or by implication and to the object for which it was created. In the case of such a creation the ordinary law applicable to an individual is somewhat reversed. Whatever is not permitted, expressly or by implication, by the contesting instrument is prohibited, not by any express prohibition of the Legislature but by the doctrine of ultra vires.

12. Further he relied on another decision rendered by the Full Bench of High Court of Punjab in case of The Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall, wherein it has been held that

As a noun "order" is synonymous with "decision". This is the most frequent use of the word in the law. Usually, it is understood as a direction of Judge or Court entered in writing, but not falling within the narrow ambit of a "judgment" or "decree". In its general sense therefore, "order" is a mandate, precept, command or direction authoritatively given and made in writing, but not included in a "judgment" or "decree". "Order", therefore, can neither be a suggestion, request or recommendation.

In this context, "order" follows an adjudication or a determination. An "order" is passed when an issue properly before a court or an authority is determined. As it has to be a permanent record of such a determination, being open to review, appeal revocation or modification, it is formulated in writing. It is a decision made during the progress of a proceeding. It may be a final, or an interlocutory order.

13. It is further relied on by the writ petitioner in the case reported in Dhananjay Sharma Vs. State of Haryana and Others, .

Further relied on the case reported in Afzal and another Vs. State of Haryana and others, wherein it is held that

The question then is: whether he committed contempt in the proceedings of this Court? Section 2(b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to

obtain a favourable order would prejudice or interfere with the due course of judicial proceedings.

14. Whereas the learned Counsel for the respondent No. 5 Sri L.M. Chidanandayya contended that the notice at Annexure-G issued for purpose of carrying out the survey No. 65 purchased by Ved Vignan Maha Peetha in the court auction, therefore, the petitioner has no locus standi to challenge the said notice. It is open for him to file objections before the authorities and without filing such an objection before the competent authority he is not entitled to challenge the said notice in a writ petition. It is contended that the writ petition is liable to be dismissed on the ground that Ved Vignan Maha Vidya Peetha is the auction purchaser but not the petitioner R. Raghu. In case any notice has been issued by the surveyor there is an appeal provided under the Land Revenue Act. When there is an alternative remedy the petitioner is not entitled to bypass that remedy to invoke the extra ordinary jurisdiction of this Court under Articles 226 and 227 of the constitution. It is contended that the survey earmarked the boundaries in land survey No. 67, therefore, such action cannot be stayed in writ petition and it is also premature one. The fifth respondent being absolute owner of the property is entitled to be in possession and enjoyment of the property and that he never parted with the possession in favour of any individual including the petitioner. It is further contended that the fifth respondent has formed a company along with two other for purpose of carrying on business, since he became the personal guarantor for the loan raised by the fifth respondent without serving the notice the KSFC filed a petition a u/s 31 of the State Finance Corporation Act therefore passing of any order by the District Judge on the basis of the order passed by the KSFC is not maintainable. The District Judge without following the procedure under Order XXI sold the property in public auction to Ved Vignan Maha Vidya Peetha which is not an agriculturist and the purchaser being a director of the said trust has not deposited the entire amount of sale consideration within 15 days, since he has not complied with the conditions of auction sale, the confirmation of sale is void. The order passed by the District Judge rejecting his application by setting aside the sale has been challenged in W.P. 1723/06 and this Court, has granted interim order 1.2.2006. It is contended that entire extent of survey No. 67 is measuring 19 acre 20 guntas and the petitioner is stated to have been purchased in court auction to the extent of 5 acres 20 guntas. In order to grab the entire extent of survey No. 67 he has come up with this writ petition. After issuance of the sale certificate the writ petitioner has not made any attempt in making an application under Order XXI Rule 95 CPC before the civil court seeking possession of the property purchased. Unless he takes possession he cannot obstruct to survey the land. The identity of the property is in dispute. And it is further contended that the land survey Nos. 67, 70, 71, 179 are one compact blocks. Therefore, the Deputy Commissioner has got jurisdiction to order for survey of the entire block consisting of the aforesaid land survey numbers and that the revision petitioner ought to have requested the Deputy Commissioner as well as the other authorities to identify the land

bearing No. 67, without that he cannot prevent the respondent authorities to survey the aforesaid items of the lands. The revision petitioner has never put up any compound abutting the BWSSB road and the trial court has restrained the respondent No. 5 from taking possession of the farm house is located in survey No. 71. The petitioner has not purchased the farm house and the farm house is situated in survey No. 71 but not in survey No. 67. Therefore, the present writ petition filed by the petitioner is not at all maintainable and the attempt made by the petitioner to encroach upon the entire extent of land and the writ petitioner has no right to claim land survey No. 70, 71 and 179. The Deputy Commissioner has power to direct his officers, including surveyor, to conduct survey and demarcation of the lands. Therefore, it is submitted that the writ petition is liable to be dismissed. Likewise I.A.II filed by the petitioner is liable to be dismissed.

15. In support of his contention the learned Counsel relied on the following decisions:

a) Pattam Khader Khan Vs. Pattam Sardar Khan and Another, wherein the Hon"ble Apex Court held that "the Court sale is a compulsory sale, conducted by or under the orders of the Court. The title to the property sold does not vest in the purchaser immediately on the same thereof and like in the case of a private sale. The law requires that it does not become absolute until some time after the sale, a period of at least thirty days must, expire from the date of sale before the sale can become absolute. In that, the sale is susceptible of being set aside at the instance of the judgment-debtor on the ground of irregularity in publication or conduct of the sale or on defalcation as regards deposit of money etc., as envisaged in Rules 89 and 90 of Order 21. Where no such application is made, as is the case here, the court was required, as indeed it did to make an order, confirming the sale and it is upon such confirmation that the sale becomes, and became, absolute in terms of Order 21 Rule 92. "...The auction purchaser to ask delivery of possession of property purchased within that period from the date of the same becoming absolute, rather than from the date of issuance of sale certificate. On his failure to avail of such quick remedy the law relegates him to the remedy of the suit for possession in a regular way."

b). Sheodhyan Singh and Ors. v. Musammat Sanichara Kuer and Ors. AIR 1941 SC 1879 wherein the apex court held that:

...When the property was fully described but number was given wrong - The court ruled that the said case was of misdescription and as the identity of the property was well established, the contention of the appellants must fail.

c). Y. Subba Rao (Died) and Ors. v. Amizunnisa Begum and Ors. AIR 1984 (AP) 300 wherein the AP High Court held that:

Property described boundaries which can be identified-mistake in survey numbers can be ignored.

d). State of U.P. v. Mohammed Nooh AIR 1958 SC 86 wherein the apex court

held that:

It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction.

e). Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar,

Existence of alternative remedy is no bar to writ petition, where it is alleged that the tribunal acted under provision of law which was ultra vires or where it is alleged that it acted in violation of principles of natural justice.

f). P. Udayani Devi Vs. V.V. Rajeshwara Prasad Rao and Another,

[A] CPC Order 21, Rule 94- Sale certificate-Boundaries of property sold in execution mentioned in certificate-Name and number of property also given in certificate-Only conclusion possible from sale certificate is that entire property falling within the boundaries was sold.

16. In view of these decision he prays for dismissal of file writ petition.

17. The learned High Court Government. Pleader for Respondents-1 to 3 Sri. J. Chandrashekariah, contended that the petition is not at all maintainable. The fifth respondent made an application to Tahsildar, Bangalore South taluk, to get the land surveyed and to effect durasthi. Therefore, the Tahsildar who has power u/s 140(2) of the K.L.R. Act. has referred the matter to the taluka surveyor of his jurisdiction for the said purpose. Accordingly surveyor has issued notice to all the cathedras of the lands in question u/s 49 K.L.R. Act. The Land survey No. 67 at Agara village at Kengeri hobli measuring 1 acre 24 guntas is a government land and it has come to the notice of the Special Deputy Commissioner and the said land was sold in public auction pursuant to a decree passed in Misc. 52/96 by the decree holder KSFC for recovery of certain sum from the 5th respondent. In fact the fifth respondent who had purchased the said 1 acre 24 guntas of land out of survey No. 67 on 7.5.1980 from one D.M. Ramakrishan and others held to be a void. And the said sale is hit by the provisions of Section 79A and 79B of the Karnataka Land Reforms Act and the said land was ordered to be resumed to the Government free from all encumbrances. Therefore, the land in question vests with the Government. Subsequently mutation entries in the revenue records were made as Government. But by mistake the entries were not made in the RTCs. The fifth respondent who has challenged the said order of resumption before the appellate authority in Appeal No. 127/2005 after a lapse of 15 years. Therefore, the land if any purchased by the petitioner herein in court auction is void one and the fifth respondent had no right and title over the said land and consequently the auction purchaser will not get any right in respect of 1 acre 24 guntas of land of survey No. 67. It is contended that in order to identify the properties purchased by the petitioner before the court auction survey is a must. Therefore, he prays for dismissal of the writ petition. It is further contended that

the petitioner who has filed affidavit in support of I.A.II making certain allegations against third respondent are baseless. He being a responsible officer of the state and having powers under Land Revenue Act is empowered to direct his subordinate officers to make the survey and to carry out durasti. Therefore, I.A.II filed does not survey since the main writ petition is not at all maintainable.

18. Having heard the arguments of learned Counsel for both parties, now I proceed to see the point that arises for my consideration and decision is whether:

The petitioner who approached this Court under Articles 226 and 227 of Constitution to quash Annexure-G notice issued by the Taluka surveyor calling upon the petitioner sis well as other interested persons as mentioned in notice on 13.2.2006 at 11 a.m. is in accordance with law?

19. It is an undisputed fact that the respondent No. 5 being a director of the company stood as a guarantor for the loan raised from the KSFC and the KSFC who has filed Misc.52/96 before the District Judge, Bangalore Rural District, Bangalore, u/s 31 of the State Finance Corporation Act, and accordingly the District Judge passed the decree against the fifth respondent and others. Thereafter Ex.Case No. 33/00 came to be filed. The property belonged to the fifth respondent brought on for court sale i.e., in respect of land survey No. 67 measuring 36 guntas, 1 acre 24 guntas and 3 acres, all measuring 5 acres 24 guntas. In the public auction the writ petitioner has purchased in his individual name but not in the name of Ved Vignan Vidya Peetha. The petitioner has been declared as the purchaser in the public auction held on 19.4.2003 and the sale certificate dated 9.9.2005 came to be issued in the name of the petitioner. After issuance of the sale certificate, the petitioner herein who filed an application before the District Judge Bangalore Rural District on 20.10.2005 under Order XXI Rule 97 CPC with a prayer to restrain the respondents or their henchmen or servants from taking possession of a small farm house situate within the boundaries of A schedule property which has been numbered as I.A.7. Likewise the respondent No. 5 who filed applications I.A.4 under order XXI Rule 90 r/w. Section 47 and 151 CPC for setting aside the sale of property mentioned in A schedule. Whereas respondent No-3 filed I.A.VIII under Order XXI Rule 90 CPC. After hearing both parties and after considering the materials placed on record the learned District Judge dismissed I.A.4 and 8 filed by respondent No. 5 and 3 respectively but allowed I.A.VII filed by the petitioner herein who is an auction purchaser, restraining the respondents therein from obstructing the auction purchaser from taking possession of the farm house. The respondent No. 5 who has preferred an appeal before the Karnataka Appellate Tribunal, Bangalore, in Appeal No. 467/2005 against the order passed by the Asst.Commissioner Bangalore Sub-Division, in LRF (83) 398/1986-87 dated 30.4.1998 forfeiting the land bearing survey No. 67 measuring 1 acre 24 guntas, survey No. 70 measuring 1 acre 30 guntas, survey No. 71 measuring 5 acres 10 and survey No. 179 measuring 4 acres all situated at Agra village in Kengeri hobli on the ground that the 5th respondent who has purchased the aforesaid items of land under

two registered sale deed dated 17.2.79 and 7.5.1980 for consideration and the necessary mutations were effect as per M.R. No. 79-80. Therefore, appeal filed by the fifth respondent regarding forfeiture of the lands has been allowed by the KAT, therefore, the third respondent cannot contend that land survey No. 67 purchased by the petitioner in court auction vest with the Government. Subsequent challenge made by the fifth respondent regarding the forfeiture of the aforesaid items of the lands are valid since the fifth respondents or its officers have not produced any materials to show that they have challenged the same before the appropriate court. Therefore the contention of the fifth respondent does not hold water and provisions of Section 79A, 79B of the Karnataka Land Reforms of Act does not come in the way of purchase of the property by the petitioner in a court auction. As per the sale certificate issued by the competent civil court discloses that the petitioner has purchase in all 5 acre 20 guntas out of survey No. 67. In the sale certificate Annexure-A the boundaries to the total extent of the land purchased by the petitioner in court auction has been clearly mentioned at page 5 of sale certificate dated 9.9.2005 in the name of R. Raghu but not in the name of Ved Vignan Maha Vidya Peeth. The petitioner may be a trustee of the said Ved Vignan Maha Vidya Peeth (Trust) does not mean that he is not entitled to purchase the land in court auction. That he being an agricultural participated in the court auction and being an highest bidder purchased the same for a total sum of Rs. 18.50 lakhs. The attempt made by the third and fifth respondent to set aside the auction sale are rightly came to be rejected by the Prl.District Judge in its order dated 16.1.2006. After dismissal of the I.A.4 and 8 the impugned notice at Annexure-G came to be issued by the Taluka Surveyor at instance of his higher officers. When the petitioner has already taken possession of the land purchased by him in court auction situated in survey No. 67, question of making survey by the concerned authorities is to defeat the rights of the purchaser. The subsequent conduct of the fifth respondent shows that he has executed a gift deed dated 28.1.2006 in favour of Arathi Krishnan bequeathing land survey No. 70, 71/2 and 179 and registering the same on 14.2.2006. If the wife of the fifth respondent becomes the owner of the said three items of the land No. 70, 71/2 and 179 and registering the same on 14.2.2006. If the wife of the fifth respondent becomes the owner of the said three items of the land the authorities may survey only those three items of the land. When the petitioner has already taken possession of the land purchased by him in a court auction, the question of issuance of notice at Annexure-"G" calling upon him to appear on 13.2.2006 at the time of making survey is illegal and uncalled for. The third respondent has not produced the relevant documents or order passed by the competent authority or court, setting aside the order passed by the Karnataka Appellant Authority in appeal 467/2005. Therefore, the contention of the learned Counsel for the third respondent that the land vests with the government does not arise.

20. Considering the facts and circumstances of the case and the decisions referred to by the counsel for the petitioner, which aptly applicable to the facts

and circumstances of the case and therefore the writ petition is liable to be allowed and the Annexure-"G" notice issued by the Taluka surveyor is liable to be quashed.

21. Accordingly, the writ petition is allowed by quashing Annexure-"G".