

(2013) 03 KAR CK 0144

In the Karnataka High Court

Case No : Writ Petition No. 67356/2011 (LA-RES)

Rachayya and Others

APPELLANT

Vs

The Land Acquisition Officer/Assistant Commissioner and
Others

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 03 KAR CK 0144

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Judgement

Dilip B. Bhosale, J.—The petitioners in this writ petition under Articles 226 and 227 of the Constitution of India seek the following reliefs-

1) Issue a writ of mandamus to respondent No. 5 to drop acquisition proceedings of 1 acre land in eastern portion in Block No. 43 initiated vide Annexure-B u/s 4(1) of Land Acquisition Act dated 18/4/11 vide No. LAQ/CR/14/2010-11.

2) In the alternative issue writ of certiorari to quash the Annexure-B notification issued u/s 4(1) of Land Acquisition Act dated 18/4/11 vide No. LAQ/CR/14/2010-11.

The challenge to the acquisition and/or to the notification u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") is on the ground that there are other suitable lands available, which the respondents can use as burial ground for Lingayath community. Learned counsel for the petitioners also, across the bar, challenged the notification u/s 4(1) of the Act on the ground of malafides. The respondents have filed statement of objections. In paragraphs 4 to 6 they have stated thus-

4. In respect of BI No. 123 measuring 34-G is submerged with Nala. During the rainy season, it is very difficult for the cremation of dead body because of the stagnant water. Therefore, the proposed land for acquisition is very essential. Hence, to this effect the detail report has been submitted with the Government

on 16.12.2011 to issue permission U/sec. 4(1A) of the Land Acquisition Act, 1894. The copy of the report is produced as Annexure-R 4. The said information forwarded to landlord on 21.09.2011. Hence the contentions of the petitioners in this writ petition cannot be accepted. The estimation copy forwarded to the landlord is herewith produced as Annexure-R 5.

5. In Narendra village, the below mentioned existing burial ground for various communities are utilising since from the beginning:

6. It is further submitted that the proposed acquisition in respect of BI No. 123 measuring 01-Acre out of 05A-27G-14A is required for Lingayat Community. According to the Government order for 4500 population 02A-20G land required for burial ground. Existing land i.e., BI No. 4A/1p1 for burial ground is 01-Acre is utilising for Lingayat Community. In addition to this disputed land the proposed acquisition of 01-Acre is needed for burial ground.

2. Apart from the averments made in the statement of objections, this Court is informed by learned Government advocate that the proceedings have reached the stage of notices under Sections 9(1) and 9(3) of the Act. She further submits that even the procedure contemplated u/s 5A of the Act was followed and the declaration u/s 6 of the Act has also been made on 07.03.2012.

3. Keeping all that in view and considering the averments made in the statement of objections, in my opinion, this petition cannot be entertained wherein the notification u/s 4(1) of the Act only is under challenge. Insofar as malafides are concerned, that was argued across the bar. I did not find any averment alleging any malafides in the writ petition. The only allegation that I find in the petition is that though the other lands are available the respondents have deliberately proposed to acquire the lands of the petitioners. No particulars are given or any allegations are made against any individual. In my opinion the ground of malafides raised across the bar doesn't take the case further to prove the malafides against any officer. It is well settled position of law that when the concerned authority decides that a particular place would be best suited for the purpose, the Court cannot re-examine the matter and substitute its opinion, unless the proposed action is contrary to the mandate of law or tainted due to malafides. In the present case the petitioners could not point out any illegality or alleged any malafides. I find no merit in the writ petition. Writ petition is dismissed. Interim applications, if any, also stand disposed of.