

(1996) 10 KAR CK 0001

In the Karnataka High Court

Case No : W.A. No's. 2023, 2074, 2100, 2146, and 2101/94

Ramachandrappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Evidence Act, 1872 — Section 114 (e)

Land Acquisition Act, 1894 — Section 11 A, 3 (f), 3 c

Citation : (1996) ILR (Kar) 3369 : (1996) 7 KarLJ 242

Hon'ble Judges : R.P. Sethi, C.J.; S. Rajendra Babu, J

Bench : Division Bench

Advocate : T.N. Raghupathy, K.N. Subba Reddy and M.P. Eswarappa for K.G. Naik and R. Bhaskar, for the Appellant; R. Krishna Reddy, Party in Person in WA 2146/94, H. Rangavittalachar, Government Advocate for R-1-3 and C.B. Srinivasan, for M.G. Srinivas, for R-4, for the Respondent

Judgement

R.P. Sethi, CJ.

1. Claiming to be still in lawful possession and enjoying their lands, the subject matter of acquisition proceedings on the basis of notification No. LAQ(1) SR 25/86-87 the appellants filed Writ Petitions in this Court praying for quashing the aforesaid notification and declaration. They also prayed that the acquisition proceedings be declared to have lapsed on the grounds detailed in the Writ Petition. It was submitted that as the impugned notification was issued by the Special Deputy Commissioner who had not been specially appointed to perform the functions of Deputy Commissioner as contemplated u/s 3(C) of the Land Acquisition Act (hereinafter called "the Act"), the impugned notification passed by him being without jurisdiction was void-ab-initio. The Special Land Acquisition Officer was also alleged to have not been specially appointed to perform the functions of Deputy Commissioner under the Act, all proceedings conducted by him were illegal in their entirety and liable to be ignored. It was submitted that the acquisition was not for the public purpose but in fact for a private purpose of the 4th respondent-Society. The impugned notification was stated to be vague

not containing the particulars with regard to the utilisation of land in question as also the object sought to be achieved by acquiring the land in question. The substance of notification giving proper notice in the locality was alleged to have not been published within the time stipulated for filing the objections under the Act. It was further contended that notice u/s 4(2) of the Act was issued on 5.1.1988 and notice in terms of Section 6(1) of the Act was issued on 9.1.1989. It was contended that as the declaration in terms of Section 6(1) was issued after the expiry of a period of one year, the acquisition proceedings stood lapsed. The petitioners are stated to have not been provided opportunity to object u/s 5A of the Act effectively. It is alleged that as the entire cost of acquisition has been deposited by 4th respondent -Society for being paid as compensation, the action taken by the respondents in effect and in essence is for the benefit of a private person and the acquisitions are not for a public purpose. It is alleged that provisions of Chapter-VII of the Act and Company Rules had not been followed as was required. No legal enquiry in terms of Section 4 or Section 5(A) of the Act is alleged to have been conducted. The acquisition proceedings are stated to be malafide as sponsored and initiated at the instance of respondent-4 only. The Government is alleged to have not applied its mind and completely ignored the report of G.V. Krishna Rao who allegedly had highly deplored the activities of 4th respondent and recommended to the State Government for stopping the acquisition proceedings. The publication of the substance of the public notice in the Official Gazette is stated to be mandatory requirement of law which was not followed in the instant case. The entire proceedings are stated to be illegal without jurisdiction, contrary to law, facts and probabilities of the case.

2. The appellants had further submitted that the acquisition proceedings had lapsed u/s 11(A) of the Act, because according to them the award was not made within two years from the date of the declaration u/s 6 of the Act. It is submitted that the final notification dated 9.1.1989 was published in the gazette on 10.1.89 and that after the Government had approved the acquisition proceedings on 28.1.91, no award was passed thereafter as was the mandate of law.

3. Vide I.A. IV the appellants prayed for the amendment of their Writ Petition by incorporating paras 5-A to F. The amendment sought is to the effect that Sri G.K. Krishnappa who styled himself as the promoter of 4th respondent had no right, title and interest to execute the power of attorney dated 29.11.85 over the lands acquired. Sri G.V.K. Rao while conducting the statutory enquiry u/s 64 of the Karnataka Co-operative Societies Act is stated to have held that said Sri G.K. Krishnappa who was a intermediary had given the General Power of Attorney to the Society though he had nothing to do with the lands. Said G.K. Krishnappa is alleged to have been engaged by the 4th respondent-Society as their agent for entering into agreement with the individual landlords in respect of 44 acres of land. The Society with an oblique motive to allegedly defraud the landlords with the sole view of knocking-out the property by misleading the executives of the State also obtained the Power of Attorney from said Sri Krishnappa in respect of the lands totally measuring 44 acres. On the basis of the said fraudulent Power

of Attorney Sri H.S. Nagendra and M. Ramakrishna are stated to have participated in the land acquisition proceedings. The Special Land Acquisition Officer is alleged to have wrongly allowed them to participate in the acquisition proceedings. The State Government without application of mind and without considering the bonafides of the 4th respondent is alleged to have directed the Special Deputy Commissioner, Bangalore, to initiate the acquisition proceedings to acquire the land in question. The appellants further claimed to have neither given consent for passing of the consent Award nor the State Government had accepted the same and executed the agreement as contemplated under Article 299 of the Constitution of India. Sarvashree H.S. Nagendra and M. Ramakrishna are alleged to have taken a dual stand in the acquisition proceedings. It is further submitted that the agreement of sale entered into in the year 1984 had not been acted upon as Sarvashree H.S. Nagendra and M. Ramakrishna had failed to perform their part of contract in time. The Land Acquisition Officer is stated to have not paid any amount to the appellants towards the compensation amount.

4. In their objections to I.A. IV, the 4th respondent has submitted that the averments made in the application were wholly misconceived and unsustainable in law. As the application has been filed at a belated stage, the same was liable to be dismissed. It was further contended that the appellants were trying to make out the new case by levelling false and baseless allegations. There was no irregularity or illegality committed by any of the officials concerned with the acquisition proceedings. The lands in question are stated to have been acquired after following due procedure as prescribed by law. There was no truth or basis for the motives impugned against the answering respondent. The Power of Attorney referred to by the appellants had not been relied upon by any authority in the course of acquisition proceedings. The Power of Attorney executed by one Sri G.K. Krishnappa has absolutely no bearing or relevance to matter in dispute in litigation. His services were not obtained by respondent -Society either as middleman or an agent or a developer. He was not paid any amount or any money. The report submitted by Sri G.V.K. Rao does not represent the true and correct position. The said report was beyond the powers conferred upon him u/s 64 of the Karnataka Co-operative Societies Act. The allegations of securing the services of Sri Krishnappa with the ulterior motive for defrauding the landlords have vehemently been denied. The award is stated to have been passed strictly in accordance with law which had no infirmity. The State Government had approved the award passed by the Land Acquisition Officer within the time prescribed. The allegations of fraud and undue influence attributed to Sri H.S. Nagendra and M. Ramakrishna are stated to be without any substance and it is claimed that they had not acted against the interest of the land acquisition. The appellants had voluntarily participated in the acquisition proceedings. They are stated to have filed applications u/s 18 of the Act which clearly show that they did not have any grievance at any time with regard to the acquisition proceedings. They had asked for enhanced compensation only.

5. Before the learned Single Judge the following points were raised on behalf of

the appellants with prayer to quash the acquisition proceedings.

"(i) Only the Government or the Deputy Commissioner can issue a notification of acquisition u/s 4(1) of the Land Acquisition Act, 1894 and the Special Deputy Commissioner was neither empowered nor authorised to issue notification u/s 4(1).

(ii) Neither the preliminary notification nor the Final notification discloses that it is for public purpose and therefore the entire acquisition is void;

(iii) The final notification u/s 6(1) was published after the expiry of one year from the date of publication of preliminary notification and therefore, the acquisition is bad;

(iv) The Award was not made within a period of two years from the date of publication of declaration, that is, the Final Notification u/s 6(1) of the Act and therefore, the entire proceedings for acquisition had lapsed;

(v) The acquisition was for the benefit of the members of a Society known as "The Talacauvery House Building Cooperative Society Ltd., (the fourth respondent herein) and a Commission of Enquiry headed by G.V. Krishna Rao had held that the said Society has committed several irregularities and therefore the entire acquisition was tainted with malafides and therefore bad.

(vi) The acquisition being for a Society which answers the definition of "Company" under the Act", the procedure prescribed under Sections 39 to 41 of the Act, ought to have been followed and failure to do so vitiates the acquisition."

6. It was argued on behalf of the respondents that as the appellants had consented for making the award, participated in the acquisition proceedings, received compensation and filed applications seeking reference to the Court for enhancement of compensation, the Writ Petitions filed by them were liable to be dismissed. The learned Single Judge agreed with the submissions made on behalf of the respondents and held that the petitions filed by the appellants were liable to be rejected on those grounds also. He further rightly opted and decided to dispose of the Writ Petitions on merits also by adjudicating the pleas raised before him.

7. The Learned Counsel appearing for the respondents have reiterated the submissions with prayer for dismissal of Writ Petitions on the preliminary grounds without deciding the questions of law argued before us on behalf of the appellants and as considered and disposed of by the learned Single Judge vide the order impugned in these appeals. We are not impressed by this argument of the Learned Counsel for the respondents. Once the Writ Petitions had been disposed of on merits, appeals filed against the findings on merits returned by the Learned Single Judge cannot be dismissed on the technical ground of delay, laches and acquiescence. Without determining the validity of the pleas raised in this behalf, it is desirable that the appeals are disposed of on merits in the light of the pleadings, arguments and position of law with respect to the controversy

involved.

8. The Learned Counsel appearing for the appellants vehemently argued that as no award has been made in terms of Section 11 read with Section 11A of the Act the whole of the acquisition proceedings are liable to be quashed. Elaborating his argument, the Learned Counsel submitted that the valid award contemplated under the Act is one which is made within a period of 2 years from the date of the publication of the declaration and if no such award is made within that period, the entire proceedings for the acquisition of the land are to lapse. It is submitted that as final notification/ declaration u/s 6(1) of the Act was issued on 9.1.89 published in the Karnataka Gazette on 10.1.89 the Collector was under a legal obligation to make the award within a period of 2 years. It is contended that as no formal award was made within the time specified, the provisions of Section 11A were attracted rendering the whole of the acquisition proceedings to be illegal and having lapsed.

9. In order to appreciate the submission of the Learned Counsel it would be appropriate to have a glance into various provisions of the Act and the admitted facts of this case. Part-II of the Act deals with acquisition. Section 4 of the Act provides that whenever it appears to the appropriate Government that any land is needed or likely to be needed for any public purpose a notification to that effect shall be published in the official gazette in the manner prescribed. Any person interested in land which is notified u/s 4(1), as being needed or likely to be needed for public purpose or for a Company has a right to file objections within 30 days from the date of the publication of the notification u/s 5A of the Act. Every objection is required to be made to the Collector in writing who in turn is obliged to give the objector an opportunity of being heard in person or by any person authorised by him in that behalf or by a pleader, and shall after hearing such objections and after making such further inquiry, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4(1) or may make different reports in respect of different parcels of land to the appropriate Government, containing his recommendation on the objections, together with the record of the proceedings held by him for the decision of the Government. The decision of the appropriate Government on the objections has to be deemed final. When the Government is satisfied, after considering the report, if any, made u/s 5A Sub-section 2, that any particular land is needed for a public purpose or for a Company it is required to issue a declaration to that effect in the manner prescribed u/s 6 of the Act. No declaration in respect of the land covered by a notification u/s 4(1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or published after the commencement of Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification. Every declaration is required to be published in the official gazette and in two daily news papers circulating in the locality in which the land

is situate of which atleast one shall be in the regional language. The Collector is however required to cause public notice of the substance of such declaration to be given at convenient place in the said locality. Such declaration is acknowledged to be the conclusive evidence of the fact that the land is needed for the public purpose or for the Company as the case may be; after making such declaration the appropriate Government may acquire the land in the manner prescribed under the Act. Whenever any land is so declared to be needed for a public purpose or for a Company, the appropriate Government or some officer authorised by such Government shall direct the Collector to make order of acquisition of land as is prescribed u/s 7 of the Act. u/s 9 the Collector is obliged to cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intended to take possession of the land and that claims to compensation for all interested in such land be made to him. The Collector further has the power to require and force the making of statements as to the names and interests in terms of Section 10 of the Act. Enquiry and Award is to be made by the Collector u/s 11 which provides that on the day so fixed or any other day to which the enquiry has been adjourned, the Collector shall enquire into the objections if any filed by the interested persons with respect to the measurement made u/s 8 and into the value of the land at the date of the publication of the notification u/s 4(1), and into the respective interests of the persons claiming compensation and make an award under his hand of the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of such compensation among the persons which in his opinion or belief are deemed to be interested in the land. Provided that no award shall be made by the Collector under the said section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in that behalf. However, the Collector has the power to make award without such approval if he is specially authorised in that behalf by the appropriate Government. Section 11A of the Act mandates the Collector to make award u/s 11 within a period of 2 years from the date of the publication of the declaration and if no award is made within that period the entire proceedings of acquisition of the land are to lapse. In computing the period of 2 years, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by order of the Court, shall be excluded.

10. The Learned Counsel for the appellants had vehemently argued that the Learned Single Judge was not justified in holding that the award was made within a period of two years from the date of publication of declaration u/s 6 of the Act and that the acquisition proceedings had not lapsed in terms of Section 11A of the Act. While dealing with the point IV the learned Single Judge held;

"In this case, as per the records, the public notice of the substance of the declaration u/s 6(1) was published in the locality on 6.2.1989. Even assuming that the date of Approval of the Award is taken as the date of the award, namely, 28.1.1991, it is seen that the award is within two years from the date of publication. It is therefore unnecessary to go into the question whether the date

of the award is the date of making of the award or the date of approval of the award.

Learned Counsel for the petitioner next submitted that what was declared on 16.12.1989 was draft award and after approval on 28.1.91, the Land Acquisition Officer had to pass a final award and as no such award has been passed after 28.1.91, it is as if there is no award as on date. This contention is also without any merit. Section 11 provides for an Enquiry and award. As per proviso to Sub-section (1) of Section 11, no award shall be made under Sub-section (1) without the previous approval of the appropriate Government or of such officer of the appropriate Government may authorise in that behalf. In this case, the award was passed by the Special Land Acquisition Officer on 16.12.1989 and submitted for approval. The Award is called as draft Award as it is made pending approval by the appropriate Government or the notified Authority. When the approval is granted what was till then a "draft award" becomes a final award and it is not necessary for the Special Land Acquisition Officer to make another award after approval of the Government. Further, it should also be noted that in regard to consent awards, approval becomes wholly unnecessary.

Hence the contention that no award was made within two years from the date of publication of 6(1) declaration is also without any merit."

11. In order to properly appreciate the submission of the Learned Counsel it is necessary to take note of the legal position regarding the meaning of the "making of the award" and the factual position of the publication and the making of the award. "To make an award" has been interpreted to mean "To sign the Award". The Supreme Court in *Kaliyappan Vs. State of Kerala and Others*, , dealing with the matter held;

"Under Section 11A of the Act the Collector is empowered to make an award before the expiry of the period of two years from the date of the publication of the declaration u/s 6 of the Act and in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 before the expiry of the period of two years from the date of its commencement. If an award is not made within the prescribed period of two years in either case, it is open to the person interested in the land to approach the Collector and tell him that the acquisition proceeding should be dropped unless the Collector is able to produce before him an award made by him within the period of two years. He may also in such a case question the continuance of the acquisition proceeding in court. Thus no prejudice will be caused to the person interested in the land. At the same time it would not be open to a person interested in the land to get rid of the acquisition of proceeding by avoiding service of notice issued by the Collector within the prescribed period. We are of the view that u/s 11A of the Act the words "the collector shall make an award within a period of two years from the date of the publication of the declaration" mean that the Collector is empowered to make an award till the expiry of the last date of the period of two years irrespective of the date on which the notice of the

award is served upon the persons interested in the land, "to make an award" in this section means "sign the award". That is the ordinary meaning to be ascribed to the words "to make an award".

12. The scheme of the Act clearly indicates that the Collector is empowered to make an award till the expiry of the last date of the period of two years from the date of publication, irrespective of the date on which the notice of the award is served upon the persons interested in the land. The period of two years prescribed u/s 11A is a time limit prescribed for making the award and not to issue the notice of making of award to interested persons.

13. Date of publication referred to in Section 11 means the publication of the award in the manner prescribed u/s 6(2) of the Act. It is mandated that every declaration be published; (1) In official gazette, (2) in 2 daily news papers circulating in the locality in which the land is situate of which at least one shall be in the regional language and (3) by causing public notice of the substance of the declaration to be given at convenient places in the locality.

14. The modes of publication contemplated under this Section are simultaneous. It may however be mentioned that simultaneous publication cannot be said to mean publication on the one and the same day. It means publication within a reasonable time after the declaration is made under Sub-section 1 of Section 6 of the Act. The publication by means of the three modes noted herein above is mandatory. Last date of such publication shall therefore be deemed to be the last date of publication of notice in any of the aforesaid 3 manners. However, if there is an unexplained or uncalled for or malafide delay in publication of the notice in any of the manners prescribed, the period of limitation may be deemed to commence from the date of admittedly earlier valid publication. The delay in malafide publication of a notice may also render the whole of acquisition liable to be quashed. The provisions of Section 6(2) are almost identical as are prescribed for the publication of the notification u/s 4(1) of the Act.

15. In the instant case the declaration in terms of Sub-section 1 of Section 6 is shown to have been issued by the Government on 9.1.89 which is admitted to have been published in the Government gazette on 10.1.89. The approval of the Government u/s 11 is dated 28.1.91. The Land Acquisition Officer is shown to have passed the preliminary award on 16.12.89 and submitted the same to the Government for approval. On receipt of the approval of the Government the Special Land Acquisition Officer is again shown to have signed the award on 29.1.91. It is submitted that even if the endorsement of signing of the award dated 29.1.91 is taken to be true, the award having admittedly been signed after two years from the date of publication of the award on 10.1.89 rendered the whole of the proceedings liable to be quashed as the award stood lapsed u/s 11A of the Act. Apparently the argument looks to be attractive but upon analysis has no footing to stand. Respondents in their reply has said:

"It is submitted by the respondents that the acquisition proceedings was initiated

and proceeded as per the rules in the procedure laid down in the land acquisition Act. The 4(1) notification was issued on 16.12.1987 which was published in the Gazette on 31.12.1987 followed by the paper publication i.e., in Lokavani on 20.7.87 and Janavani on 21.12.87 and the public notice dated 5.1.1988 was published in the locality on 14.1.1988. Thereafter objections of the petitioners were heard and enquiry u/s 5(A) of the Act was conducted giving full opportunity of hearing to the petitioners. It is submitted by the respondents that the final notification u/s 6(1) of the Act was issued on 9.1.89 which was published in the gazette on 10.1.89 followed by paper publication dated 11.1.89 and the public notice was on 6.2.89."

16. The learned Single Judge also noticed that the last date of publication in terms of Section 6(2) was 6.2.89. In view of this position the award could have been made and signed any day prior to 6.2.91. As in the instant case the award was signed latest by 29.1.91 the same cannot be termed to have been signed after the statutory period.

17. The Learned Counsel appearing for the petitioners have contended that the endorsement of the Special Land Acquisition Officer dated 29.1.91 was not genuine and that there was no proof of the despatch of the approval of the award by the Government to the Land Acquisition Officer prior to 29.1.91. This belated plea cannot be accepted at this stage. The said allegations made during the arguments are not based upon any pleadings. Official acts are presumed to have been regularly performed u/s 114 illustration (e) of the Evidence Act. The presumption is however rebuttable. The Rule of presumption in favour of Official Acts is based upon the maxim "omnia praesumuntur rite esse acta" i.e., all acts are presumed to have been rightly and regularly done. The appellants have however not placed any document on record or pointed out to any circumstance upon the basis of which it could be held that the presumption was not available to the respondents. The respondents have placed on record copy of the letter of the Principal Secretary to the Government, Revenue Department, addressed to the Government Advocate, intimating him that file No. RD 74 AQB 90 was received in the Section on 28.1.91 after approval from the then Revenue Minister. Since the acquisition proceedings were to vitiate on 29.1.91 the letter dated 28.1.91 conveying the approval of Government to the draft award was despatched with all the connected records to the office of the Special Land Acquisition Officer through a messenger on 28.1.91 itself, and that the concerned dispatch-register being more than 5 year old could not be traced. However, respondents have placed on record a photostat copy of the letter on 28.1.91 conveying the approval of the Government which is shown to have been received by the Special Collector, Land Acquisition on 28.1.91 itself. In the absence of any other record or incriminating circumstance we have come to the conclusion that the award in the instant case was made within the statutory period as provided u/s 11A of the Act.

The vague, ambiguous and fishing observations made on behalf of the appellants

cannot be made a basis to hold otherwise.

18. Alternatively it has been argued that as the award was the result of colourable exercise of power exercised by the respondents, the same is liable to be quashed. In support of this plea the Learned Counsel for the appellants has relied-upon the report of Sri G.V.K. Rao. It is submitted that Sri Rao in his report had opined that the acquisition initiated to acquire the land be stopped and inspite of his report which was based upon enquiry the respondent-State without application of mind and in colourable exercise of the powers issued the declaration u/s 6(1) of the Act. The action of the State has been termed to be mala fide. Reliance is placed on Annexure-R-1 which is stated to be the report of said Sri Rao.

19. Section 11 of the Act envisages enquiry before passing the award. No award can be made by the Collector under Sub-section 1 of Section 11 without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in that behalf. The appropriate Government however further may authorise to direct the Collector to make the award without such approval in such class of cases as the appropriate Government may specify in that behalf. Under Sub-section 2 the Collector can pass award upon his satisfaction that all the persons interested in the land who appeared before him had agreed in writing to the matters to be included in the award of the Collector in the form prescribed by Rules made by the appropriate Government. The instant case is admittedly a case falling under Sub-section 1 of Section 11 of the Act. The proviso to Sub-section 1 is mandatory and has no exception. Award made in violation of the approval has to be declared invalid. The Government is obliged to accord approval and pass appropriate orders within the period prescribed u/s 11A. The approval contemplated u/s 11 is a judicious consideration of all the materials and the report of the Collector submitted with respect to acquisition proceedings. It is not a mere ritual. The approval must indicate the application of mind of the competent authority/Government. If the approval is proved to be either not having been granted or granted in a casual manner, the Court would intervene by setting-aside the award and acquisition proceedings. The consideration contemplated by this Section is not such consideration which is required to be made applicable in deciding suit or a complaint or an appeal. It is also not required that such consideration must be reflected in the order conveying the approval. If from the record it can be ascertained that the Government or appropriate authority had taken into consideration all relevant facts before according the approval, the Court would be hesitant to interfere particularly in the exercise of its writ jurisdiction. This Court is not expected to discharge the duties of a trial or Appellate Court but is only concerned to see that the consideration for approval has been in accordance with provisions of law which was not actuated by extraneous consideration and that was not the result of non-application of mind.

20. The Court may also further interfere where it is found that the approval

granted was vague or ambiguous or there has been non-compliance of the mandatory requirements under the Act.

21. It must also be established that while granting approval, the State Government had kept in mind the public purpose sought to be achieved by acquisition of the land. Mere mentioning of the public purpose is not sufficient. The details of the alleged public purpose for which the land was being acquired is required to be noticed before granting the approval.

22. In the instant case it has been argued on behalf of the appellants that as the approval has been granted without application of mind by the Government, the same could not be made a basis for passing the award and on that count the whole of the acquisition proceedings were liable to be quashed. The submission though attractive on the face of it is without any substance when examined in the light of the pleadings of the parties. On the basis of the plea raised the learned Single Judge had formulated point No. IV and after perusal of the record came to the conclusion that the award had been made within a period of 2 years from the date of the publication of the declaration u/s 6(1) of the Act. No specific plea was raised either in the Writ Petition or in the application filed for the amendment of the petition to the effect that the acquiring proceedings were liable to be quashed on account of non-application of mind by the Government while according approval in terms of Section 11 of the Act. The appellant only alleged that as the award had been passed after the period of 2 years from the date of the approval the same was liable to be quashed. It has been noticed earlier the award was in fact passed within 2 years and not beyond 2 years. Vague allegations were made in para 13 of the petition regarding non-application of the mind by the State Government with reference to the exercise of their powers while issuing declaration u/s 6(1) of the Act. No reference was made with respect to the action of respondents being against the provisions of law on account of non-application of mind while according approval u/s 11 of the Act. In the absence of the pleadings, it is not possible to accept the contentions raised before us during the course of arguments.

23. The learned Counsel further submitted that the acquisition in the instant case was a result of colourable exercise of jurisdiction in as much as the public purpose for which the land was acquired has not been specifically dealt or considered by the Government and the Collector.

24. The expression "public purpose" has been defined u/s 3(f) of the Act to include:

- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;
- (ii) the provision of land for town or rural planning;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal

thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office.

But does not include acquisition of land for Companies;)

25. In the award in this case it has very clearly been stated that the lands sought to be acquired were, "needed for providing House sites to the Members of Talacauvery House Building Co-operative Society Ltd., Bangalore." The Special Land Acquisition Officer in the award further held, the lands now acquired in favour of the society are placed in a better position, both from the point of view of nearness to the main road as well as topography. He even inspected the lands on 22.9.89 in presence of the representatives of the Society and some of the landlords and prepared separate minutes of spot inspection, which were made part of the file pertaining to the acquisition proceedings. He noticed that the lands were dry agricultural lands and soil was reddish in nature. Some of the lands were found to be fertile wetlands. It was also noticed some of the land holders of Amruthahalli village had already given consent and in their case consent award had been passed and in case of those land holders whose consent was not obtained General Award was being passed. The reliance of the Learned Counsel for the appellant on the judgment of the Supreme Court in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, is therefore misplaced. The public purpose for which the land was acquired was specifically mentioned in the award and the notification issued for the purposes of acquiring the lands. In the facts and circumstances of the case it cannot be said that the public purpose for which the land had been acquired was either vague or ambiguous. The award

dearly mentions the purpose and object of acquisition proceedings for the benefit of members of respondent"-Society. All the legal formalities are proved to have been complied with in the instant case. It is not denied that the land has been acquired for the public purpose of providing residential accommodation to the members of respondent-Society which was incorporated with the objects:

- a) To buy or acquire lands by purchase, mortgage, lease, exchange, gift or otherwise.
- b) To make layouts in the lands acquired to suit the requirements of the society as house sites and in the shape of other public and social amenities.
- c) To construct or cause to be constructed residential and other buildings or other works of common utility to the society and its members.
- d) To hold, sell, mortgage, lease out on hire or on hire purchase system or otherwise dispose of lands houses house sites, buildings and all other properties movable or immovable as may be necessary for carrying out the objects of the society.
- e) To establish and maintain social, recreative, educational, public health or medical institutions for the benefit of the members.
- f) To raise funds required for the business of the society.
- g) To repair, alter or otherwise deal with the buildings of the society.
- h) To arrange for the manufacture and for the stocking of standardised housing materials and to arrange for their supply to the members with a view to economise the cost of constructions.
- i) To organise research work regarding the improvement of local building materials and reduce the cost of constructions.
- j) To procure building materials in bulk at the cheapest possible rates whenever possible and to supply or cause the same to be supplied to the members.
- k) To advance loans to members for purchase of sites, or houses, construction of dwelling houses, renovation and improving of existing houses and/or repair of houses or any one of these two or more purposes combined.
- I) To do all things necessary and expedient for the accomplishment of the aforesaid objects and for the comfort, convenience and benefit of the members."

26. The purpose of the Society being unambiguous the initial declaration made u/s 4 was intended and the acquisition proceedings concluded for the purpose of the society which under no circumstance can be held to be "not a public purpose". It cannot be held that the acquisition proceedings were the result of colourable exercise of jurisdiction as has been argued by the Learned Counsel for the appellants.

27. The conduct of the appellants also disentitles them to get the relief from the Court. After completion of legal formalities the notification u/s 16(2) of the Act was published in the Karnataka Gazette on 17.12.1992. The petitioners despite aware of the fact did not challenge acquisition proceedings till 18.4.94. They facilitated not only the issuance of final notification but also passing of possession -of the land to the respondents. It was very specifically stated in the objections filed on behalf of respondents that the present petitions had been filed at the instance of some developers of land on account of extraneous and irrelevant considerations. Out of 65 acres of land acquired by the notification, the petitions were filed with respect to only 10 Acres 9 Guntas of land. The possession of the land measuring 42 acres and 20 guntas had already been delivered to the respondent-society and that the present Writ Petitions were filed with respect to the land which was situated in the middle of the larger extent of the land regarding which no objection was raised by other landholders. The Bangalore Development Authority by means of its proceedings dated 16.4.94 is reported to have approved the layout plan in respect of the lands in dispute and other lands which were acquired for the purpose of respondent-society as is evident from annexure-R-1. Consequently lands are stated to have been developed by incurring substantial expenditure. Appellants are alleged to have waited till the lands were developed and filed the Writ Petitions only thereafter. One of the appellants viz., Kempamma along with one Rajanna shown as khatedars in respect of the land measuring 1 acre 32 guntas in Amruthahalli village are stated to have given their consent consequent upon which consent Award was passed in respect of the land bearing 1 acre 2 guntas and the said Rajanna is shown to have received compensation to the extent of Rs. 1,20,000/-. Sri Chinnappa son of Smt. Kempamma is proved to have filed an application for reference u/s 18 of the Act. On his application dated 22.6.91 Annexure-R-2., the reference is stated to have been made to the Civil Court. Similarly the appellant Sri Murali s/o Rajanna was also not entitled to file Writ Petition and proceed with this appeal. Petitioners in the second set of Writ Petitions Sri B.H.S. Shamanna had also filed application u/s 18 of the Act claiming enhanced compensation as is evident from his application dated 20.4.91, Annexure-R-3. The appellants in the 3rd set of Writ Petitions viz., Smt. Jayamma and Gangaramakka are also alleged to be not entitled to file the Writ Petitions on account of their acts of commissions and commissions as detailed in the objections filed on behalf of the respondents. Upon their applications the references were made u/s 18 of the Act which are stated to be still pending in the Civil Court. Smt. Doddamaniyamma who was khatedar in respect of land measuring 1 acre 27 guntas in Sy.No. 12/1, 1 acre 11 guntas in Sy.No. 11/1 and 1 acre 2 guntas in Sy.No. 11/5 of Amruthahalli village had left behind her son Sri Nanjuridappa and petitioners in the 4th set of petitions. In the course of the proceedings before the Land Acquisition Officer the said Smt. Chennamma and Chikka Akkaiamma made a statement on 19.11.92 to pay the compensation amount to their brother aforesaid Nanjundappa who is a handicapped person. Pursuant to the said statement, the Land Acquisition Officer actually paid compensation amount to the said Nanjundappa on 7.12.92. The

aforesaid petitioners also filed applications u/s 18 of the Act which was referred and are still pending in the Civil Court. After having participated in the acquisition proceedings and facilitating in the passing of the award and enjoying usufruct of the consequences of the Land acquisition proceedings, the appellants are disentitled to challenge the award at this belated stage.

28. No other point was argued before us.

29. Under the circumstances narrated herein above it is held that the acquisition proceedings sought to be quashed were in fact held and concluded in accordance with the provisions of law. There has not been violation of any provisions of the Act. The exercise of the power under the Act cannot be held to be the result of colourable exercise of jurisdiction as alleged. The appellants from their conduct were also not entitled to grant of relief as prayed for by them. The proceedings have unnecessarily been prolonged by having resort to the legal proceedings on hypertechnical grounds. There is no merit in the appeals which are dismissed but under the circumstances without any order as to costs.