

(2003) 08 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No's. 7540 and 9155-9204 of 2001 etc.

Sadashivaiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Industrial Area Development Act, 1966 — Section 28 (1)
Karnataka Land Revenue Rules, 1966 — Rule 21 (2) (B)
Land Acquisition Act, 1894 — Section 10, 11, 18, 30, 31

Citation : (2003) ILR (Kar) 5088

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : M. Shivaprakash, S.P. Kulkarni, R.G. Bhat and M.R. Rajagopal, for the Appellant; V.Y. Kumar, GA for R1-3 and 5, Ashok B. Hinchigeri, for R4 and R5, N.S. Sanjay Gowda and V. Narayana for R2, K.M. Manmohan, for R3 and R4, Goutam and Rajeswar for R4 and Mohan Ram, for R3 and R4, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—Petitioners in W.P. Nos. 7540/2001 and 9155-9204/2001 and 26275-77/2001 are all owners of lands which are notified for acquisition by the Government for establishment of an industrial area for Karnataka Industrial Area Development Board, the fourth respondent herein. Notification u/s 28(1) of the Karnataka Industrial Area development Act was issued on 15.4.1997 and final notification was issued u/s 28(4) of the Act on 16.7.1997. Thereafter, the possession of the land was taken in pursuance of a notice issued u/s 28(6) on 17.7.1997. Notices u/s 9 and 10 of the Land Acquisition Act (hereinafter for short called as "the Act") was issued after holding an enquiry for passing of an award. The compensation was mutually agreed to be paid at the rate of Rs. 6,00,000/- per acre for agricultural lands and Rs. 7,00,000/- per acre for converted land. Accordingly, compensation was paid to the petitioners. However, in so far as kharab land is concerned, the Land Acquisition Officer declined to pass any award

on the ground that the said kharab land is not assessed to land revenue, there is no provision for payment of compensation and accordingly an endorsement came to be issued as per Annexure-J dated 2.11.2000 informing the petitioners that they are not entitled to any compensation for the kharab land. Aggrieved by the said endorsement, the petitioners have preferred these Writ Petitions.

2. Respondents have filed a counter contending that as per the mutation register extracts khatha does not stand in the name of the petitioners in respect of "B" phut kharab lands and Rule 21(2)(b) of the Karnataka Land Revenue Rules states that "B" phut kharab lands refer to those lands which are reserved for public purpose. Therefore, the petitioners are not the owners of the said lands. The RTC for the year 1995-96 classifies the land in question as "B" phut kharab land and petitioners have never paid land revenue in respect of the "B" phut kharab lands. Therefore, they contend that the petitioners are not entitled to compensation for the said kharab land. It is also contended that the payment for compensation in respect of the "B" phut kharab land cannot be agitated under Article 226 of the Constitution of India as the same could be agitated only by way of resorting to the provisions of Section 18 of the Act which provides for objections to the measurement of the land. Therefore, they contend the Writ Petitions are not maintainable and are liable to be dismissed.

3. In W.P. Nos. 5998-600072002, 1842772002 and 1823172002, the petitioners land has been notified for acquisition in the similar fashion. However, the petitioners have been issued with endorsements as per Annexure-J dated 22.12.2001 in W.P.Nos. 5998-600072002, Annexure-F dated 4.12.2001 in W.P, No. 184277 2002 and Annexure-T dated 26.3.2002 in W.P. Nos. 1823172002 informing the petitioners that the grant in favour of the petitioners are not valid. As per the directions issued by the Deputy Commissioner enquiry is closed, their title cannot be gone into and therefore they are not the interested persons in the land acquisition; there is no necessity to hold any further enquiry under Sections 9 and 10 of the Act, as such the enquiry is closed.

4. In W.P. No. 18488/2002 the petitioner who claims to be the owner of land bearing Sy.No. 43 measuring 6 acres 38 guntas situated at Gangamuthanahalli, Kasaba Hobli, Devanahalli Taluk, whose land is also notified for acquisition in the aforesaid manner has been informed as per Annexure-J dated 20.10.2001 that the khatha of the property is not in his name and in column No. 11 of RTC his name is shown as a GPA holder and as the katha does not stand in his name the question of paying any compensation is not possible. Aggrieved by the aforesaid endorsement, the petitioner has also preferred the Writ Petition.

5. Learned Counsels appearing for the petitioners contend when once the petitioners lands are notified for acquisition and after final notification possession is taken it is not open to the LAO to refuse to pass an award u/s 11 of the Act on the ground the petitioners have no title to the property which is notified for acquisition and acquired. Therefore, the impugned endorsements issued by the LAO informing the petitioners that they are not the owners of the property

acquired and therefore no award could be passed in respect of the said lands is illegal, arbitrary and liable to be set aside. They further contend that the LAO is under a legal obligation to determine the amount of compensation payable for the lands acquired and if he is of the opinion that the petitioners have no title to the property then he should refer such dispute to the decision of the Court and therefore he cannot decline to pass an award at all. Therefore, they submit the impugned endorsements are liable to be set aside and appropriate direction is to be issued to the LAO directing him to refer the matter to the Civil Court for decision.

6. Per contra, the learned Counsel appearing for the Board submitted when the LAO comes to the conclusion that the petitioners are not the owners of the land which is the subject matter of acquisition he is under no obligation to determine the amount of compensation payable and therefore the impugned endorsements issued by him are legal and valid. The endorsements issued are in the nature of an award u/s 11 of the Act and if the petitioners do not intend accepting the award may by written application to the Collector request him to refer the matter for the determination of the Court u/s 18(1) of the Act in which event the Collector would refer the matter for determination to the Civil Court for decision. Instead of resorting to such a statutory remedy available to the petitioners they have rushed to this Court invoking its writ jurisdiction under Article 226 of the Constitution and therefore the Writ Petitions are not maintainable.

7. In view of the aforesaid facts and the rival contentions the points that arise for my consideration in these Writ Petitions are as under:-

(i) What does the "award" in Section 11 of the Land Acquisition Act, 1894 signify?

(ii) Whether it is open to the LAO to decide title of the property which is acquired in an enquiry u/s 11 of the Act.

(iii) Whether the LAO is under a legal obligation to pass an award u/s 11 of the Act even in cases where title to the property is in dispute?

8. Re. Point No. (i):- The word "award" has not been defined under the Act. The word "award" is also used in enactments such as Industrial Disputes Act and the Arbitration Act, in addition to the Land Acquisition Act. The award passed by a Labour Court under the Industrial Disputes Act or an award passed under the Arbitration Act are awards passed after a full fledged enquiry in which the competing parties take part and the rights of the parties are determined subject to the same being challenged in the higher Courts. The said awards are in the nature of judicial determination by competent authority deciding the valuable rights of the parties. However, the same meaning cannot be attributed to an award passed under the Act. Under the Act, u/s 11 the Collector is called upon to hold an enquiry and enquire into the objections, (if any), which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8 and into the value of the land and into the respective interests of the persons claiming the compensation and thereafter an award is made setting out

the true area of the land and the compensation payable for the said land and the apportionment of the said compensation among the persons interested in the said land. Before such an award is made previous approval of the appropriate Government is to be taken and thereafter the award is made which is final and conclusive evidence as between the Collector and the persons interested regarding the true area and value of the land and the apportionment of compensation among the persons interested. In other words after all that exercise the Collector would offer to the person interested the amount of compensation payable for the land acquired. No rights of the parties are decided in such an enquiry. In fact the Supreme Court in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, dealing with the legal character of the award made by the Collector u/s 12 of the Act has held as under:-

5.In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance...."

9. In this regard it is also useful to refer to a judgment in the case of SARAT CHANDRA GHOSE v. THE SECRETARY OF STATE FOR INDIA ILR Vol XLVI Cal, Series 861 where it has been held as the award is not defined in the Act but from Sections 11, 26, 27, 30, 31 and 32 it seems decision which does not decide in some form or the other the question of compensation, is not an award. The word award always carries with it the idea of money.

10. Again in the case of REWA SHANKAR BHAYAL v. RE. BOYCE 1965 A.L.J 1185 it has been held as under: -

"It will be seen that order dated 13.8.1948 passed by the Land Acquisition Officer did not decide the basic question of total compensation to be awarded on account of acquisition of the plot. The sole point decided on 13.9.1948 was that Smt. Boyce was not a permanent lessee, and should not, therefore, get any share in the compensation money. That is not an award as contemplated by Section 11 of the Act. The main object of Section 11 is to determine the total compensation to be awarded. In the decision dated 13.9.1948 there is no finding

as regards the total compensation to be allowed to the proprietor. So the order dated 13.9.1948 cannot be considered to be an award u/s 11 of the Act."

11. Again in the case of AIR 1932 102 (Privy Council) their Lordships have explained that an award should contain within its four corners the fixing of the value of the land with which it deals and the apportionment of that value between the various persons interested in that land. If the decision of the Land Acquisition Officer do not satisfy the aforesaid test it is not an award u/s 11 of the Land Acquisition Act.

12. Learned Counsel for the respondent relying on a judgment of the Calcutta High Court in the case of Jivandas Khimji Vs. Smt. Narbada Bai, contended that when the Collector after applying his mind and in pursuance of the duty enjoined by the section forms an opinion on the question of compensation payable in respect of the claims made for any interest and comes to a conclusion that no compensation is payable, he is doing only what the section requires him to do and it cannot be said that such a decision of the collector not awarding any amount as compensation cannot be construed as an award. In the aforesaid judgment the Land Acquisition Officer did award compensation but he declined to award compensation claimed by the owner of an adjoining land in respect of an easement over the land acquired. It is because in the Collector's opinion no such compensation should be allowed for such easement. Therefore, it is not a case of the Land Acquisition Officer not awarding any compensation in the award u/s 11, it is a case of not awarding compensation under a particular head in respect of a particular claim. In that context it cannot be said such a decision is not an award u/s 11.

13. Learned Counsel for the respondent relied on a judgment of the Gujarat High Court in the case of KRISHNAKUNJ CO-OPERATIVE HOUSING SOCIETY LIMITED AND OTHERS v. SPECIAL LAND ACQUISITION OFFICER 1989 LACC 271 and contended that there is no obligation cast on the Land Acquisition Officer to award any compensation and it is open to him to pass a nil award. In the aforesaid judgment the question for consideration was the compensation payable in respect of the damage suffered by the owner u/s 48(2) of the Act. The aforesaid Section provides that whenever the Government withdraws from such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceeding thereunder and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. Sub-section (3) of Section 48 says that the provisions of Part III of this Act shall apply so far as may be to the determination of the compensation payable under this Section. Firstly, the award to be passed u/s 48(2) is altogether different from an award to be passed u/s 11 of the Act. u/s 11 of the Act, the compensation is paid for the land acquired. u/s 48(2) of the Act, the compensation paid is not for the land but is for the damages sustained by the owner of the land for not acquiring the land. It

is for the land owner to prove by producing evidence before the authority the loss or damage sustained by him in consequence of the acquisition proceedings. It is only on proof of such damage the land owner would be entitled to compensation. If he fails to produce any evidence or on the material placed on record the LAO comes to the conclusion that the land owner has not sustained any damage because of the initiation of the acquisition proceedings the question of granting any compensation would not arise. Therefore, he would be well within his power to pass a nil award, as such the said judgment has no application to the facts of this case.

14. The learned Counsel for the respondent relied on a judgment of the Calcutta High Court in the case of Ukhra Forest and Fisheries (P) Ltd. Vs. State of West Bengal and Others, where the Land Acquisition officer declined to award any compensation for the land acquired and accordingly he awarded nil compensation on the ground that the claimants had no subsisting interest in the lands and that the land belongs to the State of West Bengal, as such no useful purpose would be served by assessing the lands. The aforesaid judgment do assist the contention of the learned Counsel for the respondent. However, as the said judgment runs counter to the judgment of the Supreme Court where the award u/s 11 of the Act has been held to be in the nature of tender or offer made by the collector on behalf of the government to the owner of the property for this acceptance, unless the LAO offers or tenders an amount as compensation to the owner of the land it cannot satisfy the requirement of Section 11 of the Act.

15. Therefore, it becomes clear the meaning to be attached to the word "award" u/s 11 of the Act and its nature and effect must be arrived at not from the mere use of the same expression but from the examination of the provisions of law relating to Collector's proceedings culminating in the award. On such examination it becomes clear that the Collector acts in the matter of enquiry and the valuation of the land only as a agent of the Government and not as a judicial officer and that consequently all though the Government is bound by its proceedings the persons interested are not concluded by its finding regarding the value of the land or the compensation to be awarded. It is only an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired. Further as is clear from Section 11 of the Act for it to be construed as an award it must satisfy the other requirements, namely that a duty is cast upon the Collector u/s 11 of the Act to make an award in regard to the matters viz., (i) the area of the land included in the award; (ii) total compensation to be awarded for that land and (iii) the apportionment of that compensation amongst all the persons interested in the land. Therefore, unless these three matters are incorporated in the award, in law it cannot be construed as an award.

16. Viewed from this angle the impugned orders passed by the LAO in the instant cases do not satisfy the requirement of Section 11. The impugned orders do not specify the area of the land included in the award and the total compensation

allowed for the said land. On the contrary it proceeds on the basis that as the petitioners have no title to the land which is acquired and which is in dispute between the parties there is no obligation cast on the Land Acquisition Officer to mention the area of the land to be included in the award and the amount of compensation payable in respect of the said land. In other words when the land sought to be acquired belongs to the Government there is no question of making any offer to the petitioners by the Land Acquisition Officer. In view of the settled legal position by the Supreme Court when the Land Acquisition Officer is not making any offer at all and when the impugned order do not mention the true area of the land sought to be acquired and the compensation which in the opinion of the Land Acquisition Officer should be allowed for the land it cannot be construed as an award passed u/s 11 of the Act. Therefore, I have no hesitation in holding that the impugned orders in these Writ Petitions are not awards passed u/s 11 of the Act.

17. Re. Point No. (ii):- By the impugned orders the Land Acquisition Officer has not only rejected the claim for compensation by the petitioners but also has declared that the petitioners have no title to the property acquired and it is the Government which is the lawful owner of the property, as such the petitioners are not entitled to any compensation. In other words in a proceedings initiated under the Land Acquisition Act, the Land Acquisition Officer has gone into the question of title of the parties and has declared that the petitioners have no title to the property acquired and the title of the property vests with the Government. Therefore, it becomes necessary to decide whether the Land Acquisition Officer under the Act has been vested with such power to declare the title of the parties to the land acquired,

Learned Counsel for the respondent relied on two judgments of the Andhra Pradesh High Court in the case of Afzal Bee Vs. The Special Deputy Collector and Others, and in the case of Govindu Venkata Reddy Vs. K. Krishna Rao and Another, where it has been held after noticing Section 11, 18, 29, 30, 31 and 32 that the LAO had the jurisdiction to go into the disputed questions of title. Therefore, it was contended that the impugned order passed by the LAO is valid and legal and the aggrieved person has a remedy by way of a reference u/s 18 of the Act, as such these Writ Petitions are not maintainable.

18. The judgment of the Supreme Court in Raja Harish Chandra Raj Singh's case makes it abundantly clear that the award to be passed by the LAO is a tender or an offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In deciding the amount of compensation payable the collector holds an enquiry and the said enquiry is confined to the valuation of the property, i.e. to ascertain the market value of the property before an offer could be made to the owner of the land. The said valuation is made by the LAO as an agent of the Government and not as a judicial officer. It is an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired. If that is the correct legal possession it cannot be said

that while making an administrative decision the Collector could decide the dispute regarding title to the property and that he has the power to decide the complicated question of title. Infact the enquiry referred to in Section 11 is confined only to enquiry into the objections which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8 and into the value of the land at the date of publication of the notification u/s 4 Sub-section (1) and into the respective interests of the persons claiming the compensation. In other words in the enquiry what the Land Acquisition Officer is expected to enquire into is the true area of the land for which he has to pay compensation and bearing in mind Sections 23 and 24 of the Act, the value of the land acquired and further if there are more than one claimant claiming compensation incidentally he has to go into the question of their respective interests in the land for apportionment of the compensation payable.

Even for the limited purpose of apportioning the compensation payable he has to enquire into the respective interests of the claims it cannot be said in such an enquiry he should go into the question of dispute regarding title of the respective claimants and more so he can go into the question of title between the claimants and the Government when the Government is not claiming any apportionment of the compensation. Having regard to the scheme of the Land Acquisition Act after the LAO decides the true area of the land and the compensation which is payable for the said land in regard to the apportionment of the compensation if several persons interested in the said compensation agree for the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment. In other words when the parties claiming compensation by agreement decides to receive the compensation in a specified manner all that the Land Acquisition Officer is expected to indicate in the award is the agreement entered into between such persons. Therefore, the question of Land Acquisition Officer deciding the title of the parties for the purpose of apportionment of the land would not arise in such circumstances. However, if the parties do not agree for the apportionment of compensation, the LAO has the jurisdiction to apportion the said compensation among all the persons known or believed to be interested in the land of whom or of whose claim he has information, whether or not they have respectively appeared before him. Having regard to the language employed in Section 11, the enquiry by the LAO is to enquire into their respective interests of the persons claiming the compensation, it presupposes that every person who is claiming compensation has title or interest to the property acquired and it is only the extent of such interest or title which is in dispute. But in such an enquiry, the Land Acquisition Officer is not called upon to decide the title of the persons claiming compensation at all. Therefore, in an enquiry to be held u/s 11, the statute does not contemplate the LAO enquiring into the existence or non-existence of title of the claimants to the property acquired or to decide in whom else the title of the property vest.

19. However, LAO passes an award apportioning the compensation awarded to

the persons who participated in the said enquiry and who has not accepted the award may by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, the persons to whom the compensation is payable or the apportionment of the compensation among the persons interested. When once such an application is filed within the time prescribed under the statute the Land Acquisition Officer has no discretion except to refer the matter to the Civil Court for adjudication. Once such a request is made within the time prescribed in law, the Land Acquisition Officer loses his jurisdiction to make payment to the persons who according to him are entitled to receive the compensation. He is legally bound to stay his hands further and refer the matter to the Civil Court for adjudication.

20. It is equally possible a person interested in the land and the compensation may not have notice of the acquisition proceedings or after the passing of the award one may acquire title to the property which is acquired. It is open to such a person to put forth a claim before the Land Acquisition Officer claiming the amount of compensation and contending that the amount of compensation awarded by him should not be paid to the persons to whom the said award sets his title. In such circumstances, it is open to the Collector to refer such dispute to the decision of the Court. There is no period prescribed in such circumstances either for making an application by the claimant to the LAO seeking a reference or for the LAO to refer the matter to the Civil Court. It is also open to the LAO not to make any reference at all. It is left to his discretion. In which event it is for the claimant to approach Civil Court for appropriate reliefs. Section 31 of the Act deals with a situation where on making of the award u/s 11 when the collector tenders payment of the compensation awarded by him to the persons interested entitled thereto according to the award and if such persons do not consent to receive it or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive compensation or as to the apportionment of it, then the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted. Therefore, this provision makes it clear the Land Acquisition Officer has the absolute power to award compensation and also to apportion the compensation awarded. But once there is a dispute regarding title to receive the compensation or as to the apportionment of it and the persons to whom compensation is awarded are not prepared to receive it then his hands are tied. He cannot make any payment to any one of them named in the award. He shall deposit the amount of compensation awarded in the Civil Court to which a reference u/s 18 would be submitted. Therefore, the entire scheme of Sections 11, 18, 30 and 31 of the Act read together makes it abundantly clear that the Land Acquisition Officer has not been vested with the power to go into the title of the claimants or go into the question of title of the property acquired. The limited jurisdiction vested in him is to enquire into the respective interests of the persons claiming the compensation so as to apportion the said compensation among all the persons known or believed to be interested in the land. Therefore, such an enquiry cannot be

equated to an enquiry to going to the question of title to the property in dispute and he is not empowered to declare the title of any of the persons. Therefore, with great respect to the views expressed by the learned Judges of the Andhra Pradesh High Court, I am of the opinion that in the scheme of the Act, the LAO is not empowered to going to the question of complicated question of title of the property sought to be acquired.

21. However, in the instant case the LAO has not come to the said conclusion after an enquiry u/s 11 of the Act. As is clear from the endorsements he states as the petitioners are not the owners of the land acquired there is no necessity to hold an enquiry at all and therefore they are closing the acquisition proceedings. Therefore, it is not a case where the LAO after enquiry u/s 11 of the Act has come to the conclusion that the claimants have no title to the property which is the subject matter of acquisition. Even before an enquiry, on the communication received by him from the Deputy Commissioner and his coming to the conclusion that the disputed land is a kharab land belonging to the Government, he has passed the impugned order. Therefore, it is a case of refusing to go into the question of title and refusing to pass an award without hearing the person aggrieved. In that view of the matter the impugned orders cannot be sustained. Accordingly, it is liable to quashed.

22. Re. Point No. (iii):- The next question for consideration is even in case where the Land Acquisition Officer comes to the conclusion that the claimants have no title to the property and if the land vest with the Government is it obligatory on his part to pass an award as contemplated u/s 11 of the Act. In this regard it is useful to refer to a judgment of the Division Bench of this Court in the case of M.S. SHESHAGIRI RAO AND ANR. v. THE SPECIAL LAND ACQUISITION AND REHABILITATION OFFICER AIR 1965 Mys. 222 where it has been held as under :-

"11. It seems to me that once a proceeding is commenced under the Land Acquisition Act every step enjoined by that Act must be taken and every relevant statutory provision contained in that Act must be obeyed. That is not a case in which the Government sought to enforce the condition of the grant even if it was enforceable. On the contrary, what was done by the Government was to keep aside that condition of the grant and to start proceedings under the Land Acquisition Act without reference to that condition which had no relevance in proceedings under the Act. Once a land is proposed to be acquired, the power exercised for such acquisition is the power available from the Act, and that power can be exercised only in the manner in which its exercise is permitted. If an acquisition proceeding was started, it was incumbent on the Acquisition Officer conducting the acquisition to make an award and by that award it was his duty to determine the compensation payable and that compensation should be determined in manner specified in Section 15 and should be paid. If the claimant is dissatisfied with the determination of the compensation he has a right to ask for a reference to the Court u/s 15 and the Court is under a duty to determine the compensation by the employment of the process specified in Section 23. At

no stage of these proceedings can any question arise whether by reason of any other independent contract between the Government and the claimant, the claimant could be refused the compensation the payment of which is directed by the Act. For the purpose of land acquisition proceedings, any such contract would have no relevance and cannot defeat the statutory right to compensation.

13. If therefore the source of power for investing the claimants of their possession of the property was the Land Acquisition Act and that law enjoins the payment of compensation for the acquisition made under its provisions, the process by which the claimants are divested of the land is not that permitted by the conditions of the grant but that provided by that law. Once the Land Acquisition Officer obtained delivery of possession of the property under the Act as he did in this case, it was after that stage not permissible for the Government even to withdraw from the acquisition, as can be seen from the provision of Section 45 of the Act. The power of the Government once there was taking of possession under the provisions of the Act, to withdraw from the acquisition and to enforce the conditions of the grant came to an end and it became incumbent on the Land Acquisition Officer to complete the acquisition according to the provisions of the Act."

Similar is the view taken by a learned Judge of the Andhra Pradesh High Court in the case of *GOLLA CHINNAIAH AND OTHERS v. DISTRICT COLLECTOR, NIZAMBAD AND OTHERS* 1995 A I HC 1431 wherein it is held as under:-

"On the premise that person is the owner of the lands where the proceedings under the Land Acquisition Act were initiated and possession was also taken over and the land vested with the Government and by that there was an accrual of right to him to have the compensation paid in lieu of deprivation of his rights from the acquired lands, the government and the authorities under the Act cannot subsequently take the stand that the lands acquired were government lands and that as such passing of the award and payment of compensation thereto were not necessary. It is very unfair on the part of the governmental authorities to take such a stand in such case where voluntarily, they initiated proceedings under the Act depriving a subject of his possession and then to say it is a government land and that the subject will not be paid compensation. If the government felt that the land belongs to it and that the person from whom the land is acquired has got no right to the same, it ought not to have initiated the proceedings under the Land Acquisition Act, rather it would have been a case under the Land Encroachment Act. But the government having perused the records and made enquiries, was of the opinion that he was the owner of the lands in question and initiated proceedings under the Land Acquisition Act obtained possession pursuant to the notification issued thereunder, Ipso facto, such an action of the governmental authorities gave the right to him to have compensation paid in terms of the Land Acquisition Act and there is no escape from the same. If it is not construed so, it would be allowing the government to deprive his rights otherwise than due course of law, thus, infracting the

constitutional guarantee embodied under Art. 300A."

23. Therefore, it is clear that before an acquisition proceedings is initiated it is necessary for the government to verify from its records whether the land which is notified for acquisition belongs to the government or the persons in whose name the revenue records stand. If the government is of the opinion that the land proposed to be notified for acquisition belongs to the government, then there is no question of government initiating any acquisition proceedings to acquire the land which belongs to it. Even if such a land is in the possession of the persons whose name is entered in the mutation register there are other legal means under which the possession could be taken from such persons. However, without resorting to such legal means if the government proceeds to acquire the land under the provisions of the Land Acquisition Act then such an acquisition proceedings could be terminated only in the manner prescribed under the Act. The mode prescribed under the Act for terminating the acquisition proceedings are firstly if a final notification is not issued within a period of one year from the date of preliminary notification as provided under proviso (ii) to Section 6 of the Act, the said acquisition lapses. Similarly if no award is passed within the stipulated period within a period of two years from the date of publication of the declaration as contemplated u/s 11A of the Act, the said acquisition lapses. Thirdly, the government shall be at liberty to withdraw from acquisition of land of which possession has not been taken u/s 48(1) of the Act. Except these modes in which an acquisition proceedings could be put to an end it is not open to the LAO to decline to proceed with the acquisition after issue of 4(1) notification and 6(1) notification under the Act on the ground that it was noticed after Section 6(1) notification that the land notified for acquisition belongs to the government and not to the claimants. No such power is conferred under the Act on the Land Acquisition Officer to terminate the acquisition proceedings on the ground that the claimants have no title to the property which is notified for acquisition. He is under a legal obligation to pass an award u/s 11 of the Act regarding the true area of the land and the compensation which in his opinion could be allowed for the land. Probably if he has information that the land notified for acquisition do not belong to the claimants who have put forth their claim before him it is open to him not to make any award within the stipulated period, so that by virtue of Section 11A the entire acquisition proceedings lapse. In which event if possession of the land notified for acquisition is taken the same has to be surrendered back, and if possession is not taken, they have no right to take possession. He need not in the award apportion the amount awarded as compensation to the claimants. It is open to him to apportion the said amount in favour of the government. Once the amount of compensation is not apportioned to the claimants, the question of the claimants accepting the said award would not arise in which event definitely they would make an application u/s 18(1) of the Act setting out their objections to the award and seek a reference to the Civil Court. Section 31 of the Act also makes it clear that if there be any dispute as to the title to receive the compensation, the Collector shall deposit the amount of

compensation in the Court to which a reference u/s 18 is submitted. Thus, he can protect the interests of the State to whom the said property belongs. It is possible that in the revenue records entries may be made in the name of private persons in respect of the government lands. It is not uncommon. It is also settled law that mere entry of persons name in the revenue records would not confer any title of the land to such person. Before initiating acquisition proceedings especially when large extent of land is notified for acquisition, the authorities would go by the entries in the mutation register and the RTC. At that stage it may not be possible for them to go into a detailed enquiry regarding title of the property. However, merely because in the acquisition notifications issued, the names of the claimants is shown either as khathedars or as anubhavaders that does not mean the land belongs to those persons and they are entitled to the amount of compensation to be awarded by the Land Acquisition Officer. In fact before passing an award the Collector is obliged to issue a notice u/s 9 of the Act calling upon the claimants to put forth their claims for compensation. The claimants are expected to state the nature of the respective interests in the land and the amount and particulars of the land for such interest and other particulars. May be during these proceedings the LAO may notice that the claimants have no title to the property which is notified for acquisition. The government may not put forth any claim even at that stage though it is open to them to put forth their claim and object to the payment of compensation to the claimants who have put forth the claim on the ground that the claimants names have been wrongly shown in the revenue records and consequently notification shows their name. In fact the language employed in Sub-clause (iii) of Sub-section (1) of Section 11 makes it clear in the enquiry to be conducted by the collector he may come across not only the claims of the persons before him he may also come across all the persons known or believed to be interested in the land of whom or of whose claim he has information, whether or not they have respectively appeared before him. He is bound to take note of such claims and apportion the compensation payable thereafter. It is in that context if it is brought to his notice by the government that the notified lands belong to the government and not to the claimants it is open to him not to apportion the payment of compensation awarded in favour of the claimants and to apportion the compensation amount in favour of the government. But, the question of apportionment would arise only after awarding the compensation amount. Land Acquisition Officer cannot decline to award compensation on the ground that the claimant has no title to the property claimed. In that view of the matter having regard to the scheme of the Act even in cases where the Land Acquisition Officer comes to the conclusion that the claimants have no title to the property acquired he is bound to pass an award regarding the true area of the land acquired and the compensation which in his opinion should be allowed for the land and then only go into the question of apportionment of the compensation and if he finds that the claimants have no title to the land it is open to him not to apportion the compensation amount but apportion the said compensation in favour of the government and then on an application filed u/s 18(1) of the Act to refer the

disputes to the Civil Court. By adopting such procedure no injustice or hardship is caused to the government. On the other hand if he declines to award any compensation at all on the ground that the claimants have no title and the land belongs to the government and even if such order is to be construed as an award and the claimants were to seek a reference to Civil Court for adjudication and in such adjudication the Civil Court declares that the claimants are the owners of the land in question and not the government, the claimants are denied of the amount of compensation as the LAO has not awarded any compensation at all. On the contrary if the LAO decides the true area of the land and the compensation payable for such land and declines to appropriate the said amount of compensation in favour of the claimants and then a reference is made to the Civil Court, the Civil Court can after declaring the title of the claimant award the compensation awarded by the LAO as it is and if a reference had been sought even in respect of the extent of land and the amount of compensation determine the same and order for payment of the same to the claimants. This would serve the cause of justice. Therefore, even in cases where the LAO comes to the conclusion in an enquiry u/s 11 of the Act that the claimants have no title to the property which is the subject matter of acquisition, if the said land is required for the purpose for which it is notified for acquisition still he is under an obligation to pass an award regarding the true extent of land acquired and the amount of compensation payable in respect of the said land.

24. In so far as the acquisition under the Karnataka Industrial Area Development Act, 1966 is concerned the same is dealt with in Chapter-VII of the KIADB Act. Section 28(1) of the KIADB Act corresponds to Section 4(1) of the Land Acquisition Act. However, after hearing the objections of the owner or the occupier of the land if their objections are overruled and the State Government proceed to acquire the land and makes a declaration u/s 28(4) of the Act, on publication of such declaration the land shall vest absolutely in the State Government free from all encumbrances. Thereafter, the State Government by a notice in writing order the person in possession of the land to surrender or deliver possession thereof to the government. On taking such possession the government may transfer the land to the board for the purpose for which the land has been acquired. In other words unlike the Land Acquisition Act the land vest absolutely with the Government the moment a declaration is made u/s 28(4) even before possession of the land is taken and any award is passed. Therefore, under the KIADB Act if the acquiring authority comes to the conclusion the land that is notified for acquisition do not belong to the claimant and belongs to the government, the only way of terminating such a proceedings is by not issuing a declaration u/s 28(4). But once a declaration u/s 28(4) is issued as the land vest with the government absolutely free from all encumbrances thereafter it is not open to the acquiring authority to refuse to pass an award on the ground that the land belongs to the government and not to the claimant in which event the Land Acquisition Officer is bound to pass an award setting out the true area of the land that is acquired, the amount of

compensation payable for the said land and the person for whom the said amount is to be paid and if there is any dispute regarding apportionment, deposit such amount in a Civil Court and require the parties to settle the disputes inter se between them in the competent Civil Court as Section 30 of the KIADB Act makes it very clear that the provisions of the Land Acquisition Act, 1894 shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, apportionment of compensation and the payment of compensation, in respect of lands acquired under the said Chapter.

25. Therefore, in the instant case as the lands are acquired under the provisions of the KIADB Act and a final declaration is made u/s 28(4) of the Act and possession of the land acquired is taken from the petitioners it is not open to the Land Acquisition Officer to refuse to pass an award in respect of the land in question and refuse to pay the compensation and to that effect to issue an endorsement saying that in a meeting held by the Board they have taken a decision not to pay the compensation amount as the land is dispute is a kharab land and not assessed to tax. The said endorsement do not constitute an award as it does not satisfy the qualifications of an award.

26. It was contended on behalf of the respondents even assuming that the Land Acquisition Officer had no jurisdiction to decide the title of the parties and that he committed a grave illegality in passing the impugned orders, the remedy open to the petitioners is to seek a reference u/s 18(1) of the Act and not to prefer a Writ Petition before this Court. In that view of the matter it was submitted that these Writ Petitions are not maintainable and this Court should not exercise its discretion under Article 226 of the Constitution when the petitioners have an alternate and efficacious statutory remedy u/s 18(1) of the Act to approach the Civil Court.

27. Section 18(1) of the Act comes into play only when an award u/s 11 of the Act is passed. Existence of an award u/s 11 of the Act is a sine quo non for maintaining an application u/s 18(1) of the Act. As already discussed an award u/s 11 of the Act should contain the finding of the LAO with reference to the true extent of the land, the amount of compensation payable for the said land and in case of more than once claimant the apportionment of the said compensation among them. Unless these three ingredients are available in the decision of the Land Acquisition Officer it cannot be construed as an award u/s 11 of the Act. Only if there exists an award the petitioners who have not accepted the said award have a remedy by an application u/s 18(1) of the Act to request the Collector to refer the matter to the Civil Court for adjudication in which event it is not open to him to challenge such an award before this Court on any ground. But if the impugned orders passed by the LAO do not satisfy the requirements of the award u/s 11 of the Act, there is no award in the eye of law. Therefore, the question of petitioners seeking the remedy u/s 18(1) of the Act would not arise. The only remedy open to them is to challenge the said order which would have the effect of taking away their valuable rights to the property that too without

hearing them, without any enquiry. A full Bench of the Delhi High Court in the case of Roshanara Begum Vs. Union of India, . has held under:

"It is true that if a particular administrative order or decision affects any legal rights of a person then such an order is amenable to the writ of certiorari. The earlier view that writ of certiorari was possible only in respect of judicial or quasi judicial decision now no longer holds the field. The extent of the certiorari jurisdiction is now widened to include administrative decisions affecting adversely the legal rights of persons but the award of the Collector is neither a judicial nor a quasi judicial nor an administrative order which can be deemed to affect adversely the legal rights of any person. It is in the nature of an offer of compensation which is not binding on the person concerned and thus, no prejudice is caused to such person even it amount of compensation is determined by the Collector without application of mind"

28. Therefore, in the aforesaid judgment it is held that the award of Land Acquisition Officer cannot be quashed by issue of writ of certiorari as it does not have the effect of depriving the owner of the land any rights in the property acquired. In the instant case the endorsement issued by the Land Acquisition Officer not only denies the compensation of the land acquired, to the petitioners, but goes to the extent of declaring that the petitioners are not the owners of the land in question. Therefore, it is clear that the valuable rights of the petitioners to the property which is the subject matter of acquisition is sought to be taken away in such a cavalier fashion by the Land Acquisition Officer. In that view of the matter, these endorsements issued by the land Acquisition Officer which is challenged in these Writ Petitions cannot be sustained.

29. Therefore, the Writ Petitions filed by the Petitioners challenging the impugned orders passed by the respondent are maintainable and for the reasons aforesaid as the impugned orders cannot be sustained as they are illegal and contrary to the statutory provisions of the Land Acquisition Act, the same is liable to be quashed and accordingly they are quashed.

30. The Land Acquisition Officer has declined to pass the award on yet another ground that the land involved in W.P. Nos. 7540 & 9155-9204/2001 is a kharab land and therefore it does not belong to the petitioners. In this regard it is necessary to know what a kharab land is and what are the rights which flow. Kharab land is so called because it is not cultivable and is classification made for purposes of revenue exemption, Kharab land is also capable of ownership and cannot be regarded as an adjunct to cultivable land which gets transferred along with the cultivable land. Acquisition of title to the kharab land is similar to acquisition of title to the cultivable land. The word "Phut Kharab" and "pot" kharab mean and have reference to a land which is included in an assessed survey number but which is unfit for cultivation. Every pot kharab land does not belong to government. For the purpose of assessment, the uncultivable portion of the land or phut kharab portion of the land is excluded from consideration on the ground that it is cultivable. But it does not cease to belong to the owner of

the survey number. In volume I of the Mysore Revenue Manual, the word kharab is explained in this way. The expression "phut kharab" is similar to the expression "pot kharab". That is so, is clear from the Mysore Revenue Survey Manual where at page 68 the words "pot kharab" land is defined thus:

"(13). Pot kharab means a piece of pieces of land classed as un-arable and included in a survey number".

The description has no relevance to ownership. The expression put kharab is explained in Gupte's book on the Bombay Land Revenue Code in the following words at page 278"-

"By the term "pot kharab" is meant "barren or uncultivable land included in an assessed survey number" and includes "any land comprised in a survey number. Which from any reason is held not to be likely to be brought under cultivation....."

31. The words phut Kharab, therefore, mean and have reference to a land which is included in an assessed survey number but which is unfit for cultivation. After coming into the force of the Karnataka Land Revenue Act 1964 the word phut Kharab has been defined under Rule 21(2) as under-

"during the process of classification, land included as un-arable shall be treated as "Pot Kharab". Pot Kharab land may be classified as follows.

(a) That which is classified as unfit for agriculture at the time of survey including the farm buildings or threshing flours of the holder; (b) That which is not assessed because, (i) it is reserved or assigned for public purpose; (ii) it is occupied by a road or recognised footpath or by a tank or stream used by persons other than the holders for irrigation, drinking or domestic purposes; (iii) used as burial ground or cremation ground; (iv) assigned for villager potteries."

32. Therefore, it becomes clear if the land falls within the category of 21(2)(a) it is not a government land, it belongs to the ownership of the petitioners. If it falls under 21(2)(b) then it belongs to the government and the petitioners cannot have a claim over the said land. However, when the petitioners claim that the said land falls within 21(2)(a) and therefore they are entitled to the compensation LAO proceeds on the assumption that it falls within Section 22(1)(b) and therefore they are not entitled to compensation as it belongs to the government and accordingly he has declined to pass any award. It is not in dispute that before arriving at such a conclusion the LAO has not given an opportunity to the petitioners in the enquiry u/s 11 of the Act to substantiate their contention. Without any such enquiry, without affording an opportunity to the petitioners he proceeds on the assumption that the said Kharab land falls within 22(1)(b) and therefore petitioners have no claim, as such he has declined to pass the award. On that ground also, the impugned orders passed by the LAO cannot be sustained and is liable to be set aside. Hence, I pass the following order: -

33. Writ Petitions are allowed. The impugned order dated 2.11.2000 in WP.Nos. 7440 and 9155-9204/2001, Annexure-J; 2.11.2000 in WP.Nos. 26275-26277/2001, Annexure-G; 22.12.2001 in WP.Nos. 5998-6000/2002, Annexure-J; 21.10.2001 in W.P.No. 18488/2002, Annexure-J; 4.12.2001 in W.P.No. 18427/2002, Annexure-F and 26.3.2002 in W.P.No. 18231/2002, Annexure-T are hereby quashed. The Land Acquisition Officer is directed to hold an enquiry u/s 11 of the Act and to pass award setting out the true extent of the land acquired, the compensation payable for the said land and then if he is of the opinion the claimants are not the owners of the said land the said land belongs to the government to apportion the compensation accordingly. If any request is made by the petitioners for reference u/s 18(1) of the Act within the time prescribed under law then to make a reference u/s 18(1) of the Act to the Civil Court for adjudication.

Parties to bear their own costs.