

**(2015) 11 KAR CK 0318**  
**In the Karnataka High Court**  
**Case No : WA No. 200613/2014 (LA-RES)**

Sharanamma and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 04-11-2015

**Acts Referred:**

Land Acquisition Act, 1894 — Section 16(1), 16(2), 18, 4(1), 6(1)

**Citation :** (2015) 11 KAR CK 0318

**Hon'ble Judges :** A.S. Bopanna and G. Narendra, JJ.

**Bench :** Division Bench

**Advocate :** B.V. Jalade, Advocate, for the Appellant; Archana P. Tiwari, Addl. Govt. Advocate, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 20.11.2014 passed by the learned Single Judge in W.P.NO.202150/2014.

2. The petitioners were before this Court assailing the notifications dated 8.8.2011 and 6.11.2012 issued under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 (for short "the Act") impugned at Annexures C and F to the writ petition. The petitioners claim to be the owner of the property bearing S. No. 41/A having purchased under the sale deed dated 13.5.2005. The respondents in order to utilise 20 guntas of land, belonging to the petitioner for burial ground, had initiated the process of acquisition. At an earlier point when the preliminary notification dated 8.8.2011 had been issued and the petitioner had filed her objections to the said notification, as at Annexure-D to the petition, she was before this Court in a writ petition contending that the process of acquisition without consideration of the objection filed by her to the preliminary notification would not be justified. The petition in W.P.80742/2012 was pending before this Court. During the pendency of the same, the respondents have issued the final notification dated 6.11.2012 under Section 6(1) of the Act and the award was also passed thereafter. The notification under Section 16(2) of the Act was issued

after the possession of the property was taken under Section 16(1) of the Act. In view of the notification under Section 6(1) of the Act being issued, the petitioner instituted the writ petition in W.P. No. 202150/2014 assailing the notifications, the order passed therein is the subject matter in this appeal.

3. The learned Single Judge on taking note of the rival contentions was of the opinion that the mere pendency of the writ petition filed earlier by the petitioner could not have altered the situation inasmuch as the prayer as made in the petition had already become infructuous prior to the date when the order was passed therein on 12.2.2013 since considering the objections filed by the petitioner at that stage did not arise. In that light the learned Single Judge has further taken into consideration the acquisition process with regard to the need for requiring the said land for public purpose and in that regard having taken note of the decision of the Hon'ble Supreme Court, as referred in the order, has arrived at the conclusion that the action of the respondents does not call for interference.

4. Learned counsel for the petitioners in assailing the said order would contend that the learned Single Judge was not justified. It is his case that when there is material to indicate that the objections was filed by the appellants to Section 4(1) notification but the same had not been considered, the entire process relating to acquisition thereafter stands vitiated. The learned counsel would place reliance on the judgment of the Hon'ble Supreme Court, in the case of Union of India (UOI) and Others Vs. Shiv Raj and Others, . In that light it is contended when the opportunity of objecting to Section 4(1) notification is not available to a land owner, the subsequent process cannot be continued. It is further contended that the action of the respondents in issuing notification under Section 6(1) of the Act and also an award being passed is of no consequence and therefore, the entire process is required to be set aside and an opportunity is to be granted to the petitioners to putforth their contention in terms of the objections and thereafter fresh orders are required to be passed with reference to the objections raised.

5. The learned Govt. Advocate with reference to the objections statement filed to the writ petition would seek to sustain the action. It is contended notwithstanding the fact that the earlier writ petition seeking consideration of the objection filed to Section 4(1) notification was pending, the Land Acquisition Officer has taken note of the fact situation, kept in view the report submitted by the Tahsildar with regard to the need of the land and also the objection raised by the appellant was adverted to by Tahsildar that the alternate Government land suggested by the appellants would not be suitable. It is only thereafter Section 6(1) notification has been issued. It is further pointed out that all process related to the acquisition, including the possession being taken and being completed cannot be disputed and therefore, at this juncture, the appellants cannot make out any grievance.

6. In the light of the contentions we have perused the appeal papers. Insofar as

the law as enunciated by the Hon''ble Supreme Court in the decision cited by the learned counsel for the petitioner, there can be no dispute. However, what is required to be noticed is that the decision would require application keeping in view the fact situation arising in each case. In the instant facts the question for consideration is whether merely because no specific and separate order is available on record, rejecting the objections stated to have been filed by the petitioners to Section 4(1) notification, that in itself could be basis to hold that the subsequent process of acquisition is vitiated even if the objection raised to the acquisition has as matter fact been noticed and such objection not making any difference to the ultimate conclusion. To take note of this fact, as already recorded above, the fact that the petitioner was before this Court at the first instance seeking that her objection be considered is a matter of record.

7. Though the same has been disposed subsequently with a direction to consider the objection, the same will not alter the situation since by then the Section 6(1) notification was issued and the requirement of the land for a public purpose had been taken into consideration.

8. Further what is necessary to be noticed herein is also that the appellants herein in the instant writ petition from which this appeal arises have also referred to in their pleadings with regard to the report of the Tahsildar being made in the year 2008 with regard to the fact that the alternate lands bearing S. No. 117 of Yelanavadagi village would not be suitable for the said purpose. Therefore, in any event the objection of there being alternate land available will not be sustainable. That apart, the objection filed to the writ petition would disclose the nature of consideration made by the Land Acquisition Officer before ordering for issue of Section 6(1) notification and the requirement of the land belonging to the appellants had been taken into consideration. Further, in the light of the objections that had been put forth, there is reference to the fact that the Government property, as suggested by the appellants, is not suitable for the said purpose.

9. Therefore, if these aspects of the matter are kept in view, certainly it would indicate that the Land Acquisition Officer, has kept in view the objections submitted by the appellants and in that light on finding that no other suitable alternate land is available and a portion of the land which belonged to the appellants was, in fact, was being used for the very purpose of cremation even earlier to the purchase by the appellants was also kept in view. In that view the Land Acquisition Officer was of the opinion that the said extent of land was required to be acquired for public purpose to retain the same as burial ground. Therefore, In the instant facts when such consideration is available, the same would answer the objections raised by the appellants. Hence, we are of the opinion that the subsequent process does not stand vitiated.

10. If in the said light the order of the learned Single Judge is perused, we find that the learned Single Judge has adverted to all aspects of the matter and has thereafter arrived at the conclusion. In addition the learned Single Judge has in

fact protected the interest of the petitioners to secure just compensation in respect of the property by providing an opportunity to file a petition under Section 18 of the Act within 90 days from the date of the order of the learned Single Judge seeking reference to enhance the market value. Keeping in view the fact that the appellants had filed the instant appeal and the appeal being pending before this Court and the time has elapsed we deem it proper to grant the benefit of the said period of 90 days to file the application seeking enhancement to be completed from this day. Therefore, for all the above stated reasons we see no reason to interfere with the order passed by the learned Single Judge.

The Appeal is accordingly, disposed of as being devoid of merit. No costs.