
(2018) 01 KAR CK 0016
In the Karnataka High Court
Case No : 29351-352 of 2017

St. Michaels Home/Convent (R) & Anr	APPELLANT
Vs	
State of Karnataka & Ors	RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Karnataka Land Revenue Act, 1964](#), [Section 136\(2\)](#) -
Bangalore Development Authority Act, 1976, Section 17(4)

Citation : (2018) 01 KAR CK 0016

Hon'ble Judges : B.S.Patil

Bench : Single Bench

Advocate : Jayakumar S.Patil, Pruthvi Wodeyar, A.G.Shivanna, T.S.Mahanthesh, N.N.Harish, Shankar.G

Judgement

1. Parties in these two writ petitions are common. Questions that arise for consideration are also common. Therefore, both these writ petitions are heard together and are disposed of by this common order.

2. W.P.Nos.29351-29352/2017 are filed by petitioner which is a Christian Charitable Association established during the period 1919-20

challenging the order dated 08.05.2009 passed by respondent No.2, under which an area measuring 8,382.66 sq. mtrs. is transferred in favour of

Bengaluru Metro Rail Corporation Limited (for short, "BMRCL") which is arrayed as respondent No.7. Further the petitioner has sought for a

writ of mandamus directing respondent No.6 - Tahsildar, Bengaluru East Taluk to enter the name of petitioner- Association in the RTC in respect

of land measuring 4 acres 23 guntas in Sy.No.9 (Old Sy.No.3) and land measuring 6 acres 8 guntas in Sy.No.10 (Old Sy.No.2) situated at

Binnamangala, Manavartheekaval Village, K.R.Puram Hobli, Bangalore East Taluk

(CTS No.790). The petitioner has also sought for a writ of mandamus directing respondent No.8 - Special Land Acquisition Officer, Metro Rail Corporation Limited to acquire and pay compensation in respect of land which is transferred in favour of respondent No.7.

3. W.P.No.4677/2017 is filed by the State of Karnataka represented by the Department of Health and Family Welfare, through Senior Specialist,

C.V.Raman General Hospital, Indiranagar, Bengaluru, challenging the order dated 23.09.2016 passed by the Assistant Commissioner, Bengaluru

North Sub-Division, thereby allowing the appeal filed by respondent no.4 therein - St. Michael's Convent Home under Section 136(2) of the

Karnataka Land Revenue Act, 1964. As per the said order, the Assistant Commissioner has set aside the mutation effected in the name of

T.B.Hospital as regards land bearing Sy. Nos.120 & 121 of Binnamangala village, Kasaba Hobli, Bengaluru North Taluk, and has ordered for

mutating the said lands in the name of respondent no.4 - St. Michael's Convent Home as per the registered sale deeds dated 08.08.1920 and

11.09.1920. The Assistant Commissioner has further issued directions to the Special Tahsildar, Bengaluru North Taluk, to carry out necessary

entries in the revenue records such as RTC, etc. Order passed by the Assistant Commissioner discloses that Sy. No.120 measuring 2 acres 2

guntas and Sy. No.121 measuring 7 acres 2 guntas were private hiduvali lands; the same were purchased by St. Michaels Convent Home under

registered sale deeds dated 08.08.1920 and 11.09.1920, respectively from their owners/khathedars; thus, the institution acquired absolute right,

title and interest over the said lands. However, these lands were mutated in the name of T.B.Hospital as though they had been acquired for their

purpose. The reason for effecting such an entry in the revenue records was traced to a Government Order dated 26.06.1941 issued by the

erstwhile Maharaja of Mysuru, whereunder land measuring 10 acres 31 guntas i.e., 4 acres and 23 guntas in Sy. No.3 and 6 acres 8 guntas in Sy.

No.2 situated to the South of Bengaluru-Madras Road abutting the village boundary of Khayam Gutta Binnamangala village, Civil & Military

Station, K.P.Puram Hobli, Bengaluru North Taluk, thereby assigning the said lands for the purpose of T.B.Sanatorium. The Assistant

Commissioner has further found that old Sy. No.3 was assigned new Sy. No.9

and old Sy. No.2 was assigned new Sy. No.10 as was evident

from the survey sketch and both of them were adjacent to the lands in Sy. Nos.120 & 121 belonging to respondent no.4 - St. Michael's Convent

Home. The Assistant Commissioner has recorded a specific finding that by mistake the khatha of the lands in Sy. Nos.120 & 121 were also

mutated in the name of T.B.Hospital. He has also recorded a finding that the said lands had not been acquired as reported by the Land Acquisition

Officer, Bengaluru, vide his letter dated 18.08.2016. Similarly, Bengaluru Development Authority vide its letter dated 15.09.2016 had reported

that the said lands were not the subject matter of acquisition in favour of CITB or BDA. Hence, the Assistant Commissioner has come to the

conclusion that the entries effected in the name of T.B.Hospital in respect of the khatha of lands in Sy. Nos.120 & 121 were illegal and the same

were to be corrected by effecting entries based on the registered sale deeds in favour of respondent no.4 - St. Michael's Convent Home. Against

this order passed by the Assistant Commissioner, the Tahsildar has filed a Revision Petition in R.P.No.306/2016- 17. Alleging that the Deputy

Commissioner failed to grant an interim order and the matter was getting adjourned because the Deputy Commissioner was not holding sittings, the

State Government has filed this writ petition.

4. In so far as W.P.Nos.29351-352/2017 is concerned, in support of the prayer, petitioner has contended that predecessor of the petitioner -

Association which was previously known as "Good Shepherd Convent" had acquired several properties to an extent of 80 acres in different

survey numbers such as Sy.Nos.2, 3, 120 and 121 along with other survey numbers situated at Binnamangala Manevarthekaval Village,

K.R.Puram Hobli, Bengaluru East Taluk, from different persons for valuable sale consideration under different sale deeds in early 1920. Having

purchased the lands, they got the revenue entries transferred in their names and had been using the same for the benefit of the association at large.

5. Petitioner - association has contended that as they were unable to pay conversion fee and since the properties were being used for charitable

and philanthropic purpose, they approached the then Government of His Highness "The Maharaja of Mysuru" and requested for waiver of

conversion fee. Accordingly, by order dated 25.02.1926 which is produced as

Annexure-B the Government waived payment of conversion fee in respect of land measuring 26 acres 22 guntas in Sy.No.2 and 25 acres 17 guntas in Sy.No.3 of Binnamangala, Manevarthekaval.

6. Petitioner - association has contended that their association was established for the express purpose of looking after poor and destitutes

particularly unmarried and abandoned mothers and unwanted children and to provide rehabilitation etc.

7. In the year 1941, His Highness the Maharaja of Mysuru assigned land measuring 4 acres 23 guntas in Sy.No.3 and 6 acres 8 guntas in Sy.No.2

in all measuring 10 acres 31 guntas situated at Binnamangala, Manevarthekaval, Bengaluru South Taluk, within the boundary mentioned therein for

the purpose of construction of a T.B. Sanatorium in Civil & Military Station, Bengaluru. The notification dated 26.06.1941 issued in this regard is

produced as Annexure-C. In the said notification, it is clearly stated that the said land was assigned to the Crown Representative with effect from

26th June 1941 for the exclusive management of and full jurisdiction over the said land for so long as the said land was used for the purpose

aforementioned. That is to say, the properties so assigned shall be used only for the purpose of construction and management of T.B.Sanatorium

and not for any other purpose. Even though the properties were not acquired and no compensation was paid before issuing the said notification,

since the petitioner - association is also a charitable institution, petitioner - association accepted the said assignment only with a good intention that

the Government will utilize the properties in question solely for the purpose of construction of T.B. Sanatorium and not for anything else.

8. Thereafter, a T.B. Sanatorium was constructed in a portion of the land so assigned. Neither while constructing the sanatorium nor after

completion of construction of the sanatorium, the land was acquired or any compensation paid to the petitioner - association. As a result, despite

such assignment by the Maharaja in favour of the Crown Representative, ownership remained with the petitioner and no title was transferred in

favour of the respondents.

9. It is the contention of the petitioner that after issuance of notification dated 03.07.1941, survey settlement was done and accordingly for old

Sy.No.2 measuring 6 acres 8 guntas, new Sy.No.10 was given and for the land

measuring 4 acres 23 guntas in old Sy.No.3, new Sy.No.9 was assigned. All the revenue records in this regard have been produced as Annexure-D series. According to petitioner, the survey sketch, moola tippani and survey settlement clearly depict that old Sy.Nos.2 and 3 were given new numbers as 9 and 10.

10. Petitioner - association has contended that Sy.Nos.2 and 3 including the properties in question were notified by the CITB for acquisition for the purpose of formation of old Madras Road and HAL II Stage Layout. Since the then CITB failed to achieve its object, they denotified the land by way of notification published in Mysuru Gazette on 27.08.1964. Thereafter, once again the BDA notified the properties in question for the purpose of formation of "Further extension of HAL II Stage layout" vide notification dated 21.06.1976. Thereafter, vide notification dated 13.08.1977 the said notification was withdrawn.

11. Petitioner - association has further contended that once again under notification published on 11.05.1978, BDA had notified the land Sy.Nos.2 and 3 including the properties in question for the purpose of formation of layout called "Further extension of HAL II Stage Layout" by showing the name of the petitioner. Under the said notification, the entire extent of Sy.Nos.2 and 3 was shown without showing new Sy.Nos.9 and 10. The said notification is produced as Annexure-F. Petitioner - association has produced copies of the RTC for the year 1982 to 2001, 2013-14 till date in respect of Sy.No.9 as Annexures-G, G1, G2, G3 and G4 and a copy of the RTC in respect of Sy.No.10 as Annexure-G5. In the said RTC, column Nos. 9 and 12 are kept blank. It is further contended that petitioner started its legal battle with the CITB in the year 1954 and continued the same with BDA upto 2007 and only in the month of December, 2007 it learnt that BDA had not issued final notification pursuant to preliminary notification dated 30.03.1978. When the legal battle thus came to an end in the year 2007, petitioner requested respondent No.6 to enter its name in the RTC in respect of properties in question, but respondent No.6 did not take any steps to enter the name of petitioner in the RTC.

12. Petitioner has contended that after issuance of preliminary notification dated 30.03.1978, since no steps were taken by the BDA for issuance of final notification, petitioner requested the BDA to furnish the details and

subsequent steps taken by them pursuant to the notification dated 30.03.1978. The BDA issued an endorsement dated 22.12.2005 and 15.01.2006 stating therein that no final notification was issued. Accordingly, petitioner made representation to the then Chief Minister requesting for a direction to the BDA to denotify the lands which were subject matter of preliminary notification dated 30.03.1978. As a result, BDA passed a resolution on 28.03.2007 in Subject No.49/2007 and resolved to drop the acquisition proceedings. Despite issuance of no objection from the BDA, the revenue authorities failed to enter the name of the petitioner in the revenue records on the ground that the lands in question had been acquired vide notification dated 26.06.1941 (Annexure-C) and also on the ground that acquisition proceedings had not yet attained finality.

13. Petitioner made a representation to the Superintendent of Department of Health requesting to furnish the details about utilization of the properties by the Health Department. For the said representation, a reply was given through letters dated 28.04.2016 stating that the said Sy.Nos.9 and 10 were not pertaining to C.V.Raman Public Hospital, Indiranagar. Further, the Land Acquisition Officer has issued an endorsement dated 20.08.2016 stating that the properties in question were not acquired for any purpose. The said letters/endorsement are produced as Annexures-H1, H2 and H3 along with the writ petition.

14. Petitioner has further contended that when no action was taken by respondent No.6, he approached the office of respondent No.6 on several dates from January 2017 to April 2017. At that point of time, respondent No.6 informed the petitioner that an area approximately measuring 2 acres was allotted in favour of respondent No.7 by the order of the State Government and further informed the petitioner that respondent No.2 was the owner of the property in question. Thereafter, on enquiry, petitioner came to know about allotment of 8382.66 sq. mtrs. of land in favour of respondent No.7. It is contended by the petitioner that at no point of time the properties in question were acquired and no compensation was ever paid to petitioner - association which is the owner of the properties.

15. Petitioner contended that by an order dated 28.03.2008, respondent No.2 has ordered closure of T.B.Hospital and has accorded sanction for the establishment of 250 bedded Government General Hospital. A copy of the

said order is produced as Annexure-L. Based on the said order, petitioner has contended that in the light of order dated 28.03.2008, respondents have stopped utilizing the land for the purpose for which the land was assigned by the then Maharaja of Mysore in the year 1941 (Annexure-C). Petitioner further contended that in view of closure of T.B.

sanatorium, respondents have no manner of right whatsoever over the property in question and as such the same shall vest with the petitioner.

16. According to the petitioner, the order dated 08.05.2009 which is produced as Annexure-J under which the land has been transferred in favour

of respondent No.7 is illegal, arbitrary and contrary to law and without jurisdiction. Petitioner urges that action of respondent No.2 which is

claiming ownership over the properties in question under the guise of notification Annexure-C is arbitrary, illegal without authority of law and

contrary to the terms and conditions of the very notification Annexure-C. It is further urged that action of respondent No.2 in allotting the

properties by diverting the use of the properties in question was only with a malafide intention to grab the properties in question and respondents

being the State and instrumentalities of the State representing the collective cause of the community could not have acted like a litigant. Further, it is

also contended that respondent No.2 knowing fully well that the petitioner was the owner of the properties in question had passed the impugned

order without acquiring the said land, without paying any compensation to the petitioner and without affording any opportunity of hearing to the

petitioner which was against the principles of natural justice.

17. On service of notice, the respondent - State has filed statement of objections inter-alia contending that Petitioner had no semblance of right,

title or interest over the said lands. Petitioner never exercised its right of ownership till date and it had lost right, title and possession over the lands.

According to them, the sale deeds on which reliance was placed by the petitioner were not acted upon over a period of 100 years and no attempts

were made to get the revenue entries entered in their name and the name of the Government only continued. The State has contended that

petitioner could not claim revenue entries in its name at such length of time, unless it established its right, title, interest and possession over the lands

in dispute before a competent civil court as required under Section 135 of the

Karnataka Land Revenue Act. Further, they have disputed the fact about re-assignment of new Sy.Nos.9 & 10 to Old Sy.Nos.2 & 3 as contended by the petitioner.

18. Respondents 7 and 8 have contended that since there was title dispute in respect of the lands, such adjudication was beyond the scope of writ

proceedings and it could only be resolved in civil court. Further, they have contended that claims of the petitioners were highly belated and barred

by the law of limitation. According to respondents 7 & 8, lands in question belonged to the State Government and as a result, question of acquiring

and paying compensation to the petitioner in respect of the land to an extent of 2 acres 2³/₄ guntas was misconceived.

19. Having heard the learned Counsel for all the parties, the question that falls for consideration are,

(i) whether action of the State Government in issuing the impugned Government Order dated 08.05.2009 - Annexure-J, suffers from any illegality?

(ii) whether petitioner is entitled for a direction to the Tahsildar, Bengaluru East Taluk, Bengaluru, to enter its name in the RTC in respect of land

bearing Sy. No.9 (Old Sy. No.3) measuring 4 acres 23 guntas & Sy. No.10 (Old Sy. No.2) measuring 6 acres 8 guntas situated at Binnamangala

Manvarthe Kaval village, K.R.Puram Hobli, Bengaluru East Taluk?

(iii) whether petitioner is entitled for payment of compensation in respect of 2 acres 2 ³/₄ guntas of land from respondents 7 & 8?

(iv) whether State has made out any ground for issuing direction as sought for in W.P.No.4677/2017?

20. Petitioner has placed reliance on two sale deeds dated 08.07.1920 whereunder it claims to have purchased 4 acres and 5 acres of land in

Binnamangala Manvarthe Kaval village. It has also asserted that predecessor of the petitioner- Association - Good Shepherd Convent had

acquired several properties measuring an extent of 80 acres in various survey numbers viz., Sy. Nos.2, 3, 120 & 121 etc., of Binnamangala

Manvarthe Kaval village, K.R.Puram Hobli, Bengaluru East Taluk, through various sale deeds. They got their names entered in the revenue

records. At the request of petitioner, His Highness The Maharaja of Mysuru ordered for waiver of conversion fee vide order dated 25.02.1926.

This order is produced at Annexure-B. Fact that in 1941 His Highness The

Maharaja of Mysuru assigned land measuring 4 acres 23 guntas in Sy.

No.3 and 6 acres 8 guntas in Sy. No.2 totally 10 acres 31 guntas with the specified boundaries for the purpose of construction of T.B.Sanitorium

in Civil & Military Station, Bengaluru, is evident from the notification dated 26.06.1941 produced at Annexure-C. One of the conditions of the

order assigning the lands for construction of Tuberculosis Sanitorium is that the assignment was ""so long as the said land is used for the purpose for

which it was assigned"".

21. It is thus clear that 1941 notification assigning the land measuring 4 acres 23 guntas in Sy. No.3 and 6 acres 8 guntas in Sy. No.2 totally

measuring 10 acres 31 guntas with specified boundaries for the purpose of construction of T.B.Sanitorium in Civil & Military Station, Bengaluru,

had nothing to do with Sy. Nos.120 & 121. However, the revenue authorities got effected khatha in the name of "T.B.Sanitorium" not only in

respect of Sy. Nos.2 & 3, but also changed khatha of Sy. Nos.120 & 121 in favour of T.B.Hospital though the said lands were not the subject

matter of assignment as is evident from the notification dated 26.06.1941 produced at Annexure-C. The resultant position is that in respect of the

four lands i.e., Sy. Nos.2, 3, 120 & 121, measuring in all 19 acres 35 guntas khatha was changed in the name of T.B.Hospital, thereby depriving

the writ petitioner - Institution of the benefit of entries in the revenue records without any justification.

22. In the connected writ petition in W.P.No.4677/2017, the State has taken a stand that Sy. Nos.120 & 121 were the subject matter of

assignment as per Notification dated 26.06.1941 issued by His Highness Maharaja of Mysuru assigning the lands for T.B.Sanatorium. This stand

of the State Government is not only contrary to Annexure-C - Notification, but is also quite contrary to the stand taken by the State Government in

its statement of objections filed in W.P.Nos.29351-352/2017. The State Government ought to have come up with a definite stand regarding the

subject matter of assignment. It has failed to do so. This conduct of the State Government represented by the Department of Health & Family

Welfare shows that it is not behaving like a model litigant but is indulging in withholding relevant facts. Even if Annexure-C is treated as an

instrument that confers right in the State, it can only be for 10 acres 31 guntas.

But, the claim made by the State over 19 acres 35 guntas of land comprised in all the four survey numbers shows that it is behaving like a land grabber.

23. Annexure-D - Index of Lands pertaining to Sy. Nos.2 & 3 of Binnamangala Manvarthe Kaval village, clearly discloses name of Lady Superior

Convent of Michael as person in possession of the land. Further, revenue records in the form of Record of Right extract and Index of Lands

produced at Annexures-D1, D2 & D3 also disclose the name of Lady Superior Convent of Michael as person having right over the land. It is

asserted by the petitioner that the survey sketch, moola tippani and survey settlement, akharband and village map enclosed to the writ petition at

Annexures-E to E5 disclose that new Sy. Nos.10 & 9 were carved out of Sy. Nos.2 & 3 and said new Sy. Nos. belonged to the petitioner-

Association.

24. Another relevant factor which has to be noticed is that Sy. Nos.2 & 3 along with other lands were notified for acquisition for the benefit of

CITB during the year 1964. The said notification was later on withdrawn. Similar exercise was done by the BDA - the successor of CITB to

acquire the land for the purpose of formation of a layout called further extension of HAL 2nd Stage layout. However, the same was withdrawn in

respect of Sy. Nos.2, 3 & 7/1 vide notification dated 13.08.1977 gazetted on 25.08.1977. Subsequently, BDA once again issued Preliminary

Notification dated 03.03.1978 gazetted on 11.05.1978 notifying Sy. Nos.2 & 3 for formation of a layout called further extension of HAL 2nd

Stage layout without showing new Sy. Nos.9 & 10 though earlier Sy. Nos.2 & 3 had been sub-divided long back. The gazette notification of the

preliminary notification produced at Annexure-F shows the name of Lady Superior Convent of Michael as khathedar and Anubhavdhar in respect

of Sy. Nos.2 & 3. However, no final notification was issued acquiring the land.

25. If at all Sy. Nos.2 & 3 did not belong to the petitioner, CITB could not have issued preliminary notification in the year 1964 notifying petitioner

as "Anubhavdhar & Khathedar". Similarly, BDA could not have again issued preliminary notification dated 03.03.1978 notifying Sy. Nos.2 & 3

for the purpose of formation of HAL 2 nd Stage Further Extension showing the name of petitioner as khathedar and anubhavdhar. Assertion of the

State Government that Sy. Nos.2 & 3 had been absolutely stood transferred in favour of the Health Department is quite contrary to Annexure-F -

Notification issued by the instrumentality of the State, wherein the name of petitioner has been shown as "Khathedhar and Anubhavdhar". Indeed,

such notifications have been issued thrice showing petitioner as "khathedhar and anubhavdhar". This being the factual position, there was no

justification for the State Government to transfer an extent of 8,382.66 sq. mtrs. of area vide impugned order dated 08.05.2009 in favour of

respondent no.7 - BMRCL.

26. The facts and circumstances as adverted to above disclose that petitioner has based its claim on the registered sale deeds and the revenue

records such as index of land and record of rights, wherein names of petitioner and its predecessor were recorded as person having right over the

subject lands. Such rights of the petitioner can be defeated and taken over only by a process known to law either by way of acquisition under the

provisions of the land Acquisition Act or by way of a contract duly entered into.

27. Stand of the Government is that sale deeds relied on by petitioner do not reveal any survey numbers as only boundaries were mentioned. It is

further stated that order of His Highness The Maharaja of Mysuru in respect of Sy. Nos.2 & 3 regarding waiver of conversion fine did not disclose

the nature of right acquired by the petitioner and that the assignment of lands comprised in Sy. Nos.2 & 3 by the Maharaja in favour of the

T.B.Sanitorium did not tally with the extent of land described in the sale deeds and further that the said assignment made it clear that the lands

became Government lands. Transfer of the land in favour of BMRCL by the State Government is sought to be justified on that basis.

28. As already pointed out, Sy. Nos.120 & 121 are not the subject matter of assignment vide notification dated 26.06.1941. Therefore, State

cannot justify its action based on 1941 notification in respect of these two lands. It is for the State Government to establish how it has acquired any

right in respect of these two lands. Prima facie, registered sale deeds and the revenue records pertaining to these two lands reveal that they were

private lands. They were purchased by the writ petitioner - Institution/its predecessor and have not been either acquired or purchased by the

Health Department, Government of Karnataka at any point of time. If the State

intends to contend to the contrary, asserting its own rights, it is for the State Government to establish its rights by approaching court of law. Mere entries in the revenue records in the name of the Health Department will not confer title over it.

29. In so far as Sy. Nos.2 & 3 are concerned, it is true that notification dated 26.06.1941 makes it clear that an extent of 10 acres 31 guntas out of these survey numbers were assigned by the erstwhile Maharaja of Mysuru in favour of T.B.Hospital and that is how the name of T.B.Hospital came to be entered in the revenue records. However, the fact remains that these two lands also belonged to private individuals and the writ petitioner - Institution/its predecessor purchased the same as per registered sale deeds. Indeed, Index of Lands and record of rights produced by the petitioner at Annexure-D series clearly disclose the right, title and interest acquired by the writ petitioner - Institution. Petitioner has placed reliance on the survey sketch, moola tippani, survey settlement, akharband and village map by producing them at Annexure-E series to show that new Sy. Nos.10 & 9 were carved out of Sy. Nos.2 & 3 and they belonged to petitioner-Institution. It is an admitted fact that the lands were sought to be notified for acquisition by showing the name of petitioner as khathedar and anubhavdhar.

30. In so far as the notification issued by His Highness Maharaja of Mysuru assigning a portion of the lands in favour of T.B.Sanitorium is concerned, it has to be stated that the said assignment was made on condition that the land shall only be used for the purpose for which it was assigned (for T.B.Sanitorium). It follows that if the same was not used for the said purpose, the assignment would no longer enure to the benefit of the assignee. Admittedly, the land is no longer used for the purpose of T.B.Sanitorium. Now T.B.Hospital has been closed and Government General Hospital has been established in a portion of the land. Therefore, by virtue of the condition imposed in the order assigning the land, the assignment would no longer enure to the benefit of the assignee. Hence, question of State Government tracing its right over the property by virtue of the said assignment does not arise. In any event, as Good Sheperd Convent of Michael owned the lands, the conditional assignment by the Maharaja would not take away all right, title and interest of the original owner

over the lands. It can only be said that such right would be subject to the conditional assignment made by the Maharaja for public purpose so long as the lands were utilized for the said public purpose.

31. It is not the case of the State Government that any final notification was issued or award was passed determining compensation payable to the petitioner. As already pointed out above, index of lands and record of rights disclose interest of Good Shepherd Convent of Michael in respect of

the lands. If that was so, without acquiring the land, how the State Government could transfer the same in favour of respondents 7 & 8 is

ununderstandable. At any rate, before taking any decision transferring the lands treating it as a Government land, particularly when the revenue

records (index of land and RR extract) at one point of time, recorded the name of petitioner as interested person followed by the action of the

Government in notifying the lands for acquisition by issuing notification under Section 17(4) of the BDA Act showing the petitioner as khathedar

and anubhavdhar, principles of natural justice ought to have been followed.

32. In the result, it has to be held that if at all the Health Department/State Government intends to establish its rights over the land, it is for the State

Government to approach the Civil Court. The stand taken by the State Government that petitioner-Institution has to approach the Civil Court

seeking declaration of its rights is wholly misconceived and untenable. In the absence of any material to show that rights of petitioner-Institution

over the private holdings acquired as per registered sale deeds stood extinguished by lawful action of the State Government acquiring the lands or

taking them over in accordance with law, mere entries in the name of T.B.Hospital cannot have the effect of depriving the petitioner-Institution of

its right.

33. As regards Annexure-J - order, it has to be held that the State Government had no authority or jurisdiction to transfer portion of the land

comprised in Sy. Nos.2 & 3 in favour of a third party as though the same absolutely belonged to the Department of Health and Family Welfare.

Therefore, Annexure-J cannot have the effect of taking away the rights of petitioner-Institution over the lands bearing Sy. Nos.2 & 3.

34. Since Health Department has taken an inconsistent stand regarding the subject matter of assignment of lands, particularly as Sy. Nos.2 & 3

have been assigned new Sy. Nos.10 & 9 and petitioner-Institution has produced copies of akharband, survey settlement village map and other

relevant records, I find it just and appropriate to direct the Deputy Commissioner, Bengaluru District, to pass necessary orders based on the

revenue records regarding the identity and location of the lands bearing Sy. Nos.2, 3, 120 & 121 and to take consequential steps in the matter

regarding entries to be effected.

35. For the aforementioned reasons, W.P.No.29351- 352/2017 are partly allowed. The Deputy Commissioner, Bengaluru District, is directed to

verify and ascertain with reference to the Index of Lands, Record of Rights, Survey sketch, akharband and village map pertaining to old Sy. No.2

(New Sy. No.10) measuring 6 acres 8 guntas and old Sy. No.3 (New Sy. No.9) measuring 4 acres 23 guntas of Binnamangala Manvarthe Kaval

village, K.R.Puram Hobli, Bengaluru East Taluk, and take steps to enter the name of the petitioner-Institution in the RTC.

36. The Deputy Commissioner is directed to locate and identify the extent of 8,382.66 sq. mtrs. of land transferred in favour of BMRCL allegedly

belonging to T.B.Hospital forming part of Old Sy. Nos.2 & 3 (New Sy. Nos.10 & 9) and pass an order to that effect, whereupon petitioner shall

be entitled to claim compensation for the said portion of the land transferred in favour of BMRCL. It is made clear that Annexure-J will not affect

the interest of the petitioner and the petitioner-Institution would be entitled to claim compensation for the utilization of its land by the BMRCL in

accordance with law. Respondents 7 & 8 are directed to acquire the said portion of 8,382.66 sq. mtrs. of land in accordance with law and pay

compensation to the petitioner as per law within a period of four months from the date of receipt of a copy of this order.

37. W.P.No.4677/2017 is disposed of. As regards Sy. Nos.120 & 121, the Deputy Commissioner, Bengaluru Urban District, shall pass final

orders in the Revision Petition filed within two months from the date of receipt of a copy of this order, keeping in mind the observations made in

this order and taking note of all other relevant factors. Both parties are directed to appear before the Deputy Commissioner in the Revision Petition

on 29.01.2018.