

(2013) 09 KAR CK 0123

In the Karnataka High Court

Case No : Writ Petition No. 22961 of 2011 (GM-RES)

T. Jayamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Karnataka Ancient and Historical Monuments and Archeological Sites and Remains Act, 1961 — Section 2(1)(iii), 2(1)(iv)

Citation : (2014) 1 AKR 225 : (2014) 1 KCCR 263

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Ram M.K, for the Appellant; M.C. Nagashree, HCGP for R2 to R5 and Sri H.C. Shivaramu for R6, for the Respondent

Final Decision : Partly Allowed

Judgement

K.L. Manjunath, J.—The husband of the petitioner had purchased 3 acres 12 guntas of land in survey No. 103 situated at Srirangapatna under registered sale deed dated 6.5.1976. The said land was situated adjoining the Fort of Srirangapatna which is a protected monument as per the Notification issued by the State of Karnataka, under the provisions of "the Karnataka Ancient and Historical Monuments and Archeological Sites and Remains Act, 1961" ("Act" for short). On 18.6.1979, the petitioner's husband obtained permission for conversion of the agricultural land into non-agricultural residential purpose from the Tahsildar, Srirangapatna. The husband of the petitioner had also obtained licence for construction of a Rice Mill, Poultry Farm, Dairy Farm and Office Building from the Town Municipal Authority vide its letter HBL No. 171 dated 1.3.1980. Thereafter, an extent of 40" x 40" was purchased by Municipality for constructing a wet well under registered document dated 21.1.2009 by paying consideration of Rs. 1,20,000/-. After the death of her husband, katha has been made out in her name and on 14.2.2011, she approached the Town Municipality to grant licence for construction of a building and for renovating the existing building. The Town Municipality issued an endorsement stating that without

obtaining NOC from the 4th respondent, the licence cannot be granted to the petitioner. Thereafter, the petitioner approached the Archeological Department for issuance of NOC on 28.3.2011. The said request was rejected by the 4th respondent stating that the lands of the petitioner has been notified as protected area in order to protect the monument, permission cannot be granted. Challenging the same, the present Writ Petition is filed.

2. Having heard the learned counsel for the parties, it is not in dispute that the lands of the petitioner comes within the protected area. When the area has been declared as protected area, this court cannot find fault with the Town Municipality of Srirangapatna in not issuing plan to the petitioner for construction of the building, in the absence of NOC from the Archeological Department. The Archeological Department cannot contend that in view of the area declared as protected area, the petitioner has to give up the rights over the lands in question. Admittedly, the ownership of the petitioner in respect of the land in question is not disputed. If the Government has notified the lands as protected areas, without initiating the acquisition proceedings and paying market value, the property of the petitioner cannot be declared as a protected area. Admittedly, the petitioner's land comes under the definition of Ancient monument u/s 2(1)(iii) and (iv) of the Act which reads as hereunder:

(iii) Such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, an ancient monument; but shall not include ancient and historical monuments declared by or under law made by Parliament to be of national importance;

In view of the definition of "ancient monument" under the Act, the area reserved as protected area is also to be considered as "ancient monument". u/s (iv) of the Act, the Government has power to declare ancient monument as "protected monument". u/s 5 of the Act, the Director may, with the sanction of the Government, purchase or take a lease of, or accept a gift or bequest of any protected monument. u/s 6 of the Act, the Deputy Commissioner shall propose to the owner of a protected monument to enter into an agreement with the Government within a specified period for the maintenance of the monument and to protect the same. u/s 19 of the Act, the Government has power to declare the archeological site and remains should be declared as a protected area. u/s 21 of the Act, if the Government is of the opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894, as if the acquisition were for a public purpose within the meaning of that Act and compensation has to be determined as contemplated u/s 24 and 25 of the Act.

3. In the instant case, without initiating acquisition proceedings and paying compensation, large extent of the petitioner's non-agricultural land has been declared as protected area. As a result of which, the petitioner is deprived of

enjoying her own property either by constructing building or selling the same for her timely benefit. In other words, by issuing an endorsement stating that the areas has been declared as protected area, the Government has deprived of the rights of the petitioner in respect of her land which is contrary to the provisions of the Act. In the circumstances, this court is of the opinion that by modifying the relief sought for by the petitioner, the Writ Petition is to be allowed. Since the area in question is admittedly situated adjoining the Fort of Srirangapatna which is an ancient monument declared as a protected area. However, such declaration is made without any compensation being paid to the petitioner. If the Government has directed to initiate acquisition proceedings and pay compensation in accordance with the Land Acquisition Act, ends of justice would be met.

In the result, the Writ Petition is allowed in part. Mandamus is issued to the respondents 1 to 5 to initiate acquisition proceedings under the Land Acquisition Act, 1894 and settle the compensation in accordance with law and the acquisition proceedings shall be initiated within 90 (ninety) days from the date of receipt of this order.