
(2014) 05 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition Nos. 16269-16273 of 2013 (LA-KIADB)

Vinay Karthik and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 28(1), 28(3), 28(4), 3(1)

Citation : (2014) 3 AKR 444 : (2014) 5 KarLJ 302

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Madhusudhan R. Naik, Senior Advocate for Shri. K. Shashi Kiran Shetty, Advocate for the Appellant; Ravi B. Naik, Senior Advocate for Shri Chandrashekar P., Advocate for Respondent No. 5, Shri S. Vijayashankar, Senior Advocate for Shri Basavaraj V. Sabarad, Advocate for Respondent Nos. 2 and 3, Shri D. Nagaraju, Additional Government Advocate for Respondent No. 1, Shri T. Puttaswamy, Advocate for Respondent No. 4, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The petitioners have sought for omnibus reliefs in the following background. The petitioners claim to be the owners of the following lands:

1. Sy. Nos. 36/1 measuring 2 acres 6 guntas,
2. Sy. No. 38 measuring 3 acres 15 guntas,
3. Sy. No. 39/3 measuring 24 guntas
4. Sy. No. 40/2 measuring 1 acre 26 guntas and
5. Sy. No. 40/3 measuring 2 acre 26 guntas

together measuring 10 acres 17 guntas situated in Kundanahalli Village, K.R. Puram Hobli, Bangalore East Taluk.

The petitioners claim to have acquired the said properties under various sale deeds as follows:

a. Land bearing Sy. no. 36/1 is said to have been converted from agricultural land to residential user. The same has been purchased by the Second petitioner from one Yasodhamma and her children, under a sale deed dated 13.9.2004. The said petitioner's name is said to be reflected in the revenue records of the Mahadevapura City Municipal Council.

b. Land bearing Sy. no. 38, of which an extent of 2 acres having been converted for residential use, is said to have been purchased by the fifth petitioner from one Magadi Muniyappa and his sons under a sale deed dated 15.6.2004. The revenue records are also said to be in the name of the said petitioner.

c. Land bearing Sy. No. 39/3 measuring 24 guntas and land bearing Sy. No. 40/2 measuring 1 acre 26 guntas are said to have been purchased by the first petitioner from one Smt. Anyamma, W/o. late Hanumappa and others under a registered sale deed dated 31.08.2005. The revenue records are also said to be in the name of the said first petitioner.

d. Land bearing Sy. No. 40/3 measuring 2 acres 26 guntas belongs to petitioners 3, 4 and 5 in equal ratio of $35 \frac{1}{3}$ guntas in the name of each of them having purchased the same from its erstwhile owners Sri. Gullappa and others under three separate sale deeds, all dated 15.06.2004. The first item of $35 \frac{1}{3}$ guntas has been executed in the name of the fifth petitioner, the second item of $35 \frac{1}{3}$ guntas has been executed in favour of the fourth petitioner and third item of $35 \frac{1}{3}$ guntas has been executed in favour of the third petitioner, and mutation entries have also been recorded in their names in the revenue records.

The petitioners assert that they are in physical possession of the lands in question as demonstrated from the documents of title and the corresponding revenue records upto date.

It is stated that in the year 1998, the third respondent, namely, the Special Land Acquisition Officer, Karnataka Industrial Area Development Board, is said to have initiated acquisition proceedings proposing to acquire an extent of 441 acres 28 guntas of land in Hoodi, Sonnenahalli, Nallurhalli, Pattandur Agrahara and Kundalahalli villages of Bangalore South Taluk A notification u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966, (Hereinafter referred to as "the KIAD Act", for brevity) declaring the said extent as industrial land and u/s 1(3) and Section 28(1) of the KIAD Act was issued, dated 24.11.1998. The above mentioned lands of the petitioners were said to be included in the said notifications. It also transpires that various other lands that were the subject matter of the notification were said to have been subject matter of various pending cases, resulting in the Acquiring Authority deciding on withdrawing from acquisition in respect of many such items of land. The State government had accordingly issued a notification in this regard, dated 12.2.2004.

2. It is the case of the petitioners that they have purchased the respective items of land subsequent to such withdrawal from acquisition of the same by the State Government. The petitioners had then learnt that certain persons claiming ownership over their lands were seeking to alienate the same, which entailed the petitioners to warn the general public by way of paper publications of such mischief. It is the further case of the petitioners that notwithstanding the same, the fifth respondent had approached respondents 2 to 4 claiming as owner of the lands of the petitioners and had proposed that the same be acquired for the purposes of an alleged industrial project. Petitioner no. 1 having learnt of the above had lodged a protest on behalf of himself and other petitioners, with respondents 2 to 4, to the effect that the petitioners were the true owners of the lands in question and that there was no proposal to offer the lands for any such project. It is claimed that there was no response to the said objection. It is stated that, however; during March 2007, the petitioners had learnt that acquisition proceedings had been initiated in respect of the lands by the concerned respondents and particularly in respect of the lands of the petitioners. The petitioners are said to have lodged a strong protest in writing, to the effect that such acquisition without reference to the petitioners, was wholly illegal. But in spite of it, the respondents 2 to 4 are said to have initiated consent acquisition proceedings at the behest of the fifth respondent, thereby accepting the claim of the said respondent to the ownership of the land, on 1.12.2006, vide notification u/s 3(1), 1(3) and Section 28(1) of the KIAD Act.

It is stated that in the above background the petitioners had preferred a writ petition before this court in W.P. 5692/2007 challenging the above notification proposing to acquire the petitioners' lands. The said petition was said to have been disposed of as being premature in view of the impugned proceedings being at the preliminary stage, vide order dated 7.1.2008. The petitioners are said to have filed detailed objections to the said notification dated 1.12.2006. The petitioners claim that the said objections have been glossed over by the competent authority in having passed an order purportedly in terms of Section 28(3) of the KIAD Act dated 18.11.2008. The same is under challenge in the present petition.

3. Respondent nos. 2 and 3 have filed objections to the petition to contend that the very frame of the petition and the reliefs sought for are misconceived and are invalid for the following reasons namely, that the notifications collectively produced at Annexure-"A" are not issued by the Respondent No. 3; that Annexure B1 is not a gazette copy as stated by the petitioners; it is only a draft final notification for publication and as such, the question of quashing either Annexure B or B1 does not arise. Further, that the statement with regard to Annexure-C is also incorrect and false in as much as clearance and corrigendum at Annexure-C is issued by Karnataka Udyog Mitra-Respondent No. 4 and not by Respondent No. 3 who is the Special Land Acquisition Officer, KIADB. Annexure C1 has been issued by Respondent No. 2 and not by Respondent No. 3, based on the 276th Board Meeting dated 2.11.2006 and with reference to the decision

taken by the Board for acquisition of 14 acres 1 gunta of land in Sy. Nos. 36/1, 38, 39/3, 40/2, 40/3 of Kundalahalli Village, K.R. Puram Hobli, Bangalore South Taluk in favour of Respondent No. 5. Similarly, that the document produced at Annexure-D is a communication issued by Respondent No. 4 to Respondent No. 5 approving the project proposal submitted by them for establishing a facility of IT Park with Hotel, residential and commercial facilities with an investment of 47.01 crores, to acquire and allot the lands stated above. That as regards the prayer to declare that possession of the petition schedule properties are with the petitioners and restrain the Government from dispossessing the petitioners and to declare that the action of Respondent No. 4 rejecting the objections filed by the petitioners as highly arbitrary, etc. It is contended that on issue of the final notification on 3.7.2013, the lands have vested in the State absolutely and free from all encumbrances and no such declaration could be issued as requested. The rejection of objections filed by the petitioners has been ordered on consideration of the said objections and therefore, the question of quashing the said order does not arise. Further, it is contended that the order rejecting the objections was passed u/s 28(3) of the KIAD Act by Respondent No. 3 and not by Respondent No. 4, as stated in the writ petition.

As regards the claim of the petitioners in respect of the acquisition of the lands under various sale deeds it is pointed out that there being a rival claim as to title and on a comparison of the title deeds it has been noticed that one K.R. Ravishankar along with M/s. Sri Hari Technologies had acquired the self same properties claimed by the petitioners, under sale deeds-prior in point of time to the deeds under which the petitioners were claiming. It is pointed out that the petitioners have not referred to the said sale deeds though this aspect is discussed in the impugned Order dated 18.11.2008. It is stated that in view of the sale deeds under which the fifth respondent was claiming ownership was found to be prior in point of time, it was opined by Respondent no. 3 in his order, that the petitioners would have to establish the primacy of title claimed, before an appropriate Civil Court. It was also found that the names of persons appearing in the revenue records at the time of issuance of notifications for acquisition were also relevant and on that count, it was found that Ravishankar and M/s. Srihari Technologies whose names were found as khatedars.

It was in that background that the objections and the title deeds set up by the petitioners had been negated. It is further contended that it was in that background that the notifications were issued under Sections 28(1) and 3(1) of the KIAD Act on the basis of the consent letter given by the said Ravishankar and M/s. Srihari Technologies. Incidentally, the petitioners have not chosen to make them parties to the petition, and hence the petition is bad for non-joinder.

It is further contended that the petitioners have failed to disclose vital facts in the writ petition. It is stated that the lands in question along with several other lands were notified for acquisition by the State for the formation of an industrial area. The preliminary notification dated 24.11.1998 to acquire a vast extent of

land of 497.35 acres comprising of villages Hoodi (124.16), Sonnenahalli (123.12), Nallurahalli (73.27 acres), Pattandur Agrahara (25.24 acres) and Kundalahalli (150.30 acres) came to be issued by the State. The following writ petitions were filed challenging the acquisition proceedings:

1. W.P. No. 36638/1999 (PIL) (Kenchappa and others vs. State and Others)
2. W.P. No. 14925-44/1999 connected with W.P. No. 31733/1999 (Gopal and Others vs. State and others)
3. W.P. 35465-68/1999 (Ramaiah Reddy and Others vs. State and Others)

It is contended that in respect of subject lands also, interim orders were obtained. W.P. 36638/1999 was disposed of on 26.11.1999 with certain directions to maintain the area of 1 km from the outer periphery of the village as a buffer zone and not to acquire lands within the said radius. Other writ petitions were allowed following the order passed in WP 36638/1999 (PIL). Against the said order, appeals in C.A. Nos. 7405/2000, 7406-26/2000 and 7427-30/2000 were filed by the Karnataka Industrial Areas Development Board (KIADB) in the Supreme Court and an interim order was said to have been granted by the said Court.

Further, C.A. No. 7405/2000 filed against the order in W.P. No. 36638/1999 (PIL) was said to have been allowed on 12.5.2006, thereby upholding the acquisition. The State Government is said to have issued a notification u/s 4 of the KIAD Act bearing No. CI 200 SPQ 1998 dated 12.02.2004 withdrawing the subject lands and lands bearing other survey numbers, from acquisition. That apart from the KIADB, M/s. Techzone Technologies-Respondent No. 5 herein, was also said to be a party to the above proceedings. In order to end the litigation, it is stated, that the KIADB and Respondent No. 5 had reached a settlement pursuant to which the KIADB had issued a letter dated 27.11.2003 agreeing to withdraw from the acquisition subject to compliance of certain conditions communicated in the letter. It is stated that as per the said letter, the Board had considered and was agreeable for deletion of 22 acres of land comprised in various survey numbers at Kundalahalli village and that it was decided by the Board in its meeting dated 15.10.2003 to delete 14 acres 1 gunta and to allot 7 acres 39 guntas of land subject to the promoters of the said respondent no. 5 - Company withdrawing the pending litigation by filing a joint memo before this Court and before the Supreme Court and remitting an amount of Rs. 5,87,500/- towards 50% of the development cost to the KIADB in respect of 14 acres 1 gunta of land to be deleted and which was included in the notification issued u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the "KIAD Act", for brevity). Respondent no. 5 was also required to pay the prevailing rate, of Rs. 40 lakhs per acre, for the allotment of 7 acres 39 guntas.

Further, it is contended that M/s. Techzone Technologies had also filed a writ petition in W.P. No. 35265/2004 to quash the notification dated 12.02.2004 bearing No. CI 200 SPQ 1998 deleting the lands acquired. In the course of the

hearing of the writ petition, a memo was said to have been filed by the petitioners therein, along with the order passed by the Apex Court in Civil Appeal No. 7405/2005 and connected matters and the letter dated 27.11.2003 of Respondent No. 2. Hence, the writ petition was said to have been disposed of in terms of the said memo.

It is asserted that the factual sequence of events leading up to the acquisition proceedings of the lands in question are as under:

That one Smt. Narasamma was said to be the registered agreement holder in respect of the lands and the total extent consisted of various other items of land, including the petition lands. The erstwhile land owners had also executed a registered General Power of Attorney to deal with the lands appropriately. It is stated that she had nominated M/s. Techzone Technologies for securing sale deeds from the land owners, in respect of which she held agreements of sale. Most of those lands were said to be converted for non-agricultural use.

That as stated supra, W.P. No. 36638/1999 (PIL) filed by Kenchappa and others was disposed of by a Division Bench of this Court vide order dated 26.11.1999 allowing the writ petition and also issuing directions to maintain a buffer zone and not to acquire lands falling within that area. Along with the order passed in Kenchappa's case, the KIADB had questioned the order passed in W.P. No. 14925-94/1999 connected with W.P. 31733/1999 (Gopal and others vs. State) and W.P. No. 7406-7426, 7427-7430/2000 as the said writ petitions had been allowed by the Division Bench following Kenchappa's case. During the pendency of the appeals before the Apex Court, the KIADB and M/s. Techzone Technologies Private Limited had reached the settlement as stated above.

The notification dated 12.02.2004 issued by the State Government, notwithstanding the settlement, deleting several lands from acquisition including the lands in question, was said to have been questioned by Respondent No. 5 - M/s. Techzone Technologies Private Limited in W.P. No. 35265/2004 before this Court and the said notification dated 12.02.2004 in respect of 22 acres of land was sought to be quashed. In the course of hearing on 20.09.2006, the said petitioner filed a memo along with the order passed by the Apex Court in C.A. No. 7405/2000 and connected matters and the letter dated 27.11.2003 written by the KIADB. Accepting the memo, the said writ petition was disposed of by this Court in terms of the letter dated 27.11.2003 (Annexure-2). It is contended that as seen from the records the lands in question i.e., Sy. Nos. 38, 39/3, 40/2, 40/3 of Kundalahalli village of different extents, had been purchased by Sri. Ravishankar and Srihari Technology Center under five sale deeds dated 6.3.2004. M/s. Techzone Technologies Private Limited-Respondent No. 5 herein, had approached the State Level Single Window Clearance Committee (SLSWCC) with a combined application seeking clearance for their project of establishing an IT Park with hotel, residential and commercial facilities. The SLSWCC at its meeting held on 16.10.2006 is said to have cleared the project and also made recommendation for acquisition of 14 acres 1 gunta of land comprising Sy. Nos.

36/1, 38, 39/3, 40/2, 40/3 of Kundalahalli Village subject to the promoter furnishing letters from the Khata Holders agreeing for acquisition of their lands and other conditions. The owners as shown from the records, are said to have furnished consent for acquisition of their lands for the project of the fifth respondent. That thereafter, the State is said to have initiated acquisition proceedings by issuing notifications under Sections 3(1), 1(3) and 28(1) of the KIAD Act, 1966, declaring the area of 14 acres 1 gunta comprised in the aforesaid survey numbers as an "industrial area", making applicable the provisions of Chapter VII of the KIAD Act to the said area and is also said to have issued a notification u/s 28(1) of the KIAD Act on 1.12.2006 proposing to acquire the same for the benefit of Respondent No. 5. At that stage, the petitioners had filed W.P. No. 5692/2007 questioning the preliminary notification claiming ownership of the lands. This Court had disposed of the said writ petition vide order dated 7.1.2008 (Annexure-X to the writ petition). The Special Land Acquisition Officer is said to have heard the parties, considered the objections and rejected the objections of the petitioners regarding ownership but had ordered to show their names in the final notification, since they were claiming as purchasers and also since the said issues had to be resolved by a Civil Court. It is hence contended that the facts stated by the petitioners in the objections are no grounds to quash the acquisition as the consent given by khatedars as per the records, satisfied the requirement laid down by the SLSWCC. The State has thereafter issued a final notification for acquisition of the lands after being satisfied that the lands were required for the project in question to be executed by the respondent No. 5. The respondent no. 5 has also remitted the requisite amount pursuant to various orders of this court and the State Government. That the petitioners had purchased the lands subsequent to the sale in favour of Respondent no. 5 as could be seen from the sale deeds produced by them with the writ petition. And that their claim that they have purchased the lands after the same were denotified by the State Government under notification dated 12.02.2004 is untenable and is liable to be rejected. That the said notification had been challenged in W.P. No. 35265/2004 by Respondent No. 5. The KIADB had filed appeals before the Apex Court challenging the order of the Division Bench in Kenchappa's case and the said appeals were pending before the Apex Court. The appeals were disposed of on 18.04.2006 in terms of Annexure R3. The petitioners have also not disclosed the fact of the order passed in W.P. No. 35265/2004 (LA-KIADB) on 20.09.2006 disposing of the writ petition in terms of the letter dated 27.11.2003. It is therefore submitted that the purchase allegedly made by the petitioner is hit by the principles of lis pendens and is liable to be rejected.

That the State has acted in accordance with law and on the basis of the decision of the Board taken on 15.10.2003 and had informed respondent no. 5 on 27.11.2003, of the order of the Apex Court dated 18.4.2006 and order dated 20.09.2006 in W.P. No. 35265/2004. The decision to acquire land was based on various proceedings that had taken place earlier between KIADB, the State

Government and Respondent No. 5 and that it is incorrect and false to contend that the said decision suffers from error of law and facts. The contention that the lands are in a residential zone, etc., are not supported by any material produced by the petitioners. At any rate, such classification cannot be a bar for acquisition of land since the project proponent is required to obtain the change of land user before utilizing the land. The claim of ownership of the petitioners is prima facie untenable and liable to be rejected in view of the material available on record.

The fifth respondent has filed objections to contend that it is a company incorporated under the Companies Act, as on 16.2.2001 and that it is engaged in the business of software development, engineering and consultancy services. That it had approached the State government with a proposal to develop an Information Technology Park at Kundalahalli, Bangalore. The fifth respondent has reiterated the sequence of events as stated by respondents 2 & 3.

It is further narrated that the fifth respondent has participated in the acquisition proceedings, from inception (since 1995). Sri K.V. Kupparaju (who represents the 5th respondent herein) and one other K.V. Bhaskar Raju are said to have acted in the capacity of Power of Attorney Holders of the landowners, of the lands which were sought to be acquired. The above Power of Attorneys were executed in the year 1995. As Power of Attorney Holders, Sri Kupparaju and Sri Bhaskar Rao are said to have executed registered sale agreements in favour of Smt. Narsamma (mother of Sri K.V. Kupparaju). Subsequent to this, registered sale deeds were executed on 06.03.2004 in respect of lands bearing Survey No. 36/1), 06.03.2004 in respect of Survey No. 38), 06.03.2004 in respect of Survey Nos. 40/2, 39/3 and 06.03.2004 in respect of Survey No. 40/3. It is stated that the registered sale deeds were executed in favour of Sri Hari Technologies and K.R. Ravishankar, its Managing Partner, which is said to be a sister concern of M/s. Techzone Technologies. Hence, it is contended that from the above facts, it would be apparent that the fifth respondent is the owner of the afore-mentioned schedule lands and the petitioners are falsely claiming to be the owners of the schedule properties. It is sought to be pointed out that the petitioners have produced sale deeds in respect of the schedule properties, which have been executed after the execution of the registered sale deeds, in favour of the fifth respondent.

Further, it is stated that the petitioners are relying on false and fabricated sale deeds. It is stated that the fifth respondent was in possession of a registered agreement to sell, executed in the year 1995 itself, and subsequently, registered sale deeds have been executed in favour of Sri Hari Technologies and Sri K.R. Ravishankar in the month of March 2004 itself, much before the execution of the alleged sale deeds of the petitioners.

It is hence contended that the 25th SLSWCC meeting held on 5.10.2006, the project of the fifth respondent was said to have been approved, subject to receipt of consent letters from the khata holders. The fourth respondent is said to have approved the project of the fifth respondent, after much deliberation by

the members of the Clearance committee. And further, that there was no bar for the government in acquiring even land earmarked as a residential zone, property for a public purpose. The petitioners' contention that the properties are in the residential zone as per the Comprehensive Development Plan (CDP) and could not be acquired is hence not tenable.

It is contended that the fifth respondent had issued paper publications in the Times of India newspaper, on 07/05/2005 and 10/06/2005, in respect of the subject properties, warning the public that the petitioners are falsely claiming to be the owners of the schedule properties and that anyone who transacted with the petitioners, in respect of the same would be doing so at their own risk.

The entries in the encumbrance certificates of the year 2004-05 bore the name of the fifth respondent, Sri Ravi Shankar and M/s. Techzone Technology. This being the case, even assuming that the sale deeds in favour of the petitioner are genuine, the petitioners should have exercised caution before proceeding to buy the said properties.

The fifth respondent is said to have made payment of Rs. 7,18,08,000/-, as directed by the KIADB and the State Government for the allotment of the subject properties. Further the fifth respondent is said to have been granted possession of 7 acres 39 guntas of land, after making the necessary payments, as was agreed in the settlement letter dated 27.11.2003 clearly establishing the bona fides of the fifth respondent.

4. The petitioners have by way of rejoinders to the statements of objections filed on behalf of respondents 2 & 3 and Respondent No. 5, to contend that, M/s. Hari Technologies and the 5th Respondent are said to be sister concern and the Directors and Share holders are one and the same in both concerns. That it is a sham transaction which has been entered into by the Respondent authorities, the fifth respondent and M/s. Hari Technologies who claims to be the owner of property. That in the guise of acting pursuant to orders of this Court and the Supreme Court, the property of the petitioners is sought to be usurped by the fifth Respondent in collusion with Respondents 2 and 3 and M/s. Hari Technologies. That M/s. Hari Technologies has absolutely no right, over the property in question. If the property belonged to it, it would not have given consent for acquisition, in that, the end result is the property reverts to the fifth respondent, which would plainly demonstrate that the whole transaction is sham and an abuse of process of law by the fifth Respondent. The various averments made with regard to the judgments referred to by the fifth Respondent, as well as the undertaking given by Respondents 2 and 3, have no relevance to the facts and circumstances of the case. In the guise of the said judgment, the land of the petitioner cannot be acquired and allotted, unless the due process of law is followed.

It is contended that in the statement of objections filed by respondents 2 and 3 they have not answered any of the contentions raised by the petitioners that a

totally inconsistent stand has been taken by the respondents in the statement of objections only with a view to deprive the legitimate right of the petitioner herein.

It is contended that the impugned notifications issued on the basis of consent acquisition sought through the Single Window agency, for acquisition of the lands, including the land in question is illegal and also against the order dated 07.01.2008 in W.P. No. 5692/2007 passed by this Court. It is asserted that the petitioners are the absolute owner of the subject lands. The claim of the petitioners with respect to the lands and the illegality of the claim of respondent no. 5 is elaborated thus in the statement of objections and rejoinders filed by the petitioners:

I. Property bearing Sy. No. 40/3 measuring 2 acres 26 guntas situated at Kundalahally:-

It is stated that the land measuring 2.26 acres situated at Sy. No. 40/3 of Kundalahalli Village was earlier owned by one Muddamma, W/o late Mugappa, who is said to have acquired the same by an order of re-grant in Case No. 35/59-60 by the Special Deputy Commissioner for Inams Abolition, it was said to be the self-acquired property of late Smt. Muddamma. Muddamma, is said to have had a daughter by name Smt. Nanjamma who was said to have been married to Gullappa. The said Muddamma is said to have died on 13.1.1997 leaving behind a registered Will dated 29.10.1985, bequeathing the above land in favour of Gullappa who was her brother and also her son-in-law. Gullappa had thus said to have become the absolute owner of the property. The Tahsildar in Case NO. RRT/Cr/20/2001-02 is said to have changed the revenue records in the name of Gullappa. It is claimed that the petitioners 3 to 5 had by three separate registered sale deeds dated 15.06.2004, purchased an extent of 35.33 guntas each, totally measuring 2.26 acres of land in Sy. No. 40/3 from Gullappa and his son G.Venkatesh (Annexure J, K & L) and were thus claiming as absolute owners of the property in possession and enjoyment. The property was agricultural land and had not been converted to non-agricultural purposes till date. That the Respondent No. 5 herein is said to have claimed that its sister concern M/s. Hari Technologies, represented by its Managing partner-Sri. K.R. Ravishankar purchased the above mentioned agricultural land by alleging that it was converted for residential purpose through the General Power of Attorney Holder Mr. K.V. Bhaskar Raju (brother-in-law of Ravi Shankar) of late Muddamma, late Narasimhaiah, Narayanaswamy, Nanjamma and Venkatesh, who are said to have executed a General Power of Attorney dated 6.2.1995 in favour of Mr. K.V. Bhaskar Raju and K.V. Kuppa Raju. It is further relevant that Muddamma had died on 13.01.1997 and Narasimhaiah is said to have died in the year 1997 and the alleged sale deed is executed on 6.3.2004, i.e., seven years after the death of the executants. Hence, the same is void ab initio and non est in law.

It is contended that the fifth respondent and M/s. Hari Technologies cannot claim any ownership rights with respect of the above mentioned agricultural property under the sale deed dated 6.3.2004, as the primary executant of the alleged

General Power of Attorney dated 6.2.1995 had died in the year 1997 and hence the General Power of Attorney could not have been acted upon. Any transaction after the year 1997 under the said GPA dated 6.2.1995 is null and void. It is clearly evident from the endorsement dated 22.06.2007 issued by the Deputy Commissioner endorsing that there are no documents with respect to the schedule property. This being the case, M/s. Hari Technologies which is a company, could not also have purchased the said land, contrary to Section 79 of the Land Reforms Act, 1961. Hence, M/s. Hari Technologies had absolutely no right over the property in question. Further, one Mr. Kupparaju and Bhasker Raju, along with their mother Narasamma are said to have filed an appeal before the Assistant Commissioner in Case No. 182/2004-05 challenging the order of rejection for transfer of khatha passed by the Tahsildar in Case No. 20/2001-02 dated 31.01.2012. The Assistant Commissioner is said to have dismissed the appeal by order dated 13.01.2009 and the same has attained finality, as the same has not been challenged.

II. Property bearing Sy. No. 39/3 measuring 0-24 acres and Sy. No. 40/2 measuring 1 acre 26 guntas stated at Kundala Hally:-

The above property was said to be jointly owned by two brothers, late Hanumappa and Narasimaiah. Narasimaiah is said to have died on 30.01.1997 and Hanumappa is said to have died on 2.9.2003. The sons and daughter of both late Hanumappa and Narasimaiah are said to have sold the above property to the first petitioner under a registered sale deed Annexure-H and the first petitioner is the absolute owner of the property and claims to be in possession and enjoyment of the property. The fifth respondent's claim that one Mr. K.R. Ravishanker who is said to be none other than the brother-in-law of Mr. K.V. Bhasker Raju, as the owner of the above property and that he had purchased the same through a registered sale deed dated 6.3.2004 executed by Mr. K.V. Bhasker Raju, GPA Holder of late Narasimhaiah, late Hanumappa, K.H. Chinanna and K.H. Narayanaswamy. On the basis that they had executed a General Power of Attorney dated 13.3.1995 in favour of Mr. K.V. Bhasker Raju and K.V. Kuppa Raju. It is pointed out that the said Narasimhaiah had died on 30.01.1997 and Hanumappa had died on 2.9.2003 and the alleged sale deed is executed on 6.3.2004, that is several years after the death of the executants and hence the same is void ab initio and non est in law. Further, it is also pointed out that the fifth respondent had produced a declaration dated 13.03.1995 with respect to Sy. No. 40/2 wherein it is indicated that Smt. Narasamma, W/o. Venkatswamy Raju and mother of Mr. K.V. Bhasker Raju and K.V. Kuppa Raju had entered into an agreement of sale dated 15.03.1995. The declaration ought to have been a subsequent document to the sale agreement. However, the declaration appears to be purportedly executed prior to the date of the sale agreement and the corrections made in the declaration had not been counter-signed by both the parties and has been notarized without acknowledging the hand written corrections. The declaration appears to be a fabricated and concocted document on the face of it. This being the case, K.R. Ravishanker has no right title over the

above properties and his consent before the KIADB is illegal and bad in law.

III. Property bearing Sy. No. 38 measuring 3 acres situated at Kundala Hally:-

The above property was said to have been owned by Hoodi Muniyappa and his three sons namely Nagaraj, Gopala and Srinivasa. The said Hoodi Muniyappa and his sons are said to have sold the said properties by virtue of three separate sale deeds each for 1.05 acres totally measuring 3.15 acres in favour of the third, fourth and fifth petitioners (Annexure-F). The petitioners 2 to 5 are the absolute owners of the schedule property and are in possession and enjoyment of the same.

The fifth respondent alleges that one Mr. K.R. Ravishanker who is none other than the brother-in-law of Mr. K.V. Bhasker Raju, is the owner of the above property and he had purchased the same by virtue of two separate sale deeds dated 6.3.2004 executed by Mr. K.V. Bhasker Raju, GPA Holder of Hoodi Muniyappa and his two sons namely Nagaraj, Gopala in favour of Sri. Hari Technologies Private Limited with respect of 2 acres and remaining 1 acre 15 guntas in favour of K.R. Ravishanker. That Mr. K.V. Kuppa Raju and K.V. Bhaskar Raju, taking advantage of the illiteracy and innocence of Mr. Hoodi Muniyappa and his two sons, under the guise of the Joint Development venture in the schedule property, had got the GPA executed in their name. Further, that in the alleged GPA dated 6.3.1995, the survey number at para 4 in page 1 is stated as Sy. No. 40/3, whereas in the schedule, it has been mentioned as Sy. No. 38 and hence, there are discrepancies with respect to the survey number.

It is further contended that from a perusal of the affidavit, it is clear that Mr. Hoodi Muniyappa and his two sons had not transferred any rights in favour of Mr. K.V. Kuppa Raju and K.V. Bhaskar Raju with respect to the schedule property and hence, the consent acquisition as claimed by respondents 2 and 3 is illegal. That the consent given by M/s. Hari Technologies before Respondents 2 and 3 is illegal and bad in law and the said respondents have failed to consider the above fact. They ought to have held that the petitioners are the absolute owners of the schedule property or they should have directed the parties to get the title cleared from the competent court of law.

IV. Property bearing Sy. No. 36/1 measuring 2 acres 6 guntas situated at Kundala Hally:-

The above property was owned by late Thimmappa Reddy and after his death, his wife Smt. Yashodamma and his 3 daughters namely Lalitha, Devika and Jyothi inherited the said property and the revenue records were also mutated in their names. Smt. Yashodamma and her three daughters then executed a registered sale deed dated 13.09.2004 in favour of the Petitioner No. 2 (Annexure-E).

The fifth respondent further alleges that one Mr. K.R. Ravishanker who is none other than the brother-in-law of Mr. K.V. Bhasker Raju, is the owner of the above

property and he had purchased the same by virtue of sale deed dated 6.3.2004 executed by Mr. K.V. Bhasker Raju, GPA holder of Smt. Yashodamma and her three daughters namely Lalitha, Devika and Jyothi in favour of K.R. Ravishanker. That Mr. K.V. Kuppa Raju and K.V. Bhaskar Raju, taking advantage of the illiteracy and innocence of Smt. Yashodamma, under the guise of the Joint Development venture in the schedule property, have got the GPA executed in their name. The petitioners are the absolute owners of the schedule properties, they having purchased the same from the original owners of the schedule properties. From a perusal of the affidavit, it is clear that Smt. Yashodamma and her daughters have not transferred any rights in favour of Mr. K.V. Kuppa Raju and K.V. Bhaskar Raju with respect to the schedule property. Hence, the consent acquisition as claimed by respondents 2 and 3 is highly arbitrary and illegal and the consent given by M/s. Hari Technologies before Respondents 2 and 3 is bad in law. That the respondents 2 and 3 have failed to consider the said fact and they ought to have held that petitioners are the absolute owners of the schedule property and considered the objections filed to the acquisition proceedings. Hence, the consent acquisition as alleged by the fifth respondent, given by Ravishankar before Respondents 2 and 3 authorities is false and illegal. That the consent given by M/s. Hari Technologies before Respondents 2 and 3 claiming that they got sale deed executed by GPA Holder on the strength of an earlier agreement executed in the name of Narasamma is defraud the rights of Petitioner No. 2. Further, the said agreement has lapsed, as the said Narasamma failed to get the sale deed executed in her name by paying the balance sale consideration in time. The said Narasamma is also reported to be dead as on the date of execution of the alleged sale deed. Hence, the consent given by M/s. Hari Technologies before Respondents 2 and 3 is a nullity in the eye of law and the acquisition proceedings are highly arbitrary, illegal and without application of mind.

It is contended that the petitioner had approached this court in W.P. No. 5692/2007, and by its order, this Court made it clear that the third respondent should enquire into the matter before passing an order u/s 28(3) of the KIAD Act and that the petitioners' objections should be taken in to consideration. Therefore, the grievance of the petitioners is that the impugned notifications are passed only to deprive the petitioners' lawful right and the exercise of power by the respondent authorities u/s 1(3), 3(1) and 28(4) of the act is highly illegal and perverse in the light of the above infirmities. The action of the respondent authority of passing the orders without considering the contention and objections along with supporting documents and without assigning reasons is illegal.

It is further contended that the respondent-authority has failed to conduct a proper enquiry and without any reasons has overruled the objection filed by the petitioners. While passing the impugned order and issuing the impugned notifications, the fourth respondent has given only one reason, namely, that the acquisition is a consent acquisition. The reason given by the third respondent is untenable when there is a dispute with regard to the title of property it was the

bounden duty of the respondent authorities to direct parties to approach the appropriate court of Law for a declaration of title. It is contended that except for the said reason, there is no other reason forthcoming in the impugned notifications.

It is further contended that the scheme in respect of which the impugned notifications are issued have lapsed. The petitioners contend that the respondents 2 and 3 have not issued the final notification all these years and the proposed action of the respondents to issue the impugned notifications without hearing and considering the objection filed by petitioners is illegal and is liable to be quashed.

It is contended that the memo and order dated 27.11.2003 does not indicate that respondent no. 3 has allotted the property to the fifth respondent. Further it is contended that the fifth respondent had failed to deposit 60% of the remaining amount of Rs. 4,30,84,800/- towards cost of acquisition proceedings inspite of sufficient time having been given. The Special Deputy Commissioner vide letters dated 17.12.2008 and 09.06.2009 is said to have had directed the fifth respondent to deposit 60% of the remaining amount Rs. 4,30,84,800/- towards cost of acquisition proceedings and that in spite of the same, the fifth respondent had failed to comply, for reasons best known to the 5th respondent. Further, the special District Collector vide letters dated 01.07.2009 had directed 5th respondent to deposit 60% of the remaining amount Rs. 4,30,84,800/- towards cost of Acquisition proceedings within 15 days in spite of same the 5th respondent has failed to comply the same, Hence the scheme for which the preliminary notification was issued had lapsed. Further in the 294th Board Meeting held on 17.08.2009 respondent authorities have take thought a decision to reconsider the acquisition proceedings since the fifth respondent had not paid the balance 60% of the remaining amount Rs. 4,30,84,800/- towards cost of acquisition proceedings. The scheme for which the impugned notifications are issued has lapsed. It is not permissible for the respondent authorities to acquire the property under the guise of consent acquisition. The respondent-authorities had therefore acted mala fide and had misused their powers.

From the above stated facts, it is contended that it is clearly evident that the respondents are hand in glove with the private respondent and were acting with the sole intention to defraud the legitimate and lawful rights of the petitioners and the erstwhile owners of the schedule properties. It is believed that the fifth respondent had persuaded the concerned authorities to acquire the petitioners' lawful lands in question. Further, the alleged sale deeds dated 6.3.2004 executed by the GPA holders of the erstwhile owners were all collusive documents, as the same is executed: amongst the family members without the consent and knowledge of the erstwhile owners. The respondent-authorities being instrumentalities of State were bound to act in a fair manner. The Respondents 2 and 3, for extraneous reasons and irrelevant considerations and to favour the fifth respondent, had passed the impugned notifications acquiring the petition

schedule property. The fifth respondent having made many unsuccessful challenges to the acquisition proceeding before the High Court and Supreme Court, has approached the Government under the guise of consent acquisition to get the petition schedule property acquired. M/s. Hari Technologies had no title over the schedule properties. Hence, the final notifications issued based on the consent given by the Director of the fifth respondent and M/s. Hari Technologies, is liable to be set aside and quashed.

5. The learned Senior Advocate, Shri Madhusudhan R. Naik appearing for the counsel for the petitioners would therefore emphasize that having regard to the serious dispute as to the manner of acquisition of ownership of the lands in question is claimed, the consideration of the objections filed by the petitioners, at the enquiry u/s 28(3) of the KIAD Act, was crucial. This was especially so as the seriousness of the matter having been urged by way of their writ petition in WP 5692/2007 and that petition having been disposed of, with an observation that the petitioners could file their objections at the enquiry, the short question, according to the learned Senior Advocate, would be that if the sale transactions under which ownership is claimed by M/s. Hari Technologies and the fifth respondent, is prima facie demonstrated to be void, whether the consent to acquisition, provided by such nebulous owners could be acted upon in proceeding further with the so called consent acquisition.

In other words, it is pointed out that the several items of land, which are the subject matter of the petition are claimed to have been acquired in the following circumstances, as would plainly indicate the void transactions:

(a) Land bearing Sy. No. 40/3: Sale deed dated 6.3.2004 is executed on the strength of a General Power of Attorney dated 6.2.1995, where as the principal executant of the Power of Attorney, Muddamma, had died in the year 1997.

(b) Land bearing Sy. No. 39/3 and Sy. No. 40/2: Sale deed dated 6.3.2004 is executed by a Power of Attorney holder under a General Power of Attorney dated 13.3.1995. The principal executants of the Power of Attorney, Narasimaiah and Hanumappa had died on 30.1.1997 and 2.9.2003, respectively.

(c) Land bearing Sy. No. 38: This is said to have been purchased under a sale deed dated 6-3-2004, executed by a General power of attorney holder of one Hoodi Muniyappa and his two sons. The said Power of attorney is said to be executed in respect of a purported joint development agreement and did not empower the agent to alienate the property.

(d) Land bearing Sy. No. 36/1: Said to have been purchased under a Sale deed dated 6.3.2004, which is said to have been executed by a power of attorney holder of Yashodamma and her daughters, who are said to have executed the power of attorney in respect of a joint development agreement and hence the same did not authorize the agent to alienate the property.

Hence, it is contended that the Special land acquisition officer could not have

proceeded on the basis that there was a valid consent to the acquisition.

6. On the other hand, the learned Senior Advocate, Shri S. Vijayashankar, appearing for the counsel for KIADB and the learned Senior Advocate Shri. Ravi B. Naik, appearing for the counsel for Respondent no. 5 would contend that there is no substance in the so called serious infirmity alleged by the petitioners. It is pointed out that the Agreement of Sale pertaining to the first two items of land above was a registered deed, along with a registered General Power of Attorney, and it was shown that the entire sale price had been paid under the agreement of sale itself, therefore, the General power of attorney conferred being one coupled with interest, would not perish with the death of the principal, therefore the contention as to the execution of the sale deeds subsequent to the demise of the executants of the power of attorney, being void, is not tenable.

And further, that in so far as the next two items of land are concerned, it is only alleged that the power of attorney on the basis of which the sale deeds were executed were in respect of a joint development agreement and did not empower the agent to alienate the property is a self serving claim and is not established and ought to be ignored.

In all other respects, it is claimed that the acquisition proceedings are not at all capable of being assailed as it is totally in accordance with law and hence seek dismissal of the petition.

7. In the above circumstances, it is seen that the issue of a valid title was significant not merely to determine the person who would be entitled to compensation but in order that consent granted for acquisition, it was also necessary that the authority satisfy itself that the consent granted was valid and unquestionable.

It is seen that the Special Land Acquisition Officer, while acknowledging that there was a dispute with regard to ownership has sought to protect the interest of the petitioners by holding that their names are reflected in the notification in order that they may lay a claim to compensation after having their dispute resolved before a civil court. But proceeds to accept the claim of the fifth respondent as to the land having been acquired in the manner as detailed hereinabove. The aspect of the sale deeds having been executed on the basis of the respective power of attorney, when the principals were dead on the date of execution of the sale deeds is not discussed or addressed.

The explanation sought to be offered on behalf of the respondents that the agency is coupled with interest and hence irrevocable, and does not stand extinguished on the death of the principal is a proposition, that could be applied in overcoming this seeming infirmity, only on a finding of fact as to the agency being coupled with interest. In the event that the said proposition is incapable of being demonstrated with reference to the documents relied on by the respondents the title claimed over the land would be rendered void and the consent given for acquisition would be invalid.

Hence, in the above circumstances, it may be said that the enquiry conducted u/s 28(3) of the KIAD Act cannot be said to be complete and fair. In the result the petition is allowed in part. The impugned proceedings are quashed, the matter is remanded for a fresh enquiry u/s 28(3) with specific reference to the infirmities as alleged by the petitioners in the transfer of title to the lands and the invalidity of the consent given to acquire the lands.