



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

WRIT PETITION NO. 50291 OF 2019 (LA-RES)

BETWEEN:

1. SHRI. ARUN KUMAR
S/O SHRI NARASIMHA SHETTY
AGED ABOUT 58 YEARS
R/O SIRIKRUPA, 1ST CROSS
V.P. EXTENSION, 5TH BLOCK
CHITRADURGA - 577 501.
2. SHRI. SHARAN KUMAR
S/O SHRI NARASIMHA SHETTY
AGED ABOUT 55 YEARS
R/O SRIKRUPA 1ST CROSS
V P EXTENSION, 5TH BLOCK
CHITRADURGA - 577 501.
3. SHRI K. KIRANKUMAR SHETTY
S/O SHRI NARASIMHA SHETTY
AGED ABOUT 47 YEARS
R/O SIRIKRUPA, 1ST CROSS
V P EXTENSION, 5TH BLOCK
CHITRADURGA - 577 501.

...PETITIONERS

(BY SRI. SPOORTHY HEGDE N.,ADVOCATE)





AND:

1. NATIONAL HIGHWAYS AUTHORITY
REPRESENTED BY ITS DIRECTOR
NH4 (KM201)
CHITRADURGA - 577 501.
2. SPECIAL LAND ACQUISITION OFFICER
NATIONAL HIGHWAY AUTHORITY, NH-50,
CHITRADURGA- 577 501.
3. GAIL (INDIA) LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR
SY NO.68/1, G.R. HALLY
CHITRADURGA TALUK AND DIST-577 501.

...RESPONDENTS

(BY SMT. SHILPA SHAH, ADVOCATE FOR R1;
SRI. YOGESH D. NAIK, AGA FOR R2;
SRI. M.S. NARAYAN, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) DECLARE THAT THE ACQUISITION PROCEEDINGS IN RESPECT OF THE PETITIONER'S LAND OF 606 SY.MTS UNDER THE IMPUGNED NOTIFICATION S.O.3526(E) DATED 3RD NOV. 2017 AT ANNEXURE-'A' AND THE POSSESSION NOTICE LAC/NHA/E/NH-50/3(E) NOTICE/2017-18 DATED:22.12.2018 AT ANNEXURE-'B' PASSED AND ISSUED BY THE RESPONDENT NO.1 AND 2 RESPECTIVELY ARE ILLEGAL AND ARBITRARY AND LIABLE TO BE QUASHED.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

Heard Sri. Spoorthy Hegde N, learned counsel for the petitioners, Smt. Shilpa Shah, learned counsel for the respondent No.1, Sri. Yogesh D.Naik, learned AGA for the respondent No.2 and Sri. M.S.Narayan, learned counsel for the respondent No.3.

2. Present petition is filed seeking declaration that acquisition proceedings in respect of petitioners' land in Sy.No.68/1, measuring 606 sq.mtrs., situated at Guddadavrangavvanahalli village, Chitradurga Taluk, Chitradurga district which sought to be acquired by respondent No.1-NHAI in terms of notification dated 03.11.2017 as per Annexure-A and possession notice dated 22.12.2018 as per Annexure-B as illegal and arbitrary.

3. Learned counsel for the petitioners reiterating the grounds urged in the memorandum of petition submits;



(a) that the land in Sy.No.68/1 originally measured 5 acres 16 guntas out of which KIADB had acquired 1 acre 10 guntas of land on 24.07.2010 and had handed over the respondent No.3-GAIL for the purpose of establishment of Sectionalized Valve Station. Subsequently, respondent No.1-NHAI by notification dated 07.09.2012 acquired 2727 sq., mtrs. from and around the property belonging to the petitioners. That again respondent No.1-NHAI acquired additional extent of 202 sq. mtrs., of land on 19.12.2016. Thus, respondent No.1-NHAI had acquired total extent of 2929 sq. mtrs.

(b) That the respondent No.1 proceeded to acquire additional extent of 606 sq. mtrs., of land in terms of notification dated 03.11.2017 which is subject matter of this petition. The said acquisition though shown as for the purpose of formation of national highway, the respondent No.1-NHAI is proposing to hand over said extent of 606 sq.mtrs., to respondent No.3-GAIL.



(c) That under the provisions of National Highways Act, 1956, the respondent No.1-NHAI has no power or authority to acquire the land and hand over the same to other entity. He submits that such an exercise of power or authority is clearly a colorable exercise of power not provided under the statute. He therefore submits that acquisition of 606 sq.mtrs., of land belonging to the petitioners under the notification dated 03.11.2017 subject matter of this petition being illegal requires to be quashed and all consequent action taken by the respondents also be set aside.

4. In response, Smt.Shilpa Shah, learned counsel for the respondent No.1-NHAI submits;

(a) that in terms of Section 13 of the National Highways Act, 1956, which provides for functions and obligation of the authority, respondent No.1-NHAI acquired the extent of land measuring 606 sq. mtrs.

(b) Learned counsel produces the minutes of the meeting dated 30.03.2017 and 07.04.2018. Based on the



contents on the said minutes of the meeting counsel for the respondent No.1-NHAI submits that after acquisition of 2929 sq. mtrs., of land which included an extent of 606 sq.mtrs., of land which was in possession of GAIL. Certain issues arose between the respondent No.3-GAIL and respondent No.1-NHAI with regard to payment of compensation, which lead to conducting of these meetings referred to in the minutes of the meetings. That after several consistent meetings it was resolved between the respondent No.1-NHAI and respondent No.3-GAIL that respondent No.1-NHAI would acquire 606 sq. mtrs., of land to compensate the extent of land belonging to the respondent No.3 which was utilized by the respondent No.1 for its purposes. That in furtherance to the said resolution, respondent No.1 proceeded to acquire 606 sq. mtrs., of land in terms of notification dated 03.11.2017.

(c) That in terms of Annexure-R10 produced along with statement of objections possession of 606 sq. mtrs. of land has been handed over to GAIL.



(d) Even though a justification is sought to be made on behalf of the respondent No.1- authorities, she fairly submits that acquisition for this purpose though not specifically provided it has to be read in the light of provisions of Section 13 of the National Highway Act, which empowers the authority to acquire the land.

(e) That petitioners have already received compensation in respect of 2929 sq. mtrs., of land and the respondent No.1-NHAI has already deposited the compensation in respect of acquisition of 606 sq. mtrs., of land in A.C.No.11/2019 on the file of Principal District and Sessions Judge, Chitradurga.

Hence, seeks for dismissal of the petition.

5. Heard and perused the records.

6. In view of the aforesaid factual aspect of the matter and the rival contentions, the question that requires to be considered in this petition is,



Whether the respondent No.1 is empowered under the National Highways Authority of India Act, 1988 to acquire the land to be handed over to respondent No.3-GAIL as being done in the fact and circumstance of the instant case?

7. There is no dispute of the fact that KIADB had acquired 1 acres 10 guntas of land on 24.07.2010 out of which an extent of 606 sq. mtrs. had been handed over to respondent No.3-GAIL. Needless to state the issue regarding payment of compensation in respect of this acquisition is still pending consideration and a submission unison made on behalf of the parties that respondent No.2 had deposited the compensation payable to the petitioners in respect of this acquisition before the reference Court.

8. As regards acquisition by respondent No.1-NHAI to an extent of 2727 sq. mtrs., on 07.09.2012 and 202 sq. mtrs., on 19.12.2016 aggregating in 2929 sq. mtrs., is concerned, there is no dispute of the fact that respondent No.1-NHAI has paid the compensation to the petitioners.



9. Present issue subject matter of this petition arose in view of an extent of 606 sq., mtrs. of land forming part of 1 acre 10 guntas of land which was earlier acquired by KIADB and was in possession of respondent No.3-GAIL, was included in acquisition of land by respondent No.1-NHAI to an extent of 2929 sq. mtrs. Inclusion of 606 sq. mtrs. of land which was handed over to GAIL in the subsequent acquisition made by respondent-NHAI has apparently led to conducting of meetings between respondent No.3-GAIL and respondent No.1-NHAI, in which as already noted above, respondent No.1-NHAI has resolved to acquire an extent 606 sq.mtrs., of land. The said acquisition of 606 sq.mtrs. of land, subject matter of the petition, is admittedly only to compensate respondent No.3-GAIL whose land has been utilized by the respondent No.1-NHAI as noted above.

10. At this juncture, it is necessary to note Section 13 of the NHAI Act, 1988, which reads as under;

"13. Compulsory acquisition of land for the Authority.-Any land required by the Authority for



discharging its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the Authority under the provisions of the National Highways Act, 1956 (48 of 1956)".

11. It is also relevant to note Section 16 of the NHAI Act, 1988 which provides for functions of the authority, which is extracted hereunder:

16. Functions of the Authority- (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Authority may, for the discharge of its functions-

(a) survey, develop, maintain and manage highways vested in, or entrusted to, it;

(b) construct offices or workshops and establish and maintain hotels, motels, restaurants and rest-rooms at or near the highways vested in, or entrusted to, it;

(c) construct residential buildings and townships for its employees;

(d) regulate and control the plying of vehicles on the highways vested in, or entrusted to, it for the proper management thereof;

(e) develop and provide consultancy and construction services in India and abroad and carry on research activities in relation to the



development, maintenance and management of highways or any facilities thereat;

(f) provide such facilities and amenities for the users of the highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways;

(g) form one or more companies under the Companies Act, 1956 (1 of 1956) to further the efficient discharge of the functions imposed on it by this Act;

[(h) engage, or entrust any of its functions to, any person on such terms and conditions as may be prescribed;]

(i) advise the Central Government on matters relating to highways;

(j) assist, on such terms and conditions as may be mutually agreed upon, any State Government in the formulation and implementation of schemes for highway development;

(k) collect fees on behalf of the Central Government for services or benefits rendered under Section 7 of the National Highways Act, 1956 (48 of 1956), as amended from time to time, and such other fees on behalf of the State Governments on such terms and conditions as may be specified by such State Government; and

(l) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act.

(3) Noting contained in this section shall be construed as-

(a) authorising the disregard by the Authority of any law for the time being in force; or

(b) authorising any person to institute any proceeding in respect of a duty or liability to which the Authority or its officers or other



employees would not otherwise be subject under this Act."

12. Though learned counsel for respondent No.1-NHAI insisted that a holistic reading of these provisions would indicate that National Highway Authority is not denuded of the powers to acquire the land though not specifically provided but for incidental and ancillary purpose which is the one involved in this case. This Court is not persuaded to accept the said submissions inasmuch as the records, more particularly, the minutes of the meetings produced and referred to hereinabove reveal that the arrangement of acquisition of 606 sq. mtrs. was undertaken by the respondent No.1-NHAI only to compensate respondent No.3-GAIL whose 606 sq. mtrs. of land has been utilised by the respondent No.1-authorities. The said factum cannot be construed as need of the land for the purpose defined under the National Highways Authorities Act, 1988 or National Highways Act, 1956.



13. Needless to state that the said arrangement is a private arrangement between respondent No.1-NHAI and respondent No.3-GAIL and same cannot be brought in within the purview of National Highway Authorities of India Act, 1988 and in the considered opinion of this Court powers under the National Highway Authorities of India Act, 1988 and National Highways Act, 1956 cannot be pressed into service to compensate respondent No.3-GAIL of its 606 sq. mtrs. utilised by respondent No.1-authority. Such exercise as rightly contended by learned counsel for petitioners would amount to colourable exercise of power which is otherwise not provided under the statute. In that view of the matter, the present notification dated 03.11.2017 subject matter of this petition in which 606 sq. mtrs. of land is sought to be acquired by respondent No.1-NHAI requires to be set aside and all consequential action taken thereof shall also be set aside.

14. Accordingly petition is allowed. Acquisition of land to the extent of 606 sq. mtrs. by respondent No.1-



NHAI under the impugned notification is set aside. It is made clear that contention of the parties with regard to apportionment of the compensation in respect of acquisition of 606 sq. mtrs. out of 2929 sq. mtrs. and in respect of 1 acre 10 guntas of land acquired by respondent No.2 the question is left open to be agitated before the Principal District and Sessions Court, Chitradurga where the matter is pending consideration. Since respondent No.1-NHAI is stated to have deposited compensation in A.C. No.11/2019 before the Principal District and Sessions Judge, Chitradurga, in respect of 606 sq. mtrs. which is set aside in this order, respondent No.1-NHAI are at liberty to withdraw the said amount.

**Sd/-
JUDGE**

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