



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 107959 OF 2014 (LA-RES)

BETWEEN:

1. SADASHIV S/O MALLAPPA MALI
AGE: 70 YEARS, OCC: AGRICULTURE

2. MARUTI S/O NARASING MALI
AGE: 30 YEARS, OCC: AGRICULTURE

BOTH R/O. JUGUL TQ: ATHANI
DIST: BELAGAVI.

...PETITIONERS

(BY SRI ANIL KALE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
REVENUE DEPARTMENT
M.S. BUILDING, BENGALURU-560001.

2. THE DEPUTY COMMISSIONER,
BELAGAVI, DIST: BELAGAVI-590001.

3. THE ASSISTANT COMMISSIONER,
CHIKKODI, TQ: CHIKODI,
DIST: BELAGAVI-591201.

4. THE TOWN MUNICIPAL COUNCIL
ATHANI, REP.BY ITS CHIEF OFFICER
ATHANI, BELAGAVI-591304.
DIST: BELAGAVI-591304.





5. THE KARNATAKA STATE
POLLUTION CONTROL BOARD,
PARISARA BHAVANA, 1ST TO 5TH FLOOR,
#49, CHURCH STREET, BENGALURU-560001.

...RESPONDENTS

(BY SRI HANAMANTHARAY LAGALI AGA FOR R1 TO R3;
SRI S.S.BADAWADAGI, ADVOCATE, FOR R.4;
SRI G.I.GACHCHINAMATH, ADVOCATE, FOR R5.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO:

I) ISSUE WRIT IN THE NATURE OF CERTIORARI
QUASHING THE IMPUGNED NOTIFICATIONS U/SEC.4(1) OF
THE ACT DTD.15.07.2013 BEARING NO.BHUSWA/NIVHI-
04/2012-13 ISSUED BY THE RESPONDENT NO.3 VIDE
ANNEXURE-G & H.

II) ISSUE WRIT IN THE NATURE OF CERTIORARI
QUASHING THE IMPUGNED NOTIFICATION U/SEC.6(1) OF THE
ACT DATED 07.04.2014 BEARING
NO.KAMEI/77/BHUSWA1/2023 VIDE ANNEXURE-J ISSUED BY
THE RESPONDENT NO.3, AND ETC.,.

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

ORDER

The lands in R.S.No.1697/2 and 1697/1 total measuring
12 acres 08 guntas situated at Athani Town. Initially, the lands
in R.S.No.1651/1A, 1651/1B, 1651/1C, 1651/2, 1652/1,
1652/2, 1655, 1656/1, 1656/2 and 1656/3, all situated at
Athani Town measuring 12 acres 08 guntas were proposed to
be acquired by issuing a notification under section 4(1) of the
Land Accession Act, 1894 ('the Act 1894' for short), on
27.03.2012, for the purpose of Sewage Treatment Plant (STP).



Since the owners of the said lands objected to the proposed acquisition, the acquisition of the said lands were dropped.

2. The 4th respondent approached the petitioners for sale of the subject lands for the purpose of establishing STP. Since the petitioners were not willing to part their lands, respondent No.4 submitted a proposal to the Government. The 2nd respondent in turn sent a report to the Government stating that the subject lands are required for the purpose of establishment of STP and to acquire the subject lands by dispensing with enquiry under section 5A of the Land Acquisition Act, 1894. The 1st respondent, on the basis of the report submitted by the 2nd respondent, passed an order dated 01.06.2012 to acquire the subject land by invoking sections 17(1) and (4) of the Act, 1894. Thereafter, the 4(1) notification was issued on 19.12.2012 published in the Gazette on 10.01.2023. The final notification under section 6(1) of the Act, 1894 was issued on 07.04.2014 for acquiring the subject lands for establishment of STP by the 4th respondent. Taking exception to the same, this petition is filed.

3. Learned counsel for the petitioners submits that the order passed by the 1st respondent to acquire the subject lands by invoking section 17(1) and (4) of the Act, 1894 is one without application of mind, since no reasons are assigned for invoking the emergency clause. He further submits the fact that the preliminary notification was issued after more than six months from the date of the order passed by the 1st respondent invoking emergency clause and also final notification was



issued after more than one year from the date of the preliminary notification clearly establishes that there was no urgency to acquire the subject lands by invoking emergency clause. The delay in issuing pre notification and post notification would render the invocation of urgency power otiose.

4. He places reliance on the decision of the Hon'ble Supreme Court in the case of ***Hamid Ali Khan (D) through LRs and another vs. State of UP and others in Civil Appeal No.1267/2012, disposed of on 23.11.2021.***

5. Learned counsel for respondent No.4 submits that the material placed before the 1st respondent clearly indicated that there was urgency for establishment of STP and the Deputy Commissioner taking into account that there was a need to establish the STP, submitted a report with the 1st respondent to invoke section 17(4) of the Act, 1894. The 1st respondent, after applying its mind to the report submitted by the 2nd respondent Deputy Commissioner, has rightly invoked the clause contained in section 17(4) of the Act, 1894. Therefore, the contention of the petitioner that the urgency clause was invoked without application of mind is without any substance. He further submits that the respondent No.4 has deposited the entire cost of the acquisition with the competent authority and if the notifications are quashed, it would cause monetary loss and also affect the interest of the public at large.



6. I have considered the submissions made by learned counsels for the parties.

7. It is undisputed that preliminary notification under section 4(1) of the Act, 1894 was issued on 27.03.2012 proposing to acquire certain lands and the said lands were dropped from acquisition since the owners of the said lands objected to the acquisition. The proposal was sent by the 2nd respondent on 23.04.2012 to the Government stating there was need for establishing the STP at the earliest. The Government passed an order on 01.06.2012 to acquire the subject lands by invoking sections 17(1) and (4) of the Act, 1894.

8. Though the order was passed on 01.06.2012, to acquire the subject land by invoking urgency clause, the preliminary notification was issued after nearly six months, i.e., on 19.12.2012, which was published in the Gazette on 10.01.2013. The 4(1) notification having been issued, it was incumbent upon the respondents to issue the final notification within one year from the date of publication of preliminary notification. However, the respondent sat over the matter and did not take any steps for issuing final notification, and after one year from the date of publication of the preliminary notification, the final notification was issued on 07.04.2014. It is also not in dispute that the possession of the subject land is not taken as of today, despite the preliminary notification was issued on 10.1.2013. Therefore, the very purpose of invoking emergency clause is not achieved.



9. The Hon'ble Supreme Court in the case of **Hamid Ali Khan (supra)**, with reference to Section 17 of the Act, 1894 has held that the delay in issuing pre-notification and post-notification will have material bearing on the question of invocation of urgency power, particularly, in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5A of the Act, 1894. At para-22, it has been held as follows:

"22. We may cull out the principles at play. What is required of the authority is to form a subjective opinion. This does not mean that the opinion can be whimsical or capricious. There must be materials before the authority. The materials must be relevant. The authority must apply his mind to the material. This is apart from the requirement that action must not be mala fide. Undoubtedly the purpose must be a public purpose. But merely because the purpose of the acquisition is found to be a public purpose, the duty of the authority does not end. He must be satisfied that there is real agency such that the invaluable right vouchsafed to a person to ventilate his grievances against the acquisition is not unjustifiably extinguished. Section 5A of the Act guarantees a right to the person interested in the property which was the only statutory safeguard to stave off of a compulsory acquisition of his property. The power under Section 17 (4) is discretionary. Being a discretion it must be exercised with due care. It is true that if there is relevant material however meagre it may be and the authority has without being guided by extraneous considerations applied his mind and taken a decision, then the court would adopt a hands-off approach. In the ultimate analysis as with any other decision a balancing of conflicting interests is inevitable. The authorities must remain alive and alert to the precious right created in favour of the citizens which is not meant to be a mere empty ritual."



10. The purpose of invoking the emergency clause under Section 17 to enable the acquiring Authority to take possession of the land urgently, even before the completion of the acquisition process, in cases where delay would be detrimental to the interest of the public.

11. Though the respondent No.1 - State Government, in the order dated 01.06.2012, has stated that, the report sent by the respondent No.2 has been considered in detail, however, the State Government has not assigned any reason for invoking Section 17(4) of the Act, 1894 independently. Despite the order passed by this Court, the respondents have not placed on record the report dated 23.4.2012 submitted by the respondent No.2 with the respondent No.1 for invoking Section 17(4) of the Act, 1894. Therefore, the order passed is without application of mind.

12. Consequently, the acquisition, in the absence of any material to establish that there was real exigency in acquiring the subject land for establishing STP plant by dispensing an inquiry under Section 5A of the Act, 1894, is not sustainable in law. Accordingly, I pass the following:

ORDER

i) The writ petition is allowed.

ii) The impugned notification dated 15.07.2013 issued by the respondent No.3 at Annexure-G and impugned notification dated 07.04.2014 bearing No.KamEi/77/BhuSwal/2013 issued by respondent No.3 at Annexure-J insofar as it relates to the land bearing RS



No.1697/2 and 1697/1 total measuring 12 acres 8 guntas of Athani Town are hereby quashed.

iii) It is needless to state that the quashing of notifications will not come in the way of respondent No.4 to approach the competent Authority for acquiring the subject land for the purpose of establishment of STP.

iv) The respondent No.4 in its statement of objections has stated that an amount of Rs.2 crore was deposited before the respondent No.2 towards acquisition. It would cause monetary loss to the respondent No.4 and also inconvenience to the public at large.

Sd/-
JUDGE