

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.54485 OF 2016 (LA-UDA)

BETWEEN:

1. SRI. BASAVE GOWDA
S/O LATE HONNEGOWDA
AGED ABOUT 78 YEARS.
2. SRI. VIJAYA KUMARA
S/O LATE BASAVARAJU
AGED ABOUT 32 YEARS.
3. SRI. MANJAPPA
S/O BASAVE GOWDA
AGED ABOUT 54 YEARS.
4. SRI. CHANDRASHEKAR
S/O BASAVE GOWDA
AGED ABOUT 50 YEARS.
5. SRI. JAGADEESHA
S/O BASAVE GOWDA
AGED ABOUT 47 YEARS.
PETITIONERS 1 TO 5 ARE
R/AT NO.950, BASAVARAJA CIRCLE ROAD,
HINKAL,
MYSURU.
6. SRI. HONAPPA
S/O LATE MARIGOWDA
AGED ABOUT 41 YEARS.
7. SRI. NANDEESHA
S/O SRI. HONAPPA
AGED ABOUT 18 YEARS.
PETITIONERS 6 AND 7 ARE
R/AT NO.363/2,
HOSABEEDI,
HINKAL, MYSURU TALUK
MYSURU DISTRICT.

8. SRI. MARIGOWDA
S/O LATE MAYANNA
AGED ABOUT 65 YEARS.

9. SRI. VENKATESHA
S/O LATE MARIGOWDA
AGED ABOUT 39 YEARS.

10. SRI. KEMPE GOWDA
S/O LATE MAYANNA
AGED ABOUT 61 YEARS.

PETITIONERS 8 TO 10 ARE
R/O NO.574, HOSABEEDI
HINKAL VILLAGE,
MYSURU.

11. SRI. HONNEGOWDA @ AMASE GOWDA
S/O LATE HONNEGOWDA
AGED ABOUT 72 YEARS.

12. SRI. RAMEGOWDA
S/O HONNEGOWDA @ AMASEGOWDA
AGED ABOUT 50 YEARS

13. SRI. MANJAPPA @ MANJU
S/O HONNEGOWDA @ AMASEGOWDA
AGED ABOUT 48 YEARS.

14. SRI. BASAVARAJU
S/O HONNEGOWDA @ AMASEGOWDA
AGED ABOUT 65 YEARS.

PETITIONERS 11 TO 14 ARE
R/AT NO.555/1, HOSABEEDI
MYSURU-HUNSUR ROAD, HINKAL,
MYSURU.

ALL THE PETITIONERS ARE REP. BY THEIR
POWER OF ATTORNEY HOLDER
SRI. T. VIBHUVARSH,
S/O B.S. TULASIRAM,
AGED ABOUT 21 YEARS,
R/AT NO.3, CHADURANGA ROAD,
'E' AND 'F' BLOCK, RAMAKRISHNAGAR,
MYSURU - 570 922.

...PETITIONERS

(BY SRI. MANMOHAN P.N., ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
M.S. BUILDING,
DR. AMBEDKAR VEEDI,
BENGALURU - 560 001.
REP. BY ITS PRINCIPAL SECRETARY.
2. THE MYSURU URBAN DEVELOPMENT
AUTHORITY
JHANSI RANI LAXMIBAI ROAD
MYSURU - 570 001.
REP. BY ITS COMMISSIONER.
3. THE SPECIAL LAND ACQUISITION OFFICER
THE MYSURU URBAN DEVELOPMENT AUTHORITY
JHANSI RANI LAXMIBAI ROAD,
MYSURU - 570 001.

...RESPONDENTS

(BY SRI. MANJUNATH K., HCGP FOR R1
SRI. SHARATH GOWDA G.B., ADVOCATE FOR R2 AND R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE PRELIMINARY NOTIFICATION DATED 23RD DECEMBER, 1991 GAZETTED ON 02ND JANUARY, 1992 VIDE ANNEXURE-B AND FINAL NOTIFICATION DATED 10TH DECEMBER, 1992 GAZETTED ON 31ST DECEMBER, 1992 VIDE ANNEXURE-C ISSUED BY RESPONDENTS HAVE LAPSED; AND ETC.

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS, COMING FOR PRONOUNCEMENT, THIS DAY, **E.S. INDIRESH J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH

CAV ORDER

(PER: HON'BLE MR. JUSTICE E.S.INDIRESH)

In this writ petition, petitioners are assailing the Preliminary Notification 23rd December, 1991 (Annexure-B) and

Final Notification dated 10th December, 1992 (Annexure-C) issued by the respondent-Authorities.

2. Facts in nutshell are that, petitioners claim to be the owners of the land bearing Survey No.123/1 measuring 6 acre 14 guntas situate at Basavanhalli Village, Kasaba Hobli, Mysuru Taluk and copy of RTC extracts in respect of the same are produced at Annexure-A to the writ petition.

3. The respondent-Authorities have issued the Preliminary Notification dated 23rd December, 1991 (Annexure-B) under Section 17(1) of the Karnataka Urban Development Authorities Act, 1987 (for short, hereinafter referred to as 'KUDA Act') proposed to acquire the land to an extent of 5 acre 3 guntas in Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk. Pursuant to the same, the respondent-Authorities have issued Final Notification dated 10th December, 1992 (Annexure-C) under Section 19(1) and (2) of the KUDA Act. It is the grievance of the petitioners that, the respondent-Authorities have shown the land to an extent of 1 acre 11 guntas in Survey No.123/1 as Kharab land despite the fact the entire extent of the land to an extent of 6 acres 14 guntas is belonging to petitioners. It is also stated in the writ petition that, though the respondents have issued the Notification dated 06th August, 1994 (Annexure-D) under Section 16(1) of Land Acquisition Act,

the subject matter of the land is not reflected in the said Notification and that apart, the respondents have also passed award dated 18th July, 1994 . It is also pleaded in the petition that the petitioners have filed Writ Petition No. 6461 of 2005, challenging the impugned acquisition proceedings and this Court, by order dated 12th September, 2006 (Annexure-F), dismissed the petition. Being aggrieved by the same, the petitioners have preferred Writ Appeal No.1732 of 2006, which is also came to be dismissed by order 12th January, 2011 (Annexure-G) holding that, the scheme has been substantially complied with by the respondent-Authorities. Pursuant to the same, the petitioners have filed Review Petition No. 189 of 2011 and this Court, by order dated 10th August, 2012 (Annexure-H), dismissed the Review Petition. It is further stated in the writ petition that, the petitioners are in possession of the land in question and therefore, the entire acquisition proceedings become lapsed as the possession of the land in question is not taken by the respondent-Authorities. It is also stated in the petition that the respondents have passed award and deposited the amount only in respect of 5 acre 3 guntas in respect of Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk as per award dated 18th April, 2002 (Annexure-M) and no award has been passed in respect of the remaining extent of 1 acre 11 guntas

4. It is also stated that, as per Annexure-P, the mahazar has been drawn on 19th July, 2001 and therefore, it is case of the petitioners that, the petitioners are entitled for compensation insofar as 5 acre 3 guntas and the acquisition proceedings has to be quashed insofar as the remaining land to an extent of 1 acres 11 guntas of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk. Hence this writ petition.

5. Heard Sri. Manmohan P.N., learned counsel appearing for petitioners; Sri. Manjunath K., learned High Court Government Pleaded appearing for respondent No.1; and Sri. Sharath Gowda G.B., learned counsel appearing for respondents 2 and 3.

6. Sri. Manmohan P.N., learned counsel appearing for petitioners contended that the petitioners, though challenged the acquisition proceedings initiated as per Notifications dated 23rd December, 1991 (Annexure-B) and 10th December, 1992 (Annexure-C) in respect of land to an extent 5 acre 3 guntas in Survey No.123/1 of Basanavanahalli Village, Kasaba Hobli, Mysuru Taluk, however, in view of issuance of Official Memorandum dated 19th December, 2023 by the respondent-Mysuru Urban Development Authority to grant certain benefits, the learned counsel appearing for the petitioners submitted that,

the respondent 2 and 3 be directed to implement the said official Memorandum annexed to the memo dated 17th December, 2024.

7. Nextly, learned counsel appearing for petitioners contended that, with regard to remaining extent of 1 acre 11 guntas out of total extent of 6 acre 14 guntas of Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk, Endorsement dated 07th April, 2016 (Annexure-L) issued by the respondent-Mysuru Urban Development Authority specifies that, no notification is issued under Section 16(2) of the Land Acquisition Act. Learned counsel appearing for petitioners, places reliance on the judgment of this Court in the case of **B.T. JAYASHANKAR AND OTHERS vs. STATE OF KARNATAKA AND OTHERS** made in Writ Petition No.40514 of 2015 decided on 23rd November, 2024; and judgment of the Hon'ble supreme Court in the case of **URBAN IMPROVEMENT TRUST vs. SMT. VIDYADEVI AND OTHERS** made in Civil Appeal No.14473 of 2024 decided on 13th December, 2024 and argued that, since, the petitioners herein are in possession of the land to an extent of 1 acre 11 guntas out of total extent of 6 acre 14 guntas of Survey No.123/1 situate at Basavanahalli Village, Kasaba Hobli, Mysuru Taluk, the petitioners are entitled for relief in the present writ petition.

8. Per contra, Sri. Sharath Gowda G.B., learned counsel appearing for respondents 2 and 3 invited the attention of the Court to the Report of the Revenue Inspector dated 19th July, 2001 (Annexure-R1) submitted that, the respondent-Authorities have taken possession of land in question including the land to an extent of 1 acre 11 guntas, which is the Kharab land. He further submitted that the Notification dated 13th February, 2002 (Annexure-R3) under Section 16(1) of the Land Acquisition Act came to be issued only to an extent of 5 acres 3 guntas in terms of impugned acquisition proceedings. Accordingly, he sought for interference of this Court.

9. Having heard the learned counsel appearing for the parties and on careful examination of writ papers, it is not in dispute that the challenge made by the petitioners in the earlier Writ petition No.6461 of 2005 was dismissed by order dated 12th September, 2006 (Annexure-F), reserving liberty to the petitioners to file the applications, seeking grant of Sites in their favour in respect of land bearing Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk to an extent of 5 acre 3 guntas and thereafter, the said order came to be confirmed by the Division Bench of this Court in Writ Appeal No.1732 of 2006 on 12th January, 2011 (Annexure-G). The Division Bench of this Court at paragraph 9, it is held as follows:

"9. The material on record would clearly show that this Court in W.P. No.16054/2004, by order dated 11-1-2005 held that there is substantial compliance with the scheme formed by the respondent-authority in respect of Vijayanagar IV Stage, Mysore and the present writ petition was also in respect of the same layout and having regard to the material on record, the learned Single Judge has rightly followed the decision in W.P.No.16054/2004 referred to above. Since there is substantial compliance with scheme, the same was not lapsed under Section 27 of the Act and accordingly, the learned Single Judge has further given an option to the writ petitioners to file an appeal before the first respondent praying for grant of sites in their favour and if such an application is filed, it is ordered that first respondent shall consider the same in accordance with law. Therefore, we hold that the order passed by the learned Single Judge does not suffer from any error or irregularity so as to call for interference in this intra-Court appeal.

Hence, this writ appeal is dismissed."

(emphasis supplied)

10. Having taken note of the fact that, the acquisition proceedings has reached finality insofar as land to an extent of 5 acres 3 guntas of Survey No.123/1 of Basavanahalli Hobli, Kasaba Hobli, Mysuru Taluk and thereafter, the respondent-Authorities have issued Official Memorandum dated 19th December, 2023, in which, certain benefits of allotting developed sites in favour of the petitioners in the schedule land has been

made and therefore, no interference be called for in respect of 5 acre 3 guntas of land in question.

11. Insofar as the controversy with regard to 1 acre 11 guntas out of total extent of 6 acre 14 guntas of the land in question is concerned, I have carefully examined the Notification dated 13th February, 2002 (Annexure-R3) issued by the respondent-Mysuru Urban Development Authority, wherein, the compensation has been determined even in respect of 1 acre 11 guntas, which is forthcoming from Annexure-R4.

12. In that view of the matter, I find force in the submission by the learned counsel for the petitioners that the respondent-Authorities have noticed the remaining 1 acre 11 guntas of the land in question as an independent land which is in the possession of petitioners excluding the acquired land to an extent of 5 acres 3 guntas in Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk. It is not in dispute that, the respondents have produced the Notification dated 13th February, 2002 (Annexure-R3) issued under Section 16(2) of the Land Acquisition Act, wherein, the respondent-Authorities have not taken possession of 1 acres 11 guntas in Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk. Therefore, I find force in the submission made by the learned counsel appearing for the petitioners that, the land to an extent of 1

acre 11 guntas as stated by the petitioners is not the subject matter in the Preliminary Notification dated 23rd December, 1991 (Annexure-B).

13. It is also to be noted that, the respondents have not placed any material with regard to conducting survey and mahazar in respect of the land to an extent of 1 acre 11 guntas in Survey No.123/1 of Basavanahalli Village, Kasaba Hobli, Mysuru Taluk and in the absence of the same, the respondent-Authorities have committed an error in arriving at a conclusion that the land to an extent of 1 acre 11 guntas is not belonging to the petitioners. As per the RTC extracts produced at Annexures 'E' and 'Q' in respect of land in question, the petitioners have been shown as owners of the land to an extent of 6 acre 14 guntas and out of the said land in question the acquisition notification has been issued only to an extent of 5 acre 3 guntas as evident from the Endorsement dated 07th April, 2016 (Annexure-L). Therefore, I find force in the submission made by learned counsel appearing for petitioners that, the respondents have not taken possession of remaining land to an extent of 1 acre 11 guntas and that apart, the same was not the subject matter in respect of the acquisition proceedings initiated as per Preliminary Notification dated 23rd December, 1991 (Annexure-B) and Final Notification dated 10th December, 1992 (Annexure-C). In that view of the matter, I am of the considered opinion

that, the petitioners shall establish their right in respect of the remaining land to an extent of 1 acre 11 guntas, which has been disputed by the respondent-Authorities in a manner known to law. Accordingly, petitioners are directed to establish their right in respect of remaining land to an extent of 1 acre 11 guntas in Survey No.123/1 of Basvanahalli Village, Kasaba Hobli, Mysuru Taluk and thereafter, petitioners shall approach the respondent-Authorities for the relief as claimed in the writ petition. With these observations, writ petition stands ***disposed of.***

**SD/-
(E.S. INDIRESH)
JUDGE**

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