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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 51312 OF 2016 (GM-RES)

BETWEEN:

SND SAMPATH,
AGED ABOUT 63 YEARS,
S/O LATE V SELVANAYAGAM,
SMITHA COTTAGE,
R/AT 10/60/1
NEHRU ROAD,
GORIGUDDA,
KANKANADY,
MANGALORE-560 001.

PETITIONER

(BY SRI. NOVA BETHANIA S.,ADVOCATE)

AND:

1. COMPETENT AUTHORITY AND
ASSISTANT COMMISSIONER,
MANGALORE SUB-DIVISION,
MANGALORE-576001.
2. COMMISSIONER,
OFFICE OF THE SPECIAL LAND ACQUISITION,
COMPETENT AUTHORITY,
NATIONAL HIGHWAY AUTHORITY OF INDIAN,
MANGALORE SUB-DIVISION,
MANGALORE-576 001.

RESPONDENTS

(BY SRI. PADMANABHA HOLLA S.,FOR R1;
SRI. RV. NAIK FOR R2)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE
RECORDS PERTAINING TO THE CASE OF THE PETITIONER;





HOLD THAT THE ACTION OF THE RESPONDENTS IN INITIATING DEMOLITION OF SCHEDULE PROPERTY BEARING NO.10/60/1 KANKANDY VILLAGE, PROCESS OF YOURS IS OWNED BY THE PETITIONER IS WITHOUT PROCESS OF LAW AUTHORITY OF LAW AND IS OPPOSED TO THE ARTICLE 14, 21 AND 300 A OF THE INDIAN CONSTITUTION AND ETC,,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs:

"WHEREFORE, the petitioner most respectfully pray that this Hon'ble Court may be pleased to call for the entire records pertaining to the case of the petitioner and grant him the following reliefs:

- a. Issue a writ of mandamus for any other appropriate writ order or directions holding that the action of the respondents in initiating demolition of SCHEDULE PROPERTY BEARING No.10/60/1 KANKANDY VILLAGE process of yours is owned by the petitioner is without process of LAW authority of law and is opposed to the article 14, 21,300 A of the Indian Constitution.*
- b. Issue a writ of mandamus or any other appropriate writ or order or direction, granting all the consequential benefits consequent upon of demolition.*
- c. GRANT the petitioner costs of these proceedings and pass such other order or orders as deem fit by this Hon'ble Court under*



the facts and circumstances of the case to meet the ends of justice."

2. The petitioner claims to be the owner of the property bearing No.10/60/1 on Nehru road, Gorigudda, Kankanady 'B' Village, Mangalore, the said property was earlier belonging to Mrs. Rohini Sujatha, the petitioner purchased the same from her vide a registered sale deed dated 02.03.2000 which is registered as document No.3434/1999-2000 at page Nos.23-36 Volume 2304 of book No.1 in the office of Senior Sub-registrar, Mangalore.
3. On purchase of the said property the name of the petitioner came to be entered into in the relevant revenue records vide MR.34/2000-01 as also in the record sheet of the urban property ownership record as UPOR No.S05-1337. The katha of the property also stood transferred in the name of the petitioner in the very same year



and the petitioner has been making payment of property tax from the year 2000 onwards.

4. The petitioner came across a public notice issued under Sub-section 3 of Section 3(G) of the National Highways Act, 1956 (hereinafter referred as 'Act') and it is only then he came to know that the National Highway Authority has sought to acquire a portion of the land of the petitioner, even in the said notification published under Sub-section (3) of Section 3(G) of the Act the name of the petitioner was not indicated. It is in that background the petitioner is before this Court seeking for the aforesaid reliefs.
5. The submissions of learned counsel Sri. Nova Bethania S, appearing for the petitioner is that neither the details of the property of the petitioner nor the name of the petitioner has been published in the notification issued under Section 3(A) of the Act, nor was any notice



issued to the petitioner, no opportunity has been provided to the petitioner to object to the acquisition, a notification under Section 3(D) of the Act has been issued which also does not reflect the name of the petitioner or his property details, except for mentioning the survey number in the notification issued under Sub-section 3 of Section 3(G) of the Act the petitioner has not been made aware of any of the proceedings taken by the Authority as regarding the said acquisition.

6. On notices having been issued and the appearance of the respondents on the earlier occasion learned counsel for the respondent made a categorical submission that there is no requirement to either mention the plot number, sub number or the name of the owner of the property in a notification issued under Section 3(A) of the Act, and what is required to be



mentioned is only a brief description of the land which has been mentioned as a survey number. No objection having been received in relation thereto a final declaration under Section 3(D) of the Act has been issued. Notification having been issued under Sub-section (3) of Section 3(G) what is left to be done is the determination of compensation depending on the rights of the Petitioner, which would be so considered on the petitioner submitting his documents.

7. Hence, learned counsel for the respondent – National Highway Authority of India (NHAI) was called upon to make his submission as to whether there is an exemption in the manner submitted, today once again reference is made to Section 3(A) of the Act to contend that only a declaration to acquire the land has to be published under Section 3(A) of the Act by giving a brief description of the land, the entire survey



number having been mentioned in the notification under Section 3(A) of the Act would be sufficient compliance with Section 3(A) of the Act.

8. On enquiry as to whether the name of the petitioner has been mentioned in the notification under Section 3(A) of the Act since the stated notification has not been placed on record, the submission is that the name of the petitioner was not mentioned in the said notification.
9. Similarly, the name of the petitioner is also not mentioned in the notification issued under Section 3(D) of the Act. Reference is made to the said notification under Section 3(D) of the Act, which has been produced at Annexure-R1 more particularly page No.15 thereof where survey No.101/1A is mentioned with the extent of land being required is stated to be 1244 sq.mts with the name of about 25 people in the



last column. Even in the Section 3(D) notification there is no mention made as to how much land is required from each of those owners except for detailing out the names, no other details are mentioned and the total extent of land required is stated to be 1244 Sq.mts.

10. On enquiry as to how much of land of the petitioner would be forming part of this 1244 Sq.mts., learned counsel for the respondent - NHAI is unable to make any submission, he only repeats and reiterates that a brief description of the land ss required to given under Section 3(A) of the Act has been given, when determining compensation the concerned owners can approach respondent – NHAI, who will consider the individual interest of each of the owners ascertain the land which is used by the respondent – NHAI from and out of the land belonging to such interested person/owner and



determine the compensation and as such prior to that stage there is no requirement for those details to be included.

11. Heard Sri. Nova Bethania.S, learned counsel for the petitioner and Sri. Lejo Josephn Gerge, learned counsel for Sri. R.V.Naik, learned counsel for respondent No. 1 and 2. Perused papers.
12. The short but important question that would arise is,

"Whether the brief description of the land mentioned in Sub-section (2) of Section 3(A) of the Act would require the details of the name of the owner and the extent of the land of the said owner which is proposed to be acquired by the NHAI or whether the mentioning of the survey number without the above details is sufficient compliance with Section 3(A) of the Act?"

13. The submission made by the learned counsel for the respondent – NHAI is that the brief



description would mean only the survey number and whoever is interested in the said survey number can object to the said notification and the compensation would be determined in terms of Sub-section (3) of Section 3(G) of the Act.

14. The power of acquisition is a power of eminent domain, which can only be exercised by the State in circumstances that are justified since it is the right of the immovable property vested with the citizen which is taken away by way of compulsory acquisition. When compulsory acquisition is resorted to, it is but required that the person whose property is proposed to be acquired is **at least** put to notice that his property is proposed to be acquired, the extent thereof and the purpose for which the acquisition is being made.
15. Section 3(A) of the Act, is reproduced hereunder for easy reference:



"3A. Power to acquire land, etc.-(1) *Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.*

(2) Every notification under Sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language."

16. The brief description of the property relied upon by the learned counsel for the respondent – NHA I that even a survey number is sufficient is not acceptable in as much as in the very said survey number there could be numerous people who would be interested, which is established in the present case where names of about 25 persons have been shown in the Section 3(D) notification relating to survey No.101/1A, the said survey number could have been bifurcated into various other sub-survey numbers, the land in the Sy No. could have been converted for non agricultural purposes, plots could have been



formed and sold to various individuals and as such these details which are available in the public domain was required to be ascertained and published in the public notification under Section 3(A).

17. Section 3(C) of the Act, is reproduced hereunder for easy reference:

"3C. Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation. For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final."



18. Without notice of the proposed acquisition under Section 3(A) of the Act, it cannot be expected for the owner of the land to submit his objections under Section 3(C) of the Act. Though Section 3(C) of the Act indicate that any person who is interested in the land proposed to be acquired may within twenty one days from the date of publication of the notification submit his objections, it would not be known to the owner of the land, if his land is proposed to be acquired since the extent in comparison to the larger extent of land may be very small as is the case in the present matter.
19. Thus, when the owner of the land has no notice of his land being proposed to be acquired, the question of objections being submitted and hearing on the said objections in terms of Section 3(C) of the Act would also not arise. Thus, in effect, without notifying the owner of



the proposed acquisition, without providing an opportunity of filing objections and hearing, a final notification under Section 3(D) of the Act has been issued, in the present case, notifying acquisition of 1244 Sq.mts in survey number 101/1A is without detailing out the extent of land of each of the owners that is proposed to be acquired.

20. Section 3(D) of the Act, is reproduced hereunder for easy reference:

"3D. Declaration of acquisition.-(1) *Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.*

(2) *On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.*

(3) *Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from*



the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."

21. Submission of learned counsel for the respondent is that the rights of the petitioner or any other owner would be considered if the person approaches the concerned Authority after a notification under Sub-Section (3) of Section 3(G) of the Act were to be published, since the said notification under Sub-Section (3) of Section 3(G) of the Act deals with determination of compensation and not objections to the acquisition *per se*.

22. Thus I am of the considered opinion, that a citizen of the Country cannot be deprived of objecting to the acquisition notification and be



only permitted to make his submission or make a claim as regards compensation under Sub-Section (3) of Section 3(G) of the Act. This also is of no consequence since the Notification under Section 3(G) would also be a repetition of the Section 3 (D) notification, which would not include the exact extent of land, the property number or the name of the owner.

23. Section 3(G) of the Act, is reproduced hereunder for easy reference:

"3G. Determination of amount payable as compensation.- (1) *Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*

(2) *Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.*

(3) *Before proceeding to determine the amount under sub-section (1) or sub- section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.*



(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent

authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

24. The petitioner in the present case having purchased the land in the year 2000, his name having been entered into all the revenue records



and the urban records, where plot numbers having been assigned to the same and mutation entry having been effected and his name is found in the revenue records, these documents being to the knowledge of one and all, as also amounting to constructive notice to all Authorities including the NHAI.

25. The submission that the respondent-NHAI only considered Basic Tax Records (for short 'BTR'), which relate to possession certificate and land tax receipt would also by itself indicate that these records of the petitioner ought to have been examined since the petitioner's name has been entered into in the revenue records and tax paid receipts having issued by the concerned Authority, which has been produced by the petitioner, before this Court at Annexure-C.

26. Therefore, it is categorically clear that notification under Section 3(A) and 3(D) of the



Act have been issued even without verification of the records as to the name of the owner of the lands found in those records.

27. Basic land details therefore would include the details of the land and the ownership of the land so that both the land and the owner are identified and are sufficiently cross referenced. If a plot has been formed the details of the plot number, size of the plot and owner of the plot has to be published in a notification under Section 3A.

28. In that view of the matter, I pass the following :

ORDER

- i) The writ petition is hereby ***allowed***.
- ii) It is declared that the notification under Section 3(A) dated 18.12.2009 and the notification under Section 3(D) notification dated 14.12.2010 do not apply to the land of the petitioner bearing No.10/60//1 at



Nehru Road, Gorigudda, Kankanady 'B' Village, Mangalore City and that the petitioner would be free to use the said land dehors the acquisition.

- iii) In the event of said land having been put to any use by the NHAI, the NHAI to remove the same and make available the land free of any such construction for the usage of petitioner.
- iv) I.A.No.1/2018 stands dismissed.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**