

The State Of Karnataka and Others Vs. T. Jayamma and Another

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Court : Karnataka

Decided On : Sep-10-2014

Judge : The Honourable Chief Justice Mr. D.H.Waghela & Ashok B. Hinchigeri

Appeal No. : Writ Appeal No. 2292 of 2014 (GM-RES)

Appellant : The State Of Karnataka and Others

Respondent : T. Jayamma and Another

Judgement :

(Prayer: This Writ Appeal Is Filed Under Section 4 Of The Karnataka High Court Act Praying To Set Aside The Order Passed In Writ Petition No.22961/2011 Dated 26/09/2013.)

D.H. Waghela, CJ

Oral Order:

1. The State Government and its authorities are in appeal to challenge order dated 26.09.2013 of learned Single Judge of this Court in Writ Petition No.22961/2011, whereby a writ in the nature of mandamus is issued to the appellants herein to initiate acquisition proceedings under the Land Acquisition Act, 1894 and settle the compensation in accordance with law for the benefit of respondent No. 1 herein.

2. There is no dispute about the facts that the land belonging to respondent No.1 is situated within an area of 10 to 20 meters adjoining the fort of Srirangapatna, which is a protected monument as per the notification issued by the State Government, under the provisions of the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 (for short 'the Act'). By notification dated 10.03.1998, bearing No. SKE 21 KMU 95, published in the Special Issue Part-V, Section 2C(ii) of the Karnataka State Gazette (Annexure R herein), issued under section 4 of the Act, in exercise of the powers vested under Rule 12 of the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1966 (for short 'Rules'), an extent of 100 meters adjacent to those monuments declared or deemed to have been declared as state protected monument and 200 meters beyond that area, was declared by the Government to be 'prohibited and protected areas' for the purposes of mining, quarrying and construction.

3. When respondent No.1 proposed to develop the land by making a layout in Survey No. 103, the licence was denied by the Town Municipality of Srirangapatna and thus respondent No.1 was prevented from constructing any building in view of the fact that under the Act, the Government was within its power to declare the ancient monuments to be protected monuments and adjoining areas thereto, to an extent of 100 meters and 200 meters beyond that, as prohibited and protected area. It was under such circumstances that the petitioner approached this Court under Articles 226 and 227 of the Constitution for the reliefs as under: -

"WHEREFORE, the Petitioner most respectfully pray that this Hon'ble Court be pleased to:

(i) Issue a writ of certiorari quashing the Notification No.Ka E 21 KMU 95 dated 10.03.1998 vide ANNEXURE-R issued by the Respondent 2 and 3.

(ii) Issue a writ of certiorari by quashing the letter No. DAM-ACT-6/258/2010-11 dated 28.03.2011 and letter No.DAM-ACT- 6/259/2010-11 dated 28.03.2011 issued by the 5th respondent vide ANNEXURE-P and Q.

(iii) Issue a writ of mandamus directing the respondents to allow the petitioner to put up a structure or construct a building in property bearing Sy.No.103 situated at Srirangapattana Town, Mandya Dist., or in alternative issue a writ of mandamus directing the respondents to compensate the loss or damage or any diminution of profits from the land in question likely to be incurred by the petitioner with respect to the land bearing Sy.No.103 situated at Srirangapattana Town, Mandya District."

4. Learned Advocate General appearing for the appellants assailed the impugned order mainly on the ground that the High Court did not have jurisdiction to issue writ of mandamus to initiate acquisition proceeding under the Land Acquisition Act, 1894 and that such was also not the prayer in the petition. After referring to the scheme of the Act, it was submitted for the appellants that, under Section 4, the State Government has the power to declare ancient monuments to be protected monuments; and under Rules 11 and 12, the State Government may after due notice declare the area near or adjoining a protected monument to be prohibited area or, as the case may be, regulated area for purposes of mining operation or construction or both, making it necessary to obtain a license for undertaking proposed mining or construction activity. It was also submitted by learned Advocate General that the provisions of Section 19, 20 and 21 conferred upon the Government the power to declare any archaeological site and remains as prohibited area' and impose restrictions upon its use or even acquire it if such acquisition were deemed appropriate. Accordingly, in terms of the aforementioned Notification dated 10.03.1998, areas near or adjoining all the state protected monuments to an extent of 100 meters and 200 meters beyond that having been declared as 'prohibited and protected area' in exercise of powers under Rule 12, the request of respondent No. 1 to put up constructions in Sy.No.103 falling within the purview of the aforementioned notification, was rightly rejected in terms of letters dated 28.03.2011 at Annexures P and Q. Having regard to the scheme of these provisions, the impugned order directing to acquire the land of respondent No.1 could not have been issued, according to the submission.

5. Learned Advocate General relied upon the recent decision of the Supreme Court in JAYAMMA AND OTHERS v. DEPUTY COMMISSIONER, HASSAN DISTRICT, HASSAN AND OTHERS [(2013)7 SCC 554], wherein it is categorically

held that, whether to acquire a particular property or not is for the Government to decide. It is not within the jurisdiction of the Court to compel the Government to acquire any property, otherwise than as per the Land Acquisition Act. The decision of the Apex Court in *ARCHAEOLOGICAL SURVEY OF INDIA v. NARENDER ANAND AND OTHERS* [(2012)2 SCC 562] was referred by learned Advocate General to submit that, in the context of similar provisions of Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, it is observed as under:-

"51. Section 19 of the 1958 Act contains a restriction against construction of any building within the protected area or carrying out of any mining, quarrying, excavating, blasting or any other operation of similar nature in such area. Rules 31 and 32 of the Rules empower the Central Government to declare an area near or adjoining a protected monument to be a prohibited area or a regulated area for the purposes of mining operation or construction. The Central Government must have issued the Notification dated 16-6-1992 after consulting experts in the field and keeping in view the object of the 1958 Act. Therefore, in the name of development and accommodating the need for multi-storeyed structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16-6-1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become part of history."

6. Learned counsel for respondent No.1 submitted that the restriction imposed by Section 20 indirectly impinge upon the right of respondent No. 1 to full enjoyment of her property and in case the land of respondent No. 1 cannot be developed because of the notification, the only recourse could be payment of such compensation as may be determined under the provisions of the Land Acquisition Act. Learned counsel relied upon the judgment dated 26.08.2008 of a Division Bench of this Court in Writ Appeal No.5546/2003 and connected matters [*State of Karnataka v. Srikanthadatta Narasimha Raja Wodeyar*] wherein the relevant observations are as under:

"12. In addition to the above, the denial of right to enjoy the property of the petitioners not only due to declaration of the 'Janana Mantapa' as the protected monument but also the surrounding area as protected area to a radius of 300 meters is also an issue which requires consideration. Though the notification indicates the protected area is to the distance of 100 + 200 meters i.e., in all 300 meters in length, if the same is worked out mathematically to consider the total protected area surrounding the monument, the same would be to the extent of 74.60 acres as worked out by the petitioners. This in fact has been admitted by the Town Development Authority, Chamarajanagar by its communication dated 30.12.2002 addressed to one of the petitioners wherein it has been stated that the 300 meters area surrounding the Janana Mantapa would be 70 acres. Neither the said correspondence nor the calculation on this aspect is disputed. Further this large extent of land is not established to be a 'Archaeological site and remains' in terms of Section 2(3) of the Act. If that be so, prevention of development or enjoyment of the property by the persons residing and carrying on business in an extent of 70 acres without being acquired or being duly compensated would naturally offend the right available under Article 300-A of the Constitution of India. Though the learned Government Advocate contended that the declaration of the protected monument and the protected area is the first step and the acquisition can always take place as contained under Section 13 of the Act, a perusal of Section 13 would indicate that the same does not as a natural consequence provide for acquisition but all that the provision contains is that only if the government apprehends that a protected monument is in danger of being destroyed, injured, misused or allowed to fall into decay, it may acquire the protected monument under the provisions of the Land Acquisition Act 1894 for the put pose of maintenance as a public purpose. Therefore in so far as the owner of the property, the said provision does not indicate that a right would be created in favour of the owner, the moment ihe structure is notified as protected monument. Further in so far as the protected area is concerned, the power to acquire is under Section 21 of the Act. As per the said provision, if the government is of the opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894 as if the acquisition were for public purpose. The said

provision would in fact run contrary to the contention put forth by the learned Government Advocate since as noticed above, the very basis of the contention to sustain the notification was that the power exercised under the present Act need not relate to the national importance since the Central Act would take care of the same. However, Section 21 of the Act would indicate that acquisition of a protected area under the present Act is permissible under this Act only if an ancient monument is of national interest and value. Therefore, in the facts of the present case, since the area in question has been declared as protected area even though it is not of national importance as admitted on behalf of the Government, it would not be open for the Government to contend that right of enjoyment is not denied since the property could be acquired after declaring the property surrounding the monument as protected area. This coupled with the fact that on declaration of the area as a protected area, all development activities/construction activities should come to a grinding halt more particularly with the restrictions as contemplated under Section 20 of the Act would mean that the property rights of a citizen is curtailed {sic} without resorting to due process of law, Therefore in a circumstance of this nature, if at all the government was interested in protecting the area the only option would have been to acquire the property in accordance with law after duly compensating the owners and thereafter utilising the area as a protected area after declaring so."

After the above observation, the Division Bench did not go into the contentions raised for assailing the constitutional validity of the Act and all contentions in that regard were left open to be considered in an appropriate case.

7. The provisions of the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961, relevant for the present purpose, are extracted hereunder:

"2. Definitions.- In this Act, unless the context otherwise requires,-

(1) "Ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith,, which is of historical, archeological or artistic interest and which has been in existence for not less than one hundred years, and includes.-

(i) the remains of an ancient monument;

(ii) the site of an ancient monument;

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(iv) the means of access to, and convenient inspection of, an ancient monument;

but shall not include ancient and historical monuments declared by or under law made by Parliament to be of national importance.

(2) (3) "archeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archeological importance which have been in existence for not less than one hundred years, and includes,-

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(ii) the means of access to, and convenient inspection of, the area.

(4) to (8) (9) "protected area" means any archeological site and remains which is declared to be protected under this Act.

"4. Power of Government to declare ancient monuments to be protected monuments.-

(1) Where the Government is of opinion that any ancient monument should be declared as a protected monument, it may, by notification in the official Gazette, give two months' notice of its intention to declare such ancient monument to be a protected monument and a copy of every such notification shall be affixed in a conspicuous place near the monument.

(2) Any person interested in any such ancient monument may within two months after the issue of the notification, object to the declaration of the monument to be a protected monument.

(3) On the expiry of the said period of two months, the Government may, after considering the objections, if any, received by it, declare by notification in the official Gazette the ancient monument to be a protected monument.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument to which it relates is a protected monument for the purposes of this Act.

PROTECTED AREAS

"21. Power to acquire a protected area.-If the Government is of opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894, as if the acquisition were for a public purpose within the meaning of that Act.

PRINCIPLES OF COMPENSATION

"24. Compensation for loss or damage.- Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason of any entry on, or excavation in, such land, or the exercise of any other power conferred by this Act, shall be paid compensation by the Government for such loss, damage or diminution of profits."

In exercise of the powers under Section 31 of the Act, the Government of Karnataka has made the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1966, of which the relevant provisions read as under:

"2. Definitions - In these rules, unless the context otherwise requires -

(a)

(a) 'Construction' of any structure includes additions to or alterations of an existing building;

(g) 'Prohibited area' or 'Regulated area' means an area near or adjoining a protected monument which the State Government has, by notification in the Official Gazette, declared to be a prohibited area, or, as the case may be, a regulated area, for purposes of mining operation or construction or both;

MINING OPERATION AND CONSTRUCTION NEAR PROTECTED MONUMENTS

"11. Notice of intention to declare a prohibited or regulated area.-

(1) Before declaring an area near or adjoining a protected monument, to be a prohibited area or a regulated area for purposes of mining operation or construction or both, the Government shall, by notification in the Official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

(2) Every such notification shall specify the limit of the area which is to be so declared and shall also call for objections, if any, from interested persons.

"12. Declaration of prohibited or regulated area.-

After the expiry of one month from the date of the Notification under Rule 11 and after considering the objections, if any, received within the said period, the Government may declare, by notification in the Official Gazette, the area specified in the Notification under

Rule 11 or any part of such area, to be a prohibited area or, as the case may be, a regulated area for purposes of mining operation or construction or both.

"13. Effect of declaration of prohibited or regulated area.- No person other than the Director shall undertake any mining operation or any construction-

(a) in a prohibited area; or

(b) in a regulated area, except under and in accordance with the terms and conditions of licence granted by the Director.

"14. Application for licence.- Every person intending to undertake any mining operation or any construction in a regulated area shall apply to the Director in Form II at least three months before the date of commencement of such operation or construction.

"15. Grant or refusal of licence.-

(1) On receipt of an application under Rule 14, the Director may grant a licence or, if he is satisfied that the licence asked for should not be granted, may for reasons to be recorded, refuse to grant a licence.

(2) Every licence granted under sub-rule (1) shall be in Form III and be subject to the following conditions, namely:-

(a) the licence shall not be transferable;

(b) it shall be valid for the period specified therein; and

(c) any other condition relating to the manner of carrying out the mining operation or the construction which the Director may specify in the licence for ensuring the safety and appearance of, and the maintenance of approach and access to, the protected monument."

The Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 is stated to have been enacted along the lines of corresponding provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and in order to bring about uniformity in the laws relating to protection and preservation of ancient monuments falling under Entry 12 in the State List, that is, ancient monuments other than, those declared by or under the law made by Parliament to be of national importance.

8. Under Section 2(9) of the Act, a protected area' is defined as any archeological site and remains which is declared to be protected under this Act. Sections 19 and 20 of the Act deal with notification of a protected area and imposition of restrictions on its use respectively. The power to acquire a protected area as per the Land Acquisition Act, 1894 is enshrined in section 21 of the Act.

As per Rule 2(g) of the Rules, a 'prohibited area or 1 regulated area' is an area near or adjoining a protected monument which the State Government has, by notification in the Official Gazette, declared to be a prohibited area, or, as the case may be, a regulated area, for purposes of mining operation or construction or both. Rule 11 states that the State Government may, after due notice of intention to declare an area as prohibited or regulated area and considering objections, if any, make such a declaration under Rule 12 by way of notification to be published in the Official Gazette. According to Rule 13, no person other than the Director of Archaeology can undertake any mining operation or construction except under a license granted in that behalf. Application for such a license may be made under Rule 14 and request for such license may be rejected under Rule 15 after recording of reasons therefor, and even if license is granted, it may be subject to any condition relating to the manner of carrying out the mining operation or construction for ensuring safety, appearance and maintenance of the approach and access to the protected monument.

9. Thus. a protected area must qualify as 'archaeological sites and remains' i.e., an area containing ruins or relics of historical or archeological importance aged over 100 years, including land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and the means of access to and convenient inspection of the area and be declared as a 'protected area' under Section 19 of the Act. However, prohibited or regulated areas are those areas near or adjoining a protected monument which are declared to be so under Rule 12 for purposes of mining operation or construction or both. It is pertinent to note that the land in question belonging to respondent No.1 has been declared by the State Government to be a 'prohibited and protected area' in exercise of powers under Rule 12, by way of Notification dated 10.03.1998 and hence, is only a prohibited and regulated area in so far as mining operations and construction activities are concerned. No restrictions which may be imposed on a 'protected area' under Section 20 are applicable to the land belonging to respondent No.1. Thus, the apprehensions expressed by learned counsel for respondent No.1 by placing reliance on the decision of the Division Bench in W.A.5546/2003 (supra) need not be addressed or dealt with as they are largely inapplicable in the present context.

10. The Notification dated 10.03.1998 declaring the areas near or adjoining a protected monument to an extent of 100 meters and 200 meters beyond that as 'prohibited or protected area' in accordance with Rule 12 is applicable to all protected monuments in the state of Karnataka and it sufficiently empowers the Director of Archaeology to deny license for any proposed construction in an area falling within the purview of that notification. The letters at Annexures P and Q, by which the license for construction was denied to respondent No.1 were impugned in the writ petition on account of the Government neither acquiring the property nor paying compensation for loss of its use. However, in absence of a license for construction in the land adjoining the fort of Srirangapatna, a protected monument, issued in exercise of the powers of the Director of Archaeology under Rule 15 and in view of the Notification dated 10.03.1998 declaring that area as prohibited and regulated area for mining and construction purposes, the proposed construction could not be commenced as a matter of legal right.

11. It is trite that for a writ of mandamus to be issued, there must be a legal right with the party asking for the writ to compel performance of some statutory duty cast upon the authorities. As held by the Apex Court in paragraph 9 of the judgment in *Mani Subrat Jain v. State of Haryana* [(1977) 1 SCC 486] :

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See *Halsbury's Laws of England*, 4th Edn., Vol. I, para 122; *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : J 973 SCC (LandS) 488 : (1974) 1 SCR 165j : *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed* [(1976) 1 SCC 671 : (1976) 3 SCR 58] and *Ferris* : *Extraordinary Legal Remedies*, para 198.)"

(underline added)

It is also observed by the Apex Court in *Oriental Bank of Commerce v. Sunder Lai Jain*, [(2008) 2 SCC 280] that :

"11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

"Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute, mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well- settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all

the surrounding facts and circumstances.

Note 206.- ... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

"12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen. Coop. Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145 : AIR 1977 SC 2149] after referring to the earlier decisions in Lekhraj Sathramdas Lalvar. v. N.M. Shah [AIR 1966 SC 334] , Rai Shivendra Bahadur (Dr.) v. Nalanda College [AIR 1962 SC 1210] and Umakant Saran (Dr.) v. State of Bihar [(1973) 1 SCC 485 : AIR 1973 SC 964] this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case [(1977) 4 SCC 145 : AIR 1977 SC 2149] , SCC pp. 152-53)

"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. ... In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. ..."

(underlines added)

12. Although Article 226 of the Constitution of India empowers the High Courts to issue writs for the enforcement of any of the right conferred by Part III and for any other purpose', the expression 'for any other purpose' has to be read in the context of the words preceding them. Therefore, it is well established that existence of a legal right and infringement thereof are the foundation of exercise of jurisdiction of the court under Article 226. As held by Constitution Bench of the Apex Court in *State of Orissa v. Ram Chandra Dev* [AIR 1964 SC 685]:

"8. ... Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus, the foundation of a petition under Article 226 ..."

13. In the facts of the present case, there is no legally enforceable right of respondent Nod, as restrictions on construction were imposed by the authorities concerned in a declared prohibited area and in accordance with law. There was no specific prayer by respondent No.1 for issue of mandamus to initiate any process for acquisition of land. The provision for restriction of construction even within the area declared to be prohibited area under the Rules is also not absolute and in a given case some kind of construction could be permitted under Rule 15 subject to such conditions as the Director may specify. Under such circumstances, issue of mandamus to the authorities to initiate acquisition proceedings, by modifying the

relief sought by the respondent No. 1 in the writ petition was not only impermissible but also uncalled for, as the decision to acquire any land vests solely with the Government and cannot be compelled by the Court.

14. In view of the aforesaid scheme of the Act and Rules and decisions of the Apex Court, we are unable to endorse the view taken by the Division Bench of this Court in *State of Karnataka v. Srikanthadatta Narasimha, Raja Wodeyar (supra)*. However, the issues arising herein may be addressed in view of the fair concession made by learned Advocate General that the provisions of Section 24 of the Act already provide for compensation by the Government for loss, damage or diminution of profits being sustained by any owner or occupier of land on account of exercise of any power conferred by the Act. Therefore, it is admittedly open to respondent No.1 to claim compensation in terms of the provisions of Section 24, if she is so advised. Learned Advocate General also fairly stated that if and when such application for compensation is made, it would be considered in accordance with law and decided as expeditiously as practicable.

15. The parties having arrived at the aforesaid understanding, the appeal is allowed by consent and the impugned order is set aside with the direction that if and when respondent No.1 makes an appropriate application under Section 24 of the Act or a fresh application for a license under Rule 14 of the Rules, it may be considered by the State Government in accordance with law and as expeditiously as practicable and preferably within a period of three months of receipt of such application. There is no order as to cost.

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