

K Gopalagowda Vs. State Of Karnataka

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Court : Karnataka

Decided On : Jun-02-2023

Judge : M.Nagaprasanna

Appeal No. : WP 50462/2019

Appellant : K Gopalagowda

Respondent : State Of Karnataka

Advocate for Def. : Sri. Yogesh D. Naik

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE02D DAY OF JUNE, 2023 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.50462 OF2019(GM - RES) BETWEEN:

1. . K.GOPALAGOWDA S/O KRISHNAPPA AGED ABOUT63YEARS, RESIDING AT14 1ST CROSS, MLA LAYOUT, R.T.NAGAR BENGALURU - 560 032. 2 . R.RAVICHANDAR S/O LATE Y.A.RAMASWAMY RAJU AGED ABOUT55YEARS, RESIDING AT: NO.73, 11TH MAIN15H CROSS, 6TH SECTOR H.S.R. LAYOUT BENGALURU - 560 032. ... PETITIONERS (BY SRI RAJESWARA P.N., ADVOCATE) AND:

1. . STATE OF KARNATAKA REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY URBAN DEVELOPMENT DEPARTMENT2VIKASA SOUDHA

DR.B.R. AMBEDKAR ROAD, BENGALURU - 560 001. 2 . BANGALORE METROPOLITAN REGION DEVELOPMENT AUTHORITY NO.1, ALI ASKAR ROAD, BENGALURU - 560 052 REPRESENTED BY ITS METROPOLITAN COMMISSIONER. 3 . BANGALORE INTERNATIONAL AIRPORT AREA PLANNING AUTHORITY NO.333/1, 1ST FLOOR, V.J.COMPLEX, SHANTINAGAR, SULEBELE ROAD, DEVANAHALLI TOWN PIN CODE - 562 110 REPRESENTED BY ITS COMMISSIONER. ... RESPONDENTS (BY SRI N.KUMAR, AGA FOR R-1; SRI YOGESH D.NAIK, ADVOCATE FOR R-2 AND R-3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE RESOLUTION DTD.12.7.2017 ON SUBJECT NO.15(5) IN THE 119TH MEETING OF THE R3 REFUSING TO CONSIDER THE REQUEST OF THE PETITIONERS FOR CHANGE OF ALIGNMENT OF 30 METER MASTER PLAN ROAD (ANNEXURE-S) AND CONSEQUENT ENDORSEMENTS BOTH DTD.20.5.2018 (SIGNED ON 20.6.2018) ANNEXURE.T AND T1 AND THE CORRIGENDUM LETTERS BOTH DTD.25.7.2018 ANNEXURE-U AND U1 AND ETC., THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- 3

ORDER

The petitioners are before this Court calling in question resolution dated 12-07-2017 by which the 3rd respondent/ Bangalore International Airport Area Planning Authority (the Planning Authority for short) refused to consider the request of the petitioners, for change of alignment to the tune of 30 meters in the Master Plan concerning road that passes through the lands of the petitioners and have also sought for quashment of endorsements dated 20-05-2018 (20-06-2018) (Annex - T, T1) and 25-07-2018 which communicate the said resolution. The petitioners further seek a writ in the nature of mandamus directing the respondents to change the alignment passing through certain villages in which the lands of the petitioners situate.

2. Shorn of unnecessary details, facts germane are as follows: The 1st petitioner claims to be owner of land measuring 1 acre in Sy.No.10/3 which is now renumbered as Sy.No.10/9 in Tharabanahlli Village, Jala Hobli, Bangalore North Taluk now Yelahanka Taluk in Bangalore Urban District. The 2nd petitioner 4 claims to be the owner of land measuring 1 acre and 32 guntas in Sy.No.15 of the same village. The petitioners aver that the village map of Tharabanahlli Village in 1919 displayed existence of village road formed in lands in Sy. Nos. 9, 12, 15, 17 and 21 of Tharabanahalli Village. It is claimed that on 13-09-2004 certain developers having their lands in Sy.Nos. 32, 33, 34 and 35 of Navarathna Agarahara and lands in Sy.Nos. 12 and 9 of Tharabanahlli Village and owing to the development of these lands at the behest of those developers the alignment of road was changed.

3. The 1st petitioner after purchase of land approaches the Planning authority for the purpose of conversion of the land from agriculture to non-agricultural purposes. It is the averment that the 1st petitioner was notified at that point in time that Sy.No.10 of Tharabanahlli Village was earmarked for public and semi-public purpose and not for residential purposes. The 1st petitioner claims to have gone through the master plan and learnt that entire 1 acre in Sy.No.10/3 which is now renumbered as 10/9 of Tharabanahlli Village was proposed to be used for formation of road in the master 5 plan. It is the averment that the petitioner was shocked by such revelation. The 1st petitioner claims that he was not aware of any master plan that was brought into force and the property was earmarked for formation of a road in the master plan. The 1st petitioner was informed that the Planning Authority had approved the interim master plan on 13-09-2014, objections were called for and the final master plan was approved five years thereafter on 29-01-2009. The 1st petitioner claims to be unaware of all these factors.

4. The 2nd petitioner had purchased the property measuring 1 acre 32 guntas in Sy.No.15 of Tharabanahlli Village from Smt. Pillamma in terms of sale deed dated 19-11-2010 and got 30 guntas out of land converted for industrial purposes and the reminder out of the said land was converted for park and road alignment purpose. It is after that the property has been permitted to be used for non-

agricultural residential purpose. The Official Memoranda that demonstrate the aforesaid facts are appended to the petition. The 1st petitioner submits representation on 10-02-2016 to the Planning Authority to change the alignment of 6 the road in the master plan, so that it runs in the lands in Sy.No.12 and 9 instead of Sy.Nos. 11, 10, 8 and 15 of Tharabanahlli Village. The representation did not yield any response and a second representation was submitted on 31-03-2016. Certain clarifications were sought from the hands of the 1st petitioner which led the 1st petitioner to submit another representation seeking that alignment should be changed or his land should be subject matter of payment of compensation as the entire 1 acre has been taken away. Communications between the 2nd and 3rd respondents were made after the representation submitted by the 1st petitioner that it should be placed before the Planning Authority. Likewise, the 2nd petitioner submits a representation on 13-03-2017 seeking the Planning Authority to change the alignment of master plan road so that it runs in the lands in Sy.Nos. 12 and 9 as was sought for by the 1st petitioner. It was the claim of the 2nd petitioner that the land belonging to him in Sy.No.15 is earmarked for public and semi- public purpose and remainder of the land had lost its value.

5. Therefore, both these petitioners were knocking at the doors of the Planning Authority seeking change in alignment of the 7 road which passes through the villages so that the land of the petitioners would be saved. This leads the Planning Authority resolving to reject the request of the petitioners on the ground that the law does not permit any such change to be made in a master plan, unless it is objected to and considered at the time when the final master plan was prepared and published. In furtherance of the said resolution, two communications are made to both the petitioners - one on 20-05-2018 and the other on 25-07-2018 rejecting the claim of the petitioners. It is this action that drives the petitioners to this Court in the subject petition.

6. Heard Sri P.N. Rajeswara, learned counsel appearing for the petitioners, Sri N. Kumar, learned Additional Government Advocate appearing for respondent No.1 and Sri Yogesh D.Naik, learned counsel appearing for respondents 2 and 3.

7. The learned counsel for the petitioners would vehemently contend that the Planning Authority had passed the resolution in a cavalier manner and it does not consider importance of the property of the petitioners. The communications made pursuant to the 8 resolution are even more callous as they read that in the event some layouts would come up in the area, then the land would be required for formation of roads. It is on that ground the request of the petitioners had been rejected. The learned counsel would further contend that right to property of the petitioners is a recognized constitutional right under Article 300A of the Constitution of India, and the property of the petitioners was first depicted in the interim master plan in the year 2004. 19 years have passed by, but even as on today the Planning Authority has not come up with any concrete project of formation of road in the area, but it is holding on to the land on the ground that it is part of the master plan existing then.

8. On the other hand, the learned counsel Sri Yogesh D. Naik, appearing for respondents 2 and 3 would vehemently refute the submissions of the petitioners to contend that once the land is earmarked for the purpose of formation of road in the master plan, it would not lapse, but continue to be so unless it is deleted in the subsequent master plan. The learned counsel would emphasize that interim master plan was notified in the year 2004. The petitioners 9 or the erstwhile land owners/vendors of the petitioners did not file any objections. Therefore, the final master plan was notified. Once final master plan is notified, it can be corrected only in the subsequent master plan and not in the interregnum unless such holding is contrary to law. He would submit that the guidelines issued by the State Government for change of land use does not permit any such deviation, once the land is earmarked for the purpose of formation of a road, and alignment or re-alignment of the existing or proposed roads cannot even be submitted as a proposal to the Government. He would seek to place reliance upon an order passed by a learned single of this Court in VIDYA VIKAS EDUCATIONAL TRUST v. STATE OF KARNATAKA¹ and a judgment of the Division Bench of this court in BANGALORE DEVELOPMENT AUTHORITY v. Y.BAYAPPA REDDY² to buttress the aforesaid submissions and seeks dismissal of the petition.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. 1 2013(5) Kar.L.J.

218 2 W.A.No.2679 of 2018 decided on 10-03-2021. 10

10. The afore-narrated facts of the petitioners coming in possession of lands and then submitting representations and their rejection by way of resolution are all matters of record. The story begins from the interim master plan of the year 2004 in which the lands belonging to the petitioners became a subject matter of formation of road in the interim master plan. A final master plan was notified on 29-01-2009. Therefore, the lands belonging to the petitioners were held for the purpose of formation of road in the year 2009. It is then the petitioners purchased the lands from the erstwhile land owners. Therefore, at the time when the petitioners purchased the lands, the master plan, interim/final was already in existence and the lands of the petitioners were earmarked for the purpose of formation of road in the said master plan, interim/final.

11. Preparation of master plan is dealt with under the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as the Act for short) and contents of master plan is dealt with under Section 12 thereof. Section 13 deals with approval of the master plan and Section 13A deals with interim master plan. 11 The provisions of the Act that are germane to be noticed are extracted hereunder for the purpose of quick reference: 9. Preparation of Master Plan. - (1) Every planning authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the local planning area, prepare and publish in the prescribed manner a master plan for such area and submit it to the State Government, through the Director, for provisional approval. (2) If the master plan is not prepared, published and submitted to the State Government by the Planning Authority within the period specified in sub-section (1), the State Government may authorise the Director to prepare and publish such plan in the prescribed manner and direct the cost thereof to be recovered from the Planning Authority out of its funds, notwithstanding anything contained in any law relating to the said fund. (3) Notwithstanding

anything contained in sub-section (2), if any Planning Authority is converted into, or amalgamated with any other Planning Authority or is sub-divided into two or more Planning Authorities, the master plan prepared for the area by the planning authority so converted, amalgamated or sub-divided shall, with such alterations and modifications as the State Government may approve, be deemed to be the master plan for the area of the new Planning Authority or authorities into or with which the former Planning Authority was converted, amalgamated or sub-divided.

(4) A copy of the master plan with the report sent to State Government under sub-section (1) or sub-section (3) shall be kept open for inspection by the public at the head office of the Planning Authority.

10. Declaration of intention of making outline development plan.-(1) A Planning Authority, before carrying out a survey of the area under its jurisdiction 12 under sub-section (1) of section 9, for the purpose of preparing a Master Plan for such area, shall make a declaration of its intention to prepare such plan and shall despatch a copy of such resolution with a copy of plan showing only boundary of the entire area proposed to be included in the master plan to the State Government. The planning authority shall publish a notice of such declaration in the Official Gazette and also in one or more local newspaper in the prescribed manner calling suggestions from the public within a period of sixty days: Provided that no such declaration of intention need be made when the masterplan is prepared and published by the Director under sub-section (2) of section 9. (2) If within two months from the date of publication of the declaration under sub-section (1) any member of the public communicates in writing to the Planning Authority any suggestion relating to such plan, the Planning Authority shall consider such suggestion and may, at any time, before sending the Plan to the State Government make such modification in the plan as it thinks fit. (3) A copy of the plan showing the boundaries of the area included in the master plan shall be opened to public at all reasonable hours at the office of the Planning Authority or Local Authority.

11. Power of entry for carrying out surveys for preparing outline development plan.-For the purpose of carrying out a survey for preparation of an outline development plan and for the purpose of preparing of such plan, any person

authorised by the Director or the Planning Authority or any public servant or person duly authorised or appointed under this Act may, after giving such notice as may be prescribed to the owner, occupier or other person interested in the land, enter upon, survey and mark out such land and do all things necessary for such purpose.

12. Contents of Master Plan.- (1) The Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated, such plan shall include proposals for the following, namely:- (a) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations; (aa) Present land use maps and proposed land use map prepared for the local planning area, local authority jurisdiction and for every ward within the local authority boundaries. (b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements; (c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments; (d) areas earmarked for future development and expansion; (e) reservation of land for the purposes of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the land in the manner provided by or under this Act; (f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed; (g) stages by which the plan is to be carried out.

14 Explanation: (i) Building Line means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme; (ii) Floor Area Ratio means the quotient of the ratio of the combined gross floor area of all the floors, excepting areas specifically exempted under the regulations, to the total area of the plot. (2) The following particulars shall be

published and sent to the State Government through the Director along with the masterplan, namely:- (i) a report of the surveys carried out by the Planning Authority before the preparation of such plan; (ii) a report explaining the provisions of the Master Plan; (iii) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority; (iv) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan. (3) Master Plan shall indicate Heritage Buildings and Heritage Precincts and shall include the regulations made therein for conservation of the same.

13. Approval of the Master Plan.- (1) On receipt of the Master Plan with the reports referred to in section 12 from the Planning Authority under sub-section (1) of section 9, or after such plan and reports are prepared and published under subsection (2) of section 9, the State Government after making such modifications as it deems fit or as may be advised by the Director, shall return 15 through the Director, the plan and the reports to the Planning Authority, which shall thereupon publish, by notification, the plan and the reports inviting public comments within sixty days of such publication 2 [Simultaneously, the plan and reports shall be forwarded to the local authorities within the local planning area, which shall, within sixty days from the date of receipt thereof, forward to the Planning Authority, its approval or any observations to be considered by the Authority, failing which the approval of the local authority shall be deemed to have been given. (2) If within sixty days of the publication under sub- section (1), any member of the public communicates in writing to the Planning Authority any comments on the plan and the reports, the Planning authority shall consider such comments and resubmit the plan and the reports to the State Government, through the Director with recommendations for such modifications in the plan and reports as it considers necessary in the light of the public comments made on the plan and reports. (3) The State Government, after receiving the plan and the reports and the recommendations for modifications from the Planning Authority, shall, in consultation with the Director, give its final approval to the plan and the reports with such modifications as the Director may advice in the light of the comments and the recommendations of the Planning authority or otherwise. (4) The Planning

Authority shall then publish in the prescribed manner the Master Plan and the reports as finally approved by the State Government. The plan and the reports shall be permanently displayed in the offices of the Director and the Planning Authority and a copy shall be kept available for inspection of the public at the office of the Planning Authority. 13-A. Interim Master Plan.- (1) Pending the preparation of Master Plan, a Planning Authority may, where it considers it expedient, and shall, when so directed by the State Government, prepare and publish the Interim Master Plan for the entire area within the jurisdiction of the Planning Authority, or for any part thereof; and their upon, the provisions of section 13 shall, 16 so far as may be, but subject to the provisions of this section, apply in relation to such Interim Master Plan as they apply in relation to the preparation and publication of the Master Plan. (2) The Planning Authority shall prepare and publish such plan not later than one year from the date of notice in the official Gazette of its declaration of intention to prepare a Master plan or not later than such further period not exceeding one year as may be extended by the State Government. (3) The Interim Master Plan shall provide only for matters mentioned in clauses (a), (b) and (c) of section 12 and if necessary, such other matters specified in that section as the Planning Authority may decide to include or as may be directed by the State Government. (4) The Interim Master Plan shall consist of such maps and such descriptive matters as the Planning Authority may consider necessary to explain and illustrate the proposals made in such plan. (Emphasis supplied) The master plan in the case at hand - interim was prepared in the year 2004 and lands belonging to the erstwhile land owners of the petitioners were declared to be part of master plan for the purpose of formation of road and in the final master plan notified in the year 2009 it was so declared. These are undisputed facts. It is, therefore, the petitioners by making hue and cry submitted representations to the respondents/authorities in the year 2016 and 2017. On the representation submitted by the 1st petitioner, the 17 Planning Authority communicates its reply dated 27-06-2016 which reads as follows: gjU: Ug DAiPg AUg Ug z Pg A.1, D Dg g, AUg. ig, Ai: AUg Gvg (Cg) vP, e , vg Uz A.10/9 (..A.10/3) g AidAiAi g g AQPgt gxr Cx g z U zP P jg MzV Pj g Ai U. GR:

1. P.UUq P Eg PgP g v AP:10-02-2016 v 31-03-2016

2) F PbjAi ASAi v AP:

13. 03-2016

3) J.f.Ar, AiiU, Eg PgP g v AP:

22. 04-2016

4) F PbjAi ASAi v AP:13-05-2016

5) J.f.Ar, AiiU, Eg CAi v AP:

23. 05-2016 ***** Aq AiP AAzAv, GR(1) g Ai P.UUq Eg AUg Gvg (Cg) vP, e , vg Uz A.10/9 (..A.10/3) g AUg CAvgAi i t z Aid Pg AidAi g AQPgtPV Pjgz gxr Cx g U zP P jg q Pjgvg. F Pgtz U vUzPPz Pz U P q PgZ P Uggz J.f.Ar EjU PgV, zjAig GR (5) g F Pgtz s QAI gAz EgzjAz jg 18 q gAz C g gvg. Pgtz AAzs F PV CAU v CUU z. AUg CAvgAi i t z Aid PgZ Ai Aid zz AidU PgZ Dz AS: CE248Ag 2003, AUg AP:13-09-2004 g PgAz vvP Cz qVgvz. zj Pgq Cz U dPjAz DPu/ CP r AP:22-09-2004 gAz wP Pl u qVgvz. PgtP AAzAv CfzggAz Aiiz DPu PvVg. vzAvg PgZ Dz AS: CE157JADg 2005, AUg AP:27-01-2009 v wzr Dz AP:29-01- 2009 gAv Aid PU CAw Cz qVgvz. - Aid PAi Pgtz gAi gAi zj 7g gAz PAm Uz wg gAsV PAm, vg, gv CUg, Pg, d v PAU UU SAvG PAU wg : gAi zj gvz. zj gAi 30.0 lg CUP AidAi Vz. zj g AQPgtz g U CzAiiVz, D U zj gUV eU Pjz. g AQPgt gv CUg Uz A.28, 29, z Uz A.34, 35 v vg Uz A.12, 15g SAvG PVv JAz Cfzgg wvg. Cfzgg PjgAv AQPgt gxrz g gAvGV U. zj v g AQPgtP Cfzgg At d UwgzjAz CjU Aiiz C Cw q DU. AidAi g U, zj g Ai MUAqAv d CU s iPg / Czgg PgZ Cw PjzU Aid ej SAvG AidAi g gUU d qAiUvz. Cfzgg PjgAv jg q, gU PVg zj d s rP PgAz Eg. 19 PgAz Aid CzAiiV ig 7 UV CzgAv, v zz CU AgzjAz v Avz F Pgtz vUzPPz Pz Pjv iUzPV Vz. v /-27/6/16 Ug v UiAvg Aid dAn zPg U z PAiz AUg CAvg gAi i t z Aid Pg z. Though the communication is made from the Planning Authority to the Bangalore Urban Development Department, the same is marked to the 1st petitioner. The communication is that action would be taken in terms of subsequent master plan. But, this did not stop the petitioners from representing to the Planning Authority. The 1st petitioner on 21-12-2016 submits his representation to the Planning Authority. It reads as follows: From Sri K.Gopalagowda S/o Krishnappa Aged about 60 years R/at:No.14

Sri Sai Nivasa 1st Cross, M.L.A. Layout R.T.Nagar Bangalore - 560 032. 20 To The Joint Director, Bangalore International Airport Area Planning Authority #333/1, 1st Floor V.J.Complex Sulebela Road Devanahalli Town. Sir, Sub: Request for canceling the alignment of Airport Peripheral Ring Road passing through Navaratna Agrahara and Tharabhanahalli Village via Meenakunte to Chikkajala Village or in the alternative payment of compensation in so far as 1 acre of land in Sy.No.10/3 (now renumbered as Sy.No.10/9) of Tharabanahalli Village, Jala Hobli, Bangalore North (Additional) Taluk, Bangalore Urban District. Ref:

1. Your letter No.Biaappa/TP1/MIS/3958/15- 16/5166/dated 31.03.2016

2) Your letter No.Biappa/TP1/MIS/3958/15- 16/1196/dated 29.06.2016

3) Letter bearing No.BMRDA/TP/Biappa/Road Alignment/11/2016-17 dated 25.08.2016 ***** Kindly refer to my representation dated 10.02.2016 and my reminder letter dated 31.03.2016 on the subject. It is almost one year since my representation, except for referring the matter for legal opinion and addressing letters to BMRDA and getting reply from BMRDA to the effect that the Annual Action Plan is required to be approved by the Authority as required under Section 68A (2) (c) of the Karnataka Town and Country Planning Act, 1961 no further action has been taken in the matter. Though the BMRDA in its letter dated 25.08.2016 sought the preparation of annual action plan till date no action appears to have been taken in the matter. In the process 21 my representation has not received any consideration at your end and I have not been able to enjoy my property, thereby affecting my constitutional right to hold the property. In the light of the foregoing this is to request you to either re-align the peripheral ring road so that my property is saved or pay me the compensation for keeping my property idle for all these years. Though you notified my land for the purpose of alignment of peripheral rind road, till date no action has been taken to develop the ring road leave along the formation of the ring road. Thanking you, Yours faithfully, Sd/- (K.GOPALAGOWDA)

(Emphasis added)

Likewise, the 2nd petitioner submits his representation on 13.03.2017 which reads as follows: From Sri R.RAVICHANDAR S/o LATE Y.A.RAMASWAMY RAJU R/at:

No.73 11th Main, 15th Cross, 6th Sector H.S.R. Layout Bangalore - 560 102 To
The Joint Director Bangalore International Airport Area Planning Authority #333/1,
1st Floor 22 V.J.Complex Sulebela Road Devanahalli Town. Sir, Sub: Request for
canceling the alignment of Airport Peripheral Ring Road passing through
Navaratna Agrahara and Tharabanahalli Village via Meenakunte to Chikkajala
Village or in the alternative payment of compensation in so far as 1 acre 32 guntas
of land in Sy.No.15 of Tharabanahalli Village, Jala Hobli, Bangalore North
(Additional) Taluk, Bangalore Urban District.

1. I am the owner of the land measuring 1 acre 32 guntas of land in Sy.No.15 of
Tharabanahalli Village, Jala Hobli, Bangalore North (Additional) Taluk, Bangalore
Urban District. I purchased the said property from the previous owner
Smt.Pillamma w/o.late Munishamaiah and her family members under a Sale Deed
dated 19.11.2010. Copy of the R.T.C. conversion order dated 31.08.2010 and
Sale Deed dated 19.11.2010 and are enclosed for your ready perusal.
Subsequently the property has been permitted for non agricultural residential
purpose in respect of 30 guntas of land as per Official memorandum dated
05.08.2015, a copy of which is also enclosed.

2. I am informed that a major portion of my land in Sy.No.15 of Tharabanahalli
Village is earmarked for public and semi-public purpose. On-going through the
Master Plan I learn that major portion of my land is proposed to be used for the
formation of Airport Peripheral Ring Road. I was shocked by the said revelation. At
no point of time my land was ever proposed for the formation of the road because
there is already a village road from Navarathna Agrahara to Chikkajala passing
through Sy.Nos.9, 10, 12, 17 and 21 of Tharabanahalli Village. This is evident from
the village map. It is really shocking how there could be a proposal for formation of
Airport Peripheral Ring Road without the existing village road not being closed as
required under Section 68 of the Karnataka Land Revenue Act, 1964. It appears
from the plain glance of the master plan that the alignment of the existing village
road is used for the purpose of formation of Airport Peripheral Ring Road
without the existing road is made to fall in the alignment in such a way that the
earlier village road is totally wiped out so as to benefit the land owners and a
separate road is proposed to be formed in a place where there was no proposal

for the formation of the road and made only with an intention to help the land owners in whose lands the village road from Navarathna Agrahara to Chikkjala was in existence. This is evident from the fact that the beneficiaries of such re-alignment of the road are the bigwigs like Rashi Developers and I.T.C.Ltd.

3. Your attention is drawn to the fact that Rashi Developers have their lands in Sy.No.32, 33, 34 and 35 of Navarathna Agrahara and I.T.C. Company has its lands in Sy.No.12 and 9 of Tharabanahalli Village. Earlier the village road ran in the above survey numbers. In order to help these two companies the alignment of Airport Peripheral Ring Road is made so as to ensure that the road passes outside their lands. By virtue of this alignment the road is now passing through Sy.Nos.27, 28, 33 and 36 of Navarathna Agrahara and Sy.No.10, 11, 15 and 8 of Tharabanahalli village. This is totally illegal. It is submitted that the Airport Peripheral Ring Road ought to be in accordance with the existing road shown in the village map. The fact that the beginning of the existing village road is at Sy.Nos.24, 26 and 27 of Navarathna Agrahara and the ending of the road is at Sy.No.21 of Tharabanahalli village is not altered in the proposed Airport Peripheral Ring Road. In fact, in the neighboring village Meenakunte there is no change in the alignment of the road which is passing through Sy.No.33 & 36. from this it is evident that the proposal for formation of Airport Peripheral Ring Road could be only along with the existing village road and in formation of a new road altogether such that lands of private owners are utilized, it is obvious that in order to help Rashi Developers and I.T.C. Company the alignment has been changed without following due process of law. How the existing village roads are now shown in the Master Plan is a million dollar question?. The 24 Master Plan has to take note of the existing village road. The fact that the existing village roads are not shown in the Master plan is the mischief which is visible to the naked eye. Under the circumstances, this is to request you to change the alignment of Airport Peripheral Ring Road in so far as it runs in the lands of Tharabanahalli village in Sy.No.12 and 9 instead of Sy.No.11, 10, 8 and 15.

4. I also bring to your notice that by virtue of the proposed Airport Peripheral Ring Road major portion of my land will be lost. This is nothing but depriving me of my property rights.

5. Now BIAPPA is proposing to prevent me from using my lands without compensation being paid. This is highly illegal. I am given to understand that there are no concrete plans for forming Airport Peripheral Ring Road. It is almost 8 years since the master plan is published and it is news to me that my land is going to be used for the proposed Airport Peripheral Ring Road. In such secretive manner public acts cannot be performed. Not even 100 meters of road is laid in this proposed Airport Peripheral Ring Road. This land cannot be kept vacant by me forever. Either you should pay compensation and make the use of the land or allow me to make use of the land in the manner I wish to do so. Under the circumstances, I request you to immediately change the alignment in the Master Plan so that the proposed Airport Peripheral Ring Road does not run in my land. If for any reason the same is not possible, I request you to pay compensation to my land on today's market value as you cannot eternally keep the Master Plan without implementing the same, moreover, when the Master Plan is actuated by malafides and wrongfully drawn in order to help the private parties who have knocked off the Government land i.e. village road from Navarathna Agrahara to Chikkajala via Tharabanahalli and Meenakunte village.

(Emphasis added)

25 Both these representations, in unison, seek one relief from the hands of the Planning Authority viz., cancellation of alignment of Airport Peripheral Ring Road passing through the lands of the petitioners. Based upon these representations, the Planning Authority resolves to reject the representations. The rejection is communicated to the 1st petitioner on 20-05-2018 which reads as follows: U, P.UUq P A.14, 1 P JAJJ Om - Dgn Ug, AUg 32. ig, Ai: AUg Gvg vP e , vg Uz .A.10/9 (..A.10/3) AidAiAi g g AQPgt gZr Cx g z U zP P jg MzV Pj g Ai U. GR:

1. v AP:21/12/2016.

2) AP:12/07/2017 gAz qz PgZ 119 sAi Ai AS 119(15[32].) g tAi.

3) F PgZ ASAi v AP:18/01/2017 v 05/09/2017. Aq AiP AAzAv, GR (1) g vZ AUg Gvg vP e , vg Uz .A.10/9 (..A103)g AidAiAi g g AQPgt gZr Cx g z U zP P jg MzV PgVgvz. 26 GR (2) gAz qz PgZ sAi Ai U ArV, - AidAi g 30.0 lg CUz gAi J.Z 7 jAz L.n.. sPj wg CAzg PAm UAz gAsV vg, gv CUg, Evg, z, d v PAU UU P z PAU UP

APArg J.Z-7 gU : gvz. v g AQPgtz ig 05 U Cz DVz, CPPz a tUU Ag (Aid v gU CAi AidAi ej SAVg CrUwz, g AQPgtz g U iPg F Pgz CzU AzU g Pz d Azv jvd vz SAVg qAiUvz. iV Aiiz v gAi PgAz Cz SAVg C r. AUg CAvgAi i t z Aid Pgz Ai Aid zP vAiijz Aid 2021 P (ig) PIP Ug v UiAvg Aid PAi Pgt 13(3) gAi Adgw rz. zj AidAi aVg v gU Pq F PgP CPgg U Aid CzAiiVg zz s GAIU zu U PgP U Pgz v AS Airr/165/JA.Dg 2012 g AP:12/10/2012 gAv iUaU grVz, PArP 16()g AiAi g g GzPV Pjg zU Evg GzUUUV s GAIU zu Ai gzAz zgvz. (w Uwz) UV Aq CAUAI zj v g AQPgtz CPPz a tUU Az Ai Az a tUU AzU AZgz CPvU CUtV zj gAi Aifv tU zAz CPv Egvz. UV, zj gAi dP vzAz Pq zsgzjAz U zz jwAi PgAz zj gAi Cr U Aid PU DyPV zqsVgAz sAi vAz tVgvz. Pgz sAi tAi GR (3)g F Pgz vz FUU wVgvz, DzU Pgz sAi tAizAv v PjgAv AidAi g AQPgt gZr F Avz PgP Aiiz jwAi CPg Eg JAz wv, g AQPgtz U Aid jj Azzs Aiig j PPUPVgvz. U Pg DyPV zqsVz EgzjAz g z U zP P jg q zsgA CA F P wAirz.

(Emphasis added)

Identical rejection is communicated to the 2nd petitioner as well. The reason rendered in the communications is that the lands are 27 included in the Master Plan for the purpose of formation of road and in the event there are developments in future, the lands would be required for formation of road and further indicates that at that stage it is not possible to accede to the request of the petitioners to realign the master plan. The petitioners challenge the resolution and the communications. What is now required to be considered is, whether the Planning Authority has a right to hold on to the lands in terms of law and the petitioners have a right to seek realignment of the plan regarding formation of road in the master plan?.

12. As observed hereinabove, the preparation of master plan is statutorily recognized - from the preparation to the approval. Lapsing of holding of lands is dealt with under Section 69 of the Act. Section 69 of the Act reads as follows: 69. Acquisition of land designated for certain purposes in a Master Plan.- (1) The Planning Authority may acquire any land designated in the Master Plan for "public purposes" by agreement or under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) as in force in the State. Explanation.- For the purpose of this section land "designated for public purpose" means designated for the

purpose of providing parks, open spaces, public or semi public utilities and infrastructure relating to transport. 28 (2) If the land designated for public purpose, as under sub-section (1), except land designated for purpose of clause (b) of sub-section (1) of section 12 is not acquired either by agreement within five years from the date of publication of the Master Plan under sub- section (4) of section 13 nor the proceedings under the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013(Central Act 30 of 2013) are commenced within period of five years, the designation shall be deemed to have lapsed. (3) When the designated land use lapses under sub- section (2), the Authority may consider the new land use sought by the land owner of such land, based on the surrounding developments, in the meeting of the Authority, after previous publication in one or more daily newspapers of which at least one shall be in local language having wide circulation in the area and call for objections and suggestions in this regard. (4) The Planning Authority shall after considering the proposals to assign land uses and objects and suggestions received in that behalf in the meeting of the Authority, the Authority may convey the assignment of new land use to the owner or reject the proposal for the reasons recorded there in. (Emphasis supplied) In terms of Section 69 the Planning Authority may acquire any land designated in the master plan for public purpose by agreement or under the Act. Sub-section (2) thereof mandates that if the land designated for public purpose except the land designated for purpose of clause (b) of sub-section (1) of Section 12 is not acquired either by agreement within five years from the date of its 29 publication or under the Act, such holding of the land by acquisition by the Planning Authority would lapse. Sub-section (2) carves out an exception. But the exception is with regard to the lands which are designated for a particular purpose in clause (b) of sub-section (1) of Section 12. Clause (b) of sub-section (1) of Section 12 deals with street pattern, major and minor roads, national highways, state highways, traffic circulation pattern and other immediate and future requirements with proposals for improvements.

13. Therefore, the right of a land-owner which would emerge from sub-section (2) of Section 69 to claim that the lands earmarked in the master plan would lapse if they are not acquired within five years would not enure to the benefit of the petitioners, as the statute itself makes an exception that once it is earmarked for

the purpose of roads, major or minor; highways state or national; for meeting immediate and future requirements, would all be exempted from lapsing despite the passage of five years. It is no doubt true that the lands of the petitioners have been held by the Planning Authority under the master plan since 2004 and 19 years have passed by. The Master Plan of 2025 is yet to come so about as the one that is in existence is the master plan of 2015, in which the lands of the petitioners continues to be held for the purpose of formation of road. Therefore, the petitioners cannot claim that their lands held by the Planning Authority in terms of Section 12 would lapse or the petitioners would have a right to re-claim the land or seek to realign formation of roads. The law prohibits it. If the law prohibits it, this Court by its fiat cannot direct the Planning Authority to act contrary to law.

14. In these circumstances, reference being made to the guidelines issued by the State Government for change of land use on 12-10-2012 becomes apposite to notice. Clause 16 under General Instructions of the guidelines reads as follows: 16. Change of land use proposals shall not be submitted to the Government under the following circumstances. a. b. Lands coming in the alignment of existing/ proposed roads of Master Plan. 31 The guidelines stipulate that change of land use proposals shall not be submitted to the Government under certain circumstances - one such circumstance is if the land is coming in the alignment of existing/proposed roads of the master plan. These guidelines are issued in order to remove certain ambiguities of what is permissible and not, under Section 14A of the Act, which provides change of land use from the approved master plan. Therefore, the petitioners do not have a right to seek a fresh alignment or re-alignment or dropping of the lands of the petitioners from the master plan merely on the score that it has been a score year that the Planning Authority has held on to the lands of the petitioners for the purpose of formation of road. The holding is permitted under the Act. Change of land use is prohibited under the Act of such holding.

15. In the light of the aforesaid facts and mandate of the statute, reference being made to the judgments rendered by this Court, on the issue, both by the Division Bench and that of the learned single Judge becomes apposite. The Division Bench in the case of BANGALORE DEVELOPMENT AUTHORITY v. Y. BAYAPPA

REDDY (supra) has held as follows:

32. 12. Section 69(2) of the Karnataka Town and Country Planning Act, 1961 makes it very clear that in the matter of construction of road, the proceedings will not at all lapse even if the period of five years is over and therefore, in the considered opinion of this Court, the learned single Judge could not have passed an order holding that the writ petitioner is entitled to proceed with the development of his site. Resultantly, this Court is of the opinion that the order passed by the learned single Judge in Review Petition Nos. 68 of 2016 and 83-88 of 216 deserves to be set aside and accordingly, the same is set aside. (Emphasis supplied) The Division Bench after quoting and noticing Section 12 and its purport and Section 69 and its purport has held that the lands held by the Planning Authority in terms of clause (b) of sub-section (1) of Section 12 of the Act would not lapse. Much earlier to the judgment rendered by the Division Bench, a learned single Judge of this Court in the case of VIDYA VIKAS EDUCATIONAL TRUST (supra) has held as follows: 7. S. 12 of the Karnataka Town and Country Planning Act, 1961 (for short the Act) specifies the contents of master plan and the same reads as under: 12. Contents of Master Plan : (1) The Master Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning 33 Authority are to be carried out and regulated, such plan shall include proposals for the following namely,- a. Zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations; b. A complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements; c. areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments; d. areas earmarked for future development and expansion; e. xxx f. xxx g. xxx By Act No.1 of 2005 S. 69 came to be substituted with effect from 14-2-2005 by new Section as under: 69. Acquisition of land designated for certain purposes in a Master Plan : (1) The Planning Authority may acquire any land designated in a Master Plan for specified purpose in clause (b), (c) or (d) of sub- section(1) of section 12, or for any public

purpose out of those specified land in clause (a) of sub-section(1) of section 12 by agreement or under the Land Acquisition Act, 1894, (Central Act I of 1894) as in force in the State. If the land is acquired under the Land Acquisition Act, 1894, the provisions of said Act as amended by S. 72 of the Act shall apply to the determination of compensation for the acquisition of such land. (2) If the designated land, except land specified for the purpose in clause (b) of sub-section(1) of section 12, is not acquired by agreement within five years from the date, the Master Plan is published in the gazette under 34 sub-section(4) of section 13 or if the proceedings under the Land Acquisition Act are not commenced within such period the designation shall be deemed to have been lapsed.

8. A reading of the above Section specifies that the lands designated for the purpose of major and minor roads, national high ways, state high ways etc., shall not be lapsed even if they are not acquired within the stipulated time of 5 years from the date of publication of master plan. in the instant case in the master plan the lands in question are designated for the purpose of roads. Therefore even if the lands in question are not acquired, the designation of lands as roads will not lapse. Therefore the respondents are well within their power insisting on the petitioner to leave the road under the impugned endorsement.

9. Petitioner contends that it has given a representation on 15-12-2008 as per Annexure L to third respondent requesting to make necessary changes in the comprehensive development plan and to delete the designated road in the property of the petitioner. Again on 4-2-2009 the petitioner gave a reminder as per Annexure L-1. Even to this day third respondent has not considered the request of the petitioner as per Annexure L and L1. It is obligatory on the part of third respondent to consider the request of the petitioner. (Emphasis supplied) Therefore, in the light of the mandate of law and its interpretation by the Division Bench and the learned single Judge of this Court, the petitioners have not made out a case of demonstrable right, to remedy their grievance, by issuance of a mandamus at the hands of this Court, 35 as the action of the Planning Authority is permitted in law and the redressal of the grievance of the petitioners, for now is prohibited in law.

16. For the aforesaid reasons, the petition lacking in merit stands dismissed. Sd/-
JUDGE bkp CT:MJ

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