

**Rangappa Vs. State of Karnataka**

**Rangappa Vs. State of Karnataka**

**SooperKanoon Citation :** [sooperkanoon.com/384280](http://sooperkanoon.com/384280)

**Court :** Karnataka

**Decided On :** Feb-15-1991

**Reported in :** ILR1991KAR3208

**Judge :** K.A. Swami and ;D.R. Vithal Rao, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 4, 4(1), 6(1), 6(1A) and 17; [Land Acquisition \(Amendment\)Act, 1961](#)

**Appeal No. :** W.P. No. 7267 of 1986

**Appellant :** Rangappa

**Respondent :** State of Karnataka

**Advocate for Def. :** Bharathi Nagesh, HCGP for R-1 to R-3

**Advocate for Pet/Ap. :** T.R. Narayana Rao, Adv.

**Disposition :** Writ petition allowed

**Judgement :**

ORDER

**K.A. Swami, J.**

1. In this Petition under Articles 226 and 227 of the Constitution of India, the petitioner, who is the owner of land bearing Sy. No. 182/1 measuring 1 acre 14

guntas situate at Magadi village, Kasaba Hobli, Magadi Taluk, has sought for quashing the Notification bearing No. LAQ(2) SR. 17/84-85 dated 17-8-1984, published in the Official Gazette on 20th September 1984 issued under Sub-section (1) of Sections 4 and 17 of the [Land Acquisition Act, 1894](#), as amended by the Karnataka Act 17/1961 (hereinafter referred to as the Act).

2. The contention of the petitioner is that the land in question, along with other lands, has been proposed for acquisition on applying the urgency clause for Outer Development of Magadi Town for providing house sites to the weaker section of the people. There is no justification for applying the urgency clause; that there are buildings on the land in question and therefore the land is not amenable for applying the urgency clause because the land cannot be held to fall within the Explanation to Sub-section (1) of Section 17 of the Act inasmuch as there are permanent structures on the land in question.

3. It is unnecessary to examine the other contentions raised by the petitioner in this Petition. The validity of the aforesaid Notification, on the ground that there is no justification for applying the urgency clause, was challenged in W.P. No. 19063/1984 and W.P. No. 18282/ 1984 decided on 24-5-1988. This Court has quashed the Notification insofar the lands belonging to the petitioners therein. The order passed by this Court reads thus:

'The impugned notification is clearly opposed to the Ruling of the Supreme Court in DORA PHALAUJI v. STATE OF PUNJAB AND ORS. : [1980]1SCR93 as the said notification does not specify that the land in question is waste or arable land and it does not mention the fact that in the opinion of the Government that there was an urgency warranting recourse to the provisions of Section 17 of the Land Acquisition Act.

Accordingly, these petitions are allowed, the impugned preliminary notification insofar as the petitioners' lands are concerned dispensing with an enquiry under Section 5A of the Act is quashed.

The petitioners are permitted to file their objections against the proposed acquisition on or before 30-7-1988 and the Land Acquisition Officer who shall

dispose of the same in accordance with law. All other contentions are left open. No costs.'

Therefore, following the aforesaid Decision, the impugned Notification insofar it relates to the lands in question belonging to the petitioner is quashed. In the said Decision, no doubt the learned single Judge did not quash the Notification but only permitted the petitioners to file objections treating the Notification as the one issued under Sub-section (1) of Section 4 of the Act without applying urgency clause and directed the Land Acquisition Officer to enquire into the objections and dispose of the same in accordance with law. It is relevant to notice that when once the application of urgency clause is held to be invalid in law and that portion of the Notification is quashed, the Notification would become the one issued under Section 4(1) of the Act without application of urgency clause, But as per the first proviso to Sub-section (1) of Section 6 of the Act, the Notification has to be published within a period of three years from the date of publication of Notification under Sub-section (1) of Section 4 of the Act. As already pointed out the Notification issued under Section 4(1) was published in the Official Gazette dated 20th September 1984. No doubt the interim order staying dispossession of the petitioner from the land in question, if he had not already dispossessed, was passed by this Court on 18-4-1986. But such an interim order does not fall within the ambit of Explanation-1 to the first Proviso to Sub-section (1 A) of Section 6 of the Act. The said Explanation reads thus:

'In computing the period of three years specified in this sub-section, any period during which any action or proceeding to be taken in pursuance of the Notification issued under Sub-section (1) of Section 4 is held up on account of stay or injunction by order of a Court shall be excluded.'

The stay order contemplated under the aforesaid Explanation 1 is the one staying any action or proceeding to be taken pursuant to the Notification issued under Sub-section (1) of Section 4 of the Act. Thus the stay order must relate to or cover the period or stage between the publication of the Notification under Section 4(1) of the Act and the declaration to be made under Section 6(1A) of the Act such as receiving of objections from the objectors or the persons interested in the land

proposed for acquisition, enquiry into the objections as per Section 5A of the Act, submission of report under Section 5A of the f Act and the declaration to be made under Section 6(1A) of the Act. Whereas in the instant case, the interim order was passed on 18-4-1986 which did not relate to the action to be taken pursuant to Sub-section (1) of Section 4 of the Act. Therefore, we are of the view that the period covered by the stay order passed by this Court viz., from 18-4-1986 till today is not liable to be excluded as it does not fall under the Explanation 1 to the first proviso to Section 6(1 A) of the Act. Hence, the Notification under Sub-section (1) of Section 6 of the Act cannot now be issued. Therefore, the impugned Notification insofar as it relates to the land in question is liable to be quashed.

4. Accordingly, this Writ Petition is allowed. The impugned Notification bearing No. LAQ(2) SR.17/84-85 dated 17-8-1984, published in the Official Gazette 20-9-1984, produced as Annexure-B insofar as it relates to the land in question, belonging to the petitioner is quashed.

5. Liberty is reserved to the respondents for acquiring the land in question, if need be, in accordance with law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**