

**Appalappa and Others Vs. State of Karnataka and Others**

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**Court :** Karnataka

**Decided On :** Dec-20-2012

**Judge :** Anand Byrareddy

**Appeal No. :** WRIT PETITION NO. 34714 OF 2010 (LA-RES)

**Appellant :** Appalappa and Others

**Respondent :** State of Karnataka and Others

**Advocate for Pet/Ap. :** Shri. S.M. Chandrashekar, Sri. Chandrashekar

**Judgement :**

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the final notification dated 10.11.2008, issued by second respondent produced at Annexure-B, as void and quash the endorsement dated 30.8.2010 issued by the third respondent produced at Annexure-A, as illegal. This petition, having been heard and reserved on 04.12.2012 and coming on for Pronouncement of Orders this day, the Court delivered the followingJ

**ORDER**

1. The petitioners question the acquisition of land in Sy.No.15/2 measuring 2 acres 14 guntas of Benniganahalli Village, K.R. Puram Hobli, Bangalore.
2. The petitioners claim as owners of the land and are said to have purchased the same from the predecessor in title, one Channarayappa. It is stated that an extent

of 26 guntas had been acquired by the State for the benefit of NGEF, under a notification dated 28.09.1977. The petitioners complain that they have not received compensation in respect of the same. It is stated that the State Government had issued a notification dated 10.11.2008 under Section 4(1) read with Section 17(1)(4) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act' for brevity), to acquire the petitioner's land bearing Sy.No.15/2 measuring 1 acre 38 guntas, inclusive of kharab land, for the Bangalore Metro Rail Corporation Limited (hereinafter referred to as the 'BMRCL' for brevity).

The petitioners claim that no notice has been issued with regard to the acquisition, notwithstanding that their names are reflected in the Record of Rights. It is the case of the petitioners that they had approached this Court earlier in W.P.No.26752- 54/2009 challenging the final notification, contending that the Metro Rail line runs on the Southern side of the Byappanahalli Railway Station and that the petitioner's land was situated beyond Byappanahalli Railway track and the Kasturi Nagar road which separated the petitioner's land from the Metro Rail line. However, it was contended by the respondents that the land of the petitioners was required for the specific purpose of accommodating a foot over-bridge with its landing on the petitioner's land and therefore, the contention that the Metro Rail line is away from the petitioner's land and hence, the acquisition of the petitioner's land was inexplicable, is not tenable. At the hearing of that petition, it is stated that the respondents had produced a sketch indicating the situation of the foot over bridge as proposed, and it was also noticed that the landing of the foot over-bridge did touch the petitioner's land in Sy.No.15/2. It was suggested on behalf of the petitioner that if the angle of the foot over-bridge could be realigned, it was quite possible to facilitate the foot over-bridge while at the same time, the substantial portion of the petitioner's land which would otherwise be unutilized for the project, could be saved from acquisition. In that circumstance, the said writ petition was disposed of with a direction to the respondent as follows:

"Liberty is reserved to the petitioners to give a representation to the fifth respondent to relocate the landing of foot over bridge and the same shall be considered by the fifth respondent in accordance with law, keeping in view the public interest."

The petitioner's request for relocation of the landing of the foot over bridge however was rejected as per Annexure-"A" to the present writ petition. Therefore, the petitioner seeks to question the same as well as the acquisition itself. The petitioner has had the benefit of an interim order dated 26.11.2010, protecting him from dispossession of the land.

3. It is now pointed out by the learned Senior Advocate Shri S.M. Chandrashekar appearing for the counsel for the petitioner, that the respondent - Corporation has in fact relocated the landing of the foot over-bridge, in that, the civil works are completed as evident from the photographs furnished; At the hearing, this Court had called upon the respondent to make a categorical statement that the landing of the foot over-bridge does not touch the petitioner's land in question and therefore, would not be required to be acquired. The contention of the respondent that notwithstanding the fact that the foot over bridge after relocation may not touch the petitioner's land, the fact remains that the land in question would be required for traffic integration, is said to be unfair and unreasonable. It is sought to be pointed out that the foot over bridge, as relocated now, abuts Kasturi Nagar road and the edge of the foot over bridge is 100 feet away from the boundary of land in Sy.No.15/2. Therefore, the original purpose for which the land was sought to be acquired, is no longer relevant. The earlier petition having been disposed of on the note that such relocation would address the Corporation's requirements, and the Corporation now doing a volte face to claim that it would be required for other purposes, is clearly an afterthought and therefore, illegal. The situation that the petitioner's land may be required for "traffic integration", is again vague and not clarified. If this entails the involvement of other agencies who are required to co-ordinate in providing services to enable such traffic integration, it can hardly justify the Corporation seeking to claim that the petitioner's land would be required for such purposes and this would clearly be beyond the power and jurisdiction of the respondent.

The learned Senior Advocate would seek to draw attention to plans and maps made available, that the land in the vicinity of the disputed area acquired for the Karnataka State Road Transport Corporation, or the Bangalore Metropolitan Transport Corporation, cannot be construed as part of the metro project. Any

connectivity to be provided to the KSRTC Satellite Terminal or the BMTC Bus Terminal, cannot be construed as part of the Metro Rail Project and hence, the claim of the respondent - Corporation as to the requirement of the land for the purposes of traffic integration involving those agencies, is clearly not tenable.

4. On the other hand, the learned Senior Advocate Shri Udaya Holla appearing for the counsel for the Corporation would submit that the earlier petition filed by the petitioners in W.P.No.26752-54/2009 was partly allowed. In that, the final notification dated 10.11.2008 was not disturbed and therefore, the petitioner is precluded from challenging the final notification and if the petitioner is permitted to question the same in the present petition, it would result in a gross abuse of the process of the court. It is stated that the possession of the land in Sy.No.15/2 to an extent of 2 acres and 2 guntas including Kharab, was handed over by the Special Land Acquisition Officer to the Corporation as on 29.11.2008 and the total extent of land that was acquired for constructing Byappanahalli Metro Station and Depot which is the major terminal of the Metro Rail Project, would include the provision of infrastructural facilities and transport facilities. It is contended that the land in Sy.No.15/2 is crucial, as it would connect the approach to foot over bridge to the KSRTC bus Terminal and the BMTC Bus Terminal as well as provide parking for Metro Rail commuters using the foot over bridge. It is claimed that it connects the South Western Railway Station, Byappanahalli Metro Railway Station, the Old Madras Road and Traffic Integration area. As per the detailed project report, for the construction of the depot and traffic integration, a large area of land is necessary and the land of the petitioner in Sy.No.15/2 is only a small part. But, if it is denied, it would become an island within the area that would be developed for the aforesaid purposes and therefore would submit that the view sought to be adopted by the petitioners that it was required only for the landing of the foot over bridge and now that there has been a relocation of the same, the land would no longer be required for the purpose of the project, is an incorrect assumption on the part of the petitioners and ought to be rejected. He would further submit that in view of the further directions issued by this Court at the time of hearing to place further particulars of the manner in which the land would be utilized, and the previous stand taken by the Corporation, it is pointed out that after the disposal of the earlier writ petition, the petitioner's representation dated 30.08.2010 seeking a

change in the design of the foot over bridge, was clearly rejected by the technical experts of the Corporation, as even with any such relocation in view of the development required to provide infrastructural facilities and to facilitate traffic integration, land having been acquired, and keeping in view the safety of pedestrians, the work has been undertaken. It is incorrect to assume that the work in connection with the foot over bridge is completed. It is only partially complete and that the entire land including Sy.No.15/2 was absolutely necessary for the purpose of traffic integration, as the land allocated for KSRTC Bus Terminal, BMTTC Bus Terminal and the Park area are all around the land in Sy.No.15/2. Hence, without including the same, it would not be possible to connect the above terminals. In other words, it is proposed to develop a state of the Art integrated Intermodal Transit Hub facility providing for a smooth interchange between different modes of transport at the station. The total area available for the development is about 25 acres and every part of the land would be utilized for the purpose and the petitioner seeking to claim that the land of the petitioner could be deleted from the project, is therefore untenable. When on the other hand, the Corporation has already submitted proposals to include other facility which may require additional acquisition of land, therefore, would submit that the petition is without merit. He places reliance on the following authorities to submit that having regard to the circumstances of the case, the petition does not merit consideration:

1. Ramniklal N. Bhutta and another vs. State of Maharashtra and others (AIR 1997 SC 1236)
2. Girias Investment Private Limited and another vs. State of Karnataka and Others ((2008) 7 SCC 53))
3. Union of India vs. Dr. Kushala Shetty and Others (AIR 2011 SC 3210)
4. Sooraram Pratap Reddy and Others vs. District Collector, Rangareddy District and Others ((2008) 9 SCC 552))
5. Subhashgir Khushalgir Gosavi and others vs. Special Land Acquisition Officer and others (AIR 1996 SC 3169)

6. State of Punjab and another vs. Gurdial Singh and Others ((1980) 2 SCC 471))
7. Northern Indian Glass Industries vs. Jaswant Singh and others((2003) 1 SCC 335))
8. Government of A.P. and another vs. Syed Akbar ((2005) 1 SCC 558))

The State Government has also filed its statement of objections to emphasize that the acquisition proceedings had been initiated in accordance with law and that the claim of the petitioners that the land in question would not be required for the project, is a self-serving claim and that the petition ought to be dismissed.

5. By way of reply, the learned Senior Advocate Shri Chandrashekar would submit that the respondents had failed to address the primary contention that the earlier proceedings stood terminated before this Court on the note that if the respondents relocated the foot over bridge, the land of the petitioner could be dropped from the acquisition proceedings and that circumstance having come about, it is clearly an afterthought on the part of the respondent - Corporation to raise the contention that the land would be required for traffic integration. He would even complain that there is an attempt to mislead this Court by indicating in the drawings now produced before the Court to make it appear that the landing of the foot over bridge is in the land of the petitioner. It is also contended that the further assertion that in view of the proposed developments, and traffic integration, the petitioner's land would be an island within such development, is also denied. It is contended that the land of the petitioner abuts a road on the Western side and it could not therefore be characterized as an island even after such development. Though at present there are some work sheds put up by the Corporation, on completion of the project, the sheds would be removed and the road is proposed to be widened, which would clearly provide access to the petitioner's land and it cannot be an island. Insofar as the claim that connectivity between the bus transport and the metro rail station are a dire necessity and hence, that the land of the petitioner is required, is also not tenable, since the bus stations have an entry from Kasturi Nagar road to the South and another entry from the road on the Northern side. Therefore, the land being required for traffic integration, is not tenable and that there is sufficient parking area both for buses and private vehicles in an 8 acre plot

of the BMTC Bus Stand, apart from other parking areas.

6. It is to be noticed, that insofar as the earlier writ petition W.P.26752-54/2009 was concerned, the relevant portion of the order disposing of the petition reads as follows: "9. The fifth respondent by exercising emergency power under Section 17 of the Land Acquisition Act issued a notification on 10.11.2008 as per Annexure A to acquire the lands in question and the surrounding lands for the purpose of establishment of traffic integration which consists of KSRTC bus terminal, BMTC bus terminal and parking facility for METRO passengers. In support of this fifth respondent has filed a memo with a copy of the integrated plan specifying the establishment of the bus terminals, parking facilities and foot over bridge. Sri. Chandrashekar, learned counsel for the petitioners contend that if fifth respondent redesigns the location of landing of foot over bridge, then they do not require the land belonging to the petitioners in survey No.15/2. If that is so, petitioners are entitled to give a representation to the fifth respondent requesting them to relocate the landing of foot over bridge. If such a representation is given by the petitioners then the fifth respondent shall consider the same keeping in view of the public interest.

10. For the reasons stated above, the following: ORDER

i. Writ petitions are partly allowed. ii. The impugned order at Annexure C dated 30.10.1981 passed by the first respondent is hereby quashed.

iii. These writ petitions insofar as they relate to the prayer of the petitioners for quashing the final notification dated 10.11.2008 at Annexure-'A' and another final notification dated 30.09.1980 at Annexure- 'D' is hereby dismissed.

iv Liberty is reserved to the petitioners to give a representation to the fifth respondent to relocate the landing of foot over bridge and the same shall be considered by the fifth respondent in accordance with law keeping in view the public interest.

v. Petitioners are also entitled to withdraw the amount pursuant to the acquisition at Annexure-'D' dated 30.09.1980 by producing the necessary title deeds and by

establishing that they are the legal representatives of original owner."

The petitioners are therefore, disentitled for the relief of quashing the final notification at Annexure-"B", in view of the above order of this Court having become final. The several authorities cited by the learned Senior Advocate for the respondent - Corporation are clearly loaded against the claim of the petitioners. It is not necessary to extract the strong views expressed by the Apex Court in circumstances such as the present, in entertaining a petition of the present nature.

7. Insofar as the case of the petitioners that on a realignment of the landing of the foot over bridge, the petitioner's land could be excluded from the project and the acquisition proceedings is not seen to have been conceded by the Corporation. The respondent - Corporation had claimed that there were infrastructural facilities to be developed to provide for traffic integration even at the time of disposal of the earlier writ petition. It is in the face of which a suggestion was made that a representation would be made to the Corporation for its consideration and liberty was accordingly reserved to make such a representation. That by itself, did not conclude the question whether the petitioner's land could be deleted from the acquisition proceedings as it would no longer be required for the project, if the landing of the foot over bridge was realigned. It is also seen that the acquisition proceedings are initiated on the basis that the land in question is required for the project of the Metro Rail Corporation, without indicating the details as to the manner in which each item of land would be utilized for any particular purpose. Therefore, the endeavour on the part of the petitioners in seeking to question the need or utility of the land of the petitioners for the purposes of the project, would require this Court to adjudicate as regards the details, which may be incidental in the overall implementation of the project and for the purpose for which the land was acquired. When the acquisition itself is not capable of being disturbed, and in the absence of any illegal user of the land so acquired by the respondent - Corporation, and even if it can be demonstrated that the land would be utilized even remotely, to aid the implementation of the project, any contention of the petitioners to the contrary and to claim that the land should revert to the petitioners, cannot be countenanced. The petitioners cannot therefore claim that the land is not being used for purposes for which it was acquired. The rejection of

the petitioner's request on his representation at Annexure-"A", cannot therefore be faulted and accordingly, the writ petition stands dismissed.

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