

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 02<sup>ND</sup> DAY OF NOVEMBER 2012

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos. 31947-57 OF 2010 (LA-BDA)

BETWEEN:

1. Smt. K. Pushpavathi,  
Wife of R. Mahadeva,  
Aged about 35 years,  
Resident of No.199/11-2,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.
2. R.Jayanna,  
Son of Late R.Ramaiah,  
Aged about 60 years,  
Resident of No.199/11-2,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.
3. R.Mahadeva,  
Son of Late R.Ramaiah,  
Aged about 45 years,  
Resident of No.199/11-2,

26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.

4. B.Nagamani,  
Wife of R. Jayanna,  
Aged about 50 years,  
Resident of No.199/11-2,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.
5. M. Venkatesh,  
Son of Late R.Mariyappa,  
Aged about 36 years,  
Resident of No.11/1,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.
6. R.Shamanna,  
Son of Late Rangappa,  
Aged about 75 years,  
Resident of No.63/3/3,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.
7. Muninanjamma,  
Wife of Late R.Krishnappa,  
Aged about 66 years,

Resident of No.63/3/2,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.

8. H.Basavaraju,  
Son of Late R.Hanumaiah,  
Aged about 50 years,  
Resident of No.63/3/1,  
26<sup>th</sup> 'B' Main,  
Puttaihna Palya,  
9<sup>th</sup> Block, Jayanagar,  
Bangalore – 560 069.

9. L.P.Manjunath,  
Son of R. Lakshmaiah,  
Aged about 46 years,  
Resident of No.26/36,  
10<sup>th</sup> 'C' Main,  
3<sup>rd</sup> Cross, 1<sup>st</sup> Block,  
Jayanagar,  
Bangalore – 560 011.

10.L.P.Srinivas,  
Son of R.Lakshmaiah,  
Aged about 42 years,  
Resident of No.26/36/1,  
10<sup>th</sup> 'C' Main, 3<sup>rd</sup> Cross,  
1<sup>st</sup> Block, Jayanagar,  
Bangalore – 560 011.

11.L.P.Suresh,  
Son of R. Lakshmaiah,

Aged about 38 years,  
 Resident of No.27/36,  
 10<sup>th</sup> 'C' Main, 3<sup>rd</sup> Cross,  
 1<sup>st</sup> Block, Jayanagar,  
 Bangalore – 560 011.

....PETITIONERS

(By Shri. Jayakumar S.Patil, Senior Advocate for Shri.  
 Abhinay P.Patil, Advocate for M/s. Jayakumar S.Patil,  
 Associates)

AND:

1. State of Karnataka,  
 Department of Urban Development  
 Authority, M.S.Building,  
 Bangalore,  
 By its Secretary.

2. Bangalore Development Authority,  
 Kumara Krupa West,  
 Bangalore,  
 Represented by its Commissioner.

3. The Special Land Acquisition  
 Officer,  
 Bangalore Development Authority,  
 Kumara Krupa West,  
 Bangalore.

... RESPONDENTS

(By Shri. K.S. Mallikarjunaiah, Government Pleader for  
 Respondent No.1  
 Shri. I.G. Gachchinamath, Advocate for Respondent Nos. 2 and 3)

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These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash the preliminary Notification under Section 17 of the Bangalore Development Authority Act, dated 15.12.1984, final Notification under Section 19 of the Act dated 28.11.1986 and award dated 30.4.2010, vide Annexure-N, P and Q published by respondents; declare that preliminary and final Notification dated 15.12.1984 and 28.11.1986 vide Annexure-N and P issued by the second respondent, as abandoned and issue a writ in the nature of mandamus that entire scheme under preliminary and final Notification dated 15.12.1984 and 28.11.1986 vide Annexure-N and P issued by the second respondent had lapsed.

These petitions coming on for Hearing this day, the Court made the following:

### **ORDER**

Heard Shri Jayakumar S Patil, Senior Advocate appearing for the Counsel for the petitioners and the Counsel for the respondents.

#### 2. The facts are as follows:-

It is the claim of the petitioners that the land bearing Survey No.49/4, Bommanahalli Village, Begur Hobli, Bangalore South Taluk, measuring 1 acre 8½ guntas was the ancestral property of one late Ramaiah, son of Nagappa. After his death, it

had fallen to the share of his wife Gowramma. Gowramma, in turn, had sold the property to one Gullappa under a registered sale deed dated 13.7.1934. The record of rights in respect of the property indicated the name of Gullappa. Gullappa, in turn, is said to have sold the property in favour of M/s Transport Corporation of India (Hereinafter referred to as 'the TCI' for brevity) under a sale deed dated 26.11.1962. Subsequent to the purchase, the TCI had got the property converted to non-agricultural user, as per Conversion Order dated 18.10.1965 and this is also reflected in the revenue records. The transfer of ownership in favour of TCI is also reflected in the revenue records.

It is claimed that the TCI had, in turn, sold the entire extent of the suit property to one Mariyappa, son of Rangappa, under a registered sale deed dated 16.3.1975. The Tahsildar had issued an endorsement dated 31.10.1975 reflecting the mutation entry in favour of Mariyappa. Pursuant to which, Mariyappa is said to

have proposed the formation of a layout and had obtained sanction from the Bommanahalli Group Panchayat in this regard.

The petitioners herein namely, 2, 3,5, 8,9,10 and 11 are the grand children, petitioner no.6 is the son and petitioner no.7 is the daughter-in-law of the said Rangappa. Petitioner no.1 is the wife of petitioner no.3. Petitioner no.4 and other petitioners are again related to Rangappa. Under a registered will dated 14.6.1976, Rangappa had bequeathed all the properties, including the property which is the subject matter of this petition, in favour of his six children. After the death of Rangappa, in terms of the bequest, the names of the children are reflected in the revenue records. The land in Survey No.49/4 was renumbered as 197 and it was further sub-divided into six portions, namely, 197/1 to 197/6. In terms of the allotment under the will, the respective beneficiaries had paid taxes to the Village Panchayat in respect of their share of the property.

It is stated that the property in question is under the purview of the City Municipal Council, Bommanahalli and subsequent to the death of Mariayappa, it is the claim of the petitioners that the subject property had fallen to the share of Gowramma and the property stood in the name of Gowramma during the year 1987 and in view of the partition effected in the year 2004, it had fallen to the share of petitioner no.5. Similarly, khata 197/3 had fallen to the share of petitioners 9 to 11 and their two sisters. The details of the allotment of the extent of lands are indicated hereunder in a tabular form:-

Sl. No.	Name	Katha No.	Extent
1.	Pushpavathi	447 / 418 / 313 / 6	2820 Sq. Ft.
2.	Jayanna Mahadev	442 / 413 / 313 / 1	4805 Sq. Ft.
3.	Nagamani	448 / 419 / 313 / 7	2820 Sq. Ft.
4.	M. Venkatesh	556 / 526 / 420 /	5472 Sq. Ft.
5.	Shyamanna	463 / 434 / 326 / 1	5722.5 Sq. Ft.
6	Muninanjamma	408 / 379 / 289	6422.5 Sq. Ft.
7.	H. Basavaraj	4232 / 1 / 303 / 197 / 3	7227.5 Sq. Ft.



8.	L.P. Manjunatha, L.P. Srinivas, L.P.Suresh	502/ 472 / 365/ 49 / 4 / 6, 7	10557.5Sq. Ft.
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The petitioners have been paying taxes to the competent authority. They had sought amalgamation of the property and the Assistant Revenue Officer, Bommanahalli, by an order dated 14.5.2008, had amalgamated the several khata numbers into one number namely, 502/472/365/49/4/6, 7 and all the numbers were deleted.

It is further stated that a portion of the land had been acquired by the National Highways Authority to form Bangalore-Hosur Highway on two occasions, namely in the year 1995 and in the year 2007. It is further stated that the petitioners had received the compensation in respect of the acquisition under protest and the same was pending in Proceedings in LAC 24/1996 before the Principal Civil Judge (Senior Division), Bangalore Rural District, Bangalore and an award came to be passed by an

order dated 27.6.2006. Therefore, by that circumstance, the petitioners' claim over the property is clearly established.

It is further stated that pursuant to the approval of the layout plan by the Bommanahalli Group Panchayat, the petitioners had put up construction of 32 independent shops and two godowns in the property in question. It is stated that in the first acquisition proceedings by the National Highways Authority in the year 1995, all the 32 shops had been acquired and they were paid compensation in respect of the vacant land as well as the structures. Subsequent to such acquisition, it transpires that the petitioners had again constructed another set of 32 shops, which was subsequently acquired in the year 2007 by the National Highways Authority and compensation was paid in respect of such acquisition as well.

It is in this background that it is claimed that respondent no.2 and its officials had visited the subject property and had proceeded to demolish a shed on the said property. It is only as

on 18.9.2010, when without any ceremony, respondent no.2 and its officials visited the subject property and began to demolish the shed existing on the said property, that it was strongly resisted by the petitioners, on the footing that there are owners of the land and are in possession of the property prior to 1970 and such possession has not been disputed and has, in fact, been endorsed by the several authorities as evident from the circumstances. It is only thereafter, by hindsight, that the petitioners were informed of the acquisition proceedings, by virtue of a preliminary notification and a final notification and an award having been passed under a development scheme for the formation of a layout called 'Between Hosur Road and Sarjapur Road', which is popularly known as HSR Layout. It is thereafter that the petitioners had obtained further details by recourse to the provisions of the Right to Information Act, 2005 and have learnt that the BDA had initiated proceedings under Section 17 of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as 'the BDA Act' for brevity) dated 15.12.1984 and a final notification

under Section 19 of the Act had been issued on 28.11.1986 and an award dated 30.4.2010 had been passed. It is in this background that the petitioners seek to explain the delay in approaching this court in challenging the acquisition proceedings.

3. The learned Senior Advocate in the above circumstances, would submit that there is no indication that there was any service of notice on any of the petitioners, whose names certainly appeared in the revenue records from the earliest point of time and since the law requires as a mandate that the authorities ought to issue notice to persons whose names are reflected in the assessment list of the local authority and the land revenue register, it is inexplicable that there is no service of notice on the petitioners whatsoever. It is also significant that the preliminary notification in respect of the properties did not reflect the names of the petitioners, though their names are shown in the revenue records even prior to the year 1970 and this lacuna is

also reiterated in the final notification, which clearly vitiates the acquisition proceedings.

The respondents have also proceeded without reference to the acquisition proceedings initiated by the National Highways Authority not once, but twice, over the years, namely, in the year 1995 as well as in the year 2007 as stated hereinabove and therefore, the possession of the petitioners not being in serious dispute, as is reflected from the records available, the acquisition proceedings having gone on without reference to the present petitioners and behind their back, should not disentitle the petitioners to challenge the same even at this point of time. It is further contended that even otherwise, the second respondent – authority has not substantially implemented the Scheme and in terms of Section 27 of the BDA Act, the Scheme lapses and Section 36 of the BDA Act becomes inoperative. More importantly, the learned Senior Advocate would submit that notwithstanding that the proceedings are vitiated on account of the above, the significant circumstance is that admittedly, an award

is said to have been passed as on 30.4.2010, though the final notification is dated 28.11.1986. Therefore, there is no explanation forthcoming insofar as the inordinate delay in passing the award, which has the effect of pegging the value for the purpose of determining the compensation to the disadvantage of the petitioners.

In this regard, he would submit that the apex court, while considering such a circumstance in the case of *Ramchand and others vs. Union of India, (1994)1 SCC 44*, at Paragraphs 25 to 27, has expressed its displeasure in the authorities proceeding in a situation such as the present one and that the said case would apply on all fours to the present case. Therefore, the learned Senior Advocate would submit that the proceedings are vitiated on more than one ground and even if the delay, though amply explained by the petitioners in the present case on hand, is an impediment to reverse the acquisition proceedings by this court. The petitioners being afforded just compensation on the footing that an award ought to have followed a final notification within a

reasonable time and therefore, the compensation that would be payable ought to be with reference to such reasonable period, is a circumstance, which would have to be kept in view in considering the case of the petitioners and granting appropriate reliefs. The learned Senior Advocate would submit that it would be just and proper to allow the petition as prayed for.

It is further submitted that in respect of similarly placed petitioners, who were before this court in a writ petition in WP 6354-56/2011, having regard to the inordinate delay, which is not explained by the petitioners, this court, having discussed a catena of decisions on the point in question and placing reliance particularly on, *Ramchand's* case supra, has proceeded to quash the proceedings insofar as the said petitioner was concerned. The present petitioners are on the same footing and are aggrieved by identical circumstances and by a parity of reasoning, the learned Senior Advocate would submit that the petition be allowed.

4. While Shri I.G.Gachchinamath, in support of the statement of objections filed on behalf of the BDA, would vehemently oppose the petition and would, in the first instance, submit that insofar as the writ petition in WP 6354-56/2011, which has been allowed by this court, quashing the acquisition proceedings insofar as the petitioners therein were concerned, is the subject matter of an appeal, which is pending before a division bench and it would be appropriate to refer this matter to the division bench, as the question involved is identical, namely, whether the delay in passing an award, would vitiate the proceedings, in the light of there being no period of limitation prescribed under the BDA Act, which is a question directly posed for consideration before the division bench. Even otherwise, he would submit that the petitioners have no case on merits.

It is contended that the preliminary notification is of the year 1984 and the final notification is of the year 1986. The present petition is filed in the year 2010 and there is absolutely no



explanation, except to contend that the names of the petitioners were not reflected in the notifications and therefore they had remained blissfully unaware of the acquisition proceedings. This would hardly be a ground for condonation of the delay and since the acquisition proceedings is on the basis of the revenue records that are made available, the respondents could not be held responsible for the petitioners being ignorant of the acquisition proceedings. Objections had been called for from the notified khatedars. The learned counsel would assert that the khatedars were notified and objections were called for and it is thereafter that other proceedings have taken place. The proceedings have attained finality as early as in the year 1986. Therefore, the petitioners are not in a position to challenge the acquisition notifications at this point of time and that the land having vested in the State, there is no scope at all for challenge to the acquisition proceedings after several decades. It is incorrect on the part of the petitioners to claim that the Scheme has not been implemented wholly. It has been implemented substantially. The

petitioners have no manner of right over the land in question and the decisions relied on by the petitioners are not applicable to the case on hand. The claim of the petitioners that they were not notified or that they were entitled to notice of the acquisition proceedings is a self-serving claim and therefore, the learned Counsel seeks dismissal of the writ petition.

5. There is ample material produced before this court to indicate the sequence of events insofar as the petitioners' claim over the subject property is concerned. As rightly pointed out by the learned Senior Advocate, a portion of the land was the subject matter of the acquisition proceedings by the National Highways Authority, which is again an authority, which has followed the procedure in acquiring the land and the petitioners were certainly identified as the khatedars and owners in possession and had even received compensation in respect of acquisition of portions of their land for road widening. Therefore, the claim of the petitioners cannot be brushed aside on the ground that the petitioners are making a self-serving claim as to their continued

occupation of the land in question over a period of time. The claim of the petitioners that the khatedars were duly notified and the khatedars, as reflected in the record of rights as on the relevant date, were not the petitioners, is a claim that is not supported by any material placed on record. On the other hand, the petitioners have placed adequate material to indicate that they were indeed recognised as the khatedars. Though the sanction obtained of the layout plan, whether was in accordance with law or not, is not the subject matter of this writ petition and even construction having been put up therein, it follows that the petitioners were never notified of the acquisition proceedings at any point of time. Further, Section 17(5) mandates that the acquiring authority shall indicate the names of the owners as appearing in the assessment list of the local authority. Since Annexure-G series to the petition clearly indicate that the petitioners were indeed the khatedars shown in the assessment list of the local authority, it is inexplicable for the respondents to contend that the khatedars had been notified and the petitioners

cannot claim that they were khatedars and is a submission that is negated on the face of it. Further, the more significant circumstance that the respondent – BDA has passed an award in the year 2010 prior to the filing of the writ petition, though the final notification is of the year 1996, would clearly be a circumstance, which has been contemplated by the Supreme Court in *Ram Chand's* case, supra and the Supreme Court has held in Paragraphs 25 to 27 as follows:

*“ 25. There appears to be some force in the contention of the petitioners that the object of respondents was to peg the price of the lands acquired from the different cultivators to a distant past and not to proceed further because if the awards had been made soon after the declarations under Section 6, respondents had to pay or tender the compensation to the claimants, which for some compulsion, respondents were not in a position to pay or tender them. But, nonetheless, the exercise of power in the facts and circumstances of the cases by the respondents has to be held to be against the spirit of the provisions of the Act, tending towards arbitrariness. In such a situation this Court in exercise of power under Article 32 and the High Court under Article 226, could have quashed the proceedings. But,*

*taking into consideration that in most of the cases, the Delhi Administration and Delhi Development Authority have taken possession of the lands and even developments have been made, it shall not be proper exercise of discretion on the part of this Court to quash the proceedings because, in that event, it shall affect the public interest. Moreover, third party interests created in the meantime are also likely to be affected and such third parties are not impleaded. The relief of quashing the acquisition proceeding having become inappropriate due to the subsequent events, the grant of a modified relief, considered appropriate in the circumstances, would be the proper course to adopt. The High Court or this Court, can grant a modified relief taking into consideration the injury caused to the claimants by the inaction on the part of respondents and direct payment of any additional amount, in exercise of power under Article 226 or Article 32 of the Constitution.*

*26. We are of the view, that there was no justification on the part of the respondents for the delay in completion of the proceedings after the judgment of this Court in Aflatoon case ( (1975) 4 SCC 285 ) on August 23, 1974. There is no explanation, except that there were several cases and, as such, in normal course, there was bound to be delay in making of the awards. This may have been acceptable if the delay was only in respect of some of the awards. It is an admitted position*

*that till 1980 no award had been made in respect of any of the acquisitions. As such, the respondents have failed to satisfy that they have performed their statutory duty within a time which can be held to be reasonable.*

*27. According to us, after the judgment of this Court in Aflatoon case ( (1975) 4 SCC 285 ) on August 23, 1974, the reasonable time for making the awards was about two years from that date. Beyond two years, the time taken for making of the awards will be deemed to be unreasonable. As such, after expiry of the period of two years, some additional compensation has to be awarded to the cultivators. Taking into consideration the interest of the cultivators and the public, instead of quashing the proceedings for acquisition, we direct that the petitioners shall be paid an additional amount of compensation to be calculated at the rate of twelve per cent per annum, after expiry of two years from August 23, 1974, the date of the judgment of this Court in Aflatoon case till the date of the making of the awards by the Collector, to be calculated with reference to the market value of the lands in question on the date of the notifications under sub-section (1) of Section 4.”*

6. This would squarely apply to the present case on hand.

Though the Supreme Court had taken exception to the

circumstance that there was no justification on the part of the respondents therein for completion of the proceedings after its earlier judgment, whereby the Supreme Court had directed the respondents to complete the proceedings within a reasonable time, has expressed that in cases where no time is prescribed, a reasonable time would imply not more than a period of two years and it is that which the learned Senior Advocate would emphasize in the present case on hand as well, to demonstrate that by no stretch of imagination, could it be said that the award has been passed within a reasonable period from the date of the final notification and hence, would submit that the acquisition proceedings would have to fail on account of this serious lacuna as well and even as on date since the BDA has failed to implement the scheme substantially, following the judgment of this court in WP 6354-56/2011, it would have to be held in terms of the decisions which are referred and discussed therein that the BDA has shown positive inaction and therefore, having regard to the abundant material produced by the petitioners to show that

they are khatedars in possession and the acquisition proceedings having gone on without notice to the said petitioners, is clearly vitiated and therefore, the acquisition proceedings are bad in law and consequently, the award and all further proceedings stand quashed. While it is always open to the respondents to resort to fresh acquisition proceedings, if indeed, the lands in question are required for any public purpose, in accordance with law.

The petition is allowed in terms as above.

Sd/-  
JUDGE

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