IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF NOVEMBER, 2011

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

WRIT PETITION Nos.13609-13614/2010 (LA-RES)

BETWEEN:

1. Smt.A.Sarojamma,
Aged about 62 years.

2. Smt.Jayalaksmamma,
Aged about 55 years.

3. Smt.Shankuntalamma,
Aged about 53 years.

4. Smt.Shamalamma,
Aged about 51 years.

5. Smt.Vanajakshi,
Aged about 49 years.

6. Smt.Shailaja,
Aged about 47 years.

All are residing at
Balagere Main Road, Varthur,
Bangalore East Taluk. ... Petitioners

(By Sri T.M.Rajanna Setty, Advocate)

AND:

1. The State of Karnataka,
Represented by its Revenue Secretary,
Multistoried Building,
Bangalore – 560 001.

2. Special Deputy Commissioner,
Bangalore District,
Bangalore.

3. The Special Land Acquisition Officer,
Vishweshwaraiah Kenda,
3rd Floor, Phodium Block,
Ambedkar Veedhi,
Bangalore – 560 001.

4. The Managing Director,
Bangalore Water Supply and
Sanitary Board,
Sanitary Clearance division.
Kaveri Bhavan,
Bangalore – 560 009. ... Respondents

(By Sri Venkatesh Dodderi, AGA for R-1 to R-3,
Sri K.T.Mohan, Advocate for R-4)

These writ petitions are is filed under Articles 226 and 227 of the Constitution of India praying to quash the preliminary notification issued dated 27.8.2008 vide Annexure-J and final declaration in dated 23.3.2010 vide Annexure-N published in the gazette on 8.4.2010 and all further proceedings if any and etc.

These writ petitions coming on for preliminary hearing in 'B' group this day, the Court made the following:

ORDER

The petitioners have raised the challenge to the preliminary notification, dated 27.8.2008 (Annexure-J) and the final notification, dated 23.3.2010 (Annexure-N) published under Sections 4(1) and 6(1) respectively of the Land Acquisition Act, 1894 insofar as they pertain to the petitioners' lands. The acquisition of the lands is for the purpose of the Bangalore Water

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Supply and Sewerage Board for setting up the sewerage treatment plant.

2. Sri J.M.Rajanna Setty, the learned counsel for the petitioners submits that the final notification is issued after about 1 year 5 months from the date of the issuance of the preliminary notification. He would therefore contend that the second proviso to Section 6(1) of the Land Acquisition Act, 1894 is attracted to the facts of the case.

3. Sri Setty has also a grievance over the publication of the preliminary notification in the newspaper even before it was published in the official gazette. He alleges the malafides. He submits that no individual notice is issued to the petitioners. He complains of the non-compliance with the mandatory requirement of Section 4(1) of the Land Acquisition Act (Karnataka Amendment Act 17 of 1961). He submits that the Section 5-A enquiry is dispensed with without there being any urgency.

4. Sri Venkatesh Dodderi, the learned Additional Government Advocate appearing for the respondent Nos.1 to 3 submits that the preliminary notification was subsequently

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displayed in Chavadi on 8.4.2009. He also submits that the mahazar is drawn at the time of displaying the preliminary notification in the Chavadi. As the final notification has to be within one year from the date of the issuance of the last of publications of the preliminary notification, one year's limitation is to be computed from 8.4.2009. He submits that the award is not passed in respect of the lands covered by these petitions, as an interim order is operating in these petitions. He submits that the records show that the individual notices are issued to the petitioners. On the Court's specifically asking him whether the notices are sent by the ordinary postal service, RPAD, courier or muddam, he submits that the records are not disclosing the mode of issuing the notice.

5. He brings to my notice the Apex Court's judgment in the case of **STATE OF GUJARAT v. PANCH OF NANI HAMAM'S POLE AND OTHERS** reported in **AIR 1986 SC 803** to advance the contention that the personal notice to each and every interested person need not be served.

6. On being asked to produce the order containing the reasons for dispensing with 5A enquiry, the learned AGA submits that the file does not contain such an order.

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7. Sri K.T.Mohan, the learned counsel for the respondent No.4 submits that the sewerage generated at present is polluting not only the area in question, but also the Varthur lake. He submits that the setting up of the sewerage treatment plant is not only necessary but also urgent.

8. The three questions that fall for my consideration are:

i) Whether the final notification is within one year from the date of the issuance of the last of the publications of the preliminary notification?

ii) Whether the non-issuance of the individual notice to the petitioners warrants the quashing of the acquisition proceedings? The allied question is, if the requirement is mandatory, whether it has been complied with?

iii) Whether the invoking of the urgency clause (Section 17 of the Land Acquisition Act, 1894) is sustainable?

9. It is not in dispute that the preliminary notification is published in the newspaper on 9.9.2008 and in the Official Gazette on 18.12.2008. The final notification is published in the Official Gazette on 8.4.2010. The respondent Nos.1 to 3 have made an attempt to wiggle out of the situation by taking the

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stand that the preliminary notification was displayed in the Chavadi on 8.4.2009. The mahazar drawn at the time of displaying the notice in the Chavadi reads as follows:

"ಸರ್ಕಾರಕ್ಕೆ

ವಿಶೇಷ ಭೂಸ್ವಾಧೀನ ಅಧಿಕಾರಿಗಳವರ ಕಛೇರಿಯ ರಾಜಸ್ವನಿರೀಕ್ಷಕರವರ ಸಮಕ್ಷಮದಲ್ಲಿ ಬೆಂಗಳೂರು ಪೂರ್ವ ತಾಲ್ಲೂಕು ವರ್ತೂರು ಹೋಬಳಿ ಬೆಳ್ಳಂದೂರು ಅಮಾನಿಖಾನೆ ಗ್ರಾಮಸ್ಥರು ಹೇಳಿ ಬರೆಯಿಸಿದ ಮಹಜರು ಏನೆಂದರೆ ತಮ್ಮ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 257 ಹಾಗೂ ಇತರೆ ಜುಮ್ಲಾ ವಿಸ್ತೀರ್ಣ 58-36 ಗುಂಟೆ ಜಮೀನನ್ನು ಬೆಂಗಳೂರು ನೀರು ಸರಬರಾಜು ಮತ್ತು ಒಳಚರಂಡಿ ಮಂಡಲಿ ಪರವಾಗಿ ಭೂಸ್ವಾಧೀನ ಮಾಡುವ ಬಗ್ಗೆ ಬೆಂಗಳೂರು ವಿಶೇಷ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳವರ ಆದೇಶದ ನಂಬರ್ ಎಲ್.ಎ.ಕೊ.ಎಸ್.ಆರ್ 2/2008-09 ದಿನಾಂಕ 27-8-2008ರ ಪ್ರಕಾರ ಭೂಸ್ವಾಧೀನ ಕಾಯಿದೆ ಕಲಂ 4(1)ರ ಅಧಿಸೂಚನೆ ಮಂಜೂರಿ ಆಗಿದ್ದು ಸದರಿ ಅಧಿಸೂಚನೆಯನ್ನು ದಿನಾಂಕ 18-12-2008 ಮತ್ತು 12-3-2009 ರಂದು ಉದಯವಾಣಿ ಮತ್ತು ವಿಜಯಕರ್ನಾಟಕ ದಿನಪ್ರತಿಕೆಗಳಲ್ಲಿ ದಿನಾಂಕ 9-9-2008 ರಂದು ಸದರಿ ಅಧಸೂಚನೆಯನ್ನು ಪ್ರಕಟಿಸಲಾಗಿದೆ ಎಂಬ ವಿಚಾರವನ್ನು ಸಂಬಂದಪಟ್ಟ ರಾಜಸ್ವನಿರೀಕ್ಷಕರು ಗ್ರಾಮಕ್ಕೆ ಬೇಟಿನೀಡಿ GoGo ಮೂಲಕ ಗ್ರಾಮದಲ್ಲಿ ಪ್ರಚುರ ಪಡಿಸಿರುತ್ತಾರೆ. ಹಾಗೂ ಈ ಬಗ್ಗೆ ವಿಶೇಷ ಭೂಸ್ವಾಧೀನ ಅಧಿಕಾರಿಗಳವರ ಕಾರ್ಯಲಯದಿಂದ ನೀಡಿರುವ ಭೂಸ್ವಾಧೀನ ಕಾಯಿದೆ ಕಲಂ 4(2) ಅನ್ವಯ ಸಾರ್ವಜನಿಕ ಸೂಚನಾ ಪತ್ರ ಮತ್ತು ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದ ಪ್ರತಿಯನ್ನು ಸಂಬಂದಪಟ್ಟ ಗ್ರಾಮ ಲೆಕ್ಕಗರ ಕಛೇರಿಯ ನೋಟೀಸು ಬೋರ್ಡ್‌ನಲ್ಲಿ ಚೆಕಲಾಯಿನೆ ಮತ್ರರೆಂದು ಹೇಳಿ ಬರೆಯಿಸಿದ ಮಹಜರು.

ಓದಿಸಿಕೇಳಿ ಒಪ್ಪಿ ರುಜು ಮಡಿರುತ್ತೇವೆ."

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ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರು
ವಿಶೇಷ ಭೂ ಸ್ವಾಧೀನಾಧಿಕಾರಿಗಳ ಕಛೇರಿ
ಬೆಂಗಳೂರು

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10. The particulars of the witnesses, who are shown as signatories to the mahazar, are not forthcoming. It is difficult to give any credence to such mahazar. The very purpose of drawing the mahazar is to establish that the act has taken place, if there is a dispute over that. Even the names of some of the witnesses are not mentioned in the mahazar. The drawing of the mahazar is not reflected in the order sheet. Such a mahazar cannot be of any aid for the respondents to indicate the date of the last of the publications of preliminary notification as 8.4.2009. I have therefore no hesitation in holding that the final notification, dated 23.3.2010 is not issued within one year from the date of the issuance of the preliminary notification published in the newspaper on 9.9.2008 and published in the Official Gazette on 8.12.2008. The first question is answered accordingly.

11. The respondent Nos.1 to 3 are not even in a position to say by what mode the individual notices are sent. Their alternative submission that individual notices are not required to be sent is unacceptable. The judgment in the case of **State of Gujarat (supra)** has no application for the facts of this case because Rule 1 of Gujarat Land Acquisition Rules does not contain

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the mandatory requirement of issuing the individual notices. On the other hand, Rule 3 of the Karnataka Land Acquisition Rules, 1965 prescribes the issuance of the individual notice. But it could also be contended that such a requirement is directory and not mandatory. I therefore do not propose to invalidate the acquisition proceedings on the ground of the non-issuance of individual notice to the petitioners.

12. The third issue is fully covered by the two latest decisions of the Apex Court. There has to be an order stating the reasons for dispensing with Section 5-A enquiry. If there is no order stating the reasons for the impracticability of complying with the requirements of Section 5-A, it creates the vitiating effect. In taking this view I am fortified by the Apex Court's judgment in the case of **STATE OF WEST BENGAL AND OTHERS v. PRAFULLA CHURAN LAW AND OTHERS** reported in **(2011) 4 SCC 537.** The important and valuable property rights of a person cannot be steamrolled on the ipse dixit of executive authority.

13. The Hon'ble Supreme Court, in the case of **RADHY SHYAM (DEAD) THROUGH LRS. AND OTHERS v. STATE OF**

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UTTAR PRADESH AND OTHERS reported in **(2011) 5 SCC 553** has extensively dealt with the issue of when the invokation of urgency clause and dispensing with the enquiry under Section 5A is permissible. It has this to say in para 77 of its judgement:

> *"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:*
>
> *(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good – Dwarkadas Shrinivas vs. Sholapur Spg. And Wvg. Co.Ltd., (AIR 1954 SC 119), Charanjit Lal Chowdhury vs. Union of India (AIR 1951 SC 41) and Jilubhai Nanbhai Khachar vs. State of Gujarat (1995 Supp (1) SCC 596.*
>
> *(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly – DLF Qutab Enclave Complex Educational Charitable Trust vs. State of Haryana ((2003) 5 SCC 622), State of Maharashtra vs. B.E.Billimoria ((2003) 7 SCC 336) and Dev Sharan vs. State of U.P. (2011) 4 SCC 769.*
>
> *(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property*

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for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/ instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will,

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in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to malafides or that the authorities concerned did not apply their mind to the relevant factors and records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The Court can take judicial notice of

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the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition."

14. The respondents have taken one year, six months for issuing the final notification after issuing the preliminary notification. In **Radhy Shyam's case (supra)** also, one of the purposes of acquisition was the laying of sewerages. In the said case, there was time-gap of one year, three months between the receipt of the land acquisition proposal from the Development Authority and the issuance of the notification. Para 82 of the said judgement reads as follows:

"82. In this Case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of

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December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition."

15. Section 17 of the Land Acquisition Act, 1894 enables the Government to exercise exceptional and extraordinary power, if the land is required urgently or if an unforeseen emergency has cropped up. But such a power cannot be invoked routinely. The Government has got to be circumspect in its exercise. In the instant case, the respondents have not produced any materials for eliminating the enquiry under Section 5-A of the Land Acquisition Act. No material reflective of the application of mind leading to the decision for skipping the requirement of hearing is produced.

16. Thus, viewed from any angle, the acquisition is not sustainable. The question Nos.1 and 3 that I have framed for my

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consideration are bound to be answered in favour of the petitioners and against the respondent Nos.1 to 3.

17. However, what cannot be disputed is that the acquisition of lands is for a public purpose. It is for establishing the sewerage plant, which is in the greater interest of the larger number. On the making out of a legal point, this Court need not quash the acquisition proceedings. The petitioners could be given special compensation or damages. The private interests of the petitioners and the public interest are to be balanced.

18. In the instant case, the acquisition has to be saved, though it cannot be otherwise upheld. For disposing of the instant case, it is profitable to refer to what the Apex Court has said in the case of **RAMNIKLAL N. BHUTTA AND ANOTHER v. STATE OF MAHARASHTRA AND OTHERS** reported in **(1997) 1 SCC 134**

> *"10. .....Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the*

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matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 – indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

19. The ends of justice would be met by my saving the acquisition but by entitling the petitioners to claim the market value as on today. For holding that the petitioners are entitled to the market value as on today, what weighs with me is that if the acquisition proceedings are quashed, the respondents have to

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start afresh and from the scratch in which case they would be liable to pay the market value as on today or on any subsequent date on which the preliminary notification would be issued.

20. The respondent No.3 is directed to issue the appropriate notice and pass the award in respect of the lands in question in accordance with law and as expeditiously as possible and in any case within an outer limit of four months from today by awarding the market value for the lands that is prevailing as on today.

21. These petitions are accordingly allowed. No order as to costs.

Sd/-
JUDGE

MD