

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 9<sup>TH</sup> DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**WRIT PETITION NO. 105271 OF 2023**

**BETWEEN:-**

THE KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED,  
(KPTCL), KAVERI BHAVAN,  
CORPORATE OFFICE, K.G. ROAD,  
BENGALURU-560 009.

REP. BY EXECUTIVE ENGINEER (ELE),  
TL & SUB DIVISION, BHAGAT SINGH ROAD,  
SIRI-581 401.

...PETITIONER

(BY SRI D. ASHWATHAPPA, ADV. FOR SRI SHIVARAJ P. MUDHOL,  
ADV.)

**AND:**

SRI DEVIDAS MALLU GAONKAR,  
SINCE DEAD BY HIS LEGAL HEIRS

1. SMT. TEERTHABAI W/O. DEVIDAS GAONKAR,  
AGED ABOUT 77 YEARS,
2. SRI SHIVANAND W/O. DEVIDAS GAONKAR,  
AGED ABOUT 56 YEARS,
3. SRI DINESH W/O. DEVIDAS GAONKAR,  
AGED ABOUT 52 YEARS,

4. SMT. BHARATI @ TEJUS  
D/O. DEVIDAS GAONKAR  
W/O. SUHAS NAIK,  
AGED ABOUT 49 YEARS,

ALL ARE RESIDING AT NO:533,  
KELAGIN MAKERI SHEJWAD,  
KARWAR TALUK,  
UTTARA KANNDA DISTRICT-581 306.

5. THE SPECIAL LAND ACQUISITION OFFICER,  
REP. BY ASSISTANT COMMISSIONER,  
KARWAR SUB-DIVISON, KARWAR-581 301.

.....RESPONDENTS

(BY SRI P.N. HATTI, HCGP FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF ORDER OR DIRECTION IN THE NATURE OF CERTIORARI TO QUASH ORDER DT: 22.12.2020 PASSED ON MEMO OF THE DECREE HOLDER IN EX.CASE.NO:216/2008 BY THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE, AT KARWAR VIDE ANNEXURE-B2 PERTAINING TO THE ORDER AT PARA-12 THAT "IN VIEW OF MEMO, OFFICE IS DIRECTED TO KEEP THIS EXECUTION PETITION ALONG WITH FRESH EXECUTION PETITION FILED BY LEARNED COUNSEL FOR DHR AND OFFICE IS DIRECTED TO PUT UP THIS EXECUTION PETITION ALONG WITH FRESH EXECUTION PETITION AND LEARNED COUNSEL FOR DHR IS ALSO EXEMPTED THE SIGNATURE OF DHR IN THE FRESH EXECUTION PETITION."; ISSUE A WRIT OF ORDER OR DIRECTION IN THE NATURE OF CERTIORARI TO QUASH ORDER DT: 28.07.2023 PASSED ON I.A.NO:2 OF THE PETITIONER IN EX. CASE.NO:19/2021 BY THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE, AT KARWAR VIDE ANNEXURE-H.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.08.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**ORDER**

The captioned petition is filed by The Karnataka Power Transmission Corporation Limited assailing the order passed by the Executing Court on an application filed in I.A.No.2 seeking dismissal of the Execution petition as barred by limitation.

2. The contention of the present petitioner-judgment debtor No.2 is that execution petition filed by decree holder on 29.06.2004 is disposed of as the same has attained finality vide order dated 5.7.2008 and therefore, petitioner-judgment debtor sought dismissal of the petition by contending that present execution petition in E.P.19/2021 is filed after 14 years and therefore, the same is liable to be dismissed under Article 136 of Limitation Act.

3. The executing Court however declined to accede to the contentions raised by the petitioner in I.A.No.2. The Executing Court referring to the memo dated 17.12.2020 submitted by the decree holders has held that the earlier

execution petition was closed reserving liberty to the decree-holders to seek revival. The above said memo is culled out by the Executing Court at Para 15 of the order under challenge.

4. It is in this background, the executing Court was not inclined to accede to the objections raised by the present petitioner-judgment debtor. The Executing Court has held that the present execution petition filed in E.P.19/2021 has to be presumed to be continuation or revival of the earlier execution petition. On these set of reasoning, the Executing Court has rejected the application. The said order is under challenge in this writ petition.

5. Heard the learned counsel for petitioner/judgment debtor No.2, and the learned HCJP. I have also given my anxious consideration to the judgment cited by the learned counsel for the petitioner.

6. The respondents-decree holders are seeking enforcement of the award passed in LAC.53/1991. The

decree-holders claim that the petitioner-Corporation has not satisfied the award passed in LAC.53/1991. On examining the order under challenge, this Court would find that the executing Court has dealt with the objections raised by the petitioner and by a considered order has rejected the application filed in I.A.No.2.

7. On examining the records, this Court would find that the respondents-decree holders filed the memo on 17.12.2020 seeking leave to file a fresh execution petition. The executing Court vide order dated 22.12.2020 passed orders on memo and closed the Execution petition for the time being to enable all the Class-I heirs of the decree holders to file a fresh execution petition and further permitted the decree holders to file a fresh memo of calculation. The Executing Court further directed the office to keep the execution petition filed in E.P.216/2008 along with fresh Execution petition and the legal heirs of the original decree holders were exempted from signing the fresh execution petition.

8. The petitioner/judgment debtor No.2 has not immediately challenged the order passed by the Executing Court on 22.12.2020. Having suffered an order on I.A.No.2, the petitioner/judgment debtor has not only challenged the order dated 28.07.2023 passed on I.A.No.2 but has also challenged the order passed on memo on 22.12.2020 in the present captioned petition. If petitioner has failed to question the order on memo, this Court is of the view that any indulgence by this Court at this juncture would cause great injustice to the respondent-decree holders. The courts do not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction. The Apex Court in the case of **G.C.Gupta Vs.N.K.Pandey** reported in **(1988) 1 SCC 316** held that inordinate delay is not merely a factor for the court to refuse appropriate relief but also a relevant consideration for not unsettling settled things.

9. Now on merits, this Court is of the view that the Executing Court has meticulously dealt with the contentions

raised by the petitioner. Executing Court referring to the judgments of other High Courts has come to the conclusion that the present execution petition on face has to be deemed to be one for revival or continuation of earlier proceedings. Executing Court has taken cognizance of the liberty reserved vide order dated 20.12.2020 and has come to the conclusion that the present execution petition is only ancillary to the previous execution petition. The executing Court has also recorded a finding that the earlier execution petition was not decided on merits. The further claim of decree-holders for want of memo of calculation was only deferred by reserving liberty to the decree-holders to seek revival. It is in this background, the executing Court has come to the conclusion that the present execution petition filed in E.P.19/2021 in continuation of the previous execution petition and therefore, Article 136 of the Limitation Act has no application to the present case on hand.

10. The executing Court has also taken cognizance of the fact that the procedural error, if any, is at the Courts' end and therefore, party cannot be punished for the procedural error adopted by the Executing Court.

11. If these significant details are looked into, I do not find any error or illegality in the order under challenge. The judgment cited by the learned counsel for the petitioner has no application to the facts of the case on hand. The respondent-decree holders are enforcing an award for having lost the lands on account of compulsory acquisition. Though right to property is no more a fundamental right, a land loser has constitutional right under Article 300A of the Constitution and the State as well as the beneficiary are legally bound to compensate the land owners by paying the compensation, which is legally due to the land owners. Even on this count, I am not inclined to interfere with the order under challenge.



12. For the foregoing reasons, I proceed to pass the following:

**ORDER**

The writ petition is dismissed.

**Sd/-**  
JUDGE

alb/-\*