**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25TH DAY OF FEBRUARY, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE M.G.S. KAMAL**

**WRIT PETITION NO. 57125 OF 2016 (LA-RES)**

**BETWEEN:**

1. K R JAYARAM
   S/O K H RAMAKRISHNAPPA,
   AGED ABOUT 39 YEARS,
   R/AT SY.NO.37/1, OPP.SRI PATALAMMA TEMPLE,
   KOTHI HOSAHALLI VILLAGE,
   YELAHANKA HOBLI, BANGALORE NORTH TALUK,
   BENGALURU-560097

2. SMT R MANJULA
   D/O K H RAMAKRISHNAPPA,
   W/O MANJUNATHA REDDY M V,
   AGED ABOUT 36 YEARS, R/AT SY.NO.37/1, OPP.SRI PATALAMMA TEMPLE, KOTHI HOSAHALLI VILLAGE,
   YELAHANKA HOBLI, BANGALORE NORTH TALUK,
   BENGALURU-560097

…PETITIONERS

(BY SRI.K.RAGHAVENDRA RAO, ADVOCATE)

Digitally signed by ROOPA R U
Location: HIGH COURT OF KARNATAKA

**AND:**

1. THE STATE OF KARNATAKA
   REVENUE DEPARTMENT
   M.S.BUILDING, DR.AMBEDKAR VEEDHI,
   BANGALORE-560001
   REPRESENTED BY ITS PRINCIPAL SECRETARY

2. THE SPECIAL DEPUTY COMMISSIONER
   BANGALORE URBAN DISTRICT,

BANGALORE-560009

3. THE SPECIAL LAND ACQUISITION OFFICER
3RD FLOOR, PHODIUM BLOCK,
VISVESWARAYA TOWERS,
DR.AMVEDKAR VEEDHI,
BANGALORE-560001

4. THE NATIONAL TECHNOLOGICAL INSTITUTE
OF HOUSING CO-OPERATIVE SOCIETY LTD.,
NO.T-5, PALACE ORCHARD APARTMENT, NO.51,
9TH MAIN, 6TH CROSS. RMV EXTENSION,
BANGALORE-560080
REPRESENTED BY ITS SECRETARY

…RESPONDENTS

(BY SRI.SPOORTHY HEGDE N., HCGP FOR R1 TO R3
SRI.B.N.PRAKASH, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO-DECLARE THAT THE PETITION SCHEDULE LANDS ARE NOT ACQUIRED BY THE RESPONDENTS AS THE POSSESSION OF THE PETITION SCHEDULE LANDS WERE NEVER TAKEN AS CONTEMPLATED UNDER THE LAND ACQUISITION ACT 1894 U/S 16(2) NOTIFICATION IN RESPECT OF SY.NO.37 AT KOTHIHOSAHALLI VILLAGE, YELAHANKA HOBLI, BENGALURU NORTH TQ.,

DECLARE THAT THE NOTIFICATION DT. 03.01.1985 PUBLISHED ON 4.1.1985 ISSUED UNDER SECTION 4(1) OF THE L.A. ACT VIDE ANNEXURE-B NOTIFICATION DT. 22.09.1986 PUBLISHED ON 25.9.1986 ISSUED U/S 6(1) OF THE LA ACT VIDE ANNEXURE-C ARE BAD IN LAW AS THE LANDS OF THE PETITIONERS WERE NEVER TAKEN POSSESSION OF BY THE RESPONDENTS AND FURTHER DECLARE THAT THE ENTIRE ACQUISITION PROCEEDINGS STOOD LAPSED IN SO FAR AS THE PETITIONERS ARE CONCERNED.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN `B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.G.S. KAMAL

**ORAL ORDER**

Petitioners claiming to be the grandchildren of one Smt.Venkatamma, who is stated to be the erstwhile owner of land in Sy.No.37/1 measuring 39 guntas which was acquired by the respondent-State for the benefit of respondent No.4 in terms of preliminary notification dated 04.01.1985 and final notification dated 22.09.1986 are before this Court seeking following reliefs:

> 1. Declare that the petition schedule lands are not acquired by the respondents as the possession of the petition schedule lands were never taken as contemplated under the Land Acquisition Act 1894 under Section 16(2) Notification in respect of Sy.No.37 at Kothihosahalli Village, `Yelahanka Hobli, Bengaluru North Taluk;
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> 2. Declare that the Notifications dated 03.01.1985 published on 04.01.1985 issued under Section 4(1) of the LA Act vide Annexure-`B' Notification dated 22.09.1986 published date 25.09.1986 issued under Section 6(1) of the LA Act vide Annexure-C are bad in law as the lands of the petitioners were never taken possession of by the Respondents and further declare that the entire acquisition proceedings stood lapsed in so far as the petitioners are concerned.

2. Case of the petitioners is that the aforesaid land belong to their grandmother Smt.Venkatamma who in terms of a registered Will dated 07.02.1980 had bequeathed the same in favour of her family members. A suit in O.S.No.574/1989 had been filed for partition and separate possession. That the said suit ended in a compromise that was entered into on 24.02.2012. A Final Decree was drawn and the same was registered in the office of concerned Sub-Registrar, Bytarayanapura on 03.01.2013. In the said compromise decree land to an extent of 19 guntas out of 39 guntas has been given to the petitioner No.1 while remaining land to an extent of 20 guntas in Sy.No.37/1 has been given to petitioner No.2. Petitioners have been thus continued to be in possession and enjoyment of the aforesaid land in Sy.No.37/1 as absolute owners thereof even till date. In the revenue records name of Smt.Venkatamma is reflected till date and petitioners have constructed ACC sheet houses and have obtained power connection from BESCOM and are residing in the said land exercising their absolute ownership over the same. That the petitioners were under bonafide belief that the acquisition that was initiated in respect of the aforesaid land had been dropped

inasmuch as the Special Land Acquisition Officer had made a recommendation for excluding the said land as it contained structures and buildings. That the name of said Smt.Venkatamma and Sri.Anjanappa, uncle of the petitioners who was the elder member of the family has been shown as a Kathedar and Anubhavadar in the notifications that were issued under Sections 4 and 6 of the Land Acquisition Act. However neither the award is passed nor any compensation paid either to the notified Khathedar-Smt.Venkatamma or their uncle Sri.Anjanappa or to the petitioners. Possession of the said land has also not been taken. No material is produced with regard to deposit of compensation under Section 18 before the concerned Court either. Thus in view of non compliance of the aforesaid statutory requirement, the acquisition shall be held to have lapsed in terms of sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The further contention raised by the petitioners is that the land in Sy.No.37/1 belonging to the petitioners has not been included under the notification that was issued under

Section 16(2) of the Land Acquisition Act which is produced at Annexure-E.

4. Thus learned counsel for petitioners referring to these documents and averments made in the writ petition vehemently submits that when neither the award is passed nor the compensation is paid nor even possession taken, the interest of the petitioners is covered in terms of the law laid by the Apex Court in the case of ***Indore Development Authority Vs Manoharlal and others*** reported in ***(2020) 8 SCC 129***. He also refers to endorsement dated 18.01.2016 purportedly issued by the Special Land Acquisition Officer in which it was stated that no award has been passed in respect of the said land, though preliminary and final notification have been issued in respect thereof. Thus, learned counsel for petitioners seek for allowing of the petition declaring the acquisition having been lapsed.

5. In response learned HCGP submits that fact of acquisition of land is reflected in the very document enclosed by the petitioners along with writ petition at Annexure-A namely the RTC for the year 1988-89 till 1992-93 in which at

column No.11 name of NTI House Building Co-operative Society is reflected which was entered into in M.R.No.3/88-89 to 92-93. He submits such entries are made soon after issuance of the notifications. He further submits that petitioners cannot plead ignorance of they not knowing about the acquisition process. He further submits petitioners being aware of the acquisition proceedings which has taken place in the year 1988 have approached this Court in the year 2016 that is after lapse of close to 28 years. Thus it is contended that the petition is liable to be dismissed at the outset on the ground of delay and laches. He refers to the judgment of the Division Bench of this Court dated 02.08.2021 passed in Sri.N.Ramaraju and others Vs The Principal Secretary and others in W.A.No.17016/2011 and connected matters pertaining to very same notifications in which the Division Bench of this Court upholding the rejection of challenge made by the land owners had confirmed the order of Co-ordinate Bench of this Court and dismissed the said writ appeals.

6. Learned HCGP further submits that after completion of the acquisition, notification under Sub-Section (2) of Section 16 of the Land Acquisition Act were issued on two occasions

firstly on 12/15.04.1991 and on 4/5.11.1992. He submits land subject matter of present petition was shown in the second notification issued under sub-Section (2) of Section 16 on 4/5.11.1992. Referring to the endorsement dated 18.01.2016 produced at Annexure-P by the petitioners, learned HCGP submits that the said document does not appear to be genuine inasmuch as there is a reference number given in the left hand side of the document as LAC 141/86-87 which in the normal course is not the procedure. He submit that the said document appears to have been brought up for the purpose of the case. In this case in any event the award has been passed in the name of original khathedar Smt.Venkatamma and Sri.Anjanappa as per the award dated 01.07.1988 in LAC No.141/1986-87. Thus, on these grounds he seeks for dismissal of the writ petition.

7. Sri.Prakash, learned counsel appearing for the respondent-society taking this Court through the statement of objections and documents enclosed therewith submits that since issuance of Preliminary notification and Final notification not being in dispute the only aspect of the matter requires to be considered is passing of the award and taking possession.

As regards passing of the award learned counsel refers to Annexure-R-3 to the statement of objections wherein name of Smt.Venkatamma and Sri.Anjanappa is shown in respect of the land in Sy.No.37/1 measuring 39 guntas. Compensation in a sum of Rs.83,801.25 inclusive of interest and all statutory allowances is shown to have been determined as on 01.07.1988. He refers to notification dated 4/5.11.1992 published on 17.12.1992 issued under sub-section (2) of Section 16 of the Land Acquisition Act produced at Annexure-R-4 and points out at Sl.No.49 the subject land having been reflected evidencing taking over the possession. He also refers to the development plan that had been approved by the respondent BDA and Town planning members according sanction for the development of the acquired land produced at Annexure-R-7. He also refers to work order dated 04.03.2010 issued by BDA produced at Annexure-R8 and submits that in furtherance to the said work order and the development plan sanctioned by the respondent-BDA, full fledged layout has been formed, sites have been allotted, houses have come up. He refers to Annexure-R9 which is a list containing 23 names of the allottees of the sites forming part of land in Sy.No.37/1

subject matter of the present petition. He also refers to the photographs produced along with memo dated 08.07.2022 showing existence of residential houses constructed on the subject land. Thus, referring to the aforesaid material documents produced on record it is submitted that the acquisition having been completed, award having been passed, possession having been taken, in the manner known to law, it is not open for the petitioners to seek relief as sought for in the present proceedings.

8. Heard and perused the records.

9. Even from the perusal of the petition averments, documents produced more particularly at Annexure-A and from the submissions made by learned counsel for petitioners one thing is clear, that is petitioners are also aware of the acquisition proceedings having been initiated by respondent authorities by issuing preliminary notification dated 04.01.1985 followed by final notification on 22.09.1986. What follows thereafter for consideration is the so called bonafide understanding of the petitioners of their land having been left out from acquisition upon the purported recommendation made

by the Special Land Acquisition Officer. In justification of the contentions, petitioners have relied upon the notification dated 12/15.04.1991 issued under sub-section (2) of Section 16 of the Land Acquisition Act, where there is no mention of the land in Sy.No.37/1 being claimed by the petitioners. What the petitioners do not speak of is the issuance of the second notification that was issued by the respondent authorities under sub-section (2) of Section 16 of the Land Acquisition Act on 4/5.11.1992 which is produced by the respondent No.4 . There is no denial of the said notification having been issued by the respondent authorities. Issuance of these notifications under sub-section (2) of Section 16 of the Land Acquisition Act has been taken note of by the Division Bench of this Court in its order dated 02.08.2021 passed in the challenge mounted by other landowners in respect of the very same notification. It is settled law issuance of notification under sub-section (2) of Section 16 of the Land Acquisition Act is an evidence of taking possession of the acquired land.

10. Approval of sanctioned layout plan, issuance of work order by respondent- BDA as per Annexure-R7 and R8 produced by the respondent No.4 is a proof of implementation

of the scheme. The photograph produced by the respondent No.4 with regard to existence of residential houses even as fairly admitted by learned counsel for the petitioners is further evidence of allottees constructing their houses on the sites allotted to them which formed part of the land subject matter of the present writ petition.

11. Appropriate also to refer to mahazar and the sketch that is produced by the Assistant Director of Land Records pursuant to the order passed by this Court on 08.07.2022 along with the memo dated 16.09.2022 wherein report has been filed specifically referring to land in Sy.No.37/1 and showing the existence of sites formed by the respondent No.4 and the construction of houses thereon. So much to point out possession having been taken by the respondent authorities pursuant to the acquisition made in terms of the aforesaid notification.

12. As regards passing of the award is concerned document at Annexure -R3 produced along with the statement of objections would reveal that the Special Land Acquisition Officer has determined the compensation at Rs.83,801.25

which included all the statutory allowances payable under the Act as on 01.07.1988 payable to Smt.Venkatamma and Sri.Anjanappa. The said amount is stated to have been paid to Smt.K.H.Ramakrishnappa (the father of the petitioners herein and son of Smt.Venkatamma). Said amount has been paid from and out of the account maintained by the respondent No.4-Society who was required to pay the cost of acquisition which included the compensation. Receipts in this regard are produced at Annexure-R10 to the statement of objections.

13. Though learned counsel for the petitioners vehemently submitted that there has been no proof of notified khathedars having been issued any notice with regard to award proceedings and material produced by the respondent No.4 in this regard cannot be relied upon, this Court is unable to accept the said contention for the simple reason that such a ground being urged by the petitioners who are grandchildren of the kathedar after 26 years of completion of acquisition process.

14. The Division Bench of this Court dealing with identical grounds raised in this writ petition in its order dated 02.08.2021 has also adverted, question of delay and laches. At

paragraph II B. page Nos.81 and 82 of the said order, the Division Bench of this Court calculated the days of delay in filing the writ petition from the date of notification which range between 19 years to 22 years did not find it appropriate to entertain the same on the ground of delay and laches.

15. In the instant case as already noted petitioners have approached this Court 26 years subsequent to the notifications which is far in excess and beyond the period which is noted by the Division Bench of this Court at pages 81 and 82 of the said order.

16. The Apex Court in the case of ***Indore Development*** (supra) at paragraphs 366.1 to 366.9 has adverted to questions with regard to invocation of sub-Section (2) of Section 24 of the Act which is squarely applicable to the present case as well, more particularly paragraph 366.9 wherein a caution is made that the closed and stale claim shall not be reopened as the same does not give any cause of action to the parties which read as under:

> **366.1.** Under the provisions of Section 24(1)(*a*) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of

proceedings. Compensation has to be determined under the provisions of the 2013 Act.

**366.2.** In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(*b*) of the 2013 Act under the 1894 Act as if it has not been repealed.

**366.3.** The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

**366.4.** The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

**366.5.** In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section

31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

**366.6.** The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(*b*).

**366.7.** The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

**366.8.** The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

**366.9.** Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

17. Viewed from any angle no grounds are made out warranting interference at the hands of this Court both factually and legally. Accordingly petition is dismissed.

**Sd/-**
**(M.G.S. KAMAL)**
**JUDGE**

SBN
List No.: 1 Sl No.: 49