



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.15103 OF 2022 (LB-RES)



BETWEEN:

1. SRI VINOD DAMJI PATEL

... PETITIONER

(BY SRI. H R ANANTHA KRISHNA MURTHY., ADVOCATE)

AND:

1. THE HOSKOTE YOJANA PRADHIKARA
MISSION HOSPITAL ROAD
1ST CROSS ROAD
SRI VENKATARI BADAVANE
HOSKOTE - 562 114
BENGALURU RURAL DISTRICT
REPRESENTED BY JOINT DIRECTOR
2. THE TOWN MUNICIPAL COUNCIL
HOSKOTE - 562 114
REP. BY PRESIDENT

... RESPONDENTS

(BY SRI. GANGADHARAPPA A V., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE LETTER/ENDORSEMENT DTD 27.01.2022 BEARING NO.HOYOPRA/L.A.O/32/2021-22 PRODUCED AT ANNEXURE-E ISSUED BY THE 1ST RESPONDENT AND ETC.

Digitally signed
by
NARAYANAPPA
LAKSHMAMMA
Location: HIGH
COURT OF
KARNATAKA





THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs;
 - a. *Issue a writ of Certiorari or any other writ, direction or order, quashing the Letter/Endorsement dated 27.01.2022 bearing No.HoYoPra/L.A O/32/2021-22 produced at Annexure-E issued by the 1st respondent.*
 - b. *For any other relief/s as this Hon'ble court may deem fit, in the interest of Justice.*
2. The petitioner is the absolute owner of 8 ½ guntas of land in Sy.No.133 of Dandupalya Village, Hosakote Taluk, Bangalore Rural District. The said land has been converted for non-agricultural purposes by way of a orders passed by a Deputy Commissioner on 28.4.2005. The said land alongwith certain other lands totally measuring 11 acres 37 ½ guntas, including the lands in Sy.No.134 measuring 26 guntas and 33 guntas in Sy.No.133 were converted for non-agricultural purposes vide order of the Deputy Commissioner dated 28.4.2005. The petitioner had purchased the aforesaid 8¼ guntas of land on 30.7.2013 under Deed of Sale registered with Sub-Registrar, Hosakote. The petitioner submitted a plan



for approval to respondent No.1 in respect of aforesaid land. The respondent No.1 vide letter dated 27.1.2022 contending that 80% of the said land had been earmarked for widening of National Highway-35 to 45 meters and called upon the petitioner to hand over the land so ear-marked free of cost and it is only thereafter the respondent No.1 would approve the plan. It is aggrieved by the same, that the petitioner is before this Court.

3. The contention of the counsel for the petitioner is that the petitioner is only seeking for a plan sanction in respect of his own land, a condition as such cannot be imposed on the petitioner to relinquish or surrender for free of cost the land which is proposed to be used for widening of the existing National Highway to 45 meters.
4. Sri.A.V.Gangadharappa., learned counsel appearing for respondent would submit that the said demand has been made in terms of Section 17(2-A) of the Karnataka Town and Country Planning Act, 1961 (for



short "KTCP Act"). In furtherance of which, the planning authority while sanctioning the layout plan can impose a condition for relinquishing the roads, parks, playground to the local authority and the Civic amenities areas to the planning authority under a registered relinquishment deed and as such the demand made by the respondent No.1 to surrender the area earmarked for the proposed 45 meter road is proper and correct and the same has to be surrendered free of cost.

5. Heard Sri.H.R. Anantha Krishan Murthy., learned counsel for the petitioner, Sri.Gangadharappa.A.V., learned counsel appearing for respondent No.1 and Sri.Kempanna., learned counsel for respondent No.2.

Pursued documents.

6. The contention of Sri.A.V.Gangadharappa., learned counsel for respondent No.1 is that there is existing National Highway which is proposed to be widened to 45 meters, the property of the petitioner coming within the area sought to be widened, the same is



required to be surrendered by the petitioner free of cost. In that regard reliance is placed on Section 17(2-B) of the KTCP Act, Section 17(2-B) is reproduced hereunder for easy reference;

(2B) The Planning Authority shall ensure the completion of all development works including all infrastructure facilities as mentioned in sub-section (2A) under the supervision of the concerned Authority/Agency/Department. On obtaining the certificate of completion from the concerned Authority/Agency/Department on having completed all the development works and on relinquishment of the roads, parks to the local authority and Civic Amenity areas to the Planning Authority and handing over the same, the Planning Authority may issue the final layout plan affixing the seal of the Planning Authority for registration purpose.

Provided that no Commencement Certificate or licence shall be sanctioned or issued for buildings on sites in the layout unless the final layout plan is issued.]2

7. A perusal of Section 17(2-B) indicates that it is when a plan sanction is granted and road ear-marked in such a plan sanction, the said road would have to be surrendered free of cost. If civic amenities are ear-marked the said civic amenities would have to be surrendered free of cost. The essential ingredient being that the said road and civic amenities are required to be part of the plan sanctioned by the planning authority and the extent of road and civic



amenities are calculated in terms of the zonal regulations applicable thereto.

8. In the present case, what is sought for by respondent No.1 is surrender of land of the petitioner for the proposed widening of the National Highway to 45 meters. In that view of the matter the demand made by respondent No.1 to say the least would be a claim made by the respondent No.1 in extortion by using their power to sanction a plan.
9. If respondent No.1 intends to form any road on land belonging to a private citizen, it would be required for such authority to acquire the land and make payment of due compensation to such private citizen. Merely because of land being designated for widening of an existing road or designated for a formation of a road, there cannot be demand by a planning authority like respondent No.1 to surrender the said land free of cost by the owner.
10. The interpretation now sought to be given to Section 17(2-B) KCTP Act is completely misplaced in as much



as the said provision only relates to roads formed within the layout and the civic amenities formed within the layout to be sanctioned.

11. Admittedly, the proposed widening of the 45 meters of road has nothing to do with a layout but something which has been planned by the authorities concerned keeping in view the requirement of widening the existing National Highway and the same has been approved by the State Government by approving the master plans. The said contention as already observed being a claim by the respondent No.1-Authority amounting to extortion cannot be sustained. As such I pass the following;

ORDER

- i. The writ petition is ***allowed***.
- ii. A Certiorari is issued, the endorsement dated 27.1.2022 bearing No.HoYoPra/L.A.O/32/2021-22 at Annexure-E is hereby quashed.
- iii. Respondent No.1 is directed to consider and approve the plan submitted for approval by the



petitioner without insisting for such surrender free of cost.

- iv. Liberty is however reserved to the respondent No.1 to acquire the land by making payment of due amounts as per applicable law.
- v. IA No.1/2023 does not survive for consideration and is disposed.

**Sd/-
JUDGE**

SR