



IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 11<sup>TH</sup> DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**WRIT PETITION NO. 7954 OF 2007**

**C/W**

**WRIT PETITION NO. 5574 OF 2007**

**IN WP NO.7954 OF 2007:**

**BETWEEN:**

1. NIDASHESHI VEERANNA

2. GALI PRAKASH

MOHANKUMAR  
B SHELAR

Digitally signed  
by  
MOHANKUMAR  
B SHELAR

...PETITIONERS

(BY SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE)

**AND**

1. STATE OF KARNATAKA,  
REPRESENTED BY ITS SECRETARY,  
REVENUE DEPARTMENT,  
M.S. BUILDING, BANGALORE.

2. THE UNDER SECRETARY,  
GOVERNMENT OF KARNATAKA,  
REVENUE DEPARTMENT(LAND ACQUISITION),  
M.S.BUILDING, BANGALORE.
3. THE DEPUTY COMMISSIONER,  
BELLARY DISTRICT, BELLARY.
4. THE ASSISTANT COMMISSIONER AND  
LAND ACQUISITION OFFICER,  
HOSPET SUB-DIVISION, HOSPET,  
DIST: BELLARY.
5. THE SUPERINTENDENT  
ARCHEOLOGICAL DEPARTMENT,  
KENDRIYA SADAN,  
KORAMANGALA, BANGALORE.

...RESPONDENTS

(BY SRI. M.H.PATIL, ADDL. GOVT. ADVOCATE FOR R1 TO R4;  
SRI.M.B.KANAVI, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO - QUASH THE NOTIFICATION OF ACQUISITION DATED 5.4.2006 ISSUED BY THE R2 i.e. ANNEXURE C IN SO FAR AS IT RELATES TO THE LANDS OF THE PETITIONERS BEARING SY.NO.4/1 SITUATED AT KRISHNAPUR VILLAGE, HOSPET TALUK, BELLARY DISTRICT, BELLARY, MEASURING 2 ACRES AND 3 ACRES 97 CENTS AND 40 CENTS RESPECTIVELY AS THE ENTRY AT SERIAL NO.5 OF KRISHNAPUR VILLAGE IN THE SAID NOTIFICATION ANNEXURE C AND ETC.,

**IN WP NO. 5574 OF 2007:****BETWEEN:**

1. GALI SHIVABASAPPA,  
S/O. LATE GALI NEELAKANTAPPA,  
AGED ABOUT 47 YEARS,  
R/AT. 2<sup>ND</sup> WARD,  
NEAR NEW BUSTAND,  
KAMALAPUR VILLAGE,  
HOSPET TALUK,  
BELLARY DIST.
  
2. GALI MALLIKARJUNA  
S/O. LATE GALI NEELAKANTAPPA,  
AGED ABOUT 57 YEARS,  
R/AT. 2<sup>ND</sup> WARD,  
NEAR NEW BUSTAND,  
KAMALAPUR VILLAGE,  
HOSPET TALUK,  
BELLARY DIST.
  
3. NETAGUNTI GANGAMMA  
D/O. LATE NETAGUNTI MALLAYYA,  
AGED ABOUT 48 YEARS,  
R/AT. MANAMATHA KERI,  
KAMALAPUR VILLAGE,  
HOSPET TALUK,  
BELLARY DIST.
  
4. J.BASAPPA  
S/O. LATE J.KOMAREPPA,  
AGED ABOUT 61 YEARS,  
R/AT. OLD 2<sup>ND</sup> WARD,  
KAMALAPUR VILLAGE,  
HOSPET TALUK,  
BELLARY DIST.,  
REPRESENTED BY HIS  
POWER OF ATTORNEY HOLDER  
J.MALLAPPA,

S/O. LATE J.KOMAREPPA,  
AGED ABOUT 61 YEARS,  
R/AT. OLD 2<sup>ND</sup> WARD,  
KAMALAPUR VILLAGE,  
HOSPET TALUK, BELLARY DIST.

...PETITIONERS

(BY SRI. MALLIKARJUNSWAMY B. HIEMATH, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA,  
REPRESENTED BY ITS SECRETARY,  
REVENUE DEPARTMENT,  
M.S. BUILDING, BANGALORE.
2. THE UNDER SECRETARY,  
GOVERNMENT OF KARNATAKA,  
REVENUE DEPARTMENT(LAND ACQUISITION),  
M.S.BUILDING, BANGALORE.
3. THE DEPUTY COMMISSIONER,  
BELLARY DISTRICT, BELLARY.
4. THE ASSISTANT COMMISSIONER AND  
LAND ACQUISITION OFFICER,  
HOSPET SUB-DIVISION, HOSPET,  
DIST: BELLARY.
5. THE SUPERINTENDENT  
ARCHEOLOGICAL DEPARTMENT,  
KENDRIYA SADAN,  
KORAMANGALA, BANGALORE.

...RESPONDENTS

(BY SRI. M.H.PATIL, ADDL. GOVT. ADVOCATE FOR R1 TO R4;  
SRI.M.B.KANAVI, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO - QUASH THE NOTIFICATION OF ACQUISITION DATED 5.4.2006 ISSUED BY THE R2 VIDE ANNEXURE-F IN SO FAR AS IT RELATES TO THE LANDS OF THE PETITIONERS BEARING SY.NO.47/2 AND 47/1 SITUATED AT KRISHNAPUR VILLAGE, HOSPET TALUK, BELLARY DISTRICT, BELLARY, MEASURING 1 ACRES 60 CENTS AND 40 CENTS RESPECTIVELY AND ALSO THE LAND BEARING SY.NO.681/A/1 AND 681/A/3 SITUATED AT KAMALAPURA VILLAGE, OF HOSPET TALUK, MEASURING 1 ACRE 2 CENTS AND 2 ACRE 53 CENTS RESPECTIVELY AS THE ENTRY OF SERIAL NO. 9 AND 10 OF KRISHNAPUR VILLAGE, AND 29 AND 30 OF KAMALAPUR VILLAGE, IN THE SAID NOTIFICATION ANNEXURE-F AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 19.04.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Writ Petition No.7954/2007 is filed by the land owners of the petition land bearing Sy.No.44/1 measuring 2 acres and 3 acres 97 cents situated at Krishnapur Village, Hospet Taluk seeking quashing of the notification of acquisition dated 05.04.2006 issued by the respondent No.2 vide Annexure-C and also notification of acquisition dated 25.05.2005 issued

by respondent No.3 vide Annexure-B insofar as the petitioners' lands are concerned.

2. W.P.No.5574/2007 is filed by the land owners of the petition lands bearing Survey No.47/2 and 47/1 measuring 1 acres 60 cents and 40 cents, respectively, situated at Krishnapur village, Hospet Taluk, and also the land bearing Survey No. 681/A/1 and 681/A/3 measuring 1 acre 2 cents and 2 acre 53 cents situated at Kamalapura village, of Hospet taluk, seeking quashing of the notification of acquisition dated 05.04.2006 issued by the respondent No.2 vide Annexure-F and also notification of acquisition dated 25.05.2005 issued by respondent No.3 vide Annexure-E insofar as the petitioners' lands are concerned.

3. The facts leading to the case are under:

The petitioners claim to be agriculturists owning land in Krishnapur Village and Kamalapur Village. The petitioners claim that they are totally dependent on the income

generated from these petition lands. The petitioners, however, admit that petition lands are proximate to the Hampi historical monuments and fall within the protected area of Hampi monuments and remains in Karnataka.

The grievance of the petitioners before this Court is that respondent No.5 along with other official respondents have been arbitrarily acquiring lands in the areas surrounding the Hampi Historical monuments. The petitioners claim that these acquisitions are made without verifying the existence of sculptures and carvings. The petitioners also claim that under the garb of protection of ancient artifacts, respondent No.5 has acquired vast extent of land. It is also claimed that respondent No.5 till this date has not carried out any excavation to identify the existence of any historical monuments underneath. Though respondents under the garb of apprehending ancient and historical monuments and archeological sites have been arbitrarily acquiring vast lands, no justifiable reasons are indicated and by invoking urgency

clause under Section 17(4), the petitioners' lands are acquired. The petitioners claim that notifications are issued by the competent authority contrary to Section 20 of Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short 'AMASR Act, 1958').

The petitioners have also questioned the manner in which the lands are acquired. The petitioners have strongly objected that respondents could not have invoked the urgency clause since final notification is issued after lapse of almost one year from the date of preliminary notification. Feeling aggrieved by the acquisition, the petitioners herein filed petition in W.P.No.5574/2007. During the pendency of the writ petition, the authority passed an award and therefore, the petitioners were advised to question the award as they would have lost valuable right of claiming enhancement of compensation. Therefore, the petitioners claim that under protest they have sought reference but there is a serious challenge to the notification acquiring



petitioners land. It is also contended that learned Judge dismissed the petition vide order dated 11.01.2012 and the same was confirmed by the Division Bench of this Court in W.A.No.30419-30422/2013. Feeling aggrieved by the orders of the learned Single Judge and the Division Bench, petitioners were compelled to approach the Hon'ble Apex Court. The Hon'ble Apex Court has allowed the petition and matters are remitted back to this Court to decide the validity of acquisition de hors reference proceedings pending before the Reference Court.

4. Learned counsel appearing for the petitioners reiterating the grounds urged in the petition would vehemently argue and contend that official respondents have virtually acquired 330 acres of land amass and no excavations have been done till this date for almost 20 years. Learned counsel would further submit that respondent No.5 on speculation has acquired petition land without ascertaining whether ancient monuments exist in the area sought to be

acquired. He would vehemently argue and contend that there is no public purpose and therefore, acquisition proceedings are liable to be quashed by this Court. Questioning the preliminary notification, he would point out that the Central Government could not have dispensed with Section 5(A) enquiry in a casual manner. Referring to the material on record, he would point out that there is nothing on record which would dispense the process of hearing objections of the land owners under Section 5(A).

5. To buttress his arguments, he has placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Darshan Lal Nagpal (Dead) by LRs. vs. Government of NCT of Delhi and Others***<sup>1</sup>. Referring to the dictum laid down in the above cited judgment, he would point out that urgency clause can be invoked only when the acquiring authorities cannot brook delay of even a few days and it is found that there are compelling reasons where

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<sup>1</sup> (2012) 2 SCC 327

enquiry under Section 5A needs to be dispensed. Referring to the law laid down by the Hon'ble Apex Court in the case of ***Dev Sharan and Others vs. State of Uttar Pradesh and Others***<sup>2</sup>, he would point out that final notification is issued after almost one year and that clearly demonstrates and substantiates petitioners' apprehension that there was no real urgency in the matter. He would further point out that petitioners are still in possession of the lands and no compensation is paid till date and therefore, acquisition stood lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. Anticipating the stand of the Central Government and respondent No.5, he has also placed reliance on the dictum laid down by the Hon'ble Apex Court in the case of ***Banda Development Authority vs. Motilal Agarwal and***

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<sup>2</sup> (2011) 4 SCC 769

**Others**<sup>3</sup>. Placing reliance on the dictum laid down in the judgment cited supra, he would point out that the petitioners being lawful owners are still in exclusive possession and mere issuance of final notification will not in itself constitute delivery of possession to the acquiring authority unless possession is taken in the manner indicated in the judgment cited supra.

7. Per contra, learned counsel appearing for the respondent No.4/State reiterating the stand taken in the statement of objections, however, has seriously countered the claim made in the writ petitions. Learned counsel for the State would vehemently argue and contend that the lands notified and acquired fall within the protected area. He would further contend that State Government is of the opinion that these areas contain ancient monuments or antiquities of National interest and value. He would further contend that petition land bearing Sy.No.44/1 is adjacent to the protected

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<sup>3</sup> (2011) SCC 394

monument of Badavilinga Temple and Ugra Narasimha Temple. He would vehemently argue and contend that there is absolutely no access to these temples and petitioners' lands on the contrary block access to these temples. He would vehemently argue and contend that the State had to acquire these lands as Government of India was of the opinion that the petitioners land contains ancient monuments and antiquities of National interest.

8. Learned counsel appearing for the respondent No.5 arguing in the same vein has reiterated the defence set up in the statement of objections filed by respondent No.4. Referring to the contents of the statement of objections, he would vehemently argue and contend that unless excavation is done, it is not possible for the authorities to figure out whether petitioners land contains any ancient monuments of National importance. He would further submit that lands acquired form part of Hampi which is a world heritage site governed under the Central Act and thus lands fall within the

prescribed area and core area declared by the Hampi World Heritage Management Authority. He would further vehemently argue and contend that the lands acquired in Sy.No.44/1 are just within the protected area. He would further vehemently argue and contend that these lands are required for beautification of National monuments and to provide related infrastructure as such acquisition was absolutely necessary. Justifying the action of the acquiring authority in dispensing with Section 5(A) enquiry, he would point out that the district of Bellary is facing severe threat of mining activities and therefore, there was possible threat of possession and damage to the monuments and antiquities in the area and therefore, this compelled the acquiring authority to invoke urgency clause and notify the petition lands.

9. Learned counsel appearing for respondent No.5 has also admitted that though petition lands do not contain any ancient monuments, however, since these lands are abutting the temple complex known as Pattabhirama temple,

these lands are proposed to be acquired. Therefore, learned counsel for respondent No.5 would also persuade this Court to dismiss the writ petitions.

10. Both the counsel appearing for the authorities would contend that acquisition is in the interest of public at large and these acquisitions are made bearing in mind that India is a signatory to the World Heritage convention and therefore, the authorities are duty bound to adhere to the norms laid down by the World Heritage Committee. Therefore, both the counsel on record would contend that Government of India has been striving hard to take series of measures to protect the World Heritage Sites, Monuments and Remains.

11. Heard learned counsel appearing for the petitioners and learned counsel appearing for the official respondents. I have given my anxious consideration to the judgments cited by the learned counsel for the petitioners.

12. In the light of the rival contentions canvassed by the Bar, the following points would arise for consideration:

*1) Whether the respondent No.4/State was justified in invoking urgency clause to acquire the petition lands and therefore, was justified in dispensing the right of opportunity conferred on the land loser under Section 5-A of the Land Acquisition Act, 1894?*

*2) Whether the petition lands can be acquired on a mere speculation that the petition lands may contain ancient monuments, or on the ground that petition lands is blocking access to the monumental temples namely Badavilinga Temple and Ugra Narasimha Temple?*

**Re: Point No.1:**

13. The State's power of eminent domain finds expression in two statutory enactments namely, the Land Acquisition Act, 1894 as well as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Both the legislations allow the State to invoke urgency clause to



bypass some important procedural safeguards and fastrack the acquisition process. Essentially, acquiring land for a public purpose in lieu of compensation to the land holders regardless of consent on their part is a testament to the massive coercive power wielded by the modern State. Therefore, one of the important checks of this power comes in the form of procedural safeguards that are to be mandatorily followed by the Executing Court. The urgency clause is an antidote to bypass this elaborate procedure. Therefore, wherever the executive wrongfully invoke the urgency clause in matters where there is no urgency, only to expedite the process of acquisition has serious repercussions.

14. The Hon'ble Apex Court in the case of ***Hamid Ali Khan vs. State of Uttar Pradesh***<sup>4</sup>, while culling out settled principles and the scope of judicial review by the courts held that the courts are required to have a "hands-off approach" in situations where urgency clause is invoked provided there is

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<sup>4</sup> 2021 SCC Online SC 1115

“sufficient material on record to justify invocation of urgency clause”. The Hon’ble Apex Court further held that Courts are also expected to check whether “the Government had applied its mind before forming a subjective opinion, free from its extraneous consideration”. The Hon’ble Apex Court in the case of **Anand Singh and Another vs. State of Uttar Pradesh and Others**<sup>5</sup>, while examining the scope of Section 17 of the Land Acquisition Act, 1894 held that urgency provisions under Section 17(4) to eliminate enquiry under Section 5-A should be invoked only in deserving cases of real urgency. The Government is required to apply its mind to aspect of urgency and should be able to justify that urgency is based on considerations which have a reasonable nexus for purpose for which it is to be exercised. In the very judgment, the Hon’ble Apex Court held that pre-notification and post-notification delay would have a material bearing on the issue particularly when no material justifying urgency necessitating elimination of enquiry is produced by the

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<sup>5</sup> (2010) 11 SCC 242

Government. The Hon'ble Apex Court in the case of **Hamid Ali Khan** (*supra*), has held that existence of exceptional consideration justify invoking of Section 17(4) must be established in the wake of challenge by land loser. Under Article 300A of the Constitution of India has right and deserves an opportunity of being heard under Section 5-A of the Act and therefore, the opportunity for a land loser under Section 5-A should not be unjustifiably extinguished by the authority.

15. In the light of the law laid down by the Hon'ble Apex Court relating to invocation of urgency clause, the question that needs consideration at the hands of this Court is, as to whether the respondent/State has justified its action by invoking urgency clause under Section 17(4) of the Land Acquisition Act.

16. Admittedly, preliminary notification was issued on 25.05.2005, while final notification is issued on 05.04.2006.

As held by the Hon'ble Apex Court in the judgment cited supra, in the present case on hand, there is obviously inordinate delay post issuing a preliminary notification. On examining the material on record, I am more than satisfied that urgency clause is invoked only to deny the right of hearing to the petitioners herein under Section 5-A of the Act. If the stand taken by the respondent/State and respondent No.5 is examined, it is quite interesting to note that though the proposed acquisition is on the ground that the petition lands may contain some ancient monuments, but during the course of final hearing, the counsel appearing for the official respondents have stressed more on the point that the petitioners land blocks access to the ancient temple complex known as Badavilinga Temple and Ugra Narasimha Temple. In fact in para 12 of the statement of objections filed by respondent No.4/State, State clearly admits in unequivocal terms that in the land belonging to petitioners, no ancient monuments are found. On the contrary, the respondent

No.4/State has taken a stand that petitioners land is situated between two temples and therefore, petitioners' lands virtually blocks access and therefore, it is contended that State has resolved to acquire petitioners' lands. At para 12, the respondent No.4/State has contended that land of petitioners further blocks connectivity between holy tank and the temple. It would be useful for this Court to cull out para 12 of the statement of objections filed by respondent No.4/State which reads as under:

*"12. It is submitted that, the land bearing Sy.Nos.44/1 situated in Krishnapura is just adjacent to the protected monument of Badavilinga Temple and Ugra Narasimha Temple. The Badavilinga Temple and Ugra Narasimha Temple is also very important complex. In the land belonging to the petitioner although there are no monuments, the said land abuts another important temple complex known as Badavilinga Temple and Ugra Narasimha Temple. The temple's original entry is on the eastern side and the agricultural field owned by the above petitioner blocks this side. In the absence of access from the original eastern doorway, as a temporary measure, the southern entrance of the*

*temple is being used as main entrance which faces the thickly habitual area of the Krishnapura Villages and which is encroachment prone. Moreover, the land of the petitioner had blocked the connectivity between the holy tank and the temple proper. The petitioner's land is sandwiched between these two structures. To revive the ancient connection between temple and holy tank and its old entrance, this land of the petitioner is absolutely essential. The encroachments that had come up were blocking the access to the temple and were removed and in 2000-01 and it was fenced properly. At present there is no space for the visitors to look at the inscriptions besides there are no approach roads and parking facilities. Above all sufficient space has to be provided between the monument and growing Krishnapura Village which would ensure the area free from any kind of encroachments. In view of this Sy.No.44/1 measuring 2 acres and 3.97 acres situated at Krishnapura village of petitioner land is acquired."*

17. However, the statement of objections filed by respondent No.5 reveals that Archeological Survey of India claimed that since petition lands are abutting to existing monuments, the authorities reasonably believe that these

petition lands may contain certain ancient monuments and remains and therefore, respondent No.5 claimed that it is necessary to acquire these lands and preserve these lands. The respondent No.5 has further contended that unless excavation is done, it cannot be ascertained as to whether ancient monuments and remains are existing underneath the petition land. At para 3 of the statement of objections, respondent No.5 has contended that these lands are required for beautification of national monuments and to provide related infrastructure and therefore, they claim that acquisition of these lands is very much essential.

18. If the defence set up by the respondent No.4/State and respondent No.5/authority are examined, then I more than satisfied that the State erred in invoking urgency clause. To counter the State's claim that petition lands are blocking access, the petitioners are entitled to object acquisition under Section 5-A. Similarly, the claim of respondent No.5 that lands are required for beautification of

National monuments, petitioners are equally entitled to be heard in that regard as lands cannot be acquired by invoking urgency clause. The material placed on record by the parties does not substantiate the respondents stand that there were compelling reasons to invoke the urgency clause under Section 17(4) of the Land Acquisition Act. I am more than satisfied that the material on record does not reveal any compelling reasons to invoke the urgency clause. Accordingly, point No.1 formulated above is answered in the negative.

**Re: Point No.2: Government's Eminent Domain Power and Speculation on Hidden Artifacts**

19. Eminent domain is a fundamental power that Governments possess, allowing them to acquire private land for public use. However, this power is not absolute and is subject to various legal and ethical considerations. One question that often arises is whether Government can acquire



land based on mere speculation that valuable artifacts are hidden beneath its surface. Acquiring land based on speculation that valuable artifacts are concealed beneath it poses unique challenges to the principles of eminent domain. Speculation alone does not constitute a clear public purpose. If the State were to exercise eminent domain based on mere speculation of artifacts, it could infringe upon property rights and disrupt the lives of landowners without clear justification.

20. In the present case on hand, the State instead of using eminent domain, was required to follow established legal and archeological procedures when dealing with potential artifacts discoveries on private land. Nothing prevented respondent No.5 in conducting archeological survey and assessment to verify the presence of artifacts and their historical significance. Even if respondent No.5 intends to use the petitioners land for beautification, the Government under the garb of eminent domain cannot mechanically snatch property of the citizen, that too by invoking urgency

clause. Though State's power of eminent domain is a crucial tool for public development, it must adhere to specific criteria, chiefly, the requirement of legitimate public purpose.

21. Speculation about hidden artifacts, while intriguing, does not meet this criterion on its own. Therefore, respondents ought to have followed established legal and ethical procedures when dealing with potential artifact discoveries on private land to strike a balance between the public interest and property rights.

22. Sections 20 and 21 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 confer power on the Government regarding excavation in protected areas. Section 20 allows the Government to carry out excavations in areas that are protected under the Act. Section 21 outlines the procedure involved in this process. It generally requires the Government to give prior notice of the intended excavation to the owner or occupier of the land, along with a

statement of the reasons for the proposed action. Had the respondent No.4/State and the respondent No.5/authority not taken recourse to Section 17(4) of the Land Acquisition Act and if an enquiry was conducted under Section 5, that would have obviously provided a fair opportunity to the petitioners herein to present their views or objections. If there cannot be arbitrary excavation in protected area solely based on speculation or presumption, the action of the respondent No.4/State in acquiring petitioners land by invoking urgency clause is tainted with malafides and the acquisition is obviously not intended for public purpose. The action of acquiring petitioners land is found to be bad and the true object of acquiring petitioners land is not forthcoming in the present case on hand.

23. Therefore, this Court is bound to examine whether the acquisition in the present case on hand does involve element of public purpose. The material placed on record clearly demonstrates that custodian of power has misused the

power of eminent domain and the lands are proposed to be acquired based on totally irrelevant consideration and the action of the respondent No.4/State is tainted with malafides. This is a clear case of forcible acquisition of land by virtually violating all standard procedures. Poor farmers land which is a lifeline for his family is snatched under the garb of acquisition for public purpose at large. The acquisition in the present case on hand is not found to be consistent with constitutional ethics. The proposed acquisition for public purpose is found to be unreal in the present case on hand and therefore, this is a fit case where this Court is bound to invoke its judicial discretion under Article 226 of the Constitution of India. Since malafides in the present case on hand are found to be tangible and the acquisition being colorable needs interference at the hands of this Court. Accordingly, point No.2 formulated above is answered in the negative.

24. On examining the material on record this Court is more than satisfied that the respondent-State could not have invoked urgency clause by dispensing enquiry under Section 5A of the Act. The respondents on assumption and speculation that the petitioners' land may have presence of artifacts or archeological monuments, has invoked urgency clause and preliminary notification is issued on 25.05.2005 while final notification is issued on 24.04.2006. The use of emergency cannot be lightly resorted to and can be applied only in cases of real urgency. In the present case on hand, though emergency is not found, respondents have invoked Section 17(4) and the enquiry is dispensed and the petitioner who is found to be a poor farmer is denied an opportunity to make his representation in respect of existence of public purpose or the need to acquire particular land and suggest an alternate land for acquisition. This Court is more than satisfied that the valuable right of the petitioner is deprived

without assigning proper reasons in invoking urgency clause under Section 17(4) of the Act.

25. Under Section 5A, 6 and 17(1) and 17(4) of the Act, the appropriate government may dispense enquiry under section 5A of the Act provided State is satisfied that it is a case of urgency. Such satisfaction can only be arrived by the appropriate government by applying its mind and taking into account the relevant consideration. The use of emergency powers cannot be lightly resorted and it can be applied only in real emergency.

26. On conjoint reading of Sections 5A, 6 and 17 of the Act, what can be gathered is that there is a conceivable virtue and merit in affording a hearing under Section 5A of the Act. Enquiry as provided under Section 5A of the Act is not of mere mystical significance and is surrounded by some magic halo. There is some rational underlying mandatory duty on the state to give a hearing to the objections and

justify its validity to acquire a private land. The party whose lands are placed under acquisition may not have an unrestricted right to lodge objections. But section 5A of the Act has to be strictly complied with the mandate of Section 5 of the Act. The requirement of hearing under Section 5A of the Act are mandatory and non-compliance with the same vitiates the entire acquisition proceedings. The purpose of enquiry under Section 5A of the Act is two fold. It is intended to instruct the mind of the Government so that the government would be in a position to decide whether any particular land is needed for public purpose or for a company. It is also meant to act as a safeguard against any ill informed action on the part of the government. The other purpose is to given an opportunity to the persons interested in the land to put forward their point of opportunity. In the present case on hand the State stand to acquire petition land by invoking urgency clause on three substantial grounds. Firstly, mere speculation that petition land may have artifacts or

archeological or historical monuments. The second ground is that they need it for beautification as the petition land is abutting to historical monuments. The third stand taken by the respondent-State is that the petition land is blocking the access to two temples i.e. Badavilinga Temple and Ugra Narasimha Temple. If these significant details are taken into consideration, the State has miserably failed to substantiate its action under Section 17(4) of the Act. The burden rests upon the State to show by evidence or some circumstances which insisted elimination of enquiry under Section 5A of the Act. There are absolutely no materials indicating that the authorities have applied its mind to this essential question.

27. The State could dispense with the enquiry under Section 5A of the Act only in exceptional cases, when the State is able to substantiate that the case is so urgent and that the time that is likely to be spent over hearing attracted by Section 5A of the Act would produce great harm or public mischief.



28. Section 17 of the Act refers to extraordinary power affecting valuable right of citizen of hearing his objections under section 5A of the Act. For invoking such jurisdiction, the authorities are required to adhere strictly to the requirements of the statute. In the present case on hand, there are absolutely no materials to substantiate the action of the State in invoking urgency clause. Therefore, the executive action of the State in the present case on hand warrants judicial review to find out existing of facts or circumstances on the basis of which the Government has formed an opinion. This Court is bound to make an enquiry to ascertain whether the facts or circumstances do exist and they have reasonable nexus with the purpose for which the State was compelled to act under Section 17(4) of the Act and dispense the enquiry under Section 5A of the Act. On examining the materials on record this court is more than satisfied that the power conferred on the State under Section 17 of the Act has not been validly exercised. It is the duty of

the State to place on record relevant materials before the Court for scrutiny as to the reasonableness of decision. The material placed by the respondent-State as well as respondent No.5 is not found to be satisfactory to justify their action under Section 17(4) of the Act. Therefore, the action of respondent No.1-State in acquiring petition lands by dispensing with enquiry under Section 5A of the Act is tainted with malafides. The proposed acquisition of petition land is illegal. The order of acquisition by invoking urgency power under Section 17(4) of the Act and thereby dispensing enquiry under Section 5A of the Act is found to be totally improper and therefore, the entire acquisition proceedings vitiate and are liable to be quashed by this Court.

29. If the impugned notifications are examined in the light of law laid down by the Hon'ble Apex Court in the case of ***Hamid Ali Khan (supra)*** the Hon'ble Apex Court has held that exercise of power under Section 17(4) of the Act cannot be dispensed unless the authority forms a subjective opinion

and the said opinion cannot be whimsical or capricious. Hon'ble Apex Court held that there must be materials before the Authority and those materials must be relevant and the state's action to acquire a private land must not be malafide.

30. The impugned preliminary notification as well as final notification are liable to be quashed as poor farmer's lands are sought to be acquired on mere speculation and on the ground that they are required for beautification of National monuments and to provide related infrastructure and therefore the power exercised by the State in acquiring petition lands are found to be malafide and therefore, the impugned notifications need to be quashed. For the reasons stated supra, I pass the following:

**ORDER**

- i) The writ petitions are allowed.*
- ii) The impugned preliminary notification dated 25.05.2005 issued by respondent No.3 vide Annexure-B and consequent final notification dated*

*05.04.2006 issued by respondent No.2 as per Annexure-C in W.P.No.7954/2007 insofar as land bearing Sy.No.44/1 measuring 2 acres and 3 acres 97 cents situated at Krishnapur Village, Hospet Taluk, are hereby quashed.*

*iii) The impugned preliminary notification dated 25.05.2005 issued by respondent No.3 vide Annexure-E and consequent final notification dated 05.04.2006 issued by respondent No.2 as per Annexure-F in W.P.No.5574/2007 insofar as lands bearing Survey No.47/2 and 47/1 measuring 1 acres 60 cents and 40 cents, respectively, situated at Krishnapur village, Hospet Taluk, and also the land bearing Survey No. 681/A/1 and 681/A/3 measuring 1 acre 2 cents and 2 acre 53 cents situated at Kamalapura village, of Hospet taluk, are hereby quashed.*

*iv) In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.*

**Sd/-  
JUDGE**