THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGEMENT

This intra-court Appeal seeks to call in question a learned Single Judge's order dated 14.09.2022, whereby Appellants' W.P.No.38241/2015 (LA-KIADB) having been negatived their request for payment of compensation for the taking of subject-land has not been acceded to.

2. Having heard the learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter broadly agreeing with the observations of the learned Single Judge at paragraph 8 of the impugned order which read as under:

> *"8. Having taken note of the fact that the land in question has been given to the ancestors of petitioners, only for the purpose of growing trees and the ownership of the land vests with the Government, I do not find any acceptable ground to interfere with the impugned endorsement issued by the respondent-KIADB. However, taking into consideration the law declared by Hon'ble Apex Court in the case of M.S. SESHAGIRI RAO (supra), while assessing the compensation payable to petitioners herein, the petitioners are entitled for compensation only in respect of*

trees grown in the subject land. With the said observation, writ petition stands disposed of."

3. The learned Single Judge having examined all the Revenue Records and the so-called Grant Order has rightly come to a conclusion that the subject-land as such has not been granted, although only right to grow trees is accorded. In the case of Grant, ordinarily title to the land vests in the Grantee, at times subject to certain conditions violation of which may result into rescinding of the Grant. However, grant of only a right to grow trees on the land cannot be treated as the grant of land itself. The so-called Grant order reads as under:

"ತುಮಕೂರು ಡಿ. ಹ. ಡ. ಸಾಹೇಬರವರ 8.6.51 ನೇ ತಾ. ನ ಮೆಮೋ. ನಂ.M4 DAR 134/50–51 ರ ಪ್ರಕಾರ ನಿಮಗೆ ಈ ಕೆಳಗೆ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದು ಮಾಡಿರುವ ಯಲದಡ್ಲು ಗ್ರಾಮದ ಸ. ನಂ. 96ನೇ ಸರ್ಕಾರಿ ಜಮೀನಿನಲ್ಲಿ ನೀವು ಅಪೇಕ್ಷಿಸಿರುವಂತೆ ಮರಗಿಡಗಳನ್ನು ಬೆಳೆಯಲು ಮಂಜೂರು ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ಜಮೀನು ಮಂಜೂರಾತಿಯು ಈ ಕೆಳಗೆ ನಮೂದು ಮಾಡಿರುವ ಷರತ್ತುಗಳಿಗೆ ವಳಪಟ್ಟಿರುತ್ತಾದೆ.

1) ಈ ಜಮೀನಿನಲ್ಲಿರುವ ಹಳ್ಳ, ಕಟ್ಟೆ ಮತ್ತು ಗಾಡಿ ದಾರಿಯನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಸಾರ್ವಜನಿಕರ ಉಪಯೋಗಕ್ಕೆ ಉಳಿಸಿಕೊಂಡಿರಲಾಗಿದೆ. ನಿಮಗೆ ಈ ಜಮೀನಿನ ಮೇಲೆ ಯಾವ ವಿಧವಾದ ಹಕ್ಕು ಇರುವುದಿಲ್ಲ. ಇದು ಸರ್ಕಾರಿ ಜಮೀನಾಗಿ ಉಳಿದಿರುತ್ತದೆ. ಬೆಳೆಯಿಸಲು ಮತ್ತು ಸತ್ತ ಮರಗಳನ್ನು ಮತ್ತು ಮರುವಳಿಯನ್ನು ಅನುಭವಿಸಲು ಮಾತ್ರ ಹಕ್ಕನ್ನು ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಪ್ರತಿ ಸತ್ತ ಮರಗಳ ಜಾಗದಲ್ಲಿ ಬೇರೆ ಮರಗಳನ್ನು ಹಾಕಬೇಕು. ಹೀಗೆ ಪೂರಾ ಜಾಗದಲ್ಲಿ ಪ್ರತಿ ವರ್ಷ ಕಾಲಭಾಗದಲ್ಲಿ ನಷ್ಟ 4 ವರ್ಷಗಳೊಳಗೆ

ಮರಗಳನ್ನು ಹಾಕಬೇಕು. ಈ ಷರತ್ತುಗಳಿಗೆ ಉಲ್ಲಂಘಿಸಿದಲ್ಲಿ ಸದರಿ ಜಮೀನನ್ನು ಸರ್ಕಾರಕ್ಕೆ ವಾಪಸು ತೆಗೆದುಕೊಂಡು ನಿಮಗೆ ಈಗ ಕೊಟ್ಟಿರುವ ಹಕ್ಕನು ವಜಾ ಮಾಡಲಾಗುತ್ತೆ."

4. That being the position, title to the subject-land despite making over a particular right in favour of ancestors of the Appellants, remains in tact with the government. What has been constitutionally guaranteed under Article 300A is the right to property; in other words, the State can take private property for public purpose on payment of compensation. This very idea of acquisition envisages "private property" and therefore the question of government acquiring its own property being an anathema to the logic & law does not arise. The power of *eminent domain* which is an attribute of the government avails against the private property and not of the property of the said government, subject to all just exceptions into which argued case of the Appellants does not fit.

5. It hardly needs to be mentioned that whatever trees are grown in the subject-land belong to the ownership of the so-called Grantees and therefore compensation needs

to be paid for the said trees grown in the subject-land if the Appellants have given up their right over the trees. If they only have taken or permitted to take these trees, the question of paying any compensation would not arise.

In the above circumstances, the Appeal being devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Snb,BKV
List No.: 1 Sl No.: 10