



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.I.ARUN

WRIT PETITION NO.677 OF 2022 (LA-UDA)

BETWEEN:

1. SRI SIKANDAR

...PETITIONER

(BY SRI MOHAN S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
TO REVENUE DEPARTMENT
VIKASA SOUDHA, BENGALURU-560 001.
2. THE DEPUTY COMMISSIONER
TUMAKURU DISTRICT
MINI VIDHANA SOUDHA
TUMKURU-572 101.
3. THE ASSISTANT LAND ACQUISITION OFFICER
AND THE ASSISTANT COMMISSIONER
TUMAKURU SUB-DIVISION
TUMAKURU-572 101.
4. THE COMMISSIONER
TUMAKURU URBAN DEVELOPMENT AUTHORITY
BELAGUMBA ROAD, TUMKURU-572 102.





5. THE COMMISSIONER
TUMAKURU MAHANAGARA PALIKE
TOWN HALL, TUMKURU-572 101.

...RESPONDENTS

(BY SRI NAVEEN CHANDRASHEKAR, AGA FOR R.1 TO R.3;
SRI SANTHOSH S. NAGARALE, ADVOCATE FOR R.4;
SMT. SHAKSHI M. KRISHNA FOR
SRI R. SUBRAMANYA, ADVOCATE FOR R.5. (through V.C.)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT OR ORDERS DIRECTING THE RESPONDENT AUTHORITIES, PARTICULARLY THE RESPONDENT NO.3 THE SPECIAL LAND ACQUISITION OFFICER AND THE ASSISTANT COMMISSIONER TUMAKURU SUB-DIVISION TUMAKURU AND THE RESPONDENT NO.4, THE COMMISSIONER TUMAKURU URBAN DEVELOPMENT AUTHORITY, THEIR OFFICIALS, WORKERS ANY PERSON/S CLAIMING THROUGH OR UNDER THEM, PARTICULARLY THE 3RD RESPONDENT NOT TO DISPOSSESS THE PETITIONER FROM THE SCHEDULE PROPERTY PENDING DISPOSAL OF THE APPLICATION DATED 08-05-2017 PRODUCED AT ANNEXURE-R, WHICH KEPT PENDING AS PER ANNEXURE-U ENDORSEMENT DATED 20-09-2019 BEARING NO.LAQCR03/2014-15 ISSUED BY THE 3RD RESPONDENT, THE SPECIAL LAND ACQUISITION OFFICER AND THE ASSISTANT COMMISSIONER, WITHOUT DUE PROCESS OF LAW OR IN THE ALTERNATIVE TO DIRECT THE SAID 3RD RESPONDENT AUTHORITY TO PAY COMPENSATION FOR THE LAND TO BE ACQUIRED BEFORE TAKING POSSESSION OF THE LAND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. The case of the petitioner is that he is the owner of 29 guntas of land in Survey No.196/1 (new Survey Nos.196/11 and 196/3), Amanikere village, Kasaba Hobli, Tumkur Taluk, Tumkur District. That he requested for a plan to be sanctioned for constructing a residential house on the said property. The said plan was sanctioned to him by an order dated 08.08.2012. However, as the authorities were intending to widen the road which was in front of the property of the petitioner, a condition was imposed on the petitioner that he should put up a compound after 75 feet from the centre of the road and thereafter put up construction in accordance with law. Subject to the said condition, the plan was sanctioned in favour of the petitioner. It is the case of the petitioner that subsequent to the said sanction, a portion of his property has been earmarked for formation of a road for which he has not been paid any compensation. For the said reason, he has made necessary representation to the respondents/authorities stating that his property should not be used without giving the necessary compensation and also has requested them to adopt due process of law in acquiring the said property.



2. Respondent no.3 in this regard has issued the impugned endorsement dated 20.09.2019 wherein it is stated that the request of the petitioner for grant of award has been submitted to the Government and as necessary instructions are not being received, his request has been kept in abeyance. As there was no further communication to the petitioner in this regard, the present writ petition is filed.

3. In the course of arguments, the learned counsel for the petitioner submitted that the petitioner has no objection to acquire that portion of his property which is required for the formation of the road and he limits his prayer to a direction to the authorities concerned for grant of compensation in respect of the land over which the road is intended to be formed.

4. Per contra, the learned counsel appearing for respondent no.4 submits that in the light of Section 32(5) of the Karnataka Urban Development Authorities Act, 1987 (for short 'the Act'), the petitioner is not entitled to any compensation for the land over which the road is being formed. The case of respondent no.4 is that any person who intends to form a layout is liable to surrender certain extent of land to the authorities concerned for



formation of road, civic amenities, parks and the like and for that reason, he is not entitled to any compensation and in the instant case, the petitioner requested for sanction of plan for putting up a residential unit on 29 guntas of his land for which he is required to surrender a portion of his land for widening of the road and the plan has been sanctioned accordingly.

5. The question that arises for consideration in the instant writ petition is as under:

"Whether as per Section 32(5) of the Act, the petitioner is required to forego a portion of his land for formation of the road without any compensation?"

6. As per the plan sanctioned, the condition imposed on the petitioner in respect of foregoing portion of his land for formation of the road is that as the road is being widened to 150 feet, the petitioner is required to put up a compound after a distance of 75 feet from the middle of the road. The plan sanctioned does not mention anything about the petitioner forfeiting his rights over the property on which the road is required to be formed. Section 32 of the Act deals with



formation of new extension or layouts or making new private streets. Section 32(5) of the Act is enacted in this regard and it reads as under:

"32. Formation of new extension or layouts or making new private streets.-

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) The authority may require the applicant to deposit, before sanctioning the application, the sums necessary for meeting the expenditure for making roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purpose as such applicant may be called upon by the authority, provided the applicant also agrees to transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas, laid out by him to the authority, permanently without claiming any compensation therefor."

7. When a layout is being formed, public roads, civic amenity sites, parks and other areas for infrastructure development in the interest of public at large will be required to be made and the same are required to be transferred to the civic authorities for the use of the public and that according to law shall be done, without any compensation paid to landlord. Section 32(5) of the Act is enacted for this particular purpose and it has no application for a single plot development. The question to



be asked here is, if the land of the petitioner were to have been situated beyond 75 feet from the middle of the proposed road, whether the authorities would have demanded surrendering a portion of the property to the authorities. The answer is *No*. This Court while examining the provision under Section 32(5) of the Act in ***Mr. M.Raju vs. State of Karnataka & Ors. (2023 0 Supreme (Kar) 224*** has held at paragraphs 9 to 12 as under:

"9. Subsection (5) of Section 32 of the KUDA Act, in my considered opinion, would come into play only when a landowner were to submit for approval a layout plan, and in the said layout plan-roads, parks, open spaces, and civic amenities are to be created and required to be surrendered by the said land owners in compliance with the applicable zonal regulations.

10. Subsection (5) of Section 32 of the KUDA Act is only applicable to such areas within the layout proposed to be formed and sought for approval, Subsection (5) of Section 32 of the KUDA Act would not apply to any road situate outside the layout.

11. In the present case, as observed above, it is the respondents, who are proposing to widen an existing 24 meter road to a 30 meter road and this road would not have been laid by the applicant or proposed to be laid. The operative word in Subsection (5) of Section 32 of the KUDA is "laid out by him", this 24 feet road is an obligation to be discharged by respondent Nos.2 and 3 for access to the citizens.



12. The authority cannot now seek to contend that because it has to discharge its obligation, a private citizen is to surrender his land free of cost without compensation. If at all the authorities wish to widen the road, it is always open to them to seek for acquisition of the land in terms of applicable law. A statutory authority like respondent No.2 or 3 cannot, by abusing the provisions of law contained in KUDA or the Zonal Regulations, prevail upon or coerce a citizen to part with his land free of cost."

Thus, in the instant case, respondent nos.4 and 5 are required to compensate the petitioner for forming a road on the land of the petitioner.

8. Hence, the following:

ORDER

Respondent nos.4 and 5 are directed to pass necessary award and compensate the petitioner or owner of the property, which is the subject matter of the writ petition, which is used/intended to be used for formation of the road.

The writ petition stands disposed of accordingly.

**Sd/-
JUDGE**

hkh.