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**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 2ND DAY OF DECEMBER, 2024
PRESENT
THE HON'BLE MR JUSTICE R.DEVDAS
AND
THE HON'BLE MR JUSTICE G BASAVARAJA
WRIT APPEAL NO.200165 OF 2023 (LB-RES)**

BETWEEN:

1. THE PRL. SECRETARY TO GOVERNMENT
URBAN DEVELOPMENT DEPARTMENT
VIKAS SOUDHA BENGALURU – 560001.
2. THE DEPUTY COMMISSIONER
VIJAYAPURA,
DISTRICT VIJAYAPURA – 586101.

...APPELLANTS

(BY SRI.MALHAR RAO K., AAG &
SRI.MALLIKARJUN C. BASAREDDY, GA)

AND:

1. MAHAVEER S/O TILOKCHAND OSWAL
AGE: 56 YEARS,
OCC: AGRICULTURE & BUSINESS,
R/O: TROSWAI, NEW KIRANA BAZAR,
TQ. AND DIST. VIJAYAPURA – 586104.
2. ANIL S/O DINAKAR AVALE
AGE: 56 YEARS,
OCC: BUSINESS & AGRICULTURE,
R/O: WARD NO.35, BURTRA COLONY,
ATHANI ROAD,
VIJAYAPURA – 586102.





3. THE COMMISSIONER,
VIJAYAPURA
URBAN DEVELOPMENT AUTHORITY,
BASAVANA BAGEWADI ROAD,
VIJAYAPURA – 586101.

...RESPONDENTS

(BY SRI.SANGANABASAVA B.PATIL, ADV. FOR R1 & R2;
SRI.S.S.HALALLI, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE
ORDER OF THE LEARNED SINGLE JUDGE DATED 06.07.2023
PASSED IN WRIT PETITION NO.201785/2023 (LB-RES).

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE R.DEVDAS
AND
HON'BLE MR JUSTICE G BASAVARAJA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE R.DEVDAS)

1. The State through its Principal Secretary, Urban
Development Department along with Deputy
Commissioner, Vijayapura, have filed this intra Court
appeal assailing the impugned order passed by the learned
Single Judge in W.P.No.201785/2023 dated 06.07.2023.

2. The respondents had filed the writ petition aggrieved
of the fact that the Vijayapura Urban Development



Authority had not acted on the application filed by the writ petitioners seeking approval of a layout plan. The writ petitioners were informed that their lands were included in a scheme proposed by the authority under Notification dated 13.08.2010 notified in the Official Gazette on 26.08.2010. The scheme was announced under Sections 17(1) & 17(3) of the Karnataka Urban Development Authorities Act, 1987 (for short hereinafter referred to as 'the Act, 1987'). The Urban Development Authority, Vijayapura had proposed the scheme to form a residential layout for the benefit of the general public in terms of Sections 35 and 36 of the Act, 1987. In terms of Section 35, the authority is empowered to enter into an agreement with the owner of any land, with prior approval of the Government which would enable the authority to allot developed sites to the owner of the land in lieu of compensation determined in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as could be found in Rule 3 of the Karnataka Urban



Development Authorities (Allotment of Sites in Lieu of Compensation for the Land Acquired) Rules, 2009.

3. Learned Single Judge, however, noticed the fact that earlier too, the Court dealt with such matters where such schemes were announced by the State and the concerned Urban Development Authority, in W.P.No.201228/2023 dated 23.05.2023 and had declared that the scheme proposed by the State and the Authority had lapsed. Consequently, while issuing a mandamus directing the authority to consider the representation given by the respondents within a period of eight weeks from the date of receipt of a copy of the order, directions were also issued to the respondent/State to communicate the orders passed in W.P.No.201228/2023 dated 23.05.2023 and W.P.No.200570/2017 dated 14.06.2019 to all concerned authorities under their jurisdiction covered under 50:50 scheme for development of residential plots about the lapsing of the scheme within a period of two weeks from the date of the order.



4. Learned Additional Advocate General appearing for the appellant-State seeks to contend that the learned Single Judge has not considered the fact that this Court and the Hon'ble Supreme Court has in several decisions directed that courts should also be very strict while considering the plea of the land owners seeking de-notification of the lands which are being acquired or while seeking to quash the notification on the ground of lapsing of the scheme or on any other ground in respect of the acquired lands for the formation of the layout. Attention of this Court is sought to be drawn to the judgment of the Hon'ble Supreme Court in the case of ***M/s. Vinayak Housing Building Co-operative Society Limited Vs. State of Karnataka and others*** in Civil Appeal No.3600/2011. It is contended that the private interest should always stand subordinate to public interest.

5. Learned Additional Advocate General submits that the State Government has floated such scheme having regard to the express provisions contained in Sections 35



& 36 of the Act, 1987 and the Rules framed thereunder, known as the Karnataka Urban Development Authorities (Allotment of Sites in lieu of Compensation for the Land Acquired) Rules, 2009. It is submitted that such schemes have been formulated and notified for the benefit of the general public and to ensure that the residential sites are allotted to persons who do not have houses of their own. As an alternative, it was also submitted that mere lapsing of the scheme would not disentitle the authority from acquiring the land afresh and such directions could not have been issued by the learned Single Judge.

6. Per contra, learned counsel for the respondents/writ petitioners submits that the very same learned Single Judge had earlier in the case of respondent No.1 Sri Mahaveer, in W.P.No.205426/2019 dated 27.01.2021 had held that in terms of Section 27 of the Act, 1987, the scheme would lapse after five years, unless extended. It was further pointed out that a Co-ordinate Bench of this Court at Dharwad, in W.A.No.100169/2021, by order



dated 02.08.2022 has held that sufficient time has lapsed and therefore, while resorting to Section 4 of the Karnataka Land (Restriction on Transfer) Act, 1991, the learned Single Judge has noticed that in the absence of notification under Section 19 of the Act, 1987, there is no bar to transfer the property.

7. At this juncture, learned Additional Advocate General would point out from Paragraph 5 of the order passed by Co-ordinate Bench in WA.No.100169/2021 that, no time limit is prescribed on the authorities to complete the process of acquisition. It was pointed out that the reliance was placed on the judgment of the Apex Court in the case of ***Bangalore Development Authority and Another Vs. State of Karnataka and Another*** reported in **(2018) 9 SCC 122.**

8. Having heard the learned Additional Advocate General for the appellants, learned counsel for the contesting respondents/writ petitioners, learned counsel for the Vijayapura Urban Development Authority and on



perusing the petition papers, this Court is of the considered opinion that the issue brought before this Court stands covered by the order of the Co-ordinate Bench in the case of ***Belagavi Urban Development Authority Vs. Basavaraj Bhimappa Illiger and Anr*** in WA.No.100169/2021 (supra). The Act, 1987, no doubt empowers the concerned Urban Development Authority, under Section 15 to draw up detailed schemes for the development of urban area. With previous approval of the Government, the Authority may undertake from time to time any works for the development of the urban area and incur expenditure therefor also for framing and execution of development schemes. Section 16 requires the authority to furnish the particulars for a development scheme. Section 17 prescribes the procedure on completion of the scheme. When a development scheme has been prepared, the authority shall draw up notification stating the fact of a scheme having been made and the limits of the area comprised therein, while publishing a statement of all such particulars, the scheme, a map of



the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which betterment tax may be levied, so that it can be seen at all reasonable hours. A copy of such notification is required to be sent to the local authority within 30 days and on such notification being received, the local authority may give any representation to the State Government. The authority is required to cause a copy of the said notification to be published in two consecutive issues of a local newspaper having wide circulation in the area. If no representation is received from the local authority within the time specified in Sub-section 2 of the Section 17, the concurrence of the local authority to the scheme shall be deemed to have been given.

9. More importantly what is noticeable is that, in terms of Section 18 of the Act, 1987, after publication of the scheme and service of notice as provided in Section 17 and after consideration of the representations, the authority is required to submit the scheme for the sanction



of the Government furnishing a description with full particulars of the scheme including the reasons for any modification inserted therein; complete plans and estimate of the costs of executing the scheme, etc. Thereafter, in terms of the Section 19, after sanction of the scheme, the Government shall publish in the official gazette a declaration stating the fact of such sanction and that the land proposed to be acquired by the authority for the purpose of the scheme is required for a public purpose. The declaration requires several details to be contained therein. Section 27 of Act, 1987 provides that if the authority fails to execute this scheme substantially, within a period of 5 years from the date of publication in the official gazette of a declaration under Sub-section (1) of Section 19, the scheme shall lapse and the provisions of Section 36 shall become inoperative.

10. What is noticeable here is that, there is no declaration notified under Section 19(1) of the Act at the hands of the State Government. What is notified is only a



proposal for a scheme under Section 17(1) and 17(3) of the Act, 1987.

11. The lapsing of the scheme as contemplated under Section 27 of the Act, 1987, is completely different from lapsing of the scheme as contemplated in Bangalore Development Authority Act. That scheme is in respect of a notification for acquisition issued under the Bangalore Development Act. The question of lapsing of the scheme in the present context arising out of the Act, 1987, would arise only if a declaration under Section 19(1) of the Act is issued by the State Government. Such declaration not having been issued by the State Government in terms of Section 19(1) of the Act, 1987, this Court should hold that nothing else has happened at the hands of Vijayapura Urban Development Authority and the State Government, other than publishing a notification under Sections 17(1) and 17(3) of the Act, 1987. Even otherwise, the learned Single Judge is right while holding that the scheme has lapsed, since admittedly the notification under Sections



17(1) and 17(3) of the Act, 1987 was issued on 13.08.2010 and gazetted on 26.08.2010, and nearly 14 years have elapsed pursuant to the said notification.

12. It is pertinent to notice the decision of the Hon'ble Supreme Court in the case of ***T.Vijaylakshmi and others vs. Town Planning Member and Another*** reported in ***(2006) 8 SCC 502***, wherein it is held that the right to property of a person would include a right to construct a building. Such a right flows from the postulates of Article 300A of the Constitution of India. It was held that the right of a person to construct residential house in a residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute. It was held that it is also a trite law that the building plans are required to be dealt with in terms of existing laws. Determination of such a question cannot be postponed, far less taken away. Doctrine of Legitimate Expectation in a case of this nature would have a role to play.



13. In the light of the above, we find that the application filed by the contesting respondents/writ petitioners seeking approval of layout plan at the hands of Vijayapura Urban Development Authority was required to be considered by the authority in accordance with the provisions of the Karnataka Town and Country Planning Act. An endorsement could not have been issued by the authority declining to sanction the plan on the ground that scheme was proposed by the authority way back in the year 2010 for development. A right would arise to the authority to decline such application only if a notification is duly published preliminarily for acquisition of the lands for formation of a scheme or a layout. The Urban Development Authority would get a right to decline such an application only if an acquisition notification is published in accordance with law.

14. It is also noticeable that Rule 3 of the Rules, 2009, which provides for allotment of sites in lieu of compensation, also provides that if the authority enters



into an agreement with the land owner by mutual consent and if the owner of the land agrees for sale or consents for acquisition of his land free from all encumbrances, etc., the authority is permitted to allot sites in lieu of compensation. Therefore, if there is no such agreement entered into between the authority and the land owners, the authority or the State Government cannot insist that the land owner should not develop his land. Such a stand would be contrary to the rights flowing from Article 300A of the Constitution of India. It is by now well settled that though right to property is not a fundamental right, nevertheless, it continues to be a constitutional right arising out of Article 300A of the Constitution.

15. This Court should also observe the fact that Urban Development Authority is not in appeal before this Court. It is the State Government and the Deputy Commissioner who have come before this Court in this intra Court appeal calling in question the orders passed by the learned Single Judge. We do not understand as to how the State



Government is aggrieved of the impugned order passed by the learned Single Judge, where directions are issued to the Urban Development Authority to consider such applications which are filed seeking approval of a layout. No declaration is issued under Section 19 of the Act, 1987, or any other acquisition notification, be it under the Land Acquisition Act, 1894 or Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The question of vesting of land in the Government, therefore, would not arise. In such a background, we fail to understand as to how the State Government is aggrieved of the impugned order. We should also notice that alternative prayers are made in the appeal that mere lapsing of the scheme would not disentitle the authority from acquiring the land afresh. There can be no cavil to this argument that the State while exercising its eminent domain power has all the liberty to issue a notification for acquisition and proceed in accordance with law. However, even before a preliminary notification is issued, it would not lie in the mouth of the



State to contend that the authority should not permit the development of the lands at the hands of the owners.

16. Consequently, we proceed to ***dismiss*** the appeal.

17. In view of disposal of the appeal, pending I.A.No.2/2023, stands disposed of.

**Sd/-
(R.DEVDAS)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

BL,DHA,VNR
List No.: 1 SI No.: 3
CT: PS