

**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC
NANJANGUD AT NANJANGUD**

Present : **Sri. Shrinath.A.** B.A.L, LL.B.
I Addl.,Civil Judge & JMFC., Nanjangud

Dated 19th day of March, 2020

O.S. No.477/2015

- Plaintiffs** : 1. Kumara,
S/o late Basavachari,
Aged about 38 years,
R/at Basavanapura Village,
Biligere Hobli,
Nanjangud Taluk.
2. Bharathi,
W/o late Swamy,
Aged about 40 years,
R/at Basavanapura Village,
Biligere Hobli,
Nanjangud Taluk.
3. Madhu,
S/o late Swamy,
Aged about 19 years,
R/at Basavanapura Village,
Biligere Hobli,
Nanjangud Taluk.
4. Subash,
S/o late Swamy,
Aged about 15 years,
R/at Basavanapura Village,
Biligere Hobli,
Nanjangud Taluk.

Since 4th plaintiff is minor represented by his natural guardian, next friend, natural mother Bharathi W/o late Swamy, i.e. 2nd plaintiff.

[By Sri.K.T.R – Adv.]

- Defendants : V/s
1. The Chief Secretary,
State of Karnataka,
Vidhanasouda,
Bangalore.
 2. The Deputy Commissioner,
Mysore District,
District Commissioner Office Building,
Mysore.
 3. The Assistant Commissioner,
Mysore Sub-Division,
District Commissioner Office Building,
Mysore.
 4. The Thasildar,
Nanjangud Taluk,
Taluk Office, M.G.S Road,
Nanjangud.
 5. The Chief Executive Officer,
Mysore Zilla Panchayath,
Krishna Raja Boulevard Road,
Chamarajapuram, Mysore.
 6. Executive Officer,
Nanjangud Taluk Panchayath,
Appolo Circle,
Mysore – Ooty Road,
Nanjangud.

7. Panchayath Development Officer,
Nagarle Grama Panchayath,
Biligere Hobli,
Nanjangud Taluk.
8. Gaythri,
W/o Mahadevu,
Aged about 55 years,
R/at Muguru Village,
T.Narasipura Taluk.
9. Shivakumaraswamy,
S/o Mahadevu,
Aged about 40 years,
R/at Muguru Village,
T.Narasipura Taluk.
10. Smt.Uma,
W/o Suresh,
D/o Mahadevu,
Aged about 37 years,
R/at Muguru Village,
T.Narasipura Taluk.
11. Lingachari @ Ramachari,
S/o late Doddamahadevachari,
Aged about 52 years,
R/at Basavanapura Village,
Biligere Hobli, Nanjangud Taluk.
12. Shivamma,
W/o late Sangachari,
Aged about 62 years,
R/at Basavanapura Village,
Biligere Hobli, Nanjangud Taluk.

[D.1 to D.4 by AGP]
[D.8 to D.10 by Sri.P.S – Adv.]

[D.5 to D.7 by Sri.C.L.B – Adv.]
[D.11 & D.12 by Sri.S.T.S – Adv.]

**ORDERS ON ISSUE No.5 WITH REGARD TO THE CIVIL
COURT HAVING JURISDICTION ON THE QUESTION OF
LAND ACQUISITION**

1. This court at the time of framing the issues had raised an issue with regard to maintainability of the suit as the nature of the suit bars the jurisdiction of the Civil Court under Sec.9 of CPC.

2. This is a suit for declaration to declare that the land acquisition proceeding bearing No. LAQ HSL SR 283/ 78-79 published in gazette dt: 02.07.1979 along with corrigendum published in gazette dt: 04.08.1988 by the defendant No.2 with respect to suit schedule “A” and “B” as null and void and with other consequential reliefs of permanent injunction to restrain the defendants from interfering in the schedule “A” and “B” properties.

3. It is pertinent to note that there is no description of survey numbers in any of the schedule A to D properties. From the perusal of the said notifications as mentioned above, it is seen that initially the land that was acquired under notification was Sy.No.241/1A and 241/1B measuring 20 guntas each. The purpose of such acquisition was to provide housing facilities by allotting sites to the poor and homeless people and such acquisition was for public purpose. Thereafter, on 21.07.1988 there was another notification issued which passed an order citing as erratum/correction, correcting the schedule

in the notification relating survey numbers of the land in Basavanapura Village, Nanjangud Taluk and it was modified by notifying that the lands bearing Sy.No.241/1B2 and 241/1B3 both measuring 20 guntas is notified, instead of Sy.No.241/1A and 241/1B. Accordingly, as per the said erratum the office of the Deputy Commissioner, Mysuru District has issued a corrigendum on 04.08.1988 to that effect, which is under challenge in this case.

4. The case of the plaintiffs is that the lands that were earlier notified ie., Sy.No.241/1A and Sy.No.241/1B being schedule "A" and "B" properties, they are the absolute owners. Upon the said notification and corrigendum, though the survey numbers were corrected, the defendants No.5 to 7 are trying to interfere in the schedule "A" and "B" properties belonging to Plaintiffs. It is their further case that as per the earlier notification and by lieu of corrigendum, their survey numbers were dropped and the Sy.No.241/1B2 and 241/1B3 have been acquired. The defendants have not acquired their schedule "A" and "B" schedule properties as per any notification. Further, to substantiate that their properties are not acquired, these Plaintiffs had written to Assistant Commissioner, Mysore with respect of granting of award based on the said earlier notification. To that an endorsement dt: 19.11.1991 was issues that the plaintiffs' land have not been notified and therefore they are not entitled for any award.

5. The advocate for plaintiffs submits that there has been no

acquisition proceedings in the lands of plaintiffs. From the perusal of the plaint averments, it is seen that at Para 11 that the land acquired by the Deputy Commissioner in the year 1978-79, the boundaries furnished and the survey number of notified lands do not match at all. This fact was noticed by the then Block Development Officer in 1985. The boundaries noted corresponded with Sy.No.241/1B2 and Sy.No.241/1B3 both measuring 20 Guntas each. Further, the advocate for plaintiffs relies on one sketch prepared in their earlier suit bearing O.S No.28/1999, wherein, it is noticed that the plaintiffs are in possession of the lands that were later notified i.e. Sy.No.241/1B2 and Sy.No.241/1B3 and not in Schedule A and B properties. It is the case of the plaintiffs that no acquisition proceedings have been acted upon till now and there has been no allotment of sites by forming sites in Sy.No.241/1B2 and Sy.No.241/1B3. Hence, has challenged the notification and corrigendum on the ground that no notices have been issued to these Plaintiffs which has changed the survey numbers totally notifying the new land and has prayed to declare those notifications as null and void

6. The learned AGP has argued on the said issue submitting that the suit is barred under law because no statutory notice issued under Sec.295(2) and Sec.295(3) of Karnataka Panchayat Raj Act which bars from filing of suit against the Defendant No.5 to 7. Further the challenge to the gazette notification and the corrigendum is barred under law, as there is latches on the part of the plaintiffs in challenging the same. Further, it is submitted that the Civil Court does

not have jurisdiction to adjudicate the matter on the legality of issuance of the notification and the corrigendum which is the subject matter in this suit. Further consequential reliefs of permanent injunction having basis on the said notification and corrigendum, though the civil court is having jurisdiction to decide on the issue of permanent injunction, but that issue being directly in connection with the notification and the corrigendum passed by the Government, and those being under challenge wherein the plaintiffs have sought for declaration to declare such notification and corrigendum as null and void, this Court does not have jurisdiction. Therefore, the suit is barred by jurisdiction on the subject matter being the question of notification and corrigendum regarding land acquisition. Hence, prays to reject the plaint.

7. Heard the learned advocate for plaintiffs and the learned AGP on issue No.5 with regard to the jurisdiction of this court.

8. The following points arise for consideration.

1. Whether the plaintiffs prove that this court has jurisdiction to declare the notification and the corrigendum as null and void with regard to Issue No.5 ?
2. What order?

9. The above points are answered as follows :

Point No.1 : In the Negative

Point No.2 : As per the final order for the following :

REASONS

10. **Point No.1:** This is the suit for declaration to declare that the notification passed under land acquisition proceedings bearing No.LAQ HSL SR 283/1978-79 published on 02.07.1979 and the corrigendum published in gazette dt: 04.08.1988 by the defendant No.2 in respect of schedule "A" and "B" property as null and void. It is the contention of the plaintiffs that initially the Government of Karnataka had notified the lands for acquisition for public purpose in order to provide sites for the homeless people and notified the property bearing Sy.No.241/1A and Sy.No.241/1B1 both measuring 20 guntas each. It is the further case that the boundaries that was mentioned in respect of the said survey numbers tallied with the boundaries that were situated next to these properties bearing Sy.No.241/1B2 and Sy.No.241/1B3 which was noticed. This was later rectified by the Government and changed the notified survey numbers from 241/1B1 and 241/1A to Sy.No.241/1B2 and Sy.No.241/1B3. After making such corrections the Government ie., the Special Deputy Commissioner being the Defendant No.2 has issued gazette notification on 21.07.1988 showing that Sy.No.241/1B2 and Sy.No.241/1B3 have been notified for acquisition and thereafter under erratum has corrected the said notification of LAQ HSL CR 283/1978-79 dt: 30.06.1979 vide the above said notification. Further

thereafter has issued corrigendum to the said gazette notification dt: 30.06.1979 which came to be passed on 04.08.1988 notifying of acquisition of lands bearing Sy.No.241/1B2 and Sy.No.241/1B3.

11. Under these facts of the case the advocate for plaintiffs has further submitted that the defendants being the government officials and panchayat officials have been trying to interfere in Sy.No.241/1A and 241/1B1 which are shown as schedule "A" and "B" properties. The lands that have been notified finally have been described as schedule "C" and "D" properties. Though in the plaint schedule there is no description of survey numbers, from reading plaint, it is construed so. These plaintiffs earlier had filed O.S.No.28/1999 against the defendants No.1, 2 & 4 for permanent injunction in respect of schedule "A" and "B" properties, wherein the suit was decreed in favour of the plaintiffs against the Government. It is further case that sketch was prepared in the said case and accordingly it was observed by the land surveyor that these plaintiffs are in possession of the notified properties as published under final notification and as per corrigendum.

12. The case of the plaintiffs are that though there has been notification in respect of Sy.No.241/1B2 and Sy.No.241/1B3, there has been no acquisition proceedings till date and relies on a document of endorsement issued by the Deputy Commissioner dt: 19.11.1991 wherein the schedule "A" and "B" properties have been not acquired and therefore there is no question of issuing award in respect of those

properties and clarified that it is in the lands of Sy.No.241/1B2 and Sy.No.241/1B3 that acquisition proceedings have been taken up and it is abutting their lands. Therefore, it is the case of the plaintiffs that the defendants being the government officials have tried to interfere in the schedule "A" and "B" properties mistakenly thinking that those properties are notified under the notification and corrigendum that is under challenge under this suit. Now it is the case of the plaintiffs that in the said notification and corrigendum that the lands that are identified falls in Schedule C and D properties ie., Sy.No.241/1B2 and Sy No.241/1B3 and the officials have mistaken with the boundaries of Schedule A and B properties and are claiming Schedule C and D properties as Schedule A and B properties.

13. In Para 8 of the plaint, it is submitted that the defendants No.5 to 7 visited the property within the boundaries described in suit schedule "A" and "B" properties claiming that these properties have been notified. Further in Para 11 of the plaint, there has been mention of mistake in the description of sub-division of survey numbers. The boundaries that have been notified corresponds to Schedule A and B properties. At Para 15 of the plaint, it is submitted that in 1998 the 2nd defendant has issued a notification amending the survey number, but while doing so it is alleged against the defendant No.2 that no notice was issued to the plaintiffs' family members with regard to such change. Furthermore, after issuing such corrigendum has not issued any notices to these plaintiffs but has issued to one Madachari S/o Basavachari who are not the owners of the said notified land in order

to prove possession of the said land. Therefore, the plaintiffs' claim that for the said reasons the acquisition proceedings notified by the 2nd defendant is null and void.

14. As the plaintiffs are challenging the said notification and the corrigendum with regard to the defendant No.2 not properly identifying the notified properties and not specifying the correct boundaries of the schedule "A" and "B" properties and are claiming by defendant No.2 that the possession of the plaintiffs' land is only the notified land, the plaintiffs are put to hardship and therefore the plaintiffs have challenged such notification and corrigendum praying this court to declare as null and void.

15. Though it is submitted by the plaintiffs that no action has been taken of any acquisition in respect of Sy.No.241/1B2 and Sy.No.241/1B3, the advocate for defendants No.5 to 7 have produced documents with regard to such acquisition of land by the Government and has produced documents to show that Hakku Pathra has been issued and Mortgage Deeds have been registered in the name of the beneficiaries pertaining to the properties of sites formed in Sy.No.241/1B2 and Sy.No.241/1B3. The plaintiffs are claiming to be in possession of the Sy.No.241/1B2 and Sy.No.241/1B3 which is contrary to the documents. The entire case of the plaintiffs is based on the notification and the corrigendum that is under challenge in this suit on the ground of identification of the notified land and with regard to the correction of the boundaries. It is not in dispute that the

suit properties were notified under the Land Acquisition Act.

16. The advocate for plaintiffs have relied on a decision of Hon'ble High Court of Karnataka in W P No.42988/2011 between Venkatesh V/s. Special Deputy Commissioner and others. This decision is relied upon to show that as there is no material of any such acquisition in the plaintiffs land, the civil court has jurisdiction to decide on any matters pertaining to civil in nature. In the said facts of the above mentioned case there is no material to show of passing of any award by the Land Acquisition Officer. The plaintiffs in this present case has also relied on a document to show that no such acquisition proceedings have taken in respect of schedule "A" and "B" properties as the defendant No.2 had declined to pass any award. But it is further seen in the present facts of the case that the final notification and the corrigendum that is now passed by the defendant No.2 is in respect of Sy.No.241/1B2 and Sy.No.241/1B3 and now the plaintiffs have challenged the said notification and corrigendum contending that the boundaries that have been shown to the said survey numbers falls in the schedule "A" and "B" properties and therefore has sought for declaring such notification and corrigendum as null and void.

17. The defendants No.5 to 7 have produced documents of such acquisition as mentioned above, the plaintiffs entire case stands on declaring that the notification and corrigendum is null and void. As there is material on record to show such acquisition proceedings but

such notification and corrigendum being under challenge and there being mistake in the identity of properties, the facts shown in the cited decisions and the present case differs and therefore this decision is not applicable to the present facts of the case.

18. The learned advocate for plaintiffs has relied another decisions of the Hon'ble Supreme Court of India reported in 2015(2) KCCR SN 154(C) between Zarif Ahamad (D) through Lrs' V/s Mohammed Faruq and another judgment reported in 2006(5) SCC 466 between Subhaga and others V/s Shobha and others and also another judgment of Hon'ble High Court of Gauhati reported in AIR 2007 Gauhati 18 between Jonaramdas V/s Mohammed Abdul Khadir. These judgments are relied on to show that the properties can be identified by boundaries. It is true that the boundaries give clear description of the said property but the fact remains that the plaintiffs which they are claiming as the properties that are not notified by the Government, the plaintiffs are in possession over the said property upon which the Government is claiming to be as notified lands. Therefore, the notified survey numbers being Sy.No.241/1B2 and Sy.No.241/1B3 and as per the sketch prepared in O.S No.28/1999 it is seen that the plaintiffs are in possession of these properties. But the claim of the plaintiffs is that they are in possession of schedule "A" and "B" properties. But from the notification and corrigendum it remains same in respect of the notified survey number and the land in which the plaintiffs are in possession. This once again goes to show that the notification and corrigendum is the subject matter that has to

be adjudicated, which this court has no jurisdiction. Though by the boundaries the properties could be identified but the fact remains that the notified land and the land in possession of the plaintiffs are claimed to be one and the same and therefore there has to be correction of the said notification upon which the plaintiffs are claiming to declare the said notification and corrigendum as null and void.

19. The another decision relied by the advocate for plaintiffs is of the Hon'ble High Court of Karnataka reported in 1975 AIR KAR 119 between the State of Karnataka and others V/s S.Venkataraj. This decision is in respect of granting of temporary injunction exercised by the civil court pertaining to involvement of Land Acquisition Proceedings under Land Acquisition Act to show that the civil court has jurisdiction in respect of the land acquisition matters. The said decision being only on pertaining to granting of temporary injunction and there being no discussion on exercising of jurisdiction of the civil court with regard to land acquisition matters challenging the notification and any corrigendum, the present decision is not applicable to the facts of the case that has been relied upon.

20. The learned Additional Government Pleader contending to his objections has relied on the decision of the Hon'ble High Court of Karnataka reported in **T. M. Gopala Binnani V/s. All India Confederation Bank in RFA No.1399/2009 dt: 08.08.2013** which is clearly on the point of whether the Civil court having jurisdiction in

respect of the notifications passed under the Land Acquisition Act that are under challenge before the Civil Court. There is reference of the decisions of Hon'ble Supreme Court in the said judgment wherein, it is held that even though the suit is with respect to the permanent injunction, the civil court has no jurisdiction to declare any acquisition proceedings, such as notifications and corrigendum as null and void. It is further held that there is necessary implication in terms of power of civil court to take cognizance under Sec.9 of CPC which is excluded to go into the question of validity or legality of the notification under Sec.4 and declaration under Sec.6 of Land Acquisition Act and it is the exclusive domain of the Hon'ble High Court under writ jurisdiction.

21. In the present facts of the case the plaintiffs in order to claim permanent injunction against the defendants government, is relying on another prayer to declare the said notification and corrigendum passed by the 2nd defendant under Land Acquisition Act as null and void. This court even considering this suit and grants an order of permanent injunction, the dispute further remains as there is no resolve of dispute until there is a finding given in respect of the said notification and corrigendum that is subject matter in this suit, which the plaintiffs are claiming as null and void. Further, it has to be by way of another gazette notification passed to resolve the controversy.

22. From the perusal of the plaint averments at Para 15, the

plaintiffs are claiming that no notice was issued before passing the notification and corrigendum which is the subject matter in this suit and on this issue the plaintiffs are claiming that the said notification and corrigendum is null and void. The said decision relied by the Additional Government Pleader is clearly apt to the present facts of the case and it is with respect to the question of jurisdiction of the Civil Court over the subject matter regarding land acquisition.

23. It is clear that the plaintiffs are claiming their Schedule A and B lands, in the lands in Sy.No.241/1B2 and Sy.No.241/1B3 and the Government has notified the said lands by way of corrigendum and by the notification passed in the year 1979. In this suit the plaintiffs have prayed to declare the said notification and corrigendum as null and void. The plaintiffs are questioning the notification issued by the defendant No.2 that the boundaries furnished with respect to 40 guntas of land is pertaining to Sy.No.241/1B2 and Sy.No.241/1B3 and not their lands. However, as per the report given in O.S No.28/1999 the plaintiffs are in possession of Sy.No.241/1B2 and Sy.No.241/1B3 which are the acquired lands under Land Acquisition. At Para 15 of the plaint, it is contended that the 2nd defendant while amending the survey number did not issue any notice to the ancestors of the plaintiffs and therefore land acquisition proceedings notified by the 2nd defendant is claiming to be as null and void because of the mistake in the boundaries of the notified land which is in accordance to the land belonging to the plaintiffs i.e. Sy.No.241/1A and Sy.No.241/1B1. Therefore the lands which the defendants Government are claiming as

Sy.No.241/1B2 and Sy.No.241/1B3 is not the land and it belongs to the plaintiffs i.e. Sy.No.241/1A and Sy.No.241/1B1. Hence, has filed this suit.

24. The learned Additional Government Pleader has relied that the said suit is also barred from instituting as per Sec.295(2) and Sec.295(3) of Karnataka Panchayath Raj Act 1993 which refers to previous sanction of Zilla Panchayath. It is seen that the defendant No.5 is one of the body under Zilla Panchayath. Further there are no statutory notices as contemplated under said Act has been issued. In the light of the ruling of the Hon'ble High Court in RFA No.1399 of 2009 as mentioned above, this Court answers Point No.1 in the Negative.

25. **Point No.2:** As this order is on Issue No.5 and it being on the question of maintainability of the suit and it being answered in negative and holding that this court has no jurisdiction, there arises no point in deciding on other issues, as no evidence in that regard is laed. As the point No.1 is answered in the Negative, this court proceeds to pass the following:

ORDER

The suit filed by the plaintiffs is not maintainable, as the civil court does not have jurisdiction over the subject matter pertaining to the land acquisition under the

Land Acquisition Act.

The plaint is hereby rejected as the suit is barred under law under Order 7 Rule 11(d).

Office to draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 19th day of March, 2020).

(Shrinath.A)
I Addl., Civil Judge & JMFC
Nanjangud