

Karnataka High Court M/S. Manjog Builders, Bangalore vs Vyalikaval Co-Operative Housing ... on 26 November, 1996 Equivalent citations: ILR 1997 KAR 1223, 1998 (1) KarLJ 495 Bench: Chandrashekariah ORDER 1. The petitioner claims to be in possession of the land bearing Survey Nos. 181 and 182 of Bilakahalli Village, Begur Hobli, Bangalore South Taluk, measuring 1 acre 34 guntas and 1 acre 13 guntas respectively under the agreement of sale dated 24-8-1984. 2. The aforesaid lands were proposed for acquisition by the preliminary notification dated 12-8-1986 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'). The said notification was followed by a final notification dated 24-9-1987. These notifications are challenged by the petitioner in this petition. 3. The learned Government Advocate appearing for the State contended that the petitioner cannot maintain the writ petition as he had no title to the property as on the date of preliminary notification. In reply to this submission the learned Counsel for the petitioner submitted that the petitioner is in possession of the land measuring 1 acre 34 guntas and 1 acre 13 guntas in Survey Numbers 181 and 182 respectively of Bilakahalli Village, Begur Hobli, Bangalore South taluk, under the agreement of sale dated 24-8-1984, executed by the owner of the land agreeing to sell the same. In view of this legal possession, it is submitted that the petitioner has got every right to challenge the acquisition proceedings on the grounds available to the owner of the land. In support of this submission he relied on Section 3(b) of the Act, which reads as follows:- "the expression"person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land". He also relied on sub-section (3) of Section 5A of the Act, which reads as follows:-"For the purpose of this section a person shall be deemed to be interested in land who would be entitled to claim an interest in the compensation if the lands were acquired under this Act". Relying upon the said provisions it is contended that the petitioner being the person in possession under the agreement of sale has an interest in the land and therefore, he is the person interested so as to challenge the acquisition proceedings on all the grounds which are available to the land owner. In reply to the said submission the learned Government Advocate submitted that the petitioner being in possession of the property under the agreement of sale may be a person interested for the purpose of claiming compensation but he cannot be treated as a person interested so as to challenge the very acquisition proceedings as he had not acquired any title to the said property as on the date of the preliminary notification. 4. The learned Counsel for the petitioner in support of his contention relied on the decisions in the case of Sunderlal v Paramsukhdas and Others and in the case of General Government Servants Co-operative Housing Society Limited, Agra v Wahab Uddin and Others . In these decisions it is held that a person who claims to be in lawful possession as on the date of preliminary notification is entitled to claim compensation. These decisions do not help so as to decide the contentions raised in this writ petition regarding the right to challenge the notifications issued under Sections 4(1) and 6(1) of the Act. 5. Sri S.M. Hegde

Kadave learned Counsel for the petitioner cited another decision in the case of *Bai Dosabai v Mathurdas Govinddas and Others* . This decision virtually is in favour of the respondents and not in favour of the petitioner. It is an admitted fact that the petitioner is put in possession of the above said land under the agreement of sale. Whether the right to be in possession under the agreement of sale creates any interest in the property requires to be considered for the purpose of considering the locus standi of the petitioner to challenge the acquisition proceedings. The Supreme Court in the above said decision has held as follows: "Thus the equitable ownership in property recognised by equity in England is translated into Indian law as an obligation annexed to the ownership of property, not amounting to an interest in the property, but an obligation which may be enforced against a transferee with notice or a gratuitous transferee". By a reading of the above, it is clear that under the agreement of sale the person who is put in possession, only has a right to enforce an obligation which other party owed to him. When such being the case no title passes under the agreement of sale. In view of this, I am of the opinion that the person who has no title to the property under the agreement of sale has no right to challenge the acquisition proceedings referred to above. 6. The learned Government Advocate in support of his contention relied upon an unreported decision of this Court in *A. Paramashivaiah v State of Karnataka and Others*. The question that arose for consideration in the said writ petition is whether the lessee of the land which was subject-matter of acquisition has got any interest to challenge the notifications or not. While dealing with this contention, the Division Bench in the said case has held as follows:—"It is well-settled in law that a lessee has no right to question the acquisition as such. This is a case in which the owners are not coming forward complaining of deprivation of land by the acquisition proceedings. Of course, if the petitioner has any right to claim compensation, he could ' agitate for the premature termination of the lease-hold rights consequent to the acquisition. However, it requires to state that there is no question of premature termination of lease-hold rights in the absence of the term because by power of eminent domain, the very land which the petitioner has exploited, is acquired". 7. In the case on hand, the landowners have not challenged the acquisition proceedings. It is only the petitioner who claims to be in possession under the agreement of sale has challenged the acquisition proceedings. As stated earlier under the agreement of sale no title passes from the land owner to the intending purchaser. The Supreme Court in the case of *Smt. Sneha Prabha v State of Uttar Pradesh and Another* , has held as follows:—"It is settled law that any person who purchases land after publication of the notification under Section 4(1) does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings points out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. In other words, the person must be the owner

of the land on the date on which notification under Section 4(1) was published“. In the above said decision, it is held that the person who purchased the property subsequent to the preliminary notification has no locus standi to challenge the acquisition proceedings. In view of the decisions referred to above, the petitioner has no right to challenge acquisition proceedings. 8. For the reasons stated above, writ petition is rejected. Rule is discharged.