

M/S Evershine Monuments Vs. The State of Karnataka

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Court : Karnataka

Decided On : Dec-14-2017

Judge : B.V.Nagarathna

Appeal No. : WP 17852/2014

Appellant : M/S Evershine Monuments

Respondent : The State of Karnataka

Advocate for Pet/Ap. : Sri. B.V.Acharya

Judgement :

- 1 - R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF DECEMBER, 2017 BEFORE THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA WRIT PETITION Nos.17852-17856/2014 & 17969/2014 c/w W.P.Nos.17290/2014 & 17673-17687/2014, W.P.No.20626/2016 (LA-BDA) In W.P.Nos.17852-17856/2014 & 17969/2014 BETWEEN:

1. M/S. EVERSHINE MONUMENTS (EARLIER KNOWN AS M/S. GRANITE EXPORTERS) A PARTNERSHIP FIRM HAVING ITS OFFICE AT NO.15, VITTAL MALLYA ROAD, BANGALORE, REP. BY ITS PARTNER, MR. MUNNAVAR BASHA AGED ABOUT83YEARS.

2. MR. MUNNAVAR BASHA S/O. LATE MOHAMMED BASHA, AGED ABOUT83YEARS, RESIDING AT NO.15 VITTAL MALLYA ROAD, BANGALORE -

560 001.

3. MRS. MAQBOOL JAAN W/O. ASGAR AHAMAD PASHA, AGED ABOUT 50 YEARS, RESIDING AT LAKSHMIPURAM, KUPPAM, ANDHRA PRADESH - 517 425.

4. MRS. MUDASHIRA BEGUM D/O. ASGAR AHAMAD PASHA, AGED ABOUT 45 YEARS, RESIDING AT LAKSHMIPURAM, KUPPAM, ANDHRA PRADESH - 517 425.

5. MRS. REHANA BEGUM D/O. ASGAR AHAMAD PASHA, - 2 - AGED ABOUT 40 YEARS, RESIDING AT LAKSHMIPURAM, KUPPAM, ANDHRA PRADESH - 517 425.

6. MRS. RUKSANA BEGUM D/O. ASGAR AHAMAD PASHA, AGED ABOUT 35 YEARS, RESIDING AT LAKSHMIPURAM, KUPPAM, ANDHRA PRADESH - 517 425. ... PETITIONERS (BY SRI AJESH KUMAR S., ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VIDHANA SOUDHA, BANGALORE - 560 001.

2. THE BANGALORE DEVELOPMENT AUTHORITY REPRESENTED BY ITS COMMISSIONER T. CHOWDIAH ROAD, BANGALORE - 560 020.

3. THE SPECIAL LAND ACQUISITION OFFICER BANGALORE DEVELOPMENT AUTHORITY, K.P.WEST, BANGALORE - 560 020.

4. THE SUB-REGISTRAR BANGALORE SOUTH TALUK, BANGALORE - 560 009.

5. MRS. PARIMALA NAGAPPA, AGED ABOUT 55 YEARS, W/O. LATE H. NAGAPPA, RESIDING AT #93, BILEKANAHALLI DOLLARS COLONY, BANNERGHATTA ROAD, BTM 2D STAGE, BANGALORE - 560 076.-. 3 - 6. MR. C.S. SHIVALLI, S/O. SRI SATHYAPPA, AGED ABOUT 47 YEARS, RESIDING AT KUNDAGOLA KSHETHRA, DHARWAD DISTRICT - 580 001.

7. MRS. SHASIKALA W/O. LATE SHIVAMAHADEVA .M AGED ABOUT 52 YEARS, RESIDING AT NO.668, 45TH CROSS, 8TH BLOCK, JAYANAGAR, BANGALORE - 560 011.

8. DR. T.S. CHANAPPA S/O. LATE DR. T.C. SEETHARAM, AGED ABOUT 40 YEARS, RESIDING AT NO.49, 4TH CROSS, I PHASE, J.P.NAGAR, BANGALORE - 560 078.

9. MR. SHIVAMURTHY BANAPUR HIEMATH, S/O. B.H.M.V. VEERABHADARIAH, AGED ABOUT 49 YEARS, RESIDING AT NO.4, I MAIN, I CROSS, COCONUT GARDEN, NAGARABHAVI, BANGALORE - 560 072.

10. M/S. HOMOEOPATIC FOUNDATION REP. BY ITS CHAIRMAN DR. B.T. RUDRESH S/O. H.N. THIPPESWAMY, AGED ABOUT 58 YEARS, RESIDING AT 54E, 2ND CROSS, BSK III STAGE, III PHASE 4H BLOCK, KATRIGUPPE, BANGALORE - 560 085.

11. MRS. A. SAVITHA W/O. MR. PRASAD, AGED ABOUT 38 YEARS, RESIDING AT NO.5, 29TH MAIN, BTM I STAGE, BANGALORE - 560 076. - 4 - 12. MR. DAYAL KUMAR .R.S S/O. LATE SRIRAMULU NAIDU, RESIDING AT NO.330, 4TH BLOCK, 7TH A MAIN, KORAMANGALA, BANGALORE - 560 034.

13. MR. B.V. KRISHNA REDDY S/O. LATE VENKATASWAMAPPA, AGED ABOUT 70 YEARS, RESIDING AT NO.14, 2ND MAIN ROAD, JAYBHIMANAGAR, BTM I STAGE, BANGALORE - 560 068.

14. MR. CHIKKAREVANNA S/O. AJJAPPA, AGED ABOUT 37 YEARS, RESIDING AT NO.255/N, 3RD BLOCK, BANASHANKARI 6H STAGE, BANGALORE - 560 062. ALSO AT HEMMIGE PURA DHAKLE KENGERI HOBLI, TALAGHATAPURA POST, CHIKKEGOWDANAPALYA, BANGALORE SOUTH - 560 067. ...RESPONDENTS (BY SRI S. VIJAYA KUMAR A. PATIL, ADDL. GOVT. ADVOCATE FOR R-1 AND R-4; SRI BIPIN HEGDE, ADVOCATE FOR R-2 & R-3; SRI M. ERAPPA REDDY, ADVOCATE FOR R-5; SRI D. LEELAKRISHNAN, ADVOCATE FOR R-7; SRI SHARATH S. GOWDA, ADVOCATE FOR R-10; SRI T.N. RAGHUPATHY, ADVOCATE FOR R-13 & R-14) ***** THESE WRIT

PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ALLOTMENT LETTER DATED - 5 - 17.12.2012 VIDE ANN-Z PASSED BY THE RESPONDENT BDA AND ALL THE TRANSACTIONS REFERRED TO HEREIN BEFORE WHICH ARE NOT IN CONSONANCE WITH THE BANGALORE DEVELOPMENT AUTHORITY ACT AND THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT TO BE NULL, VOID AND NON-EST AND ETC., In W.P.Nos.17290/2014 & 17673-17687/2014 BETWEEN:

1. SMT. CHINNA PAPAMMA W/O. LATE RAMAIAH @ DODDANNAIAH, AGED ABOUT 79 YEARS,

2. SRI NAGARAJA REDDY S/O. LATE CHIKKANNAIAH, AGED ABOUT 65 YEARS,

3. SRI NARAYANA REDDY S/O. LATE CHIKKANNAIAH, AGED ABOUT 59 YEARS, SRI PAPANNA, SINCE DECEASED BY HIS LRs.,

4. SRI GOPALA REDDY, S/O. LATE PAPANNA, AGED ABOUT 60 YEARS,

5. SRI CHIKKANNA S/O. LATE PAPANNA, AGED ABOUT 57 YEARS, PETITIONERS NO.1 TO 5 ALL ARE R/AT NO.5, 1ST MAIN ROAD, N.S. PALYA, BTM 2D STAGE, BANGALORE - 560 076.-. 6 - SMT. KAMALAMMA, SINCE DECEASED BY HER LRs.,

6. SMT. SRIMATHI, S/O. SRI BABUL REDDY, D/O. LATE NANJAPPA & KAMALAMMA, AGED ABOUT 44 YEARS, R/AT DODDANEKUNDI, BEHIND GOVT. SCHOOL, NO.10, KOTE NIVAS, BANGALORE - 560

037. SRI THIMMARAYAPPA, SINCE DECEASED BY HIS LRs.,

7. SMT. AKKAYAMMA, W/O. LATE THIMMARAYAPPA, AGED ABOUT 68 YEARS,

8. SRI SRINIVAS REDDY S/O. LATE THIMMARAYAPPA, AGED ABOUT 51 YEARS,

9. SRI RAJAPPA S/O. LATE THIMMARAYAPPA, AGED ABOUT 49 YEARS, PETITIONERS NO.7 TO 9 ALL ARE R/AT NO.18/19, 1ST MAIN, N.S. PALYA, B.G. ROAD, BTM 2D STAGE, BANGALORE - 560

076. SRI NARAYANASWAMY, SINCE DECEASED BY HIS LRs.,

10. SMT. JAYAMMA, W/O. LATE NARAYANASWAMY, AGED ABOUT 72 YEARS,

11. SMT. N. RUKKAMMA D/O. LATE NARAYANASWAMY, AGED ABOUT 52 YEARS, - 7 -

12. SMT. RENUKAMMA D/O. LATE NARAYANASWAMY, AGED ABOUT 49 YEARS,

13. SRI N. BHARATHI D/O. LATE NARAYANASWAMY, AGED ABOUT 44 YEARS,

14. SMT. ARUNA D/O. LATE NARAYANASWAMY, AGED ABOUT 42 YEARS,

15. SMT. JYOTHI D/O. LATE NARAYANASWAMY, AGED ABOUT 39 YEARS,

16. SMT. SHOBA D/O. LATE NARAYANASWAMY, AGED ABOUT 35 YEARS, PETITIONERS NO.10 TO 16 ARE R/AT NO.51/A, 8TH MAIN, 14TH CROSS, BTM 2D STAGE, BANGALORE - 560

076. BENEFIT OF SENIOR CITIZENSHIP IS NOT CLAIMED BY THE PETITIONERS NO.1, 2, 7 AND 10 IN THIS WRIT PETITION. (BY SRI B.V. ACHARYA, SENIOR COUNSEL FOR SRI THE PETITIONERS NO.1 TO 16 HEREIN ARE REPRESENTED BY THEIR GPA HOLDER SRI SHIVASHANKAR REDDY AGED ABOUT 37 YEARS, S/O. A. NAGARAJA REDDY, RESIDING AT NO.3, 20TH CROSS, 7TH MAIN, BTM 2D STAGE, N.S. PALYA, BANGALORE - 560

076. ... PETITIONERS BHADRINATH R., ADVOCATE) - 8 - AND:

1. THE STATE OF KARNATAKA, REP. BY ITS PRINCIPLE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DEPARTMENT, VIKASA SOUDHA, M.S. BUILDINGS, DR. B.R. AMBEDKAR VEEDHI,

BANGALORE - 560 001.

2. THE BANGALORE DEVELOPMENT AUTHORITY, SANKEY ROAD, BANGALORE - 560 020. REP. BY ITS COMMISSIONER.

3. THE SPECIAL LAND ACQUISITION OFFICER, BANGALORE DEVELOPMENT AUTHORITY, SANKEY ROAD, BANGALORE - 560 020. S/O. AJJAPPA, AGED ABOUT 39 YEARS, R/AT NO.255/N, BANASHANKARI 6TH STAGE, III BLOCK, TALAGHATTAPURA POST, BANGALORE - 560 062.

4. CHIKKAREVANNA (BY SRI S. VIJAY SHANKAR, SENIOR COUNSEL FOR (R-4 IMPEADED VIDE COURT

ORDER

DATED 18/07/2014) ... RESPONDENTS SRI B.S. SACHIN, ADVOCATE FOR R-2 & R-3; SRI VIJAYA KUMAR A. PATIL, ADDL. GOVT. ADVOCATE FOR R-1; SRI T.N. RAGHUPATHY, ADVOCATE FOR R-4) ***** THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE PRELIMINARY NOTIFICATION - 9 - DT.19.09.1977 ISSUED FOR FORMATION OF LAYOUT CALLED "BYRASANDRA THAVAREKERE MADIWALA SCHEME" ISSUED U/S 171) OF THE BDA ACT (BDA ACT FOR SHORT) AS FOUND AT ANNEX-C AND THE FINAL NOTIFICATION DT.07.02.1978 ISSUED U/S 191) OF THE BDA ACT AS FOUND AT ANNEX-D AS LAPSED IN TERMS SEC. 24 OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION & RESETTLEMENT ACT 2013 In W.P.No.20626/2016 BETWEEN:

1. SMT. K.S. MEENAKSHI W/O. LATE K.T. VENKATESH, AGED ABOUT 65 YEARS, RESIDING AT NO.501, 1ST A MAIN, M.S. RAMAIAH CITY, J.P. NAGAR, 8TH PHASE, BANGALORE - 560 076.

2. MR. K.V. VASU S/O. LATE K.T. VENKATESH, AGED ABOUT 44 YEARS, RESIDING AT NO.1/9, 12TH MAIN, VIJAYANAGAR, BANGALORE - 560 040 3. MR. K.V. VENUGOPAL S/O. LATE K.T. VENKATESH, AGED ABOUT 42 YEARS,

RESIDING AT NO.1, 13TH A CROSS, WILSON GARDEN, BANGALORE - 560 027, 4. SMT. ANNAPURNA PHUTANE W/O. MANOJ KUMAR PHUTANE, AGED ABOUT 40 YEARS, - 10 - RESIDING AT NO.539, KALACHANDRA, SECTOR 27 SAMBHAJI CHOK PRADHIKARAN NIGDI, PUNE - 411 044.

5. MR. K.V. PRAVEEN KUMAR S/O. LATE K.T. VENKATESH, AGED ABOUT 38 YEARS, RESIDING AT NO.501, 1ST A MAIN, M.S. RAMAIAH CITY, J.P. NAGAR 8TH PHASE, BANGALORE - 560 076. ... PETITIONERS PETITIONERS 2 TO 5 ARE REPRESENTED BY GPA HOLDER SMT. K.S. MEENAKSHI. (BY SRI V.S. HEGDE AND SRI SHAMANTH NAIK, ADVOCATES) AND:

1. STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA, M.S. BUILDINGS, DR. B.R. AMBEDKAR VEEDHI, BANGALORE - 560 001.

2. THE BANGALORE DEVELOPMENT AUTHORITY, SANKEY ROAD, BANGALORE - 560 020 REPRESENTED BY ITS COMMISSIONER.

3. THE SPECIAL LAND ACQUISITION OFFICER, BANGALORE DEVELOPMENT AUTHORITY, SANKEY ROAD, BANGALORE - 560 020. ... RESPONDENTS - 11 - (BY SRI VIJAYA KUMAR A. PATIL, ADDL. GOVT. ADVOCATE FOR R-1; SRI VIJAY SHANKAR, SENIOR COUNSEL FOR SRI M. KARUNAKAR, ADVOCATE FOR R-2 & R-3) ***** THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE PRELIMINARY NOTIFICATION DATED 19.09.1977 ISSUED FOR FORMATION OF LAYOUT CALLED BYRASANDRA THAVAREKERE MADIWALA SCHEME ISSUED UNDER SEC.17(1) OF THE BDA ACT, (BDA ACT FOR SHORT) AT ANNEX-A AND THE FINAL DECLARATION DATED 07.02.1978 ISSUED UNDER SEC.19(1) OF THE BDA ACT AS FOUND AT ANNEX-B AS LAPSED IN SO FAR AS THE PETITIONER'S LAND IS CONCERNED AS THE BDA HAS ABANDONED THE SCHEME IN SO FAR AS PETITIONER'S LAND IS CONCERNED; AND ETC., THE

ORDER

IN THESE WRIT PETITIONS HAVING BEEN RESERVED ON 2011.2017 AND THEY BEING LISTED FOR PRONOUNCEMENT TODAY, COURT PRONOUNCED THE FOLLOWING: - 12 -

ORDER

These writ petitions raise important questions of law and fact. Hence, they have been clubbed together and are heard and disposed of by this common order.

2. At the outset, it is stated that in W.P.No.17290/2014 & W.P.Nos.17673-17687/2014, reference was made to filing of O.S.No.9493/1999 by the petitioners in those writ petitions. At the fag end of hearing of these writ petitions, I noted that I had filed the said suit in the year 1999, but thereafter, another advocate appeared in the suit and it was ultimately dismissed on 27.09.2010. When this aspect was brought to the notice of learned Senior counsel and learned counsel appearing in these writ petitions by me, without any hesitation, they submitted, in unison, that I could proceed to adjudicate these writ petitions. In the circumstances, I concluded the hearing of these writ petitions and have decided the matters.

3. These writ petitions arise pursuant to issuance of Preliminary Notification dated 19.09.1977 under Section 17(1) of the Bangalore Development Authority Act, - 13 - 1976, (hereinafter, referred to as the BDA Act, for the sake of brevity) vide Annexure-C, and declaration and Final Notification dated 07.02.1978 under Section 19(1) of the BDA Act, vide Annexure-D, in respect of Survey No.172/2A of Bilekahalli Village, measuring seven acres. According to petitioners, one Ramaiah had purchased the said extent of land in the said survey number under a registered Sale Deed dated 27.05.1974 from one Krishna Setty. However, in the acquisition notifications, the name of Krishna Setty was mentioned and not that of Ramaiah.

4. The petitioners herein have filed the writ petitions under sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter, referred to as the 2013 Act, for the sake of brevity) seeking a declaration that acquisition initiated

under the provisions of the BDA Act has lapsed. 5.W.P.Nos.17852-17856/2014 & W.P.No.17969/2014 are filed by the purchasers of three acres out of seven acres of land from Ramaiah, while W.P.No.17290/2014 & W.P.Nos.17673-17687/2014 are filed by the legal - 14 - representatives of Ramaiah, and W.P. No.20626/2016 has been filed by the legal representatives of K.T. Venkatesh, who is stated to be a tenant under Ramaiah. As already noted, the petitioners substantial prayer in the writ petitions is to seek a declaration that acquisition initiated pursuant to the Notifications issued on 19.09.1977 and 07.02.1978 under the provisions of Sections 17 and 19 of the BDA Act is deemed to have lapsed.

6. The factual matrix in each of the cases could be succinctly stated as under: a) In W.P.Nos.17852-17856/2014 & W.P.No.17969/2014, petitioners are stated to be the purchasers of three acres out of seven acres of land in Sy.No.172/2A (hereinafter, seven acres of land is referred to as the land in question, for the sake of convenience) under a registered Sale Deed dated 30.06.1983 (Annexure-A). By then, the acquisition notifications had been issued. That the award was passed on 21.03.1984. Thereafter, notification under Section 16(2) (Karnataka Amendment) of the Land Acquisition Act, 1894, (hereinafter, referred to as the LA Act, 1894, for the sake of brevity) was issued in - 15 - the name of Ramaiah on taking possession of the entire land in question being seven acres. That petitioners herein had filed W.P.No.11299/1996 challenging the aforesaid acquisition notifications before this Court and by seeking a direction to the Bangalore Development Authority (BDA) not to demolish the existing structures. The said writ petition was disposed of on 13.09.1996 (Annexure-F), directing the BDA not to demolish nor dispossess the petitioners from three acres of land that petitioners had purchased. Subsequently, the State Government passed an order permitting denotification of lands in respect of which possession had not been taken. Be that as it may. The State government enunciated a Group Housing Policy by order dated 17.11.1995 (Annexure-G). Petitioners sought approval for a housing project of three acres of land, which they had purchased. Their application was rejected by order dated 15.07.2000 (Annexure-K). Being aggrieved, they had preferred W.P.No.26992/2000 before this Court. But the said writ petition was also dismissed by order dated 08.03.2002 (Annexure-L) and Writ Appeal No.3515/2002 was filed against that order, which was also dismissed by judgment dated

20.09.2006 (Annexure-M). The matter - 16 - was carried to the Honble Supreme Court in S.L.P. No.20549/2006, which initially stayed the operation of the order in Writ Appeal No.3515/2002, but subsequently on 10.12.2013, vide order at Annexure-S, permitted the petitioners to withdraw the special leave petition with liberty to take steps before the appropriate forum. b) According to the petitioners, on 15.12.2006, there was an interim order of stay of sale of land advertised by the BDA (Annexure-P) granted by the Honble Supreme Court. Subsequently, there was an order of status quo to be maintained by the parties. But on 17.12.2012, the respondent-BDA allotted petitioners land to respondent No.13 (Annexure-Z). Thereafter, on 28.02.2013, the BDA executed an Exchange Deed for 4420.72 Sq.mts. in favour of respondent No.13 (Annexure- Y) in exchange for some other land. Subsequently, respondent No.13 sold the land allotted to him, to respondent No.14 (Annexure-AA). On 23.08.2013 Respondent No.14 executed a Cancellation Deed (Annexure-AB) in favour of the BDA and, thereafter, BDA restored the land to respondent No.14 under a Restoration Deed dated 25.03.2014 (Annexure-AC).- . 17 - c) That subsequent to withdrawal of the special leave petition, petitioners filed a suit seeking declaration of title and injunction against the BDA in O.S.No.25184/2014. To complete the narration of facts, it is noted from the statement of objections filed by the respondent-BDA that the said suit is pending and that there is no interim order passed in favour of the petitioners. Thereafter, these writ petitions have been filed before this Court invoking sub- section (2) of Section 24 of the 2013 Act. d) In W.P.No.17290/2014 & W.P.Nos.17673-17687/2014, petitioners are the legal representatives of deceased Ramaiah. It is averred that Ramaiah had purchased totally five acres of land, out of which, three acres were sold to the petitioners in W.P.Nos.17852- 17856/2014 & W.P.No.17969/2014. That he retained 1 acre 33 guntas of land. That Ramaiah died on 26.12.1998. Thereafter, the Khata of the said land was transferred in the names of petitioners on 16.01.1999. That the petitioners had filed O.S.No.9493/1999 and during pendency of the said suit, BDA tried to interfere with their possession. The said suit was dismissed by judgment dated 27.09.2010. Being aggrieved, petitioners had - 18 - preferred Regular First Appeal No.2124/2010 before this Court, which was also dismissed on 23.07.2012. It is stated at the Bar that the petitioners have filed a review petition which is pending

before this Court. Contending that they have a right to seek a declaration that the acquisition has lapsed in terms of Section 24 of the 2013 Act, in respect of 1 acres 33 guntas of the land in question, the legal representatives of Ramaiah have filed the said writ petition. e) In W.P.No.20626/2016, petitioners are the legal representatives of late K.T.Venkatesh seeking a similar relief, contending that late K.T.Venkatesh had made an application under the provisions of the Karnataka Land Reforms Act, 1961, as a tenant, seeking grant of occupancy rights. The Land Tribunal by order dated 31.08.1979 granted occupancy rights in respect of sixteen guntas in Sy.No.172/2A totally measuring seven acres (land in question). In the interregnum, Preliminary and Final Notifications were issued by the BDA on 19.09.1977 and 07.02.1978 respectively. To complete the narration of facts, it is noted from the statement of objections filed by the BDA to the said writ petition that K.T. Venkatesh - 19 - had executed an agreement of sale and General Power of Attorney (GPA) in favour of Wajid Pasha. That K.T.Venkatesh had filed O.S.No.1664/1996 seeking relief of declaration and injunction. The Trial Court dismissed the suit on 27.03.2006. In the said suit, Wajid Pasha was impleaded as a co-plaintiff. That K.T.Venkatesh died during the pendency of the suit. Aggrieved by the dismissal of the suit, Wajid Pasha filed Regular First Appeal No.1150/2006 before this Court. By judgment dated 08.06.2016, the said appeal was dismissed. Subsequently, Wajid Pasha filed W.P.No.18059/2013 before this Court assailing the allotment of sites by the BDA, in favour of certain persons. The said writ petition was dismissed as being devoid of merit. Subsequently, these writ petitions are filed by the legal representatives of deceased K.T. Venkatesh invoking sub-section (2) of Section 24 of the 2013 Act.

7. Statement of objections have been filed by the BDA, State Government and respondent Nos.13 and 14 in W.P.Nos.17852-17856/2014 & W.P.No.17969/2014 contending that petitioners are not entitled to any relief under sub-section (2) of Section 24 of the 2013 Act. That - 20 - having regard to the factual findings arrived at by both this Court as well as Civil Court in earlier proceedings and also the fact that award has been passed and possession of the land in question has been taken by the State and thereafter transferred to the BDA, it is contended that the petitioners are not entitled to any relief under sub-section (2) of Section 24 of the 2013 Act. The respondents have therefore sought dismissal of the writ petitions.

8. Statement of objections as well as additional statement of objections have been filed by BDA in W.P.Nos.17290/2014 and connected writ petitions, as well as in W.P.No.20626/2016.

9. I have heard learned Senior counsel and learned counsel for the petitioners and learned Senior counsel and counsel for the respondents and perused the material on record.

10. Adverting to the facts in each of the writ petitions, learned Senior counsel and learned counsel for the petitioners have submitted that having regard to the parameters enunciated in sub-section (2) of Section 24 of the 2013 Act, they are entitled to a declaration that the acquisition in respect of the land in question is deemed to - 21 - have lapsed and, therefore, they are entitled to continue as owners in possession of their respective extents. Sri B.V.Acharya and learned counsel for the petitioners heavily relied upon the decision of this Court in Smt. K.M.Chikkathayamma and others vs. The State of Karnataka and others [ILR 2016 KAR1603 (Chikkathayamma)].

11. In response, learned Senior counsel, Sri S. Vijay Shankar, appearing for the BDA and learned counsel for the private respondents submitted that the petitioners are not entitled to any relief under Section 24 of the 2013 Act as the said Act is not applicable to any acquisition initiated under the BDA Act. Alternatively, it is contended that assuming, but not conceding, that 2013 Act is applicable even to acquisition initiated under the provisions of the BDA Act, having regard to the findings arrived at by this Court as well as by the Civil Court in each of the cases that petitioners have filed no relief could be granted to them under sub-section (2) of Section 24 of the 2013 Act.

12. Learned Senior counsel appearing for the BDA also submitted that writ petitions have to be dismissed in - 22 - limine on the ground of res judicata and that the petitioners by filing the present writ petitions have abused the process of this Court.

13. Learned Senior counsel and learned counsel for the respondents, have also relied upon certain judicial dicta of the Honble Supreme Court to contend that the

dictum Chikkathayamma is not in consonance with those decisions.

14. Having heard learned Senior counsel and learned counsel for the petitioners and learned Senior counsel and learned counsel and learned Additional Government Advocate for the respondents, the following points would arise for my consideration: (i) Whether petitioners are entitled to relief under sub-section (2) of Section 24 of the 2013 Act. In other words, whether Section 24 applies to acquisition initiated under the provisions of BDA Act as held in the case of Chikkathayamma?. (ii) Keeping aside Point No.1 and assuming that the said Section applies to even acquisitions initiated under the BDA Act, whether petitioners are entitled to any relief?. (iii) Whether these petitions are hit by the principles of res judicata?. (iv) What order?. - 23 - The aforesaid points shall be considered in seriatim and chronologically insofar as each of the three batches of writ petitions are concerned. Re. Point No.(i) 15. Petitioners have sought a declaration that the acquisition of Sy.No.172/2A is deemed to have lapsed under sub-section (2) of Section 24 of the 2013 Act. Section 24 of the 2013 Act is extracted for immediate reference as under: 24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases: (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894: (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.-. 24 - (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified

in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. The title or preamble to Section 24 reads as Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. It is explicit, restricted in its scope and not expansive in nature. It is only where the acquisition process has been initiated under - 25 - LA Act, 1894 that the acquisition would lapse, on the existence of conditions as stated in sub-section (2) of Section 24. Same is the case with regard to Clauses (a) and (b) of sub-section (1) of Section 24.

16. The said Section has been interpreted by the Honble Supreme Court in the case of Delhi Development Authority vs. Sukhbir Singh and others [(2016) 16 SCC258 (Sukhbir Singh)]. In said case the acquisition was under the provisions of LA Act, 1894 and not under any other Central or State enactment. Further, it has been held as under: 11. Section 24(1) begins with a non- obstante clause and covers situations where either no award has been made under the Land Acquisition Act, in which case the more beneficial provisions of the 2013 Act relating to determination of compensation shall apply, or where an award has been made under Section 11, land acquisition proceedings shall continue under the provisions of the Land Acquisition Act as if the said Act had not been repealed.

12. To Section 24(1)(b) an important exception is carved out by Section 24(2). The - 26 - necessary ingredients of Section 24(2) are as follows: (a) Section 24(2) begins with a non- obstante clause keeping sub-section (1) out of harms way; (b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act; (c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act; (d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act; (e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again. (underlining by me) 17. Further, in the case of Government (NCT of Delhi) vs. Manav Dharam Trust and another [(2017) 6 SCC751, (Manav Dharam Trust) referring to Sukhbir Singh, it has been observed as under: - 27 - 24. The 2013 Act has made a sea change in the

approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11-A where what would lapse is the ... entire proceedings for the acquisition of land whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 1-1-2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 1-1-2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. To quote R.F. Nariman, J.

in DDA v. Sukbhir Singh: (SCC p.283, para

26) 26. ... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical - 28 - consequence of such putative state of affairs. ... In fact, Section 24(2) uses the expression deemed to have lapsed because the Legislature was cognizant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State, vesting has taken place, after which land acquisition proceedings could be said to have been ended. Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. Even, according to the appellants, the transfers were illegal and void for the reason that there was an impediment for the transfer. Once the acquisition proceedings lapse, all impediments cease to exist. (underlining by me) 18. The aforesaid observations have been made by the Honble Supreme Court while considering the question whether subsequent purchasers/assignees/power of attorney holders etc. have locus standi to file a petition seeking declaration of lapse of acquisition proceedings under - 29 - sub-section (2) of Section 24 of 2013 Act, which, even according to the Honble Supreme Court was the only issue arising in that case. But, nevertheless, the aforesaid observations have been made in the context of land acquisition proceedings initiated under LA Act, 1894.

19. Further, in the case of Aligarh Development Authority vs. Meghsingh (AIR 2016 SC2912, which is also a case arising under the provisions of LA Act, 1894, at paragraph 6 and 7, it has been held as under; 6. Section 24 of the 2013 Act envisages mainly two situations; i) where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force. (ii) where the Award has been passed but neither the owner has been dispossessed nor has he been paid the compensation. Under the first, where the award had not been passed, the acquisition proceedings could continue; but the compensation will have to be determined under the scheme of 2013 Act. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the 1894 Act had already been passed prior to coming into force of the 2013 Act, but - 30 - payment is yet to be made and possession is yet to be taken. In that case, the further proceedings after the award could continue under the old Act of 1894; but if either payment or possession has not taken effect in five years prior to the 2013 Act, then proceedings will lapse.

7. In the case before us, since admittedly the award has not been passed, there arises no question of lapse. The land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of 2013 Act. 20. Thus, by following the observations and interpretation made by the Honble Supreme Court, it becomes clear that Section 24 of the 2013 Act, [whether it is sub-section (1) or sub-section (2)]. applies only when acquisition proceedings have been initiated under the provisions of the LA Act, 1894. Therefore, on that short ground alone, it could be held that Section 24 of the 2013 Act is not applicable to an acquisition initiated under the BDA Act. In this regard, it would be relevant to cite another decision of the Honble Supreme Court in Karnail Kaur vs. State of Punjab [(2015) 3 SCC206, wherein - 31 - sub-section (2) of Section 24 of 2013 Act was applied to a case arising under the provisions of Punjab Regional Town Planning And Development Act, 1995 and declared that the acquisition had lapsed as the conditions under that provision was satisfied, but without touching upon the controversy as it emanates in the present case and having regard to the subsequent judgments referred to above, the said judgment would not be applicable to the instant cases.

21. But having regard to further submissions made by learned Senior counsel and learned counsel for the petitioners that, any acquisition made under the provisions of the BDA Act, is akin to an acquisition made under the provisions of the LA Act, 1894, it is necessary to delve further on the question despite the use of the expression in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 in both sub-section(1) as well as sub-section (2) of Section 24 of the 2013 Act. In this regard, it will be useful to compare the provisions of the LA Act, 1894, with the provisions of the BDA Act.-. 32 - 22. The LA Act, 1894, though a pre-constitution legislation and since repealed, could be traced to Entry-42, List-III (Concurrent List) of the Seventh Schedule of the Constitution, whereas the BDA Act has been enacted by the State Legislature on the strength of Entry-5, List-II (State List) of the Seventh Schedule of the Constitution. The said entries are extracted for immediate reference as under: Seventh Schedule, List III-Concurrent List, Entry 42 - Acquisition and requisitioning of property. Seventh Schedule, List II- State List, Entry-5 - Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Thus, both the Acts have been enacted under two different Entries of two distinct Lists of the Seventh Schedule. Moreover, the object and purpose of the two Acts are distinct.-. 33 - 23. The object and purpose of the LA Act, 1894, is for acquisition of the land for public purposes and for companies. The expression public purpose is defined in Section 3(f) of the said Act. It is an inclusive definition and not an exhaustive one. Section 3(f) is substituted by the Karnataka Amendment with effect from 24.08.1961. On the other hand, the object of the BDA Act, which has substituted City Improvement Trust Board Act, is to provide for the establishment of a Development Authority for the development of the city of Bangalore, now Bengaluru, and areas adjacent thereto and matters connected therewith. Whereas, the provisions of LA Act, 1894, is to acquire land for public purposes, determination of compensation and matters connected therewith and is a general enactment, the object and purpose of the BDA Act is for planned development of Bangalore Metropolitan Area and acquisition of land under Sections 17 and 19 of the BDA Act by issuance of Preliminary and Final Notifications is incidental which is for the purpose of

development schemes, as enunciated in Chapter III of the BDA Act, for Bangalore Metropolitan Area. For that purpose, the BDA has authority to acquire land by agreement with the land - 34 - owners as per Section 35 of the said Act or the State Government could transfer land to the BDA belonging to it or to Corporation or a local authority as per Section 37 or, BDA could directly acquire land from land owners under Chapters III and IV of the said BDA Act.

24. The object and purpose of the BDA Act has been considered by the Honble Supreme Court in the case of Bondu Ramaswamy and others vs. Bangalore Development Authority and others [(2010) 7 SCC129 (Bondu Ramaswamy)], which was a case concerning challenge to acquisition made by BDA for the purpose of formation of Arkavathi Layout, at Paragraph No.47, by holding that, the purpose and object of the BDA is to act as a development authority for the development of the city of Bangalore and areas adjacent thereto. The Preamble of the BDA Act describes it as an Act to provide for the establishment of a Development Authority for the development of the city of Bangalore and areas adjacent thereto and for matters connected therewith. The development contemplated by the BDA Act is carrying out of building, engineering or other operations in or over or under land or the making of any material change in any - 35 - building or land and includes redevelopment (vide Section 2(j) of BDA Act). Therefore, the purpose of BDA Act is to make lay outs, construct buildings or carry out other operations in regard to land.

25. Further, on comparing the provisions of LA Act, 1894, with BDA Act, the Honble Supreme Court has held as under: 79. This question arises from the contention raised by one of the appellants that the provisions of section 6 of the Land Acquisition Act, 1894 (the LA Act, for short) will apply to the acquisitions under the BDA Act and consequently if the final declaration under section 19(1) is not issued within one year from the date of publication of the notification under sections 17(1) and (3) of the BDA Act, such final declaration will be invalid. The appellants submissions are as under: the notification under Sections 17(1) and (3) of the Act was issued and gazetted on 3-2-2003 and the declaration under Section 19(1) was issued and published on 23-2-2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are - 36 - applicable. Section 6 of LA Act requires that no declaration shall be

made, in respect of any land covered by a notification under Section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under section 4 of LA Act. As the provisions of LA Act have been made applicable to acquisitions under the BDA Act, it is necessary that the declaration under Section 19(1) of BDA Act (which is equivalent to the final declaration under Section 6 of the LA Act) should also be made before the expiry of one year from the date of publication of notification under Sections 17(1) and (3) of BDA Act (which is equivalent to Section 4(1) of LA Act).

80. The BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. The BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is, issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation etc. Section 36 of the BDA Act does not make the LA Act applicable in its entirety, but states that the acquisition under BDA Act, shall be regulated by the provisions, so far as they are applicable, of LA Act. Therefore it follows that where there - 37 - are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of LA Act will not apply to the acquisitions under the BDA Act. Only those provisions of LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under BDA Act.

81. The BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under the BDA Act is different from the procedure under the LA Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the Scheme for acquisition under Sections 15 to 19 of the BDA Act and the limited application of the LA Act in terms of Section 36 of the BDA Act, the provisions of Sections 4 to 6 of the LA Act will not apply to the acquisitions under the BDA Act. If Section 6 of LA Act is not made applicable, the question of amendment to Section 6 of the LA Act providing a time-limit for issue of final declaration, will also not apply. (underlining by me) - 38 - 26. Further, in *Offshore Holdings Private Limited vs. Bangalore Development Authority* [(2011) 3 SCC139 (Offshore Holdings)], the

scheme under the BDA Act, 1976, has been alluded to in detail by the Honble Supreme Court as under: Scheme Development Authority Act, 1976 under the Bangalore 17. The primary object of the BDA Act was to provide for establishment of the development authority for development of the city of Bangalore and areas adjacent thereto and for the matters connected therewith.

18. For different reasons, various provisions of this Act were amended from time to time. The term development under Section 2(j) of the BDA Act, with its grammatical variations, means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment. Similarly, Section 2(r) defines the word to erect which in relation to any building includes: 2. (r)(i) any material alteration or enlargement of any building; - 39 - (ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation; (iii) the conversion into more than one place for human habitation of a building originally constructed as one such place; (iv) the conversion of two or more places of human habitation into a greater number of such places; (v) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security; (vi) the addition of any rooms, buildings, houses or other structures to any building; and (vii) the construction in a wall adjoining any street or land not belonging to the owner of the wall, or a door opening on to such street or land; The definitions aforesaid clearly show that they were given a very wide meaning to - 40 - ensure that the check on haphazard and unauthorized development is maintained.

19. The Authority came to be constituted in terms of Section 3 of the BDA Act. The object of the Authority has been spelt out in Section 14 of the BDA Act which states that the Authority shall promote and secure the development of the Bangalore Metropolitan Area and for that purpose, the Authority shall have the power to acquire, hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto. The language of this section shows that powers of wide magnitude are

vested in the Authority and the purpose for which such powers are vested is absolutely clear from the expression to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto. In other words, the primary purpose is planned - 41 - development and other matters are incidental thereto. The acquisition of immoveable property is, therefore, also for the said purpose alone.

20. Chapter III of the BDA Act deals with development plans. Under Section 15, the Authority has to draw up detailed schemes termed as Development Scheme. The Government in terms of Section 15(3) is empowered to direct the Authority to take up any development scheme subject to such terms and conditions as may be specified by it. In terms of Section 16(1) of the BDA Act, every development scheme has to provide, within the limits of the area comprised in the scheme, for the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme. It should, inter alia, also provide for laying and re-laying out all or any land including the construction/ reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, forming open spaces for betterment and sanitary arrangements. The Authority may provide for construction of houses within or without the limits of the area comprised in the scheme. It is clear that the development scheme has to provide for every detail in - 42 - relation to development of the area under the scheme as well as acquisition of land, if any, required. It may be noticed, even at the cost of repetition, that such acquisition is only in regard to the development scheme.

21. Once the development scheme has been prepared, the Authority is expected to draw up a notification stating that the scheme has been made and give all the particulars required under Section 17 of the BDA Act including a statement specifying the land which is proposed to be acquired and land on which betterment tax is to be levied. A copy of this notification is required to be sent to the Government through the Corporation which is obliged to forward the same to the appropriate Government within the specified time along with any representation, which the Corporation may think fit to make, with regard to the scheme. After receiving the scheme, the Government is required to ensure that the notification is

published in the Official Gazette and affixed in some conspicuous part of its own office as well as in such other places as the Authority may consider necessary.

22. In terms of Section 17(5) of the BDA Act, within 30 days from the date of - 43 - publication of such notification in the Official Gazette, the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax and to issue show-cause notice giving thirty days time to the person concerned, as to why such acquisition of building or land and the recovery of betterment tax should not be made.

23. Thus, the provisions of Section 17 of the BDA Act are of some significance. They describe various time-frames within which the Authority/Government is expected to take action. A deemed fiction is introduced in terms of Section 17(4) of the BDA Act where if the Corporation does not make a representation within the time specified under Section 17(2), the concurrence of the Corporation shall be deemed to have been given to enable the authorities to proceed with the matter in - 44 - accordance with Section 17(5) of the Act. Having gone through the prescribed process, the Authority is required to submit the scheme for sanction of the Government.

24. The Authority has been given power to modify the scheme keeping in view the representations received. The scheme shall also provide for the various details as required under Sections 18 (1)(a) to 18(1)(f) and 18(2) of the BDA Act. After considering this proposal, the Government may give sanction to the scheme in terms of Section 18(3). Upon 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 purposes of the scheme is required for a public purpose. This declaration shall be conclusive evidence that the land is needed for a public purpose.

25. The Authority has also been given the power to alter or amend the scheme if an improvement can be made. If the scheme, as altered, involves acquisition

otherwise than by an agreement, then the provisions of Sections 17, 18 and 19(1) shall apply to the scheme in the same manner as if such altered part were the scheme. This entire exercise is to be taken - 45 - in terms of Section 19 of the BDA Act post grant of sanction in terms thereof. 27. Adverting to Section 27 of BDA Act, the Honble Supreme Court has observed that it places an obligation upon the Authority (BDA), to complete the scheme within a period of five years and if the scheme is not substantially carried out within that period, it shall lapse and the provisions of Section 36 shall become inoperative, i.e. this is a provision which provides for serious consequences in the event the requisite steps are not taken within the specified time.

28. Observing that some land may have to be acquired for the purpose of completing the scheme; such land has to be identified in the scheme itself as per Section 16 of the BDA Act. Chapter IV of the BDA Act deals with acquisition of land. Adverting to Sections 35 and 36 of the BDA Act, the Honble Supreme Court has observed that these provisions postulate acquisition of land by two modes. Firstly, by entering into an agreement with the owner of the land; and secondly, otherwise than by agreement which shall be regulated by the provisions of the Land Acquisition Act, in so far as they are applicable.-. 46 - Where the lands are acquired by agreement, there would be hardly any dispute either on fact or in law. Controversies, primarily, would arise in the cases of compulsory acquisition under the provisions of the Act. The intention of the Legislature, thus, is clear to take recourse to the provisions of the Land Acquisition Act to a limited extent and subject to the supremacy of the provisions of the State Act.

29. Comparing BDA Act with Maharashtra Act, the Honble Supreme Court has observed that a very important aspect which, unlike the MRTP Act, (Maharashtra Regional and Town Planning Act), is specified in the BDA Act is that, once the land is acquired and it vests in the State Government in terms of Section 16 of the LA Act, 1894 then the Government, upon (a) payment of the cost of acquisition and (b) the Authority, agreeing to pay any further cost, which may be incurred on account of acquisition, shall transfer the land to the BDA whereupon, it shall vest in the BDA. The Government is further vested with the power to transfer land to the BDA belonging to it or to the Corporation as per Section 37 of the BDA Act.-.

47 - 30. By contrast, the scheme of the LA Act, 1894, which is since repealed by 2013 Act was an expropriatory legislation to provide for acquisition of land for public purposes and for companies. Section 4 of the said Act dealt with publication of Preliminary Notification while Section 5-A provided for hearing objections with regard to the proposed acquisitions. Section 6 dealt with the issuance of a declaration and Final Notification that the land was required for a public purpose. The said declaration was conclusive evidence that the land was needed for a public purpose or for a Company, as the case may be. After making such a declaration, the appropriate government could acquire the land in accordance with the Act. In fact, Part II of the LA Act, 1894, dealt with acquisition which contemplated procedure for the passing of an award; notifying persons interested and taking possession of the land. Part II of the said Act, dealt with the provisions dealing with enhancement of compensation by the reference Court by the land owner seeking a reference for a higher compensation. Part IV dealt with apportionment of compensation, while Part V of the said Act concerned with payment. Acquisition of land for - 48 - companies was dealt with in Part VII of the said Act and a special procedure was prescribed. Part VIII pertained to miscellaneous provisions. Thus, the whole object and scheme of LA Act, 1894, was to acquire land for a public purpose or for the benefit of companies, whereas the object and scheme of the BDA Act is to have planned development of Bangalore Metropolitan Area and in that regard acquisition of land under the BDA Act read with the provisions of the LA Act, 1894 is only incidental to and not the primary object of BDA Act.

31. More specifically, the controversy as to, whether, Sections 6 and 11-A of the LA Act, 1894, were applicable to provisions of the BDA Act or not were considered by the Honble Supreme Court in the cases of Munithimmaiah vs. State of Karnataka and others [(2002) 4 SCC326; Offshore Holdings Private Limited, and Bondu Ramaswamy, the latter two cases have been referred to above. a) In Munithimmaiah vs. State of Karnataka and others [(2002) 4 SCC326 (Munithimmaiah), while referring to the decisions of this Court in Khoday - 49 - Distilleries Ltd., vs. State of Karnataka [ILR1997 Kar. 1419]., in the context of whether Section 6 of the LA Act, 1894, was applicable to Section 19 of the BDA Act (both dealing with declaration and final notification), Honble Supreme Court

has at Paragraph No.15, categorically observed as under: 15. So far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure a planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central Enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing for - 50 - acquisition for the special purposes of the BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it the Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis--vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self- contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or pari materia legislations. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act.-. 51 - When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of

letting them lapse forever, cannot be imported into consideration for purposes of BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the BDA Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11-A, which cannot also on its own force have any application to actions taken under the BDA Act. Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in Khoday Distilleries Ltd. case to exclude the applicability of Sections 6 and 11-A as amended and - 52 - inserted by the Central Amendment Act of 1984 to proceedings under the BDA Act. The submissions to the contra on behalf of the appellant has no merit whatsoever and do not commend for our acceptance. b) While considering the question as to whether (underlining by me) Section 11-A of the LA Act, 1894, applies to acquisitions made under the BDA Act, the Honble Supreme Court in Offshore Holdings Private Limited, has emphatically held that Section 11-A does not apply to acquisitions made under the BDA Act, by observing as follows: 33. The provisions of the Land Acquisition Act, which provide for time-frame for compliance and the consequences of default thereof, are not applicable to acquisition under the BDA Act. They are Sections 6 and 11-A of the Land Acquisition Act. As per Section 11-A, if the award is not made within a period of two years from the date of declaration under Section 6, the acquisition proceedings will lapse. Similarly, where declaration under Section 6 of this Act is not issued within three years from the date of publication of notification under Section 4 of the Land Acquisition Act [such notification being issued after the commencement of the - 53 - Land Acquisition Amendment and Validation) Ordinance, 1967 but before the commencement of Central Act 68 of 1984]. or within one year where Section 4 notification was published subsequent to the passing of Central Act 68 of 1984, no such declaration under Section 6 of the Land Acquisition Act can be issued in any of these cases.

34. A three Judge Bench of this Court in the case of Bondu Ramaswamy v. Bangalore Development Authority while dealing with the contention that

notification issued in terms of Section 17(1) and (3) of the BDA Act appears to be equivalent to Section 4 of the Land Acquisition Act and the declaration under Section 19(1) of the BDA Act appears to be equivalent to the final declaration under Section 6 of the Land acquisition Act, held that all the provisions of the Land Acquisition Act will not apply to the acquisition under the BDA Act and only those provisions of the Land Acquisition Act, relating to stages of acquisition, for which there is no corresponding provision in the BDA Act, are applicable to an acquisition under the BDA Act. The provisions of Sections 4 and 6 of the Land Acquisition Act would not be attracted to the BDA Act as the Act itself provides for such mechanism.-. 54 - 35. Be that as it may, it is clear that the BDA Act is a self-contained code which provides for all the situations that may arise in planned development of an area including acquisition of land for that purpose. The scheme of the Act does not admit any necessity for reading the provisions of Sections 6 and 11-A of the Land Acquisition Act, as part and parcel of the BDA Act for attainment of its object. The primary object of the State Act is to carry out planned development and acquisition is a mere incident of such planned development. The provisions of the Land Acquisition Act, where the land is to be acquired for a specific public purpose and acquisition is the sum and substance of that Act, all matters in relation to the acquisition of land will be regulated by the provisions of that Act. The State Act has provided its own scheme and provisions for acquisition of land.

36. The co-relation between the two enactments is a very limited one. The provisions of the Land Acquisition Act would be attracted only in so far as they are applicable to the State law. Where there are specific provisions under the State Act the provisions of Central Act will not be attracted. Furthermore, reading the provisions of default - 55 - and consequences thereof, as stated under the Central Act into the State Act, is bound to frustrate the very scheme formulated under the State Act. Only because some of the provisions of the Land Acquisition Act are attracted, it does not necessarily contemplate that all the provisions of the Central Act would per se be applicable to the provisions of the State Act irrespective of the scheme and object contained therein. The Authority under the BDA Act is vested with complete powers to prepare and execute the development plans of which acquisition may or may not be a part. The provisions of the State Act can be

implemented completely and effectively on their own and reading the provisions of the Land Acquisition Act into the State Act, which may result in frustrating its object, is not called for. We would be dealing with various facets which would support this view shortly.

37. The provisions of Section 27 of the BDA Act mandate the Authority to execute the scheme, substantially, within five years from the date of publication of the declaration under sub-section (1) of Section 19. If the Authority fails to do so, then the scheme shall lapse and provisions of Section 36 of the BDA Act will become inoperative. The provisions of Section 27 have a direct nexus with the provisions of - 56 - Section 36 which provide that the provisions of the Land Acquisition Act, so far as they are applicable to the State Act, shall govern the cases of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject-matter of execution under the provisions of the BDA Act.

38. On a conjunctive reading of the provisions of Sections 27 and 36 of the State Act, it is clear that where a scheme lapses, the acquisition may not. This, of course, will depend upon the facts and circumstances of a given case. Where, upon completion of the acquisition proceedings, the land has vested in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act. An argument to the contrary cannot be accepted for the reason that on vesting, the land stands transferred and vested in the State/Authority free from all encumbrances and such status of the property is incapable of being altered by fiction of law either by the State Act or by the Central Act. Both these Acts do not contain any provision in terms of which property, once and absolutely, vested in the State can be reverted to the owner on any - 57 - condition. There is no reversal of the title and possession of the State. However, this may not be true in cases where acquisition proceedings are still pending and land has not been vested in the Government in terms of Section 16 of the Land Acquisition Act.

39. What is meant by the language of Section 27 of the BDA Act, i.e. provisions of Section 36 shall become inoperative, is that if the acquisition proceedings are

pending and where the scheme has lapsed, further proceedings in terms of Section 36(3) of the BDA Act, i.e. with reference to proceedings under the Land Acquisition Act shall become inoperative. Once the land which, upon its acquisition, has vested in the State and thereafter vested in the Authority in terms of Section 36(3); such vesting is incapable of being disturbed except in the case where the Government issues a notification for re-vesting the land in itself, or a Corporation, or a local Authority in cases where the land is not required by the Authority under the provisions of Section 37(3) of the BDA Act.

40. This being the scheme of the acquisition within the framework of the State Act, read with the relevant provisions of the Central Act, it will not be permissible to bring - 58 - the concept of lapsing of acquisition as stated in the provisions of Section 11-A of the Land Acquisition Act into Chapter IV of the BDA Act.

44. One of the apparent and unavoidable consequences of reading the provisions of Section 11-A of the Central Act into the State Act would be that it is bound to adversely affect the development scheme under the State Act and may even frustrate the same. It is a self-defeating argument that the Government can always issue fresh declaration and the acquisition in all cases should lapse in terms of Section 11-A of the Central Act. c) Further, in the case of Girnar Traders (3) vs. State of Maharashtra and others [(2011) 3 SCC1, (Girnar Traders)], the Honble Supreme Court on comparing the provisions of Maharashtra Regional and Town Planning Act, 1966, (MRTP Act) which is an Act similar to BDA Act with the provisions of the LA Act, 1894, has observed as under: 130. While referring to Section 6 of the Land Acquisition Act, the State Legislature has not adopted, specifically or otherwise, the - 59 - period mentioned in proviso to Section 6(1) of the Land Acquisition Act. On the contrary, different time-frames have been postulated under different provisions of the MRTP Act. If those limitations of time are not adhered to by the authorities concerned, the consequences have also been provided therefor. From the stage of initiation of steps for preparation of draft plans to the finalization of the scheme, it takes considerable time. Furthermore, its implementation at the ground level, takes still much more time. If this entire planned development which is a massive project is permitted to lapse on the application of Section 11-A of the Central Act, it will have

the effect of rendering every project of planned development frustrated. It can hardly be an argument that the Government can always issue fresh declaration in terms of Section 6 of the Land Acquisition Act and take further proceedings. Recommencement of acquisition proceedings at different levels of the hierarchy of the State and Planning Authority itself takes considerable time and, thus, it will be difficult to achieve the target of planned development.

131. This clearly demonstrates that all the provisions of the Land Acquisition Act introduced by later amendments would not, per se, become applicable and be deemed to - 60 - be part and parcel of the MRTP Act. The intent of the legislature to make the State Act a self- contained Code with definite reference to required provisions of the Land Acquisition Act is clear. xxx xxx xxx 134. However, if the provisions of section 11-A of the Central Act were permitted to punctuate a scheme of the State Act and the award is not made within two years from the date of declaration under Section 6 of the Central Act, the acquisition proceedings will lapse which will frustrate the rights of the State as well as the scheme contemplated under Section 126 as well as Section 127 of the State Act and that would not be permissible in law. This being legislation by incorporation, the general reference to the provisions of the Land Acquisition Act shall stand excluded. xxx xxx xxx 137. The Court cannot lose sight of one very important fact that the MRTP Act is an Act relating to planned development and acquisition is an incidental aspect thereof. Planned development is quite different from merely achieving a public purpose for which the land is acquired under the provisions of the Land Acquisition Act. Development plan, - 61 - Regional Plan and town planning scheme are major events in the development of a State. They are controlled and guided by different financial, architectural and public interest for the development including macro and micro planning of the entire State.

138. The provisions relating to planned development of the State or any part thereof, read in conjunction with the object of the Act, show that different time-frames are required for initiation, finalization and complete execution of such development plans. The period of 10 years stated in Section 127 of the MRTP Act, therefore, cannot be said to be arbitrary or unreasonable ex facie. If the provisions of Section 11-A of the Land Acquisition Act, with its serious consequence of

lapsing of entire acquisition proceedings, are bodily lifted and read into the provisions of MRTP Act, it is bound to frustrate the entire scheme and render it ineffective and uncertain. Keeping in view the consequence of Section 11-A of the Central Act, every development plan could stand frustrated only for the reason that period of two years has lapsed and it will tantamount to putting an end to the entire development process. xxx xxx xxx - 62 - 140. Thus, in our view, reading of Section 11-A of the Land Acquisition Act into Chapter VII of the MRTP Act will render the substantive provisions of the State Act ineffective, unworkable and may frustrate the object of the Act materially. (underlining by me) d) Recently, in Special Land Acquisition Officer, KIADB, Mysore and another vs. Anasuya Bai (D) by LRs. and others (AIR 2017 SC904 (Anasuya Bai)), the question under consideration before the Honble Supreme Court was, as to, whether relief under Section 24 of the 2013 Act could be granted to landowners when acquisition was made under the provisions of the Karnataka Industrial Areas Development Act, (KIAD Act). After referring to the judgment of this Court which was appealed against before the Honble Supreme Court in light of Section 24 of the 2013 Act, Honble Supreme Court noted the observations made by the Division Bench of this Court in the following words: 24. The Division Bench of the High Court by the impugned judgment, however, has quashed the acquisition proceedings itself holding that they have lapsed. For this purpose, the High Court has taken aid of - 63 - Section 24 of the New LA Act in the following manner: 13. It is also noted that the acquisition proceedings including preliminary and final declaration have been passed under the provisions of the KIADB Act. But there is no provisions under the KIADB Act to pass an award and award has to be passed only under the provisions of the LA Act, 1894. If the award has to be passed under LA Act, whether the new act can be pressed into service to hold the acquisition proceedings are lapsed on account of non-passing of award within a period of 5 years u/S11 If the award is passed under LA Act, the enquiry has to be conducted by the Deputy Commissioner or Collector before passing the award. Section 11-A contemplates if the award is not passed within 2 years from the date of publication of the final declaration, the entire proceedings for acquisition of the land shall automatically stands lapsed. It is no doubt true the Hon'ble Supreme Court in the case of M.Nagabhushana Vs. State of Karnataka and Others (2011) 3 SCC408

(AIR 2011 SC1113 has held that Section 11-A of the Act is no application in respect of the - 64 - land acquired under the provisions of the Karnataka Industrial Areas Development Act. We have to consider in this appeal as to whether Section 24(2) of the New Act is applicable in order to hold that the acquisition proceedings deemed to be lapsed due to non-payment of compensation and non-passing of the award within a period of five years from the date of declaration and with effect from non-payment of compensation to the land owners.

14. The New Act does not say whether the Act is applicable to the land acquired under the provisions of the Karnataka Land Acquisition Act 1894. What Section 24 says that if the award is not passed u/S.11 of the Act and the compensation is not paid within 5 years or more prior to new act, if the physical possession of the land is taken or not especially the compensation is not paid or deposited in Court such proceedings deem to have been lapsed. In the instant case, it is not case of the respondent that award is not required to be passed under the provisions of LA Act. When the award is required to be passed under LA Act, the respondents cannot contend that the - 65 - provisions of New Act cannot be made applicable on account of non payment of compensation within a period of five years.

25. This approach of the High Court, we find, to be totally erroneous. In the first instance, matter is not properly appreciated by ignoring the important aspects mentioned in para 24 above. Secondly, effect of non- applicability of Section 11A of the Old LA Act is not rightly understood. 32. After comparing the provisions of the LA Act, 1894 with KIAD Act, Honble Supreme Court on the basis of the decisions rendered under the provisions of the BDA Act, in the cases of Munithimmaiah, Offshore Holdings Private Limited and Girnar Traders (3) (referred to above) has held as under: 32. In Munithimmaiah v. State of Karnataka [(2002) 4 SCC326 : (AIR 2002 SC1574 this Court held that the provisions of Sections 6 and 11-A of the said Act do not apply to the provisions of the Bangalore Development Authority Act, 1976 (the BDA Act). In SCC para 15 at p. 335 of the Report this Court made a distinction between the purposes of the two enactments and held that all the provisions of - 66 - the said Act do not apply to the BDA Act. Subsequently, the Constitution Bench of this Court in Offshore Holdings (P) Ltd. v. Bangalore Development Authority [(2011) 3 SCC139: (2011) 1 SCC (Civ) 662 :

(2011) 1 Scale 533]., held that Section 11-A of the said Act does not apply to acquisition under the BDA Act.

33. The same principle is attracted to the present case also. Here also on a comparison between the provisions of the said Act and the KIAD Act, we find that those two Acts were enacted to achieve substantially different purposes. Insofar as the KIAD Act is concerned, from its Statement of Objects and Reasons, it is clear that the same was enacted to achieve the following purposes: It is considered necessary to make provision for the orderly establishment and development of industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for industrial development and establish a board to develop such areas and make available lands therein for establishment of industries. 33. Next, it is necessary to discuss Smt. K.M. Chikkathayamma and others vs. The State of - 67 - Karnataka and others [ILR 2016 KAR1603, which is a recent judgment rendered by a learned Single Judge of this Court and which is the sheet-anchor of learned counsel for the petitioners. a) The points for determination in the aforesaid case are culled out for immediate reference as under: a) Whether the petitions in WP3886870 and WP Nos.38871-74/2015 are maintainable in view of the acquisition proceedings initiated under the KUDA Act having been quashed and the same being the subject matter of an appeal before a Division bench of this Court. b) Whether the provisions of the LA Act, 1894 or the LA Act, 2013, should be applied to acquisition proceedings under the provisions of the KUDA Act and the BDA Act, if the proceedings are not completed as on the date of coming into force of the LA Act, 2013. c) What order should follow in each of these petitions. Learned Single judge has culled out the ingredients of the said sub-section which is extracted later.-. 68 - b) It is necessary to delineate on this case in detail as heavy reliance has been placed on the said decision by learned counsel for the petitioners. The primary contention canvassed in the aforesaid case was, as to, whether 2013 Act would be applicable to acquisitions initiated under the provisions of the Karnataka Urban Development Authorities Act, 1987 (KUDA Act) and BDA Act. If the answer to the same was in the affirmative, then the acquisition proceeding in the aforesaid case which concerned BDA Act also was deemed to have lapsed. c) In that case, the contention of learned Senior Counsel and learned Counsel for the petitioners was, where a statute is cited by a

reference (the cited statute) (LA Act, 1894) into an another statute (the referring statute) (BDA Act/KUDA Act) any repeal or amendment of the cited statute is automatically carried over or reflected in the referring statute. This was in contrast, to a case of legislation by incorporation wherein the repeal or amendment of the incorporated statute does not automatically affect the incorporating statute. It was further contended in the said case that in Offshore Holdings Private Limited, the Honble Supreme Court held, - 69 - Section 36 of the BDA Act (a provision in pari materia with Section 36 of KUDA Act) to be a case of legislation by incorporation. But, the repeal of LA Act, 1894 and substitution of 2013 Act created an exception and when the exception applied, the effect would be one of legislation by reference. It was contended that, if LA Act, 1894, was to be applied to acquisitions made under the KUDA Act post 01.01.2014, the quantum of compensation to the land owners in relation to acquisitions under the KUDA Act would be lesser than the compensation vis--vis acquisition made under 2013 Act, even though the purpose of the acquisition is same (urban or town planning and allotment of house sites). Similarly, the additional benefits in relation to rehabilitation and resettlement of affected families would also not be available to the land owners even though the purpose of the acquisition remains the same. It was emphasized in that case that the provisions of 2013 Act are more beneficial to the land owners and affected families in land acquisition proceedings. The discriminatory effect as regards compensation and other benefits would occur because there is a complete change in the legislative approach in relation to land acquisition, - 70 - rehabilitation and resettlement under 2013 Act which is more beneficial to the land owners. It was further contended in the said case that the land owners would thus be entitled to different rates of compensation and other resettlement and rehabilitation benefits, depending upon which Act the acquisition is made, whether under the BDA Act or KUDA Act or the central land acquisition enactments resulting in a discriminatory effect being in violation of Article 14 of the Constitution. d) Per contra, the State through learned Advocate General submitted in the said case that the intention of Section 24 in 2013 Act is different and distinct in that the said section has specific reference to acquisition proceedings initiated under LA Act, 1894. That the object and purpose of Section 24 is not only to save acquisition initiated under LA Act, 1894, but also to declare lapse of acquisition under sub-section (2) of Section 24

and to also give the benefit of the 2013 Act under certain circumstances. It was further contended that Section 27 of KUDA Act as well as BDA Act provide for lapse of scheme of development and consequent inoperation of Section 36 of the Act. That BDA Act being a complete - 71 - code by itself, lapse of acquisition has to be considered under that Act only. It was further contended that Section 24 is more in the nature of a transitory provision and an exception and operates as a link between LA Act, 1894 and 2013 Act. e) While considering point No.2 extracted above, learned Single Judge in the said case held with regard to interpretation of sub-section (2) of Section 24 of the 2013 Act as under:- Section 24(2) of the LA Act, 2013 provides for lapse of acquisition proceedings commenced under the LA Act, 1894, on the satisfaction of certain conditions, which are as follows: a. The award of compensation should have been passed five years or more prior to the commencement of the LA Act, 2013. In that, it should have been passed prior to 01.01.2009; AND b. Physical possession of the land has not been taken; OR c. Compensation has not been paid.-. 72 - The Apex Court has interpreted the requirement of possession being taken under Section 24(2) of the LA Act, 2013, to mean that actual physical possession has to be taken and mere symbolic possession would not suffice. Although learned Single Judge has noticed that sub-(emphasis by me) section (2) of Section 24 of the 2013 Act applies to acquisition proceedings commenced under the LA Act, 1894, nevertheless has also held that the answer to the second point for consideration is that it is the LA Act, 2013 that shall be applied to acquisition proceedings under the BDA Act and KUDA Act, that have remained without being completed in all respects as on 1.1.2014, and proceedings that have been initiated thereafter. f) Thus, learned Single Judge after referring to Section 24 of 2013 Act, held that it was applicable even to acquisitions made under the provisions of the BDA Act as well as KUDA Act. Learned Single Judge however noted that sub-section (2) of Section 24 is a substantive provision of law which saves acquisition as well as affords - 73 - the prospect of land sought to be acquired reverting to the land owner under certain conditions.

34. The said decision was rendered on 10.03.2016. It is stated at the Bar that the said decision has been appealed against by the BDA and a Division Bench of this Court has stayed the order passed in the said case.

35. There are several other decisions, which are similar to the decisions rendered in Chikkathayammas case, which are cited at the Bar by learned counsel for petitioners. In Sri Munibyrappa and another vs. State of Karnataka and others, (W.P.Nos.32950-951/2015 and connected matter disposed of on 18.7.2017), there is no discussion on the legal aspect of the applicability of sub-section (2) of Section 24 of 2013 Act to an acquisition initiated under the BDA Act. On the facts of that case, relief was given to the petitioners therein on the assumption that Section 24 of 2013 Act applied to an acquisition initiated under the BDA Act. Similarly, in Jayamma and others vs. State of Karnataka and others, (W.P.Nos.59417-59419/2013 disposed of on 18.07.2016), proceeded on facts as if the said section was - 74 - applicable to an acquisition initiated under the BDA Act. In T.B.R.Boranna and others vs. The Bangalore Development Authority and others, (W.P.Nos.16634- 16636/2014, disposed of on 22.04.2016), without considering the legal aspect of the applicability of sub- section (2) of Section 24 of 2013 Act, this Court held that the conditions mentioned under the section were applicable and allowed the writ petitions by declaring that the acquisition had lapsed. So also, in the case of Smt. Padmavathi and others vs. State of Karnataka and others (W.P.Nos.23251-255/2016, disposed of on 09.08.2017) the petitioners therein did not press their case under sub-section (2) of Section 24 of 2013 Act. But, nevertheless, this Court held that BDA had abandoned the acquisition and allowed the writ petitions by holding that the acquisition had lapsed. In Writ Appeal Nos.4302- 4304/2016, Bangalore Development Authority and another vs. Smt. Prema and another, (disposed of on 23.11.2016), the Division Bench of this Court proceeded on the basis that the writ petitioner therein had been in settled possession of a constructed building and thus settled things should not be unsettled. Without there being - 75 - any discussion on the applicability of sub-section (2) of Section 24 of 2013 Act, the Division Bench held that the acquisition had lapsed and dismissed the writ appeal which was filed after a delay of 199 days. In Bangalore Development Authority vs. M. Narasimhaiah and others (W.A.No.3306/2016 and connected matters disposed of on 05.01.2017), the judgment of the Division Bench proceeded on the premise that the learned Single Judge had held that the scheme for formation of layout had been abandoned and the acquisition proceedings were quashed, on a finding that out of the initial

notification proposing to acquire 225 acres after the Final notification and on issuance of notification under sub-section (1) of Section 48 of LA Act, 1894, releasing certain extents from acquisition, there were only 20 acres left for the purpose of formation of layout. Therefore, the Division Bench held that in roughly 20 acres of land in isolated pieces no layout could be formed. Consequently, it held that the scheme to form a layout stood frustrated. *M/s.Arunachalam Properties vs. State of Karnataka and others* (W.P.Nos.10962 and 12456-457/2012 and connected writ petitions) pertains to an order dated 18.12.2012 passed - 76 - prior to the enforcement of 2013 Act. The said order is not applicable to the point in issue. Therefore, the aforesaid judgments relied upon by learned Counsel for the petitioners are not applicable having regard to the nature of controversy in this case.

36. In *Sri Suryaprakash and others vs. State of Karnataka and others* (W.P.Nos.10286-291/2014 disposed of on 5.12.2016) the petitioners therein expressly submitted that they did not press their case under sub-section (2) of Section 24 of 2013 Act as according to them that provision did not arise for consideration in that case. Even de hors sub-section (2) of Section 24 of 2013 Act the petitioners sought a declaration that the acquisition proceeding had been abandoned by the BDA and had stood lapsed and such a declaration was granted to subsequent purchasers therein, who were the petitioners in that case. On the other hand, in *H.A. Balaji vs. The State of Karnataka and others* reported in ILR2011 Kar. 2727, it was held that having regard to the judgments of the Honble Supreme Court in the case of *Munithimmaiah and Offshore Holdings Private Limited*, the concept of lapse of acquisition as envisaged under Section - 77 - 11A of LA Act, 1894, could not be imported into the provisions of BDA Act and that if the award was not made within a reasonable time i.e. five years, then the land owners therein could seek additional compensation by bearing in mind that under Section 27 of BDA Act, there must be substantial implementation of the scheme within five years. In the said case the award had not been passed within the said five years.

37. In my humble opinion, the judgment in *Chikkathayammas* case as well as similar judgments in other cases, in the context of KUDA, 1987 and BDA Act have

been rendered without making an analysis of Section 24 of the 2013 Act, with regard to its applicability to acquisitions initiated under those Acts as opposed to acquisitions initiated under LA Act, 1894. Further, judgments of Honble Supreme Court in that regard have not been considered and followed and without bearing in mind the distinction in the object and scheme of the LA Act, 1894 and the BDA Act, as well as the decisions rendered by the Honble Supreme Court in that regard. Learned Single Judge by his order has granted relief under sub-section (2) of Section 24 of 2013 Act. While a - 78 - reference has been made to the decisions of the Honble Supreme Court in the case of Bondu Ramaswamy, Munithimmaiah, and Offshore Holdings Pvt. Ltd., the said reference is not in depth, as a detailed consideration of the aforesaid judgments, which have been rendered on a detailed comparison of LA Act, 1894 with BDA Act, would have thrown light on the object and scope of Section 24 of 2013 Act.

38. Reliance placed on the observations made by Honble Supreme Court in the aforesaid decisions referred to above in detail would clearly indicate that the object and scheme of the LA Act, 1894 and the BDA Act, being distinct and meant for different purposes, it cannot be construed that acquisition initiated under the provisions of the BDA Act, is an acquisition initiated under the provisions of the LA Act, 1894. More significantly, the judgment in Chikkathayammas case does not take into consideration the dicta of the Honble Supreme Court in the case of Sukhbir Singh and the subsequent decision in the case of Manav Dharam Trust, which are directly on the issue of applicability of sub-section (2) of Section 24 of the 2013 Act to only acquisitions initiated under LA Act, 1894.-. 79 - 39. With respect, the judgment in the case of Chikkathayamma and other judgments which are similar in nature cannot be considered to be binding precedent as they are contrary to the dicta of the Honble Supreme Court referred to above as well as the provision of Section 24 of the 2013 Act and hence cannot be applied to the present cases which deal with acquisition under BDA Act. There are also additional reasons for holding so.

40. Revisiting the words of Section 24 of the 2013 Act, what is significant to note is the fact that the said Section expressly refers to land acquisition proceedings initiated under the LA Act, 1894. The said Section does not incorporate the words

or proceedings initiated under any other enactment. Therefore, the expression land acquisition proceedings initiated under the LA Act, 1894 are significant and must be given its natural and plain meaning and the said expression cannot be given an expansive interpretation by adding words to the provision, in the absence of the provision itself giving rise to any such implication. In this regard, the rules of interpretation of a statute would become relevant and reliance could be placed on guiding principles of interpretation of statute.-. 80 - One such principle is that the Court is not entitled to read words into a provision of an Act or Rule for, the meaning is to be found within the four corners of the provision of an act or rule, as in the instant case. Therefore, while it is not permissible to add words or to fill in a gap or lacuna, on the other hand, effort should be made to give meaning to each and every word used by the legislature. Thus, the golden rule of construction is that the words of a provision of a statute, or rule must be first understood in the natural, ordinary or popular sense. Phrases and sentences must be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. In other words, the golden rule is that the words of a statute prima facie be given an ordinary meaning. Natural and ordinary meaning of words should not be departed from unless it can be shown that the legal context in which the words are used requires a different meaning. Such a meaning cannot be departed from by the judges in light of their own views as to policy unless it is shown to adopt a purposive interpretation of the statute, which does not arise in the instant case.-. 81 - 41. In this context, Harbhajan Singh vs. Press Council of India reported in AIR 2002 SC1351 could be relied upon wherein, Cross on Statutory Interpretation (Third Edition, 1995) has been relied upon as follows:- Thus, an ordinary meaning or grammatical meaning does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. 42. The aforesaid principles being squarely applicable to Section 24 of the 2013 Act, the same must be interpreted having regard to the intention of the Parliament. In this regard, one cannot lose sight of the fact that 2013 Act repeals only LA Act, 1894, and not any other Central or State enactment

dealing with acquisition. Therefore, what are sought to be saved under Section 24 of the 2013 Act, are those acquisitions initiated only under LA Act, 1894 and not any acquisition initiated under any other Central or State enactment. Therefore, the words acquisition proceedings initiated under any other - 82 - enactment cannot be added or supplemented by the Court after the expression in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 under both sub-sections 1 and 2 of Section 24 of 2013 Act. Further, the short title of Section 24 of 2013 Act reads as Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. This is another indication that Section 24 applies only to those acquisition initiated under the provisions of LA Act, 1894.

43. Further, Section 24 creates a new right in favour of land owners in as much as they are entitled to relief under certain circumstances as stipulated in Section 24 of the Act. One such relief is under sub-section(2) of Section 24 of the Act, dealing with lapse of acquisition by a fiction. It is a deeming provision, provided the stipulations therein are complied with or the conditions mentioned therein exist. One overbearing condition is that the acquisition must have been initiated under the provisions of LA Act, 1894. Thus, if acquisition is initiated under any other Central or State enactment, Section 24 does not apply.-. 83 - 44. The reasons as to why Parliament has incorporated Section 24 in the 2013 Act are evident and not far to see. The said section creates a new right in favour of land owners whose lands have been acquired under the provisions of LA Act, 1894, which has been repealed and substituted by 2013 Act. The 2013 Act is not a substitution for other Central enactments pertaining to acquisition of land or for that matter any other State enactment. Therefore, Section 24 uses the expression that the acquisition must have been initiated under the provisions of LA Act, 1894. But while creating a new right in favour of land owners under Section 24, Parliament at the same time has intended two further aspects: first, saving acquisition under LA Act, 1894 and second, not encroaching upon other Central or State enactments. As far as State enactments dealing with acquisitions are concerned, Parliament intentionally has not touched upon any State enactment. The reason being that several State enactments have been made drawing sustenance from Entry 5, List II or State List of Seventh Schedule of the Constitution, whereas LA Act, 1894 as well as 2013

Act could be traced to Entry 42 List III (Concurrent List of the - 84 - Seventh Schedule. Moreover, as has been explained above, the object and scope of the BDA Act made under Entry 5 List II (State List) are distinct from LA Act, 1894 substituted by 2013 Act.

45. Further, the State enactments have their own provisions concerning lapse of acquisition such as Section 27 of BDA Act or KUDA Act and Section 24 of 2013 Act cannot trammel upon those provisions of the State Acts such as BDA Act or KUDA Act. The State enactments may have referred to certain provisions of LA Act, 1894, particularly with regard to determination of compensation and such other matters. Reference to LA Act, 1894 in the State enactments for certain purposes does not imply that the acquisition is initiated under LA Act, 1894. What is of prime importance for Section 24 of 2013 Act to apply is that acquisition proceedings must have been initiated under LA Act, 1894 and not any other law. Losing sight of this aspect would create confusion in the applicability of Section 24 of 2013 Act. If the said provision is to apply to acquisitions initiated under a State enactment, such as, BDA Act or KUDA Act, then Section 27 of the said Acts which also deal with lapse of acquisition under certain circumstances will be rendered nugatory, - 85 - otiose or redundant on prevailing of circumstances mentioned in Section 24 of the 2013 Act. In this regard, it is also observed that when State Acts such as, BDA Act or KUDA Act, have specific provisions in the form of Section 27 concerning lapse of acquisition, Section 24 of the Parliamentary enactment i.e., 2013 Act, cannot be applied, when acquisitions are under State enactments. This is because, the State or Central Laws concerning acquisition are enacted under different entries and in different Lists of the Seventh Schedule of the Constitution and therefore, they operate in different fields. This is so, although, the State enactments may refer to the provisions of LA Act, 1894 for certain purposes.

46. At this stage itself, it may be observed that the issue as to whether LA Act, 1894 has been incorporated into BDA Act by the device of legislation by incorporation or legislation by reference is wholly foreign and outside the scope of controversy while considering the applicability of Section 24 to acquisition initiated under any law (whether State or Central), de hors LA Act, 1894. The arguments of learned counsel for the land owners - petitioners in Chikkathayammas case on the

aforesaid aspect was - 86 - unwarranted and wholly digressive from the issue to be considered in that case namely, whether Section 24 of 2013 Act was applicable to acquisitions initiated under any law other than LA Act, 1894, such as, BDA Act, KUDA Act. The dicta of the Honble Supreme Court in this regard after comparing the scheme of LA Act, 1894 and BDA Act, are binding and authoritative and the same cannot be brushed aside or ignored by not applying the same in appropriate cases, such as the present one.

47. Thus, 2013 Act has not only repealed the LA Act, 1894, but has substituted the said Act. The 2013 Act is a totally distinct enactment and a complete code by itself. Hence, for the aforesaid reasons, initiation of acquisition under State enactments such as BDA Act is not the same as initiation of acquisition under LA Act, 1894.

48. Further, it is noted that 2013 Act has, by virtue of Section 114 thereof, repealed LA Act, 1894. Section 114 reads as under: 114. Repeal and Saving: (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed. (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not - 87 - be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals. Therefore, what is saved under Section 114 of 2013 Act are only those acts and actions initiated under the provisions of the LA Act, 1894, which ought to be saved having regard to the provisions of Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act, 1897, reads as under: 6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not.- (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture or punishment incurred in respect of any - 88 - offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or

punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. However, Section 6 of the General Clauses Act would apply only when a saving clause as per sub-section 2 of Section 14 is not expressly provided under 2013 Act. Section 24 of the 2013 Act, which is in the nature of a saving clause has created new rights in favour of land owners whose lands had been acquired under LA Act, 1894. Sub-section (1), lays down the conditions when the land acquisition proceedings initiated under the LA Act, 1894, would be amenable to the provisions of 2013 Act or, continued under the provisions of the LA Act, 1894, on certain conditions or circumstances prevailing. Under sub- section (2) of Section 24, the Parliament has, by a deeming provision, intended that if certain conditions are - 89 - satisfied, the acquisition proceedings initiated under the LA Act, 1894, shall be deemed to have lapsed.

49. Sub-section (2) of Section 24, which has been invoked in the instant case has been interpreted by the Honble Supreme Court in the case of Pune Municipal Corporation vs. Harakchand Misirimal Solanki [(2014) 3 SCC183, in the following words:- 11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an - 90 - award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act. xxx xxx xxx 14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender

payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the Court to which reference under Section 18 may be made.-. 91 - 15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the Court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the Court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the Court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the Court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money - 92 - shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word paid to offered or tendered. But at the same time, we do not think that by use of the word paid, Parliament intended receipt of compensation by the

landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression paid used in this sub-section [sub-section (2) of Section 24].. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as paid if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 - 93 - Act. In other words, the compensation may be said to have been paid within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31-1-2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the Government treasury.-. 94 - Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested?. We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes relying upon the earlier decision in Prem Nath Kapur, has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and

the liability of the State to pay interest subsists till the amount has not been deposited in Court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the Court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act. (underlining by me) - 95 - 50. Therefore, for a declaration of lapse of acquisition, the pre-conditions or conditions precedent mentioned under sub-section (2) of Section 24 of the 2013 Act must apply. Most importantly the said conditions must prevail in an acquisition initiated under the provisions of the LA Act, 1894, and not with regard to acquisition initiated under any other enactment be it Central or State enactment. Therefore, before land owners could seek relief under sub-section (2) of Section 24 of 2013 Act, which is a right created in their favour, the basic postulate that must be borne in mind is to ascertain, in the first instance, as to under which law, acquisition has been initiated; whether under the provisions of the LA Act, 1894 or any other law. If it is under any other law, then in my view Section 24 would not be applicable to such acquisitions. The dicta of the Honble Supreme Court in the case of Munithimmaiah, Bondu Ramaswamy, Offshore Holdings Private Limited clearly enunciate that an acquisition initiated under the provisions of the BDA Act being distinct from an acquisition initiated under the provisions of the LA Act, 1894, it cannot be held that acquisition process initiated under the provisions of the LA Act, 1894, would also encompass - 96 - acquisition proceedings initiated under any other law such as, the BDA Act. As already noted, the two enactments being distinct having a different object and scope and acquisition of lands being only incidental to the main object and scope under the BDA Act, the acquisition proceedings initiated under the two Acts cannot be considered on par, so as to hold that land acquisition proceedings initiated under the provisions of the BDA Act is land acquisition proceedings initiated under the provisions of the LA Act, 1894.

51. As already observed, Section 24 of the 2013 Act creates a new right in the land owners. For the exercise of said right, certain conditions have to exist, the most significant of them being, the initiation of proceedings for acquisition under the provisions of the LA Act, 1894. Therefore, the said words must be given a natural interpretation and not an expansive or wide interpretation, so as to extend the right under Section 24 even in respect of land owners whose lands are subjected to acquisition under any State enactment, such as the BDA Act or KUDA Act. In fact, the Parliament itself has been conscious of the fact that 2013 Act repeals and substitutes only LA Act, - 97 - 1894, and not any other Central enactment or for that matter any other State enactment dealing with acquisition of lands. This is evident from Section 105 of the 2013 Act, which reads as under:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications: (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. (2) Subject to sub-section (2) of Section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule. (3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of - 98 - this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. (4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by

both the Houses of Parliament. The enactments relating to land acquisition specified in the Fourth Schedule referred to in sub-section (1) of Section 105 consists of the following thirteen Parliamentary enactments, namely: THE FOURTH SCHEDULE [See section 105]. LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT - 99 - 1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).

2. The Atomic Energy Act, 1962 (33 of 1962).

3. The Damodar Valley Corporation Act, 1948 (14 of 1948).

4. The Indian Tramways Act, 1886 (11 of 1886).

5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).

6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).

7. The National Highways Act, 1956 (48 of 1956).

8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).

9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).

10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).

11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).

12. The Electricity Act, 2003 (36 of 2003).

13. The Railways Act, 1989 (24 of 1989). - 100 - 52. Therefore, Parliament itself has listed the Central enactments to which 2013 Act does not apply. This is because Parliament was conscious of the fact that LA Act, 1894 was substituted by the 2013 Act, which is distinct and different from the other Central enactments enumerated in the Fourth Schedule to the 2013 Act or State enactments.

53. In the circumstances, it is concluded and held that Section 24 does not take within its scope nor does it apply to, acquisitions which have been initiated under the provisions of any other enactment particularly, State enactment, such as, BDA Act. The said Section is restricted to only those acquisitions which have been initiated under the provisions of the LA Act, 1894 only. Subject to compliance of the conditions mentioned under sub-section (2) of Section 24, the land owner would be entitled to the deeming provision regarding lapse of acquisition and not otherwise.

54. In the result, Point No.(i) is answered by holding that petitioners are not entitled to relief under sub-section (2) of Section 24 of the 2013 Act, as the acquisitions in - 101 - these cases were initiated under the provisions of the BDA Act and not under the LA Act, 1894. It is further held, with respect, that Chikkathayammas and other similar decisions, having regard to the dicta of Honble Supreme Court in the case of Munithimmaiah, Bondu Ramaswamy, Offshore Holdings Private Limited, are not applicable as binding precedent in the present case. Further, most of the decisions referred to above have granted relief on the basis of factual determination as per sub-section 2 of Section 24 and without considering the question of law which arises in these cases. Further, in some cases, the petitioners have themselves not pressed sub-section (2) of Section 24 of 2013 Act. Even then, relief has been granted on a determination made on facts and by holding that there has been abandonment of acquisition/lapse of acquisition.

55. Hence, these writ petitions are liable to be dismissed, as the petitioners are not entitled to relief under sub-section (2) of Section 24 of the 2013 Act as the said section does not apply to acquisition initiated under the provisions of BDA Act.

56. But these matters do not end here. Learned senior counsel and other counsel for the respective parties - 102 - have also made submissions on the premise that Section 24 of 2013 Act applies and therefore, writ petitions would now be considered individually and independent of the answer given to Point No.1 on that assumption also. Therefore, assuming that Section 24 applies to acquisitions initiated under the BDA Act also, whether petitioners are entitled to relief under

that provision, is considered on the basis of the emerging facts in each of the writ petitions as Point No.(ii). Re. Point No.(ii) 57. Despite having held that Section 24 of the 2013 Act does not apply to an acquisition initiated under the provisions of the BDA Act, Point No.(ii) shall be considered keeping aside the answers given to Point No.1 and on the assumption that the said section would also apply to an acquisition initiated under the BDA Act, so as to make a complete adjudication in the matter, by taking into consideration the factual aspects and inferences, in light of the provisions of law that would emerge in each of the writ petitions which would be considered in seriatim.-. 103 - In W.P.Nos.17852-856/2014 & W.P.No.17969/2014 58. The relief sought by petitioners in these writ petitions is on the premise that having regard to sub- section (2) of Section 24 of 2013 Act, it must be declared that the acquisition is deemed to have lapsed. Secondly, it is contended by Sri S.Ajesh Kumar, learned counsel appearing for the petitioners that there has been no substantial implementation of the scheme within five years from the date of publication of Final Notification under Section 19 (1) of the BDA Act, the scheme has lapsed having regard to Section 27 of the BDA Act and the provisions of Section 36 of the BDA Act has become inoperative. In this regard, learned counsel for the petitioners contended possession of three acres of land, purchased by the petitioner in Sy.No.172/2A has remained with the petitioners. That BDA has not executed the Byrasandra-Tavarekere-Madiwala Scheme (BTM Scheme) in respect of petitioners land. Further, adjoining land has been denotified and there has been no activity of the BDA on petitioners land. That petitioners have neither received any compensation nor has possession of their land been taken by the State. That petitioners are bona fide - 104 - purchasers from Ramaiah after the issuance of Preliminary Notification. That since BDA has not formed any layout on petitioners land, under sub-section (2) of Section 24 of the 2013 Act and/or Section 27 of the BDA Act, the acquisition must be deemed to have lapsed. In this regard, learned counsel for the petitioners drew my attention to various orders passed by this Court as well as by the Honble Supreme Court concerning petitioners land in order to urge that the petitioners are entitled to relief under sub-section (2) of Section 24 of the 2013 Act. Learned counsel for the petitioners further contended that allotment of their land to respondent No.13 and thereafter restoring it in favour of respondent No.14 as well as allotment to other respondents

is without authority of law and, therefore, those allotments would have to be set aside.

59. Per contra, learned counsel, Sri Bipin Hegde appearing for the BDA contended that petitioner-M/s. Evershine Monuments was earlier known as M/s. Granite Exporters. That they are subsequent purchasers from Ramaiah and others after the issuance of Final Notification and prior to passing of the award and they do not have the - 105 - locus standi to maintain these writ petitions. That Annexure-A is the copy of the Sale deed, which the petitioners have produced. That Ramaiah, who is one of petitioners vendors, had made a claim for award of compensation pursuant to the issuance of acquisition notifications, as he was aware of the issuance of the notifications although, he was not, and his vendor was shown as the Kathedar in the notifications. That as per the award, it is established that there were no structures on the said land. That the petitioners had purchased three acres of land in Sy.No.172/2A on 30.06.1983 prior to the passing of the award. The award was passed in respect of the entire survey number measuring seven acres on 27.02.1984. The compensation amount was deposited before the Civil Court under Sections 30 and 31 of LA Act, 1894 on 19.06.1984, as there was a dispute with regard to apportionment of the same amongst the members of the family of Ramaiah. Thereafter, possession was taken and the same was notified as per sub-section (2) of Section 16 of the LA Act, 1894 (Karnataka Amendment), which is evidence of possession being taken. Subsequently, BDA has allotted the said extent of land to third parties.-. 106 - According to learned counsel for BDA, the petitioners in these writ petitions cannot assail the said allotment made by the BDA to third parties, as they lost their right, title and interest in the said land no sooner acquisition was completed. That when once award has been passed and possession has been taken, neither sub-section (2) of Section 24 of the 2013 Act nor Section 27 of the BDA Act would apply is the submission of learned counsel for BDA. Drawing my attention to orders passed by this Court as well as the Honble Supreme Court, in the case of these very petitioners and the findings arrived at therein, learned counsel contended that there is no merit in these writ petitions.

60. Sri T.N. Raghupathi, learned counsel appearing for respondent Nos.13 and 14 in these writ petitions and also for respondent No.4 in W.P.No.17290/2014 and connected writ petitions, contended that the allotment in favour of respondent No.13 was made on 17.12.2012 long after possession of the land was taken by the State and transferred to BDA. That on 3.7.2013, respondent No.13 sold the land in favour of respondent No.14. Respondent No.14 thereafter surrendered the land to the BDA and on - 107 - 25.3.2014, BDA restored the land to respondent No.14. Contending that the petitioners do not have locus standi to seek prayer No.1, as they have lost their right, title and interest in three acres of land in Sy.No.172/2A, learned counsel submitted that insofar as prayer No.3 is concerned, neither sub-section (2) of Section 24 of 2013 Act nor Section 27 of the BDA Act would apply. Learned counsel for the said respondents sought dismissal of the writ petitions.

61. By way of reply, learned counsel for the petitioners reiterated his submissions and sought for reliefs as prayed for in the writ petitions.

62. The material on record is considered in light of the rival submissions made by the respective parties. It is noted that the petitioners had purchased three acres out of the land in question measuring seven acres in Sy.No.172/2A, Bilekahalli Village, under a registered Sale Deed 30.06.1983 from Ramaiah and seven others. The said sale deed was in the name of the Managing Partners of M/s. Granite Exporters, namely, Ashgar Ahmed Pasha and Munnavar Basha. By then, both Preliminary and Final - 108 - Notifications dated 10.09.1977 and 07.02.1978 respectively had been issued by the BDA under Sections 17(1) and 19(1) of the BDA Act. Thus, the purchase of three acres out of the land in question was made by the petitioners after issuance of acquisition notifications and hence, they could be termed as subsequent purchasers. In the case of Manav Dharam Trust (supra), the question as to whether a subsequent purchaser/assignee, Power of Attorney Holder etc., has locus standi to file a petition for a declaration of lapse of acquisition proceedings under sub-section (2) of Section 24 of 2013 Act, has been considered. This is of course when the acquisition is initiated under the provisions of LA Act, 1894. The Honble Supreme Court has held that a subsequent purchaser is a person who is interested in compensation and is an affected person

in terms of 2013 Act and such a person is entitled to file a case seeking a declaration that the acquisition proceedings had lapsed by virtue of sub-section (2) of Section 24 of 2013 Act. It is a declaration qua the land wherein indisputably such a subsequent purchaser has interest and would be affected by such acquisition. Therefore, these writ petitions filed by the petitioners as subsequent purchasers are maintainable and - 109 - cannot be dismissed on the ground that petitioners lack locus standi to file these petitions. Hence, they are considered on merits.

63. Learned counsel for the petitioners drew my attention to the fact that petitioner No.1 herein had filed W.P. No.11299/1996 before this Court assailing the acquisition notifications. By order dated 13.9.1996, (Annexure-F to the writ petition), this Court held any interference in respect of these lands would come in the way of implementing the scheme by the BDA. Therefore, I do not propose to interfere with the acquisition of these lands, and these petitions are liable to be rejected. Accordingly, these petitions are rejected. Further, learned Single Judge granted the following limited relief: 3. From the records it is seen that the petitioners have established certain industries and poultry farms on the lands in question. If that is so, the petitioners shall make an application for deletion of the said lands in their favour within two months from today. If such a representation is made, the BDA shall consider the same in respect of which the industries are existing in their favour at the rate to be fixed by the BDA. Till then, the BDA is directed not to demolish or dispossess the - 110 - petitioners from the said land and the petitioners are also restrained from putting up any construction till that time. (underlining by me) 64. The petitioners made a representation on 12.5.1997 seeking denotification of three acres of their land, but the State Government did not take steps in that regard. As the State had notified a new Housing Policy as per Government Order dated 17.11.1995, petitioners who had initially intended to develop Group Housing Scheme on their land, wrote to the BDA on 16.02.2000, stating that they were not in a position to take up Group Housing Scheme and instead permission be granted to form a layout as per Government Order dated 17.11.1995. In response, the BDA stated that as the Authority had already acquired the land and formed twelve sites each measuring 50x80 ft., Government Order dated 17.11.1995 was not applicable to the petitioners as the said

Government Order was applicable to notified lands only where acquisition process had not been completed and not to lands already acquired by the Authority. Therefore, BDA stated that any approval accorded by it in its meeting dated 21.07.1999 was rescinded.-. 111 - 65. The said communication of the BDA dated 15.7.2000 was challenged by the petitioners in W.P. No.26992/2000 before this Court. A learned Single judge of this Court by order dated 08.03.2002 held that Government Order dated 17.11.1995 was not applicable to the petitioners as the same was applicable only where there was no acquisition proceedings as was evident from the said order itself. The learned Single Judge further held as under: In this case, the acquisition proceedings have been completed and an award was passed in 1984 itself. In these circumstances the petitioner cannot derive any benefit from annexure G. Moreover BDA has provided sites to 12 persons in these very lands. In the circumstances BDA is perfectly justified in the light of the earlier acquisition proceedings and in the light of the earlier allotment orders in favour of other allottees in rejecting the case of the petitioner. Therefore, no fault can be found with BDA. Annexure N requires to be upheld. Counsel also invites my attention with regard to denotification of these lands. I am afraid that this submission is not based on facts. Documents at annexure D and E reveal that BDA has decided to write to government with regard to withdrawal of these lands from - 112 - acquisition. As on today the lands are not withdrawn from any acquisition proceedings. (underlining by me) 66. The writ petition was dismissed and the petitioners preferred W.A. No.3515/2002 before the Division Bench. The Division Bench on narrating the events and proceedings that had transpired in respect of petitioners land, noted that petitioner-firm, while challenging the acquisition notifications, had also sought for quashing of the draft award passed by the Special Land Acquisition Officer (SLAO) in LAC.No.671/1978-79 dated 27.2.1984. The Division Bench further noted that after issuance of the acquisition notifications, the firm or its partners could not have purchased the lands in question. That in W.P.No.11299/1996, by order dated 13.09.1996, this Court did not grant any relief to the petitioner-firm except permitting it to make a representation to the BDA to seek deletion of the lands acquired and directed the BDA to consider the same in accordance with law. Holding that Government Order dated 17.11.1995 was applicable to only those acquisitions which had not yet

been completed the same could not be extended to the petitioners herein. The Division Bench dismissed - 113 - W.A.No.3515/2002 by judgment dated 20.09.2006 with the following observations: 26. As we have already noticed, the Government order dated 17.11.1995 provides only those acquisitions, which are not yet complete and in such cases, the private entrepreneurs may be permitted to make investment for Group Housing. Therefore, the respondents were justified in coming to the conclusion that the benefit of the order passed by the State Government dated 17.11.1995 cannot be extended to the appellants. Therefore, even the second contention canvassed by the learned Counsel for the appellants requires to be rejected and accordingly, it is rejected. (underlining by me) 67. Being aggrieved, the petitioners preferred Special Leave Petition No.20549/2006 before the Honble Supreme Court which had, by order dated 08.01.2007, granted an order of status quo to be maintained by parties. But, ultimately, on 10.12.2013, the petitioners herein sought permission to withdraw the special leave petition to enable them to move before appropriate forum - 114 - for appropriate relief. The Honble Supreme Court ordered as follows:- Permission is granted without any liberty to challenge the same very order before this Court. The special leave petition is, accordingly, dismissed as withdrawn. Consequently, contempt petition is also dismissed. 68. Thereafter, the petitioners filed a suit in O.S. No.25184/2014 before the City Civil Court, Bangalore City, seeking the relief of declaration that petitioners are the absolute owners in lawful possession of three acres in Sy.No.172/2A and for perpetual injunction restraining defendants from interfering or dispossessing them from the suit schedule land. Significantly, the said suit is filed against State of Karnataka, Department of Housing and Urban Development and Bangalore Development Authority and not against any private party. It is submitted at the Bar that respondent Nos.13 and 14 have sought impleadment in the said suit. The said suit had been filed on the premise that the scheme vis--vis three acres of land belonging to the petitioners has lapsed. In the said suit, the petitioners herein filed an application under Order - 115 - XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (CPC) seeking an interlocutory injunction against the defendants in the suit. It is submitted at the Bar that no interlocutory injunction was granted in the said suit, which was filed on 01.02.2014. Thereafter, petitioners have preferred these writ petitions on 08.04.2014 invoking sub- section (2) of

Section 24 of 2013 Act and Section 27 of the BDA Act and by assailing the allotment of land of the petitioners to various allottees.

69. The contention of the petitioners is that acquisition of petitioners land measuring three acres in Sy.No.172/2A has lapsed. Having regard to the aforesaid facts, the same shall be considered in light of the submission of petitioners counsel, statement of objections filed by respondent Nos.2 and 3 - BDA, respondent Nos.13 and 14 and the submissions of learned counsel for BDA, respondent Nos.13 and 14, learned Additional Government Advocate appearing for respondent No.1.

70. It would not be necessary to reiterate what has been stated above in detail except highlighting the fact that in O.S. No.25184/2014 filed by the petitioners herein - 116 - (subsequent to withdrawal of special leave petition before the Honble Supreme Court) in the affidavit filed in support of the application filed under Order XXXIX Rules 1 and 2 CPC, the deponent, Munnavar Basha (petitioner No.2 herein and partner of petitioner No.1-partnership firm) has inter alia stated as under: Defendants, in order to bring out a Scheme for Improvement that came to be sanctioned on 26.10.1971, called upon that, a Scheme be provided for the purposes of undertaking a fast development in the area and thereby, issued a preliminary notification, notifying the suit schedule property, together with adjacent land, for formation of a layout called as Bommanahalli-Tavarekere-Madiwala Scheme. A preliminary notification and a final notification came to be issued insofar as the extent of the property is concerned. This extent was notified as an extent of 1703-10 acres of land. Various areas constituting Byrasandra, Tavarekere, Nayappanashetty Palya, Bilekahalli and Madiwala came to be issued. A copy of the preliminary notification is made available along with the plaint.

4. I am to submit that, the purchase of the property on 30.06.1983 that came to be - 117 - purchased, it was permissible to purchase in view of the fact that, the property was purchased by us for establishment of a Granite Factory. In this regard, it need to be submitted that, the said Land Acquisition Officer drew up a mahazar, by conducting inspection and satisfied that the land is vacant and there is no layout formed in the said land, that apart, land has not been developed

despite the scheme having come to an end as issued by the Bangalore Development Authority under Section 27 of the Bangalore Development Bank. The scheme in respect of the suit property fell undeveloped and therefore, it got reverted, as the original owner of the property, Ramaiah, is to be considered, Ramaiah having noticed that the scheme having not been completed within the statutory period as indicated and found to be vacant, has conveyed the property, thereby what was done as formality indicated to have been done by the defendants is that, the Land Acquisition officer passed an Award on 27.02.1984, the Inspection Report of the Land Acquisition Officer and the Award passed are noticed that, the lands are not taken possession. However, the notification also came to be issued on 07.05.1985 notifying the land under Section 16 (2) of the Land Acquisition Act by the - 118 - Bangalore Development Authority notifying the property having being vested.

5. I submit that, the vesting of the property by virtue of the series of notification referred to above, is only a paper declaration, there is no physical mahazar that has been taken for having taken physical possession of the property. Suffice it to submit, physical possession by drawing up a mahazar has not been done by the Authority, much less the Land Acquisition Officer. I submit that, there has been no Panchanama drawn for having taken possession. Notification dated 07.05.1981 is inconsequential. Those apart, preliminary and final notifications have not been enforced and therefore, the acquisition proceedings as regards the lands have not been completed in any respect nor admission by the Land Acquisition Officer. Therefore, the defendants have neither vested title nor possession. 8. We have been in settled possession of the land, established a Granite Factory. At this juncture, the Bangalore Development Authority had intended to acquire lands for development scheme of Byrasandra-Tavarekere-Madiwala. On coming to know of the said vesting, we approached the Bangalore Development - 119 - Authority for denotification of the schedule land on 31.10.1988. We wrote a letter to allot the land described in the schedule. The defendant on 31.10.1988 agreed to the request for allotment of the land for our partnership business concern. On 04.08.1993, third defendant withdrew the acquisition. I have produced the document of withdrawal from the acquisition. The Bangalore Development Authority on 20.11.1992 wrote the letter. I am to submit that, the defendants

thought it necessary that the denotification pertaining to the acquisition, to withdraw the proceedings initiated for acquiring the land described in the schedule, became certain was intended for inclusion in the Development Scheme of the Bangalore Development Authority, thereby two letters dated 31.10.1988 and 20.11.1992 indicates that, the Bangalore Development Authority did not take possession, it has abandoned the entire acquisition proceedings, thereby enabling us to hold title, interest, ownership and possession. It is pertinent to mention that, the third defendant failed to denotify the very acquisition. Thereby, I initiated proceedings in W.P. No.11299/1996 on 30.09.1996. The Honble High Court dismissed the Writ Petition, directing us to give a representation to the - 120 - defendants to consider denotification of the area on the Granite industry belonging to our firm, the first plaintiff, which is established and the defendants were prohibited from demolishing the factory or dispossessing. The copy of the order is placed in the accompanying suit. 71. Statement of objections has been filed to the (underlining by me) said application by the BDA, Annexure-W to the writ petition, averring inter alia as under: 2. It is submitted that, it is an admitted fact by the Plaintiffs that the Land in Question has been vested with this defendant authority and the same has been admitted in Para 4 of the Affidavit- read as However, the Notification also came to be issued on 07.05.1985 notifying the land under Section 16(2) of the Land Acquisition Act by the Bangalore Development Authority notifying the property having being Vested. As such the Plaintiffs cannot contend that the such vesting is only a paper declaration. In a suit the validity of Section 16(2) of L.A. Act and Section 27 of B.D.A Act cannot gone into, the one and only course open to the Plaintiffs is to seek appropriate remedies before the Honble High Court of Karnataka under the Writ jurisdiction. In view - 121 - of this ground alone the Plaintiffs have no right to seek any ad-interim order of injunction against the true and lawful owner of the suit schedule property and hence, the aforesaid application filed by the Plaintiffs is liable to be dismissed.

3. This Defendant further submits that, admittedly the Plaintiffs have purchased the suit schedule property on 30.06.1983 and hence, the plaintiffs being a purchasers after completion of the acquisition proceedings and hence, the plaintiffs have no manner of right, title and interest to file Civil suit against this defendants authority as per the reported decisions of the Honble Supreme Court

of India, reported in AIR 1995 SC1955(State of Bihar V/s-Dhirendra Kumar) and 2013 AIR SCW2378(Commissioner, B.D.A. and Another -V/s-Brijesh Reddy).

4. The averments made in paras 1 and 2 of the application that, the plaintiffs is a partnership concern and the plaintiffs are partners are not within the knowledge of this defendant authority. The further averments in this paras are hereby denied as false, frivolous and baseless statement that, the plaintiffs are in lawful possession of the land in Sy.No.172/2A of Bilekahalli village. Further, - 122 - Sri.Ramaiah and others have no right, title and interest over the schedule property to convey in favour of the plaintiffs, by virtue of registered sale deed, since the aforesaid Sri.Ramaiah and others have lost their right, title and interest over the suit schedule property, since the suit schedule property was notified and acquired by this defendant authority in the year 1977 itself and hence, the aforesaid Sri.Ramaiah and others have no right, title and interest to convey the same in favour of the plaintiffs on 30.06.1983 and the same is illegal and the same cannot be looked into any purposes, much-less the legal purposes. On this ground alone the ad-interim order of injunction application is liable to be dismissed. 6. The averments made in para 4 of the application is false, frivolous and baseless statement and the same is stated only for the purpose of getting ad-interim order of injunction against this defendant authority before this Honble Court, by suppressing the material true facts. Further, the plaintiffs have no manner of right, title and interest to purchase the suit schedule property on 30.06.1983 and further, it is hereby denied that, no lay-out formed in the said land and that the scheme in respect of the suit schedule - 123 - property fell undeveloped and therefore, it got reverted as the original owner property are totally denied as false, the plaintiffs have stated false statement before this Honble Court. It is true that, the suit schedule property possession was taken by this defendant authority and the award was passed and hence, the question of lands are not taken possession does not arise at all. Further, the plaintiffs have admitted the possession taken and acquisition completed in formalities in this para and the same is read as However, the Notification also came to be issued on 07.05.1985 notifying the land under Section 16(2) of the Land Acquisition Act by the Bangalore Development Authority notifying the property having being Vested. As such the Plaintiffs have (sic) moral right to seek any relief before this Honble Court, much less the ad-interim order of

injunction against the true owner in lawful possession and enjoyment of the suit schedule property.

7. The averments made in paras 5 and 6 of the application are hereby totally denied as false, frivolous and baseless statement and the same are stated only for the purpose of obtaining the ad-interim order of injunction against this defendant authority. Admittedly, in all formalities the acquisition proceedings of - 124 - the suit schedule property are completed. In view of the fact, that the Notification issued under Section 16(2) of Land Acquisition Act and the plaintiffs are admitted the said fact. In view of their admission the plaintiffs have no right, title and interest to question the same. Hence, the contention taken by the plaintiffs are false, frivolous and baseless statement and the same cannot be looked into any purposes, much less for the legal purposes and to pass an ad-interim order of injunction against the true owner. 11. The averments made in para 10 of the application are partly admitted and partly denied. It is true that, this defendant authority has considered the request of the plaintiffs for Group Housing Project in the suit schedule property, however the same was rescinded by this defendant authority in its meeting dated:

21. 07.1999 on Subject No.127/1999 and the same was intimated to the plaintiffs.

72. The respondent - BDA has submitted that BTM (underlining by me) Scheme was approved by the State Government on 26.10.1971. That a layout was formed in about 354 acres of land and sites have been allotted to thousands of allottees and the scheme has been substantially - 125 - implemented long ago. That out of 1703 acres 10 guntas proposed under the scheme, only 920 acres and 23 guntas were acquired; out of the said extent, a layout was formed in about 228 acres; bulk allotment was made for formation of residential layout in respect of 126 acres 27 guntas; that an extent of 124 acres 39 guntas is in dispute in various Courts; 166 acres 39 guntas of land is comprised in Madiwala tank and in balance 213 acres 38 guntas of land, there are permanent structures built there. Thus, according to the BDA, there has been substantial implementation of the scheme. As opposed to these facts, I find that petitioners have not produced any material in support of their contention that there has been no substantial implementation of the scheme and therefore, acquisition has lapsed under Section 27 of the BDA Act.

73. Insofar as petitioners three acres of land is concerned the series of litigations referred to above would indicate that they have been unsuccessful throughout. Moreover, possession of the entire land in question measuring seven acres was taken by the State Government on 21.3.1984 and the Notification under sub-section (2) of Section 16 of the LA Act, 1894, (Karnataka - 126 - Amendment) was issued on 24.10.1985. The issuance of such a notification is evidence of the fact of taking possession. Further, the petitioners, filed the writ petition in the year 1996, assailed the acquisition notifications, but did not seek any relief under Section 27 of the BDA Act; it is only by filing these petitions in the year 2014 that the petitioners are invoking Section 27 of the BDA Act in conjunction with sub-section (2) of Section 24 of the 2013 Act. The dismissal of the earlier petitions filed by the petitioners herein by the learned Single Judge vis--vis the challenge to the acquisition and subsequently by another learned Single Judge who considered the writ petition filed by the petitioners herein when permission was not granted to them to develop the land, the judgment of the Division Bench and the withdrawal of special leave petition before the Honble Supreme Court clearly indicate that the case of the petitioners is sealed. They have not been able to establish their rights under the BDA Act vis--vis the extent of three acres that they have purchased. Further, the BDA in its statement of objections has averred that in the three acres of land in respect of which this writ petition is filed, thirteen sites have been formed and the remaining - 127 - area of 43 guntas have been allotted to respondent No.13. The details of the persons to whom 13 sites have been allotted are given in the statement of objections and the manner of allotment has also been stated, but the allottees are unable to make development on account of continuous litigation engaged in by the petitioners.

74. Revisiting the prayers sought by the petitioners, it is noted that petitioners have sought that the allotment of sites by the BDA in favour of respondent Nos.5 to 14 is null and void and non est. This relief is claimed on the basis that the acquisition of petitioners land has lapsed under Section 27 of the BDA Act read with sub-section (2) of Section 24 of the 2013 Act. Having regard to the above discussion, it is held that the acquisition in the instant case has not lapsed under Section 27 of the BDA Act. There has been substantial implementation of the BTM Scheme decades ago. A full fledged layout known as BTM Layout has been formed in the

Southern part of Bengaluru. Moreover, the petitioners have never sought such a relief in W.P.No.11299/1996 filed by them before this Court assailing the notifications issued on 19.9.1977 and 07.02.1978 under Sections 17 and 19 of the BDA Act. In - 128 - fact, the said writ petition was filed almost two decades after the issuance of the Final Notification. This Court has clearly held that there could be no interference in respect of petitioners land as any such interference would come in the way of implementing the scheme by the BDA. The only relief granted to the petitioners was to seek deletion of their land from acquisition. Obviously, such a relief could not have been granted to the petitioners by the State, as by then, the land had stood vested in the State and was handed over to the BDA as possession had been taken long ago on 21.03.1984 and the same was notified under sub-section (2) of Section 16 of the LA Act, 1894, on 07.05.1985, which aspect was not brought to the notice of the learned Single Judge then. Further, the petitioners by filing these writ petitions on the basis of sub-section (2) of Section 24 of the 2013 Act have sought to contend that there is lapse of acquisition under Section 27 of the BDA Act when they have not raised the latter contention in the earlier writ petitions filed by them. They cannot be permitted to do so at this point of time.

75. As far as the claim made by the petitioners under sub-section (2) of Section 24 of the 2013 Act is - 129 - concerned, while answering Point No.(i), it is held that the said Section is not applicable to acquisition initiated under the BDA Act. Therefore for that reason alone the writ petitions are liable to be dismissed. However, I have nevertheless considered the relief sought for by petitioners under sub- section (2) of Section 24 of the 2013 Act, on the premise that the said section is applicable to them, but on a detailed discussion made above, I find that the petitioners are not entitled to seek relief under sub-section (2) of Section 24 of the 2013 Act, as they have not been able to establish that compensation has not been paid nor does possession continue to remain with them.

76. As far as the issue regarding compensation is concerned, the same shall be considered in detail together with the other two writ petitions as the said issue is common to all the writ petitions. But, as far as physical possession not being taken is concerned, it is held that the petitioners have failed to establish that they

continue to remain in possession. The detailed discussion above would clearly indicate that the petitioners have lost possession of three acres of land as the BDA has already allotted this extent of land to its allottees who are now in physical possession of - 130 - their sites. Therefore, these writ petitions are liable to be dismissed.

77. Further, when the petitioners have been unsuccessful in seeking a declaration that to the effect that the acquisition has lapsed under sub-section (2) of Section 24 of 2013 Act or that the scheme has lapsed under Section 27 of the BDA Act, they have no right to challenge any allotment made by the BDA in favour of the private respondents. Hence, it is unnecessary to discuss the manner and the circumstances under which BDA or the State Government has allotted the sites to various persons at the instance of these petitioners. In the result, the writ petitions are dismissed. WP No.17290/2014 & 17673-17687/2014 78. The legal representatives of Ramaiah, who had purchased five acres of land in question from the original owner Krishna Setty, under a registered Sale Deed dated 27.05.1974, have filed these writ petitions seeking a declaration that the acquisition has lapsed in terms of sub-section (2) of Section 24 of the 2013 Act insofar as 1 acre 33 guntas of the land in question is concerned. According to the petitioners, on purchasing five acres of land, Ramaiah had sold 3 acres 7 guntas and retained 1 acre 33 guntas of land.- 131 - That the said extent of land (which is part of the land in question being seven acres) was notified for the purpose of Byrasandra Thavarekere Madiwala (BTM) layout by issuance of Preliminary and Final Notifications dated 19.09.1977 and 07.02.1978 under Sections 17 and 19 respectively of the BDA Act. That notified khathedar was shown as Krishna Setty and not as Ramaiah although he had purchased five acres out of the land in question under a registered Sale Deed dated 27.05.1974. That no notice was issued to Ramaiah, but subsequently he came to know about the issuance of acquisition notifications though not in his name. That the adjacent lands including Sy.Nos.172, 172/3 and 173 have been deleted from acquisition by issuance of a notification, and in respect of 1 acre 33 guntas of land with which the petitioners are concerned, the scheme has not been implemented by the BDA.

79. According to the petitioners, after the death of Ramaiah, they being his legal representatives filed O.S. No.9493/1999 before the City Civil Court, Bangalore. The said suit was dismissed by judgment dated 27.09.2010. Thereafter, Regular First Appeal No.2124/2010 was filed before this Court, which was also dismissed by judgment dated 23.07.2012, against which, Review Petition - 132 - No.879/2012 is pending before this Court. According to the petitioners though the award may have been passed, possession of 1 acre 33 guntas has not been taken from the petitioners and neither compensation has been paid. Therefore, petitioners have sought relief under sub-section (2) of Section 24 of the 2013 Act.

80. Statement of objections has been filed by the BDA, which shall be adverted to later.

81. Learned Senior counsel, Sri B.V.Acharya, appearing for the petitioners mainly contended that, in the instant case, physical possession of 1 acre 33 guntas has not been taken by the BDA. That there has been no development on the said extent of land. The petitioners are therefore entitled to relief under sub-section (2) of Section 24 of the 2013 Act. Placing reliance on the decision of a learned Single Judge of this Court in the case of Chikkathayamma, learned Senior counsel contended that the said order being squarely applicable to the present case, this Court may declare that the acquisition of 1 acre 33 guntas of land belonging to the petitioners is deemed to have lapsed.-. 133 - 82. Drawing my attention to Annexure-R6, which is stated to be a Mahazar Report, dated 17.07.1980, learned Senior counsel contended that the said mahazar does not pertain to Sy.No.172/2A as it is dated 17.07.1980. Whereas, the award in the instant case was passed on 27.02.1984 and approved thereafter and, therefore, in terms of Annexure-R6, possession could not have been taken in respect of the entire extent of seven acres of land in Sy.No.172/2A, on 17.07.1980, as per Annexure-R6. Learned Senior counsel further submitted that notification issued in the present case under sub-section (2) of Section 16 cannot also be believed; even otherwise, issuance of such a notification is not conclusive proof of having taken physical possession from the petitioners or from Ramaiah. It is only conclusive evidence which could be rebutted and the same has been done so in the instant case. It is further contended by learned Senior counsel that although the suit filed by the petitioners

was dismissed and the appeal filed was also dismissed, nevertheless the review petition assailing the appellate judgment passed by this Court is pending consideration. Learned Senior counsel Sri B.V. Acharya further drew my attention to the fact that the - 134 - adjacent land namely Sy.No.172/1 measuring 3 acres 12 guntas has been denotified and that is an important factor to be considered while deciding these writ petitions. Learned Senior counsel further contended that as physical possession of petitioners land measuring 1 acre 33 guntas has not been taken, this Court may declare that the acquisition is deemed to have lapsed on the basis of the dictum in Chikkathayamma and allow the writ petitions.

83. Per contra, learned Senior Counsel, Sri S. Vijay Shankar, appearing for the BDA, with reference to the additional statement of objections filed on behalf of the BDA, contended although the Preliminary and Final Notifications were not issued in the name of Ramaiah who had purchased five acres of land in Sy.No.172/2A, in respect of which these writ petitions concern 1 acre 33 guntas, nevertheless, Ramaiah had filed a claim petition in L.A.C. No.671/78-79 along with seven other persons by contending that claimant Nos.1, 4, 6, 7 and 8 are brothers being the sons of late Chikka Muniyappa, claimant Nos.2 and 3 are the sons of late Chikka Annaiah and claimant No.5 is son of late Hanumappa. That the land in question measured 6 acres 37 guntas, which includes 1 acre 37 - 135 - guntas of karab, was owned jointly by all the claimants. Therefore, Ramaiah along with others sought 1/7th share in the compensation. A copy of the claim petition is produced as Annexure-R3 to the additional statement of objections. It is further submitted that the award in the instant case was passed on 27.02.1984, as per Annexure-H produced by the petitioners, from which it is pointed out that in response to the public notice through newspaper publication, Ramaiah and others filed an application on 23.08.1978 (Annexure-R3) and that in the award, it was noted that there being a dispute regarding title to the land, the matter was referred to the Civil Court under Sections 30 and 31 of the LA Act, 1894. This was because no clear title of the land was established for want of evidence. Learned Senior counsel drew my attention to the fact that a communication was addressed to the Principal City Civil Judge, Bangalore, by the Commissioner of BDA, dated 19.12.1984 (Annexure-R4), stating that in respect of the land in question (seven acres in Sy.No.172/2A), the case was referred to the City Civil Court, Bangalore, under

Sections 30 and 31(2) of the LA Act, 1894. This - 136 - communication was pursuant to the award dated 27.02.1984.

84. Learned Senior counsel, Sri Vijay Shankar, contended that even if the name of the original owner, Krishna Setty was mentioned in the acquisition notifications, it was Ramaiah and other members of his family who filed a claim petition before the Special Land Acquisition Officer (SLAO) on coming to know about the publication of notifications. That Annexure-R6, dated 17.07.1980, is only an inspection report before making of the award and that possession of the land was taken on 09.04.1984 by the Revenue Inspector and handed over to the Assistant Commissioner as per Page No.26 of Annexure-R6 of the additional statement of objections and, thereafter, Section 16(2) Notification was issued by the Special Land Acquisition Officer on 07.05.1985 as per Annexure-R7 and in respect of the entire extent of seven acres of the land in question, in terms of L.A.C. No.671/78-79, possession was taken on 21.03.1984. Learned Senior counsel appearing for the BDA submitted that thereafter BDA has allotted the said lands to various persons as per Annexure-R9 and possession certificates - 137 - had been issued to the allottees as per Annexures-R10 and R11 and they have put up construction on the said extent of land and are residing therein and the same is evident from photographs produced at Annexure-R12.

85. Adverting to the suit filed by the petitioners in O.S.No.9493/1999, learned Senior counsel contended that the said suit was rightly dismissed by the trial Court by holding that the plaintiffs therein i.e. petitioners herein had not produced any material to show that possession was not taken over by the BDA. On the other hand, Commissioner BDA had reported that the entire land had been developed and that plaintiffs had simply failed to prove not only the identity of the property, but also their possession. Learned Senior counsel drew my attention to the judgment passed by this Court in Regular First Appeal No.2124/2010, disposed of 23.07.2012, to contend that the dismissal of the suit has been affirmed by this Court. Hence, there is a concurrent finding to the effect that the petitioners herein are not in possession of 1 acre 33 guntas of land in respect of which the suit as well as these writ petitions have been filed. Learned Senior counsel further contended that having regard to the finding of facts - 138 - arrived at as elucidated

above, petitioners herein cannot contend that they are in possession of 1 acre 33 guntas of land in Sy.No.172/2A and seek to upset the findings of trial Court confirmed by this Court in the regular first appeal.

86. During the course of submission, learned Senior counsel appearing for the BDA also drew my attention to W.P.Nos.33295/2014 and 35608/2014 filed in the name of Ramaiah, through Special Power of Attorney, in the year 2014 (although he had died in the year 1998) and by other persons who claim to have purchased the very same 1 acre 33 guntas of land under a registered Sale Deed dated 24.10.1991 through Ramaiahs power of attorney and those writ petitions were dismissed by this Court by order dated 26.11.2015. Hence, according to learned senior counsel, these writ petitions are not maintainable.

87. He further submitted that the dictum in Chikkathayammas case is not applicable to the present case and, therefore, these writ petitions may be dismissed both on the question of law as well as on facts.

88. By way of reply, learned senior counsel, Sri B.V. Acharya, submitted that Annexure-F, dated 21.03.1984, is - 139 - the report of the spot inspection. Annexure-G is the copy of the sketch and that Annexure-R6 dated 17.07.1980, cannot be construed to be the document under which possession of petitioners land was taken. He further contended that Annexure-R7, which is stated to be the notification issued under Section 16(2) of LA Act, 1894 to the effect that possession of entire extent of land in question, measuring seven acres was taken on 21.03.1984, cannot be believed and that the same is not conclusive proof of taking possession.

89. The detailed narration of facts and contentions above would not call for a reiteration except highlighting the fact that these petitioners, who had earlier filed O.S.No.9493/1999 and the same being dismissed, had preferred Regular First Appeal No.2124/2010 before this Court and being unsuccessful in the said appeal, having filed Review Petition No.879/2012, which is pending consideration for the last five years have now filed these writ petitions. In the suit, the trial Court by judgment dated 27.09.2010 (Anenxure-G2 to the writ petitions) held that the acquisition notifications could not be questioned before the Civil Court. Further, the

plaintiffs - 140 - (petitioners herein) had failed to prove that they were in possession of 1 acre 33 guntas of land or that BDA had not taken over physical possession. Further, reliance was placed on the report of the Commissioner of BDA stating that the entire property had been fully developed. The BDA in the said suit produced a copy of the award passed as Ex.D3 and copy of the report submitted to the State Government as Ex.D4. Considering the evidence on record, the trial Court held that the suit, though one for permanent injunction was in effect assailing the acquisition and that the same was not maintainable. Before this Court in Regular First Appeal No.2124/2010, at paragraphs 12 and 13 of the judgment, this Court has observed as under: 12. Therefore, keeping all these aspects in view, a perusal of the documents would indicate that the property in question was notified for acquisition as indicated in Exhs.D1 and D2. It is no doubt true that the entire extent of 7 acres has been notified in the name of Sri Krishnaiah Shetty i.e., the vendor of the predecessors of the plaintiffs. However, in the subsequent proceedings, Sri Ramaiah i.e., the predecessor of the plaintiffs has taken part in the proceedings. A perusal of the award at Ex.D3 would indicate that Sri - 141 - Ramaiah had made an application seeking compensation on 23.08.1978 yielding to the acquisition proceedings. However, since Sri Ramaiah @ Doddannaiah as also Sri Narayana and others had claimed right in respect of the property. The compensation was required to be deposited before the Civil Court to enable determination and apportionment under Section 30 and 31 of the Act. The said award is passed on 27.02.1984. The mahazar for taking possession is at Ex.D4 and sketch is at Ex.D5. Though it is contended by the plaintiffs that they continued to be in physical possession of the property, when the documents at Exhs.D4 and D5 indicate that the BDA had taken possession of the said property, the burden was heavy on the plaintiff to establish that they still continued to be in possession, more particularly when the entire acquisition proceedings was commenced and concluded at a period when Sri Ramaiah was alive and nearly 14 years had passed after Sri Ramaiah died on 25.12.1998. Therefore, in such situation, when the defendants have established the fact of acquisition and no materials is placed by the plaintiffs that the acquisition had been challenged, it would be too late in the day for the plaintiff to contend - 142 - that even as on the date of filing the suit, they had continued in possession of the property.

13. Yet again what is also to be noticed is that when the said documents establish that the property had been acquired, even the admission of the witnesses on behalf of BDA that the scheme had not been completed as contended by the learned counsel for the plaintiff would not also arise for consideration, in a suit of the present nature. The law is well established that the acquisition and the fact of implementation are not issues which could be considered in a civil suit. Therefore, in such circumstance, when the evidence on record indicates that the property in question had been acquired by BDA, the question of the plaintiff making out a case that defendant Nos.1 and 2 had interfered with the possession of the property would also not arise, when the plaintiffs themselves did not have any right whatsoever in respect of the suit schedule property which is adjacent to the property of defendant Nos.1 and 2. Therefore keeping in view these aspects of the matter, a perusal of the judgment passed by the Court below would indicate that the Court below in fact has referred to the evidence available on record and has arrived at the conclusion that the relief prayed for by the plaintiff cannot be granted.-. 143 - While re-appreciating the evidence available on record in a first appeal, when I do not find any reason to state that the said findings are perverse, I see no reason to interfere with the impugned judgment. Accordingly, the appeal being devoid of merit is dismissed. In the peculiar facts and circumstances of the case, there is no order as to costs. (underlining by me) 90. Therefore, the contention that Ramaiah was unaware of the acquisition has been negated as per Annexure-H, which is a copy of the award dated 27.02.1984, produced by the petitioners and from the judgment of the Civil Court as well as by this Court in the suit as well as in the Regular First Appeal, it has been established that the BDA had taken physical possession of 1 acre 33 guntas in Sy.No.172/2A. The relevant portions of the award read as under: Claim application. In response to the notice and paper publication the following persons have filed claim application.-. 144 -

Name of person	Date of application
Ramaiah S/o. late Chikka Annaiah, Naraya Nagaraju and 5 others.-.-----	23.08.1978

On response to the notice issued one claim petition signed by Ramaiah, Narayana, Nagaraju, Papanna, Chandra Reddy, Nanjappa Hanumantharayappa and Narayanaswamy has been received on 13.5.78. They have claimed compensation for the land at Rs.100/- per sq. yard and Rs.7500/- for the Farm

house and Rs.500/- each for the 200 Allahabad Gouva Trees. I have gone through the claim petition inspected the land and made local enquiry. There are no Gouva plants and Farm House existing on the land. The signatures to the petition have given false information. They have evaded to be present at the spot during the course of spot inspection despite notice issued. The lands lying vacant. They have not produced documentary and other valid evidence in support of the value of the land. I feel their claim is too high and exorbitant and also baseless. In the absence of valid evidence, I am not inclined to accept the claim that rate and hence, I proceed to determine - 145 - reasonable compensation for this land as per provisions of Land Acquisition Act. Apportionment of compensation amount:- The above compensation amount is apportioned as under:- As per final Notification Sri Krishna Setty is the notified person. He has not filed any petition claiming title and interest on the land. Sriyuth Ramaiah claim title and interest on the land. Sriyuth Ramaiah claim Dodd Annaiah, Narayana Nagaraju Papanna, Chandra Reddy, Nanjappa, Thimmarayappa and Narayanaswamy. All residents of N.S. Palya, in a joint petition claimed title and interest on the land saying that they have purchased the land and under acquisition in the name of Ramaiah alias Dodd Annaiah under the sale deed dt:

27. 5.74 etc. They have requested for payment compensation amount at 1/7 share each to claimants 1, 4, 5, 6, 7 and 8 that is Ramaiah, Papanna, Chandra Reddy, Nanjappa, Thimmarayappa or Narayanaswamy and 1/7 share to claimants 2 and 3 that is Narayana and Nagaraju together. They have not produced R.T.C. I:L.R E.C. and sale deed to prove their title and interest. In view of the above circumstances I am of the opinion that the ownership of the land is - 146 - under dispute. I have therefore ordered as under :- The persons to whom the compensation is due: Name of the persons to whom compensation has been awarded. Clear title of land not established for want of evidence, apportionment of compensation not made referred to the Court of Principal city civil Judge, Bangalore. The Tahsildar Bangalore South Taluk Total Award amount Rs.70,035- 00 Whether the compensation is ordered to be paid cash or to be deposited the civil Court. Civil Court Deposit. R.22,137-00 Cash Rs.92,172- 50 As there is dispute regarding the title to the land the matter is referred to the civil Judge Court for under Section 30 and 31 of L.A. Act. No interest that the award amount from the date of Court

deposit. (underlining by me) Sl. No.1)

2) 91. The compensation was deposited before the City Civil Court (Reference Court) under Sections 30 and 31 of LA Act, 1894, as there was a controversy with regard to its apportionment vide Annexure R-4. In this context, reliance - 147 - could be placed on a decision of the Honble Supreme Court in the case of Delhi Development Authority vs. Kusham Jain and another [(2016) 16 SCC254 wherein, it has been held that when compensation is deposited before the Reference Court under Sections 30 and 31 of the LA Act, 1894, it cannot be held that there is a breach as per sub-section (2) of Section 24 of 2013 Act.

92. Thereafter, these writ petitions have been filed by invoking sub-section (2) of Section 24 of 2013 Act, which creates a right in respect of certain land owners, while at the same time saving acquisitions already initiated under the provisions of the LA Act, 1894, under certain circumstances, whereas, Ramaiah during his lifetime nor these petitioners, who claim to be his legal representatives, had challenged the acquisition at any point of time.

93. That Annexure-R6 is dated 17.07.1980 which is not a mahazar with regard to taking of possession of land in question. It is only an inspection report which has been prepared after ascertaining that in Sy.No.172/2A there are no malkies and that it is a vacant land. Therefore, - 148 - nothing much turns on the said document. Annexure-F dated 21.03.1984, is a spot inspection report made when possession was taken and on that date, possession was taken which is evident from Annexure-R7 which is the notification issued under Section 16(2) of the LA Act, 1894.

94. What is strange and curious is that writ petitions were filed before this Court in the name of Ramaiah in the year 2014, long after, he had died in the year 1998, through his Special Power of Attorney which was not at all maintainable. The relevant portion of the order passed in the said Writ Petition Nos.33295/2014 and 35608/2014, dated 26.11.2015, which was adverted to by learned senior counsel for BDA, is extracted as under: 1st petitioner claims to have purchased 5 acres of land from out of 7 acres in Sy.No.172/2A of Nayanappassetty palya Gramatana from one Sri Krishnashetty under sale deed dated 27.5.1974. According to the

said petitioner, the respondent Bangalore Development Authority acting under the Bangalore Development Authority Act, 1976 (for short BDA Act) proposed for acquisition large tracts of land including the aforesaid land - 149 - by issuing preliminary notification dated 19.09.1977, followed by final notification on 7.2.1978. The 1st petitioner asserts that a piece and parcel of land measuring 35ft x 200ft. was hived off from Sy.No.172/2A measuring 5 acres and was conveyed to one V.M.Jameel Ahmed under sale deed dated 29th November 1983 who in turn is said to have conveyed the property in favour of petitioners 2 to 5 under a sale deed dated 24.10.1991.

2. Alleging that the scheme for acquisition of land to form BTM layout was not substantially implemented by the respondent- BDA, petitioners have sought quashing of notifications by declaring the scheme as lapsed insofar as Sy.No.172/2/A to an extent of 7,000 Sq.ft.

3. Apparently, the 1st petitioner has no more right, title and interest in the immovable property in the light of sale deed dated 29th November 1983 Annexure-B and therefore, at his instance, the scheme for acquisition of land cannot be declared as lapsed.

4. The 1st petitioner conveyed the land bearing Kaneshumari No.172/2/A of Nayanappasetty palya Gramatana under Annexure-D sold to Jameel Ahmed who in turn - 150 - by Annexure-D sale deed conveyed the very same land to petitioners-2 to 5. x x x Petitions wholly meritless, are dismissed. 95. In this case also, the legal representatives of (underlining by me) deceased Ramaiah had filed O.S.No.9493/99 before the City Civil Court and the said suit having been dismissed RFA.No.2124/2010 was filed before this Court which is also dismissed. Review petition is kept pending for the last five years. It has been held that the plaintiffs (petitioners herein) are not in possession of the land in question. The petitioners herein, are the legal representatives of Ramaiah, who filed the claim petition and there being a dispute, the compensation amount was deposited before the trial court thereafter, possession has been taken. Despite the same these writ petitions have been filed, after W.P.Nos.33295/2014 and 35608/2014 have been dismissed. This only makes it clear that some third parties have also

made attempts to deal with this extent of land claiming to have right, title and interest over it by filing - 151 - writ petitions against the State and the BDA in the name of deceased Ramaiah. The memorandum of writ petitions as well as the order passed therein was ordered to be put up by the Registry and on going through the same, it is noted that the writ petitions were presented in the name of Ramaiah and others assailing the acquisition notifications and seeking a declaration that the acquisition had lapsed on account of non-implementation of the scheme. Therefore, a multi-pronged attempt is being made against the State as well as the BDA to somehow get excluded an extent of 1 acre 33 guntas of land from the acquisition when in fact the said extent had already been allotted by the BDA to third party allottees after taking physical possession of the same. In the result, the writ petitions are dismissed. W.P.No.20626/2016 96. This writ petition is filed by the legal representatives of one K.T.Venkatesh seeking a declaration that the acquisition of land measuring 16 guntas in Sy.No.172/2A had lapsed as BDA has abandoned the scheme insofar as petitioners land is concerned and also that the acquisition is deemed to have lapsed under sub- section (2) of Section 24 of the 2013 Act. The aforesaid - 152 - extent of land in this writ petition is part of the land in question, which is totally seven acres in extent in the said survey number. This piece of land is also part of the notified land under Sections 17 and 19 respectively of the BDA Act as in the aforesaid two cases. According to the petitioners herein, late K.T. Venkatesh, husband of petitioner No.1 and father of petitioner Nos.2 and 5, was a tenant of 16 guntas of the land in question under Ramaiah. That he had filed Form No.7 under the provisions of the Karnataka Land Reforms Act, 1961 seeking grant of occupancy rights and by order dated 31.08.1979 (Annexure-C), occupancy rights were granted in the name of K.T. Venkatesh. Thereafter, Form No.10 was issued on 17.8.1982 in the name of K.T. Venkatesh. He died on 27.07.2002. Though this extent of land was also notified, it was in the name of Krishna Setty and not in the name of either Ramaiah or K.T. Venkatesh. That the award was passed in the name Ramaiah on 27.02.1984, but physical possession continues to remain with the petitioners. Relying upon sub-section (2) of Section 24 of the 2013 Act, petitioners have sought a declaration that the acquisition has lapsed.-. 153 - 97. Statement of objections have been filed by the BDA contending that the petitioners cannot seek relief under Section 24 of

2013 Act as compensation in respect of the entire land in question has been deposited before the City Civil Court, Bangalore, as per Sections 30 and 31 of LA Act 1894. That even before 16 guntas of land was granted in favour of K.T. Venkatesh, acquisition notifications had been issued. That the petitioners herein had filed O.S. No.1664/1995 before the XXVII Additional City Civil Judge, Bangalore, seeking relief of declaration and permanent injunction. The said suit was dismissed by the trial Court on 27.3.2006. That in the said suit, a person by name Wajid Pasha was impleaded as a plaintiff. Subsequent to dismissal of the suit, Wajid Pasha alone preferred Regular First Appeal No.1150/2006 before this Court. A Division Bench of this Court by judgment dated 08.06.2006 dismissed the appeal. Thereafter, Wajid Pasha preferred W.P.No.18059/2013 before this Court assailing the allotments made by BDA. The said writ petition was also dismissed by order dated 28.10.2013. According to BDA, acquisition process has been completed as the award was passed by the Special Land Acquisition - 154 - Officer (SLAO) in respect of the entire extent of seven acres (land in question) on 27.02.1984. Thereafter, compensation amount was deposited before the City Civil Court, Bangalore, under Sections 30 and 31 of LA Act, 1894. Possession of the land was taken on 21.03.1984 and Section 16(2) Notification was issued on 07.05.1985. Contending that the writ petition is not maintainable, BDA has sought for dismissal of the same.

98. Learned counsel, Sri V.S. Hegde, appearing for the petitioners raised similar contentions as the learned senior counsel and counsel for the petitioners in the aforesaid writ petitions. He submitted that acquisition notifications were not issued in the name of K.T. Venkatesh, but in the name of Krishna Shetty, the erstwhile landlord. The award was passed in the name of Ramaiah when in fact, K.T. Venkatesh had been granted 16 guntas of land by the Land Tribunal on 31.08.1979. Thereafter, Form No.10 was also issued in his name. That it is not known as to how Wajid Pasha got himself impleaded in O.S.No.1664/1996 filed by the petitioners herein. That K.T. Venkatesh died on 27.07.2002. The suit stood abated as far as he was concerned but it was - 155 - dismissed by the trial Court thereafter. The petitioners herein were not aware of the proceedings in the suit. Relying on the judgment of the learned Single Judge of this Court in the case of Chikkathayamma, learned counsel submitted that a declaration may be granted to

the effect that the acquisition proceedings was deemed to have lapsed under sub-section (2) of Section 24 of 2013 Act.

99. In response, learned Senior Counsel, Sri S Vijay Shankar, appearing for the BDA contended, even before 16 guntas of the land in question was granted by the land Tribunal in favour of K.T. Venkatesh, the said extent along with the rest of the land in Sy.No.172/2A was sought to be acquired by issuance of Preliminary Notification under the provisions of the BDA Act. That the suit filed by the petitioners namely O.S.No.1664/1996, which was for declaration and injunction, was dismissed on 27.3.2006. The 5th plaintiff in that suit, namely Wajid Pasha, who claimed to have interest in 16 guntas of the land in question, filed Regular First Appeal No.1150/2006 before this Court. The findings arrived at in the said appeal by this Court are categorical and the appeal was dismissed on 08.06.2006 and the Special Leave Petition - 156 - No.20486/2006 filed against the said judgment has also been dismissed by order dated 30.01.2009. Therefore, the grant of occupancy right in favour of K.T. Venkatesh pales into insignificance when the said extent of land was notified even prior thereto by the BDA.

100. Learned Senior counsel drew my attention to statement of objections filed by the BDA and contended that there is no merit in this writ petition also, and that the petitioners are not entitled to invoke sub-section (2) of Section 24 of the 2013 Act as physical possession has been taken over by the BDA by issuance of Notification under Section 16(2) of the LA Act, 1894, vide Annexure-R6 and compensation amount has been deposited before the Reference Court as per Sections 30 and 31 of the LA Act, 1894, as per Annexure-R4. Learned Senior counsel contended that this writ petition may also be dismissed.

101. By way of reply, learned counsel, Sri V.S. Hegde, appearing for the petitioners submitted, the suit was filed by K.T. Venkatesh in the year 1995 (30.3.1995 to be precise). K.T. Venkatesh died on 27.07.2002. The suit thereafter abated. That a stranger to the land got himself - 157 - impleaded in the suit and prosecuted the suit and filed regular first appeal, the judgments therein are not binding on the petitioners herein. That though the tenanted land vested with the State initially, occupancy right of the same being granted to K.T Venkatesh, it

devolved on the petitioners on the demise of the grantee. The land never vested with the State and nor with the BDA. Therefore, petitioners counsel sought for the writ petition being allowed in terms of the prayers sought by the petitioners.

102. It is not necessary to reiterate the facts and contentions narrated above except emphasizing that the facts and documents pertaining to acquisition relied upon by the learned Senior counsel for the BDA in W.P. No.17290/2014 & W.P.Nos.17673-687/2014 would also apply in this writ petition also. It is noted that in this writ petition also there emerges a similar pattern. K.T. Venkatesh had filed O.S. No.1664/1995 on the file of the XXVII Additional City Civil Judge, Bangalore, seeking the relief of declaration and permanent injunction in respect of 16 guntas of land in Sy.No.172/2A. In the said suit, the following issues and additional issues were raised: - 158 - 1. Whether the plaintiffs prove their lawful possession of the suit schedule property on the date of the suit ?.

2. Whether the plaintiffs prove unlawful interference by the officials of the defendant?.

3. Whether the defendant proves that the suit schedule property stood vested in the BDA by virtue of the acquisition proceedings and as such the suit is not maintainable?.

4. Whether the plaintiffs are entitled to a decree of permanent injunction as sought for?. Additional Issues:

1. Whether the 5th plaintiff proves his title over the suit property?.

2. Whether the 5th plaintiff is entitled for the relief of declaration of title?. The said suit was dismissed by judgment dated 27.03.2006. In the said suit, Wajid Pasha had impleaded himself as having an interest in 16 guntas of land. On dismissal of the suit, Wajid Pasha filed Regular First Appeal No.1150/2006 before this Court. The said appeal was also dismissed 08.06.2006, with the following observations; - 159 - 12. We have perused the correctness of the findings recorded by the learned Trial Judge on the question of title, the lawful possession etc. Bases on these the rival legal contentions, the Trial Judge has rightly framed the contentious issues as

the same are based on the pleadings of the parties. It is very relevant to refer to the findings recorded by the learned Trial Judge with reference to Issue No.1 at Para-7 of the impugned judgment. No doubt, much reliance is placed by the plaintiffs upon the order of the Land Tribunal dated 31.8.1979, which discloses that first plaintiff was cultivating the suit property as a tenant under one Sri Ramaiah @ Doddannaiah and that on his application, occupancy right was granted in his favour by the Land Tribunal. Further the Trial Judge with reference to the claim of the 5th plaintiff rightly on the basis of Ex.P17 has examined his claim wherein he has stated that purchase of property from the first plaintiff as absolute owner and undisputedly there is no registered sale deed executed in favour of 5th plaintiff he has executed GPA as per Ex.P1. Further, the learned Trial Judge has rightly made an observation that 5th plaintiff has neither chosen to examine the scribe of Ex.P16 and 17 hence held that an agreement of sale and a General Power of Attorney will - 160 - not convey title from one person to another person in respect of the schedule property. Further stated that they are all unregistered documents and therefore the learned judge had rightly recorded a finding of fact holding that in favour of 5th plaintiff registered sale deed was not executed by the 1st plaintiff. Therefore, rightly, the learned Trial Judge has held that no title much less valid and lawful title in respect of suit schedule property was transferred in favour of 5th plaintiff and while recording such finding he has also rightly referred to the application filed by the 5th plaintiff seeking amendment of the plaintiff to show that there was adverse possession of the suit schedule property and the same has been examined by the trial Court to record a finding that 5th plaintiff did not acquire title over suit schedule property on this Court also. Further reliance placed upon Ex.P17 by the plaintiffs is also examined and rightly held that the same does not amount to transfer of title in favour of 5th plaintiff in respect of the suit schedule property. Further with reference to the pleadings and evidence on record it is held that property is 16 guntas which is fully described out of which, 70 x 100 vide Ex.P1 and P17 the Trial Court had held that plaintiff has failed to show as to how the 5th plaintiff has acquired - 161 - right or interest over the suit schedule property measuring sixteen guntas. Further, with reference to the evidence of BDA on record wherein they have produced Ex.D1 to D3 the preliminary notification and final notification under the provisions of the BDA Act and also the award

respectively, Exs.P1 and P17 are dated 19.6.1996 when the property was acquired by the State Government in favour of BDA in the year 1978 and therefore, 1st plaintiff had no right to sell the suit property in favour of 5th plaintiff. The Trial Judge on proper appreciation of evidence on record has rightly held that having regard to the documentary evidence produced by the BDA on record to show that land was acquired by the State Government in its favour in the year 1978, first plaintiff had no right to alienate the property in favour of 05th plaintiff. The reliance placed by the plaintiffs counsel upon the decision of this Court reported in ILR 2002 KAR3023 in support of proposition that the scheme was implemented within five years and therefore, it has lapsed. The Trial Judge held that this decision is not applicable to the facts of the present case because the question involved in this suit is not the validity or otherwise of the acquisition proceedings of the land in question. Hence the above decision is, - 162 - distinguishable and not applicable to the fact situation. Further, the decision upon which the reliance is placed by the plaintiffs i.e. ILR 2005 KAR295 is also not accepted holding that the same is not applicable to the present situation as it was a case in which acquisition was challenged and the learned Trial Judge has rightly rejected the contention of the plaintiff. Thus it has held that 05th plaintiff has not acquired title over the suit property by answering the contentious issue.

13. The case of the plaintiffs at para- 3(a) of the amended plaint that first plaintiff is registered as an occupant by the Land Tribunal by its order dated 31.8.1979 otherwise, though he has been in possession, pleading clearly indicates that he was not in possession and prior to that he has been put in possession. Whether the procedure contemplated under Sec.41 of the Karnataka Land Reforms Act is not the plea urged in the plaint. Therefore, the learned Trial Judge while answering Issues 1 and 2 discussed regarding the suit filed by plaintiffs 1 to 4 pleading that they were in lawful possession of the suit schedule property. The Trial Judge referred to the pleading of the defendant in written statement that after obtaining interim order in the suit, plaintiffs illegally constructed the shed on the suit - 163 - property. In para 3(a) of the amended plaint, it is pleaded that possession was delivered by the 1st plaintiff to 5th plaintiff and the 5th plaintiff alone is taking part in the proceedings. Plaintiffs 2 to 4 were stated to be tenants. 5th plaintiff has admitted in his evidence that plaintiffs 1 to 4 are no more the tenants in respect of

any portion of the suit property that they have vacated the portions in their possession. Hence, the Trial Judge held that as per the pleadings the 5th plaintiff alone is in possession of the suit property. In his evidence, 5th plaintiff has deposed that the first plaintiff was in possession of the suit property since the date of grant of occupancy rights, that three houses, one car shed and a fuel depot were constructed by the 1st plaintiff in the year 1995, that plaintiffs 2 to 4 were the tenants in respect of different portions of the suit property and that he was put in possession of the suit property by the 1st plaintiff on 19.6.1996. While referring to the pleadings pleaded by Plaintiff No.5, evidence of DWs1 and 2 is referred, the Trial Court has referred to Ex.D4 the copy of possession Mahazar dated 21.3.1984 and Ex.D5 the notification dated 7.5.1985 issued under Sec.16(2) of the Land Acquisition Act. After referring to the said documents, at para-13 of the impugned - 164 - judgment, it is stated that nothing is elicited in the cross-examination of DWs1 and 2 by the first plaintiffs counsel to discredit their testimony regarding possession of the land taken by the B.D.A. as pleaded by it. Further, referring to the evidence of PW.1 regarding possession it has held that it is not credit worthy to believe as the suit property is 16 guntas while as per Exs.P1 and P17, 5th plaintiff was put in possession of only the portion measuring 70 x 100. It is the evidence of PW.1 that he is in possession of entire sixteen guntas and PW.1 has admitted that the suit property is one which is within the compound seen in Ex.P60(photo). Hence, it is clear from Ex.P60 that the property within the compound cannot measure 16 guntas. P.W.1 in his cross-examination deposed before the trial Court that plaintiff has constructed three houses one car shed and a fuel depot in the year 1995 whereas plaint averments reveal that it was the tenants who had constructed the structures by spending huge amount. The Trial Court has recorded the findings of fact with reference to the evidence of P.W.1 who has deposed in his cross-examination that there are coconut trees and sapota trees but, after perusing Ex.P60, three houses, coconut trees and sapota trees are not at all seen and - 165 - 5th plaintiff has not produced photos to show the existence of three houses, coconut trees and sapota trees in the suit property.

14. Further with reference to evidence of PW.1 in respect of possession at para-14, the Trial Court has held that P.W.1 has not deposed the manner in which he is enjoying the suit property. Therefore, the learned Trial Judge had come to the right

conclusion and held that it is hard to believe that plaintiffs were in possession of the suit property prior to the suit and now the 5th plaintiff is in possession of the same.

15. The said finding of fact is perfectly based on the pleadings of the first plaintiff at para-3 that he has been in possession after he was registered as a grantee and has been put in possession. Thereafter, the learned Trial Judge at para-15 with reference to the copies of possession certificates Ex.D6 to D8 produced by the defendant which reveal that the sites allotted to Sri K.B.Chandrashekar, M.V.Rajashekar and C.S.Shivalli and Ex.D11 which the layout plan in which the sites formed in Sy.No.172/2A is shown and recorded a finding of fact that claim of the 1st and 5th plaintiff that they have been in possession is rightly answered against the plaintiffs which - 166 - findings and reasons are fully concurred with by us as the same are based on proper appreciation of pleadings and cogent and legal evidence adduced by the BDA before the trial Court. The evidence produced by the plaintiffs is totally inadequate and insufficient to show that the first plaintiff had the right of possession in respect of the suit property in view of acquisition proceedings in the year 1978 and the agreement of sale does not convey title in favour of 5th plaintiff. Therefore, the Trial Judge declined to grant the declaratory relief and relief of permanent injunction.

16. The submission made by the learned counsel for the plaintiffs placing reliance upon the findings recorded on Issue No.3 with regard to statutory vesting of the land after acquisition proceedings in favour of BDA against which no challenge is made placing reliance upon the decision reported in AIR 1984 ORISSA180 The decision upon which the reliance is placed is totally inapplicable to the fact situation. No doubt, the learned Trial Judge while treating Issue No.3 as preliminary issue regarding maintainability of the suit he has made an observation that land is not vested irrespective of the findings having regard to the findings - 167 - recorded on other contentious issues referred to in earlier paragraphs and while answering additional issues 1 and 2 which we have concurred with for the reasons recorded by us. We are not accepting the said finding on Issue No.3 treating it as a preliminary issue having regard to Ex.D1 to D3 and also the learned Trial Judge could have answered all the issues together. In view of aforesaid

documentary evidence, we have to exercise our power under Sec.105 CPC and hold that the suit schedule land is vested with the BDA. This fact is evident from the Award passed by the Land Acquisition Officer and Mahazar copy to evidence the fact that possession of the land was taken and 16(2) notification of the Land Acquisition Act is published, which document is evidenced the factum of taking possession by the State Government and transferred the same to B.D.A. and therefore the schedule land vests with the B.D.A. The finding on Issue No.3 by the trial Court treating it as preliminary issue is erroneous in law in view of abundant legal evidence referred to supra in support of BDA. The 5th plaintiff has not adduced rebuttal evidence in this regard.

17. For the reasons stated supra, we do not find any reasons whatsoever including the decisions upon which much reliance is - 168 - placed by the plaintiffs counsel in this appeal are wholly untenable in law.

18. The dismissed. Appeal is accordingly (underlining by me) 103. Thereafter, Wajid Pasha filed W.P.No.18059/2013 assailing the allotment of sites made in favour of certain allottees by the BDA in 16 guntas of land on the premise that he continued to be in possession and enjoyment of the said extent of land by virtue of an agreement of sale and General Power of Attorney (GPA) dated 19.06.1996 executed by K.T. Venkatesh. In that writ petition, the specific question raised was Whether the petitioner has the locus standi to question the allotment of sites formed by the BDA in Sy.No.172/2A of Bilekahalli village, Begur Hobli, Bangalore South Taluk?. This Court in paragraphs 8 to 12 held as under: 8. During the course of hearing, Mr. Ilyas Hussain, conceded that K.T. Venkatesh, who executed the agreement of sale and the deed of power of attorney (Annexures - F and F1) in respect of the subject property on 19.06.1996, died much earlier to the date of filing of this writ petition. In law, the contract - 169 - of agency gets automatically terminated by death of either of the parties. As soon as the person who executed the power of attorney dies, the right given to the agent comes to an end. Once the agency is terminated on account of the operation of law or by the act of the principal, the agent cannot act on the basis of the power conferred upon him under the deed of power of attorney. In view of death of K.T. Venkatesh, the power conferred upon the petitioner to act as the agent as per the deed dated

19.06.1996 has got automatically terminated.

9. Mr. Ilyas Hussain admitted that the petitioner has not instituted a suit for specific performance of the agreement of sale dated 19.06.1996 against K.T. Venkatesh. Even if, the petitioner has been put in possession of the property while executing the agreement of sale dated 19.06.1996, in law, the petitioner has no locus standi to question the acquisition proceedings or the allotment of sites by the BDA. In catena of cases, Apex Court has held that the alienation of land after issuance of a Notification under S.4 of Land Acquisition Act is void and the purchaser cannot question the acquisition of the property. It is trite that a person who purchased the property after the publication of a Notification under S.4 of the - 170 - Land Acquisition Act is not entitled to challenge the acquisition for the reason, that his title as against State and the beneficiary of the land acquisition is void and he can at best claim compensation on the basis of vendors title. (See (1996) 10 SCC721- Ajay Krishan Shinghal v. Union of India; (1995) 5 SCC335- Mahavir v. Rural Institute; (1995) 2 SCC528- Gian Chand v. Gopala; (2008) 9 SCC177- Meera Sahni v. Lt. Governor of Delhi; (2009) 10 SCC689- Tika Ram v. State of U.P.) 10. In the case of ST. SNEH PRABHA Vs. STATE OF U.P. AND ANOTHER, AIR 1996 SC540 Apex Court has held that 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 and that the person must be the owner of the land, on the date on which the notification under Section 4(1) was published. In effect, it has been held that the person who purchased the property subsequent to preliminary notification has no locus standi to challenge the acquisition proceedings.

11. From the above it becomes clear that in an agreement of sale the person who was put in possession, only has a right to enforce an obligation which other party owed - 171 - to him, in as much as no title passes under an agreement of sale. Hence, the petitioner, who has not acquired title over the subject property under the agreement of sale dated 19.06.1996 has no right to raise any objection with regard to acquisition proceeding which was initiated much earlier to the alleged transaction between himself and K.T. Venkatesh, noticed supra.

12. Keeping in view the undisputed facts, noticed supra, the petitioner has no right to take any kind of exception to the acquisition of the subject property by the Government, the formation of layout and allotment of the sites formed therein by the BDA, in favour of respondent Nos.3 to 6. In the result, writ petition being devoid of merit is dismissed. However, the parties shall bear their respective costs. (underlining by me) It is after the dismissal of the W.P.No.18059/2013 on 28.10.2013 that the present writ petition has been filed by the legal representatives of K.T. Venkatesh on the enforcement of the 2013 Act.-. 172 - 104. It is noted that despite the above orders and judgments extracted above, this writ petition has been filed seeking a relief under sub-section (2) of Section 24 of the 2013 Act. Having regard to the aforesaid discussion, it becomes clear that the petitioners have failed to prove that they are in physical possession of 16 guntas of land or that the compensation has not been paid to them as the SLAO has rightly deposited the compensation amount before the trial Court under Sections 30 and 31 of LA Act, 1894. In the circumstances, no relief can be granted to the petitioners under sub-section (2) of Section 24 of 2013 Act or for that matter under Section 27 of the BDA Act as evidently BDA has allotted sites to third parties in the land in question and in fact the same was assailed by Wajid Pasha, this Court dismissed the writ petition. Hence, this writ petition is also dismissed. Re: Point No.(iii) 105. There is another important aspect in these matters, which has been pointed out by learned Senior Counsel Sri Vijay Shankar, in these matters. According to him, in each of these cases civil Court and/or this Court have already opined that the land owners have lost their title as well as possession once the acquisition process has - 173 - been completed. That this finding of fact cannot be upset in these proceedings merely because the petitioners have invoked sub-section (2) of Section 24 of 2013 Act. He submitted that both on the issue of payment of compensation or as on taking physical possession of the land in question under which circumstances sub-section (2) of Section 24 of 2013 Act has been invoked, the finding of facts are against the petitioners herein. That when this Court has confirmed the finding of facts that has been arrived at by the trial Court and has further given its own findings in the earlier petitions/appeals filed by the petitioners herein, as the case may be, those findings cannot be reconsidered in these writ proceedings. The submission of learned Senior Counsel was that this

Court cannot sit in judgment over the findings arrived at in the earlier proceedings concerning the very same land in question by this very Court as those findings have attained finality. He submitted that the principles of res judicata would apply to these cases as the finding of facts may have been arrived at in the earlier writ petitions and/or appeals instituted by these very petitioners against the State and the BDA which cannot be reopened in these - 174 - subsequent writ petitions filed by the very same petitioners. He further submitted that the finding of facts concluded by this Court in the earlier cases is binding and cannot be reopened by filing these petitions. Learned Senior Counsel, contended that the petitions are not maintainable and ought to be dismissed in limine on the ground of res judicata as well as an instance of abuse of process of law and of this Court. He further submitted that grounds which were available to the petitioners when they earlier filed their writ petitions, but not availed of at that time cannot be permitted to be raised in these writ petitions and that the explanation to Section 11 of the CPC, which is also applicable to writ proceedings squarely applies to these cases.

106. It has been noted while discussing each of these cases that the three sets of petitioners herein have not approached the Court of law for the first time. The petitions filed by the respective petitioners herein have a checkered history. While it is not necessary to reiterate the same in detail while considering the contentions of learned Senior Counsel in light of the principle of res judicata and finality of judgments and orders of Courts and - 175 - binding nature of findings arrived at between the parties, it would only be necessary to revisit the same in order to recapitulate the cases filed by them earlier. (a) The petitioners in W.P.Nos.17852-17856/2014 and connected writ petitions, had in the first instance filed W.P.No.11299/1996 and thereafter preferred W.P.No.26992/2000 and being aggrieved by the orders passed by the latter writ petition, the petitioner preferred Writ Appeal No.3515/2002 and the judgment passed in the writ appeal was assailed before the Honble Supreme Court in S.L.P.No.20549/2006. After withdrawing the special leave petition, the petitioners filed O.S.No.25184/2014. Not being successful in getting an interim injunction/order in that suit and on the enforcement of 2013 Act, petitioners have invoked sub-section (2) of Section 24 of 2013 Act and also Section 27 of the BDA Act. As already noted, the petitioners in these writ petitions did not invoke Section 27 of the BDA Act in the earlier writ

petitions filed by them. Finally in the context of lapse of acquisition under sub-section (2) of Section 24 of 2013 Act, Section 27 of BDA Act has been invoked. The petitioners have - 176 - been unsuccessful in establishing their case under the aforesaid provisions. (b) Similarly, the petitioners in W.P.No.17290/2014 and connected writ petitions, had in the first instance filed O.S.No.9493/1999 before the City Civil Court, Bangalore, the said suit being dismissed by judgment dated 27.09.2010, they preferred Regular First Appeal No.2124/2010 and the said appeal meeting the same fate as in the suit, Review Petition No.879/2012 has been filed by the petitioners. The same is kept pending for the last five years and they have once again approached this Court by filing these writ petitions invoking sub-section (2) of Section 24 of 2013 Act. (c) Similarly, the petitioners in W.P.No.20626/2016 were earlier parties to O.S.No.1664/1996. The said suit having been dismissed by the trial Court on 27.03.2006, Regular First Appeal No.1150/2006 was filed before this Court. The said appeal has also been dismissed by judgment dated 08.06.2016. Thereafter, Wajid Pasha one of the parties to the suit as well as the regular first appeal preferred W.P.No.18059/2013 and he, being unsuccessful - 177 - in the said writ petition, the petitioners herein have preferred these writ petitions invoking sub-section(2) of Section 24 of the 2013 Act.

107. Thus, there is a clear pattern in these writ petitions. The purpose of filing cases repeatedly before different Courts is to seek an order, which would strike at settled state of affairs and unsettle them so as to create an atmosphere of uncertainty not only in the minds of the authorities, but also in the minds of the allottees of BDA as in the instant case. In all this rigmarole there would be certain third parties seeking to encash on the uncertainty and enrich themselves illegally and unjustly. When such things are brought to the notice of the Court, it is the duty of the Court to discourage such litigations on the basis of principles of finality of decisions of Courts of law and also on the basis of the principle of res judicata, which are enunciated in Section 11 of the CPC. Further, if certain prayers have not been sought in the earlier litigation even when those prayers were available to the petitioners they cannot do so subsequently by filing fresh writ petitions. Such petitions would have to be declined on the basis of the principle enunciated in Order II Rule 2 of CPC.-. 178 - (a) That the principle of res judicata concerning

finality of orders and judgments is a salutary principle, which is applicable in such matters or there would be no sanctity to the judgment and orders passed by this Court vis--vis the authorities herein. The general principle underlying the doctrine of res judicata is ultimately based on consideration of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authority and the other principle is, no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. (b) In fact, the following observations of the Honble Supreme Court in a decision in the case of M.Nagabhushana vs. State of Karnataka & others [(2011) 3 SCC408, disposed of on 02.02.2011 are apposite:

14. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, interest - 179 - *reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constet curiae quod sit pro un act eademn cause* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquishing his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical - 180 - doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promise honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. (c) The Apex Court has also

held that there can be no doubt that the principles of constructive res judicata as explained in explanation IV to Section 11 of the CPC are also applicable to writ petitions. Thus, the attempt of the petitioners herein to re-argue the case which has been finally decided by this Court is a clear abuse of process of the court. In this context reference may be made to the decision in the case of K.K.Modi vs. K.N.Modi & others [(1998) 3 SCC573, wherein it has been held as follows: One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reargitation may or may not be barred as res judicata.-. 181 - 108.

A recent trend in litigation with regard to lands acquired in and around Bengaluru appears, to be to initiate repeated proceedings before different Courts such as, City Civil Court, High Court, assailing the acquisition proceedings by seeking a declaration that the lands have not been acquired by the BDA and a consequential decree for permanent injunction, in an attempt to seek a favorable order before atleast one forum. The other erstwhile land owners would make use of that order not only in respect of that particular acquisition, but to treat it as a precedent for all other acquisitions made by the BDA. There have been instances of declarations being granted to the effect that there has been lapse of acquisition even when in some instances, allottees who have been allotted sites by the BDA have put up construction thereon out of their hard earned money crying foul and fretting over such attempts made by the erstwhile land owners in their multiple dubious attempts. This batch of cases is one such instance where it appears that it is not really the legal representatives of Ramaiah who are interested in seeking a declaration that acquisition of 1 acre 33 guntas of land is deemed to have lapsed. It appears that there are - 182 - backstage actors who have may been treating these petitioners as puppets for their unlawful gains and selfish ends. It is high time for this Court as well as the City Civil Court to remind themselves to make a preliminary assessment about the genuineness of such cases, whether they are for unlawful and oblique motives, before entertaining them for a detailed adjudication. Possibly it is on account of some of the erstwhile land owners being successful in misleading this Court or the Civil Court in certain cases which has emboldened other such persons or those who are using the erstwhile land owners

as their front persons to repeatedly file cases, either before this Court or, before the Civil Court, so as to create uncertainty about the acquisition, although completed, within the respondent-authorities as well as in the minds of the allottees who are bona fide allottees by the BDA and who have invested their life savings in constructing a shelter on the sites allotted by the BDA and in the mind of public in general.

109. The aforesaid observations may not lead to an inference that every petition filed by an erstwhile land owner or somebody else representing her/him before the - 183 - trial Court or this Court does not do so for a bona fide purpose or that every such petition or proceeding is an abuse of process of Court and the law. But such petitions seems to be minuscule in number particularly, when the acquisition process has already reached a finality. I find that in several cases, where acquisition of land has been initiated and completed decades ago, writ petitions and civil suits have been filed to somehow cast a doubt in the acquisition process and to speculate on a favorable order from the Courts. The reasons for such a spate of litigation seeking to re-open completed acquisitions and create uncertainty in acquisition proceedings completed long ago are not far to see. Firstly, it is due to steep escalation in the value of land in and around Bengaluru, which is triggered by an unholy nexus between various groups and stake holders. Secondly, the State Government denotifying lands from acquisition, even after taking over possession creates a hope, albeit a false hope, in the mind of other erstwhile land owners to seek denotification or deletion of their lands also from acquisition on the purported touchstone of parity (Article 14 of the Constitution). This leads to allottees of acquired lands challenging - 184 - denotification of land and the subsequent withdrawal of such denotifications is another controversial chapter in the realm of acquisition of lands in Bengaluru by BDA. Thirdly, in certain cases, BDA which has taken possession of the acquired land does not allot the acquired land to the allottees in time. When all this is mired in controversy third parties, alinees, land sharks, and those hobnobbing in real estate start interfering by taking sides with the erstwhile land owners or with allottees of BDA. Inevitably, an atmosphere of uncertainty would give rise to actors and agents who try to settle controversies between various vested interests. One such step, in this scenario of created uncertainty, is to file cases either before this Court or before the civil

Courts so as to test the patience of genuine stakeholders and interested parties. Even before any finality is achieved in any legal proceeding, another litigation would be commenced either in the same Court or before another Court by the same parties or some other parties who, by then, would also claim to have acquired stake/interest in the disputed land. The cycle of litigation becomes never ending. Further, when parties sense that they may not be successful before a higher - 185 - forum, they withdraw their cases with liberty to seek remedies before another forum and inevitably make some cosmetic changes to their complaints/petitions and seek reliefs which cannot be sought or not maintainable and the rigmarole goes on. Such a trend, if encouraged by Courts would unsettle acquisition proceedings which have attained finality and are completed and will only lead to citizens losing faith in the authorities involved in the acquisition process.

110. When such frivolous cases are filed, it is the bounden duty and responsibility of the authorities involved in the acquisition, be it the State Government, the BDA or any such acquiring authority and all those responsible for initiating and completing the acquisition process at all levels to give their utmost attention to such cases and render effective assistance to the Courts to come to a correct adjudication. The persons who represent the authorities cannot afford to fail in their duty in assisting the Courts to come to a correct decision in such matters. Any wavering of mind before the Court would inevitably lead to erroneous judgments and decisions which would result in not only further litigation, but cause havoc in - 186 - delivery of justice itself. Therefore, great responsibility and onerous duty is cast on the respondent authorities and those who represent them to assist the Court in a fair and open manner as has been done in the instant cases. If indeed the authorities involved in acquisition have not taken possession of any parcel of land or there have been any other infirmity in the acquisition process, then it must be fairly submitted to the Court in that regard. Let me hasten to add that the Court does not expect any party to make a concession when it is not permissible or available, but a true and correct assistance to the Court in such matters would bring about not only clarity and certainty in adjudication, but also lead to quick and quality justice.

111. Further, it is the duty of Courts to be cautious while entertaining writ petitions when they encounter a series of litigations filed earlier by the very same petitioners even when they invoke sub-section (2) of Section 24 of the 2013 Act, or when the said section is not applicable to acquisitions made under the BDA or KUDA Act as has been held herein while answering Point No.1 above.-. 187 - 112. In light of the above, these writ petitions would also have to be dismissed on the ground of res judicata and for abuse of the process of this Court with costs quantified at Rs.25,000/-, in respect of each of the three batches of petitions.

113. The summary of findings are as under:- (1) That sub-section (2) of Section 24 of 2013 Act, which creates a new right in the land owners is applicable only to those lands where initiation of acquisition is under the provisions of LA Act, 1894 and not any other enactment. The said section does not apply to those acquisition proceedings, which have been initiated under any other Central enactment or State enactment such as BDA Act or KUDA Act, as the case may be. (2) As the acquisitions in the instant cases have been initiated under the provisions of BDA Act, the petitioners are not entitled to relief under sub-section (2) of Section 24 of 2013 Act. Therefore, the writ petitions are liable to be dismissed. (3) While holding so, reliance has been placed on the decisions of the Honble Supreme Court in the case of Munithimmaiah, Offshore Holdings Private Limited, Bondu Ramaswamy, Girnar Traders (3) and Sukhbir Singh. Consequently, - 188 - the dictum of this Court in K.M. Chikkathayamma and other decisions which are not in consonance with the aforesaid dicta of the Honble Supreme Court are not applicable to the present case. (4) Assuming that the petitioners are entitled to relief under sub-section (2) of Section 24 of 2013 Act, writ petitions are dismissed having regard to the fact that petitioners have not proved their case under the said sub-section. The petitioners have not proved that compensation has not been paid or that physical possession has not been taken from them and hence, they are not entitled to a declaration that the acquisition is deemed to have lapsed under the said sub-section. (5) Having regard to the findings arrived at in each of the three batches of cases, it is held that filing of these writ petitions are an abuse of the process of law as already there have been findings given by the competent Courts i.e., City Civil Court and/or this Court, as the case may be, holding that the acquisition has been completed and the petitioners are not in possession of their respective portions of

the land in question i.e., Sy.No.172/2A, totally measuring seven Acres. Consequently, petitioners have no right to assail the allotment - 189 - of sites in the land in question to various persons. In the result, the writ petitions are dismissed with costs of Rs.25,000/- (Rupees twenty five thousand only) payable in each of the three batches of petitions. The said cost shall be paid to the BDA, which has been dragged into these cases in several rounds before the City Civil Court, this Court as well as before the Honble Supreme Court within a period of eight weeks from the date of receipt of certified copy of this order. JUDGE mv/*mvs/s Sd/-

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