

Sri. Umashankar Vs. The Commissioner

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Court : Karnataka

Decided On : Apr-22-2021

Judge : P.B.Bajanthri

Appeal No. : WP 11021/2011

Appellant : Sri. Umashankar

Respondent : The Commissioner

Advocate for Pet/Ap. : Mr. Ramaswamy

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF APRIL, 2021 BEFORE THE HONBLE MR.JUSTICE P.B. BAJANTHRI WRIT PETITION NO.11021/2011 (LA-BDA) BETWEEN:

1. SRI. UMASHANKAR AGED ABOUT53YEARS, S/O LATE DODDAMARAPPA RESIDING AT No.19/2, NEW BINNAMANGALA INDIRANAGAR POST, OLD MADRAS ROAD, BANGALORE - 560 038 2. LATE RAMARAJU S/O LATE RAMARAJU SINCE DECEASED BY HIS LEGAL REPRESENTATIVES:

2. A) SMT. LEELA R W/O LATE RAMARAJU AGED ABOUT52YEARS2B) SHABARI DIXIT S/O LATE RAMARAJU AGED ABOUT29YEARS2C) POORINAMA R D/O LATE RAMARAJU AGED ABOUT22YEARS2D) MANJITH RAGHAVENDRA S/O LATE RAMARAJU AGED ABOUT22YEARS2E) ARJUN

RAGHAVENDRA S/O LATE RAMARAJU AGED ABOUT 21 YEARS 22(F) ANUP RAGHAVENDRA S/O LATE RAMARAJU AGED ABOUT 20 YEARS PETITIONERS 2(A) TO 2(F) ARE RESIDING AT No.19/2, NEW BINNAMANGALA INDIRANAGAR POST, OLD MADRAS ROAD, BANGALURU - 560 058. PETITIONERS (BY SRI. REUBEN JACOB, ADVOCATE (NOC)) AND:

1. THE COMMISSIONER BANGALORE DEVELOPMENT AUTHORITY CHOWDAIAH ROAD, KUMARA PARK WEST, BANGALORE - 560 020 2. THE SECRETARY THE VYALIKAVALL HOUSE BUILDING CO-OP SOCIETY, 15TH CROSS, MALLESHWARAM BANGALORE - 560 003 3. THE PRINCIPAL SECRETARY DEPARTMENT OF URBAN DEVELOPMENT, M.S. BUILDING, BANGALORE - 560 001 4. M.C. ASSOCIATES A PARTNERSHIP FIRM 5 M.B. AND COMPANY A PARTNERSHIP FIRM 6 M.N.L. BUILDERS A PARTNERSHIP FIRM 7 M.P. DEVELOPERS A PARTNERSHIP FIRM 8 M.R. ENTERPRISES A PARTNERSHIP FIRM 39. M.J.

CONSTRUCTIONS A PARTNERSHIP FIRM 10 M.S. PARTNERS A PARTNERSHIP FIRM 4 TO 10 ARE HAVING OFFICES AT 8TH FLOOR, 'THE ESTATE', # 121, DICKENSON ROAD, BANGALORE - 560 042 RESPONDENTS 4 TO 10 ARE REPRESENTED BY R.C. BHAVUK 11 LATE A. SUKLAL SINCE DECEASED BY HIS LR'S (A) KIRAN S/O LATE A. SUKLAL AGED ABOUT 50 YEARS (B) MANJULA W/O LATE A. SUKLAL AGED ABOUT 75 YEARS (C) PARVEENA D/O LATE A. SUKLAL AGED ABOUT 47 YEARS (D) BHAVANA D/O LATE A. SUKLAL AGED ABOUT 44 YEARS RESPONDENT NOS. 11(A) TO (D)]. ARE RESIDING AT 'PLUMERIA HEAVEN' NO.344 & 351, 2ND FLOOR 12TH CROSS, INDIRANAGAR I STAGE BANGALORE - 560 038. ... RESPONDENTS (BY SRI. SRINIVASA GOWDA, AGA FOR R-3. SRI. MURUGESH V. CHARATI, ADVOCATE FOR BDA SRI. M. KARUNAKARAN, ADVOCATE R-1 SRI. A.S. PONNANNA, SR. COUNSEL FOR SRI. ARNAV A. BAGALWADI, ADVOCATE FOR R-4 TO 10 SRI. K. SUMAN, ADVOCATE FOR R-2. SRI. K.N. KRISHNA RAO, ADVOCATE FOR R-11(A) TO (D)) 4 THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE AWARD PRODUCED AT ANN-N AND DATED 31/1/77 AND FINAL NOTIFICATION DATED 13/1/1980 AND CONSEQUENTLY THE SALE DEEDS

PRODUCED AT ANN-R & S BY ISSUING A WRIT OF MANDAMUS IN THIS REGARD AND ETC., THIS PETITION HAVING BEEN HEARD AND RESERVED ON 01/03/2021 AND COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the instant petition, legal heirs of B.Doddamarappa have prayed for the following relief:- WHEREFORE the petitioner humbly prays this Hon'ble Court be pleased to set aside the award produced at Annexure-N along with preliminary notification bearing No.BDA/SALAO/C3.PR.301/77-78 dated 3rd November 1977 and final Notification bearing No.HUD35MNJ78 dated 13 November 1980 and consequently sale deed produced at Annexure-R and S by issuing writ of mandamus. Issue such other writ or order or direction as deemed fit by this Hon'ble Court with regard to the facts and circumstances of the case to secure the ends of justice.

2. Brief facts of the case are as follows:- Respondent No.1 - Bangalore Development Authority (Herein after referred to as BDA, for short) initiated proceedings for acquisition of land for the purpose of formation of OMBR layout. On 03.11.1977 preliminary notification and on 13.11.1980 final notification was issued. Portion of survey numbers in Binnamangala Village had been identified by the officials of the Revenue Department and BDA. In the present case, for acquisition of Sy.No.78 of Binnamangala Village to an extent of 1 acre 12 guntas, number of correspondences took place among BDA, Revenue and Urban Development Departments. In the correspondences in respect of Sy.No.78 to an extent of 1 acre 12 guntas, Sri.A.Suklal's name is reflected in respect of acquisition. He has also claimed compensation, simultaneously, one Sri.A.Narayan had also claimed, who is stated to be brother of Sri A Suklal. On 01.04.1985 award in respect of Sy.No.78 was passed and it was approved by the Special Deputy Commissioner of BDA on 17.06.1985. It is stated that possession of the property bearing Survey No.78 was taken by drawing the mahazar on 03.10.1985. Sri.A.Suklal filed an application under Section 18 of the Land

Acquisition Act, 1894 (Hereinafter referred to as 'Act 1894' for short) for reference to the Civil Court. Pursuant to Sri.A.Suklal's application, BDA deposited the award amount in the Civil Court on 24.12.1986. Simultaneously, award amount in respect of 6 Kharab land was forwarded to the office of the Tahasildar, North Taluk on 29.12.1986.

3. When things stood thus, Vyalikaval House Building Co- operative Society(Hereinafter referred to as 'Society' for short) stated to have requested the State Government for bulk allotment of land on 18.03.1987 and Government had issued certain directions to the BDA for allotment of lands on 18.05.1987 while invoking power under Section 65 of the Bengaluru Development Authority Act, 1976 (Hereinafter referred to as 'BDA Act' for short) while issuing notification. On 26.09.1987, Civil Court allowed the reference in favour of Sri.A.Suklal. Pursuant to the State Government's directions, BDA passed resolution No.1085 for bulk allotment in favour of Society on 28.06.1988. BDA handed over the possession of Sy.No.78 of Binnamangala to the Society on 07.02.1989 whereas the sale deed was entered in favour of the Society on 20.04.1989. Notification under Section 16(2) of the Act, 1894 was published in the official gazette on 05.12.1991.

4. In the meanwhile, Sri.A.Suklal and others filed W.P.No.5785/1996 and W.P.Nos.34830-34835/2001 connected with W.P.No.41414/1999 and W.P.Nos.34822-34829/2001 7 wherein the preliminary notification and final notification issued on 03.11.1977 and 13.11.1980 respectively were challenged and also sought for cancellation of Government Order dated 24.03.1995 and further, direction to the concerned respondent to restore the possession of the property in Sy.No.78 measuring 1 acre 12 guntas of Binnamangala Village. On the other hand, on 01.08.2001, Division Bench disposed of the writ petitions with the following observations:- "The government, by its impugned order dated 24.03.1995 issued no objection certificate to the 4th respondent society to sell the land of 1.12 acres subject to the following conditions: (a) Some Portion of the sale proceeds from the said land shall be utilized for the purpose of payment of developmental charges to BDA in respect of layout at Nagavara. (b) Refund of deposits to its members who are adversely affected in the recent decision of the supreme Court of India in Narayana Reddy's case. (c) To make use of the remaining money to

develop for the other approved layouts. It is this order that has been challenged in these two writ petitions. The other writ petition is filed purportedly in public interest. The counsel for 5th respondent in whose favour the land has been transferred by the society pursuant to the permission granted by Government contend that these petitioners have been set up by the erstwhile land owners. By referring to various averments in the writ petition, it is pointed out that they are virtually espousing the cause of the land owner rather than their own cause. Our attention has been drawn to the similarity in the averments made in the two writ petitions. Be that as it may, the petitioners being members of the co-operative society and being interested in safeguarding their own rights cannot maintain a public interest litigation as if they are speaking for the members of public. The disputes inter se between the co-operative society and the members could be agitated by having resort to the remedies under the co-operative societies Act. We cannot therefore, at the instance of the petitioners win WP414141999, quash the impugned order of the Government or to direct probe into the affairs of the society. At the same time, the 4th respondent-society shall not be permitted to make a windfall out of the sale transactions entered into with the 5th respondent pursuant to the permission granted by the Government. One of the reasons advanced in the representation made by the society was that it has to refund a lot of money to its members. Moreover, it is stated in the counter filed by the 4th respondent society that substantial amount has been refunded to the members. In these circumstances, learned counsel for the 4th respondent-society could not put forward any objection for resisting the petitioners' claim for refund of the amount which they paid in the year 1982 or so. Learned senior counsel has pleaded, in the course of arguments, that even though there is no specific prayer, the relief to the extent of refunding the amount deposited with interest should be granted. We accept the contention of the learned counsel for the petitioners. As already observed, the 4th respondent-society should not be permitted to take undue advantage of the Government order to the detriment of the members of the society. We are therefore, of the view that the amount deposited by the petitioners should be returned to them with reasonable interest thereon. We feel that double the amount deposited will be the reasonable sum that should be returned to the 9 petitioners in WP4141499. Accordingly, we direct the said sums to be paid within eight weeks from the date of

receipt of the order. In case of failure to do so, the permission granted by the Government shall stand cancelled apart from the 4th respondent being liable for proceedings under the Contempt of Courts Act. It is further made clear that the Registrar of Co-operative Societies or any other competent authority can take such steps as may be required to safeguard the interests of the members in regard to the money deposited so that the sale proceeds are not utilised for illegitimate purposes. We further direct that in the case of the impleading applicants the amount deposited by them and an additional amount of 50% thereof should be paid over to them within a period of three months. Court fee should be paid by each of the petitioners including the impleading applicants within one week. The writ petitions are disposed of subject to the above directions.

5. In this back ground, one of the petitioner-legal heir of B.Doddamarappa filed an application before the BDA seeking certain documents like notification, award and board resolution under RTI on 21.11.2007. Simultaneously, legal heirs of B.Doddamarappa filed O.S.No.27055/2007 against the Society and BDA was not arrayed as party to the suit. Certain information was furnished to the second petitioner - legal heir of B.Doddamarappa on 31.12.2007. Legal heirs of B.Doddamarappa filed suit in O.S.No.27055/2007 against Society and another which was decreed on 25.05.2010. Thereafter, O.S.No.25916/10 was filed by the legal heirs of B.Doddamarappa against the BDA and others. At this juncture, legal heirs of B.Doddamarappa were of the view that in respect of challenge to the land acquisition proceedings, competent Court is the Writ Court. Thus, legal heirs of B.Doddamarappa have presented this petition on 16.03.2011. Suit filed by legal heirs of B.Doddamarappa in O.S.No.25916/2010 was dismissed on 20.07.2012 while rejecting the plaint.

6. The contentions of legal heirs of B.Doddamarappa is that Revenue and Urban Development Departments and BDA or Sri.A.Suklal have not taken note of revenue records that it stood in the name of deceased Sri.B Doddamarappa as on the date of issuance of preliminary notification, its finalisation and passing of award. To that effect, the Revenue Department is stated to have manipulated the revenue records and serious allegations have been leveled against the officials in respect of land acquisition. This Court on 20.12.2019 directed the Revenue

Department to ascertain who was the real owner of Sy.No.78 to an extent of 1 acre 12 guntas of land in Binnamangala Village as on the date of issuance of preliminary notification. Pursuant to such direction, the Regional Commissioner was appointed as an Investigating 11 Officer/Enquiry Officer by the Government and he has furnished a report along with number of documents(copies) to the Revenue Department on 22.06.2020. After due examination of various revenue records, he has given his opinion at paragraph 12. In this background, matter is taken up for final disposal.

7. Learned counsel for the legal heirs of B.Doddamarappa submitted that subject matter of present petition is land in Sy.No.78 of Binnamangala Village, Kasaba Hobli, Bengaluru North Taluk measuring 1 acre 19 guntas vide schedule to the writ petition. The schedule land is an Inam land covered under the provisions of Mysore (Personal Miscellaneous) Inams Abolition Act, 1954. Deceased B.Doddamarappa was a permanent tenant of schedule property and had sought for occupancy rights under Section 5 of the Act 1954, which application was allowed by the Special Deputy Commissioner vide endorsement dated 25.09.1964. Further, deceased B Doddamarappa's name was mutated in the revenue records which was reflected in the record of right (RR311 and in the index of the lands vide documents at Annexures -A to D and also marked as Annexures 1 to 4 of the report of the Regional 12 Commissioner dated 22.06.2020 and MR No.52/64-65 and RTC marked as Annexures-A6 to A7 to the report dated 22.06.2020.

8. Sri.A.Suklal S/o. Ambaram (respondent No.11) claims to be the son of a Jodidar/Inamdar of Binnamangala Village. Late A. Suklal claims to have applied for grant of occupancy right in case No.104/58-59. In terms of Regional Commissioner's report, there is no application filed by Sri.A.Suklal available in the records in respect of subject land. Further, in terms of the entry in R.R.No.276 at page 8 of the Regional Commissioner's report, it is recorded that application of Sri.A.Suklal in case No.104/58-59 has been rejected by the order dated 07.10.1964 where as for the years 1956-66 and 1969-70, RTC in respect of schedule land reveals the name of deceased B Doddamarappa in both column Nos.9-12 and MR No.52/64-65 and it is also reflected in column No.10 as is

evident from the Regional Commissioner's report vide page Nos.9 and 10 respectively. Thus, learned counsel for the legal heirs of B.Doddamarappa submitted that the aforesaid documents reveal name of petitioners father Sri. B.Doddamarappa as the owner and khathedar of the schedule land as on the date of acquisition proceedings by the BDA. 13

9. It is further submitted that preliminary notification dated 03.11.1977 was issued under Section 17 of the BDA Act for acquisition of lands for formation of OMBR layout. Only 2 acres 28 guntas was notified in Binnamangala Village which included 1 acre 12 guntas of the schedule land and the other lands notified for OMBR layout was in respect of villages at a distance of 8 kms away like Byapanahalli, Banaswadi, Doddakunte as is evident from Annexure-R. In the final notification under Section 19 of the BDA Act on 13.11.1980, the schedule land was also part and parcel vide Annexure-S. In the aforesaid notification, name of Sri.A.Suklal S/o.Ambaram is revealed as khathedar of the notified land. Legal heirs of B.Doddamarappa submitted that no notice was served on deceased B Doddamarappa though he was the khathedar in possession of the land in question and Sri.A.Suklal was not the khathedar of the property and any notice served on Sri A Suklal would not meet the requirements of Section 17(5) of the BDA Act. That apart, there was no publication of both the notifications in the official Gazette and so also in any of the daily newspaper and there was no service of notice of the said 14 acquisition on deceased B Doddamarappa and he had no knowledge of such acquisition proceedings.

10. The Special Land Acquisition Officer passed award on 27.03.1985 (Annexure - N) in the name of Sri A Suklal whereas it is stated that on 08.05.1978 it was notified in Deccan Herald and Prajavani on the other hand the contention of legal heirs of B.Doddamarappa's is that no such publication has taken place. To that effect he has produced newspapers of the aforesaid dates vide Annexures - W and X. On 01.06.1991 B Doddamarappa died and petitioners are the legal heirs of B.Doddamarappa. BDA proceeded to sell the subject land in favour of the Society on 20.04.1989 whereas possession of the schedule land was alleged to be taken from deceased B Doddamarappa on 03.10.1985. To that effect, a mahazar was drawn and it is not in manuscript but typed. Mahazar do not contain the

identification of witnesses along with their respective address. In the absence of necessary ingredients of a mahazar, the mahazar drawn on 03.10.1985 cannot be accepted.

11. On 07.07.1997, Society sold the schedule land in favour of respondent Nos.4 to 10(Annexure - S). Till the year 2007 there was no interference on behalf of the BDA or by 15 Society or by respondents 4 to 10. Only on 29.10.2007, when possession of the legal heirs of B.Doddamarappa were disturbed, legal heirs of B.Doddamarappa are stated to have lodged police complaint (Annexure - J). In this regard, legal heirs of B.Doddamarappa filed O.S.No.27005/2007 against one Smt.Papa and Society seeking for permanent injunction and it was decreed ex-parte on 25.05.2010. In the month of January 2008, legal heirs of B.Doddamarappa came to know through respondents 4 to 10 that they had purchased schedule property from the Society. Consequently, on 10.01.2008 legal heirs of B.Doddamarappa applied for certified copies of the alleged sale deeds and obtained certified copies relating to execution of sale deed. On 19.07.2008 legal heirs of B.Doddamarappa filed suit which is numbered as P.Misc.25005/08 seeking for declaration that the transactions among the BDA, Society and respondent Nos.4 to 10 is null and void and it is not binding on the legal heirs of deceased B Doddamarappa. Since, suit was defective, it was returned to the legal heirs of deceased B Doddamarappa. Thereafter, legal heirs of B.Doddamarappa preferred O.S.No.25916/2010 and it was rejected on 20/07/2012 with 16 reference to Order VII Rule 11 CPC after the presentation of present writ petition on 16.03.2011.

12. Respondent Nos.4 to 10 filed O.S.7192/2010 seeking for declaration that exparte decree dated 25.05.2010 in O.S.No.27055/2007 was not binding on the plaintiffs therein and for permanent injunction in respect of schedule land. This suit is still pending consideration. At this juncture, legal heirs of B.Doddamarappa presented the present petition while invoking Article 226 of the Constitution of India in respect of the acquisition proceedings.

13. Learned counsel for the legal heirs of B.Doddamarappa submitted that during the pendency of the present petition, this Court directed the Principal Secretary,

Revenue Department to appoint an officer not below the rank of Deputy Commissioner as an investigating/inquiring authority so as to find out who is the real owner of Sy.No.78 of Binnamangala Village as on the date of acquisition. Pursuant to the same, the Regional Commissioner, Bengaluru Division, Bengaluru was appointed by the Government and he has submitted a report to the Government and it was placed on record in the present petition. Legal heirs of B.Doddamarappa is relying on para.12 of 17 the report of the Regional Commissioner dated 22.06.2020. Para.12 of the report is culled out hereunder:

12. AqAv Zaz CAU Dzsgz i GZ AiiAiz DzzAv 1977 g z AU Uz .A.78g 1-19 J/U tz d iPg t U F Pgz CAi:- 1. AU Uz .A.78 vB EA UVz, EA gAiiw PAi 1954 ejAiAv .A.78 g d PgP vUArz, vzAvg zqiggg .A. 78g dU CUzsjP QU fPjU EA gg Cf z, D CfAiAv Zgu q, Dz AS:108/58-59gAv zqig gjU .A.78 g 1-19 J.UA. tz d Adg ir Dzz, D CfAiAv wAi vP Pbj CSAiz sg vz. Azgz zqiggjU d Adgz vgAi Endorsement AP:25-09- 1964gAv Ag r qzggV Wz, Dg.Dg.A.311 gAi F U gvg.

2. Azgz R CAgAi gg .A.78g P UV Cf gz g Aiiz zRU Az PAqAg Azgz gAit CAgAigg iv .A. 78g P Pj Cf z, D CfAi Zgu qz fPjAig Cg CfAi Dz AS:106/58-59 jv eUgvg. Azgz Dg.Dg.A.276g F U z irz, CU PAzAi zRU gAit CAgi gjUU Cx R CAgi gjUU AU Uz .A.78 g d Adgz U Aiiz zRU sg.

3. zqiggjU DVg m wAiiU Cx Pgz tAiiU CSAiz szjAz Cg g tAi zVv Cx E JAz w PzsVgvz.

4. UV FU v sg zRU Dzsgz AU Uz .A.78 g 1-19 J/U d EA PAi Cg 18 zqig qgjU AdjAiiVz, D Adg wAiAi Dg.Dg. U Evg zRU z 1977g z zqiggjU Adg wAiiVvAz CzVz.

14. Learned counsel for the legal heirs of B.Doddamarappa submitted that revenue records have been manipulated at the behest of the BDA, Revenue Department or interested persons in order to snatch the schedule land or claim compensation. He has specifically pointed out Anubanda - 10 to the Regional Commissioner's report dated 22.06.2020 relying on the Record of Right with reference to Item Nos.274, 275, 276 (276 relates to Sy.No.78) Sri A Suklal's name has been incorporated up to 07.10.1964 whereas the later portion that Sri A Suklals application was rejected has been purposely omitted. In this regard, he

has pointed out from the original records of the Revenue Department whereas copy of the original is cited as Anubandha - 14 wherein Item Nos. 273, 274, 275 and 276 are relating to A.Suklal whereas against Sy.No.78 it is ordered that his application is rejected with reference to Case No.104/58-59 dated 07.10.1964. In view of these facts and circumstances, it is submitted that despite this Court giving directions to the BDA and Revenue Department, they failed to produce revenue 19 records correspondence as on the date of preliminary notification. Such direction was issued in order to find out who is at fault in furnishing the information to the BDA that the owner of Sy.No.78 of Binnamangala Village is Sri A Suklal. Therefore, it is submitted on behalf of the legal heirs of B.Doddamarappa that BDA has manipulated the records. Since they do not possess relevant records prior to preliminary notification so as to verify who has furnished the name of Sri A Suklal as the owner of the schedule land, which has resulted in fraud on behalf of the BDA and others authorities in identifying Sri A Suklal as the owner of the schedule land for the purpose of acquisition of subject land by the BDA so also granting compensation to Sri A Suklal, further, BDA in making bulk allotment in favour of Society consequently, Society selling the schedule land in favour of respondents 4 to 10. Learned counsel for the legal heirs of B.Doddamarappa cited the following decisions: Sl.No.Particulars The Vyalikaval House Building Co-Op.Society by its Secretary 1 Vs Chandrappa & Others Reported in (2007) 9 SCC304(Paras., 2 to

9) Chayadevi vs State Of Karnataka. Reported in ILR 1988 KAR23125, 1988 (2) KarLJ444(Relevant Paras., 14,15,19 to

23) Kulsum R. Nadiadwala & Ors vs State Of Maharashtra . 3 Reported in (2012) 6 SCC348(Relevant Paras., 11 to

14) Bangalore Development Authority vs R. Ramachandran 4 Reported in ILR 1993 KAR116 1993 (1) KarLJ1(Relevant Paras., 17 to

18) 20 State Of Punjab And Another vs Gurdial Singh And Others. 5 Reported in 1980 AIR319 1980 SCR (1)1071 (Relevant Paras., 8 to

11) The State Of A.P Another vs T. Suryachandra Rao Reported in 6 (2005) 6 SCC149(Relevant Paras., 8 to

16) Anil Kumar Gupta vs The State Of Bihar Reported in (2012) 7 12 SCC443(Relevant Paras., 13 &

15) Dr. A. Parhasarathy vs state of Karnataka Reported in ILR82017 KAR3489(Relevant Paras., 9 &

10) S.P Chenhalavaraya Naidu vs Jagannath Reported in (1994) 9 1 SCC1(Relevant Paras., 1,5 &

6) Patasi Devi vs State of Haryana Reported in (2012) 9 SCC10503 (Relevant Paras., 14 to

16) Uddar Gagan Properteis Limited vs Sant Singh Reported in 11 (2062) 12 SCC378(Relevant Paras., 22 to

26) 15. Learned State counsel submitted that writ petition is not maintainable on the ground of delay. It was further submitted that Revenue and Urban Development Departments do not possess papers relating to correspondences with the BDA prior to issuance of preliminary notification so as to apprise this Court who has provided revenue records that stood in the name of Sri A Suklal. He relied on Regional Commissioner's report dated 22.06.2020. No other contentions are urged.

16. Learned counsel for the BDA vehemently contended that the grievances of legal heirs of B.Doddamarappa is highly belated in respect of challenge to the preliminary and final notifications relating to acquisition. It is submitted that after acquisition proceedings, possession was taken on 03.10.1985 21 and further, schedule land was sold in favour of the Society in terms of the Government direction read with the resolution of the BDA. He relied on document No.1 filed along with the affidavit dated 19.02.2021, the record of rights vide MR2/91-92 which was obtained from the Revenue Department wherein Sl.No.9 relating to Sri A Suklal has been rounded off. Such entries have been made with reference to payment of compensation in favour of Sri A Suklal. Learned BDA counsel on instructions submitted that BDA do not possess correspondences that has taken place among the Revenue and Urban Development Departments with BDA prior to

issuance of preliminary notification so as to apprise this Court about who has provided Sri A Suklal's name along with the relevant records. Even the BDA counsel has relied on Anubanda 10 to the Regional Commissioner's report dated 22.06.2020. It is further submitted that there is discrepancy in respect of schedule land acquired. As per BDA 1 acre 12 guntas was acquired whereas the legal heirs of B.Doddamarappa's claim is in respect of 1 acre 19 guntas. It was also submitted that in O.S.27055/2007 vide Annexure - M at para.2, legal heirs of B.Doddamarappa made a statement that Doddamarappa is stated to have purchased the land on 25.04.1984. It is also submitted that a substantial portion of possession was taken over on 03.10.1985 with reference to notification under Sub-section (2) of Section 16 of the Land Acquisition Act, which is substantial proof of taking possession. Petitioner No.2 has approached respondent/BDA only in the year 2007 seeking certain records whereas writ petition was presented in the year 2011. Thus, there is delay on the part of the legal heirs of B.Doddamarappa in approaching this Court when the subject land was crystallised among the private parties viz., respondent Nos.4 to 10. Thus, legal heirs of B.Doddamarappa have not made out case both on the ground of delay as well as on merit. BDA has pointed out by the revenue records made available by the Revenue Department in respect of acquisition proceedings that there are no errors committed by the BDA. Consequently, there is no default on the part of BDA. It was further contended that Regional Commissioner in his report dated 22.06.2020 unnecessarily made a comment on the BDA. In the absence of material information, the same be expunged.

17. Learned counsel for the BDA further submitted that for the purpose of expunge of remarks made by the Regional Commissioner in para 14 of the report dated 22.06.2020 relied on Col.No.4 of Pahaniprati and para. 11(f) of the report which reads as under:

4. t w:- F PhjAi sg st P jV P IU AsUz 74-75, 75-76 JAz zVgvz. P IU PAq g. .A .78 g J.R JAz z lz zVz, 2 lz z PAq gz. Dzg JA.Dg.A.02/91-92 JAz 74-75 stAi R gg g w rJ JAz z irgz PAq gvz. Czg wAi zrPj v CUU z. Annexure-19.

11. (Js) AU UP AAzAv vP PbjAi 1974-75 v 1975-76 U AAzAv t Pz z t sz, zj t Pz .A.78 J.R JA z, Ez UAqw .r.J.

JA.Dg.2/91-92 JAz zRVgz PAqAgvz. These two material informations are contrary to para.14 of the Regional Commissioner's report. Hence, the observations made by the Regional Commissioner at para.14 against BDA is liable to be expunged. No other contentions are urged.

18. Learned counsel for R11(a) to (d) Sri. K.N.Krishna Rao submitted that Sri A Suklal's father was a Jodidar of entire land in Binnamangala Village whereas the Inam's Abolition Act has come into effect from 1959. Claim by the legal heirs of B.Doddamarappa is to the extent of 1 acre 19 guntas whereas actual land available in Sy.No.78 is 1 acre 8 guntas. Sri A Suklal 24 and his brother sought for regrant of land by making application under Section 7(1) of the Inams Abolition Act, 1956. Sri A Suklal was regranted land on 07.10.1964 in respect of Sy.No.78. The report and documents furnished along with Regional Commissioner's report dated 22.06.2020 partially are unacceptable.

19. Learned counsel for respondent Nos.11(a to d) and legal representatives of Sri A Suklal submitted that regrant of Inam land in Case.No.108/58-59 relates to deceased B Doddamarappa whereas case No.104/58-59 relates to Sri A Suklal. The Revenue Department is not in a position to furnish the original file relating to Case No.104/58-59 of Sri A Suklal whereas only RTC which stood in the name of Sri A Suklal is being shown to the Court. Respondent Nos.11(a to d) have submitted application to produce original records in respect of aforesaid files and it was not furnished on behalf of the State/respondent. No other contentions are urged.

20. Sri. A.S.Ponnanna, learned Senior Counsel for Sri.Arnab A Bagalwadi and Sri.K.L.Ramesh, learned counsel for respondent Nos.4 to 10 submitted that they had purchased schedule land on 07.07.1997 from the Society vide Annexure - 25 'S'. They have also filed O.S.7192/2010 seeking declaration and injunction and it is pending consideration and to that extent the decree dated 25.05.2010 passed in favour of the legal heirs of B.Doddamarappa is void and not binding on respondent Nos.4 to 10 as decree was obtained ex-parte. It is further submitted that there is

compliance to Sub-section (2) of Section 16 of Land Acquisition Act relating to taking possession pursuant to the notification dated 05.12.1991. Consequently, there is no infirmity in the acquisition proceedings till sale proceedings in favour of respondents 4 to 10 by the Society on 07.07.1997.

21. Learned counsel for respondent Nos.4 to 10 vehemently contended that there is delay and laches on the part of the legal heirs of B.Doddamarappa in approaching this Court in respect of acquisition proceedings and consequential proceedings. He cited the following decisions: Sl.No.Citation Re: Delay and Laches with respect to acquisition proceedings 1. Indrapuri Griha nirman Sahakari Samiti Ltd Vs. The State of Rajasthan and Others (1975) 4 SCC296- (Page 8 -

10) - 'Premium on dilatory tactics if urging grounds belatedly when aware of acquisition 2. Hari Singh and Others Vs. State of U.P. and Others - (Para -

4) 1984 (2) SCC624(Para -

4) - 2.5 years delay fatal to acquisition 3. Tamil Nadu Housing Board Chennai Vs. M. Meiyappan and Others (2010) 14 SCC309(Para - 13, 15 and

18) 26 4. W.A. No.467/2012 disposed by DB of this Hon'ble Court on 01/06/2012 (Para -

9) - Delay vis--vis KIAD Act 5. (2010) 8 SCC383- Meghmala & others. Vs G. Narasimha Reddy & Others (Para 32-42) 22. It is further submitted that at the best legal heirs of B.Doddamarappa are entitled to compensation in the event of any fraud in the acquisition proceedings by the BDA and legal heirs of B.Doddamarappa are not entitled to seek for quashing of the entire acquisition proceedings. No other contentions are urged.

23. Learned counsel for the legal heirs of B.Doddamarappa countered the arguments advanced on behalf of the respondents on the ground of delay and laches. He has pointed out dates and events stating that BDA has not taken physical possession on 03.10.1985 as contended by them read with notification issued on 05.12.1991 under Section 16(2) of the Act 1894, since mahazar is a typed copy in which addresses of the witnesses are not forthcoming or atleast the

names of adjacent land owners and their signatures are also not reflected. Therefore, such mahazar is stated to have been prepared in the BDA office. The actual knowledge of the acquisition proceedings 27 came to be known to the legal heirs of B.Doddamarappa only as and when respondent Nos.4 to 10 approached them stating that they are the purchasers of the schedule land from the Society pursuant to the acquisition proceedings by the BDA in the year 2007. Thereafter, legal heirs of B.Doddamarappa have resorted to file police complaint and suit and also in collecting material information which has resulted in delay in approaching this Court. Ultimately, knowledge of the acquisition proceedings and taking possession by the BDA are very relevant. Neither BDA nor Society have taken possession of the schedule land from the legal heirs of B.Doddamarappa so also respondent Nos.4 to 10 . On purchase of subject land by respondents 4 to 10 from the Society on 07.07.1997, respondent Nos. 4 to 10 approached legal heirs of B.Doddamarappa in seeking possession of the subject land in the year 2007, further, legal heirs of B Doddamarappa resorted to filing of O.S.27055/2007 and O.S.25916/2010, in result there is delay. Having regard to the dates and events read with the fact that fraud has taken place in respect of acquisition proceedings in a third party claim, question of delay would not be a hurdle. 28

24. It is further contended that RTC record is crystal clear that it is manipulated by BDA or some interested persons as is evident from Anubanda -10 and 14 read with the original of RTC which has been produced by the Revenue Department. Complete records in respect of Sri A Suklal's application has not been made available to the BDA by the Revenue Department on the other hand it is shown as if Sri A Suklal was granted land even though record reveals Sri A Suklals application for grant of land was rejected. Therefore, delay would not be a hurdle. The alleged manipulation of revenue records has come to the knowledge of the legal heirs of B.Doddamarappa only during the pendency of the present petition when BDA, Revenue Department and Regional Commissioner's report dated 22.06.2020 reflected name of Sri A Suklal in some of the revenue records. In view of these facts and circumstances, the contention of the respective respondents on the issue of delay are liable to be dismissed.

25. Learned counsel for the legal heirs of B.Doddamarappa in order to counter the arguments advanced on behalf of R.11(a to d) that there was no application on behalf of deceased B.Doddamarappa for regrant of land is countered with reference 29 to Anubandha 24 relating to Case No.108 (deposition of Doddmarappa) wherein Sri Ambaram, father of Sri A Suklal has stated that "I agree for the above"(i.e., for issuance of katha in favour of B Doddamarappa in various survey numbers including Sy.No.78) and it has been attested. This has been taken note of with reference to the original records presented on behalf of the State counsel.

26. Heard learned counsel for the parties.

27. The core issues involved in the present petition are: (i) Whether is there any delay in questioning the acquisition proceedings by the legal heirs of B.Doddamarappa or not?. (ii) Whether delay and laches would be a hurdle in questioning the acquisition proceedings where fraud is involved or not?. (iii) Whether mahazar drawn by the BDA in respect of subject land is in terms of the provisions of BDA Act or not?. (iv) What relief?.

28. Undisputed facts are that BDA initiated proceedings for acquisition of land for the purpose of formation of OMBR Layout including the subject land viz., Sy.No.78 of Binnamangala Village 30 to an extent of 1 acre 8 guntas vide notification dated 3.11.1977 read with 13.11.1980. It is alleged that owner of Sy.No.78 of Binnamangala Village measuring 1 acre 8 guntas is stated to be one Sri A Suklal. Pursuant to his name reflected against the aforesaid subject land, he had claimed compensation and one Sri A Narayana had also claimed. On 01.04.1985, award was passed and it was approved by the Special Deputy Commissioner, BDA on 01.04.1985 and 17.06.1985 respectively. BDA is stated to have drawn mahazar on 03.10.1985 while taking possession of the subject land. BDA deposited the award amount in Civil Court on 24.12.1986. Reference Court passed order in favour of Sri. A Suklal. In this backdrop, Society approached State Government for allotment of bulk land on 18.03.1987 and the State Government directed the BDA to allot bulk land on 18.05.1987. Consequently, on 28.06.1988 BDA passed a resolution allotting bulk land in favour of Society. BDA handed over the possession

of subject land to the Society on 07.02.1989 and sale deed was executed on 20.04.1989. Before execution of sale deed in favour of Society, BDA had handed over possession of the subject land to the Society which is contrary to the provisions of the BDA Act. Sri A Suklal questioned 31 the preliminary and final notification before this Court and suffered an order. Society sold the property in favour of respondents 4 to 10 who tried to displace the legal heirs of B.Doddamarappa, at that juncture legal heirs of B.Doddamarappa came to know that BDA had acquired subject land which stood in the name of deceased Sri B Doddamarappa. Thus, one of the legal heirs of B.Doddamarappa approached BDA seeking certain information and documents in the year 2007. In the meanwhile, legal heirs of B.Doddamarappa took following action in initiating judicial proceedings: (1) O.S.No.27055/2007 decreed on 25.05.2010. (2) O.S.No.25916/2010 was dismissed on 20.07.2012 by rejecting the plaint.

29. This Court during the course of arguments noticed that there was a issue relating to entry in the name of deceased Sri B Doddamarappa or Sri A Suklal's in the revenue records. Consequently, a direction was given to the Revenue Department to appoint an Officer as an investigating/inquiry officer not below the rank of Deputy Commissioner. Revenue Department appointed Regional Commissioner, Bengaluru as an Investigating/Inquiry officer. He submitted a report on 32 22.06.2020. Perusal of the report and its Anubandhas (Annexures) relating to Sri A Suklal and further, perusal of records furnished by the Officer of the BDA and records (vide Affidavits dtd 19.12.2019 and 19.02.2021) it is evident that they are not tallying with each other like Annexure R8 - Record of Rights which is not certified/authenticated when compared with the same document produced by respondent No.11(a to d) before the Regional Commissioner. Further, Regional Commissioner has stated that Annexure R8 which is part of his report is not authenticated and Revenue Department has not issued such document. That apart, BDA has collected the documents cited along with the affidavits from the Revenue Department during pendency of the present petition, which is crystal clear that BDA is not in possession of all relevant revenue records relating to acquisition of subject land. The following are the revenue records in respect of Sri A Suklal's application seeking regrant of land, which is reproduced from the original: RECORDS OF RIGHTS U AU P vP AUg Gvg rP AUg dAdg Pzgg g v Q s

AAzs g m Ejm A. Ag v jfg jfjU 33 v nt zR zR Ag 1 2 3 4 5 6 274 R CAgi gjU 67 - rR
- - A||r||E||g||C|| || || P|| gg 43/64- A104585// 7-10-64 65 275 - A - 69 - A - - 276 - A
- 78 - A - - 30. Learned counsel for Sri A Suklal presented 5 documents before the
Regional Commissioner along with representation dated 05.06.2020. Anubandha-
10 (Annexure -

10) marked by the Regional Commissioner is only a xerox copy and not certified by any authority. Further, in Sl.No.1 of the Regional Commissioners report (Page No.4), the Special Deputy Commissioner, Bengaluru in its report has specifically stated that against File No.104/58-59 in respect of Sy.No.78, it has been shown as rejected while quoting the name of Sri A Suklal. Even the documents produced on behalf of Sri A Suklal like R.R.Nos.274, 275 and 276 were not issued by the Office of the Special Deputy Commissioner since the revenue records do not disclose issuance of such documents to Sri A Suklal. On the other hand, in the original file relating to R.R.Nos.273, 274, 275 and 276 as against R.R.No.276 Sri Suklal s/o Ambaram File 34 No.104/58-59 dated 07.10.1964, it is indicated that it was rejected.

31. Record of Right document furnished by the BDA (Annexure - R8) is incomplete to the extent in not revealing the words "e DVgvz as entire format of document is different from the revenue document(format) with reference to Sri A Suklal's application for grant of land which reveals that Sri A Suklal's application for land grant was rejected vide order dated 07.10.1964 (Anubandha - 5). Therefore, prima facie someone has tampered the revenue records in favour of Sri A Suklal. It is unable to detect or analyse from the revenue records who has furnished/inserted the manipulated/created documents to the BDA. Neither the Revenue/Urban Development Departments or BDA are in possession of records to apprise this Court in producing various correspondences with the revenue department which have taken place among the aforesaid departments and authority prior to issuance of preliminary notification dated 03.11.1977.

32. Pursuant to the final notification dated 13.11.1980, BDA is stated to have taken possession of the subject land on 35 03.10.1985 after drawing a mahazar. Perusal of mahazar it is evident that it is not a manuscript whereas it is a typed copy and

not supported by addresses of the witnesses and owners/occupants of the adjacent land. Prima facie, there is non-compliance to Section 17(5) of BDA Act. Further, no material has been furnished by the BDA or the Society that subject land was handed over to the Society after bulk allotment read with the sale proceedings in favour of the Society. Infact, date of sale deed between BDA and Society is 20.04.1989 whereas alleged possession of the subject land handed-over to the Society is on 07.02.1989 which is contrary to the provisions of the BDA Act. Further, Society sold the subject land in favour of respondents 4 to 10 on 07.07.1997 and there is no material information relating to taking over possession of the subject land from the legal heirs of B Doddamarappa. In this background, suits filed by both legal heirs of B.Doddamarappa and respondents 4 to 10 are pending.

33. In Anubhanda-24 produced by the Regional Commissioner in his report dated 22.06.2020, Sri Ambaram father of Sri A Suklal in Revenue proceedings had agreed for issuance of katha in favour of Sri Doddamarappa, extract of the 36 deposition of Sri. B. Doddamarappa in case no 108/1958-1959 reads as under:- S.No.75/1-10, 76/1-21, 78/1-19, 80/0-13, 81/1.00, 82/2.24 v 84/4-02 j Pj Sv irPqPAz CfPnz. Aq AgU I.L. jfj g zqig JAz zRVz. Dzg, F AgUU PAzAi PnPAq U iqv Egv. vAzAig PAz U iqv. DzjAz F AgU jU Sv zR irPqPV Pgv. R.R. PAiAi PAzAi PnPAq Ag zR Egv. B. zqig. I agree for the above (F.V. Ambaram) 34. The Regional Commissioner's report read with the documents, it is crystal clear that subject land did not stand in the name of Sri A Suklal, s/o Ambaram as on the date of acquisition of subject land by the BDA. Therefore, one has to draw inference that someone has played fraud which is impracticable to detect for the reasons that Revenue/Urban Development Department and BDA do not possess a piece of record prior to issuance of preliminary notification. Further, even though final notification was issued on 13.11.1980, none of the 37 interested parties have taken physical possession of the subject land from the legal heirs of B.Doddamarappa and issue relating to taking over possession of the land is still hanging on the respective parties read with the pending suit proceedings.

35. In view of the aforesaid dates and events, it is evident that there is no delay on the part of the legal heirs of B.Doddamarappa in presenting this petition. Assuming

that there is delay, one has to draw inference that legal heirs of B.Doddamarappa did not have the knowledge of acquisition proceedings that took place in the years 1977 to 1980, thereafter subject land was allotted to Society and Society sold the property in favour of respondents 4 to 10 on 07.07.1997. Mahazar drawn by the BDA on 03.10.1985 is in violation of Section 17(5) of the BDA Act. Prima facie, mahazar must have been prepared in the office of the BDA since it is not a manuscript and it is a typed mahazar and addresses of the witnesses are not revealed. That apart, spot mahazar drawn do not reveal the names of adjacent owners/occupants and their attestations as witness/s. Therefore, delay would not be a hurdle in deciding the matter on merit. 38 DELAY AND LACHES³⁶ Learned counsel appearing on behalf of legal heirs of B Doddamarappa relied on VYALIKAVALL HOUSE BUILDING CO- OPERATIVE SOCIETY's case cited supra wherein Apex Court has examined the malafide and fraud read with delay and laches, it is held that delay is uncondonable (paras.2 to 9). Extract of para 2 to 9 are reproduced here under:

2. This case has a chequered history, therefore, in order to deal with it, it will be necessary to refer to certain facts. A notification was issued on 22-12-1984 under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act) for acquiring 176 acres and 5 guntas of land in Nagavara Village of Bangalore North Taluk. Declaration under Section 6 of the Act was issued on 21-2-1986 and the award was passed on the basis of the aforesaid notification on 16- 11-1987. It was alleged that the possession of the land was taken on different dates up to the year 1992. It was alleged that possession of 31 acres and 21 guntas of land including an area measuring 1 acre and 25 guntas situated in Survey No.78/4 of Nagavara Village was taken on 6-8-1988. Aggrieved against the aforesaid notification and the award, private petitioners filed writ petition assailing the validity thereof on variety of grounds. It was alleged that this land measuring 8 acres and 2 guntas was owned jointly by a family comprising 5 brothers, namely, Pattadi Haumanthappa, Pattadi Venkateshappa, Pattadi Nannappa, Pattadi Lakshmaiah and Pattadi Nagappa, all deceased and survived by their legal heirs, who filed the writ petition. The main grievance of these petitioners was that this notification was very adversely commented upon by the Karnataka High Court 39 in Narayana Reddy v. State of Karnataka [ILR 1991 KAR2248 and the decision of the Division

Bench of the Karnataka High Court in Writ Appeals Nos. 2336-43 of 1997 and connected matters which were disposed of on 5-3-1998. In that judgment it was held that the whole acquisition proceedings stand vitiated on account of fraud, the appellant Society was also found to be not bona fide housing society, therefore, on the basis of the same reasoning the present notification was also challenged and it was urged that the impugned notification also suffered from same vice of mala fide, therefore, it should be quashed. It was alleged that the delay in approaching the Court was irrelevant since the validity of the same notification in which other lands were acquired along with the present land has been found to be void.

3. This writ petition was contested by the appellant Society as the respondent and it was alleged that it was hopelessly barred by time being delayed by 14 years and it was also submitted that the writ petitioners had participated in the inquiry under Section 5-A of the Act and have also received substantial amount from the appellant Society pursuant to the agreement executed in their favour. Learned Single Judge dismissed the writ petition on the ground of being hopelessly barred by time and the writ petitioners participated in the proceedings therefore they have acquiesced in the matter. Aggrieved against this order passed by learned Single Judge, a writ appeal was filed by the respondents which came to be allowed by the Division Bench for the reasons mentioned in another writ appeal decided by the same Division Bench headed by the Chief Justice of the High Court on 17-1-2000. In that writ appeal the Division Bench held that the entire acquisition on behalf of the appellant Society was actuated with fraud as held in *Narayana Reddy v. State of Karnataka* [ILR 1991 KAR2248]. In that case it was held as follows: As seen from the findings of G.V.K. Rao Inquiry Report, in respect of five respondent societies and the report of the Joint Registrar in respect of 40 Vyalikaval Housebuilding Cooperative Society, these societies had indulged in enrolling large number of members illegally inclusive of ineligible members and had also indulged in enrolling large number of bogus members. The only inference that is possible from this is that the office-bearers of the societies had entered into unholy alliance with the respective agents for the purpose of making money, as submitted for the petitioners, otherwise there is no reason as to why such an agreement should have been brought about by the office-bearers of the societies and the agents. Unless these persons had the intention of making huge profits as alleged by the

petitioners, they would not have indulged in enrolment of ineligible and bogus members. The circumstance that without considering all these relevant materials the Government had accorded its approval, is sufficient to hold that the agents had prevailed upon the Government to take a decision to acquire the lands without going into all those relevant facts. The irresistible inference flowing from the facts and circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide housing scheme but is substantially for the purpose of enabling the office-bearers concerned of the respondent societies and their agents to indulge in sale of sites in the guise of allotment of sites to the members/associate members of the society to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus, the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned notifications are liable to be struck down.

4. In view of the aforesaid observation, their Lordships of the Division Bench held that since the acquisition was colourable exercise of the power, ⁴¹ therefore, delay cannot be a good ground to dismiss the writ petition. The said judgment of the Division Bench of the High Court of Karnataka was affirmed by this Court in Special Leave Petitions (C) Nos. CCs Nos. 525-32 of 1999 and Special Leave Petitions (C) Nos. CCs 504-22 of 1999 decided on 14-7-1999 and it was held that the appellant Society is a bogus housebuilding society and accordingly, the order passed by the learned Single Judge was set aside by the Division Bench. Against the order of the Division Bench passed in Writ Appeal No.2294 of 1999 a review petition was filed which was dismissed on 22-3-2002. Hence both these appeals.

5. Learned counsel for the appellant urged before us that the view taken by the Division Bench of the High Court is not correct as the Division Bench should not have condoned the inordinate delay of 14 years and secondly, learned counsel further submitted that the respondents herein being the beneficiary had entered into an agreement of sale and had accepted the whole amount not to file objections under Section 5-A of the Act for acquiring the aforesaid land. Learned counsel for the appellant has emphasised that the Division Bench has gone wrong

in setting aside the order of the learned Single Judge as the learned Single Judge has discussed the factual controversy in greater detail.

6. As against this, learned counsel for the respondents submitted that there was not one judgment but there are number of judgments in which such acquisition of land has been set aside. Learned counsel for the respondents invited our attention to two decisions of this Court in HMT Housebuilding Coop. Society v. Syed Khader [(1995) 2 SCC677 and HMT Housebuilding Coop. Society v. M. Venkatswamappa [(1995) 3 SCC128 in which similar societies filed special leave petitions and this Court affirmed the order of the Karnataka High Court and held that the whole exercise of acquiring the land by various societies including the present appellant Society was actuated with mala fide and quashed all acquisitions. In this connection, a reference may be made to HMT Housebuilding Coop. Society case [(1995) 2 SCC677 wherein similar question was raised by the cooperative society like the appellant herein and in that context their Lordships framed the question in para 18 of the judgment which reads as follows: (SCC p.

687) 18. Now the question which is to be answered is as to whether in view of the definition of public purpose introduced by the aforesaid amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the society and without putting such housing cooperative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof?.

7. This question was answered by their Lordships in paras 21 and 22 which read thus: (SCC pp. 688-89) 21. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section

3(f)(vi) of the Act to the housing scheme in question. The power under Sections 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in the decision-making process - whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid. 43

22. In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for public purpose, to outsiders as part of commercial venture, undertaken by the office-bearer of the appellant Society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, Respondent 11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

8. Similarly, in HMT Housebuilding Coop. Society [(1995) 3 SCC128 in which the present appellant was one of the societies, which challenged the order of the Division Bench of the High Court of Karnataka, their Lordships dismissed the special leave petition following the judgment in HMT Housebuilding Coop. Society [(1995) 2 SCC677 . In para 3 of the judgment while dealing with the facts of this Society their Lordships observed that this Society had advertised inviting persons who wanted to have mansions in the city of Bangalore and had also given the names and addresses of the representative at Dubai. It was held that on the basis of the aforesaid material the High Court has rightly come to the conclusion that the Society itself was not bona fide housebuilding society and accordingly, the order passed 44 by the High Court setting aside the acquisition of the land was upheld

by this Court and the SLP was dismissed. Para 3 reads as follows: (SCC pp. 130-31) 3. Lands on the basis of the notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, had been acquired for the petitioner Housebuilding Society, treating the said acquisition to be for a public purpose. No order of the State Government as required by Section 3(f)(vi) granting prior approval for acquisition of the lands in question for the housing scheme of the petitioner Society has been produced. The petitioner Society had also entered into an agreement with the contractor more or less on the same terms and conditions as was in the case of HMT Housebuilding Cooperative Society, assuring that the lands in question shall be acquired on the basis of the notification issued by the State Government under Sections 4(1) and 6(1) of the Act. The High Court in its impugned judgment has given details of the allegations made against the petitioner Society regarding collection of huge amounts from different applicants for site who were not even members of the Society and how the Society had entered into an agreement with agents, who with their influence have got the lands acquired. The High Court has also referred to an advertisement issued by the petitioner Society inviting persons who want to have mansions in the city of Bangalore. It also gave the name and address of a representative at Dubai. On the basis of the aforesaid materials, the High Court has come to the conclusion that the Society itself was not a bona fide housebuilding society. The High Court has also recorded a finding that the notifications under Sections 4(1) and 6(1) of the Act had been issued at the instance of the agents appointed by the petitioner Society, to whom huge amounts had been paid for influencing the Government to issue the aforesaid notifications. Mr Ramaswamy, appearing for the petitioner Society purported to distinguish this case on facts from the 45 case of HMT Housebuilding Cooperative Society. But according to us, the facts of the present case are similar to the case of HMT Housebuilding Cooperative Society and there is no scope to interfere with the order of the High Court, quashing the notifications under Sections 4(1) and 6(1). Accordingly, the special leave petitions filed on behalf of the petitioner Society are dismissed. No costs.

9. Learned counsel for the respondents has also invited our attention that same notification was set aside by the High Court and the said order of the High Court was also upheld by this Court by dismissing SLP (C) No.6196 of 1998 on 7-4-1998

and SLPs (C) Nos. CCs Nos. 495-98 of 1999 on 14-7-1999 concerning the very same appellant Society. In this background, when the acquisition has been found to be totally mala fide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance. Learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence. Learned counsel for the respondents raised other pleas like decree for partition was granted among brothers and they were not made parties, we are not going into those questions when we are satisfied that when acquisition stands vitiated on account of mala fide, nothing remains further. 46

37. This decision is relevant to the case on hand for the reasons that when the acquisition has been found to be totally malafide and not for bonafide purpose, the ground of delay and acquiesce has no substance.

38. In the case of ANILKUMAR GUPTA supra delay and laches has been discussed and under what circumstances Court can entertain belated litigations (paras. 8 to

13) is discussed at paras. 8 to 13 which are reproduced here under:

8. The respondents contested the writ petition mainly on the ground that the same was belated.

9. The learned Single Judge noticed the factual matrix of the case and held that the declaration issued under Section 6(1) was a nullity and the delay of one year and few months in filing the writ petition was inconsequential. He accordingly

quashed the acquisition proceedings.

10. The Division Bench of the High Court did not find any patent error in the exercise of discretion by the learned Single Judge not to decline relief to the appellant on the ground of delay but held that he was guilty of laches by observing that no explanation has been offered for the time-gap between the date of publication of the declaration issued under Section 6(1) and filing of the writ petition. The Division Bench also opined that in view of Section 16 of the Act, the acquired land will be deemed to have been vested in the State Government and it was beyond the pale of challenge.

11. We have heard Shri L.N. Rao, learned Senior Counsel appearing for the appellant and Shri Manish 47 Kumar, learned counsel appearing for the respondents and carefully perused the record.

12. Since the parties have not placed on record copies of Notification dated 1-1-1993 issued under Section 4(1) and order dated 6-4-1993 to which reference has been made in the order passed by the Division Bench of the High Court in Anil Kumar Gupta v. State of Bihar [Anil Kumar Gupta v. State of Bihar, (1994) 1 BLJR195], we do not consider it necessary to examine in detail whether there was any real public purpose for the acquisition of the appellant's land after the State Government is said to have been taken a decision to shift the office of Sone Embankment Division to the government premises at Maner.

13. We shall now examine whether the appellant was guilty of laches and the Division Bench of the High Court had rightly set aside the order passed by the learned Single Judge on that ground. In this context, it is apposite to observe that the Framers of the Constitution have not prescribed any period within which a petition can be filed under Article 226 of the Constitution of India. However, in the last six decades, the superior courts have evolved several rules of self-imposed restraint which are required to be kept in view by the High Courts while exercising power under Article 226. One of these rules is that the High Court will not come to the aid of a person who approaches the Court with delay and no explanation is offered for the same (State of M.P. v. Bhailal Bhai [AIR 1964 SC1006 and Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC110: AIR 1970 SC898]). In the

first of two cases, the Constitution Bench observed that even though no period of limitation has been prescribed for filing a writ petition under Article 226 of the Constitution, the Court will come to the rescue of only those who are vigilant and a petition filed after expiry of the period of limitation prescribed for filing a suit will not be entertained unless cogent explanation is offered for the same. In the second case, Hidayatullah, C.J.

who concurred with R.S. Bachawat and G.K. Mitter, JJ.

48 expressed the view that there is no upper or lower limit for filing a writ petition and each case has to be decided on its own facts. The learned Chief Justice further observed that even if the petition is filed beyond the period of limitation prescribed for filing a suit, the Court may entertain the petition provided the petitioner gives satisfactory explanation or may decline relief in a case where the petition is filed within limitation but the explanation for the delay is not satisfactory.

39. Delay and laches has been considered. It is observed that unless cogent explanation is offered, delay and laches could not be ignored where as in the case on hand, petitioner has elaborately explained the knowledge of acquisition as and when respondents 4 to 10 tried to take possession and legal heirs of B Doddamarappa protested and filed a police case and agitating their right in the Court of law in the year 2007.

40. In CHAYADEVI's case supra Section 17(5) of BDA Act is held to be mandatory (Para14, 15 and 19 to

23) and relevant paras 19 to 23 are extracted hereunder:

19. In the instant case, the submission of the petitioners is that they are still in actual possession of the lands in question and they have not yet been divested of their possession.

20. Merely because a number of houses have come up in the vast area of land acquired by the B.D.A. under the scheme, it cannot be said that the B.D.A. is absolved of the statutory obligation which is mandatory 49 in nature of complying

with the requirements of Section 17(5) of the Act.

21. It was pointed out by the learned Counsel for the B.D.A. that in the case of Hari Singh v. State of U.P. [(1984) 2 SCC624: AIR 1984 SC1020], the Supreme Court has held that a Writ Petition challenging the validity of acquisition proceedings filed after 2 years is liable to be dismissed for laches and, therefore, the same principle should be applied to the instant case also. In the said decision, what was under consideration was acquisition proceedings under the Land Acquisition Act. The Supreme Court observed:- It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act. The acquisition proceedings in the instant case are under the Bangalore Development Authority Act and the provision relating to service of statutory notice on the petitioners is in substance to be from the notice envisaged under the Land Acquisition Act. Under the B.D.A. Act service of statutory notice on the petitioners is mandatory and any other means of publication cannot be a substitute for the kind of notice envisaged in the special statute viz., the B.D.A. Act. Therefore, the principle laid-down in (1984) 2 SCC624: AIR 1984 SC1020[(1984) 2 SCC624: AIR 1984 SC1020]. is distinguishable in view of the difference not only on facts but also in law: Regarding the question of law, reliance placed on the decision in Writ Petition No.21849 of 1986 [W.P. No.21849 of 1986 DD24-1987.]. is of no avail to the B.D.A. since there is little analogy between the case cited and this case.

22. In the facts and circumstances of the case and in the absence of material to the contrary on record, I am 50 of the opinion that the delay in approaching this Court deserves to be condoned.

23. For the reasons stated above, these Writ Petitions are allowed and the impugned acquisition proceedings in pursuance of the preliminary notification dated 19-9-77 and final notification dated 7-2-1978 are quashed in so far as these Writ Petitions are concerned confined to the lands described in the schedule to

these Writ Petitions and belonging to them. There shall be no order as to costs in the circumstances of the case.

41. The aforesaid decision is relevant to the case on hand that the petitioners therein so also in the present case are still in actual possession of the land in question. Taking of possession by respondents nos.4 to 10 are under dispute and pending consideration in the suit filed by the respective parties.

42. KULSUM R NADIAWALA's case cited supra relates to publication of preliminary notification in what manner at paras.11 to 14 which is extracted here under:

11. Section 4 of the Land Acquisition Act reads as under: 4. Publication of preliminary notification and powers of officers thereupon.-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification. (2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workman- to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle: Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

12. The said provisions came up for consideration before this Court in *Collector v. Raja Ram Jaiswal* [(1985) 3 SCC1 . In the said decision, the Court specifically observed that there are two requirements for the issuance of the notification under Section 4 of the Act. The first requirement is that the notification requires to be published in an Official Gazette and the second requirement is that the acquiring authority should cast (sic publish) public notices of the substance of such notification in a convenient place in the locality in which the land proposed to be acquired is situate. The Court has further observed that both the contentions (sic requirements) are cumulative and they are mandatory.

13. In the instant case, the respondents before the High Court had filed their reply-affidavit. They did not dispute the contentions of the appellants that they had not issued any public notices as required under Section 4 of the Act. They only reiterated that such notification was published in the Official Gazette. Since the mandatory requirement as required under Section 4(1) of the Act is not complied with by the respondents, while acquiring the lands in question, in our opinion, the entire acquisition proceedings requires to be declared as null and void.

14. This Court in *J&K Housing Board v. Kunwar Sanjay Krishan Kaul* [(2011) 10 SCC714 has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings. This Court further observed thus: (SCC p. 725, para

32) 32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the landowners 53 failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to.

43. The aforesaid decision is relevant to the case on hand for the reasons that preliminary and final notifications have not been notified in the newspapers as claimed by the BDA, since petitioner furnished newspaper of the relevant date and such publication as contended by the BDA are not forthcoming vide Annexures W and X.

44. R Ramachandan's case cited supra relates to interpretation of Section 4(1) of the Act, 1894 on the one hand and Sections 17 and 17(5) of the BDA Act. Obligation to publish in the newspaper. (Para.17 and 18). Extract of paras 17 to 18 are reproduced here under:

17. The provisions relevant for consideration with reference to Section 4(1) of the Land Acquisition Act on the one hand and Section 17 of the B.D.A. Act on the other are already extracted earlier. It is, therefore, not necessary to cull out the same here again. It is necessary to point out the same here that in Section 4(1) of the Land Acquisition Act, the Deputy Commissioner apart from publishing a notification in the official gazette and in two daily newspapers circulating in the locality is also obliged to cause publication of the substance of such notification to be given at convenient places in the said locality and may also cause a copy of such notification to be served on the owner. I hasten to add here that the obligation to publish the notification in two daily newspapers circulating in the locality is incorporated in Section 4(1) of the Land Acquisition Act by Act No.33/1991. The said obligation to publish in the newspapers was not there next before Act No.33/1991 came into force. It is significant to notice here that there is an obligation on the part of the Deputy Commissioner to cause the substance of the notification to be given at convenient places in the said locality. Further, the word used in Section 4(1) of the Land Acquisition Act, with reference to service of notice to the owner is may. However, in Section 17(5) of the B.D.A. Act, a mandatory duty is cast upon the authority to give 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. Apart from the fact that the word used is shall in sub-section (5) of Section 17 of the B.D.A. Act, the said notice is a notice required to be given during 30 days next after the following day on which such notification is published. It is, therefore, clear that the language

reflected in Section 4(1) of the L.A. Act on the one hand and Section 17 of the B.D.A. Act on the other is quite different, with reference to the expression relevant for consideration. It is also significant to notice here that in Section 17(6) of the B.D.A. Act even the mode of service of the said notice is given. Apart from that, sub-section (5) of Section 17 of the B.D.A. Act is a separate self-contained provision enacted for the purpose of causing the service on every person whose name appears in the assessment list etc. Further it is also necessary to point out here that the period during which such notice is required to be issued, is after the publication of notification in the gazette and not simultaneously with the said notification. It, therefore, becomes manifest that the two provisions relevant in the context of the point under consideration are not identical. It would therefore follow that the Decision in Rangaswamy's case [1992 KAR1483:

1992. (3) KLJ89]. would not apply to the facts of the instant case. 55

18. As pointed out earlier, the names of the predecessors in title of the respondents were very much there in the assessment list and/or demand register. Further they were also the persons who acquired title from the erstwhile owners under registered sale deeds. It is significant to notice here that Doddanna whose name finds a place in the notification at Ex. D1 had lost his title long prior to the notification in question. His successors referred to earlier had acquired title to the two acres of land by regular registered Sale Deeds. Under these circumstances, it is clear that the predecessors in title of plaintiffs, whose names were there in the demand register and/or assessment list were required to be given a notice as provided for under Section 17(5) of the B.D.A. Act. If that be so, what is the effect of failure to give notice to them is a question which is required to be considered next. At this juncture it is necessary to mention here that this aspect though dealt with in great detail is an aspect which is incidental to the main issue. This aspect in a suit for permanent injunction would arise for consideration incidentally to see as to whether plaintiffs' possession, if at all, was lawful on the date of the suit. With reference to the question as regards as to what will be the effect of failure to comply with the mandatory requirement of a statute, the Decision relevant for consideration is the one in *Khub Chand v. State of Rajasthan*. [1967 (1) SCR120]. In the said case, the Supreme Court was considering the impact of the failure to

comply with the mandatory requirement of Sections 4 and 5 of the Rajasthan Land Acquisition Act. Dealing with that aspect, the Supreme Court has, among other things, observed as under: Indeed, the wording of Section 4(2) of the Act leads to the same conclusion. It says, thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality. The expressions thereupon and shall be lawful indicate that unless such a public notice is given, the officer or his servants cannot enter the land. It is necessary condition for the exercise of the power of entry. The non-compliance with the said condition makes the entry of the officer or his servants unlawful. On the express terms of sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied with, he or his servants cannot exercise the power of entry under Section 4(2), with the result that if the expression shall is construed as may, the object of the sub-section itself will be defeated. The statutory intention is, therefore clear, namely, that the giving of public notice is mandatory. If so, the notification issued under Section 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void. In my opinion, the observation made by the Supreme Court in the aforesaid case would apply on all fours to the facts of this case also with reference to the interpretation of Section 17(5) of the B.D.A. Act. I may also point out here that this Court in the Decision in *Kenchawwa v. Amagonda* [1988 (1) KLJ530]. has also held that failure to comply with the mandatory requirement of a statute will render the transaction void. In view of the Decision of the Supreme Court referred to immediately hereinabove, it is not necessary to dilate further on this aspect. It will suffice if it is held that the ratio laid down in the said case will have to be applied whenever and wherever there is a failure to comply with the mandatory requirement.

45. The aforesaid decision is in relation to non-compliance of Section 4(1) of Act 1894 and Section 17 of the BDA Act. BDA has failed to comply with Section 17(5) of BDA57Act which is mandatory. Therefore, this decision is aptly applicable to the case on hand. Hence, issue no.1 is answered in favour of petitioners.

46. As regards issue No.2 whether delay would be a hurdle in respect of fraud in an acquisition proceedings, the following citations are relevant:

1. SEETHARAM AND OTHERS VS THE STATE OF KARNATAKA, REP. BY ITS SECRETARY TO THE GOVERNMENT REVENUE DEPARTMENT AND OTHERS reported in ILR 2017 KAR2063 (2017) 4 KANT L.J195 wherein it is held that delay and laches has no consequences as acquisition found to be vitiated, fraud vitiates the whole acquisition proceedings. Relevant paras 23 and 24 are reproduced here under:

23. We are of the opinion that the decision in the case of Bangalore City Co-Operative Housing Society Limited (supra) has universal application. In these cases, a middleman was engaged to influence the Government and prior approval of the scheme was absent as mandatorily required under Section 3(f)(vi) of the said Act. Hence, we have no hesitation in holding that the Hon'ble Single Judge was not right in dismissing the writ petitions on the grounds of delay and laches. The acquisition is, therefore, liable to be quashed.

24. However, certain members of the co-operative Society had acquired the plots of land even prior to passing of an order of injunction against the Society by the Hon'ble Single Judge on March 14, 2005 and some of them have even constructed their houses. We feel that they should be permitted to retain their houses on the sites allotted to them, on payment of reasonable compensation to the land owners at the prevailing market price as on the dates of their purchases. Some persons have purchased the property after the order of injunction. They are given liberty to negotiate with the land owners for purchase of the land at an agreed price, preferably the market price prevailing in the year 2005.

2. SRI SRIKANTA REDDY K VS THE STATE OF KARNATAKA IN WP.NOS. 38545/17 & 39924/17, DISPOSED OF ON 19/09/2018 wherein Court held that fraud vitiates a solemn act 3. REGI SURESH NAIR VS SURESH PUTHARAKKAL NAIR, reported in (2012) 3 Mah L.J783 wherein Bombay High Court condoned the delay 4. JAGIR SINGH & OTHERS VS STATE OF PUNJAB & OTHERS reported in 2014 SCC OnLine P & H25050 wherein Court held that fraud and collusion

vitiates even the most solemn proceedings in any civilised system of jurisprudence. Extract of paras 15 and 18 are reproduced here under:

15. It is well settled that fraud vitiates all actions. Hon'ble Supreme Court in Commissioner of Customs, Kandla v. Essar Oil Limited, (2004) 11 SCC364 has held that fraud is well known vitiates every solemn act. Fraud and justice never dwell together. An act of fraud on court is always viewed seriously; a collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and Collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence.

18. Collector, Land Acquisition, Anantnang v. Mst. Katiji, (1987) 2 SCC107 holds that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in in-justice being done because of a non- 59 deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. In G. Ramegowda Major etc. v. The Special Land Acquisition Officer, Bangalore, 1988 (1) R.R.R. 555 : (1988) 2 SCC142 the Apex Court ruled that : the law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter when Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. Again in State of Karnataka v. Y. Moideen Kunhi (dead) by Lrs., (2009) 13 SCC192 it has been held that the expression sufficient cause as appearing in Section 5 of the Indian Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice - Where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it, the same should not be excluded while deciding what constitutes sufficient cause. The decision taken by the Appellate Authority in the peculiar facts and circumstance of this case, is fully guided by the briefly noticed

legal and equitable considerations. It calls for no interference by a Writ Court in exercise of its discretionary jurisdiction.

6. KASANI GNANESHWAR VS THE JOINT COLLECTOR, MEDCHAL-MALKAIGIRI DISTRICT & OTHERS reported in (2018) 3 ALD441(DB), consequences of playing fraud is vitiate proceedings. Extract of paras 19 to 23 are reproduced here under:

19. While belated exercise of the power of revision is impermissible, the question which necessitates examination in the present case is whether such an exercise of the power would necessitate interference, in 60 proceedings under Article 226 of the Constitution of India, in cases of fraud. Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another, to gain by another's loss. (S.P. Chengalvaraya Naidu v. Jagannath; State of A.P. v. T. Suryachandra Rao; and Behari Kunj Sahkari Avas Samiti v. State of U.P.). Fraud has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary, fraud in equity has been defined as an act or omission to act, or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, fraud is defined as an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, is one which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to the Halsburys Laws of England, a representation is deemed to be false if it was, at the material date, false in substance and in fact.

20. From the dictionary meaning or even otherwise, fraud arises out of the deliberate active role of the representor about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true.

The representation to become fraudulent must be of a fact with knowledge that it was false. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless of whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud. (Ram Chandra Singh v. Savithri Devi; T. Suryachandra Rao¹⁹; Behari Kunj Sahkari Avas Samiti²⁰; Derry v. Peek).

21. The expression fraud involves two elements, deceit and injury to the person deceived. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (Vimla (Dr.) v. Delhi Admn; Indian Bank v. Satyam Fibres (India) (P) Ltd.; T.S. uryachandra Rao¹⁹; Behari Kunj Sahkari Avas Samiti²⁰ and Bhaurao Dagdu Paralkar v. State of Maharashtra). In fraud one gains at the loss of another. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. (A.V. Papayya Sastry v. Govt. of A.P.).

22. Fraud is a conduct which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former. Misrepresentation itself amounts to fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be saved by the application of any equitable doctrine including estoppel and res judicata. (Ram Chandra Singh²¹; T. Suryachandra Rao¹⁹; Behari Kunj Sahkari Avas Samiti²⁰; Ram Preeti Yadav⁶; A.P. Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev).

23. A representation is fraudulent not only when the person making it knows it to be false, but also when he ought to have known, or must be taken to have known, that it was false. A mans mere assertion that he 62 believed the statement he made to be true is not accepted as conclusive proof that he did so. (Kerr on Fraud and Mistake; Ram Chandra Singh²¹). Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. (Badami⁴; Shrisht Dhawan v. Shaw Bros; Roshan Deen v. Preeti Lal; Ram Preeti Yadav⁶; and Ram Chandra Singh²¹). Fraud and justice never dwell together. (Ramchandra Singh²¹; T. Suryachandra Rao¹⁹; and Behari Kunj Sahkari Avas Samiti²⁰). Fraud avoids all judicial acts, ecclesiastical or temporal. A judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eye of the law. Such a judgment/decreeb by the first court or by the highest court should be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings. (S.P. Chengalvaraya Naidu¹⁸; Badami⁴; Ram Preeti Yadav⁶).

7. BASHIR AHMED CHAND SHAIKH VS STATE OF MAHARASTRA AND ANOTHER, reported in (2010) 1Mah LJ500 fraud is committed, the length of time is immaterial as fraud vitiates everything. Para 15 is extracted here under:

15. It is pertinent to note that in view of the serious allegations of fraud, the Supreme Court overlooked the delay of 13 years in exercise of powers under section 34 of the U.L.C. Act. The principles which can be deduced from the above judgments is that powers under section 34 of the Land Acquisition Act have to be exercised by the State within a reasonable time. What would be reasonable time would depend on the facts and circumstances of each case and no fixed formula can be laid down. There can be no rule of universal application in this behalf. Reasonable time would generally be a period of three years but not always. The facts and circumstances of the case would be determinative of the reasonableness of the time taken to exercise powers under section 34 of the U.L.C. Act. However, where it is pointed out that a fraud is committed, the length of time in exercise of powers 63 under section 34 of the U.L.C. Act is immaterial as fraud vitiates everything. In such circumstances, order passed under section 34 of the U.L.C. Act can be sustained even after extraordinary delay.

47. In the light of the aforesaid decisions, decisions cited on behalf of the respondent No.1- BDA are:

1. ANDRAPRADESH INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED VS CHINTHAMANENI NARASIMHA RAO AND OTHERS reported in (2013) 2 SCC (Civ) 731 D/D159/2011 (PARAS11TO20 2. PREM KUMAR J.J V STATE OF KARNATAKA AND OTHERS reported in 2018(3) Kar.L.J.

395

3. V. CHANDRASEKARAN AND ANOTHER Vs THE ADMINISTRATIVE OFFICER AND OTHERS reported in JT2012(9) SC2604. NUNNA VENKATARAMANA & ANR. VS GOVERNMENT OF ANDHRA PRADESH AND ORS. in W.P.No.14995/2008 DD0909/2008 5. V.T KRISHNAMOORTHY V/S STATE OF KARNATAKA reported in ILR 1991 KAR11836. KULSUM R. NADIADWALA Vs STATE OF MAHARASHTRA AND OTHERS reported in (2012) 6 SCC348(PARAS12TO14 7. BENGALORE DEVELOPMENT AUTHORITY AND OTHERS VS R HANMAIH AND OTHERS reported in AIR 2005 SC3631(PARAS17 18 &

21) 8. CHAYADEVI VS STATE OF KARNATAKA in W.P.Nos.4101/4102/1986 DD1409/1988 (PARAS15 20 &

21) 9. VYALIKAVALL HOUSE BUILDING COOP SOCIETY BY ITS SECRETARY Vs V. CHANDRAPPA AND OTHERS reported in (2007) 9 SCC304(para

2) 64 10. M.MARIDEV AND OTHERS VS STATE OF KARNATAKA D/D255/2009 reported in 2009 (6) AIR KAR R279(PARAS114, 11.5) 11. NARTHERN INDIAN GLASS INDUSTRIES V JASCANT SINGH AND OTHERS REPORTED IN AIR 2003 SC234(PARA9 12. DB (SC) AIR 1997 SC207613. K.N ASHWATHAMARAYA SHETTY AND OTHERS V/S STATE OF KARATAKA REPORTED IN2003(2) KLJ335(EB) 14. S. B SUBRAMANYA SETTY AND OTHERS VS KSRTC AND OTHERS reported in 1998 (2) KLJ453(SC) 15. SMT JANET SHAKUNTALA MABEN AND OTHERS VS STATE OF KARNATAKA & OTHERS reported in 2009 (3) KCCR210348. Decisions cited on behalf of

respondents 4 to 10 are as under:

1. INDRAPURI GRIHA NIRMAN SAHAKARI SAMITI LTD VS. THE STATE OF RAJASTHAN AND OTHERS reported in (1975) 4 SCC296- (Page 8 -

10) - 'Premium on dilatory tactics if urging grounds belatedly when aware of acquisition 2. HARI SINGH AND OTHERS VS. STATE OF U.P. AND OTHERS - reported in 1984 (2) SCC624(Para -

4) - 2.5 years delay fatal to acquisition 3. TAMIL NADU HOUSING BOARD, CHENNAI VS. M. MEIYAPPAN AND OTHERS reported in (2010) 14 SCC309(Para - 13, 15 and

18) 4. In Writ Appeal No.467/2012 disposed by Division Bench of this Hon'ble Court on 01/06/2012 (Para -

9) - Delay vis--vis KIAD Act 5. MEGHMALA & OTHERS. VS G. NARASIMHA REDDY & OTHERS reported in (2010) 8 SCC383(Para 32-42) 65 49. Perusal of the decisions cited on behalf of BDA and respondents 4 to 10, none of the decisions are co-related to delay read with fraud. If there is only delay and laches, one can understand that petition is not maintainable on the ground of delay and laches. Where as in the present case, legal heirs of B.Doddamarappa did not have the knowledge of acquisition proceedings from 1980 to 2007, BDA has not published acquisition proceedings in the newspapers and physical possession of the subject land was not taken over by the BDA from deceased B Doddamarappa. Legal heirs of B Doddamarappa were aware of the acquisition proceedings only as and when respondents 4 to 10 approached for taking over possession of the schedule property in the year 2007. Thereafter, during the course of hearing at the earliest point of time, this Court noticed various discrepancies in the revenue records produced by the Revenue Department and BDA as regards who was the real owner i.e. whether deceased B Doddamarappa or Sri A Suklal in respect of subject land. In this regard, State Government was asked to appoint an Investigating Officer/Inquiring Officer. State Government appointed Regional Commissioner, Bengaluru Division and he had submitted report 66 on 22.06.2020 to the State Government. If these material information is taken into consideration

read with the fact that fraud has taken place while taking note of revenue records one has to draw inference that there is prima facie deceitful in the acquisition proceedings. Even though revenue records stood in the name of Sri B Doddamarappa, on the other hand, application filed on behalf of Sri A Suklal for grant of land was rejected. Therefore, it is clear that officials of the BDA prior to issuance of preliminary notification have not perused the original revenue records of the Revenue Department and have notified the name of Sri A Suklal as owner of the subject land in fact the original records of the Revenue Department reflects the name of deceased Sri B Doddamarappa. On the other hand none of the respondents have furnished authenticated documents relating to regrant of land in favour of Sri. A. Suklal. In the light of these factual aspects of the matter, respondents have not made out case so as to dismiss the writ petition on the ground of delay and laches, since fraud is noticed in the acquisition proceedings with reference to original revenue records. On the other hand, Sri A Suklal's application for regrant of land was rejected on 07.10.1964. The document furnished by the BDA in respect of 67 reflecting Sri A Suklal's name is stated to have been prepared by Village Accountant and it is not tallying with the original record to the extent of regrant of land in favour of Sri. A. Suklal. The document furnished in the name of Sri A Suklal is not a genuine one, since, the Register of Record of Right maintained by the Revenue Department is in the vertical form whereas the document furnished on behalf of Sri A Suklal like Record of Right is in the horizontal form. The Revenue Department was not maintaining horizontal register in respect of Record of Right on the other hand, it is vertical register as on the date of acquisition proceedings. Thus, there is collusion among the officials and beneficiaries in incorporating fake revenue records in respect of acquisition proceedings and claim of compensation. Moreover, neither BDA nor Revenue Department are in possession of corresponding records prior to issuance of preliminary notification for which no reasons have been assigned by the respective Revenue Department and BDA. This is also crucial event to draw inference that fraud is played by the then officials in collusion with some private parties. To the above extent, there is fraud in the acquisition proceedings. 68 FRAUD:

50. In *STATE OF PUNJAB vs GURDIAL SINGH's* case *supra* malafides in the jurisprudence of power and fraud has been discussed. The aforesaid decision has

relevancy to the case on hand for the reasons that what is malafide in the jurisprudence of power has been discussed. In the present case, fraud is to the extent of not examining the original revenue records and some interested persons proceeded to manipulate revenue records in the name of Sri A Suklal. On the other hand, original revenue records stand in the name of Sri B Dodamarappa.

51. In STATE OF A.P. AND ANOTHER vs T SURYACHANDRA RAO supra it is held the word 'fraud' has been discussed elaborately (paras.8 to

16) 8. By fraud is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The expression fraud involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Vimla (Dr.) v. Delhi Admn. [1963 Supp (2) SCR585: AIR 1963 SC1572at pp. 1576-77 para 14 : (1963) 2 Cri LJ434 and Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC550].

9. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC1 .) 10. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows

to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine 70 including res judicata. (See Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC319 .) 11. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, wing me into the easy-hearted man and trap him into snares. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines fraud as an act committed by a party to a contract with the intent to deceive another. From dictionary meaning or even otherwise fraud arises out of a deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with the knowledge that it was false. In a leading English case i.e. Derry v. Peek [(1886-90) All ER Rep 1 : (1889) 14 71 AC337(HL)]. what

constitutes fraud was described thus: (All ER p. 22 B-C) [F].raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. But fraud in public law is not the same as fraud in private law. Nor can the ingredients, which establish fraud in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State for Home Deptt.* [(1983) 1 All ER765:

1984. AC74: (1982) 1 WLR948(HL)]. that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. Fraud in relation to statute must be a colourable transaction to evade the provisions of a statute. If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present-day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. In a contract every person must look for himself and 72 ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See *Shrisht Dhawan v. Shaw Bros.* [(1992) 1 SCC534 SCC p. 554, para 20.) 12. In that case it was observed as follows: (SCC p. 553, para

20) 20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.

Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, wing me into the easy-hearted man and trap him into snares. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case *Derry v. Peek* [(1886-90) All ER Rep 1 : (1889) 14 AC337(HL)]. what constitutes fraud was described thus: (All ER p. 22 B-C) [F].raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* [(2002) 1 SCC100:

2002. SCC (L&S) 97]. , *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC311 , *Ram Chandra Singh case* [(2003) 8 SCC319 and *Ashok Leyland Ltd. v. State of T.N.* [(2004) 3 SCC1 14. Suppression of a material document would also amount to a fraud on the court. (See

Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3 SCC310 and S.P. Chengalvaraya Naidu case [(1994) 1 SCC1 .

15. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case [(2003) 8 SCC311 .

16. In Lazarus Estates Ltd. v. Beasley [(1956) 1 QB702: (1956) 1 All ER341: (1956) 2 WLR502(CA)]. Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C) No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. In the same judgment Lord Parker, L.J.

observed that fraud vitiates all transactions known to the law of 74 however high a degree of solemnity. [[Ed.: (1956) 1 All ER341at p. 351 placitum E-F].].

52. The aforesaid decision is relating to fraud and collusion. In the present case, BDA officials in connivance with Sri A Suklal and others played fraud in respect of acquisition proceedings and claiming compensation. Hence, the aforesaid decision has relevancy to the case on hand.

53. S P CHANDANAVARAYA NAIDU (D) supra fraud has been discussed in paras.1, 5 and 6.

54. Fraud with reference to a document has been considered, whereas in the present case also fraud is required to be taken into consideration with reference to revenue records which are in the name of Sri B. Doddamarappa and Sri A Suklal. The regrant of land is in favour of Sri B Doddamarappa on the other hand regrant of land had been rejected insofar as Sri A Suklal on 07.10.1964.

55. On merits, except learned counsels for legal heirs of B Doddamarappa, BDA and respondents 11(a to d) none of the counsel for other respondents have addressed arguments on merit. 75

56. Learned counsel for the BDA submitted that on the basis of the records made available by the Revenue Department, BDA proceeded to initiate and complete acquisition proceedings of the subject land among other lands. Therefore, there is no infirmity in the acquisition proceedings of the subject land. In fact, extract of Revenue records has been produced along with Statement of Objections read with Affidavit dated 19.02.2021 of Special Land Acquisition Officer, BDA at Documents 1 to 3. Further, acquisition proceedings were notified/published in the news papers dated 31.08.1975, a mahazar was drawn on 03.10.1985 and possession of subject land was taken by the BDA. Subject land was sold in favour of Society on 20.04.1989 where as possession is stated to have given on 07.02.1989, and in turn Society sold the subject land in favour of respondent nos.4 to 10. Therefore, there is no infirmity in the acquisition proceedings.

57. Learned counsel for respondents 11(a to d) submitted that there was no application on behalf of deceased B Doddamarappa for regrant of land. An application was filed by respondents 11(a to d) to summon the records in respect of regrant of land etc. of Sri A Suklal to this Court. This Court 76 verified from the Revenue Department officials and they submitted that Sri A Suklal's application is not available. To that extent Sri V R Ramesh, i/c SSY Shirestedar, Office of Bengaluru North Taluk has filed an affidavit dated 03.03.2021. Therefore, whatever materials available with the BDA and which are placed on record are genuine, consequently, legal heirs of B.Doddamarappa have not made out case so as to interfere with the acquisition proceedings.

58. Learned counsel for the legal heirs of B.Doddamarappa submitted that BDA, Revenue and Urban Development Department do not possess any records relating to correspondences made among themselves prior to issuance of preliminary notification of acquisition of subject land, so as to ascertain who has forwarded the revenue records and which record has been taken note of by the BDA and at what point of time fraud has taken place, from which date the subject land stood in the name of Sri A Suklal. Though original revenue records reveal that Sri A Suklal's application for regrant of land was rejected in Case No.104/58-59 dated 05.08.1961 vide Order No dated 07.10.1964 cited supra. Even respondents 11(a to d) did not furnish any relevant material information that subject 77 land

stood in the name of Sri A Suklal. On the other hand, rejected application has been demonstrated as if the land was granted in favour of Sri A Suklal. Consequently BDA, State and other contesting respondents have not made out case on merit that the acquisition proceedings of the subject land is with reference to the revenue records that stood in the name of Sri A Suklal as on the date of issuance of preliminary notification by the BDA. The aforesaid contention of the legal heirs of B.Doddamarappa is appreciated in view of the non-availability of the records with the BDA or Revenue Department as on the date of preliminary notification. On the other hand perusal of the original revenue entries in respect of both Sri Doddamarappa and Sri A Suklal reveals that the subject land was granted in favour of Sri B Doddamarappa whereas Sri A Suklal's application for regrant of land was rejected. Rejection of Sri A Suklal's revenue entries has been manipulated as if regrant of subject land was made in favour of Sri A Suklal which is contrary to revenue records cited supra. In fact, as is evident from the revenue records deceased Ambaram f/o A Suklal has given consent that " I agree for the above" and it was attested that he has no objection for issuance of katha in favour of Sri B Doddamarappa. 78 These material information supports the contention of the legal heirs of B.Doddamarappa in respect of challenge to acquisition proceedings as fraud. Entire decision making process was nothing but an abuse of fraud on power. Legal heirs of B.Doddamarappa are justified in seeking annulment of acquisition proceedings. The transactions were directly as a result of abuse of fraud on power, a writ Court could certainly deal with such issues and while granting relief against such fraud on power, incidental and consequential directions could also be passed annulling such transactions. This issue is supported by a decision of the Apex Court in the case of GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY vs DEVENDAR KUMAR & ORs reported in (2011)12 SCC375 and UDDAR GAGAN vs SANT SINGH & Ors reported in (2016)11 SCC378 This has been taken note in a recent decision in the case of RAMESHWAR AND OTHERS VS STATE OF HARYANA AND OTHERS Reported in (2018) 6 SCC215 decided on 12.03.2018. In view of the aforesaid analysis of the facts and legal aspects, Issue No.2 relating to delay and laches would not be a hurdle in questioning the acquisition proceedings, since petitioners have made out that fraud has been played in the subject acquisition proceedings.

79 As regards issue No.3:

59. BDA proceeded to sell the subject land in favour of the society on 20.04.1989 whereas possession of the schedule land was alleged to be taken from deceased B Doddamarappa on 03.10.1985. To that effect, a mahazar drawn was not in manuscript and it is typed one. Mahazar do not contain the identification of witnesses along with their respective address. In the absence of necessary ingredients of a mahazar, the mahazar drawn on 03.10.1985 cannot be appreciated. That apart it is alleged that Society was given possession on 07.02.1989 for which no material is placed on record.

60. Mahazar drawn by the BDA on 03.10.1985 is in violation of the provisions of the BDA Act. Prima facie, mahazar must have been prepared in the office of the BDA since it is not in manuscript and is a typed mahazar and addresses of the witnesses are not revealed. That apart, in the spot mahazar names of adjacent owners/occupants and their attestations as witness/s are not reflected. 80 DEFECTIVE MAHAZAR⁶¹ In *Dr. A PARTHASARTHY & OTHERS vs STATE OF KARNATAKA* reported in ILR2017 Kar 3489 (paras.9 and

10) Section 17(5) and 19(1) of BDA Act relating to defective mahazar has been discussed. Paragraphs 9 and 10 reads as under:

9. From the above, it is clear that the Authority did not have intention of implementing the scheme over the entire portion of land which was acquired, but it had done so only to create a land bank, which is not the purpose for which Development Authorities have been created. If this is permitted, then any Development Authority can misuse the land acquisition proceedings by notifying and acquiring large tracts of land which may be in hundreds, or even thousands of acres, for future development, which may be proposed to be carried out even after three, four or five decades, and deposit the compensation at the rate as on the date of notification which may be awarded by the Special Land Acquisition Officer, and deposit the same after several years, as in the present case, it is after thirty one years of the initial notification for acquisition, and twenty three years even after the award had been passed. The Development Authorities are not in the business of land dealing, as the purpose is different, which is proper development

of cities, which may include providing of residential accommodation to citizens, but not create a land bank by way of compulsory acquisition of land, thereby depriving the legitimate owners of land for profiteering purpose by BDA. In the present case, nearly 90% of the land so notified to be acquired, has remained unutilized for more than three and a half decades. The possession of the land belonging to the appellants is said to have been taken in the year 1986 under a mahazar which cannot be relied upon, and we have no reason to 81 disturb the finding of fact recorded by the Writ Court in this regard, in para 27 of its judgment, which was on perusal of the original record and is reproduced below: The first question that falls for my consideration is, whether the possession of the land is taken by the Government from the petitioners?. My answer to this question is emphatically no, for the following reasons: (a) The perusal of the records reveals that the things are not done in a manner known to law. The mahazar on which all reliance is placed is deficient in more than one respect. It contains the signatures of five persons, but their names, much less their addresses, are available. (b) The alternative portions like (i) the petitioners were present/not present (ii) BDA has taken over the possession/the owners have handed over the possession (iii) malkies are existing/not existing are retained as they are. The non-applicable portion is not even struck off. The mahazar prepared is in the cyclostyled form. It is hard to give any credence to such a mahazar. (c) No acknowledgments for having served the copy of the mahazar on the petitioners is produced. It is also not the case of the respondent BDA that the notice calling upon the petitioners to handover the possession was sent under RPAD.

10. The facts in the case before the Apex Court in the case of Tamil Nadu Housing Board (supra) were different from the facts of the present case and as such, the ratio laid down in the said judgment would not be applicable to these cases. Possession of land so 82 notified for acquisition has to be taken in a proper and valid manner. The findings recorded by the Learned Single Judge, that there was no independent witness which had signed the mahazar, nor the names and addresses to show the identity of the alleged witnesses was given, would be sufficient to show that the mahazar was not prepared in a valid and legal manner. The same was done in a mechanical manner on a cyclostyle form, and the Learned Single Judge has rightly held that it is hard to give any credence to such

mahazar. Learned Counsel for respondents has also not denied the fact that no notice was ever given to the appellants for handing over possession and straight away the mahazar had been prepared, the authenticity of which is extremely doubtful.

62. The aforesaid decision has relevancy to the case on hand for the reasons that mahazar relating to taking over the possession of the subject land is not in accordance with law wherein this Court has elaborately considered how a mahazar should be drawn. In the present case, mahazar is not in a manuscript form and is a typed copy and addresses of the witnesses are not forthcoming. If spot mahazar was done, in such an event, it should have been in manuscript having regard to the date of alleged mahazar drawn by the BDA. BDA has not complied with the procedure in taking over the possession of the subject land by drawing mahazar in terms of provisions of BDA Act read with the principle laid down in the case of Dr.A83PARTHASARTHY *supra*. Hence, Issue No.3 is answered in favour of petitioners.

63. Learned counsel for the BDA submitted that para.14 of the report of the Regional Commissioner, Bengaluru was not warranted having regard to the issue involved in the present matter.

64. Having regard to the material information read with the arguments advanced on behalf of learned counsel for the BDA, such observation made by the Regional Commissioner, Bengaluru is hereby expunged.

65. In view of these facts and circumstances, petitioners have made out prima facie case so as to interfere with the impugned acquisition proceedings. In the result, the following order is passed:

ORDER

(i) The award passed by the Special Additional Land Acquisition Officer, Bengaluru Development Authority, Bengaluru on 03.11.1977 bearing No.BDA/SALAO/C3.PR.301/77-78 vide Annexure - N84 and sale deeds produced vide Annexures R and S dated 20.04.1989 and 07.07.1997 respectively executed by the 1st respondent in favour of the 2nd respondent and 2nd respondent in

favour of respondents 3 to 9 stands quashed. (ii) The subject land at Sy.No.78 measuring 1 acre 12 guntas situated at Binnamangala Village, Kasaba Hobli, Bengaluru North Taluk stands restored in the name of deceased B Doddamarappa. (iii) The official respondents BDA, Revenue and Urban Development Departments are hereby directed to rectify all the respective records and restore the land in favour of deceased Sri B Doddamarappa in accordance with law. Such exercise shall be completed within a period of 4 months from the date of receipt of this order. (iv) It is a case warranted for imposition of cost on the respondent - Bengaluru Development Authority in not maintaining records of acquisition of subject land so also correspondences with the Revenue and Urban Development Department before issuing preliminary notification. Accordingly, Writ Petition is allowed with costs of Rs.1,00,000/- to be remitted by the Bengaluru Development Authority - respondent No.1 before the Karnataka State Legal Services Authority, Bengaluru within a period of four months from the date of receipt of this order. Sd/- JUDGE Brn

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