

Sri Krishnappa vs the Bengaluru Development Authority

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Court : Karnataka

Decided On : Mar-17-2025

Judge : S.R.Krishna Kumar

Appeal No. : RFA/310/2024

Appellant : Sri Krishnappa

Respondent : The Bengaluru Development Authority

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF MARCH, 2025 BEFORE THE
HON'BLE MR JUSTICE S.R.KRISHNA KUMAR REGULAR FIRST
APPEAL NO. 310 OF 2024 (INJ) BETWEEN:

1. SRI KRISHNAPPA AGED ABOUT 60 YEARS, S/O LATE SIDDAPPA
AND SMT THIMMAKKA RESIDING AT SY.NO.30/2 NAGARABAVI 2nd
STAGE, BENGALURU 560 072 MOBILE NO. 9880653789
2. SRI. M GANGARAJU AGED ABOUT 66 YEARS, S/O LATE
MALLAIAH R/AT SITE NO.4 CARVED OUT OF SY.NO.30/2

KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, Digitally BENGALURU 560 072 signed by

LEELAVATHI 3. SMT. SHANTHA KUMARI SSR

AGED ABOUT

KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

4. SMT. LATHA AGED ABOUT 34 YEARS, WO HUCCHE GOWDA, R/AT SITE NO.1A, R/AT SITE NO. 3/2 -2- CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

5. SRI. N K SHIVAKUMAR AGED ABOUT 33 YEARS, S/O S KRISHNAPPA R/AT SITE NO.1A, CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

6. SMT. NAGAMMA

AGED ABOUT 49 YEARS, W/O S KRISHNAPPA R/AT SITE NO.1B AND 1D CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

7. SMT. SOWBHAGYA

AGED ABOUT 59 YEARS, W/O P THIPPE RUDRAPPA, R/AT SITE NO.6 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072 APPELLANTS (BY SRI. B M SIDDAPPA, ADVOCATE FOR A1 TO A7) AND:

1. THE BENGALURU DEVELOPMENT AUTHORITY SANKEY ROAD, KUMARA PARK WEST, BENGALURU 560 020 REPRESENTED BY ITS COMMISSIONER -3-

2. SRI. C M SOMSHEKHAR

AGED ABOUT 64 YEARS, S/O LATE C B MEGHA NAIK R/AT SITE NO.3 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

3. SRI. B ESYA NAIK

AGED ABOUT 68 YEARS, S/O LATE KRISHNA NAIK, R/AT SITE NO.3 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 07

4. SRI. T PRAHALAD AGED ABOUT 37 YEARS, S/O THIPPE SWAMI R/AT SITE NO.3/2 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

5. SMT. M K NAGAMANI

AGED ABOUT 65 YEARS, W/O K N NAGE GOWDA, R/AT SITE NOS. 1A AND 1B CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

6. SRI. MALLIKARJUNA AGED ABOUT 35 YEARS, S/O LATE S RAMACHANDRAPPA AND -4- LATE SMT. CHIKKAMMA R/AT SITE NO. 1A, 1B, 1C, 1D CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

7. SMT. HUCHAMMA AGED ABOUT 58 YEARS, W/O G B NANJAPPA, R/AT SITE NO.2 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

8. SMT. SUNANDA

AGED ABOUT 60 YEARS, W/O LATE N R RAJANNA, R/AT SITE NO.3/1 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072

9. SRI. S PANNALAL

AGED ABOUT 53 YEARS, S/O SHESHARAM G R/AT SITE NO.1 CARVED OUT OF SY.NO.30/2 KRISHNAPPA GARDEN, 80 FEET RING ROAD, NAGARBHAVI 2nd STAGE, BENGALURU 560 072
RESPONDENTS (BY SRI. K. KRISHNA, ADVOCATE FOR R1 NOTICE TO R2 TO R9 IS DISPENSED WITH V/O DTD 19.3.2024) THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE ORDER DATED 25.10.2023 PASSED ON I.A.IN OS.NO.26321/2020 ON THE FILE OF THE XXVIII ADDITIONAL CITY -5- CIVIL JUDGE, MAYO HALL, BANGALORE, ALLOWING THE I.A. FILED UNDER ORDER VII RULE 11(d) R/W SEC.151 OF CPC FOR REJECTION OF PLAINT AND ETC. THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

1. This Appeal by the unsuccessful plaintiff in O.S.

No.26321/2020 is directed against the impugned order passed on I.A.1/2023 culminating in the impugned judgment and decree dated 25.10.2023 passed by the XXVIII Addl. City Civil Judge, Mayohall Unit, Bengaluru whereby the said application on I.A.1/2023 filed by the respondent-BDA under Order VII Rule 11(d) of Code of Civil Procedure, 19081 was allowed whereby resulting in the trial Court rejecting the plaint and consequently dismissing the suit as barred by res judicata

2. Heard learned counsel appellants and learned counsel for the BDA and perused the material on record.

3. A perusal of the material on record will indicate that the

appellant-plaintiffs instituted the aforesaid suit against the Hereinafter referred to as the CPC -6- respondents-defendants for permanent injunction and other reliefs in relation to the suit schedule immovable properties. According to the appellants-plaintiffs, they are purchasers on various portions of the suit schedule bearing old Sy.No.30 new survey No.30/2 situated at Nagarabhavi Village, Yashavanthapura Hobli, Bengaluru North Taluk, measuring 1 acre 11 guntas out of a total extent of 4 acres 16 guntas now coming within the limits of BBMP, Krishnappa Garden, 18 feet ring road, Nagarabhavi 2nd Stage, Bengaluru-72 as described in the schedule to the plaint. The said suit was opposed by the respondent-BDA who not only filed the written statement disputing and denying the various claims and contentions urged by the appellant appellant-plaintiff but also filed an application under Order VII Rule 11(d) of CPC inter alia contending that the dispute between the predecessor in title of the appellant and the BDA had culminated in order dated 26.08.2019 passed in Civil Appeal No.3600/2001 by the Honble Supreme Court in the case of M/s. Vinayaka House Co-operative Society Limited V/s State of Karnataka and others reported in AIR 2019 SCC 4473 and consequently, the present suit by persons claiming through the unsuccessful parties in the said earlier round of litigation was barred by res judicata and the plaint was liable to -7- be rejected in the present case. The said application was opposed by the appellant-plaintiff who reiterated that the subject matter of dispute before the Apex Court was 3 acres 5 guntas while the subject matter of the present suit was an extent of land measuring 1 acre 11 guntas falling outside of 3 acres 5 guntas and which was not the subject matter of the earlier round of litigation and as such, the matter requires trial and the plaint could not have been rejected as barred by res judicata.

4. After hearing the parties, the trial Court proceeded to reject

the plaint by primarily/heavily placing reliance upon the judgment

of the Apex and thereby came to the conclusion that the appellant- plaintiff did not have any manner of right, title and interest or possession over the suit schedule properties and that the plaint was liable to be dismissed.

5. Aggrieved by the impugned order, resulting in the impugned

judgment and decree dismissing the suit of the appellants-plaintiffs

are before this Court by way of present appeal.

6. In addition to reiterating the various contentions urged in the

memorandum of appeal and referring to the material on record, -8- learned counsel for the appellant invited my attention to the plaint averments in order to point out that the appellant had not suppressed the earlier round of litigation culminating in the aforesaid judgment of the Apex Court. In this context, it is submitted that it is the specific contention of the appellants-plaintiffs that the subject matter of dispute in the earlier round of litigation was restricted to 03 acres 5 guntas while the appellants-plaintiffs were purchasers of land in an extent of 1 acre 11 guntas which fell outside the subject matter of dispute in the earlier round of litigation and consequently the appellants-plaintiffs being in lawful and peaceful possession and enjoyment of their respective portions in the remaining extent of 1 acre 11 guntas, they were entitled to decree for permanent injunction.

7. It is submitted that the Trial Court has committed a grave

and serious error in placing reliance only upon the earlier round of litigation which culminated before the Apex Court in order to reject the plaint and consequently dismissed the suit by passing the impugned order which deserves to be set aside.

8. Per contra, learned counsel for the respondent-BDA submits

that in the light of the judgment of the Apex Court in the case of -9- M/s.Vinayaka House Co-operative Society Limited (supra) the claim of the appellants-plaintiffs is barred by res-judicata and that the entire land measuring 6 acres 1 gunta including the suit schedule property measuring 1 acre 11 guntas had already been acquired by the State Government for the benefit of Vinayaka House Building Co-operative Society Limited and consequently, the

Trial Court was fully justified in passing the impugned order

rejecting the plaint and consequently dismissing the suit and as such, there is no merit in the appeal and the same is liable to be dismissed.

9. The only point that arises for consideration in the appeal is as to whether the Trial Court was justified in rejecting the plaint of the appellants-plaintiffs as barred by res judicata?

10. Before advertng to the contentions, it would be necessary to refer to the judgment of the Apex Court in the earlier round of litigation, wherein it was held as under:

Bangalore was a beautiful city - once, said Justice O. Chinnappa Reddy, in one of his judgments of the year 1987 (B.K. Srinivasan v. State of Karnataka [B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658]). He went on to say : (SCC p. 661, para 1) - 10 - 1. It was a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. Not now. That was before the invasion of concrete and steel, of soot and smoke, of high rise and the fast buck. Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces..

Indeed, Bangalore was a beautiful city. It had luscious gardens, beautiful lakes, well-laid roads, plenty of open spaces and wonderful weather throughout the year. It was one of the most beautiful cities in the country. It was rightly called the Garden City and a Pensioner's Paradise. These are things of the past. The city's environment is degraded so much and so fast that the time will not be far away for us to say once upon a time Bangalore was a beautiful city. Traffic jams, overcrowding, haphazard constructions, dying lakes, destruction of the flora, shrinking of lung spaces, etc. have become the order of the day. Its clear cool foggy air has turned into grey smoke and brown dust. All this has happened in the name of development. Of course, the development in today's time comes at a cost that the city of Bangalore has very dearly paid. What is lost has already been lost and no amount of work or effort can bring back the glorious garden days of Bangalore. The only thing that can be done and must be done is to at least wake

up now, meticulously plan and develop the city in order to maintain whatever little is left of the old Bangalore City and develop the ever-growing city on the broad lines of the glorious days of the past.

2. Keeping the above in mind as a blueprint, let us come to the

facts of this case

3. The appellant is a society registered under the Karnataka

Cooperative Societies Act, 1959, with the objective of inter alia acquiring lands for formation of house sites and for distributing the same to its members. The appellant had requested the State Government to acquire an extent of 100 acres of land in Nagarabhavi Village, Yeswanthapura Hobli, Bangalore. In the year 1982, the State Government accorded sanction for initiation of proceedings for acquisition of 78 acres 16 guntas of land for the benefit of the appellant. It appears that even before the initiation of acquisition proceedings, Vijayanagar Industrial Workers Housing Cooperative Society Ltd. had approached the appellant with a representation that it had already entered into an agreement dated 6-11-1982 with Respondent 3 to purchase the entire extent in Survey No. 30, of which she claimed to be the owner. Accordingly, the said society requested the appellant to withdraw its request for acquisition of the said land. This is evident from the agreement at Annexure P-1 entered into between the third respondent and the said society. Under the

- 11 - said agreement, out of the total sale consideration of Rs 50,000 per acre, Respondent No. 3 had received a sum of Rs 25,500 and had parted with possession of the land in favour of the said society and stated that she had no objection to the land being acquired by the State Government.

4. In compliance with the procedure prescribed under Chapter VII

of the Land Acquisition Act, 1894 (for short the LA Act), the State Government executed an agreement at Annexure P-2, undertaking to acquire land in favour of the appellant which included Sy. No. 30 measuring 5 acres 33 guntas and 8 guntas of pot kharab land. On 16-1-1985, Notification under Section 4(1) of the LA

Act was issued proposing to acquire the required extent of land including Sy. No. 30. An enquiry under Section 5-A of the LA Act was conducted and a report was submitted to the State Government recommending acquisition.

5. The State Government, having accepted the recommendation,

issued a declaration under Section 6(1) of the LA Act on 4-3-1986, to the effect that several extent of land including Sy. No. 30 was needed for the public purpose of the appellant Society.

6. The third respondent, claiming to be the owner of an extent 4

acres 16 guntas of land in Sy. No. 30, filed WP No. 12566 of 1986 before the High Court of Karnataka questioning the notifications issued under Sections 4(1) and 6(1) of the LA Act and obtained an interim order dated 8-7-1986 staying dispossession. Acquisition was challenged on the ground that the third respondent was not issued with any notice; that no enquiry was held; and that acquisition was not for public purpose.

7. Subsequently, awards were passed which were approved by

the State Government. In respect of Sy. No. 30, an award was passed fixing compensation at the rate of Rs 45,000 per acre. The Land Acquisition Officer in terms of his letter dated 6-4-1987 (Annexure P-5) called upon the appellant to deposit Rs 19,76,948 including the general award amount, in compliance whereof the appellant has deposited the amount.

8. The third respondent made a representation as per Annexure

P-6 dated 26-8-1990 to the State Government for withdrawing the acquisition proceedings in respect of 3 acres 5 guntas of land in Sy. No. 30 (hereafter referred to as disputed property). The representation of Respondent No.3 stated that she had sold the land in Sy. No. 30 long back. The purchasers of the sites had come forward to construct the houses on the sites which was objected to by the Land Acquisition Officer and the appellant. It was also contended that she had sold the sites as she had to

- 12 - maintain her family as her children were unemployed and that she had to perform the marriages of her sons and daughters.

9. The High Court by its order dated 22-2-1991 dismissed the writ petition by rejecting all the contentions of Respondent 3.

10. Soon after the dismissal of the writ petition, Respondent 3

claiming to be the owner of 4 acres 16 guntas of land in Sy. No. 30, again filed WP No. 5558 of 1991 before the High Court questioning the award determining the market value of the acquired land. On 12-3-1991, the High Court granted an interim

order staying the dispossession. The State Government delivered

possession of the land acquired in terms of the official memorandum dated 13-10-1992/14-10-1992 to an extent of 68 acres 17 guntas to the appellant. The extent delivered to the appellant included 1 acre 25 guntas in Sy. No. 30 out of total extent 6 acres 1 gunta. Balance of disputed land measuring 4 acres 10 guntas in Sy. No. 30 which formed subject-matter of interim order of stay in WP No. 5558 of 1991 was not delivered to the appellant.

11. The High Court by order dated 15-7-1998 [Thimmakka v.

State of Karnataka, 1998 SCC OnLine Kar 390 : ILR 1999 Kar 793] dismissed the writ petition WP No. 5558 of 1991 by imposing a cost of Rs 2000 on the ground that the appellant having suffered an order in WP No. 12566 of 1986, ought not to have filed another writ petition for the same relief. Respondent 3 challenged this order in intra-court appeal before the Division Bench of the High Court in WA No. 4245 of 1998.

12. In spite of dismissal of WP No. 12566 of 1986 and WP No.

5558 of 1991 rejecting the challenge made by Respondent 3 to the acquisition, the State Government issued a withdrawal Notification dated 19-8-1998 under Section 48 of the LA Act in respect of the disputed property, even without affording an

opportunity of being heard to the appellant. The appellant challenged this order by filing Writ Petition No. 26558 of 1998 before the High Court.

13. Writ Appeal No. 4245 of 1998 filed by Respondent 3 came to

be dismissed by the Division Bench in terms of the order dated 18-11-1998 [Thimmakka v. State of Karnataka, 1998 SCC OnLine Kar 989] , thereby confirming the order in Thimmakka v. State of Karnataka [Thimmakka v. State of Karnataka, 1998 SCC OnLine Kar 390 : ILR 1999 Kar 793] . On the same day i.e. 18-11-1998 [Vinayaka House Building Coop. Society Ltd. v. State, WP No. 26558 of 1998, order dated 18-11-1998 (Kar)] , the High Court allowed WP No. 26558 of 1998 filed by the appellant on the ground that the appellant had not been heard in the matter before

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issuing the notification under Section 48 of the LA Act and the matter was remitted to the State Government for reconsideration after affording opportunity to the appellant. It was directed that until the time the State Government took fresh decision, the status quo as regards possession and nature of the property would be maintained.

14. Respondent 3 had only sought de-notification of the disputed

property i.e. 3 acres and 5 guntas in Sy. No. 30. However, even out of the balance 2 acres and 36 guntas, only 1 acre 25 guntas had been handed over to the appellant. Accordingly, after dismissal of the writ appeal WA No. 4245 of 1998 filed by Respondent.No.3, the appellant requested the State Government to deliver possession of further 1 acre 11 guntas in Sy. No. 30 which did not form part of the request made by Respondent No.3 for de-notification. The State Government having failed to act, the appellant filed WP No. 2592 of 1999 before the High Court for necessary direction. The High Court in terms of the order dated 2-2-1999 [Vinayaka House Building Coop. Society Ltd. v. State of Karnataka, 1999 SCC OnLine Kar 712] allowed the said writ petition directing the State Government to hand over possession of 1 acre 11 guntas of land to the appellant and accordingly

possession of the said extent was handed over to the appellant. Thus, a total extent of 2 acres 36 guntas of land was handed over to the appellant out of 5 acres 33 guntas. The review petition filed by Respondent.No. 3 seeking review of the order dated 2-2-1999 in Vinayaka House Building Coop. Society Ltd. v. State of Karnataka [Vinayaka House Building Coop. Society Ltd. v. State of Karnataka, 1999 SCC OnLine Kar 712] was dismissed [Thimmakka v. Vinayaka House Building Coop. Society Ltd., 1999 SCC OnLine Kar 711] by the High Court imposing costs of Rs 2500 with the following observations : (Thimmakka case [Thimmakka v. Vinayaka House Building Coop. Society Ltd., 1999 SCC OnLine Kar 711] , SCC OnLine Kar para 5)

5. Thus it is clear that a clever attempt is being attempted to be made by the petitioner to get over an order of this Court by creating an impression that the petitioner has attempted suppression of fact and has practised fraud. On the contrary, it is clear that the petitioner is playing fraud on this by means of representing that 1 acre 11 guntas of land restored to the first respondent form part of the property, claimed by the petitioner. This is a clear misrepresentation. I am of the opinion that this writ petition is totally misconceived and is made with oblique motive. Accordingly this revision petition is dismissed with costs of Rs 2500 payable to the first respondent.

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15. After lapse of about 5 years of the order dated 18-11-1998 in

Vinayaka House Building Coop. Society Ltd. v. State [Vinayaka House Building Coop. Society Ltd. v. State, WP No. 26558 of 1998, order dated 18-11-1998 (Kar)] , in terms whereof the notification under Section 48 of the LA Act in respect of the disputed property had been quashed, the State Government issued notice to the appellant regarding its proposal to de-notify the land. On 28-8-2003, the appellant filed detailed statement of objections to the proposed de-notification of the acquired land. Ignoring objection raised by the appellant, the State Government proceeded to pass an order deciding to withdraw the aforesaid land measuring 3 acres 5 guntas in Sy. No. 30.

16. Being aggrieved by the Government Order dated 27-12-2003

and the consequential Notification dated 12-1-2004 issued under Section 48 of the LA Act, the appellant approached the learned Single Judge of the High Court by filing WP No. 4912 of 2004. The learned Single Judge dismissed the writ petition on 8-3-2004 [Vinayaka House Building Coop. Society Ltd. v. State of Karnataka, 2004 SCC OnLine Kar 657] and the writ appeal filed by the appellant in Writ Appeal No. 2583 of 2004 challenging the said order has been dismissed by the Division Bench on 7-8-2008 [Vinayaka House Building Coop. Society Ltd. v. State of Karnataka, Writ Appeal No. 2583 of 2004, order dated 7-8-2008 (Kar)] . The appellant has called in question the legality and correctness of the said order in this appeal.

17. We have heard Mr Basava Prabhu Patil, learned Senior Advocate for the appellant, Mr Joseph Aristotle S., for Respondents 1 and 2 and Mr Huzefa Ahmadi, learned Senior Advocate for Respondent 3.

18. Mr Patil, learned Senior Counsel, submits that the first respondent has exercised the power under Section 48(1) of the

LA Act in an arbitrary and whimsical manner. The order

prejudicially affects the interest of the appellant. The exercise of power lacks bona fides and suffers from vice of arbitrariness. It is further submitted that the disputed property forms an integral part of the layout formed by the appellant. A portion of the disputed property is reserved for civic amenities. If the land in question is de-notified, it will have adverse impact on the planned development of the layout leading to public inconvenience. It is further submitted that the individual interest of Respondent.No.3 cannot come in the way of larger public interest. It is also submitted that according to the third respondent, she had already sold 1/3rd of 3.5 acres to the third parties by a registered sale deed on 28-5-1992. According to her representation, the purchaser has already formed sites in disputed property. She

cannot maintain an application under Section 48(1) of the LA Act for de-notification of the land already sold. Having failed in her challenge to the acquisition proceedings, she could not have maintained the application for de-notification. Section 48(1) was basically meant for the State Government to de-notify the land from acquisition when it is not possible to acquire the said land and not meant for the owners, particularly when lands are being acquired for public purpose.

19. On the other hand, learned advocates appearing for the

respondents have sought to justify the impugned order. Mr Ahmadi, learned Senior Counsel, appearing for the third respondent submits that the appellant society is not a bona fide housing society. It is submitted that there was no bar for the third respondent to maintain an application for de-notification under Section 48(1) of the LA Act even though her writ petition challenging the acquisition proceedings has ended in dismissal. Taking into account the hardship suffered by the third respondent, the State Government has de-notified the land in her favour. Accordingly, the third respondent prays for dismissal of the appeal.

20. We have carefully considered the submissions of the learned counsel made at the Bar.

21. Section 48 of the LA Act corresponds to Section 54 of the old Act 10 of 1870. For ready reference, Section 54 of the old Act is as under:

54. Government not bound to complete acquisition.-Except in the case provided for in Section 44, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Compensation when acquisition is not completed.-But whenever the Government declines to complete any acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under Section 4 or Section 8 and not already paid for under Section 5, and shall pay such amount to the person injured.

22. Section 54 of the old Act gave power to the Government for

withdrawal of the land which it has proposed to acquire. This power had to be exercised before the award is made. This was causing great hardship to the Government. The reasons for reenacting the said provision in the LA Act of 1894 can be gathered - 16 - from the preliminary report of the Select Committee dated 2-21893, which is as under:

Section 54 of the Act (10 of 1870) gives to the Government or the public bodies whom it represents the power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award, withdrawal is prohibited whatever may be the circumstances. Experience has shown that the only occasion on which powers of withdrawal, would be really useful are when an award has shown that the Government was seriously misled by an underestimate of the value of the land. A case has been reported in which a municipality has been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after, as well as before, the award, but that, if so exercised, it should only be on terms of the most liberal compensation to the owner and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in case of acquisition.

(emphasis supplied)

23. The Select Committee in its second report dated 23-3-1893 has given certain clarifications, which are as under:

We have altered the terms of the first clause of Section 48, which gives certain powers to the Government to withdraw from a contemplated acquisition of land so as to make it clear that this withdrawal may be made at any time before possession is taken but not afterwards. Instances were quoted in our preliminary report in which the Collector was proved by the Judge's award to have been seriously misled as to the value of the land and in which the Government would not have acquired the land had it received a correct appraisalment. We think, that a Government which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of

opinion that no such power should be given after possession has once been taken and that each Local Government must protect itself by executive instructions to Collectors to refrain from taking possession until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property.

(emphasis supplied)

24. Section 48 of the LA Act, 1894 is as under: - 17 -

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such

acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

25. It is clear that an important change was affected in law in

1894 by enactment of this section. Under the previous Act, the Government could not withdraw from the acquisition after an award had been made or a reference directed. This was causing hardship in cases where the land turned out to be more valuable than the acquisition was worth. The difficulty has been removed by fixing the bar at the taking of possession, an act which can be indefinitely postponed to meet the occasion. When possession under Section 16 of the LA Act is not taken, the Government can withdraw from acquisition and the person interested would be entitled to compensation for the damage suffered in consequence of the

acquisition proceedings and also to such costs of the proceedings as reasonably incurred by him. Section 48, however, will have no application when once the land has vested in the Government under Section 16 of the LA Act.

26. The two reports referred to above indicate that the liberty to

withdraw from acquisition under Section 48(1) of the LA Act was made available prior to taking possession of the land in order to curtail payment of exorbitant award amount in cases where it was no longer possible for the Government to effectuate the intended purpose of acquisition.

27. In *LAO v. Godrej & Boyce* [*LAO v. Godrej & Boyce*, (1988) 1

SCC 50] , this Court was considering the de-notification of land before taking its possession. In this case, the Government had intended to acquire vast piece of land for construction of houses by the State Housing Board but this land had been overrun by slum dwellers to such an extent that it was no longer possible for the Government to effectuate the intended purpose of acquisition.

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It was observed that the State Government was not responsible for the occupation of land by trespassers. Therefore, the State Government cannot be compelled to go ahead with the acquisition when the purpose of such acquisition could not be achieved. In this regard, it is beneficial to note the observations of the Supreme Court : (*Godrej & Boyce case* [*LAO v. Godrej & Boyce*, (1988) 1 SCC 50] , SCC p. 56, para 6)

6. Where slum dwellers on a large scale occupy pieces of land, social and human problems of such magnitude arise that it is virtually impossible for municipalities, and no mean task even for the Government, to get the lands vacated. If the Government is reluctant to go ahead with the acquisition in view of these genuine difficulties, it can hardly be blamed. We see no justification to direct the Government to acquire the land and embark on such a venture. We are also of the opinion that the fact that the Government exercised the power of withdrawal after the writ petition was filed does not spell mala fides once the existence of

circumstances, which, in our opinion, justified the Government's decision to withdraw, is acknowledged.

28. It is thus clear that sub-section (1) of Section 48 of the LA Act

empowers the Government to withdraw from acquisition proceedings of the land of which possession has not been taken. It is further provided that when the Government withdraws from acquisition, the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of notice or proceedings thereunder. A combined reading of sub-section (1) and sub-section (2) of Section 48 of the LA Act makes it clear that the purpose of Section 48 was mainly to ensure that the State Government is not compelled to acquire the land when the acquisition ceases to be beneficial for the intended purpose. That is why, sub-section (2) of Section 48 provides for payment of compensation to the owner, whose land was notified for acquisition but not acquired for the reason that such an acquisition is against the public interest and public revenue.

29. However, from the language employed in sub-section (1) of

Section 48, it can also be inferred that there is no bar to de-notify the land from acquisition at the request of the landowners. We are of the view that when an application is made for denotification of the land, the Government has to consider the same with great care and caution. The Government has to consider the application keeping in mind the subservience of public interest because the lands are being acquired for public purpose. The Government should not exercise this power in an arbitrary and whimsical manner. The decision of withdrawal from acquisition

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should be bona fide and backed by valid reasons. It is settled that the Government could not withdraw land from acquisition without giving the beneficiary of acquisition an opportunity of being heard. (See : State Govt. Houseless Harijan Employees' Assn. v. State of Karnataka [State Govt. Houseless Harijan Employees' Assn. v. State of Karnataka, (2001) 1 SCC 610] .)

30. It is also necessary to emphasise here the need to have

planned development of the city and the importance of planning schemes and the ill effects of de-notification of the land from the approved scheme/plan. Town planning schemes are made for the immediate need of the community. Town planning is meant for planned development of certain local areas in order to make utilities and facilities available to the general public. Planned development of the city is a sine qua non for its health and growth, given the rapid increase in population of the city on account of influx of thousands of people from other parts of the country.

31. The Karnataka Town and Country Planning Act, 1961 (for

short the Planning Act) and the Bangalore Development Act, 1976 (for short the BDA Act) play an important role in the planned development of the city of Bangalore. The Planning Act was enacted by the State Legislature for the regulation of planned growth of land use and development and for executing town planning schemes in the State of Karnataka. The Planning Act has created a planning authority which has been given power to check, survey and locate the area for development by declaring it as a planning area. It also provides for preparation of master plan for development of the city after carrying out the survey of the area within its jurisdiction. The zoning regulations are made from time to time, classifying the land use in the planning area.

32. The State Legislature has enacted the BDA Act for the

establishment of a development authority for the development of city of Bangalore and areas adjacent thereto and for matters connected therewith. The State Government has constituted Bangalore Development Authority to effectuate the purpose of the BDA Act. This authority is a planning authority for the city of Bangalore. The main object of the BDA Act is planned development of the city of Bangalore and to check haphazard and irregular growth of the city. BDA is the sole authority which draws the schemes for formation layouts within the Bangalore metropolitan area. This Act envisages development of two types of layouts. The first is formation of a layout by BDA itself. For this purpose, BDA has to draw a

development scheme. The particulars to be provided in the development scheme are enumerated in Section 16 of BDA Act. The development scheme

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made by BDA provides for acquisition of the land, laying and relaying of all or any land including the construction and reconstruction of buildings, formation and alteration of the streets, provision for drainage, water supply, electricity, reservation of not less than 15% of the area of the layout for public purpose and playground and an additional area of not less than 10% of the total area of the layout for civic amenities. Section 18 of the BDA Act provides for sanction of the scheme submitted by BDA. After acquisition, the State Government vests the acquired land with BDA for formation of a layout strictly in accordance with the sanctioned scheme.

33. The second type of layout under the BDA Act is a private

layout. Section 32 of the BDA Act provides for formation of private layouts. If any person intends to form an extension or a layout, he has to make a written application with a plan to the Commissioner, BDA under sub-section (2) of Section 32. The said plan has to contain laying out sites of the area, reservation of land for open spaces, the intended level, direction and width of the street, street alignment and the building line and the proposed sites abutting streets, the arrangement for levelling, paving, metalling, flagging, channelling, sewerage, draining, conserving and lighting the streets and for adequate drinking water supply. A private layout cannot be formed without the approval of the layout plan by the Commissioner, BDA and such layout has to be formed strictly in accordance with the approved plan. While forming the layout, BDA or a private individual or a society, as the case may be, cannot deviate from the sanctioned scheme or the approved layout plan.

34. It has come to the notice of this Court that of late the State

Government has been de-notifying the lands acquired for public purpose for the benefit of the authorities like BDA or other urban development authorities and for the formation of private housing layouts, adversely affecting the planned

development of the city of Bangalore and other cities in the State of Karnataka. The instant case is a classic example where the power has been blatantly misused ignoring larger public interest.

35. As noticed above, the State Government had accorded

sanction for initiation of acquisition proceedings for the benefit of the appellant in the year 1982 itself. The State Government executed the agreement in the month of August 1984, undertaking to acquire 78 acres 16 guntas of land in favour of the appellant, including the land in Sy. No. 30 belonging to the third respondent. Notifications under Sections 4(1) and 6(1) of the LA Act were issued and possession was taken except the disputed land to an extent of 3 acres 5 guntas.

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36. The approved layout plan was issued by the Government in

compliance with the provisions of the BDA Act and the Planning Act. The layout plan produced by the appellant at Annexure P-13 would indicate that meticulous planning has been undertaken for planned development of the layout. The plan also indicates that lands have been reserved for civic amenities, open spaces and also for roads. The width of the street and its alignment, the building line and the proposed sites abutting the streets, have been perfectly drawn.

37. The appellant has contended that the disputed property falls

in the middle of the layout. However, the third respondent has contended that the disputed property is situated in the southern end of the layout. Whether the disputed property falls in the middle of the layout or in the southern end makes no difference so long as it is within the layout. It is also clear from the materials on record that a portion of the disputed property has been earmarked as a civic amenity and the remaining portion abutting the street has been proposed for residential sites. If the order of de-notification is allowed to stand, the very object of the planned development of the layout would be lost. There will be shortage of civic amenity sites in the layout and it would no longer be possible to set the street alignment and the building line as per the approved plan. This will have adverse

impact on the planned development of the layout leading to public inconvenience. It will nullify the object and the purpose for which the Planning Act and the BDA Act have been enacted by the legislature.

38. Experience has shown us that the lands are being de-notified

before taking possession or dropped from acquisition before the issuance of declaration by the Government are mostly at the instance of land mafias in connivance with influential persons; political or otherwise. These lands are generally situated within the layouts in major cities and specially in Bangalore City. After de-notification, multi-storied complexes come up on these lands comprising of large number of residential and non-residential units. This has a direct impact on the existing infrastructure consisting of water supply, sewerage and lighting. Similarly, the traffic movement facility suffers unbearable burden and is often thrown out of gear because the original scheme/layout plan did not envisage construction of these complexes. The civic amenities provided in the original layout plan were in proportion to the development proposed in the scheme/plan. The purchasers of residential sites, who wish to have a roof over their heads, fall prey to the designs of unscrupulous land mafias. We may not hesitate to add that irreparable damage has already been done to many layouts in Bangalore and in other places by allowing construction of multi-storied buildings within the layouts.

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39. We are of the considered view that the Government should

refrain from de-notifying or dropping any land being acquired for the formation of a layout, under Section 48 of the LA Act or under any other law. The courts should also be very strict while considering the plea of the landowners seeking de-notification of the lands which are being acquired or quashing of the notification on the ground of lapsing of the scheme or on any other grounds in respect of the acquired lands for the formation of the layout. It has to be kept in mind that private interest always stands subordinated to the public good.

40. It is also to be noted here that the area reserved for civic

amenity should not be diverted for any other purpose other than the purpose for which it was reserved in the sanctioned scheme or the approved layout plan. The plan for building in the layout should be sanctioned strictly in accordance with the building byelaws. If a site is earmarked for residential purpose, no plan should be sanctioned for construction of a non-residential building at such site. The construction on the sites by the allottees should be made in accordance with the plan sanctioned by the competent authority.

41. It is no doubt true that right to build on one's own land is a

right incidental to the ownership of the land. This right has been regulated in the interest of the community residing within the limits of the city in general and the layout in particular. This has to be strictly implemented for the planned development of the city. If it is not controlled, it will have tremendous burden on the infrastructure available in the layout.

42. We are of the view that Section 14-A of the Planning Act,

which empowers the Planning Authority to grant permission for change of land use or development, has no application to the lands acquired under Sections 17 to 19 of the BDA Act for the implementation of the scheme or the layout approved under Section 32 of the said Act. The position is similar even in respect of the other Development Authorities in the State of Karnataka.

43. We make it clear that henceforth, the planning/development

authorities in the State of Karnataka, including BDA shall not permit change of land use within the layout formed by BDA or a private layout formed under Section 32 of the BDA Act or the layout formed by any other authority contrary to the scheme sanctioned by the State Government or the layout plan approved by the competent authority. BDA or the other planning/development authorities shall not venture to alter the sanctioned scheme/approved layout plan in any manner. BDA and the other planning/development authorities, Bruhat Bangalore City Municipal Corporation, Bangalore, or any other - 23 -

authorities in the State of Karnataka authorised to sanction the plan for construction of the buildings shall not sanction any plan for construction contrary to the sanctioned scheme/approved layout plan. The sites reserved for parks, playgrounds or for providing other amenities shall be used strictly for the purpose for which they were reserved. Be it noted that violation of any of these directions by the authorities will be viewed strictly.

44. It is also hereby clarified that if de-notified lands or the lands

dropped from acquisition before the issuance of the declaration under the BDA Act or any other law are available within the BDA layout or the private layout approved by BDA or the layout formed by any urban development authorities in the State of Karnataka, the said lands shall be utilised strictly in accordance with the land utilisation proposed in the scheme/approved layout plan. Hence, building permission or the sanctioned plans to build on these lands shall not be issued by any authorities contrary to the land utilisation proposed in the scheme/approved layout plan.

45. Now, let us focus on the conduct of the third respondent who

had managed to obtain an order of de-notification. It is clear from the materials on record that even prior to the issuance of preliminary notification, M/s Vijayanagar Industrial Workers Housing Cooperative Society Ltd. had entered into an agreement on 6-11-1982 with the third respondent to purchase the land in question. In fact, the third respondent had also received partial compensation from the said society. She has challenged the acquisition proceedings thereafter by filing writ petition in WP No. 12566 of 1986. During the pendency of this case, she filed a representation dated 26-9-1990, requesting the State Government to withdraw from acquisition of the said land. In the said representation, it was contended that she had sold the said land long back for the purpose of collecting funds to perform the marriage of her children and that she had divided the sale proceeds amongst her children. It was also contended that pursuant to the sale, the purchaser had come forward to construct houses and the Land Acquisition Officer and the appellant had objected to the same. On the said ground, she had sought de-notification of the land after the dismissal of WP No. 12566 of 1986.

Therefore, the Land Acquisition Officer passed an award. She filed the second writ petition challenging the acquisition proceedings in WP No. 5558 of 1991, which was rightly dismissed by the High Court and intra-court appeal filed by her challenging the said order was also dismissed by the Division Bench. It is obvious that in the said cases, she had raised the grounds which had been raised by her in her representation seeking de-notification of the disputed property.

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46. The appellant has opposed the proposal for de-notification by

filing detailed objections as per Annexure P-12. The conduct of third respondent in filing case after case for quashing the notification issued by the State Government for acquisition of the land has been brought to the notice of the Government. It was also stated that since the lands have been notified for acquisition for a public purpose, namely, for the formation of a layout, a portion of the said land cannot be de-notified as it will adversely affect the layout, causing public inconvenience. The first respondent, without adverting any of these contentions, has passed an order of de-notification. We are of the view that the said order has been passed without application of mind and it is arbitrary in nature.

47. In this appeal, the fourth respondent has filed an application

contending that he had purchased certain extent of land out of the disputed property. In support of his contentions he has produced sale deed dated 27-5-1992 executed by the third respondent in favour of his vendor, Smt P.N. Kanthanna. In fact, the third respondent in her statement of objections filed in this appeal has admitted having sold the land. However, it is pleaded that de-notification of the land is necessary in order to convey better title in favour of the purchasers. It is stated as under:

23. The contention that this respondent has no subsisting interest in the land in question as she has sold the land is totally false. This respondent has to convey better title in favour of the purchasers and therefore her request to denotify the land is not tainted with any mala fides. As stated earlier, this respondent has sold

certain land to sustain herself and her family.

48. Since the third respondent has already sold certain portion of

the land, she could not have maintained the application for denotification of the said portion of the land as she has no subsisting interest in the said land. We are also of the view that even the subsequent purchaser of the land cannot seek denotification of the land from acquisition as his sale deed is void.

49. We have also noticed that the State Government has been

de-notifying the lands under Section 48(1) of the Act for the past 10-15 years and allegations have been made that these orders have been passed with ulterior motives. We are of the view that the State Government has to reconsider all these orders and take corrective steps in case it is found that such orders have been passed in violation of the law. Perpetuation of illegality has to be ceased, desisted and deterred at any cost.

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50. Mr Ahmadi, learned Senior Counsel, submits that the

appellant is not a bona fide housing society and that 90% of its members are not eligible to become its members and that they are not entitled for allotment of sites from the appellant. It is not possible to consider these contentions of Mr Ahmadi in this appeal. However, if the third respondent has any grievance in relation to the bona fides of the society, she may lodge a suitable complaint before the competent authority. If such complaint is filed, we direct the authority concerned to consider the same in accordance with law.

51. A contention has also been raised by the third respondent

that the appellant society has sold sites meant for civic amenities illegally to various persons and the show-cause notice has been issued by the competent authority in this regard. The third respondent has produced the notices issued by Pattangere City Municipal Council, Bangalore dated 8-7-1998 at R-18 which is as under:

Annexure R-18 Pattanagere City Municipal Council Bangalore, Dated 8-7-1998
The President/Secretary, Sri Vinayaka House Building Cooperative Society Limited, No. 3, Adi Chunchanagiri Complex, Vijayanagar, Bangalore 40 Sir, Sub. : Representation with regard to transfer of katha from the City Municipal Council fraudulently in respect of C.A. reserved sites to some of the members of your society contrary to law and rules of BDA in the layout formed at 2nd stage, Nagarabhavi and suppressing the information.

With relation to the above subject, the layout formed by Sri Vinayaka House Building Cooperative Society Ltd., is the layout which comes within Ward No. 7 of our City Municipal Council limits. It is noticed that the sites have been developed, approval being obtained by the Bangalore Development Authority, the sketch/plan has been got sanctioned and the sites have been allotted.

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But, the Local City Municipal Council Member, Sri V. Prakash, B.Com., LL.B., Advocate has submitted the complaint in writing on behalf of the general public that the plan/sketch in respect of certain areas has not been sanctioned by BDA and the area which has been reserved for civic amenities by BDA have been formed in to sites and by giving wrong information to some of the members and in violation of the rules of Government and BDA, the President, C.H. Subboji Rao and the Secretary M.S. Srinivasa Murthy have fraudulently registered the said civic amenities sites to the civilians and cheated the said persons.

Therefore, it has come to the notice of our City Municipal Council that kathas have been effected for 39 members by giving wrong information. I hereby order to give explanation as to why legal action should not be initiated against the President, Secretary and the members who have obtained the sites, within 7 days from the date of receipt of this notice.

Yours faithfully, sd/- Commissioner Pattangere CMC Bangalore-39. (emphasis supplied)

53. The appellant has not denied the above contentions by filing

a rejoinder. It is necessary to notice here that out of 5 acres 33 guntas and 8 guntas of port kharab land in Sy. No. 30, possession of 2 acres 36 guntas has been taken by the State Government and delivered to the appellant. The subject-matter of this appeal is only 3 acres 5 guntas of land in Sy. No. 30. Admittedly, the possession of this land has not been taken so far. In the layout plan, a portion of this land is reserved for civic amenities and the balance of the land is meant for formation of house sites.

54. An intervener application has been filed by one Mrs Bhavna

Praveen contending that certain sites have been formed in the disputed property and possession of these sites have been given to members of the appellant Society, namely, R. Dhanabalan, D. Vinod Kumar and Mrs D. Geetha. The sale deeds have also been executed in respect of these sites in their favour.

55. Contempt Petition (Civil) No. 823 of 2018 was filed by S.

Krishnappa complaining of violation of the interim order of status quo granted by this Court in this appeal dated 7-1-2009 [Vinayaka House Building Coop. Society Ltd. v. State of - 27 -

Karnataka, 2009 SCC OnLine SC 49] . It was alleged that the contemnors therein have trespassed into the disputed property and began to construct illegally on the said land. A reply was filed by the appellant herein contending that Sites Nos. 501, 526, 527, 528 and 529 have been formed out of 2 acres 36 guntas of land in Sy. No. 30, the possession of which was already delivered to the appellant and that the sites formed in the said land have been allotted to the members of the Society as per the plan approved by BDA prior to the order of de-notification. Relevant portion of the objection is at para 10 which is as under:

10. That, the said Sites Nos. 501, 526, 527, 528 and 529 have been formed out of 2 acres 36 guntas of land in Survey No. 30

which has been handed over in favour of the Society by the order

passed by the Hon'ble High Court of Karnataka in WP No. 10249 of 2003 and the same has been allotted in favour of the members of the Society as per the approved BDA and that too, prior to the

order of the de-notification dated 27-12-2003 and Notification

dated 12-1-2004 issued by the Government of Karnataka.

56. Therefore, even according to the appellant, the disputed

property is vacant and no allotment/sale of the sites have been made out of this land. However, it is evident from the abovereferred two letters and other materials on record that the appellant has illegally formed the sites in the other lands reserved for civic amenities in the approved plan. In order to compensate for the loss of land reserved for civic amenities, it is just and proper to direct the appellant to reserve the entire disputed property measuring 3 acres 5 guntas in Sy. No. 30 for civic amenities and playground. Therefore, we direct the appellant to utilise the portion of the disputed property reserved as a civic amenity site in the layout plan for providing civic amenities. The competent authorities are directed to develop the balance of the disputed property as a park or a playground or both for the benefit of general public. The appellant shall not allot/sell the disputed property or any portion thereof either to its members or to any other parties. The Commissioner, BDA is directed to ensure compliance of this order.

(emphasis supplied)

57. If it is found that the appellant has allotted any site in the

disputed property in favour of its members or any other parties, the appellant has to refund the consideration paid by them with interest @ 18% p.a. from the date of the allotment till the date of payment. Ordered accordingly. - 28 -

58. The State Government is directed to take possession of the aforesaid disputed property and transfer the same to the appellant forthwith for its utilisation in terms of para 56 of this

judgment.

59. In the light of the above discussions, we pass the following orders: 59.1. The judgment and order of the Division Bench as also of the learned Single Judge impugned herein are hereby set aside.

59.2. The order passed by the first respondent dated 27-12-2003 and the consequent Notification dated 12-1-2004 pertaining to the lands in dispute are hereby quashed.

60. The appeal and all the pending applications are disposed of

accordingly, without any order as to costs. In view of the above, Contempt Petition (C) No. 823 of 2018 in CA No. 3600 of 2011 is also disposed of. The Registry is directed to send a copy of this

judgment to the Commissioner, Bangalore Development

Authority, Bangalore forthwith.

11. In the context of the aforesaid judgment, it would also be necessary to extract the plaint averments in the instant suit which reads as under: The plaintiff named above respectfully submits as under: -

(01) The addresses of the parties for the purposes of issuing

court notices, summons, etc., are as shown in the cause title. The plaintiffs may also be served through his counsel Sri.S.D.N.PRASAD. Sri.M.N.UMESH, and Smt.M.B.Yashoda, Advocates, No.24/1, 2nd Floor, Opp to Bishop Cotton Women's College, 1st Cross, C.S.I Compound, Mission Road, Bengaluru-

(02) The mother of the plaintiff No.1 namely Smt. Thimmakka

was the absolute owner of all that piece and parcel of land bearing Sy.No.30, measuring to an extent of 4 Acres 16 guntas situated at Nagarabavi village, Yeshwanthapura Hobli, Bengaluru North Taluk,

having acquired the same by virtue of a registered sale deed executed by its previous owner Smt. Kariyamma dated 17-12-1969. The certified copy of the said registered sale deed - 29 -

dated 17-12-1969 is produced herewith as 'DOCUMENT No.01 The mother of the plaintiff No. 1 Smt. Thimmakka died on 23-09-2011 leaving behind the plaintiff No. 1 to succeed to her estate. 'DOCUMENT No.02' is the copy of the death certificate.

(03) Out of the said extent of 4 Acres 16 guntas, M/s Vinayaka

House Building Co-operative Society sought to acquire an extent of 3 Acres 5 guntas of land for the benefit of its members. In that regard preliminary and final notifications were issued. The said notifications had been challenged before the Hon'ble High Court of Karnataka. During the pendency of the writ petitions before the Hon'ble High Court of Karnataka, the mother of the plaintiff had approached the state of Karnataka and sought for deleting the extent of 3 acres 5 guntas from acquisition. The State of Karnataka after considering the said representation was pleased to order to delete the said land from acquisition by issuing a notification under Section 48 of the Land Acquisition Act on 12-01-2004. 'DOCUMENT No.03' is the copy of the said notification issued under Section 48(1) of the Land Acquisition Act deleting the said land from acquisition. Infact, the Special Land Acquisition Officer had prepared a sketch showing the extent of 3 acres 5 guntas and the balance extent of 1 acre 11 guntas owned by Smt. Thimmakka. 'DOCUMENT No.04' is the copy of the said sketch prepared by Special Land Acquisition Officer.

(04) M/s Vinayaka House Building Co-operative Society in whose

benefit the land was sought to be acquired had challenged the notification under Section 48(1) of L.A.Act by filing a writ petition before the Hon'ble High Court of Karnataka in W.P.No.4912/2004 and the Hon'ble High Court of Karnataka by its order dated 08-03-2004 was pleased to dismiss the said writ petition. DOCUMENT No.5' is the copy of the final order in W.P.No.4912/2004.

(05) As against the said order, the said society filed an appeal

before the Hon'ble High Court of Karnataka in W.A.No.2583/2004. During the pendency of the said writ Appeal, the Hon'ble High Court of Karnataka had appointed the Commissioner of B.D.A to inspect the land and to report about the status of the land in question. The Commissioner, B.D.A after inspection of the property had submitted a detailed report to the Hon'ble High Court of Karnataka. The copy of the Commissioner's report filed in W.A.No.2583/2004 is produced herewith as 'DOCUMENT No.06'. Thereafter, the Hon'ble High Court of Karnataka by its order dated 07-08-2008 was pleased to

dismiss the said writ Appeal, thereby upheld the order of denotification. 'DOCUMENT No.07' is the copy of the final order

passed in W.A.No.2583/2004 dated 07-08-2008. - 30 -

(06) The aforesaid orders passed by the Hon'ble High court of

Karnataka was carried by the said society before the Hon'ble Supreme Court of India in Civil Appeal No.3600/2011 and the Hon'ble Supreme Court of India, by its order dated 26-08-2019 was pleased to set aside the orders passed by the Hon'ble High Court of Karnataka in W.P.No.4912/2004 and W.A.No.2583/2004 and has further directed the State Government to take possession of the disputed property and to form play ground or park for the use of general public. 'DOCUMENT No.08' is the copy of the final order passed by the Hon'ble Supreme Court of India in Civil Appeal No.3600/2011.

(07) The subject matter of this suit is remaining extent of 1 Acre

11 guntas out of 4 Acres 16 guntas of Sy.No.30 of Nagarabavi village, Yeshwanthapura Hobli, Bengaluru North Taluk and the said property is morefully described in the schedule hereunder and hereinafter referred to as 'SUIT SCHEDULE PROPERTY'.

(08) The narration of the aforesaid fact clearly reveals that the

order of the Hon'ble Supreme Court is confined to 3 Acres 5

guntas of land in Sy.No.30. Infact, the mother of the plaintiff No: 1 had filed a suit in O.S.No.6386/1993 before this Hon'ble Court against the Defendant herein seeking for the relief of mandatory and permanent injunction to delete the property bearing Sy.No.30 measuring to an extent of 4 Acres 16 guntas from the layout plan of M/s Vinayaka House Building Co-operative Society. The said suit after contest was decreed by this Hon'ble Court on 22-082006.DOCUMENT No.09' is the copy of the judgement and decree passed in O.S.No.6386/1992 dated 21-08-2006.

(09) As stated earlier, the acquisition proceeding was related only

to an extent of 3 Acres 5 guntas out of four acres 16 guntas of land bearing Sy. No.30 of Nagarabavi village. Infact, the plaintiff No. 1 has sold major portion of the land in the remaining extent of 1 Acre 11 guntas and sale deeds have been executed in their favour. The present suit is filed to protect the interest of the purchasers of sites from the plaintiff No.1 and the remaining plaintiffs are the purchasers of sites from the mother of the plaintiff No. 1. Infact, the B.D.A commissioner, who had visited the spot as per the directions of the Hon'ble High Court of Karnataka has also submitted a report stating that several houses have come up in the land in question.

(10) The Plaintiff No. 2 to 15 have purchased various sites carved out of the Schedule Property, now coming within the agglomeration of Bruhat Bengaluru Mahanagara Palike (BBMP), - 31 - carved out of Sy. No. 30/2, Krishnappa Garden, 80 feet ring road, Nagarbhavi 2nd Stage, Bengaluru-560 072, in the following manner- Sl. Site No. Owner Manner of Acquisition No

1. Northern Plaintiff Sale Deed No. BLN-1- Portion of No.2 21738-2004-05 site No.3, measuring (Document No.10 30 feet x herein) 50 feet Tax paid receipt for the year 2019- Document No.10(a)

2. Site No.4 Plaintiff Sale Deed No. BLN-1-

measuring No.3 19134-2004-05 40 feet x 30 feet (Document No.11 herein) Tax paid receipt for the year 2020-21 Document No.11(a) 3 Northern Plaintiff Sale Deed No. BLN-1- Portion of No.4 21744-2004-05 site No.3, measuring (Document No.12 30 feet x herein) 50 feet Bbmp Khata dated 05.09.2014 Document No.12(a)

4 Site No.1A Plaintiff Gift Deed No. NGB-1- measuring No.5 02581-2018-19 30 feet x 50 feet (Document No.13 herein) Tax paid receipt for the year 2019-2020 Document No.13(a) 5 Site No.3/2 Plaintiff Sale Deed No. NGB- measuring - 32 - 18 feet x No.6 1-05697-2009-10 50 feet (Document No.14 herein) Tax paid receipt for the year 2008-09 Document No.14(a) 6 Site No.1A Plaintiff Gift Deed No. NGB-1- measuring No.7 08140-2018-19 30 feet x 50 feet (Document No.15 herein) BBMP Khata dated 23-09-2020 - Document No.15(a)

7 Site No.1A Plaintiff Sale Deed No. AND
140 feet (Document No.16 herein) BBMP Khata dated 09-07-2018- - Document No.16(a)

8 Site Plaintiff Sale Deed No. No.1A
60 feet x 80 feet (Document No.17 herein) BBMP Khata dated 09-07-2018- Document No.17(a) 9 Site No.1A Plaintiff Gift Deed No. BLN-1- measuring No.1 22838-2004-05 62 feet x 140 feet (Document No. 18 herein) 10 Site No.1B Plaintiff Gift Deed No. BLN-1- measuring - 33 - 62 feet x No.11 22838-2004-05 40 feet 11 Site No.1C Plaintiff Gift Deed No. BLN-1- measuring No.11 22838-2004-05 15 feet x 40 feet 12 Site No.1D Plaintiff Gift Deed No. BLN-1- measuring No.11 22838-2004-05 50 feet x 40 feet

13 Site No.3 Plaintiff GPA No.447/2000-01,

30 feet x 50 feet (Document No. 19 herein) Tax paid receipt for the year 2020-21 - Document NO.19(a) 14 Site No.1C Plaintiff Sale Deed No. BLN-1- measuring No.13 58183-2006-07 50 feet x 40 feet (Document No.20 herein) BBMP Khata of the year 2021- Document No.20(a) 15 Site No.1B Plaintiff Gift Deed No. BLN-1- measuring No.14 58177-2006-07 85 feet x 70 feet (Document No.21 herein) BBMP Khata dated 19-03-2020- Document No.21(a) 16 Site No.1D Plaintiff Gift

Deed No. BLN-1- measuring No.14 58177-2006-07 43 feet x 50 feet - 34 - 17 Site No.2 Plaintiff Sale Deed No. BLN-1- measuring No.15 50939-2006-07 25 feet x 30 feet (Document No.22 herein) BBMP Khata dated 19-03-2020- Document No.22(a)

18 Site No.6 Plaintiff GPA dated 10-6-199

Tax paid receipt for the year 2015- 16 - Document NO.23(a) 19 Site No.3/1 Plaintiff Sale Deed No. NGB- measuring No.17 1-10284-2015-16 25 feet x 50 feet (Document No.24 herein) BBMP Khata dated 02-05-2016- Document No.24(a) 20 Site No.1 Plaintiff Sale Deed No. NGB- measuring No.18 1-03221-2007- 08 16.70 feet x 21 feet (Document No.25 herein) BBMP Khata dated 28-02-2014 Document No.25(a)

3) Infact, the Bruhat Bengaluru Mahanagara Palike has also laid underground drainage system, sanitary pipes and also provided water connections to the houses constructed in the suit schedule property. The extract of the Schedule Property for the years 2020-21 is herewith produced as DOCUMENT No. 26. Photographs reflecting the same are collectively produced herewith as 'DOCUMENT No.27'. - 35 -

(12) Infact even in respect of 3 Acres 5 guntas of land which has

bee directed to be made as park/playground, the compensation payable in view of acquisition is not paid and plaintiff No. 1 reserves right to seek appropriate compensation in lieu of such acquisition.

(13) In the guise of the order passed by the Hon'ble Supreme

Court of India to form park or play ground in the extent of 3 Acres 5 guntas, the Defendant is trying to demolish the buildings constructed in the suit schedule property. The Defendant has absolutely no manner of right, title and interest in respect of the suit schedule property. Moreover, the extent of 3 Acres 5 guntas has already been identified and the same is a separate property. Inspite of it, the defendant on the strength of the order passed by the Hon'ble Supreme Court is

trying to encroach upon the suit schedule property and is trying to disrupt the road, U.G.D, Sanitary connection and is forcibly trying to demolish the structures standing in the suit schedule property. The Defendant has no manner of right, title and interest in respect of the suit schedule property. In view of the high handed attempt on part of the Defendant, the plaintiff has approached this Hon'ble Court seeking necessary reliefs.

(14) The cause of action for the present suit arose on 09-10-2020

and on 07-11-2020, when the officials of the Defendant tried to disrupt road, Underground drainage connection, sanitary connection, etc., and the plaintiffs resisted the said illegal attempts made by the Defendant's officials. However, the officials of the defendant have threatened the plaintiffs to continue their illegal attempt. The cause action still subsists as the defendant's officials may at any time may barge into the suit schedule property and demolish the structures.

(15) The required court fee has been paid as per the valuation slip annexed to the plaint.

(16) There is no pendency of litigation or legal proceedings either in the past or the present with respect to the subject matter of the suit in any court, to the knowledge of these Plaintiffs.

(17) WHEREFORE, the plaintiffs respectfully pray that this Hon'ble Court be pleased to pass a Judgement and Decree in his favour and against the Defendant:- - 36 -

(a) granting a decree of permanent injunction restraining the

Defendant, their men, officers or any other persons acting under it from interfering with the peaceful possession and enjoyment of the suit schedule property and demolish the structures standing therein,

(b) granting a decree of permanent injunction restraining the

Defendant, their men, officers or any other persons acting under it from disrupting the road, U.G.D, Sanitary connection, etc., in the suit schedule property and

(c) award cost and grant such other reliefs as this Hon'ble Court deems fit to grant in the circumstances of the case in the interest of justice and equity. SCHEDULE PROPERTY

All that piece and parcel of land bearing Old Sy.No.30, New Sy. No. 30/2, situated Nagarabavi village, Yeshwanthapura Hobli, Bengaluru North Taluk, measuring to an extent of 1 Acre 11 guntas (out of 4 Acres 16 guntas), now coming within the agglomeration of Bruhat Bengaluru Mahanagara Palike (BBMP), Krishnappa Garden, 80 feet ring road, Nagarbhavi 2nd Stage, Bengaluru-560 072, and bounded on: -

East by: - Sarkari Halla, West by: - Remaining Land bearing Sy.No.30/2

12. A careful perusal of the plaint averments would clearly

indicate that the appellants- plaintiffs have not suppressed the earlier round of litigation which culminated in the order of Apex Court referred to supra. On the other hand, it is the specific contention of the appellants-plaintiffs that the subject matter of dispute in the earlier round of litigation and the acquisition - 37 - proceedings was only in relation to 3 acres 5 guntas out of a total extent of 4 acres 16 guntas and that since the appellants-plaintiffs do not claim any right over the aforesaid 3 acres 5 guntas and instead claim right over portions of the remaining extent of 1 acre 11 guntas, the aforesaid judgment of the Apex Court would neither operate as res judicata nor come in the way of appellants-plaintiffs putting the claim for possession based on lawful title and possession over the suit schedule properties.

13. In this context, it is also relevant to state that in the facts of

the instant case, the question/ issue relating to res judicata would clearly be mixed question of fact and law which can neither be treated as preliminary issue nor can be made the basis to reject the plaint as held by the Apex Court in the case of Sathyanath and Another v. Sarojamani reported in (2022) 7 SCC 644 wherein it is

held as under:

6. Order 14 Rule 2 before amendment by Act 104 of 1976 reads thus:

2. Issues of law and fact.-Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those

issues first, and for that purpose may, if it thinks fit,

postpone the settlement of the issues of fact until after the issues of law have been determined. - 38 -

7. The said provision came up for consideration before

this Court in a judgment reported as S.S. Khanna v. F.J. Dillon [S.S. Khanna v. F.J. Dillon, AIR 1964 SC 497] . It was held that under Order 14 Rule 2 of the Code where

issues both of law and of fact arise in the same suit and

the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and postpone the settlement of the

issues of fact until other issues of law have been

determined. It was held as under : (AIR pp. 502-03, para 18)

18. Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court : not to do so, especially when the decision on issues even of law

depend upon the decision of issues of fact, would result in a lopsided trial of the suit.

8. Order 14 Rule 2 after the substitution of Rule 2 by Act 104 of 1976, effective from 1-4-1977, reads thus:

2. Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all

issues.

(2) Where issues both of law and of fact arise in the

same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or - 39 -

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9. Some other provisions of the Code, which are relevant to decide the issues raised in the present appeal are as follows:

ORDER 20

JUDGMENT AND DECREE

5. Court to state its decision on each issue.-In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

ORDER 41

APPEALS FROM ORIGINAL DECREES

24. Where evidence on record sufficient, appellate

court may determine case finally.-Where the evidence, upon the record is sufficient to enable the appellate court to pronounce judgment, the appellate court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the

judgment of the Court from whose decree the appeal is

preferred has proceeded wholly upon some ground other than that on which the appellate court proceeds.

25. Where appellate court may frame issues and

refer them for trial to Court whose decree appealed from.-Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit - 40 -

upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor [within such time as may be fixed by the appellate court or extended by it from time to time].

10. The amended provision of Order 14 came up for

consideration before the Full Bench of the Allahabad High Court in a judgment reported as Sunni Central Waqf Board v. Gopal Singh Vishrad [Sunni Central Waqf Board v. Gopal Singh Vishrad, 1990 SCC OnLine All 387 : AIR 1991 All 89] .

It was held that material changes had been brought about by substituting Order 14 Rule 2 of the Code. The word shall in the unamended provision has been replaced by the word may in the substituted provision, therefore, it is now discretionary for the Court to decide the issue of law as a preliminary issue, or to

decide it along with the other issues. It was further held

that even all issues of law cannot be decided as preliminary issues and only those issues of law falling within the ambit of clauses (a) and (b) of sub-rule (2) of Rule 2 could be decided. The High Court held as under : (SCC OnLine All paras 22 & 24-25)

22. Under the above provision once the court came to the conclusion that the case or any part thereof could be disposed of on the issues of law only it was obliged to try those issues first and the other issues could be taken up only thereafter, if necessity survived. The court had no discretion in the matter. This flows from the use of the word it shall try those issues first. Material change has

been brought about in legal position by amended Order

14 Rule 2 which reads as follows:

24. The word shall used in old Order 14 Rule 2 has

been replaced in the present Rule by the word may. Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory for the Court to decide an issue of law as a preliminary issue. - 41 -

25. Another change brought about by the amended

provision is that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit

of clauses (a) and (b) of sub-rule (2) of Rule 2 of Order

14. Clause (a) mentions jurisdiction of the Court and clause (b) deals with bar to the suit created by any law for the time being in force. In the present case clause (a) is not attracted. The case is sought to be brought within the ambit of clause (b). For bringing it under clause (b) the Limitation Act and the Muslim Waqf Act have been invoked.

11. A Full Bench of the Himachal Pradesh High Court in a

judgment reported as Prithvi Raj Jhingta v. Gopal Singh

[Prithvi Raj Jhingta v. Gopal Singh, 2006 SCC OnLine HP 25 : AIR 2007 HP 11] , held as under : (SCC OnLine HP paras 8-9) 8. The legislative mandate is very clear and unambiguous. In the light of the past experience that the old Rule 2 whereby, in the fact-situation of the trial court deciding only preliminary issues and neither trying nor deciding other issues, whenever an appeal against the

judgment was filed before the Appeal Court and the

Appeal Court on finding that the decision of the trial court on preliminary issues deserved to be reversed, the case per force had to be remanded to the trial court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial court on all the issues, both of law and fact.

9. Based upon the aforesaid reasons therefor, and in the

light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a court in fact frames only issues of law in the first instance and

- 42 - postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the court has

framed all issues together, both of law as well as facts

and has also tried all these issues together, it is not open to the court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a court because sub-rule (1) does not permit the court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as

issues of law. Sub-rule (1) clearly mandates that in a

situation contemplated under it, where all the issues

have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the court covering all the

issues framed in the suit.

12. A Single Bench of the Punjab and Haryana High Court in a judgment reported as Hardwari Lal v. Pohkar Mal [Hardwari Lal v. Pohkar Mal, 1978 SCC OnLine P&H

66 : AIR 1978 P&H 230] compared the provision of Order

14 Rule 2 prior to and after the amendment and held as under : (SCC OnLine P&H para 5)

5. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the unamended Code, the categorisation was only between

issues of law and of fact and it was mandatory for the

Court to try the issues of law in the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This subrule relaxes the mandate to a limited extent by conferring a discretion upon the Court that if it is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. The exercise of this discretion is further

- 43 - limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.

13. A Single Bench of the Patna High Court in a

judgment reported as Dhirendranath Chandra v. Apurba

Krishna Chandra [Dhirendranath Chandra v. Apurba Krishna Chandra, 1978 SCC OnLine Pat 207 : AIR 1979 Pat 34] held that even if the case may be disposed of on a preliminary issue, the court is bound to pronounce

judgment on all the issues, subject to the provision in

sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue relates to jurisdiction of the court or a bar to the suit created by law for the time being in force, the court may try such issue first. The High Court held as under : (SCC OnLine Pat para 6)

6. A plain reading of Rule 2 will show that ordinarily even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgment on all issues. This ordinary rule is subject to only one exception which has been provided in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue of law relates to the jurisdiction of

the Court or a bar to the suit created by any law for the time being in force the court may try such issue first. It is, therefore, clear that a departure from the ordinary rule provided in sub-rule (1) of Rule 2 can be made by the Court only in the circumstances mentioned in sub-rule (2) and even in these circumstances the Court has only a discretion that it may try an issue of law relating to the points mentioned in clauses (a) and (b) of sub-rule (2) as a preliminary issue before framing other issues. There is, however, nothing in sub-rule (2) which in my opinion makes it obligatory for the Court to try such an issue first in all cases. If, therefore, the Court is of opinion that in any particular

case it will be more expedient to try all the issues

together and therefore, if it refuses to try and decide any issue of law even on the points referred to in clauses (a) and (b) of sub-rule (2) as a preliminary issue before taking up other issues.

14. A Single Bench of the Bombay High Court in a

judgment reported as Usha Sales Ltd. v. Malcolm Gomes

- 44 - [Usha Sales Ltd. v. Malcolm Gomes, 1983 SCC OnLine Bom 122 : AIR 1984 Bom 60] held that after the amendment, a duty is cast upon the court that it must proceed to hear all the issues and pronounce the

judgment on the same, except that the court may try an

issue relating to the jurisdiction of the court or to the legal bar to the suit as a preliminary issue. It was held to be more in the nature of discretion rather than a duty. It was held as under : (SCC Online Bom paras 11-12) 11. From the above it is easily seen that there is an obligation cast upon the court that even though a case may be disposed of on a preliminary issue the courts shall subject to the provision of sub-rule (2) pronounce

judgment on all issues. In other words, the obligation to

decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer, there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast

upon the Court that it must proceed to hear all the issues

and pronounce judgment on the same.

12. There is, however, a small exception carved out to

the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in sub-rule (2) of Rule 2 of Order 14 of the Code. The words it may try are clearly indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue.

15. A Single Bench of the Jammu and Kashmir High

Court in a judgment reported as Aruna Kumari v. Ajay Kumar [Aruna Kumari v. Ajay Kumar, 1989 SCC OnLine J&K 23 : AIR 1991 J&K 1] held as under : (SCC OnLine J&K para 4)

4. Admittedly both the parties have to lead evidence regarding both the issues. In case Issue 2 is allowed to be treated as preliminary the parties will certainly lead evidence in the case and instead of disposing of the case expeditiously it will prolong the matter and frustrate the very basis of law contained in Order 14 Rule 2, Civil

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Procedure Code. The evidence to be led by both the parties will almost cover both the issues and it cannot, therefore, be said that by allowing Issue 2 to be treated as preliminary the trial of the case would be expedited. When we review the whole

law on the point it becomes clear that where issue of jurisdiction is a mixed question of law and fact requiring evidence to be recorded by both the sides same cannot be treated as a preliminary issue.

16. The matter has also been examined by this Court in

a judgment reported as Ramesh B. Desai v. Bipin Vadilal Mehta [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638] wherein it was held as under : (SCC p. 650, para 13) 13. Sub-rule (2) of Order 14 Rule 2CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

(a) the jurisdiction of the court, or (b) a bar to the suit

created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in S.S. Khanna v. F.J. Dillon [S.S. Khanna v. F.J. Dillon, AIR 1964 SC 497] and it was held as under : (SCR p. 421) *** Though there has been a slight amendment in the

language of Order 14 Rule 2CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

17. This Court in Ramesh B. Desai [Ramesh B. Desai v.

Bipin Vadilal Mehta, (2006) 5 SCC 638] held that the principles enunciated in S.S. Khanna [S.S. Khanna v. F.J. Dillon, AIR 1964 SC 497] still hold good and the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and - 46 -

where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of Order 14 Rule

2 clauses (a) and (b). After the amendment, discretion has been given to the court by the expression may used in sub-rule (2) to try the issue relating to the jurisdiction of the court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e. the bar to file a suit before the civil court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order 14 Rule 2 is read along with Order 12 Rule 5, the court is expected to decide all the issues together unless the bar of jurisdiction of the court or bar to the suit in terms of sub-rule (2) clauses

(a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the lis on a question which oust either the jurisdiction of the court or bars the plaintiff to sue before the civil court.

18. We may state that the First Schedule appended to

the Code contains the procedure to be applied in respect of the matters coming for adjudication before the civil court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as Amarjit Singh Kalra v. Pramod Gupta [Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272] wherein it was observed as under : (SCC p. 300, para 26)

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.

19. A three-Judge Bench in a subsequent judgment

reported as Kailash v. Nanhku [Kailash v. Nanhku,

(2005) 4 SCC 480] held that all rules of procedure are

handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance

the - 47 - cause of justice. The Court held as under : (SCC p. 495, paras 28-29)

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [*Sushil Kumar Sen v. State of Bihar*, (1975) 1 SCC 774] are pertinent : (SCC p. 777, paras 5-6)

5. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

6. The processual law so dominates in certain systems as

to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence - processual, as much as substantive.

29. In *State of Punjab v. Shamlal Murari* [*State of Punjab*

v. Shamlal Murari, (1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that : (SCC p. 720) Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. - 48 -

In *Ghanshyam Dass v. Dominion of India* [*Ghanshyam Dass v. Dominion of India*, (1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and

advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

20. This Court in *Sugandhi v. P. Rajkumar* [*Sugandhi v.*

P. Rajkumar, (2020) 10 SCC 706 : (2021) 1 SCC (Civ) 116] held that if the procedural violation does not seriously cause prejudice to the adversary party, the courts must lean towards doing substantial justice rather than relying upon procedural and technical violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was

held as under : (SCC pp. 708-09, para 9)

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

21. The provisions of Order 14 Rule 2 are part of the

procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended

Order 14 Rule 2. If the issue is a mixed issue of law and

fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no

evidence is required and on the basis of reading of the - 49 -

plaint or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

22. In fact, in a judgment reported as A. Shanmugam v.

Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430 :

(2012) 3 SCC (Civ) 735] , this Court held as under : (SCC p. 458, para 39)

39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

23. The different judgments of the High Court referred to

above are in consonance with the principles laid down by this Court in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638] that not all issues of law can be decided as preliminary issues. Only those

issues of law can be decided as preliminary issues which

fell within the ambit of clause (a) relating to the jurisdiction of the Court and (b) which deal with the bar to the suit created by any law for the time being in force.

The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary

issues upon which the trial court had decided.

24. On the other hand, the learned counsel for the respondent relies upon the judgments of this Court - 50 -

reported as Abdul Rahman v. Prasony Bai [Abdul Rahman v. Prasony Bai, (2003) 1 SCC 488] , Srihari Hanumandas Totala v. Hemant Vithal Kamat [Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489] and Jamia Masjid v. K.V. Rudrappa [Jamia Masjid v. K.V. Rudrappa, (2022) 9 SCC 225 : 2021 SCC OnLine SC 792] to contend that on a question of res judicata, the preliminary issue needs to be framed.

25. In Abdul Rahman [Abdul Rahman v. Prasony Bai, (2003) 1 SCC 488] , this Court was examining a suit filed

by the appellant in the year 1999 to declare that the defendant is not the daughter of Mangal Singh and that the appellant is in adverse possession even during the lifetime of Mangal Singh. An additional issue was framed regarding the jurisdiction of the civil suit to try the said suit. The High Court in proceedings passed an order on 29-11-2001 [Abdul Rahman v. Labh Singh, 2001 SCC OnLine Raj 1174] dismissing the suit on the preliminary issue whether the dispute to the present civil suit has already been decided and adjudicated by the Court and is barred by the principles of res judicata. An intra court appeal was filed which was dismissed on 4-12-2001 [Abdul Rahman v. Prasony Bai, 2001 SCC OnLine Raj 1143] and thereafter, the matter travelled to this Court. In these circumstances, this Court held as under : (Abdul Rahman case [Abdul Rahman v. Prasony Bai, (2003) 1 SCC 488] , SCC p. 497, para 21)

21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code

of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.

26. A perusal of the above judgment of this Court shows that it was an admitted fact that issue of res judicata and of constructive res judicata can be adjudicated as - 51 -

preliminary issue. Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea of res judicata can be decided as a preliminary issue.

27. In Srihari Hanumandas Totala [Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 :

(2021) 4 SCC (Civ) 489] , the property was mortgaged

in favour of Karnataka State Finance Corporation (for short the Corporation). The Corporation auctioned the property as the loan was not repaid. The legal heirs of the borrower filed a suit in OS No. 138 of 2008 challenging the sale deed dated 8-8-2006 executed by the Corporation and partition of the suit property. A separate OS No. 103 of 2007 was filed by the purchaser from the Corporation. Such suit of the purchaser was decreed on 26-2-2009. The decree in the said suit was affirmed by the High Court on 11-8-2017 [Hemanth v. Ghanashyam Shrinivas Chindak, 2017 SCC OnLine Kar 6481] . The purchaser from the Corporation filed an application under Order 7 Rule 11 for rejection of the plaint of OS No. 138 of 2008. Such application was dismissed by the learned trial court. The order was affirmed in revision by the High Court holding that the ground of res judicata could not be decided merely by

looking at averments in the plaint. It is the said order

which became subject-matter of challenge before this Court.

28. This Court in Srihari Hanumandas Totala [Srihari

Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489] found that the plea of res judicata requires consideration of the pleadings,

issues and decision in the previous suit and such a plea

would be beyond the scope of Order 7 Rule 11. However, in the operative paragraph, it was observed that the trial court shall consider whether a preliminary issue should be framed under Order 14, and if so, to decide it within a period of three months of raising the preliminary issue. The operative part of the order reads thus : (Srihari Hanumandas Totala case [Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 : (2021) 4 SCC

(Civ) 489] , SCC p. 113, para 28) 28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and - 52 -

affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.

29. This Court in Srihari Hanumandas Totala [Srihari

Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489] was thus examining the scope of Order 7 Rule 11 of the Code, whereas such is not the issue in the present appeal. In fact, the defendant has filed an application for framing of preliminary issues. The direction of the High Court is on such application. Therefore, such application needs to be considered in the light of the provisions of Order 14 Rule 2 of the Code.

30. In Jamia Masjid [Jamia Masjid v. K.V. Rudrappa, (2022) 9 SCC 225 : 2021 SCC OnLine SC 792] , the

judgment and decree in a second appeal holding that the

suit is barred by the principle of res judicata was the subject-matter of challenge before this Court. The learned trial court decided Issues 5 and 6 related to res

judicata and limitation as preliminary issue. It was held

that suit was not barred by limitation but barred by res judicata. In appeal, such finding was affirmed. However, in second appeal, the matter was remanded to the trial court for disposal of the suit in accordance with law holding that the suit is not barred by res judicata. In appeal against such judgment and decree, the appeal was remanded to the High Court. The High Court after remand held that the judgment in a representative suit under Section 92 of the Code binds the parties to the suit and would thus operate as res judicata.

31. In appeal before this Court, it was considered whether res judicata raises a mixed question of law and - 53 - facts. The Court held as under : (Jamia Masjid case [Jamia Masjid v. K.V. Rudrappa, (2022) 9 SCC 225 : 2021 SCC OnLine SC 792] , SCC paras 26 & 66)

26. The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of Section 11CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable. We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the trial court and the first

appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this Court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

66. In view of the discussion above, we summarise our findings below:

66.1. Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.

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32. A perusal of the said judgment would show that only

Issues 5 and 6 were decided relating to res judicata and

limitation as preliminary issues by judgment dated 3-22006. This Court set aside the finding on the preliminary issue by judgment dated 23-9-2021 [Jamia Masjid v. K.V. Rudrappa, (2022) 9 SCC 225 : 2021 SCC OnLine SC 792] i.e. almost more than 15 years later when the matter was remanded back to the trial court. The absence of the decision on all issues has necessitated the matter to be remanded back, defeating the object of expeditious disposal of lis between the parties. The

conclusion in para 66.1 in Jamia Masjid case [Jamia

Masjid v. K.V. Rudrappa, (2022) 9 SCC 225 : 2021 SCC OnLine SC 792] is that the plea of res judicata in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact. Such finding is what this Court held in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638] .

33. We find that the order of the High Court to direct the

learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order 14 Rule 2 of the Code had salutary object in mind that mandates the court to pronounce judgments on all issues subject to the provisions of sub-rule (2). However, in case where the issues of both law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit, etc. It is not a plea in law alone or which bars the jurisdiction of the court or is a statutory bar under clause (b) of sub-rule (2).

34. The objective of the provisions of Order 41 Rules 24

and 25 is that if evidence is recorded by the learned trial court on all the issues, it would facilitate the first appellate court to decide the questions of fact even by reformulating the issues. It is only when the first appellate court finds that there is no evidence led by the - 55 - parties, the first appellate court can call upon the parties to lead evidence on such additional issues, either before the appellate court or before the trial court. All such provisions of law and the amendments are to ensure one objective i.e. early finality to the lis between the parties.

35. Keeping in view the object of substitution of sub-rule

(2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order 14 Rule 2 and

Order 20 Rule 5, and for the first appellate court in terms

of Order 41 Rules 24 and 25 to record findings on all the

issues.

36. Therefore, the order of the High Court remanding the matter to the learned trial court to frame preliminary

issues runs counter to the mandate of Order 14 Rule 2 of

the Code and thus, not sustainable in law. The learned trial court shall record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue.

37. Consequently, the appeal is allowed. The order

[Sarojmani v. Sathyanath, 2021 SCC OnLine Mad 10012] passed by the High Court is hereby set aside.

13. As stated supra, while it is the specific contention of the

appellants-plaintiffs that the suit schedule properties fall outside of the extent of 3 acres 5 guntas which was a subject matter of the dispute in the earlier round of litigation before the Apex Court, it is the specific contention of the respondent-BDA that the suit schedule properties come within the total extent of 6 acres 1 gunta acquired by the State Government for the benefit of M/s. Vinayaka House Co-operative Society Limited V/s State of Karnataka - 56 - and others reported in AIR 2019 SCC 4473. It is therefore clear that several contentious issues and disputed questions of law and fact arise for consideration between the appellants and the respondent-BDA which would necessarily have to be decided by the Trial Court only after full fledged trial and not at the stage of considering an application for rejection of plaint which needless to state would can be based only upon the plant averment and not based on the defence putforth by the respondent-BDA. As stated earlier, the appellants-plaintiffs have not suppressed the earlier round of litigation culminating the aforesaid order of the Apex Court and on the other hand, specifically contend that the suit schedule properties were not the subject matter of the earlier round of litigation and the said dispute/issue between the appellants and the respondent-BDA as to whether the earlier round of litigation before the Apex Court would cover and include the suit schedule property or not would

necessarily have to be decided only after full fledged trial and not while considering an application for rejection of plaint. Under these circumstances, I am of the considered opinion that the trial Court misdirected itself completely in placing reliance upon the earlier judgment of the Apex Court for the purpose of rejecting the claim of the appellant-plaintiff by - 57 - summarily rejecting the plaint without appreciating the various averments made in the plaint referred to supra warranting interference by this Court in the present appeal. Accordingly point formulated above in the present appeal is answered by holding that trial Court fell in error in rejecting the plaint and by setting aside the impugned order and remitting the matter back to the trial for reconsideration afresh in accordance with law. Hence, the following:

ORDER

i) Appeal is hereby allowed. ii) Impugned order dated 25.10.2023 in O.S. No.26321/2020 on I.A.1/2023 passed by the XXVIII Addl. City Civil Judge, Mayohall Unit, Bengaluru is set aside. Matter is remitted back to the trial Court for reconsideration afresh in accordance with law. iii) All rival contentions between the appellants and respondent including non joinder of parties, maintainability etc., are kept open and no opinion is expressed on the same. - 58 - iv) Appellants and respondent-BDA are directed to appear before the Trial Court on 07.04.2025 without awaiting further notice from the Trial Court. Sd/- (S.R.KRISHNA KUMAR)
JUDGE BS List No.: 1 Sl No.: 11