

B.T. Sakku Vs. the Commissioner, Bangalore Development Authority, Bangalore and Another

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Court : Karnataka

Decided On : Oct-05-1994

Reported in : AIR1995Kant192; ILR1994KAR3267; 1995(1)KarLJ361

Judge : N.D.V. Bhat, J.

Acts : Bangalore Development Authorities Act, 1976 - Sections 4, 5, 16, 17, 19, 27, 29, 36 and 64; [Land Acquisition Act, 1894](#) - Sections 4, 6, 9, 10, 11, 16, 24, 48 and 50; [Limitation Act, 1963](#) - Sections 9 - Articles 56, 57 and 58; Urban Land Ceiling and Regulation Act, 1976 - Sections 10; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1; [Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991](#); City of Bangalore Improvement Act, 1945 - Sections 14, 18, 23(1) and 27; [Karnataka Municipal Corporations Act, 1976](#) - Sections 321 and 507; Urban Area Act, 1991

Appeal No. : Regular First Appeal No. 227 of 1993

Appellant : B.T. Sakku

Respondent : The Commissioner, Bangalore Development Authority, Bangalore and Another

Advocate for Def. : C.B. Srinivasan and ;M.N. Ramajaneya Gowda, Advs., ;M/s. Kasim and ;S. Shankaranarayana, Adv.

Advocate for Pet/Ap. : P. Krishnappa, Adv.

Judgement :

1. This appeal is preferred against the judgment and decree dated 23-4-1993 passed by the XIV Additional City Civil Judge, Bangalore City in O.S. No. 5988, 1989. By the said judgment, the learned Additional City Civil Judge dismissed the suit of the plaintiff.

2. When the matter has come up for admission, the learned Counsel on both sides submitted that the matter may be taken up for final disposal. It is under these circumstances, the appeal was taken up for final disposal.

3. The facts relevant for the disposal of this appeal, briefly stated, are as under:

Plaintiff-appellant filed the aforesaid suit before the lower Court praying for a judgment and decree declaring the preliminary notification hearing No. HC. PR. AI, AO 389 BDA 76-77, dated 21-3-1977 and published in the official gazette dated 5-5-1977 and the final notification No. HUD/49/MNJ/78, dated 14-5-1980 and published in the Karnataka Gazette dated 12-6-1980 so far as they relate to the suit schedule property are null and void and that the same do not bind the plaintiff in any manner and for permanent injunction restraining the defendants from in any way interfering with the suit schedule property. According to plaintiff, she is the owner of 1 acre 36 guntas of land described in the schedule Sy. No. 14/2 (old Sy. No. 14) situated at Kacharakanahalli Village, Bangalore North Taluk. She purchased the same from its previous owner K. Narayanamma and others under a registered sale deed dated 24-2-1979. It is her case that the said land along with the other lands were proposed for being acquired by the defendant by the issue of preliminary notification and final notification referred to above, but no notice under Section 17(5) of the B.D.A. Act (for short the Act) was issued to her. It is also her case that she had made number of representations to the 1st defendant to drop the proceedings and had also filed an application for regularization of the suit schedule property, since according to her it was clearly covered the construction and building as also a factory. She has stated that she has put up 80 squares of RCC building consisting of ground floor, first and second floors, 36 squares of

ACC roofing poultry sheds, servant quarters, bore well and a factory thereon and all these constructions, according to her, were put up in the year 1982-83, long prior to 31-3-1986. It is her case that such constructions can neither be acquired nor demolished in view of Government Order dated 12-10-1987. Plaintiff has also alleged in her plaint that the suit land is covered by the provisions of the Land Revenue Act as also by the provisions of the Urban Land (Ceiling and Regulations) Act, 1976 and under the provisions of the said Act, plaintiff is entitled to retain the existing constructions as well as the vacant land in the suit schedule property. It is disclosed by the plaintiff that she had earlier filed a suit at O.S. No. 10660/85 on the file of the Additional City Civil Judge, Bangalore with regard to the suit schedule property as against the 1st defendant but the said suit was withdrawn with liberty to file a fresh suit. According to plaintiff, the officials of defendant are trying to demolish the construction made on the suit land though they are not entitled to do so. The legal notice dated 11-8-1989 issued by her as required under Section 64 of the Act did not have any effect on them. It is under these circumstances and on these allegations plaintiff filed the suit in question for the reliefs referred to hereinabove,

4. The suit was resisted both by the 1st defendant as also by the 2nd defendant. Defendant-1 B.D.A., in substance, took up the stand that Sy. No. 14 of Kacharakanahalli village was acquired for the formation of Banasawadi -- Hennur Road Layout and in that behalf preliminary notification and final notification referred to in para No. 2 of the written statement were issued. It is pointed out that the award was passed on 28-2-1983 and possession was taken on 12-4-1983 and as such the entire land measuring 3 acres 37 guntas in Sy. No. 14 of Kacharakanahalli village vested with defendant-1. It is contended by defendant-1 that plaintiff's version that she purchased the property on 24-12-1979 from one K. Narayanamma is not tenable, since plaintiff cannot purchase the suit schedule property after the same was acquired by defendant-1. It is also pointed out by defendant-1 that according to the revenue records, as on the date of the preliminary notification, one Ankanna Reddy, s/o Chik-kaerappa Reddy, Pillappa, s/o Garemuni-swamappa, Srinivasa Reddy and M. G. Ankanna Reddy were the notified khatedars and defendant-1 does not know how K. Narayanamma became the owner of the land from whom the plaintiff is said to have purchased the land in

question. Defendant-1 asserted that neither plaintiff nor her vendor were the owners of the property. It is stated that the application filed by the plaintiff through her power of attorney holder Sri P. T. Raj for dropping the acquisition proceedings was rejected. Defendant-1 has contended its written statement that there is no bar to acquire the land coming within the purview of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short the ULCAR Act), defendant-1 denied the allegation that liberty was reserved to the plaintiff by dismissing the suit at O. S. No. 10660/1985. Defendant-1 has also stated that site No. 5BC-304 measuring 50' x 80' has been allotted to defendant-2. All other allegations made by the plaintiff contrary to the stand taken by defendant-1 in its written statement are denied by it. Defendant-1 prayed for the dismissal of the suit.

In its additional written statement, defendant-1 has taken a contention that though plaintiff or her vendor did not require any notice since according to plaintiff's own showing she had participated in the acquisition proceedings requesting the L.A.O. to drop the acquisition proceedings, the plaintiff cannot make a grievance that she is not served with the notice and that she had no knowledge of acquisition. The allegation of the plaintiff that she had put up constructions in the land is denied by defendant-1. Defendant-1 has pointed out that Sy. No. 14/2 was acquired by the H.D.A. and the B.D.A. formed layout and sites were distributed to the general public. It is stated that defendant-1 took possession of Sy. No. 14/2 then it was a vacant land.

5. It appears that defendant-2 has filed his written statement after the amendment of the plaint by the plaintiff. In his written statement, 2nd defendant denied the allegations made in para 7(a) of the plaint, Defendant-2 also taken a contention that the suit is not maintainable in view of the fact that her earlier suit at O.S. No. 10660/85 was withdrawn without any reservation. Defendant-2 asserted that plaintiff was served with notice under Sections 9, 10 and 1 of the Land Acquisition Act and she appeared before the Land Acquisition Officer and filed objections requesting for dropping the proceedings. Defendant-2 prayed for the dismissal of the suit.

6. On the basis of these pleadings, the lower Court raised the following issues:

- (1) Whether the plaintiff proves lawful possession of the suit property
- (2) Whether the plaintiff proves issuance of notice under Section 64 of the BDA Act ?
- (3) Whether the plaintiff is entitled to permanent injunction sought for?
- (4) To what relief or order the parties are entitled

Additional Issue:

Whether the plaintiff is entitled to the declaration sought for

7. Before the lower Court, on behalf of the plaintiff, her power of attorney holder is examined. Ex. P. 1 to P. 27 were marked for the plaintiff. On behalf of defendant-1 C. Rajanna as DW-1, an official working in the Land Acquisition Section in ft.D.A. is examined, Defendant-2 has examined himself. Exs. D.1 to D.13 were marked for the defendants.

8. The lower Court, on a consideration of the evidence on record and for the reasons recorded in his judgment, answered issue Nos, 1, 3 and the additional issue in the negative; issue No. 2 was answered in the affirmative. In the result, the suit of the plaintiff came to be dismissed. Hence, the instant appeal.

9. I have heard the arguments of Sri P. Krishnappa, learned Counsel for the appellant and Sri C B. Srinivasan, learned Counsel for respondent-1 and Sri S. Shankaranarayana, learned Counsel for respondent-2.

10. In the context of the submissions made at the Bar, by the learned Counsel for the respective parties, the following points arise for consideration:

- (1) Whether the finding of the court below that the plaintiff was not in lawful possession of the suit land on the date of the suit is not correct
- (2) Whether the plaintiff's suit for declaration is barred by time'.
- (3) Whether plaintiff is entitled to any of the reliefs prayed for?

11. Points Nos. 1, to 3 : Since these points are inextricably mixed up with each other they are taken up for discussion together.

12. It is noticed that the lower Court has taken the view that plaintiff has failed to prove her lawful possession of the suit property. While reaching that conclusion, the lower Court has pointed out that the property was acquired by the B.D.A. and had already vested in it. The lower Court has also held that the evidence on record including (he admission of PW 1 would go to show that the B.D.A. had taken even possession of the property. The lower Court has also taken the view that the plaintiff if at all ought to have filed the suit within three years from the date of the final declaration made by the B.D.A. in the gazetted dated 14-5-1980 as per Ex. P2. it is further pointed out by the lower Court that the present suit appears to have been filed by the plaintiff after getting the earlier suit dismissed since temporary injunction was not granted in the said suit. These and other aspects referred to in the course of its judgment weighed with the lower Court to dismiss the suit of the plaintiff.

13. Sri Krishnappa, learned Counsel for the appellant contended that the lower Court has wrongly held that the suit property was vested in B.D.A. It is pointed out by the learned counsel that the entire acquisition proceedings initiated and continued by the B.D.A. is void inasmuch as the provisions of Sections 4 and 6 of the Land Acquisition Act have not at all been complied with. The learned Counsel argued that the preliminary notification was published on 5-5-1977 whereas the final notification or declaration was published on 12-6-1980 and that therefore, there was a violation of the provisions of Section 6 of the L.A. Act. Dilating on this aspect, the learned Counsel argued that it is not as if the provisions of Sections 4 and 6 of the L.A. Act would not apply to the acquisition under Sections 19 of the B.D.A. Act. The learned Counsel contended that having regard to the fact that no time limit is prescribed under Section 19 of the B.D. Act, the time limit prescribed under Section 6 of the L.A. Act will have to be necessarily invoked in such a situation. The learned counsel in support of his submission, that the provisions of the L.A. Act would apply even to the acquisition under the B.D.A. Act, has placed reliance on the decision of the Supreme Court in Land Acquisition Officer C.I.T.B. v. Narayanaiah K. : [1977]1SCR178

It is also pointed out by the learned counsel that no actual or physical possession was ever taken by the B.D.A. and unless the actual possession is taken, the property would not vest in B.D.A. In this connection, reliance is placed on the decision in *Balwant Narayan Bhagde v. M. D. Bhagwat* (: AIR 1975 SC1767). Dilating on this aspect, the learned counsel contended that the evidence on record would go to show that buildings were constructed even from 1982 onwards and that therefore unless these constructions were also removed it cannot be said that B.D.A. had taken actual possession of the property. The learned counsel also tried to gain some support in this behalf of the evidence of PW I Rajanna wherein he has made certain reference to Ex. D5. The learned counsel has placed reliance on Exs. P12 to P17 as also on Exs. P7 to P20 in support of his submission that plaintiff was in possession of the suit land on the date of the suit. The learned counsel also pointed out that possession is required to be taken by the proper authorities of the Government and anybody taking possession for and on behalf of the Government will not satisfy the requirement of taking possession under Section 16 of the L.A. Act. The learned counsel, Sri Krishnappa also pointed out that having regard to the provisions of Section 27 of the B.D. Act, any scheme is required to be executed within a period of five years from the date of the publication in the official gazette of the declaration under Section 19(1) of the B.D.A. Act and if the authority failed to execute the scheme substantially, the scheme shall lapse and provisions of Section 36 of the Act shall become inoperative. The learned counsel contended that the B.D.A. has not completed the scheme at all. It is also argued by the learned Counsel that notice required under the provisions of Section 17(5) of the B.D.A. Act were not served either on plaintiff or her predecessor in title and that therefore, the acquisition also is rendered void on that count. The learned counsel also advanced arguments contending that even if plaintiff's possession is held to be not lawful for any reason she cannot be dispossessed, since her possession is a settled possession. In this connection, reliance is placed by the learned Counsel on the decision in *Jarn Rattan v. State of Uttar Pradesh* : 1977 CriLJ433 also the decision in *Krishna Ram Mahale v. Mrs. Shobha Venkat. Rao* : AIR 1989 SC2097 . The learned Counsel also contended that the B.D.A. is not competent to oust the plaintiff from the suit land in view of the Government Order of 1986 and in the light of the provisions of the Karnataka

Regularisation of Unauthorised Constructions in Urban Areas Act 1991. It is further pointed out by the learned Counsel Sri Krishnappa that it was not competent to invoke the provisions of the Land Acquisition Act having regard to the fact that the property lies within the area covered by the ULCR Act. In this connection, reliance is placed on the decision in *State of Gujarat v. Parshottamdas Ramdas Patel* : [1988]1SCR997 . On these grounds, in substance, the learned Counsel Sri Krishnappa contended that the judgment and decree of the Court below are liable to be set at naught, and the suit of the plaintiff deserves to be allowed.

14. On the other hand, Sri C. B. Srinivasan, learned Counsel appearing for B.D.A. contended that Sections 4 and 6 of the L.A. Act have no application to the acquisition under the relevant provisions of the B.D.A. Act. In this connection, the learned Counsel has placed reliance on the decision of this Court in *Hanumanthappa v. State of Karnataka* (ILR 1987 Kant 3024). Dilating on this aspect, the learned counsel argued that it is not as if the citizens have no remedy in the case of any inordinate delay in the declaration under Section 19 of the B.D.A. Act. The learned counsel pointed out that the decision of the Supreme Court in *L.A.O., C.I.T.B. v. Narayanaih K.* : [1977]1SCR178 and pressed into service by Sri Krishnappa, learned Counsel for the appellant has no application to the facts of this case. The said decision is not on the question as to whether the provisions of Sections 4 and 6 of the L.A. Act would apply to the declaration under the provisions relating to Sections 17 and 19 of the B.D.A. Act.

Dealing with the question relating to the actual possession having been taken by the B.D.A. the learned Counsel invited the attention of the Court to the evidence of PW I. In the course of his cross-examination, it is pointed out that he has admitted that the B.D.A. has taken possession of the property during the year 1982. It is also pointed out by Sri Srinivasan, that Ex. D. 6, the mahazar would also confirm the possession having taken by the B.D.A. The learned Counsel has also brought to the notice of the Court that the evidence of DW I - Rajanna relied on by Sri Krishnappa with reference to Ex. D. 5 to contend that there were structures at the time when the possession was taken is not at all helpful to the plaintiff because, what Rajanna has said is only to the effect that Ex. D. 5 is a form relating to the

existence or otherwise of the buildings and the contents of the same as also the further evidence of DW 1 would unmistakably go to show that at the time when the possession was taken by the B.D.A.. there were no structures at all.

The learned Counsel Sri Srinivasan also contended that the question of issuing any notice to the plaintiff did not arise before issuing the notification and decoration since plaintiff was not a person referred to under Section 17 of the B.D.A. Act. It is pointed out by Sri Srinivasan that notices were issued to all those persons whose names were reflected in the records referred to under the said provisions. The learned Counsel further pointed out that the plaintiff also had knowledge of the acquisition and had even applied for dropping the proceedings. He, therefore, submitted that there is no merit in the contention raised by Sri Krishnappa with reference to this aspect.

15. The learned counsel Sri Srinivasan, also contended that the suit of the plaintiff is barred by time and the fact that the plaintiff got the suit dismissed or for that matter got it dismissed even with liberty to file a fresh suit on the same cause of action would not arrest the running of the limitation which had already commenced. Sri Srinivasan further pointed out that the submission made by Sri Krishnappa with reference to the non-applicability of the Land Acquisition Act, in view of the ULCAR Act, has no merit. It is pointed out by the learned counsel that the ratio of the decision in *State of Gujarat v. Parshottamdas Ramdas Paid'* : [1988]1SCR997 pressed into service by Sri Krishnappa ' has no application to the facts of the case and a Division Bench of this Court *Manjunath House Building Co-operative Society Ltd. v. State of Karnataka* (ILR 1991 Kant 4487) has, with reference to the aforesaid decision of the Hon'ble Supreme Court, pointed out that a land which could be acquired under the Urban Land (Ceiling and Regulation) Act, 1976, if not acquired thereunder, can be acquired under any other law or enactments providing for acquisition of such land. This can be seen from para 8 of the said decision. The learned counsel Sri Srinivasan also pointed out that the provisions of the Karnataka Regulation of Unauthorised Constructions in Urban Areas Act, 1976 has no application to the facts of the case. It is pointed out by the learned counsel that Section 4 of the said Act explicitly makes it clear that the property which has vested in the B.D.A. cannot be the subject matter of

regularisation. The learned counsel also contended that the construction, if any, on the land was admittedly done after the filing of the suit and that the same cannot be made the basis to contend that plaintiff was in possession of the property on the date of the suit. The learned counsel argued that plaintiff's possession if any cannot be construed as settled possession. On these grounds in substance, the learned counsel prayed for the dismissal of the appeal.

16. I have given my anxious consideration to the submissions made by either side.

17. It will be convenient to consider the submission relating to the want of notice to the plaintiff-appellant or for that matter her vendor in the first instance. Plaintiff has stated in para No. 3 of her plaint that no notice under S. 17(5) of the B.D.A. Act was issued to the plaintiff. At this juncture, it is necessary to state here even at the risk of repetition that the preliminary notification under S. 17 of the BDA Act was issued on 21-3-1977 and published in the gazette dated 5-5-1977. However, the sale in favour of the plaintiff is dated 24-2-1979. It is therefore clear that plaintiff obviously was not the person who would fall within the category of persons referred to in S. 17(5) of the BDA Act. Section 17(5) of the BDA Act reads as under;

'17. Procedure on completion of scheme

(1) When a development scheme has been prepared, the authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.

(2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3) The authority shall also cause a copy of the said notification to be published in three consecutive issues of the official Gazette and affixed in some conspicuous

part of its own office, the Deputy Commissioner's Office the Office of the Corporation and in such other places as the Authority may consider necessary.

(4) If no representation is received from the Corporation within the time specified in sub-sec. (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.

(5) During the thirty days next following the day on which such notification is published in the Official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) xxx xxx xxx Further plaintiff has also not stated as to whether her vendors viz., Smt. Narayanamma, Sri P. Chandrappa, Sri P. Shankar-appa and Sri Muniramaiah who are shown to have executed the sale deed dated 24-2-1979 in her favour would fall in the category of persons under S. 17(5) of the Act. At this juncture, it is necessary to point out here that defendant-B.D.A. has, in the course of its written statement, stated that according to the land revenue records as on the date of preliminary notification one Ankanna Reddy, son of Chikkeerappa Reddy, Pillappa, son of Garemuniswamappa and M. G. Ankanna Reddy were the notified khatedars and this defendant does not know how K. Narayanamma became the owner of the land from whom the plaintiff said to have purchased the properties. In the course of the evidence, PW 1 P. T. Raj, the power of attorney holder of the plaintiff has stated that he does not know how plaintiffs vendor Narayanamma acquired the property. It is further elicited in his evidence (cross-examination) that Ankanna Reddy and Pillappa were the original owners of the suit land from whom Narayanamma derived title. I may point out here that the burden is upon the plaintiff to show the infirmity. In that view of the matter, it is for the plaintiff to produce satisfactory evidence to show that either she or her predecessors-in-title

who would fall within the category of persons under S. 17(5) of the Act were not served with the notice. Plaintiff, as pointed out hereinabove, has failed to show the same. At this juncture, it is necessary to refer to the decision of the Division Bench of this Court in *Muniveerappa v. State, of Karnataka*, (ILR 1991 Kant 1362). In the said case, the scope of S. 17(5) of the Act has been explained by this Court at para 12 of its judgment. This Court has stated therein as under: 'The object of sub-section (5) of S. 17 of the Act is to ensure that the persons falling in the category mentioned in sub-sec. (5) of S. 17 of the Act are served with the notice. Therefore, the said provision specifically states 'shall serve a notice on every person whose name appears.....' It does not state that it shall be served within 30 days next following the date on which the notification is published. The sub-section opens with the words 'during the thirty days next following the day on which such notification is published in the Official Gazette the Authority shall serve a notice on every person'. So the emphasis is on the service of notice and not on the period within which it should be served. The period is mentioned in sub-section (5) because the Authority enjoined with the duty to serve the notice on the persons specified in sub-sec. (5) of S. 17 of the Act should not take its own time. It should as far as possible serve it within 30 days. It is to enable the Land Acquisition Proceedings to be completed as early as possible. The said provision also further gives a right to a person to file his objections within 30 days from the date of service. Therefore, even if a person falling within the category of sub-sec. (5) of S. 17 of the Act is served beyond 30 days from the date of publication of the notification issued under sub-sec. (1) and published under sub-sec. (3) of S. 17 of the Act, he is not affected in any manner. No harm is caused to him. Because his right to file the objection is safeguarded as sub-sec. (5) of S. 17 of the Act provides that such a person can file his objections within 30 days from the date of service of notice. Therefore, the object of sub-sec. (5) of S. 17 of the Act is to ensure service of notice on the persons specified therein and that object is not defeated in any manner by service of notice beyond the period of 30 days; because the person concerned can file his objections within 30 days from the date of service of notice. When the object of the statute is not defeated by not serving the notice within 30 days as specified in the opening portion of sub-section (5) of S. 17 of the Act, strict compliance with such a provision, viz., serving notice within 30 days cannot be

held 10 be mandatory; because it does not result in deprivation of any right of the person concerned nor it defeats the object of the statute if the notice is served beyond 30 days. Therefore, such a provision cannot be held to be mandatory. Hence it follows that though service of notice is mandatory but it is not mandatory to serve such notice within 30 days only. It can even be served beyond 30 days. Even then it does not vitiate the acquisition.'

In the light of the aforesaid decision, it would follow that unless the plaintiff shows that either she or her vendors were the persons who would fall within the category of persons referred to under S. 17(5) of the Act at the relevant point of time, it is not possible to accede to her submission that the acquisition is bad for want of notice referred to under S. 17(5) of the Act.

18. If that be so, the next question for consideration is as to whether the acquisition can be said to be bad in law on the count that the declaration under S. 19 of the Act was issued more than three years next after the preliminary notification under S. 17 of the Act was issued. As stated earlier, preliminary notification is dated 21-3-1977 and was published in the Gazette on 5-5-1977 (vide Ex.D1). Further the final notification dated 14-5-1980 was in fact, published in the Gazette on 12-6-1980 (vide Ex.D2). It is therefore clear that the gap between the publication of the preliminary notification and the final notification (declaration under S. 19 of the Act) is more than three years. Sri Krishnappa, learned counsel for the appellant as pointed out earlier, argued that the same is contrary to the provisions of Ss. 4 and 6 of the L. A. Act, which according to him, would be applicable to the facts of the case also and that therefore, the acquisition is bad for violation of the mandatory direction. It is pointed out by Sri Krishnappa that since no time limit is prescribed under S. 19 of the BDA Act to issue the final notification (declaration) next after the notification under S. 17 of the BDA Act, recourse will have to be had to the provisions of S. 6 of the L. A. Act with reference to the time limit within which such a notification under Sec. 19 of the Act is required to be published. Reliance is placed in this behalf on the decision of the Supreme Court in *Land Acquisition Officer, CIT-B v. Narayanaiah K.* : [1977]1SCR178 . Sri Krishnappa, learned counsel argued that S. 27 of the City of Bangalore Improvement Act, 1945 is pari materia with the provisions of S. 36 of the BDA Act

and that therefore, the ratio laid down in Narayanaiah's case by the Hon'ble Supreme Court would equally apply to the facts of the instant case also.

It will have to be seen as to whether the submission made by Sri Krishnappa in this behalf is tenable. Section 36 of the B.D. A. Act reads as under:

'Provisions applicable to the acquisition of land other wise than by agreement -

(1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the [Land Acquisition Act, 1894](#).

(2) For the purpose of sub-sec. (2) of S. 50 of the [Land Acquisition Act, 1894](#), the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government under S. 16 of the [Land Acquisition Act, 1894](#), the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing to pay any further costs which may be incurred an account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority.'

Section 27 of the City of Bangalore Improvement Act, 1945 reads as follows:

'Provisions applicable by the acquisition of land otherwise than by agreement ---
The acquisition otherwise than by agreement of land within or without the City under this Act shall be regulated by the provisions, so far as they are applicable, of (the Mysore [Land Acquisition Act, 1894](#)), and by the following further provisions, namely:

(1) Upon the passing of a resolution by the Board that an improvement scheme under S. 14 is necessary in respect of any locality, it shall be lawful for any person either generally or specially authorised by the Board in this behalf and for his servants and workmen, to do all such act son or in respect of land in that locality as it would be lawful for an officer duly authorised by the Government to act under S.4(2) of the (Mysore [Land Acquisition Act, 1894](#)) and for his servants and workmen to do thereunder; and the provision contained in S. 5 of the said Act shall

likewise be applicable in respect of damage caused by any of the acts first mentioned.

(2) The publication of a declaration under S. 18 shall be deemed to be the publication of a declaration under S. 6 of the (Mysore [Land Acquisition Act, 1894](#)).

(3) For the purposes of S. 50(2) of the (Mysore [Land Acquisition Act, 1894](#)) the Board shall be deemed to be the local authority concerned.

(4) After the land vests in the Government under S. 16 of the (Mysore [Land Acquisition Act, 1894](#)) the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Board agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Board, and the land shall thereupon vest in the Board.'

A careful perusal of both the provisions culled out hereinabove would go to show that though they are similar in certain aspects they are not the same. It is significant to notice here that a provision incorporated in 27(2.) of the City of Bangalore Improvement Act is not to be found in S. 36 of the B.D.A. Act. That is only one aspect. Even otherwise, it is necessary to point out here that the Hon'ble Supreme Court in Narayanaiah's case has pointed out that whereas the procedure from notification under S. 4 to the notification under S. 6 of the Land Acquisition Act gives place to the procedure provided by Ss. 14 to 18 of the Bangalore Act, the stage at which compensation is to be determined is to be regulated entirely by the general provisions of S. 23(1) of Land Acquisition Act, because there is no special or separate provision in the Bangalore Act to regulate the compensation payable. It is further pointed out by the Apex Court that the meaning of the words 'so far as they are applicable' used in S. 27 of the Bangalore Act cannot be construed to exclude the application of any general provision of the Land Acquisition Act. In other words, the Hon'ble Supreme Court has pointed out that the said expression would amount to laying down the principle that what is not either expressly or by necessary implication excluded must be applied. A careful perusal of the decision of the Hon'ble Supreme Court, the gist of which is referred to immediately hereinabove would go to show that the submission made by the learned counsel with reference to the said decision is not correct. On the other

hand, the said decision in a way goes against the submission made by the learned counsel for the appellant. The portion underlined hereinabove, would go to show that the provisions of the Land Acquisition Act should yield to the Bangalore Act wherever there are special provisions; where however, there are no provisions in the Bangalore Act, the provisions of the Land Acquisition Act will have to be applied with reference to the aspects arising out of acquisition under the Bangalore Act. The said decision would also further go to show that Ss. 4 and 6 of the L. A. Act should yield to the provisions of Ss. 14 to 18 of the Bangalore Act. In that view of the matter, it is equally clear that the provisions of S. 4 and S. 6 of the Land Acquisition Act should yield to Ss. 16 to 19 of the B.D.A. Act. It is not as if a portion of S. 4 and S. 6 of the L. A. Act can be read into the provisions of S. 17 and S. 19 of the B.D.A. Act. In fact, this aspect is dealt with by this Court in *Hanumanthappa v. State of Karnataka* (ILR 1987 Kant 3024). In the said case this Court in para 7, has pointed out as under:

'Acquisition under the B.D.A. Act is not governed by Ss.4 and 6 of the Land Acquisition Act. It is well settled that acquisition by the B.D.A. is exclusively governed by Ss. 17 and 19 of the B.D.A. Act and not by the provisions of Land Acquisition Act (vide unreported decision in W.P. No. 3531/84 and connect ex cases, decided on 5-4-1964 confirmed in W.A. No. 1000 of 1984). Therefore, the concept of 'Publication of Declaration' occurring in S. 11-A of the Land Acquisition Act as publication in the Gazette under S. 19 of the B.D.A. Act cannot be accepted. The period of two years under S. 11-A of the Land Acquisition Act is not applicable to acquisition under the B.D.A. Act. Therefore, the said contention cannot be accepted. The acquisition docs not lapse.'

The portion culled out hereinabove in the said case should not leave any doubt as regards as to whether the provisions of Sections 4 and 6 of the L. A. Act would apply to Sections 16 to 19 of the BDA Act. I hasten to add here that the matters relating to compensation and other allied matters flowing from acquisition under the BDA Act in respect of which the provision is not made in the B.D.A. Act would attract the provisions of the L. A. Act in the light of the decision of the Apex Court in *Narayanaiah's case*.

Sri Krishnappa, learned counsel for the appellant is right in contending that it is not as if the B.D.A. can issue the notification (declaration under Sec. 19 of the Act) by committing an inordinate delay. If the B.D.A. commits such inordinate delay in issuing the notification under S. 19 of the Act, the citizen has indeed the right to challenge in an appropriate proceeding under Art. 226 of the Constitution of India. In that view of the matter, the submission that acquisition is void since there is a gap of more than three years between the two notifications is not tenable.

19. At this juncture only, it is necessary to see as to whether there is any substance in the submission made by Sri Krishnappa with reference to the decision in *Radhey Sham Gupta v. State of Haryana* (FB). In the said case, the High Court of Punjab and Haryana has pointed out that in a petition challenging the proceedings under the Land Acquisition Act purchasers of the land after notification can file a petition. Having regard to the clear pronouncement of this Court in *Muniveerappa's case* (ILR 1991 Kant 3362) alluded to earlier with reference to the requirement of notice under S. 17 of the B.D.A. Act, I am indeed of the view that it is not necessary for this Court to dilate further with reference to this aspect.

Sri Krishnappa has also relied on the decision in *G. Narayanaswamy Reddy (dead) by L.Rs. v. Government of Karnataka* : [1991]2SCR563 to contend that since the award was passed beyond the time stipulated under S. 11-A of the L. A. Act the acquisition lapses. In my opinion, it is not necessary to go into that aspect since the award was passed before S. 11-A was introduced into the statute book. The award is dated 28-2-1983 whereas S. 11-A was introduced by Act No. 68/1984 to the Land Acquisition Act. Further the proviso to S. 11-A would go to show that in a case where the declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement. In other words, even if the award was not passed earlier to the coming into being of the Amendment Act the same can be made within a period of two years from the commencement of the Act. In the instant case, as stated earlier, the award was passed even on 28-2-1983. Therefore, S. 11-A is not at all attracted to the facts of this case. In fact, Sri Krishnappa, learned counsel for the appellant though had

initially pressed into service the submission with reference to S. 11-A of the L. A. Act, fairly submitted later that in the context of the language reflected in S. 11-A of the L. A. Act, this point may not carry conviction.

20. Sri Krishnappa, however, as pointed out earlier, contended that since the land in question is covered by the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, recourse will have to be had to the provisions relevant in the said Act and acquisition under the Land Acquisition Act or the B.D.A. Act cannot be resorted to. In this connection, the learned counsel has placed reliance on the decision in *State of Gujarat v. Parshottamdas Ramdas Patel* : [1988]1SCR997 . In the said case, the Hon'ble Supreme Court has in para 9 of its judgment held as under:

'With great respect to the High Court of Delhi it has to be slated that the view taken by it is wholly incorrect. The High Court of Delhi omitted to notice that in order to exclude a land from the definition of vacant land' it should be shown that it was a land on which construction of a building was not permissible under the building regulations in force in the area in which such land was situated. The question whether a piece of land is a vacant land or not does not depend upon the fact whether a prudent man would put up a building on that land or not after the issue of a notification under S. 4(1), Land Acquisition Act, 1894. Nor a land will cease to be a vacant land merely because the permission of certain authority is to be taken to put up a building thereon. It may be further seen that what clause 'seventhly' in S. 24 [Land Acquisition Act, 1894](#) provides is that any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under S. 4(1), Land Acquisition Act, shall not be taken into consideration while awarding compensation. It does not ban the construction of any building on the land which is so notified. The High Court of Gujarat against whose judgment there appears have been filed also committed an error in accepting a similar contention which was urged before them. The declaration made by the High Court in these cases that the land acquisition proceedings did not suffer from an infirmity which indirectly suggests that the proceedings should go on is again erroneous. It is open to the State Government to drop the land acquisition proceedings and to withdraw the

lands from acquisition under Sec. 48, [Land Acquisition Act, 1894](#). We are informed that the State Government has in fact subsequently withdrawn these lands from acquisition. The proceedings under the [Land Acquisition Act, 1894](#) cannot therefore have any bearing on the question whether the lands in question are vacant lands or not for purposes of the ceiling law contained in the Act. When the lands in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire them under the provisions of the [Land Acquisition Act, 1894](#). As already stated the Act has the overriding effect on all other laws.'

A careful perusal of the observation made by the Hon'ble Supreme Court would go to show that the same does not apply to the facts of the instant case at all. In the said case, all that the Supreme Court has held is that when the lands in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire the said lands under the provisions of the [Land Acquisition Act, 1894](#). It is also pointed out that the provisions of ULCAR Act have got overriding effect on all other laws. In fact, this aspect has been considered by a Division Bench of this Court in Manjunatha House Building Co-operative Society Ltd. v. State of Karnataka (ILR 1991 Kant '4487). This Court has considered the ratio laid down by the Hon'ble Supreme Court. The Division Bench of this Court has held that the land which can be acquired under the ULCAR Act, 1976, if not acquired thereunder can be acquired under any other law or enactment providing for acquisition of such land. Under these circumstances, the submission made by Sri Krishnappa, learned counsel for the appellant that it was not permissible to have recourse to the provisions of the B.D.A. Act and recourse ought to have been had only to the provisions of the ULCAR Act is not correct.

21. The next question for the consideration of the Court is as to whether the property vested in B.D.A. The submissions made by Sri Krishnappa, learned counsel for the appellant are already alluded to earlier and it is not necessary to risk a repetition here again. It is needless to say that property would vest in B.D. A. after the property is transferred to the B.D. A. by the Deputy Commissioner only after the land vests in the Government under Sec. 16 of the L. A. Act. In the instant

case, the award was passed on 28-2-1983, in order to evidence the fact that possession was taken, reliance is placed on behalf of the defendant on the mahazar Ex.D.6. Ex.D.6 goes to show that possession of the property was taken on behalf of the Government under Sec. 16 of the Act and the same was handed over to the B.D.A. forthwith. The said mahazar is dated 12-4-1983. In fact, this aspect has been spoken to by DW-1 Rajanna, an official of the Bangalore Development Authority. I may also point out here that this aspect should not leave any one in doubt having regard to the unequivocal admission given by PW-1, the power of attorney holder of the plaintiff. In the course of his cross-examination, PW-1 P. T. Raj has stated as under:

'I know that the properties were acquired in 1982. The B.D.A. has taken the possession of the properties during the year 1982.'

Under these circumstances, the fact that possession was taken cannot be doubted.

Sri Krishnappa, learned counsel for the appellant, however, submitted that taking possession does not mean drawing up of mahazar, but actual possession of the property will have to be taken. In this connection, reliance is placed on the decision in *Balwant Narayan Bhagde v. M. D. Bhagwat* : AIR 1975 SC1767 . In the said case, the Hon'ble Supreme Court has pointed out that when the Government proceeds to take possession of the land acquired by it under the [Land Acquisition Act, 1894](#), it must take actual possession of the land, since all interests in the land are sought to be acquired by it. It is further pointed out therein that there can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. It is also pointed out that mere possession on paper is not sufficient, and what the Act contemplates as a necessary condition of vesting of the land in the Government, is the taking of actual possession of land and such possession would have to be taken as the nature of the land admits of. It is further held in the said case that there can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of the land and that the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is further held in the

said case that it is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible to give such notice before possession is taken by the authorities.

The thrust of the submission made by Sri Krishnappa is that the possession purported to have been taken in the instant case was only a paper possession and not actual possession. It is argued by the learned counsel that there were buildings in the land at the time when the possession is said to have been taken and (here is nothing to indicate that the possession of the building as such was taken. In this connection, reliance is placed on the evidence of DW-1 Rajanna. In the course of his evidence, Rajanna is shown to have stated among other things, as under:

'Ex.D.5 is the mahazar relating to existence of structures at the time of taking possession.'

Putting his finger on this sentence, the learned counsel submits that the evidence of Rajanna would unmistakably go to show that at the time of taking possession there were buildings and Ex.D.6, the mahazar does not at all go to show that possession of the building was taken in the way and manner as is required to be taken. The submission made by the learned counsel for the appellant deserves to be considered in little detail. At this juncture, it would be indeed in fitness of things to refer to Ex.D.5, which is stated to be a mahazar relating to the existence of structures at the time of taking possession, Ex.D.5 reads as under:

(Vernacular mailer omitted)

A careful perusal of Ex. D. 5 would go to show that the same does not even remotely reflect the existence of any structures therein. All that DW-1 Rajanna has stated in the course of his evidence is that Ex. D.5 is a mahazar relating to the existence of the structures. In other words, what he can be said to have meant is that it is a formality relating to the said aspect. Such an inference is absolutely necessary having regard to his evidence in the very para wherein he has clearly stated as under:

'At the time of taking of possession there were no structures existing on the suit land. The BDA has formed the layout in the suit land and the sites have been allotted to the allottees.'

Further it is necessary to see as to what is the version of plaintiff herself as regards the construction of the buildings on the land in question. In para 4 of the plaint, it is stated that she has put up 80 squares of RCC building consisting of ground, first and second floors, 36 squares of ACC roofing poultry sheds and besides there are servant quarters, bore well and a factory there on and all these constructions were put up in the year 1982 and 1983 long prior to 31-3-1986. Further in his examination-in-chief PW 1 has stated that there are 12 constructions in the suit land which are put up in the year 1983. However, in the course of the cross-examination, it is stated by PW 1 that all the buildings in the suit land were constructed in the year 1983-84. He has further stated that he has no record to show as when buildings in the suit land are constructed. Thus it is clear that the version of the plaintiff as regards as to in which year the construction was done is not uniform. As pointed out earlier, in the course of the cross-examination, PW 1 has stated that buildings were constructed in the year 1983-84. As noticed earlier, possession is shown to have been taken on 12-4-1983. Having regard to the totality of the evidence, it becomes difficult to agree with the submission made by Sri Krishnappa, learned Counsel for the appellant that there were buildings at the time when possession was taken by the B.D.A. In the light of what is stated hereinabove, it appears to me that when the possession was taken by the B.D.A. consequent upon the passing of the award there were no buildings at all. Under these circumstances, the mode of taking possession in the way and manner as reflected in Ex. D.6 cannot be said to be insufficient. Further as pointed out earlier, PW 1 has admitted in the course of his evidence that B.D.A. has taken possession of the property. Under these circumstances, I have no hesitation whatsoever in holding that the property vested in the B.D.A. as on 12-4-1983.

22. If that be so, the next question which arises for consideration is as to whether plaintiff's suit for declaration is in time. Plaintiff has prayed for declaring that the preliminary notification dated 2-3-1977 and published in the official gazette dated 5-5-1977 and the final notification dated 14-5-1980 and published in the official

gazette on 12-6-1980, in so far as it relates to the suit schedule property are null and void and contrary to law and the same does not bind the plaintiff in any manner. A declaration like the one which is prayed for is covered by Art. 58 of the Limitation Act, Article 56 of the Limitation Act relates to the declaration regarding the forgery of an instrument issued or registered. Article 57 relates to the declaration that the alleged adoption is invalid. Article 58 relates to the reliefs for any other declaration. The suit in question, therefore, is covered by Art. 58 of the Limitation Act. The period of limitation prescribes is three years when the right to sue first accrues. It is necessary to notice here that even according to plaintiff's own showing, she had filed a suit earlier at O.S. No. 10660/1985 praying for a decree for permanent injunction with regard to the suit schedule property against the B.D.A. The said suit was withdrawn according to plaintiff 26-9-1988 with liberty to file a fresh suit. Further at para 3 of the plaintiff, plaintiff has stated that she had given number of representations to defendant-1 to drop the acquisition proceedings and had also filed an application on 25-2-1984 for regularisation of the suit schedule property since it was completely covered with constructions. It is therefore clear that even as long back as in the year 1984 plaintiff had the knowledge that the property for regularisation of the suit schedule property also would confirm that the acquisition was completed and the land had vested in the B.D. A. It is necessary to mention here, as rightly pointed out by Sri C.B. Srinivasan, learned Counsel for the respondent -- B.D.A. that limitation once starts running will not get arrested on account of the fact that plaintiff has withdrawn her earlier suit or for that matter she has withdrawn the suit with permission to file a fresh suit.

23. Sri Krishnappa, learned Counsel for the appellant submitted that under S. 27 of the Act, the B.D.A, is required to execute the scheme within a period of 5 years from the date of the publication in the official gazette of the declaration under sub-section (1) of S. 19 of the Act and if they failed to do so, the scheme shall lapse and the provision of S. 36 of the Act shall become inoperative. In my opinion, the contention is not tenable for two reasons. In the first place, the said contention is not raised in the plaint. Secondly, what is required to be seen as to whether the scheme has been substantially complied with. Under these circumstances, I am of the view that this contention will have to be mentioned only to be rejected.

24. The foregoing discussion would go to show that the fact that notice was not issued to plaintiff under S. 17(5) of the BDA Act would not render the acquisition bad; similarly, the fact that there was a gap of more than 3 years between the preliminary notification under Section 17 of the Act and the final (declaration) under S. 19 of the Act would also not make the acquisition bad in law; similarly, the fact that the award was not drawn up within a period of two years from the date of the publication of the declaration would not result in lapse of the entire proceedings for acquisition; it is also clear that the property vested in B.D.A. consequent on its taking possession of the land in question after the award was passed; and it is also clear that plaintiff's suit for declaration is barred by time. Further the contention that the scheme was not substantially complied with is also not tenable.

25. It is in the context of what is stated hereinabove, this Court is required to see as to whether plaintiff is entitled to a decree for declaration and injunction. As pointed out earlier, it is not possible to hold that the acquisition is bad in law. Even otherwise, it is noticed that the relief for declaration is barred by time. Under these circumstances, it would follow that plaintiff is not entitled to the relief of declaration of title.

26. If that be so, the next question for consideration is as to whether plaintiff was in possession of the suit property on the date of the suit and if she was in possession whether her possession was lawful or a settled possession. At this juncture, it is necessary to mention here that the suit property comprises of an area of one acre 36 guntas with certain construction thereon. It is held earlier that the suit land was vacant when it was acquired and when the possession of the same was taken in accordance with the provisions of the Land Acquisition Act R/W the provisions of the B.D.A. Act. I have held earlier that the acquisition of land by B.D.A. is valid and the property vested in it consequent to the possession having been taken on the passing of the award. Possession was taken on 12-4-1983. I have already referred to the evidence of PW 1, the power of attorney holder of the plaintiff, who has admitted the factum of possession having been taken by the B.D.A. Further PW 1 has stated at page 8 of his deposition that all the constructions were completed in 1983-84 and he has records to show as to when the said buildings were

constructed on the suit land. However, those records are not produced in evidence. It is necessary to point out here that in 1985 the first suit was filed on the same cause of action. PW 1 has stated at page 7 of his deposition that since temporary injunction was not granted in the first suit, he filed the present suit and after filing the present suit he got the earlier suit dismissed. At any rate, one thing is clear that he started constructing the building from 1983-84 and in 1985 the plaintiff had filed the first suit on the same cause of action. It is not possible to reach a conclusion from the evidence of PW 1 as to which of the constructions on the suit land were built in which year. At any rate, it is clear that the construction was started after the land vested in B.D.A. and possibly in 1984. I may also point out here that even in his representation dated 23-8-1984 at Ex. P. 27, he does not disclose the number of constructions or for that matter the details of the construction.

27. From what is stated hereinabove, it is clear that plaintiff started constructing the building after the B.D.A. took possession. It is also clear that plaintiff was aware of the acquisition as also the facture of B.D.A. having taken possession. PW 1 has stated in the course of his evidence that he had written letters to B.D.A. on 21-7-1981, 15-1-1982, 8-4-1982 and 23-6-1982 for dropping acquisition. Thus, it is seen that having been well aware of the situation then prevailing plaintiff has hazarded the risk of unauthorized constructing the buildings. Further, Ex. P. 21, provisional order under the Municipal Corporation Act, requiring him to refrain from proceedings with the construction, was issued. The same is dated 18-4-1984. It is therefore clear that plaintiff was trying to create a situation to take advantage of the same if possible.

28. As pointed out earlier, the total area of Sy. No. 14/2 (Old Sy. No. 14) which is the suit property measures 1 acre 36 guntas. Barring the unauthorised construction, the rest is obviously vacant. The possession of such vacant land should go with a title. I may also point out here that a small portion of the said land measuring 50' x 80' formed by B.D.A. as a site is shown to have been allotted to defendant No. 2 as evidenced by Ex. D.8 dated 16-9-1988 (allotment order) and Ex. D.9 dated 18-8-1988 (possession certificate). Under these circumstances, all that can be said is that plaintiff has put up certain unauthorised constructions and

they were in the suit land on the date of the suit. If such unauthorised construction on the land can be construed as amounting to plaintiff being in possession to that extent it is obvious that the same cannot be considered as lawful possession.

29. Sri Krishnappa, learned counsel for the plaintiff; however, contended that plaintiff's possession is a settled possession and that therefore, her possession deserves to be protected. In this connection, he has placed reliance on the decision of the Supreme Court in Krishna Ram Mahale (dead) by L.Rs. v. Shoba Venkat Rao, : AIR 1989 SC2097 as also the decision of the Supreme Court in Ram Rattan v. State of Uttar Pradesh : 1977 CriLJ433 . The said decision would indeed go to show that a person in settled possession cannot be evicted except in due course of law. It is therefore necessary to see as to whether plaintiffs possession can be held to be a settled possession. Possession can be said to be settle possession when it has been peaceful over a reasonable length of time. A person can be said to be in settled possession if it is uninterrupted and his possession is not precarious. Instances are not uncommon when possession of persons who are lawfully inducted, becomes unlawful or unauthorised on the happening of an event. The possession of such persons can be indeed considered to be a settled possession though they have no right to continue in possession. Even the possession of a trespasser over a considerable length of time may become settled possession in certain circumstances. In sum, the question as to whether possession of a person in a given case is a settled possession or not depend upon the facts of each case. The illustrations which I have given hereinabove are only indicative and not exhaustive.

30. In the instant case, the possession of the plaintiff, if at all, over the area where the buildings are constructed is precarious and cannot be considered as settled possession, because, she was being informed from the beginning that she should not proceed with construction. Further, plaintiff herself had as late as in the year 1984 by Ex. P.27 prayed for re-conveying the land, the B.D.A. by Ex.P.21 dated 28-4-1984 had issued an order to her not to proceed with the construction. The first suit itself was filed in the year 1985. The second suit was filed after terminating the first suit in the circumstances, I am afraid that it would be wrong to say that the plaintiff in the instant case has been in settled possession

notwithstanding the fact that she had erected buildings.

31. However, with a view to see as to whether the B.D.A. was resorting to forcible demolition and not in due course of law, this Court posted the matter for further arguments on 14-9-1994 and the learned counsel on either side were heard specifically on this aspect.

32. Sri C. B. Srinivasan, learned counsel for respondent-1 pointed out that under Sec. 29 of the B.D.A. Act read with Sec. 321 of the [Karnataka Municipal Corporations Act, 1976](#), the B.D.A. has power to pass the 'orders in the matter of demolition of building after following the procedure prescribed there. Section 29 of the B.D.A. Act reads as under:

'29. Authority and Commissioner to exercise powers and functions under Mysore Act 69 of 1949 -

(1) In any area or part thereof to which this Act applies, the Government may, by notification, declare that from such date and for such period as may be specified therein and subject to such restrictions and modifications, if any, as may be specified in the notification -

(i) the powers and functions of the Corporation including or a standing committee thereof under the City of Bangalore Municipal Corporations Act, 1949, shall be exercised and discharged by the Authority; and

(ii) the powers and functions of the Commissioner of the Corporation under the said Act shall be exercised and discharged by the Chairman;

Provided that the Corporation shall be consulted before making such declaration if such area or part thereof lies within the limits of the City of Bangalore.

(2) On the making of a declaration under sub-sec. (1), notwithstanding anything contained in any other law for the time being in force, the Corporation, any standing committee thereof or the Commissioner of the Corporation, shall not be competent to exercise or discharge the powers or functions conferred or imposed on the Authority or the Commissioner as the case may be, by such declaration.

(3) The Authority or the Commissioner may delegate any of the functions exercisable by it or him under sub-sec. (1) to any officer or servant of the Authority.

(4) The exercise or discharge of any of the powers or functions delegated under sub-sec. (3) shall be subject to such limitations, conditions and control as may be laid down by the Authority or the Commissioner as the case may be.'

I may point out here that after the coming into being of the [Karnataka Municipal Corporations Act, 1976](#), the City of Bangalore Municipal Corporation Act, 1949 does not operate any more since it is repealed by S. 507 of the K.M.C. Act. However, by virtue of the second proviso to S. 507(1)(d) of the K.M.C. Act, any reference to the provisions of the City of Bangalore Municipal Corporation Act, 1949, will have to be read as the corresponding provisions in the K.M.C. Act. Under these circumstances, what is relevant would be the provisions reflected in S. 321 of the K.M.C. Act. Section 321 of the K.M.C. Act reads as under:

'321. Demolition or alteration of buildings or well work unlawfully commenced, carried on or completed -

(1) If the Commissioner is satisfied,

(i) that the construction or reconstruction of any building or hut or well -

(a) has been commenced without obtaining his permission or where an appeal or reference has been made to the standing committee, in contravention of any order passed by the standing committee; or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws; or

(ii) that any alteration required by any notice issued under S, 308, have not been duly made; or

(iii) that any alteration of or addition to any building or hut or any other work made or done for any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of S. 320, he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the Commissioner, has been unlawfully executed, or make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, bye-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or orders was based and may also direct that until the said order is complied with the owner of building shall refrain from proceeding with the building or well or hut.

(2) The Commissioner shall serve a copy of the provisional order made under sub-sec, (1) on the owner or builder of the building or hut or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner.

(4) If the construction or reconstruction of any building or hut is commenced contrary to the provisions of S. 300 or 314 and the Commissioner is of the opinion that immediate action should be taken, then, notwithstanding anything contained in this Act. a notice to be given under sub-sec. (2) shall not be of less duration than twenty four hours and shall be deemed to be duly served if it is affixed in some conspicuous part of the building or hut to which the notice relates and published by proclamation at or near such building or hut accompanied by beat of drum, and upon such affixation and publication, all persons concerned shall be deemed, to have been duly informed of the matters stated therein.'

On a careful perusal of the said provisions, it appears to me that the said provision is indeed such as can rope in within its ambit even the constructions effected by the plaintiff in this case.

33. Sri Krishriappa, learned counsel for the appellant, however, contended that S. 29 of the B.D.A. Act cannot be applied to the facts of this case since no Government notification referred to in S. 29(1) of the BDA Act has been issued. However, it is noticed from Ex.P.23, an order dated 24-11-1984 that a reference is made to Government Notification No. HUD 154 MNX 81 dated 14-5-1981. Under these circumstances, I am not impressed by the submission made by the learned counsel for the appellant that the power of the Corporation under S. 321 KMC Act cannot be exercised by defendant-I -- B.D.A.

34. However, it is necessary to mention that before B.D.A. can resort to demolition it has to necessarily follow the procedure prescribed under S. 461 of the Karnataka Municipal Corporation Act. The said section reads as under:

'Consequences of failure to obtain licences, etc., or breach of the same -

(1) If, under this Act, or any rule, by-law or regulation made under it the licence or permission of the Corporation, the standing committee or Commissioner or registration in the office of the Corporation is necessary for the doing of any act, and if such act is done without such licence or permission or registration then-

(a) the Commissioner may, by notice, require the person so doing such act to alter, remove, or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private, affected thereby within a time to be specified in the notice;

(b) the Commissioner or any officer duly authorised by him may also enter into or on any building or land where such act is done and take all such steps as may be necessary to prevent the continuance of such act; and

(c) if no penalty has been specially provided in this Act for so doing such act, the person so doing it. shall be liable on conviction by a Magistrate to a fine not exceeding fifty rupees for every such offence.

(2) No claim shall lie against the Commissioner or any other person for any damage or inconvenience caused by the exercise of the power given under this section or by the use of the force necessary for the purpose of carrying out the

provisions of this section.'

Unless and until the said procedure is resorted to it is not permissible for the B.D.A. to cause the demolition of unlawful constructions on its own.

35. From what is stated hereinabove, it is clear that the B.D.A. has the authority of law to cause the unlawful constructions removed without having the need to go to a Court of law for that purpose.

36. Sri Krishnappa, learned counsel for the appellant, however, submitted that in view of the letter dated 1-10-1987 by the Government Order No. HUD 36 MNY 86 addressed to the concerned authorities including B.D.A.; Government Order No. HUD 775 MNX 87 dated 27-9-1990 as also the Karnataka Regularisation of Unauthorised Construction in Urban Area Act, 1991 (Karnataka Act No. 29/91), the B.D.A. is duty bound, in law, to regularise the unauthorised constructions and unless and until order in that behalf is passed by the B.D.A., the B.D.A. cannot resort to any demolition. Reliance is also placed by the learned counsel on the judgment of this Court in *Fathimabi v. State of Karnataka* (1993 (3) Kant LJ 387) rendered in W.P. No. 23082/ 3992. I may point out here that these aspects' cannot be considered in this suit, since they are not part of the relief prayed for. Further though there are certain stray references to these aspects in the plaint, they are not matters of full-fledged pleadings. I may also point out here that in view of the Karnataka Regularisation of Unauthorised Construction in Urban Area Act, 1991, the earlier Government orders do not hold the field now. It also appears that plaintiff did not approach the appropriate Court to seek a mandamus to the B.D.A. in that behalf. Further it is doubtful as to whether the provisions of the aforesaid Act are of any assistance to the plaintiff. However, if according to plaintiff she is entitled to certain benefits under the said Act she is indeed at liberty to approach the B.D.A., if she is so advised, by an appropriate application if she has not already made such an application praying for the appropriate relief under the said Act and it is for the B.D.A. to pass such order as it deems fit in that behalf, according to law keeping in view the rights of the third party including defendant-2. I may also point out here even according to plaint allegations, it appears that the land allotted to defendant-2 is not covered by the constructions of the building.

Further, I have also pointed out earlier as to how the possession of the land goes with the title in respect of the vacant land. Under these circumstances, it is also clear that plaintiff is not entitled to succeed as against defendant-2 also.

37. Thus on a consideration of all the aspects relevant for consideration, I am indeed of the view that the appeal is liable to be dismissed, subject to the observations made hereinabove at para-34 as also at para-36.

38. In the result, the appeal is dismissed subject to the observations made in paras-34 and 36. In the facts and circumstances of the case, both the parties are directed to bear their own costs.

39. Appeal dismissed.