

Subbanna Vs. State of Karnataka

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Court : Karnataka

Decided On : Mar-25-1984

Reported in : ILR1994KAR992

Judge : S.B. Majmudar C.J. and ;K.B. Navadgi, J.

Acts : [Karnataka Town and Country Planning Act, 1961](#) - Sections 4A(1), 4A(3), 9(3), 19(2), 22(4) and 76J; Karnataka Town and Country Planning (Amendment) Act, 1991

Appeal No. : W.P. No. 12200 of 1987

Appellant : Subbanna

Respondent : State of Karnataka

Advocate for Def. : B.V. Acharya, Adv. General, ;B.J. Somayaji, Govt. Adv. for R-1, ;C.B. Srinivasan, Adv. for R-2, ;H.K. Vasudeva Reddy, Senior Adv. and ;S. Rangaswamy, Amicus Curiae

Advocate for Pet/Ap. : R.B. Brahmavar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.B. Majmudar, C.J.

1. This Petition has been moved under Article 226 of the Constitution of India by the petitioner, who claims to be the President of Bangalore North Taluk Public Grievances Committee, Doddabommasandra, Jalahalli, Bangalore-13. According to him, it is a Social Welfare Association of citizens of that taluk functioning with the avowed object of redressing the hardships and catering to the welfare of the residents therein. He is also a permanent resident of the Taluk. Many of the Members of the Association, besides a large number of Members of the public of the Taluk are owners of small areas of lands in villages within the Taluk. These areas were for the first time brought under the jurisdiction of the Town Planning Authority, Bangalore City, which is also Bangalore Development Authority, respondent No. 2 in the Petition. Though the areas were included in the jurisdiction of the Bangalore Development Authority, in April 1984 a Comprehensive Development Plan, which according to the petitioner, had no application to the said area was published in October, 1984 and is being enforced. Under the said Plan, a large extent of land comprising of many villages surrounding the Metropolitan Area of Bangalore is declared as 'Green Belt' severely restricting their use and confining the same to agriculture. This has brought the petitioner to this Court in the present proceedings.

2. The main prayers in the Petition are:

(a) for issue of appropriate Writ, order quashing the proceedings of the respondents, namely the State of Karnataka and the Bangalore Development Authority, commencing from the issue of Notification by the State Government HUD 496 TTP 83 dated 13.3.1984, Annexure-B to the Petition:

(b) for quashing the Notification dated 6.4.1984 issued by the first respondent State under Section 4A(3) of the [Karnataka Town and Country Planning Act, 1961](#), hereinafter referred to as the 'Planning Act', amalgamating the local Planning Area of Bangalore declared in Notification dated 1st November, 1965 and local Planning Area declared for the environs of Bangalore in the Notification of 13.3.1984 and calling such amalgamated local Planning Area as Bangalore City Planning Area with effect from 1.4.1984,

(c) for quashing the Comprehensive Development Plan for the entire area as per Notification dated 12.10.1984 and published in the Karnataka Gazette on 18.10.1984, Annexure-D to the Petition. In the alternative, it is prayed that the respondents be restrained from enforcing the Comprehensive Development Plan Annexure-D in so far as it is made applicable to the local Planning Area set-out in the Notification No. HUD 496 TTP. 83 dated 13.3.1984 Annexure-B to the Petition.

3. In order to appreciate the grievance of the petitioner centering-round the impugned Notifications, it is necessary to have a glimpse at the relevant background facts,

BACK-DROP OF FACTS AND EVENTS:

In the year 1952, the then Bangalore Development Committee as a matter of urgent necessity recommended the operation of a Master Plan for the metropolitan region of City of Bangalore with a view to plan development and growth of Bangalore City. On 14.11.1961 the Bangalore Metropolitan Planning Board was constituted. The Planning Act came into force from 15.1.1965 by a Notification dated 31.12.1964 issued by the first respondent, State, in exercise of its powers under Section 1(3) of the Planning Act. On 1.11.1965 the first respondent State Government, in exercise of its powers under Section 4A(1) of the Planning Act, constituted the Bangalore City Planning Area comprising of City of Bangalore and other areas indicated therein. That became the local Planning Area for the Bangalore City and surrounding areas as contemplated by the Planning Act. From 1.6.1967 the first respondent by Notification dated 25.5.1967 determined the present land use of the lands comprised in the said Planning Area. On 8.8.1967 the first respondent State constituted a Planning Authority for the said Planning Area under Section 4C of the Planning Act. As per Section 81A(1)(a) of the Planning Act, Outline Development Plan (O.D.P. for Short) for the Bangalore Metropolitan Area as prepared by the erstwhile Bangalore Metropolitan Board was deemed to be the O.D.P. prepared by the Planning Authority for the Planning Area comprising the Bangalore City and the date relating to the declaration of intention of making O.D.P. was deemed to be 8.8.1967 which was the date of constitution of the Planning Authority, as enjoined by Section 81(S)(2) of the Planning Act. An

Outline Development Plan for the Planning Area comprised in the Bangalore City was approved and promulgated on 22.5.1972. The validity of Outline Development Plan for Bangalore City Planning Area was upheld by the Supreme Court in the case of B.K. SRINIVASAN AND ANR. ETC. ETC. v. STATE OF KARNATAKA, : [1987]1SCR1054 . This O.D.P. covered an area of 500 Sq.kms. comprising of the Bangalore City and its peripheries. A few years thereafter, Bangalore Development Authority Act 1976 being Act No. 12 of 1976 was published in the Official Gazette on 8.3.1976. As per Section 81-B of the Planning Act, the Bangalore Development Authority - Respondent No. 2 herein as constituted under the B.D.A. Act 1976 had to be treated the Local Planning Authority for the local Planning Area comprising the City of Bangalore with jurisdiction over the area for which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority was constituted. The second respondent was entitled to exercise powers, functions, and discharge the duties under the Act as if it were a Local Planning Authority constituted for the Bangalore City.

4. A Comprehensive Development Plan (C.D.P. - for short) was prepared by the City Planning Authority under Section 19 of the Planning Act. That C.D.P. prepared upto the year 2001 for population of 38 lakhs was submitted to the Government for provisional approval. The C.D.P. was provisionally approved by the Government and returned to B.D.A. incorporating several observations made as required under Section 22(1) of the Planning Act. Comments and suggestions were called for from the public for the C.D.P. The Planning Wing of second respondent revised the C.D.P. provisionally on the basis of the old census figures of 1981. The observations made by the Government while according provisional approval and comments and suggestions received from the public in the provisionally approved C.D.P, were taken note of. It was observed from the census that the earlier population projection made along with the C.D.P. approved provisionally by the Government was very much on the lower side as population of 29 lakhs and 38 lakhs was anticipated for the year 1991 to 2001. As the population anticipated for 1991 was reached during 1981 itself, the C.D.P. had to be revised drastically and the population projections revised in view of the subsequent trends, Further, developments that had come up from the date of preparation of C.D.P. in

the year 1975 had to be considered and the land use trends were required to be known for finalising the C.D.P.

5. In view of the aforesaid facts and events it was felt that the local Planning Area of Bangalore comprising 500 Sq.kms. was insufficient to cater to the future growth of the City and its developmental requirements. The second respondent, therefore, proposed to the first respondent to increase the local Planning Area to 1279 Sq.kms., by bringing in the lands comprising of surrounding 326 villages. To achieve the objectives of extension of the area notification under Section 4A(1) was issued on 13.3.1984 constituting a new local Planning Area comprising 326 villages named in the Notification. This Notification for the new local Planning Area for the environments of Bangalore, hereinafter referred to for the sake of brevity as 'Environs Planning area', was published in the Gazette on 26.4.1984. In the meantime another Notification under Section 4A(3) was issued by the first respondent amalgamating the local Planning Area of Bangalore comprised of 500 Sq.Kms. with the Environs Planning Area comprising of 779 Sq.Kms. covering 326 villages. With the result, the total Planning Area became enlarged to 1279 Sq.Kms, The Notification was given effect from 1.4.1984. This Notification dated 6.4.1984 was published in the Government Gazette on 9.4.1984. The land use survey covering the entire 1279 Sq.Kms. was conducted during January - February, 1983. Notification dated 12.10.1984 was issued by the first respondent approving the CDP with the enlarged Planning Area including 326 villages and thus covering 1279 Sq.Kms. This Comprehensive Development Plan for the entire 1279 Sq.Kms. was finalised as per Section 22(4) by the first respondent State and was published in Government Gazette on 18.10.1984. As noted earlier, it is this approved and promulgated C.D.P. for this entire area of 1279 Sq.Kms. which is brought in challenge in this Petition amongst others.

RIVAL CONTENTIONS:

The learned Counsel for the petitioner contended that the Notification dated 13.3.1984 Annexure-B issued under Section 4A(1) of the Planning Act and the Amalgamation Order dated 9.4.1984 issued under Section 4A(3) by the first respondent are null and void and inoperative in law. Even the Final Notification

under Section 22(4) promulgating C.D.P. and bringing it into force for the entire Planning Area of 1279 Sq.Kms., Annexure-D to the Petition is also ex facie inoperative in law and null and void. The following main grievances were voiced:

(1) Bangalore Development Authority which is constituted as a Town Planning Authority for the Bangalore City as Bangalore City Planning Authority under declaration of 1.11.1965 found in the Book-let at page 190, has no jurisdiction over the area of 779 Sq.Kms. brought in as New Planning Area by virtue of Notification dated 13.3.1984 Ex.B page 34.

(2) C.D.P. prepared by B.D.A. as Town Planning Authority functioning as City Planning Authority cannot extend to environment area that is, 779 Sq.Kms. as none of the provisions of the Town Planning Act are complied with relating to preparation of Development Plan.

(3) As there is no O.D.P. for 779 Sq.Kms. there cannot be a C.D.P. for that area as laid down by Section 19 of the Town Planning Act.

(4) Since C.D.P. as required by the Act is an integral one, each component of which depends on the other, it cannot be sub-divided or severed, so that if portion of it is bad rest cannot be saved. The whole of it is either good or bad.

(5) C.D.P. is not for City Planning Area but is for Metropolitan Area as defined under the B.D.A. Act and therefore it is ultra vires the Act.

(6) No survey as required by Section 9(2) was done after 1.4.1982 when the impugned amalgamation of two Planning Areas took place and therefore, also the C.D.P. cannot operate for the newly added area of 779 Sq.Kms.

Placing reliance on the relevant provisions of the Act, it was broadly submitted in support of these grievances and contentions that before any valid Notification under Section 4A(1) can operate, it should be a Notification as defined by the Act. That as per Section 2(4), Notification would mean Notification published in the Official Gazettee. Therefore, the Notification dated 13.3.1984 issued under Section 4A(1) by the First respondent, Annexure-B to the Petition would become effective if at all from 26.4.1984 when it was gazetted. Consequently, the Environs Planning

Area could not be held to have been legally constituted with effect from 15.3.1984 as mentioned in the Notification dated 13.3.1984. If that is so, the contention of the learned Counsel for the petitioner that the Notification dated 9.4.1984 seeking to amalgamate the existing Bangalore City Planning Area with Environs Planning Area with effect from 1.4.1984 remained otiose and inoperative. On 9.4.1984 there was one Planning Area in existence namely erstwhile City Planning Area, which was sought to be amalgamated with non-existing Environs Planning Area which can be said to have seen the light of the day only on 26.4.1984 when the Annexure-B dated 13.3.1984 was published. Result was that 9.4.1984 Notification remained inoperative and did not carry out any effective amalgamation of these Planning Areas with effect from 9.4.1984 as per Section 4A(3) of the Planning Act. As a sequitur it was submitted that 779 Sq.Kms. comprised of 326 peripheral villages which were sought to be brought in within the extended Planning Area, could not legally be covered by the said amalgamation or extension. Consequently, the second respondent had no jurisdiction to proceed further under the Planning Act by way of preparing any C.D.P. for that area. In fact for that 779 Sq.Km's. area the Act itself did not apply as Notification dated 13.3.1984 had not brought it into existence by the time 9.4.1984 order for the purported amalgamation of such non-existing additional Planning Area into existing Planning Area was sought to be enforced. In the alternative, it was contended that even assuming that such Planning Area for 779 Sq.Kms. could be treated to have been brought into existence atleast from 26.4.1984 when Notification Annexure-B was gazetted, even then the said Notification could not operate to create a Planning Area with retrospective effect. Therefore the entire exercise of amalgamation would fail. It was next contended in the alternative that even if it is assumed that the new planning area of 779 Sq.Kms. comprised of 326 villages can be said to have, been brought into force from 26.4.1984 and that the Amalgamation Order dated 9.4.1984 issued under Section 4A(3) would operate from that date, even then as the new Planning Area namely 779 Sq.Kms. being Environs Planning Area had no O.D.P, prepared for it by the competent Planning Authority, and as the earlier O.D.P. was only confined to Bangalore City Planning Area comprised of 500 Sq.Kms. no C.D.P. could be prepared for this additional 779 Sq.Kms. of Area. This was tried to be highlighted on the conjoint reading of Sections 9(1), 10(1) and

19 of the Act. It was therefore submitted that the C.D.P. as promulgated for this entire Area of 1279 Sq.Kms., under Section 22(4) of the Act could not validly operate and was null and void. Once it was void for 779 Sq.Kms., it being not severable, it could not operate even for 500 Sq.Kms. It was then submitted that in any case, the C.D.P. even if operative for 500 Sq.Kms. of the original local Planning Area of Bangalore City will not operate for the added territories of 326 villages comprising of 779 additional square kms., and for these villages it must be held that there is neither valid O.D.P. nor there is valid C.D.P. and consequently the petitioner is entitled to the reliefs as prayed for.

6. The learned Advocate General appearing for the respondent No. 1, whose arguments were adopted by the learned Counsel for the respondent No. 2 and Senior Advocate Sri Vasudev Reddy, who appeared as an intervener, on the other hand submitted that the petitioner has no case. At the outset, it was submitted by them that the petitioner has no locus standi to file this Petition. In any case Petition, is barred by gross delay and laches. Though the C.D.P. has come into force as early as on 18.10.1984 the Writ Petition was filed only after almost 3 years on 1.6.1987. In the meantime interests of third parties have intervened, various actions of commission and omission have taken place under the C.D.P. even for this extended area of 779 Sq.Kms. That on the basis of the C.D.P. various permissions for constructions have been granted to so many parties and they have sunk large amounts of money pursuant to such permissions, that various Schemes have been promulgated pursuant to C.D.P. covering these Areas and those persons, who are likely to be affected by any order passed in this Petition in favour of the petitioner are not parties to this proceeding, therefore both on the ground of delay and laches and as well as on the ground of non-jointer of necessary parties, this Petition is liable to fail.

7. It was next contended that as per Section 25 of the Planning Act, the revision of the C.D.P. is now in the offing and new C.D.P. will come into existence for the entire area after inviting objections from the Members of the public and therefore, petitioner will be entitled also to raise all legally permissible objections in that connection. This is the additional reason why this challenge which has become stale need not be entertained against C.D.P. of October, 1984. That as per

Section 14A of the Planning Act, change of land use is permitted on valid grounds and if the petitioner feels offended by the green-belt as laid down by the C.D.P. he can avail of the remedy under Section 14A read with Section 24 of the Act and hence this Petition should not be entertained at this late stage.

8. On merits it was submitted that even though the Notification under Section 4A(1) dated 13.3.1984 was published on 26.4.1984, the moment it was published all the requirements of Section 4A(1) read with Section 2(4) got fulfilled and once that happened the Notification took effect creating new Planning Area from 15.3.1984. Relying upon two Decisions of the Supreme Court, namely *Tulasipur Sugar Co., Ltd v. Notified Area Committee, Tulasipur & 1956 SC 246*, 1980 SC 882, *A. Thangal Kunju Musaliar v. M. Venkatachalam Patti, Authorised Officer & Income-tax Officer and Anr.*, it was submitted by the learned Advocate General that Section 4A(1) empowers the State authorities to exercise delegated legislative power and therefore, the State could exercise the power of creation of a new Planning Area at any time after the coming into force of the parent Act namely the Planning Act. As a sequester to this contention, it was submitted that once the Notification under Section 4A(1) brought the new Planning Area into existence from 15.3.1984, there was nothing wrong in the State authority exercising the powers of amalgamation under Section 4A(3) of the Planning Act amalgamating the new Area with the existing area pursuant to the order dated 6.4.1984, which was Gazetted on 9.4.1984. It was next contended that O.D.P. which was already operative for 500 Sq.Kms. of Bangalore City Planning Area and which was upheld by the Supreme Court in : [1987]1SCR1054 *Supra*, would enure even for the newly amalgamated Planning Area of 779 Sq.Kms., in view of Section 9(3)(ii) of the Planning Act. That necessary surveys were done for the entire 1279 Sq.Kms. and those surveys would satisfy the requirements of Section 19(2) read with Section 10(1) of the Act. That there was no procedural flaw on this aspect.

9. It was also contended placing reliance on Section 76J(e) of the Planning Act that the so called omissions, defects or irregularities do not affect the merits of the case and hence they cannot be made a valid ground of attack. It was also submitted that in the light of Section 4A(1) as amended by amendment Act 17/91 atleast from that date additional Area can be included in the existing Planning Area

and which would not require any process of further amalgamation of that Planning Area with any other Planning Area and if that happens there is no provision in the Act requiring a further O.D.P. for the included area. Therefore, it was wrong to assume that the Act requires an O.D.P. for the additional area which is included either by way of amalgamation or inclusion in the erstwhile Planning Area. That the Act never contemplated any revision of O.D.P. unlike revision of C.D.P. which is contemplated by Section 25. That the procedure for C.D.P. is almost parallel to the procedure for preparing the O.D.P. and for all these reasons, therefore it was contended that there is no flaw in the C.D.P. as operating for the entire 1279 Sq.Kms. and hence even on merits, petitioner has no case,

10. In rejoinder, the learned Counsel for the petitioner submitted that there is no question of delay on his part as under the C.D.P. even though the lands comprising of 326 villages were shown to be forming part of green belt, many a times permissions were granted by the Deputy Commissioner under the Karnataka Land Revenue Act for conversion of agricultural lands to non-agricultural use and therefore, only when the petitioner's claim was rejected, he was driven to file the Petition. That everything was in a state of doubt and lot of confusion prevailed in the minds of the land holders in these villages. Because Government actions were also not consistent, nobody knew whether the C.D.P. will really be enforced or not. Under these circumstances, there is no question of delay on his part and once the Petition is admitted, it should be entertained and it will be too late now to dismiss it on this ground.

11. It was next contended that there is no question of non-jointer of necessary parties as all that the petitioner wants is a declaration that there is no valid C.D.P. atleast for the 779 Sq.Kms. comprised of 326 villages which are sought to be covered by the said C.D.P. and if such a declaration is given, the green-belt which is imposed for these villages will automatically become inoperative and the residents of that area will be entitled to use their lands in the way they like after getting proper conversions of the use from the revenue authorities. Therefore, if at all, they will stand to benefit by such declaration and the declaration will not adversely hurt them.

12. On merits, it was submitted that on the scheme of the Act, there would be no escape from the conclusion that the Notification dated 13.3.1984 was null and void and could not effect any valid amalgamation. With the result, the second respondent would not get jurisdiction to propose any C.D.P. for 779 Sq.Kms. nor the first respondent will have jurisdiction to promulgate any C.D.P. for that area as per Section 22(4) and C.D.P. therefore atleast to that extent is null and void.

POINTS FOR DETERMINATION:

In the light of these rival contentions, the following Points arise for our Determination:

- (1) Is the petition liable to be dismissed on the ground of delay and laches?
- (2) Whether the petitioner has locus standi to maintain the petition?
- (3) Is the petition liable to be dismissed on account of non-jointer of necessary parties?
- (4) Whether the Notification Annexure-B dated 13.3.1984 issued under Section 4-A(1) of the Planning Act is otiose and of no legal effect?
- (5) Whether the Amalgamation Order under Section 4-A(3) of the Planning Act dated 6.4.1984 Gazetted on 9.4.1984 was null and void and inoperative in law?
- (6) Whether the impugned C.D.P. notified under Section 22(4) on 18.10.1984 is null and void and inoperative either wholly or atleast partially so far as it seeks to cover 779 Sq.Kms. comprising of 326 villages?
- (7) What final order?

Our answers are as follows:

POINTS:

- (1) In the negative
- (2) In the affirmative

- (3) In the affirmative
- (4) In the negative as indicated
- (5) In the negative as indicated
- (6) In the negative
- (7) Petition is liable to be dismissed.

We shall deal with these Points seriatim.

POINT NO. 1: It has to be kept in view that impugned Notification dated 18.10.1984 issued by the first respondent in exercise of its powers under Section 22(4) of the Act is brought in challenge in this Writ Petition, which is filed as late as on 1.6.1987. Therefore, obviously, the petition suffers from delay and laches spreading over almost 3 years. Petitioner has sought to explain this delay and laches by an additional statement of facts filed in support of the Petition dated 1.1.1991. It is pleaded by the petitioner that in respect of Comprehensive Development Plan a green-belt was demarcated therein, wherein no conversion of the agricultural land was permitted. Still the Deputy Commissioner continued to grant such conversions. On 24.10.1985 the first respondent had issued Notification published in Karnataka Gazette dated 30.10.1984 denoting the limits of green-belt. Based on this Notification, competent authority, State of Karnataka granted conversion under the Karnataka Land Revenue Act and Comprehensive Development Plan was not relied upon by the Competent Authority, On 10.6.1993 the Deputy Commissioner, Bangalore District granted conversion of 30 acres 6 guntas of lands in Chikkabyatahalli, Yelahanka Hobli, Bangalore North Taluk. On 29.7.1986 the first respondent again issued a Circular declaring that there was no green-belt and Deputy Commissioners were not barred from entertaining applications for conversion. However, on 16.3.1987, this Court in a group of Writ Petitions regarding Comprehensive Development Plan barred such conversions. These varying actions led to confusion worst confounded. Petitioner was a victim of this state of affairs created by the actions and pronouncement of the first respondent authorities concerned interpreting law to suit their convenience.

Further instance was a Circular issued by the first respondent directing withdrawal of Circular dated 29.7.1986. Petitioner being the owner of the agricultural land in the impugned green-belt area, as there was no imminent threat of non-conversion in the area, was expecting that the first respondent would certify the conversion. Apart from issuing Circulars, they added to the confusion. In June, 1987 when the petitioner intended to get a piece of his land converted, he learnt from the office of the Deputy Commissioner, Bangalore that land conversion was barred after the C.D.P. came into force. It is under these circumstances, that the petitioner has approached the Court.

13. In view of what is stated hereinabove by the petitioner and on which there was not much dispute between the parties, in our view, though the C.D.P. is sought to be challenged after almost 3 years and the earlier orders Annexure-B dated 23.3.1984 under Section 4A(1) and the order dated 6.4.1984 under Section 4A(3) of the Planning Act are also sought to be challenged after 3 years, this is not a fit case in which the Petition can be dismissed at this late stage only on the ground of delay and laches. We have also to keep in view the fact the Petition was admitted for final hearing years back in 1987 and it was heard before different Division Benches from time to time and ultimately it reached final hearing before us in 1994. Under these circumstances, it is too late in the day to tell the petitioner that the Court will not decide the Petition on merits on account of delay and laches in filing the Petition.

First Point is, therefore, answered in the negative in favour of the petitioner and against the respondents.

14. POINT NO. 2:-

So far as locus standi of the petitioner is concerned, he has made it clear in the 'Petition that he is one of the occupants of the lands comprised in the additionally added area of 326 villages which are comprised in the impugned Environs Planning Area of Bangalore. Because of the green-belt, which has been imposed under the impugned C.D.P. for this extended area, he cannot utilise his land in the way he likes by converting it to non-agricultural use. The C.D.P. which applies to his area is an impediment in his way. Under these circumstances it is difficult to

appreciate how the petitioner is said to be not having any locus standi to challenge the C.D.P. in its application to his area. Apart from the fact that he has stated that he has filed the Petition on behalf of the persons who are Members of the Association and even assuming that the Association may not be a legally constituted body, still he is ventilating the common grievance of various occupants of agricultural lands comprised in the green-belt as earmarked in the C.D.P. for the extended area. It cannot, therefore, be said that the petitioner has no locus standi to file this Petition.

Second Point for Determination is, therefore answered in the affirmative in favour of the petitioner and against the respondents.

15. POINT NO. 3:-

So far as this Point is concerned, it has to be kept in view that even assuming that the petitioner could move this Petition after 3 years and it is not barred by delay and laches, however in the meantime from the date of operation of the C.D.P. that is from 18.10.1984 for all these years, the C.D.P. has operated without any hindrance for the added area of 779 Square Kms. No interim relief was obtained by the petitioner in this Petition. So by now at least almost a decade has passed since the time C.D.P. was brought into force even for this added area of 326 villages comprising 779 Sq.Kms. During this span of more than 9 1/2 years much water has flown under the bridges, so many transactions have taken place and interests of third parties have intervened. The submission of the learned Counsel for the petitioner that those who are likely to be affected by the relief which may be given to the petitioner, would all stand to benefit, amounts to over simplification of the situation. The impugned Comprehensive Development Plan dated 18.10.1984 seeks to cover the entire area of 1279 Sq.Kms. comprising of two parts (1) 500 Sq.Kms. which are covered by earlier O.D.P. confirmed by the Supreme Court for Bangalore City Planning Area and (2) it also covers additional 779 Sq.Kms. of 326 villages in the vicinity of the Bangalore City. For this entire area the Comprehensive Development Plan has been prepared. The report of the Comprehensive Development Plan was placed on record by consent of parties. When we look at this report, which has resulted into impugned Notification dated

18.10.1984 Annexure-D, we find that the entire area of 1279 Sq.Kms. is divided for the purpose of Comprehensive Development Plan into 37 Districts and for all these Districts general land uses are clearly demarcated and laid down. In Chapter 9 of the said report dealing with general land uses it is stated that for the earlier Metropolitan Area of 500 Sq.Kms. (193 Sq.Miles), in the Comprehensive Development Plan provisionally approved, the conurbation area proposed was only 321.4 Sq.Kms. (124 Sq.miles) and the green belt was 36.1% of the Metropolitan Area. Due to the population explosion as reflected in 1981 Census, if the same Metropolitan Area is maintained, the green-belt available by 2001 AD will be only 67.16 sq.kms. (25.96 sq.miles) in relation to the conurbation area of 449 Sq.kms (173.00 sq.miles) required for a population of 70 lakhs in the year 2001 A.D. Keeping this in view this new Comprehensive Development Plan for the entire area of 1279 Sq.Kms. provided as under. A revised Metropolitan Area had been worked out covering 1279 Sq.Kms. (494.0 sq.miles). According to the amalgamated Metropolitan Area, the conurbation area is 449 Sq.Kms. (173,0 sq.miles) and the green-belt will be 830 sq.kms, This works out to 64.89% of the Amalgamated Planning area. In the provisional C.D.P. the green belt was only 36.19% of the Planning Area. It becomes therefore clear that conurbation area proposed for 500 Sq.Kms. which was 321.4 Sq.Kms. (12 Sq. miles) got elongated in the Comprehensive Development Plan for entire 1279 Sq.Kms. to 449 Sq.Kms. Meaning thereby, there is additional conurbation area amounting to 127.6 sq.kms. and the green-belt got elongated from 178.6 sq.kms. (being the difference between the then existing 500 sq.kms. area and 321.4 sq.kms. conurbation for this 500 sq.kms.) to 830 sq.kms. under the Comprehensive Development Plan for the entire 1279 sq.kms. Thus, the green-belt area has also increased by 651.4 sq.kms. It may be that if this green-belt area is held to be invalid under the C.D.P. for this added area of 779 sq.kms. as the petitioner contends, the occupants of land in that green belt may stand to benefit. But due to the increase in the conurbation area to the extent of 127.6 sq.kms. occupants of lands in added 127.6 sq.kms who have got benefit of this new conurbation area under the Comprehensive C.D.P. for 1279 sq.kms, would necessarily stand to lose. In connection with conurbation area of 449 sq.kms. as mentioned in the impugned C.D.P. land use upto 2001 A.D. is laid down as under:

Proposed land use - 2001:

The total conurbation area proposed in the amalgamated metropolitan area of 1279 sq.kms. is 449 sq.kms. The green belt available is therefore 830 sq.kms. or 65.66% of the amalgamated metropolitan area. The following is the land use analysis proposed for the year 2001.

PROPOSED LAND USE - 2001 A.D.

Land use

Areas in hectares

Percentage

Residential

17,600.04

40.07

Commercial

1,670.58

3.80

Industrial

2,986.03

6.80

Parks& Open Spaces

5,960.48

13.57

Public& Semi-public

3,763.57

8.57

Transportation

9,723.84

22.13

Unclassified

2,223,70

5.06

TotalDeveloped Areas

43,928.24

100.00 or

439.28Sq.Kms.

34.34%

GreenBelt

83971.76 or

839.72Sq.Kms.

65.39%

Total

1,27,900.000 or

1,279.00 Sq.Kms.

It becomes very clear that because of the impugned C.D.P. not only the Green Belt area is enlarged as compared to the earlier proposed C.D.P. for only 500 Sq.Kms. but even the non-green belt area available for development and connurbation has also increased under diverse heads, Residential constructions are permitted and larger scale commercial use, industrial use, public and semi-public user of areas, transportation and parks, open spaces are also provided. These additional uses of land permitted on larger scale will naturally give benefit to the concerned occupier of such lands as contemplated by the impugned C.D.P. All these beneficiaries of land use permitted by the C.D.P. under diverse heads of connurbation schemes are not before us. In fact, none of them is before us. Therefore, any declaration given about the alleged invalidity of the C.D.P. covering this additional 779 Sq.Kms. area will directly and adversely affect these beneficiaries. In their absence, therefore no relief of any declaration of any type can be given to the petitioner. Learned Advocate General in this connection highlighted the situation by submitting the draft chart which showed that in more than 9 1/2 years during which the impugned C.D.P. has operated since October, 1984, diverse Schemes have been undertaken as per the C.D.P. approved in 1984. The said statement is taken on record by consent of parties. It projects the following picture:

I. List of schemes taken up outside the connurbation area of O.D.P., but within the connurbation area of C.D.P. approved in 1984:-

1. New Lagers scheme 400 acres
2. Srigandadakaval 559 acres
3. Sajjepalya 225 acres
4. Matadahalli 575 acres
5. Jnanabharathi 800 acres
6. Venkateswara 137 acres

7. J. P. Nagara IX Phase scheme 157 acres

8. B.T.M. VI stage scheme 130 acres

9. B.T.M. V stage 432 acres

10. H.B.R. I, II & III stages 1,819 acres

11. O.M.B.R. Scheme 266 acres

12. East of N.G.E.F. Scheme 255 acres

13. H.S.R. Scheme 1,664 acres

Total ..7,419 acres

II Approval accorded for housing societies layouts 2,000 acres
Grand total ..
9,419 acres

III. List of major development permitted in Green Belt after getting necessary approval from the Government:-

1. K.I.A.D.B. (Hoddy, Pattandur Agrahar & Sonnenahalli villages) 392 acres

2. Sri Sathya Sai Central Trust (Seegehalli village) 58 acres

3. VICON Limited (Sadaramangala village) 68 acres

4. K.I.A.D.B. for Technology Park (Pattandur Agrahar and Sadaramangala villages) 62 acres

5. K.I.A.D.B. or IBM Tata Computer Software Project (Chikkabettahalli and Singapura villages) ..30 acres

Total ..610 acres

16. It is not in dispute that the first paragraph of the said statement refers to Schemes undertaken within 500 sq.kms. The Schemes mentioned in paragraphs 2

& 3 will cover even wider area beyond 500 sq.kms and will cover substantial parts of the added area of 779 sq.kms; for which the impugned C.D.P. is operated since 1984. None of these parties who are beneficiaries under these Schemes are before us. Any declaration that the impugned C.D.P. is inoperative for this additional area of 779 sq.kms. would directly hit all those parties who are beneficiaries under diverse schemes operated under the C.D.P. approved in 1984. Consequently, it must be held that in the absence of all these necessary parties, this Petition is fatally defective and is liable to be dismissed on that ground alone.

16.(A) Before parting with this discussion it is necessary to note the additional submissions of learned Counsel for the petitioner in this connection. He submitted that the developments listed in paragraph 3 of the statement submitted by learned Advocate General were permitted contrary to green belt Zonal Regulations under C.D.P. As such they are not developments under the C.D.P. but contrary to it. Be that as it may. The developments have been continued even under the C.D.P. and no one has taken any exception to these developments. Whether these developments were contrary to C.D.P. or not cannot be decided in these proceedings and especially in the absence of those who are parties to such developments.

16.(B) It was next contended that the Schemes mentioned in the statement of para-1 are all outside the conurbation area under the old C.D.P. 264 sq.kms but within the conurbation area under the C.D.P. being the new one covering 449 sq.kms. It is difficult to appreciate this contention. If that is so, it would obviously mean that the schemes are taken-up even within the extended conurbation area covering the additional 779 sq.mtrs. It is therefore not possible to agree with the contention of the learned Counsel for the petitioner that no development has taken place in the amalgamated area of 779 sq.mtrs. It is not equally possible to countenance the submission that these Schemes are under the BDA Act and not under the Town Planning Act. These Schemes might have been permitted under the BDA Act but they are in tune with and countenanced by C.D.P. for the entire area and are not de hors it. For all these reasons, therefore, it is not possible to agree with the contention of the learned Counsel for the petitioner that during the period of 9 1/2 years when the impugned C.D.P. operated, no development has

taken place in the amalgated area of 779 sq.kms. The fact situation as clearly established on record, contra indicates this submission. Therefore, there is no escape from the conclusion that the Petition suffers from the fatal flaw of non-jointer of parties who are likely to be adversely affected by any declaration in favour of the petitioner.

16.(C). Point No. 3 is, therefore answered in the affirmative against the petitioner and in favour of the respondents.

17. POINT NO.4:-

In view of our finding on Point No. 3, strictly speaking it may not be necessary for us to go into the merits of the Petition. However, to give completeness to this Judgment and as all these Points are, of course, pressed for our consideration by the learned Counsel for the petitioner and on which the respondents also joined issues, we are deciding these Points on merits also.

18. So far as the attack on the Notification Annexure-B issued under Section 4A(1) of the Planning Act by the first respondent is concerned, it is necessary to note the relevant statutory provisions holding the field.

19. Section 4A is found in Chapter 1 -A of the Planning Act dealing with local Planning Areas and Planning Authorities. The said Section deserves to be reproduced in extenso. It reads as under:

4A. Declaration of Local Planning Areas, their amalgamation, Sub-Division, inclusion of any area in a Local Planning Area. - (1) The State Government may, by notification, declare any area in the State to be a Local Planning Area for the purposes of this Act, and on such declaration this Act shall apply to such area;

Provided that no military cantonment or part of a military cantonment shall be included in any such area.

(2) Every such notification shall define the limits of the area to which it relates.

(3) The State Government may, after consultation with the Board, amalgamate two or more planning areas into one local planning area, sub-divide a local planning

area into different local planning areas, and include such divided areas in any other local planning area.

(4) The State Government may, by notification, direct that all or any of the rules, regulations, orders, directions and powers made, issued, conferred and in force in any other local planning area at the time, with such exceptions and adaptations and modifications as may be considered necessary by the State Government, shall apply to the area declared as, amalgamated with or included in, a local planning area under this section and such rules, regulations, bye-laws, orders, directions and powers shall forthwith apply to such local planning area without further publication.

(5) When local planning areas are amalgamated or sub-divided, or such sub-divided areas are included in other local planning areas, the State Government shall, after consulting the Board, the Planning Authority or authorities concerned, frame a scheme determining what portion of the balance of the fund of the Planning Authority shall vest in the Planning Authority or authorities concerned and in what manner the properties and liabilities of the planning authority or authorities shall be apportioned amongst them and on the scheme being notified the fund, properties and liabilities shall vest and be apportioned accordingly.'

There was amendment in Sub-section (1) of Section 4A by amendment Act 17/91. In the light of the said amendment, Sub-section (1) now reads as under:

'4A(1) The State Government may, by notification declare any area in the State to be a Local Planning Area for the purposes of this Act or include within such local planning area, any area adjacent thereto, and on such declaration or inclusion this Act shall apply to such area.'

20. Section 4B deals with the power of the Government to withdraw Local Planning Area from operation of this Act, which is not relevant for our purpose. Then comes Section 4C, which deals with constitution of Planning Authority. Sub-section (1) thereof lays down that after declaration of a local planning area, the State Government in consultation with the Board, may, by notification in the Official Gazette, constitute for the purposes of the performance of the functions

assigned to it, an authority to be called the 'Planning Authority' of that area, having jurisdiction over that area.

So far as the term notification as employed by Section 4A(1) is concerned, as noted earlier, definition clause Section 2 Sub-section (4) defines Notification to mean the Notification published in the Official Gazette. Consequently, when Section 4A(1) is read with Section 2(4), it becomes clear that once the State Government publishes the Notification in the Official Gazette, the Act becomes applicable to the newly created Planning Area. Till that happens, the Act would not become applicable to that newly created area. Thus so far as the declaration about creation of a new Planning Area is concerned, Section 4A(1) does require that the State Government can do so by a Gazette Notification only. Thus both for creation of a new Planning Area and for applicability of the Planning Act to such area, a Gazette Notification is a must. It is obvious that only to such Planning Area to which the Act applies that power under Section 4A(3) regarding amalgamation can be exercised. It is, therefore, not possible to agree with the contention of the learned Advocate General that the new Planning Area namely the Environs Planning Area can be said to have been brought into force or existence for the purpose of applicability of the Act to it from 13.3.1984 the date of the Notification, Annexure-B. Learned Counsel for the petitioner is, therefore right when he contends that Annexure-B did not operate effectively from 13.3.1984 as it was not gazetted till 26.4.1984 and so long as it did not operate there was no question of the provisions of the Act applying to such newly created area and the State exercising its powers under Section 4A(3) of amalgamating that area with another Planning Area like Bangalore City Planning Area, which was already in existence. However, it cannot also be forgotten that Notification Annexure-B was in fact gazetted on 26.4.1984. From that day onwards, it necessarily became operative and started giving valid signals. The moment that Notification dated 13.3.1984 became effective on 26.4.1984 on its being gazetted the Notification as framed had to be given effect to in its entirety. When this is so, it would become clear that with effect from 15.3.1984 a new local Planning Area for the Environs of Bangalore was sought to be constituted. It is true as submitted by the learned Advocate General for the Respondent State that under Section 4A(1) it was open to the State to declare any area in the State as new Planning Area on any day after

coming into operation of the Planning Act and in support of this contention, he relied upon a Constitution Bench Decision of the Supreme Court in : [1956]29ITR349(SC) namely, A. THANGAL KUNJU MUSALIAR, v. M. VENKATACHALAM POTTI, AUTHORISED OFFICER & INCOME-TAX OFFICER AND ANR. However, a moot question remains as to from which date the State has exercised its delegated legislative power under Section 4A(1), On a conjoint reading of Section 4A(1) and Section 2(4), it must be held that State exercised that power effectively from 26.4.1984 and therefore, new Planning Area called Environs of Bangalore came into existence atleast from that date, and not from 15.3.1984 as stated in the Notification. Hence, from 26.4.1984 the Act became applicable to this newly constituted Planning Area. Point No. 4 will therefore, have to be answered by holding that the Notification Annexure-B issued under Section 4A(1) of the Planning Act became operative and effective from 26.4.1984 and the new Planning Area namely Environs Planning Area came to be validly created from 26.4.1984, though the said Notification was not operative from 15.3.1984 qua this newly created Planning Area. Therefore, the said Notification cannot be said to be totally otiose or ineffective or of no legal effect as tried to be suggested by the learned Counsel for the petitioner. In this connection, we may note one contention advanced by the learned Counsel for the petitioner. He stated that if this Notification is to be treated to be effective from 26.4.1984, then as read on that date, it directed that new Planning Area was sought to be amalgamated from a back date i.e., from 15.3.1984. That such an exercise is not legally competent for the State. It is difficult to agree. If a Notification states that a new area comes into existence from 15.3.1984 and in effect it comes into effect from a later date, it would not mean that it would amount to rewriting the Notification or giving retrospective effect to it. It may not operate from the back date, but can validly operate from a subsequent date. Point No. 4 is therefore, answered in the negative against the petitioner and in favour of the respondents by holding that the Notification dated 13.4.1984 is legal and valid from 26.4.1984 and not from any period prior thereto.

21. POINT NO. 5:- So far as this Point is concerned, it has direct linkage with our answers on Point 4 we have seen earlier while discussing Point No. 4 that new Planning Area namely Bangalore Environs Planning Area validly came into

existence as such under Section 4A(1) from 26.4.1984. The State Government under Sub-section (3) of Section 4A could not therefore have amalgamated with effect from 1.4.1984 or 6.4.1984 the then existing Local Planning Area of Bangalore with the Environs Planning Area of Bangalore as neither on 1.4.1984 nor on 6.4.1984 or even on 9.4.1984 there was in existence any new Planning Area called the Environs of Bangalore Planning Area. During all these days, for the additional 779 Sq.Kms, comprised of 326 villages the Act had not applied. Therefore, there was no occasion for the State to pass any order in connection with this area under Section 4A(3) upto 26.4.84. It is obvious that before powers under Section 4A(3) can be exercised, there must be, on the date of such exercise of power, two or more existing Planning Areas covered by the Act. The said provisions obviously cannot contemplate a situation where an existing Planning Area is to be amalgamated with a non-existing Planning Area which is yet to be born. Therefore the Notification and order under Section 4A(3) dated 6.4.1984 which is gazetted on 9.4.1984 cannot be said to have operated and brought about valid amalgamation of the concerned Planning Areas as mentioned therein with effect from 1.4.1984 or for that matter from 6.4.1984. But then the question remains as to whether this Notification had no effect whatsoever for all times to come. The answer is obviously in the negative. This Notification though inoperative and dormant upto 25.4.1984 became operative and kicking and started giving valid signals atleast from 26.4.1984 when creation of new Planning Area as per Annexure-B became operative. As we have already held that Annexure-B was not inoperative and otiose for all times to come but it became effective from 26.4.1984, it must be held that a valid newly created Planning Area called the Environs of Bangalore came in existence from 26.4.1984. Once that happened the Notification dated 6.4.1984 issued under Section 4A(3) and gazetted on 2.4.1984 started operating simultaneously with Notification Annexure-B issued under Section 4A(1) from 26.4.1984 onwards. On their conjoint operation the following picture emerged.

A new Planning area called Environs of Bangalore came into existence on 26.4.1984. The moment it sprung into existence, by the super imposed operation of the Notification dated 6.4.1984 issued under Section 4A(3) that newly created Planning Area got amalgamated with the existing local Planning Area of

Bangalore. Once that amalgamation took place on 26.4.1984, immediately there sprung into force amalgamated local Planning Area called Bangalore City Planning Area. It therefore cannot be held as submitted by the learned Counsel for the petitioner that the Notification under Section 4A(3) was totally otiose and inoperative. It must be held that it was earlier ineffective from the date on which it was issued and later on published in the Gazette dated 9.4.1984, but it became operative atleast from 26.4.1984 when it amalgamated the then existing new Planning Area of Bangalore with the existing local Planning Area of Bangalore and created a new amalgamated Planning Area namely the Bangalore City Planning Area. If this is the conjoint effect of both the Notifications issued under Section 4A(1) Annexure-B and Notification issued under Section 4A(3) dated 6.4.1984 gazetted on 9.4.1984, we cannot hold that both these Notifications had no efficacy even after 26.4.1984 as tried to be submitted by the learned Counsel for the petitioner. In this connection, we must keep in view Section 76J which deals with validation of acts and proceedings, especially Clauses (a) and (e) thereof. They read as under:

76J. Validation of acts and proceedings.- No act done or proceeding taken under this Act shall be questioned on the ground merely of,

(a) the existence of any vacancy in or any defect in the constitution of the Board or any Planning Authority;

xxx xxx xxx(e) any omission, defect or irregularity not affecting the merits of the case.'

These provisions are christened as 'Ganga' clauses by Mr. Justice Chinnappa Reddy speaking for the Supreme Court in : [1987]1SCR1054 supra. Therefore defect in the constitution of any Planning Authority which would naturally include Planning Area or any omission, defect or irregularity not affecting the merits of the case cannot be countenanced. It is difficult to appreciate how merits of C.D.P. prepared later on can get adversely affected by the amalgamated area of 1279 sq.kms. coming into force from 26.4.1984 instead of 1.4.1984. Within these twenty five days, nothing was done towards preparing of new C.D.P. for the entire area of 1279 sq.kms. In fairness learned Advocate for the petitioner also did not submit to

that effect. It must, therefore, be held that even though there may be any omission or irregularity in the creation of a new Planning Area and its amalgamation with the existing Planning Area between 6.4.1984 and 26.4.1984, such omission, defect or irregularity did not affect the merits of the case for such amalgamation at least from 26.4.1984 and defect in the constitution of the conjoint Planning Area namely, the Bangalore City Planning Area which became available to the Planning Authority for that enlarged area namely Bangalore City Planning Authority or B.D.A. respondent No. 2 herein would get protected by the aforesaid provisions of the Ganga Clauses 76J(a) and (e) atleast from 26.4.1984.

22. Before parting with discussion on this point we may mention one submission of Mr. Vasudeva Reddy, in support of the respondents. He submitted that even if Section 4A(1) by amendment of 1991 permitted the State authorities to add areas to the existing Planning Area that power could be said to have been available in 1984 by virtue of Section 21 of General Clauses Act read with Section 14 of the General Clauses Act. It is not possible to agree. Section 4A(3) Notification in terms seeks to amalgamate two areas. It does not seek to add 779 sq.kms. to existing Bangalore area. To accept Mr. Vasudeva Reddy's submission would amount to rewriting the Notification which cannot be done.

23. Mr. Reddy next submitted that 9.4.1984 Notification can be said to have been published on 17.5.1984 when compilation of Gazette Notifications was made available to the public and by 17.5.1984 Section 4A(1) Notification had already operated. Therefore, Section 4A(3) Notification cannot be said to be seeking to amalgamate an existing area with the non existing Planning Area, Even this contention cannot be accepted for the simple reason that the Notification dated 6.4,1984 was also gazetted in the Gazette Extraordinary on 9.4.1984. Even if a compilation of the Gazette Notifications is subsequently published it would not mean that members of the public could not have read the Gazette Notification on 9.4.1984 if they wanted to do so.

24. This Point, is therefore also answered in the negative against the petitioner and in favour of the respondent by holding that 4A(3) Notification became valid and effective from 26.4.1984 and brought about the requisite amalgamation of the

two Planning Areas as mentioned from that date.

25. POINT NO. 6:

So far as this Point is concerned, learned Counsel for the petitioner highlighted the following aspects:

(a) Respondent No. 2 Authority which was constituted as a Town Planning Authority for the Bangalore City as Bangalore City Planning Authority under declaration 1.11.1965 had no jurisdiction for the area of 779 sq.kms brought in as new Planning Area by Notification dated 13.3.1984 and therefore it cannot prepare any C.D.P. for that area.

(b) C.D.P. prepared by respondent No. 2 as Town Planning Authority functioning as City Planning Authority cannot extend to environment area that is, 779 sq.kms. as none of the provisions of the Town Planning Act leading to preparation of Development Plan, are complied with for 779 sq.kms.

(c) As there is no O.D.P. for 779 sq.kms there cannot be any C.D.P. for that area as laid down by Section 19 of the Town Planning Act.

(d) As C.D.P. is not for City Planning Area but for Metropolitan Area as defined under the B.D.A Act it is ultra vires the Planning Act.

(e) No survey as required by Section 19(2) was done after 1.4.1984 when the impugned amalgamation of two Planning Areas took place and therefore also C.D.P. cannot operate for the newly added area of 779 sq.kms.

(f) C.D.P. as required by the Act is an integrated one, each component of which depends on the other, it cannot be sub-divided or severed. In other words if it is bad for part, it cannot remain good for the rest. It is either wholly good or wholly bad.

26. We have given our anxious consideration to the aforesaid various facets of this point. So far as first aspect (a) is concerned, it cannot be disputed that the Planning Authority functioning under the Planning Act has to prepare Development Plan for the area within its jurisdiction. Development Plan as defined by Section

2(1)(d) means Outline Development Plan or Comprehensive Development Plan prepared under the Act. Section 4C(1) as noted earlier provides that the Planning Authority is constituted for the purpose of the functions assigned to it being an Authority for that area having jurisdiction over that area. As per Section 6, the Planning Authority has to prepare an accurate map showing the present land use in the Planning Area under its jurisdiction. As per Section 9(1) every Planning Authority shall as soon as may be, carry out the survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the local Planning Area prepare and publish in the prescribed manner an Outline Development Plan for such area. As per Section 12(1), an Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire Planning Area within the jurisdiction of the Planning Authority are to be carried out and regulated. As per Section 19(1) as soon as may be after the publication of the Outline Development Plan and the Regulations under Sub-section (4) of Section 13, but not later than three years from such date, every Planning Authority has to prepare in the prescribed manner a Comprehensive Development Plan and submit it for approval. As per Section 21(1) the Comprehensive Development Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire Planning Area within the jurisdiction of the Planning Authority are to be carried out and regulated. As per Section 23 on the publication of the Comprehensive Development Plan and the Report as finally approved by the State Government under Section 22, still C.D.P. and the Report shall have effect and shall govern all changes in the land-use and development for the area under the jurisdiction of the Planning Authority and the Outline Development Plan and Regulations published under Section 13 shall be deemed to be superseded. A conjoint reading of these provisions leaves no room of doubt that Planning Authority under the Planning Act cannot have jurisdiction over area which is not brought within its jurisdiction. However, so far as 779 sq.kms. are concerned, as we have held while discussing Points 4 & 5 that this area got amalgamated with the erstwhile 500 sq.kms. and became a composite area of 1279 sq.kms. and that comprehensive new Planning Area became Planning Area for the Planning Authority and as the Planning Authority was the second respondent, it necessarily

got jurisdiction to operate on the entire area upto 1279 sq.kms as falling within its jurisdiction because of the combined operation of the Notifications under Section 4A(1) and 4A(3) atleast from 26.4.1984. The learned Counsel for the petitioner would have been justified in urging this aspect of the matter with greater emphasis if we had held in his favour on Points 4 & 5. Therefore, this aspect pales into insignificance.

27. So far as aspect (b) of the objections is concerned, it is difficult to appreciate how the C.D.P. for 779 sq.kms. cannot operate once it is held that this 779 sq.kms. additional area also falls within the jurisdiction of second respondent as Planning Authority under the Planning Act as discussed earlier. Learned Counsel for the petitioner in this connection vehemently contended that as per Section 19(2) for the preparation of the Comprehensive Development Plan, the Planning Authority shall carry out such surveys as may be necessary and as may be prescribed and that such survey should be made even for the area comprised of 779 sq.kms. after 26.4.1984 only. It is difficult to appreciate this contention.

28. It is not in dispute and cannot be disputed that survey had taken place not only for the erstwhile 500 sq.kms. but also for the additional 779 sq.kms. Of course that survey was done in the year 1982-83. Petitioner could not dispute that aspect of the matter. He contended that this Survey was made prior to the date on which this added 779 sq.kms. got amalgamated with erstwhile 500 sq.kms in 1984. In the Book-let about Comprehensive Development Plan report it has been stated in the introduction in clearest terms that the land use surveys covering 1279 sq.kms. were conducted during January February 1983 and all the developments permitted and that have come up were incorporated. It is difficult to appreciate how this survey cannot be utilised for the purpose of Section 19(2). That survey naturally was carried out for the preparation of the Comprehensive Development Plan for this added area of 779 sq.kms also otherwise there was no earthly reason for having such a survey. It is not as if that for the purpose of survey as contemplated under Section 19(2), surveyed area must first be officially comprised in any Planning Area by passing an order under Section 4A(1). Advance Survey can be effected for the purpose of ultimately having C.D.P. for any area which may subsequently be formed into a Planning area. It is true that the B.D.A. at the time

of survey might not have got clothed with the jurisdiction as the Planning Authority over that area as that happened on 26.4.1984. But whatever was the result of erstwhile survey could be adopted by the Planning Authority namely, B.D.A. for the purpose of the area falling within its jurisdiction atleast after 26.4.1984 onwards and that is precisely what has been done by the concerned respondents authorities. It, therefore, cannot be said that Section 19(2) was not complied with for the purpose of preparing C.D.P. for the 779 Sq.kms. if there is any procedural defect in this connection, it gets cured by Section 76J(a) & (d) noted earlier.

29. It was then submitted that B.D.A. acting as Town Planning Authority under Town Planning Act cannot act as Planning Authority for this new area. There cannot be any dispute on this aspect. But here second respondent in its capacity as Planning Authority under the Planning Act has undertaken the exercise of preparing the C.D.P. and not as B.D.A. acting under the B.D.A. Act. One more submission in this connection may be noted. It was submitted that none of the provisions of the Town Planning Act relating to the preparation of Development Plan for 779 sq.kms was followed. It is difficult to appreciate this contention. For 779 sq.kms. brought in as new Planning Area, admittedly earlier there was no O.D.P. at the stage of C.D.P. there was no occasion to follow the gamut of Section 10(1) as that applies to the preparation of Outline Development Plan for that area. Reliance placed on Section 24(1) is of no avail for the simple reason that as per the said Section the provisions of Section 14, 14A(1), Section 15 & 16 apply mutatis mutandis to the enforcement of the C.D.P. That lays down the procedure how every change of land-use and every development in the area covered by the Plan shall conform to the provisions of the Act. That stage is reached when the C.D.P. is approved and finalised as per Section 22(4). At that stage there is no provision of following the procedure for preparation of an O.D.P. or C.D.P. as the case may be. Consequently, contention even on second aspect is devoid of any substance.

30. So far as contention on aspect (c) is concerned, namely that there was no O.D.P. for 779 sq.kms, it is an admitted position. However, it cannot be forgotten that 779 sq.kms. got amalgamated with 500 sq.kms. which were earlier forming part of Bangalore City Planning Area and after amalgamation entire 1279 sq.kms.

became the new Planning Area and came under the jurisdiction of the second respondent. As we have discussed earlier, it is also not in dispute that for 500 sq.kms. second respondent had already got an O.D.P. for that area and that O.D.P. was confirmed by the Supreme Court in : [1987]1SCR1054 supra. Thereafter the amalgamation of two Planning Areas namely, the Bangalore City Planning Area and the Bangalore Environs Planning Area by the order under Section 4A(3) became effective from 26.4.1984 as discussed earlier, in that eventuality the provisions of Section 9(3)(ii) got attracted, it will be profitable to look at Section 9(1)(2) & (3) at this stage.

9. Preparation of outline Development Plan.- (1) Every Planning Authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the local planning area prepare and publish in the prescribed manner an outline development plan for such area and submit it to the State Government, through the Director, for provisional approval;

Provided that on application made by a Planning Authority, the State Government may from time to time by order, extend the aforesaid period by such periods as it thinks fit.

(2) If the outline development plan is not prepared, published and submitted to the State Government by the Planning Authority within the period specified in Sub-section (1) or so extended under the proviso to Sub-section (1), as the case may be, the State Government may authorise the Director to prepare and publish such plan in the prescribed manner and direct the cost thereof to be recovered from the Planning Authority out of its funds, notwithstanding anything contained in any law relating to the said fund.

(3) Notwithstanding anything contained in Sub-section (2),-

(i) If any Planning Authority has prepared a plan for the development of the area within its jurisdiction before the date of the coming into force of this Act, it may send the same to the State Government for provisional approval within a period of six months from the said date and the plan so approved shall, notwithstanding

anything contained in this Act, be deemed to be the outline development plan for the Planning Area concerned;

(ii) If any Planning Authority is converted into or amalgamated with any other Planning Authority or is sub-divided into two or more Planning Authorities, the outline development plan prepared for the area by the planning authority so converted, amalgamated or sub-divided shall, with such alterations and modifications as the State Government may approve, be deemed to be the outline development plan for the area of the new Planning Authority of authorities into or with which the former Planning Authority was converted, amalgamated or sub-divided.

31. A conjoint reading of the provisions of Section 9(1) and (2) leaves no room for doubt that every Planning Authority has to prepare and publish an O.D.P. for the area under its jurisdiction. If it is not so done, within two years from the date of declaration of such local Planning Area then even an authorised officer of the State can prepare and publish such plan. However, Sub-section (3) of Section 9 which opens with a non obstinate clause clearly provides for the following contingencies. If the Planning Authority is converted into or amalgamated with any other Planning Authority and if one of the amalgamated Planning Authority has O.D.P, prepared for the area in its erstwhile jurisdiction then such O.D.P. subject to such alterations and modifications as approved by the State Government shall be deemed to be the O.D.P. for the entire area of the New Planning Authority. Aforesaid provision clearly gets attracted on the facts of the present case. As we have already held above Bangalore City Planning Authority got amalgamated with the Environs Planning Authority by the combined effect of Notifications under Section 4A(1) and 4A(3) read with Section 4C. It is true that, because of the combined operation of the Notifications under Section 4A(1) and 4A(3), a new Planning Area comprised of 1279 sq.kms. came into existence with effect from 26.4.1984. As seen above, if once that happened, automatically second respondent became the Planning Authority for that entire area as seen from Section 2 Sub-section (7) which defines the Planning Authority to mean, (a) in the case of -

'(i) the local Planning area of 500 sq.kms. comprising the City of Bangalore, the Bangalore Development Authority.

So far as newly added 779 sq.kms. were concerned, as no new Planning Authority was constituted earlier, as per Section 2(7)(b), the Town Improvement Board as it was or in any case local authorities having jurisdiction over such local planning area of 779 sq.kms. would be the relevant planning authorities. Consequently, it can be held that amalgamation of two or more Planning Areas under Section 4A(3) brings about automatically amalgamation of the erstwhile Planning Authorities incharge of such areas. That would squarely attract Section 9(3)(ii), Therefore, as per the amalgamated effect of Section 4A(1), 4A(3) Notifications if read with Section 27(a) and (b), when one Planning Area is amalgamated with another Planning Area, their erstwhile Planning Authorities also get amalgamated. Consequently with amalgamation of 500 sq.kms. of Planning Area with 779 sq.kms. of new Planning Area, their respective Planning Authorities namely respondent No. 2 and other local Planning Authorities being local authorities got simultaneously amalgamated. Once that happened Section 9(3)(ii) operated and as it is found that one of the amalgamated Town Planning Authority namely, Bangalore City Town Planning Authority had O.D.P. for 500 sq.kms. operating in its area, then that O.D.P. which earlier covered 500 sq.kms. would be deemed to be the O.D.P. for the entire area of the New Planning Authority namely, the New Planning Authority functioning for 1279 sq.kms. In view of this deeming fiction found in Section 9(3)(ii) which gets squarely attracted to the facts of the present case as seen above, there is no escape from the conclusion that even for this additional 779 sq.kms. comprised of 326 villages there was a deemed O.D.P. in force. Once that conclusion is reached, the argument that there cannot be any C.D.P. for this 179 sq.kms. without any O.D.P. would not survive. For applying this deeming fiction, we cannot permit our imagination to boggle and we must give full effect and play to the fiction contemplated by Section 9(3)(ii). Consequently, there is no question of Section 19(1) not getting attracted for the 779 sq.kms. as submitted by the learned Counsel for the petitioner. Submission highlighting this aspect is therefore, rejected.

32. So far as aspect (d) is concerned, it is difficult to appreciate how the C.D.P. can be treated to be ultra vires the Act. This C.D.P. is for the entire 1279 sq.kms. of the Planning Area for which the B.D.A. as Planning Authority has jurisdiction to operate under the Act, the Notification Annexure-D in terms provided that the Government by the order dated 12.10.1984 have approved under Section 22(3) of the Planning Act a Comprehensive Development Plan of Bangalore Metropolitan Area prepared by the Bangalore Development Authority. It is true that the approval is mentioned to have been given to the Comprehensive Development Plan for Metropolitan Area and not Planning Area. But that does not mean the Metropolitan Area under the B.D.A. Act. It necessarily refers to the area as a Town Planning Area under the Planning Act. Merely because the B.D.A. is also the local authority under the B.D.A. Act for the purpose of that Act, once the approval to the C.D.P. is given under Section 22(3) of the Planning Act, it necessarily follows that C.D.P. will be applied for the entire Planning Area covered by the Planning Act and it has nothing to do with the Metropolitan Area under B.D.A. Act. The aforesaid contention of the learned Counsel for the petitioner is hyper technical and devoid of any substance whatsoever.

33. So far as the contention on aspect (3) is concerned, it is already covered by our discussion on aspect No. (b). We have already shown that there was a pre-existing survey for 779 sq.kms. which would enure for the purpose of Section 19(2) in connection with the C.D.P. which is prepared for that area. This aspect therefore, is also devoid of any substance.

34. So far as aspect (f) is concerned, it cannot be disputed that C.D.P. is an integrated one and either it must exist as a whole or must fall through as a whole. It cannot be sub-divided or got truncated as it would amount to redrafting of the C.D.P. But in view of our finding that C.D.P. can survive as a whole for the entire 1279 sq.kms. there remains no occasion for us to consider this alternative contention on the part of the learned Counsel for the petitioner.

35. Before parting with this Point certain general submissions made by the learned Counsel for the petitioner may be noted. Relying on Maxwell's Interpretation of Statutes, 12th Edition, Pages 258 & 328 it was submitted that statutory power

conferred has to be strictly construed and condition precedent affecting jurisdiction has to be clearly established, that power must be exercised in the manner laid down or not at all. In this connection, Singh's Interpretation of Statutes Page 233 was also pressed in service. Reliance was also placed on Indo Nissin Foods Ltd. v. Appraiser of Customs, ILR 1993(1) Karnataka Page 1548 for contending that act of publication has to be strictly complied with and in this connection reliance was also placed on State of UP. v. Singhara Singh and Ors., : [1964]4SCR485 There cannot be any dispute on this settled legal position. However, we have seen above, while discussing various Points for Consideration that factually there is no basis for the contentions put-forward by the learned Counsel for the petitioner for voiding the C.D.P.

In the result, even this Point No. 6 will have to be held in the negative against the petitioner and in favour of the respondents.

36. POINT NO. 7:-

As aforesaid were the only contentions in support of the Petition and as all the contentions raised by the petitioner fail the Petition also fails and is accordingly dismissed. Rule discharged.

In the facts and circumstances of the case, there will be no order as to costs.