

State of Karnataka Vs. Gokula Education Foundation and ors.

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Court : Karnataka

Decided On : May-27-2005

Reported in : 2005(6)KarLJ429

Judge : S.R. Nayak and ;Anand Byrareddy, JJ.

Acts : Bangalore Development Authority Act, 1976 - Sections 17 and 19; [Land Acquisition Act, 1894](#) - Sections 16(2) 16(2), 17, 19, 36(3) and 48; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 20(1) Medical Council Act, 1956; Code of Civil Procedure (CPC) - Order 47, Rule 1; Establishment of Medical College Regulations, 1999 - Regulation 3

Appeal No. : Writ Appeal Nos. 2627, 2740 to 2755, 3618, 2792, 2793, 3135 to 3150 and 3777 to 3794 of 2004

Appellant : State of Karnataka

Respondent : Gokula Education Foundation and ors.

Advocate for Def. : Deshraj, Government Adv. for Respondent-3 in W.A. Nos. 2627, 2740 to 2755, 3618, 2792, 2793 and 3135 to 3150 of 2004, ;Udaya Holla, Sr. Adv. ;for R.V. Jayaprakash, Adv. for Respondent-3 in W.A. Nos. 3

Advocate for Pet/Ap. : Deshraj, Government Adv. in W.A. Nos. 3777 to 3794 of 2004 and ;Udaya Holla, Sr. Adv. for ;R.V. Jayaprakash, Adv. in W.A. Nos. 2627, 2740 to 2755 and 3618 of 2004, ;U. Abdul Khader, Adv. in W.A. Nos.

Disposition : Appeal dismissed

Judgement :

S.R. Nayak, J.

1. Since all these writ appeals are directed against the same common judgment of the learned Single Judge dated 15th April, 2004 passed in Writ Petition Nos. 3832 to 3849 of 2004, all these writ appeals were clubbed, heard together and they are being disposed of by this common judgment.

2. Writ Appeal Nos. 3777 to 3794 of 2004 are preferred by the State of Karnataka, Writ Appeal Nos. 2627, 2740 to 2755 and 3618 of 2004 are preferred by the Bangalore Metropolitan Transport Corporation (BMTTC), whereas Writ Appeal Nos. 2792, 2793 and 3135 to 3150 of 2004 are preferred by the Bangalore Development Authority (BDA).

3. M/s. Gokula Education Foundation, Bangalore (for short, 'GEF'), which is one of the respondents in all these appeals, filed Writ Petition Nos. 3832 to 3849 of 2004 in this Court for quashing of the allotment order dated 13-3-2003 in No. BDA/DS-1/CA/Sy. No. 20/RMV/III/II]72003-04 and consequential possession certificate bearing No. BDA/DS-1/Sy. No. 20/RMV/IMI/2003-04, dated 20-9-2003 issued by the BDA in favour of BMTTC. The GEF also sought for a declaration that the subject lands have not vested in the BDA and the BMTTC and that they have no subsisting rights over the lands in Sy. Nos. 6/1, 6/2, 7, 9, 10, 12, 13, 20 and 21 of Chikkamaranahalli Village and Sy. Nos. 27, 29/1 and 29/2 of Devasandra Village, Yelahanka Hobli, Bangalore North Taluk covered by the preliminary Notification No. A3/PETITIONER-511/SLAO/76-77, dated 3-1-1977 (Annexure-D) and final Notification No. HUD 39 MNJ 78, dated 2-8-1978 (Annexure-E) and also for a permanent injunction to restrain the BMTTC and BDA from interfering with its possession and enjoyment of the said lands covered by the preliminary Notification No. A3/PETITIONER-511/SLAO/76-77, dated 3-1-1977 and final Notification No. HUD 39 MNJ 78, dated 2-8-1978. The above writ petitions were opposed by the BDA, BMTTC as well as the State of Karnataka by filing statement of objections. Learned Single Judge has allowed the writ petitions, quashed the

impugned orders and declared that the subject lands are not vested in the BDA and BMTC and that the acquisition proceedings under preliminary Notification No. A3/PETITIONER-511/SLAO/76-77, dated 3-1-1977 and final Notification No. HUD 39 MNJ 78, dated 2-8-1978 insofar as the subject lands are concerned have lapsed. Learned Judge has also declared that the BDA, BMTC and the State of Karnataka have no right whatsoever to disturb the possession of GEF in respect of the subject lands in view of the declaration made by him. Hence, these writ appeals by the aggrieved parties.

4. The background facts leading to the filing of the writ petitions be noted first and they, in brief, are as follows.-

The GEF is a trust constituted under the registered Deed of Trust dated 20-12-1962. The object of the trust among others, is to run educational institutions in various faculties including Engineering, Medical Science, Management, Law etc. The M.S. Ramaiah Institute of Technology was established prior to 1962 and started functioning from 1962. Massive buildings were put up from time to time for running various professional colleges and teaching hospitals and for providing other infrastructural facilities. The GEF has established more than 25 educational institutions which include professional colleges in Medicine, Dentistry, Engineering, Business Management, Law, etc., and all the institutions are recognised by the statutory authorities like Medical Council of India, Dental Council of India, All India Council for Technical Education, Bar Council of India, State Government, concerned Universities etc. 85% of seats in Engineering and other professional courses are filled up by the candidates sponsored by the Government of Karnataka through Common Entrance Test.

5. The GEF is the owner in possession and enjoyment of 76 acres and 30 guntas of land in Sy. Nos. 6/1, 6/2, 7, 8, 9, 10, 11, 12, 13, 20 and 21 of Chikkamaranahalli Village (measuring in all 52 acres and 04 guntas), Sy. Nos. 27, 29/1 and 29/2 of Devasandra Village (measuring in all 8 acres and 7 guntas) and Sy. Nos. 7, 8, 9, 10 and 11 of Mathikere Village (measuring in all 16 acres and 19 guntas), Kasaba Hobli, Bangalore North Taluk. The GEF has put up huge buildings over the said lands covering an extent of about 70 acres to house its various General and

Professional Educational Institutions/Colleges, Teaching Hospitals and super-speciality hospitals and it has earned reputation as one of the premier Educational Institution in the country. Its professional colleges and its teaching and super-speciality hospitals are equipped with sophisticated equipments and other paraphernalia of world standard. The GEF has also built Libraries, Laboratories, Hostels for boys and girls, parking places, workshops, Administrative blocks etc., covering a compact block of about 70 acres of land enclosed by a massive compound wall all around. It is stated that the strength of the students studying in various colleges at the time of filing the writ petition was around 7000. The GEF has built hospital with bed strength of 1000 with all modern facilities. It is stated that the GEF has not so far constructed staff quarters of its own for accommodating staff of essential services such as Doctors, Nurses, Attenders etc. It is stated that the GEF is under an obligation in terms of Regulation 3, Part II(8) of the Establishment of Medical College Regulations, 1999 to accommodate essential staff in the near proximity of the hospital building. Therefore, the GEF has reserved 2 acres 1 guntas of land in Sy. No. 20 and 2 acres 3 guntas of land in Sy. No. 21 of Chikkamaranahalli Village, which forms a compact block of 4 acres 4 guntas for the said purpose and that parcel of land would be quite suitable for the purpose of constructing staff quarters. It is also claimed by the GEF that appreciating the above need, the State and the BDA did not take possession of the said lands nor did they make any attempt to do so at any time.

6. In the writ petitions, the GEF has set out the several attempts made by the State Government to acquire the subject lands from time to time and dropping the proposals at the request of GEF that the subject lands are very much needed for its own purposes. It is stated that in the year 1962 it was proposed to acquire the subject lands for the purpose of Indian Institute of Science. However, on a representation made on behalf of the GEF, the acquisition proceedings were dropped and the notification with regard to the same was withdrawn vide Notification No. RD 77 LCI 62, dated 22-10-1964 on the ground that the subject lands are essentially required for the purpose of running educational institutions by the GEF itself. Once again in the year 1967, another attempt was made to acquire the subject lands. After discussion with the then Chief Minister and Revenue Minister and on inspection by them, the acquisition proceedings of the subject

lands were dropped. When the matter stood thus, for the third time, at the instance of the BDA, the subject lands were notified for acquisition under preliminary Notification No. A3/PR.511/SLAO/76-77, dated 3-1-1977 under Section 17 of the Bangalore Development Authority Act, 1976 (for short, 'the Act') and published in the Karnataka Gazette on 24-2-1977 for a public purpose, to wit, for implementation of the scheme called 'Rajamaharaj Vilas Extension II stage Layout', for distribution of house sites and that was followed by final Notification No. HUD 39 MNJ 78, dated 2-8-1978 under Section 19 of the Act and the same was published in the Karnataka Gazette on 31-8-1978. It is claimed that the above acquisition was vitiated by apparent illegality and procedural impropriety. It is complained by the GEF that in April 1982 some officials of the BDA attempted to interfere with its possession of lands in Sy. Nos. 20 and 21 of Chikkamaranahalli Village. Further, the BDA also obtained an order of temporary injunction against the GEF not to put up further constructions in the above two survey numbers in a suit filed by them in O.S. No. 1213 of 1982 on the file of the City Civil Court, Bangalore. In the circumstance, the GEF filed Writ Petition No. 16464 of 1982 in this Court for quashing preliminary notification dated 3-1-1977 and final notification dated 2-8-1978. In the said writ petition, this Court, after hearing all the parties, passed an interim order on 29-4-1982 restraining the State Government and the BDA from dispossessing the GEF or demolishing structures in Sy. Nos. 6/1, 6/2, 7 to 13/1, 13/2, 20, 21/1, 21/2 and 44 of Chikkamaranahalli Village and Sy. Nos. 7, 8, 9, 10 and 11 of Mathikere Village and Sy. Nos. 29/1, 29/2 and 27 of Devasandra Village. Further, this Court also stayed the temporary injunction granted by the City Civil Court, Bangalore, in O.S. No. 1.213 of 1982. It is claimed by the GEF that after that event, the GEF has continued to be in possession and enjoyment of all the subject lands in general and land in Sy. Nos. 20 and 21 of Chikkamaranahalli Village in particular without any interference or disturbance by the State Government or by the BDA or anyone else-.

7. It is stated by the GEF that when the matter stood thus, it learnt that one Sri Shivanna had filed Writ Petition No. 29726 of 1981 and one Smt. Sunandamma had filed Writ Petition No. 29355 of 1981, they being the purchasers of certain lands covered by the notifications, against the State Government and the BDA challenging the acquisition proceedings under the preliminary notification dated 3-

1-1977 and final notification dated 2-8-1978 and those writ petitions were allowed by this Court by a common order dated 27-7-1984 quashing the preliminary and final notifications in their entirety. The GEF also learnt that against the said order of this Court, none of the respondents therein preferred any appeal and the order made by this Court has become final. Since the preliminary and final notifications were quashed in their entirety in the above writ petitions, the State Government and the BDA did not make any attempt to take possession of the subject lands owned by the GEF. When the matter stood thus, it is claimed that the State Government issued a fresh final Notification No. HUD 578 MNX 94, dated 14th December, 1995 under Section 19 of the Act under which all the lands belonging to the GEF are deleted and in view of the above notification, the GEF was under the bona fide impression that the land acquisition proceedings initiated under the preliminary notification dated 3-1-1977 and final notification dated 2-8-1978 has lapsed forever. Nevertheless, according to the GEF, in order to ward-off the eclipse caused to its title in respect of the subject lands by the proposed acquisition, it approached the State Government to issue a notification under Section 48 of the [Land Acquisition Act, 1894](#) (for short, 'the LA Act') denotifying the subject lands.

8. When the matter stood thus, the Government, at the request of the GEF passed an order dated 14-5-1991 on its file No. HUD 93 CE 189 exempting the subject lands from the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'ULCR Act'), and permitted the GEF to utilise the subject lands for putting up construction of medical college/hospital etc. and the same was communicated to the BDA. It is stated by the GEF that since the preliminary notification and final notifications were quashed in their entirety in Writ Petition Nos. 29726 and 29355 of 1981 filed by Sri Shivanna and Smt. Sunandamma respectively, the GEF bona fide believed that it was superfluous to keep Writ Petition No. 16464 of 1982 pending and, accordingly, it filed a memo dated 3-1-1987 in this Court praying for withdrawal of the writ petition with liberty to approach this Court, if necessary, at a later stage and this Court, by its order dated 22-1-1987 permitted the GEF to withdraw the writ petition and dismissed the writ petition as withdrawn. When the matter stood thus, the BDA in the year 1988 filed C.P. Nos. 144 and 144-A of 1998 under Order 47, Rule 1 of the CPC seeking review of the order dated 27-7-1984 passed by this

Court in Writ Petition Nos. 29726 and 29355 of 1981 preferring by Shivanna and Sunandamma. The GEF was not made a party-respondent to the said C.Ps, though the GEF had also challenged the very notifications in Writ Petition No. 16464 of 1982. It is stated that the GEF had no knowledge of the above review petition. This Court allowed the C.Ps. and quashed the final notification only insofar as the petitioners in W.P. Nos. 29726 and 29355 of 1981 were concerned.

9. In the year 1991, it is stated by the GEF that two Engineers of the BDA visited the land in Sy. Nos. 20 and 21 of Chikkamaranahalli Village on 31-1-1991 to measure the land. The GEF objected to the same and prevented them from trespassing into the lands. At that time, those officials claimed that a portion of the land in Sy. Nos. 20 and 21 of Chikkamaranahalli Village was allotted by the BDA in favour of one Smt. Hemalatha Ramesh vide allotment order dated 28-1-1991 for the purpose of running a petrol bunk. The GEF apprehending that the BDA and Smt. Hemalatha Ramesh may trespass into Sy. No. 20 of Chikkamaranahalli Village, filed Writ Petition No. 4691 of 1991 seeking quashing of the order dated 28-1-1991 allotting a portion of the land in Sy. No. 20 of Chikkamaranahalli Village in favour of the said Smt. Hemalatha Ramesh and for a declaration that the BDA and Smt. Hemalatha Ramesh have no subsisting rights over the subject land. It is stated that this Court after hearing the parties, by its order dated 19-2-1991 passed an interim order staying dispossession of the GEF from the subject lands including Sy. No. 20 of Chikkamaranahalli Village. It is claimed by the GEF that after issuance of the above interim order, neither the BDA nor the allottee interfered with the possession and enjoyment of Sy. No. 20 or any other land by the GEF. It was also claimed that the allotment made in favour of Smt. Hemalatha Ramesh was subsequently cancelled by the BDA. It is further claimed by the GEF that during the pendency of Writ Petition No. 4691 of 1991 there were several meetings between the GEF on the one hand and State Government and BDA on the other and in those meetings the GEF requested the State Government and the BDA to denotify the subject lands from acquisition by issuing a notification under Section 48 of the LA Act. The BDA finally agreed to the request of the GEF and had instructed the GEF by endorsement No. BDA/LA9/176/96-97, dated 17-6-1998 to withdraw Writ Petition No. 4691 of 1991 and any other proceedings instituted by it pending before the Court. The GEF bona fide believing that the

State Government would issue withdrawal notification under Section 48 of the LA Act in respect of the subject lands, filed a memo before this Court on 28-6-1998 praying for permission of the Court to withdraw Writ Petition No. 4691 of 1991 with liberty to approach this Court for appropriate reliefs, if necessary, in future. On the said memo, this Court by its order dated 29-6-1998 dismissed the writ petition as withdrawn, reserving liberty to the GEF to approach this Court again, if necessary. Thereafterwards, the State Government issued Notification No. HUD 893 MNX 95, dated 24th July, 1999 under Section 48 of the LA Act withdrawing from acquisition of Sy. Nos, 8, 11 and 44 of Chikkamaranahalli Village and Sy. Nos. 7, 8, 9, 10 and 11 of Mathikere Village measuring in all 38 acres 28 guntas as against 76 acres 30 guntas. It is alleged that the BDA without withdrawing acquisition proceedings in its entirety as promised, has withheld withdrawal of acquisition proceedings to an extent of 35 acres 16 guntas in various survey numbers described in the schedule and has been coercing the GEF by way of making allotment in a part of Sy. No. 20 of Chikkamaranahalli Village in favour of BMTCL. It is stated that the GEF fell into a trap of false assurance given by the BDA directing it to withdraw Writ Petition No. 4691 of 1991 as a condition precedent to issue withdrawal notification under Section 48 of the LA Act.

10. It is submitted by the GEF that under the Establishment of Medical College Regulations, 1999 the minimum land to be held by an institution for medical college is 25 acres with infrastructural facilities for not less than three hundred beds and should be capable of developing into a teaching institution in the campus of the medical college. The GEF has already constructed a teaching hospital with 1000 bed strength. Further, it is stated that the Engineering College with intake of 1,140 students in terms of the norms prescribed by the AICTE requires about 40 acres of land. In addition, the GEF is running large number of schools and colleges both undergraduate and degree in various branches including law. For this purpose, it has secured/retained about 70 acres of land which forms the campus, of the GEF. Even the land in Sy. Nos. 20 and 21 of Chikkamaranahalli Village measuring 4 acres 4 guntas would form part of the said 70 acres of land enclosed by a high-rise compact and concrete compound wall. It is further claimed by the GEF that though several attempts were made by the State Government and the BDA to acquire the subject lands, at no point of time, physical possession of

the subject lands were taken over by the State Government or the BDA and the possession of the subject lands has been all through with the GEF. According to the GEF, this position is very much reflected not only by the notification issued by the State Government under Section 48 of the LA Act withdrawing the acquisition proceedings, but also by the letter of the BDA dated 17th September, 1992 addressed to the State Government in which it is stated that the entire subject land has been in possession of the GEF and the same has been utilised for the purpose of the GEF and huge buildings have come up.

11. It is alleged that on 15-10-2003 some officials of the BMTC came to the land in Sy. No. 20 of Chikkamaranahalli and apprised the GEF that a part of the land in Sy. No. 20 admeasuring 3276 square meters has been leased by the BDA in their favour for a period of 30 years for the purpose of construction of a bus stand vide, allotment order dated 13-3-2003.

12. In the above circumstance, the GEF filed the present writ petitions praying for the following reliefs:

'(a) Issue a writ of mandamus quashing the allotment order dated 13-3-2003 vide No. BDA/DS-1/CA/Sy. No. 20/RMV-II/III/2003-04 and consequent possession certificate in No. BDA/DS-I/CA/Sy. No. 20/RMV-II/III/2003-04, dated 20-9-2003 issued by the first respondent in favour of the second respondent;

(b) Declare that the subject lands have not vested in respondents 1 and 2 and that the respondents have no subsisting rights over the lands in Sy. Nos. 6/1, 6/2, 7, 9, 10, 12, 13, 20 and 21 of Chikkamaranahalli Village and Sy. Nos. 27, 29/1 and 29/2 of Devasandra Village, Yelahanka Hobli, Bangalore North Taluk covered by the preliminary Notification No. A3/PR.511/SLAO/76-77, dated 3-1-1977 (Annexure-D) and the final Notification No. HUD 39 MNJ 78, dated 2nd August, 1978 (Annexure-E);

(c) Restrain the respondents from interfering with the petitioners' possession and enjoyment of the said lands covered by the Notifications No.' AE-PR. 511/SLAO/76-77, dated 3-1-1977 and No. HUD 39 MNJ 78, dated 2-8-1978 (Annexure-D and E respectively) and described in the schedule herein;

(d) Grant costs of these proceedings; and

(e) Grant such other or further reliefs as this Hon'ble Court deems fit.

INTERIM PRAYER

It is prayed that pending disposal of this writ petition, this Hon'ble Court may be pleased to grant an order restraining the respondents from interfering with the petitioners' peaceful possession and enjoyment of Survey Nos. 6/1, 6/2, 7, 9, 10, 12, 13/1, 13/2, 16, 20 and 21 of Chikkamaranahalli Village and Sy. Nos. 27, 29/1 and 29/2 of Devasandra Village, Bangalore North Taluk, in the interest of justice'.

At the time of hearing, we were told that during the pendency of the writ petitions, there was an interim order in favour of the GEF to protect its possession of the subject lands.

13. The learned Single Judge having examined the earlier attempts made to acquire the subject lands by the State Government and the BDA and having not found any evidence to show that in pursuance of the acquisition proceedings, physical possession of the subject lands were taken over by the State Government and the same was handed over to the BDA and having noticed that GEF has utilised the subject lands for building educational institutions and Hospitals, Laboratories, Libraries etc., after obtaining necessary permission from the concerned statutory and governmental authorities, has opined that the GEF is entitled to the reliefs claimed by it and, accordingly, the learned Judge allowed the writ petitions and granted the reliefs as already referred to above.

14. We have heard Sri Deshraj, learned Government Advocate for the State of Karnataka, Sri Udaya Holla, Senior Counsel for Sri R.V. Jayaprakash for BMTC, Sri U. Abdul Khader, learned Standing Counsel for BDA and Sri C.S. Vaidyanathan, Senior Counsel assisted by Sri K. Shashikiran Shetty, Advocate for GEF.

15. On behalf of the appellants Sri Udaya Holla, Senior Counsel, lead the arguments. It was contended on behalf of the appellants that since the GEF had sought the reliefs of declaration and injunction apart from quashing the impugned

notifications and the dispute brought before the Court bristles with disputed facts, the learned Single Judge ought to have dismissed the writ petitions as not maintainable and the learned Judge ought not to have undertaken the adjudication of disputed facts. It was further contended that the finding recorded by the learned Single Judge that the actual physical possession of the subject lands was not taken over by the State Government and the BDA is factually incorrect and, on the other hand, the mahazar dated 31-8-1981 would clearly show that the physical possession of the subject lands was taken over on 31-8-1981 itself in the presence of the panchas. It was also contended that the notification issued under Section 16(2) of the LA Act would clearly and conclusively establish the fact that the possession of the subject lands has been duly taken. It was also contended that the opinion of the learned Single Judge that the order passed in C.P. Nos. 144 and 144-A of 1988 has not disturbed the declarations made in the body of the order declaring that the entire acquisition proceedings were wholly without jurisdiction, is untenable. It was further contended that the learned Single Judge has failed to notice that the GEF had earlier filed Writ Petition No. 16464 of 1982 challenging the notifications of acquisition and since that writ petition was withdrawn on 22-1-1987 without reserving liberty to file fresh writ petition, the present writ petitions ought to have been dismissed as not maintainable in law. It was also contended that the writ petitions ought to have been dismissed by the learned Single Judge on the ground of delay and laches. Apart from the above contentions, in general, on behalf of the appellants, Sri Udaya Holla would contend that the land allotted to BMTC for establishing bus-stand is absolutely needed for public purpose and if the bus-stand is established that facility would not only sub-serve the interest of the public at large in general but also the interest of the patients who visit the hospitals for treatment in particular and, therefore, no exception could be taken to the same. Sri Deshraj, learned Government Advocate and Sri U. Abdul Khader, learned Standing Counsel for the BDA would adopt the arguments of Sri Udaya Holla and supplement the same.

16. Sri C.S. Vaidyanathan, learned Senior Counsel appearing for the GEF, at the threshold, seriously questioned the bona fide of the State Government and the BDA to acquire the subject lands for any public purpose. Sri Vaidyanathan would highlight the fact that the entire subject land has been put to use by the GEF not

for any other purpose except for the purpose of establishing educational institutions to impart education in various fields of human knowledge and it is well-settled that imparting education is a constitutional obligation and when a Trust like GEF has come forward to discharge this function, it is fair and just that the State should come to its aid in providing the land by acquisition. But, unfortunately, in this case, instead of the State acquiring the land for the benefit of GEF to establish its educational institutions, it has been consistently trying to deny its own land to the GEF for its purposes. Sri Vaidyanathan would draw our attention to what is stated in para 19 of the writ petition which has not been seriously disputed by the respondents-appellants herein. In para 19 of the writ petition it is stated that the State of Karnataka, in pursuance of its constitutional obligation, has acquired lands in and around Bangalore and allotted the same in favour of several Medical and Engineering colleges. It is pointed out that the State Government has acquired private lands to an extent of 150 acres and gifted the same to St. John's Medical College free of cost. Sri Vaidyanathan, therefore, would maintain that the whole idea of acquiring the subject lands which are absolutely needed by the GEF itself for its own purposes should be condemned as unconstitutional, arbitrary, unreasonable and violative of the doctrine of fairness in action. Sri Vaidyanathan while supporting the order of the learned Single Judge would adopt the same reasons stated by the learned Single Judge to record a finding that the State Government and the BDA did not take over the possession of the subject lands in pursuance of the acquisition proceedings initiated by issuing preliminary notification dated 3-1-1977 and final notification dated 2-8-1978 till the date of filing the writ petition, would highlight the fact that the letter of the BDA dated 12th September, 2001 is apparently with regard to the lands not covered by the withdrawal notification issued under Section 48 of the LA Act and the exemption notification issued under Section 20(l)(a) of the ULCR Act. Sri Vaidyanathan would maintain that the materials and documents laid before the Court would show that the State Government and the BDA have not taken possession of any of the subject lands nor made any attempt to take over the subject lands at any time and, therefore, the question of vesting title in the State Government or the BDA does not arise and as such, the allotment made by the BDA in favour of BMTC is wholly unauthorised and beyond the scope of the Act, It was also contended by Sri

Vaidyanathan that if the land allotted in favour of the BMTC, which is within the compound of the medical college and hospital, is utilised for establishing the bus-stand, it would pollute the air endangering the health of the patients who stay as in-patients or others who visit the hospitals. Meeting the arguments of the appellants based on delay and laches, Sri Vaidyanathan would contend that the cause of action to file the present writ petitions arose only in the year 2003 when the BDA allotted a part of the land in Sy. No. 20 of Chikkamaranahalli Village in favour of BMTC and writ petitions were filed on 25-1-2004 without any loss of time. Sri Vaidyanathan would submit that now a mahazar is cited as a proof to show that the possession of the subject land was taken over by the State Government, but, there is no reference to the mahazar in the statement of objections and even the records were not produced before the learned Single Judge by the State Government and a cyclostyled copy now found in the file of the BDA could not be relied upon to conclude that the possession of the land was taken over by the State Government by drawing a mahazar in presence of panchas. Sri Vaidyanathan placing reliance on the judgment of the Supreme Court in the case of Balwant Narayan Bhagde v. M.D. Bhagwat and Ors., : AIR 1975 SC1767 would submit that the State 'Government should take over actual physical possession of the subject lands and not notional possession of the same by drawing a mahazar. In the instant case, he would point out that even according to the Government and the BDA, physical possession was with the GEF even after the date of the so-called mahazar and, therefore, the mahazar is of no help to show that the physical possession of the subject lands was taken over on 31-8-1981. It was contended on behalf of the GEF that the benefit of the order made by this Court in C.P. Nos. 144 and 144-A of 1988 would also be available to the GEF inasmuch as the GEF had also challenged the same notifications and since this Court in the above C.Ps. has quashed the acquisition proceedings in respect of those who had challenged the same, the GEF also should be deemed to have been saved by the said order passed in the above C.Ps. It was submitted that only such interpretation would be reasonable interpretation in the context of the case that the GEF bona fide believing that the order made by this Court on 27-7-1984 in Writ Petition Nos. 29726 and 29355 of 1981 preferred by Shivanna and Sunandamma quashing the preliminary notification and final notification in their entirety and since that order

became final, withdrew Writ Petition No. 16464 of 1982 wherein the same notifications were assailed. It was pointed out by learned Senior Counsel that the BDA has acted in a highly mala fide way in directing the GEF to withdraw Writ Petition No. 4691 of 1991 by assuring that it would issue notification of withdrawal of acquisition proceedings under Section 48 of the LA Act in respect of all the subject lands as per its letter dated 17-6-1998, but it issued the notification under Section 48 of the Act only with regard to the part of the subject lands. Lastly, it was contended that Sy. No. 20 of Chikkamaranahalli Village is presently used as a playground for the students and GEF has planned to put up staff quarters in the said land for accommodating the Doctors, Nurses and Attenders working in the hospital in order to discharge its statutory obligation under Regulation 3, Part II(8) of the Establishment of Medical College Regulations, 1999 framed under the Indian Medical Council Act, 1956.

17. Having heard the learned Counsels for the parties, the only question that arises for our consideration and decision is: Whether the appellants have made out any ground on the basis of which we can interfere with the discretionary order made by the learned Single Judge

18. The fact that the subject lands including Survey Nos. 20 and 21 of Chikkamaranahalli were sought to be acquired by issuing preliminary Notification No. A3/PETITIONER-5111/SLAO/76-77, dated 3-1-1977 marked as Annexure-D issued under Section 17 and final Notification No. HUD 39 MNJ 78, dated 2-8-1978 marked as Annexure-E issued under Section 19 of the Act, is not in dispute. But, there is a serious dispute between the parties with regard to the taking over of the subject lands by the Government and the BDA and vesting the same in the Government and the BDA in terms of Section 16(2) of the LA Act and Section 36(3) of the Act. As per GEF, the Government has not taken over the possession of the subject lands at any point of time after issuance of the final notification dated 2-8-1978 (Annexure-E) and that the physical possession of the subject lands always remained with the GEF. Per contra, it is the case of the State Government and the BDA that the Government took over the possession of the subject lands as far back as on 31-8-1981 itself by drawing a mahazar in the presence of panchas and thereafterwards, it issued notification contemplated under Sub-

section (2) of Section 16 of the LA Act on 1-4-1982 and with the issuance of that notification, the subject lands stood vested in the State Government and subsequently, the subject lands were handed over to the BDA as envisaged under Section 36(3) of the Act thereby vesting that title of the subject lands in the BDA. A copy of the notification issued under Section 16(2) of the LA Act is produced at page 137 of the material papers appended to Writ Appeal Nos. 2627 and 2740 to 2755 of 2004. Learned Single Judge having considered the entire material evidence on record threadbare, has recorded a finding, that there is absolutely no evidence to show that after final notification (Annexure-E), dated 2-8-1978, the Government took over possession of the subject lands at any point of time, and on the other hand, evidence on record would show that the physical possession of the subject lands including the lands comprised in Survey Nos. 20 and 21 of the Chikkamaranahalli always remained with GEF and the GEF has constructed huge buildings in the entire extend of land to house its professional colleges like medical college, engineering college, law college, business management college and other colleges for imparting education in various other disciplines, teaching and super-speciality hospitals, laboratories, workshops, auditoriums, playgrounds etc. In the premise of the above finding, the learned Judge has held that the lands in Survey Nos. 6/1, 6/2, 7, 9, 10, 12, 13, 20 and 21 of Chikkamaranahalli Village; Survey Nos. 27, 29/1 and 29/2 of Devasandra Village, Yelahanka Hobli, Bangalore North Taluk, covered by a preliminary Notification No. A3/PR.511/SLAO/76-77, dated 3-1,1977 (Annexure-D) have not been vested with the State Government and the BDA. Furthermore, the learned Single Judge has held that the land acquisition proceedings initiated under the above preliminary and final notifications, insofar as the lands referred to above, are lapsed. In the light of the above declarations, the learned Single Judge has held that the State Government, BDA and BMTC have no right whatsoever to disturb the possession of the GEF in respect of the above lands.

19. The success of these writ appeals would depend upon the answer to the question whether the State Government having initiated land acquisition proceedings under the LA Act and after issuance of final notification on 2-8-1978 and passing of the award did take over the physical possession of the subject lands at any point of time. If it is found, as claimed by the State Government and

the BDA, that the possession of the subject lands was taken over by the Government on 31-8-1981 after drawing a mahazar in the presence of panchas and thereafter, it issued notification contemplated under Section 16(2) of the Act on 1-4-1982, it is trite, the subject lands would stand vested in the State Government. On the other hand, if it is found that the above claim of the State Government and the BDA is not supported by any legal evidence, but, on the other hand, if it is found that the physical possession of the subject lands always remained with GEF, the impugned action of the State Government and the BDA in allotting a part of the land in Survey Nos. 20 and 21 of the Chikkamaranahalli in favour of BMTC would be totally illegal and without authority of law and no exception could be taken to the finding of the learned Single Judge that the acquisition proceedings lapsed.

20. We do not find any merit in the contention of the State Government and the BDA that the physical possession of the subject lands was taken over by the State Government on 31-8-1981 by drawing a mahazar in the presence of panchas. The above claim is based on a xerox copy of the so-called mahazar drawn on 31-8-1981 which is available in the file of the BDA. This document could not be trusted as a genuine copy of the original to sustain the above claim of the State Government and the BDA. It needs to be noticed at this stage itself that there is no reference to the above mahazar in the statements of objections filed by the BDA and BMTC. The State Government did not file statement of objections. Furthermore, before the learned Single Judge, the State Government did not produce even the records nor was it the contention of the learned Counsel appearing for the State Government before the learned Single Judge that the physical possession of the subject lands was taken over on 31-8-1981. In the statement of objections of BDA, the only thing said is that the possession of subject lands was taken on different dates during 1981 and 1982 and a notification under Section 16(2) of the LA Act was published in the Karnataka Gazette, dated 29-7-1982. In the statement of objections filed by BMTC, in para 10, it was claimed the possession of the subject lands including Sy, No. 20 of Chikkamaranahalli was taken over by the Government somewhere in the year 1982 itself. Therefore, a cyclostyle copy of the so-called mahazar dated 31-8-1981 now found only in the file of the BDA could not be relied upon to conclude that the possession of the land

was taken over by the State Government by drawing a mahazar in the presence of the panchas on 31-8-1981. Alternatively, it needs to be noticed that even assuming that such a mahazar was drawn on 31-8-1981 without notice to and in the absence of the representatives of the GEF, only on the basis of such mahazar and without anything further it could not be concluded that the physical possession of the subject lands was taken over by the State Government on 31-8-1981 and the same vested in the State Government with the issuance of notification under Section 16(2) of the LA Act on 1-4-1982. In this regard, it needs to be noticed that a three-Judges Bench of the Supreme Court in Balwant Narayan Bhagde's case, has held that State must take over actual physical possession of the acquired land and not notional possession of such land by drawing a mahazar. The Supreme Court in the above judgment observed in paragraph 1 thus:

'We think it is enough to state 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. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case'.

We need not dilate on this aspect further, because, the evidence on record would satisfactorily establish that even according to the State Government and the BDA, the physical possession of the subject lands always remained with the GEF even after 31-8-1981 and 1-4-1982. We will presently refer to and consider the pieces of evidence to support the above conclusion. We, however, before adverting to those pieces of evidence, wish to notice a fact which is germane to the decision-making.

Under the Act, the State Government is the authority to acquire the land. Vesting of an acquired land in the State Government in terms of Section 16 of the LA Act does not automatically vest such land in the BDA, if such land is acquired by the State Government under the provisions of the Act. Under the scheme of the Act, after passing of the award, the State Government is required to take possession and thereafter it may transfer the acquired land to the BDA. In that regard, the provisions of Sub-section (3) of Section 36 need to be noticed. It reads as follows.-

'36. Provisions applicable to the acquisition of land otherwise than by agreement.-

(1) XXX

(2) x x x

(3) After the land vests in the Government under Section 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 on account of the acquisition, transfer the land to the authority, and the land shall thereupon vest in the authority'.

In terms of Sub-section (3) of Section 36 of the Act, the Deputy Commissioner is mandated to transfer the acquired land to the BDA only upon payment of the cost of the acquisition, and upon the BDA agreeing to pay any further costs which may be incurred by the State Government on account of the acquisition and only on such transfer in favour of the BDA the acquired land would vest in the BDA. In the instant case, there is absolutely no pleading nor any proof to show that the Deputy Commissioner transferred the subject lands in favour of the BDA on fulfillment of the conditions prescribed in Sub-section (3) of Section 36 of the Act. There is absolutely no supporting materials to sustain the claim of the State Government and the BDA that it took over the physical possession of the subject lands as far back as on 31-8-1981 by drawing a mahazar and issuing notification under Section 16(2) of the LA Act on 1-4-1982.

21. The above claim of the State Government and the BDA even otherwise stands falsified by the following circumstances:

(I) If the version of the State Government and the BDA that it took over physical possession of the subject lands as far back as on 31-8-1981 itself is true, there was absolutely no need for the State Government to entertain the application made by the GEF under Section 20(l)(a) of the ULCR Act and to pass the order on 14-5-1991 on its file No. HUD 93 CEI 89 granting exemption with regard to 61 acres 26 1/2 guntas by virtue of power conferred upon it under Section 20(l)(a) of the ULCR Act. This order was issued by the State Government after effective consultation with and concurrence of the Special Deputy Commissioner (ULC), Bangalore, the Town Planning Member, Bangalore Development Authority, the Commissioner, Karnataka Housing Board and taking into account the judgment of this Court dated 15-2-1991 passed in Writ Appeal Nos. 2071 to 2774 of 1989 and the batch whereby and whereunder this Court had upheld the policy of the State Government to allow Group Housing Schemes by holders of excess land themselves or allowing such holders of the land to sell to any promoters/developers. The operative portion of the G.O. No. HUD 93 CEI 89, Bangalore, dated 14-5-1991 reads as follows.- 'G.O. No. HUD 93 CEI 89, Bangalore, dated 14-5-1991

In exercise of powers conferred under Section 20(l)(a) of the Urban Land (Ceiling and 'Regulation) Act, 1976 Government of Karnataka hereby accord exemption along with permission to transfer the lands to the extent of 61 acres 26 1/2 guntas held by Sri M.S. Ramaiah and his 10 family members and also two others Sri N. Ramamurthy and Sri Midigeshi Govindappa-Verikatappa, Bangalore each of the in different survey numbers of Chikkamaranahalli, Devasandra and Mathikere Village, Bangalore North Taluk as indicated in the Schedule I and also exemption along with permission for construction of Group Housing Scheme in an area to the extent of 14 acres 29 1/2 guntas in Sy. Nos. 33 to 38 of Poornapura and Sy. Nos. 67 to 70 of Mathikere, Bangalore North Taluk held by Sri M.S. Ramaiah and his 10 family members as indicated in the Schedule II annexed to this order for providing residential accommodation to the employees belonging to weaker section and other industrial workers subject to the following conditions:

I. Conditions applicable to the lands to be transferred in favour of Gokul Education. Foundation:

(i) the entire extent of 61 acres 26 1/2 guntas of land should be transferred in favour of Gokul Education Foundation within a period of 6 months;

(ii) the Gokul Education Foundation should utilise the entire vacant land within a period of 3 years from the date of this order for construction of various educational buildings of the Foundation including the Hospital attached to the Medical college after getting necessary plans approved by the Bangalore Development Authority by paying necessary developmental charges;

(iii) the land in question should not be transferred by way of sale, gift, mortgage or otherwise without prior permission of the Government by the Gokul Education Foundation after taking possession of the lands. However, there is no objection to mortgage the lands in favour of financial institutions without giving possession of the same;

(iv) the concerned Competent Authority, Urban Land Ceiling, Bangalore shall have the powers to supervise the implementation of the projects of the Gokul Education Foundation;

(v) if any of the above conditions are violated by the transferee i.e., Gokul Education Foundation this order shall automatically be cancelled.

II. Conditions applicable to the lands for formation of Group Housing Scheme:

(i) the lands to the extent of 14 acres 29 1/2 guntas held by Sri M.S. Ramaiah and his family members should be utilised only for construction of Group Housing Scheme for providing residential accommodation to the employees belonging to weaker section and other industrial workers;

(ii) the housing project should be got approved by the Bangalore Development Authority by paying necessary developmental charges and the above project should be completed within a period of 3 years from the date of this order and this scheme should be in conformity with the Government of India Guideline No. 1/3/80-UCU, dated 11-8-1980;

(iii) the house/flats so constructed should be sold to those who do not own any sites or residential buildings in Bangalore Agglomeration area;

(iv) the concerned Competent Authority or Urban Land Ceiling shall have the powers to supervise the implementation of this project;

(v) if at any time the above mentioned conditions are violated this order shall automatically be cancelled'.

(II) If the subject lands were vested in the State Government and the BDA in the year 1982 itself as claimed by them, granting exemption under Section 20(l)(a) of the ULCR Act in the year 1991 at the behest of GEF could not have arisen. The very fact that the State Government entertained the application of the GEF and passed exemption order under Section 20(l)(a) of the ULCR Act 011 14-5-1991 would falsify the claim of the State Government and the BDA and on the other hand, it would support the case of the GEF that the physical possession of the subject lands always remained with the GEF. At this stage itself, it is also relevant to notice the fact that the Government, in the exemption order, has noticed that the acquisition proceedings in respect of the lands involved in the proposal have been quashed. This statement is made in the order obviously keeping in mind the order made by this Court on 27-7-1984 in W.P. No. 29726 of 1981 and W.P. No. 29355 of 1981 filed by Sri Shivanna and Smt. Sunandamma respectively quashing preliminary notification Annexure-D, dated 3-1-1977 and final notification Annexure-E, dated 2-8-1978. The State Government having made such a statement in its own order now unrighteously has taken a stand that the benefit of that order is not available to the GEF. The above stand taken by the State Government and the BDA, if we may say so, smacks off irrationality and arbitrariness. 'Likes should be treated alike' is a constitutional creed flowing from Article 14 postulates. In the matter of assailing the validity of the land acquisition proceedings Sri Shivanna and Smt. Sunandamma on the one hand and the GEF on the other are similarly circumstanced, and since this Court had quashed the preliminary and final notifications in their entirety in the writ petitions filed by Shivanna and Sunandamma and since that fact was noted by the State Government itself in the exemption order as a basis for granting exemption, the

State Government is not justified in turning round and contending that it had taken over the physical possession of the subject lands on 31-8-1981 itself;

(III) W.P. No. 16464 of 1982 was pending on the file of this Court from 28-4-1982 to 22-1-1987 and in the said writ petition this Court had stayed dispossession of the GEF from the subject lands. The preliminary notification Annexure-D and final notification Annexure-E were quashed in their entirety by this Court in W.P. Nos. 29726 and 29355 of 1981 by a common order dated 27-7-1984 and the acquisition proceedings were non est till this Court passed order in C.P Nos. 144 and 144-A of 1998 preferred by the BDA on 30-3-1992. Further, in W.P. No. 4691 of 1991 referred to above filed by the GEF, this Court had stayed dispossession of the GEF. In view of these successive proceedings and the interim orders made therein, the State Government and the BDA have not and could not have taken possession of the subject lands and, therefore, the subject lands never vested in the State Government. Precisely, for this reason, the State Government passed the exemption order under Section 20(l)(a) of the ULCR Act. Further, the BDA by letter dated 17th September, 1992 addressed to the State Government, copy of which is produced and marked as Annexure-Q has observed that on inspection, it found that the entire subject lands have been utilised for the purpose of the GEF and that huge buildings have come up. This circumstance also would falsify the claim of the State Government and the BDA that it took over the physical possession of the subject lands on 31-8-1981;

(IV) It is the case of the GEF that on 31-1-1991, two engineers of the BDA visited the lands in Survey Nos. 20 and 21 of the Chikkamaranahalli Village and attempted to prepare some plan and the GEF objected to the same. The representatives of the GEF were told by the State authorities that a portion of the land in the above survey numbers was allotted by the BDA in favour of one Smt. Hemalatha Ramesh by order dated 28-1-1991 for the purpose of running a petrol bunk. In the circumstance, the GEF preferred Writ Petition No. 4691 of 1991 for quashing the allotment order dated 28-1-1991. In the said writ petition, as already pointed out supra, this Court had passed an interim order on 19-2-1991 staying the dispossession of the GEF on the subject lands including the land in Survey No. 20 of Chikkamaranahalli Village. A copy of the said order is produced and marked

as Annexure-L. It is the further case of the GEF that after stay of dispossession passed by this Court on 19-2-1991, the State Government and the BDA did not make any attempt to interfere with the GEF's possession and enjoyment of the land in Survey No. 20 of Chikkamaranahalli Village or any other part of the subject lands and that they have been in actual physical possession and enjoyment of all the subject lands till date. The fact stated by the GEF that subsequently, the allotment made in favour of Smt. Hemalatha Ramesh was cancelled, is not disputed by the State Government and the BDA. It is the further case of the GEF that during the pendency of the Writ Petition No. 4691 of 1991, it made an appeal to the State Government and the BDA to give up their attempt to acquire the subject lands on the ground that the entire subject land is required by the GEF itself for its own purposes and that it has already constructed buildings in the entire subject land and in pursuance of their appeal and application several rounds of discussions took place and ultimately the State Government agreed to issue notification under Section 48 of the LA Act. Having conceded the request of the GEF, the BDA wrote a letter bearing No. BDA/LA9/176/96-97, dated 17-6-1998 asking the GEF to withdraw all writ petitions and other proceedings instituted by it in the Court challenging the land acquisition proceedings and allotment of a parcel of land in Survey No. 20 of Chikkamaranahalli in favour of Smt. Hemalatha Ramesh. In the circumstance, it is the case of the GEF that bona fide believing that the State Government and the BDA would issue notification of withdrawal under Section 48 of the LA Act in respect of all the subject lands, it filed a memo on 28-6-1998 in Writ Petition No. 4691 of 1991 seeking permission of the Court to withdraw the said writ petition with liberty to approach this Court for appropriate reliefs in future, if necessary and on the basis of the said memo, this Court on 29-6-1998 dismissed the writ petition as withdrawn reserving liberty sought by the GEF. When the matter stood thus, quite curiously, if we may say so, totally irrationally and arbitrarily the Government issued Notification No. HUD 893 MNX 95, dated 24th July, 1999 under Section 48 of the LA Act withdrawing from acquisition Survey Nos. 8, 11 and 44 of Chikkamaranahalli Village and Survey Nos. 7, 8, 9, 10 and 11 of Mathikere Village measuring in all 38 acres 28 guntas as against 76 acres 30 guntas which were required to be withdrawn. It is pointed out that subsequent request made by the GEF to pass one more order under Section

48 of the LA Act with regard to the remaining extent of land which was sought to be acquired is pending before the State Government. Be that as it may, the circumstance noticed above in this sub-paragraph would also falsify the claim of the State Government and the BDA that they had taken over physical possession of the subject lands on 31-8-1981.

22. Final notification under Section 19 of the Act was issued as far back as on 2-8-1978. We are hearing these appeals almost in the middle of the year 2005, that is to say, roughly 27 years after the issuance of the final notification under Section 19 of the Act. The materials placed before the Court would satisfactorily establish that the entire extent of 76 acres 30 guntas of land form one concrete compact block enclosed by a high-raised compound wall and admittedly, huge buildings have been built in the entire land to house professional colleges, other educational institutions, hospitals, laboratories, workshops, playgrounds etc. The GEF is one of the earliest Trusts established to carry on educational activities in the State of Karnataka and in the course of time it has emerged as one of the premier Trusts in the country to impart education in various fields/disciplines of human knowledge. It is not the case of the Government nor the BDA that the subject lands are not required for the purpose of the GEF, but on the other hand, their own documents produced before the Court in this case would clearly show that the GEF requires the entire subject lands for its own purposes and that it has already utilised for those purposes. If the lands sought to be acquired are required by the GEF for its own purposes, which purposes are undeniably public purposes and since in the lands buildings have already come upto house medical, engineering and other professional colleges apart from providing infrastructure facilities, question for our consideration is whether the Court would be justified in denying the lands to the GEF thereby creating a chaos in the smooth administration of the educational activities carried on by the GEF and thereby defeating the public purpose and injuring the public interest. It is needless to State that if GEF requires some more lands for its expansion of educational activities, the State Government would be justified in acquiring the private lands under the LA Act or any other enabling statute for the benefit of the GEF. Therefore, when the subject lands are absolutely necessary for the purposes of GEF itself, it will be totally arbitrary and irrational for the State Government to invoke eminent domain power and acquire

the lands belonging to GEF thereby forcing the GEF to approach the State Government itself to find lands for their purposes or to purchase the required lands in the market. It is stated by Sri Vaidyanathan that free private lands in and around the subject lands are not at all available for purchase.

23. In paragraph 19 of the writ petition filed by the GEF it is stated that the State Government in discharge of its constitutional obligation acquired lands in and around Bangalore and allotted the same in favour of several Medical and Engineering colleges. As an example, it is stated that the State Government acquired an extent of 150 acres of private lands and gifted the same in favour of St. John's Medical College free of cost. It is pointed out that the educational activities carried on by the GEF compared to those of St. John's College are far wider and comprehensive. The land available to it is only half the extent of land acquired by the State Government for the purpose of St. John's Medical College. The correctness of the above assertions made by the GEF in the writ petition is not seriously contested by the State Government and the BDA. Be that as it may, if the Court were to be satisfied with the claim of the State Government and the BDA that the physical possession of the subject lands was taken over by the State Government on 31-8-1981 itself, and the acquired lands were put to use for which they were acquired, perhaps, the Court would not be justified in sustaining the impugned judgment of the learned Single Judge. But, the hard established fact is that at no point of time the physical possession of the subject land was taken over by the State Government after it issued final notification Annexure-E on 2-8-1978. On the other hand, it is found that the possession always remained with the GEF and that the subject lands have been fully utilised by the GEF itself for its own purposes. In that view of the matter, the learned Single Judge in our considered opinion is absolutely right and justified in granting reliefs to the GEF.

24. Before we conclude it is fair though not necessary to notice certain decisions cited, by Sri Udaya Holla, learned Senior Counsel. Sri Udaya Holla cited before us a judgment of the Division Bench of this Court in V.T. Krishnamoorthy v. State of Karnataka, : ILR 1991 KAR1183 and judgment of the Supreme Court in Reliance Petroleum Limited v. Zaver Chand Popatlal Sumaria, : (1996)4SCC579 to contend that since in the award enquiry late Sri M.S. Ramaiah, one of the owners of the

subject lands, claimed compensation at the rate of Rs. 100 per sq. yard, the owners are not entitled to assail the land acquisition proceedings. We have carefully perused the statement of late Sri M.S. Ramaiah recorded by the Land Acquisition Officer. Late Sri M.S. Ramaiah while stating that the subject lands are required for their own purposes, sought that in the event of acquisition, compensation at the rate of Rs. 100 per sq. yard should be paid. From that statement, it could not be said that late Sri M.S. Ramaiah consented for acquisition of the subject lands as proposed by the State Government for the purpose of the BDA. Therefore, the above case-law is of no help to support the contention of Sri Udaya Holla. Sri Udaya Holla also cited before us the judgments of the Supreme Court in Tamil Nadu Housing Board v. A. Viswam, AIR 1996 SC 3377 : : [1996]2SCR402 ; State of Tamil Nadu v. Mahalakshmi Ammal, : (1996)7SCC269 and Larsen and Toubro Limited v. State of Gujarat, : [1998]2SCR339 and unreported judgment of the Division Bench of this Court dated 14-1-2000, W.A. No. 1330 of 1992 with regard to mode of taking possession and legal consequences that flow from the taking of possession and to contend that since Government issued notification under Section 16(2) of the LA Act on 1-4-1982, the subject lands stood vested in the State Government and therefore, the title held by the owners thereby stood divested. All the judgments of the Supreme Court cited by Sri Udaya Holla are by two-Judges Bench. In view of the three-Judges Bench judgment of the Supreme Court in Balwant Narayan Bhagde's case, the judgments cited by Sri Udaya Holla are of no help to support its claim. Apart from that, as already pointed out supra, there is clear and clinching evidence to show that even after 31-8-1981 and 1-4-1982, the physical possession of the subject lands has always been with the GEF and this position is admitted by the State Government and BDA as noted above.

25. In the result and for the foregoing reasons, we dismiss the writ appeals, however, with no order as to costs.