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**Court : Karnataka**

**Decided On : Nov-19-2004**

**Reported in : ILR2005KAR295**

**Judge : V. Gopala Gowda, J.**

**Acts : [Land Acquisition Act, 1894](#) - Sections 3, 11A and 16(2); Bangalore Development Authority Act, 1976 - Sections 27 and 38; Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rules 2, 3, 5, 6 and 10; City of Bangalore Improvement Act, 1945 - Sections 19; [Constitution of India](#) - Articles 226 and 227; Bangalore Development Authority (Disposal of Corner/Intermediate and Commercial Sites) Rules, 1984 - Rules 2C, 6, 6(3) and 6(6)**

**Appeal No. : Writ Petition No. 3317/2004**

**Appellant : D. Narayanappa**

**Respondent : The State of Karnataka, by Its Secretary, Housing and Urban Development Department and ors.**

**Advocate for Def. : V.Y. Kumar, AGA for R1, ;C.B. Srinivasan, ;K. Krishna, Adv. R2, ;M. Shivaprakash, Adv. for R3 to 5 in I.A. II. 2004, ;L. Govindaraj, Adv. for R6-14 and 17, ;Ashok Patil, Adv. for R15, 16, 18 and R21**

**Advocate for Pet/Ap.** : G.V. Shantharaju, Sr.Adv. for ;Mohan Rao M.S. and ;G.S. Hiremath, Advs.

**Disposition** : Petition allowed

**Judgement** :

ORDER

**V. Gopala Gowda, J.**

1. The applicants in I.A.II are the devotees of the temple situated in the land which is the subject matter of this Writ Petition. They being interested persons in the land in question, and therefore they are necessary and proper parties to these proceedings. The applicants in I.A. XIII are the purchasers of the sites formed in the land in question. Any order passed in this case will be binding on them and therefore they are also necessary and proper parties. Hence, both the I.A.s II and XIII are allowed.

2. This is a classic case of exhibiting the style of functioning of officers of Bangalore Development Authority (hereinafter in short referred to as 'BDA') in a dictatorial manner either without understanding the statutory provisions, law laid down in a catena of decisions, violating rule of law or in utter ignorance of law. They have exercised powers illegally, arbitrarily and discriminately giving a go-bye to all norms, guidelines and principles required to be scrupulously followed for taking possession of the acquired property, formation of layout and dispose of the sites either by way of allotment or sale of the same in accordance with the Rules framed by the State Government in exercise of its statutory power under Section 38 of the BDA Act of 1976 (in short referred to as 'BDA Act'). The arbitrary exercise of power by the officers for demolition of the existing structures upon the property in question, formation of the sites and disposal of the same in the public auction in utter violation of the Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) (Amendment) Rules, 1984 shocks the conscious of this Court.

3. The brief facts of the case leading to the arbitrary action warranting certain observations of this case are as under:

(i) Land bearing Sy. No. 137 measuring 1 acre 15 of Thippasandra Village, K.R. Puram Hobli, Bangalore South Taluk was acquired by the erstwhile City Improvement Trust Board (Present BDA) for formation of HAL II Stage lay-out in exercise of its power under the provisions of Bangalore City Improvement Trust Boards Act of 1945 (in short referred to as 'CITB'). The Preliminary Notification was dated 28.11.1959 and Final Notification was dated 19.8.1964 for acquiring the land in question along with other lands. The name of the Khatedar of the land in question is shown as Doddaiiah, the father of the petitioner, who was not alive at that relevant point of time. An award was passed on 13.05.1969 in respect of the land in question. Since the petitioner and another person by name Nanjundachar filed claim applications, compensation was not paid but it is stated in the Award that matter will be referred to Civil Court for adjudication under Sections 30 and 31(2) of the Land Acquisition Act of 1894. It is claimed by the BDA that possession of the land was taken on 28.12.1976. Notification under Section 16(2) of Land Acquisition Act was published in the Karnataka Gazette dated 16.6.1977, the copy of the same is produced by the B.D.A.

(ii) Despite acquisition of the land in question the undisputed fact is that, the petitioner continued in possession of the land and it appears that he has put - up some structures which had been demolished by the BDA only during the month of August 2003, after a lapse of about 40 years from the date of final notification. During these 40 years, there were several litigations between the petitioner, his son, brother and the devotees of the temple against the BDA. The details of those litigations are as hereunder:

1. O.S. No. 610/1969:- Filed by the petitioner for injunction, dismissed for default in the year 1969.

2. O.S.No. 314/69:- Filed by Hanumanthappa S/o Doddaiiah brother of the petitioner for injunction. Injunction Application was dismissed as per orders dated 6.11.1969.

3. M.A. No. 81/1969:- Appeal against the order of 2nd Munsiff dismissing the application for injunction in O.S. 314/69 filed by the brother of the petitioner being dismissed as per order dated 1.12.1969.

4. O.S. Nos. 3430/1980 (Orgl. No. 1139/78): Originally filed as 1139/1978 later renumbered as O.S. 3430/80 for declaration that the notice seeking possession issued by the BDA against the petitioner is illegal void and barred by limitation with a consequential relief of injunction restraining the BDA from interfering peaceful possession and enjoyment of the property of the petitioner. The petitioner did not prosecute the case properly as such the suit was dismissed for non-prosecution. Miscellaneous case No. 413/1984 for restoration was filed by the petitioner herein. Restored as per orders dated 29.9.1986. On 26.11.1986 status quo was ordered to be maintained by the parties pending disposal of I.A. 5. On 7.1.87, the defendant BDA did not opt to file objection nor prosecuted the case and allowed the case to be pending till 9.4.96, the date when the plaint against the BDA was rejected under Order 7 Rule 11 of the Code.

5. O.S. No. 4848/1994 :- Partition suit filed by one H. Srinivasa Murthy, S/o. Lt. Hanumanthappa ( brother of petitioner) and others on 19.08.1994 for partition and separate possession arraying the BDA as party defendant for knowledge and information. However no relief is claimed against the BDA.

6. O.S. No. 3354/1996 - On 24.5.1996 suit was filed by petitioner against BDA for injunction. Interim order of injunction not to demolish the constructions put up in the suit property pending disposal of the LA. Suit dismissed on 27.11.2000.

7. O.S.No. 16572/2000 - Devotees filed suit on 8.12.2000 in representative capacity for declaration and permanent injunction against BDA.

(iii) When the BDA demolished the structures which were existing upon the property in question during the month of August 2003, the petitioner filed this Writ Petition praying to declare that the acquisition proceedings and all further proceedings are null and void; that the acquisition proceedings have lapsed on account of non-utilization of the land for the purpose for which it was acquired and to direct the respondents not to interfere with the peaceful possession and

enjoyment of the petitioner in respect of the land in question.

(iv) After demolishing the structures, the BDA formed sites and offered them to sell in public auction through various daily news paper publications made in the Bangalore City. The date of public auction of sites formed upon the property in question was fixed on 23.8.2003. During pendency of this petition the petitioner has also filed I.A. XIV under Order 6 Rule 17 read with Article 226 and 227 of the [Constitution of India](#) for amendment of this petition to bring the subsequent events on record and sought additional prayers to quash the paper publication dated 14.8.2003 produced as Annexure-G and to declare the sale of sites made in favour of auction purchasers, who are party respondents pursuant to the proposed public auction held by the BDA, are null and void.

v) The application is opposed by the BDA and other contesting respondents by filing objection statements. In the objections filed on behalf of the BDA it is stated that formation of lay-out could not be completed on the land in question on account of pendency of civil suits referred to supra between the parties. It is further stated that finally on 14.8.2003 re-adjustment of lay out was made and 16 sites were formed and sold the same in public auction. According to the BDA they are all 'Stray Sites' in terms of definition of Rule 2(J) of the Bangalore Development Authority (Allotment of sites) Rules, 1984. The auctioning of the sites formed upon the land in question is defended by the BDA on the basis of Circular dated 6.8.1997 issued by the State Government giving guidelines to it for disposal of stray sites. It is also stated that the petitioner had not remained in possession of the land. It is stated that demolition of the structures existed on the land in question could not be effected by it on account of the civil suit proceedings initiated by the petitioner and others against it seeking various reliefs. It is categorically stated by it that in view of the provisions of Section 38 of the B.D.A. Act read with Rule 3 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984, there are no restrictions, conditions or limitations for the BDA to sell the properties acquired by it and BDA has got right to sell its properties in any manner as it likes. Consequently, the BDA has prayed to reject the amendment application.

vi) In order to examine the legality of the impugned action of the BDA, the amendment application has to be allowed. Accordingly, I.A.XIV is allowed, the learned Counsel for the petitioner shall file the amended petition in two weeks by incorporating the facts, grounds and additional prayers as prayed in the said application, and incorporating the applicants in the I.A. Nos. II and XIII as additional respondents who are permitted to come on record.

vii) In the statement of objections filed by the BDA to the Writ Petition it is stated that the Writ Petition is not maintainable in law and the same is liable to be dismissed on the ground of delay and laches as the Writ Petition is filed after a lapse of 45 years from the date of Preliminary Notification. It is admitted that the Award amount in respect of the property in question has been deposited in the Civil Court. It is admitted that excluding the temple, the R.C.C. building adjacent to it and the way for ingress and egress to the temple, in the rest of the area sites have been formed and auctioned on 23.8.2003. Furnishing the details of the civil suits, it is stated that the delay in completion of the acquisition proceedings in respect of the land in question was on account of the civil litigation between the parties in various civil Courts referred to in the earlier paragraph of this order. Finally, justifying the impugned action, the BDA has prayed for dismissal of the Writ Petition.

4(i) Mr. Shantharaju, learned Senior Counsel for the petitioner submitted that possession of the land in question was not taken over by the BDA and alternatively he has vehemently contended that the petitioner contained in settled possession of the land in question with the Knowledge of the BDA, thereby he has acquired statutory right over the property. In support of this legal contention, the learned Sr. Counsel has relied upon the Division Bench decision of this Court in JOHN B. JAMES v. BANGALORE DEVELOPMENT AUTHORITY, LL.R 2000 KAR 4134 at paras 67 to 71 (which is hereinafter referred to as John's case). The learned Sr. Counsel further contends that in view of non-utilization of the land for quite a long period by the BDA for the purpose for which it was acquired, the acquisition proceedings have lapsed in respect of the land in question. The learned Sr. Counsel further contends that without taking possession of the land from the petitioner in accordance with law as held by the Apex Court in the case of

BALWANT NARYAN BHAGDE v. M.D. BHAGWANT, AIR 1975 SC 1769 the demolition of the structures upon the property in question and the subsequent auction sale of the sites made by the BDA are bad in law.

(ii) Per contra, Mr. C.B. Srinivasan, learned Counsel appearing for the BDA contended that since possession of the land was taken over, petitioner was neither in possession nor settled possession of the property as contended by him. The learned Counsel also relied upon the decision in John's case placing reliance at paras 83, 84, 85 and 90 to contend that petitioner has no right much less the statutory right over the land in question. Placing reliance upon the decision reported in : ILR 1990 KAR3320 it is contended that BDA has got power to sell its property in the manner it likes. He further contends that the Act and the Rules referred to supra do not prevent the BDA from selling its property in the interest of public and there is no impermissibility for it to do so. In support of this contention, the decision reported in G.B. MAHAJAN v. THE JALGAON MUNICIPAL COUNCIL, : AIR 1991 SC1153 is pressed into service.

(iii) Mr. L. Govindaraj, learned Counsel appearing for some of the respondents, who are purchasers of the sites, contends that the acquisition proceedings in respect of the land in question have become final and the petitioner is not 'aggrieved person' and he cannot question the sale of the sites in public auction. To contend that sale of the sites as 'stray sites' in public auction is legal and valid, the learned Counsel relied upon the decision reported in JASBHAI MOTIBHAI DESAI v. ROSHAN KUMAR : [1976]3SCR58 . It is contended that since the petitioner has suppressed certain relevant facts of auctioning the sites which were within his knowledge, he is not entitled to any relief in this petition. It is asserted by the learned Counsel that since the sites formed upon the land in question had been sold in public auction, there is transparency in the sale of sites as the same is free from corruption and nepotism. Further he contends that interference at this stage with the action of the BDA will adversely affect their valuable rights acquired over their respective sites. The purchasers having invested their hard earned money on the sites by raising loans on interest, paid the sale consideration amount to the BDA, got the sale deeds executed in their favour and obtained Possession Certificate and other documents and therefore their rights will be

affected. Hence, the learned Counsel has pressed for dismissal of the Writ Petition with costs. He has also placed reliance upon the decision of the Apex Court reported in ILR 1977 SC 603 in support of his submission that the petition is liable to be rejected solely on the ground of delay and laches.

iv) The other learned Counsel who are appearing for the remaining purchasers of the sites have also reiterated their submission by adopting arguments of learned Counsel Mr. L. Govindaraj. In addition to that Mr. Ashok Patil has contended that the petitioner has made false statement of facts such as that he has not received notices under Sections 9 and 10 of L.A.C. Act from the L.A.O of C.I.T.B. for preferring claim of awarding compensation amount towards the acquired land and that he has not filed any other petitions, other than present one.

5. On the basis of the facts of the case and the legal contentions urged on behalf of the parties, the following points would arise for consideration:-

a) Whether the petitioner continued in possession, acquired right over the land in question, 'aggrieved person', and the Writ Petition is maintainable?

b) Whether the acquisition proceedings in respect of the land in question are in force and BDA has got right to exercise its power?

c) Whether the sites formed upon the land in question by way of re-alignment of the HAL II Stage Master Layout plan is legal and valid if so whether sale of sites in public auction by the BDA on 23.8.2003 are legal, valid and in conformity with the statutory provisions of the Act and Rules?

d) Whether the exercise of power by the officers of BDA is justified?

e) To what relief the petitioner is entitled to ?

6. Point (a) :- The contention of the BDA is that the petitioner sold the land in question to one Nirmalanand Annaiahachar way back in the year 1952. Having sold the land, the petitioner has no locus standi to file this petition and he is not the 'aggrieved person' to maintain the Writ Petition. This petition is raised on the basis of the statement contained in the Award at Annexure-B1. It is pertinent to note that

in the claim petition filed by the petitioner, he has stated that he had taken loan of Rs. 2,000/- from Nirmalanand Annaiahachar and a nominal sale deed was executed and that he has been paying interest regularly for that amount. From this, it could be gathered that what was executed was not absolute sale deed but it is a conditional sale. The possibility of mortgage deed being written as sale cannot be ruled out.

The purchasers of the sites have also not produced copy of the sale deed to ascertain the true nature of the transaction. Therefore this Court can easily presume that it was only a nominal sale deed and not absolute sale deed. This conclusion arrived at can be justified for the following reasons.

i) Even though the alleged sale was made in the year 1952, the name of Doddaiyah, the father of the petitioner, continued as Khatedar of the land in question in all the RTC and Index of land records. That is the reason for the C.I.T.B. to show his name as such in the notifications issued for acquisition of the lands and also in the Award at Annexure-B1. This pre-supposes that possession of the land was not delivered to the purchaser Mr. Nirmalananda Annaiahachar, presumably on account of the fact that it was only a nominal sale deed.

ii) Except filing claim petition to the Award notice before the L.A.O of C.I.T.B. the so called purchaser Nirmalanand Annaiahachar has not asserted his right over the land in question nor he claimed that he was or is in possession of the land in question. This ipso facto strengthens the claim of the petitioner upon the land in question that he is in possession of the same as true owner.

iii) Nirmalanand Annaiahachar never claimed ownership upon the land in question in any of the civil proceedings or before the reference Court after Award was passed by LAO or any other authority, including the BDA. He has been silent all along in respect of the property in question. The reason for his quietness must be, he was aware that he was not the actual owner of the land in question and he cannot assert right as owner of the land.

iv) Right from the beginning it is the petitioner, his brothers and son are exercising their ownership rights over the land in question in order to protect the same and

they have initiated several legal proceedings against BDA and also made correspondence with it in respect of the land in question.

v) The petitioner has continued in possession of the land until the structures were demolished by the officers of the BDA very recently, which is an undisputed fact. In the alternative even assuming that he is not the owner of the land, by continuing in possession from the beginning, the petitioner has acquired a valuable statutory right and his possession is 'settled possession' as held by the Privy Council in the case of MIDNAPUR ZAMINDARY CO. v. NARESH NARAYAN ROY, AIR 1924 PC 144 and Apex Court decision in the case of KRISHNA RAM MAHALE v. SHOBA VENKATA RAM, : AIR 1989 SC2097 . Therefore dispossession of such person from the land in question should not have made by the officers of the BDA without due process of law. In this regard, the law laid down in a catena of decisions, which are referred to in paragraphs 67 to 71 in John's case referred to supra are relevant and they are extracted hereunder:

'67. If the power of forcible dispossession or demolition is not conferred on BDA (as owner of land), necessarily BDA will have to make out such a right with reference to general law applicable to true owners and trespassers. The rights of a true owner vis-a-vis trespasser in possession has been considered by the privy Council and the Supreme Court and this Court in several cases.

68. We will first refer to those decision which lay down the principle that no one in India, including the State, has the power to forcibly dispossess an unauthorized occupant, otherwise than in accordance with law.

(Emphasis supplied)

68(1) In Midnapur Zamindary Co. v. Naresh Narayan Roy the privy Council observed thus:..... In India, persons are not permitted to take forcible possession, they must obtain such possession as they are entitled to, through a Court....'

Relying on the said decision, the Supreme Court in LALLU YESHWANT SINGH v. JAGADISH SINGH held that a landlord who forcibly enters on his land which is in the possession of a tenant whose tenancy has expired, and dispossesses or

attempts to dispossess such tenant, commits trespass.

68(2) In *STATE OF U.P. v. DHARMANDER PRASAD SINGH* while dealing with the rights of the State Government on cancellation of a lease granted by it, the Supreme Court held that the fact that the lessor is the state does not place it in any higher pedestal or better position. The Supreme Court observed thus:

'Under law, the possession of a Lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited..... Therefore, there is no question in the present case of the government thinking of appropriating to itself an extrajudicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It can resume possession otherwise than in accordance with law. Government is accordingly prohibited from taking possession otherwise than in due course of law.'

68(3). In *KRISHNA RAM MAHALE v. SHOBHA VENKAT RAO* while considering the claim of a licence, who has been wrongly dispossessed by the licensor before the expiry of licence period, for restoration of possession, the Supreme Court observed thus:

'It is well settled law in this Country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse of law.'

The Supreme Court held that the dispossessed licence was entitled to restoration of possession in spite of the fact that by then the term of licence has expired.

68(4). In *STATE OF HARYANA v. MOHINDER PAL* the Supreme Court rejected an appeal filed against a decision of the Punjab and Haryana High Court which had held that the Government cannot take law into its own hand while dispossessing persons in possession of land by putting up khokhas (on the ground that they were unauthorized occupants to Government land) but should have followed the due procedure prescribed by law. The Supreme court held that:

'.... Question of examining the title of the parties does not arise at all as admittedly respondents were in possession of the property in question and put up structures thereon. On that admitted position, High Court took the view that ejection of the respondents forcibly without due recourse of law was not in due process. No exception can be taken to that view at all. In fact, this view is consistent with what has been stated by this Court.....'68(5). In PATIL EXHIBITORS PVT. LTD. v. BANGALORE CITY CORPORATION a Division Bench of this Court observed thus:

'It is part of the concept of 'Rule of Law' that no claim to a right to dispossess by the use of force without recourse to procedure in accordance with law is recognized or countenanced by Courts. Such a right in the respondent cannot be recognised regardless of the question whether or not the appellant (Licencee) itself has any subsisting right to remain in possession. The protection that the Court affords is not of the possession which in the circumstances is litigious possession and cannot be equated with lawful possession but a protection against forcible dispossession. The basis of relief is a corollary of the principle that even with the best of title, there can be not forcible dispossession... Under our jurisprudence, even an unauthorized occupant can be evicted only in the manner authorized by law. This is the essence of the Rule of law.'

69. We will next refer to those decisions which explain what is settled possession and at what stage the true owner loses the right to defend its possession by use of force.

69(1). In MUNSHI RAM v. DELHI ADMINISTRATION the Supreme Court succinctly stated the legal possession regarding settled possession thus;

'It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted endue course of law, he is entitled to defend his possession even against the rightful owner. But, stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitle to defend against the rightful owner much be a settled possession extending over a sufficiently long period and acquiesced in by the true

owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary, such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time to remove the obstruction even by using necessary force.'

(Emphasis supplied)

69(2). The above principle laid down in MUNSHIRAM's case were referred to reiterated and elaborated by the Supreme Court in PURAN SINGH v. STATE OF PUNJAB as follows:

'.... The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since possession of the appellant in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a straitjacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner ... Thus, in our opinion, the nature of possession in such cases which may entitled a trespasser to exercise the right of private defense of property and person should contain the following attributes:

i) That the trespasser must be in actual possession of the property over a sufficiently long period:

(Emphasis supplied)

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case:

(iii) The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner, and

(iv) That one of the usual tests to determine the quality of settled possession, in the case of culturable (cultivable) land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defense.'

69(3) The principle was further elaborated by the Supreme Court in RAM RATTAN v. STATE OF UTTAR PRADESH as follows:

'..... It is well settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the owner should dispossess the trespasser by taking recourse to the remedies available under the law..... it may not be possible to laydown a rule of universal application as to when the possession of a trespasser becomes complete and accomplished'

(Emphasis supplied)

69(4). In NAIR SERVICE SOCIETY v. K.C. ALEXANDER the Supreme Court held that the law does not countenance the doctrine of 'findings keeping' in regard to

immovable properties and no one can claim to have acquired a right or claim to be in possession merely by intruding upon a land in the night and putting up a hut or shed and occupying it before morning.

70. Lastly it is also necessary to notice the position of a trespasser who is in peaceful, open, continuous and uninterrupted possession of another's property, in denial of the title of the true owner, for a long period. Section 27 of Limitation Act, 1963 provides that at the determination of the period limited under that Act, to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Article 65 provides the period of limitation for a suit for possession of immovable property based on title as twelve years from the date when the possession of the defendant becomes adverse to the plaintiff. Article 112 provides the period of limitation for such a suit, if filed by or on behalf of the Central Government, or State Government is thirty years instead of twelve years. Article 112 will not however apply to BDA as it is neither the state nor central Government. In *NAIR SERVICE SOCIETY v. K.C. ALEXANDER* the Supreme Court quoted with approved the following passage from *PERRY v. CLISSOLD*.

'... It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provision of the statute of Limitation applicable to the case, his right is for ever extinguished and the possessory owner acquires an absolute title.'<sup>71</sup>. Having regard to the principles laid down in the said decisions, we may conveniently cull out the legal position in regard to a true owner vis-a-vis a trespasser as under.

i) A true owner (even if it is the State or a Statutory body) has no right to forcibly dispossess an unauthorized occupant (including a trespasser) in settled possession, otherwise than in accordance with law.

ii) A trespasser or unauthorized occupant in settled possession can be dispossessed, only in accordance with an order/decreed of a competent Court/tribunal/authority or by exercise of any statutory power of

dispossession/demolition entrusted to the State or statutory Authority.

iii) A person in unauthorized possession shall be deemed to be in settled possession, if his entry into the property was lawful or authorized.

iv) a person in unauthorized possession, whose entry into the property is illegal or unauthorized, can claim to be unsettled possession, only if he is in open, continuous and actual physical possession over a sufficiently long period, with the knowledge of the true owner.

v) A surreptitious and unauthorized entry into another's land and stealthy trespasser, will not have the effect of dispossessing the true owner of giving possession to the trespasser. Such acts will lead to settled possession only when the true owner having knowledge of it, acquiesces in it.

vi) Where the trespasser is not in settled possession, all acts of the trespasser in regard to the property will be considered as only attempts to secure possession. The true and rightful owner can re-enter and reinstate himself by removing the obstruction or the unauthorized construction put up by the trespasser by using the minimum force. Such action by the true owner will be considered as defending his possession and resisting an intrusion with his property and not forcible dispossession of an unauthorized occupant.

vii) Where however the trespasser is in settled possession and such settled possession adverse to the true owner continues for 12 years, the right of the true owner is extinguished and the trespasser as possessory owner acquires absolute title to the property in question.'

vi) When law protects the petitioner, in utter violation of the law laid down in the above case the officers of the BDA forcibly dispossessed the petitioner from the land in question and consequently sold the sites formed upon them in favour of purchaser respondents, quite naturally the petitioner will be an 'aggrieved person' and he can certainly maintain the Writ Petition against them to protect his right over the land in question.

vii) Let the claim of the BDA that it took possession of the land in question be examined with reference to the pleadings, rival contentions urged on behalf of the parties, the documents and the record produced by the BDA. Along with the details of proceedings pertaining to the land in question are furnishing, a copy of Gazette Notifications dated 16.6.1977 is produced to prove that possession of the land was alleged to have been taken from the petitioner on 28.12.1976.

viii) In the records produced by the BDA, at pages 17 and 18 acknowledgment is produced for having handed over possession of the land in question. A perusal of the same reveals that possession was handed over by the Special Revenue Inspector of BDA to the I.E. and A.E. of B.D.A. on 28.12.1976. It is nothing but handing over possession from Revenue Section to Engineering Section. But, when either Government or Deputy Commissioner took possession and handed over to the B.D.A. is not forthcoming. The documents referred to supra are ample proof that possession was not taken on 28.12.76 as mentioned in relevant column of the notification issued and published under Section 16(2) of the L.A. Act.

ix) It is to be noted that while the Preliminary Notification was dated 28.11.1959, the Final Notification was dated 19.8.1964. Possession is said to have been taken on 27.4.1977, after a lapse of more than 12 years from the date of Final Notification. Until then, petitioner was undoubtedly in settled possession and thereby he has perfected his title by adverse possession.

x) Admittedly, possession of the land was not taken over by the erstwhile C.I.T.B. soon after its acquisition for implementation of the scheme. The reasons for the delay in the alleged taking over possession of the land from the petitioner are not forthcoming in the statement of counter filed by the BDA. The first suit in O.S.No. 610/1969 filed by the petitioner was in the year 1969. From the date of Final Notification in the year 1964 till the first suit was filed, nothing happened. There was no impediment for the erstwhile C.I.T.B. to take possession of the land from the petitioner within those 5 years, as there was no interim order against the B.D.A. in any proceedings.

xi) Assuming that BDA took possession of the land on 28.12.1976, from whom it took possession, how it took possession and how and when the structures upon

the land came-up, are not known to it and the same is not stated in its statement of counter. In the decision reported in BALWANT's case referred to supra it is held that actual possession of the land must be taken and mere taking symbolic or paper possession is not sufficient to prove the fact of taking possession of the acquired land by the Government. In the instant case, if BDA had taken actual possession of the land, it could not have allowed the structures to come up on the land. Nothing prevented it to from forming sites and allotting the same to public simultaneously when the sites in the surrounding areas were formed as per the Master Layout Plan produced by it and allotted under the relevant Rules applicable for allotment.

xii) On the other hand the BDA demolished the structures existed upon the property on 13.8.2003 and alleged to have formed the sites by realignment of the layout plan and sold the same in public auction on 23.8.2003 in favour of the purchasers respondents. These factors belie the contention of the BDA that it had taken possession of the land in question on 28.12.1976. The BDA could not have taken actual possession of the land since the petitioner was in possession of the land in question and structures were in existence upon the same.

xiii) From what has been observed above it is clear that possession of the land was not taken by the Government and in turn handed over to the BDA by following the procedure as laid down by the Apex Court in BALWANT's case referred to supra. BDA has not produced the original record to evidence and prove the fact of taking over possession of the land as required in law. As it has positively asserted that possession of the land in question was taken, to prove the same it should have produced the record. In account of non production of the record which is in possession and custody of B.D.A., this Court has to draw an adverse inference against BDA as held by the Apex Court in the case reported in : [1968]3SCR862 . Relevant portions of paragraphs 5 and 6 reads thus;

'5 xxxxxxx Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the

best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In *Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi* 44 Ind App 98 at P. 103 (AIR 1917 PC 6 at P. 8). Lord Shaw observed as follows:

'A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough .... they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordship's opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.'

This passage was cited with approval by this Court in a recent decision *Biltu Ram v. Jainandan Prasad*, Civil Appeal No. 941 of 1965 D/15.4.1968 (SC). In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in *Mt. Bilas Kunwar v. Deshraj Ranjit Singh*, 42 Ind App. 202 at p. 206 - (AIR 1915 PC 96 at P. 98):

'But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails, so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents.'

6. But Shah, J speaking for the Court stated:

'The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party with holding evidence in his possession. Such a rule is inconsistent with illustration (g) of Section 114 of the Evidence Act, and also an impressive body of authority.'xiv) The original Master lay-out plan of the layout

was summoned from the BDA and when the same was perused, it is noticed by this Court that in the surrounding areas of the land in question, sites have been formed and numbers are assigned and allotted in favour of different persons. In respect of this portion of the land, neither sites are formed nor any numbers are assigned in the master layout plan. From this, undisputed fact noticed from the layout plan of the BDA it can be conveniently held that the BDA did not take actual possession of the land from the petitioner on account of the fact that he has been in possession and structures were in existence upon the property in question. That is the reason for leaving the land in question blank in the Master-lay-out plan, which is produced by the BDA. Under these circumstances, it cannot be said that BDA took possession of the land in question on 28.12.1976 as asserted by it as mentioned in the notification. The notification issued under Section 16(2) dated 16.6.1977 cannot be accepted by this Court, as it only shows taking over of symbolic possession and actual possession of the land was not taken from the petitioner by the Government by following the mandatory procedure as held by the Apex Court in the case of BALWANT NARAYAN referred to supra. Therefore the claim so made by the BDA regarding taking possession of the land in question is wholly untenable and unacceptable to this Court. Therefore, it can be safely said that the notification issued under Section 16(2) of the L.A. Act to show that the possession of the land was taken is factually incorrect.

xv) In view of the foregoing reasons and the law laid down by the Apex Court, Privy Council and this Court, the reliance placed upon by learned Counsel Mr. L. Govindraaj upon the decisions of the Apex Court reported in 1976(1) SC 671 and ILR 1977 SC 603 are wholly inapplicable to the case on hand for the reason that the petitioner has been in possession either as owner or in the alternative in settled possession of the land in question and he has acquired a valuable statutory right upon the land in question as held in the James case.

xvi) For the reasons stated in paras (i) to (xv), Point (a) is answered in favour of the petitioner and it is held that petitioner has been in possession either as true owner or in the alternative in settled possession of the land, and has acquired statutory right over it. Consequently, he is an 'aggrieved person' to question the arbitrary, illegal, unlawful and forcible action of the officers of BDA and hence this

petition against the respondents is maintainable.

7. POINT (b) : (i) The question is, whether the acquisition proceedings are in force and whether the BDA can exercise its power? The petitioner has relied upon the provision of Section 27 of the B.D.A. Act to contend that the scheme in so far as the land in question had lapsed. Section 11A of the L.A. Act is also relied upon to contend that the Award was not passed within a period of two years from the date of publication of the final notification.

(ii) The benefit of both the provisions relied upon by the petitioner are not available. In so far as Section 27 of the BDA Act is concerned, the provisions of BDA Act are not applicable as the said Act itself was enacted subsequently in the year 1976 and it has received the assent of the Governor on 2nd March 1976, published in the Karnataka Gazette Extraordinary on 8.3.1976. The provisions of the statute viz C.I.T.B. which was in force at the relevant period of acquisition of the land were applicable to the case on hand. It envisages that the scheme will lapse if it is not substantially executed within a period of 7 years as provided under Section 19 of CITB. The same will be dealt with in the succeeding paragraph, Hence, Section 27 of the Act will not come to the aid of the petition. In so far as Section 11A of L.A. Act is concerned, it was inserted by Act No. 68 of 1984 and it is only prospective. By that time Award was already passed in the present case. Hence, the reliance placed upon Section 11-A of L.A. Act by the petitioner is misplaced and therefore the above provisions of the BDA Act cannot be applied to the fact situation of the case on hand.

(iii) The Preliminary Notification was dated 28.11.1959, Final Notification was dated 19.8.1964 and the Award according to the BDA was passed on 13.5.1969. However, possession of the land in question is claimed to have been taken on 28.12.1976. The B.D.A. Act came into force w.e.f. 20.12.1975 (received the assent of the Governor on 2.3.1976). Earlier to that, the City of Bangalore Improvement Act, 1945 (hereinafter called '1945 Act') was in force. The said Act governs the acquisition proceedings of the land in question. Section 19 of 1945 Act reads thus:

'19. BOARD TO EXECUTE THE SCHEME WITHIN SEVEN YEARS - Where within a period of seven years from the date of the publication in the (Mysore

Gazette) of the declaration under Clause (b) of Sub-section (1) of Section 18, the Board fails to execute the scheme, substantially the scheme shall lapse and the provisions of Section 27 shall become inoperative.'

From the admitted facts and with reference to the above provision of the repealed Act, it should be held that the scheme was not executed within 7 years from the date of declaration. However, since the scheme is subsequently executed substantially, it has to be held that in so far as the land in question, the scheme had lapsed for non-execution of the same within 7 years as prescribed under Section 19 of the 1945 Act. The reason is, the lay-out plan produced by the BDA along with Memo dated 17.9.2004 (filed in the Court on 20.9.2004) disclose that the same was approved vide BDA Resolution No. 184 dated 14.4.1976. When the lay-out plan itself was approved after long lapse of the period mentioned in Section 19 of 1945 Act, question of executing the scheme within the stipulated period does not arise at all. That apart, even according to the BDA, possession of the land in question was taken only on 28.12.1976, which is more than 12 years from the date of declaration made in the year 1964. Therefore, it has to be held that the scheme had lapsed under Section 19 of 1945 Act.

(iv) In the circumstances it has to be held that the BDA has abandoned its scheme in so far as the land in question for the reason that it has not formed sites upon the land in question as is evident from the Master Layout plan produced by the BDA. Consequently, the successor BDA had no jurisdiction to execute or implement the lapsed and abandoned scheme. Therefore the legal consequence is that the officers of BDA should not have exercised their power over the land in question under the provisions of the BDA Act and Rules for demolishing the existing structures and formed the sites upon the property and sold the same in the public auction on 23.8.2003.

(v) It is no doubt true that under Section 19 of the 1945 Act and under Section 27 of BDA Act the scheme would lapse if it is not implemented substantially within the specified period. But, what should happen to the lands acquired by the erstwhile CITB for the scheme and not utilized for several years despite the scheme is substantially executed in respect of the other lands? If the acquired lands are not

utilized for the purpose for which they were acquired within a reasonable period (for example within a period of 10 years from the date of final notification), it shall be held that such lands are not required for the purpose for which they were acquired and the same are abandoned. In such cases, it has to be held that the acquisition proceedings automatically lapsed on account of abandonment of the same for decades and the original owners of such lands can exercise full ownership rights upon such lands. Otherwise, neither the original owners nor the authority for which the land was acquired will use the land and the valuable lands remain un-utilized even for several decades. That results in defeating the very object and purpose for which the land was acquired under the guise of public purpose on the one hand and on the other hand the owners of the lands are deprived of their valuable rights of enjoying and exercising their ownership rights. Therefore, an end has to be put to such a situation so that lands are utilized properly either by the owners or acquired body or Authority in whose favour lands are acquired.

vi) If the acquired land is not utilized for several years by the acquired body or authority for the purpose for which it was acquired, it has to be held that the acquired body or authority failed to exercise its rights over the land. In such a situation, the right of the land owner revives. In the instant case since the petitioner is in settled possession upon the land, he has acquired a valuable statutory right as held in James case. Hence the officers of the BDA should not have demolished the existing structures upon the land in question by using force without taking possession of the land from the petitioner with due process of law as held in several decisions.

vii). For the reasons stated in paragraphs (i) to (vi) above, in the instant case the acquisition proceedings in respect of the land in question are not in force as the acquisition proceedings have lapsed and the B.D.A has abandoned its scheme due to non-utilization of the land in question for nearly four decades. The BDA has no right to exercise its power over it at this stage as the petitioner has acquired a valuable statutory right upon the land in question. Accordingly, point (b) is answered against the B.D.A.

8. POINT (c):- (i) This point relates to legality and correctness of the officers of the BDA in demolishing the existing structures upon the land, forming sites and selling them in public auction. Before proceeding to consider the merits of this point, the background leading to the impugned action has to be looked into.

(ii) From the file produced by the B.D.A along with Memo dated 17.9.2004, it is seen that the A.E.E of the BDA had put-up a note without putting the date seeking information regarding any pending litigation in respect of the land in question (Sy. No. 137 of Thippasandra village). On 2-8-2003 the officer Legal Cell clarified about pendency of suits in O.S.No. 4848/94 and O.S.No. 16572/2000 and the file was referred to legal Cell dealing with Writ Petitions. On 4-8-2003 it was clarified that no Writ Petitions are pending in respect of the land in question. Thereafter, on 6-8-2003 the A.E.E sought the details of acquisition and the concerned Surveyor to demarcate the land in question. On the same day, the S.A.L.A.O furnished the details of acquisition and direction to the Surveyor. Again on the same day, the A.E.E sought the legal opinion from the legal cell as to whether there are any legal impediments for removing the unauthorized structures that are existing on the land in question. The Law Officer furnished his opinion as under;-

'13. Copy of order received from Smt. S. Sujatha, Advocate in M.F.A 3164/2001 arising out of OS16572/2000 is placed herewith. The High Court has limited the order of injunction only to the Temple structure. Leaving the temple structure if there are any temporary structures, there is no legal impediment to demolish the same'.

(Emphasis supplied)

Sd/-

Law Officer,

Bangalore Development Authority Bangalore-560 020.

On the basis of the above legal opinion, on 12-8-2003 the A.E.E prepared the Demolition order and put-up for approval to E.E(E) & E.O-II. On the same day the concerned Executive Engineer and E.O-II. have made their note as under;-

'15. Pre para for kind perusal

Vide para (13) Law Officer has given his opinion that expect the temple there is no legal impediment to demolish the temporary structures.

It is therefore requested for demolition order to take further action.Sd/- Sd/-12-8-03  
12-8-03EO-II EE(E)

Thereafter, the proceedings-sheet is blank. However, there is separate order for demolition. On a perusal of the same it is observed that the date is put as 13-8-2003. But the Engineer Officer-II of the BDA signed and put the date as 12-8-2003. Even other two officers who have initialed the same have put the date as 12/8. As per the note of A.E.E, the demolition order was prepared on 12-8-2003. Probably the date might have been wrongly put by an official of the BDA. But the fact remains that the Engineer who approved the Demolition Order has blindly signed it. Be that as it may. On 14-8-2003 the A.E.E sought police bandobast from the concerned police Station of Jeevan Bheema Nagar, Bangalore for demolishing the structures on the land in question. Thereafter, the demolition of the existing structures upon the land in question was carried on by using bulldozers, which has been widely published in the daily news papers the relevant paper cuttings are produced by the petitioner, which fact is not disputed by the B.D.A.

(iii). From what has been noticed above, it is clear that

(a). The Law Officer of the BDA has furnished his opinion to the effect that there is no legal impediment to demolish the existing structures upon the land in question without taking into consideration that BDA was not in possession and that the petitioner is in possession of the land, that he should be evicted lawfully as held by the Division bench of this Court in James case and in a catena of decisions referred to therein. The legal advice given in the matter was without examining the legal implications of James case. The opinion of the Law Officer is the basis for passing demolition order by the Engineer who is incompetent to pass the same. The demolition order has been executed by the officers arbitrarily and illegally by using force with the aid of police, under the garb of power, which in fact is not available for them.

(b). Taking into consideration on all these aspects, this Court makes an observation that the Law-Officer has acted carelessly in utter disregard to the Rule of Law by giving illegal advice without application of mind that there is no impediment for demolishing the structures upon the land in question. On account of this the valuable rights of the petitioner upon the property in question are adversely affected. In view of heavy responsibility cast upon the Law officer, the BDA should think seriously to continue his services, as it is on the basis of the legal opinion required to be furnished by him the other officers will have to act to discharge their statutory duties. Their function depends upon the legal opinion furnished. The BDA should function properly without affecting the valuable rights of the private citizens in such a way that public trust upon it should not be eroded and its functioning must be appreciated by public at large. The opinion furnished by the Law Officer is in blatant violation of Rule of Law contrary to the law laid down in catena of decisions referred to supra, without application of mind to the provisions of the relevant statutes and the procedure to be followed either for evicting unauthorized persons and taking possession of the property or demolition of unauthorized structures upon the property.

(c). No notices have been issued either to the petitioner or any person before demolishing the structures situated upon the land in question;

(d). The Commissioner of B.D.A has not exercised his powers under Section 13 of the BDA Act and he is not at all in picture though he is the Chief Executive and Administrative Officer of the BDA under Section 13(1) of the Act;

(e). The entire operation of demolition of the structures existed on the land in question and formation of the sites has been carried-out only by the Engineering Department without the orders of either the Commissioner or the Authority (BDA) constituted in terms of Section 3 of the BDA Act.

(f). The Chairman, the Commissioner and the Secretary of the BDA have not played any role and they are not at all in the picture. This is something strange on the functioning of the BDA.

(g). The file has moved from officer to officer very briskly on the same day without any wastage of time. Everything has been done in a systematic and planned manner with some understanding among the officers themselves.

(h). The Commissioner has managed to see that he is not at all in picture to show that everything has been done without his knowledge.

(i). Even after demolition the then Commissioner who was in office has not raised any voice in this regard. That shows that he was hand-in-glove with the other officers included in the matter.

(j). In this case, the file moved so fast beyond imagination. It is common knowledge that the staff and officers of BDA will not respond or attend to the files for longtime. Unless some one approaches them the files remains as such even for several months/ years. The Court takes judicial note of this aspect. Even in some of the Judicial matters there will be no proper response even after the cases are adjourned by granting reasonable time. Such being the case how and why all the officers attended the file on the same day and what prompted them to do so is beyond imagination. This is certainly a clear case of high handed and arbitrary action of some of the officers without any authority of law, the basis for which is the wrong legal opinion of the Law Officer. The then Commissioner of BDA, has approved the illegal action by keeping silence and cleverly not putting his signature in the file produced. This aspect is seriously taken note of by this Court. Be that as it may.

9. Let me proceed to examine whether the subsequent action of forming sites selling the same in public auction and execution of the sale deeds in favour of the so-called Auction purchases are in accordance with the provisions of relevant Acts, Rules etc.

(i). The original lay-out plan produced by the BDA was approved by the Authority/Board vide Resolution No. 184 dated 14-4-1976. Any modification to the same will have to be done only with approval by way of Resolution of the BDA which is established under Section 3 of the BDA Act. The plan indicates incorporation of some other sites as per the resolutions of the Authority. Some

more sites have been incorporated in the master layout plan on the orders of the Commissioner dated 27-12-1999 and 17-5-2002. In respect of the sites formed on the land in question after demolishing the structures situated upon the property in question on 14-8-2003, there is no resolution of the Authority or order of the Commissioner in this regard. Thus there is no approval of either the Authority or the Commissioner for the formation of sites on the land in question.

(ii). Without proper approval for formation of the sites from the Authority as required under the provisions of the BDA Act, the same ought not to have been formed and put to public auction by the Engineer Member of the BDA. Even there is no order for forming the sites upon the land in question by BDA after demolition of the existing structures. Therefore the formation of the sites and sale of sites in public action in favour of the auction purchaser respondents is illegal and without authority of law.

(iii). The sketch available in the record produced by the BDA showing the sites formed on the land in question. As per the Index in the file, it is termed as 're-adjustment plan'. It is signed by the AEE. and EE, all on the same day on 14-8-2003. It appears that the demolition of the structure took place on 14-8-2003 and the so-called re-adjustment of Master Layout plan was prepared on the very next day and signed by all the engineers on the same day. Without obtaining either approval of the Authority or orders of the Commissioner for re-adjustment of the original plan as required in law, sites ought not to have been formed. The public auction was fixed on 23-8-2003. This fact is evident from the paper publication produced as Annexure-G got published by the Engineer member of the BDA along with application filed for amendment of the Writ Petition. The paper publication is dated 16-8-2003. In the said notification it is mentioned as 'corner intermediate and end sites' and the same will be auctioned as per Bangalore Development Authority (Disposal of Corner/Intermediate and Commercial Sites) Rules, 1984.

(iv). In the statement of objections filed to the amendment application, the BDA quite contrary to its paper publication, to mislead this Court has contended that the sites that were put to auction were 'Stray Sites' in terms of the definition of Rule 2(j) of the allotment of Rules of 1984 and the stand taken at paragraph 3 is as

under.:-

'At the conclusion of such allotments a number of stray sites remained. These stray sites were either because of the cancellation of the allotment surrender of the sites by the allotment. Periodically there was a readjustment of the layout plan also. In respect of this Sy.No. 137 of Thippasandra the formation of layout could not be completed because of the pendency of legal proceedings and interim orders of stay by courts. Finally on or about 14-08-2003 a readjustment was made and 16 sites were formed in the Survey Number and made available for public auction. It is respectfully submitted that in the matter relating to the stray sites the Government has issued revised guidelines. A copy of the guideline issued by the Government is produced. The auction of 16 sites formed was in accordance with the guidelines. Since the BDA termed the sites as 'Stray sites' it is necessary for this Court to see whether they are really Stray Sites. Rule 2(j) of BDA (Allotment of Sites) Rules, 1984 defines the same as under; 'STRAY SITES' means a site which was once allotted but subsequently the allotment was either cancelled by the Authority or surrendered by the allottee or a site which has been formed on account of readjustment in the plan subsequent to the issue of notification inviting applications for allotment of sites'.

One thing is clear that the sites in question are not the sites either cancelled or surrendered by the allottees and therefore the same cannot be construed as 'stray sites' formed by the so-called readjustment in the layout plan as contended by the BDA. The readjustment of the plan is without the approval of the Authority or the Commissioner as required under the provisions of the BDA Act and Rules and therefore the same is illegal and void abinitio in law.

10. The BDA has deliberately taken inconsistent and contradictory stand in utter disregard to the factual position as taken by it earlier in the paper publication dated 16-8-2003 Annexure-G. In the statement of objections filed to the amendment application it is termed that the sites formed upon the land in question are 'stray sites' even though in fact they are not so and therefore it has justified its action of sale of the same in the public auction. Two copies of extracts of the Registers of Stray Sites are produced without producing the original registers. Non production

of original Registers casts serious suspicion in the mind if this Court for the reason that quite contrary to the terminology given to the sites in the copies extracts of stray registers in Annexure-G auction notice published in the news paper the sites are described as 'residential, corner, intermediate and end sites.' This has been done by the BDA with a deliberate intention with a view to mislead this Court by misrepresenting incorrect and false facts to justify its illegal action by fabricated documents, which is not expected from the BDA as it is the statutory Authority. Its actions must be honest transparent as it is accountable to the public at large and it should function to the expectations of the people by discharging its statutory functions honestly and efficiently. Further it is not explained why and how two extracts copies of the registers are produced to show that the sites are stray sites by giving separate serial numbers in the copies.

v). The sites in question are not Commercial Sites as defined under Rule 2(c) of B.D.A (Disposal of corner Sites and Commercial Sites), Rules 1984 (hereinafter referred to as '1984 Rules'). In the newspaper publications issued and published for conducting auction of the sites, the details of the sites are stated as 'residential, intermediate, corner and end sites'. Whatever may be the nature of the sites, let us accept the stand of the BDA that they are 'stray sites' and proceed to examine whether disposal of the said sites is done in the manner prescribed.

vi). Rule 5 of BDA (Allotment of sites) Rules, 1984 (hereinafter referred to us '1984 Rules') stipulates as under;'5. Allotment of stray sites - The Bangalore Development Authority shall dispose of stray sites in accordance with the guidelines issued by Government'. Thus, the disposal of stray sites shall be done by the BDA as per the directions of the Government. The BDA claims that the sites in question were disposed of in accordance with the guidelines issued under Rule 5 of the 1984 Rules in Circular No. UDD/129/MNJ/97 dated 6-8-1997, copy of which is produced along with the objections filed by the BDA to the amendment application. The first item in the said Circular, disposal by auction is categorized-A and the extent of disposal is 30%. But all the 16 sites formed in the land in question have been auctioned, which amounts to 100% disposal by auction.

11. As per subject No. 57/2004 copy of which is available in the file produced by the BDA it is seen that for the years 2001-02, 2002-03 and 2003-04 in all 1150 stray sites in the lay-out have been identified by the BDA. By the resolution dated 29-3-2004 passed on the subject by the BDA, it has been resolved to approve the stray sites identified and interalia to send the proposal to the Government to bring amendment to the guidelines permitting 50% disposal of sites by auction instead of 30%. What is to be observed is , by the time the 16 sites in question were auctioned, they were not approved by the State Government by modifying the guidelines as required under Rule 5 of the allotment Rules. Their approval was only by resolution dated 29.3.2004 while auction of the sites in question took place on 23.8.2003, much earlier to the a foreside resolution and approval. Thus without approval of the State Government the sites are identified as stray sites by the BDA formed in the land in question in utter violation of the provisions of the Act and they have been auctioned. So it does not lie in the mouth of the BDA to contend that the auction of the sites in question was in accordance with the guidelines of the Government Circular and Rule 5 of the allotment Rules.

vii). In the decision reported in BABU VERGHESE v. BAR COUNCIL OF KERALA, AIR 1949 SC 1281 it is held that the power conferred upon the statutory Authority in the statute must be exercised in the manner as prescribed in the statute. The relevant para 31 and 32 are extracted here under to appreciate the case of the parties.

31. It is the basic principle of law long settled that if the manner of going a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor, 63 Ind App 372; AIR 1936 PC 253 who stated as under;

'Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all'.

'32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, : 1954 CriLJ910 and again in Deep Chand v. State of Rajasthan, : [1962]1SCR662 . These cases were considered by a Three judge

Bench of this Court in State of Uttar Pradesh v. Singhara Singh, : [1964]4SCR485 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law'.

Now, let us see whether the sale of sites in public auction was done in the manner prescribed. Rule 6 of BDA (Disposal of Corner and Commercial Sites) Rules of 1984 prescribe the mode of disposal of sites by auction sale. The relevant portions of the Rules are extracted hereunder;-

#### '6. CONDITIONS OF AUCTION SALE OF CORNER SITES OR COMMERCIAL SITES -

6.(1) The Commissioner or such other Officer authorised by the Authority to conduct the auction sale, may fix the amount by which the successive bids may be raised.

6(2). The Officer conducting the auction sale shall have the right to accept or refuse any bids without assigning any reasons.

6(3):- The auction purchaser whose bid is accepted shall deposit twenty-five percent of the amount of his bid at once at the spot and pay the balance within forty five days from the date of receipt of intimation letter as in Form-I communicating the confirmation of sale, in default of which the deposit of twenty five per cent made by such auction purchaser shall be liable to be forfeited to the Authority and the Authority shall be entitled to resell the site and in such an event or resale, the defaulting auction purchaser shall be liable to make good any loss suffered by the Authority on account of such resale.

6(6). As soon as the full amount of the purchase money is paid the auction purchaser shall execute an agreement in Form-11 and thereafter he shall be put in possession of the site and a possession certificate issued to him.'

The public auction of sites was conducted on 23-8-2003. When the confirmation of the sale in the Form-1 prescribed under Rule 6(3) of BDA sale of (Corner and Commercial sites) 1984 Rules was made and communicated to the auction

purchasers and when the remaining seventy five percent of sale consideration amount was paid by the Auction purchasers to the BDA is not stated either in the statement of counter filed by the BDA or auction purchasers. Whether agreements in Form-II as prescribed under Rule 6(6) of the Rules are executed or not, neither the BDA nor the purchasers of sites have stated in their statement of objections. Even in the Sale Deeds executed in favour of the auction purchasers by the BDA, the above relevant facts are not stated. Therefore, it has to be held that the sale deeds executed in favour of purchasers of the sites are bad in law for non-compliance of the mandatory requirement of the Rule 6 of Sub-rule (3) and (6) of the above Rules. Applying the ratio laid down in BABU VERGHEESE case it has to be held the action of the officers of the BDA from the stage of demolition, formation of sites, sale of the same up-to the execution of sale deeds in favour of purchasers/respondents is not in the manner as prescribed in the provisions of BDA Act and Rules referred to supra and therefore the same has to be declared as void abinitio in law.

12. Learned Counsel for the purchasers of the sites and also B.D.A relied upon Section 38 of B.D.A Act to contend that the BDA has got power to dispose of its properties by lease, sale or otherwise. To defend the action of the officers of the BDA in selling the sites in public auction, this provision is pressed into service and some decisions are also cited in support of the same. The contention urged, the provision relied upon and the decision cited will not be helpful in view of the finding recorded that BDA has no jurisdiction, right or authority and all its actions are illegal, contrary to law and the decisions referred to above. Hence the contention is wholly untenable and is rejected.

13. In view of the foregoing reasons the reliance placed upon the decision of the Apex Court reported in : AIR 1991 SC1153 and also decision of Division Bench reported in : ILR 1990 KAR3320 by the learned counsel for the BDA and some of the purchasers is misplaced and therefore the same do not render any assistance to their case.

14. From a perusal of the cause title of purchasers of sites, it is seen that respondents 6 and 7 are husband and wife and two sites have been purchased by

them. Like-wise respondents 8 and 9 are also husband and wife and they have also purchased two sites. So also respondents 15 and 16 being husband and wife have purchased two sites. Under Rule 5 of allotment of sites 1984 Rules, the allotment of stray sites are subject to Rule 10 which prescribed eligibility. Sub-rule (2) of Rule 10 stipulates that a person or any member of his family if owns a site or house, is not eligible to apply for allotment of site. No doubt, the word mentioned in the said Rule is 'allotment' but the disposal of stray sites is in accordance with the directions and guidelines issued by the Government under Rule 5 thereof. Therefore, for the purpose of acquiring a site, either by allotment or auction purchase makes no difference. Having regard to the object and intentment of the BDA Act under both 1982-1984 Rules purchase of two sites by members of the same family (husband and wife) is impermissible in law. When allotment is restricted for a single site to a family, members of the same family cannot be permitted to purchase any number of sites in the name of a single member or in the name of other members of the family merely because they are wealthy to enrich themselves. If the houses in which they are residing belong to them, their position will be much worse as, a person owning a site or house cannot acquire another property from the BDA either by way of allotment or purchase in the public auction. They may purchase private sites or houses but not BDA sites or houses.

15. POINT (d):- For the reason mentioned above, it is held that the Commissioner of the BDA has not exercised his powers as Chief Executive and Administrative Officer of the Authority under Section 13(1) of the Act. The Law officer of the BDA has furnished his legal opinion without application of mind. He failed even to mention that possession of the land should be taken under due process of law and that the petitioner or any other person who has either put-up the structures or residing therein should be served with notices before demolition of the existing structures. The Engineers of BDA have attended to the file very fast and have failed to obtain approval of the sites formed from the Authority. The Secretary of the BDA has failed to place the matter before the Authority for passing resolution or for approving the action taken. Despite all these happenings, the Chairman the then Commissioner and the Secretary of BDA have not played any role nor they either approved or disagreed with the impugned action.

16. In the light of the discussions made above and the findings recorded and the reasons assigned, the contentions urged by the learned counsel for the BDA as well as the respondents purchasers of sites are wholly untenable, unacceptable and the decisions relied upon are not helpful to them. The entire action of the BDA being without jurisdiction, arbitrary and contrary to the BDA Act, Rules and the law laid down in a catena of decisions, the BDA cannot defend its action and the purchasers of the sites cannot justify the illegal and high handed action of BDA. Consequently they cannot justify the sale of sites in their favour in public auction.

17. For the foregoing reasons the following orders are passed;

i) The Writ Petition is allowed.

ii) It is hereby declared that the acquisition proceedings in respect of the land in question are lapsed and/or abandoned on account of non-utilization of the land by the BDA for more than a decade (four decades).

iii) The demolition of structures and the formation of sites on the land in question are declared illegal, arbitrary, bad in law and void abinitio.

iv) The auction notice at Annexure-G the sale of sites, the sale deeds executed and the possession certificates issued in favour of the respondents/purchasers are hereby quashed.

v) The purchasers of the sites are at liberty to claim refund of the sale consideration amount paid from the BDA, within two weeks with current Bank interest.

vi). BDA is restrained from interfering with the possession of the petitioner of the land in question.

18. It is hoped that the observations made in this order will be an eye-opener to the officers of the BDA to understand better their powers and duties under the BDA Act and the allied Rules, know their responsibilities and limitations, discharge their duties and functions properly in the manner stipulated and avoid wastage of public money, which has been done in the instant case for demolishing the

structures and to all other consequential actions.

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