Junjamma and ors. Vs. the Bangalore Development Authority, Rep. by Its Commissioner and ors.

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Court : Karnataka

Decided On : Sep-30-2004

Reported in : ILR2005KAR608; 2004(7)KarLJ677

Judge : N. Kumar, J.

Acts : Bangalore Development Authority Act, 1976 - Sections 2, 14, 15, 15(1), 15(2), 16, 17(1), 18, 18(3), 19, 19(1), 36, 36(1) and 36(2); Land Acquisition Act, 1894 - Sections 4(1), 4(2) and 15(2); Bangalore Metropolitan Region Development Authority Act, 1985 - Sections 10; Karnataka Panchayat Raj Act, 1983 - Sections 63, 310, 315, 503A and 503B; Karnataka Panchayat Raj (Amendment) Act, 1994; Karnataka Panchayat Raj (Amendment) Act, 1991 - Sections 63; Karnataka Municipality Act, 1964 - Sections 155, 156, 170, 171, 302 and 302A; Karnataka Municipal Corporation Act, 1976 - Sections 503E; constitution of India - Articles 14, 226, 227, 243 to 243-O , 243ZD and 243ZE; Constitution 73rd and 74th (Amendment) Act, 1992

Appeal No. : Writ Petition Nos. 42483 and 42517/2002 Etc.

Appellant : Junjamma and ors.

Respondent : The Bangalore Development Authority, Rep. by Its Commissioner and ors.

Advocate for Def. : U. Abdul Khader, Adv. for R1 & R2, ;Desharaj, AGA for R1 and R3, ;C.B. Srinivasan, Adv. for ;K. Krishna, Adv. for R1-2, 3 and ;K. Krishna, Adv. for R2-R3

Advocate for Pet/Ap. : A.S. Bopanna, ;K.S. Beemaiah, ;G.R. Sujatha, ;Goreppa, ;K.S. Rahul Cariappa, Advs., N.R. Nagaraj & Associates, ;A.H. Vani, ;Puttegowda, ;P. Krishnappa, ;D.L. Jagadeesh, ;S.G. Bhat, ;R. Chandrashek

Judgement :
ORDER

N. Kumar, J

1. In all the above Writ Petitioners have challenged the acquisition of their lands by the Bangalore Development Authority for the formation of Visweshwaraiah Layout. As common questions of law and facts do arise for consideration in all these Writ Petitions, they are clubbed and heard together and disposed of by this common order.

2. The petitioners in all these petitions could be broadly classified as under:-

(a) The owners of lands who are either cultivating the land personally or who have put up constructions on the said lands and using them either for residential purposes, non-residential purposes or industrial purposes.

(b) The owners of sites;

(i) Who have purchased sites in agricultural lands.

(ii) Who have purchased sites in layouts which are not approved and formed in agricultural lands.

(iii) Who have purchased sites in layouts which are formed after conversion and after obtaining the necessary permission/sanction from the local authorities.

(iv) Who have purchased sites in any of the modes aforesaid and who have put up constructions and who are living there.

(c) Petitioners who are having garden land, nursery land.

(d) Petitioners whose lands are in the green belt.

(e) Petitioners after purchasing the lands are either running schools hospitals or industries, etc,

(f) Petitioners who are in possession of the sites/lands by virtue of registered General power of Attorney executed in their favour or agreements of sale or allotment letters.

3. The brief facts are as under:- The Bangalore Development Authority issued a notification under Sections 17(1) and (3) of the Bangalore Development Authority Act, 1976 (hereinafter for short called as 'the Act') stating extent of 183 acres 71/2 guntas situated at Sonnenahally, 633 acres 181/2 guntas of Ramasandra Village, 38 acres 28 guntas situated in Kommaghatta Village and 75 acres 8 guntas in Kengeri Village, all situated in Kengeri Hobli, Bangalore South Taluk, Bangalore District, are likely to needed for the purpose of formation of a layout called 'Sri M. Visveshwaraiah Layout.' The said notification dated 14.12.2001 was published in the Karnataka Gazette on 24.1.2002. Thereafter, they issued one more notification under Sections 17(1) and (3) of the Act notifying 708 acres in Ullalu Village and 56 acres 25 guntas in Manganahally Village, both situated at Yeshwanthapur Hobli, Bangalore North Taluk, Bangalore District, as likely to be needed for the above said purpose i.e. for the formation of layout called 'Sir M. Vishveswaraiah II Stage Layout'. The said notification is dated 15.4.2002 published in the Karnataka Gazette on 23.5.2002. The said notifications were issued after the BDA drew up a detailed scheme for the development of Bangalore Metropolitan Area. The said notifications also made it clear that the particulars of the scheme, the maps of the area comprised therein and the statement specifying the lands, which it is proposed to be acquired may be seen in the office of the Additional Land Acquisition Officer, Bangalore Development Authority, Bangalore during the office hours on all working days. It also called upon all persons interested in the said lands not to obstruct or interfere with any Surveyor or any persons employed upon the said lands for the purpose of said acquisition. It further said that contracts for the disposal of the said lands by sale, mortgage, assignment exchange or

otherwise or any outlay or improvements made therein without sanction of the Deputy Commissioner (Land Acquisition), Bangalore Development Authority, Bangalore, after the date of publication of the notification shall under Section 24 of the Land Acquisition Act, 1894, be disregarded by the officer assessing compensation for such parts of the said lands as may be finally acquired. Notice was given to all under Sub-section (1) and (3) of Section 17 of the Act. In accordance with Section 36 of the Act, the Additional Land Acquisition Officer, BDA, his staff and workmen were authorised to exercise the powers conferred under Section 4(2) of Land Acquisition Act, 1894. It was also made clear that any person interested in the land may prefer his/her objections within 30 days from the date of publication of the notification to the Additional Land Acquisition Officer, Bangalore Development Authority Bangalore. Accordingly, it appears that except to the extent of 93 acres 5 guntas objections were filed by persons interested to the remaining extent of land, i.e., objections were filed opposing the acquisition of 1695 acres 7 guntas. After considering the said objections, the BDA upheld the objections only in respect of 357 acres 25 guntas, for the reasons that land is situated within green belt, the land is a built up area, nursery is situated on the land, land is a converted land, BMICP, land is utilised for Ashraya Scheme, Mutts, temple and mosques are situated. However, the Authority rejected the objections in respect of acquisition of remaining extent of land. Though two separate preliminary notifications were issued, they clubbed both these notifications and issued one final notification as Sir. M. Visweswaranagara and accordingly they submitted a report to the Government. In the report submitted by the BDA to the Government it was stated, out of the total extent of land to be notified for acquisition, namely 1,337 acres 22 guntas, about 4423 revenue site holders have purchased the revenue sites from the land owners. They have also filed their objections. Their objections have been over-ruled. But, similar objections raised by site owners when lands were acquired for Anjanapura layout was the subject matter of several Writ Petitions and this Court by an order dated 20.7.2001 passed an order directing the authorities to allot sites measuring 30'x40' in favour of revenue site holders who had purchased the sites prior to the issue of preliminary notification subject to the conditions mentioned in the said order. It was also stated that the said benefit was not extended to persons who had purchased sites under

GPAs or persons who have entered into agreement to purchase or purchased after the preliminary notification. Therefore, they also recommended to the Government that the revenue site holders in the land proposed for acquisition could also be extended the same benefit in terms of the said order. Thereafter, they submitted a report to the effect that in the layout to be formed they will be able to form 4,648 sites measuring 6x9 meters, 5,436 sites measuring 9x12 meters, 3868 sites measuring 12x18 meters and 1,506 sites measuring 15x24 meters. They also set out that 42% of the total land acquired nearly 561.55 acres would be earmarked for formation of sites, 15% of the total extent of land acquired measuring 200.50 acres would be utilised for formation of parks and playgrounds, 10% of the land acquired roughly measuring 133.50 acres would be utilised for civic amenities and 33% of the land acquired, namely 442 acres would be utilised for formation of roads. The total cost of the project was estimated at 286.50 crores and they proposed to realise a sum of Rs. 336.50 crores, thus the BDA would be making a profit of Rs. 50 crores. They also resolved that, if the land owners surrendered the lands without any objections coupled with the fact that they would not seek reference of the Civil Court for enhancement of compensation, land owners who are owners of the acquired land measuring above half acre and below one acre would be given a site measuring 30'x40' in the layout formed at 25% of the cost price. Similarly, land owners who own more than one acre of land acquired would be entitled to 40'x60' site per acre, the maximum being 10 acres at the cost of 25% of the price. The Government considered the said report submitted by the BDA, accorded sanction under Section 18(3) of the Act subject to the condition that the BDA should not expect any financial assistance for implementation of the entire scheme. The Government made it clear that they would not stand as a guarantor for any loan to be borrowed by the BDA from any financial institutions. The Government would not be a party to any transactions entered into between the BDA and other authorities. Further it made it clear that before this agricultural lands are used for residential purposes for the said change of land use prior permission of the Government is to be obtained. The said sanction is published in the Karnataka Gazette on 30.10.2002. Thereafter, the Government has sanctioned the improvement scheme for the formation of Layout called 'Sir M. Visveshwaraiah Layout' by its order dated 30.10.2002 which was

published in the Karnataka Gazette on 31.10.2002. The said final notification was issued after combining the aforesaid two preliminary notifications. In the said final notification issued, an extent of 157 acres 30 guntas in Sonnenahally Village, 521 acres 32 guntas in Ramasandra Village, 24 acres 15 guntas in Kommaghatta Village, 39 acres 29 guntas in Kengeri Village, which are all situated in Kengeri Hobli and 552 acres 15 guntas situated in Ullalu Village and 41 acres 21 guntas situated in Manganahally Village, both situated in Yeshwanthapura Hobli, all situated in Bangalore South Taluk, Bangalore District, in all measuring 1337 acres 22 guntas was declared to be required for the formation of Sir. M Visweshwaraiahnagara layout. Aggrieved by the said notifications and the acquisition proceedings, the petitioners have preferred these petitions.

4. The petitioners are challenging the acquisition of the land on several grounds. Broadly stated they are as under;-

(1) The scheme is not approved by the Government as required under Section 15(1)(b) of the Act and, therefore, the entire acquisition proceedings are void. The Act provides for acquisition of lands and it does not provide for acquisition of building and, therefore the acquisition of building under the Act is one without jurisdiction.

(2) The notification issued under Section 17(1) of the Act as well as under Section 19(1) of the act are vague as it does not disclose the public purpose for which it is acquired and it also does not contain the particulars as required to be provided for under Section 16 of the Act, as such the entire acquisition proceedings are liable to be quashed.

(3) Section 4(2) of the Land Acquisition Act applies to notifications issued under Section 4(1) of the Land Acquisition Act only. It does not apply to the notification under the BDA Act and therefore, the acquisition is bad.

(4) Under the Act no power is conferred on the authority to appoint Land Acquisition Officer and, therefore the appointment of the Land Acquisition Officer for the purpose of acquisition under the Act is one without authority and, therefore, the entire proceedings is liable to be quashed.

(5) The Land Acquisition Officer has not considered all these objections raised before him and on that ground alone the acquisition is liable to be quashed.

(6) No enquiry contemplated under Section 5A of the Land Acquisition Act is conducted by the Land Acquisition Officer and no notice of such enquiry was ever issued nor the petitioners were informed about the submission of the report. Therefore, the acquisition proceedings are vitiated.

(7) The sanction accorded by the Government under Section 18(3) of the Act is liable to quashed on the ground of non-consideration of the objections filed by the petitioners and also because of non application of mind by the sanctioning authorities.

(8) One notification is issued under Section 17(1) for the formation of Sir M. Visweshwaraiah Layout. The second notification is issued under Section 17(1 & 3) of the Act for the formation of Sir M. Visweshwaraiah II stage layout. Whereas one final notification is issued under Section 19(1) of the Act for the formation of Sir M. Visweshwaranagara Layout. One final notification according sanction to two schemes is not permissible in law and therefore, the same is liable to be quashed.

(9) It was also contented that the Government has issued circulars from time to time directing the acquiring authorities not to acquire lands which are situated within the green belt area, garden lands and lands used for nursery and built up areas. Therefore, the notification issued acquiring the lands which are situated between green belt, garden land, nursery land and built up area is vitiated. It only shows non-application of the mind by the Government before according sanction.

(10) Some of the petitioners after obtaining the conversion of the land for residential purposes have formed layouts after obtaining the requisite approval from the competent authorities. Thereafter, they have formed the layouts, roads drainage, lighting and they have sold the sites to the needy poor people who in some cases have put up constructions on such sites and acquiring the aforesaid layouts emboldened for the very same purpose for formation of layout and allotment of sites to needy persons would not constitute public purpose, as such the acquisition is bad.

(11) It is also contended that majority of the petitioners are all poor people coming from lower status of the society who have purchased small sites formed in the layout which is now notified for acquisition by investing their life's earning and some of them have put up residential constructions and living there and acquiring their lands for the purpose of distributing the sites to needy poor people would serve no purpose much less public purpose and therefore, acquisition of sites from the poor people to give it to another section of the poor people is arbitrary and is liable to be quashed.

(12) It is also contended that the BDA has no power to acquire lands which falls within the limits of Grama 'Panchayat or Municipal Council in view of the 73rd and 74th Amendment to the Indian Constitution inserting part-IX and part-IXA in pursuance of which the State legislature amended the Karnataka Municipalities Act 1964, Karnataka Municipal Corporation Act, 1976 and also in view of the provisions contained in Karnataka Panchayat Raj Act, 1983.

(13) Similarly the Authority has no power to acquire lands situated outside the Bangalore Metropolitan area.

(14) Acquisition is also bad for want of previous permission under Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985.

5. Respondents have filed objections contending as follows;

(1) In law there is no prohibition for issue of one final notification in respect of two preliminary notifications as is clearly held by the Supreme Court and therefore, on that ground the acquisition cannot be found fault with.

(2) In so far as grant of approval under Section 15(1)(b) of the Act is concerned such a previous approval of the Government is required to undertake any developmental work and incur expenditure therefor and for preparing and execution of development schemes. When the authority is not depending on the Government for funds and when the scheme is to be implemented out of their own resources, no such previous approval is required as is clear from Section 15(2) of the Act. Moreover, the order of sanction issued by the Government under Section

18(3) of the Act makes it abundantly clear that the Government is not providing any funds to the Authority for implementation of the scheme and the entire scheme has to be executed by the authority out of their own resources. The contention that the acquisition is bad for non obtaining previous approval is without any substance.

(3) The contention that the Act does not provide for acquisition of building and only provides for acquisition of land is also without any substance because the definition of the land under the Act includes building on the land.

(4) Similarly, the contention that the notification is bad for vagueness has no substance because the requirement of Sections 17(1) and 19(1) has been fully complied with and it is not bad for vagueness as contended by the petitioners.

(5) Under Section 36 of the Act, the Authority has the power to appoint Land Acquisition Officer and therefore, the contention that appointment of Land Acquisition Officer under Section 4(2) of the Land Acquisition Act is without jurisdiction has no substance.

(6) The records produced before the Court clearly demonstrates that the objections filed by the petitioners have been considered by the Authority and thereafter the report is submitted to the Government and the Government after applying its mind to the material on record have accorded sanction and, therefore, the requirements of Section 18(3) of the Act has been fully complied with and the submission to the contrary is without any substance.

(7) In law there is no prohibition for acquiring the land which is within the green belt area as is clear from the law laid down by this Court and the Supreme Court and on that ground acquisition cannot be found fault with. Similarly there is no prohibition in law for acquiring garden land, nursery and built up area and therefore the acquisition is not vitiated on that account.

(8) The authority has the power to acquire land not only which falls within the Metropolitan area of Bangalore, but it also has jurisdiction to acquire land which falls outside the Bangalore Metropolitan area and the lands adjoining the

Metropolitan area and, therefore the contention that acquisition of land which are situated outside the Bangalore Metropolitan area is without jurisdiction, cannot be countenanced.

(9) The authorities have not acquired lands upholding the objections of some of the land owners to the effect that their lands are built up, it falls within green belt, garden land and nursery. The petitioners also have raised such objections, but they have been discriminated is concerned, the same has no substance, because the petitioners have not substantiated by acceptable evidence on record that their lands are within green belt, built up area or they are garden lands and nursery lands.

(10) In so far as acquisition of lands where layouts are formed, sites are sold, is concerned, in law there is no bar for acquiring such lands, as such on that ground the acquisition cannot be found fault with.

6. In view if the aforesaid rival contentions, the points that arise for my consideration in these batch of Writ Petitions are as under;

(1) Whether acquisition is vitiated for want of prior approval from the Government as contemplated under Section 15(2) of the Act?

(2) Whether the acquisition of buildings under the impugned notification is bad for want of authority to acquire under the

Act?

(3) Whether the notifications issued are liable to be quashed on the ground of vagueness, not mentioning the public purpose, not giving clear description of the property?

(4) Whether the appointment of Land Acquisition Officer under the Act is one without jurisdiction?

(5) Whether the Authority has the jurisdiction to acquire the lands which are situated outside the Bangalore Metropolitan area?

(6) Whether issue of one final notification in respect of lands notified under two preliminary notifications is bad and vitiate the entire acquisition proceedings?

(7) Whether the acquisition is vitiated for want of previous permission under Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985 ?

(8) Whether the BDA has no power to acquire lands which falls within the limits of Grama Panchayat or Municipality in view of the provisions contained in the Karnataka Municipalities Act, 1976, Karnataka Panchayat Raj Act, 1983 and in view of the 73rd and 74th amendment to the Constitution?

(9) Whether acquisition of garden land, nursery land and converted land is one without authority under the Act?

(10) Whether acquisition of land which is within green belt area is void?

(11) Whether the sanction accorded by the Government under Section 18(3) of the Act is bad for non application of mind and non consideration of material facts?

(12) Whether the acquisition of built up area, converted land garden land, nursery land, land falling within green belt is liable to be quashed on the ground of discrimination when similarly situated lands are excluded from acquisition?

(13) Whether the petitioners who are site owners who have challenged the acquisition of those sites are entitled to the benefit proposed by the authority in their report on the same terms and conditions which are extended to the said owners who are similarly placed in Anjanapura layout?

(14) What order?

7. Re.Point No. (1):- The main thrust of the argument is that before a preliminary notification is issued under Section 17(1) of the Act, the said notification should disclose that the authority has obtained the previous approval of the Government for the said scheme, and admittedly, in the instant case no such approval has been obtained and, therefore, in view of the aforesaid admitted facts the entire acquisition proceedings initiated under Section 17(1) of the Act is one without

jurisdiction and liable to be quashed. In order to appreciate this contention, it is necessary to have a look at Section 15 of the Act which reads as under;-

'15. Power of Authority to undertake works and incur expenditure for development, etc.,-(1) The authority may,-

(a) draw up detailed schemes (hereinafter referred to as 'development scheme') for the development of the Bangalore Metropolitan Area; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development Schemes.

(2) The authority may also from time to time make and take up any new or additional development schemes.-

(i) on its own initiative, if satisfied of the sufficiency of its resources, or

(ii) on the recommendation of the Local Authority if the Local Authority places at the disposal of the authority the necessary funds for framing and carrying out any scheme; or

(iii) Otherwise.

(3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems fit necessary require the authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government'.

This provision has been interpreted earlier in several judgments. It is necessary to refer to those judgments to appreciate the point in controversy.

8. This Court in the case of D. HEMACHANDRA SAGAR AND ANR. v. THE STATE OF KARNATAKA AND ORS., : ILR 1998 KAR4172 dealing with the aforesaid contention has held as under:-

'10. ..... Clause (a) of Sub-section (1) of Section 15 of the BDA Act deals with the drawing up of the scheme by the authority for the development of the metropolitan area. Clause (b) of Section 15(1) of the BDA Act, has two parts; the first part deals with the prior approval of the Government for the Authority to undertake from time to time any works for the development of the Bangalore Metropolitan Area and to incur expenditure thereof, whereas the second part deals with the previous approval of the Government to incur expenditure also for framing and execution of the development schemes. This becomes clear, if Clause(b) of Section 15(1) of the BDA Act, is read with Sub-section (2) of Section 15 which empowers the BDA to take any new or additional development schemes, on its own initiative, if satisfied of the sufficiency of its resources. So the emphasis is on the approval to incur expenditure and not with respect to the drawing up of the scheme. The BDA Act prescribes only one sanction/prior approval of the Government under Section 18(3) of the BDA Act. What is required by Section 15 is the administrative approval to incur expenditure if it exceeds its financial capacity as could be seen from Section 15(2) of the Act. There is no dispute that the administrative approval was given by the Government as observed by this Court in its decision in the previous petitions. The Act also does not contemplate sanction of the scheme at two stages. It is clear from Section 19 of the Act which begins with the expression 'Upon sanction of the scheme, the Government shall publish in the official gazette declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose'. Whereas Section 17(a) commences with the expressions that 'When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made xx xx'. It is therefore clear that the Act did not contemplate sanction of the Government of the scheme at two stages.....'

In the case of P. KRISHNAPPA AND ORS. v. STATE OF KARNATAKA AND ORS., : ILR 1997 KAR905 it is held as under: -

'6. Sanction referred to in the final notification appears to be an administrative sanction as contemplated under Section 15(1)(b) of the Act. Section 15 of the Act provides the authority may draw up a detailed scheme with the previous approval

of the Government. This approval is only an administrative approval to initiate the proceedings for declaration that the land is required for public purpose. In W.P.4975/85, a copy of the order referred to in final notification has been produced as Annexure-B. The reading of the said order it is clear, that Government accorded administrative approval subject to certain conditions. The source of power for the Government to issue such approval is traceable only under Section 15(1)(b) of the Act.

7. The counsel for the respondents, alternatively contended that according approval under Section 15(1)(b) of the Act be treated as a sanction under Section 18(3) of the Act: As held by me supra, the according approval under Section 15(1)(b) is only to initiate proceedings commencing from issuance of preliminary notification under Section 17(1) of the Act, whereas, the sanction referred in Section 18(3) is subsequent to the preliminary notification which is a condition precedent to issue final notification. Therefore, the said order cannot be considered to be a sanction as contemplated under Section 18(3) of the Act'.

9. In the case B.K. ANNAPPA v. THE URBAN DEVELOPMENT AUTHORITY, HASSAN AND ORS., ILR 1999 KAR 1147 it has been held as under:-

'22. From the above provisions, it is clear that the Authority cannot undertake any development scheme without seeking the previous approval of the Government. From the said provision, it also manifests that the Government's approval is required also for incurring the expenditure for execution of said development scheme which will also include the expenditure against employment of manpower by way of daily wages or contract basis restricting its tenure till completion of the scheme. Therefore, the Commissioner is wrong in assuming that he or the Authority can make temporary or daily wages appointments under the guise of undertaking development schemes'.

Chapter III of the Act deals with development schemes. Section 15 deals with the power of the Authority to undertake works and incur expenditure for development, etc., Section 15(1)(a) speaks about drawing up of a detailed scheme for the development of the Bangalore Metropolitan area by the Authority. For drawing up a development scheme no previous approval of the Government is required. After

the developmental scheme is drawn up the next stage is as contained in Section 17(1) of the Act. It provides that when a developmental work has been prepared the authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours. Therefore, it does not speak about any prior approval before issue of a notification.

Therefore, the contention that the notification issued under Section 17(1) is bad for want of previous approval of the Government has no substance in the light of the language employed in Section 15(1)(a) read with Section 17(1) of the Act.

10. Previous approval of the Government under Section 15(2) is required for undertaking works for development of the Bangalore Metropolitan area. Similarly, such previous approval is required to incur expenditure therefor. Similarly, such a previous approval is required for preparing and execution of development schemes and not for drawing up a developmental scheme. Sub-section (2) of Section 15 makes it very clear that if the authority has sufficient resources or if a local authority places at the disposal of the authority the necessary funds for framing and carrying out any scheme they can take up new or additional development schemes. Therefore, it is clear only for the expenditure to be incurred either for undertaking, framing or execution of the developmental scheme previous approval of the Government is required. If the authority is able to take up these developmental scheme on its own and it does not depend upon the Government for raising the necessary resources, then there is no necessity to have the previous approval of the Government.

11. Re.point No. (2):- The argument was that the Act provides for acquisition of the land for public purpose. It does not provide for acquiring buildings on the land and, therefore, the acquisition of buildings under the impugned notification is one without jurisdiction. In order to appreciate this contention, we have to see the definition of 'land' as contained in Section 2(m) of the Act.

'Land includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth'.

12. Learned Counsel for the petitioners relied on the judgment in the case of THE MUNICIPAL CORPORATION OF GREATER BOMBAY AND ORS. v. THE INDIAN OIL CORPORATION LIMITED, : AIR 1991 SC686 to contend that once a building is constructed on a land it ceases to be a land and it becomes a building and, therefore, the building cannot be acquired under the Act. In the aforesaid judgment, the question for consideration was whether the storage tanks of petroleum products are 'land' within the meaning of Section 3(r) or 'buildings' as defined under Section 3(s) of the Bombay Municipal Corporation Act and are exigible to property tax. As the storage tank was constructed beneath the land it was contended that it was not a building and not liable for tax. It is in that context in the aforesaid judgment, the Supreme Court held that the petroleum storage tanks are structures attached to the land within the definition of Section 3(s) and 3(r) of the Act and are exigible to property tax. Therefore, the said judgment is of no assistance in deciding the question whether the buildings erected on the land could be the subject matter of acquisition or not. As is clear from the definition things attached to earth or permanently fastened to anything attached to the earth is also included in the definition of the word 'land' which has to necessarily follow that any construction/building put up on the land falls within the definition of the word 'land' under the Act. Therefore, having regard to the definition of the word 'land' under the Act, the Act authorises acquisition of buildings which are constructed on the land.

13. Re. Point No. (3):- It was contended that the notification issued under Section 17(1) of the Act as well as under Section 19(1) of the Act does not disclose the public purpose for which the lands are notified and also the particulars mentioned in Section 16 of the Act are not mentioned. In other words, the notification is vague and, therefore, the entire acquisition proceedings based on such vague notification is liable to be quashed on that ground. In support of the said contention, learned counsels for the petitioners relied on a judgment of the Supreme Court in the case of MADHYA PRADESH HOUSING BOARD v. MOHD SHAFI AND ANR., : [1992]1SCR657 where the Supreme Court held as under:-

'It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a notification under Section 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the government for the 'public purpose' mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the 'public purpose' for which the acquisition proceedings are being commenced but also the 'locality' where the land is situate with as full a description as possible of the land proposed to be acquired to enable the 'interested' persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged 'public purpose' also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.'

In the aforesaid judgment the Supreme Court was interpreting Section 4(1) and 6(1) of the Land Acquisition Act. Section 4(1) of the Land Acquisition Act reads as under;-

'4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily

newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.'

The corresponding Section dealing with the preliminary notification under the Act is 17(1) which reads as under;-

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

14. A comparison of the aforesaid two Sections discloses that in Section 17(1) of the Act there is no obligation cast upon the acquiring authority to mention the public purposes for which the land is needed. On the contrary what is to be mentioned in a notification under Section 17(1) is that a developmental scheme has been prepared and the said fact is to be stated in the notification and the limits of the area comprised therein and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax would be levied may be seen at all reasonable hours is all to be mentioned in the notification. When we look at Section 17(1) notification issued, it is mentioned that it appears to the Bangalore Development Authority that lands specified in the schedule hereto is likely to be needed for the purpose of formation of a layout called Sir M. Visweshwaraiah Layout and in that regard a developmental scheme has been proposed and that the particulars of the scheme, the maps of the area comprised therein and the statement specifying the lands which is proposed to be acquired may be seen in the office of the Additional land Acquisition Officer, Bangalore Development Authority, Bangalore, during the office hours on all

working days. Thus the notification issued under Section 17(1) of the Act complies with all the legal requirements mentioned in the aforesaid provision. It is not vague. In the judgment of the Supreme Court as aforesaid, in the preliminary notification in the column 'public purpose' it was shown the land is required for residential purpose and the only description given about the land to be acquired was that 2.29 hectares of land proposed to be acquired is situated in District Mandsaur, Village Mandsaur. Whereas, in the final notification issued under Section 6(1) the public purpose has been stated to be housing scheme of housing board, thus the public purpose mentioned in 4(1) notification was different from what was mentioned in 6(1) notification which was again different from what was mentioned in the letter of the Board to the Government. Similarly, the description of the property as required under law was not given. The Supreme Court therefore held those factors go to expose non application of mind by the authorities while issuing the impugned notification and it appears that they were not even sure of the public purpose for which the land was sought to be acquired. It is in that context it was held that the impugned notifications are vitiated on account of being vague and for non-compliance with the mandatory requirements of that law.

15. Whereas in the instant case, the notification issued is strictly in conformity with the requirements of law. The land sought to be acquired is clearly mentioned by giving the names of the kathedars/ anubhavadars, the survey numbers, the nature of the land, the extent of land owned, extent of land proposed for acquisition and the boundaries of the land which is proposed to be acquired, name of the Village where the land is situated and also the total land acquired under the scheme. Under these circumstances, I do not find any merit in the submission of the learned counsels for the petitioners that the notification is liable to be quashed on the ground of vagueness.

16. In fact a Constitution Bench of the Supreme Court in the case of BABU BARKYA THAKUR v. STATE OF BOMBAY (NOW MAHARASHTRA) AND ORS., : [1961]1SCR128 countering the argument that when the preliminary notification under Section 4(1) of the Land Acquisition Act does not state that the land sought to be acquired was needed for a public purpose, such a defect is fatal to the validity of the proceedings has held as under;-

'11. ..... It is argued that in terms the notification does not state that the land sought to be acquired was needed for a public purposes. In our opinion, it is not absolutely necessary to the validity of the land acquisition proceedings that, that statement should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of the Company, which would amount to a public purpose under Part VII, as already indicated.

12. It is further argued that Section 4(1) of the Act had deliberately omitted the words 'for a company' and insisted upon a public purpose. The absence from the notification under Section 4 aforesaid of those words, namely for a public purpose, are fatal to the proceedings. The purpose of the notification under Section 4 is to carry on a preliminary investigation with view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under Section 4 is fatal to the validity of the proceedings particularly when the acquisition is for a Company and the purpose has to be investigated under Section 5A or Section 40 necessarily after the notification under Section 4 of the Act'.

In the light of the aforesaid Supreme Court judgment coupled with the fact that the impugned notification satisfies the requirements of law as contemplated under Section 17(1) of the Act, there is no vagueness as contended by the petitioners. As such there is no substance in the said contention.

17. Re.Point No. (4):- It was next contended that in exercise of the powers under Section 36 of the Bangalore Development Authority Act the Additional Land Acquisition Officer, Bangalore Development Authority, Bangalore, has been authorised to exercise the power conferred under Section 4(2) of the Land

Acquisition Act, 1894. As the Additional Land Acquisition Officer is not an officer of the Government he cannot be appointed. Secondly, it was contended Section 36 comes into picture only after the land vests with the Government under Section 16 of the Land Acquisition Act and therefore even before such vesting the said Section is not attracted and, therefore, the appointment made is one without jurisdiction. Consequently, all the proceedings conducted by such officer is without the authority of law and liable to be quashed.

18. Sub-section (1) of Section 36 of the Act provides that the acquisition of the land under the Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they applicable to the Land Acquisition Act, 1894. It only means in the Act when there is no provision prescribed for acquisition of land, the provisions of the Land Acquisition Act could be availed of for the acquisition proceedings. In other words if the Act provides for specifically to that extent the Land Acquisition Act stands excluded and in the absence of any provision, the provisions of Land Acquisition Act are applicable to the acquisition under the Act. In fact, Sub-section (2) of Section 36 categorically states that for the purpose of Sub-section (2) of Section 15 of the Land Acquisition Act, 1894 the Authority under the Act shall be deemed to be the local authority concerned. When a notification is issued under Section 4(1) of the Land Acquisition Act under Section 4(2) any officer either generally or specially authorized by such Government in that behalf and his servants and workmen can take up the preliminary work as mentioned in the Sub-section (2) of Section 4. When the Commissioner under the Act issued the notification it is the Land Acquisition Officer of the Authority and his staff and Workmen who are authorized to exercise the power conferred under Section 4(2) of the Act the said power is exercised by the Commissioner under Section 4(2) of the Act because there is no corresponding provision in the Act. Merely because the Additional Land Acquisition Officer of the Bangalore Development Authority is not an Officer of the Government it cannot be said that he cannot be appointed under the provisions nor such an appointment would vitiate the acquisition proceedings. Under the Act though the preliminary notification is issued by the BDA the final notification is issued by the Government after sanction of the Scheme submitted by the BDA and it is the Government which publishes the declaration under Section 19(1) of the

Act. It is in that context coupled with the fact that Section 50 of the Land Acquisition Act provides that the cost of acquisition should be borne by local authority after the acquisition is complete and on payment of the cost of acquisition and on issue of notification of Section 16 of the Land Acquisition Act, 1894 the land which has vested with the Government would be transferred to the Authority and it is thereafter that the land vests with the Authority. Therefore the contention that Section 36 comes into picture only after the land vests with the Government under Section 16 of the Act is contrary to the express provision contained under Section 36. In that view of the matter there is no substance in the contention that because of the appointment of Additional Land Acquisition Officer attached to the BDA the acquisition proceedings are vitiated.

19. Re.Point No. (5):- It was contended that the Authority has no jurisdiction to acquire lands which are situated outside the Bangalore Metropolitan Area. Therefore, the notification issued acquiring the land which is outside the jurisdiction of the Bangalore Metropolitan Area is liable to be quashed. It was also contended that even if it is to be held that the Authority has the jurisdiction to acquire the land which is adjoining the Bangalore Metropolitan Area, the Authority has no jurisdiction to acquire lands which are not adjoining the lands within Bangalore Metropolitan Area and, therefore, such lands which are sought to be acquired which are not adjoining the lands within Bangalore Metropolitan Area and hence the notification is liable to be quashed. Countering such an argument, learned counsel for the authority relied on two judgments of this Court where similar questions were raised and they were answered in favour of the Authority. In the case of VISHWABHARATHI HOUSE BUILDING COOPERATIVE SOCIETY LIMITED v. BANGALORE DEVELOPMENT AUTHORITY, 1989 (3) KLJ 17 dealing with similar contention this Court held:-

'7..... When the express language of Clause (a) of Sub-section (1) of 15 of the Act enables the Authority to draw up a 'development scheme' for the development of the Bangalore Metropolitan Area, to hold that, that clause enables the authority to draw up a 'development scheme' for the development within the Bangalore Metropolitan Area will result in regarding the preposition 'of used in the clause, which comprehends development of the Bangalore Metropolitan Area both 'within'

and 'outside' as a preposition which limits the development of the Bangalore Metropolitan Area to an area 'within' it. I find no warrant to hold so, by reading down the meaning of the preposition 'of in the clause. In fact Section 14, which was relied upon by the learned Counsel for the petitioners to read down the preposition 'of in the said clause, instead of warranting such reading down, goes against it. The provision in Section 14 of the Act, which proceeds the provision in Section 15, which empowers the Authority, to acquire, hold, manage and dispose of the property within or outside the Bangalore Metropolitan Area, to promote and secure the development of Bangalore Metropolitan Area, to hold that the 'development scheme' to be drawn up or prepared by the Authority under Clause (a) of Sub-section (1) of Section 15 of the Act cannot comprise of the area laying outside the Bangalore Metropolitan Area, but has to comprise of only an area (property) lying within the Bangalore Metropolitan Area, would result in giving the preposition 'of in the clause a meaning unwarranted in the context and setting in which the clause is introduced by the Legislature, the avowed object of which as envisaged in Section 14, is but to empower the Authority to prepare the 'development schemes' for the development of the Bangalore Metropolitan Area by acquiring, holding, managing and disposing of the property within or outside the Bangalore Metropolitan Area.

8. Coming to Sub-section (1) of Section 16 of the Act, it provides that the 'development scheme' to be prepared by the Authority shall specify the limits of the area comprised in the scheme and the lands to be acquired for execution of such scheme. 1 am unable to find from a perusal of that sub-section, anything which would indicate that the area comprised in the scheme cannot cover the adjacent area of the Bangalore Metropolitan Area, that is, the area outside the Bangalore Metropolitan Area, as sought to be pointed out by the learned Counsel for the petitioners. Then, Section 25 of the Act, to which my attention was drawn, no doubt, empowers the Authority to take up works for the further development of an area within the Bangalore Metropolitan Area. If it was really the intention of the Legislature to confine the power of the Authority to draw up a 'development scheme' under Clause (a) of Sub-section (1) of Section 15 of the Act to an area within the Bangalore Metropolitan Area, it would not have been difficult for it to say that the development scheme to be drawn up thereunder should be for an area

within the Bangalore Metropolitan Area, as had been done under Sub-section (1) of Section 25 of the Act while referring to further development to be made by the Authority as that to be made within the Bangalore Metropolitan Area. Subsection (1) of Section 25, therefore, instead of supporting the construction sought to be placed on Clause (a) of Sub-section (1) of Section 15, by the learned Councel for the petitioners, goes against such construction. Again, when the definition clause of 'Bangalore Metropolitan Area' in Section 2 of the Act, to which also my attention was drawn, given the meaning of such Bangalore Metropolitan Area as such other areas adjacent to the Bangalore Metropolitan Area as the Government may, from time to time by notification, specify; the same cannot, in my view, have the effect of excluding such adjacent areas from being included in a 'development scheme' envisaged in Clause (a) of Sub-section (1) of Section 15 of the Act, as sought to be made out. The provision, in the definition clause relating to the notification to be issued by the Government respecting the adjacent areas of the Bangalore Metropolitan Area to be included in the Bangalore Metropolitan Area, as I find it, is a power exercisable by the Government subsequent to the implementation of the development scheme drawn up by the Authority and not the one, the re-course to which has to be had by the Authority, even before a 'development scheme' is drawn up by it. Further, Section 35 of the Act, which empowers the Authority to enter into an agreement with the owner of any land or interest, whether situated within or without the Bangalore metropolitan Area for the purchase of such land or interest therein for the purpose of the Act, cannot in any way effect the power of the Authority to acquire such land or interest therein in accordance with the provisions of the Act providing for compulsory acquisition, to which I have already adverted. Indeed Sub-section(1) of Section 36 of the Act declaring that the acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894, read with the provision in Sub-section (2) of Section 3 of the Act empowering the Authority to acquire the property, would clearly indicate that the provisions of the Act relating to the acquisition of land within or without the Bangalore Metropolitan Area could be availed of by the Authority for the purpose of the Act. However, I am unable to find anything in Section 35 of the Act which would show that the power of the Authority,

in drawing up a development scheme should not include the area or lands outside the Bangalore Metropolitan Area. Moreover, the preamble to the Act, which was also relied upon by the learned Counsel for the petitioners to support the restricted construction which he wanted me to place on Clause (a) of Sub-section (1) of Section 15 of the Act by declaring that the Act is intended to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto, if anything makes it obvious that the power invested in the Authority under Clause (a) of Sub-section (i) of Section 15 of the Act to draw up a 'development scheme' for the development of 'Bangalore Metropolitan Area' includes not merely the power to draw up such scheme for the area within the Bangalore Metropolitan Area, but also for areas adjacent to it.

9. I, therefore, hold that the Bangalore Development Authority does have jurisdiction under Clause (a) of Sub-section (1) of Section 15 of the Act to prepare, frame or draw up a 'development scheme' generally called as 'improvement scheme' respecting an adjacent area of the 'Bangalore Metropolitan Area'.

20. Following the aforesaid judgment, another learned single Judge of this Court in the case of CHIKKA MUNIYAPPA REDDY MEMORIAL TRUST v. STATE OF KARNATAKA AND ORS., 1998(2) KLJ 274 has followed the said view.

Section 14 of the Act which deals with objects of the Authority reads as under:-

'14. Objects of the Authority:- The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out buildings, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto.'

A reading of the aforesaid Section makes it clear that the Authority has the power to acquire, hold manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of

expedient for the purpose of such development and for purposes incidental thereto. Section 15 of the Act empowers the Authority to draw up a detailed scheme for the development of Bangalore Metropolitan Area. Section 35 of the Act empowers the Authority to enter into an agreement with the owner of any land or any interest therein whether situated within or without the Bangalore Metropolitan Area for the purchase of such land or interest therein for the purpose of this Act. Section 2(c) of the Act defines what Bangalore Metropolitan Area means. According to the definition, 'Bangalore Metropolitan Area' means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949, the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of this Act was in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify. In fact the Government has from time to time issued notifications extending the area comprised in the Bangalore Metropolitan Area. As against these provisions, Section 25 of the Act empowers the Authority to take up works for further development with the previous sanction of the Government for further development of any area within the Bangalore Metropolitan Area. The proviso to Section 25(1) makes it clear that the Corporation shall be consulted if such area lies within the limits of the City of Bangalore. A conjoint reading of these provisions makes it clear that the Authority has the jurisdiction to acquire land which is situated within the Corporation of the City of Bangalore and the areas adjacent to the land situated within the Corporation City of Bangalore and areas which are situated outside its jurisdiction. Merely because, its powers to take up developmental works is confined to areas situated within the Bangalore Metropolitan Area, it cannot be said it had no power to acquire lands which are outside the Bangalore Metropolitan Area. The acquisition of land is one thing and taking up developmental work is another. When Section 14 explicitly provides for acquiring, holding, managing and disposing of properties which are situated outside its jurisdiction, purchase of lands which are situated outside the Bangalore Metropolitan Area and when no prohibition is imposed while drawing up a developmental scheme of Bangalore Metropolitan Area, it cannot be said that the Authority has no jurisdiction to acquire land which is situated outside the Bangalore Metropolitan Area. Bangalore is a fast growing city in the World. In law

by issuing a notification the Government can extend the area of operation of the Authority. In other words, it can extend the boundaries of Bangalore Metropolitan Area. Even in the absence of such notification extending the Bangalore Metropolitan Area, the Act empowers the Authority to acquire lands which are situated outside the Bangalore Metropolitan Area for the purpose of developmental schemes in order to give effect to the object for which the Authority has been constituted under the Act. Therefore, it cannot be said that the Authority has no jurisdiction to acquire lands which are situated outside the Bangalore Metropolitan Area or it can acquire only lands which are adjacent either to the land which is situated within the Corporation of the City of Bangalore or the Metropolitan Area. The simple words used in the aforesaid provisions do not call for any interpretation from a literal meaning of the aforesaid words coupled with the object with which the Act is passed and the onerous responsibility cast upon the authority for development of the City of Bangalore, it can be said with certainty that the Authority under the Act has the jurisdiction to acquire land which is situated outside the Bangalore Metropolitan Area. The aforesaid judgments set out above also support this finding of mine. Therefore, I do not find any substance in the contention raised.

21. Re.Point No. 6:- It was submitted that the Bangalore Development Authority has issued one notification under Section 17(1) of the Act for formation of Sir M. Visweshwaraiah layout on 14.12.2001 and another notification on 15.4.2002 for the formation of Sir M. Vishweshwaraiah II Stage layout, but only one final notification is issued under Section 19(1) of the Act for the formation of Sir M. Visweshwara Nagara Layout, which is impermissible in law. The argument is that each notification under Section 17(1) has to be followed by an independent notification under Section 19(1) of the Act and the Act does not provide for amalgamation of two schemes and for making a declaration in respect of two schemes together. Countering this argument, the learned counsel for the Authority submits that in law there is no prohibition for issue of two notifications under Section 17(1) of the Act and for issue of one final notification under Section 19(1) of the Act, as a notification under Section 17(1) is issued after drawing up a developmental scheme which is only in the nature of a proposal and on consideration of such proposal and the objections filed by the owners of the land,

the authority as well as the Government has to make up its mind and, therefore, in law there is no legal impediment for issue of two preliminary notifications to be followed by one final notification. In order to appreciate this contention it is necessary to have a look at the language employed in Section 15 which deals with power of the Authority to undertake works and incur expenditure for development, etc., Section 15(a) categorically states that the Authority may draw up 'detailed schemes' for the development of the Bangalore Metropolitan Area. Therefore, it is clear that one scheme is not what is thought of which would satisfy the development of the Bangalore Metropolitan Area. It has to be necessarily more than one scheme. Sub-section (2) of Section 15 also speaks about the authority taking up any new or additional development schemes. Therefore, in the nature of things for the development of Bangalore Metropolitan Area, the authority is empowered to draw up detailed schemes, i.e, more than one scheme. After such development scheme has been drawn up and a notification has been issued under Section 17(1) and on consideration of the representations made by the land owners the Authority should apply its mind and submit a scheme making such modifications therein as it may think fit to the Government for sanction. After considering the proposal submitted to it, the Government may by order give sanction to the scheme. It is upon sanctioning of the scheme, the Government shall publish in the official gazette a declaration stating the fact of such sanction and the land proposed to be acquired by the Authority for the purpose of the scheme is required for a public purpose and then the requirements contemplated under Section 19(2) has to be complied with. Therefore, a reading of Sections 15, 16, 17, 18 and 19 makes it clear that there is no prohibition for issue of two notifications in respect of a scheme and for issue of a single declaration in respect of the lands covered under the two schemes. In this regard it is useful to refer to the judgment of the Supreme Court in the case of THE STATE OF MADHYA PRADESH AND ORS. v. VISHNU PRASAD SHARMA AND ORS., : [1966]3SCR557 where it has been held while interpreting Sections 4, 5 and 6 of the Land Acquisition Act that it is not in dispute that it is open to the appropriate Government to issue as many notifications as it deems fit under Section 4(1) even with respect to the same localities followed by a proper notification under Section 6 so that the power of the appropriate Government to acquire land in any locality is

not exhausted by the issue of one notification under Section 4(1) in respect of that locality. All that has been said in the aforesaid judgment is once a declaration is made under Section 6, the notification under Section 4(1) must be exhausted for it has served its purpose. There is nothing in Sections 4, 5-A and 6 to suggest that Section 4(1) is a kind of reservoir from which the Government may from time to time draw out land and make declarations with respect to it successively. Once a declaration is made under Section 6 specifying the particular land needed and that completes the process, the notification under Section 4(1) cannot be further used thereafter. Therefore, it is clear that there can be more than one preliminary notification under Section 17(1) of the Act where the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours. But, if the said developmental scheme which is prepared by the Authority is adjacent to each other and a common layout could be formed out of the lands within those schemes, it is open to the Authority to consider those developmental schemes together and make such modification as it may think fit and then submit to the Government for sanction furnishing the particulars mentioned in Section 18(a). Thereafter, it is open to the Government to consider the proposal submitted to it and thereafter to pass an order giving sanction to the scheme. Upon such sanction it is open to the Government to issue its declaration by way of a single notification under Section 19(1) of the Act.

22. In the instant case, in the notification issued on 14.12.2001 the Authority has drawn up a scheme in respect of an extent of 930 acres 22 guntas of land comprised in Villages Sonnenahally, Ramasandra, Kommaghatta and Kengeri. Whereas, in the notification dated 15.4.2002 they have drawn up a scheme in respect of 764 acres 25 guntas of land situated in Ullalu and Manganahally Villages. Therefore, it is clear that both notifications pertain to lands situated in villages which are adjoining each other and the layout to be formed would be a single compact layout. When once the layout to be formed is only one compact layout comprising of lands which are notified for acquisition in the aforesaid two

notifications then a declaration could be granted by the Government on consideration of the entire extent of land being suitable for the purpose for which it is sought to be acquired. The making up of the mind cannot be in two stages whereas the proposal could be in installments. In that view of the matter, the material on record discloses that though in the first notification, the Authority drew up a developmental scheme comprising of lands in six villages to the extent of 1337.22 acres subsequently when they thought they need additional extent of 764.25 acres which is situated in respect of two villages which are situated adjoining to the village in the first notification, they have issued a second notification. Objections from the persons interested/land owners have been called for under both the notifications. On receipt of the same, on consideration of the said objections the Authority thought it fit to modify the scheme and submit the proposal for sanction of the Government. The Government on its part after applying its mind to the proposals and the report of the Authority has accorded sanction. After so according sanction it has issued the declaration under Section 19(1) of the Act as required. Therefore, it cannot be said that the declaration under Section 19(1) issued by the Government is vitiated for having issued the same in respect of two notifications under Section 17(1) of the Act. The said notification under Section 19(1) is not faulty, is not defective and issue of one final notification under Section 19(1) of the Act is not fatal, as contended by the learned counsels for the petitioners in so far as acquisition of the lands which are the subject matter of these Writ Petitions are concerned. Hence, I do not find any substance in the said contention.

23. Re. Point No. (7):- Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985 states that notwithstanding anything contained in any law for the time being in force except with the previous permission of the Authority, no authority or person shall undertake any development within the Bangalore Metropolitan Region of the types as the Authority may from time to time specify by notification published in the official gazette. Relying on this it was contended even before drawing up of a developmental scheme, the authority should have taken the permission. They also rely a letter issued by the Bangalore Metropolitan Region Development Authority dated 21.8.2003 stating that the BDA has not taken permission from them for formation of Sir. M. Vishweshwaraiah

layout. Therefore, it was contended that the acquisition of the land is in violation of the statutory provisions. This contention also has no substance because the permission under Section 10 is required before undertaking any development and not before acquiring the land for development. If after acquisition the Authority is yet to take permission from BMRD that would not vitiate the acquisition proceedings without the prior permission of the BMRD, the BDA cannot develop the land acquired as a layout. It is always open to the BDA to obtain the necessary permission and form the layout. On that score the acquisition of land cannot be quashed.

24. Re.Point No. (8):- By the Constitution 73rd and 74th Amendment Act, 1992 which inserted parts-IX and IXA in the constitution steps were taken to organize Village Panchayat and endeavored them with such powers and authority as may be necessary to enable them to function as units of Central Government. While part-IX relates to the Panchayats' containing Articles 243 to 243-O, Part-IXA relates to Municipalities containing Articles 243P to 243ZG. Parts IX and IXA are more or less parallel or analogous.

25. In view of the constitutional provisions Karnataka Municipalities Act, 1964 was amended and Section 302-A has been inserted providing for preparation of development plan. That provision read with Sections 155 to 159, 170 and 171 provides for preparation of development plan submitting the same to the District Planning Committee, acquisition of land, drawing up of improvement schemes and providing for approval for formation of layouts, extension and prevention of unauthorized formation of extensional layouts.

26. Similarly the Karnataka Municipal Corporation Act, 1976 was also amended and Section 503A and 503B were inserted providing for constitution of Metropolitan Planning Committee.

27. Karnataka Panchayat Raj Act providing Sections 309 and 310 which provided for development plan and constitution of District and Section 315 provides power to the Grama Panchayat to regulate lying out and location of streets.

28. In view of these provisions it was contended that the Bangalore Development Authority Act and the Town and Country Planning Act being pre-constitutional amendment legislature, those provisions are inconsistent to Part-IX and IXA of the Constitution and stand repealed and therefore the Bangalore Development Authority has no jurisdiction to acquire lands which fall within the Karnataka Municipalities Act or the Karnataka Panchayat Raj Act, form layouts for distribution of sites. Therefore it was contended that the impugned acquisition in so far as it acquires land which falls within the Grama Panchayat limits or Municipalities limit are liable to be quashed for want of power under the Bangalore Development Act.

29. In order to appreciate these contentions we have to see what is the law enacted by the Parliament by way of amendment to the Constitution of 73rd and 74th Constitution Amendment Acts. The relevant provisions are Articles 243ZD and 243ZE. Article 243ZD provides that there shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole. It also provides that the state Legislature may by law, make provision with respect to the composition of the District Planning Committees, the manner in which the seats in such Committees shall be filled, what are its functions and the manner in which chairpersons of such Committees shall be chosen. It also provides for the District Planning Committee preparing draft development plan having regard to matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation, the extent and type of available resources whether financial or otherwise and recommendations to be made by them to the Government. Similar is the provision contained in Article 243ZE where constitution for Metropolitan area is made with similar powers. Therefore there is absolutely, in these two provisions, no prohibition imposed for a developmental authority like BDA or State Government to acquire land for the purpose of formation of layout for residential purpose to meet the requirements of poor and needy people of the State.

30. Article 243N of the Constitution provides that notwithstanding anything in Part-IX any provision of any law relating to the panchayats in force in a State immediately before the commencement of the Constitution (73rd Amendment) Act 1992 which is inconsistent with the provisions of this part shall continue to be in force until amended or repealed by competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

31. Section 302A which is introduced into Karnataka Municipalities Act, 1964 by way of amendment by Act 36 of 1994 in pursuance of the aforesaid 74th Constitutional Amendment deals with only preparation of a development plan. It states that every Municipal Council shall prepare every year a development plan and submit the District Planning Committee constituted under Section 310 of the Karnataka Panchayat Raj Act, 1983 or as the case may be the Metropolitan Planning Committee constituted under Section 503E of the Karnataka Municipal Corporation Act, 1976. Therefore, there is no prohibition in the said provision for acquisition of land which is situated within the limits of the Municipal Council.

32. In so far as the provisions of the Karnataka Panchayat Raj Act, 1983 is concerned, no consequential amendments were carried out in pursuance of the aforesaid Constitutional Amendments. The Panchayat Raj Act of 1993 replaced the Karnataka Zilla Parishat, Taluk Panchayat Samithis, Mandal Panchayats under the Panchayat Raj Act, 1983. Consequent upon the changes proposed in the 72nd Constitution (Amendment by July 1991) Section 63 of the Act deals with power of Grama Panchayat as to roads, bridges etc. It states that all roads, bridges, cart tracks, drain well and other public places in the Panchayat area not being private property and which are not in the control and management of other authorities mentioned therein shall vest in the Grama Panchayat and the Grama Panchayat may do all things necessary for the maintenance and repairs there of and make roads etc. Section 310 of the said Act deals with establishment of District Planning Committee. Section 315 of the Act empowers the Grama Panchayat to make by-laws. One such power vested with is to make by-laws for prevention of erection of building, form layout etc. Therefore none of these provisions contain any prohibition for acquisition of land within their limits belonging to the private persons

for formation of layouts. Section 155 of the Karnataka Municipalities Act deals with the power of Municipal Council to undertake works and incur expenditure for improvement etc. Section 156 deals with particulars to be provided for in an improvement scheme which also includes the power to acquire the lands. Section 170 deals with forming of new extensions or layouts or making new private streets. Section 171 deals with alteration or demolition of extension, layout or streets. All that Section 170 states is notwithstanding anything to the contrary in any law for the time being in force no person shall form or attempt to form any extension or layout for the purpose of constructing buildings there on or make any new private street without the express sanction in writing of the Municipal Council and expect in accordance with such conditions as the Municipal Council may specify. Therefore that provision does not prohibit acquisition of land but it states that if any layout is to be formed within the limits of the Municipality permission of the Municipality is required. It is to be noticed that all these legislations are passed by the State Legislature and duly assented by the President of India. It is not in dispute that the State Legislature has the competency to pass all these legislations. There is no conflict between these legislations. Each legislation is operating in a given field. Therefore it is clear that none of these provisions relied on by the learned counsel for the petitioners prohibits acquisition of land within the limits of Grama Panchayat or Municipal Council by the BDA. Therefore, I do not find any substance in the said contention.

33. Re. Point No. (9):- In law there is no prohibition for acquiring a land converted from agricultural use to either residential use, industrial use or commercial use from being acquired for the purpose of formation of a layout. The conversion of land from one user to another user would not in any way affect the power of the Government to acquire such land. If the Government proposes to acquire a converted land probably they have to pay a higher amount of compensation than what they have to pay to agricultural lands taking into consideration the potential user of the land and the improvements which the owner of the land has made consequent to such conversion. But, such conversion does not take away the power of the authorities or the Government to acquire the said land for the formation of a layout.

34. Similarly, there is no substance in the contention that having regard to the user of the land acquired, namely non-residential purpose, industrial purpose, commercial purpose, lands used for nursery and garden, cannot be used for residential purpose without there being appropriate permission obtained from the planning authority. In fact, in this regard the learned counsels for the petitioners relied on a judgment of this Court in the case of B.R. BALIGA AND ORS. v. TOWN MUNICIPAL COUNCIL, UDUPI, D.K. AND ANR., 1995(4) Kar. L.J. 408 where it has been held that when land which is acquired is an agricultural land acquired for the purpose of forming a residential layout, the permission of the Planning Authority is required for the change of land use. Without such permission the land cannot be used for residential purposes. That again does not affect the power of the Authority or the Government to acquire the land. It is only after acquisition of the land that the authority can seek permission for change of land use. The very fact that there is a provision for change of land use implies that the owner of the land is entitled to approach the planning authorities for change of land use. But, such a request is to be made by the owner of the land. The ownership of the land could be acquired by the Authority by the mode of acquisition. Therefore, not obtaining prior permission from the Planning Authority for change of land use does not in anyway vitiate the acquisition of land. In fact while according sanction under Section 18(3) of the Act, the Government has categorically stated that the sanction sought for is granted subject to the condition that the Authority shall obtain permission for change of land use. Therefore, not obtaining prior permission for change of land use would in no way vitiate the acquisition proceedings.

35. Re.Point No. (10):- This objection pertains to acquisition of land which is situated within the green belt area. It is submitted when the Comprehensive Development plan of Bangalore, 1984 was revised in 1995 by the Government, green belt area earmarked in the CDP of 1984 was shifted. The shifting of green belt area was questioned in a public interest litigation in W.P.No. 4750/1997 before this Court. One more public interest litigation in W.P.No. 31562/1997 is also filed seeking restoration of the CDP, 1984. It is during the pendency of the aforesaid Writ Petitions the impugned notifications are issued including the lands which are situated in green belt area. It is also stated that in a circular issued by the Rural Development and Panchayat Raj Secretariat regarding green belt area revising

the green belt area in the Comprehensive Development Plan of Bangalore, on 20.8.1984, instructions were issued to stop issue of licences for building activities in the green belt area without prior approval of the BDA, Thereafter, a Comprehensive Development Plan of Bangalore is finalised and the green belt area has since been revised as per the list annexed to the said circular. Further, it was stated in the said circular no land acquisition proceedings, if any, need be pursued further in any area under the green belt. No fresh proposals be initiated for acquisition nor any fresh proposals for the formation of a layout or for any other non-agricultural purpose in the said green belt area need be entertained. Relying on these two circulars it was contended in the first place, that notifying the lands which are situated within the green belt is bad and even otherwise while according sanction to the scheme the Government has not applied its mind and has not taken into consideration the aforesaid litigation pending as well as the circular issued by them in the year 1984 and, therefore, it was submitted that the entire acquisition proceedings is liable to be quashed on this ground.

36. In fact a Division Bench of this Court in the case of SMT. VENKAMMA AND ORS. v. DEPUTY COMMISSIONER, BANGALORE DISTRICT AND ORS., : AIR1995 Kant351 had an occasion to consider a similar contention. After considering the said contention the Division Bench held as under:-

'9. We do not think that there is any substance in this contention also. The Act does not limit the power of the State Government to acquire any land for a public purpose. No other provision of law has been pointed out to us in support of the contention that agricultural lands situated in green-belt cannot be acquired by the State Government. In our opinion, what the State Government is required to do in such cases is to consider whether the said land can still be regarded as suitable for the purpose for which it is sought to be acquired. Section 95 of the Karnataka Land Revenue Act, restricts the power of an occupant of agricultural land to put it to any other use without permission it does not put any restriction on the power of the State Government to utilise such land for any other purpose. Moreover, the Deputy Commissioner has the power under that provision to permit change of user of agricultural land. We can safely assume that the State Government was aware of this provision and keeping in mind this provision it thought it is now included in

the green-belt it cannot be said that the satisfaction of the State Government in that behalf is not genuine'.

The Supreme Court in the case S.S. DARSHAN v. STATE OF KARNATAKA AND ORS., : AIR 1996 SC671 and in the case of JAINARAIN AND ORS. v. UNION OF INDIA AND ORS., : AIR 1996 SC697 has held that whatever may be the user of the land under the master plan in the zonal development plan the State can always acquire the land for public purpose in accordance with the law of the land. Therefore, the power of the Authority or the Government to acquire a land which is situated in the green belt area is not hampered in any way. Mere pendency of a public interest litigation questioning the shifting of green belt area and a circular issued in the year 1984 as a guidance to the acquiring authorities not to acquire lands which are situated within the green belt area for the formation of a layout would in no way affect the power of the Government to acquire the land. If as a result of acute shortage of land within the city nearby agricultural land situated in the green belt is acquired by the Government it cannot be said that it is not a case of proper exercise of power under the Act by the Government. There is a large influx of people from all over the country to 'Bangalore. A comprehensive development plan has been prepared by the Planning Authority for the City of Bangalore earmarking residential area, commercial area, industrial area, etc, in the said plan. The said plan is not static. It is reviewed from time to time. Similarly, the green belt area shown in the Comprehensive Development Plan cannot be static for all time to come. In any Comprehensive Development Plan sufficient area is to be earmarked as green belt area. If a portion of a green belt area is utilised for the formation of a layout, consequently the authorities may earmark equivalent extent of land as green belt by extending the original green belt area. That is the reason why the boundary of the Bangalore Metropolitan area is extended from time to time by issuing notifications by the Government including more and more villages. The need is ever growing. It is for the planning authorities who are vested with the power to prepare a Comprehensive Development Plan, to take into consideration the needs of the public and other factors and earmark the green belt area. However, all this would not in anyway affect the power of the Government under the Land Acquisition Act or the power of the Authority or the Government under the Act to acquire land which is situated within the green belt area for the

formation of layout. Therefore, I do not find any substance in the said contention.

37. Re. Point No. (11):- The contention of the petitioners is that after service of the preliminary notification all of them have filed objections opposing the acquisition on the ground that the property sought to be acquired is a built up area, it is situated within green belt, it is a garden land, it is a nursery, it is a converted land and, therefore, the same is not liable to be acquired. In that connection they have also relied on the circulars issued by the Government from time to time to substantiate their contention that the aforesaid lands cannot be acquired. It is their grievance that after the objections are filed they were not heard in the matter, they did not receive any notice of an enquiry and without considering the said objections, in a mechanical way their objections are rejected and final notification has been issued. Therefore, they contend that for non-application of mind in accordance with law, in so far as considering their objections are concerned, the final notification issued is liable to be quashed.

38. Section 18 of the Act deals with sanction of scheme. It provides that after publication of the scheme and service of notices as provided in Section 17, if the persons interested in the land were to file objections within 30 days from the date of receipt of notice why such acquisition of the building or land and the recovery of betterment tax should not be made, the authority is under an obligation to consider the said representation. It is only on consideration of such representations the authority shall submit the scheme making such modifications therein as it may think fit to the Government for sanction. What the aforesaid Section requires is consideration of representations. Therefore, there is no obligation cast upon the authority to issue any notice to the objector giving him an opportunity of being heard and holding any enquiry in respect of the said objections. Therefore, the contention that after objections were filed they should have been notified of the further hearing of the matter, and that they should have been given an opportunity to substantiate their objections and that they should have been heard personally in support of their objections before the authority applied its mind, is not provided for and is not the requirement of law. All that the law expects the authority is to consider the representations. Therefore, on that score the acquisition cannot be held to be vitiated in any manner. After the authority considers their

representations, the authority shall submit the scheme furnishing the description with full particulars of the scheme including the reasons for any modification inserted therein, the complete plans and estimates of the cost of executing the scheme, a statement specifying the land proposed to be acquired, any representation received under Sub-section(2) of Section 17, a schedule showing the rateable value as entered in the municipal assessment book on the date of the publication of a notification relating to the land under Section 17 or the land assessment of all land specified in the statement under Clause (c) and such other particulars for consideration by the Government. The Government on consideration of the aforesaid proposal submitted by the authority to it, may by order give sanction to the scheme. In this regard, the authority has made available its entire records for perusal by the Court. The said record discloses that the authority has considered the objections filed by the land owners. The material on record clearly discloses that the authorities have visited the place, considered the objections filed by each of the land owners with reference to the possession as it existed at the place and thereafter they have overruled the objections filed by the petitioners and thereafter submitted a report to the Government for according sanction. The authority after considering the objections filed by various persons in the land which is the subject matter of acquisition proceedings held that the objection regarding green belt, built up area, nursery, conversion of land, land utilised for Ashraya Scheme, land belonging to temple, mutts and mosques in all about 357.25 guntas objections could be upheld. Thereafter, they have given the tabular form, names of the villages, the total area built up, total area falling within green belt area, the area falling with BMICP, land converted, nursery land, land utilised for Ashraya scheme. Thereafter, they have proceeded to hold that out of 1,337 acres 22 guntas the objections filed in respect of 1,244 acres 17 guntas be rejected and as in respect of 93 acres 5 guntas for which no objections are filed, in all in respect of 1,337 acres 22 guntas a final notification can be issued. They have also referred to the fact that in respect of the aforesaid extent of land, though two preliminary notifications have been issued, the lands proposed for acquisition in the said two notifications could be clubbed and one final notification can be given. They have also taken into consideration the fact in the land 1,337 acres 22 guntas which is now proposed for acquisition, 4,423 revenue site holders who have

purchased the land have filed their objections and their objections have been rejected. They have referred to the Writ Petitions filed in respect of acquisition of land for Anjanapura layout by the revenue site holders before this Court and the order passed by this Court in those Writ Petitions on 20.7.2001 calling upon the BDA to allot such revenue site holders sites measuring 30'x40' subject to the conditions mentioned therein. Therefore, they have observed similarly such revenue site owners may approach this Court challenging the acquisition as their objections have been over-ruled and therefore allotment of sites measuring 30'x40' to such persons in terms of the orders passed by this Court in respect of Anjanapura Layout may also be considered. Thereafter, they have given the total number of sites of various dimensions to be formed in the layout which would come to about 15,458. Then they have also referred to the fact that the sites would be going to be formed in 42% of the land acquired 15% has been set apart for parks and playground, 10% for civic amenities and 33% for roads. It is stated that a sum of Rs. 286.5 crores is required for executing the work and they propose to earn a sum of Rs. 336.50 crores by sale of these sites. Thereafter, they also took a decision to allot sites in favour of the land owners at 25% of the cost price if the land owners were to surrender lands without any unauthorised constructions thereon, without objections to the acquisition and that such land owner should not go to the Civil Court for enhancement for the acquired land and if the land acquired is less than 1 acre they would be entitled to a site measuring 30'x40' and if the land acquired is more than 1 acre a site measuring 40'x60' per acre, maximum for 10 sites to be granted.

39. The letter addressed by the Authority to the Government dated 10.10.2002 in this regard discloses the following facts:-

'The Government on its part on consideration of the said report and the representation of the land owners under Sub-section (2) of Section 17 has proceeded to accord sanction which is duly published in the gazette on 30.10.2002. It discloses that the Authority considered the fact that in the preliminary notification the total extent of 1695 acres and 7 guntas was notified for acquisition. Subsequently, the authority has given up acquisition of the extent of 357 acres 25 guntas and they have submitted a report for sanction in respect of

only 1,337 acres 22 guntas. It also has taken into consideration the fact that 292.50 crores is to be spent for the formation of the proposed layout and that 15,458 sites in all would be formed and they propose to recover a sum of Rs. 345 crores by sale of the aforesaid sites and at the end the authority would make a profit of Rs. 52.50 crores.'

40. On consideration of the aforesaid facts that the Government has accorded sanction subject to the condition that the said layout should be formed out of the funds of the Authority and they should not seek any assistance from the Government, they would not stand as guarantors to any loan to be borrowed by the Authority nor they would be liable for any transaction entered by the Authority and the Government will in no way participate in any agreement entered into between the Authority and others and in the event if the Authority wants to change the land use they should obtain prior permission of the Government.

41. These materials on record clearly disclose the application of the mind by the authority as well as by the Government before according sanction under Section 18(3) of the Act which is in conformity with the statutory provision and, therefore, the contention that the scheme is vitiated on account of non-application of mind has no substance.

42. Re. Point No. (12):- It is an undisputed fact that the total extent of land sought to be acquired under the two preliminary notifications is 1695.7 acres. After consideration of the objections, acquisition to the extent of 357 acres 27 guntas was decided to be given up from the acquisition proceedings. The reason given for such dropping of the proceedings is that the aforesaid extent of land falls within green belt is built up area, nursery, converted land, BMICP, land utilised for Ashraya Scheme where temple, Mutts and mosques are constructed. In fact when the authority was called upon state in Writing under what circumstances the said extent is given up and the particulars thereof they have filed a statement giving the following particulars.

1. Built up area - 142.26 Acres

(consisting of permanent

residential houses built

long ago by the land owners and

occupied for their residence making it

difficult to take up the area for the

formation of a layout.

2. Gree Belt - 50.20 Acres

3. Bangalore Metropolitan - 11.14 Acres

Infrastructure Corridor Project

(BMICP)

4. Officially recognised - 60.32 Acres

conversion of land

5. Officially recognised - 52.24 Acres

Nursery

6. Ashraya Scheme - 39.29 Acres

357.62 Acres

Relying on the aforesaid undisputed facts some of the petitioners contend that their lands are also similarly situated. They also fall under what is known as built up area, green belt, nursery and garden land converted land and therefore the action of the authority in proceeding to acquire their land which are similarly placed as that of those persons whose lands are not acquired though notified is violative of Article 14 of Constitution of India. Therefore they submit that the acquisition is liable to be quashed on that ground also.

43. Before, I consider this point it is necessary to look into two circulars issued by the Government. One such Government order is dated 1-1-1987 issued by the Government exempting the nursery lands from acquisition by BDA. On a representation made by persons who were running nursery and possessing garden lands bringing to the notice of the Government the hardship caused due to acquisition of such lands the Government passed an order that the lands used for nursery be exempted for land acquisition for its developmental activities by the BDA. If owners of nurseries discontinue to use those lands for nursery the lands will be acquired by the BDA. Similarly the Government also has passed an order which is dated 20th August 1984 which is in the nature of a circular where it has been said that no land acquisition proceedings if any need be pursued, further in an area under green belt no fresh proposals be initiated for acquisition nor any fresh proposals for the formation of layout or for any non-agricultural purpose in the green belt area need be entertained. Similarly if an area is completely built up no useful purpose would be served in acquiring the said land, demolishing the structure and forming a residential layout for distributing sites for the needy persons. Similar is the case where land is already acquired under Ashraya Scheme for residential purpose to be distributed to depressed classes and weaker sections. In so far as converted lands are concerned the cost of acquisition would be higher when compared to agricultural lands. Taking into consideration all these aspects when such objections were raised by the land owners on consideration of the same, as aforesaid the extent of 357.62 acres of land was not notified for acquisition under Section 19(1) of the BDA Act. It is nobody's case that the authorities committed any illegality in not notifying this extent of land, nor any malafides alleged against the authorities in dropping the acquisition proceedings in respect of the said land. But the ground urged is, same benefit should have been extended to persons who are similarly placed, which has not been done. Therefore rejection of the objections of persons who are similarly placed is arbitrary and violative of Article 14 of the Constitution of India.

44. Learned counsel appearing for the BDA relying on a judgment of this Court in the case of BANGALORE DEVELOPMENT AUTHORITY v. DR. H.S. HANUMANTHAPPA, : ILR 1996 KAR642 contended that in similar set of facts it has been held as under;

'The total area proposed to be acquired is about 1334 acres and 12 guntas and even assuming that the area of 90 acres is released, that itself cannot lead to the conclusion that the Authority and the Government were acting illegally and were not serious to implement the Scheme and the acquisition proceedings must fail. In the first instance, the release of these lands was not in accordance with law and therefore that release cannot lead to the conclusion that the action of the Government and the Authority in proceeding with the acquisition was fraud on the power of acquisition'.

45. On the contrary, learned counsel appearing for the petitioners relied on a judgment of the Supreme Court in the case of SUBE SINGH AND ORS. v. STATE OF HARYANA AND ORS., : AIR 2001 SC3285 wherein it has been held as under:

'It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into A, B and C classes is a reasonable classification, having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of A class can be allowed to remain while other structures situated in close vicinity and being used for some purposes (residential or commercial) should be demolished.'

'At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with

R.C. roofing, mosaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan.'

'On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the appellants that the rejection of the request of the appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. We are of the view that such action of the Government is arbitrary and discriminatory. Unfortunately, the High Court failed to judge the causes in their proper perspective.'

46. It is also useful to refer to two other judgments of the Supreme Court on the point. The Supreme Court in the case of CHANDRA BANSI SINGH AND ORS. v. STATE OF BIHAR AND ORS., : [1985]1SCR579 has held as under:

'The matter does not rest here but the counsel for the appellants further submitted before this Court to declare the entire acquisition of lands as unconstitutional even though a very small fraction of it was hit by the mischief of Article 14. It was submitted that the entire tract of lands was acquired by one notification and once it is found that even an infinite small part of it was unconstitutional the entire notification would have to be struck down. In case, at the time of acquisition the lands belonging to the Pandey families were left out on some special grounds in public interest, then doubtless the appellants' argument would be unanswerable. This, however, does not appear to have happened in this case, as indicated above. Whereas, Section 4 notification was issued on 19.8.74, the release came on 24.5.80 that is to say about six years thereafter. Hence, all that would happen is that the release is hereby declared to be bad and nonest as a result of which the entire notification issued under Section 4 on 19.8.74 would be deemed to be valid and the land released to the Pandey families would form part of the acquisition as it initially did on 19.08.74.'

'Perhaps the appellants wanted to persuade this Court to strike down the entire notification so that when a fresh notification is issued they may be able to get a higher compensation in view of the sudden spurt and rise in the price of land and other commodities in between the period when the acquisition was made and when the actual possession was taken. For the reasons that we have given above we are unable to uphold this process of reasoning. The release being a separate and subsequent act of the collector, could not invalidate the entire notification but would only invalidate the portion released, with the result that the original notifications would be restored to its position as it stood on 19.7.84.'

47. Again Supreme Court in the case of CHANDIGARH ADMINISTRATION AND ANR. v. JAGJIT SINGH AND ANR., : [1995]1SCR126 has held as under:

'We are of the opinion that the basis or the principle, if it can be called one, on which the Writ Petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent - authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or, it might not. That has to be investigated first before it can be directed to be followed in the cases of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of this case., it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.'

'The extra - ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent - authority has passed on illegality/ unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/ unwarranted action must be correct, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is

difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent - authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case.'

'In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.'

48. Applying the aforesaid Principles of law to the facts of the present case, in the first place, the claim of the petitioners is not based on any illegal order passed by the Government or authority and therefore the law laid down by this Court in the case of Dr. HANUMANTHAPPA'S case has no application. Secondly, if petitioners who are similarly placed as that of the owners whose land is not acquired then, on that ground the entire acquisition itself cannot be set aside. At best persons who are similarly placed are also entitled to the relief which is given to others.

Therefore it is necessary to examine the entitlement of the petitioners before Court to the relief in the facts and circumstances of each case. Before any relief could be given to the petitioners in these case, an investigation has to be conducted to find out whether their case would fall within the parameters prescribed by the authorities on the basis of which relief is given to the persons who are similarly placed.

49. In the statement of objections filed before this Court the respondents deny the fact that the petitioners are similarly placed. Therefore, if this court has to grant any relief to the petitioners the court has to investigate into these disputed questions of fact and then only the petitioners would be entitled to the relief. For that purpose it has to be seen what is the nature of the plea of each petitioner, what was the position of the land on the date of preliminary notification, whether the entire land claimed by the petitioner would fall within the exempted category, if not what is the extent of land which could be excluded etc. It is also necessary to find out whether any of the petitioners have altered or improved the properties after obtaining the interim order from this Court. By mere looking into the photographs produced it is not possible to arrive at any conclusion. It requires an investigation, after affording reasonable opportunities to all the parties concerned to produce evidence and then to arrive at a conclusion. This Court cannot undertake this exercise in its jurisdiction under Article 226 of the Constitution of India. Therefore, I am of the view the appropriate course would be as was done in SUBESINGH's case where Supreme Court directed the authority to consider the objections raised by the petitioners for exclusion of their properties from acquisition in the light of what is stated above and then pass appropriate orders on its merits. If said lands are similarly situated as that of the others certainly the authorities are bound to give the same benefit to those persons. If it is not similarly placed it is always open to the authorities to reject their objections and proceed further in the matter. This complaint could not have been made by the petitioners in the original objections filed by them for acquisition. Therefore all that they have contended in their objection statement is that their land is not liable to be acquired for the reasons mentioned therein. The present objection has arisen after their objections are over-ruled whereas the objections of persons who are similarly placed are accepted. Therefore the authorities have to necessarily take in to

consideration the material which was before them while upholding the objections of others and compare the same with the petitioners herein who have raised similar objections and then come to their own conclusion on merits and pass appropriate orders. It is in the nature of a subsequent event. Therefore, there is no necessity to quash the acquisition which is otherwise valid and legal and thus it would meet the ends of justice.

50. Re.Point No. (13): In so far as the challenge to the acquisition by owners of the sites is concerned it also requires a sympathetic consideration. The reason is the majority of the site owners are also persons who are economically weak who have purchased these sites with the fond hope of having a roof over their head by investing their hard earned money and sometimes life investment. They cannot wait to get a regular allotment from Bangalore Development Authority in normal course which may take in some cases even decades. In fact taking note of these plight of the site owners the authority itself after rejecting their objections recommended to the Government a solution. In similar circumstances when lands were acquired for another layout in Writ petitions filed by persons who are similarly placed as that of the Petitioners who are the owners of sites in W.P.Nos. 20875-938/ 2001, 23298-318/01, 23433-549/01, 25192/01 and 27103-124/01 this Court by order dated 20.7.2001 with the consent of the BDA passed an order to accommodate the site owners in the manner mentioned in the aforesaid order and subject to the terms and conditions stipulated therein. The said order was given effect to and the site owners were accommodated in terms of the said order. From this past experience the authority in their report to the Government stated that it is possible that similar site owners in Visveswaraiah layout also may approach the High Court. Therefore, they proposed to the Government the benefit which is extended by the Authority to such similarly placed site owners also could be extended to the petitioners who are similarly placed. They also stated that in the total extent of land acquired for Visveswaraiah layout is 1337 acres 22 guntas, and about 4423 revenue site holders have purchased sites in the said land under registered sale deeds. Unfortunately, the Government appears to have not bestowed its attention in respect of this proposal. Neither said proposal is accepted nor rejected and the Government proceeded to issue declaration under Section 19(1) of the Act. It is in this background we have to appreciate their case.

51. As already stated these site owners could be broadly classified as petitioners who have purchased sites in agricultural lands, who have purchased lands in layouts which are not approved, who have purchased sites in layouts which are approved and who have put up constructions on the said sites and some of them who have paid entire consideration, taken possession of the sites under power of attorney registered or otherwise, and on the basis of affidavit etc. It is in this background and taking note of other social conditions, hard realities of life, legal illiteracy among literates also and the consequences which flow from such indiscrete, injudicious acts on the part of the petitioners, coupled with the fact that the Authority acquires land against the will of the owner of the land, forms layout, distributes lands keeping in mind the social philosophy reserving a certain extent of site to SC, ST, backward communities, Ex-service men handicapped people, sportsman etc., an acceptable solution is to be found. In a city like Bangalore it is not possible to acquire a site by paying the market value prevailing in any particular locality by these classes of people. There are more people to buy but sites are few. In such situation if one has to acquire a site through the Authority, he has to wait in queue, make applications and it is only after several attempts one may get his turn to get a site. Factors such as delay in acquisition proceedings, the hurdles the Authority has to cross and the judicial intervention at every stage of the acquisition proceedings, then the remedy of appeals etc., necessarily results in the formation of layouts at a snails pace and the people patience is tested. It is these hard realities that drive some of those poor people purchase sites formed in agricultural lands; unapproved layouts or even in approved private layouts. Hence, it cannot be said all these acquisitions are by way of an investment. May be few indulge in purchase of such site with an intention of investment and multiplying their money. By and large the persons who purchase these sites also belong to lowest strata of the society who are poor, weak and coming from depressed classes and minorities. Acquiring sites of such persons in exercise of the power of domain and allotting the very same sites to persons who are similarly placed does not stand to reason. But at the same time one cannot encourage disobedience to law and illegal actions. It is here that the Courts are faced with the problem of balancing private interest against the public interest, rule of law and the constitutional mandate. It is an universally accepted view that adequate housing is

one of the most basic human needs. With the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing comes within the fold of universally applicable and universally accepted human rights law. Ultimately, adequate housing is the right of every child, woman and man. Recognizing this, the Supreme Court has held that the right to shelter is a fundamental right that springs from right to residence (Article 19(1)(e) and right to life (Article 21), : [1995]3SCR729 .

52. The acute shortage of housing and magnitude of the problem has often given rise to some sort of a solution being found, as was done in the case of formation of Anjanapura layout. In the said instance; a balance was struck and by way of a compromise an order came to be passed directing the Authority to accommodate such poor unfortunate innocent site owners in the manner suggested therein. It is because of that, the Authority while considering their objections in the instant case, though over-ruled their objections while sending report to the Government brought to the notice of the Government the difficulties experienced by such site owners and what transpired in similar situations earlier and proposed the very same remedy in the instant case also. Therefore, the authority is not averse to extend the same benefit to the site owners who are petitioners in some of these petitions in the manner it was done in the Anjanapura layout. Therefore, I do not find any good reasons why the said benefit should not be extended to the petitioners who are similarly placed. Even though the Government has not considered the said proposal and passed appropriate orders, now that the matter is before Court no one has and can have any objection for extending the same benefit to the petitioners. Under these circumstances, I deem it proper to extend the same benefit to the petitioners who are similarly placed subject to the terms and conditions mentioned in the aforesaid order. Here I would like to suggest that in the given case if the Authority is satisfied that though some of the petitioners do not possess a registered sale deed or they have acquired title to the land after preliminary notifications or claiming right under power of attorney or any other mode other than by way of a registered sale deed if such persons belonged to weaker sections, economically backward, poor in their discretion the same benefit may also be extended to them.

53. Similarly, if a layout has already been formed with approval of some authority or if a pucca layout is formed even without such approval if it is of the specifications prescribed under the BDA Act itself and if the said layouts could be harmonized or mingled with the layout to be formed by the BDA as far as possible every attempt should be made to synchronize the said layouts with the BDA layout and if it is possible to allot the very same sites to the petitioners and in particular to those who have already put up construction and living there. That would be the best way of solving this human and housing problem. However, if those sites or constructions come in the way of layout formation, it is open to the authorities to disturb the possession of the occupants of the said sites and buildings and allot a site in the layout to be formed by them. All these suggestions are made only with the fond hope of minimizing the hardship to those site owners, to reduce the cost of forming a layout and the heart burn is likely to cause. The same cannot be claimed as a matter of right by any of the petitioners.

54. It is also necessary to point out here that the formation of unauthorized layouts, construction of unauthorized buildings and diversion of agricultural lands for non-agricultural purposes would not have been possible in the outskirts of Bangalore so blatantly without the connivance and active co-operation of the officials who are under obligation under the various statutes to prevent such illegal acts. The gullible public is mislead. The demolition of unauthorized constructions with police support by the officials of the BDA cannot be any stretch of imagination be termed as an act of bravery. But on the other hand it is like constructing the bridge after the water has flown, and goes against the very spirit of providing shelter. The citizens, though some may be poor and helpless, have a right to expect the Government to be concerned about their shelter needs and to fulfil the State's obligations in terms of protecting and improving the housing facilities rather than using all its might to damage or destroy the houses.

55. It is an old but wise saying that 'Prevention is better than cure'. The Authority should take every step to ensure that illegal constructions are nipped in the bud instead of waiting till the completion of huge structure at great cost and then pull it down in public gaze. It is high time such things are not allowed to recur frequently. In a country like ours it is neither wise nor proper to cause loss of huge amount,

materials, labour and time in such acts of demolition very often. We cannot afford such national waste of materials. Therefore it is time that the Authority opens its eyes to the above harmful effects of its actions and gives a relook into the entire matter and fixes the responsibilities on the concerned officials who under the relevant statutes are vested with the power and duty to prevent such illegal acts. Apart from taking action against such persons who indulge in illegal action, responsibility should be fixed on individual officials who were incharge at the relevant point of time when these illegal activities were permitted to be carried out within the area of their jurisdiction and disciplinary action should be taken against such officials. Then it would send a proper signal and message to all the concerned to ensure that such illegal acts are not repeated. This is possible only if the persons in authority are also not a party to these illegal actions. Therefore if they want to come out clean and show that they have no role to play in these illegal actions they should demonstrate the same by initiating appropriate actions against all the officials who were at the relevant point of time vested with the power, responsibility and duty to prevent such illegal actions. That is the minimum that is required of them. Government should also ensure that prompt action is taken against the officials of all the departments concerned.

56. The concern shown by this Court for the poor, needy, downtrodden and economically weaker sections of the society should not be construed as a license to allot sites to all the persons who have purchased sites in the approved and unapproved layouts and in revenue plots. Here it is emphasized that a distinction has to be made between persons who are struggling to have a roof over their head for shelter and persons who are speculators and who have purchased sites by way of investments. It could be easily made out from the sale deeds. If sites are purchased in the name of a family members minors and persons who are not residents of Bangalore and who are residing in other parts of the country, certainly there is no obligation cast upon the authority to allot sites in lieu of such sales. It would be a just exercise of discretion to award them compensation for the sites acquired. In this regard every care should be taken to scrutinize each sale deed by the officials concerned and keeping in mind the observations made by this Court in these Writ Petitions and terms of the order in respect of Anjanapura layout and see to it that the benefit conferred under this judgment is not misused, abused and

misinterpreted. If persons who are entitled to allotment of sites are denied the sites and persons who are not entitled to sites are granted sites, and if any person were to approach this Court with the aforesaid complaint certainly this Court would view the matter very seriously and the concerned official who has been vested with the power to process claims could be held personally liable for all the consequences flowing therefrom. The experiences gained should lead the Authority to prompt action being taken in future to avoid repetition of similar situation so that there could be an orderly development of the beautiful city of Bangalore, and the land grabbers and speculators are kept at bay and innocent people are not lured into such helpless situations.

57. In the light of the aforesaid discussion and the findings recorded on the questions raised I proceed to pass the following: