

**Barla Rami Reddy and ors. Vs. Government of Andhra Pradesh Rep. by Its
Prl. Secretary, Municipal Administration and Urban Development Department
and ors.**

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Court : Andhra Pradesh

Decided On : Apr-21-2008

Reported in : 2008(3)ALD752; 2008(3)ALT336

Judge : C.V. Nagarjuna Reddy, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4(1), 5A, 6, 12(2), 18, 36 and 59; [Urban Areas \(Development\) Act, 1975](#) - Sections 2, 3, 3(1), 3A, 3A(1), 3(3), 4, 6, 7, 8, 9, 10, 12(1), 12(2), 12(3), 12(4), 12(6), 13, 13(1), 13(3), 13(4), 13(5), 18, 18(1), 18(2), 19, 19(1), 19(2), 20, 21, 31, 34, 38(1), 42, 47A, 49, 49(1), 50(1), 50(2), 55, 56, 56(1), 56(2) and 57; Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purpose) Act, 2006; Punjab Town Improvement Act; [Punjab Regional and Town Planning and Development Act, 1995](#); Madras State Housing Board Act, 1961 - Sections 3, Sections 35 to 69, 70, 71 and 72; [Delhi Development Act, 1957](#) - Sections 12, 12(1), 12(2) and 15; [Maharashtra Regional and Town Planning Act, 1966](#) - Sections 37; Bombay Land Requisition Act - Sections 6; Tow

Appeal No. : Writ Petition Nos. 14062, 18757 and 22052 of 2007

Appellant : Barla Rami Reddy and ors.

Respondent : Government of Andhra Pradesh Rep. by Its Prl. Secretary, Municipal Administration and Urban Developm

Advocate for Def. : Adv. General for Respondent No. 1,; Dhanamjaya Reddy, Adv. for Respondent No. 2,; Y. Ravinder, Standing Counsel and G.P. for Land Acquisition for Respondent Nos. 3 and 4 and; S.V. Bhatt, Adv. for Resp

Advocate for Pet/Ap. : Challa Sita Ramaiah, Sr. Counsel for; Gummalla Vijay Kumar, Adv.

Judgement :

C.V. Nagarjuna Reddy, J.

1. These three Writ Petitions raise common issues of facts and law. Hence, they are being disposed of together.

2. The petitioner in Writ Petition No. 18757 of 2007 owns an extent of Ac.6.20 guntas; the petitioners in Writ Petition No. 14062 of 2007, who are two in number, together own Ac.9.39 guntas; and the four petitioners in Writ Petition No. 22052 of 2007 together own about Ac.4.19 guntas in various survey numbers of Narsingi village, Rajendra Nagar' Mandal, Ranga Reddy District.

3. Respondent No. 1 initiated proceedings under the [Land Acquisition Act, 1894](#) (for short 'the 1894 Act') for acquisition of the above-mentioned extents of lands, along with the lands belonging to others, for the purpose of construction of Outer Ring Road (for short 'the ORR'). For the lands covered by Writ Petition Nos. 18757 and 14062 of 2007, notification under Section 4(1) of the 1894 Act was issued on 4-4-2006; declaration under Section 6 of the 1894 Act was published on 6-4-2006; and Award was passed on 27-5-2006. The respondents claim that they have taken possession of the lands on 7-7-2006.

The lands covered by Writ Petition No. 22052 of 2007 were notified under Section 4(1) of the 1894 Act on 13-12-2005. The petitioners claimed to have filed objections in response to the notice issued under Section 5-A of the 1894 Act. The Award was passed on 1-10-2007 and petitioners received notices dated 3-10-2007

issued under Section 12(2) of the 1894 Act on 8-10-2007. Thus, all these three Writ Petitions were filed after the Awards were passed.

PLEADINGS OF THE PETITIONERS:

4. The gist of the pleadings contained in the affidavits originally filed and the additional grounds is summarized hereunder:

5. The Government constituted Hyderabad Urban Development Authority (for short 'the Authority') under Section 3 of the [Urban Areas \(Development\) Act, 1975](#) (for short 'the 1975 Act'). It is a corporate body. It has the powers to acquire and dispose of property, both movable and immovable. The objects of the Authority are to promote and secure development of all or any of the areas comprised in the development area. The Authority carries out civic survey and prepares Master Plan. It defines Zones and indicates the manner in which the land of each Zone is proposed to be used and the stages by which the development would be carried out. Along with the Master Plan, the authority should prepare a Zonal Development Plan, which contains the land use for roads, housing etc. Before submitting the draft Master Plan to the Government for approval, the Authority shall give an opportunity to every local authority and any person, who would like to file objections and suggestions to the draft Master Plan, and after its approval it will come into operation.

6. That, unless the Master Plan comes into operation, no development can be carried out. The authority can modify the Master Plan by virtue of the power conferred under Section 12(1) of the 1975 Act without effecting important alterations in the character of the Plan and which do not relate to the extent of the land uses or the standards of population density. Under Sub-section (2) of Section 12 of the 1975 Act, the Government is empowered either suo motu or on a reference from the Authority to make any modifications to the plan, whether such modifications are of the nature specified in Sub-section (1) or otherwise. This power is subject to the same restrictions as in Section 12(1) of the 1975 Act and not absolute. It cannot make major changes and the words 'or otherwise' must be read as ejusdem generis.

7. That, the 1994 Master Plan did not set apart any land for use of a ring road. Laying down a ring road is a major change and a major modification. The Authority must go through the procedure and prepare another Master Plan but cannot modify the Master Plan of 1994. Unless the Master Plan is approved and comes into operation, no development activity can be undertaken. Even otherwise, unless the modified Master Plan comes into operation, no development can be carried out. The modifications proposed to be made to the 1994 Master Plan completely alters the original Master Plan and it amounts to bringing forth a new Master, Plan. The procedure contemplated under the 1975 Act for preparing the Master Plan is, therefore, required to be followed. Unless the modified Master Plan comes into operation, no acquisition of the lands can be made. The process of acquisition was initiated without converting the agricultural land for non-agricultural use as per the provisions of the A.P. Agricultural Land (Conversion for Non-Agricultural Purpose) Act, 2006

8. That, memo dated 26-5-2007 issued by the Government of Andhra Pradesh, Municipal Administration & Urban Development Department, inviting objections and suggestions for the extensive modifications to Master Plan was published in A.P. Gazette dated 31-5-2007. Even without following the procedure contemplated under the provisions of the 1975 Act for change of the Master Plan and without considering the objections of the public, proceedings under the 1894 Act have been initiated.

9. That, the respondents twisted, turned and shifted the alignment of the ring road and also shifted the junction from Poppalguda to Narsingi on the express highway by disturbing the straight alignment made earlier with several twists and turns only to target the lands belonging to the petitioners. The new alignment proposed by the respondents passes through the water body in Survey Nos. 291, 298, 299 and 300 of Poppalguda village. In order to avoid the acquisition of the lands of men-in-power and to boost up the land prices of the lands in Kokapet village, the alignment was shifted without any scientific survey and sufficient reasons. In G.O. Ms. No. 8 dated 12-12-2005 it is stated that the change of alignment was necessitated due to several representations from the general public and the People's Representatives requesting the Government to make alterations in

certain places and considering the said representations, the Government appointed a Committee and on the report of the Committee, the Government approved the change of alignment. The changed alignment suffers from basic infirmities such as improper connectivity to Phase-I Outer Ring Road at Poppalaguda; the longitudinal gradient will be almost 1 in 50 for a stretch of 2.5 K.Ms., which is not advisable for a design speed of 120 KMPH, and the volume of rock cutting results in increased cost of execution of the project and acquisition of excess land is involved.

10. That, the Alignment Committee noticed existence of water bodies in Survey Nos. 291, 298, 299 and 300. The A.P. Pollution Control Board proposed shifting of the alignment by 2 to 3 Kms., from the catchment area to protect the lakes; whereas the changed alignment is nearer to the lakes, which seriously affects the lakes and environment.

PLEADINGS OF THE RESPONDENTS:

11. The Project Director & Special Collector (Land Acquisition), Outer Ring Road, filed separate but similar counter-affidavits in these Writ Petitions and the following is the gist of their stand as reflected in these counter-affidavits.

12. That, the Outer Ring Road (for short 'ORR') is an important infrastructure initiative in Hyderabad Metro Region undertaken by the Hyderabad Urban Development Authority (for short 'the HUDA') to provide connectivity to various State Highways and National Highways and to facilitate Intra-City and Inter-City Traffic in view of the burgeoning urbanization and increasing traffic congestion in the City. The HUDA engaged M/s. MECON as consultants in the year 2001 for feasible study of the ORR project. The ORR was conceived as 109 Km four-line connectivity around the City. The land acquisition for Phase-I, of about 33 Kms., from Miyapur to Gachibowli segment, was also initiated based on the consultancy report. The proposed road was passing through well-developed areas in Hi-tech City resulting in the proposal for issuance of notification for acquisition of large-scale properties and disturbing the habitations.

13. That, in July, 2004, the Government of Andhra Pradesh reexamined the project features. Based on the recommendations of a group of Senior Officials in Government and HUDA, the concept was revised and the project was decided to be taken as a 'Green Field Project', through open areas avoiding major settlements and habitations. Accordingly, a revised plan was finalized for taking up construction of ORR around the Twin Cities. The Government issued G.O. Ms. No. 442 dated 19-10-2004 mandating HUDA to take up the project with its own funds. In April, 2005 the ORR alignment was finalized by HUDA as 159 Km road around Twin Cities. The alignment plans were approved in four Sectors-Western, Northern, Eastern and Southern - by the Vice-Chairman of HUDA. The Special Collector, ORR, notified the required lands under Section 4(1) of the 1894 Act for almost all the Sectors between 13th April, 2005 and 21st April, 2005.

14. That, originally the alignment notified in the Western Sector was passing through Poppalguda, Vattinagulapally, Janawada, Kollur and Edulanagulapally villages. The said alignment was prepared in those areas based on the HUDA base maps. Representations were received from the public that the alignment in Poppalguda village is going through the hillocks, tanks/lakes and habitations. At that time, no ground survey or alignment of base map survey of the HUDA with the aid of more accurate maps of GSI was done. The notified alignment was inspected at Poppalguda by the technical wing of ORR Project and the said inspection revealed that the alignment was passing through hillocks involving huge rock cutting and will be uneconomical. At the time of notification in April, 2005, the junction of Phase-I and Phase-II alignments of ORR was not contemplated and the detailed design of the interchange, its dimensions and the area required for it was not available as the Detailed Project Report was not prepared by them. Subsequently, M/s. Aarvee Associates were appointed for the Detailed Project Report preparation for Phase-I of ORR during the last week of April, 2005. The consultants proposed a trumpet interchange at T-Junction point where Phase-II joins Phase-I of ORR.

15. That, the proposed trumpet interchange for signal free movement of traffic requires huge area of about Ac. 50.00 guntas approximately. When the trumpet interchange was incorporated at Poppalguda junction, the same was affecting

some structures, including a school building. This necessitated an alternative alignment for the interchange of Phase-I and Phase-II of ORR. The Committee on the alignment of ORR - comprising the Principal Secretary, Infrastructure & Investment Department, Managing Director, INCAP; Vice-Chairman, HUDA and the Project Director, ORR - noticed the above mentioned set-backs and the Principal Secretary, Infrastructure & Investment. Department constituted a departmental Committee for the purpose of examining various alternatives in the Western Sector and to propose the best possible alignment keeping financial, environmental and technical considerations in view. The Committee recommended for a detailed survey.

16. That, the Alignment Committee, which has examined various objections, gave its recommendations on the final alignment, which was approved by the HUDA and eventually approved by the State Government vide G.O. Ms. No. 8 dated 12-12-2005. The Alignment Committee's recommendations were accepted by the Government on the Western Sector alignment relating to Poppalguda, Kollur, Janawadaetc.

17. That, there is no necessity of completing the procedure for modification of the Master Plan as contemplated in Section 12(2) and (3) of the 1975 Act before acquiring the lands, as the mere act of land acquisition does not constitute 'development' under Section 2(e) of the said Act. Acquisition of land only leads to change of its ownership and the same does not in any way violate the provisions of Section 13.

18. That, the ORR is a part of the existing Master Plan, which was notified in the year 1980 with 1: 50000 scale in which 1 cm., represented a distance of Half a K.M., while the project implementation plans are drawn to very minute scales like 1: 500 in which 1 cm., represents 5 metres. Ground conditions may always require a detailed project alignment which may be at variance with the 1980 alignment and this is true for all road projects and also for all road-widening schemes in the city wherein a Master Plan road alignment is translated into a road development plan, which depicts the exact alignment of the road. Land acquisition can be done only on the basis of such a detailed project alignment and not as per the 1980 Master

Plan alignment. Therefore, modification to Master Plan is neither a prerequisite for land acquisition nor the present land acquisition can be said to be contrary to the plan in force.

19. That, the process of modification of Master Plan and land acquisition are fundamentally distinct and different from each other and in the event of a certain utility project like a road becoming an urgent necessity in the public interest, such as providing connectivity to an International Airport as in the present case, nothing in the 1975 Act prevents taking up of a project of this nature and since ORR is a part of the plans in force, deviations on technical ground at project stage are common. The present Master Plan revision is not at all linked with the ORR project and it is a sheer coincidence that the implementation of ORR and the overall revision of the Master Plan of the HUDA area are happening at the same time. The current modification to Master Plan was initiated as early as in 2003 and is not related to the ORR project. Incorporating the finalized alignment of the ORR project is as per the Master Plan presently in force and not dependent on the current Master Plan modification exercise. The legality of the land acquisition depends on the specific provisions of the 1894 Act and since the ORR project is as per the plan in force, proceedings under the 1975 Act have no bearing on the said land acquisition proceedings.

20. That, the allegations of malafides are vague untenable and without any basis; and change of alignment was made under the circumstances, which were explained in detail in the counter-affidavits. The Special Collector, ORR, has competence to acquire the lands in view of G.O. Ms. No. 442, Municipal Administration, dated 19-10-2004 under which a separate unit, consisting of Special Collector (LA) and Special Deputy Collector, was constituted to finalize the land acquisition proceedings. In exercise of the powers under Section 3-A of the 1975 Act the Government issued G.O. Ms. No. 459 dated 8-4-2005 authorizing the Special Collector to perform the functions on behalf of the State Government.

21. That, the allegation that the present alignment of the ORR is not cleared by the Pollution Control Board is false. The Pollution Control Board of Andhra Pradesh, after being satisfied with the present alignment, gave consent for establishment,

vide order dated 4-10-2006. The contention that there are water bodies in the present alignment in Survey Nos. 291, 298, 299 and 300 is not true. On physical verification and also verification of the record, it was found that the said survey numbers are not covered by any water body. Survey Nos. 291 and 298 are patta lands and Survey Nos. 299 and 300 relate to evacuee property lands (dry lands). This issue has been decided by a Division Bench of the High Court by its judgment dated 1-10-2007 in Writ Petition Nos. 22809 and 22810 of 2006. The reliance on G.O. Ms. No. 479, Municipal. Administration, dated 2-9-1994, which approved HUDA Master Plan showing Survey No. 291 as water body is of no avail to the petitioners because on ground verification it is found that there is no water body. At any rate, existence or otherwise of water bodies alone was not the consideration for changing the alignment and various other relevant factors were taken into account, as explained in the counter-affidavits, in changing the alignments. Even assuming that water bodies exist, necessary steps would be taken to protect the same.

REPLY AFFIDAVITS:

22. Separate reply affidavits, but with identical averments, are filed by the petitioners. They denied their physical dispossession. They further denied existence of ORR in the existing Master Plan. It is stated, 'the petitioner is not aware of any existence of Outer Ring Road in 1980 Master Plan'. Reliance is placed on the counter-affidavit filed in Writ Petition No. 8124 of 2007 stating that it was mentioned therein that the Project of ORR was initiated in the year 2001. The petitioners also placed reliance on Memo No. 9225/105 dated 26-5-2007 wherein objections were invited under Sub-section (3) of Section 12 of the 1975 Act against the draft revised Master Plan comprising 18 Zonal segments and land use etc. Item-7 of the said memo was referred to, to substantiate their plea that the draft proposal under the said item was in relation to incorporation of ORR alignment. It is pleaded that having invited the objections and before the Government of Andhra Pradesh formulated any scheme for formation of ORR, initiation of proposal for acquisition of Land under the 1894 Act is bad in the eye of law. The allegation that implementation of ORR and revision of Master Plan are a sheer coincidence, is denied as not correct. The petitioners referred to the

constitution of Urban Development Authority as a body corporate under Section 3(3) of the 1975 Act, the objects for which the authority is constituted, its powers and duties, carrying out of civic survey, preparation of master plan and zonal development plan containing land use for roads, housing etc. They have also reiterated that unless the Master Plan comes into operation, no development can be carried out and the modifications envisaged in Section 12(1) of the 1975 Act could be only minor modifications and changes. While denying the stand of the respondents that there were no water bodies on the proposed alignment, the petitioners stated that the judgment in Writ Petition No. 22809 of 2006 is subject matter of SLP before the Supreme Court and that leave was granted on 3-1-2008 directing the parties to maintain status quo in relation to possession of the property, which was subject matter of the Civil Appeal. The petitioners emphasized the need for the State to protect the water bodies as per the law laid down by the Supreme Court. They also pleaded that the new alignment contravenes G.O. Ms. No. 111, dated 8-3-1996 and G.O. Ms. No. 86 dated 3-3-2006, which prohibited construction on the water bodies. They also disputed the finding of the Technical Committee's report that the proposed alignment is 4 to 5 K.Ms away from the two lakes. The petitioners relied on Zonal Development Plan of Poppalguda village and the Gazette to show that water bodies exist in Survey No. 291. The petitioners reiterated that the acquisition of the lands, without approval of the Master Plan, is contrary to the provisions of the 1975 Act.

THC CONTENTIONS:

23. Sri Challa Sita Ramaiah, learned Senior Counsel for the petitioners, advanced the following contentions:

(i) Unless the Master Plan, as modified, is finalized, land acquisition proceedings cannot be initiated;

(ii) (a) Modification of a Master Plan can be only of a minor nature and no extensive changes of the existing Master Plan are permissible in, the name of modification. As a necessary corollary, the procedure for preparing a Master Plan envisaged under the provisions of the 1975 Act shall be undertaken for making major changes in the Master Plan;

(b) If the power under Section 12(2) of the 1975 Act is absolute, the Government cannot enlarge the power of the Authority under Section 12(1) by delegation and it cannot delegate its power under Section 12(2) to the Vice-Chairman of the Authority; and

(iii) The proposed ORR passes through water bodies and it does not fulfill the criteria prescribed by the A.P. Pollution Control Board in its proceedings dated 4-10-2006.

24. Opposing the contentions of the learned senior counsel for the petitioners, the learned Advocate General advanced the following contentions:

(i) The very premise of the petitioners that ORR is envisaged for the first time in the draft Master Plan is erroneous and the 1980 Master Plan itself envisaged ORR. What is presently done is only adjustment of alignment;

(ii) Assuming that ORR is proposed for the first time in the draft Master Plan, there is no requirement under the provisions of the 1975 Act to get the Master Plan approved first before acquiring the lands;

(iii) Under Section 12(2) of the 1975 Act no limit is prescribed on the power of the State Government regarding the nature and magnitude of the modifications of the Master Plan. Similarly, the power and discretion vested in the Government to delegate the function of suggesting modifications to the Master Plan is absolute and unrestricted, and in the absence of any restrictions with respect thereto, no fetters can be read into the provisions; and

(iv) No water bodies exist on the proposed alignment. At any rate, since, admittedly, no water bodies existed in the lands of the petitioners, they cannot seek invalidation of acquisition of their lands on the purported ground of existence of water bodies on others' lands.

THE POINTS:

25. Having regard to the rival contentions of the parties, the following points arise for consideration.

- (1) Whether proceedings for acquisition of land for development cannot be initiated and land acquired without the approval of amendment to the Master Plan?
- (2) Whether power of the State Government under Section 12(2) of the 1975 Act is limited to modification j of Master Plan involving minor but not extensive changes?
- (3) Whether delegation of power of State Government under Section 12(2) of the 1975 Act in favour of the Vice Chairman of the Authority is invalid and whether such delegation amounts to enlargement of the Authority's power under Section 12(1) of the 1975 Act? and
- (4) Whether the proposed alignment affects existing water bodies and failed to fulfill the criteria prescribed by the Andhra Pradesh Pollution Control Board?

THE DEBATE:

26. Before dealing with the points framed above, it is necessary to refer to the relevant statutory provisions.

27. The 1975 Act received the Presidential assent on 20-1-1975 and published in the A.P. Gazette on 27-1-1975. The long title of the Act indicates that the Act was intended to provide for development of urban areas in the State of Andhra Pradesh according to plan and for matters ancillary thereto.

28. Section 2(b) defined 'authority' as an Urban Development Authority constituted under Sub-section (1) of Section 3 or a Special Area Development Authority constituted under Sub-section (1) of Section 3-A for a development area under the Act.

29. Section 2(e) defined 'development' as the carrying out of all or any of the works contemplated in a master plan or zonal development plan referred to in the Act and the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land and includes re-development. The proviso to the said definition excluded from the said definition activities mentioned in Clauses (i) to (v).

30. Section 2(f) defined 'development area' 'as any urban area or group of urban areas declared to be a development area under Sub-section (1) of Section 13.

31. Section 2(o) defined 'urban area' and Section 2(p) defined 'zone'.

32. Section 3 provided for constitution of Urban Development Authority for the development area declared under Sub-section (1) of Section 13 under a notification of the Government. The Development Authority is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable, immovable and to contract; and shall by the said name sue and be sued.

33. Sub-section (3) provided for the composition of the Authority, which includes one officer representing the Municipal Corporation of Hyderabad or the Municipal Administration Department of the Government to be nominated by the Government; one officer from the Town Planning Department of the Government; one officer of the Finance Department of the Government, to be nominated by the Government; and five other members to be nominated by the Government. Under Sub-section (4-A), the Vice-Chairman shall be the whole-time paid member of the Authority and shall be entitled to receive from the funds of the Authority such salaries and such allowances, if any, etc.

34. Section 3-A provides for constitution of Special Area Development Authority and Section 4 empowers the Government to sanction the. post of a Secretary, a Chief Accounts Officer, a Town Planner and an Engineer for any Authority.

35. Chapter-III deals with Master Plan and Zonal Development Plans.

36. Chapter-IV is concerned with development of lands. Under Section 13(1) where the Government considers it necessary to do so for purposes of proper development or any urban area or group of urban areas in this State, they may, by notification, declare such urban area or group of urban areas to be development area for the purposes of this Act. Under Sub-section (3), the Authority is barred from undertaking or carrying out any development of land in any area, which is not a development area, except to the extent it was otherwise provided in the Act.

Sub-section (4) imposes a bar on development of land after commencement of the Act within the development area unless permission for such development has been obtained in writing from the Authority in accordance with the provisions of the Act. Under Sub-section (5), after coming into operation of any of the plans in any area within the development area, no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

37. Under Section 21, notwithstanding, anything contained in Sub-section (3) of Section 13, the Authority or, as the case may be, the local authority may, if it is of opinion that it is expedient to do so, undertake or carryout any development of any land which has been transferred to it or placed at its disposal under Section 18 or Section 20 even if such land is situated in any area which is not a development area.

38. Under Section 6, the Authority shall, as soon as may be, carry out a civic survey and prepare a Master Plan for the development area concerned. The Master Plan shall define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used and the stages by which any such development shall be carried out etc. The Master Plan may provide for any other matter which is necessary for the proper development of the development area.

39. Section 7 envisages preparation of Zonal Development Plans by the Authority simultaneously with the preparation of Master Plan and Sub-section (2)(a) to (d) provide for the various aspects to be contained in the Zonal Development Plan, which include a site plan and land use plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zones for such purposes as roads, housing, schools, recreation, hospitals, industry, business, markets, public works and utilities, public buildings, public and private open spaces and other categories of public and private uses.

40. While Section 8 envisages the procedure to be followed in preparation and approval of plans, Section 9 deals with submission of plans to the Government for approval. Under this provision, every plan shall, as soon as may be after its preparation, be submitted by the Authority to the Government for approval and the

Government may either approve the plan without modifications or with such modifications as they may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions. Under Sub-section (2), the Government may direct the Authority to furnish such information as they may require for the purpose of approving any plan submitted to them under this section.

41. Under Section 10, immediately after a plan has been approved by the Government, the Authority shall publish in such manner as may be determined by regulations, a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected during the specified hours and upon the date of the first publication of the aforesaid notice, the plan shall come into operation.

42. Sub-section (1) of Section 12 authorizes the Authority to make such modifications to the plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density. Sub-section (2) empowers the Government either suo motu or on a reference from the Authority to make any modifications to the plan, whether such modifications are of the nature specified in Sub-section (1) or otherwise. Under Sub-section (3), before making any modifications to the plan, the Authority or, as the case may be, the Government shall publish a notice in such form and manner as may be prescribed inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Government. Sub-section (4) requires every modification made under the provisions of this Section shall be published in such manner as the Authority or the Government, as the case may be, may specify and such modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Government may fix. Under Sub-section (6), if any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be

referred to the Government whose decision thereon shall be final.

43. Chapter-V deals with acquisition and disposal of land. Under Section 18(1), if, in the opinion of the Government, any land is required for the purpose of development or for any other purpose under this Act, the Government may acquire such land under the provisions of the [Land Acquisition Act, 1894](#). Sub-section (2) empowers the Government to transfer the acquired land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

44. Section 19(1) empowers the Authority or the local authority, as the case may be, to dispose of any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon; or any such land after taking or carrying out such development as it thinks fit; to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to the plan. The powers of the Authority with respect to the disposal of land under Sub-section (1) are subject to the parameters contained in Sub-section (2). Under proviso to Sub-section (2), where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

45. Under Section 34, the Authority shall carry out such directions as may be issued to it, from time to time, by the Government for the efficient administration of this Act.

46. Under Section 56(1), the Authority is empowered by notification to delegate any power exercisable by it under the Act, except the power to make regulations, to any such officers or local authority as may be mentioned therein, subject to such conditions, as may be specified therein. Sub-section (2) vested a similar power in the Government to delegate any of its powers to any such officers as

may be mentioned in the notification issued by it for this purpose.

47. I shall now consider the points framed supra.

Re-Point No. 1:

48. As noted, the sheet-anchor of the petitioners' case is that for the first time the ORR is envisaged in the draft amendment to the Master Plan and without approval of the draft proposals for modification of the Master Plan, no acquisition proceedings can be initiated. The learned Advocate General contended that this very assumption of the petitioners is factually incorrect.

49. In their counter-affidavits, respondents took the stand and repeatedly asserted that the Government declared development area under Section 13(1) of the 1975 Act by G.O. Ms. No. 411 dated 27-9-1975 which included Narsingi where the lands covered by these Writ Petitions are situated at Items 241 and 242 thereof. It is also their case that the Master Plan approved in the year 1980 envisaged the ORR and what is now being done is only change of alignment as the scale on which the 1980 plan was prepared varied from the revised scale leading to change of location of the proposed ORR.

50. At the hearing, the learned Advocate General produced before the Court a copy of the draft modified Master Plan, which contains the ORR as notified in the Master Plan of 1980 and the ORR as presently being implemented. The 1980 ORR is marked in yellow and the ORR, which is now being implemented, is shown in pink. As the learned Counsel for the petitioners seriously disputed the claim of the respondents that the 1980 Master Plan envisaged the ORR, I have carefully scrutinized the draft Master Plan published by the Authority with the title 'A Plan for Sustainable Development'. In page 2 of the said Book, with reference to the 1980 Master Plan it is stated as under:

The Government of AP constituted the Hyderabad Urban Development Authority under the Andhra Pradesh Urban Areas (Development) Act 1975, in the year 1975. In 1980 the HUDA notified a Master Plan for the rest of the metropolitan area (1692.27 sqkm). In the following decades, HUDA notified 18 Zonal

Development Plans (ZDP) till 1994. These covered both MCH area as well as the metropolitan zones. A few ZDPs were enforced even for smaller pockets like Chintalbasti

51. Annexure-II of the Book published edited parts of the report on Master Plan for non-Municipal area (1980) of the Hyderabad Development Area. At page 166, the relevant part of the report on the 1980 Master Plan reads as under:

The Inner Ring Road as per the notified Master Plan is proposed to connect Uppal-Industrial area to Saroornagar, Nagarjunasagar Road to Defence Labs, Katedan industrial area & Mehidipatnam to Banjara Hills. The width of the road proposed is 150 ft.

Intermediate Ring Road and Outer Ring Road are proposed in the peripheral area to connect the major industrial areas and ring towns such as Ramachandrapuram, Medchal, Ghatkesar etc.

In order to avoid the truck traffic entering the city and congesting the existing roads, major truck terminals are proposed on Bombay Road (NH No. 9) at Kukatpally, second on Bangalore route opposite to Police Academy (on NH No. 7) and the third on the Vijayawada road (on NH No. 9). In addition to those transport nodes are provided on the major intersections of the arterial roads.

52. The above reproduced portion of the report on the 1980 Master Plan, clearly shows that the Master Plan as approved in the year 1980 and has been presently in existence envisaged the ORR. Though the petitioners denied existence of such a provision in the Master Plan and the claim of the respondents that on account of the change in the scale the location and the alignment of the ORR were required to be changed, they failed to produce any material in support of such a denial. The only circumstance on which the learned Counsel for the petitioners relied on is Memo No. 9225/11/2005 dated 26-5-2007 wherein objections were invited for modifications/suggestions on the draft revised Master Plan for undertaking several works including incorporation of the ORR alignment.

53. On a careful consideration of the contents of the report on the 1980 Master Plan and the Memo dated 26-5-2007 issued by the Government, it is clear that the ORR was already envisaged in the Master Plan approved in the year 1980 and one of the modifications proposed was to incorporate the ORR alignment. The petitioners have not denied the claim of the respondents that due to the change of the scale, the alignment of the ORR has got changed. I have, therefore, no reason to reject the plea of the respondents that the ORR was already in existence in the approved Master Plan and what has been proposed is only incorporation of the changed alignment of the ORR and not the inclusion of the ORR as such for the first time in the Master Plan.

54. It is not in dispute that if the alignment, as originally envisaged in the 1980 Master Plan is implemented, there is no need for acquisition of the petitioners' lands. The very fact that the proposal to change the alignment is included in the draft amendment of the Master Plan, vide: Memo dated 26-5-2007, goes to show that the respondents felt it necessary to incorporate the change of alignment in the Master Plan. Therefore, for the purpose of disposing of the point under discussion framed based on the first contention of the learned Counsel for the petitioners, the question whether the ORR is already included in the 1980 Master Plan or not pales into insignificance; because having made a proposal for change of alignment in the draft amendment to the Master Plan, it is not open to the respondents to plead that modification of Master Plan has no relevance to the execution of the ORR work with reference to the changed alignment. Keeping these facts in view, the submission of the learned Counsel for the petitioners that unless the Master Plan as modified is finalized, the land acquisition proceedings cannot be initiated, is required to be considered.

55. The impugned notices issued under Section 4(1) of the 1894 Act specified the purpose for which the lands are proposed to be acquired 'for formation of Outer Ring Road Junction at Narsingi village in W.P. Nos. 18757 of 2007, W.P. No. 14062 of 2007 and for Outer Ring Road in W.P. No. 22052 of 2007'. It is, thus, clear that the purpose of acquisition is in connection with the formation of ORR.

56. The first limb of the argument of Sri Challa Sita Ramaiah is that Section 13(3) of the 1975 Act prohibits undertaking or carrying out of any development of land by the Authority in any area, which is not a development area. He laid emphasis on the definition 'development' in Section 2(e) of the said Act and contended that unless such works are contemplated in a Master Plan or a Zonal Development Plan, the Authority is not entitled to execute the work. The second limb of his contention is that since the ORR is proposed for the first time in the Master Plan, until the draft Master Plan, which was notified in Memo dated 26-5-2007 is approved, the Authority is not entitled to acquire the land.

57. As regards the first limb of his argument, the language of Section 13(3) of the 1975 Act is plain and unambiguous. The said provision, understood in the light of the definition of 'development' in Section 2(e) of the said Act permits the Authority to undertake or carryout any development of land subject to two conditions, viz., (1) that such work shall be carried out in a development area; and (2) the proposed work shall be contemplated in a Master Plan or a Zonal Development Plan, which necessarily mean the approved plans under Sections 8 and 10 of the 1975 Act. In the instant case, there is no dispute that the Narsingi village, where the lands of the petitioners are situate, are included in the notified development area, vide: G.O. Ms. No. 411, dated 27-9-1975, and, hence, the first condition is satisfied. Even the second condition, viz., the ORR must be contemplated in a Master Plan, is equally satisfied because, as per my finding given in the foregoing, the Master Plan of 1980 envisaged the ORR and what is now proposed is only change of alignment, due to which acquisition of the petitioners' lands is found inevitable. On this premises, I am of the view that the provisions of Section 13(3) of the 1975 Act do not come in the way of the respondents to undertake or carryout the work of execution of the ORR.

58. Let me now consider the second limb of the argument of Sri Challa Sita Ramaiah. According to him, until and unless the draft proposal for amendment of the Master Plan is approved, no land can be acquired. In support of his contention, he relied upon the judgments of the Supreme Court in *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Cock* 2007 (6) SCJ 552 : 2007 (8) SCALE 11, *Sarwan Singh v. State of Punjab* : [1975]2SCR1007 , *Munshi Singh v. Union of*

India : [1973]1SCR973 , State of Tamil Nadu v. A. Mohammed Youse : [1991]3SCR375 , State of Tamil Nadu v. L. Krishnar : (1996)1SCC250 , and State of Punjab v. Sanjeet Singh Grewal : (2007)6SCC292 .

59. While contending that the said judgments cited by the learned Counsel for the petitioners have no relevance to the cases on hand, the learned Advocate General relied on the judgments of the Supreme Court in Aflatoon v. Lt. Governor of Delhi : [1975]1SCR802 and Bhagat Singh v. State of U.P. 1998 (9) Supreme 361.

60. The Judgment in Chairman, Indore Vikas Pradhikaran 2007 (6) SCJ 552 : 2007 (8) SCALE 11 was rendered on the following facts:

In February, 1974 the Government of Madhya Pradesh issued notification under Section 13(1) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (Act 23 of 1973) constituting Indore Planning Area comprising 37 villages. Two villages, viz., Bicholi and Kanadia, were not included in the said notification. In respect of the said notified area, the State Government, by a notification, established Indore Vikas Pradhikaran. By a subsequent notification issued by the District Planning Committee, to which the State Government delegated its power under Section 13 and 47A of the Act, the said Bicholi and Kanadia villages were included in the Indore Planning Area. The Indore Vikas Pradhikaran published a draft development plan on 27-6-2003 in respect of Urban Development Scheme No. 164 and called for objections and suggestions in respect thereof. While those objections and suggestions were heard by the Development Planning Committee between 25-8-2003 and 03-9-2003, in anticipation of approval of the Government a resolution was passed on 20-8-2004 for construction of a bye-pass road over certain lands, which included the lands situated in the villages of Bicholi and Kanadia and declaration of intention to prepare a Town Development Scheme in terms of Sub-section (2) of Section 50 was issued on 24-8-2004. The draft development plan submitted to the State of Madhya Pradesh in terms of Section 19(1) of the Act was returned with a direction that the plans be prepared for the projected population as in the year 2021 and the same be placed before the Government for approval as soon as possible. In pursuance of a notification issued by the State of Madhya Pradesh under Sub-section (1) of Section 38 of the

Act in respect of Bicholi and Kanadia villages, Indore Vikas Pradhikaran issued notification on 18-5-2006 inviting objections in respect of the Town Development Scheme and a Draft Development Plan-2021 was published on 13-7-2006.

61. The lands of the respondents before the Supreme Court were situated in the above-mentioned two villages, which were within their respective jurisdictions of the Gram Panchayats and their applications for sanction of building plans were accepted and building plans were sanctioned in April, 1991. However, the Joint Director, Town and Country Planning, rejected their applications for building permissions in view of publication of development plan under Sub-section (2) of Section 50. The respondents therein filed Writ Petitions questioning the said order of the Director. A learned Single Judge having dismissed the same, the Division Bench allowed the Writ Appeals; and questioning the judgment of the Division Bench, Indore Vikas Pradhikaran approached the Supreme Court.

62. The Division Bench of the High Court struck down the declaration made under Sub-section (2) of Section 50, inter alia, on the grounds that unless a development plan for an area is published and comes into operation, a draft development scheme cannot be published by the Town and Country Development Authority under Sub-section (2) of Section 50; and that such a town development scheme cannot by itself without a development plan for the area restrict the right of a person to use his property in the manner he likes.

63. In the above mentioned factual background of the case, the Supreme Court held that once a final plan comes into force, steps inter alia are taken for acquisition of the property under Sections 34 and 49 of the said Act; that under the latter Section six clauses of the said Section relate to acquisition of land for different purposes; that the purpose of declaring the intent under Sub-section (1) of Section 50 of the Act is to implement a development plan; and that unless and until the final development plan is approved, freezing of development, in anticipation of such a final approval, is not permissible. The Supreme Court further held that had the legislature thought of implementation of a draft development plan, they could have also provided for an interim development plan, which, ipso facto, would have been enforceable.

64. On a careful consideration of this Judgment, I am of the view that it has no bearing on the issue involved in the cases on hand. As noted from the facts narrated, the Supreme Court confirmed the Division Bench judgment of the Madhya Pradesh High Court which struck down declaration made by the Indore Vikas Pradhikaran to prepare a town development scheme, even before the Government approved the draft development plan and in that context it held that rejection of building permission on the basis of such a draft development plan was not sustainable under the provisions of the said Act. The observations in para 79 that once a final plan comes into force, steps inter alia are taken for acquisition of the property are, therefore, required to be understood in the light of the provisions of the said Act and the facts peculiar to the said case. Indeed, the question of validity of acquisition of lands, pending approval of the draft development plan, never fell for consideration of the Supreme Court in the said case. Hence, in my considered opinion, this Judgment can be of no avail to the petitioners.

65. In *Sarwan Singh* (1975) 1 SCC 284, the owners of the lands - which were acquired for a development scheme of the Ludhiana Improvement Trust under the provisions of the Punjab Town Improvement Act questioned the awards passed by the Land Acquisition Officer under the said Act by seeking reference under Section 18 of the [Land Acquisition Act, 1894](#) and in that context they questioned the vires of Section 59(a) of the said Act under which compensation was determined. While pointing out the distinction in the acquisitions between the provisions of the Punjab Town Improvement Act and the Land Acquisition Act, the Supreme Court observed that the Government under the Land Acquisition Act acquire the land for public purposes without the preliminary requirements of any schemes for utilization of the particular land; under the Punjab Town Improvement Act there is a statutory obligation upon the trusts first to frame appropriate schemes prior to the actual notification under Section 36; and that this pre-acquisition difference of procedure is significant as the material date for determination of compensation in either case is the publication of the notification under Section 36 and Section 4 of the two Acts respectively. These observations are thus made in the context of adjudicating the vires of the provisions of Section 59(a) of the said Act and there is not even a remote nexus between the issues raised in the said case and the present cases.

66. In *Munshi Singh* AIR 1973 SC 1150 - on which the learned Senior Counsel for the petitioners next placed reliance - several notifications were issued under Section 4(1) of the [Land Acquisition Act, 1894](#) proposing to acquire huge extents of lands in fifty villages of Ghaziabad. The notifications were questioned on several grounds; one of the grounds being that the notification was too vague and afforded no adequate basis for the lodging of objection under Section 5A of the Act. A specific plea was raised that no proper, reasonable or effective opportunity was available to the appellants to file any objections under Section 5A of the Act, inasmuch as the notification gave no indication that different pieces of land would be acquired by different authorities in different circumstances and for different purposes and that the purpose shown in the notification was extremely vague. While considering the said pleas, the Supreme Court analyzed the provisions of the [Land Acquisition Act, 1894](#), the purpose of publication of notification under Section 4(1) and the purpose of Section 5A, which affords valuable opportunity for the owner of the land to persuade the authorities concerned not to acquire the land. The Supreme Court took note of the fact that the purpose mentioned in Section 4(1) notification was 'planned development of the area' and that there was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e., whether the land would be acquired and the development made by the Government or whether the owners of the properties would be required to develop a particular area in a specified way. The Supreme Court observed that if the Master Plan, which came to be sanctioned on September 4, 1962, had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved, the position may have been different. The Supreme Court went into the evaluation, of the provisions of Section 5A and emphasized on its importance qua the opportunity to be given to the owners of the land. I fail to see how this judgment has any relevance to the issue on hand.

67. In *A. Mohammed Yousef* (1991) 4 SCC 224, which is heavily relied on by the learned Senior Counsel, at the instance of the Tamil Nadu Housing Board, constituted under Section 3 of the Madras State Housing Board Act, 1961, certain

lands were proposed to be acquired under Section 4 of the [Land Acquisition Act, 1894](#). The said notification was challenged in the Madras High Court. The High Court held that the public purpose mentioned in the notification was too vague in the absence of details relating to the scheme for which the acquisition was sought to be made, thereby denying the land owners the opportunity of filing objections effectively. The High Court accordingly set aside the notification. While dealing with the appeal filed by the State of Tamil Nadu, the Supreme Court considered the provisions of the Madras State Housing Board Act, 1961 and, in particular, Sections 35 to 69, which envisaged framing of the schemes, and Sections 70, 71 and 72, which provide for acquisition and disposal of land for the purpose of the schemes. The Supreme Court held that the procedure prescribed under the said Act indicates that before the scheme is finalized, full publicity has to be given inviting objections and the aggrieved party has a right of appeal. Placing reliance on the language of Clause (b) of Sub-section (1) of Section 49 of the said Act, the Supreme Court held that acquisition of the land is a part of the scheme, which can be only after its finalization. The Supreme Court also construed the language of Clause (b) of proviso to Section 56 of the said Act in concluding that acquisition of land shall precede framing of the scheme. It is relevant to extract the following finding of the Supreme Court:

The fallacy in the argument is that it assumes that the acquisition of the land is not a part of the execution of the scheme itself. As has been indicated earlier, the position is otherwise. Since the acquisition is included in the scheme, the process of execution of the scheme starts immediately when steps for acquisition are taken. Thus, there is no question of any disregard of the command in Section 55

68. The learned Senior Counsel relied on the observations contained in para 11 of the Judgment, which are reproduced herein below:

On the other hand, the order, in which the different steps for the preparation of the scheme and the acquisition of the land, is suggested on behalf of the petitioners to be taken, appears to be impractical and defeating the purpose of Section 5-A of the Land Acquisition Act. If the notification under Section 4 under the Land Acquisition Act is published without waiting for the scheme, as has been done in

the present case, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all, and therefore does not serve any public purpose, or that another piece of land in the area concerned, is far more suitable, leading to the possible conclusion that the proposed acquisition is mala fide

The above reproduced observations, contends the learned Senior Counsel, equally apply to the cases on hand. According to him, unless the proposal of ORR is finalized, the petitioners cannot file any meaningful objections.

69. I have carefully considered this submission of the learned Senior Counsel, which, though looks attractive at the first blush, is without merit on a deeper scrutiny. As evident from the judgment of the Supreme Court, under the provisions of the Madras State Housing Board Act, acquisition of land forms an integral part of the scheme to be framed by the Housing Board and approved by the Government. However, a careful perusal of the provisions of the 1975 Act reveals that acquisition and disposal of land under Chapter-V is not made dependant on preparation and approval of the Master Plan and the Zonal Plans envisaged in Chapter-III. Section 18 of the 1975 Act reads as under:

18. Compulsory acquisition of land:

(1) If, in the opinion of the Government, any land is required for the purpose of development or for any other purpose under this Act, the Government may acquire such land under the provisions of the [Land Acquisition Act, 1894](#).

(2) Where any land has been acquired by the Government they may, after they have taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

The above reproduced provision confers very wide powers on the Government to acquire the land either for the purpose of development or for any other purpose under the Act.

70. Under Section 19 of the 1975 Act, a reference to which was already made in this judgment, the Authority or the local authority is empowered to dispose of any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon.

71. A careful reading of these two, provisions clearly goes to show that if the Government is satisfied that a land is needed for development, it can acquire and transfer the same to the Authority. On such transfer, the Authority, subject to the directions, if any, given by the Government, may even dispose of the land so acquired without undertaking or carrying out any development thereon. In my considered view, there is nothing in these provisions which would suggest that initiation of acquisition proceedings should necessarily precede final approval of the Master Plan or the Zonal Development Plans and the scheme of the Act in its entirety does not prohibit initiation of process for preparation and approval of plans on the one side and initiation of the acquisition proceedings on the other, simultaneously. The very fact that the Authority is empowered to dispose of the land acquired by the Government and transferred to it without undertaking or carrying out any development, coupled with the fact that acquisition of land is not made an integral part of the process of preparation and approval of the Master Plan and the Zonal Development Plans leads one to the irresistible conclusion that approval of the Master Plan or the Zonal Development Plans is not a sine qua non for initiation of proceedings under the provisions of the 1894 Act. In a given case, the Government, even in anticipation of approval of plans submitted by the Authority, can notify the lands for acquisition. This view of mine is further reinforced by the provisions of Section 21 of the 1975 Act which empower the Authority to develop the land transferred to it or placed at its disposal under Section 18 or 20, notwithstanding anything contained in Section 13(3) and even if such land is situated in any area, which is not a development area. If the Legislature intended that acquisition of land under the provisions of the 1894 Act shall not precede approval of the plans, it would not have envisaged a provision such as Section 21. This provision clearly visualizes even situations where the Government acquires lands without notifying development area and approving the plans under Chapter-III of the 1975 Act.

72. For the foregoing reasons, the judgment in A. Mohammed Yousef (1991) 4 SCC 224 - which turned on the interpretation of the provisions of Madras State Housing Board Act, 1961 which do not bear similarity with the provisions of the 1975 Act - has no application to the present cases.

73. In L. Krishnan (1996) 1 SCC 250, the judgment in A. Mohammed Yousef (1991) 4 SCC 224 fell for consideration and a three Judge Bench of the Supreme Court noted that the correctness of the said judgment of the Supreme Court was doubted by a two Judge Bench and referred it to the three Judge Bench. The Supreme Court also noted that the provisions contained in Sub-sections (2) and (3) of Section 35 and Section 36 of the Madras Housing Board Act, 1961 were not brought to the notice of the Bench which decided A. Mohammed Yousef (1991) 4 SCC 224, under which the duty of the Housing Board does not begin and end with the execution of housing and improvement schemes prepared by it under the Act and that the Housing Board is under obligation to carryout certain other schemes also as are provided in the said provisions. On the said premise, the Supreme Court held that unless the lands were specifically notified for the purpose of housing scheme, acquisition of land need not await the approval of the housing scheme. The Supreme Court further held that once it is held that the Housing Board can execute schemes other than those framed by it under Sections 37 to 56, there appears to be no warrant for qualifying the plenary power under Section 4 of the Land Acquisition Act with reference to the said provisions, of the Housing Board Act. The Supreme Court took note of the fact that following the judgment in A. Mohammed Yousef (1991) 4 SCC 224, the Tamil Nadu Legislature has amended the Housing Board Act with retrospective effect with a view to remove the basis of the said judgment and providing expressly that existence of a scheme framed by the Housing Board is not a pre-condition for acquiring land for the purpose of the Board. The Supreme Court referred to and relied upon Aflatoon (1975) 4 SCC 285 and held that the limitation on acquiring the land before approval of the scheme applies only where the land is sought to be acquired avowedly for the purpose of execution of housing or improvement scheme prepared by the Housing Board under Chapter-VII of the Tamil Nadu Housing Board Act.

74. In *Sanjeet Singh Grewal* 2008 (1) SCJ 34 : (2007) 6 SCC 292 the Board constituted under the provisions of the [Punjab Regional and Town Planning and Development Act, 1995](#) was empowered by notification to declare its intention to specify any area in the State to be a regional planning area, a local planning area or the site for a new town. Under Section 57, on declaration of such planning areas, the Board may for the purpose of performance of the functions assigned to it, designate planning agency for that area. Under Section 42 of the said Act, where any land other than the land owned by the Central Government is required for the purposes of the Authority under the Act, the State Government may, at the request of the Authority, proceed to acquire it under the provisions of the [Land Acquisition Act, 1894](#) and on payment by the Authority of the compensation awarded under that Act. One of the contentions advanced on behalf of the land owners, which was found acceptance by the Supreme Court, was that it was the Board which alone was empowered to declare a planning area under Section 56 and that without such a notification being issued by the Board, acquisition of land for being put to use at the request of the new Town Planning Authority constituted under Section 31, was illegal. Considering the language of Section 42 of the said Act, the Supreme Court upheld the judgment of Punjab and Haryana High Court, which quashed the acquisition notification on the ground that in the absence of a validly declared planning area, there did not exist any valid public purpose for acquisition of the land for establishment of a new town. The Supreme Court considered the restrictive scope of the provisions of Section 42, under which acquisition of land by the Government is permitted if only a request is made by the Authority to do so for the purposes of the Authority under the Act. The ratio in this judgment, rendered on the above mentioned provisions, has no direct bearing on this case.

75. In *Aflatoon* (1975) 4 SCC 285 an identical question to the one raised in the instant case was considered by a Constitution Bench of the Supreme Court. In the said case, for the purpose of planned development of Delhi, lands were acquired under the provisions of the 1894 Act. A contention was raised that as no Master Plan was approved, acquisition as of land was contrary to the provisions of Section 12 read with Section 15 of the [Delhi Development Act, 1957](#). It is noteworthy that while the provisions of Section 13(1) and (3) of the 1975 Act are in

pari materia with Section 12(1) and (2) of the Delhi Development Act respectively; Section 18 of the 1975 Act, under which the Government is empowered to acquire the land, is ipsissima verba with Section 15 of the Delhi Development Act. While repelling the said contention, the Supreme Court held in para 23 as under:

It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready. In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority.

Emphasis added

76. As rightly contented by the learned Advocate General, the ratio contained in the above reproduced paragraph of the Constitution Bench Judgment applies in all fours to the cases on hand in view of the identical provisions of the Delhi Development Act and the 1975 Act, which is the subject matter of these Writ Petitions. My view that there is no inhibition on the Government to acquire the land even before approval of the Master Plan is, thus, fully fortified by this judgment.

77. The judgment in Aflatoon (1975) 4 SCC 285 was followed in Bhagat Singh 1998 (9) Supreme 361, wherein it was held as under:

Para 22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the master plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to

be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in Aflatoon's case AIR 1974 SC 207, it is clear that acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependent upon the latter

Emphasis added.

78. For the reasons given by me on the analysis of the provisions of the 1975 Act and the authoritative pronouncements of the Supreme Court in Aflatoon (1975) 4 SCC 285 and Bhagat Singh 1998 (9) Supreme 361, I reject contention No. 1 advanced by the learned Counsel for the petitioners and point No. 1 is answered accordingly.

Re-Points 2 and 3:

79. Since, these two points are interrelated they are considered together. The contention that modification of a Master Plan can be only of a minor nature and no extensive changes of the existing Master Plan are permissible in the name of modification is based on the premise that the existing Master Plan notified in the year 1980 does not envisage ORR. In view of my finding given while dealing with Point No. 1, this plea of the learned Counsel for the petitioner becomes purely academic. When once, the ORR is already in existence the proposed change of alignment in the existing Master plan can, by no means, be treated as an extensive change.

80. Since, the learned Senior Counsel advanced extensive arguments on the scope of Section 12(1) and (2) of the 1975 Act, let me consider this contention of the learned Counsel irrespective of the finding that the proposed change is not extensive. It is the contention of the learned Counsel that the width of Section 12(2) of the 1975 Act under which the Government got power which can be exercised either suo motu or on a reference from the authority to make any modifications to the plan, does not extend to cases where the modifications involve extensive changes. The learned Counsel submitted that having regard to the scheme underlying the Act the provisions of Section 12(2) shall be read down to hold that the procedure envisaged under Sections 8 and 9 shall be followed in cases of extensive modifications to the plan. Since, major changes are required to be done, contends the learned Counsel, having regard to the parameters contained in Sections 6 and 7 of the Act involving development of the whole area having regard to the density of population, the provisions of Section 12(2) shall be construed in the above-mentioned manner. The learned Counsel relied on the judgment of the Supreme Court in *Pune Municipal Corporation and Anr. v. Promoters and Builders Association and Anr.* : AIR 2004 SC3502 . and *Bombay Dyeing and . v. Bombay Environmental Action Group and Ors.* 2006 (2) SCJ 705 : 2006 (3) Supreme 49. In support of his contention that the word 'modifications' shall be construed as minor modifications and not wholesale replacement of the Master Plan. The learned Counsel submitted that the words 'or otherwise' in Section 12(2) shall be construed ejusdem generis and relied on the judgment of Queen's Bench Division in *the Corporation of Portsmouth v. Smith and Ors.* 1883 Queen's Bench Division vol. XIII p. 193.

81. While Sections 6 and 7 of the 1975 Act empower the authority to prepare Master Plan and Zonal Development Plan after carrying out a civic survey of land inter alia defining the various zones into which the development area may be divided for the purpose of development and indicating the manner in which the land is proposed to be used etc., Section 8 envisages procedure to be followed in the preparation and approval of the plans. Under Section 9 the plans so submitted by the Authority to the Government for approval may be either approved by the Government without modifications or with such modifications as may be considered by it or the Government may reject the plan with direction to the

authorities to prepare a fresh plan according to such directions. Under Section 12(1) the Authority is empowered to make modifications to the plan as it thinks fit if such modifications in its opinion do not effect important alterations in the character of the plan and they do not relate to the extent of land-uses or the standards of population density. Section 12(2) under which the Government is vested with the power of making modifications and which is the bone of contention of the learned Counsel for the petitioners, reads as under:

The Government may suo motu or on a reference from the Authority make any modifications to the plan, whether such modifications are of the nature specified in Sub-section (1) or otherwise.

82. A plain reading of Sub-section (1) of Section 12 discloses that if the authority seeks to make modifications to the plan, its power is limited to making modifications which do not effect important alterations in the character of a plan and do not relate to the extent of the land uses or the standards of the population density. However, the power conferred on Government under Sub-section (2) is not only with reference to the modifications which the authority is empowered to make under Sub-section (1) but also 'or otherwise'. It is a well accepted principle of Interpretation of Statutes that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. *Nagendra Nath Dey v. Suresh Chandra Dey* , *Pakala Narayana Swami v. Emperor* , *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376, *S.A. Venkataraman v. The State* : 1958 CriLJ254 , *Shri Ram Daya Ram v. State of Maharashtra* : [1961]2SCR890 , *Doypack Systems Pvt. Ltd. v. Union of India* : 1988(36)ELT201(SC) , and *Mohammad Ali Khan v. Commissioner of Wealth Tax* AIR 1997 SC 1165.

83. When we apply the above-mentioned principle of interpretation, I have no doubt in my mind that in the context in which the words 'or otherwise' are used, the plain meaning of the said words is required to be taken, because while Section 12(1) of the 1975 Act limited the power of Authority to make modifications, the

legislature intended to confer wider powers on the Government for the purpose of modification of the plans. If the legislature intended that the power of the Government to make modifications is coextensive with the power of the Authority, there would have been no need for providing for a separate provision by way of Sub-section (2) and instead in Section 12(1) itself the word 'Government' also would have preceded the word 'the authority'. The very fact that under Sub-section (2) power has been conferred on the Government to make modifications of the nature indicated in Sub-section (1) and also of the nature 'or otherwise' clearly reflects the legislative intent that even if the modifications are not of the nature as specified in Section 12(1), the Government is empowered to make such modifications. In my considered view such a construction does not in any manner defeat the purpose for which the enactment is made. From the provisions of the 1975 Act discussed supra, it is clear that the object of the Act is to ensure planned development of urban areas in the State of Andhra Pradesh. The Government is conferred with the plenary powers under the Act to constitute Urban Development Authority by notification by appointing Chairman, Vice Chairman and nominating various other members etc. (Section 3), to appoint Secretary, Chief Accounts Officer, Town Planner and Engineer (Section 4), to regulate the methods of recruitment, conditions of service etc., of the officials appointed under Section 4 (Section 4A), to approve plans with or without modifications and reject the plans with directions to the authority to prepare fresh plans (Section 9), to notify development areas (Section 13), to acquire the land required for the purpose of development or for any other purpose (Section 18) In addition to the above-mentioned powers, under Section 34 the Authority shall carry out such directions as may be issued to it from time to time by the Government for the efficient administration of the Act. These provisions thus clearly show that the Government is assigned pivotal role and entrusted with multifarious functions under the Act to achieve the purpose and objects of the Act. By interpreting the words 'or otherwise' by giving their natural and etymological meaning, it does not lead to any incongruity nor does it defeat the purpose of legislation, for, the Government which is the apex body is vested with the powers to undertake extensive changes in the Master Plan, while limiting the power of the Authority to make minor modifications under the Act.

84. In *Pune Municipal Corporation* (2004) 10 SCC 796 the scope of Section 37 of the [Maharashtra Regional and Town Planning Act, 1966](#) fell for consideration of the Supreme Court. Under the said provision where a modification of any part of or any proposal made in a final development plan is of such a nature that it will not change the character of such development plan, the planning authority may or when so directed by the State Government shall within 60 days from the date of such direction publish a notice in the official Gazette inviting objections and suggestions. On receipt of proposals from the planning authority the State Government may sanction the modification with or without changes or refuse to accord sanction. The said provision was construed by the Supreme Court placing limitation on the power of the Government to approve any amendment to change the basic character of the development plan and held that the proposed amendment could only be minor within the limits of the development plan. The said provision considered by the Supreme Court is similar to Section 12(1) of the 1975 Act, but a provision similar to Section 12(2) did not fall for Supreme Court's consideration. The observations of the Supreme Court that the proposed amendment could only be minor within the limits of the development plan were made having regard to the language contained in the above-mentioned provision and in the face of an express statutory power conferred by Section 12(2) of the 1975 Act, the limitation on the Government's power to confine to minor modifications cannot therefore be read into the said provision.

85. The Judgment in *Bombay Dyeing and Manufacturing Company Limited* 2006 (2) SCJ 705 : 2006 (2) SCJ 705 : 2006 (3) 2006 (3) Supreme 49 is of no help to the petitioners either. In that case the Supreme Court was considering Section 37 of the [Maharashtra Regional and Town Planning Act, 1966](#) which contains an embargo on changing development plan involving change of its character. In that connection, the Supreme Court considered the terms 'modification' or 'change' and in the process referred to the judgment in *Legg v. Ilea* 1972 (3) All E.R. 177 wherein it was observed that 'once one reaches a stage of wholesale rejection and replacement, the process must cease to be one of modification'. On considering the facts of that case, the Supreme Court gave a finding that the changes made by the authority did not bring about any significant changes so as to come to a conclusion that its basic features are altered. On a careful consideration of this

judgment, it is apparent that the same has no relevance to the present cases.

EJUSDEM GENERIS:

86. The doctrine of ejusdem generis applies to cases where particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as specified. *Thakur Amar Singh v. State of Rajasthan* : [1955]2SCR303 , *Kavalappara Kottarathil Kochuni Moopil Nayar v. State of Madras* : [1960]3SCR887 , *Siddeshwari Cotton Mills (P) Ltd. V. Union of India* : 1989(39)ELT498(SC) .

87. This Rule applies when the following conditions are satisfied:

- (1) The statute contains an enumeration of specific words.
- (2) The subjects of enumeration constitute a class or category.
- (3) That class or category is not exhausted by the enumeration.
- (4) The general terms follow the enumeration, and
- (5) There is no indication of a different legislative intent.

Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura : [1973]1SCR533 .

88. In *Lilavati Bai v. Bombay State* : [1957]1SCR721 . explanation (a) to Section 6 of the Bombay Land Requisition Act which contains the words 'or otherwise' fell for consideration. The said provision reads as under:

(a) Premises which are in the occupation of the landlord, the tenant or the subtenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation

89. The Supreme Court while rejecting the contention that the words 'or otherwise' shall be read as ejusdem generis held as under:

As an offshoot of the argument that we have just been examining it was contended on behalf of the petitioner that Explanation (a) to Section 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) 'ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner of his interest in the premises or otherwise'. The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words 'or otherwise' must be construed as ejusdem generis with the words immediately preceding them: and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words 'or otherwise'. Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words 'or otherwise', apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense. No decided case of any court, holding that the words 'or otherwise' have ever been used in the sense contended for on behalf of the petitioner, has been brought to our notice.

Emphasis added.

90. The above judgment in my considered view applies squarely to the present case, because in this case also by using the words 'or otherwise' the legislature intends to cover all other nature of changes or modifications which do not fall in Section 12(1).

91. The Queen's Bench judgment 1883 Queen's Bench Division Vol. XIII p. 193 cited by the learned Senior Counsel has no application to the present case. In the said case the words 'or otherwise' mentioned in Section 55 of the Towns Improvement Clauses Act, 1847 fell for consideration of the Court and the said provision to the extent relevant reads as follows:

If any street, not being a public highway at the passing of the special Act, be thereafter to the extent of two-third parts thereof paved and flagged or otherwise made good to the satisfaction of the commissioners, then, on the application of the owners of the lands abutting on such parts of the said street as have been so made good, the commissioners may require the owners of the buildings or lands abutting on the remainder of the said street to pave and flag or otherwise make good to the satisfaction of such commissioners such remainder of the said street or such parts thereof as front such last-mentioned buildings and lands, within a reasonable time to be fixed by the commissioners; and if such remainder of the said street, or any such part thereof as aforesaid, be not made good as aforesaid within the time so fixed, the commissioners may cause the part not so made good to be made good, and the expenses which shall be incurred by the commissioners in respect thereof shall be repaid to them by the owners by whom such paving ought to have been done respectively....

92. While interpreting the said words the Court held that the words 'or otherwise made good' shall be read by keeping in view the words 'paved and flagged' preceding the said words. The Court held that the nature of the repairs to be made to the street shall be similar to paving and flagging. On a careful consideration of this judgment, it is apparent that the context in which the words 'or otherwise' were used in Section 55 of the said Act is totally different from the one in which the said words are used in Section 12(2) of the 1975 Act. Therefore, the said judgment has no application whatsoever to the present cases. This part of contention No. ii(a) of

the learned Counsel is accordingly, rejected.

Delegation of Government's power under Section 12(2) Whether valid?

93. Under Sub-contention ii(b) the learned Senior Counsel contended that the State Government cannot enlarge the power conferred on the Authority under Section 12(1) by indirectly delegating its power to make extensive modifications to the Master Plan to one of its functionaries, namely, Vice Chairman. He further submitted that if modification involves wholesale changes the State Government should entrust the work of preparation of new Master Plan to the authority under Section 6 of the Act and follow the provisions of Sections 8 and 9.

94. According to the learned Counsel, Vice Chairman being part of the Authority under Section 3(3)(b) is not separate from the Authority and he should not have been delegated with the power to prepare a modified Master Plan. The learned Counsel also contended that the power to make modifications to a Master Plan is a quasi-judicial power and such a power cannot be delegated. He relied on the judgment of the Queen's Bench Division in *Barnard and Ors. v. National Dock Labour Board* and Ors. 1953 Queens Bench Division 18 and *Vine v. National Dock Labour Board*. 1956 (3) All England Reports 939.

95. With regard to the contention relating to delegation of Government's power under Section 12(2), it is relevant to notice that under Section 56(2) of the 1975 Act the Government, by notification, is empowered to delegate any power exercisable by them under the Act except the power to make Rules to such officer as may be mentioned therein in such cases and subject to such conditions if any as may be specified in the notification. A perusal of Memo No. 9225/11/05, dated 26.5.2007 whereby the Government called for objections for amendment to the Master Plan shows that the Government's power to prepare the revised Master Plan by undertaking power of modification thereto was delegated to the Vice-Chairman of the Authority vide G.O. Ms. No. 22 dated 22.1.2003. Though the petitioners by way of subsequent affidavit dated 29.11.2007 (in W.P. No. 18757 of 2007) raised additional ground that delegation of Government's power under Section 12(2) to the Vice Chairman of the Authority is without jurisdiction and illegal, they have not questioned G.O. Ms. No. 22 dated 22.1.2003. The petitioners

did not assign any reason therefor. Be that as it may, in my considered view the amplitude of Section 56(2) of the 1975 Act is wide enough to include a functionary such as the Vice-Chairman of the Authority in the expression 'such officer as may be mentioned'. The mainstay of the learned Counsel's argument is that extensive modification of a Master Plan is an expert job and that such an important function ought to be entrusted to the Authority which is expected to consist of experts and not one of the functionaries of the Authority. The learned Advocate General pointed out that the Vice-Chairman to whom the power is delegated has not undertaken the job all alone and that he took the assistance of many technical experts. He invited the Court's attention to the draft Master Plan book which showed involvement of many experts in the field of Town Planning and Scientists whose services were acknowledged therein. I find force in the contention of the learned Advocate General that a delegate is entitled to take the help of experts in the field and the fact that the Vice-Chairman in the instant case took such help from the experts is undeniable. The fact that the Government thought it fit to delegate its power to the top functionary of the Authority itself shows that it kept in view the relevant consideration, namely, that the important job of modifications to the Master Plan shall be handled by a responsible functionary of the Authority itself and not by an outsider. The mere fact that the Vice-Chairman is a part of the Authority does not render him ineligible for being delegated with the power of preparation of a draft Master Plan. Indeed, far from it, I find the Government's decision to delegate such a power to no other than the Vice-Chairman of the Authority very apt and appropriate. I do not, therefore, find any illegality in such delegation and the contention of the learned Counsel in this regard deserves to be rejected.

96. Though the learned Senior Counsel argued on the strength of the judgments in *Barnard* 1953 Queens Bench Division 18 and *Vine* 1956 (3) All England Reports 939, that a judicial/quasi-judicial function cannot be delegated, the question whether the function under Section 12(2) of the 1975 Act was a quasi-judicial function or merely an administrative function was not specifically argued by the learned Counsel. He has fairly agreed at the hearing, that this point may be left open by the Court for being raised in an appropriate case. I therefore, refrain from going into this aspect and giving a finding there on.

97. The legal proposition put forth by the learned Senior Counsel that the power vested in the authority under Section 12(1), cannot be enlarged by the Government for exercising power under Section 12(2) is unexceptionable. But, in the instant case, the Government merely delegated its power to one of the functionaries of the Authority and in undertaking preparation of draft Master Plan for incorporating changes in the Master Plan the Vice Chairman acted under Section 12(2), independent of Section 12(1). Therefore, the question of enlargement of the power of the Authority under Section 12(1) by the Government by delegating power to the Vice Chairman does not arise at all. In this view of the matter, I find no substance in contention No. ii(b) of the learned Senior Counsel and points 2 and 3 are answered accordingly.

Re-Point No. 4:

98. In their affidavits the petitioners contended that the Andhra Pradesh Pollution Control Board by its order dated 4.4.2005 while considering the application for grant of consent for laying ORR laid down conditions which include condition No. 1 to the effect that as the Himayathsagar lake is a source of drinking water to the city and in view of G.O. Ms. No. 111 dated 8.3.1996, it would not be desirable to have alignment along the Himayatsagar lake. It is also pleaded that the Pollution Control Board directed the project proponent to submit a report regarding the measures proposed to prevent development along the ORR. The learned Senior Counsel pointed out that the Pollution Control Board while granting consent for establishment on 4.10.2006 laid down several conditions to protect water bodies. In particular he referred to Clause-15 of Schedule-B of the consent order in which it is laid down that the proponent shall not undertake any activity without obtaining environmental clearance from M.O.E. & F, Government of India as per its notification No. SO60(E) dated 27.1.1994 and the amendment issued thereof.

99. With respect to the contention that G.O. Ms. No. 111 dated 8.3.1996 prohibits development within 10 kms., radius of Himayathsagar and Osmansagar lakes, I have carefully perused the said G.O. The said G.O. was issued in order to protect catchment areas of Himayathsagar and Osmansagar lakes on the recommendations of a committee constituted for this purpose. In Clause-3 of the

G.O, it is mentioned that the said G.O. was issued in modification of G.O. Ms. No. 192 dated 31.3.1994 'to prohibit polluting industries, major hotels, residential colonies or other establishments that generate pollution in the catchment of the lakes upto 10 kms., from full-tank level of the lakes as per the list in Annexure-I'. An identical question was raised in Dr. S. Jeevananda Reddy v. Government of A.P. in W.P. No. 4492 of 2007 and a Division Bench of this Court, of which I am a party, disposed of the said writ petition by order dated 18.6.2007. The Division Bench took note of filing of W.P. No 222.96 of 2006 by the same petitioner for restraining the Government and the HUDA from raising any construction pertaining to ORR within a distance of 500 metres of the tank bund and the fact that the Bench disposed of the said writ petition with certain directions by order dated 13.12.2006. Direction No. 2 pertains to G.O. Ms. No. 111 and it reads as follows:

Within next seven days, the technical committee shall submit its report. While doing so, the technical committee shall examine the records produced by HUDA and also keep in view the restrictions contained in G.O. Ms. No. 111, dated 8.3.1996.

100. The Pollution Control Board considered the report of the technical committee and passed an order on 12.2.2007 which was assailed in W.P. No. 4492 of 2007. With reference to G.O. Ms. No. 111, the Division Bench extracted para-6 of the counter affidavit filed by the Member Secretary of the Pollution Control Board and it is apt to extract the said paragraph.

The recommendations of the Technical Committee have been placed before the CFE clearance committee in the meeting held on 24.1.2007. The Consent for Establishment Committee decided to refer the issue of proposed clarification for due consideration by Board with a view to facilitate objective assessment/decision in the matter through its decision dated 24.1.2007. Meeting of Board was convened on 07.2.2007 to consider two issues, both of them having bearing on implementation of G.O. Ms. No. 111, dated 08.3.1996. It is respectfully submitted that this respondent Board is committed to implement GO Ms. No. 111, dated 08.3.1996 and in the process has not issued CFE/CFO to any Pollution Potential Industry/Establishment in 10 kms., FTL of lakes for the past several years. The

subject project is a Highway Road Project located on the downstream of Himayathsagar

The following materials/documents have been placed before the Board for decision in this behalf.

- a. GOMs. No. 111, dated 08.3.1996 and the Supreme Court orders dated 01.12.2000.
- b. CFE application alongwith EIA report.
- c. Public hearing minutes.
- d. The correspondence between the proponent and the Board.
- e. The Technical Committee minutes.
- f. The CFE committee minutes and CFE order dated 02.6.2005.
- g. Environmental clearance of Mo EF dated 20.10.2005.
- h. The alignment of ORR road and the gap between the ORR and the bund of Himayathsagar.
- i. Risk analysis study of EPTRI and IICT in the event of an accident during transportation of hazardous chemicals.

Keeping due consideration to the documents, reports, technical committee recommendations, petitioner's objections and contentions of the proponent and the nature of pollution the project is likely to cause in normal circumstances and in events like accidents etc. and to the condition of Mo EF in Environmental Clearance, the Board in its ultimate analysis of the matter defined the ambit and scope of Clause 10 of Schedule-B of the CFE order as follows:

The proponent shall maintain a minimum width of 500 m. along the bund up to a length of 1400 m. and shall also maintain minimum width of 365 m. greenbelt between the bund and the road and shall take the extra caution of developing thick greenbelt in the remaining length where minimum width between the bund and the

road is varying from 365 m. to 500 m. to act as wind barriers and preserve the water body from remote contingencies.

The above decision has been weighed' by following considerations:

a. The matter relates to maintenance of distance between Outer Ring Road and Himayatsagar Bund.

b. The Highway Project is positioned on the down stream of Himayatsagar Lake.

c. G.O. Ms. No. 111, dated 08.3.1996 is clear in its applications to areas vis-a-vis industries/establishments etc.

d. The risk analysis report prepared by IICT and EPTRI refers to most probable worst scenario, in case of an accident involving release of toxic volatile substances.

e. The condition of environmental clearance of Ministry of Environment and Forests, Govt., of India reads as follows:

To protect the Himayatsagar lake from the possibility of pollution from the developments/habitation HUDA should declare the stretch of proposed ORR from downstream side of lake bund as no development zone in the 500 m. gap between ORR and bund for a length of 1400 m. Necessary action should be initiated to incorporate the above condition in the Master Plan of HUDA.f. To keep the conditions operating in the same area uniform.

g. There is no statutory prohibition or guideline prescribing definite distance between the Bund and the proposed road under environmental laws. Precautionary principle is followed by requiring maintenance of reasonable distance.

h. With a view to ensure prevention of environmental pollution, the proponent has been directed to develop thick density trees, which will act as barriers in normal and contingent occasions.

i. The Board was satisfied with the technical details made available by the proponent of the project. It is contextual to state that while granting environmental clearance, the distance of Bund has been confined to 1400 meters.

j. The decision making process of the Board is based on relevant materials and for sustainable development. The unsustainable objections of the petitioner are totally out of context and have been made in tandem only for the purpose of the writ prayer. These allegations in the affidavit under reply are totally devoid of merit and are liable to be rejected.

101. Having considered in detail the pleas of the State Government and the Andhra Pradesh Pollution Control Board and being satisfied about the measures to protect the two lakes, the Division Bench dismissed the writ petition and declined to interdict the project work. In view of the said Division Bench judgment, the plea of the petitioners that the alignment of ORR violates G.O. Ms. No. 111 dated 8.3.1996 cannot be accepted. Even otherwise, Clause-3 which was reproduced supra, prohibits polluting industries, major hotels, residential colonies or other establishments that generate pollution in the catchment of the lakes. Even a liberal construction of this clause does not make ORR project fall within its ambit. Further, as rightly contended by the learned Advocate .General Annexure-I with reference to which the activities are prohibited under the said G.O. does not include Narsingi village in which the petitioners' lands are situated. This G.O. therefore does not come in the way of undertaking construction of ORR on the petitioners' lands.

Water Bodies:

102. With regard to water bodies, the case of the petitioners is that though there are no water bodies on the lands of the petitioners, the proposed alignment affects water bodies comprised in survey Nos. 291 and 298. In Jayabheri Properties Private Limited and Ors. v. State of A.P. W.P. No. 22809 of 2006 & Batch, a Division Bench of this Court, of which I am a party, considered in detail the said issue and rendered the following findings:

On a careful reading of the Gazettee Notification and letter dated 23.12.2006 sent by Executive Engineer, I & CAD Department, we are constrained to remark that while the Gazettee Notification relates to Survey No. 291 of Narsingi village, letter of the Executive Engineer makes a mention of Survey No. 291 of Poppalaguda and Narsingi villages simultaneously. The falsity of the contents of letter No. DB/HD/2006-2007/1570 is evinced from the fact that the Executive Engineer makes a mention of the office records and zonal development plan of Poppalaguda village issued by HUDA, site inspection and panchanama conducted by him, but the so-called panchanama etc. have not been produced before the Court. As against this, the letter of the Executive Engineer, North Tanks Division, Secunderabad makes a detailed mention of the joint inspection of the four survey numbers by Special Deputy Commissioner, L.A. Unit, ORR Project, HUDA, Assistant Project Officer, ORR project, Revenue Inspection, ORR Project, Deputy Executive Engineer, HUDA, Deputy Executive Engineer and Assistant Engineer of North Tanks Division and S.I. Sheet No. 56K/7/NW. It is, thus, evident that even though, on papers, survey numbers enumerated above may have been recorded as 'kuntas', on ground, there are no water bodies in those survey numbers.

Emphasis added.

103. It is brought to my notice that against this judgment an appeal with Special Leave petition is filed and the same is pending before the Supreme Court. The petitioners have not produced any contra material to come to a different conclusion from the one arrived at by the Division Bench in the said judgment. Unless and until the finding in the said Division Bench judgment is set aside, this Court is bound by the findings recorded therein.

104. Learned Advocate General contended that even if there are any water bodies, the same cannot be a ground to prevent construction of ORR, because Condition No. 11 of Schedule-B of the consent order dated 4.10.2006 issued by the Pollution Control Board envisages that measures suggested by the project proponent for protection of water bodies appear satisfactory, but it may be added that where the alignment passes over a water body the structure may be taken over by columns. This condition thus enables the respondents to execute the ORR

work even over the water bodies by duly protecting them following the method suggested by the Pollution Control Board in its consent order. In this view of the matter, it is not necessary for me to refer to and deal with the various judgments cited by the learned Senior Counsel for the petitioners dealing with the protection of environment including the judgment of the Supreme Court in *Intellectuals Forum, Thirupati v. State of A.P* : AIR 2006 SC1350 and the judgment of the U.S. Supreme Court in *Sierra Club v. Rogers C.B. Morton* 31 L.Ed. 2d 636 : 405 US 727. and that of the Superior Court of the U.S. in *Village of Euclid v. Ambler Realty Co.* 1926 S.C. Reporter's Edn. 365-397.

105. Sri Challa Sita Ramaiah lastly contended that the respondents failed to comply with condition No. 15 of Schedule-B of consent order dated 4.10.2006 issued by the Pollution Control Board by not obtaining environmental clearance from MOE & F under Government of India notification No. SO 60(E) dated 27.1.1994.

106. The respondents filed W.P.M.P. No. 8376 of 2008 to receive additional documents and the said application was allowed by this Court on 26.3.2008. The said material papers include consent for establishment dated 4.10.2006 issued by the Pollution Control Board and proceedings dated 20.10.2005 issued by the Government of India, Ministry of Environment and Forests granting environmental clearance for ORR Phase-I for a distance of 21.90 kms., from Gachibowli to Shamshabad. The respondents also filed letter dated 17.1.2007 of Government of India, Ministry of Environment and Forests addressed to the Managing Director of Hyderabad Growth Corridor Limited, HUDA wherein it is mentioned that the ORR project does not attract the provisions of Environment Impact Assessment Notification, 2006 as the same is neither a National highway nor a State highway. The learned Advocate General explained that the said letter was written by the Government of India in response to the request made by the Project Director of ORR project for according clearance for the second phase of ORR of a distance of 140 kms. He contended that ORR is neither a State highway nor a National highway but it is only an expressway traversing through an urban area easing traffic congestion in the arterial roads in the twin cities and linking the new international airport to various parts of the twin cities. He filed Pocket Book for

Highway Engineers published by the Ministry of Shipping, Road Transport and Highways wherein National Highway and State Highways are defined as under:

National Highway: These are main - highways running through the length and breadth of the country connecting major ports, highways of neighbouring countries, State capitals, large industrial and tourists centers etc.

State Highways: These are arterial routes of a State linking district headquarters and important cities within the States and connecting them with the National Highways and the neighbouring states.

107. Going by the above-mentioned definitions, I find force in the contention of the learned Advocate General that the ORR does not fall in either of the highways but it is only a facility created for the above mentioned purposes. Therefore, in view of the clarification issued by the Government of India that environmental clearance for Phase-II is not required under the new notification, namely, SO 1533 dated 14.9.2006 published under the Environment (Protection) Act, 1986 read with the Rules made there under, the construction of ORR cannot be invalidated on the ground of lack of environmental clearance for Phase-II Point No. 4 is answered accordingly.

THE RESULT:

108. In view of my findings on points 1 to 4 supra, all the three writ petitions, namely, W.P. Nos. 18757, 14062 and 22052 of 2007 are dismissed, but in the circumstances, the parties shall bear their respective costs.

109. As a sequel to the dismissal of the writ petitions, all the miscellaneous applications shall stand disposed of.