

S.B.Kirloskar and ors Vs. the Hyderabad Urban Development Authority (Huda) Renamed as Hyderabad Metropolitan Development Authority (Hmda), Hyderabad and ors

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Court : Andhra Pradesh

Decided On : Sep-09-2010

Judge : V.V.S.Rao; B.N.Rao Nalla, Jj.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1),6,18,54,23(1),4 ;

Appeal No. : Writ Petition No.16378 of 2006

Appellant : S.B.Kirloskar and ors

Respondent : The Hyderabad Urban Development Authority (Huda) Renamed as Hyderabad Metropolitan Development Authority (Hmda), Hyderabad and ors

Advocate for Def. : R.Prabhakar; Dhananjay Reddy ; Ravindra Yanamandra ; D.V.Seetharama Murthy; Vijaysen Reddy; B.P.Mohan; Veera Swamy; Raghuveer Reddy; Rudra Prasad; Radhiv Reddy; E.Ajay Reddy; Rajagopal Rao; Hari Sreedhar; S.Rambabu; P.Sri Raghuram; S.Niranjan Reddy; P.Ven

Advocate for Pet/Ap. : S.Ramachandra Rao, Adv.

Judgement :

INTRODUCTION

Hyderabad with its twin city of Secunderabad apart from being the Capital of Andhra Pradesh is also famous for its social and cultural history, pearls, pharma and software companies besides being the home of more than seven million population. It is a fast developing sprawling mega city with fast track growth initiatives and - as rumoured; a place for greedy and fortune hunters to make quick buck with speculation, political lobbying and subtle methods of cheating. The growth mine is not only gold mine for such people but a destiny for millions in search of a humble avocation to eke out decent livelihood. The city with less than a million population half a century ago is now spread over 10,000 square kilometers. In addition to irreversible environmental problems, it has also thrown up the problems of immense concern in relation to urban utilities, transport, mobility, movement and day-to-day life. Municipal Corporation of Hyderabad (MCH) and Hyderabad Metro Development Authority (HMDA) constituted under Hyderabad Metro Development Authority Act, 2007 and Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS&SB;) and similar statutory bodies continuously attempt to conceive, plan and implement many projects to make this mega city a citizen friendly habitation. OUTER RING ROAD (ORR)

In 1984, a unique urban infrastructure initiative was mooted. It is to put in place an Outer Ring Road (ORR) to reduce urban congestion. The feasibility study for this 'Green Field Project' was done by M/s.Mecon. Initially, it was conceived to construct 109 kilometers four-lane ORR. After bureaucratic revision, the project was enlarged to cover 169 kilometers. The core object of the Project is to build Four-Lane Express Highway with large double trumpet road interchanges to facilitate least cumbersome user friendly collection and payment of toll from road users. Government's sanction was granted in G.O.Ms.No.442, dated 19.10.2004. HMDA is in the saddle to implement ORR by generating its own funds. The project to be taken up in two phases with a financial outlay of about Rs.6,000/- crores, required 5,500 acres of private land. ALIGNMENT AND DESIGN OF ORR

The Vice Chairman, HMDA approved the alignment as advised by the Secretaries Committee in four sectors, namely, Western, Northern, Eastern and Southern. Between 13.04.2005 and 21.04.2005, Project Director, ORR (hereafter, PD) issued number of Notifications under Section 4 of the [Land Acquisition Act, 1894](#)

(the Act, for brevity) (hereafter Notifications under Section 4 and Declarations under Section 6 are referred to as 'DN' and 'DD' respectively) for all the sectors proposing to acquire land. These DNs followed by issuing addenda, some were allowed to lapse. The alignment of ORR at many places was changed three times. The Government and HMDA could not stick to one finalized alignment which would have avoided scores of writ petitions in this Court challenging the method, manner and mode of acquiring the land to suit fast changing alignment. Some cases also reached apex Court involving questions like whether forest land, water bodies can be acquired for ORR and whether the alignment was changed with bad faith. Even while the litigation is pending in this Court as well as apex Court, Phase I (Western Sector - from Gachibowli to Shamshabad) of ORR, except few patches, was completed. Phase IIA (in Western Sector from Narsingi to Patancheru and in Eastern Sector from Peda Amberpet to Shamshabad) and Phase IIB (in Northern Sector from Patancheru to Shamirpet and from Patancheru to Peda Amberpet) are at different stages of completion. CHALLENGE IN THIS CASE

Ten petitioners filed the instant writ petition praying this Court to quash DN dated 14.12.2005 issued under Section 4(1) of the Act. Some time thereafter, W.P.No.20316 of 2006 was filed invoking Public Interest Litigation (PIL) jurisdiction of this Court challenging acquisition of land for ORR on the ground that it is vitiated by arbitrariness and mala fide exercise of power. This case was tagged on to PIL case and from time to time interlocutory orders were passed. Initially, respondents 1 to 6 were arrayed as parties. But, petitioners filed application being W.P.M.P.No.30845 of 2005 to implead respondents 7 to 25, which was allowed on 30.11.2006. All these respondents are represented by the counsel. They have also filed counter affidavits. Petitioners, subsequently, filed W.P.M.P.No.34380 of 2009 to amend the prayer in the writ petition. As it stands, the petition is for issue of writ of mandamus declaring the action of respondents in initiating and continuing land acquisition proceedings for acquiring the lands of petitioners in an extent of Acs.65.35 guntas in survey Nos.23, 29, 61, 122 and 123 of Kandlakoi village of Maheswaram Mandal in Ranga Reddy District for the purpose of ORR by issuing DNs being O.R.R.No.71, dated 16.04.2005, ORR No.72, dated 16.04.2005 and ORR No.83, dated 21.04.2005, ORR

No.122, dated 08.07.2005 as amended by addendum in ORR No.103, dated 12.07.2006 and ORR No.207, dated 14.12.2005 and the consequential proceedings, DDs and awards as illegal, unjust, arbitrary, discriminatory and violative of fundamental rights under Articles 14, 19 and 307 of Constitution of India apart from being contrary to the provisions of the Act. PETITIONERS' CASE Senior counsel for petitioners requests us to treat the affidavit accompanying W.P.M.P.No.34380 of 2009 (application for amendment) as a comprehensive one. From this, the case of petitioners in a nutshell may be noticed. The lands owned by the petitioners are sought to be acquired by DN in ORR No.207, dated 14.12.2005, which was originally impugned in the writ petition. However, petitioners amended the prayer seeking to challenge four other DNs being ORR Nos.71, 72, 83 and 122 as amended by ORR No.103. Admittedly, the land sought to be acquired by these four DNs is situated at Kandlakoi village and the alignment of the ORR would pass through the lands of petitioners. They contend that if the road is taken up as per the original approved alignment, ORR will pass through Athivili village, which is at a distance of five kilometers from Kandlakoi. They allege that the alignment was changed thrice to exclude the land belonging to persons who are close to political leaders in power. (The details are adverted to later). The following statement is furnished by senior counsel to demonstrate as to how the lands of petitioners would be affected by the successive DNs impugned in the writ petition.

Petitioner No	Name of Petitioner	Sy. No.	First Alignment	Second Alignment	Third Alignment	Notification in ORR 71, 16.4.2005	Notification in ORR 72, 16.4.2005	Notification in ORR 83, 21.4.2005	Notification in ORR 122, 08.07.2005	Notification in ORR 207, 14.12.2005
1	SB.Kirloskar	27	--	--	--	Ac.03.05 gts	Ac.07.07 gts	28	Ac.02.03 gts	--
			--	--	--	Ac.00.35 gts	Ac.04.20 gts	29	Ac.07.07 gts	--
			--	Ac.00.07 gts	Ac.04.28 gts	61	--	--	Ac.03.07 gts	Ac.04.12 gts
2.	T.Rajkumar	23	Ac.05.19 gts	--	Ac.01.04 gts	---	Ac.06.12 gts			
3.	P.R.G.Raju	123	--	Ac.00.10 gts	Ac.06.06 gts	--	Ac.06.06 gts			
4.	Latha Momaya	24	Ac.03.14 gts	--	Ac.01.35 gts	--	Ac.05.09 gts			
7.	Dr.Wilfred D'Souja	25	Ac.01.30 gts	--	Ac.00.22 gts	--	Ac.05.23 gts	26	--	--
			Ac.05.32 gts	28	Ac.02.03 gts	--	Ac.00.35 gts	Ac.06.19 gts	29	Ac.06.16 gts
			--	--	--	--	--	--	--	--

2. T.Rajkumar 23 Ac.05.19 gts -- Ac.01.04 gts --- Ac.06.12 gts

3. P.R.G.Raju 123 -- Ac.00.10 gts Ac.06.06 gts -- Ac.06.06 gts

4. Latha Momaya 24 Ac.03.14 gts -- Ac.01.35 gts -- Ac.05.09 gts

7. Dr.Wilfred D'Souja 25 Ac.01.30 gts -- Ac.00.22 gts -- Ac.05.23 gts 26 -- -- -- --
Ac.05.32 gts 28 Ac.02.03 gts -- -- Ac.00.35 gts Ac.06.19 gts 29 Ac.06.16 gts -- --

Ac.00.07 gts Ac.06.16 gts

8. L.Rajeswari 123 -- Ac.00.10 gts Ac.03.39 gts -- Ac.07.21 gts 5,6, 9 & 10 Noble Park 122 -- -- AC.01.12 gts -- Ac.18.34 gts Various DNs issued under Section 4(1), one after the other either increasing or reducing the area of the land owned by petitioners according to changed alignment are challenged mainly on the following grounds: (i) Acquisition of land at Kandlakoi was taken up in haste without any transparency even without finalizing the trumpet design; (ii) the acquisition impairs water bodies, lakes and other wetlands which is contrary to law; (iii) part of petitioners' land was acquired without therebeing a DN under Section 4(1) of the Act, and therefore, the whole process is vitiated; (iv) the successive DNs for acquiring the land in the same survey numbers render the acquisition process invalid and illegal; (v) the awards are not passed within the mandatory two years period under Section 11-A and therefore, the DNs are to be declared invalid; and (vi) the acquisition is vitiated by mala fide exercise of power on the part of the respondents 4, 6 and 17 and that the alignment was changed by the official respondents to help deletion of the lands belonging to respondents 17, 26, 28, 29, 30, 34, 37 and

38. DEFENCE OF HMDA & OTHER RESPONDENTS

There are as many counters/rejoinders as petitioners' affidavits. But, we will be referring to counter dated 16.12.2009 filed in W.P.M.P.No.34380 of 2009, which is comprehensive. Respondents deny the factual background and the allegations of mala fide exercise. Senior counsel for petitioners, learned Advocate General for respondents 1 and 2, senior counsel appearing for respondents 17, 18, 20, 23 and other counsel made elaborate submissions, on different days for a period of two months. Reference is also made to precedents. We shall refer to these and others at appropriate place. Before taking up these points one after the other, we may summarise the stages in land acquisition and the admitted position in relation to land at Kandlakoi village with which this writ petition is concerned.

The land of petitioners cumulatively to an extent of Acs.28.12 guntas was proposed in ORR Nos.71 and 72, dated 16.04.2005, when first alignment had received approval. Within a week thereafter on 21.04.2005, another DN under

Section 4(1) being ORR No.83 was issued proposing to acquire additional extent of Acs.14.38 guntas belonging to petitioners. The DDs under Section 6 of the Act were also issued being ORR Nos.66, 53 and 111 respectively. At that stage, the alignment was changed (second alignment). Another DN under Section 4(1) being ORR No.122, dated 08.07.2005 was issued. This time an extent of Acs.8.16 guntas belonging to petitioners 1 and 7 was covered. The corresponding DD being ORR No.122 dated 08.07.2005 was issued which was preceded by an addendum under

Section 4(1) of the Act in ORR No.103, dated 12.07.2006. Again the alignment was changed in December 2005 (third alignment) necessitating issue of DN being ORR No.207, dated 14.12.2005 proposing to acquire an extent of Acs.88.39 guntas belonging to petitioners. This is not disputed. The following particulars in relation to various stages in impugned land acquisition are also not denied. TABLE - 2 Particulars of LA Proceedings Sl. No. Notifications and Declarations under the Act Number and Date of Award Date of Possession taken U/s 4(1) U/s 6 Addendum to Notification, if any Amended Draft Declaration 1 ORR No.71, dated 16.04.2005 ORR No.66, dated 20.04.2006 -- ORR 110 Dated 26.07.2006 11/2008 dated 04.05.2008 21.10.2009 2 ORR No.72, dated 16.04.2005 ORR No.53, dated 20.04.2006 -- ORR 122 dated 31.07.2006 09/2008 Dated 04.05.2008 21.10.2009 3 ORR No.83, dated 21.04.2005 ORR No.72, dated 01.05.2006 -- ORR 111 dated 26.07.2006 10/2008 Dated 10.05.2008 21.10.2009 4 ORR No.122, dated 08.07.2005 ORR No.112, dated 17.07.2006 ORR No.103, dated 12.07.2006 --- 24/2008 Dated 07.01.2009 21.10.2009 5 ORR No.207, dated 14.12.2005 ORR No.123, dated 31.07.2006 -- ORR 113 dated 29.07.2006 25/2008 Dated 07.01.2009 21.10.2009 There is no serious dispute that at least in respect of many pieces of lands, legal requirement of publishing DNs under Section 4(1) and DDs under Section 6 of the Act in the locality in the two newspapers have been duly complied with. There is also no dispute that respondent 17, namely, P.Venkatarami Reddy at the relevant time was Secretary of HMDA. Respondents 18, 20 and 23, which are firms in which brothers of respondent 17 are partners, own agricultural dry lands abutting or at a near distance from ORR in Kokapet village. They also own lands at Kollur and Kokapet villages. There is also no dispute that respondent 28 is son-in-law of brother of respondent 26 who is at

relevant time Central Cabinet Minister and a Member of Parliament. Respondent 28 entered into development agreement on 09.07.2003 with M/s.V.Devender Reddy, Jayachandra Reddy and Akshay who are owners of lands in survey Nos.126 and 128 admeasuring Acs.26.00 situated at Kandlakoi village. There is also no dispute that initially an extent of Acs.11.00 out of this land was proposed but in subsequent alignments, it was excluded. There is also no dispute that the final approved alignment (third alignment) passes through a part of water body known as Nagulkunta, which is statedly irrigating about eight acres of land. The acquisition of land for part of the ORR and double trumpet road interchange/clover leaf interchange involves 500 meters in phase II of ORR in Northern Sector out of 169 kilometers. The dispute, therefore, is about Acs.70.00 of land belonging to petitioners, which is likely to be consumed by double trumpet interchange.

POINTS ARGUED AND CONSIDERED

In the light of the admitted factual position - to the extent as above; and the rival contentions, we will take up various points one after the other keeping the question of mala fide acquisition to the last. Acquisition without designs

It is brought to our notice that access controlled express highway with trumpet interchanges facilitates unhampered flow of high-speed traffic even if HMDA is to collect the toll fee from the road users. Such interchanges permit hazard free travel on the Express Highway in any direction without causing inconvenience to other travellers. It is not a simple cross-road junction. It is something more which requires some times road under passes, over bridges etc. Such integrated toll plaza system would help in making toll operations effective, economical and secure. This reduces the cost of construction as only three vehicular under passes are required as against seven if clover leaf interchanges are taken up.

There is no dispute that the final alignment was approved by the Government vide G.O.Ms.No.8, dated 12.12.2005. At that stage, the proposal or designs for road junction interchanges at nine places were not approved. The petitioners obtained the information from the office of HMDA under Right to Information Act, 2005. As per the UO note, dated 10.07.2009, of the Chief General Manager (Technical) to the PD, ORR, the final design of ORR junction at Kandlakoi was not available and

such design for Medchel interchange was under preparation. A note was approved by Chairman & Managing Director, HMDA on 04.12.2008 wherein it was decided to address the Government for approval of proposal to construct either clover leaf interchanges or rotary interchanges at nine places. From this it is very clear that by the time first DN being ORR No.71 or for that matter last DN being ORR No.207 were issued, the designs for clover leaf/trumpet interchange were not ready. As there was no such move to acquire the land for interchange only a part and parcel of the land belonging to petitioners 1, 2, 4 and 7 alone was sought to be acquired for the purpose of ORR. It is rather curiously understandable as to how the petitioners' lands were included in the impugned DNs even before conceiving the design for the ORR phase II and decision was not taken whether to go for clover leaf interchange or double trumpet interchange. Whether law permits such successive Notifications?

There is no dispute that within a period of eight months, there were five DNs under Section 4(1), five DDs under Section 6 and five amended DDs including an addendum to DN. This speaks of improper planning, hasty decision making and lack of vision in conceiving and implementing such a mammoth project intended to retain utility for another period of fifty years. Indeed as commented by the petitioners' counsel that this has been the position in respect of many ORR acquisition proceedings, which were handled by eight Land Acquisition units. When complaint is made to the Court about successive DNs allegedly having been issued with ulterior motive, they cannot be straightaway thrown away as the decisions in the area of administrative discretion or prerogatives.

PD, ORR admits in his counter affidavit that issue of such successive DNs was necessitated "in view of the slight modifications in the alignment to avoid the industrial structures, 220 KV electricity substation and minority engineering college". Petitioners contend that the final DN in ORR No.207 is contrary to the report of alignment committee constituted by the Government in G.O.Rt.No.87, dated 02.11.2005 and such successive DNs are in derogation of provisions of law besides being arbitrary.

The alignment committee submitted its report on 24.11.2005. In submitting the report, the said committee considered the possible technical, environmental and financial impact on ORR project. To look into these aspects, the alignment committee consisting of Secretary to Government in Municipal Administration Department; Chairman, Managing Director (MD), INCAP; Vice Chairman (VC), HUDA; District Collectors of Ranga Reddy District and Medak; and PD, Member Convener constituted the Departmental Committee with MD, INCAP; VC, HMDA; and PD, ORR.

This committee inspected areas and the alignment which was earlier suggested by a team of officials. Insofar as Northern Sector is concerned, committee noticed that two water bodies, one Darga, educational institutions and industries are coming in the way and accordingly suggested change in the alignment. Insofar as Medchel segment is concerned, the committee noticed that SANA Educational Society (respondent 30), Egwood Factory at Muneerabad (respondent 29) and a steep curve at Kandlakoi village made the change allegedly inevitable. The reasons are tabulated in the report, which need to be extracted.

Sl. No.	Name of the village	Location	Reasons for change	Extent realigned in Acres.
1	Shamirpet	Karimnagar High Way	Presence of 2 water bodies, one Darga, St.Paul School, Futani Steel Industry	133.15
2	Bomraspet			1.08
3	Kandlakoi	National High Way	Egwood industry sold by SFC, steep curve & one engineering college	48.17
4	Muneerabad			36.36
Total extent re-aligned in 4 villages				219.36

The committee also noticed that ten writ petitions had been filed which were disposed of by this Court directing LAO to conduct enquiry under Section 5-A of the Act. Does the change of alignment make it any objection free? The alignment committee itself pointed out that suggested change in the alignment would not satisfactorily answer the objections. Insofar as Medchel Junction (at Kandlakoi) is concerned, the committee observed as under. The committee agreed with the reasons why the changes were made in the Original Alignment at Kandlakoi and Munirabad because of the Tank, Ameena College, Egwood Industry and the 200 KV sub station along the notified ROW. But the Committee felt that the New Alignment notified on May 2005 was also curvy and passing through the Medchal Reserve Forest. Going through the Alignment from Munirabad Village is made

straight through the Agricultural Market Yard till the Nagpur NH 7, the ROW still would fall in the vacant area and also avoids the Medchal Reserve Forest. (emphasis supplied) The alignment committee mainly relied on secondary data and the report submitted by departmental committee which statedly inspected the areas where the changes in the alignment were suggested. Therefore, they cautioned that the alignment proposed is only the administrative one which can be the basis for further action. Here, we may excerpt the conclusion of the alignment committee In the end the Committee recommends to freeze the proposed Alignment that no uncertainty need be allowed. The alignment proposed has been identified with the help of Google Earth software, Satellite imageries and topographic maps, with field in sections at critical points. The data available with satellite imageries is subject to 20-25 meters variations. Accurate RoW (Right of Way) can be determined only after engineering survey is done with the help of GPS and Total Stations. Due to constraint of time and resources such study cannot be conducted as part of this exercise. Neither is it within the scope of this Committee. Therefore, the alignment proposed is only an administrative one, which can form the basis for further action. At the time of DPR preparation the consultants and engineering wing will fix the alignment by way of peg marking. There may be minor corrections required as per field conditions, which may not be more than 5% deviation within the RoW proposed. (emphasis supplied) The Advocate General justifies and sustains the changes in the alignment and also justifies successive DNs to suit such changes. We cannot disagree with him that in the matter of developmental projects, like construction of dams, roads and other infrastructure, it is the Government which has final say because it is presumed that the Government has expert advice and always acts to subserve public interest ensuring equality, equitable benefits and equal distribution of burdens. Though there is a presumption in law that all statutory and non- statutory Government actions are carried on in accordance with law, "there is no presumption that the Government always acts in a manner which is just and fair" (See para 15 of O.P.Gupta v Union of India¹). Therefore, we are certainly inclined to subject the decisions of the Government in these areas to strict scrutiny. While doing so, it is always within the scope of judicial review to examine whether the decisions of the Government with regard to change of alignment for reasons pointed out by them

are valid, rational or there could be better alternatives which would best subserve public interest. We leave this aspect here and propose to advert to when we take up the issue of mala fides. The petitioners would urge that the final DN being ORR No.207 is itself contrary to the report of the alignment committee. The Special Deputy Collector (LA Unit IV) in the counter affidavit filed in W.P.No.23618 of 2005, a copy of which is placed before us states that the decision to realign ORR is of technical nature and was carried out considering the ground reality and field requirement as per the technical opinion of the concerned engineering and planning officials. It is also contended that being in the realm of policy the jurisdiction under Article 226 of Constitution is barred. The Advocate General justifies successive DNs contending as follows. A large extent of about 5,500 acres was proposed to be acquired. According to the area in each village 3 to 8 gazette DNs; each covering 35 to 60 acres, were issued. Whenever small changes are made in the alignment a new DN was issued duly retaining part of the land required which was already notified and awards were passed. Insofar as remaining unsuitable land is concerned, the DNs were allowed to lapse either by not issuing a DD under Section 6(1) or by not passing award within time stipulated as per Section 11-A of the Act. In some cases, the DNs were withdrawn. Thus, the HMDA does not dispute the issue of successive DNs the withdrawal of proposals and allowing certain proposals to lapse. Whether such procedure is justified in law? It is always competent to the State to issue successive DNs under Section 4(1) of the Act if the situation so warrants. When a revised DN is issued, it renders earlier DNs ineffective. If the earlier DN proposes certain lands but in the subsequent DN, some of the notified lands are excluded, including others to the extent of excluded land, the earlier DNs must be deemed to be ineffective. In *State of Madhya Pradesh v Vishnu Prasad Sharma*², a Division Bench of Supreme Court considered the question whether it is open to appropriate Government to issue successive DNs under Section 6 of the Act with reference to the land comprised within one DN under Section 4(1) of the Act. The point was answered as follows (para 16 of AIR). Sections 4, 5-A and 6 in our opinion are integrally connected. Section 4 specifies the locality in which the land is acquired and provides for survey to decide what particular land out of the locality would be needed. Section 5-A provides for hearing of objections to the acquisition and after

these objections are decided the Government has to make up its mind and declare what particular land out of the locality it will acquire. When it has so made up its mind it makes a DD as to the particular land out of the locality notified in Section 4(1) which it will acquire. It is clear from this intimate connection between Sections 4, 5-A and 6 that as soon as the Government has made up its mind what particular land out of the locality it requires, it has to issue a DD under Section 6 to that effect. The purpose of the DN under Section 4(1) is at this stage over and it may be said that it is exhausted after the DN under Section 6. If the Government requires more land in that locality besides that notified under Section 6, there is nothing to prevent it from issuing another DN under Section 4(1) making a further survey if necessary, hearing objections and then making another DD under Section 6. The DN under Section 4(1) thus informs the public that land is required or would be required in a particular locality and thereafter the members of the public owning land in that locality have to make objections under Section 5-A; the Government then makes up its mind as to what particular land in that locality is required and makes a DD under Section 6. It seems to us clear that once a DD under Section 6 is made, the DN under Section 4(1) must be exhausted, for it has served its purpose. There is nothing in Sections 4, 5-A and 6 to suggest that Section 4(1) is a kind of reservoir from which the Government may from time to time draw out land and make DDs with respect to it successively. If that was the intention behind Sections 4, 5-A and 6 we would have found some indication of it in the language used therein. But as we read these three sections together we can only find that the scheme is that Section 4 specifies the locality, then there may be survey and drawing of maps of the land and the consideration whether the land is adapted for the purpose for which it has to be acquired, followed by objections and making up of its mind by the Government what particular land out of that locality it needs. This is followed by a DD under Section 6 specifying the particular land needed and that in our opinion completes the process and the DN under Section 4(1) cannot be further used thereafter. At the stage of Section 4 the land is not particularised but only the locality is mentioned; at the stage of Section 6 the land in the locality is particularised and thereafter it seems to us that the DN under Section 4(1) having served its purpose exhausts itself. The sequence of events from a DN of the intention to acquire [Section 4(1)] to the DD under Section 6

unmistakably leads one to the reasonable conclusion that when once a DD under Section 6 particularising the area out of the area in the locality specified in the DN under Section 4(1) is issued, the remaining non- particularised area stands automatically released. (emphasis supplied) In *Raghunath v State of Maharashtra*³, referring to *Vishnu Prasad Sharma*, Supreme Court held as under. The Court held that once there is a valid DD under Section 6, the scope of the DN under Section 4 will get exhausted. This principle cannot clearly apply to a case where the DD under Section 6 proves to be invalid, ineffective or infructuous for some reason. It has been so held by this Court in a number of decisions. In *Girdharilal Amratlal Shodan v State of Gujarat* (AIR 1966 SC 1408) which was decided about a week earlier to *Vishnu Prasad Sharma* (supra), this Court held that, where a DN under Section 6 is invalid, the Government may treat it as ineffective and issue in its place a fresh DN under Section 6 and that there is nothing in Section 48 of the Act to preclude the Government from doing so. This view has been repeated in *State v Haider Bux* ((1976) 3 SCC 536: AIR 1977 SC 594 and *State v Bhogilal Keshavlal* (AIR 1980 SC 367). These decisions have clearly pointed out the distinction between a case where there is an effective DD under Section 6 (which precludes the issue of further DDs in respect of other parts of the land covered by the DN under Section 4 not covered by the DD issued under Section 6) and a case where, for some reason, the DD under Section 6 is invalid. (emphasis supplied) The law may, therefore, be taken as well settled that the subsequent DN under Section 4(1) of the Act expressing the opinion of the Government to acquire the land for public purpose would render the earlier DNs innovative and inoperative. Even if an award is passed with reference to such subsequent DN, after following the procedure contemplated under Sections 6 to 11, the same would be illegal award and does not have any binding effect. How the principle operates to the facts in this case can be better appreciated after considering the ensuing point for adjudication. The principle can be appreciated by referring to the DN under Section 4(1) of the Act being ORR No.71, dated 16.04.2005. NOTIFICATION UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT, 1894

Whereas it appears to the Government of Andhra Pradesh that the lands specified in the schedule below and situated in the Kandlakoi Village, Medchal Mandal,

Ranga Reddy District are needed for a public purpose, to wit, for formation of Outer Ring Road. Notice to that effect is hereby given to all whom it may concern in accordance with the provisions of sub-section (1) of Section 4 of the [Land Acquisition Act, 1894](#) (Central Act 1 of 1894); as amended by the Land Acquisition (Amendment) Act, 38 of 1923 and the Land Acquisition (Amendment) Act of 1984. Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 4 of the said Act, the Governor of Andhra Pradesh hereby authorizes the Special Deputy Collector, Land Acquisition, Unit - IV, Outer Ring Road, Hyderabad Urban Development Authority, Hyderabad, his staff and workmen, to exercise the powers conferred by the said sub-section and under clause (c) of Section 3 of the said Act, the governor of Andhra Pradesh hereby appoints the Special Deputy Collector (L.A.), Unit - IV, Outer Ring Road, HUDA, Hyderabad to perform the functions of a Collector under Section 5-A of the said Act. The fact that other impugned DNs being ORR Nos.72, 83, 122 and 207 issued one after the other within few weeks or months would certainly require HMDA to discharge burden as to why such successive DNs were necessitated when all the DNs are similar and proclaim the intention of the Government to acquire land situated in Kandlakoi village for formation of ORR. Acquisition without Notification under Section 4(1) of the Act

The allegation made is that an extent of Acs.20.10 guntas comprised in survey Nos.25, 26, 28, 29 and 122 of Kandlakoi Village belonging to the petitioners was acquired without issuing DN under Section 4(1). The senior counsel has furnished the following details and details of the land in respect of which awards being Award Nos.10 of 2008 and 24 of 2008, were passed without there being a DN under Section 4(1) of the Act.

TABLE - 4 Award No.10/2008 - Procedural Particulars												
Notification u/S 4 (1)	Sy. No.	Extent Ac.Gt	Declaration u/S 6	Extent Ac.Gt	Amended Declaration	Extent Ac.Gts.	Land declared by Amended Declaration without 4(1)	Notification ORR	No.	Date	Extent	
72	1-5-2006	0.22	ORR-111	26-7-2006	3.37	(0.22+3.15)	3.15	122	1.22	1.12	6.30	
					(1.12+5.18)		5.18	Total				08.33

TABLE - 5 Award No.24/2008 - Procedural Particulars

Notification u/S.4 (1)	Sy. No.	Extent Ac.Gt	Addendum to Draft Notification	Extent Ac.Gt	Declaration u/S 6	Extent Ac.Gts.	Land declared in without 4(1)	DN ORR	No.	Date	Extent
122	08.07.2005	26	--	ORR 103	12.7.2006	2.31	ORR 112	17.07.2006	2.31	2.31	28
					0.35		3.18	(0.35+2.23)		2.23	29
					0.07		6.10	(0.07+6.03)		6.03	

Total 11.17 The above two tables need some explanation. By ORR No.83, dated 21.04.2005, HMDA proposed to acquire a total extent of Acs.39.37 guntas including Acs.0.22 guntas in survey No.25, and Acs.1.12 guntas in survey No.122 belonging to petitioners 7 and 1 respectively. After enquiry under Section 5-A of the Act by Special Deputy Collector (LA Unit-IV), DD under Section 6 being ORR No.72, dated 01.05.2006 was published for the said extent and other extents in survey Nos.25 and 122 (part of the land). On 26.07.2006, an amended DD was issued under Section 6 of the Act insofar as the two survey numbers proposing to acquire Acs.3.37 guntas in survey No.25 and Acs.6.30 guntas in survey No.122. Indisputably there was no DN under Section 4(1) for the excess area of Acs.3.15 guntas and Acs.5.18 guntas in survey Nos.25 and 122 respectively. By DN being ORR No.122, dated 08.07.2005 land admeasuring Acs.48.17 guntas of Kandlakoi village was notified under Section 4(1) of the Act. The extent includes Acs.0.35 guntas in survey No.28, Acs.0.07 guntas in survey No.29. About one year thereafter, an addendum vide ORR No.103, dated 12.07.2006 was issued including Acs.2.31 guntas in survey No.26. When DD in ORR No.112, dated 17.07.2006 was issued, an extent of Acs.3.18 guntas in survey No.28 and Acs.6.10 guntas in survey No.29 was declared for acquisition including Acs.2.31 guntas in survey No.26. An award No.24/2008 dated 07.01.2009 was passed. Here also indisputably for an extent of Acs.2.23 guntas in survey No.28, Acs.6.03 guntas in survey No.29 and also Acs.2.31 guntas in survey No.26, there was no DN under Section 4(1) of the Act. Thus, in all for an extent of Acs.20.10 guntas, there was no DN. The non-compliance with mandatory requirement violates 300A of the Constitution. In the counter affidavit filed by PD in W.P.M.P.No.34380 of 2009, there is no denial that an extent of Acs.20.10 guntas was not notified under Section 4(1) although counter reveals the perceived position of HMDA that they followed the procedure as per the Act and they contend that the petitioners be barred from raising objection after lapse of about four years. The State's power to take private property for public use without owners consent flows from the 'doctrine of eminent domain' which is inherent and inviolable. Its use and exercise is conditional that the private owner shall be paid adequate compensation. The Constitution of India recognized this power initially by including Articles 19(1)(f) and 31 and 31-A in Part III of Constitution of India. Till Constitution (Forty-fourth)

Amendment Act, 1978 whenever an acquisition is vitiated by procedural and statutory non-compliance, such action offended the fundamental rights recognized in these Articles. After deletion of right to property as fundamental right and by insertion of Article 300A of Constitution of India, what was a fundamental right became a constitutional right. Property cannot be taken without following the procedure mandated by law. A citizen can plead in a challenge to compulsory acquisition on the ground that there is non-compliance with provisions of law, that the power is exercised mala fide or for collateral purposes, irrational or unreasonable and that there is no public purpose. By Land Acquisition (Amendment) Act, 1984, additional safeguards were incorporated in the Act prohibiting the issue of mandatory DD under Section 6 of the Act beyond the period of one year and barring award after lapse of two years from the date of DD. All these statutory and non-statutory impediments in acquisition process are intended to safeguard the interests of the citizens' rights to enjoy the property without which enjoyment of life and liberty would be dull drab. Rule of law demands strict compliance with "the procedure established by law" for depriving a citizen of property. The citizen can only complain non-compliance. But ordinarily the Court would not countenance submissions such as there is no public purpose warranting compulsory acquisition. The procedure contemplated under Sections 4 to 17 has to be strictly complied with and the acquiring authority flouting law, cannot be heard to take the plea of delay or overriding public interest. If any acquisition is fait accompli, the same would suffer invalidation in case of breach of Sections 4, 5-A, 6 and 17 of the Act. In support, we may refer to the Judgment in *Madhya Pradesh Housing Board v Mohd. Shafi*⁴. On a requisition by the appellant, Mandsaur District Collector issued DN under Section 4(1) of the Act to acquire 2.298 hectares of land situated at bus stand for construction of buildings and shops under self-financing schemes. The same was followed by DD under Section 6(1) of the Act. The acquisition was successfully impugned before the High Court on the ground that DN under Section 4 was vague and invalid for non-compliance with mandatory requirements of the Act. The High Court held that invocation of the powers under Section 17 of the Act was arbitrary, and that the DN without any details was vague. Confirming the findings of the High Court, Supreme Court after referring to *Narendrajit Singh v State of Uttar Pradesh*⁵ and

Munshi Singh v Union of India⁶, held that DNs impugned therein are vitiated on account of being vague and for non-compliance with the mandatory requirements of the Act. It is apt to excerpt paragraph 8 of SCC. It is settled law that the process of acquisition has to start with a DN issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of DN under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any DN which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a DN under Section 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The DN has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The DN is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a DN under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the DN, but also renders all subsequent proceedings connected with the acquisition, bad. (emphasis supplied)

The publication of DD giving the particulars of lands to be acquired is conclusive evidence of necessity of the land for public purpose. It does not, however, mean that without therebeing a DN under Section 4(1) of the Act to enable the owner to know the public purpose and intention, the Government can straightaway issue a DD under Section 6 of the Act. Any such interpretation would render Section 4(1) otiose. Such an interpretation cannot be adopted by the Court. The legislative

intention is to make the public purpose conclusive must be done in two stages. First, notifying the intention of the Government and then declaring conclusively such intention. Therefore, insofar as Acs.3.15 guntas and Acs.5.18 guntas of lands in survey Nos.25 and 122 respectively covered by ORR No.83, dated 21.04.2005 and the lands to an extent of Acs.2.31 guntas, Acs.2.23 guntas and Acs.6.03 guntas in survey Nos.26, 28 and 29 respectively covered by ORR No.122, dated 08.07.2005 are concerned, it must be held that acquisition is in violation of mandatory requirements of law and cannot be sustained. PROCEDURAL VIOLATIONS

The procedural violations pointed out by senior counsel are (i) acquisition without DN; (ii) improper publication in the local newspapers and locality; (iii) improper or no enquiry under Section 5-A in relation to DNs being ORR Nos.71, 72, 83 and 122; (iv) non-issue of notices under Section 9(3) and 10(1); and (v) lapse of land acquisition proceedings under Section 11-A. Except the points (i) and (v), other points are not seriously pressed. The issue of acquisition without DN has already been considered above. Whether the awards passed are beyond the period stipulated under Section 11-A of the Act? For appreciating this aspect, we may re-visit Sections 4(1), 6 (as amended in Andhra Pradesh) and 11-A of the Act.

The appropriate Government or District Collector has to publish a DN that the land in any locality is likely to be noted for public purpose. Such DN shall have to be published in the Official Gazette or District Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language. The substance of such DN shall be published within forty days from the newspaper publication at convenient place in the locality where the land is situated. Publication in the Official Gazette, publication in two local newspapers and publication in the locality being on different dates, the last of the dates of such publication shall be the date of publication of DN. After doing so, within one year from the date of such publication of DN, the Government or the District Collector shall make a DD in the Official Gazette. The DD shall also be published in two daily newspapers circulated in the locality of which at least one shall be in the regional language and the substance thereof shall also be published at convenient places in the said locality. The last of the dates of such publication and giving such

DD shall be the date of publication of DD which is relevant while reckoning the period of two years for making award. Section 11-A of the Act mandates that the Collector (LAO) shall make the award under Section 11-A of the Act within a period of two years from the date of publication of DD. If no award is made within the period, the proceedings shall lapse. The date of publication in the local papers and publication of substance of such DD in the locality are relevant to consider the point in issue. Insofar as these cases are concerned, the details are as below.

TABLE - 6

Sl. No.	Draft Notification u/s 4(1)	Draft Declaration u/s 6	Publication in Newspaper	Publication in locality	Two years expires on	Award No./Date	Date of possession
1	71	16.04.2005	66	20.04.2006	02.05.2006	02.05.2006	05.05.2006
		05.05.2006	11/08	4.5.2008	21.10.2009	2	72
		16.04.2005	53	20.04.2006	02.05.2006	02.05.2006	05.05.2006
		02.05.2006	02.05.2006	05.05.2006	05.05.2006	09/08	04.05.2008
		21.10.2009	3	83	21.04.2005	72	01.05.2006
		09.05.2006	09.05.2006	11.05.2006	11.05.2006	10/2008	10.05.2008
		21.10.2009	4	122	08.07.2005	112	17.07.2006
		30.12.2006	30.12.2006	08.01.2007	08.01.2007	24/2008	07.01.2009
		21.10.2009	5	207	14.12.2005	123	31.07.2006
		30.12.2006	30.12.2006	30.12.2006	08.01.2007	08.01.2007	25/2008
		07.01.2009	21.10.2009				

It is curious that in all the cases as above, the award was passed on the last day of expiry of two years contemplated under Section 11-A of the Act. It is curiouser that the DNs under Section 4(1) were issued in April, July and December, 2005, the DD under Section 6 was also issued just two or three days before DN lapsed. After conclusion of the arguments, we directed the standing counsel for HMDA to produce all the original files. But, it was not done. Therefore, we had to request the office of Advocate General to arrange for the files. The five note files containing notices, proposals, orders and minutes of higher authorities in relation to five awards are produced. Entire files were not produced. We again had to request office of Advocate General to arrange for the files. Ten days thereafter, five files are handed over to the Court Officer. These are (i) File No.LA/Unit/18/ORR/06 (Volume-I); (ii) File No.LA/Unit- V/19/ORR/06 (Volume-I); (iii) File No.ORR/LA/Unit V/21/06 (Volumes-I and II); (iv) File No.LA/Unit-V/22/ORR/06 (Volumes-I and II) and (v) File No.LA/Unit- V/27/ORR(J)/06 (Volumes-I, II and III). We have thoroughly perused these files and our observations are as follows. (i) File No.LA/Unit/18/ORR/06 (Volume I)

This file relates to award No.11 of 2008, dated 04.05.2008. The Note File (NF) contains pp.1-22 and Current File (CF) contains pp.1-605. DN issued on 16.04.2005. Notice of enquiry under Section 5-A was issued on 31.01.2006 proposing to conduct enquiry on 02.02.2006. From the notings in the note file, the enquiry was completed on 26.03.2006. About a month thereafter, the Office put up a note that DN is going to be lapsed on 26.04.2005 and therefore, the DD was issued by the Special Collector on that date. Be it noted, vide their orders in G.O.Ms.No.459, Revenue (LA) Department, dated 08.04.2005, the Government delegated their powers to the PD and Special Collector (LA) ORR, to approve statutory DNs. DD was sent on 20.04.2006, the same was approved by the PD on the same day and was published on the same day. Be that as it is, as noticed supra, the Government issued other DN dropping the lands belonging to some of the respondents by including the lands of others. This took some time. Due to this, award enquiry could not be completed. On number of occasions, the enquiry was postponed. The effective date of publication of DD for the purpose of Section 11-A is 05.05.2006. Therefore, the office put up another note on 02.05.2008 for necessary orders as to sending the draft award to the PD for approval as required under relevant Government Order. It was sent and the PD approved the award on 03.05.2008. On 04.05.2008, the LAO passed award directing issuing of notices under Section 12(2) of the Act.

The chronology certainly leads to an inference that the office of LAO processed and handled land acquisition proceedings in a great haste or went on making attempts to legitimize the proceedings to bring within the ambit of Section 6(1) at the time of DD and Section 11-A at the time of passing an award. (ii) File No.LA/Unit-V/19/ORR/06 (Volume I)

This file is in relation to award No.9 of 2008, dated 04.05.2008 in respect of DN ORR No.72 and DD ORR No.53. This contains NF with pp.1-14 and CF with pp.1-599. Here also on 20.04.2006, the preparation of draft DD submission to PD and approval by him and publication of DD happened on the same day i.e., on 20.04.2006. The award was also passed on the last day before expiry of two years, after obtaining approval of the Director on 03.05.2008. (Draft was also sent for approval on the same day). The comments made by us in respect of award

No.11 of 2008 shall also hold good for this as well. (iii) File No.ORR/LA/Unit V/21/06 (Volumes I and II)

This file is in relation to award No.10 of 2008, dated 10.05.2008 in respect of lands acquired under DN vide ORR No.23, and corresponding DD vide ORR No.72. This is in two volumes. NF contains pp.1-17 and Volume I of CF contains pp.1-437 and Volume II contains pp.445-965. In this file also the notings in the NF and the office copies of correspondence in the CF would show that at the nick of the moment DD was prepared, got approved by the PD, and published on 01.05.2008 in the Gazette. Apart from that even while passing the award, it appears the pattern is the same. In the last week before expiry of two years the draft award was sent, which was approved by PD on 09.05.2008 and the award is passed by LAO on 10.05.2008, which is the last day for passing the award. The comments and observations made by us after perusing the files in respect of award Nos.9 and 11 are also relevant in this regard. (iv) File No.LA/Unit-V/22/ORR/06 (Volumes I and II)

This file is in relation to award No.24, dated 07.01.2009. This file in two volumes deals with the acquisition of land pursuant to DN dated 08.07.2005 (ORR No.122) and DD dated 17.07.2006 (ORR No.112). NF contains pp.1-29 and Volume I of CF contains pp.1-530 (But pages are missing and some pages are not in sequence, i.e., pp.443- 470 and again pp.471 - 517). Volume II of CF has pp.586-1377. In this also, pages are not in sequence at the beginning. The date to be reckoned for the purpose of 11-A is indisputably on 08.01.2007 (the date of local publication). The award was passed on 07.01.2009, the last day before the bar under Section 11-A comes into operation. A perusal of the notings in the note file and various office copies of the correspondence, the proceedings and other Memoranda contained in file would show that on 10.07.2006, the office assistant put up a note that DD is going to lapse on 19.07.2006. It was also proposed that objections were not received and enquiry under Section 5-A need not be conducted. In the meanwhile addendum was issued to DN being ORR No.103, dated 12.07.2006. Again a DD was sent on 14.07.2006 for which approval was granted by PD. Pursuant to which, DD was published on 17.07.2006. It appears DD was also published in the locality in two newspapers and the award enquiry was conducted

from time to time. Pages 28 and 29 of the note file reveal that as per the instructions of the SDC (LAO), dated 11.12.2008, draft award was prepared and sent to PD by proceedings No.D/ORR/372/05, dated 07.01.2009, PD approved the award and on the same day, SDC endorsed that the award is pronounced in the open Court.

The copy of the proceedings of PD, dated 07.01.2009 approving the award is not available in the file, when in respect of other awards, the SDC passed a two sentence or three sentence orders. Curiously, in this case, he simply says 'award is pronounced'. Here itself, the first impression one gets on a perusal of the files is that at every stage of acquisition, there was lot of haste on the part of the office of SDC and PD. (v) File No.LA/Unit-V/27/ORR(J)/06 (Volumes I, II and III) This file is in relation to award No.25, dated 07.01.2009. This file in three volumes deals with the acquisition of land notified vide DN ORR No.207 and declared vide ORR No.123. In this file, NF contains pp.1-40 and Volume I of CF contains pp.1-810, Volume II contains pp.811-1606 and Volume III contains pp.1607-2175. In this case, after publication of DN, an amendment was issued vide ORR No.113, dated 29.07.2006 probably to include some land which was not earlier included or to exclude some land which was earlier included. Thereafter, DD was published in the Gazette on 31.07.2006 and in the local newspapers on 30.12.2006. Substance was published in the locality on 08.01.2007.

After publication of DD on 31.07.2006 and while the award enquiry was on, petitioners filed this writ petition on 03.08.2006. While the same is sub judice, DD was published in the local newspapers and in the concerned locality. On 18.08.2006, learned single Judge of this Court passed an interim order staying all further proceedings pursuant to DN, which was extended from time to time. Subsequently, the order was modified to allow the proceedings pursuant to DD to go on but HMDA was directed not to dispossess the petitioners from their land. Presumably, emboldened by such order, the SDC passed award on 07.01.2009.

A perusal of pages 38 and 39 of NF would reveal that on 11.12.2008, SDC passed minutes to put up a draft award. About two weeks thereafter on 27.12.2008, a draft award was prepared and it appears the same was sent to PD for approval which

was given on 07.01.2009. The same day SDC made notings that the award is pronounced in the open Court. Incidentally 07.01.2009 is the last day beyond which the award could not have been passed as per Section 11-A of the Act. Our conclusions in relation to Files

After perusing the notings in the note files and various documents in the current files, our observations and conclusions are as follows.

(i) The DD under Section 6(1) was made and published on the last day before expiry of one year from the date of publication of DN;

(ii) The SDC himself did not prepare the award before sending it to the PD. The same was prepared by some office assistant, and in a routine manner sent to the PD. After obtaining approval, formally the award was passed on the last day before expiry of two years;

(iii) In respect of five awards, the office of SDC raced against time to escape rigour of Section 11-A. Curiously, on the same day draft award was sent, on the same day approval was given by PD and on the same day the award was passed. This creates a strong suspicion;

(iv) The suspicion is strengthened by the fact that 04.05.2008 on which day award Nos.10 and 11 of 2008 were passed happens to be Sunday, and 10.05.2008 on which award No.24 of 2008 was passed happens to be second Saturday (which is a public holiday). 07.01.2009 on which day two awards were passed being award Nos.24 and 25 of 2008 happens to be public holiday on account of Muharram. The suspicion turns into belief when one looks at the overwriting on the date/dates in the files and irregular pagination of the current files. Further more, the concerned dealing assistant endorsed that if the awards are not passed, the proceedings would lapse, and therefore, on probabilities, it can be inferred that the awards were not passed on the dates on which they were purported to have been passed; and

(v) Lastly, arrangement or compilation of files, irregular non-sequential pagination would lead to reasonable inference that the available papers were heaped-up to

compile and complete the file for submission to the Court.

Nevertheless, as noticed supra, learned single Judge of this Court passed orders on 18.08.2006 staying all further proceedings pursuant to DD which was modified subsequently on 30.11.2006, by the Division Bench of this Court prohibiting dispossession. The authorities conveniently forgot the effect of these interlocutory orders of this Court under the Explanation to Section 11-A of the Act. But, for interlocutory orders of this Court, we would have had no hesitation to quash the award as statutorily barred. This point is decided accordingly. Destruction of Lakes

The petitioners contend that the final alignment of ORR has the effect of obliterating Nagulkunta lake besides substantially affecting Gondavelli Pedda Cheruvu/Bhima Cheruvu and Yelleru Cheruvu. They also point out that when water bodies were coming in the path of ORR alignment near Shamirpet, first respondent changed the alignment to protect the water bodies. They further contend that insofar as Kandlakoi village is concerned, so as to exclude the lands belonging to the people close to powers that be, Nallakunta and other lakes are being destroyed. HMDA does not dispute this. They, however, justify placing reliance on "consent order for establishment" (CFE) dated 04.10.2006 issued by Andhra Pradesh Pollution Control Board (APPCB). In their counter affidavit filed in W.P.M.P.No.34380 of 2009, they stated that while fixing alignment of ORR, care has been taken to avoid village settlements, water bodies to the maximum extent possible, that where it was inevitable, the alignment was taken along foreshores of the lakes affecting part of the lakes and that it was proposed to take up de-silting/deepening the balance area of the lakes so as to retain/restore the capacity of the lakes. The allegation that HMDA changed alignment to protect water bodies in Shamirpet stretch of ORR stands un rebutted. In a related writ petition being W.P.No.16017 of 2005 in the counter affidavit filed by Special Deputy Collector (LA), Unit IV, ORR and in the counter affidavit filed by PD, ORR, it is admitted that in Shamirpet stretch of ORR, the alignment was changed only to protect the water bodies keeping in view the Judgment of Supreme Court in Hinch Lal Tiwari v Kamala Devi⁷. Why then Nagulkunta and other Kunta in Kandlakoi village are ignored? We need to refer to case law dealing with eco-systems, lakes and water bodies. We may notice that even where developmental activities are taken up with

good intentions, the Courts have not hesitated to prohibit such activities in the vicinity of water bodies if such development is found detrimental to the catchment area, hydrology or eco-system that sustains flora and fauna in wetlands. In *People United for Better Living in Calcutta v State of West Bengal*⁸, a PIL case was filed in regard to maintenance of wetlands on eastern side of Kolkata. The petitioner challenged the reclamation of wetlands for economic activity. Quoting extensively from authoritative text books on the use of wetlands, Justice U.C.Banerjee (as His Lordship then was) observed: Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment thereof would be detrimental to the society which the Law Courts cannot permit. This benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society - what is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature's bounty is required for the proper maintenance of environmental equilibrium. It cannot be measured in terms of requirement and as such, the Court of Law cannot, in fact, decry the opinion of the environmentalist in that direction. Law Courts exists for the benefit of the society - Law Courts exists for the purpose of giving redress to the society when called for and it must rise above all levels so that justice is meted out and the society thrives thereunder. (emphasis supplied) The Calcutta High Court also restrained the State from granting any further permission to any person from changing use of land from agriculture to residential or commercial in the area. However, the Court gave liberty to the State to seek necessary clarification if they are desirous of having World Trade Centre or Public Exhibition Centre in a limited area. In *Dr.Ajay Singh Rawat v Union of India*⁹ (Nainital Lake Case) a member of Nainital Bachao Samiti approached the Supreme Court under Article 32 of the Constitution seeking directions as would prevent further pollution of already suffocating Nainital. It was inter alia contended that Nainital lake is polluted because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead, salts, copper, cobalt and zinc make the lake toxic for living organisms. The discharge of waste water also pollutes the lake. But the most potent source of pollution is human excreta from leaking sewers. Throwing of plastic bags and dumping of other materials have added to the lake's pollution. The Supreme Court requested the

District Judge Nainital to appoint an advocate commissioner to examine the construction activity and other factors causing pollution. Accordingly a report was submitted. After considering the report as well as recommendations of the Commissioner, the Supreme Court directed to take certain urgent steps, and observed.

We part with the hope that the butterfly would regain its beauty and would attract tourists not only in praesenti but in future as well, which would happen if the beauty would remain unsoiled. Given the will, it is not a difficult task to be achieved; the way would lay itself out. Let all concerned try and try hard. Today is the time to act; tomorrow may be late.

In *M.C.Mehta v Union of India*¹⁰ (Badkhal and Surajkund Lakes case), the Supreme Court considered sustainable development near water bodies. In a writ petition under Article 32 seeking a direction to Haryana Pollution Control Board (HPCB) to control the pollution caused by stone crushers and mine operators so as to preserve environment within a radius of 5 Kms from the tourist resorts of Badkhal lake and Surajkund lake, initially, the Court directed HPCB to inspect and ascertain the impact of mining on the ecologically sensitive area of Badkhal and Surajkund lakes. A team of scientists inspected and submitted a report, recommending preparation of environmental management plan and for restraining mining activities within the radius of 5 Kms. Accepting report, Supreme Court restrained mining, construction activity within 2 Kms radius of the lakes and green belt. The Municipal Corporation of Faridabad and other builders filed petitions for modification of the Orders. In *M.C.Mehta v Union of India*¹¹, the Supreme Court rejected the plea observing as follows. The functioning of ecosystems and status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. ... The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to

the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

In *Vellore Citizens' Welfare Forum v Union of India*¹², the Supreme Court accepted 'sustainable development' principle of environmental law. It was observed:

The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer. In the international sphere 'Sustainable Development' as a concept came to be known for the first time in the Stockholm DD of 1972 ... During the two decades from Stockholm to Rio 'Sustainable Development' has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. 'Sustainable Development' as defined by Brundtland Report means 'Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.' *Hinch Lal Tiwari* is a case which arose under U.P. Zamindari Abolition and Land Reforms Act, 1950. The revenue officials allotted house sites to ten persons of Ugapur village in U.P. On an application made by village resident Hinch Lal, Additional Collector cancelled the allotment on the ground that the land allotted forms part of a pond (talab). The cancellation order was confirmed by Divisional Commissioner, which was set aside by the High Court. Before the Supreme Court placing reliance on Section 117 of U.P. Zamindari Abolition Act, it was contended that the allotment of tanks, ponds, water channels etc is prohibited and they shall vest in Gram Sabha. Accepting the plea of appellant, Supreme Court allowed the appeal. While ordering to remove the allottees and restore the pond as a recreational spot, the Court observed as below (paras 13 and 14 of SCC). It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed

their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non- abadi sites. ... The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride. In *Jayabheri Properties Private Limited v State of Andhra Pradesh* (Order dated 05.04.2010 in Civil Appeal No.52 of 2010), Supreme Court was dealing in a challenge to ORR DN under Section 4(1) for acquiring the lands situated in Narsingi and Poppalguda villages of Ranga Reddy District. A Division Bench of this Court dismissed the writ petitions being W.P.Nos.22809, 22810 and 26996 of 2006, dated 01.10.2007. In the appeal before the apex Court, it was inter alia contended that the alignment impugned therein would affect environmentally sensitive water bodies. Supreme Court while disposing of the appeal, observed as under (para 33). Although, we are not inclined to interfere with the orders impugned in the three appeals or to entertain the two writ petitions, we dispose of the same with a direction to the authorities to take all possible steps to ensure that the water bodies in the area are not unduly affected and are preserved to the maximum extent possible during the construction of the remaining portion of the Outer Ring Road on the Western Sector. (emphasis supplied) Kandlakoi stretch of ORR including lands to be acquired for road interchange are in Western Sector. Therefore, any predation of water bodies like Nagulkunta cannot be approved. Even according to HMDA, other alternatives are available. For that reason alone, second alignment was mooted and was given a go by for reasons which are to be discovered in the light of petitioners' allegations. Government has issued orders from time to time directing conservation, maintenance, development and protection of water bodies, however, the small they may be. In 2002, State enacted Andhra Pradesh Water, Land and Trees Act, 2002 with a view to prevent over exploitation of the underground water and illegal use of water from Government sources of surface water. Realising the importance of preserving water bodies which play an important role in maintaining

ecological equilibrium and protecting natural heritage (flora and fauna), the Government has issued orders entrusting surface water bodies to local authorities like Panchayats, Municipalities and Municipal Corporations. Insofar as Hyderabad is concerned, the Government entrusted about 200 water bodies to HMDA for proper conservation, maintenance, development and protection. Admittedly, PD issued DN, dated 04.05.2000 directing authorities not to acquire the land within Full Tank Level or within 30 meter buffer belt around the lake under any circumstances. The petitioners have filed quite a few maps showing the ORR alignment and changes brought out from time to time. The Advocate General placed before this Court, HMDA approved alignment plan insofar as Kandlakoi village and other villages in Yamjal Zone showing the three alignments and the topography. When the first alignment was approved starting from Gowdavelly village to Muneerabad portion, there are two lakes directly impacted by the alignment. The foreshores of the lake in Gowdavelly and 90% of the Nagulakunta lake of Kandlakoi are affected. Indeed, Nagulakunta lake would be completely vanished from landscape. Presumably for this reason, it was proposed to take ORR alignment in such a way that it would not affect the lakes. The second alignment was prepared, which passes through a portion of Kandlakoi and Medchal Reserve Forest area. This would have saved the entire Nagulakunta lake but a small portion of foreshore of Gowdavelly lake would have been affected. Be that as it is, the second alignment was given a go by and a third alignment was finalized which would almost completely remove Nagulakunta from geography. HMDA in para 29 of the counter affidavit contends that care has been taken to avoid village settlements, water bodies to the maximum extent possible. But they justify predation of Nagulakunta and that of Gowdavelly lakes, alleging that, "in certain locations, alignment was taken along with foreshores of the lakes affecting the lakes to avoid sharp turns with curvatures less than 700 meters due to which avoiding water bodies completely could not be possible at certain locations". The counter also speaks of proposals to take up desilting and deepening of the balance areas of the lakes to restore their water retention capacity. In view of the clear admission and in view of the law laid down by Supreme Court and various Courts referred to hereinabove as well as observations made by Supreme Court in Jayabheri Properties Private Limited, we are convinced that both the lakes - at

least, the Nagulakunta could have been saved had they stuck to the second alignment near Kandlakoi village of Yamjal zone of ORR. Why then HMDA and Government opted for third alignment ignoring this important aspect? The allegations of the petitioners in this regard that it was done to help some of the persons close to the 'powers that be' is a point considered infra. Forest loss Argument

The shift from second alignment to third alignment is justified by the State contending that such adoption would result in loss of forest land. After the completion of the arguments, the Advocate General has circulated the Government Order in G.O.Ms.23, dated 18.01.1963 notifying the Medchal Reserve Forest and Kandlakoi Reserve Forest respectively. The 'Guidelines for diversion of forest land for non forest purposes under the Forest (Conservation) Act, 1980' and the guidelines for collection of Net Present Value (NPV) of such diversion have also been placed before this Court. These guidelines were issued in due compliance with the orders of the Supreme Court dated 30.10.2002 and 01.08.2003 in I.A.No.566 in W.P. (Civil) No.202 of 1995. These deal with compensatory afforestation and realization of NPV whenever the forest land is diverted/converted for non-forest purposes. Compensatory afforestation is most important condition stipulated by Central Government while approving proposals for de-reservation or diversion of forest land. Afforestation of equivalent area of non-forest land contiguous to or in proximity of reserved forest is also yet another salient feature of compensatory afforestation. There are exceptions to above noticed forest conservation endeavours. Paragraph 3.2 (vi) provides for one, i.e., raising of afforestation over land twice in extent of forest area being diverted is permissible if the proposal inter alia is "for construction of link roads" and "for diversion of linear or strip plantation declared as protected forest along with road/rail/canal sides for widening or expansion of rail/road/canal". For ready reference, relevant compensatory afforestation guidelines are extracted hereunder. 3.2 Land for Compensatory Afforestation

(i) Compensatory afforestation shall be done over equivalent area of non- forest land.

Clarification:- As a matter of pragmatism, the revenue lands/zudpi jungle/chhote/bade jhar ka jungle/jungle-jhari land/civil-soyam lands and all other such categories of lands, on which the provisions of Forest (Conservation) Act, 1980 are applicable, shall be considered for the purpose of compensatory afforestation provided such lands on which compensatory afforestation is proposed shall be notified as RF under the Indian Forest Act, 1927.

(vi) As an exception to 3.2(i) above, compensatory afforestation may be raised over degraded forest land twice in extent of the forest area being diverted/dereserved in respect of following types of proposals: (a) For extraction of minor minerals from the river beds: (However, if forest area to be diverted is above 500 hectares, compensatory afforestation over equivalent area of degraded forest shall be required to be done instead of twice the area being diverted subject to a minimum of 1000 hectare compensatory afforestation. (b) For construction of link roads, small water works, minor irrigation works, school building, dispensaries, hospital, tiny rural industrial sheds of the Government or any other similar work excluding mining and encroachment cases, which directly benefit the people of the area - in hill districts and in other districts having forest area exceeding 50% of the total geographical area, provided diversion of forest area does not exceed 20 hectares. (c) For laying of transmission lines upto 220 KV. (d) For mulberry plantation undertaken for silk worm rearing without any felling of existing trees. (e) For diversion of linear or strip plantation declared as protected forest along the road/rail/canal sides for widening or expansion of road/rail/canal. (f) For laying of telephone/optical fibre lines. A plain reading of the above would show that diversion of forest land is permissible subject to compensatory afforestation and/or payment of NPV. For projects like ORR, multi purpose river projects (construction of dams), establishment of industries, mining of minerals and the like etc., utilization of forest land is not prohibited. It requires prior approval/sanction/permission of the Central Government. In scores of cases before the Supreme Court as well as other High Courts, such issues have been raised. The Courts have laid down that right to healthy environment being a penumbral right to life guaranteed under Article 21 of Constitution of India, the State should endeavour to protect the environment and safeguard the forest in discharge of their constitutional duty under Article 48A of Constitution of India. But,

if the development project aimed at welfare of the people also involves degradation of forest area, balance must be struck. "The approach of the Court has to be liberal towards ensuring social justice and protection of human rights" (see *M.C.Mehta v Union of India*¹³) and "while approaching the problem thrown up by competing rights - one for betterment and better economic conditions and the other for public environment and protection of forests; the Court lacks expertise. Nonetheless, it cannot just throw away the environment case on the premise that it is for the experts to advice and the Government to decide". In *Sri Sachidanand Pandey v State of West Bengal*¹⁴, Supreme Court gave guidelines on the approach to environmental cases. When the Court is called upon to give effect to the doctrine of Directive Principles and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least the Court may do so is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations.

Urban problems like sanitation, solid waste management, public places (parks and pavements), town planning raise serious questions of public law. In *Forward Construction Company v Prabat Mandal*¹⁵, *Shri Sachidanand Pandey and Pratibha Co-operative Housing Society Limited v State of Maharashtra*¹⁶, Supreme Court allowed developmental activities, taking a broader view of environmental issues. In *Dahanu Taluka Environment Protection Group v BSES*¹⁷, it was observed as under:

It is sufficient to observe that it is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of the various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance

between these two conflicting objectives. The Court's role is restricted to examine whether the government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision. (emphasis supplied)

In connected matter reported in *M.C.Mehta v Union of India* (Badkhal and Surajkund Lakes case), the Supreme Court referred to various earlier decisions viz., *Subhash Kumar v State of Bihar*¹⁸, *M.C.Mehta v Union of India*¹⁹, *Narmada Bachao Andolan v Union of India*²⁰, *A.P.Pollution Control Board v M.V.Nayudu*²¹ and *T.N.Godavarman Thirumulkpad v Union of India*²² and made the following observations. Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, a series of orders have been passed by this Court in *T.N.Godavarman* case regulating the felling of trees in all the forests in the country. Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. (emphasis supplied) Government of India and State Government have prompted the diversion or conversion of large extents

of forest lands for various purposes, some of which are indicated supra. Indeed, we may take judicial notice of the fact that in State of Andhra Pradesh when river valley projects are proposed, the Central Government granted permission for diversion of forest land. This is in tune of National Forest Policy, 1988, which calls for minimizing adverse affects on forest and for maintenance of environmental stability. In this background, we need to examine whether respondents 1 to 3 were justified in approving the third alignment in preference to second alignment of ORR in Kandlakoi village. Petition plan shows that the ORR from west to east near Kandlakoi cuts across National Highway No.7. Kandlakoi Reserve Forest is spread over in survey Nos.118, 119, 120, 121 and 125. This is abutting Medchal Reserve Forest in survey No.805 (this is not clear from the DN vide G.O.Ms.No.23, dated 18.01.2006). NH 7 already passes through Kandlakoi Reserve Forest in survey No.121. If the second alignment is approved, survey No.121 totally admeasuring Acs.15.23 guntas would not be needed. As only part of it (little more than half) would be required for ORR (second alignment), we may infer that only an extent of Acs.8.00 of Kandlakoi Forest land would be required. Even in regard to Medchal Reserve Forest, we are convinced that land in an extent of not more than Acs.38.00 would go for ORR in case of second alignment. Curiously, State argues that second alignment was not approved to save the forest. We find the submission without any substance. When a part of Kandlakoi Reserve Forest is already used for NH7 and what would be required for ORR (second alignment) is less than Acs.50.00, which the Government would have got free of cost subject to compensatory afforestation and payment of NAV, acquiring the land admeasuring Acs.55.00 belonging to the petitioners is certainly an irrational and arbitrary decision. We are convinced that professed cause of saving forest, is ruse to defeat the law. MALA FIDE ACQUISITION - PRINCIPLES & PRECEDENTS

It is seminal principle that all power - be it constitutional, common law, prerogative, statutory or inherent power, has legal limits. The power coupled with discretion is always handicapped. Every public authority vested with discretion must act within the law and for the purpose for which power is endowed. No public authority is permitted to exceed or abuse power nor act outside the limits of authority committed to it. Every such authority must act in good faith and reasonableness. Any mala fide exercise/exercise with bad faith is per se unconstitutional. Public

authority may be omnipotent, but Court lording over such decisions can review and set at naught the decisions outside limits of the power and those tainted with bad faith or mala fides (see *West Minister Corporation v London and North Western Railway Co.*,²³). The law also makes a distinction between the malice in law and malice in fact. If a decision maker acting in good faith understands facts correctly but applies law wrongly or understands the law correctly and applies it to wrongly determined facts, it suffers from malice in law. It amounts to doing something without lawful excuse. Malice in fact is ill-will or spite towards any party or any improper motive in taking an action. Personal malice is where a public authority intentionally acts or omits to act with a view to defeat the legitimate rights of the subject. Such a decision amounts to use the power given by legislature for an alien purpose. (see paras 12-14, *State of Andhra Pradesh v Goverdhanlal Pitti*²⁴).

In order to succeed, petitioners have to take the entire burden of proving the mala fides (*E.P.Royappa v Tamil Nadu*²⁵ and *Chandra Prakash Singh v Purvanchal Gramin Bank*²⁶). The standard of proof is however not like in criminal cases requiring proof "beyond reasonable doubt". It is always possible to draw reasonable inference of mala fides from the facts pleaded and established on probabilities avoiding surmised inference (*Shankar Narayanan v State of Karnataka*²⁷). It may be too harsh to require proof beyond doubt. The Government is run not always on stereo types. Their decisions, of late, result from public pressure exerted either in the legislatures or in the corridors of power. There has been increasing role of lobbying by interested groups for favourable decisions. The Government more often than not meets some selfish demands, to keep disgruntled elements subdued. The Court may have to apply innovative and different standards of testing allegations of mala fides. In *R v ILEA Ex p. West Party City Council*²⁸, High Court of England quoted with approval De Smith's²⁹ six tests to be applied where plural ostensible purposes or motives are present. The tests are: (i) What was the true purpose for which the power was exercised? (ii) What was the dominant purpose for which the power was exercised? (iii) Would the power still have been exercised if the actor had not desired concurrently to achieve an unauthorized purpose? (iv) Was any of the purposes pursued an authorized purpose? (v) Were any of the purposes pursued an unauthorized

purpose? And (vi) Would the decision maker have reached the same decision if regard had only been had to the relevant considerations or to the authorized purposes? Every authority exercising public functions has to take decisions in accordance with the purposes for which the power is endowed and in public interest without ill-will to none. The legitimacy of such public decision making would depend on the question whether such decisions are infected with improper motives, fraud, dishonesty, malice or personal self-interest. Fraud unravels and renders decision void. Dishonesty renders a decision illegal and malice or bad faith (*mala fide*) makes a decision not only illegal and improper but *ultra vires*. A *mala fide* decision would be *ex facie ultra vires* if the same is not intended to achieve the purpose for which the power is conferred. The decision maker has self-interest or unwittingly proceeds for achieving a purpose which is not authorized, it is '*mala fide*'. It is a serious allegation directed to the person. The malice may arise out of personal or political animosity built up over a series of past dealings. "If an authority acquires property for the ostensible purpose of widening the street or re-developing an urban area but in reality for the purpose of reselling it at a profit or preventing the owner from reaping the benefit of the expected increment in land values or giving an advantage to a third party", such action would suffer invalidity. (See 5-082, De Smith's Judicial Review, sixth edn., 2007). In *Mahesh Chandra v Regional Manager, U.P. Financial Corporation*³⁰ (this is overruled on another point in *Jagdamba Oil Mills v Haryana Financial Corporation*³¹). Supreme Court made the following observations. Every wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is *ultra vires*. It does not become *bona fide* and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is *mala fide* if it is contrary to the purpose for

which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. (emphasis supplied) Professor De Smith, in his classic after referring to Australian, English and New Zealand cases opines that if the ostensible purpose is compulsory acquisition for public purpose but the hidden purpose is something else, any such acquisition shall not stand scrutiny in judicial review. As pointed out by learned author in a case of compulsory acquisition/compulsory purchase by the State of private land including road or developing urban area, the acquisition is (i) for the purpose of reselling it at a profit; or (ii) preventing the owner from reaping the benefit of expected increment in the land values; or (iii) giving advantage to the third party, such acquisition would be certainly a mala fide acquisition (para 5-082). As we are dealing with a specific case of mala fide (as alleged) land acquisition for ORR, we will only refer to cases of compulsory acquisition, challenged as mala fide. In *West Minister Corporation*, the respondent challenged the construction of lavatories and subway made by the said Corporation. They owned a block of buildings. They objected that such construction would cause obstruction to the highway and amounts to trespass. The action was justified under Public Health (Alignment) Act, 1891 which provides for construction and maintenance of lavatories and sanitary conveniences. The trial Judge ordered removal of encroachment. The Court of Appeal confirmed. The House of Lords confirmed holding that the action was a colourable device adopted in order to enable a sub-way to be built. Dealing with 'want of good faith', in his lead opinion Lord Macnaghten observed :

Then I come to the question of want of good faith. That is a very serious charge. It is not enough to shew that the corporation contemplated that the public might use the subway as a means of crossing the street. That was an obvious possibility. It cannot be otherwise if you have an entrance on each side and the communication is not interrupted by a wall or a barrier of some sort. In order to make out a case of bad faith it must be shewn that the corporation constructed this subway as a means of crossing the street under colour and pretence of providing public conveniences which were not really wanted at that particular place. That was the view of their conduct taken by the Court of Appeal. "In my judgment", says

Vaughan Williams L.J., "it is not true to say that the corporation have taken this land which they have taken with the object of using it for the purposes authorized by the Legislature." "You are acting mala fide," he added, "if you are seeking to acquire and acquiring lands for a purpose not authorized by the Act of Parliament." (emphasis supplied) In *Municipal Council of Sydney v Campbell*³², the Privy Council considered yet another case where the facts are similar as in above discussed case. Sydney Corporation Act empowered compulsory purchase of land for carrying out improvements or re-modelling any portion of the city. Municipal Council of Sydney resolved to purchase the land of Campbell and others, with an object to get the benefit of increase in the value of the land which would result from the proposed extension of highway (improvement of the city). There was no plan for improvement or re- modelling at the time of resolution by the council. Chief Judge of Sydney Equity Court found that the real purpose of acquisition was to get the benefit of increase of land value and granted injunction, from acting on the impugned resolution. The view of the Chief Judge in Equity was upheld by Privy Council. Justice Duff speaking for the judicial committee, held: The legal principles governing the execution of such powers as that conferred by section 16, in so far as presently relevant, are not at all in controversy. A body such as the Municipal Council of Sydney, authorized to take land compulsorily for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the courts will interfere. As Lord Loreburn said, in *Marquess of Clanricarde v Congested Districts Board* (1914) 79 J.P. 481: "Whether it does so or not is a question of fact." Where the proceedings of the council are attacked upon this ground, the party impeaching those proceedings must, of course, prove that the council, though professing to exercise its powers for the statutory purpose, is in fact employing them in furtherance of some ulterior object. (emphasis supplied) Thus, if any real purpose of acquiring land is for the purpose of making a profit or preventing the owner from reaping the benefit of the expected increment in the land values or giving advantage to a third party, such acquisition would be vitiated as a mala fide. Professor De Smith and Professor Wade³³, analyses a number of such cases where the purpose of acquisition is not in reality in public interest but either to benefit acquiring authority or a third party besides depriving the benefit to the owner. In Indian Context, the Constitutional governance by rule of law must be

in tune with "equality clause" and "equal protection clause" in Article 14. In the process of acquisition if the authority harms one and helps the other make quick money, the same would be certainly by mala fide even if the purpose is for the welfare of the people. In the guise of acquisition for the public purpose, no authority can ignore the constitutional minima of equality before law and equal protection of laws. Here, we shall refer to three cases decided by Supreme Court where the acquisition was challenged as mala fide. In *Raja Anand v State of U.P.*,³⁴ a Constitution Bench of Supreme Court indicated that if the State has not applied its minds at the time of proposal for acquisition of private land or the action of the State Government is mala fide, the procedural DNs as well as award can be quashed. It was a case wherein the proposal for acquiring land admeasuring Acs.409.00 was proposed for acquisition for limestone quarry. Enquiry under Section 5-A of the Act was dispensed with and a DD was published followed by an award enquiry culminating in award. Possession was taken by Collector and handed over to the Government Cement Factory. The owner of the land also sought reference under Section 18 and such a reference was made. While the same was pending, writ petition was filed in Allahabad High Court challenging the acquisition as without jurisdiction, that production of cement as a commercial venture is not public purpose and that compensation need be paid for mines and minerals. The High Court dismissed the writ petition. The apex Court considered various questions with which we are not concerned with this case, and quashed all proceedings. It is necessary to quote the following, which is relevant. But even though the power of the State Government has been formulated under Section 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of Section 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the DN of the State Government under Section 17(4) of the Act

directing that the provisions of Section 5-A shall not apply to the land is ultra vires. (emphasis supplied) In *State of Punjab v Gurdial Singh*³⁵, Supreme Court affirmed the High Court's Judgment invalidating acquisition by the State as mala fide. So as to establish the grain market in 1962, a site was chosen and foundation stone was laid by Chief Minister of the State. Satnam Singh Baja, former Minister and M.L.A., was owner of the land. Acquisition proposals were dropped and the land belonging to Guru Dayal Singh and twenty one others was proposed in 1971. Punjab and Haryana High Court upheld the challenge for such acquisition and shot down the exercise as mala fide. Again in 1977, lands were acquired dispensing with the enquiry under Section 5-A of the Act. The same was assailed which was again struck down as mala fide. The plea appears to have been that the land of respondents therein was chosen so as to exclude the land of the former Minister and M.L.A., who did not bother to contradict the allegations of mala fide. The Supreme Court upheld the verdict of the High Court. It is apposite to excerpt the inimitable forensic prose of Justice V.R.Krishna Iyer (para 9 of SCC): Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. ... Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud

on power vitiates the acquisition or other official act. (emphasis supplied) In *Hansraj H.Jain v State of Maharashtra*³⁶, the factual background is as follows. Government proposed setting up of a new township known as new Bombay. State issued DNs under Section 4(1) of the Act proposing to acquire huge tracts of lands covering 86 villages for the purpose of development and using for industrial, commercial and residential purposes. The land owners impugned the same. A Division Bench of Bombay High Court dismissed the writ petitions. Before the Supreme Court inter alia it was contended that the acquisition is mala fide and that it was intended to peg the price of land at prevailing rate on the date of DN without having regard to the actual requirement of such land, that there was no proper scheme or plan for fulfillment of the stated object and that there has been inordinate delay in completion of the proceedings. As there was no proper foundation to support the plea of mala fide, the contention was rejected by the Supreme Court. But the observations made in connection with the same are relevant and are extracted hereunder. In a project of this magnitude, substantial time is required to complete the acquisition proceedings. Even then, we are not fully satisfied that the concerned authorities had acted with such promptitude as was required of them. We are rather inclined to hold that even such a big and delicate scheme could have been given proper shape earlier and the acquisition proceedings in our view could have been completed earlier if there had been proper diligence and concerted efforts at different levels. But simply on account of the proverbial slow pace with which the public authorities move in this country, we are not inclined to hold that there had been deliberate laches and utter lack of bona fide on the part of the acquiring authorities and the sole intention to initiate acquisition proceedings by issuing DN under Section 4 of the Land Acquisition Act was to peg down the prices with a clear intention to sit over the matter for years just to deny to the land owners the reasonable price of the land. Such submission is not warranted on any firm foundation ... (emphasis supplied) In *Sooram Pratap Reddy v District Collector*³⁷, apex Court quoted with approval the observations of the US Supreme Court in *Susette Kelo v City of New London*³⁸, to the effect that "Government's pursuit of public purpose might benefit individual private parties", that "using eminent domain for economic development improbably blurs the boundary between public and private takings", and that "when the Legislature's

purpose is legitimate and its means are not irrational, the Courts should be slow to interfere with compulsory purchase orders". Our summit Court also held that "in appropriate cases where such power is exercised mala fide or for collateral purposes or the purported action is de hors the Act, irrational or otherwise unreasonable, or the so called purpose is no public purpose at all and fraud on the Statute", compulsory acquisition can be invalidated. From the Supreme Court cases dealing with allegations of mala fide land acquisition, the following would emerge. (i) if an acquisition proposal is initiated without therebeing a public purpose or where such public purpose is non-existent, acquisition would be ultra vires; (ii) even if the Act as a piece of eminent domain legislation, confers power on the State to acquire private land, such power is not absolute and it is always subject to restrictions contained therein; (iii) If the acquisition which is ostensibly for public purpose but in reality is intended to deprive the owners of the land to get present or future benefit out of the land or such acquisition is intended to help others to get the land at cheaper rate to be sold at a future date for a premium; and (iv) acquisition is initiated without objectively considering all possible alternatives - such alternatives which would reduce the cost of acquisition; the action is not in good faith or honest, and therefore, rendered mala fide. Such mala fide acquisition even if it is challenged after the award (as in the case of Raja Anand v State of U.P.,) can be quashed by the writ Court. Applying these principles, we may now advert to various allegations made by petitioners.

ALLEGATIONS AND REBUTTAL

The petitioners contend that by the impugned acquisition, they are either positively affected or negatively affected, and that those people who are affected by first alignment remained unaffected whereas the petitioners who are earlier not affected are now affected by land acquisition. The cliché is that those people who were initially affected by first alignment now remain unaffected. All these are either close to politicians or were able to successfully sprint through the corridors of power. Indisputably, if the first alignment had been grounded, only small portion of the land belonging to petitioners would have been acquired. The land belonging to respondents 28, 29 and Ameena Engineering College (respondent 30, 31 and 32) was also included in the acquisition proceedings besides a major portion of Nagulkunta lake. The first alignment abutting the village was approved and

relevant DNs were issued, followed by DDs. Why then lands belonging to respondents 28, 29 and 30 were excluded and second alignment was proposed? Second alignment involved land admeasuring Acs.3.07 guntas in survey No.61 belonging to first petitioner, and as concluded supra, an extent of about Acs.50.00 of land forming part of Kandlakoi and Medchal Reserve Forest. In addition, the land belonging to respondent 34, Malla Reddy in survey Nos.59 and 60; and respondent 37 in survey No.47 were also notified. Allegedly to save the Reserve Forest, second alignment was also altered and third alignment/final alignment was proposed. This alignment hit the petitioners hard and the lands of respondents 28, 29, 30, 31, 32, 34 and 37 remained unaffected but also came to be situated near the third alignment of ORR gaining enormous advantage. If the first alignment or second alignment had been completed, petitioners would not have been affected or would have been affected to the extent of losing minimum extent of land. Therefore, they submit that they have been singled out and subjected to hostile discrimination in breach of Articles 14 and 300A of the Constitution. At this stage itself, we need to advert to the allegations made by the petitioner with reference to various respondents and the rebuttal thereof. Specific allegations are made by petitioners with regard to exclusion of lands belonging to (i) respondents 4, and 7 to 16; (ii) respondents 17 and his relatives; (iii) respondents 26 and 27; (iv) respondent 29; (v) respondents 30 and 31; and (vi) respondents 33 to 36. (i) Lands of respondents 4 and 7 to 16

There is no allegation that respondent 4, who is chairman of HMDA, owns any lands. Respondents 7 to 16 are his relatives. Petitioners aver that respondent 4 played significant role in frequent alterations and modifications to ORR alignment to help his relatives to take advantage of land cost escalation. There is no denial that respondent 7 to 16, who are related to respondent 4, purchased the lands after the issue of DNs. They own lands in Hayatnagar (in Eastern Zone of ORR), Kokapet and Manchirevula villages (in Western Zone of ORR). They do not, however, own any lands in Kandlakoi village. As in these cases, the writ petition is filed for invalidating the DNs for Kandlakoi land, we leave the matter there observing that even if the respondent 4 had played role in acquisition in Eastern and Western Zones for ORR prompted by extraneous reasons, the same may not have much bearing on this case. (ii) Lands of Respondent 17 and his relatives

Respondent 17, at the relevant time, was Secretary, HUDA, since 07.07.2004. Respondent 18 is his sister-in-law and respondent 20 is his brother. Respondent 21 (another brother) is Managing Director of respondents 19 and 20. Respondents 18 and 23 are firms of brothers of respondent 17. He filed counter affidavit admitting the relationship. The family of respondent 17 own lands in Kollur, Kokapet and Mankhal villages. It is admitted case that respondent 17 partitioned from the family in 1998. He was selected as Sub Inspector in 1996 and in 1997 he became Deputy Collector. He did not buy any land after 1997. But, he was a partner in a poultry farm in Mankhal. After he became Government employee, his wife became partner. There is no dispute that land in Kokapet including the lands belonging to relatives of respondent 17 comprised in survey Nos.108 (Acs.3.27 guntas), 113 (owned by respondent No.19) and 115 (Acs.5.20 guntas) were acquired for ORR. An extent of Acs.13.19 guntas in Kokapet and Mankhal villages belonging to family of respondent 17 was also proposed for township. By Government Order being G.O.Rt.No.1337, dated 30.11.2004, the proposal was withdrawn. Therefore, the lands of the respondent 17 or his family members are not proposed for ORR at Kandlakoi village. Nonetheless, it is vehemently contended that respondent 17 played an important role for extraneous reasons in changing the alignment at Kandlakoi. It may be noticed here, that Dr.Nagam Janardhan Reddy and five others filed W.P.No.20316 of 2006 challenging the final alignment of ORR inter alia on the ground that it was done with mala fide purpose to help the persons who are proximate to people in power. Therein W.P.M.P.No.25662 of 2006 was filed seeking a direction restraining Chairman, HUDA (respondent 4), Secretary, HMDA (respondent 17) and Chairman, APIIC (respondent 6) from functioning in the respective offices. This Court disposed of W.P.M.P.No.25662 of 2006 on 26.03.2007 directing respondent 17 (respondent 41 therein) from dealing in any manner with any issue pertaining to ORR Project. The Government of Andhra Pradesh and HMDA were also directed not to entrust any ORR work to him. Referring to R.Sai Bharathi v J.Jayalalitha³⁹, Division Bench of this Court passed the order, the relevant portion is extracted hereunder.

It is no doubt true that the applicants filed various documents such as agreements of sale, GPAs, sale deeds etc., in order to establish the nexus between respondent No.41 and those sale transactions. The CBI is holding preliminary

enquiries into the entire gamut relating to the alleged irregularities in the implementation of ORR Project. Any intrinsic examination of the allegations made in this application is likely to affect the enquiry/investigation by the CBI. Without such an examination it is not possible to hold whether respondent No.41 has real nexus with the disputed transactions and whether withdrawal of lands from acquisition in Mankhal and Kokapet villages was at this instance. At this stage, one can say with certainty that the five unregistered firms M/s.Rajapushpa Farms, M/s.Parupati Farms, M/s.Mudra Properties, M/s.Rajapushpa Estates and M/s.Silver Lawns are owned by the nearest relatives of respondent No.41 (wife, mother, brothers and sisters-in-law) while respondent No.44, who is the brother of respondent No.41 is one of the partners in M/s.SSR Properties. The issues such as whether Mohd.Gafaruddin was in any way connected with respondent Nos.41 and 44 or it was a mere coincidence that they purchased the properties in Kokapet and Mankhal villages from him who represented the original owners as their GPA, whether withdrawal of lands in Mankhal and Kokapet from acquisition was only at the instance of respondent No.41 are matters which require a deep probe, which we are sure would be undertaken by the CBI. (emphasis supplied)

The above observations would suffice to draw an inference as to extraneous interest of respondent 17, which will have influencing sway over HMDA reviewing its decisions at the time of repeated alterations of alignment. The conclusions that respondent 17 was only a glorified middle management executive having no say in the final decision of alignment committee may not hold good. When it is shown and admitted that the relatives of a high official of HMDA are vitally interested in the alignment either to get their land excluded from the acquisition proceedings or to see that the ORR passes abutting the land for obvious reasons, the Court cannot ignore and brush aside the allegations of mala fide exercise of power. It would be too nave to say that someone would be bold enough to announce that "my land would be in an advantageous position if ORR passes abutting the same, and therefore, I will approve or get approved the alignment in such a manner that it would increase the value of my land". Pre decisional mala fide actions are not publicized by players. All decisions prompted by extraneous considerations would appear to be legal and seemingly in accordance with settled procedures but the attending circumstances would compel adverse inference. (iii) Lands of

respondents 26 and 27

There is no dispute that respondent 27 and his son purchased lands in Kandlakoi village. An allegation is made that originally in master plan of 1980, ORR was proposed at Athivilli village on the outer fringes of Kandlakoi village. But so as to increase the value of the lands purchased by respondents 26 and 27, the ORR was designed in such a manner that the lands of these respondents would be at a shouting distance. From a bare look at petition plan, the allegation is not without truth. But no material is placed before us to show that the ORR was originally proposed at Athivilli village. In the counter affidavit of the PD while denying the allegation it is alleged that M/s.Mecon study report did not cover any alignment proposal in the Northern Sector and that final layout was prepared and approved to avoid sharp curves and electrical substation as well as Egwood factory. We are, for the purpose of this case, prima facie satisfied that the allegation that final layout at Kandlakoi was designed to enhance the value of lands of respondents 26 and 27 stands not proved. We say this because investigation by Central Bureau of Investigation (CBI) is pending. (iv) Lands of respondent 28

M/s.Uma Soumya Builders Private Limited is respondent 28 represented by its Managing Director, Sri D.Sridhar Reddy. Indisputably he is son-in-law of brother of respondent 26. The said company entered into a registered Development Agreement cum General Power of Attorney vide document No.8471 of 2003, dated 09.07.2003 with M/s.Devender Reddy, Jayachandra Reddy and V.Akshay in respect of land admeasuring Acs.26.00 comprised in survey Nos.126 and 128 of Kandlakoi village. When DN being ORR No.71, dated 16.04.2005 was issued, land to an extent of Acs.6.20 guntas in survey No.26 and an extent of Acs.5.33 guntas in survey No.128 was also notified. When the alignment was changed second time and DN being ORR No.122 was issued, entire land of respondent 28 got excluded. The same is the position when the third (final) alignment was approved. Thus, there cannot be any dispute that an extent of Acs.12.13 guntas in survey Nos.126 and 128, which is subject matter of document No.8471 of 2003 was excluded. Not only that this land is situated at near distance from third and final alignment and obviously there would be enormous increase of land value. The petitioners contend that the alignment was changed at the behest of respondent 26 and help

his brother's son-in-law. The petition plan relied on by both sides would demonstrate the point beyond any doubt. As rightly pointed by counsel, if HMDA had adhered to first alignment at Kandlakoi, major portion of the land of respondent 28 would have been consumed by ORR. In which event, in all probability their Development project would not have been viable. The Advocate General however contends that the first alignment was changed to prevent any adverse effects on Egwood Factory, 220 KV electricity power station and one minority Engineering College. Though appears to be plausible, having regard to the principle of purity of administration, we cannot totally disregard the submission of petitioners. (v) Lands of respondent 29

Egwood factory manufacturing plywood and wood engineering products is owned by Musaddilal group. They have their lands and factory building in survey No.129 admeasuring Acs.5.37 guntas. The land was originally notified in ORR No.72, dated 16.04.2005, but by third alignment DN ORR No.207, dated 14.12.2005, their land stood deleted from acquisition proceedings. Petitioners contend that affluent Musaddilal group with their political connections influenced the men in power especially respondents 4 and 17 to get their land dropped from acquisition. Counter affidavit is not filed by respondent 29. PD justified pro Egwood action alleging that the cost of acquisition would have been more if Acs.5.37 guntas of respondent 29 had been acquired as there was built up structure on the land. It is also alleged that the alignment was changed to save electricity sub station and minority engineering college. The specific allegation of the petitioners that respondent 29 is influential industrial group with considerable influence remains uncontroverted. While adopting third alignment when HMDA could sacrifice Nagulkunta, an environmental sensitive water body - prudence cannot approve ostensible justification offered by HMDA. There is certainly something which does not meet the eye in the gambit of dropping the Egwood's land. (vi) Lands of respondents 30, 31 and 32 Respondent 30 is an educational society promoted by respondent 31 and his son respondent 32. Petitioners allege that respondent 31 was Vice Chairman of Andhra Pradesh Youth Congress. He was Vice Chairman of Uppal Municipality in the year 1989. His resume placed by petitioners before the Court from his website makes an impressive reading. This is admitted in the counter affidavit of respondent 31. He established the minority educational

institution through a Society - Amina Engineering College. The land admeasuring Acs.10.02 guntas in survey No.29B and 31 of Kandlakoi village was gifted by respondent 32 under a gift Deed dated 28.01.2009 to the Society. Contributions were also collected. Statedly they raised 60,000 sft of construction for Engineering College, which allegedly has strength of thousand students. Petitioners allege that it is at the instance of respondent 31 that the Chief Minister interfered and the proposed acquisition of the land for the first alignment was not pursued by HMDA. In the counter affidavit, respondents 30, 31 and 32 admit to this stating that when ORR No.71 was issued proposing to acquire Acs.7.07 guntas in survey No.29 and Acs.10.00 guntas in survey No.30, they made representations on 20.05.2005 and 08.06.2005 to various authorities, Chief Minister and National Minority Commission and that considering those objections, the acquisition was dropped while issuing ORR No.122 (second alignment). Again when the land admeasuring Acs.13.08 guntas in survey No.29 and Acs.0.04 guntas in survey No.31 was notified in ORR No.207, they made representations, in vain. They, therefore, filed W.P.No.923 of 2006 challenging ORR No.207, dated 14.12.2005 contending that the land belonging to minority educational institutions cannot be acquired. This Court ordered status quo. They brought to the notice of the Government the decision of Supreme Court in *Society of St.Joseph's College v Union of India*⁴⁰, dealing with the question of constitutional prohibition for acquiring the land belonging to minority educational institution. In the meanwhile, the plea of respondent 30 was accepted and the Government notified changes in the alignment saving a major portion of the college area. They also agreed to give a small extent of land required for the alignment. In *Society of St.Joseph*, the apex Court was called upon to interpret clause (1A) of Article 30 of Constitution introduced by Constitution (Forty Fourth) Amendment Act, 1978. Article 30 reads as under.

30. Right of minorities to establish and administer educational institutions.- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in

clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. (emphasis supplied)

Supreme Court held that the State while making law of compulsory acquisition shall ensure that in the event of the property of minority educational institution being required, such law shall provide for adequate compensation as would not restrict or abrogate the right guaranteed under Article 30(1). There is no prohibition for acquiring land belonging to minority educational institution. Indeed, the doctrine of eminent domain does not admit any exception except the guarantees provided by the Constitution and the law itself. We quote the following observations of Supreme Court in this regard (paras 6 and 7 of SCC). It is not necessary that a statute should be enacted exclusively for the compulsory acquisition of the property of minority educational institutions, but it is necessary that in a law that provides, in general, for the compulsory acquisition of property, there should be enacted, by amendment thereof, a provision that relates specifically to the acquisition of the property of minority educational institutions. That provision must ensure that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30. ... Plainly, Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts in exchange. To obviate the violation of the right conferred by Article 30 in this manner, Parliament introduced the safeguard provision in the Constitution, first in Article 31 and then in Article 30.

In view of the interpretation of Article 30(1A) by the Supreme Court, the contention of the counsel for respondents 30, 31 and 32 that the land of minority educational institution cannot be acquired is devoid of any merit. Constitution does not contemplate such situation. What all Constitution injuncts is acquiring the land in abrogation of Article 30, minorities rights. If it is shown that the minority

educational institution can still exercise its right under Article 30(1) even after acquisition, for payment of adequate compensation, there is no bar. It is admitted by respondent 30 itself that on the request made to the Government and Chief Minister, the proposal was dropped. No material is placed before this Court that the acquisition of land belonging to respondent 30 would have resulted in abrogating fundamental right under Article 30(1). We accordingly hold that the land belonging to respondents 30 to 32 were excluded from the first alignment not because of Article 30(1A) but only because there was 'a word from the top' to do so because respondent 31 is admittedly and indisputably an influential person of political party-in-power. (vii) Lands of respondents 33, 34, 35 and 36

The petitioners allege that Chamakura Malla Reddy, respondent 34, is brother-in-law of Janardhan Reddy, Congress MLC, a confidant of the then Chief Minister. Family of respondents 34 to 36 owns lands in survey Nos.57 to 61, 69 to 71, 78 to 81, 87 and 100 at Kandlakoi. They promoted respondent 33 Society that established two Engineering Colleges. Initially, their land was sought to be acquired when first alignment was to be implemented. They filed W.P.No.23618 of 2005 challenging DN vide ORR No.122 alleging that the alignment was changed at the behest of respondent 31. Special Officer and LAO opposed the writ petition justifying change of alignment. The petitioners allege that while the writ petition was pending, respondent 34 influenced respondents 4 and 17 and therefore to protect the land of respondents 33 to 36, third alignment was prepared and approved. The writ petition was later dismissed on 31.07.2009 as infructuous. The allegations made by petitioners - except the one relating to influencing respondents 4 and 17 - are admitted. Involvement of Congress MLC is also denied. A perusal of petition plan would support the contentions of the petitioners that if second alignment had been adhered to, respondents 33 to 36 would have lost the land. It is nobody's case that the buildings and other structures of two engineering colleges promoted by respondent 33 were in any way affected and therefore, the alignment was changed. It is admitted case of HMDA that the alignment was changed to avoid the steep curve and for the purpose of saving the forest. After giving anxious considerations to the allegations and the way they were traversed and rival submissions, we are convinced that there are no strong reasons to throw away petitioners' allegations as baseless. As is well settled, the

allegations of mala fides need not be proved beyond reasonable doubt. If on probabilities, such an inference is possible, a decision of public authority can be invalidated on the ground of mala fides. After thoroughly examining the specific allegations, the denials thereof and the material placed before us as well as petition plan, we conclude that HMDA though ostensibly changed the alignment from time to time, the real purpose was not absolutely to save the forest or to avoid sharp curves but it was certainly actually and factually to help quite a few contesting respondents to reap the benefit in ways more than one. Acquisition cannot be said to be for the purpose for which it is intended. Such exercise of power is certainly mala fide and ultra vires which must suffer invalidation. CBI Investigation

This writ petition was filed on 18.08.2006. Another writ petition being W.P.No.20316 of 2006 was filed by Deputy Floor Leader of Telugu Desam Party (TDP) and four others on 25.09.2006 invoking PIL jurisdiction of the Court. By that time, there was - as many gathered; concretized public opinion that officials and unofficials altered the alignment of ORR with a view only to help few people close to the Government and for getting benefits for themselves. The public opinion was so strong that the Government of Andhra Pradesh issued G.O.Ms.No.240, dated 28.09.2006 conveying their consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (Delhi Act) to entrust the matter to Central Bureau of Investigation (CBI). The Head Office of CBI issued directions to its Hyderabad Office. In obedience thereto, five cases being PE 03 (A) to PE 07 (A)/2006-CBI/HYD were registered on 20.10.2006. The investigation is pending. The preliminary report is filed in this Court in the PIL case. In view of this, it is not proper for us to consider in detail the role played by each of the official and unofficial respondents, namely, respondents 4, 6 to 28, 31 and 32, 34 to 38 and other societies/associations which some of them represent. Therefore, this Judgment may not be construed as exonerating the respondent 4 (the then Chairman of HMDA), respondent 6 (the then Chairman of APIIC), respondent 17 (the then Secretary of HMDA), respondent 26 (the Member of Parliament and former Minister), respondent 31 (Vice President of APCC) and respondent 37 and others. It is for the CBI after investigation to file a report before the competent criminal Court. This Judgment is not intended in any manner to interdict CBI or the

criminal Court at subsequent trial stage. Consent by petitioners 5, 6 and 9 and others

Petitioners 5, 6, 9 and some plot holders of petitioner 10 gave consent for acquisition and therefore, they are estopped from challenging the proceedings. That is what HMDA would urge. In para 34 of the counter affidavit of PD, the details are furnished, which would show that petitioners 5, 9 and 10 are parties before Lok Adalat being pre litigation case Nos.803, 798 and 799 of 2009 respectively. They gave consent for acquisition of their plots admeasuring less than 360 square yards. It is also the case of the State that as many as 51 plot holders of Noble Park (represented herein by petitioner 10) have given consent for acquisition of their lands. But these details are not furnished. Be that as it is, HMDA has not placed before this Court any material like Forms I, III and IV as contemplated under Rule 5 of the Land Acquisition (Negotiations Committee) Rules, 1992 or Section 11(2) read with 31(2) of the Act. We may mention that in exercise of powers under Section 55(3) of the Act, the Government promulgated those Rules which enable the State to acquire the lands by negotiations. As a first step, the Convener of the Negotiations Committee constituted under Rule 4 of the said Rules has to issue notice calling for claims for settlements through Negotiations Committee. If the land owner agrees for the same, they have to file settlement of claims before the Committee and after the deal is struck, the same has to be reduced in writing in Form III followed by an affidavit in Form IV given by the land owner. All these are conspicuously absent and therefore, HMDA's submission is devoid of any merit. Further, even if such consent was given by the petitioners 5, 6 and 9 before Lok Adalat, in the background of this case, we do not think that the aggrieved can be denied the relief under Article 226 of Constitution of India. In a given case, as held by Supreme Court in *Union of India v Ananto*⁴¹ and *State of Punjab v Jalour Singh*⁴², even an award/settlement before Lok Adalat either in a pre litigation case or in Lok Adalat case, can be challenged in a writ petition. Awards bar the writ petition?

The State shall not "deprive a person of his property save by authority of law". That is the mandate of Article 300A of the Constitution. If the power of eminent domain is to be exercised or the enjoyment of land is regulated by use of police

powers coupled with eminent domain, the State cannot ignore the constitutional mandate because every prerogative power of the Sovereign is subject to the constitutional provisions intended to ensure rule of law, which is basic structure of Constitution of India. Therefore, a citizen, when his land is to be acquired for a public purpose, can always take a plea that such public purpose does not exist, the acquisition is in violation of procedural safeguards, that the compensation for the land is arbitrarily determined and/or the proceedings are vitiated by other legal infirmities. When once an award is passed under Section 11 and attains finality under Section 12(1), after paying compensation, the State can take possession under Section 16 where upon the acquired land shall vest absolutely in the Government free from all encumbrances. Can a person seek redressal of his grievance after an award is passed? Ordinarily, after the award is passed, if the same is challenged along with the challenge to DN and DD, writ petitions may not be entertained by the High Court, if there is inordinate delay (see *State of Maharashtra v Digambar*⁴³, *C.Padma v Deputy Secretary to the Government of Tamil Nadu*⁴⁴ and *Municipal Council, Ahmednagar v Shah Hyder Baig*⁴⁵). There is, however, an exception to this rule. If the acquisition is ultra vires or a fraud on the power of eminent domain as well as provisions of the Act, or acquisition is mala fide in the sense it is intended to deny the benefit out of land to some one, with an intention to help others to reap rich dividends from the land, the Constitution Court is not precluded from entertaining the writ petition against acquisition. This opinion is also supported by *Raja Anand* and *Sooraram Pratap Reddy*.

In *Raja Anand*, land acquisition proceedings were challenged after the award was passed and after the owners sought reference under Section 18 to Civil Court inter alia on the ground that it is ultra vires. Accepting the plea that dispensing with enquiry under Section 5-A is dishonest and ultra vires, the Constitution Bench quashed all the proceedings including the award directing restoration of possession to land owner. In *Sooraram Pratap Reddy*, Supreme Court ruled that where power is exercised mala fide or for collateral purposes or the purported action is de hors the Act or there is no public purpose, acquisition would amount to fraud on the statute which can be visited with invalidation. Therefore, passing of awards by the concerned SDCs by itself does not bar the writ petition.

Further initially the learned single Judge stayed all further proceedings by order, dated 18.08.2006. By that time DDs were published. Subsequently on 30.11.2006, the Division Bench of this Court passed orders, thus: "the interim order passed earlier ... is extended till 23.12.2006 with the modification that the respondents shall be entitled to take proceedings in furtherance of draft declaration issued under Section 6 of the [Land Acquisition Act, 1894](#), dated 20.07.2006. However, it is made clear that the petitioners shall not be dispossessed from the land in dispute". Later, the order was extended from time to time till 09.02.2007 whereafter there was no interim order. Probably for this reason, the awards were passed in May, 2008 and January, 2009.

More often than not, even where the interim order passed by this Court in staying dispossession, ordinarily the Land Acquisition Officers do not pass the awards and await the result of the writ petition. In this case, peculiarly the awards were passed in great haste. In this background, it would not be proper to deny the constitutional remedy to the petitioners on the ground that the awards are already passed. We accordingly reject the submission of the Advocate General. Before parting with this case, with our conclusions and directions, we may observe that in the capital city of Hyderabad, during the last two decades or so, there has been steady increase of neo rich people who were able to grab land in prime (or posh) areas. Those who invariably became from lakhiers to multi- crorepathis are all persons who exploited their being proximate to Government. Some of them using easily acquired wealth garnered political posts which help retain and multiply ill-gotten wealth. Land acquisition which has social welfare and social justice underlying it, has now become machinery for creating wealth to those who master the art of always being proximate to the power to get loans, largess and land with immense potentialities of becoming costlier than gold in short time. In *Bondu Ramaswamy v Bangalore Development Authority*⁴⁶, while observing that, "it is necessary to evolve tailor made schemes to suit particular acquisitions so that they will be smooth, speedy, litigation free and beneficial to all concerned", opined that, "proper planning, adequate counseling and timely mediation with different groups of land losers should be resorted to". The Supreme Court indicated that in the cases involving acquisition for planned development of urban areas, scheme should be evolved to give a share to the land losers in the development itself. The relevant observations

are as follows (paras 150 and 153). While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the plight of farmers affected by frequent acquisitions for urban development. ... There are several avenues for providing rehabilitation and economic security to landlosers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories: (i) Acquisitions for the benefit of the general public or in national interest: This will include acquisitions for roads, bridges, water supply projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities. (ii) Acquisitions for economic development and industrial growth: This will include acquisitions for industrial layouts/zones, corporations owned or controlled by the State, expansion of existing industries, and setting up special economic zones. (iii) Acquisitions for planned development of urban areas: This will include acquisitions for formation of residential layouts and construction of apartment blocks, for allotment to urban middle class and urban poor, rural poor, etc. In acquisitions falling under the first category, the general public are the direct beneficiaries. In the second category, the beneficiaries are industrial or business houses, though ultimately, there will be indirect benefit to the public by way of generation of employment and overall economic development. In the third category, the beneficiaries are individual members of public who, on account of allotment of plots/flats, will be able to lead a better quality of life by having a shelter with comforts, apart from the fact that the planned development of cities and towns is itself in public interest. At present, irrespective of the purpose, in all cases of acquisition, the landloser gets only monetary compensation. Acquisitions of the first kind, does not normally create any resistance or hostility. But in acquisitions of the second kind, where the beneficiaries of acquisition are industries, business houses or private sector companies and in acquisitions of the third kind where the beneficiaries are private individuals, there is a general feeling

among the landlosers that their lands are taken away, to benefit other classes of people; that these amount to robbing Peter to pay Paul; that their lands are given to others for exploitation or enjoyment, while they are denied their land and their source of livelihood. When this grievance and resentment remains unaddressed, it leads to unrest and agitations. ... The solution is to make the landlosers also the beneficiaries of acquisition so that the landlosers do not feel alienated but welcome the acquisition. (emphasis supplied) We may also notice that law makers seemed to realize and recognize the exploitative and expropriate purpose for which the Act is put to use. The two Parliamentary Bills are on the anvil, namely, Land Acquisition (Amendment) Bill, 2007 (Parliamentary Bill No.97 of 2007) and Rehabilitation and Resettlement Bill, 2007 (Parliament Bill No.98 of 2007) intended to provide a speck of little of succour to the small and medium farming community as well as lower middle class and middle middle class community whose land in developing metropolitan areas becomes a tool of producing wealth for others.

CONCLUSIONS

In view of the analysis of the facts and the law with reference to the pleadings, documents and submissions made, we may sum up our findings on various issues and points as under.

- (i) The passing of the Awards by the Special Deputy Collector-cum-Land Acquisition Officer during the pendency of these proceedings does not bar the writ petition;
- (ii) The consent of petitioners 5, 9 and 10 in respect of 360 square yards of land in pre-litigation case numbers 798, 799 and 803 of 2009 before Lok Adalat, is no bar for entertaining the writ petitions at their instance;
- (iii) HMDA initiated impugned action even before it could decide and approve the designs as to whether to go in for clover leaf interchange or double trumpet interchange at Kandlakoi;
- (iv) The necessity for issuing of successive impugned DN's being ORR No.72, dated 16.04.2005; ORR No.83, dated 21.04.2005; ORR No.122, dated 08.07.2005 and ORR No.207, dated 14.12.2005, one after the other, has not been explained

by HMDA by discharging the burden cast on it, and therefore, the acquisition of land admeasuring Acs.3.15 guntas and Acs.5.18 guntas comprised in survey Nos.25 and 122 respectively covered by ORR No.83, dated 21.04.2005 and the land admeasuring Acs.2.31 guntas in survey No.26, Acs.2.23 guntas in survey No.28 and Acs.6.03 guntas in survey No.29 respectively covered by ORR No.122, dated 08.07.2005, is in violation of mandatory requirements of law as there is no DN under Section 4(1) of the Land Acquisition Act,1894, in respect of these lands;

(v) The method and manner of making and publishing the DDs under Section 6(1) and passing of the Awards being Award Nos.11 of 2008, dated 04.05.2008; 9 of 2008, dated 04.05.2008; 10 of 2008, dated 10.05.2008; 24 of 2008, dated 07.01.2009 and 25 of 2008, dated 07.01.2009 are vitiated by non-application of mind. The perusal of the files produced does not inspire confidence in the Court and there are strong suspicions of interpolating and extrapolating the record, probably to report fait accompli with an intention to deny the remedy to the petitioners;

(vi) The directions issued by Supreme Court in Jayabheri Properties Private Limited v State of Andhra Pradesh have been violated. The impugned alignment would consume the entire Nagulkunta lake and therefore, cannot receive imprimatur of this Court;

(vii) The acquisition of land admeasuring Acs.55.00 belonging to the petitioners is irrational and arbitrary which cannot be justified on the ground that it is resorted to save Kandlakoi Reserve Forest for the reasons discussed in this Judgment;

(viii) The impugned acquisition is mala fide and ultra vires. There are more than one reason for this Court to hold that petitioners' land is sought to be acquired to help respondents 28, 29, 30 to 32, 34 to 36 and 37 to have the advantage of increment of land value by reason of their lands coming within the near proximity to the Outer Ring Road/road interchange near Kandlakoi or at a shouting distance thereof. The frequent change of alignment is also mala fide and cannot be sustained in law. RELIEF

In the result, for the above reasons, the impugned land acquisition proceedings including the Notifications under Section 4(1), Declarations under Section 6 of the Land Acquisition Act and the awards are quashed. The petitioners would be entitled to their costs. ¶1 (1987) 4 SCC 328 : AIR 1987 SC 2257 2 AIR 1966 SC 1593 3 (1988) 3 SCC 294 : AIR 1988 SC 1615 4 (1992) 2 SCC 168 5 (1970) 1 SCC 125 : AIR 1971 SC 306 6 (1973) 2 SCC 337 : AIR 1973 SC 1150 7 (2001) 6 SCC 496 : AIR 2001 SC 3215 8 AIR 1993 Cal 215 9 (1995) 3 SCC 266 10 (1996) 8 SCC 462 : AIR 1996 SC 1977 11 (1997) 3 SCC 715 : 12 (1996) 5 SCC 647 : AIR 1996 SC 2715 13 (2004) 12 SCC 118 : AIR 2004 SC 4016 14(1987) 2 SCC 295 : AIR 1987 SC 1109 15 (1986) 1 SCC 100 : AIR 1986 SC 391 16 (1991) 3 SCC 341 : AIR 1991 SC 1453 17 (1991) 2 SCC 539 18 (1991) 1 SCC 598 : AIR 1991 SC 420 19 (1987) 4 SCC 463 : AIR 1988 SC 1037 20 (2000) 10 SCC 664 : AIR 2000 SC 3751 21 (1999) 2 SCC 718 : AIR 1999 SC 812 22 (1997) 2 SCC 267 : AIR 1997 SC 1228 23 [1905] AC 426 24 (2003) 4 SCC 739 : AIR 2003 SC 1941 25 AIR 1974 SC 555 : (1974) 4 SCC 3 26 (2008) 12 SCC 292 27 (1993) 1 SCC 54 : AIR 1993 SC 763 28 [1986] 1 WLR 28 29 De Smith's Judicial Review (2007) Lord Woolf and others (Eds.,) 30 (1993) 2 SCC 279 : AIR 1993 SC 935 31 (2002) 3 SCC 496 : AIR 2002 SC 834 32 [1925] AC 338 33 Administrative Law 34 AIR 1967 SC 1081 35 (1980) 2 SCC 471 : AIR 1980 SC 319 36 (1993) 3 SCC 634 37 (2008) 9 SCC 552 38 545 US 469 : 162 I.Ed., 439 (2005) 39 (2004) 2 SCC 9 : AIR 2004 SC 692 40 (2002) 1 SCC 273 : AIR 2002 SC 195 41 (2007) 10 SCC 748 : AIR 2007 SC 1561 42 (2008) 2 SCC 660 : AIR 2008 SC 1209 43 (1995) 4 SCC 683 : AIR 1995 SC 1991 44 (1997) 2 SCC 627 45 (2000) 2 SCC 48 : AIR 2000 SC 671 46 (2010) 7 SCC 129 : JT 2010 (6) SC 57

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