Sathee Premnath and Others Vs. Mysore Urban Development Authority and Others

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Court : Karnataka

Decided On : Jun-15-2011

Judge : V.G. Sabhahit &Amp; B. Manohar

Appeal No. : W.A.No. 1207 of 2008 (LB-RES) C/w W.A. Nos. 1275 of 2008 & 2349-50 of 2008, 1297 of 2008, 1280 of 2008, 1274 of 2008, 1277 of 2008, 1295 of 2008 & 351-352 of 2009, 1278 of 2008 & 2033 of 2008, 1279 of 2008 & 95-98 of 2009, 1276 of 2008, 1296 of 2008, 1281 of 2008 & 353 of 2009 & 1288 of 2008 (LB-RES)

Appellant : Sathee Premnath and Others

Respondent : Mysore Urban Development Authority and Others

Advocate for Pet/Ap. : For the Appellants: V. Srinivas Raghavan for M/s Indus Law, T.A. Karumbaiah, Advocates. For the Respondents: S.S. Naganand, Sr. Advocate. for J. Rangarajan, Adv. for C/R4. Smt. Geetha Devi for M/s. M.P. Associates for C/R2, P.S. Manjunath for R1. E.S. Ind

Judgement :

(Prayer: Writ Appeal No.1288/2008 is filed U/s 4 of the Karnataka High Court Act praying to set aside the order passed in the writ petition No.21155/2005 dated 25/7/2008.)

1. These writ appeals are filed by the petitioners in W.P.No.7226/2007 and connected writ petitions wherein the learned Single Judge, by common order dated 25-7-2008 has dismissed the writ petitions with certain observations.

2. All these writ appeals are disposed of by this common order since the common questions of fact and law pertaining to the acquisition of the properties belonging to the petitioners in the writ petitions out of which, these appeals arise, by the City Improvement Trust Board (hereinafter called the 'CITB') which is now succeeded by the Mysore Urban Development Authority (hereinafter called 'MUDA').

3. For the purpose of convenience, the facts pertaining to W.P.No.7226/2007, the order which has been challenged in W.A.No.1207/2008 being the main case to which other appeals are tagged on, are as follows:

It may be stated at the outset that averments made in the other writ petitions are also similar.

It is averred in W.P. No.7226/2007 that the petitioners are the descendants of late Sri Raibahadur Bakshi Narasappa, who was the Minister of Finance in the erstwhile State of Mysore under His Highness Krishnaraja Wodeyar Bahadur III. Late Bakshi Narasappa owned amongst others, land measuring over 35190 sq.ft or 3270 sq.mtrs, coming with the area now called Makkaji Chowk at Mysore. In the year 1857, late Bakshi Narasappa constructed two temples, one Sri Anjaneyaswamy temple and the other Sri Subramanyeshwara temple and one chatram on the said lands. He also started a Sanskrit Institution known as Sharada Vilasa Pathasala to impart Vedas and Shastras. He also constructed shops on the said lands. The said shops bear the present door Nos.D.1/1 to 1/11 (old Nos.11/1 to 11/9) and D.2 to D.2/11 (old Nos.1 to 4-6). Apart from the above shops, he had also got constructed other shops bearing door Nos.2/12 to 2/19 and 4/2. The said Bakshi Narasappa died on 21-8-1878 and left behind a Will dated 22-9-1873 bequeathing several movable and immovable properties including the properties in Makkaji Chowk appointing his wife Smt. Lakshmidevamma as the Executor. There was an order exempting payment of tax in respect of the schedule property and when erstwhile Mysore City Council, predecessor of the second respondent herein. Council, predecessor of the second respondent herein, during the year

1937 sought to levy and collect taxes on the shops belonging to late Bakshi Narasappa, grandfather of the petitioners filed a suit and the Court upheld the exemption granted in favour of late Bakshi Narasappa. It is averred that over the years, several developments and changes have taken place on the schedule land. On the north eastern portion of Makkaji Chowk, there were 23 shops and on the Northwestern portion, there were 9 shops constructed. The shops bear the door Nos.D.1/1 to 1/11 (old Nos.11/1 to 11/9) and D.2 to 2/11 (old Nos.D1 to D.4-5-6) which are on the north eastern side and door Nos.2/12 to 2/19 and 4/2 are on the north western side. The shops on the north western side were notified by the authorities on 26-6-1989 and were acquired by the authorities on 26-6-1989 and were acquired by the authorities after granting compensation to the petitioners. The remaining shops on the north eastern side belonging to the petitioners continue to remain under their ownership who are descendants of late Bakshi Narasappa.

4. It is the further case of the petitioners that in the year 1971, a notification was issued under Section 18(1) and (2) of the City of Mysore Improvement Act, 1903 and the then Government of Mysore sought to acquire the schedule property along with adjacent vacant land and thereafter the proceedings were not continued by the authorities. When the things stood thus. MUDA issued a notification dated 26-6-1989 notifying some of the shops bearing Door Nos.2/12 to 2/19 and 4/2 for acquisition. The petitioners were surprised to see the notification, as some of the shops notified earlier for acquisition had not been continued and no compensation was received by them. The said notification was challenged in W.P.No.15068/1989 and in the said writ petition, respondents filed objections stating that acquisition had not been completed and therefore on the basis of the submission made by the respondents, writ petition was disposed of with liberty to the petitioners to approach the authorities for determination of the compensation. It is further averred in the petition that since the notification issued in the year 1971 has been lapsed for non implementation of the scheme and acquisition was not completed, notification was again issued on 26-6-1989 for acquiring some property for the purpose of constructing shopping complex by the Corporation of City of Mysore. The petitioners have been in possession of the schedule property as referred to above through their tenants as shops have been let out to the tenants.

After the petitioners succeeded to the properties and were in possession and enjoyment of the same, made an application for change of khata on 30-7-2002 which was rejected by the order passed by the Corporation of the City of Mysore on 25-11-2002 on the ground that the said properties stood acquired by virtue of notification issued in the year 1971 and the said properties belong to the Corporation of City of Mysore. Being aggrieved by the same, W.P.Nos.26179 and 34325 to 34331/2003 were filed seeking for a direction to the second respondent to issue khata in the names of the petitioners in respect of the said properties. The said writ petition was allowed by order dated 23-2-2006. Thereafter, khata was made in the name of the petitioners. The petitioners came to know that Corporation of City of Mysore - second respondent entered into a Concession agreement with the fourth respondent on 25-5-2006 as per Annexure-G to the writ petition permitting the fourth respondent to put up shopping complex in an area comprising of 4 acres 19 guntas including the area in possession of the petitioners especially the shops and the land adjacent to them. The petitioners claim that second respondent had not acquired any ownership over the properties in the possession of the petitioners.

5. Since respondents-2 and 4 tried to cordon off the properties to put up construction as per the Concession agreement and therefore, the petitioners have filed the writ petition contending that act of the second respondent - Corporation of the City of Mysore in granting concession and entering into an agreement in favour of fourth respondent in respect of the lands of the petitioners and the action of second and fourth respondents in trying to take possession of the schedule property are arbitrary and illegal and violative of Articles 14, 19 and 21 of the Constitution of India. It is contended that the second respondent is attempting to take away the rights of the property which are substantial means of sustenance to the petitioners and respondents are seeking to deprive right to the property of the petitioners without following due process of law and the same is in violation of Article 300A of the Constitution. It is also contended that the second respondent could not have granted any concession in favour of fourth respondent by the agreement dated 25-5-2006 as the second respondent had not acquired ownership of the schedule properties as the schedule properties are in possession and enjoyment of the petitioners as owners and since acquisition proceedings

were not continued, scheme has elapsed and khata has been entered in their names. It is further contended that MUDA has also admitted that the acquisition proceedings was not completed and therefore, second respondent could not have entered into a Concession agreement with the fourth respondent and therefore, since scheme has elapsed and petitioners have continued to be in possession of the properties in question, the writ petition has been filed for the following reliefs:

[1] A writ declaring that the Concession Agreement entered into by the second respondent in favour of the fourth respondent at Annexure-H in so far as it concerns the schedule property belonging to the petitioners is illegal, arbitrary, null and void:

[2] A writ, order or direction directing the respondents not to interfere with the possession enjoyment of the schedule property by the petitioners.

[3] A writ granting costs and such other reliefs as this Hon'ble Court may deem fit in the circumstances above."

6. The writ petition was resisted by the respondents-2 and 4 by filing statement of objections.

7. The second respondent filed statement of objections and produced Annexures-R1 to R-7. In the objections second respondent has stated that the averments made in the writ petition that agreement entered into by the second respondent with the fourth respondent is illegal and contrary to law and action of the respondents is violative of Articles 14, 16 and 21 of the Constitution of India and Article 300 of the Constitution of India are denied. The averments made in the writ petition that the earlier acquisition which was commenced in the year 1971 was not completed and possession was not taken and the scheme had elapsed is denied by the second respondent. It is averred that it is true that late Bakshi Narasappa owned lands in Makkaji Chowk area measuring over 35,190 sq.ft or 3270 sq.mtrs and he had built shops bearing Nos.D.1 to D/1/11 (old Nos.11/1 to 11/9) and D.2 to D.2/11 [old] Nos.1 to 4-5-6) and he had also constructed other shops bearing door Nos.2/12 to 2/19 and 4/2. It is also averred that respondents had initiated the acquisition proceedings in respect of all these shops. The

allegations of the petitioners that the shops on the north western side bearing door Nos.2/12 to 2/19 and 4/2 have been acquired by the authorities and have granted compensation are true. Further, the allegations made in the petition that remaining shops in the north eastern side continued to remain in the names of the petitioners and that the proceedings initiated for acquisition of the said property has not reached logical conclusion are false. The entire property including the shops property in question was notified for acquisition under Section 16(1) of the Mysore City Improvement Trust Board Act, 1965 by notification dated 15-12-1965 and after observing all the formalities, the State Government issued notification dated 9-11-1971 under Section 18(1) and (2) of the Mysore City Improvement Trust Board Act, declaring all the properties mentioned in the notification, required for public purpose for improvement in the Makkaji Chowk. Gandhi square and Town Hall areas of Mysore City. In pursuance of the said notification, the Land Acquisition Officer, Mysore City Improvement Trust Board, had issued a notice dated 12-6-1972 in LAC No.1 and 2/1972-73 to the petitioners' predecessors in title with regard to determination of compensation. The said notice was served on Sri S. Sheshagiri Rao, who was residing at the temple. The predecessors of the petitioners entered appearance and filed objections in the acquisition proceedings. Thereafter, Special Land Acquisition Officer has passed an award dated 1-4-1975 awarding a sum of Rs.73,766.75. A copy of the award is produced as Annexure-R3 to the writ petition. It is averred that the said property has been acquired for the development of Makkaji Chowk area and the predecessors in title of the petitioners have participated in the proceedings and the petitioners were aware of all the developments and they have not challenged the acquisition proceedings.

Further, it is averred that the acquisition was notified for the purpose of determination of the existing building in an area known as Makkaji Chowk which was a constructed shopping complex. The second respondent had intended to build a new shopping complex in the area and after the formalities, acquisition was complete and certain portions of the shops were also taken possession. The second respondent has deposited the entire amount of compensation payable for the acquired lands in the year 1973. Therefore, the second respondent was corresponding with the erstwhile CITB to complete the acquisition proceedings and at the same time, the plan for the proposed commercial complex was ready

and was submitted to the first respondent for approval. Thereafter, tenders have been invited for putting up the construction of shopping complex in the said area. It is averred that after some time, occupants of the building approached the State Government seeking allotment of alternate shops to them. The Government, accordingly, issued an order dated 24-12-1997 stating that the occupants shall not be disturbed from the possession of the property until alternate arrangements are made for their relocation by the second respondent. The symbolic possession of the properties were taken and delivered to the second respondent and all the properties were entered in the property register of the second respondent as its property. It is further averred that the second respondent had raised a loan from HUDCO and loan to the tune of Rs.244.58 lakhs which was sanctioned by HUDCO towards first phase. In the meanwhile, the Government rejected the plan submitted by the second respondent. Thereafter, steps were taken from February, 1979 to redo the plan with the architects. In the meanwhile, HUDCO declined to extend the time for loan and on the direction from HUDCO, the second respondent had to withdraw the loan application that was submitted to HUDCO. Thereafter the Corporation was negotiating with the Government and a revised plan was submitted in December, 1983. It was noticed that some of the shops were not notified for acquisition and fresh proceedings for acquisition were initiated in the year 1989 by issuing preliminary notification on 26-6-1989 and final notification on 7-11-1991 and possession was also taken on 4-3-1993. Thereafter, in the year 1994 the second respondent began correspondence with HUDCO for fresh loan in March, 1995 and fresh tenders were invited for construction of the Commercial complex. During the year 1995, the tenants in occupation of the shops in the property notified for acquisition, filed O.S.No.280/1995 on the file of 1 Addl.Civil Judge (Jr.Dn), Mysore for injunction restraining the second respondent from interfering with the plaintiffs possession and enjoyment of the property. Subsequently, the plaintiffs entered into a compromise agreement dated 20-10-2000 to deliver possession of the property and agreed to vacate the premises. The second respondent had undertaken to construct a permanent commercial complex on this land with a condition to provide shops on rental basis to the plaintiff in the newly constructed complex. Thereafter the process of executing the scheme of constructing a commercial complex was approved by the Municipal Council on 30-

12-2004. Thereafter the respondent corresponded with the Government and sought for its approval. The Government gave permission imposing certain conditions. Thereafter, after fulfilling the conditions, tenders were called for and the work of putting up construction has been entrusted to fourth respondent and the Government by its order dated 2-4-2006 had withdrawn its earlier order dated 24-12-1977 and gave permission to the second respondent to proceed with the scheme. Thereafter the declaration under Section 16(2) of the Land Acquisition Act was passed on 3-5-2007 and possession was formally handed over to the second respondent on 5-5-2007. The allegation in the writ petition that second respondent could not have entered into concession agreement in favour of fourth respondent is denied. It is averred that the writ petition is devoid of merit.

8. The fourth respondent, in its statement of objections, denied the averments made in the writ petition regarding acquisition of the property belonging to the petitioners in the year 1971 and the said scheme had elapsed and since no further steps were taken, petitioners continued to be in possession and enjoyment of the schedule property. It is also averred that grievance of the petitioners are confined to property bearing Nos.D.1/1 to D1/11 and D2, D2/1 to D2/11 which are the subject matter of the writ petition, there is preliminary notification and final notification followed by award and which is referred to in the order dated 23-2-2006 passed in W.P.No.26179/2003 seeking transfer of khata in regard to the said properties and the said petition was allowed only on the ground that possession of the subject properties had not been taken and no notification as contemplated under Section 16(1) of the Land Acquisition Act is issued. Thereafter, notification under Section 16(1) of the Land Acquisition Act was issued on 10-5-2007. Therefore, the writ petition is meritless.

It is further averred that acquisition proceedings commenced in the year 1971 has been completed, award has been passed and possession has been taken. The petitioners suppressed the fact about completion of the acquisition proceedings and passing of the award and even receipt of compensation. Therefore, fourth respondent contends that the proceedings are barred by the principles of resjudicata. It is also averred that fourth respondent had submitted its tender for execution of the work of constructing the commercial complex and the same has

been accepted. It is also averred that a public interest litigation is filed in W.P.No.6781/2006 which is disposed of by this Court on 31-5-2006 and a copy of which is marked at Annexure-R6.

9. The learned Single Judge, having regard to the contentions of learned counsel appearing for the parties and having regard to the pleadings, held that there is inordinate delay on the part of the petitioners in approaching this Court; the delay in implementation of the scheme was due to various Government Orders and the order of the Minister to frame a rehabilitation scheme and till then not to take possession of the land and also due to several litigation pending before the Civil Court and this Court due to which scheme could not be implemented. The learned Single Judge observed that as per the submission made by the counsel for the respondents that 85% of the persons whose properties have been acquired, have come forward to accept the scheme offered i.e., 250 sq.ft accommodation free of cost for a period of forty years either to have their own shop or to let out and only for the sake of the petitioners, acquisition proceedings cannot be quashed. The learned Single Judge held that in view of the undertaking given by the second and fourth respondents, if the petitioners are not satisfied with the offer, without interfering with the acquisition proceedings, in order to safeguard the interest of the petitioners, the second respondent was directed to consider the representation if given by the petitioners to find out some other place apart from 250 sq.ft. which is offered and to give them accommodation elsewhere on lease basis for their rehabilitation, on priority and passed the following order:

“However, in view of the ratio laid down by the Apex Court in various decisions and also when there is an undertaking given by the builder as well as the Corporation to provide 250 sq.ft to these petitioners as well, that would serve the interest o the petitioners. Apart from that, if the petitioners are not satisfied with the offer, without interfering with the acquisition proceedings and although there is delay in implementing the scheme, holding that it is due to the contribution of the petitioners also in view of the various litigation, in order to safe guard the interest of the petitioners, it is for the respondent Corporation to consider the representation, if given by the petitioners, to find out some other place apart from 250 sq.ft which is offered and to give them accommodation elsewhere on lease

basis for their rehabilitation, on priority.

With the above observations, petitions are dismissed."

10. Being aggrieved by the above said order passed by the learned Single Judge, this appeal is filed by the unsuccessful petitioners.

11 The learned counsel for the appellants submitted that the scheme had lapsed since it was not implemented within five years as per the provisions of the Act and the said period of five years is contemplated for completing the scheme and though the provisions of Section 11A of the Act may not be applicable to the acquisitions under the Bangalore Development Authority Act, the period of five years for expiry of the scheme would itself indicate that the entire scheme should be implemented within five years from the date of final notification. He further submitted that possession of the property is continued to be with the appellants and the possession certificate and the mahazar are drawn in paper without taking actual possession of the property and therefore, acquisition proceedings are vitiated and the scheme has lapsed. He further submitted that though acquisition had been challenged in the earlier proceeding, the question as to whether the scheme had elapsed was not considered and therefore the writ petitions ought to have been allowed by the learned Single Judge and the learned Single Judge was not justified in holding that the writ petitions are devoid of merit.

In support of his contention, he has relied on the decisions of the Supreme Court in Nagindas Ramdas vs Dalpatram Iccharam Alias Brijram and Others (AIR 1974 SC 471) and Offshore Holding Pvt. Ltd vs Bangalore Development Authority and others (2011(1) Scale 533) wherein the Hon'ble Supreme Court has observed that Section 27 of the Bangalore Development Authority Act imposes an obligation upon the Authority to complete the scheme within a period of five years and if the scheme is not substantially carried out within that period, it shall lapse and the provisions of Section 36 shall become inoperative i.e., the provision which provides for serious consequences in the event the requisite steps are not taken within the specified time. He has also relied on the decision of this Court in Khoday Distilleries Ltd. vs The State of Karnataka and Others (ILR 1997 KAR 1419) wherein it has been held that the provisions of Land Acquisition Act as are made

applicable in the BDA Act are attracted except Section 6 and 11-A which are excluded from application to acquisition under the BDA Act. He has also relied upon the decision of the Supreme Court in Munithimmaiah vs State of Karnataka and Others [(2004) 4 SCC 326) wherein it has been stated that the provisions of Section 11-A of the Land Acquisition Act is not applicable to the acquisition under the BDA Act However, the scheme is required to be completed within five years. The learned counsel has also relied upon the decision of the Division Bench of this Court in Urban Development Authority. Shimoga vs State of Karnataka and Others (2004(5) Kar.L.J. 233) wherein this Court has considered the provisions of Section 27 of the Karnataka Urban Development Authorities Act, 1987 and held that in computing the period of five years, period during which authority was prevented from taking possession of acquired land to implement scheme on account of interim order of stay by Court, has to be excluded even though there is enabling provision in the Act to do so. The learned counsel has also relied upon the decision of the Division Bench of this Court in M.B. Ramachandran vs State of Karnataka (ILR 1992 KAR 174) wherein scope of Section 27 of the BDA Act has been considered and it has been laid down that literal interpretation is not to be placed on Section 27 of the BDA and failure to execute the scheme due to dereliction of statutory duties and period of five years to be read and construed as from date of taking possession of lands and not from the date of declaration under Section 19 and Section 36 applies to the provisions of Land Acquisition Act for passing of the award after taking possession and BDA cannot be blamed for delay in passing of award and if from the date of taking possession scheme is not executed substantially within five years, it is not open to seek relief under Section 27 of the BDA Act.

12. The learned counsel appearing for the respondents submitted that acquisition proceedings in these appeals had become final: possession of the property has been taken and land has vested with the acquiring authority and handed over to the fourth respondent and the validity of the contract entered into with the fourth respondent has been upheld by this Court: that therefore, the order of the learned Single Judge is justified and the appeals are devoid of merit. The learned counsel further submitted that there is substantial compliance of the provisions of the scheme and substantial number of persons whose lands have been acquired have

entered into an agreement and accepted the offer proposed by the respondents and the same offer was also offered to the appellants but the same has been declined by them. Therefore, appeals are liable to be dismissed.

13. In reply, learned counsel appearing for the appellants submitted that katha was changed in the name of the appellants and possession was continued to be with the writ petitioners - appellants herein and in earlier writ petition there is a finding that possession had continued with the appellants and therefore change of khata was justified as per the order passed in W.P.No.26179/2003 dated 23-2-2006 and no material is produced to show that possession is taken thereafter and therefore, petitions ought to have been allowed by the learned Single Judge and the appeals may be allowed by setting aside the order passed by the learned Single Judge.

14. We have carefully considered the contentions of learned counsel appearing for the parties and scrutinized the material on record.

15. The material on record would clearly show that the subject matter of these appeals have been acquired is indisputable in view of the earlier proceedings and also the fact that award has been passed. It is the contention of the respondents in these appeals, possession of the property has already been taken and handed over to the fourth respondent and the land is vested with the authority. A copy of the notification and the mahazar has been produced. The very fact that this Court has observed that as on the date of disposal of W.P.No.26179/2003 on 23-2-2006 the appellants herein had continued to be in possession of the property which would not necessarily mean that appellants have been in possession of the property even on the date of writ petition and the material on record would clearly show that possession has been taken on 21-4-2007 vide Gazette notification dated 3-5-2007 and handed over to the fourth respondent on 18-6-2007 as per Annexure-R1 and R4 respectively produced along with statement of objections by fourth respondent. The possession taken was symbolic as admittedly, appellants were not in possession of the schedule property and the schedule property was in possession of the tenants. The appellants have not challenged the acquisition proceedings in the writ petitions and the prayer in the writ petitions is only to declare that the agreement entered into between the second respondent and the

fourth respondent is void insofar as it relates to the schedule property and direction may be issued to the respondents not to interfere with the possession and enjoyment of the schedule property by the appellants.

16. The question as to whether the agreement entered into between the second respondent and the fourth respondent is void and as to whether the schedule property has been acquired for the public purpose is no longer a res-integra as the said questions have been decided by this Court and have become final as per the order passed by this Court in W.P.No.6781/2006 decided on 31-5-2006 wherein public interest litigation has been filed contending that contract entered into between the second respondent and the fourth respondent herein is illegal and void, this Court after considering the contentions of learned counsel appearing for the parties, has held that property has been acquired for public purpose i.e., improvement of area in Makkaji Chowk by putting up commercial complex and award of concession agreement in favour of fourth respondent is justified and is in accordance with law and it is not necessary to go into the validity of the agreement and the prayer sought for by the petitioner to declare that the contract is void.

17. In view of the above said decision of the Division Bench of this Court in W.P.No.6781/2006 dated 31-5-2006, the contention of the learned counsel appearing for the appellants that the possession has not been taken and land is not vested with the acquiring authority nor handed over to the fourth respondent; and that the possession cannot be symbolical cannot be accepted as it is not disputed that the appellants herein are only in constructive possession as the schedule property is in possession of the tenants. The acquisition proceedings have not been challenged. Award has been passed. The proceedings of the meeting convened by the second respondent second respondent and handing over of possession to the fourth respondent has been produced along with the statement of objections by second respondent as per Annexures-R5, R6 and R7. The material on record would clearly show that the order passed by the Government not to take possession of the property physically till the persons to be evicted - the tenants are rehabilitated, was in force and therefore possession could not be taken and a copy of the said communication is produced by the second respondent at Annexure-R4. It is clear from the scrutiny of the material on record

that there is no material on record to show the lapse on the part of the development authority in implementation of the scheme as the construction of the commercial complex has already been commenced and substantial numbers of owners have accepted the compensation and also the offer made to the land owners that they would also be given space measuring 250 sq.ft in the newly built complex. Though the appellants were also offered the same, appellants did not accept the same. The fact that the construction of the complex has already been commenced and though according to the appellants, possession of the schedule property belonging to the appellants has not been taken, there is document to show that possession has been taken which would clearly show that even assuming the contention of the appellants, the mere fact that there is no development of the land belonging to the appellants which has been acquired, the same would not amount to lapsing of the scheme. The scheme would lapse only when there is no substantial compliance of he scheme and that is attributable to the negligence of the BDA. The material on record would clearly show that appellants have also litigated in the first instant to challenge the acquisition and the same was dismissed and thereafter they have filed these writ petitions and there was an order by the Government as per Annexure-R not to take possession of the disputed property till arrangements are made. Therefore, in view of the fact that only small portion of the property belonged to the appellants has been acquired and there is substantial implementation of the scheme as already undertaken and construction of the complex has already been commenced, it is clear that the contention of the appellants that scheme has lapsed cannot be accepted in view of the principles laid down by this Court and that the scheme would lapse only when there is no substantial compliance of the scheme and even assuming that possession is continued with the appellants, the said contention that scheme has lapsed cannot be accepted as the scheme can be implemented only after possession is taken and according to the respondents, possession has been taken on 3-5-2007 and therefore five years has not lapsed from the date of taking possession and therefore scheme is not lapsed. The land owners have received the compensation and have accepted the offer made by the respondents for allotment of shops in the new shopping complex to be built. However, the said proposal has been kept open in respect of the appellants also. The learned Single

Judge has stated that it is open to the appellants to accept the same and shall give representation to the respondent-corporation and the same shall be considered. Therefore, interest of the appellants also have been sufficiently safeguarded. Therefore, we hold that all these appeals are devoid of merit and are liable to be dismissed. Accordingly, we pass the following order:

ORDER

The appeals are dismissed. However, there is no order as to costs in these appeals.