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**Court : Karnataka**

**Decided On : May-30-2011**

**Judge : The Honourable Mrs. Justice B.V. Nagarathna**

**Appeal No. : Writ Petition Nos.38964-968 of 2010 (LA-RES)**

**Appellant : S. Rekaha and Others**

**Respondent : State of Karnataka, Department of Housing and Urban Development, Represented by Its Secretary and Others**

**Advocate for Pet/Ap. : For Petitioners: X.M. Joseph, Advocate. For Respondents: R1 - H. Venkatesh Dodderi, AGA.**

**Judgement :**

(Prayer: These writ petitions are filed under Article 226 of Constitution of India praying to hold that the Acquisition of the writ petition schedule land by Annexure-C dated 21.4.04 issued by the 2<sup>nd</sup> respondent and 3<sup>rd</sup> respondent, Annexure-D dated 3.2.2005 issued for and on behalf 1<sup>st</sup> respondent as statutory lapsed by virtue of Section 11-A of the Land Acquisition Act, 1894.)

1. In these writ petitions, petitioners have challenged the notification dated 21.04.204 at Annexure-‘C’ issued by respondent Nos.2 and 3 and notification dated 03.02.2005 which is produced at Annexure-‘D’ by contending that

acquisition has lapsed in the instant case on account of non-compliance with Section 11-A of the Land Acquisition Act, 1894 (hereinafter referred to as the 'LA Act').

2. According to the petitioners, the scheduled land bearing Sy.No.87/2 measuring 2 acres 22 guntas at Devanoor Village of Kasaba Hobli, Mysore Taluk was an ancestral property of one Javaraiah and after his death his successors along with the father of the petitioners succeeded to the said property. During the minority of the petitioners, their grand father had sold 21 guntas of the said land to one Mohammed Umar Madani on 26.04.2003. Thereafter the Commissioner of the 3<sup>rd</sup> respondent issued notification under Section 17(1) of the Karnataka Urban Development Authorities Act, 1987 on 21.04.2004 (hereinafter referred to as '1987 Act') proposing to acquire the scheduled land. The said notification was challenged in W.P.No.34808/2004 by the purchaser-Mohammed Umar Madani. Thereafter on 03.02.2005 in exercise of the power conferred under Section 19(1)(2) of the 1987 Act, final notification was issued. After issuance of the preliminary notification, petitioners' grand father had also filed W.P.No.1973/2006 before this Court. The said writ petition was however disposed of on 08.01.2007 reserving liberty to the petitioners' grand father to file objections to the preliminary notification. The 3<sup>rd</sup> respondent thereafter issued notice dated 12.04.2007 and on 24.11.2007 an award was made in respect of the scheduled land as per Annexure-'H'. Being aggrieved by the said award, the petitioners have filed these writ petitions contending that the award has been made beyond two years from the issuance of the final notification and therefore there being violation of Section 11-A of the LA Act the acquisition has lapsed.

3. I have heard the learned counsel for the petitioners. He submits that in the instant case, the preliminary notification was issued on 21.04.2004 and the final notification was issued on 03.02.2005 and that the award ought to have been passed within two years from the date of final notification but in the instant case the award has been passed on 24.11.2007 which is beyond the prescribed period under Section 11-A of the LA Act and therefore the acquisition of the land as far as the schedule land belonging to the petitioners is concerned has lapsed. Learned counsel for the petitioners also submits that Section 11-A provides substantive

right to the land owners and therefore such right has to be mandatorily made applicable to the provisions of the 1987 amendment also.

4. Having heard the learned counsel for the petitioners and on careful perusal of the materials on record, it is not in dispute that the preliminary notification is issued on 21.04.2004. The same is produced at Annexure-'C' to the writ petitions. The said notification is followed by the declaration/final notification dated 03.02.2005 under Section 19(1)(2) of the 1987 Act. Though in the said notification a declaration is made on 03.02.2005, there is no material produced to demonstrate that the award made on 24.11.2007 is beyond the prescribed period of two years as stated in Section 11-A of the LA Act. Merely because of the final notification issued on 03.02.2005 and the award passed on 24.11.2007, it cannot be held that there is violation of Section 11-A of the Act. The date on which the declaration has been published in the Gazette or newspapers have to be taken into consideration and it is only from the date of such publication of the declaration that the said statutory period of two years has to be reckoned. In the absence of there being any materials to that effect, the contention of the counsel for the petitioners that there has been a violation of the mandatory condition under Section 11-A of the LA Act cannot be accepted.

5. The other contention raised by the learned counsel for the petitioners is that Section 11-A is applicable to the provisions of 1987 Act and therefore the provisions of Section 11-A of the LA Act have to be read into the provisions 1987 Act and having regard to the same the award being made beyond a period of two years in the instant case the acquisition has lapsed.

6. It would be relevant to observe that in the first instance it has been stated supra that no material is placed before this Court to establish the fact that the award has been passed beyond a period of two years as is stated in Section 11-A of the LA Act. Even otherwise, I am of the considered view that the ratio of the decision of the constitution bench of the Apex Court in the case of OFFSHORE HOLDINGS PVT. LIMITED vs. BANGALORE DEVELOPMENT AUTHORITY and OTHERS, (2011) 3 SCC 139, is squarely applicable to the present case. No doubt in the said decision, the Apex Court has considered Section 27 read with Section 36 of the

Bangalore Development Authority Act, 1976 (hereinafter referred to as the 'BDA Act') and held that the concept of lapse of acquisition does not apply to the BDA Act. On the said premise, Section 11-A cannot be read into the provisions of the BDA Act and the statutory requirement that an award has to be passed within two years from the date of final publication of the declaration would not apply in the said Act. The Apex Court held as follows:

“Now, on this anvil, let us examine the provisions of the BDA Act. It is an Act which has a self-contained scheme dealing with all the situations arising from the formation of the scheme for planned development to its execution. It is not a law enacted for acquisition or requisitioning of properties. Various terms used in the Act, like amenity, civic amenities, betterment tax, building, operations, development, streets etc. are directly, and only, relatable to 'development' under a 'scheme' framed under the provisions of the Act, as observed in K.K. Poonacha (supra). The BDA Act also provides for an adjudicatory process for the actions which may be taken by the authorities or functionaries against the persons; except to the limited extent of acquisition of land and payment of compensation thereof. For that very purpose, Section 36 of the BDA Act has been incorporated into the provisions of Land Acquisition Act. To the limited extent of acquisition of land and payment of compensation, the provisions of the Land Acquisition Act would be applicable for the reason that they are neither in conflict with the State law nor do such provisions exist in that Act. The provisions of the Land Acquisition Act relating thereto would fit into the scheme of the BDA Act. Both the Acts, therefore, can co-exist and operate without conflict. It is no impossibility for the Court to reconcile the two statutes, in contrast to invalidation of the State law which is bound to cause serious legal consequences. Accepting the argument of the appellant would certainly frustrate the very object of the State law, particularly when both the enactments can peacefully operate together. To us, there appears to be no direct conflict between the provisions of the Land Acquisition Act and the BDA Act. The BDA Act does not admit reading of provisions of Section 11A of the Land Acquisition Act into its scheme as it is bound to debilitate the very object of the State law. The Parliament has not enacted any law with regard to development the competence of which, in fact, exclusively falls in the domain of the State Legislature with reference to Entries 5 and 18 of List II of Schedule VII. Both these

laws cover different fields of legislation and do not relate to the same List, leave apart the question of relating to the same Entry. Acquisition being merely an incident of planned development, the Court will have to ignore it even if there was some encroachment or overlapping. The BDA Act does not provide any provision in regard to compensation and manner of acquisition for which it refers to the provisions of the Land Acquisition Act. There are no provisions in the BDA Act which lay down detailed mechanism for the acquisition of property, i.e. they are not covering the same field and, thus, there is no apparent irreconcilable conflict. The BDA Act provides a specific period during which the development under a scheme has to be implemented and if it is not so done, the consequences thereof would follow in terms of Section 27 of the BDA Act. None of the provisions of the Land Acquisition Act deals with implementation of schemes. We have already answered that the acquisition under the Land Acquisition Act cannot, in law, lapse if vesting has taken place. Therefore, the question of applying the provisions of Section 11A of the Land Acquisition Act to the BDA Act does not arise. Section 27 of the BDA Act takes care of even the consequences of default, including the fate of acquisition, where vesting has not taken place under Section 27(3). Thus, there are no provisions under the two Acts which operate in the same field and have a direct irreconcilable conflict.

We have already held that the provisions of the BDA Act constitute a self-contained code in itself, object of which is planned development under the scheme and not acquisition of land. Thus, only those provisions of the Land Acquisition Act which relate to the acquisition, and have not been enacted under the State law, have to be read into the BDA Act. It has a self-contained scheme with a larger public purpose. The State Legislature is competent to enact such a law and it is referable to power and field contained in Article 246(2) of the Constitution read with Entries 5 and 18 of List II of Schedule VII. Such legislation may incidentally refer to the Land Acquisition Act for attaining its own object.”

7. Therefore, while giving an interpretation to Sections 27 and 36 of the BDA Act, the Apex Court has held that Section 11-A of the LA Act would not apply to the acquisition initiated under the provisions of the BDA Act.

8. In fact in an earlier decision of the Apex Court in the case of *MUNITHIMMAIAH v. STATE OF KARNATAKA*, (2002) 4 SCC 326, the scheme of the Land Acquisition Act as modified by the BDA Act in the context of Sections 17, 18, 27 and 36 of the BDA Act was considered in the following manner:

“So far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka Legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis--vis the Central Act has been analyzed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self-contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or *pari materia* legislation. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonable be stated that the subsequent amendments to the central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act. When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period

of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of the BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provision in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the BDA Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11-A, which cannot also on its own force have any application to actions taken under the BDA Act. Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in Khoday Distilleries Ltd. to exclude the applicability of Sections 6 and 11A as amended and inserted by the Central Amendment Act of 1984 to the proceedings under the BDA Act. The submissions to eh contra on behalf of the appellant have no merit whatsoever and do not commend themselves for our acceptance.”

9. Therefore, the concept of lapse of acquisition would not apply to 1987 Act also since the provisions of the BDA Act and 1987 Act are in pari materia. A comparison of the scheme of the two acts shows the identity of provisions. The object of the 1987 Act is to provide for the establishment of urban development authorities for the planned development of major and important urban areas in the state and areas adjacent thereto and for matters connected therewith. The object of the BDA Act is also similar. The expression ‘development’ is defined in Section 2(j) of the BDA Act with its grammatical variations to mean the carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes planning and redevelopment. Section 2(r) defines the expression ‘to erect’ and Section 2(k) defines ‘Engineering Operations’. These definitions are in pari materia with the definition of ‘development’ and ‘to erect’ under Section 2 of the 1987 Act. While construing the said definitions under the BDA Act, the Apex Court has held that the definitions clearly show that they were given a very wide meaning to ensure that the check on haphazard and unauthorised development is maintained which is so even under the 1987 Act.

10. The Urban Development Authority is constituted in terms of Section 3 of the 1987 Act and the object of the authority has been spelt out in Section 14, which are in pari materia with Sections 3 and 14 of the BDA Act, constituting the Bangalore Development Authority. The Apex Court has held that language of Section 14 shows that powers of wide magnitude are vested in the Authority and the purpose for which such powers are vested is absolutely clear from the expression “to do all things necessary or expedite for the purpose of such development and for purposes incidental thereto”. In other words, the primary purpose is planned development and other matters are incidental thereto. Acquisition of immovable property is, therefore, also for the aforesaid purpose alone.

11. Chapter III of the 1987 Act as well as the BDA Act deals with development plans. Under Section 15, the Authority has to draw up detailed schemes terms as ‘Development Scheme’. The Government in terms of Section 15(3) is empowered to direct the Authority to take up any development scheme subject to such terms and conditions as may be specified by it. Section 16(1) prescribes the particulars, which have to be provided in a development scheme. The same is so provided under Section 16(1) of the BDA Act also. It is necessary to observe that such acquisition is only in regard to the development scheme. Once the development scheme has been prepared, the Authority is expected to draw up a notification stating that the scheme has been made and give all the particulars required under Section 17 including a statement specifying the land which is proposed to be acquired and land on which betterment tax is to be levied. Section 17 of the 1987 Act is in pari materia with Section 17 of the BDA Act. A copy of the notification issued under Section 17 is required to be sent to the Government through the local authority, which is defined under the 1987 Act and in Section 2(n) to mean a Municipal Corporation or a Municipal Council constituted or continued under any law for the time being in force, which is obliged to forward the same to the appropriate Government within the specified time along with any representation, which the local authority may think fit to make with regard to the scheme. After receiving the scheme, the government is required to ensure that the notification is published in the Official Gazette and affixed in some conspicuous part of its own office as well as in such other places as the Authority may consider necessary. In

terms of Section 17(5) of the BDA Act, within 30 days from the date of publication of such notification in the Official Gazette, the Authority shall serve a notice on every person whose name appears in the assessment list of the Local Authority or the Land Revenue Register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax and to issue show cause notice giving thirty days time to the person concerned, as to why such acquisition of building or land and the recovery of betterment tax should not be made. Thus, the provisions of Section 17 of the BDA Act are of some significance. They describe various time frames within which the Authority/Government is expected to take action. A deemed fiction is introduced in terms of Section 17(4) of the BDA Act where if the local authority does not make a representation within the time specified under Section 17(2), the concurrence of the local authority shall be deemed to have been given to enable the authorities to proceed with the matter in accordance with Section 17(5) of the Act. Having gone through the prescribed process, the Authority is required to submit the scheme for sanction of the Government. The Authority has been given power to modify the scheme keeping in view the representations received. The scheme shall also provide for the various details as required under Sections 18(1)(a) to 18(1)(f) and 18(2) of the BDA Act. After considering this proposal, the Government may give sanction to the scheme in terms of Section 18(3). Upon sanction of the scheme, the Government shall publish, in the Official Gazette, a declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose. This declaration shall be conclusive evidence that the land is needed for a public purpose. The Authority has also been given the power to alter or amend the scheme if an improvement can be made. If the scheme, as altered, involves acquisition otherwise than by an agreement, then the provisions of Sections 17, 18 and 19(1) shall apply to the scheme in the same manner as if such altered part were the scheme. This entire exercise is to be taken in terms of Section 19 of the BDA Act post grant of sanction in terms thereof.

12. The next relevant provision of significance, is Section 27 of the BDA Act as well as 1987 Act which reads as under:

“27. Authority to execute the scheme within five years.-Where within a period of five years from the date of the publication in the official Gazette of the declaration under sub-section (1) of Section 9, the Authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative.”

It places 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. This is a provision which provides for serious consequences in the event requisite steps are not taken within the specified time. Section 30 of the BDA Act as well as 1987 Act provide that the street, which are completed under the scheme, shall vest in the local authority as well as the open spaces as per Section 30(2). The disputes, if any, between the Authority and the local authority in respect of Sections 30(1) and 30(2) are to be referred for determination to the Government whose decisions shall be final. Section 31 of the BDA Act puts a rider on the right of the Authority to sell or otherwise dispose of sites, which is so under the 1987 Act also. Sections 32 to 34 of the BDA Act deal with imposition of restriction by virtue of the provisions of the Act where no person shall form or attempt to form any extension or layout for the purposes of constructing building thereon without the express sanction in writing of the Authority and except as per the conditions stated therein. In terms of Section 32(6) of the BDA Act, the Authority may refuse such sanction but where it does not refuse sanction within six months from the date of application made under sub-section (2) or from the date of receipt of all information asked for under sub-section (7), such sanction shall be deemed to have been granted and the applicant has the right to proceed to form the extension or layout or to make the street but not so as to contravene any of the provisions of the Act or the Rules made thereunder. The above restrictions are prescribed under Section 32 of the 1987 Act also. Similarly, alteration, demolition of extension is controlled by Section 33 in both the Acts. Section 34 of the BDA Act as well as 1987 Act empowers the Authority to order work to be carried out or to carry it out itself in the event of default. It is possible that some land may have to be acquired for the purpose of completing the scheme; such land has to be identified in the scheme itself as per Section 16 of the BDA Act.

13. Chapter IV of the BDA Act as well as 1987 Act deals with 'acquisition of land'. This Chapter contains only two sections, i.e. Sections 35 and 36 which read as under:

“35. Authority to have power to acquire land by agreement-subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, whether situated within or without the Bangalore Metropolitan Area for the purchase of such land.

36. Provisions applicable to the acquisition of land otherwise than by agreement.-  
(1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.

(2) For the purpose of sub-section (2) of Section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government under Section 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer upon the Authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority.”

14. The Apex Court has interpreted these provisions by observing that they postulate acquisition of land by two modes. Firstly, by entering into an agreement with the owner of the land; and secondly, otherwise than by agreement which shall be regulated by the provisions of Land Acquisition Act, in so far as they are applicable. Where the lands are acquired by agreement, there would be hardly any dispute either on fact or in law. Controversies, primarily, would arise in the cases of compulsory acquisition under the provisions of the Act. The intention of the Legislature, thus, is clear to take recourse to the provisions of the Land Acquisition Act to a limited extent and subject to the supremacy of the provisions of the State

Act. A very important aspect which, is specified in the BDA Act is that once the land is acquired and it vests in the State Government in terms of Section 16 of the Land Acquisition Act, then the Government upon (a) payment of the cost of acquisition and (b) the Authority agreeing to pay any further cost, which may be incurred on account of acquisition, shall transfer the land to the Authority whereupon, it shall vest in the Authority. The Government is further vested with the power to transfer land to the Authority belonging to it or to the local authority as per Section 37 of the BDA Act. Sections 35, 36 and 37 of the 1987 Act are similar to the provisions of the BDA Act.

15. In terms of Section 69 of the BDA Act, the Government is empowered to make rules to carry out the purposes of the Act. Under Section 70, the Authority can make regulations not inconsistent with the provisions of the Act, while in terms of Section 71, the Authority is again vested with the powers to make bye-laws not inconsistent with the Rules or the Regulations. Both these powers of the Authority are subject to previous approval of the Government. These provisions are at Sections 71, 72 and 73 respectively of the 1987 Act. It is not necessary to deal with other provisions of the BDA Act as they hardly have any bearing on the controversy in question.

16. The provisions of the Land Acquisition Act, which provide a time-frame for compliance and the consequences of default thereof, are therefore not applicable to acquisition under the 1987 Act or the BDA Act. They are Sections 6 and 11A of the Land Acquisition Act. As per Section 11A, if the award is not made within a period of two years from the date of declaration under Section 6, the acquisition proceedings will lapse. Similarly, where declaration under Section 6 of this Act is not issued within three years from the date of publication of notification under Section 4 of the Land Acquisition Act [such notification being issued after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of Central Act 68 of 1984] or within one year where Section 4 notification was published subsequent to the passing of Central Act 68 of 1984, no such declaration under Section 6 of the Land Acquisition Act can be issued in any of these cases.

17. A three Judge Bench of Apex Court in the case of **BONDU RAMASWAMY v. BANGALORE DEVELOPMENT AUTHORITY** [(2010) 7 SCC 129] while dealing with the contention that notification issued in terms of Section 17(1) and (3) of the BDA Act appears to be equivalent to Section 4 of the Land Acquisition Act and the declaration under Section 19(1) of the BDA Act appears to be equivalent to the final declaration under Section 6 of the Land Acquisition Act, held that all the provisions of the Land Acquisition Act would not apply to the acquisition under the BDA Act and only those provisions of the Land Acquisition Act, relating to stages of acquisition, for which there is no corresponding provision in the BDA Act, are applicable to an acquisition under the BDA Act. According to the Apex Court the provisions of Sections 4 and 6 of the Land Acquisition Act would not be attracted to the BDA Act as the Act itself provides for such mechanism. Be that as it may, it is clear that the BDA Act is a self-contained code which provides for all the situations that may arise in planned development of an area including acquisition of land for that purpose. The scheme of the Act does not admit any necessity for reading the provisions of Section 6 and 11A of the Land Acquisition Act, as part and parcel of the BDA Act for attainment of its object. According to the Apex Court the primary object of the State Act (BDA Act) is to carry out planned development and acquisition is a mere incident of such planned development. The provisions of the Land Acquisition Act, where the land is to be acquired for a specific public purpose and acquisition is the sum and substance of that Act, all matters in relation to the acquisition of land will be regulated by the provisions of that Act. The BDA Act has provided its own scheme and provisions for acquisition of land. The co-relation between the two enactments is a very limited one. The provisions of Land Acquisition Act would be attracted only in so far as they are applicable to the State law. Where there are specific provisions under the BDA Act the provisions of Central Act will not be attracted. Furthermore, reading the provisions of default and consequences thereof, as stated under the Central Act into the State Act (BDA Act), is bound to frustrate the very scheme formulated under the State Act. Only because some of the provisions of the Land Acquisition Act are attracted, it does not necessarily contemplate that all the provisions of the Central Act would per se be applicable to the provisions of the State Act irrespective of the scheme and object contained therein. The Authority under the BDA Act is vested

with complete powers to prepare and execute the development plans of which acquisition may or may not be a part. The provisions of the BDA Act can be implemented completely and effectively on their own and reading the provisions of the Land Acquisition Act into the State Act, which may result in frustrating its object, is not called for. The provisions of Section 27 of the BDA Act mandate the Authority to execute the scheme, substantially, within five years from the date of publication of the declaration under sub-section (1) of Section 19. If the Authority fails to do so, then the scheme shall lapse and provisions of Section 36 of the BDA Act will become inoperative. The provisions of Section 27 have a direct nexus with the provisions of Section 36 which provide that the provisions of the Land Acquisition Act, so far as they are applicable to the State Act, shall govern the cases of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject matter of execution under the provisions of the BDA Act. On a conjunct reading of the provisions of Sections 27 and 36 of the State Act, it is clear that where a scheme lapses the acquisition may not. This, of course, will depend upon the facts and circumstances of a given case. Where, upon completion of the acquisition proceedings, the land has vested in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act. An argument to the contrary was not accepted for the reason that on vesting, the land stands transferred and vested in the State/Authority free from all encumbrances and such status of the property is incapable of being altered by fiction of law either by the State Act or by the Central Act. Both these Acts do not contain any provision in terms of which property, once and absolutely, vested in the State can be reverted to the owner on any condition. There is no reversal of the title and possession of the State. However, this may not be true in cases where acquisition proceedings are still pending and land has not been vested in the Government in terms of Section 16 of the Land Acquisition Act. What is meant by the language of Section 27 of the BDA Act, i.e. "provisions of Section 36 shall become inoperative", is that if the acquisition proceedings are pending and where the scheme has lapsed, further proceedings in terms of Section 36(3) of the BDA Act, i.e. with reference to proceedings under the Land Acquisition Act shall become inoperative. Once the

land which, upon its acquisition, has vested in the State and thereafter vested in the Authority in terms of Section 36(3); such vesting is incapable of being disturbed except in the case where the Government issues a notification for re-vesting the land in itself, or a local authority, or a local Authority in cases where the land is not required by the Authority under the provisions of Section 37(3) of the BDA Act. This being the scheme of the acquisition within the framework of the State Act, read with the relevant provisions of the Central Act, it will not be permissible to bring the concept of 'lapsing of acquisition' as stated in the provisions of Section 11A of the Land Acquisition Act into Chapter IV of the BDA Act. The aforesaid observations are squarely applicable to the 1987 Act also.

18. However, in the instant case, the further contention of the learned counsel for the petitioners is that the BDA Act is an enactment which was in force prior to the amendment made to the LA Act by insertion of Section 11-A and that under those circumstances and on account of subsequent amendment to a general enactment (LA Act) the Apex Court has held that Section 11-A of the LA Act does not apply to the BDA Act. However, in the present case, the acquisition is made under 1987 enactment which is an enactment subsequent to the amendment made to the LA Act and therefore it cannot be said that the ratio of the decision in the case of OFFSHORE HOLDINGS PVT. LIMITED vs. BANGALORE DEVELOPMENT AUTHORITY and OTHERS would be applicable to the 1987 Act also. It is no doubt true that 1987 Act has come into force subsequent to the amendment made to the LA Act by insertion of 11-A to the said Act. However, the applicability of a provision in a statute by reference would not depend upon as to whether the general enactment (LA Act) is prior to a special enactment (1987 Act) or any amendment made to a general enactment would have a bearing on a special enactment which has come into force subsequent to the amendment made to the general amendment. Both the BDA Act as well as the 1987 Act are self-contained codes. A self-contained code is an exception to the rule of referential legislation. The slight overlapping would not take the colour of repugnancy. In such cases, the doctrine of pith and substance would squarely be applicable and rigours of Article 254(1) would not be attracted. Besides that, the reference is limited to specific provisions of the Land Acquisition Act, in the State Act.

19. As already stated, the object and scope of the BDA Act and the object and scope of the 1987 Act is common. The object of the BDA Act is planned growth and development of the city of Bangalore and areas adjacent thereto and in the case of the 1987 Act the object of the Act is to ensure a planned development of major and important urban areas in the State and the areas adjacent thereto. Therefore, while BDA Act is an enactment constituting a special planning Authority for the City of the Bangalore metropolis as far as other urban areas in the state is concerned the object is to have planned development of urban areas and therefore the same is regulated by the 1987 Act. Since the provisions considered by the Apex Court namely, Sections 27 and 36 of the BDA Act are in pari materia with the provisions of the 1987 Act, in my considered view, the ratio of the decision of the Apex Court in the case of OFFSHORE HOLDINGS PVT. LIMITED vs. BANGALORE DEVELOPMENT AUTHORITY and OTHERS is squarely applicable to the provisions of the 1987 Act also.

20. In the circumstances, the contention of the learned counsel for the petitioners that Section 11-A is applicable to the provisions of the 1987 Act is rejected. In the result, the writ petitions fail and accordingly the same are rejected.

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