

(2016) 03 KAR CK 0367

In the Karnataka High Court

Case No : W.A. Nos. 5279, 5280-5281 and 5282-5283/2003 (LA)

Bharath Earth Movers Gruha Nirmana, Sahakari Sangha
Niyamitha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 166
Land Acquisition Act, 1894 — Section 11, Section 16, Section 24, Section 3(f)(vi),
Section 38, Section 38, Section 39, Section 39, Section 4, Sect

Citation : (2016) AIRCC 2369 : (2016) 3 AirKarR 385 : (2016) 4 CivilLJ 356 :
(2016) ILRKarnataka 2338 : (2016) 5 KantLJ 214 : (2016) 2 KCCR 1761

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : T.S. Amar Kumar, Advocate for Lawyers Inc., T.S. Karumbaiah and
P.C. Vinitha, Advocates, for the Appellant; D. Aswathappa, AGA, for the
Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—1. These Writ Appeals are preferred calling in question the Judgment passed in Writ Petition Nos. 766/1997 c/w. 37048-49/1995 and 37227-28/1995 dated 7th April, 2003, wherein the learned single Judge quashed the acquisition proceedings initiated vide Notification dated 17.7.1992 in LAQ SR No. 304 of 1992-93 and also the final Notification dated 3.5.1993 in No. REV.DEPT.109.LAQ.MY.92 issued under the Land Acquisition Act, 1962 by the first respondent - State Government.

2. Before adverting to the grounds raised for challenging the orders passed by the learned single Judge, we prefer to have brief factual matrix of the case:

The appellant M/s. Bharath Earth Movers Gruha Nirmana Sahakari Sangha Niyamitha, Mysore, a Cooperative Housing Society sought for acquisition of

certain lands (hereinafter referred to as "Society" for short) situated at Bogadi village, Kasaba Hobli, Mysore Taluk, for the purpose of formation of residential sites for distribution amongst the members of the Society. The Government has issued a Preliminary Notification on 17.7.1992 and subsequently issued a Final Notification on 3.5.1993. Certain land owners who are arrayed as private respondents in these Writ Appeals have preferred various Writ Petitions challenging the said notifications issued by the Government and sought for quashing of the same on various grounds.

3. The respondent in Writ Appeal No. 5279/2003 Sri Channaiah, who is the owner of survey Nos. 241/2 and 242 measuring 24 guntas and 3 acres 27 guntas respectively filed Writ Petition No. 766/97. The respondents in Writ Appeal Nos. 5280/2003 and 5281/2003 by names Sri B.L. Chandrashekar, Smt. C. Lakkamma, Sri Chennappa and Sri Eranna Swamy who are the owners of land bearing Survey Nos. 241/2 and 242 to various extents filed Writ Petitions in Nos. 37048-37049/1995. The 3rd and 4th respondents in Writ Appeal Nos. 5282-83/2003 by names B. Basappa and B. Ningappa, who are the owners of Survey No. 235 measuring 2 acres 29 guntas, have filed Writ Petition No. 37227 and 37228/1995, and the 5th respondent in Writ Appeal No. 5282-83/2003 by name L. Sanjeeva, who is the absolute owner of Survey No. 266 measuring 5 acres 5 guntas, has filed Writ Petition Nos. 37227-28/1995.

4. The Writ Petitioners/respondents herein in the Writ Appeals have raised various grounds challenging the notifications. The important ground raised by the Writ Petitioners/respondents herein are that, the provisions under part VII of the Land Acquisition Act (hereinafter referred to "LA Act" for short) had not been complied and Sections 38 to 40 have not been strictly followed, therefore, the acquisition was illegal. Further, it was contended by the Writ Petitioners that there was no approval of any scheme as required u/s.3(f)(vi) of the LA Act. Further, before this court, the respondents have also raised a legal ground that in view of the new Land Acquisition Act, 2013, the acquisition has lapsed, as actual possession of the lands from the respondents has not been taken and that no amount of compensation was deposited before the court, nor paid to the land owners (writ petitioners).

5. The appellant herein seriously contested the above writ petitions by submitting that a scheme was submitted to the Government and the Government has approved the scheme as required under the statute and that the Government after complying all the legal requirements has acquired the land; that there is no legal lacuna in the acquisition proceedings.

6. After hearing the parties to the proceedings in detail, the learned single Judge by providing elaborate reasons, has quashed the acquisition notifications in so far as the lands in question owned by the Writ Petitioners.

7. We have heard the arguments of the learned counsels at length and in detail.

8. Sri Amar Kumar, learned counsel for the appellant-society has argued before

us in detail so far as the rights of the Writ Petitioners are concerned and the findings given by the learned single Judge and submitted that, Part VII of the Land Acquisition Act, 1894, which deals with the "Acquisition of land for Companies" is not applicable; therefore, none of the provisions of Sections 38 to 40 need be followed. It is also contended that Part VII of the Act is applicable only if the land is acquired for a Company. The appellant is not a Company, it is only a Society and the acquisition of land was sought for public purpose; therefore, Section 4 of the Act is applicable for the purpose of acquisition, under the Land Acquisition Act, 1894 (hereinafter called as "1894 Act" for short). It is further contended that the learned single Judge has misconstrued the formation of the scheme and the approval given by the Government.

8.1 Secondly, it is contended that, on considering the entire materials on record, the scheme can be inferred and it was well within the powers of the Government to accept such scheme and to approve the same. The materials placed on record and as well as the materials produced by the appellant clearly disclose that, the scheme was placed before the Government though it is not in detail but by providing list of members of the Society, requirement of number of sites and how those sites will be distributed etc., which are the factors sufficient to constitute a scheme. There is no specific definition given under the Act as to how the scheme should be. The said scheme was approved by the Government and the land has been acquired for the purpose of formation of layout by the appellants. After following the detailed procedural aspects with regard to the lands, the Deputy Commissioner has issued the necessary orders for acquisition of the lands. There is no procedural irregularity or illegality committed by the Government.

8.2 Thirdly, it is contended that the respondents are not entitled to raise any additional ground before this court u/s.24 of the new enactment i.e., Land Acquisition Act, 2013 for the simple reason that those grounds were not available to them under the old act with regard to the possession and deposit of the award amount. It is also contended that after acquisition, possession of the lands have already been taken and the lay out has been formed and buildings have already been constructed, the structures are very much in existence. Therefore, it is deemed that physical possession has already been taken. Even under Section 16 of the Act, it is shown to the court that the possession deemed to have been taken and on that ground the acquisition proceeding's cannot be quashed. Hence, the Writ Appeals deserve to be allowed.

9. Per contra, Sri M.V. Seshachala, the learned counsel for the respondents/land owners in Writ Petition Nos. 37227-28/1995 submitted that the actual possession of the petitioner's property has not been taken and payment of compensation has not been made to the land owners, therefore, acquisition lapses under the New Act. The learned counsel has relied upon the latest view of the Hon'ble Apex Court to the effect that, if the amount of compensation is not deposited before the court and actual possession has not been taken, then such acquisition automatically lapses by virtue of Section 24 of the new Land Acquisition Act,

2013. He also concentrated with regard to the formulation of the scheme. He has specifically argued that nowhere in the act, definition for "scheme" is provided, but some substantial factors should have been shown by the appellant with regard to the formulation of the scheme and the submission of the said scheme to the Government. In the absence of any such Scheme or approval of any Scheme by the Government, the acquisition fails.

10. Sri. B.M. Arun, the learned counsel appearing for one of the respondents/ land owners has meticulously argued before this court with regard to the non production of any scheme by the appellant and non application of mind by the Government and non approval of any scheme as such by the Government. The learned counsel further contended that there are lot of discrepancies with regard to the extent of the lands required by the appellant; the extent of lands sought for acquisition; and also contended that there is absolutely no scheme provided to the Government. He has taken us through various documents which will be discussed in detail while discussing the said ground. The learned counsel for the respondents further contended that actual possession of the land has not been taken, and no compensation has been paid and therefore, the acquisition lapses u/s.24 of the new Act. The learned counsels for the respondents strenuously contended that the learned single Judge has in detail considered all these factual and legal aspects. Hence, the impugned judgment does not call for any interference.

11. Having heard the learned counsels, the questions that would arise for our consideration are:

(1) Whether the Procedure contemplated under part-VII or Chapter-III of the Land Acquisition (Amendment) Act 1961 is applicable for Acquisition of Lands in question?

(2) Whether the appellant has submitted any "scheme" to the Government for acquisition of the lands and whether such "scheme" has been approved by the Government or not?

(3) Whether the acquisition proceedings in any manner lapsed u/s.24 of the new Land Acquisition Act, 2013 or not?

12. As mentioned supra, the appellant's counsel seriously argued before this court that the provisions of Sections 38 to 40 under Part VII of the Act are not applicable; however, Section 3(f)(vi) of the Act is applicable as the appellant Society is a Cooperative Society within the meaning of the definition and the Government has accorded approval to the Cooperative Society for the purpose of forming lay out for the benefit of its members; and therefore, there is no need to follow the provisions of Sections 38 to 40 of the Land Acquisition Act.

13. There has been no much argument on the side of the respondents in this regard. However, as it is a question of law raised before this court, and as the learned Single Judge has held that Sections 38 to 40 of the Act, ought to have

been followed. Hence, we feel it just and necessary to touch upon this point before adverting to the second important aspect in this case.

14. Part VII of the Land Acquisition Act, 1894 deals with "Acquisition of Land for Companies" for the benefit of a Company, under Sections 38 to 44-B of the Land Acquisition Act, 1894. In such an event the previous enquiry as contemplated u/s.40 of the Act needs to be strictly followed. Section 40 of the Act reads thus-

"40. Previous enquiry - (1) Such consent shall be given unless the appropriate Government be satisfied either on the report of the Collector u/s.5-A(2) or by an enquiry held as hereinafter provided-

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for the workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such Officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the CPC in the case of a Civil Court."

15. Per contra, if the acquisition is not for the purpose of a Company, Section 3(f) (vi) of Part-I of the Land Acquisition Act is to be applied which reads thus:-

"3. Definitions - In this Act, unless there is something repugnant in the subject and context,-

(f) the expression "public purpose" includes-

(i) xxxxx to (v) xxxxx

(vi). The provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to co-operative societies for the time being in force in any state;"

[Emphasis supplied]

Section 3(f)(vi) clears the doubt that if the acquisition of the land is for the public purpose and that too for housing by means of forming lay out and distribution of the same to its members by a co-operative Society, then after the approval of the scheme formulated by the Society, by the appropriate Government, the land can be acquired.

16. The learned counsel for the appellant in this regard has relied upon various rulings such as:

(1) , AIR 1961 SC 343 between Pandit Jhandu Lal and Others Vs. State of Punjab and another.

(2) , AIR 1984 SC 120 between Manubhai Jethalal Patel and another Vs. State of Gujarat and Others.

(3) , ILR 1989 KAR 376 between Narayana Raju Vs. State of Karnataka,

(4) , ILR 1989 KAR 406 between Narayana Raju Vs. State of Karnataka,

(5) , ILR 1995 KAR 1962 between H.M.T. House Building Co-operative Society Vs. Syed Khader.

In the above said decisions, the Hon"ble Apex Court and the High Court of Karnataka had an occasion to deal with Section 3(f)(vi) of Part-I and Sections 38 to 40 of Part VII of the Act. The courts have consistently made an observation that under Section 3(f)(vi) of the Act, land can be acquired for public purpose, the words "public purpose" includes acquisition of the lands for carrying out any housing scheme by a cooperative society with the prior approval of the Government. The question whether the purpose of acquisition is for a "public purpose" or not is the criteria to be verified. If any co-operative Society wants to form a lay out and formulate a scheme for distribution of the houses or sites to its members, for the "Housing purpose" is recognized as public purpose as per the provisions of Section 3(f)(vi) of the Act, whereas Part-VII including Sections 38 to 40 deals with the "Acquisition of land for Companies" for the formation of lay out or sites for housing for the benefit of a Company and its workmen. If the acquisition is for a company, then Part-VII, Sections 38 to 40 are applicable. In view of the inclusive definition of the expression "public purpose" as noted above, in Section 3(f)(vi) of the Act, the provision for carrying out any Housing Scheme sponsored or approved by the Government or by any authority established by the Government for carrying out any such scheme shall be deemed to be a "public purpose". Added to that, the acquisition of the land for carrying out any Housing Scheme with prior approval of the State Government by a co-operative Society shall be deemed to be for a "public purpose". The only rider attached to the co-operative Society which intends to be the beneficiary for acquisition of the land is that, it should formulate a scheme and then the said scheme has to be approved by the Government. Therefore, formulation of the scheme and prior approval of the Government are mandatory prerequisite for the purpose of acquisition of the lands for the co-operative society. Therefore, when

the lands are acquired for any co-operative Society with prior approval of the State Government, there is no question of application of the provisions of Part-VII of the Act.

17. The Hon"ble Apex Court and the High Court of Karnataka have in detail dealt with such an aspect earlier and came to the same conclusion. Hence, in our opinion, there is no need for this court to further delve upon the said legal aspect. Hence, we hold that if the intending beneficiary is a co-operative Society and if it complies with the provisions of Section 3(f)(vi) of the Act, then the Government may acquire the land for the benefit of the co-operative Society.

18. Second question to be decided is, whether the "scheme" as such is formulated by the appellant Society and the same has been approved by the Government or not. This is a prime and important aspect, which is a decisive factor in order to decide the lis between the parties.

19. The learned counsel for the appellant in this regard has strenuously argued before us that in order to understand, what is meant by scheme and how the scheme should be, he has relied upon several rulings, which we are going to discuss little later.

20. According to the learned counsel for the appellant, there is no specific format as such which is prescribed in the Act. However, if the co-operative Society gives the list of members and requirement of sites, that itself is sufficient to constitute a scheme. He has drawn our attention to several documents which are available in the file to show that the letter was addressed by the appellant to the Government seeking land for formation and distribution of sites to the employees; and that letter is processed by several authorities of the Revenue department and then, the Government after due satisfaction and after approval of the request made by the appellant has directed the Deputy Commissioner to acquire the land for the benefit of the appellant. He also submitted that the District Land Grant Committee has also submitted its report on 27.01.1992 recommending for acquisition of the land however, leaving the decision to the Government. Ultimately the Government has passed the order on 6.7.1992 directing the Deputy Commissioner to acquire the land for the benefit of the Society. As the Co-operative Society, does not work for the benefit of any individual; but it is for the benefit of its members, the society has sought for acquisition of the land which is apparent on records. The Government having accepted the said request of the co-operative Society and also the list of members and requirement of the Society, gave the direction to the Deputy Commissioner for acquisition of the land, that itself is sufficient to show that there was satisfactory approval of the scheme by the Government. Therefore, the learned counsel contended that these aspects have not been properly considered and appreciated by the learned single Judge.

21. Per contra, the learned counsels appearing for the respondents have argued before the court that there is no definition for the word "scheme" anywhere in

the Act. However, it is the imperative duty of the appellant to show the existence of a scheme for approval of the Government. The appellant has to explain the details of the scheme formulated by it for approval by the Government. He drawn our attention to several documents and argued that there is no list of members furnished by the appellant pertaining to its Society. No sketch of the lands and exact extent of the land required and number of members in the Society are also not furnished. But simply requested for acquisition of the lands, for the purpose of formulation of 900 to 1000 sites, which is without any basis. The District Level Committee also has not considered this aspect, but mechanically forwarded its opinion on 27.1.1992. Though there is no specific format prescribed for production of the scheme, but certain guidelines have to be followed, which are recognized by way of judicial pronouncements. There is no scheme as such produced by the appellant before the Government and there is no specific order passed by the Government approving the said scheme. Even the letter of the Government dated 6.7.1992 if it is read in its proper perspective, it does not mention any scheme as such provided by the appellant and the same has been perused by the Government and thereafter approved. At the most, it can be styled as a consent letter for acquisition of the land and it cannot be at any stretch of imagination be considered as an approval of any scheme.

22. It is also contended that the same acquisition proceedings was challenged by some other persons before this court in Writ Petition No. 19154/1996 wherein this Court has quashed the notification on the ground of absence of any Scheme and approval of any scheme by the Government to the extent of the lands of the petitioners therein. It is also contended by the learned counsel that middleman intervention is apparent on the face of the records that the appellant has totally entrusted the matter to the middleman who is a developer who has his personal interest. Therefore, when the acquisition is shown to be for personal interest of a middleman, it is vitiated, as against the public policy. Therefore, it is contended by the learned counsel that the acquisition is bad in law, rightly the learned single Judge has quashed the acquisition proceedings and the impugned judgment deserves to be undisturbed.

23. Before advertng to the above said rival contentions, we would like to see whether there is any definition to the said "scheme" or what is meant by a "scheme" and how the "scheme" should be formulated and how the Government can approve such scheme. In this regard, it is just and necessary to examine the observations or guidelines by way of judicial pronouncements.

23.1 In a decision reported in , AIR 2001 SC 436 between Management of Addisons Paints & Chemicals Ltd., Vs. Workmen, rep. by Secretary (A.P. & C), the Hon"ble Supreme Court at paragraph 54, has observed thus-

"No form of the prior approval required u/s.3(f)(vi) of the Act has been specified in the Act itself What the Section in terms requires is prior approval to the acquisition for the purpose specified. This was expressly given. That the letter dated 15.3.1991 was issued by the Government is not in dispute. The lack of

compliance with Article 166 did not render it a nullity as held by the Constitution Bench of this Court in , (1964) 6 SCR 368.

....It is therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with it can be established as a question of fact that the impugned order was issued in fact by the State Government or by the Governor."

23.2 In another ruling reported in , (2003) 1 SCC 228 between Kanaka Gruha Nirmana Sahakara Sangha Vs. Narayanamma and others, the Hon''ble Apex Court has observed at paragraph 15 thus-

"15. In our view, the aforesaid finding is, on the face of it, erroneous. It has been pointed out by the State Government and also by the Housing Cooperative Society that with a view to provide sites to the members, who were site less, the Society requested the State Government to acquire the land in Sy. Nos. 19/2, 26 and 29 of Kadirenhalli village in Bangalore South Taluk. At the direction of the State Government, the Assistant Registrar of Cooperative Societies, Bangalore II Circle verified the requirement of the members of the Society and recommended to the Revenue Department that the extent of land in the above said survey numbers was required by the Society. The State Government placed the above matter before the Committee of three members for scrutiny. The three-member Committee approved and cleared the proposal for the acquisition of the aforesaid survey numbers for the benefit of the Society. The State Government conveyed its approval for initiating the proceedings for acquisition of the aforesaid lands for the benefit of the Society by its order dated 14-11-1985 as per Annexure R-I. After issuance of notification dated 29.3.1986 under sub-section (1) of Section 4 of the Act, the landowners made representations to the Government and the State Government overruled the objections of the Writ Petitioners and issued directions for taking further proceedings in the matter vide order dated 25-4-1987 which was followed by a notification dated 4-5-1987 issued under section 6 of the Act acquiring the above mentioned lands. The acquisition proceedings are stated to have been initiated and concluded in accordance with law."

23.3 In the above case after considering the facts, the Government directed the Assistant Registrar of Co-operative Societies, Bangalore to verify the requirement of the society and thereafter the matter was placed before the Three Members Committee for scrutiny and thereafter the Government has conveyed its approval for initiating proceedings for acquisition of the land. The court has considered Annexure-R1 as approval given by the Government.

23.4 In another ruling reported in , (2012) 3 SCC 727 between Bangalore City Co-operative Housing Society Ltd., Vs. State of Karnataka and Others, the Hon''ble Supreme Court at paragraph 61 has observed thus-

"61. Shri Dushyant Dave also relied upon order dated 12-4-1996 passed by the High Court in Byanna v. State of Karnataka, order dated 3-12-1996 passed by

the Division Bench in *Byanna v. State of Karnataka*, order dated 23-7-1997 passed by this Court in *Byanna v. State of Karnataka*, order dated 22-11-1995 passed by the learned Single Judge in *Sumitramma v. State of Karnataka*, order dated 1-1-1996 passed by the Division Bench of the High Court in Writ Appeal No. 5081 of 1995 with the same title and order dated 4-10-1996 passed in *Sumitramma v. State of Karnataka*, *Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma*, referred to the recommendations made by SLCC in its 20th meeting held on 26-2-1988 and Letter dated 21-5-1988 sent by the State Government to the Deputy Commissioner, Bangalore and argued that the direction given by the State Government to the Deputy Commissioner, Bangalore for initiating the acquisition proceedings should be treated as approval of the housing scheme framed by the appellant."

(Emphasis supplied)

24. Relying on the above rulings, the learned counsel for the appellant submitted that, in the absence of definition for the word "Scheme", the intention of the appellant to form layout and to distribute the sites to its members itself is sufficient to constitute a scheme for public purpose. The Government after accepting such intention and the materials produced by the appellant, directed the concerned to acquire land, which constitutes a valid approval.

25. In this background, it is also just and necessary to look into the observations made by the Hon"ble Apex Court in other rulings cited by the learned counsel for the respondents. In a decision reported in , (1995) 2 SCC 677 between *HMT House Building Co-operative Society Vs. Syed Khadar & Others*, the Hon"ble Apex Court has observed at paragraph 21 with reference to the scheme, which reads thus-

"21. xxxxxx. In spite of the repeated query, the learned counsel appearing for the appellant - Society could not point out or produce any order of the State Government u/s.3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands which were to be acquired for a public purpose. There is no restriction or bar on the part of the appellant - Society on carving out the size of the plots or the manner of allotment or in respect of construction over the same. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any co-operative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing scheme in question. The power u/s.4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in decision making process -whether the acquisition of the lands shall be for a

public purpose. This itself is enough to vitiate the whole acquisition proceedings and render the same invalid."

(Emphasis supplied)

26. In another ruling reported in , (2012) 10 SCC 184 between B. Anjanappa and Others Vs. Vyalikaval House Building Co-operative Society Ltd., and others, the Hon"ble Apex Court has observed at paragraphs 20 to 23 in the following manner:

"20. We then enquired from Shri Bhat whether his client had submitted housing scheme for the approval of the State Government. Shri Bhat responded to the Court's query by reining upon the recommendations made by the State-level co-ordination Committee for the acquisition of 179 acres, one and a half guntas of land. We have carefully gone through the recommendations of the State-level Coordination Committee but do not find any trace of housing scheme which was under the consideration of the committee.

21. Shri Bhat then relied upon the approval accorded by the State Government for the acquisition of land and the directions issued to the Deputy Commissioner, Bangalore to issue notification under Section 4(1) of the 1894 Act. He also relied upon the judgment in Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma.

22. In Bangalore City Coop. Housing Society Ltd. V. State of Karnataka decided on 2-2-2012, this Court considered the question whether the approval granted by the State Government for the acquisition of land can be considered as an approval of the housing scheme within the meaning of Section 3(f)(vi) of the Act and answered the same in negative.

23. The judgment in Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma, if read in the light of 1st HMT and 2nd HMT judgments and the finding recorded by us that Respondent 1 had not framed any housing scheme and secured its approval from the State Government, the direction given to the Deputy Commissioner to issue notification under Section 4(1) cannot be treated as the State Government's approval of the housing scheme framed by Respondent 1. It is also opposite to note that in Kanaka Gruha case this Court was not called upon to consider a case in which the State Government has come out with a specific stand that the housing society had not framed any scheme."

(Emphasis supplied)

27. On careful perusal of the above said rulings, it is abundantly clear that the Government can issue approval for acquisition of the land. However, mere letter without considering the scheme as such formulated by the Society cannot be construed as an approval of the Government.

28. It is true that no definition for the word "scheme" is given under the Act. The dictionary meaning of the word "scheme" in our opinion has to be relied upon, under such circumstances, in order to understand as to what is the meaning of a

"scheme". In Whartons concise law dictionary, the meaning given for "Scheme" is - "a scheme is carefully arranged and systematic program of action".

29. In our opinion the Government before issuing any letter of approval, has to peruse the scheme as such, in order to ascertain whether any scheme has been actually formulated and submitted by the co-operative Society. If so, what are the terms and conditions of the said scheme and what are the appropriate conditions that can be imposed by the Government before approval of such scheme etc., The Phraseology used in the Section mandates that, there should be formulation of a scheme comprising of the intention and systematic program of action (action plan) of the co-operative Society - like formation of layout, manner of allotment, and in respect of construction of the building over the same etc., Therefore, it is incumbent on the part of the appropriate Government to examine various aspects of the matter so as to understand that, there was a systematic action plan of a scheme, the acquisition is for the public purpose and public interest and not in respect of very few interested persons. Thereafter only it can accord approval to the said scheme. It is also abundantly clear that mere intention of the Society to form lay out and give sites to its members may not be sufficient for the purpose of considering it as a scheme. The entire gamut of the acquisition of the land for the benefit of public purpose and the details of the scheme has to be furnished to the Government for its consideration and for the purpose of granting approval.

30. Now, we would like to discuss some of the materials available on record to find out whether the appellant has complied with these requirements to hold that, the letter addressed by the Deputy Commissioner to the Government for acquisition of the land, amounts to acceptance of the scheme by the Government and thereafter the Government has granted the approval.

31. The letter addressed to the Deputy Commissioner by the appellant dated 12.12.1991 seeking for acquisition of the lands show that, the cooperative Society has negotiated with the land owners of Bogadi village and the owners were willing to sell the land to the Society at a reasonable price. It is also stated in the said letter with list of Survey numbers along with the sketch for perusal of the Government and requested the Deputy Commissioner to recommend to the Government for acquiring lands by way of issuing 4(1) Notification. This letter does not disclose as to any scheme is formulated, how many members are there in the Society, how much lands are required, how many sites they would like to formulate, how they have planned to form the lay out and to allot the plots to its members. There is no detail as such, but this letter only shows that the Society has intended to form layout, sites and allots to its members. This letter is also supported by the letter of the Tahsildar dated 25.1.1992 (Annexure-6). The Tahsildar in his letter has observed that the lands sought to be acquired are within the agricultural area and no acquisition proceedings yet has been initiated for any purpose. Annexure-7 which is the check list furnished by the appellant for issue of NOC to the HBCS Mysore city, wherein it is stated that there are as many

as 692 + 469 members eligible to get sites but out of them 692 members have already got sites and only 469 members have to get the sites. In the same check list it is mentioned, the Society requires 900 and 1000 sites. It is not stated that only 469 sites are required. It is also not explained why they further need 900 to 1000 sites.

32. Annexure-X is the letter written by the Deputy Commissioner to the Secretary to the Revenue department stating that the land sought to be acquired is not yet acquired for any purpose. On such report, the Deputy commissioner has consequently recommended for acquisition of the land ultimately leaving it to the decision of the Government. Thereafter, the matter went to the District Committee and vide order dated 27.1.1992, Three Member District Level Committee has also recommended for acquisition of the land.

33. On careful perusal of the recommendations of the three members committee, there is no whisper about the discussion or consideration on facts, with regard to the formulation of any scheme, except the letter and the check list as noted above for approval of the Government. After receiving the report of the committee, the Government has issued a letter on 6.7.1992 directing the Deputy Commissioner to acquire the lands (as per Annexure-4). The letter also does not disclose that the Government has applied its mind, examined the report of the committee and any documents produced by the appellant's Society and thereafter issued the said letter. Even as we have said, there is no whisper in the committee's report which is at Annexure-3 to the effect that the committee has examined any scheme as such formulated and produced before it. It is only observed that the society has submitted that the members of their Society have sought for allotment of sites. The Society also submitted that it has not collected any advance amount but only taken affidavits from some of the members. It is observed by the committee that, only 475 members are enrolled in the Society but they have not examined as to how many members are already owning any house or site. On such bald request, the committee has recommended for acquisition of 98 acres 4 guntas of land. On meticulous examination of the records by us, we found no scheme as such produced in compliance with the guidelines enunciated in the rulings of the Hon'ble Apex Court and observation made by us. Therefore, looking to the above said facts and circumstances of the case, it cannot be with all certainty said that the appellant has formulated any scheme as such explaining its activities, as to how they will formulate the layout and sites and construct the house etc., and what extent of land exactly required for allotment to its members and why excess land is required etc. It cannot be said that the said letter alone with check list constitute a scheme.

34. Apart from this, the learned single Judge has also rightly opined in the order dated 7th March 2000 passed in Writ Petition No. 19154/1996, wherein this court dealing with the same acquisition proceedings has made an observation at paragraph 4 that-

"The Learned Government Pleader made available the records relating to this

acquisition. From the records, I find that the Society has not framed the scheme and submitted the same to the Government for its approval before initiating the proceedings for acquisition by issuing notification u/s.4(1) of the Act. If that is so, the acquisition of the land for the benefit of the Society is not for public purpose. The Government Order, if any issued by the Government permitting the Deputy Commissioner to issue 4(1) Notification is only administrative approval and it cannot be treated as an approval of the scheme framed by the Society. Therefore, following the decision of the Hon"ble Supreme Court in HMT's case cited supra, held that the acquisition of the land for the Society in so far as the petitioner's land is concerned is not for public purpose."

(Emphasis supplied)

35. Though the learned counsel for the appellant submitted that Writ Appeal No. 3858/2000 is preferred against the order in the said Writ Petition, however, there is no material produced before the court, that any contrary view has been taken in the Writ Appeal. Therefore, this court has been consistent in holding that there was no scheme as such formulated by the Society.

36. The learned counsel for the respondents Sri Arun drawn our attention to the Audit Report dated 31.10.1995 pertaining to the appellant's Society for the year 1994-95 and argued before us that if the Audit report is properly observed, it clearly shows that some third party has entered into contract for development of the land. As per the records, right from the beginning the developer of the lands was contracted to take care of the entire acquisition process. This aspect has also not been properly considered by the Government and this has not been placed for the consideration of the Government. Of course the document Annexure-R4-17 which is produced along with application filed u/s.151 of CPC for production of additional documents. The said document shows that the society has decided to entrust the development of the lands sought to be acquired, to the M/s. Skytop Builders, No. 175, 6th Cross, Gandhinagar, Bengaluru, for the purpose of taking steps even with regard to the processing of the acquisition proceedings before the Government. The developer was also entrusted with the work of identification of the lands. From the time of identification of the land till payment of the award amount to the land owners and also development of the said property, the contract has been given to them.

Annexure-R4-18 is the Audit report pertaining to 1995-96. At page 556 also it is clarified that the contractor has to take care with regard to the acquisition of the land, taking possession and payment of the award amount to the land owners and thereafter to develop the property.

37. On the above said factual aspects, the learned counsel Sri. B.M. Arun argued that involvement of third party in acquisition proceedings is apparent. But, we do not want to say anything about this particular aspect, as this stand was not taken by the respondents before the single judge nor considered, and any finding is given. We can only say that these factual aspects should have been brought to

the notice of the Government, while writing a request letter to the Government for acquisition of the land.

38. Looking to the above said legal aspects as well as the factual aspects, we are of the opinion that the learned single Judge has not committed any error in holding that the Society has not formulated any scheme, submitted the scheme to the Government, the Government had any opportunity to examine the scheme, the activities of the Society and then to issue any approval letter. Therefore, the said letter of the Government as stated above cannot be construed as an approval of any scheme by the Society. Hence, we do not find any grounds to interfere with the judgment of the learned single Judge in this regard.

39. The next question arose before this court is regarding taking of physical possession of the lands of the respondents and application of Section 24 of the new Land Acquisition Act, 2013.

40. The learned counsel for the appellant primarily raised a question that the respondents have not taken any ground before the learned single Judge with regard to Section 24 of the Land Acquisition Act. Therefore, the ground taken is not sustainable. Further, he contended so far as the physical possession is concerned, the Government has taken possession of the property after the acquisition of the lands by issuing notification under Section 16 of the LA Act. Therefore, it amounts to a deemed taking of possession of the lands by the Government.

41. It is admitted by the learned counsel for the appellant that except Survey No. 235 measuring 2 acres 29 guntas, the possession of all the other lands have been taken over by the Government. He drawn our attention to the notification issued by the Land Acquisition Officer dated 30.9.1994 wherein it is stated that the survey numbers of the lands noted in the said notification have been taken possession for the purpose of providing the same to the appellant for forming lay out and for distribution of the sites to its members. Of course, except the land in Survey No. 235, all other lands shown to have been taken possession.

42. What the learned counsels for the respondents strenuously argued before the court is that there is lot of difference between taking of possession under the old Act and under Section 24(2) of the New LA Act, 2013. The Land Acquisition Act 1894 subsequently amended shows that u/s.16, if the collector has made an award u/s.11, he may take possession of the land, thereupon the land vests with the Government free from all encumbrances. Therefore, if once the notification is issued that they have taken possession of the land as per Section 16 of the Act, it is deemed that the possession vests with the Government. But, according to the new act, which came into force from 1.1.2014, Section 24(2) of the Act says, under what circumstance the acquisition lapses, which reads as follows:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

(1) xxx xxx xxx xxx xxx xxx

(2) Notwithstanding anything contained in sub-Section (1) in case of Land Acquisition proceedings initiating under the Land Acquisition Act, 1894 wherein an award under the said section 11 has been made five years or more prior to the commencement of this act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act."

(Emphasis Supplied)

43. Learned counsel for the appellant submitted that the respondents couldn't have taken this ground because it has not been taken up before the learned single Judge or before this court by way of objections. However, we are of the opinion that it is a question of law that can be raised at any stage. No body can expect the respondents to take such a plea or such a stand before the learned single Judge when the Writ Petitions were filed long back in the year 1997 and appeals are being filed in the year 2003. However, as it is a question of law, even in the absence of any stand being taken, it is the duty of the court to see whether by subsequent statute the acquisition process lapsed or not.

44. The above said acquisition proceedings in this case has been attacked on two grounds. One is u/s.24(2) of the new act, the award amount has to be paid to the land holders or deposited before the court. Secondly, the court has to see whether the actual physical possession was taken by the Government and whether the amount has been paid to the land owners or deposited in the court or not.

Interpreting Section 24(2) of the New Act, the Hon''ble Apex Court in various rulings has in fact considered this aspect.

Before advertng to the said rulings, it is seen that the Ministry of law and Justice has promulgated an ordinance on 30.05.2015 intending to bring some amendment to Section 24(2) of the new Act incorporating the following,-

"If the compensation is lying deposited in the court or in any designated account maintained for the purpose."

The Government intended to bring the amendment for the benefit of the beneficiary of the land that, if he has deposited the entire amount in the designated account with the Land Acquisition Officer, that would have been served the purpose. But both the learned counsels have categorically admitted that the said ordnances did not pass through the legislative approval and the same has been lapsed. In this background, the latest ruling of the Hon''ble Supreme Court as to how the said provision has to be construed is to be taken note of.

45. The Hon''ble Apex Court has observed in Civil Appeal No. 8468/2015 dated 12.10.2015 at paragraphs 19 and 20 that-

"xxxx. One of the requirement mentioned in Section 24(2) of the Act is that the compensation should have either been paid to the land owner or should have been deposited in the Reference Court. The admitted position is that the compensation of Rs. 35,52,528/- was neither paid to the appellant nor deposited in the Reference court. It was admittedly deposited in the Government treasury of the State. The deposit was apart from anything else made only after the act came into force and perhaps with a view to get over the provisions of Section 24(2) of the Act and prayer made in IA 4 unfortunately even the deposit of the compensation made in the reference court does not come to the aid of the appellant under the circumstance and cannot be taken as "deemed payment".

46. In another ruling, which is reported in , (2014) 6 SCC 586 between Bharat Kumar Vs. State of Haryana wherein the Hon''ble Apex Court at paragraph 20 has held that-

"From the above, it is clear that the award pertaining to the special land acquisition has been made by the special Land Acquisition Officer more than 5 years prior to the commencement of 2013 Act."

It is also admitted position that compensation so awarded has neither been paid to the land owners, persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the land owners or persons interested. We have therefore, no hesitation in holding that the special land acquisition proceedings shall be deemed to have lapsed u/s.24(2) of 2013 Act."

47. We have carefully examined the records placed before this court and also the objections filed by the appellant. There is no dispute that awards in this case have been passed more than five years prior to the new Act coming into force. The appellant's counsel has submitted that the beneficiary i.e., the appellant has deposited the entire amount as awarded, with the Land Acquisition Officer in-turn he has deposited in the treasury and they have not committed any mistake and there is no question of lapsing of the acquisition on the wrongful act of the LAO. We are unable to accept the said submission because of the simple reason that the statute provide an act to be done in a particular manner, it should be done in accordance with such statute. When the law says under Section 24(2) of the Act, if the amount is not deposited before the court or paid to the land owners, the acquisition proceedings shall lapse, if such thing is not available, then without any other go, the court has to hold that the acquisition proceeding lapses so far as it relates to the persons who have challenged the acquisition proceedings (respondents herein).

48. On careful examination of the records also, there is no material to show that the Land Acquisition Officer or any person has deposited the amount before the court or paid the amount to the land owners. Admittedly, the appellant has not

stated that the respondents herein, the land owners who have challenged the acquisition proceedings have received any compensation. Therefore, in our opinion, on this ground also, the land owners have to succeed and the acquisition proceedings so far as it relates to the respondent land owners are concerned, lapses.

49. So far as the possession aspect is concerned, the court has to see whether actual physical possession has been taken by the Government irrespective of Section 16 of the old Act because the new Act says that if actual physical possession has not been taken by the Government and it is continued with the owners, in such an eventuality also, the acquisition proceedings shall lapse.

50. We have carefully perused the RTC extracts produced in respect of Survey Nos. 241(2) and 242, which have been continued in the name of the land owners and there is no mention at column No. 9 with regard to any acquisition and taking possession of the property and also consequential acceptance of mutation in the name of the Government. The said names of the owners continued upto 2013-14, but in the year 2013-14 it is changed into the name of the appellant. The change of the mutation when the subject matter is pending before the court, in our opinion, is not tenable and acceptable. The plans produced before the court with reference to the lay out formed in Survey Nos. 241 and 242, which are at page Nos. 492 and 493 of the records before this court show that the said lands are shown as Civic amenity sites and these plans were came into existence in the year 1997. Perhaps may be for the reason that the actual possession has not been taken, no sites have been formed and granted to any of the members. The letter dated 5.1.2011 vide Annexure-R4-1, to the Assistant Commissioner from the Town Planning Authority, Urban Development Authority, Mysore, a request was made that, if the land in Survey No. 241/2, 242 and other lands totally measuring 97 acres 38 guntas are acquired and possession has been taken, the same has to be intimated to the town planning authority. The Asst. Commissioner has replied the said letter as per Annexure-R4-3, stating that as the matter is pending before the High Court, Survey Nos. 241/2 and 242 are given up and they are not yet cleared and excluding those lands, the remaining land has been handed over to the appellant society and the necessary documents are also sent to the Town Planning Authority.

51. Another letter at Annexure-R4-4 dated 2.2.2011 addressed to the appellant society by the Town Planning Authority, Mysore, with reference to the letter of the Asst. Commissioner noted above, to exclude the lands from the plan submitted by the appellant, which were not given possession, and also directed the appellant to give explanation as to why they have included Survey Nos. 241/1 and 242 in their plan and why action should not be taken against them for including those Survey numbers also in the plan. The appellant vide letter dated 24.6.2011 marked at Annexure-R4-6 has stated that though the Government has shown to have taken possession of the lands u/s.16(2) of the old Act, they have incorporated the said lands also in the plan. However, they in fact requested the

Government to take the possession of the remaining 19 acres 39 guntas and to handover the said lands to the appellant.

52. Apart from the above, the learned counsel for the respondent Sri Arun has brought to our notice the Audit report of the Appellant Society. As we have already referred to the Audit Report for the year 1995-96 which also show that, only 72 acres 29 guntas out of the acquired land, possession has been delivered to the appellant on 7.3.1996.

53. From the above, it is clear that though the notification was issued u/s.16 of the old Act, showing the possession of the above said lands are taken, but in view of the documents produced before this court and also the correspondence between the appellant and the Town Planning Authority and the Revenue department shows that actual physical possession of the lands appears to have not been taken from the respondent land owners, who have challenged the acquisition. When such proof is placed before this court, which are sufficient to rebut the presumption, which can be raised in favour of the appellant u/s.16 of the Land Acquisition Act, it can be safely held that the possession of the said lands so far it relates to the private respondents/land owners are concerned, have not been taken by the Government. Therefore, Section 24(2) of the New Act, 2013, is also attracted and we are of the considered opinion that the acquisition is lapsed so far as it relates to the land owners/respondents are concerned.

54. Looking from any angle, we do not find any good grounds to interfere with the judgment of the learned single Judge. Consequently, the Writ Appeals are liable to be dismissed. Hence, we proceed to pass the following:

ORDER

The Writ Appeals are dismissed.