

(1998) 08 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No's. 33717 and 33718 of 1997 connected with Writ Petition No's. 28702 and 34796 of 1996; 35061 to 35064, 35065, 35066. 35584 to 35588, 36174, 36223 to 36226, 36257, 36298 to 36300, 36421 to 36424, 36494, 36873, 37808, 35895, 1623, 37331,

D. Hemachandra Sagar and Another APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 31-08-1998

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 15, 16, 17 (1), 19 (1)
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 KarLJ 510

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Sri T.S. Ramachandra, Sri M. Erappa Reddy, Sri M. Jagannath, Sri K.P. Ashok Kumar, Sri A.S. Bopanna, Sri R. Gopal, Sri S. Chennarayana Reddy, Sri Kumar and Kumar, Sri K.S. Nagaraja Rao, Sri Ujre Ishwara Bhat, Sri N. Shankaranarayana Bhat, Sri P. Krishnappa, Sri C.M. Nagabushana, Sri S.P. Kulkarni, Sri B.K. Manjunath, Sri N.S. Hiremath, Sri G. Pappi Reddy, Sri K. Krishna Swamy, Sri Basava Prabhu S. Patil, Sri S. Shivaram, Sri Y. Hariprasad, Sri B.N. Dayananda, Sri A.N. Venugopala Gowda, Sri Mohandas N. Hegde, Sri B. Sreenivasagowda and Associates, Sri S. Shekar Shetty, Sri Jayakumar S. Patil, Sri R.G. Hegde, for the Appellant; Sri K.H. Jagadish, Government Advocate, Sri N.K. Patil, Sri G. Narayana Rao, Sri R.S. Hegde, Sri Vishnu D. Bhat, Sri A.K. Subbaiah, Sri Mahesh, Sri Sampat Anand Shetty, Smt. Vatsala Sampat, Sri P. Srinivasa and Sri S.A. Nazeer, for the Respondent

Judgement

1. second time challenging the acquisition of certain lands by the Bangalore Development Authority, hereinafter called the "BDA", for formation of Banashankari V Stage, Jayaprakash Narayana Nagar 8th Stage, Jayaprakash Narayana Nagar 9th Stage and Gnana Bharathi Layout.

2. A preliminary notification dated December 22, 1988 was issued by the BDA u/s 17(1) of the Bangalore Development Authority Act, 1976, hereinafter called

"the BDA Act" and the same was published in the Gazette dated April 6, 1989. It was followed by the declaration as published in the Gazette dated May 9, 1994 u/s 19(1) of the BDA Act in respect of certain lands situated in Uttarahalli, Vaddarapalya, Vasantpura, Marasandra, Konanakunte, Doddakallasandra, Yelachenahalli, etc. for formation of Banashankari 5th Stage Layout. Similarly, a preliminary notification dated March 23, 1988 gazetted on June 9, 1988 was issued by the BDA in respect of certain lands situated in Kotthanur Village for formation of J.P. Nagar 8th Stage Layout. This was followed by the declaration dated October 19, 1994 gazetted on the same day, u/s 19(1) of the BDA Act. Another preliminary notification was issued on November 17, 1988 in respect of certain lands situated in Konanakunte, Raghuvanahalli, Alahalli, Doddakallasandra and Arakere in respect of J.P. Nagar 9th Stage Layout and the same was published in the Gazette dated January 12, 1989. The declaration u/s 19(1) of the BDA Act was made on July 22, 1991 in respect thereof. The preliminary notification in respect of Gnanabharathi Layout was published in Karnataka Gazette dated February 29, 1989 u/s 17(1) and (3) of the BDA Act in respect of certain lands situated in Nagadevanahalli and Valagerehalli. It was followed by a declaration dated January 29, 1994, made and published u/s 19(1) and (2) of the BDA Act.

3. The petitioners in these petitions and some others have filed petitions before this Court under Articles 226 and 227 of the Constitution of India for quashing the aforesaid preliminary notifications and declarations. This Court by order dated September 19, 1996, September 26, 1996, and October 7, 1996 made in different petitions allowed those petitions and quashed only the declarations issued u/s 19(1) of the Act insofar as they relate to the lands of the petitioners, leaving liberty to the authorities to proceed with the impugned acquisition from the stage of considering the report and complete the same within one year from the date of disposal in accordance with law and in the light of the observations made therein.

4. That, after the disposal of the previous petitions some of the petitioners filed their objections and the BDA at its meeting held on March 1, 1997 decided to reject the objections of the petitioners and submit the scheme and the declaration to the Government for sanction in Subject Nos. 65 of 1997, 67 of 1997 and 66 of 1997 in respect of Banashankari V Stage, J.P. Nagar 8th Stage, J.P. Nagar 9th Stage respectively. Similarly, at its meeting held on June 27, 1997, the BDA rejected the objections of the petitioners in respect of acquisition of their lands for Gnanabharathi Layout and decided to submit the scheme for sanction of the Government as per the resolution dated June 27, 1997 in Subject No. 166 of 1997.

5. The proposal submitted by the BDA was considered by the Government and sanction was accorded to all the schemes pursuant to which the declarations dated September 16, 1997 P. Krishnappa and Others Vs. State of Karnataka and Others, , September 17, 1997, September 17, 1997 and October 6, 1997 came

to be made in respect of Banashankari V Stage Layout, J.P. Nagar 8th Stage Layout, J.P. Nagar 9th Stage Layout and Gnanabharathi Layout respectively. They were published in the Gazette dated September 17, 1997, September 18, 1997, September 18, 1997 and October 6, 1997 respectively.

6. Having been aggrieved by the decision of the respondents to pursue the acquisition of their lands for the aforesaid Layouts the petitioners have filed these petitions for quashing the aforementioned preliminary notifications and the declarations, inter alia contending that the notifications and the declarations are illegal, invalid and inoperative for having been made in violation of the provisions of the BDA Act and the Land Acquisition Act, 1894, hereinafter called "the Acquisition Act". Some of the petitioners have also prayed for quashing the order of the Government giving sanction to the schemes u/s 18(3) of the Act.

7. The learned Counsel appearing for the petitioners have contended that the preliminary notifications are bad in law for not complying with Sections 15 and 16 of the BDA Act. Elaborating their contention it was submitted that the BDA shall prepare the scheme with the prior approval of the Government before drawing up the notification u/s 17 of the Act. There is no prior approval of the scheme by the Government u/s 15 of the Act. The scheme shall provide for all the particulars enumerated in Section 16 of the BDA Act. No material is produced by BDA for having prepared such a scheme before drawing up the notification u/s 17(1) of the Act and publishing the same. In view of Section 36 of the BDA Act the acquisition of land under this Act shall be regulated by the provisions of the Acquisition Act. The declaration should have been issued within one year or at least within a reasonable time and the declaration having been made 5 to 6 years after the publication of the preliminary notification is barred by principles of delay and laches and the acquisition proceedings should be declared ultra vires of the Acquisition Act. u/s 18 of the Act the Authority alone is competent to consider the representations filed by the petitioners and take decision thereon. The Authority did not consider the representations of the petitioners in their proper perspective. The rejection of representations without assigning any reasons is no consideration at all. The Land Acquisition Officer while preparing the note in respect of the representations of the petitioners, has observed that "No objections are filed" by many of the petitioners, without taking into account the representations filed by them, prior to the filing of the previous petitions and the EDA also failed to consider the same in view of the notes prepared by the Land Acquisition Officer. The resolution of the BDA is therefore illegal and invalid for non-compliance with Section 18(1) of the BDA Act. By preliminary notifications large extent of lands were shown to be required for the scheme, but by the impugned declarations lesser extent of land than what was shown in the preliminary notifications are declared to be needed for public purpose. Certain extent of land were omitted from the declaration which clearly establishes the bias of the BDA against the petitioners who are similarly situated with those whose lands have been omitted in the declaration. It was further contended by the petitioner co-operative society that the lands acquired for them under

Chapter II of the Acquisition Act have again been sought to be acquired for BDA for another public purpose. One public purpose should not defeat another public purpose. The Government did not apply its mind before according sanction to the scheme. The order of sanction is, therefore, unsustainable in law and the consequent declarations are, therefore, illegal and warrant interference of this Court. It was contended by the learned Counsel appearing for the petitioners that the BDA had already acquired large extent of land for different schemes. They did not complete those schemes for variety of reasons including paucity of funds. When the BDA has failed to execute the schemes substantially for which the lands have already been acquired for paucity of funds, there is no reason for the BDA to draw up another scheme, the scheme as drawn up and sanctioned by the Government, not for serving public purpose but to deprive the persons like the petitioners of their avocations, is bad and the non-application of the mind by the Government has vitiated the order of sanction. It was also contended that the Government while making an administrative order u/s 15 of the BDA Act has imposed certain conditions on account of which the terms and conditions imposed by the Government would automatically get incorporated into the scheme resulting in alteration of the scheme. The sanction of the Government u/s 18(3) of the BDA Act without considering such alterations establishes the fact of non-application of mind. The sanction is, therefore, illegal and liable to be quashed. It was also contended on behalf of some of the petitioners that from the proposal, submitted by the BDA to the Government for sanction, indicates that the BDA would make profit out of the scheme and therefore the scheme itself is bad in law for being profit oriented contrary to the public purpose sought to be served. The State Government by its order dated January 1, 1987 directed the BDA not to acquire lands used for nurseries for its development scheme. The BDA in view of that order had in fact omitted certain gardens and nurseries and the built-up portion from acquisition. The lands belonging to many of the petitioners comprises nurseries, gardens besides being built-up portions. Though they are similarly situated with others whose lands have been omitted from declarations, their case was not considered in the light of the Government order and also the orders of the BDA made in respect of some other owners. In some other petitions it was contended that their lands though notified in preliminary notification was not included in the earlier declarations after considering their representations pursuant to which they got their lands converted by paying huge sums of money and had filed an application before the BDA to undertake Group Housing Scheme. Even though such lands were not the subject-matter in any of the earlier petitions they have been included in the impugned declaration. In some other petitions it was contended that 50% of their lands are built-up and the remaining land is being used for growing medicinal plants which was recognised by pharmaceutical institutions. The BDA has failed to consider their representations in their proper perspective. In some of the petitions the earlier declaration was challenged inter alia contending that their land as approved prior to the preliminary notification were not notified in the preliminary notification. They did not have notice of such acquisition. The acquisition of land assigning old

survey numbers without notice to the petitioners is illegal and void.

8. The BDA has filed similar statement of objections in most of the petitions inter alia contending that none of the objections of the petitioners as to the validity of acquisition are tenable in law and on facts. It was contended by BDA that the Authority considered all the representations filed by the petitioners and their objections were overruled. In many cases as no objections were filed after remand the question of considering their representation did not arise. The other contentions such as prior approval of the scheme u/s 15, the profit motive of BDA and the non-application of the mind by the Government are all disputed. It was specifically contended that the BDA constituted a planning committee to inspect the ongoing schemes of the BDA and to make recommendations regarding the areas with reference to which the acquisition proceedings could continue. The planning Authority inspected the entire area, submitted their report. The BDA considered the representations of the petitioners in the light of the report of the planning committee and overruled their objections. There is no illegality in such overruling. It was also contended that the Commissioner himself inspected the lands acquired for Gnanabharathi Layout and decided to exclude certain lands which are either built-up or comprising the gardens. The decision of the BDA cannot, therefore, be construed as either arbitrary or unreasonable.

9. Before I advert to the contentions of the petitioners it is material to note the relevant provisions of Sections 15, 16 and 18 of the BDA Act. They read as follows:

"15. Power of Authority to undertake works and incur expenditure for development, etc.--

(1) The Authority may:--

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefore and also for the framing and execution of development schemes.

(2) The Authority may also from time to time make and take up any new or additional development schemes.--

(i) on its own initiative, if satisfied of the sufficiency of its resources; or

(ii) on the recommendation of the local Authority if the local Authority places at the disposal of the Authority the necessary funds for framing and carrying out any scheme; or

(iii) Otherwise.

(3) Notwithstanding anything in this Act or in any law for the time being in force,

the Government may, whenever it deems it necessary require the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government.

16. Particulars to be provided for in a development scheme.--

Every development scheme u/s 15.--

(1) shall, within the limits of the area comprised in the scheme, provide for--

(a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or effected by the execution of the schemes;

(b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;

(c) drainage, water supply and electricity;

(d) the reservation of not less than fifteen per cent of the total area of the Layout for public parks and playgrounds and an additional area of not less than ten per cent of the total area of the Layout for civic amenities.

(2) may, within the limits aforesaid, provide for.--

(a) raising any land which the Authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required.

(3) may, within and without the limits aforesaid provide for the construction of houses.

17. xx xx xx. 18. Sanction of Scheme.--

(1) After publication of the scheme and service of notices as provided in Section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit to the Government for sanction, furnishing.--

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein;

(b) complete plans and estimates of the cost of executing the scheme;

(c) a statement specifying the land proposed to be acquired;

(d) any representation received under sub-section (2) of Section 17;

(e) a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land u/s 17 or the land assessment of all land specified in the statement under

clause (c); and

(f such other particulars, if any, as may be prescribed.

(2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme".

10. It is contended by the petitioners that the EDA shall draw up the scheme with the prior approval of the Government and notifications shall be issued u/s 17(1) of the Act only in respect of such schemes. There is no prior approval of the scheme. The preliminary notification is, therefore, illegal. Consequently all acts in furtherance thereof will have no effect in law. The learned Counsel appearing for the petitioners place emphasis on the expressions "with the previous approval of the Government" used in clause (b) of sub-section (1) of Section 15 of the BDA Act and contended that the scheme referred to in clause (a) of sub-section (1) of Section 15 for development of the Bangalore Metropolitan area shall be with the prior approval of the Government. From the reading of sub-section (1) of Section 15 of the BDA Act, it is clear that the contention of the learned Counsel appearing for the petitioner is untenable in law. Clause (a) of sub-section (1) of Section 15 of the BDA Act, deals with the drawing up of the scheme by the Authority for the development of the metropolitan area. Clause (b) of Section 15(1) of the BDA Act, has two parts, the first part deals with the prior approval of the Government for the Authority to undertake from time to time any works for the development of the Bangalore Metropolitan Area and to incur expenditure thereon, whereas the second part deals with the previous approval of the Government to incur expenditure also for framing and execution of the development schemes. This becomes clear, if clause (b) of Section 15(1) of the BDA Act, is read with sub-section (2) of Section 15 which empowers the BDA to take any new or additional development schemes, on its own initiative, if satisfied of the sufficiency of its resources. So the emphasis is on the approval to incur expenditure and not with respect to the drawing up of the scheme. The BDA Act prescribes only one sanction/prior approval of the Government u/s 18(3) of the BDA Act. What is required by Section 15 is the administrative approval to incur expenditure if it exceeds its financial capacity as could be seen from Section 15(2) of the Act. There is no dispute that the administrative approval was given by the Government as observed by this Court in its decision in the previous petitions. The Act also does not contemplate sanction of the scheme at two stages. It is clear from Section 19 of the Act which begins with the expression "Upon sanction of the scheme, the Government shall publish in the Official Gazette 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". Whereas Section 17(1) commences with the expressions that "When a development scheme has been

prepared, the Authority shall draw up a notification stating the fact of a scheme having been made xx xx". It is, therefore, clear that the Act did not contemplate sanction of the Government of the scheme at two stages. It is also material to see that this very contentions were raised by petitioners in the earlier petitions and as this Court directed the respondents to proceed with the impugned acquisition from the stage of considering the report and complete the acquisition within one year from today in accordance with law it is not open to the petitioners to contend that the preliminary notifications are against law.

11. The next contention that the scheme should contain all the particulars enumerated in Section 16 of the Act even before the publication of the notification u/s 17(1) is also untenable. If the scheme contains the broad factors in respect of the particulars enumerated in Section 16 it would be sufficient compliance with the preparation of the scheme. It is not the case of the petitioners that no scheme is drawn up by the BDA. Their objection is that there was no prior approval of the Government for the scheme.

12. It is also material to see that the BDA, after preparing the scheme, shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired, for being seen at all reasonable hours, u/s 17(1) of the BDA Act.

It is not the case of the petitioners that the BDA did not draw any notification nor is it contended that the notification did not contain all those particulars nor was it contended that the scheme and the map were not kept for inspection. In the absence of any pleading in this behalf, it is not open to the petitioners to contend that the scheme was not prepared in accordance with Sections 15 and 16 of the BDA Act.

In *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , the Supreme Court considering the consequences of want of particulars in the pleading has held as follows:

"It is not enough to allege that a particular rule or any provision has not been complied with. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particular. No issue can be raised on a plea the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the Court finds that a plea has been advanced without any substance, though ordinarily the department may have to place its full cards before the Court".

As stated supra, the pleading lacks particulars regarding the notification, exhibition of scheme and the map at a named place for inspection. In the absence of such pleading, there is no justification for the petitioners to contend

that the scheme was not prepared in accordance with Sections 15 and 16 of the BDA Act.

13. The petitioners relying on the decision of the Supreme Court in *Ramchand and Others v Union of India and Others*, have contended that the declarations should be quashed for having been issued after 5 to 6 years from the date of publication of preliminary notification. It is no doubt true that the Supreme Court in *Ramchand's* case, *supra*, considering the failure of the authorities to exercise their power within a time which can be held to be reasonable, was of the view that,

"The exercise of power in the facts and circumstances of the cases by the respondents have to be held to be against the spirit of the provisions of the Act, tending towards arbitrariness. In such a situation this Court in exercise of power under Article 32 and the High Court under Article 226, could have quashed the proceedings".

But after considering the facts and circumstances of the case, the Supreme Court has held that, payment of additional amount of compensation to be calculated at the rate of 12% per annum after expiry of two years from 23-8-1974 the date of judgment of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , till the date of making the award by the collector would return the damages caused to the petitioners therein.

That was a case where the award was sought to be made 21 years after the declaration was made. In those circumstances, the Supreme Court was of the view that there was no reasonable explanation by the Authority for the inordinate delay. Yet, the declaration was not quashed.

14. In *S.A. Jalaluddin Vs. Bangalore Development Authority and another*, , the question whether the notification published u/s 18(1)(a) of the City Improvement Trust Board Act, 1945 is barred under the provisions of the Land Acquisition (Karnataka Amendment and Validation) Act, 1967 prescribing a period of two years for issue of declaration u/s 6 of the Acquisition Act, came up for consideration before a Division Bench of this Court. After considering the catena of decisions including the decision of the Supreme Court in *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, , this Court was of the view that, the acquisition under the CITB Act is not governed by Sections 4 and 6 of the Land Acquisition Act. The relevant portion reads thus:

"Dealing with the similar contention, *N.D.V. Bhat, J.*, relying upon *Naryanaiah's* case, *supra*, has held that Sections 4 and 6 of the Land Acquisition Act should yield to the provisions of Sections 14 to 18 of the Bangalore Act and similarly the provisions of Sections 4 and 6 of the Land Acquisition Act should yield to Sections 16 to 19 of the BDA Act. It is further observed that it is not as if a portion of Sections 4 and 6 of the Land Acquisition Act can be read into the provisions of Sections 17 and 19 of the BDA Act. Reliance is placed upon *M. Hanumanthappa v State of Karnataka and Others*, in which this Court had

pointed out thus:

"Acquisition under the BDA Act is not governed by Sections 4 and 6 of the Land Acquisition Act".

We are in respectful agreement with the view taken by the learned Judge on the basis of the settled law on the question".

The contention that the declaration is bad for delay and laches is, therefore, rejected as untenable.

15. It is no doubt true that by preliminary notifications larger extent of land were notified that they are required for formation of the respective Layouts. However, in the declaration certain extent of land out of the lands notified in the preliminary notification were left out. By mere omission of certain lands it is not possible to hold that the declarations are invalid as it is open to the authorities to omit certain lands from the declaration after considering the representations of the owners, in the light of the prevailing circumstances as to the nature of the land.

16. The declarations are sought to be quashed on the ground of the financial capacity of BDA to implement the scheme, in view of large extent of lands acquired for various other schemes have remained unutilised and the schemes have remained unexecuted for paucity of funds. This contention is liable to be rejected as it is not open to this Court to examine the financial conditions of the BDA in the matter of executing the schemes formulated. The allegation of incompleteness of scheme for paucity of funds is liable to be rejected as no particulars in support of such contention are produced by the petitioners. Even otherwise, if one scheme has remained incomplete for various other reasons, that cannot be a ground to hold that the BDA is incapable of formulating another scheme and execute it. When the State Government has accorded permission for BDA to pursue its schemes subject to certain conditions it is for the BDA to execute it by mobilising the resources. It is not impossible for BDA to mobilise funds for execution of their scheme. Even otherwise, if any scheme framed remains unexecuted for a prescribed period such scheme lapses and the provisions of Section 36 shall become inoperative, in view of Section 27 of the BDA Act. The contention of the petitioners is, therefore, untenable in law and accordingly rejected.

17. It was next contended by some of the petitioners that the schemes of BDA are profit oriented and thus they violate the purpose and object of the Act, and the acquisition is, therefore, illegal and ultra vires of the provisions of the BDA Act. It is true that in the proposal submitted by the BDA to the Government for sanction of the scheme while explaining the cost of formation and execution of the scheme it is mentioned that the BDA would ultimately make certain profits. Even though it is so mentioned in the proposal the scheme cannot be treated as profit oriented in the common parlance as they are not framed with the object of making any profit like a private entrepreneur. The BDA frames the schemes in

order to serve the public cause. The formation and distribution of sites are in accordance with provisions of the Act and the rules, in favour of eligible persons, belonging to all strata of the society with an emphasis on the persons belonging to weaker sections of the society. In that process, if the BDA makes money in excess of the expenditure, it cannot be construed as "profit oriented", as such profit is likely to be utilised for further development, which is a continuous process. Even if there is an element of profit, schemes cannot be declared invalid, as such profit is for the benefit of general public and not for any individual or group of individuals.

18. In *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, , the Supreme Court while considering the similar contention has held as follows:

"26. Simply because there is an element of profit, it could not make the whole scheme illegal. A private entrepreneur will certainly look at some profit but to see that the profit motive does not lead to exploitation even of the rich and that the houses are available to the poor people and to middle class people at nominal or affordable prices, or even on no-profit-no-loss basis, the Housing Board exercises the necessary control. It is certainly a public purpose to provide houses to the community especially to poor people for whom the prices are beyond their means and they would otherwise never be able to acquire a house.

27. xx xx xx xx 28. The Court must shake off its myth that public purpose is served only if the State or the Housing Board or the joint sector company does not earn profit. There cannot be any better Authority than the State or the statutory corporation to supervise or monitor the functions of the joint venture company. Courts will certainly step in if the public purpose is sought to be frustrated.

29. In the present case Directors appointed by the Housing Board/State on the Board of Directors of the joint venture company would certainly see that no runaway profit is earned and that sale price of HIG houses is guided by market forces but there is no exploitation. Every section of the society needs protection from exploitation. It is however not possible nor desirable to lay down any principle as to how this is to be done in a particular case".

19. The BDA is a statutory body established under the provisions of the BDA Act. The object of the Authority shall be to promote and secure development of the Bangalore Metropolitan Area and to achieve such object, the BDA frames and executes the schemes to provide house sites to the eligible persons among general public, belonging to all sections on "no-profit-no-loss" basis. If, in executing such schemes, it cannot be said that the BDA would act or function for any extraneous considerations or for the benefit of any individual or group of individuals and, it makes a little profit the scheme should not be held to be illegal or ultra vires of the Act.

20. It was next contended that the Government while giving administrative approval to the scheme u/s 15 of the Act, has imposed conditions to reserve a

certain quantity of sites for persons belonging to weaker sections of the society. The imposition of such condition to reserve 25% of sites to one section gets incorporated into the scheme and thus the scheme originally framed by the BDA stands altered. Yet, the BDA submitted the scheme to the Government to sanction without altering the scheme in accordance with the conditions imposed by the Government. The sanction of such scheme by the Government without reference to its Administrative approval demonstrates the total non-application of mind by the Government. The sanction is, therefore, illegal and void.

No material, either of law or fact, was placed by the petitioners in support of their contention that the condition has altered the scheme. It is clear from Section 16 that the BDA should reserve certain prescribed area for specified purpose and utilise the rest for the purpose of residential and non-residential purposes. Any suggestion or condition made by the Government would not alter the scheme, as the State Government has no Authority of law to alter the scheme either expressly or by necessary implication. The power to modify or alter the scheme vests with the BDA. The BDA after considering the representations rightly or wrongly, submitted its scheme to the Government for sanction, along with all the materials mentioned in Section 18(1) of the Act. The Government considered the scheme as submitted by the BDA, as is clear from the order. The BDA also produced the particulars of the material submitted to the Government for sanction, for my perusal. From the material produced, I am not able to persuade myself to agree with the contention of the petitioner that the Government did not apply its mind to give sanction to the scheme. It is accordingly rejected.

21. To consider the objections of the petitioners that their representations were not considered by the Authority in accordance with the statutory provision and the Government did not apply its mind while according sanction, it is necessary to look into the records of the BDA and of the Government to ascertain as to the manner of consideration of representation, if there is any. The objections of the petitioners is that BDA did not consider any of their representations. Their representations were rejected without applying its mind. The decision of the Authority did not indicate the manner in which the representations were considered. The absence of any reference to the representations, the consideration as to the correctness or otherwise of such representations and the reason for the rejection of representations in their resolution, leads to the irresistible conclusion of non-application of mind. The petitioners contended that, there was no consideration of representations by the Authority and the alleged consideration should be held to be illegal and violative of the principles of natural justice.

22. The learned Counsel appearing for the respondents have contended that the BDA is a statutory body assisted by various officers in the performance of its functions. It is not necessary that the Authority itself should refer to the nature of representations, to record its opinion in respect of each of such

representations and the reasons for such opinion. The BDA may evolve its own procedure to consider each representation and if, by evolving such procedure a responsible officer is conferred with power to prepare a note in respect of each representations with his remarks to enable the BDA to consider the representations, it cannot be said that such process is outside the scope of Section 18(1) of the BDA Act, The consideration of the representations on the basis of the note prepared by the authorised officer, would satisfy the requirement of Section 18(1) of the Act. Such consideration cannot be held to be illegal, merely because it contains no detailed discussion. It was submitted by the learned Counsel appearing for the respondents that the Land Acquisition Officer of the concerned area was authorised to prepare a note containing Survey Number, the extent of land sought to be acquired, the name of the owner, whether there is any objection or not and if there is any the nature of objection, the correctness or otherwise of such objection and his remarks. In addition to this, the BDA had also appointed a planning committee to visit all the Layouts and to make recommendations regarding the areas with reference to which the acquisition proceedings would continue. The Authority after receiving the report of the planning committee and also the notes prepared by the Land Acquisition Officer considered the objections and rejected the same. Thus the BDA has considered the representations in accordance with law.

23. In support of their contention the BDA produced the records for my perusal containing the notes prepared by the Land Acquisition Officer, the report of the planning committee, the notes prepared for the consideration of the Authority, the decision of the Authority, the proposal submitted by the Authority to the Government for sanction of the schemes and the order of sanction made by the Government.

The reports of the Land Acquisition Officers submitted for the consideration of the Authority contains the following particulars such as Sl. No., Sy. No., extent notified, W.P. No. (earlier petitions), extent quashed, name and address of the objector and the date of objection, nature of objection, status of land (actual), acquisition status, and remarks.

24. It is contended by the learned Counsel appearing for the petitioners that it is clear from the report of the Land Acquisition Officer that he did not consider the representations filed by the petitioners prior to the disposal of the previous petitions and the consideration of the representations is also not in the manner in which they ought to have been considered. The statement made in the remarks column clearly indicates the non-application of the mind or the mechanical manner in which he prepared the report.

25. In order to examine the contention of the petitioners it is material to extract the statement of the Land Acquisition Officers in their report in respect of a few items as illustrations in respect of each scheme which read as under:--

I. BSK V Stage.--

Extent notified

Name and address of the objector and date of objection

Nature of objection

Status of land (actual)

Acquisitionstatus

Remarks

1

2

3

4

5

6

1-25

Sri Krishna Spinning and Weaving Mills

Objection not filed

Partly built-up (less than 60%)

—

Land is vacant. FN may be issued

1-31

-do-

-do-

Vacant

Award approved

-do-

1-35

-do-

-do-

Partly built-up (less than 50%)

-do-

-do-

7-09

-do-

-do-

Vacant

-do-

-do-

19-11

G-H.Ramachandra

-do-

-do-

-do-

-do-

4-36

Sri Krishna Spinning Mills Private Limited, Subramanyapura, Bangalore-61, dated 17-10-1996

Textile mills and residential quarters are constructed and required for further development of textile mills

Vacant

Award passed

Vacant land. FN may be issued

1-09

Y.N. Gangadhara Shetty, Subramanyapura, Bangalore-61, dated 16-10-1996

Textile mills and residential quarters are constructed and required for further development of textile mills and also the Authority does have sufficient resources to develop the area

Vacant

Award passed

Vacant land. FN maybe issued

0-35

G.D.Dhamodhar Naidu

The land has been fully developed and residential houses come up. Hence Layout

cannot be formed

Vacant

Award passed

Land is vacant. FN may be issued

3-16

Poornapragna HBCS,Bangalore

After Acquisition proceedings Government has taken over possession and handed possession to the society

Vacant

FN stayed

Land is vacant. FN may be issued

3-06

-do-

-do-

-do-

-

-do-

0-24

-do-

-do-

-do-

Award approved

-do-

II. JP Nagar 8th Stage.

Extent

Name of the objector petitioner

Date of filing objection

Gist of objections

Remarks/recommended by Planning Committee

1

2

3

4

5

5-35

V. Natarajan

30-10-1996

The land owner represented that he is running nursery. Prays to, delete as per Government Order

Land is vacant. There is nursery with fruit-bearing trees. It may be included in FN and may be included in scheme by overruling objections-

6-29

Not filed

—

—

Land is vacant. FN may be issued as it is suitable for Layout

10-02

-do-

—

—

-do-

6-38

-do-

—

—

-do-

0-13

-do-

—

—

-do-

7-31

-do-

—

—

-do-

10-15

-do-

—

—

-do-

6-05

-do-

—

—

-do-

4-00

K.P.M. Subramanyam

25-10-1996

Delay in issue of FN. Land is developed by owner, etc.

2-33

P.K. Chandrakanth and P.K. Dayanand

-do-

Delay in issue of FN. Acquisition is arbitrary

Land is vacant with some sheds. Fn maybe issued as it is suitable for Layout.
Objections may be overruled

0-18

-do-

-do-

-do-

-do-

15-01

Objection not filed

—

—

—

0-24

-do-

—

—

—

0-12

-do-

—

—

Land is vacant. FN may be issued as it is suitable for Layout

5-27

R.P.M. Subramanyam

25-10-96

Delay in issue of FN. Land developed already

Land is vacant. Recommended for FN by ruling objections

6-03

-do-

-do-

-do-

-do-

18-30

Muni reddy, Susheela, Narayana Reddy

28-11-1996

Land owner proposed to take up Group Housing as per G.O. dated 17-11-1995

Land is vacant. Already handed-over.FN may be issued earmarking the area for site development as per G O. dated 17-11-1995

5-00

Objection not filed

—

—

—

III. J.P. Nagar 9th Stage:-

Extent A-G

Name of the writ petitioner

Gist of objections

Remarks/recommended by Planning Committee

1

2

3

4

0-23

Beerappa and Auusuyamma

Objection not received

Land is built-up. Layout cannot be formed. To be deleted in FN

0-03

-do-

-do-

Land is vacant. FN may he issued

0-05

-do-

-do-

Land is vacant. FN may be issued

IV. Gnanabharathi Layout.-

Extent

Name of the notified Kathedars

Date of claim application received

Remarks

1-31

G. Sharada Prabhu W/o Late Lakshman Prabhu

—

The land is partially built-up and it may be pursued under the provisions of the G.O. dated 17-11-1995

1-12

Thimmaiah, Ajjaiah

—

The land is vacant, it can be included in the FN and the objection may be overruled

7-36

Thimmaiah

3-10-1996

Objection may be overruled and it can be included in the FN

1-10

Munivenkata

4-11-1996

The Land is partially built-up and it may be pursued under the provision of the G.O, dated 17-11-1995

1-35

Jayamma

4-11-1996

02 guatas covered with structure may be deleted and remaining extent can be included in the FN

0-27

Dasappa, Erangaiah

—

Land is vacant, it can be included in the FN

0-30

G-V. Sreedhar

—

-do-

0-19

Gangappa

—

-do-

1-27

Gurappa

—

-do-

26. It is true that a statutory Authority like BDA evolves its own procedure to consider the representations filed by the owners in respect of the proposed acquisition. There is no hard and fast rule that the Authority itself should consider each of the representations before making appropriate orders. However, it is settled that the consideration of the representation by any Authority should be in the manner recognised by law. "Consideration of representation" postulates that the Authority concerned has thought over the matter by applying its mind to the relevant portion of the representations and may make its recommendation assigning reasons for such recommendation. Mere extracting the nature of objections and his remarks without assigning reasons is no consideration at all.

27. The Supreme Court in Barium Chemicals Limited and Another v A.J. Rana and Others, while considering the meaning of expressions "considers it necessary" has stated as follows:

"The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect" (vide shorter Oxford Dictionary). According to Words and Phrases --Permanent Edn., Vol. 8-A to "consider" means to think with care. It is also mentioned that to consider is to fix the mind upon with a view to careful examination, to ponder, study, meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential

requisite to the making of the order would be held to be non-existent".

From the illustrations as extracted from the notes prepared by the various Land Acquisition Officers, it is seen that they have simply noted objections and made their remarks in the relevant column. They have not stated any reasons as to why the objections in the representations should be overruled. It is material to see that even in the case of the acquisition of land in favour of a Housing Co-operative Society having been completed the Land Acquisition Officer simply states, final notification may be issued. Even in respect of the lands where there are constructions he has stated that, the land is vacant and FN may be issued. In case of Gnanabharathi Layout, even the nature of representations are not mentioned in the report. This establishes the total non-application of mind of the Officer who is authorised to prepare note with reference to the representations of the owners for the consideration of the same by the Authority.

28. It is contended by the petitioners that the Land Acquisition Officers have mentioned in their report that the objections have not been filed without taking into consideration the objections filed by the petitioners prior to the disposal of the previous writ petitions and therefore, the declaration is bad for non-consideration of representations. It is contended by the learned Counsel appearing for the BDA that this Court while disposing of the earlier petitions reserved liberty to the respondent-Authority to consider the representations to be filed within 30 days from the date of the order and to make appropriate orders thereon and therefore there was no direction to consider the representation filed by the petitioners earlier to the previous writ petitions. The contention of the learned Counsel appearing for the respondent-BDA is untenable in law. It is material to see that in many of the earlier petitions the petitioners have contended that their representations were not considered by the BDA. When the petitions were disposed of quashing the declaration and reserving liberty to the respondents to proceed with the acquisition from the stage of considering the report it is incumbent on the respondent-Authority to consider all the representations filed whether prior to or after the disposal of the previous petitions, in the absence of any specific order to consider only such objections that may be filed pursuant to the order as made by this Court in the previous writ petitions. In this context it is material to read the order dated September 19, 1996 made by this Court in P. Krishnappa's case, *supra*, and connected matters which reads thus.--

"In some of the petitions, the petitioners have contended that though their names have appeared in the revenue records, no notices have been served on the petitioners as contemplated u/s 17(5) of the Act. In reply to these submissions, the learned Counsel appearing for BDA submitted that the notices were issued to the person whose name appeared in the revenue records and therefore, the petitioners cannot have any grievance as against the said acquisition u/s 17(5) of the Act, the notices shall be issued to the Kathedars as found in the revenue records and also to the persons as found in the assessment

registers maintained by the local Authority. As I have held that the notification issued u/s 19(1) of the Act is not valid in law, there is no need to consider this point and instead the liberty is to be given to the Authority to proceed with the acquisition by permitting the petitioners to file objections if any within 30 days from the date of receipt of this order without awaiting for any notice from the respondent-Authority and in the event such objections are filed the Authority may consider the same as per Section 18(1) of the Act, and thereafter to proceed in accordance with the law".

Liberty to file objections was given only to those who were not served with notice u/s 17(5) of the Act. That did not mean that there is no need to consider the representations filed by the other owners prior to the disposal of the previous petitions, particularly in view of declaration having been quashed for want of sanction u/s 18(3) of the Act. In order to give sanction, there shall be consideration of representation of the owners by the Authority u/s 18(1) of the Act. Representation means representations filed by all owners unless such representations are apparently untenable in law. It is not the case of the respondents that the objections filed by the petitioners are untenable in law as no such finding is recorded.

29. It is contended by the petitioners that the BDA did not consider the representations of the petitioners as required in law and on the other hand rejected all the representations by one stroke. In this context it is material to see the resolution dated 1-3-1997 passed by the BDA in Subject No. 65 of 1997 in respect of the acquisition of lands for the Banashankari V Stage which is almost similar to other resolutions:

From the resolution it is seen that the representations received pursuant to the order dated 27-9-1996 made by this Court have been considered and decided to reject the objections in respect of 725 acres 06 guntas and to forward the scheme and the declaration for approval of the Government. The said resolution is based on the note prepared by the office which in turn was prepared on the basis of the inspection report of the planning committee appointed in respect of the first three stages. The Planning Committee consisting of the Engineering Member, Deputy Commissioner (LA), Town Planning Member was constituted by the Authority to inspect the on-going scheme of BDA and to make recommendations regarding the areas to which the acquisition proceedings would continue.

30. The note prepared for the consideration of the Authority at its meeting in respect of Subject No. 67 of 1997 reads as follows.--

31. The Notes prepared for other two schemes are almost similar. The report of the Planning Committee did not have the benefit of the representations of the owners nor was it authorised to consider the representations. In this behalf the recommendation of the Planning Committee is material and the same reads as follows.--

"Objections filed by the petitioners may be overruled and acquisition may be continued for these lands. A scheme may be prepared as the Court has quashed the final notification and the proposal be sent to the Government to approve the scheme and issue the final notification. Survey Numbers involved are in Annexure-D (extent 286 acres 39 guntas)".

On the basis of this report and the notes prepared for the meeting of the Authority, the Authority decided to overrule the objections. It is therefore, clear that the Authority did not consider the representations of the owners in the manner it was required to be considered. Moreover, it is admitted that the representations filed by the owners prior to the disposal of the previous writ petitions were not considered either by the Land Acquisition Officer or by the Authority. In this view of the matter, there is non-compliance with the provisions of Section 18(1) of the Act.

32. It was next contended by the petitioners that the order of the Government sanctioning the scheme is also illegal and void for non-application of the mind. From the records it is seen that the Authority submitted the proposal to the Government for sanction of the scheme along with all the particulars enumerated in Section 18(1) of the Act. The State Government by its order dated 12-9-1997 accorded sanction after considering the proposal. From the order it is seen that the State Government had all materials before it and applied its mind and gave the sanction for the schemes. There is no legal infirmity in the sanction of the scheme by the Government u/s 18(3) of the Act.

33. In W.P. Nos. 66 and 67 of 1998 the petitioner is seeking a writ for quashing the declaration in respect of Sy. Nos. 169/4 and 170 of Kothanur Village. It is admitted that these lands were not included in the previous declarations. This was not the subject-matter of any writ petition. Yet, the Authority decided to issue declaration in respect of the aforesaid lands without considering the objections filed by the petitioner. There is no reference to the objections of the petitioner in the note prepared by the Land Acquisition Officer.

34. The petitioners in W.P. Nos. 36421 to 36424 of 1997, 36223 to 36226 of 1997, 37331 and 37332 of 1997, 7682 to 7711 of 1998 and W.P. No. 34796 of 1998 are the purchasers of sites or portion of land subsequent to the publication of preliminary notification. In view of the decision of this Court in Poornaprajna House Building Co-operative Society, Bangalore Vs. Bailamma @ Dodda Bailamma and Others, , the subsequent purchasers have no right to question the validity of acquisition proceedings. Similarly the petitioners in W.P. Nos. 2652 to 2693 of 1998 and W.P. Nos. 13781 to 13830 of 1998 and 13924 of 1998 are also subsequent purchasers excepting the first petitioners therein. The first of the petitioners in those petitions are also not entitled for any discretionary relief at the hands of this Court as they alienated their lands which were the subject-matter of the previous petitions during the pendency of those petitions.

35. W.P. No. 36873 of 1997 is filed by a Housing Society which is not registered.

The said petition was filed on behalf of the various owners of different sites. The Bikasipura Site Owners' Co-operative Housing Society Limited do not have any subsisting interest in the sites of those persons who are stated to be the members of that society. The petitioner in W.P. No. 8188 of 1998 is stated to be a tenant of the land in question who is ordered to be registered as occupant in the year 1990. He did not have any subsisting interest in the land in question as on the date of publication of preliminary notification. W.P. Nos. 36510 and 36511 of 1997 are also by the subsequent purchasers.

36. For the reasons aforesaid I make the following order:

W.P. Nos. 36421 to 36424 of 1997, W.P. No. 36873 of 1997, W.P. No. 8188 of 1998, W.P. Nos. 36223 to 36226 of 1997, W.P. Nos. 37331 and 37332 of 1997, W.P. Nos. 7682 to 7711 of 1998, W.P. Nos. 2652 to 2693 of 1998, W.P. Nos. 13781 to 13832 of 1998 and 13924 of 1998 and W.P. Nos. 36510 and 36511 of 1997 are hereby dismissed.

W.P. No. 759 of 1998 and W.P. No. 34796 of 1998 are also dismissed as the petitioner has alienated part of his land, during the pendency of the previous petitions in favour of petitioners in W.P. Nos. 7682 to 7711 of 1998.

W.P. Nos. 20162 and 20163 of 1998 are also dismissed as the petitioners admittedly did not file any representation before the respondents even after the disposal of the previous petitions.

The rest of the petitions are allowed. The declarations dated 16-9-1997, 17-9-1997, 17-9-1997 and 6-10-1997 published in the Karnataka Gazette dated 17-9-1997, 18-9-1997, 18-9-1997 and 6-10-1997 respectively, issued u/s 19(1) of the Act are hereby quashed only insofar as they relate to the petitioners' lands, leaving liberty to the respondents to issue fresh declaration if they are so advised only after considering the representations of the petitioners in accordance with Section 18(1) of the Act. It is made clear that in view of the sanction having been granted by the Government in accordance with Section 18(3) of the Act, the orders of sanction have remained undisturbed.

37. In W.P. No. 37808 of 1997 the petitioner is seeking a writ for quashing the declaration dated 9-5-1994. He was one of the petitioners in W.P. Nos. 4233 to 4244 of 1992 for quashing the declaration in respect of Jayaprakash Narayan Nagar, 9th Stage, which were allowed by this Court by its previous order. Therefore, he was aware of the acquisition proceedings even as long back as in the year 1992. The petition is, therefore, liable to be dismissed solely on the ground of delay and laches. It is accordingly dismissed.

38. In the circumstances of the case there is no order as to costs.

Sub.

A.J. Sadashiva, J. 2-9-1998

Order on for being spoken to W.P. Nos. 11289 and 11290 of 1997 and W.P. Nos.

34557 to 34569 of 1997

These petitions were allowed by judgment and order dated 31-8-1998 and the declarations were quashed, leaving liberty to the respondents to pursue acquisition from the stage of considering the representations filed by the petitioners. In these petitions, the petitioners did not file their representations in view of the lands in question were notified in the preliminary notification with reference to their survey number and the ownership. The petitioners have contended that, some of them were granted under the Land Grant Rules and some have purchased at public auction pursuant to which it was resurveyed and a new survey number was given.

2. In view of the declarations having been quashed, it is just and appropriate to permit the petitioners to file their objections/representations before the Land Acquisition Officer within 30 days from today and the respondents may pursue the acquisition of the lands in question, if they are so advised, after considering the representations in accordance with Section 18(1) of the Act.