

(2014) 02 KAR CK 0150

In the Karnataka High Court

Case No : Writ Petition Nos. 83011-83035/2013 (LA-KIADB)

Gopireddy Hanamappa Sangavanavar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Karnataka Industrial Areas Development Act, 1966 — Section 1(3), 16, 24(2), 28, 28(1)
Land Acquisition Act, 1894 — Section 11, 11A, 16, 18, 4

Citation : (2015) 1 AKR 609 : (2014) ILR 3491

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Subramanya Jois, Senior Counsel for Sunitha P. Kalasoor, Advocate for the Appellant; Basavaraj V. Sabarad, Senior Counsel for P.N. Hatti, Advocate and A.G. Maladar, HCGP, Advocate for the Respondent

Judgement

Aravind Kumar, J.—Heard Sri Subramanya Jois, Learned Senior Counsel along with Smt. Sunitha P. Kalasoor, appearing for the petitioners, Sri Basavaraj Sabarad, Learned Counsel appearing for respondent No. 3 and Sri Maldar, Learned High Court Government Pleader appearing for respondent Nos. 1 and 2. Perused the records made available by Learned Counsel appearing for the Karnataka Industrial Area Development Board (for short "the Board").

2. Petitioners are seeking for a direction to the respondents to denotify the lands mentioned in Annexures-A and B insofar the same relates to the petitioners by declaring that the professed and purported acquisition of lands notified has stood frustrated by efflux of time.

3. Records would indicate that declaration declaring that the lands in question and other adjacent lands to be an industrial area came to be made on 27.09.1982 and 30.07.1983 under Sections 3(1) and 1(3) respectively. Pursuant to the same, a Notification under Section 28(1) of the Karnataka Industrial Area

Development Board Act (hereinafter referred to as "the Act" for short) came to be issued on 19.01.1985 with an intention to acquire the same for the purposes of development by Karnataka Industrial Areas Development Board for the establishment of industries therein vide Notification dated 19.01.1985. The said acquisition proceedings was not objected to by the petitioners and final notification under Section 28(4) came to be issued on 21.03.1985. Subsequently, an award came to be passed on 01.12.1988 fixing the compensation at the rate of Rs. 5,000/- per acre. Some of the land owners sought for reference and the reference Court has enhanced the compensation from Rs. 5,000/- per acre to Rs. 30,000/- per acre. Being aggrieved by the said enhancement, the Board was in appeal before this Court and the said appeals came to be dismissed on the ground that the compensation awarded appears to be just and fair. However, one of the land owners had approached this Court not being satisfied with the compensation awarded in M.F.A. No. 2229/1995 and this Court by Judgment dated 19.11.2002 had allowed the appeal by fixing market value at the rate of Rs. 40,000/- per acre which came to be accepted by the Board. Compensation fixed by this Court in the said appeal came to be accepted by the Board since it was not further challenged and matter having attained finality.

4. Undisputedly, petitioners did not challenge the acquisition proceedings. Their claim in the present writ petitions is that they are illiterate, vulnerable villagers and they were lured by respondents to consent for acquisition and with an earnest belief that their villages would be industrially developed and their children and wards would be extended employment they were of the view that it would enable them to eke out their livelihood which would be as a measure of rehabilitation and as such they categorically and unequivocally admit that they did not seriously oppose the acquisition which had been so proposed by the Board and notified for acquisition. The lands involved in the present writ petition belonging to the respective petitioners are tabulated hereinbelow indicating the name, survey number and extent of land of each of the petitioners Annexure-A.

5. It is the contention of Sri Subramanya Jois, Learned Senior Counsel appearing for the petitioners that petitioners were not divested of the possession of the lands and as such they submitted representation to the respondent Nos. 3 and 4 seeking for release of the lands from the acquisition proceedings and expressing their willingness to return the amount which they had received by way of compensation. On account of non-consideration of the said representation, they had approached this Court in W.P. Nos. 72258-262/2012 and 72503-524/2012 (LA-KIADB) and a direction was issued to the respondents therein to consider the representation submitted by the petitioners in accordance with law and as expeditiously as possible vide Order dated 12.12.2012 and even before the said order could have reached the respondent-Authorities, representation submitted by the petitioners came to be considered by the respondents in a perfunctory manner without application of mind and as such the order of rejection dated 24.12.2012 (Annexure-H series) is liable to be quashed and the prayer sought for in the writ petition is required to be granted.

6. The Learned Senior Counsel would elaborate his submission by contending that a direction issued by this Court in W.P. No. 72258-72262/2012 and other connected matters has not been complied by the respondent-Authorities in its letter and spirit and there has been total non-application of mind by respondent-Authorities and there is no serious consideration of the representation submitted by the petitioners. He would also submit that no scheme has been formulated by the respondents and as such for want of sanction of scheme, acquisition proceedings are vitiated. He would further contend that provisions of the K.I.A.D.B. Act namely Sections 6, 7 and 28(8) have not been complied and the statement of objections filed by the respondents are silent on this aspect. He would contend all these aspects would itself indicate that possession has not been delivered by the petitioners and as such acquisition proceedings are bad in law. He would also draw the attention of the Court to all five of the statement of objections filed by respondents to his argument that possession of the lands in question has not been delivered since non-traversing of petition averments would amount to admission and the affidavit filed in support of the statement of objections is by a person who does not have any personal knowledge. He would submit that respondents have not placed any material before this Court to demonstrate and establish that possession of the land in question has been taken by the State and delivered to the Board for the purposes for which the land had been acquired and as such petitioners are entitled to relief sought for. In support of his submission, he has relied upon the following judgments:

- 1) Thomas Patrao since deceased by his LR and Another Vs. The State of Karnataka and Others,
- 2) Prudential Housing and Infrastructure Development Limited, Bangalore and Another vs. State of Karnataka and Others 2011 (5) KLJ 384 .
- 3) State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,
- 4) Punjab National Bank Vs. R.L. Vaid and Others,
- 5) S. Pratap Singh Vs. The State of Punjab,
- 6) Govt. of A.P. and Another Vs. Syed Akbar,
- 7) M/s. Lipton India Ltd. and another Vs. State of Karnataka and others,
- 8) Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others,
- 9) Pune Municipal Corporation and Another vs. Harakchand Solanki and Others Civil Appeal No. 877/2014 disposed of on 24.01.2014.

7. Per contra, Sri Basavaraj Sabarad, Learned Counsel along with Sri P.N. Hatti, Learned Counsel appearing on behalf of respondents No. 3 and 4 by reiterating the contentions raised in the statement of objections have contended that very writ petition itself is not maintainable, since the prayer sought for in these writ petitions is virtually for denotification and said denotifying the land is not permissible in view of the law laid down by the Hon''ble Apex Court in the case of

Government of Andhra Pradesh vs. Syed Akbar (Supra). He would submit that records would indicate that respondents 2 and 3 have taken possession of the lands in question under Section 28(8) and as such question of denotifying the land does not arise. He would further contend that when there is no challenge to the acquisition proceedings, prayer sought for in the writ petition cannot be granted. He would also submit that on the ground of delay and latches itself the petition is liable to be dismissed and mere submission of representation and non-consideration of the said representation by the respondent-Authorities would not give rise for a fresh cause of action to the petitioners to approach this Court for grant of relief under Article 226 of the Constitution of India after a lapse of 30 years. He would draw the attention of the Court at Annexure-R-1 and R-2 which indicates that possession of the lands in question has been delivered and as such the petitioners cannot now turn around and contend that possession has not been delivered. He would also submit that inordinate delay in approaching this Court namely 30 years has not been explained and hence, the petitioners are not entitled for reliefs sought for. In support of his submission, he relied upon the following judgments.

- 1) M. Nagabhushana Vs. State of Karnataka and Others,
- 2) P. Narayanappa and Another Vs. State of Karnataka and Others,
- 3) Order passed by the Division Bench of this Court in W.A. No. 31347-31391/2012 disposed of on 16.09.2013.

8. Sri Subramanya Jois, Learned Senior Counsel appearing on behalf of Smt. Sunita P. Kalsoor, Learned Counsel would submit by way of reply and reiterating the contentions raised in the rejoinder that by virtue of provisions of the Land Acquisition Act having been repealed by new Act namely Right to Fair Compensation in Transparency in Land Acquisition Act and Rehabilitation and Resettlement Act, 2013 submits that Section 24(2) of the aforesaid Act is attracted inasmuch as physical possession of the lands belonging to the petitioners has not been taken and as such the acquisition proceedings have lapsed. He would also submit that Annexures-R-1 and R-2 filed by the respondent does not indicate that possession has been taken and documents produced by the respondents are concocted and the signature of the Revenue Inspector is not found on them. He would also submit in view of the same, the declaration made under Section 3 and Notification issued on 13.09.1983 has stood frustrated by efflux of time and when petitioners have contended that possession is undisturbed possession and there being inaction on the part of the petitioners for past 28 years in taking possession of the lands in question it has given cause of action for the petitioners to submit representation to the authorities seeking release of the land from the acquisition and when said request has not yielded any result, petitioners had approached this Court in W.P. No. 72258/2012 and other connected matters in which writ petitions an order came to be passed on 12.12.2012 directing the respondent-Authorities to consider the same and same having not been considered as already contended

the petitioners are entitled to the relief sought for. On these grounds he seeks for allowing writ petitions.

9. Learned HCGP appearing for the respondents No. 1 and 2 would support the contention raised by the Learned Counsel appearing for respondents No. 2 and 3 and prays for dismissal of the writ petition.

10. Having heard the Learned Counsel appearing for the parties and on perusal of records as well as the case laws relied upon by the Learned Counsel appearing for the parties, I am of the considered view that following points would arise for my consideration:

1) Whether Writ Petitions filed by the petitioners are maintainable or not?

2) Whether there is delay on the part of petitioners in approaching this Court? and, if so, whether it has been explained with reasonable and sufficient cause?

OR

Whether the issue of delay would become insignificant or redundant in the facts and circumstances of the case and recedes background or not?

3) Whether the petitioners are entitled to relief of denotifying the land acquired for the purposes of establishing industrial area?

4) What order?

11. Brief Background: For establishment of industrial area, the appropriate Government declared its intention under the Karnataka Industrial Area Development Board Act and by exercise of its power under Section 3(1) and 1(3) of the Act issued Notifications dated 27.02.1982 and 30.07.1983 which was duly published in the Gazette notification. Pursuant to the same notification under Section 28(1) came to be published on 19.01.1985 and it was duly published in the Gazette notification on 21.03.1985. Records would indicate that the Board has served the notices under Section 28(2) on the petitioners on 26.07.1985 and after hearing objections, the Special Land Acquisition Officer, K.I.A.D.B. passed an order under Section 28(3) of the Act on 06.02.1986.

12. It is thereafter a final notification under sub-Section (4) of Section 28 of the Act came to be issued on 11.09.1986. Awards came to be passed on 10.11.1988, 08.11.1988 and 01.12.1988. Petitioners have been paid with the compensation and thereafter an application for reference was filed seeking for enhancement of compensation by each of the petitioners and their predecessors viz., Sriyuths Chandrashekhar Patil, Lokanna V. Patil, Vittalappagouda Sagarappa Patil, Ramachandra Somappa Patil, Venkanna Gadigeppa Gouda Patil, Manjunath Duragappa Madar, Laxamana Naduwinamani Madar, Duragappa Maragappa Madar, Mallappa Laxamana Giddannavar, Prema Hanumant Kushtagoudar, Basappa Patreppa Muragod, Lokkanna Irappa Muragod, Basappa Hanamappa Patil, Vittal Hanumanthappa B. Patil as could be seen from the original records.

13. Insofar as petitioner Nos. 1, 3, 12, 20, reference was sought seeking enhancement of compensation in LAC No. 295/1990. Said reference application has been allowed. Being aggrieved by the order of reference Court and contending that compensation awarded by the Special Land Acquisition Officer is on the higher side, the Special Land Acquisition Officer, KIADB filed appeal in M.F.A. No. 2463/1995 before this Court and said appeal came to be dismissed by Order dated 06.08.1999. Petitioner No. 19 had also filed Reference application seeking enhancement of compensation in No. 298/1990 which also came to be allowed and compensation was enhanced and ultimately affirmed by this Court in M.F.A. No. 3299/1995. Likewise, petitioner No. 15 (Meti Siddawa) had also filed reference applications before Civil Court seeking enhancement of compensation in L.A.C. No. 304/1990 which came to be allowed and compensation was enhanced and affirmed in M.F.A. No. 2833/1995. So also, petitioner No. 18 had filed reference application in L.A.C. No. 1/1994 which was allowed and affirmed in M.F.A. No. 2832/1995. The details of reference applications and LAC Nos. which came to be affirmed by this Court in the first appeals are tabulated hereinbelow for the purposes of convenience.

14. The records would also indicate that compensation has been received and the voucher for payment of compensation is found in the original files. These documents read in conjunction with the averments made in the writ petition at paragraph 6 would clearly indicate that petitioners did not oppose the acquisition, accepted the same, received the compensation, sought for enhancement and after the same being enhanced, defended their rights before this Court in the appeals filed by the KIADB contending inter alia that the compensation awarded by the reference Court is just and proper. It would be necessary and apt to extract the admission of the petitioners in the present pleading which is at paragraph 6 which would clearly indicate that they did not choose to oppose the acquisition proceedings at any point of time but on the other hand they had acquiesced in the proceedings. The said admission reads as under:

"The vulnerable villagers xxx xxx has been agriculture, did not seriously oppose the acquisition which had been so proposed and notified, xxx xxx, on the said lands."

15. Insofar as admission regarding receipt of compensation can also be found from the admission made in paragraph 9 of the writ petition and it reads as under:

"Such a notification xxx xxx sum of Rs. 5,000/- per acre was awarded to the gullible petitioners who, for want of bargaining power, had no other conceivable option than receiving the same, in the hope that the area would develop industrially and that the petitioners and their dependant members of their family would be rehabilitated by providing them employment for enabling them to earn their livelihood. Their earnest hopes and aspirations have, lamentably been shattered by the respondents."

16. These averments made in the petition when read in conjunction with the original records made available by the Learned Advocate appearing for the KIADB would clearly indicate that petitioners at no point of time opposed the acquisition nor raised their little finger while receiving the compensation.

Regarding Point Nos 1 and 2:

17. In these writ petitions, petitioners are seeking for a mandamus to command the respondents to formally denotify the lands mentioned in Annexures-A and B insofar as the same relates to the petitioners' lands contending inter alia that even though period of 28 years have lapsed, possession has not been taken and the khas possession continues with them till date. Before embarking upon an enquiry to find out as to whether possession is taken or otherwise, let me examine as to whether there has been delay in approaching the Court and if so, whether the delay has been properly and sufficiently explained with sufficient cause or whether there is no delay at all and such an issue would recede to the background or otherwise.

18. It has been the contention of Sri Subramanya Jois, Learned Senior Counsel appearing for the petitioners that when possession has continued with the petitioners and the very inaction of respondent Nos. 3 and 4 all these years in not taking possession of the lands in question which has continued in possession of petitioners itself is an indicator to the fact that the prayer sought for by the petitioners is to be granted requires to be examined with utmost circumspection. Petitioners have also tried to draw sustenance from the fact that before filing of the writ petitions, they had approached the concerned authorities namely the respondents seeking denotification of the lands and offering to refund the compensation received by them and on account of non-consideration of their requests and representations submitted in this regard, they had approached this Court and had obtained a direction to consider the said representations. At the outset, it requires to be noticed that a dead cause of action cannot be revived by submitted memorials or representations. If the cause of action has arisen at any point of time and petitioners had approached this Court at the earliest point of time, this Court would have definitely examined such a prayer. However, such a situation did not arise at all in the instant case.

19. In the instant case, notification under Section 28(1) of the Act came to be issued in the year 1985 and notification under Section 28(4) came to be issued in the year 1986 and award came to be passed in the year 1988. Thereafter, petitioners have filed reference applications before the reference Court. Though Smt. Sunitha P. Kalasoor, Learned Counsel for the petitioners would vehemently contend before this Court that still the reference applications are pending, I am not inclined to accept the said contention for reasons more than one.

20. Firstly, there is no material produced before this Court to establish that such reference applications are pending and secondly, records produced by the KIADB would clearly indicate that petitioners had filed the reference applications, got

the compensation enhanced which came to be affirmed by this Court in the appeals referred to herein supra and as tabulated by this Court herein above.

21. It has been held by the Hon"ble Apex Court that submission of representations to the authorities concerned cannot justify a belated approach. In the case of K.V. Rajalakshmiah Setty and Another Vs. State of Mysore and Another, . Their Lordships were examining as to whether the representations submitted by the petitioners therein and same being forwarded by the authorities to the higher authorities would entitle the petitioner to seek the extraordinary relief at the hands of the Court exercising the jurisdiction under Article 226 of the Constitution of India. It was held in the negative and in the following manner.

"There is also a good deal of force behind the contention that the appellants are guilty of laches. After the passing of the order of May 17, 1950, they should have made an application within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that they could rest upon their oars if they were really being discriminated against. As we cannot hold that the appellants were entitled to any particular indulgence or concession, the only way of meting out equality to all surveyors who had been promoted to the cadre of Assistant engineers would be to say that promotions should in all cases be effective from the date of the notification. This is obviously beyond our powers."

22. In Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , it has been held by the Hon"ble Apex Court that making representation is not sufficient for filing belated writ petition. It has been held by Their Lordships as under:

"5. The factual position as noted above clearly shows that for nearly two decades Respondent 1 workman had remained silent. As rightly pointed out by learned counsel for the appellants even in the representations made in 1997 and 1998 there was no reference to the representations claimed to have been made in 1982 and/or 1989. Even if that would have been made, there was considerable delay even in making the representations. There is no dispute that mere making of representations cannot justify a belated approach."

23. Keeping the principles enunciated by the Apex Court in mind, when the facts on hand are examined, it would clearly indicate that in the instant case, from the date of preliminary notification i.e., 19.01.1985 to the date of submitting a representation to respondent Nos. 3 and 4 on 21.08.2012 Annexure-E to E21, petitioners did not whisper a word, raised their little finger and silently enjoyed the benefits accruing from acquisition including receiving the compensation and also defended the order passed by the reference Court which came to be enhanced in the appeal filed by the respondent-Board.

24. A perusal of the representations at Annexure-E series would clearly indicate that to revive the dead cause of action after a lapse of nearly 28 years,

petitioners submitted representations to respondent-Authorities and even before the ink on these representations could dry, they approached this Court in W.P. Nos. 72258-72262/2012 and 72503-524/2012 seeking for quashing of the acquisition proceedings (doubt). A submission was made by the Learned Senior Counsel appearing for the petitioners to the effect that representation requesting the respondents to denotify the lands had been submitted and a direction to the respondents may be issued to consider the representation in accordance with law and expeditiously and it would suffice. Placing the said submission on record, writ petitions came to be disposed of and petitioners did not press for other prayers sought for in the writ petitions at that juncture. Accordingly, co-ordinate bench of this Court disposed of the writ petitions by placing the submission made by Learned Senior Counsel.

25. In these Writ Petitions, the said direction given by the co-ordinate bench of this Court is sought to be contended as the cause of action for the present petitions. As already noticed hereinabove, submitting of memorials and representations would not revive the dead cause of action. This Court while disposing of the writ petitions on 12.12.2012 has not expressed any opinion with regard to delay or other contentions on merits. In other words, all issues were kept open. As such, petitioners cannot be heard to contend that by virtue of a direction having been issued by this Court in W.P. Nos. 72258-72262/2012 and 72503-524/2012 on 12.12.2012, the cause of action for the petitioners to press for the prayers made in these petitions is still alive and kicking and said contention raised by the petitioners are without any merit and liable to be rejected. Hence, said contention stands rejected.

26. This brings me to the question as to whether delay has been explained by the petitioners and if so with sufficient cause or whether the delay is inconsequential and it has no bearing to the facts and circumstances of the case. It is in this background, this Court will have to examine as to whether the possession of the lands in question have been taken under the provisions of the KIADB Act governing the said issue.

27. Before embarking upon such an enquiry, it would necessary to make note of case laws governing on the said issue. Delay defeats equity is the cardinal principle on which the Courts would refrain itself from exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. A person who goes to Court seeking the relief under the extraordinary jurisdiction of this Court has to approach the Court at the first available opportunity and without any undue haste and he/she should be espousing their legitimate cause before the appropriate forum and then only it can be said that the lis is still alive as otherwise much water would have flown down the bridge thereafter and what has transpired over years or during the interregnum period cannot be undone at a later stage when there is inordinate delay.

28. At the cost of repetition, it requires to be noticed that in the instant case, petitioners undisputedly did not oppose the acquisition when the preliminary and

final notifications came to be issued in the year 1985 and 1986 respectively. In fact, they have participated in the proceedings for award of compensation by the Special Land Acquisition Officer as could be seen from the records. They have subsequently filed reference applications before the reference Court seeking for enhancement of compensation. The reference Court has enhanced the compensation and fixed the market value @ of Rs. 30,000/- per acre and majority of the petitioners have received the compensation. As already noticed hereinabove, the very averments made by the petitioners in these writ petitions would clearly indicate that they have received the compensation.

29. Yet another factor which records would indicate is: there cannot be any dispute with regard to the fact that petitioners have received the compensation inasmuch as in the very representations submitted by the petitioners which are at Annexure-E series to the writ petitions would also indicate that petitioners themselves are offering to refund the compensation already received by them to the KIADB authorities. This admission on the part of petitioners would clearly indicate the fact that petitioners have received the compensation at an undisputed point of time i.e., in the year 1988-89, 1990-91 and 1991-92 and thereafter. As noticed hereinabove, when the petitioners 1, 3, 12, 15, 18, 19 and 20 have received the compensation in the year 1999 and when no explanation is forthcoming from the writ petitions as to what steps they took from 1989 till the date of filing of the first writ petition i.e., W.P. Nos. 72262/2012 and 72503-524/2012 in the year 2012 it cannot be construed that cause for delay has been sufficiently explained. In other words, from the year 1999 to 2012, they have enjoyed the compensation received by them. Even assuming for a moment sake, at this juncture (which is not factually so for the reasons that would unfold hereinbelow) possession of the lands in question continued with the petitioners, there is no explanation offered by the petitioners in these writ petitions as to the reason for not approaching this Court for denotification of the lands in question at earlier point of time. It is well settled principle of law that after passing of the award and taking possession under the Land Acquisition Act, the lands vests with the appropriate Government free from encumbrances. Even if the land was not used for the purpose for which it was acquired, the land owner does not have any right to seek for denotification of the land or restitution of the land.

30. The question of condonation of delay is one of discretion and is to be exercised in the facts and circumstances of each case. It will depend upon the facts as pleaded in a given case. It is no doubt true that there is no limitation prescribed for the Courts to exercise the power under Article 226 of the Constitution of India. It is also not in dispute that there can never be a case where the Courts cannot interfere in a matter after the passage of certain length of time. There may be cases where compelling facts would indicate that demand for justice is so compelling that this Court would be inclined to interfere in respect of such delay. Thus, it would ultimately be the discretion of the Court which will have to be exercised fairly and justly so as to promote justice and not to

defeat it. There cannot be any hard and fast rule insofar as either condonation of delay or refusal to condone the delay. Merely because, no third party rights have been created is hardly a ground for condonation of delay. The discretionary power under Article 226 of the Constitution of India would be exercised to grant relief only to a person whose conduct does not disentitle him to obtain such discretionary relief and from the conduct of the Act, if it is explicit that for such relief, the petitioners would not be entitled then condonation of delay would not be called for and this Court while exercising the power under Article 226 would be slow in condoning such delay. Lapse of time and delay are important factors which requires to be considered while exercising the power under Article 226 and such defence must be examined by taking into consideration the length of delay and the nature of the acts done during this interregnum period namely during such intervals. The Hon"ble Apex Court in the following case has considered the delay aspect in various perspective and held that while exercising the power under Article 226 of the Constitution of India, if delay is raised as a defence and if it is found on facts and circumstances of each case, then such delay is not to be condoned or the defence of delay is to be accepted. The relief under Article 226 should be refused in the following cases.

i) Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others,

"11. In any event xxx permits. In these circumstances we consider that there was such acquiescence in the R.T.A.'s order dated September 10/11, 1965 on the part of respondent No. 1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent similar to though not identical with, the exercise of discretion in the court of chancery. The principle has been clearly state by Sri. Barnes Peacock in Lindsay Petroleum Company vs. Prosper Armstrong Hurd, Abraham Farewall, and John Kemp (1874) 5 PC 221 at p. 239 as follows:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party as, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles, substantially equitable. Two circumstances, always important in such cases, are,

the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy".

This passage was cited with approval by this Court in a recent case - *The Moon Mills, Ltd. Vs. M.R. Meher, President, Industrial Court, Bombay and Others*, . In our opinion, the principle of this decision applies to the present case and since respondent No. 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour".

ii) *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*,

"32. The learned Counsel for the petitioners strongly urges that the decision of this Court in *M/s. Tilokchand Motichand's* case (supra) needs review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Art. 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Art. 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years.

It is said that Art. 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

33. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years. It was on this ground that this Court in *Jaisinghani's* case observed that the order in-that case would not affect Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case, we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone.

34. Learned Counsel for the petitioners, however, says that there has been no undue delay. He says that the representations were being received by the Government all the time. But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one

representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned Counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961, when the Government mentioned these facts in their letter dated December 28, 1961.

35. We are unable to accept this explanation. This fact has been mentioned in the minutes of the meeting of the Committee which met in Feb. 1952, and we are unable to believe that the petitioners did not come to know all these facts till 1961. But even assuming that the petitioners came to know all these facts only in Dec. 1961, even then there has been inordinate delay in presenting the present petition. The fact that Jaisinghani's case was pending before the High Court and later in this Court is also, no excuse for the delay in resending the present petition. In the result, the petition fails and is dismissed. There will be no order as to costs."

iii) Aflatoon and Others Vs. Lt. Governor of Delhi and Others,

"11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the, notification even after the publication of the declaration under s. 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the, public purpose were not specified. A valid notification under s. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the, acquisition proceedings on the basis that the notification under s. 4 and the declaration under s. 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be, putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Thomas Patrao since deceased by his LR and Another Vs. The State of Karnataka and Others, and Rabindranath Bose and Others v. Union of India & Others 2011 (5) KLJ 384.

12. From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Cooperative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court."

iv) Hari Singh and Others Vs. State of U.P. and Others,

"4. At the out set we are of the view that the writ petition filed in July, 1982 questioning the notification issued in January, 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no

doubt true that the appellant have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by section 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings are challenged is Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a short while and it is difficult to believe that the appellant who are residents of that place would not have known till July, 1982 that the impugned notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone.

7. Appellant No. 1 claims to be the owner of plot No. 249. On behalf of the respondents it is urged that appellant No. 1 is recorded only as a co-tenure holder along with five others and they have not impeached the notifications. With regard to the allegation about the existence of a house on this plot, it is seen that the said fact is denied. The respondents rely upon some statements recorded by the revenue authorities suggesting that there was no house on this plot on the date of the notification. This is a disputed question of fact. Appellant No. 2 who claims to be the owner of plot No. 261 is stated to have purchased it on November 17, 1980 after the impugned notifications were published. The title of appellant No. 3 to plot No. 133 is denied by R.K. Kannaujia, Secretary, Krishi Utpadan Mandi Samiti, Kheragarh. In this state of affairs where there are disputed questions of fact it cannot be said that the appellants have made out any case for interference under Article 226 of the Constitution".

v) Northern Indian Glass Industries Vs. Jaswant Singh and Others,

"9. Looking to the facts of the present case and conduct of the respondents 1-5, the High Court was not at all justified in ignoring the delay and laches and granting relief to them. As already noticed, the respondents 1-5 approached the High Court by filing writ petition almost after a period of 17 years after finalization of the acquisition proceedings. They accepted the compensation amount as or the award and sought for enhancement of the compensation amount without challenging the notification issued under Sections 4 and 6. Having sought for enhancement of compensation only, they filed writ petition even three years after the appeals were disposed of by the High Court in the matter of enhancement of compensation. There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a

ground to condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for retesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in *Gulam Mustafa & Ors. v. The State of Maharashtra and Ors.* [in para. 5] has stated thus:-

"At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant Company."

vi) *Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*,

"13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, ; *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, and *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*,).

14. No hard and fast rule can be laid down as to when the High Court should

refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of an non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay; on the part of the Petitioners. (Vide: Durga Prashad Vs. Chief Controller of Imports and Exports, ; Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, ; M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, ; Dayal Singh and Others Vs. Union of India (UOI) and Others, and Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others,)

vii) Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others,

"15. Insofar as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing reference application under Section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award.

16. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd.*, where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held: (SCC p. 520, para. 29.)

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for

interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

In the concurring judgment, S.B. Majmudar, J. held as under: (Industrial Development Investment case, SCC pp. 522-523 para. 35)

"35..... Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants bypassing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches."

17. Similarly, in the case of State of Rajasthan & Ors. v. D.R. Laxmi following the decision of this Court in Municipal Corporation of Greater Bombay (supra) it was held: (D.R. Laxmi Case, SCC p. 452, para. 9)

"9. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

18. To the similar effect is the judgment of this Court in the case of The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, this Court, following the decision of this Court in the case of C. Padma v. Dy. Secy. to the Govt. of T.N. held: (Shah Hyder Case, SCC p. 55, para. 17)

"17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C.

Padma v. Dy. Secy. to the Govt. of T.N.)"

viii) State of Maharashtra Vs. Digambar,

"3. In the year 1991, respondent, an agriculturist of Vepani village in District Nandat of Maharashtra, filed a writ petition, W.P. No. 3124/91 under Article 226 of the Constitution of India in the Bombay High Court, Aurangabad Bench against the appellant, the State of Maharashtra. The relief sought in that writ petition was for issue of a direction to the Government of Maharashtra to grant compensation to him for his land alleged to have been utilised by the Government without his consent for Vepana - Gogri Road--a road work carried out by the agencies of the State Government, in the course of execution of scarcity relief works undertaken by the State Government in the year 1971-72. When the said writ petition, as well as other 191 similar writ petitions, had been set down for admission before the Aurangabad Bench of the Bombay High Court, the Hon''ble Judges constituting that Bench, called upon the concerned Government Pleader to appear for the State by waiving service of notice on it. The learned Government Pleader, who, accordingly, appeared on behalf of the State in those writ petitions, urged for dismissal of the writ petitions on the ground of laches on the part of writ petitioners, i.e., undue delay of 20 years, which had occurred in the filing of the writ petitions. But, the Bench of the High Court refused to entertain the ground of undue delay urged by the learned Government pleader against the grant of the relief sought for in the writ petitions and allowed the writ petitions by its judgment dated October 10, 1990. The portion of the judgment which could be regarded as material, reads thus:

"Mr. Kakade, learned Government Pleader faintly urged that assuming that the petitioner/petitioners were right, but since possession was taken sometime in the year 1972, the present Writ petition filed in the year 1991 are hopelessly time barred and this delay itself is sufficient to reject the petition. We are afraid, in a welfare state, the State Government cannot take such attitude when citizens come before the Courts and complain that they have been deprived of their property without following due process of law and without paying the compensation. It certainly affects the valuable right of the citizen to receive compensation. There is no dispute that the possession of lands was taken sometime in 1972. There is no investigation on factual aspects by any agency so far. The question as to whether any land of the petitioner has been taken possession of in the year 1971-72 as alleged in the petition will have to be enquired into by a competent Officer. We accordingly direct the Collector or any other Officer nominated by him but not below the rank of Deputy Collector to initiate the proceedings under the Land Acquisition Act, 1894."

7. The main contention raised on behalf of the appellant - the State of Maharashtra against the sustainability of the judgment of the High Court under appeal by Shri Ashok Desai, its learned counsel, relates to exercise of dictionary power conferred on the High Court under Article 226 of the Constitution for grant of relief of payment of compensation to the writ petitioner (respondent here) for

his land alleged to have been utilised by officers of the State Government in the year 1971-72 for construction of a public road against his wish refusing to consider the plea of laches or undue delay of 20 years raised on behalf of the State Government as a ground disentitling the writ petitioner for grant of such discretionary relief. According to him, High Court's power under Article 226 of the Constitution to grant relief to a person by issue of directions, orders or writs for any other purpose when was purely discretionary, judgment of the High Court by which such relief is granted becomes unsustainable, if it is shown that the same has not been founded on sound discretion, that is, on consideration of recognised judicial principles governing exercise of such discretion, to wit, laches, undue delay, acquiescence, waiver or the like on the part of the person seeking relief. Further, according to him, when it is well-settled that High Court's discretionary power under Article 226 of the Constitution could be exercised to grant relief only to a person whose conduct does not disentitle him to obtain such discretionary relief, the High Court cannot refuse to take into consideration petitioner's conduct which disentitles him for such relief merely because it is the State against which such relief is sought. When a citizen complains against the State which is interested in protecting his legal rights, by filing a petition under Article 226 of the Constitution, of infringement of his legal right and seeks exercise of High Court's discretionary power to grant him relief the need for the High Court, to look into the conduct of the citizen disentitling the discretionary relief sought is, if any thing, of great public importance for grant of such relief against the State would result in loss to the State, i.e., public money. His contention, therefore, was that impugned judgment by which relief had been granted to the writ petitioner (respondent here) refusing to consider the ground of laches - undue delay of 20 years, urged on behalf of the State against grant of such relief was liable to be interfered with and set-aside as that made by the High Court in wrong exercise of its discretionary power under Article 226 of the Constitution. The judgments of the High Court in 191 other writ petitions rendered by following the judgment impugned in this appeal were also liable to be annulled as a consequence.

11. As seen from the judgment under the present appeal, when the writ petition out of which the present appeal has arisen and other 191 similar writ petitions out of which the S.L.P's., which are yet to be registered by the Registry of this Court, have arisen, were listed before the High Court for preliminary hearing, the High Court has required the Government Pleader to appear for the State of Maharashtra - the common respondent in all of them by waiving service of notice upon it and heard learned counsel appearing for the writ petitioners and the learned counsel-High Court Government Pleader, by treating the writ petitions as listed for final hearing. As the relief claimed in the writ petitions filed under Article 226 of the Constitution in the year 1991 against the State of Maharashtra, the appellant here, was for directing it to pay compensation for writ petitioners' lands alleged to have been used without their consent by the State or its agencies for carrying out the scarcity relief works in the drought stricken villages

of the State of Maharashtra, during the year 1971-72, the grant of that relief by the High Court is resisted by the learned Government Pleader on the ground of laches or undue delay of 20 years on the part of the writ petitioners in seeking such relief.

12. Again, as seen from the judgment, the portion of which is excerpted by us earlier, the High Court has not chosen to consider the ground of laches or undue delay on the part of the writ petitioners as that which disentitled them to seek relief under Article 226 of the Constitution, because of its view that the ground of laches or undue delay cannot disentitle a citizen to obtain relief from the High Court under Article 226 of the Constitution when he claims compensation from the State for his land alleged to have been taken away by the State or its agencies.

13. The said view taken by the High Court that the ground of laches or undue delay on the part of a citizen does not disentitle him to obtain relief under Article 226 of the Constitution, when his claim for relief is based on deprivation of his property by the State or its agencies has since made it (High Court) to grant relief to the respondent in this appeal and other similarly situated, sustainability of such view requires our examination in this appeal.

24. Since we have held earlier that the person seeking grant of relief under Article 226 of the Constitution, even if it be against the State, is required to satisfy the High Court that he was not guilty of laches or undue delay in approaching it for relief, need arises for us to consider whether respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although certain extent of his land was taken away in the year 1971-72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971-72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefor, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

25. In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's noncompliance with petitioners' demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the

writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

26. Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blame-worthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the judgment of the High Court, the allegation adverted to above, appear to be the common allegation in other 191 writ petitions where judgments are rendered by the High Court following the judgment under appeal and which are subject of S.L.P's in this Court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the judgment under appeal, and judgments rendered following the said judgment in other 191 writ petitions, said to be the subject of S.L.P's or otherwise. All the said judgments of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the interests of justice even though only learned counsel appearing for a few writ petitioners were heard by us."

31. In that view of the matter, I am of the considered view that point formulated hereinabove is answered against the petitioners and it is held that petitioners are not entitled to the relief sought for. In view of these two points being answered against the petitioners, question that would arise is whether it would be necessary to examine point No. 3 formulated hereinabove.

32. Though this Court can conclude that such an exercise may not be necessary, in the facts and circumstances of the case, this Court is of the view that in view of the fact that arguments have been advanced by the Learned Advocates extensively on the merits of the case and also to ensure that litigation is put to a quietus once and for all, the matter is also being examined on merits by this Court and as such point No. 3 is being considered, adjudicated and answered in the following manner:

RE:POINT NO. 3:-

33. Petitioners are seeking relief of de-notifying lands mentioned in Annexures - A and B, insofar as it relates to and concern the petitioners only. The lands in

question belonging to petitioners have been acquired by the State by issuance of notification under Section 28(1) and (4) of the Act. Mode of acquisition of lands for Board can be done only by having recourse to the procedure stipulated under the Act. On a comparative analysis of the provisions of the KIADB Act as well as the Land Acquisition Act, it has been held by the Hon"ble Apex Court in the case of *M. Nagabhushana vs. State of Karnataka and Others* (Supra), that KIADB Act is a complete code by itself or in other words, a self-contained code. It has been held as under:

"30. On a comparison of the aforesaid provisions, namely, Sections 28(4) and 28(5) of the KIAD Act with Section 16 of the said Act, it is clear that the land which is subject to acquisition proceeding under the said Act gets vested with the Government only when the Collector makes an award under Section 11, and the Government takes possession. Under Sections 28(4) and 28(5) of the KIAD Act, such vesting takes place by operation of law and it has nothing to do with the making of any award. This is where Sections 28(4) and 28(5) of the KIAD Act are vitally different from Sections 4 and 6 of the said Act.

31. A somewhat similar question came up for consideration before a three-judge Bench of this Court in *Pratap vs. State of Rajasthan*. In that case the acquisition proceedings commenced under Section 52(2) of Rajasthan Urban Improvement Act, 1959 and the same contentions were raised, namely, that the acquisition notification gets invalidated for not making an award within a period of two years from the date of notification. Repelling the said contention, the learned Judges held that once the land is vested in the Government, the provisions of Section 11A are not attracted and the acquisition proceedings will not lapse. (*Pratap case*, SCC para. 12 at page 8 of the report).

32. In *Munithimmaiah vs. State of Karnataka* this Court held that the provisions of Sections 6 and 11A of the said Act do not apply to the provisions of Bangalore Development Authority Act, 1976 (BDA Act). In SCC para. 15 at page 335 of the report this Court made a distinction between the purposes of the two enactments and held that all the provisions of said Act do not apply to BDA Act. Subsequently, the Constitution Bench of this Court in *Offshore Holdings Pvt. Ltd. vs. Bangalore Development Authority* held that Section 11A of the said Act does not apply to acquisition under BDA Act.

33. The same principle is attracted to the present case also. Here also on a comparison between the provisions of said Act and KIAD Act, we find that those two Acts were enacted to achieve substantially different purposes. In so far as KIAD Act is concerned, from its Statement of Objects and Reasons, it is clear that the same was enacted to achieve the following purposes:

"It is considered necessary to make provision for the orderly establishment and development of Industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for Industrial Development and establish a Board to develop such areas and make available lands therein for establishment

of Industries."

34. The KIAD Act is of course a self contained code. The said Act is primarily a law regulating acquisition of land for public purpose and for payment of compensation. Acquisition of land under the said Act is not concerned solely with the purpose of planned development of any city. It has to cater to different situations which come within the expanded horizon of public purpose. Recently the Constitution Bench of this Court in *Girnar Traders (3) vs. State of Maharashtra* held that Section 11A of the said Act does not apply to acquisition under the provisions of Maharashtra Regional and Town Planning Act, 1966."

34. Section 30 of the KIADB Act, would clearly indicate that provisions of Land Acquisition Act, 1894 would mutatis mutandis apply insofar as enquiry and award by the Deputy Commissioner, reference to Civil Court for apportionment of compensation and payment of compensation only. In fact in *Nagabhushana's* case, referred to supra, the Hon"ble Apex Court has held the provisions of Section 11A itself would inapplicable insofar as acquisition proceedings initiated under the provisions of KIADB Act.

35. Keeping the dicta laid down by Hon"ble Apex Court in mind when the facts on hand are examined, it would indicate that under the provisions of the KIADB Act, there is no provision for de-notification of the land.

36. Section 4 of the KIADB Act would indicate that the State Government at any time by issuance of a notification can exclude any industrial area, any area or include therein any additional area, as may be specified in the notification. As noticed herein above, in the instant case, petitioners have not challenged the acquisition proceedings. They are not seeking for setting aside the acquisition proceedings. However, only on the ground that possession of the lands have continued with them they are seeking for de-notification of the lands. Thus, the question that would beg the issue would be whether possession has been taken at all? and, if not, whether the petitioners would be entitled to seek for de-notification of the lands in question?

37. On the one hand, petitioners contend that they have continued with the possession of the lands in question. On the other hand, respondents contend that possession has already been taken. It is a question of fact which requires to be examined with reference to the records made available by the Learned Counsel appearing for the Board. Along with the statement of objections, respondents have produced Annexures-R2 to R18, viz., the possession certificates said to have been executed by petitioners in favour of Board. It has been contended by petitioners in their rejoinder to the statement of objections, that these possession certificates are concocted, fabricated and it does not contain the signature of the Revenue Inspector who has identified the LTMs. of the persons who have affixed their LTMs and as such, it should not be accepted and same should be rejected. Along with the rejoinder they have also filed RTC extracts as per Annexures - L to L19, relating to the year 2013-14. These RTC extracts

would clearly indicate in Column No. 12(2), the name of the Karnataka Industrial Areas Development Board has been entered into and in some of the RTCs produced at L1 to L19 except in L5, L7, L8, L9, L10, L11, L12, wherein the names of few petitioners along with the names of KIADB is also appearing.

38. Notifications Annexures - A and B issued under Section 28(4), has been duly published in the Official Gazette on 11.09.1986. Notices have been issued under Section 28(6) to the petitioners on different dates i.e., on 20.10.1986, 02.12.1986, 20.10.1986 and on other different dates calling upon them to deliver possession. Such notices has been issued by the Special Land Acquisition Officer by virtue of the power vested in him under Section 28(6). At this juncture itself it would be appropriate to deal with the contention raised by Shri Subramanya Jois, Learned Senior Counsel namely that such notice could not have been issued by the Special Land Acquisition Officer, KIADB and it is the State Government alone which ought to have issued the said notices. In fact, Special Land Acquisition Officer or Additional Special Land Acquisition Officer in the KIADB have been empowered to exercise the powers of the State by virtue of delegation of power as could be seen from Rule 14 of the Karnataka Industrial Areas Development Rules 1986 which has been made by the appropriate Government in exercise of the power conferred by Section 40(1) of the KIADB Act. Rule 14 reads as under:

"14. Delegation of powers of the State Government. - The powers of the State Government under sub-sections (2), (3), (6), (7) and (8) of Section 28 and sub-sections (1), (2) and (3) of Section 29 hereby delegated to the Assistant Commissioner in charge of the Revenue sub-divisions within their respective jurisdiction or to the Special Land Acquisition Officers or the Additional Special Land Acquisition Officers in the Karnataka Industrial Areas Development Board and such jurisdiction as the State Government may specify from time to time."

39. Undisputedly, in the instant case, by virtue of such power conferred by delegation of power on the Special Land Acquisition Officer, namely 4th respondent, he has been exercising such power and it is the 4th respondent who has passed the award on 01.12.1988 vide Annexure - B in respect of the lands in question. Petitioners are fully aware of this aspect. It is because of this precise reason they have submitted their representations, E series, to the Chairman as well as Special Land Acquisition Officer of KIADB, Dharwad. By virtue of said power having been delegated to the Special Land Acquisition Officer, the notices under Section 28(6) came to be issued to these petitioners on different dates by Special Land Acquisition Officer as already noticed herein above and pursuant to the same, the petitioners have delivered possession. In order to satisfy myself as to whether these petitioners have affixed their signatures or LTMs in the possession certificates found in the original records at random it has been scrutinised, namely the signatures and LTMs found in the possession certificates are compared with the signatures found on the vakalatnama filed by the petitioners in these writ petitioners.

40. Perusal of Annexures - R2 to R18 would indicate that it is the possession certificate said to have been executed by the land losers for having delivered possession of the lands in question, as already noticed herein above, the petitioner No. 16 Mallappa Laxman Giddannawar has executed the possession certificate delivering the possession of the land and his signature found in Annexure - R26 when compared to the signature found in the vakalatnama, it would clearly indicate that it is the one and the same signature. Annexure - R2 relates to possession having been delivered by petitioner No. 3 and his LTM found in the vakalatnama when compared with the LTM found in Annexure - R2, it would indicate it as one and the same. Likewise, 1st petitioner's signature as found in the vakalatnama when compared with Annexure - R2, it would clearly indicate it is one and the same. Likewise, other petitioners have also executed possession certificates delivering possession of the properties belonging to them to Special Land Acquisition Officer and for having delivered possession, they have duly executed certificates. The said possession certificates are duly attested by the Special Land Acquisition Officer also. As such, contentions of the petitioners that they have continued in possession of the lands in question is not even in the vicinity of truth and as such it is not susceptible to acceptance and it stands rejected. Accordingly, point No. 1 has to be answered by holding that possession of the lands in question has been delivered by the petitioners themselves to respondent No. 4 herein and they were divested of the possession of the property in question long back.

41. As to whether possession of the lands having been taken, can be the subject matter of de-notification or not came to be considered by the Hon'ble Apex Court and in catena of decision it has been held that it is impermissible for de-notifying the lands when possession has been taken. It has been held in the following decisions to the said effect:

- i) Government of Andhra Pradesh and Another vs. Syed Akbar (Supra)
- ii) Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others,
- iii) V. Chandrasekaran and Another Vs. The Administrative Officer and Others,

RE:POINT NO. 4:-

42. It would not detain this Court for too long to answer this question in the negative for the reason that point No. 1 has already been answered against the petitioners and holding that de-notification of the lands in question is impermissible and even otherwise when petitioners have not challenged the acquisition proceedings and have accepted the same and received the compensation, delivered possession of the lands in question, de-notifying the lands in question does not arise. Even otherwise, as could be seen from the records that respondents 3 and 4 having followed the procedure prescribed under the Act namely at the first instance notification under Section 1(3) and 3(1) having been issued and thereafter, notification under Section 28(1) and

28(4) having been issued there is no infirmity in the acquisition proceedings calling for interference which would enable the petitioners to contend that by virtue of there being lapse in the process of acquisition proceedings they would be entitled for the relief sought for since representation submitted seeking denotification was directed or ordered by this Court to be considered by respondents. This Court has not directed the authorities to ignore the issue regarding delay. Petitioners cannot be heard to contend after lapse of 28 years that they are ready and willing to refund the compensation received by them for the land acquired in the year 1986 and compensation received by them in the year 1999 and willing to refund the same in the year 2012 or 2013. For these reasons, I do not find any merit in the contentions raised by Learned Senior Counsel in this regard. Accordingly, point No. 3 is answered against the petitioners.

43. Costs should follow the costs or events is the rule. The question that would arise for consideration is whether the petitioners are to be mulcted with the costs or not? At the time of issuing notice on these writ petitions for examining the Writ Petitions on merits, this Court had directed each of the petitioners to deposit a sum of Rs. 10,000/- to cover the costs of these proceedings. The order passed by this Court on 16.01.2014 reads as under:

"Since petitioners are challenging the acquisition of the lands which took place in the year 1986 and on account of certain legal contentions having been raised by them, I am of the considered view that ends of justice would met if the petitioners are put on terms and as such petitioners are hereby directed to deposit a sum of Rs. 10,000/- each towards cost of these proceedings within a period of three days from today".

44. It was also made clear in the said order that in the event of petitioners succeeding in the present writ petitions, they would be entitled to refund of the amount so deposited by them before this Court. In view of the fact that contentions raised by them have been negatived by this Court and in pursuance to orders passed by this Court on 16.01.2014, petitioners have deposited the costs as per the note made by the Registry.

45. In the instant case, respondent-Authorities 3 and 4 have appeared and contested the writ petitions. They were directed to produce the original records of the year 1999 and they were made available for perusal of the same by this Court by the Learned Counsel appearing for respondents 3 and 4 Sri Basavaraj Sabarad at the time of addressing the arguments on 22.01.2014 as noticed hereinabove. The petitioners who have taken a chance to litigate before this Court after lapse of 28 years by submitting representation on 21.08.2012 and having failed in their attempt to revive a dead cause of action and also having failed in their valiant efforts to infuse life to a cause - cause of action and in the process, respondents have been made to search for the records and produce them before this Court, which is voluminous in nature. I am of the considered view that respondents No. 3 and 4 would be entitled to the costs of these

proceedings. Hence, the following:

ORDER

(i) Writ petitions are dismissed with costs.

(ii) A sum of Rs. 10,000/- shall be paid by each of the petitioners and the amounts in deposit before this Court are ordered to be paid by the Registry to the respondents 3 and 4 forthwith.

(iii) Ordered accordingly.