

(2006) 01 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No's. 1058, 1393 and 4148 of 2005

H.G. Sheela

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4), 28 (6), 3 (1), 41 (2) (b)

Karnataka Town and Country Planning Act, 1961 — Section 14 (1), 14 (2), 14 (3), 14 A

Citation : (2006) 3 KarLJ 24

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sreevatsa Associates, G. Krishna Murthy, M.V. Vedachala and S. Vijaya Shankar, for the Appellant; R.K. Hatti, High Court Government Pleader for Respondent 1, R.N. Narasimha Murthy, for S.T. Mahesh, for Caveator Respondent 2 and 3, Jayakumar S. Patil, for H.C. Kavitha, for Respondent 3 and Vijayakumar A. Patil Advocate for Respondent 3, for the Respondent

Judgement

V. Gopala Gowda, J.—By consent of the learned Counsels for the parties these writ petitions were heard together and disposed of by this common order as the lands involved are same and common questions of fact and law are involved.

2. By a Notification dated 27-1-2004 issued u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act"), produced as Annexure-H in W.P. No. 4148 of 2005 and Annexure-A in W.P. No. 1393 of 2005, the State Government declared the following lands of Mahadevapura Village, K.R. Puram Hobli, Bangalore South Taluk as "Industrial Area".?

SI. Nos. Sy. Nos. Extent 01. 110 03-15 02. 112 03-38 03. 113:1 00-07 04. 113:2 00-07 05. 113:3 01-02 SI. Nos. Sy. Nos. Extent 06. 113:4 00-23 07. 114 01-25 08. 115 01-35 09. 116 01-14 10. 126 01-20 11. 127 00-20

Pursuant to such declaration, Notification dated 4-12-2004, produced as

Annexure-B in W.P. No. 4148 of 2005 and Annexure-C in W.P. No. 1393 of 2005, was issued u/s 28(4) of the Act proposing to acquire the said lands in favour of respondent 3 in W.P. No. 4148 of 2005 S.B.G. SOFTWARE Private Limited (hereinafter referred to as "3rd respondent-Company"). The petitioners in the two writ petitions, who are the owners of the lands mentioned in the aforesaid writ petitions, are seeking to quash the aforesaid two notifications. In addition to that, the petitioner in W.P. No. 4148 of 2005 is seeking to quash the notice at Annexures-Q and R, dated 7-12-2004 issued u/s 28(6) of the Act asking to handover possession of the lands. Further, the petitioner in W.P. No. 1393 of 2005 is also seeking (i) to declare the proceedings at Annexure-D of 235th Meeting of the State Level Single Window Agency dated 15-11-2003 on Subject No. 10 as illegal only insofar as it pertains to 3rd respondent; (ii) to declare Section 3(1) of the Act as illegal; and (iii) to direct the State Government to condition enquiry against the officers of Karnataka Industrial Areas Development Board (hereinafter referred to as "the KIADB").

3. So far as the petitioners in W.P. No. 1058 of 2005 are concerned, the first petitioner is a company registered under the provisions of the Companies Act, 1956 and the 2nd petitioner is one of the promoters of first petitioner-Company. He acquired the lands mentioned in Annexure-A. The Company formulated a Scheme to establish a Software Technology Park, for which the 2nd petitioner offered his lands. The total extent of land of these petitioners is 36-08 acres but the relief is confined only to an extent of 1-14 acres of land in Sy. No. 116 of Mahadevapura Village. The prayer made in their writ petition is to quash the order at Annexure-P, dated 8-3-2004 passed by the 2nd respondent-Special Land Acquisition Officer rejecting the objections filed to the acquisition of the lands and directing to issue Notification u/s 28(4) of the Act. The further prayer is to quash the consequential Notification issued at Annexure-Q, dated 4-12-2004 only insofar as it relates to the aforementioned extent. Annexure-G is the Project Report of these petitioners and the same is approved by the Government under Annexure-J, dated 2-7-2003. As per Annexure-K, dated 12-11-2004 the Bangalore Development Authority has recommended for change of land use. The project plan is produced as Annexure-M. In paragraph 8 of the writ petition the petitioners have highlighted their project as hereunder:

8. The petitioners submit that the State High Level Committee has agreed to provide infrastructural facilities on concession under certain terms and conditions. The BESCOM has agreed to provide 20,000 KVA power supply to the petitioner subject complying with the provisions of KERC Code. Under the provisions of Karnataka Electricity Regulatory Commission (Electricity Supply and Distribution) Code, 2000-01, as amended by Order No. KPTCL/BI/3014(3)2001-02 under Chapter III, under SYSTEM AND CLASSIFICATION OF SUPPLY, alternative current, 3 phase, S50 c/s, 66/110/220/400 KV of two phase supply of 220 K.V. is classified as EHT SUPPLY. As per the amended provision of Section 9.05(i) of the Karnataka Electricity Regulatory Commission (Electricity Supply and Distribution) Code, 2000-01 regarding the space required to

BESCOM, it is mandatory for all the buildings of this nature to provide exclusive space in his premises free of cost for erection of transformers, switchgear and other allied equipments in case buildings with the specified load above 25 KW or where the area of site is more than 600 sq. m. The project of the petitioners is approved by the HCL with 20,000 KV of power supply, which is much more than the prescribed unit by KERC and the petitioners have to go for 20,000 KV to run its project, the mandatory provision of KERC has to be followed by providing necessary land with direct access from public road. Therefore, the petitioner is left with no option but to provide the required space to BESCOM to run its project, as it is mandatory. They have also imposed condition that there must be direct access from the main road and sufficient space have to be provided for maintenance, etc. 20,000 KVA power station requires about 1 acre of land and therefore the petitioners reserved 1 acre 5 guntas of land for establishing power station. Land in Survey No. 116 is situated on the other side of the road (Northern side) and there is a direct access from the main road. It is therefore, convenient for BESCOM to maintain the establishment exclusively without any interference from the main project. Therefore, extensive space from the main road has been provided under the scheme. As such without the land under Survey No. 116 the project approved by the Committee cannot be implemented. It is also relevant to note that the exclusive provision is not available on the main area since there is no direct access to the power station from the main road. It is also relevant to note that the power under EHT (Extra High Tension) require more security and strict vigilance. Therefore, it is mandatory to have separate power station for the project to avoid any untoward incidence at a later date. The project plan which was considered is produced herewith and marked Annexure-M.

(emphasis supplied)

When the petitioners have made all arrangements to go ahead with the project, their land in Sy. No. 116 to an extent of 1 acre 14 guntas was acquired by the State Government. From what has been extracted above, it is clear that petitioners have categorically stated that "without the land in Sy. No. 116, the project of the company approved by the State Level Single Window Agency Committee cannot be implemented". In those circumstances, they are seeking to quash the acquisition of their land to the extent indicated above.

4. Statement of objections is filed by the Board (KIADB) in W.P. No. 4148 of 2005 traversing the petition averments. It is stated that possession of the lands of the petitioner had been taken on 11-1-2005 by the Special Land Acquisition Officer of the Board (hereinafter referred to as "SLAO") on 11-1-2005 and handed over to 3rd respondent on 15-1-2005. While admitting the acquisition of the land for the benefit of the company, the allegations relating to fraud on power, mala fides etc., alleged against the Board and State Government are denied. Consequently, the 2nd respondent has prayed for dismissal of the writ petitions.

5. Objections statement is also filed by the 3rd respondent-Company for whose benefit the lands in question are acquired. While denying the various allegations

of the petitioners, the 3rd respondent justified the impugned action of the State Government in acquiring the lands in question. It is pleaded that any delay in the implementation of the project of 3rd respondent will lead to consequences such as escalation in cost, withdrawal of commitments by the financial institutions, loss of business opportunities and affect employment generation. The 3rd respondent also prayed for dismissal of the writ petitions.

6. Rejoinder is filed in W.P. No. 4148 of 2005 producing the conversion order of the lands as Annexure-T, dated 22-1-2004 for residential park. It is contended that change of land use cannot be done except as provided under the Karnataka Town and Country Planning Act, 1961 (hereinafter called as "KT and CP Act").

7. Elaborate arguments were heard on both sides. Learned Senior Counsel for the parties have relied upon large number of decisions in support of their case. On the basis of the pleadings and the contentions urged, the following points arise for consideration.?

1. When the lands in question are earmarked for residential and park zone in the Comprehensive Development Plan (C.D.P.), whether the declaration of the same as "industrial area" without revising the CDP under the provisions of Karnataka Town and Country Planning Act of 1961 and the consequent acquisition of the same for industrial development are legal and valid and in accordance with law?

2. Whether the Government has formed its opinion u/s 28(1) of the KIAD Act after considering relevant aspects, that the lands in question are required for public purpose and whether the acquisition of lands is for "public purpose"?

3. Whether the Government can acquire the lands for the benefit of respondent 3, without preparing a Scheme as provided u/s 13 of the KIAD Act and whether the acquisition of lands in question is in conformity with its industrial policy and whether the acquisition of lands for respondent 3 is in accordance with the provisions of the Act, Rules and Regulations?

4. Whether the acquisition of land of the petitioner in W.P. No. 1058 of 2005 without taking into consideration its project cleared/approved by State Level Single Window Agency, is justified?

5. Whether the petitioners in the aforesaid writ petition can challenge the acquisition of their land without challenging the declaration/notification of industrial area published u/s 3(1) of the Act?

6. Whether the declaration of the petitioners lands as "industrial area" and the acquisition of lands are vitiated on account of legal mala fides?

8. Instead of referring the contentions urged and the decisions cited by the learned Senior Counsel for the parties and the other learned Counsel, the Court straightaway proceeds to answer the above points on merits by assigning the following reasons.

9. Point No. 1.?The point is, without revising the Comprehensive Development

Plan (hereinafter referred to as "CDP") as provided u/s 14-A of the Karnataka Town and Country Planning Act, whether the declaration of the lands as "industrial area" and acquisition of the same for industrial purpose by the State Government in exercise of its eminent domain power under the provisions of the Act, is legal and valid.

10. It is not in dispute that the lands in question are earmarked for residential/ park in the CDP published under the provisions of the Karnataka Town and Country Planning Act. The same shall be used by all the concerned persons only for the purpose for which they are earmarked. If, change of land use is required the same shall be done u/s 14-A of the Karnataka Town and Country Planning Act. The provisions of the above section is extracted hereunder:

14-A. Change of land use from the Outline Development Plan.?(1) At any time after the date on which the Outline Development Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the Outline Development Plan as may be necessitated by topographical or cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan or the circumstances prevailing at any particular time, by the endorsement of the plan:

Provided that.?

(a) all changes are in public interest;

(b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and

(c) xxx xxx xxx

(2) The provisions of Sub-sections (2) and (3) of Section 14 shall apply mutatis mutandis to the change in land use or development from the Outline Development Plan.

(emphasis supplied)

Sub-section (2) of Section 14 reads thus:

(2) No such change in land use or development as is referred to in Sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed.

From the above provisions it is clear that change of land use other than for the purpose it is earmarked in the CDP, the same shall be allowed by the Planning Authority with the previous approval of the State Government. In the instant case, change of land use in respect of the lands in question is neither sought nor

granted by the Planning Authority and approved by the State Government as required in law. In this regard, it is necessary to look into the law on the issue.

In Bangalore Medical Trust Vs. B.S. Muddappa and others, it is held as under:

22. Significantly, the original scheme, duly sanctioned under the Act, includes a public park and the land in question has been reserved exclusively for that purpose. Although it is open to the BDA to alter the scheme, no alteration has been made in the manner contemplated by Section 19(4) of the Bangalore Development Authority Act, 1976. xxx xxx Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power. In the circumstances, it has to be concluded that no valid decision has been taken to alter the scheme. The scheme provides for a public park and the land in question remains dedicated to the public and reserved for that purpose.

XXX XXX XXX 24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

xxx xxx xxx 36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, "gift from people to themselves". Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology....

What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

xxx xxx xxx 46. ...The purpose for which the Act was enacted is spelt out from the preamble itself which provides for establishment of the authority for development of the city of Bangalore and areas adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in Sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute.

47. ...This legislative mandate enables the authority to alter any scheme. Existence of power is thus clearly provided for. What is the nature of this power and the manner of its exercise? It is obviously statutory in character. The Legislature took care to control the exercise of this power by linking it with improvement in the scheme. What is an improvement or when any change in the scheme can be said to be improvement is a matter of discretion by the authority empowered to exercise the power. In modern State activity discretion with executive and administrative agency is a must for efficient and smooth functioning. But the extent of discretion or constraints on its exercise depends on the rules and regulations under which it is exercised.... Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions.

(emphasis supplied)

48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The Legislature never intends its authorities to abuse the law or use it unfairly. When Legislature enacted Sub-section (4) it unequivocally declared its intention of making any alteration in the scheme by the authority, that is, BDA and not the State Government. It further permitted interference with the scheme sanctioned

by it only if it appeared to be improvement....

49. Manner in which power was exercised fell below even the minimum requirement of taking action on relevant considerations. A Scheme could be altered by the authority as defined u/s 3 of the Act....

19. The legislative intent to prevent the diversion of the user of an area reserved for a public park or playground or civic amenity is reaffirmed by the Bangalore Development Authority (Amendment) Act, 1991 (Karnataka Act 18 of 1991) which came into force with effect from January 16, 1991, and which substituted a new Section 38-A in the place of the earlier provision inserted by Act 17 of 1984. Section 2 of the Karnataka Act 18 of 1991 reads:

2. Substitution of Section 38-A.?For Section 38-A of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976) (hereinafter referred to as "the principal Act"), the following shall be deemed to have been substituted with effect from the twenty-first day of April, 1984, namely.?

38-A. Grant of area reserved for civic amenities etc.?(1) The authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved.

(2) The authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose any disposition so made shall be null and void".

This new Section 38-A, as clarified in the statement of objects and reasons and in the explanatory statement attached to L.A. Bill 6 of 1991, removed the prohibition against lease or sale or any other transfer of any area reserved for a civic amenity, provided the transfer is for the same purpose for which the area has been reserved. This means that once an area has been stamped with the character of a particular civic amenity by reservation of that area for purpose, it cannot be diverted to any other use even when it is transferred to another party. The rationale of this restriction is that the scheme once sanctioned by the Government must operate universally and the areas allocated for particular objects must not be diverted to other objects. This means that a site for a school or hospital or any other civic amenity must remain reserved for that purpose, although the site itself may change hands. This is the purpose of Sub-section (1) of Section 38-A as now substituted. Sub-section (2) of Section 38-A, on the other hand, emphasises the conceptual distinction between "public parks and playgrounds" forming one category of "space" and "civic amenities" forming another category of sites. While public parks and playgrounds cannot be parted with by the BDA for transfer to private hands by reason of their statutory dedication to the general public, other areas reserved for civic amenities may be transferred to private parties for the specific purposes for which those areas are reserved. There is no prohibition, as such against transfer of open spaces reserved for public parks or playgrounds, transfer is limited to public authorities and their user is limited to the purposes for which they are reserved under the

scheme. Whether or not for consideration but the distinction is that while public parks and playgrounds are dedicated to the public at large for common use, and must therefore remain with the State or its instrumentalities, such as the BDA, or a Municipal Corporation or any other authority, the civic amenities are not so dedicated, but only reserved for particular or special purposes. This restriction against allotment of public parks and playgrounds is further emphasised by Section 3 of the Karnataka Act 18 of 1991 which reads:

3. Validation of allotment of civic amenity sites. Notwithstanding anything contained in any law or judgment, decree or order of any Court or other authority, any allotment of civic amenity site by way of sale, lease or otherwise made by the authority after the twenty-first day of April, 1984, and before the seventh day of May, 1988 for the purposes specified in Clause (bb) of Section 2 of the principal Act, shall, if such site has been made use of for the purpose for which it is allotted, be deemed to have been validly made and shall have effect for all purposes as if it had been made under the principal Act, as amended by this Act and accordingly.

The evil that was sought to be remedied by the validation provision is in regard to allotment of "civic amenity sites", and not public parks or playgrounds (see also the Explanatory Statement attached to the Bill). All these provisions unmistakably point to the legislative intent to preserve a public park or public playground in the hands of the general public, as represented by the BDA or any other public authority, and thus prevent private hands from grabbing them for private ends. It must also be stated here that the validation clause relates to the period between April 21, 1984 and May 7, 1988 which was long after the impugned allotment.

(emphasis supplied)

In *M.C. Mehta Vs. Union of India (UOI) and Others*, , it is held as under:

40. In *Virender Gaur and Others Vs. State of Haryana and Others*, , referring to Principle 1 of the Stockholm Declaration of the United Nations on Human Environment, 1972, this Court observed that right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Where in the zonal plan, a land is marked out and reserved for park or recreational purpose, it cannot be allotted for building purpose though housing is a public purpose. Further, it was observed that though the Government has power to give directions, that power should be used only to effectuate and further goals of the approved scheme, zonal plans, etc., and the land vested under the scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged thereunder. Dealing with the contention that two decades had passed, it was held that self-destructive argument to put a premium on inaction cannot be accepted.

xxx xxx xxx 42. In *Administrator, Nagar Palika v. Bharat*, (2001) 9 SCC 232, this Court observed that public interest has to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment. The hazard to health and environment of not only the persons residing in the illegal colonisation area but of the entire town as well as the provision and scheme of the Act had to be taken into consideration.

43. In *Faqir Chand Vs. Shri Ram Rattan Bhanot*, , dealing with the use of premises in Delhi by a tenant contrary to the purpose for which they could be used in terms of the lease between the landlord and the paramount lessor, this Court observed, while dealing with a landlord-tenant dispute that the policy of the Legislature seems to be to put an end to unauthorized use of leased land rather than merely to enable the authorities to get back possession of the leased lands. While dealing with the provisions of the Delhi Development Act, 1957 and Clause (k) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958, it was noticed that the Legislature has clearly taken note of the fact that the enormous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. It was also observed that the authority may not be prepared to accept compensation but might insist upon cessation of the unauthorised use. Since most of the land used for industrial purpose in residential I non-conforming areas is leased land, it was even open to the authorities to cancel the lease on account of the misuser.

(emphasis supplied)

44. *Dr. K. Madan Vs. Smt. Krishnawati and another*, , it was held that observations made in *Punjab National Bank Vs. Arjun Dev Arora and Others*, , to the effect that as long as the penalty for wrongful user is continued to be paid, the deviation of user could be permitted, do not appear to be in consonance with the decision of the larger Bench in *Faqir Chand's* case. On one hand, we have the decisions observing that merely by payment of penalty, continued misuser cannot be permitted and on the other, the misuser commenced and continued contrary to the land use under the nose of the authorities without any action being taken.

xxx xxx xxx 46. In the present case, the land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and the Rules. Non-taking of action by the Government amounts to indirectly permitting the unauthorised use which amounts to the amendment of the master plan without following due procedure.

(emphasis supplied)

xxx xxx xxx 51. The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large scale violations have commenced and continue leaves no

manner of doubt that it was not possible without the connivance of those who are required to ensure compliance with law and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law-abiders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law-makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in view the norms of environment, health and safety, the Government and its agencies, if there was genuine will, could have helped the industry and workers by relocating industries by taking appropriate steps in the last about 15 years. On the other hand, it encouraged illegal activities.

xxx xxx xxx 68. The result of the aforesaid discussion is that except household industry, all other industrial units which have come up in residential/non-conforming areas in Delhi after 1-8-1990 have to stop functioning.

11. In view of the law laid down by the Apex Court in the cases referred to supra, the notification u/s 3(1) of the Act by including the lands in question and declaring the same as "industrial area" and acquisition of the lands in question by the State Government in favour of the company which are earmarked for residential/park in the CDP for industrial establishment is contrary to the object and purpose for which the lands are earmarked. Therefore the Board has no authority or power to declare the area as "industrial area" without change of land use in the CDP by following the mandatory procedure by the Planning Authority and State Government as provided under the provisions of the Karnataka Town and Country Planning Act. The change in the land use shall be done u/s 14-A of the Karnataka Town and Country Planning Act by the Planning Authority constituted u/s 4-C of the said Act. The Board cannot usurp the said power to declare any area as "industrial area". In the decision of the Apex Court in *Bihari Lal Jaiswal and Others Vs. Commissioner of Income Tax and Others*, , at paragraph 19 upon which learned Senior Counsel on behalf of some of the petitioners has rightly relied it is held as under:

One arm of law cannot be utilised to defeat the other arm of law. Doing so would be opposed to public policy and bring the law into ridicule.

12. CDP is prepared u/s 19 of the KT and CP Act keeping in view the objects of the said Act. The objects of the Act are.?

An Act to provide for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State of Karnataka.

Whereas, it is necessary and expedient.?

(i) to create conditions favourable for planning and re-planning of urban and rural areas in the State of Karnataka, with a view to providing full civic and social amenities for the people in the State;

(ii) to stop uncontrolled development of land due to land speculation and profiteering in land;

(iii) to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land; and

(iv) to direct the future growth of populated areas in the State, with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting general standards of living in the State.

And whereas, in order to ensure that town planning schemes are made in a proper manner and their execution is made effective, it is necessary to provide that a local authority shall prepare a development plan for the entire area within its jurisdiction.

And whereas, it is necessary and expedient to consolidate and amend the law relating to town planning for the aforesaid and other purposes hereinafter appearing.

The CDP shall be preceded by Outline Development Plan. The procedure contemplated to prepare the CDP under the provisions of KT and CP Act is very elaborate. The Board cannot dilute such CDP by declaring an area as "industrial area" without consulting the Planning Authority and seeking change of land use. Any change of land use without revising the CDP defeats the very object and purpose of CDP. That is not permissible in law. Therefore, the declaration made u/s 3(1) of the Act as "industrial area" of the lands in question which are earmarked as residential/park zone and acquisition of the same for industrial purpose by the State Government is without authority of law, and the same is opposed to the provisions of KT and CP Act and therefore the same cannot be allowed to sustain.

If the action of the Board and State Government declaring the lands earmarked for residential, park etc., as industrial area is accepted by this Court, those lands remain for residential, park etc., in the CDP but insofar as the Board is concerned, the lands in question will be meant for industrial purpose. The lands in a particular area cannot be earmarked for two different purposes. Such thing will result in absurdity and the same is opposed to public policy as enumerated in the KT and CP Act.

13. As per Clause (a) of Section 14-A(1) of the KT and CP Act, the change of land use shall be in public interest. In the instant case, the declaration of the lands as "industrial area" is not for public purpose but for a private purpose. Even if it is construed that acquiring lands in favour of the company is public purpose, this important aspect is not evidenced from the original records of the

State Government and Board. Clause (b) stipulates that the changes that would be proposed to the existing CDP shall not contravene the provisions of the KT and CP Act or any other law. The declaration of the lands in question as "industrial area" contravenes Section 14-A and Sub-section (2) of Section 14 of the said Act. In this regard the law laid down by the Apex Court in the case cited below is aptly relied upon by the learned Senior Counsel Sri S. Vijaya Shankar, which relevant paragraph is extracted hereunder:

In *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , it is held as under:

13. It is, therefore, clear that for the purpose of acquisition of any land u/s 126(2) of the Maharashtra Regional and Town Planning Act, 1966 Act, the land sought to be acquired must have a direct connection with its specification, earmarking or reservation for a specified public purpose in the development plan itself. Such earmarking etc., is its charter. In other words, absence of public purpose would be a fetter on exercise of power of acquisition made u/s 126(2) of the Maharashtra Regional and Town Planning Act, 1966 or a truncated public purpose. An exercise of eminent domain derives its efficacy from the reservation, specification or designation for public purpose of the concerned land as found in the development plan itself. In this nexus or linkage between the specification etc., of public purpose in the plan and the land concerned which is sought to be acquired under the MRTP Act is snapped off, prior to the completion of acquisition proceedings as per Section 126(2) of the MRTP Act, the entire edifice of acquisition proceedings u/s 126 would crumble down and the acquisition under that section would become incompetent.

xxx xxx xxx 15. It would be necessary to emphasise that to implement the scheme framed and approved by the State Government under the MRTP Act, the land was notified u/s 126 as it was for a public purpose. If the earmarked, designated or reserved land in the subsequent plan prepared and approved under the Bombay Metropolitan Region Development Authority Act, 1974, does not subserve any public purpose within the earmarked, designated or reserved public purposes, necessarily, the public purpose envisaged u/s 126 outlives its purpose and gets eclipsed. Public-purpose envisaged in original approved plan no longer survives and if the land sought to be acquired is diverted to or earmarked or designated to a private purpose, necessarily remedy must be either under Chapter 7 of the Act or any relevant law or Section 126 as per revised and approved scheme at which stage the owner gets opportunity to submit his objections for consideration before submitting the plan for approval by the State Government.

(emphasis supplied)

14. Further in pursuant to the impugned acquisition notification u/s 28(4) of the Act, under Sub-section (5) of the same provision the acquired lands shall vest absolutely in the State Government free from all encumbrances. If the State

Government cannot change the land use other than the purpose for which it is already earmarked in the CDP in view of the decisions of the Apex Court which are referred to above and under the provisions of KT and CP Act then the purpose for which the lands acquired cannot be utilised and therefore it cannot be stated that lands in question are acquired by the State Government for public purpose. Apart from the factual and legal position the acquired lands cannot be utilised for industrial development unless the change of land use though the same statutorily vests with the State Government. Therefore the lands in question also can be either acquired by the other statutory authority or their owners for the purpose for which they are earmarked in the CDP, then it would leads to anomalous and incongruous position.

15. It is pertinent to note that in the 235th Meeting of State Level Single Window Agency held on 15-11-2003, the proceedings of the Committee is produced as Annexure-S in W.P. No. 4148 of 2005, which is sought to be declared as illegal contending that the same is not in accordance with law in W.P. No. 1393 of 2004, Subject No. 10 the meeting of the project of 3rd respondent-SBG Software is approved, the representative of Bangalore Development Authority who is one of the members of the committee has informed to the State Level Single Window Agency as under:

The representative of BDA informed the Committee that a portion of the land is meant for parks as per existing CDP and the remaining portion under residential area. It was also informed that the land is abetting the outer ring road in K.R. Puram area.

Despite pointing out as above by the representative of the BDA, the State Level Single Window Agency has not at all considered the same and mechanically approved the project of S.B.G. Software Company without application of mind. No discussion whatsoever is made regarding the change of land use. Therefore, the approval of the said project of the company is not in accordance with law. The submission of learned Senior Counsel Mr. R.N. Narasimha Murthy, placing reliance upon the decision of the Division Bench of this Court in Darshan Vs. State of Karnataka, , which decision is approved by the Apex Court in S.S. Darshan Vs. State of Karnataka and others, , wherein the Division Bench of this Court has held that Section 14 of KT and CP Act requires that land needs to be utilized for a particular purpose, relaxation thereto has to be sought for under the above Act. Merely acquisition of land by itself is not prohibited. It is only when the land is sought to be developed invoking provision of Section 14 of the Act would be attracted. In this decision the Apex Court has not examined in detail the scheme and object of the KT and CP Act, apart from this it has not considered its earlier decision in the case of Bangalore Medical Trust and other decisions of the Apex Court. The later decisions of the Apex Court which relevant paragraphs are extensively referred to in this judgment, wherein it has after examining the fundamental rights of citizens, Principle 1 of the Stockholm Declaration of the United Nations on Human Environment, 1972, the

fundamental rights of citizens guaranteed in Part III of the Constitution of India and the environmental law is thoroughly examined and laid down the law holding that the lands which are earmarked for a particular public purpose in the CDP by the State Government on the recommendation of the Planning Authority after following the mandatory provisions of the KT and CP Act, the same can be altered only by the State Government by following the procedure as contemplated in law. Further, it is held by the Apex Court that the change of land use cannot be done by the State as it would affect the fundamental rights of the residents/citizens, as such change of land use would be opposed to law. In this view of the matter the submission of learned Senior Counsel on behalf of the Board cannot be accepted. It follows that the declaration sought in this regard has to be granted. Point No. 1 is answered in favour of the petitioners holding that declaration of the area where the lands in question as "industrial area" and acquiring the same for the benefit of private company, other than the purpose as earmarked in the CDP and therefore the same is not legal and valid.

16. Point No. 2. The question is, whether the State Government has formed its opinion as required u/s 28(1) of the Act that the lands are required for "public purpose" after taking into consideration all the relevant aspects as provided under the provisions of the Act with reference to the Industrial Policy of the State Government and the scheme of the Board before publishing the notifications under the above provisions of the Act. At the outset for the reasons stated by this Court in answer to the Point Nos. 1, 3 and 6 it has to be held that the lands involved in these petitions are not acquired for a public purpose, but it is purely for the benefit of 3rd respondent which is a private purpose. Section 28(1) of the Act reads thus:

28. Acquisition of land. (1) If at any time, in the opinion of the State Government any land is required for the purpose of development by the Board, or for any other purpose in furtherance of the objects of this Act, the State Government may by notification, give notice of its intention to acquire such land.

(emphasis supplied)

17. A plain reading of the above provision of the Act clearly indicates that the State Government must form its opinion that a particular land is required for the purpose of industrial development by the Board. In the original file of the Government, the note put up at paragraph 13 is to the effect that the Special Deputy Commissioner of the Board has prepared the draft Notification to be issued u/s 28(1) of the Act and submitted for the approval of the Government. It is not in dispute that the lands in question were identified by the 3rd respondent and not by the State Government, the lands in question which are identified by the 3rd respondent for its project as evidenced from the original file and proceedings of the State Level Single Window Agency, the Government has mechanically accorded its approval without applying its mind with reference to the CDP, wherein the lands in question are already earmarked by the State Government as per the recommendation of the Planning Authority as residential/

park, which is for the public purpose. From perusal of the original file of the State Government it is evidenced that it has not formed its independent opinion as required u/s 28(1) of the Act to acquire the lands in question. The Government has merely affixed its rubber stamp to the proposal sent by the 3rd respondent. The State Level Single Window Agency in its proceedings of its committee meeting has dealt with the lands in question as under:

(ii) Land.—The Committee resolved to permit M/s. S.B.G. Software Private Limited, Bangalore, to locate their software development project in 17 acres 21 guntas of land at Sy. Nos. 110, 112p, 113, 114, 115p, 126 and 127 of Mahadevappa Village, K.R. Puram Hobli, Bangalore Urban District. It was also resolved to recommend to KIADB for acquiring the above 17 acres 21 guntas of land as a "Single Unit Complex" and hand over the same to the company for implementation of the project.

The law on the phrase "opinion" as occurred in different statutes is interpreted by the Apex Court and laid down the same in the following decisions upon which the learned Senior Counsel for petitioners has placed strong reliance in these cases with reference to the original record of the State Government to show that it has not formed its opinion as required in law independently by considering relevant factors namely; the industrial policy of the State Government, the types of lands required for formation of Industrial Area by the Board, lands already acquired for the aforesaid purpose, how many Industrial Plots are allotted in favour of the eligible applicants under the Regulations, how many prospective applicants are before the Board requesting for allotment of the same and the relevant data in this regard must be placed by the Board before the State Government, which relevant facts on the various aspects as mentioned must be reflected in the record of the State Government to apply its mind and form its opinion and take a decision in this regard and exercise its eminent domain power under the provisions of the Act to acquire the lands before issuing the notification u/s 28(1) of the Act.

Dolgobinda Paricha Vs. Nimai Charan Misra and Others, :

Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is a belief or a condition resulting from what one thinks on a particular question.

Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, :

(8) It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Land Acquisition Act, 1894, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4). The legal position has been explained by the Judicial Committee in AIR 1945 156 (Privy Council) and by this Court in a recent case Jaichand Lall Sethia Vs. State of West Bengal and Others, . But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the

expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of Sub-section (1) of Section 17 are applicable, the Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows, therefore, that the notification of the State Government u/s 17(4) of the Act directing that the provisions of Section 5-A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in *Estate and Trust Agencies Limited v. Singapore Improvement Trust* AIR 1937 PC 265 : 1937 AC 898, in which a declaration made by the Improvement Trust of Singapore u/s 57 of the Singapore Improvement Ordinance, 1927 that the appellants' property was in an insanitary condition and, therefore, liable to be demolished was challenged. Section 57 of the Ordinance stated as follows.?

57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary.

The Judicial Committee set aside the declaration of the Improvement Trust on two grounds: (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said ordinance and, therefore, the declaration was liable to a challenge if the authority stepped beyond those terms; and (2) that the ground on which it was made was other than the one set out in the Ordinance. In another case *Ross Clunis v. Papadopoulos* (1958)1 WLR 546 : (1958)2 All ER 23, the appellant challenged an order of collective fine passed under Regulation 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955 which provided that if an offence was committed within any area of the colony and the Commissioner "has reason to believe" that all or any of the inhabitants of that area failed to take reasonable steps to prevent it and to render assistance to discover the offender or offenders it would be lawful for the Commissioner with the approval of the Governor to levy a collective fine after holding an inquiry in such manner as he thinks proper subject to satisfying himself that the inhabitants of the area had been given an adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon. It was contended on behalf of the appellant that the only duty cast on the Commissioner was to satisfy himself of the facts set out in the Regulation, that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. In rejecting the contention the Judicial Committee observed as follows.?

Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a Court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.

In another case *R. v. Australian Stevedoring Industry Board* (1952)88 CLR 100 ? the High Court of Australia was called upon to review the conduct of a Board empowered to cancel the registration of an employer of dock labour if "satisfied" that he was unfit to be registered or had so acted as to interfere with the proper performance of stevedoring work. It was held by the High Court that it was entitled to award prohibition against the board if the board was acting without any evidence to support the facts upon which its jurisdiction depended, or if it was adopting an erroneous test of the employer's liability to cancellation of his registration, or if it appeared likely to go outside the scope of its statutory discretion.

In view of the law laid down in the cases cited supra, the same would with all fours applicable to the fact situation of these petitioners for the reason that the State Government has not applied its mind independently and formed its opinion by taking into consideration the relevant facts as stated supra, is evident from the original file of the Government, the relevant portion of the proceedings of the State Level Single Window Agency in this regard is extracted in the earlier paragraph of this judgment. The formation of an opinion by the State Government to acquire lands for public purpose on relevant facts is subjective one and therefore it must be strictly followed, as its action would entail serious civil consequences upon the landowners. Thus, this Court has to hold that there is no opinion formed by the Government as required u/s 28(1) of the Act before issuing notification by acquiring the lands in question. The point is answered accordingly in favour of the petitioners.

18. The learned Senior Counsel Mr. R.N. Narasimha Murthy, on behalf of the Board has placed strong reliance upon the decision of the Apex Court in *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, wherein it is held in para 10 as under:

10. The cabinet is responsible to the Legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the Governmental functions. Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well-planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subjects to political pressure. The Minister is not

expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the "Rules" or the standing orders, can take decisions on behalf of the Government". These officers are the limbs of the Government and not its delegates.

The learned Senior Counsel has further contended that the State Government has examined the recommendation of the State Level Single Window Agency, which is not a delegate, but one of the limbs of the State Government can recommend the suitability of a land by approving the project report of the company is a well-conceived plan as it contains all details and same is considered on merit. It has specified the need and requirement of land and it is not vague, the same is in conformity with law laid down by the Apex Court in *Delhi Administration Vs. Gurdip Singh Uban and Others*, and Division Bench decision in *P. Rajappa alias B.P. Rajappa v. State of Karnataka and Ors.* 2004(4) Kar. L.J. 180 (DB) : ILR 2004 Kar. 2969 (DB). The decision of the State Government in publishing the notification after following the procedure contemplated u/s 28(1) of the Act and therefore the same is in accordance with the observation made by the Apex Court in the case of *Kanaka Gruha Nirman Sahakara Sangha Vs. Smt. Narayanamma* (Since deceased) by Lrs. and Others, . The said agency has different constituent members, who have got specialization in the filed of technical, industrial, planning and environmental. The Board has got associated itself in the deliberations of the State Level Single Window Agency in its meeting. The suitability of the lands to acquire in favour of respondent 3-company and decision in this regard is not taken by the State Level Single Window Agency, but records were built up by it and placed before the State Government for the formation of its opinion by furnishing the required data by the Agency, which shall not be construed as its decision to acquire the lands in question as the material and data collected by the Agency was furnished by it to the State Government to form its opinion and take a decision in the matter of acquisition of lands in exercise of its eminent domain power as required u/s 28(1) of the Act. Therefore, the contention urged on behalf of the petitioners that the State Government has not formed its opinion in acquiring the lands in question and publishing the notification in this regard, but that it is the opinion of the State Level Single Window Agency to acquire the lands is only untenable in law as the same is contrary to the record of the State Government, this contention of him cannot be accepted as the same is contrary to the record. In view of the reasons stated supra in answer to the Point No. 1 and also on the basis of the notings recorded in the original record, this Court is of the view that it is not the State

Government which has formed its opinion after taking into consideration the relevant aspects referred to supra. Having regard to the intentment and scheme of the Act, statutory procedure is provided to achieve the objects of the Act to acquire the lands in favour of the Board to form Industrial Area upon which industrial plots are carved out, construct sheds and dispose of the same as provided under Regulation 5 of the Karnataka Industrial Areas Development Board Regulations of 1969 (hereinafter called "Regulations") in favour of eligible applicants. The State Government has to frame its scheme for formation of Industrial Area on the basis of Industrial Policy of the State Government. In this regard the KIADB being a statutory Board is required to furnish the relevant material data as stated supra to facilitate the State Government to form its opinion and exercise its eminent domain power to acquire the lands. The formation of opinion means making a judgment on relevant facts that are required to be furnished by it as required u/s 28(1) of the Act. The definite procedure is provided under the provisions of the Act to acquire the lands for industrial development in the State. As could be seen from the original record of the State Government the relevant material facts which are necessary for its consideration to form its opinion are not available in it. Therefore, this Court has to hold that it has simply acted upon the recommendation of the State Level Single Window Agency, which has no role to play to recommend to the State Government for formation of its opinion to acquire the lands. The relevant material facts and data which was required to be furnished by the Board are not forthcoming from the original record, the contention urged by the learned Senior Counsel by placing reliance upon the decision of the Apex Court referred to supra cannot be accepted by this Court, as the same is not tenable in law, but on the other hand the submission of the learned Senior Counsel on behalf of some of the petitioners placing reliance upon the decisions of the Apex Court which relevant paragraphs are extracted herein above are with all fours applicable to the fact situation in support of the claim of the petitioners. Therefore, the legal submission made by the learned Senior Counsel is well-founded and must be accepted by this Court. Accordingly, this Court has accepted the submissions and answered the aforesaid points in favour of the petitioners.

19. Point No. 3.?This point relates to whether the acquisition of lands for the benefits of 3rd respondent without preparing Scheme by the Board as contemplated under the provisions of the Act is in accordance with law. In the application filed by the 3rd respondent, the date is not mentioned. Regulation 7 of the Regulations stipulates as under:

7. Inviting applications.?The Board shall notify the availability of land, the manner of disposal, the last date for submission of applications and such other particulars as the Board may consider necessary in each case by giving wide publicity through newspapers having circulation in and outside Karnataka State and invite applications from industrialists or persons intending to start industries.

Regulation 4(a) of the Regulations prescribes the form of application to be

submitted by an applicant for allotment of land or a shed in a Industrial Area shall be made to the Executive Member in the prescribed Form 1 obtained from the Board in duplicate along with the earnest money of Rs. 100/-. Clause (b) of Regulation 4 states that application shall be presented in person or sent by R.P.A.D. to reach the office of the Board before the date and time if any fixed. For the receipt of such application invited by the Board under Regulation 7, Clause (c) of Regulation 4 further states that if an application is incomplete or not accompanied with by the earnest fees shall not be considered. In Form 1 various particulars are required to be furnished by the applicant such as statutes of the Firm, whether it is a proprietary firm, joint stock company, public, private limited or partnership, the relationship of the applicant, the nature of the industry proposed to be established or expanded, the nature of industry, capital proposed to be invested, extent of land already in possession or possession of sister/subsidiary associated concerns, number of labourers likely to be employed, skilled and unskilled, no of shifts and the extent of land required in terms of square yards (or) meters and it shall furnish the break-up details of the proposed use in sq. mtrs./yards of land and other related particulars shall be furnished in the relevant columns of the prescribed form. Regulation 5 provides the manner of disposal of land acquired for the Board. Regulation 10 provides either Board, sub-committee or its Executive member shall notify to such applicant to whom an allotment is made, Regulation 11 confers right upon the Board to reject any application without assigning any reason and the decision of the Board shall be final and binding on every applicant. In view of the aforesaid statutory Regulations framed by the Board and approved by the State Government under the provisions of Section 41(2)(b) of the Karnataka Industrial Areas Development Act, 1966 and elaborate procedure is prescribed under the Regulations for allotment of land or shed in a Industrial Area by either the Board, Sub-Committee or its Executive Member in favour of a eligible applicant. The Regulations have got statutory force as the same amounts to law as defined under Article 13(3), Clause (a) of the Constitution of India. Therefore the procedure as provided under the aforesaid Regulations must be strictly adhered to by the Board for allotment of a land or shed in favour of a eligible applicants as the same is mandatory in law, otherwise its action of allotment of either industrial plot or shed in favour of a applicant would amounts to void abinitio in law as held by the Apex Court in Babu Verghese and Others Vs. Bar Council of Kerala and Others, , which paragraphs are extracted hereunder:

31. It is the basic principle of law long settled that if the manner of going a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision to Taylor v. Taylor (1875)¹ Ch D 426 : 45 LJ Ch 373, which was followed by Lord Roche in AIR 1936 253 (Privy Council) who stated as under:

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, and again in *Deep Chand Vs. The State of Rajasthan*, . These cases were considered by a Three Judges Bench of this Court in *State of Uttar Pradesh Vs. Singhara Singh and Others*, and the Rule laid down in *Nazir Ahmad's* case, was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law.

In view of the aforesaid statutory provisions of the Act and Regulations providing a detailed procedure under the regulations for allotment of land or shed by acquiring private lands of the owners by framing a scheme on the basis of Industrial Policy of the State Government to achieve the object and intentment of the Act, with a view to promote Small Scale Industries in the State and provide self-employment to the qualified Engineers, graduates, other skilled/unskilled persons in various fields and to solve unemployment problem in the State. Therefore, the industrial plots formed and sheds constructed- upon the industrial area after acquiring the lands of private owners by the State Government in favour of the Board is the public property, as the same belongs to the Statutory Board and therefore the same shall be allotted or granted in favour of eligible person or sold by strictly adhering to the procedure as contemplated under the Regulations., Deviating the mandatory statutory procedure of law as elaborately provided under the provisions of the Act and Regulations acquiring private lands of the petitioners in favour of a industrial company or firm would be opposed to the aforesaid statutory Regulations and law laid down by the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , wherein the Apex Court after careful consideration of constitutional provisions particularly Article 14 of the Constitution of India and referring to its earlier decisions has laid down the law stating that no largess can be conferred upon any individual, it would amount to arbitrary action of the State which is not permissible under our Constitutional Scheme, the relevant paragraphs 12, 20 and 21 are extracted hereunder:

12. We agree with the observations of Mathew, J., in *V. Punnen Thomas Vs. State of Kerala*, that:

The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

The same point was made by this Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? Ray, C.J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing of a person not only affects his reputation which is in poundian terms an interest both of personality and substance, but also denies him equality

in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions.... The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one, but if it does so, it must do so fairly without discrimination and without unfair procedure". This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily as its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences, etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

xxx xxx xxx 20. Now, obviously where a Corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such Corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well-settled as a result of the decisions of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , that Article 14 strikes at arbitrariness in State action and

ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality-The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals Limited's* case, where the learned Chief Justice pointed out that "the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing ? A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling ? It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

20. For the reasons stated supra the reliance placed upon the decision of this Court in *Heggappanavara Markhandappa and Ors. v. State of Mysore and Ors.* 1974(1) Kar. L.J. 71, para 2 by the learned Senior Counsel on behalf of the Board in justification of the case of the Board that it can get private lands acquired in favour of eligible applicant/applicants and this decision is further approved by this Court in the case of *N. Somashekar and Ors. v. State of Karnataka and Ors.* 1997(7) Kar. L.J. 410, is not the law laid down by this Court after considering the various provisions of the Act and Regulations. In the light of the provisions of the

Act and Regulations referred to supra even assuming for the sake of arguments that this Court has laid down the law in this regard, same cannot be applied to the fact situation of these cases in view of the ratio laid down by the Apex Court in Ramana Dayaram Shetty's case. Further unlike the provisions of Land Acquisition (Karnataka Extension and Amendment) Act of 1961, the KIADB Act does not confer power upon the State Government to acquire lands in favour of company. In Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others, , the Apex Court after interpretation of Maharashtra Industrial Development Act has held that the said Act was a special enactment having specific and special purpose of growth, development and organisation of industries and it has got its own procedure. Therefore, the submission of the learned Senior Counsel on behalf of the Board cannot be accepted. Thus, the Board shall notify the availability of its industrial plots and sheds formed in the industrial area. Regulation 4(b) states that when applications are invited under Regulation 7, it shall be submitted in person or sent by registered post. In the instant case, the Board has not invited applications mentioning the availability of the lands in question. It appears that the 3rd respondent-Company has voluntarily submitted the application for allotment of the lands. When applications are not invited by the Board, the application filed by the company could not have been entertained by it. Under Regulation 13 of the Regulations, allotment of plots can be made in special cases in consultation with the State Government. The claim of 3rd respondent-company can neither be treated as a special case nor it is treated so by the Board and State respondents as its project costs is less than Rs. 50 crores and therefore the claim of the company could not have been placed before the State Level Single Window Agency in view of the provisions of Section 3(2) of the Karnataka Industries (Facilitation) Act, 2002. Therefore, the Government should not have acquired the lands in question for the benefit of the 3rd respondent-Company and the acquisition is not for any public purpose.

21. Section 13 of the KIADB Act deals with the functions of the Board. Clause (ii) provides for:

- (a) develop industrial areas declared by the State Government and make them available for undertakings to establish themselves;
- (b) establish, maintain, develop and manage industrial estates within industrial areas;
- (c) undertake such schemes or programmes of works, either jointly with other corporate bodies or institutions, or with the Government or local or statutory authorities, or on an agency basis, as it considers necessary or desirable, for the furtherance of the purposes for which the Board is established and for all purposes connected therewith.

In the instant case, no scheme for industrial development in the area is framed for the acquisition of the lands in question. Section 14(a) of the Act pertains to

general powers of the Board and it reads as under:

14. General powers of the Board. Subject to the provisions of the Act, the Board shall have power.

(a) to acquire and hold property, both movable and immovable as the Board may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Board.

(emphasis supplied)

The acquisition of lands in question are not for the performance of any of the activities of the Board as provided under the provision of Section 13 to develop industrial areas and make them available for undertakings to establish themselves, but it was for the benefit of 3rd respondent-Company. The acquisition of land in favour of the said company is also without following the statutory Regulations 4, 5, 7, 8, 9 and 10 of the Regulations which provisions are mandatory in nature as the State Government has to exercise its eminent domain power to acquire the private lands for formation of an industrial area for industrial development to achieve the intentment and object of the Act by framing the scheme and allot the same in favour of the eligible applicants/ industrialists by strictly following the procedure as provided under the Regulations, the same is in accordance with the constitutional scheme and law laid down by the Apex Court in the case of Ramana Dayaram Shetty.

22. It is contended that acquisition in favour of 3rd respondent-Company is permissible and the decisions in the cases Heggappanavara Markhandappa and N. Somashekar, has been cited. Further Mr. R.N. Narasimha Murthy, learned Senior Counsel for the Board relied upon paragraph 7 of the decision in Darshan's case, wherein it is held that merely because the lands are included in Green Belt Area, the State Government in exercise of its power can change the same and the said policy decision cannot be questioned on the ground of unconstitutionality or opposed to law in these petitions. In view of the law laid down in the above cases he further contends¹ that the Court need not exercise its judicial review power in these petitions as acquisition of lands is for public purpose. It is further contended by him that the Government has formed its opinion on the basis of relevant material facts and it has opined that there was need for acquisition of land for public purpose and therefore, it is totally irrelevant as to who identified the lands for the purpose of acquisition by the State Government in favour of the respondent-Company as it is for industrial development in the State, is the object and intentment of the Act. In support of this, he cited the decision in State Government Houseless Harijan Employees Association v. State of Karnataka and Ors. AIR 2001 SC 437 : (2001)1 SCC 610 : 2001 AIR Kant. 2273.

23. The above legal contentions urged by the learned Senior Counsel on behalf of the Board are untenable and the decisions relied upon by him referred to supra

are of no assistance in view of the law laid down by the Apex Court in Mehta's case:

41. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , this Court observed that no consideration should be shown to a builder or any other person where the construction is unauthorised. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. In para 73, this Court reiterated that in numerous decisions, it has been held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. A discretion which encourages illegality or perpetuates an illegality cannot be exercised. In *M.I. Builders (Private) Limited's* case, this Court declined to come to the aid of the law violator.

24. In view of the law laid down as above by the Apex Court, Point No. 3 is answered in favour of the petitioners holding that Government cannot acquire the lands for the benefit of 3rd respondent-Company without preparing a Scheme and that the acquisition of the lands in question are contrary to the provisions of the Act, Rules and Regulations and law laid down by the Apex Court in the case of *Ramana Dayaram Shetty*, and therefore this Court has got power to exercise its judicial review power under Article 226 of the Constitution of India, as the action of the Board and State Government is in blatant violation of Article 14 of the Constitution of India, the provisions of KT and CP Act, KIADB Act and Regulations.

25. The further submissions made by the learned Senior Counsel and Government Pleader that by acquiring lands in favour of Private Limited Company employment opportunity will be generated and wealth will be distributed to the State Government by establishing software, outsourcing centres and it generates foreign exchange and high taxes will be imposed on such companies thereby there will be development of economy of the nation. Hence owners losing land is inevitable and therefore either legally or on principle it cannot be contended that acquisition of land of the petitioners is bad in law. For the reasons recorded on the above contentious points and submissions made by the learned Senior Counsel on behalf of the respondents is not tenable in law. For the reasons assigned on the points in favour of the petitioners, they must succeed in these petitions.

26. Point No. 4.?This relates to the acquisition of the land of the petitioners in W.P. No. 1058 of 2005 ignoring their own project. The first petitioner is a company and it has proposed to establish a Software Technology Park. Its project was approved by the State Level Single Window Agency in its 91st meeting held on 21-4-2003 vide Annexure-H. The same is approved by the State Government

as per Annexure-J. It is categorically stated that without the land bearing Sy. No. 116 which is acquired by the State Government in favour of respondent 3-Company, the project of the petitioners cannot be implemented.

27. The legal contention urged by Mr. Krishna Murthy on behalf of the petitioners in the above writ petitions is that when the land is required for the petitioners for their own project, which has got clearance, there is no meaning in acquiring the same to some other company. The petitioners cannot be deprived of their land in order to acquire and allot the same to 3rd respondent-Company, this contention of him has to be accepted. Further in view of the reasons assigned by this Court on the points answered in favour of the landowners, the prayer sought for by the petitioners in W.P. No. 1058 of 2005 will have to be partly granted as indicated in the operative portion of this judgment. Accordingly, Point No. 4 is answered holding that acquisition of land for the benefit of the 3rd respondent-Company is bad in law. The contention of the learned Senior Counsel on behalf of the Board that, if the legal contentions urged on behalf of the petitioners that the lands should not have been included in the industrial area as the same is opposed to CDP and contrary to law then the project report of these petitioners also was approved by the State High Level Single Window Agency. They have purchased the land in question for establishment of an industry and therefore the petitioners are not entitled for the relief. The above said contention of the learned Senior Counsel may be partly correct insofar as the petitioners. However, the petitioners are entitled for the relief in view of the fact that the contentious points are answered in favour of the petitioners/landowners. For the above reason it may not be possible for the petitioners in these petitions that they cannot establish their industry as the same is opposed to CDP as the land in question is earmarked as residential/park purpose. In view of the reasons recorded by this Court on the Point No. 1, the State Government could not have declared the area where the lands in question are involved as an industrial area and therefore the acquisition proceedings are also held as bad for the above reason and also for the reasons assigned on Point Nos. 2, 3 and 6, the acquisition of lands including the land of petitioners in W.P. No. 1058 of 2005 are liable to be quashed.

28. Point No. 5.-The point is, whether the petitioners in the aforementioned writ petition can challenge the acquisition of their land without challenging notification issued u/s 3(1) of the Act, declaring the area in question by including the land of the petitioner as industrial area. This point is framed in view of the contention taken in the statement of objections by the Board in this regard and learned Senior Counsel for the Board has vehemently urged that the petitioners who have not questioned the notification u/s 3(1) of the Act are not entitled to question the legality and validity of acquisition notifications which are impugned in the writ petition, this contention of learned Senior Counsel cannot be accepted as the same is opposed to the provisions of KT and CP Act and law laid by the Apex Court in number of cases, which are extensively referred to in the reasoning portion of Point No. 1 answered in this judgment. In that view of the

matter, Point No. 5 is held wholly unnecessary and does not arise at all.

29. Point No. 6.?This point pertains to legality of the declaration of the lands of petitioners as "industrial area" and acquiring the lands in favour of respondent 3-Company whether the same is vitiated on account of legal mala fides and for extraneous considerations. For the reasons stated on Point Nos. 1 and 2, it is held that the declaration and acquisition of the lands for industrial purpose by the State Government are vitiated in law. The same suffer from legal mala fides, as the exercise of eminent domain power by the State Government under the Act is bad as the true object of it is to reach an end different from the one for which power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. The declaration and acquisition of the lands in question are not for public purpose but they are for extraneous considerations for the reason that the State Government has exercised its eminent domain power other than the purpose for which it is entrusted with it is evident from the relevant facts narrated in this judgment from the original record, the findings and reasons recorded by this Court on the above points. In this regard, it is necessary to refer to the following decision.?

State of Punjab and Another Vs. Gurdial Singh and Others, :

9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not lexicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated, "I repeat...that all power is a trust - that we are accountable for its exercise ? that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act.

The above decision is reiterated by the Apex Court in the subsequent case Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, . The

learned Senior Counsel Mr. S. Vijayashankar has rightly placed reliance upon the Constitutional Bench judgment of the Apex Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, , in support of the proposition of law that the action of the State Government in declaring the lands in question in the industrial area, though the same are earmarked as residential/park in the CDP without considering this important aspect and acquiring the lands solely on the basis of the recommendation of the State High Level Single Window Agency without application of mind in favour of a Private Limited Company is a clear case of arbitrariness, hence for this reason also the acquisition of lands by the State Government is bad in law, the relevant portion from para 85 of E.P. Royappa's case, is extracted as hereunder:

85. ...Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

30. In the light of the aforesaid decisions, Point No. 6 is answered in favour of the petitioners holding that the declaration of the lands in question as "industrial area" and their acquisition for the benefit of 3rd respondent-Company are vitiated on account of legal mala fides.

31. In the light of the discussions made above on the contentious points referred to supra and the reasons recorded on the same in favour of the petitioners, the contention canvassed with regard to Section 2(6) of the Act that the 3rd respondent-Company is not an "industry", has no relevance and therefore, the

dictionary meaning pointed out, the decisions relied upon and the provisions of law relied upon on this aspect are all unnecessary for consideration in these cases. So also, the various decisions relied upon by the learned Counsel for the parties in support of their contentions need not be either referred to or discussed. The answers to the points framed are supported with reasons.

32. For the reasons assigned on the various points framed by this Court with reference to the rival legal contentions urged on behalf of the parties though the learned Government Pleader on behalf of the State and learned Senior Counsel Mr. Jayakumar S. Patil in favour of SGB Software Private Limited Company justifying the acquisition proceedings by placing reliance upon the project report approved by the State High Level Single Window Agency Committee proceedings which are considered and answered in detail by recording reasons on the contentious points in this judgment, therefore their contentions are not separately referred to in this judgment. But this Court considering the submissions made by the learned Senior Counsel on behalf of the Board and Government Pleader after referring to the relevant statutory provisions and law laid down by the Apex Court on various relevant aspects which are extensively referred and answered the points formulated in these petitions in favour of the petitioners and against the respondents.

33. For the reasons stated above, the writ petitions are allowed and the impugned notifications dated 27-1-2004 and 4-12-2004, the notices at Annexures-Q and R, dated 7-12-2004 in W.P. No. 4148 of 2005, Annexures-A and C and the proceedings of the 235th meeting of State High Level Single Window Agency, dated 15-11-2003 insofar as it relates to subject No. 10 in W.P. No. 1393 of 2005 and the order at Annexure-P, dated 8-3-2004 as also Annexure-Q, dated 4-12-2004 in W.P. No. 1058 of 2005 insofar as it relates to 1-05 guntas in Sy. No. 116 of Mahadevapura Village are quashed. The petitioner in W.P. No. 1058 of 2005 can utilize its lands for industrial purpose only after seeking change of land use u/s 14-A of the KT and CP Act.

34. Since reliefs are granted to the petitioners, the prayer in W.P. No. 1393 of 2005 to declare Section 3(1) of the Act as illegal need not be considered. The further prayer made to direct conduct of enquiry against the officers of the Board, is wholly unnecessary.

35. If possession of any of the lands involved in these cases are taken by the Board, the respondents are directed to restore possession to the owners immediately.

36. Before parting with the judgment, it is felt that some observation has to be made so that the future action of the officers shall be in accordance with the provisions of statutory enactments with proper application of mind to the relevant aspects. It is to be noted that when some area is earmarked for residential or other purposes in the CDP, the Board or any other authority cannot make use of such area to other purposes. If that is done, the very object and

purpose of preparing the CDP is defeated. In other words, the areas earmarked by the Planning Authority in the CDP remains as such but practically the said areas are permitted to be used for some other purpose by other authorities without revising the CDP. That is wholly impermissible in law. That apart, conversion of the lands is a must under the provisions of Karnataka Land Revenue Act, 1964. Without conversion, the agricultural land cannot be used for any other purpose.