

(2016) 03 KAR CK 0147

In the Karnataka High Court

Case No : Writ Petition Nos. 38868-38870 and 38871-38874 of 2015 (LA-UDA), 35858 and 35880-35881 of 2013 (LA-BDA), 82, 26980-26982 and 83 of 2015 (LA-BDA), 15616-15620 of 2013 (LA-UDA) and 40076 of 2014 (LA-BDA)

K.M. Chikkathayamma and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Atomic Energy Act, 1962 — Section 21
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13, Section 14
Constitution of India, 1950 — Article 14, Article 141, Article 19, Article 19(1)(f), Article 19(f), Article 226, A

Citation : (2016) 2 AirKarR 737 : (2016) ILRKarnataka 1603 : (2016) 4 KCCR 523

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : L. Nageshwara Rao, Senior Advocate for B.L. Sanjeev, Advocate, for the Appellant; Madhusudhan R. Naik, Advocate General for Laxminarayana and D. Nagaraja, Additional Government Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—1. These petitions are heard and disposed of together. The legal issues arising for consideration are similar.

2. The facts as stated in the petitions may be restated briefly as follows:

WP 38868-38870/2015

The petitioners are said to be owners of lands bearing survey No. 185 and portions of lands bearing survey No. 176 and 183/1, measuring 8 acres 26 guntas and 1 acre 33 guntas, respectively, of Dattagalli, Kasaba hobli, Mysore Taluk and District. These lands, apart from lands belonging to several others, were said to have been notified for acquisition, for the formation of a residential

layout, Dattagalli Extension, by recourse to the provisions of the Karnataka Urban Development Authorities Act, 1987, (Hereinafter referred to as the "KUDA Act" for brevity). A notification under Section 17(1) of the KUDA Act was said to have been issued and duly published in the Karnataka Gazette, dated 26.12.1991. Thereafter, a notification under Section 19(1) and (2) of the KUDA Act, was also said to have been issued and duly published in the Karnataka Gazette on 7.1.1993.

The petitioners are said to have challenged the acquisition proceedings before this court by way of a writ petition in WP 27994/2001. The said petition is said to have been allowed by a learned single judge of this court by an order dated 15.12.2003. The same was said to have been challenged in a writ appeal in WA 1863/2004. The division bench is said to have set aside the order of the learned single judge and is said to have remanded the matter for a fresh consideration. On such remand, the petition is said to have been dismissed on merits, by an order dated 7.2.2011. A writ appeal in WA 15445/2011, was said to have been filed against the said dismissal order. The appeal was said to have been allowed and remanded for a fresh consideration by a judgment dated 13.9.2012. The learned single judge had then allowed the petition and had quashed the acquisition proceedings by an order dated 10.10.2013. Aggrieved by the said order, the respondents are said to have filed a writ appeal in WA 6829-6830/2013, which is said to be pending consideration.

It is said that with the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Hereinafter referred to as the "LA Act, 2013", for brevity) with effect from 1.1.2014, the petitioners are said to have filed an application in the pending writ appeals, before the division bench, as on 29.8.2015, seeking a declaration that by virtue of Section 24(2) of the LA Act, 2013, the acquisition proceedings in question stood lapsed by efflux of time and by operation of law. The division bench is, however, said to have expressed that such a prayer could only be made by way of a fresh writ petition and hence the present writ petition.

WP 38871-38874/2015

These petitioners are said to be owners of lands bearing survey No. 168 and 169/1 and portions of land in survey Nos. 176 and 183/1 of Dattagalli, Kasaba hobli, Mysore taluk and District. These lands were also the subject matter of acquisition under the very notifications issued in respect of the lands which are the subject matter of the writ petitions in WP 38868-38870/2015, mentioned above, as they are neighboring lands.

The petitioners herein and the petitioners in the first of these petitions above, have proceeded hand in hand, though in independent petitions and appeals, at all stages, as stated in the writ petition in WP 38868-38870, resulting in the present petitions.

WP 35858/2013 and 35880-35881/2013

The petitioners are said to be the owners of lands bearing survey No. 70/7 measuring 14 guntas of Bommanahalli, Begur hobli, Bangalore South taluk. It transpires that acquisition proceedings under the provisions of the Bangalore Development Authority Act, 1976, (Hereinafter referred to as the "BDA Act", for brevity) was said to have been initiated by the issuance of a notification under Section 17 of the BDA Act, dated 17.1.1985. The acquisition was for the formation of a residential layout known as Hosur-Sarjapur Road layout. A final notification is said to have been issued on 28.11.1986. However, an award in respect of the petitioner's land is said to have been passed only as on 30.4.2010. It is claimed that physical possession of the land continues to remain with the petitioners. It is hence contended that the award not having been passed within a period of five years from the date of final notification and possession of the land not having been taken, the Scheme under which the acquisition was initiated has lapsed and consequently the acquisition as well.

WP 82/2015

The petitioner is said to be the owner of land to an extent of 14 guntas of the land bearing survey No. 14/1 of Hosahalli, Uttarahalli hobli, Bangalore South taluk. The said land is said to have been converted for non-agricultural purposes, since the year 1995. It is stated that the above land forms part of a larger extent of 6 acres 7 guntas said to have been purchased by the uncle of the petitioner who had got 5 acres out of the same converted for non-agricultural use and is said to have formed house sites and is said to have sold the same to various third parties and that he had also delivered the above said land to the petitioner under a General Power of Attorney and the petitioner is said to have put up residential buildings after obtaining a sanctioned plan from the Talghattapura Panchayat and that he had also paid betterment charges in respect of the same.

It is claimed that several other third party purchasers had paid betterment charges to the Bangalore Development Authority (BDA) and had obtained "No Objection Certificates" from the said Authority before putting up constructions on their sites.

It is claimed that when the petitioner approached the BDA seeking to pay betterment charges, it is said, he was informed that the land in question was subject matter of acquisition proceedings. A preliminary notification dated 7.11.2002 and a final notification dated 9.9.2003 are said to have been issued. It is however claimed that physical possession, neither of the petitioner's properties nor that of other property owners in survey No. 14/1 had been taken possession of by the BDA. It is contended that though the final notification was of the year 2003, even as on date, the possession of the land not having been taken, the Scheme as well as the acquisition are deemed to have lapsed in view of Section 24 of the LA Act, 2013.

WP 26980-982/2015

It is stated that petitioner No. 1 and the father of petitioner No. 2 are said to be

the owners of land in survey No. 55/1 measuring 38 guntas in Malagala. It transpires they had agreed to sell 9 guntas of land in favour of one Ankappa Reddy.

It is further stated that there are two other land owners in land bearing survey No. 55/2 to the extent of 3.36 acres held by S.M. Kannaiah and 55/1 to the extent of 3 acres. The said extents along with the land of the petitioners totally measures 7 acre 34 guntas. It is stated that the entire extent of 7 acre 34 guntas along with other lands was notified for acquisition by the BDA, vide preliminary notification dated 15.7.1982 and a final notification dated 5.8.1986.

It is claimed by the petitioners that as neither an award was passed nor possession of their land had been taken, they had sought no objection from the BDA to have the land converted for non-agricultural use. BDA is said to have issued an Official Memorandum dated 1.8.1994 in that regard, indicating that it has no objection.

Insofar as the extent of land held by S.M. Kannaiah is concerned, the same is said to have been withdrawn from the acquisition proceedings as per notification dated 5.10.2007. However, the said notification was sought to be withdrawn, which was challenged by way of a writ petition in WP 10709/2009, which is said to have been allowed on the ground that possession could not be said to have been taken on the basis of a mahazar which was produced in proof thereof. The petitioners claim that they also would have the benefit of the said finding as it pertains to their land as well. It is contended that in view of possession of the land remaining with the petitioners to this day, the benefit of Section 24(2) of the LA Act, 2013 would extend to them. Hence the writ petition.

WP 83/2015

The petitioner claims to have purchased land bearing survey No. 27/3 measuring an extent of 27 guntas, of Manavarthikaval village, Uttarahalli Hobli, Bangalore South taluk, under a registered sale deed dated 15.2.2012. The BDA is said to have notified lands at Manavarthikaval and several other villages for the purpose of formation of further extension of Banashankari VI Stage layout, under a preliminary notification dated 7.11.2002. A Final notification is said to have been issued on 9.9.2003. It is claimed that the notifications did not include the portion of land purchased by the petitioner. The petitioner had sought for conversion of the land for non-agricultural user. Thereafter, the petitioner is said to have sought a "No Objection Certificate" from the BDA, it is then that the BDA is said to have claimed on the basis of a joint survey that the land of the petitioner was indeed part of the notifications for acquisition.

It is pointed out that the acquisition proceedings were initiated without reference to any of the predecessors in interest of the land held by the petitioner and hence it is not open to the BDA to claim that the land had been acquired. In any event, there is no award in respect of the property and the petitioner continues in possession of the property. It is hence claimed that the Scheme was never

sought to be implemented in respect of the land in question and as there is no award passed, the acquisition has lapsed in terms of Section 24(2) of the LA Act, 2013.

WP 15616-15620/2013

The petitioner claims that land bearing survey No. 257/2C measuring 20 guntas of Hinkal Mysore taluk, is his ancestral property. It is claimed that an extent of 1 acre of land in survey No. 257/2C of the same village is said to have been inherited by Petitioner No. 2. And the land in Survey No. 255/1 measuring 35 guntas of the same village, is said to belong to petitioner No. 3. The land in survey No. 255/2, measuring 1 acre 16 guntas, also of the same village, is said to belong to petitioner No. 4.

The Mysore Urban Development Authority (MUDA) is said to have issued a preliminary notification dated 1.4.1981, under the provisions of the City of Mysore Improvement Act, 1903 (Hereinafter referred to as the "CMI Act", for brevity). A final notification is said to have been issued on 31.3.1984. And it is stated that it is only thereafter a sanction of the Scheme was accorded on 3.6.1989.

It is claimed that there is no award passed in the name of the petitioners nor any compensation paid and that they continue in possession of the lands.

It is urged that with the coming into force of the LA Act, 2013, the acquisition is deemed to have lapsed even if the respondents refute the correctness of the petitioners' assertion on facts.

WP 40076/2014

The petitioners are said to be owners of land bearing survey No. 139/3 measuring about 28 guntas of Kacharkanahalli, Bangalore North taluk. The petitioners claim that it is their ancestral property.

The BDA is said to have notified the land, amongst other lands, for acquisition for the purpose of formation of the Hennur-Bellary Road I Stage layout, vide preliminary notification dated 27.6.1978 and a final notification is said to have been issued on 14.3.1985. An award is said to have been passed on 7.1.1987. But it is claimed that the petitioners continue to be in physical possession of the land, though a notification is said to have been issued under Section 16(2) of the Land Acquisition Act, 1894 (Hereinafter referred to as the "LA Act, 1894", for brevity), on the basis of what is alleged by the petitioners, to be a concocted mahazar. It is hence contended that not only has the Scheme lapsed, but also the acquisition ought to be deemed to have lapsed.

3. The primary contention that is sought to be canvassed in the present petitions are as to whether the LA Act, 2013 would be applicable to acquisitions initiated under the provisions of the KUDA Act or the BDA Act, respectively. If the answer to the same is in the affirmative, it is then to be addressed whether the

acquisition proceedings in the above said petitions are deemed to have lapsed.

4. Shri L. Nageshwara Rao, Senior Advocate, appearing for the counsel for the petitioners in WP 38868-38870 and WP 38871-38874/2015, would contend that in so far as the KUDA Act, under which the acquisition proceedings were initiated in the said petitions, is concerned, that Section 36 of the KUDA Act refers to the LA Act, 1894 and draws attention to Section 36, which is extracted hereunder:--

"36. Provisions applicable to the acquisition of land otherwise than by agreement-

(1) The Acquisition of land under this Act otherwise than by agreement within or without the urban area shall be regulated by the provisions, so far as they are applicable, of the LA Act, 1894."

The learned Senior Advocate would emphasize that since Section 114(1) of the LA Act, 2013 repeals the LA Act, 1894, with effect from 1.1.2014, Section 36 of the KUDA Act is now to be read as referring to the LA Act, 2013, for the following reasons:

It is contended that it is a settled rule of construction that where a statute is cited by reference (the "cited statute") into another statute (the referring statute) any repeal or amendment of the "cited statute" is automatically carried over or reflected in the "referring statute". In contrast, in a case of legislation by incorporation, the repeal or amendment of the "incorporated statute" does not automatically affect the "incorporating statute".

Attention is drawn to the following:

(i) Collector of Customs, Madras vs. Nathella Sampathu Chetty , (1962) 3 SCR 786;

(ii) New Central Jute Mills Co. Ltd. vs. CCE, , (1970) 2 SCC 820;

(iii) Western Coalfields Limited vs. Special Area Development Authority, , (1982) 1 SCC 125,

(iv) Section 8(1) of the General Clauses Act, 1897.

It is contended that on a plain reading, Section 36 of the KUDA Act appears to be a simple case of "legislation by reference", since the entire provisions of the LA Act, 1894 are referred to, to the extent that they are applicable. There is no bodily lifting of any specific provisions of the LA Act, 1894 as would be done in a case of "legislation by incorporation".

It is contended that admittedly, in Offshore Holdings (Private) Limited vs. Bangalore Development Authority, , (2011) 3 SCC 139, the Supreme Court has held Section 36 of the BDA Act (a provision in pari materia with Section 36 of the KUDA Act) to be a case of "legislation by incorporation", when confronted with the question of whether Section 11A of the LA Act, 1894 (introduced by an amendment in 1984) would automatically apply to land acquisitions under the BDA Act. It is submitted that such finding of the supreme Court in Offshore

Holdings, *supra*, will have no applicability in determining whether Section 36 of the KUDA Act is a case of "legislation by reference" or "legislation by incorporation", in the context of the wholesale repeal of the LA Act, 1894 and its replacement with the LA Act, 2013. This is because well established exceptions to the rule of "legislation by incorporation" will now apply. The exceptions to the rule of "legislation by incorporation" dealt with below can be examined only in the light of the nature and extent of the amendments that are being made to the statute. A case of minor amendment by the introduction of one or two changes (as was the case with introduction of Section 11-A in the LA Act, 1894) cannot be compared with amendments making wholesale repeal and reenactment of a legislation. The relevant exceptions to the rule of "legislation by incorporation" and their applicability to the present scenario were explained thus.

It is contended that even in cases where there is a legislation by incorporation, if any one of the four exceptions as stated in *State of Madhya Pradesh vs. M.V. Narsimhan*, (1975) 2 SCC 377 are satisfied, the effect would be one of legislation by reference. The two exceptions (c) and (d) laid out in *Narasimhan's* case are particularly relevant to the present case. The said exceptions are as follows:

"(c) where the amendment in the previous Act if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) Where the amendment of the previous Act either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

It is contended that both these exceptions depend wholly upon the nature of the "amendment made" to the previous or incorporated enactment. In *Offshore Holdings, supra*, the amendment made to the previous or incorporated enactment (the LA Act, 1894) was the introduction of Section 11-A (by the 1984 amendment), a relatively minor change. The BDA Act was held to be workable and effectual even if Section 11-A of the LA Act, 1894 were not read into the BDA Act. Similarly, it was held that there was nothing to evidence that Section 11-A was necessarily intended to be brought into the BDA Act. In the present case, the amendment made is of a completely different nature, that is it involves the wholesale repeal of the LA Act, 1894 and its reenactment in the form of the LA Act, 2013 with vastly differing provisions. It is in this different context that whether the tests of the KUDA Act being rendered "unworkable or ineffectual" (i.e., exception (c) of the *Narasimhan* case) and the necessary intendment of the LA Act, 2013 (that is exception (d) of the *Narasimhan* case) must be applied and examined.

It is contended that if the provisions of the LA Act, 1894 were to be still applied to acquisitions under the KUDA Act post 1.1.2014, the quantum of compensation to the land owners in relation to acquisitions under the KUDA Act would be lesser than the compensation in acquisitions made under LA Act, 2013, even though

the purpose of the acquisition is the same (urban or town planning and allotment of house sites). Similarly, the additional benefits in relation to rehabilitation and resettlement of affected families would also not be available to the land owners even though the purpose of acquisition remains the same. In this regard, it may be noted that Section 2(e) of the LA Act, 2013 expressly contemplates acquisitions in relation to "project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas". Shri Rao would thus emphasize that the provisions under the LA Act, 2013 are more beneficial to the land owners and affected families in land acquisition proceedings.

The discriminatory effect as regards compensation and other benefits would occur because there is a complete change in the legislative approach in relation to land acquisition, rehabilitation and resettlement under the LA Act, 2013, which is more beneficial to the land owners. The land owners would thus be entitled to different rates of compensation and other resettlement and rehabilitation benefits, depending upon which Act the acquisition is made, whether under the BDA Act or KUDA Act or the Central Land Acquisition enactments, resulting in a discriminatory effect that violates Article 14 of the Constitution. In this regard, reliance is placed on *Nagupur Improvement Trust vs. Vithal Rao*, (1973) 1 SCC 500.

This unconstitutional discriminatory effect would render the KUDA Act "unworkable and ineffectual", thereby satisfying exception (c) of *Narasimhan's* case.

Similarly, the Statement of Objects and Reasons read with Sections 103 (Provisions to be in addition to existing laws), 105 (Provisions of this Act not to apply in certain cases or to apply with certain modifications), 107 (Power of State Legislatures to enact any law more beneficial to affected families) and 108 (Option to affected families to avail better compensation and rehabilitation and resettlement) of the LA Act, 2013, all evidence Parliament's legislative intent to save State enactments pertaining to land acquisitions, where they are more beneficial to the land owners. This would satisfy exception (d) of *Narasimhan's* case.

It is further contended that where there is a "legislation by reference", Section 8(1) of the General Clauses Act, 1897 (Hereinafter referred to as the "GC Act", for brevity) applies. The provision reads as follows:

"Section 8 - Construction of reference to repealed enactments.-

"(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted....."

Section 114(1) of the LA Act, 2013 repeals the provisions of the LA Act 1894. Therefore, as per Section 8 of the GC Act, the reference to the LA Act, 1894 in the KUDA Act will now be construed as a reference to the LA Act, 2013, "unless a different intention appears". There is no provision in the LA Act, 2013 (the repealing Act), which provides for a different intention. On the contrary, the preamble, object and reasons and the provisions of the LA Act, 2013 all show that the Parliament intended to make the provisions of the LA Act 2013, applicable to all statutes where the LA Act, 1894 is "referred". Consequently, the provisions of the LA Act, 2013 would have to be read into the referred statute (the KUDA Act).

Attention is drawn to *Shri R. Shankaran Vs. State of Karnataka*, , ILR (2014) Kar. 4371 and *Sudhakar Hegde Vs. State of Karnataka*, , ILR (2014) Kar. 4995, wherein while dealing with the BDA Act 1976 ("BDA") it is held as follows:

"It is contended that applying the above test, it may safely be said that the provisions of the LA Act that are made applicable to the BDA Act are in the nature of legislation by reference. It would then follow that the only procedure to be followed in respect of proceedings - post Section 19 of the BDA Act - would be that which exists at the time of acquisition proceedings. It would be a fair interpretation of Section 36 of the BDA Act to hold that whichever may be the procedure therein, with regard to matters regulating acquisition under the LA Act, the procedure that exists at the time of acquisition proceedings will apply to acquisition made under the BDA Act.

In view of the repeal of the LA Act and the coming into force of the LA Act, 2013, during the pendency of these proceedings, it would be the corresponding provisions under the LA Act, 2013, in so far as they are applicable, that would regulate the acquisition proceedings.

It may hence be concluded that the repeal of the LA Act, 1894 and the coming into force of the LA Act, 2013 would not frustrate further acquisition proceedings under the BDA Act. For even without an amendment to Section 36 of the BDA Act, the provisions of the LA Act, 2013 would operate to regulate the acquisition proceedings under the BDA Act - according to the settled principles as enunciated in the authoritative decisions referred to above."

It is hence contended that Section 36 of the KUDA Act is in pari materia with Section 36 of the BDA Act and the ratio laid down by this Court in *R. Shankaran vs. State of Karnataka*, ILR 2014 Kar. 4371 and *Sudhakara Hegde vs. State of Karnataka*, ILR 2014 Kar. 4995 would squarely apply in the instant case. Though the decision in *Offshore Holdings*, supra, has not been dealt with in *Shankaran* and *Sudhakar*, supra, the final decision reached in those cases are correct, since the decision in *Offshore Holdings* can be differentiated and is inapplicable to the issue on hand.

It is therefore contended that as on 1.1.2014, the provisions of the LA Act, 2013 are made applicable to land acquisition proceedings under the KUDA Act.

That the present land acquisition proceedings lapsed on the coming into force of the LA Act, 2013 for the following reasons:

a. Section 24(2) of the LA Act, 2013 provides for lapse of acquisition proceedings commenced under the LA Act, 1894 on the satisfaction of certain conditions, which are as follows:

- i. The award should have been passed five years or more prior to the commencement of the LA Act, 2013 (that is prior to 1.1.2009) and
- ii. physical possession of the land has not been taken; or,
- iii. compensation has not been paid.

Reliance is placed on Government of NCT of Delhi vs. Jagjit Singh, for the above proposition.

It is contended that courts have interpreted the requirement of possession being taken under Section 24(2) of the LA Act, 2013 to mean that actual physical possession has to be taken and mere symbolic possession will not suffice.

Reliance is placed on the following in support of the above proposition:

(a) Magnum Promoters Private Limited vs. Union of India , (2015) 3 SCC 327

(b) Shree Balalji Nagare Residents Association vs. State of Tamil Nadu, , (2015) 3 SCC 353

It is pointed out that in the instant case, the award has been passed on 27.5.1994, which is prior to 1.1.2009 and even as on date, actual physical possession of the lands that are subject matter of the present proceedings has not been taken. And that the respondents have themselves admitted that physical possession of the subject Lands have not been taken in various affidavits before this Court. For instance, in the affidavit dated 22.7.2013 filed in WP 27994/2001, the respondents have stated as follows:

"26. Total extent of land notified for acquisition is 491 acres 9 guntas. Possession of an extent of 470 acres of land were taken and only a small extent of 20 acres 38 guntas could not be taken"

Also the Statement of Objections dated 27.7.2001 filed by MUDA also records the fact that actual physical possession is not taken.

It is contended that this court in WP 27994/2001 and WP 28756/2001 by judgments dated 15.12.2003, 7.2.2011 and 10.10.2013 had held that possession of the said lands are with the petitioners.

The conditions, namely, the award having been passed on 27.5.1994, which is prior to 1.1.2009 and the fact that even as on date actual physical possession has not been taken, entitles the petitioners to seek a declaration in respect of lapse of the land acquisition proceedings relating to the aforesaid lands. When

the above conditions under Section 24(2) have been satisfied, as in the instant case, there is an automatic lapse of the land acquisition proceedings by operation of law.

5. Shri V. Lakshminarayana, Senior Advocate, appearing for the counsel for the petitioners in WP 35858/2013 and WP 35880-35881/2013, WP 82/2015 and WP 83/2015, would contend as follows:

Section 24(2) of the LA Act, 2013, is part of legislation now introduced and not an amended provision of an existing Act. It is intended to save pending acquisition proceedings under the LA Act, 1894. It is in the nature of a saving provision. However, the legislature has also intended that all acquisition proceedings which had not been concluded even after five years prior to the 2013 Act coming into force, are deemed to have lapsed. Provided the conditions prescribed therein could be applied to such acquisitions.

A significant condition prescribed is that possession of such land ought to be shown to have been taken before the LA Act, 1894 stood repealed. Possession that is contemplated is actual physical possession and not possession on account of a deemed vesting by reference to legal provisions or nominal documentary evidence.

Section 24(2) is a substantive provision of law which saves acquisition as well as affords the prospect of the land sought to be acquired, reverting to the land owner. The provision contemplates three cut-off dates, which are a legislative device and analogous to such cut-off dates contemplated even under the LA Act, 1894.

It is contended that Section 36(1) of the BDA Act - employing the phrase "in so far as " the provisions of the LA Act, 1894, are applicable to the acquisition under the BDA Act, is concerned, would import all such procedure which is not expressly provided for under the BDA Act. And when a law enacted by a state legislature is integrated with a Central law for a special purpose, whether it should be termed as legislation by reference or by incorporation, pales into insignificance. It is contended that by virtue of Section 36(1) of the BDA Act, the procedure in relation to the passing of an award and taking of possession of the land being under the LA Act, 1894, by virtue of Section 24(2) of the LA Act, 2013, which specifically deals with physical possession or non-payment of compensation as on 1.1.2014, would necessarily have to be reconciled not only with the provisions of the LA Act, 1894, but also with the acquisition under the BDA Act.

It is contended that Section 105 of the LA Act, 2013 provides that if the land is not utilized for a period of five years prior to the date on which the Act came into effect, the land be returned to the owner. Thus the period prescribed under Section 24(2) of the LA Act, 2013 is in consonance with the period prescribed under Section 27 of the BDA Act.

It is contended that the interpretation of the provisions of the LA Act, 2013 has been in favour of the land owners in the several contexts that the apex court was called upon to apply the same:

(i) The contention that acquisition proceedings stood concluded with possession having been taken of the land after a revenue deposit was made of the compensation amount without actual payment of the same to the land owner has been rejected in *Pune Municipal Corporation vs. Harakchand Misirimal Solanki*, , (2014) 3 SCC 183.

(ii) Time limits prescribed under the Act stood extended by the corresponding period in which interim orders in pending litigation was operating, has been rejected in *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu*, , JT 2014 (14) SC 375.

(iii) That possession had been handed over to the beneficiary of the acquisition proceedings and there was development of the land was not conclusive of the process, as held in *Velaxan Kumar vs. Union of India and others*, , (2015) 4 SCC 325.

(iv) That delay in taking possession of land being on account of interim orders of court, only payment of interest would arise and that the acquisition would not lapse, was rejected in *Rajiv Chowdharie HUF vs. Union of India and others*, , (2015) 3 SCC 541.

(v) In a case where physical possession 90% of the land was taken to implement a development scheme and the majority of the land owners having accepted the compensation-notwithstanding, the rigour of Section 24(2) was held applicable in respect of the balance land in the case of *Karnail Kaur vs. State of Punjab*, , JT 2015 (1) SC 377.

6. The learned Senior Advocate, Shri Ashok Harnahalli, appearing for the learned counsel for the petitioner in WP 15616-15620/2013 contends as follows:

That from a plain reading of the preamble to the LA Act, 1894, the preamble to the KUDA Act and the preamble to the LA Act, 2013, respectively, it is evident that the object of the LA Act, 1894, was only for acquisition of land and the object of the KUDA Act was to acquire land for planned development; Whereas the preamble to the LA Act, 2013 indicates that the object of the Act is all encompassing, in that, it contemplates land acquisition for industrialization, development of essential infrastructural facilities and urbanization. Further, Section 2 also contemplates planned development, which the learned Senior Advocate would contend is a significant aspect that should be kept in view.

It is contended that the LA Act, 1894 has been referred to in Section 36 of the KUDA Act. However, the provisions of the LA Act, 1894 have not been incorporated into the KUDA Act. Therefore, it is contended that it is a case of legislation by reference. And any amendment, repeal or re-enactment etc., of the LA Act, 1894 would automatically apply to the KUDA Act. The petitioners are

hence held entitled to invoke the provisions of the LA Act, 2013.

It is also contended, that even if it is assumed that it is a case of legislation by incorporation - yet the provisions of the LA Act, 2013 are to be construed as being supplemental to the provisions of the KUDA Act, as the same are found to be in pari materia, as seen from a reading of the Preamble and Section 2(e) and (f) thereof.

It is also contended that if the provisions of the LA Act, 2013 is not read into the KUDA Act, the latter would become unworkable and ineffectual.

It is hence contended that Section 24(2) of the LA Act, 2013 is applicable to the case. It is pointed out that compensation has not been paid to the petitioners nor has the amount been deposited in civil court. Hence, the acquisition is deemed to have lapsed.

It is further contended that the judgments in *Munithimmaiah vs. State of Karnataka*, (2002) 4 SCC 326 and *Offshore Holdings (P) Ltd. vs. Bangalore Development Authority*, (2011) 3 SCC 139, would not be binding precedents in addressing the present challenge, as the apex court was only concerned with the provisions of the LA Act, 1894 and the BDA Act in those cases. The LA Act, 2013, was not the subject matter for consideration therein. As the provisions of the LA Act, 2013 is radically and substantially different from the LA Act, 1894, the said judgments cannot be mechanically applied in interpreting the changed law. The LA Act, 2013 includes within its ambit-planned development, apart from introducing substantial changes with regard to the procedure for acquisition, rehabilitation and resettlement, compensation etc.

It is contended that if this interpretation is not accepted, there would be two legislations relating to land acquisition. In such a case the process of acquisition under the LA Act, 1894 that may be followed by the MUDA, for acquisition would be repugnant to the LA Act, 2013.

It is contended that the respondents have failed to execute the Scheme despite lapse of more than 29 years and as such the Scheme has lapsed even under Section 27 of the KUDA Act.

Yet another glaring infirmity which renders the acquisition proceedings bad in law, is the circumstance that the second respondent is shown to have obtained sanction of the Scheme for development only after the issuance of the Final notification. Hence, the acquisition proceedings having been initiated without prior sanction cannot be regularized by a post facto sanction as it were.

7. The learned Senior Advocate, Shri Jayakumar S. Patil, supporting the case of the petitioners would draw attention to the Preamble to the LA Act, 2013 and particularly, Section 2(e) and (f), to contend that all special enactments providing for compulsory acquisition would necessarily have to be in consonance with the said general Act. It is hence contended that LA Act, 2013 shall be applied to acquisitions under the BDA Act and the KUDA Act, wherever an award

has not been passed within a period of five years prior to the commencement of the LA Act, 2013.

It is pointed out that Section 24 of the LA Act, 2013 saves all those acquisition proceedings where an award has been passed under the provisions of the LA Act, 1894, not more than 5 years from the date of commencement of the LA Act, 2013, further proceedings shall be continued under the LA Act, 1894. But in other cases, the proceedings would have to be completed in accordance with the LA Act, 2013 or would lapse, in terms of Sub-section (2) of Section 24 of the LA Act, 2013.

It is not correct to consider Section 24 of the LA Act, 2013, as providing for limitation in respect of the acquisition proceedings, it is a saving clause in so far as those cases where an award is passed under the LA Act, 1894, within five years prior to coming into force of the LA Act, 2013 and confers the benefit of the LA Act, 2013 in the event of a deemed lapsing on the conditions prescribed being satisfied and is hence a substantive provision of general law that would apply to all compulsory acquisitions.

8. Shri S.M. Chandrashekar, Senior Advocate, appearing for the counsel for the petitioner in the writ petition in WP 40076/2014, would contend as follows:

A reading of Section 36 of the BDA act and section 50 of the LA Act, 1894, would reveal that the acquisition of the land is made under LA Act, 1894 for the benefit of a local authority. Section 36(2) declares that BDA is a local authority within the meaning of section 50(2) of the LA Act, 1894. The vesting of the land would be under section 16 of the LA Act, 1894 with the Government and not with the BDA and the BDA is only a beneficiary under the LA Act, 1894, like any other beneficiary. Upon payment of the cost of the acquisition and upon the BDA agreeing to pay any further cost which may be incurred on account of acquisition, transfer the land to the authority, and the land shall thereupon vest in the BDA.

The BDA is established under Act No. 12 of 1976 and the provisions of the LA Act, 1894 is made applicable for acquiring the land to develop the metropolitan regions by declaring the BDA as a local authority. 1894.

The BDA Act was in conformity with the LA Act and there was hardly any repugnance the source of power to initiate and acquire the land under the LA Act, 1894. BDA is a creature of a statute to authorise to operate parameters of LA Act when section 11-A of the LA Act, 1894 were introduced and undisputed the vesting of the land under section 16 of the LA Act, 1894. The ultimate power, even the power of de-notification is exercised by the Government under section 48 of the LA Act, 1894. Therefore, viewed from any angle, the acquisition of the land is under the LA Act and the BDA is beneficiary under the LA Act. The BDA derived its power only under the LA Act and courts have held looking into the better creature of BDA Act and the complete code in itself, that the BDA Act prevailed over the LA Act. Those precedents cannot be of any assistance in the

present facts and circumstances. Only Section 24 read with Section 114 of the LA Act, 2013 would save the acquisition proceedings to the extent stated therein. Therefore, Section 24 would apply to the facts of the case to the extent stated therein.

The acquisition of the land is deemed to be under the LA Act, 1894. Therefore, provisions of section 24(2) of the LA Act, 2013 is applicable.

It is contended that one of the important aspects which was not present in the BDA Act or any other State Act is the participation of the local authority for acquiring the land and in the absence of the above said requirement, any state law made by the State Legislature either existing, or in future would be repugnant to the new Act.

Section 107 of the LA Act, 2013 notifies the State Legislature and with a caveat that they shall not enact any law which is inconsistent with the said Act, however, the State Legislature is permitted to make any law to enhance or add entitlement or confer higher compensation and more beneficial rehabilitation to the land losers. Therefore, it is submitted that the law made by the State Legislature repugnant to the existing law made by the Parliament would be void.

On and from coming into the force of the LA Act, 2013, the State has no power or jurisdiction to acquire the land in pursuance of the law made by the State Legislature by necessary implication. All provisions containing the development of any area by acquiring the land by the State Legislature have to be declared void and inoperative.

It is contended that the acquisition of the land after coming into force of the BDA Act would be illegal. The intention of the Parliament is to prohibit any other law to operate to acquire the land of the citizen, which is evident in the LA Act, 2013. In any existing law of the State, which do contain the provisions in conformity with right compensation would be void having regard to Article 254(1) of the Constitution of India.

It would be misconceived in law to state that the BDA Act operates under a different field and can survive even after coming into force of the LA Act, 2013. Insofar as it relates to acquisition of the land, the power of the State would be traced to Entry-42 of the Concurrent List or to the LA Act, 2013 and there is no other device or authority or powers to acquire the land of a citizen in contravention of the LA Act, 2013.

9. Per Contra, it is contended by the learned Advocate General, Shri Madhusudan R. Naik, on behalf of the State, as follows:

That as regards the effect and scope of Section 24 of the LA Act, 2013, it is pointed out that Section 103 of the said Act expressly states that the provisions of the LA Act, 2013 are in addition to and not in derogation of any other law in force. This read with Section 114 of the LA Act, 2013 would imply that the repeal of the LA Act, 1894 shall not affect the application of Section 6 of the GC Act with

regard to the effect of repeals. In that, it is contended that when a Central Act repeals any enactment, then, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered under the repealed enactment.

Section 8 of the GC Act, it is contended, would further lay down that, where a Central Act (read LA Act, 2013) repeals and re-enacts any provision of a former enactment, (read LA Act, 1894) then references in any other enactment (read BDA Act and KUDA Act) to the provision so repealed (LA Act 1894) shall, unless a different intention appears, be construed as references to the provision so re-enacted. (emphasis supplied)

It is urged that Section 24(1) and (2) of the LA Act, 2013 reflect a different intention. It is pointed out that the said Section is with particular reference to acquisition proceedings initiated under the LA Act, 1894. In that, Section 24(1) and (2) in the context of Section 114 of LA Act, 2013 read with Section 6 and 8 of the GC Act are provisions reflecting a "different intention" and therefore, an exception from the applicability of the LA Act, 2013 by way of reference in terms of Section 36 of the KUDA Act.

It is contended that Section 24(1) and (2) of the LA Act, 2013, intended differently in so far as acquisitions initiated under the LA Act, 1894. To save the acquisition and apply the provisions of the LA Act, 2013 under Section 24(1)(a) and to save and apply the repealed provisions of LA Act 1894, under Section 24(1)(b) and to declare the lapsing of proceedings under Section 24(2).

It is thus contended that the above provisions under Section 24 make exceptions to Section 8 of the GC Act, qua acquisition proceedings initiated under the LA Act, 1894.

It is contended that insofar as Section 27 of the KUDA Act and the BDA Act, respectively, which provides for lapsing of the Scheme of development and inoperativeness of Section 36, it was held that the BDA Act was a complete code and that Section 11-A of the LA Act, 1894 was held to be inapplicable for acquisition under the BDA Act. (See: *Offshore Holdings (P) Ltd. vs. Bangalore Development Authority*, (2011) 3 SCC 139; *M. Nagabhushan vs. State of Karnataka*, (2011) 3 SCC 408 and *Girnar Traders vs. State of Maharashtra*, (2011) 3 SCC 1.

The learned Advocate General would contend that by virtue of Section 36, whether under the KUDA Act or the BDA Act, the following provisions are to be made applicable:

LA Act, 1894

New Act, 2013

Section 8

Section 20

Section 9

Section 21

Section 11

Section 23

Section 12

Section 37

Section 15 (read with 23 & 24)

Sections 26 to 29

Section 16

Section 38

Section 17

Section 40

Section 18

Section 64

By reason of Section 27 of the said Development Acts, the above provisions, whether under the LA Act, 1894 or the LA Act, 2013, become inoperative, on the lapsing of the Scheme.

It is contended that while Section 25 of the LA Act, 2013 is in pari materia with Section 11 A of the LA Act, 1894, Section 24 is an exception - addressing the transitory events. And as Section 36 (of the Development Acts) operates as a link between acquisition under the said Acts and the provisions of the LA Act, 1894, the provisions of the LA Act, 2013, read with Section 8 of the GC Act, is severed by referred provisions becoming inoperative.

10. The learned Senior Advocate, Shri S. Vijaya Shankar appearing for the counsel for the respondent - MUDA in WP 38868/2015 and connected matters, contends as follows:

That the writ petitions are not maintainable as the land acquisition proceedings initiated under the KUDA Act have been quashed by order dated 10.10.2013 in writ petitions in WP 18756/2001 connected with WP 27994/2001 filed by the present writ petitioners. On the date of filing of the present writ petitions, the acquisition proceedings were non-est. Therefore, Section 24(2) of LA Act, 2013 will not apply and the prayer for a declaration that the acquisition proceedings have lapsed is to be rejected. This objection is one of the issues noted in the order dated 21.9.2015 made in WP 38868/2015.

It is contended that the writ petitioners have not established unambiguously and

unvaryingly that physical possession of the lands has not been taken from them, which is one of the issues pending in WA 6829-30/2013 filed by the MUDA against the judgment dated 10.10.2013 in WP 18756/2001 c/w. W.P. No. 27994/2001. As there is no final and binding decision that the writ petitioners are in physical possession, the writ petitions are to be dismissed as the sine qua non for the applicability of Section 24(2) of the LA Act, 2013 is not established.

Reliance is placed on *Radiance Fincap (Private) Limited vs. Union of India*, (2015) 8 S.C.C. 544.

It is contended that Clause (ii) of sub-section (1) of section 6 of the LA Act, 1894 provides that no declaration under Section 6(1) shall be made after the expiry of one year from the date of publication of the notification under Section 4(1) thereof. Section 11-A directs that if no award is made under Section 11 within a period of two years from the date of publication of the declaration, the entire acquisition proceedings shall lapse. Section 24(2) of LA Act, 2013 makes a similar provision for the lapsing of the entire acquisition proceedings, subject to the conditions specified therein. Section 27 of the KUDA Act declares that if a development scheme is not substantially executed within a period of five years from the date of publication of the declaration under Section 19(1) thereof, the Scheme shall lapse and the provisions of Section 36 shall become inoperative. The execution of a development scheme includes the gamut of the process of acquisition, that is, making an award, taking possession of the lands and the publication of the notification under Section 16(2) of the LA Act 1894, which is the reason why Section 27 of the KUDA Act makes the provisions of Section 36 inoperative on the lapse of the development scheme. Inasmuch as Section 27 of KUDA Act provides for lapsing of a development scheme and renders the provisions of LA Act, 1894 inoperative, and the provisions of Section 24(2) of LA Act, 2013 cannot be read into the KUDA Act, which would result in the absurd passion of two laws, one Central and the other State, providing for lapse of acquisition proceedings.

It is contended that Section 36 of the KUDA Act is legislation by incorporation and not by reference is settled by judgments of the Supreme Court. While considering Section 36 of the BDA Act, which is a statute in pari-materia, in *Offshore Holdings (Private) Limited vs. Bangalore Development Authority*, (2011) 3 SCC 139 and others, and also in *Girnar Traders Vs. State of Maharashtra*, (2011) 3 SCC 1, the Supreme Court has held that Section 36 of the BDA Act is legislation by incorporation, which applies squarely to Section 36 of the KUDA Act.

Section 36 of the KUDA Act does not fall within exception - (d) of the exceptions noticed in para 15 of *State of Madhya Pradesh vs. M.V. Narasimhan*, (1975) 2 SCC 377 as contended by the petitioners. That exception says that where the amendment of the previous Act, (Act No. 1 of 1894) either expressly or by necessary intendment, applies the said provisions to the subsequent Act (KUDA Act), the rule of incorporation does not apply. The argument of the petitioners

that Section 36 falls within the exception is unacceptable as the three tests laid down in the decision of the Supreme Court in *Mariyappa vs. State of Karnataka*, , (1998) 3 SCC 276, for a statutory provision to come within the exceptions are not fulfilled. While considering Section 5 of the Karnataka Acquisition of Land for Grant of House Sites Act (18 of 1973) which makes the Land Acquisition Act applicable to acquisitions under the State Act, it is held that the Karnataka Act comes within the exceptions stated in the case of *M.V. Narasimhan, supra*, for the reasons, (i) that there is no detail machinery whatsoever in the Karnataka which is not a self-contained or complete code, (ii) that the Karnataka Act and the Central Act 1894 are supplemental to each other for unless the Central Act supplements the Karnataka Act, the latter Act cannot function and (iii) that the two Acts are in *pari-materia* dealing with the same subject of land acquisition. The Supreme Court has ruled in *Munithimmaiah, supra* in *Bondu Ramaswamy vs. Bangalore Development Authority*, , (2010) 7 SCC 129 and *Offshore Holdings (Private) Limited, supra*, that the BDA Act, which is in *par-materia* with the KUDA Act, is a self-contained code covered by the field of legislation in Entry-5 List II of the Seventh Schedule to the Constitution, whose primary object is planned urban development and not land acquisition, not dependent for its operation on the provisions of Act 1 of 1984. The reasons given in the case of *Mariyappa, supra* to hold that the Karnataka Acquisition of Land for Grant of House Sites Act, 1972, falls within the exceptions to legislation by incorporation noted in the case of *M.V. Narasimhan, supra* have no application to the KUDA Act, in particular to Section 36 thereof. Ergo, reliance by the petitioners on the exceptions to legislation by incorporation is untenable.

In Answer to a contention regarding violation of Article 14 in the matter of payment of compensation, it is contended that the judgment in the case *Nagpur Improvement Trust vs. Vithal Rao*, , (1973) 1 SCC 500, rendered in year 1973 was prior to the 44th amendment to Constitution under which Article 19(1)(f) and Article 31 have been deleted.

It is contended that the effect of 44th amendment is right to property as fundamental right is taken away. Right to pay just compensation also taken away. Property right is made ordinary civil right. State can deprive the property right by a law made in that behalf. That law may not provide for compensation at market value. In view of Article 31-A that law cannot be questioned on the ground that it is inconsistent with or takes away or abridges any of the rights conferred in Article 14 or 19 and even a similar law is made by the State Government which has received the assent of the President. However, if the State were to make a law for acquisition, the protection is available only if it has received the assent of the President of India. However, there is a rider, if a state were to acquire compulsorily land along with building, structures standing thereon within the ceiling limit provided by any law in respect of that portion of the land it is mandatory to pay the market value.

What has been considered in *Nagapur Improvement Trust, supra* is Article 31-A

as stood at the time of delivering the said judgment. After the said judgment, there has been change in the matter of fundamental right. The property right is no longer a fundamental right in view of 44th amendment to the Constitution of India. Therefore, argument regarding violation of Article 14 relying upon 1973 judgment cannot be sustained.

11. The alternative submissions canvassed by the learned Senior Advocate are as follows:--

It is contended that if it is held that the acquisition of the land by an Urban Development Authority or BDA are not governed by the LA Act, 2013, there will be discrimination in payment of compensation while compulsorily acquiring the lands, in as much as the persons whose lands are acquired under LA Act, 2013 would get higher compensation than the persons whose lands are acquired at the same time under the KUDA Act or BDA Act. As far as the land loser is concerned, it does not matter to him whether the land is acquired by one authority or the other and one enactment or the other enactment. His sole concern is he must get market value and he should not be placed at a disadvantage when compared with a persons whose land is acquired under LA Act, 2013, as that would constitute an unequal treatment meted out to the subject by the State. Though the argument looks attractive, a deeper investigation would show that such a plea is unsustainable.

Article 14 prohibits the State from denying any person equality before any law or equal protection of laws within the territory of India. What the law prohibits is class legislation. But if the legislature takes care to reasonably classify persons for legislative purposes, so long as the classification is founded on an intelligible differentia which lays down a perceptible differentiation between the two groups and the differentiation has a rational relation with the object sought to be achieved, such a classification does not fall foul of Article 14.

The question for determination of the court is not whether it has resulted in inequality, but whether there is some difference which bear a just and reasonable relation to the object to legislation. Mere differentiation per se does not amount to discrimination. To attract the operation of the class it is necessary to show selection or differentiation, unreasonableness or arbitrariness.

Discrimination can be made in respect of the same class of persons but classification is permissible on a rational basis. Classification is not hit by Article 14.

For acquisition of land for a public purpose, the Land Acquisition Act is not the only law. There are several other enactments where land acquisition is incidental to the main object to be achieved by those legislations. The land to be acquired under those legislation form a different class than the lands acquired for a public purpose under the Land Acquisition Act. The compensation payable in respect of a class where the acquisition of land is incidental is based on the provisions of law contained in those enactments. The use of the land bears a different

classification in each of the enactments which is evident from the laws that have been included in Schedule IV under Section 105 of LA Act, 2013. In each of those enactments, the manner of acquisition and payment of compensation is different from the one found in LA Act, 1894. Challenge to laws mentioned in Schedule IV on the ground that the law is discriminatory in the matter of payment of compensation for compulsory acquisition of land has not been found favour with by the Supreme Court, in as much as those laws constitute a different intelligible classification.

Sections 13 and 14 of the Coal Bearing Areas Acquisition and Development Act, 1957 provide for different mode of determination of compensation for the lands acquired has been held to be not unconstitutional as it meets the requirement of Article 31(2) of the Constitution. (See: *Burrakur Coal Company Limited Vs. Union of India*, , AIR 1961 SC 954).

In the Atomic Energy Act, 1962, under Section 21, the mode of payment of compensation for compulsory acquisition is by agreement between the parties or by an Arbitrator appointed by the Central Government. There is no reference to the Land Acquisition Act.

Section 24(1)(a) provides that if the acquisition proceedings initiated under the repealed Act and no Award has been passed in respect of those lands compensation shall be paid under the LA Act, 2013.

Section 24(1)(b) provides that where an Award has been passed, the proceedings will continue under the LA Act, 1894, as if the 2013 Act had not been made.

The learned Senior Advocate, Shri S. Vijayashankar cites the following example:

100 Acres of land notified in 2012 and by the time LA Act, 2013 came into force, the award has been made in respect of 50 acres only, in respect of those 50 acres all further proceedings would be under the LA Act, 1894. In respect of remaining 50 acres, compensation payable would be under the LA Act, 2013. Discrimination is writ large on the face of the Section itself. But it is likely to be defended on the ground that there is reasonable classification, namely, those lands in respect of which Award has been made and those lands in respect of which no award is made stand on a different footing and are not of the same class.

Suppose a notification was issued in the year 2012, and the Award was passed in respect of 50 acres on or before 31.12.2013, the compensation in respect of 50 acres of land is payable under the LA Act, 1894 and compensation in respect of the remaining 50 acres is payable under the LA Act, 2013. Therefore, by the circumstances of the new Act coming into force, those persons in whose case an Award is passed get lesser compensation than those in respect of whom an Award is passed after 1.1.2014, though the lands are acquired under the same notification and for the same purpose, will get a higher compensation under the

LA Act, 2013.

In the present case, a notification for acquisition has been issued in the year 1992-1993. Award was made in the year 1994 and compensation has been paid to all the land owners. In respect of the petitioners' land, the compensation has been deposited in the Civil Court in the year 2001 itself. Therefore, even assuming that the LA Act, 2013 is applicable, the acquisition cannot be declared to have lapsed invoking Section 24(2) of the Act.

In the instant case, if the court were to order that compensation shall be paid in accordance with the new Act only because of the LA Act, 2013, on the ground that there is discrimination between the persons whose lands are notified in the same notification and for same purpose but different criteria for payment of compensation is sought to be adopted and as a consequence, persons in respect of whose lands an Award was not made prior to 1.1.2014, on account of the fortuitous circumstances, gets higher compensation and possibility of two adjacent land owners being paid different compensation cannot be ruled out. Under such a situation, a person in respect of whose lands, an Award has been made before 1.1.2014 could not complain of discrimination. Such a complaint would be met by an argument that there is reasonable classification.

It is contended that the following argument may have some substance if it is held that LA Act, 2013 has no application in respect of acquisition under the KUDA Act.

Suppose in the city of Mysore, MUDA issues a notification on 2.1.2014 under 17(1) of the KUDA Act and on the same day the State Government issues a notification under the provisions of the LA Act, 2013, the purpose of acquisition is the same. The land owner whose lands are acquired under the provisions of KUDA Act will get lesser compensation under the LA Act, 1894 and the land owner whose lands are acquired under the LA Act, 2013 will get more compensation and benefits. But it is premature to advance such an argument. The said argument cannot be made in the present case as the award has already been made.

It is contended that insofar as Section 24(2) of the LA Act, 2013 is concerned, the key words are physical possession of the land has not been taken." The use of the adverb "not" indicates that the burden is on the land owners to show unambiguously and unvaryingly, as held by the Supreme Court in *Radiance Fincap (Private) Limited and others vs. U.O.I.*, (2015) 8 SCC 544, that possession is with the petitioners must be a proven point of fact. The petitioners have not proved the fact of physical possession not being taken from them. The Mysore Urban Development Authority has proved that possession was taken from the writ petitioners by Annexures "R1" and "R2", the letters written by the petitioners stating that the MUDA has formed roads and drains on their lands and by Annexures "R3" to "R7", the R.T.C. besides, the notification dated 18.9.2000 under Section 16(2) of the LA Act, 1894, which establish transfer of possession

to the MUDA. Pertinently in the earlier petition, in WP 18756 of 2001, the petitioners had challenged the validity of the notification under Section 16(2), which fact supports the defence of the MUDA that possession is taken. The presumption attached to the said notification is not rebutted. The order dated 10.10.2013 in WP 18756 of 2001 connected with WP 27994/2001 does not establish that physical possession is not taken. The order quashes the acquisition proceedings on the ground of arbitrariness. That order is not final as MUDA has presented Writ Appeal No. 6829-30/2013 which are pending. No reliance therefore can be placed on the order in the writ petitions for the purpose of deciding the issue with respect to Section 24(2) of the LA Act, 2013 Act. Except producing three orders passed by the learned Single Judges, the petitioners have not produced any other legally acceptable material to show that the possession is not taken. Out of the 3 orders, 2 orders have been set aside by the Division Bench and latest order is in appeal referred to above. The issuance of notification under Section 16(2) of the LA Act, 1894 is conclusive proof of taking possession and vesting of land in the State free from all encumbrances. Therefore, it is for the petitioners plead and establish that the possession is not taken. The standing trees would not conclude that the petitioners are in possession. In fact as on the date of issuance of notification and making award itself, there were standing trees and the award is made for garden land in respect of some of the Survey numbers, which are subject matter of these writ petitions.

Reliance in this regard is placed on P.K. Kalburgi vs. State of Karnataka, (2005) 12 SCC 489, in support of the contention that symbolic possession of vacant land approved even in the absence of a notification under section 16(2).

Reliance is placed on the decision in Mysore Urban Development Authority vs. Veer Kumar Jain, , (2010) 5 SCC 791, which is to the effect that the burden is on land owners to show that possession was not taken, for otherwise a presumption attached to Section 16(2) Notification is not rebutted.

The decision in Radiance Fincap vs. Union of India, , (2015) 8 SCC 544 is relied upon, which is to the effect that land owners to establish each and every deeming operation under Section 24(2) of 2013 Act including the fact of physical possession not being taken.

The judgments in R. Shankaran, supra and Sudhakara Hegde, supra, hold that the provisions of the LA Act, 1894 made applicable to the Bangalore Development Authority Act, 1976 is legislation by reference and not by incorporation. The Constitution Bench judgment of the Supreme Court in Offshore Holdings (Private) Limited, supra, is to the effect that Section 36 of the BDA Act is legislation by incorporation and not by reference is not noticed in R. Shankaran, supra and Sudhakara Hegde,

The ratio decidendi of the aforesaid two judgments are not applicable for deciding the question of incorporation or reference in the context of Section 24(2) of the LA Act, 2013. The mandate of Article 141 of the Constitution of

India is that the law declared by the Supreme Court shall be binding on all courts within the territory of India. To a decision given without reference to a binding authority of the Supreme Court, and where some part of the decision is inconsistent with the law declared by the Supreme Court, the rule of per incuriam (inadvertence or want of care) applies. It is contended that the decisions in R. Shankaran, supra and Sudhakara Hegde, supra, are rendered per incuriam and the petitioners cannot contend that the issue with respect to Section 36 of the KUDA Act vis-a-vis Section 24(2) of the LA Act, 2013 Act are already decided in the aforesaid reported cases. This applies squarely to the KUDA Act.

Reliance is placed on C.M. Rudramurthy vs. K. Barakathulla Khan, , (1998) 8 SCC 275; Union of India vs. Dhanvanthi Devi and others, , (1996) 6 SCC 44; Suganthi Suresh Kumar vs. Jagadishan, , (2002) 2 SCC 420; Municipal Corporation of Delhi vs. Curnam Khan, , AIR 1989 SC 38; and Union of India vs. R.P. Singh, , (2014) 7 SCC 340.

The provisions of KUDA Act and the BDA Act, are not repugnant to LA Act, 2013.

It is contended that repugnancy between two statutes is to be ascertained on the basis of three principles,

- (i) Whether there is direct conflict between the two provisions,
- (ii) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature,
- (iii) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.

It is contended that these conditions are not fulfilled, in that, the BDA Act, as held by the Supreme Court in Munithimmaiah's case, supra and the KUDA Act are not laws dealing with acquisition of land, and they are independent and self contained statutes occupying the field under Entry-5 of List-II of the Seventh Schedule and for the further reason that LA Act, 2013 is not an exhaustive code replacing the State Acts.

The acquisition of lands for the purposes of the KUDA Act and the BDA Act are not under the LA Act, 1894 and the acquisitions are under the respective enactments.

With the coming into force of the constitution (Forty-Fourth Amendment) Act, which deleted Article 19(1)(f) and (s) Article 31 and inserted Article 300-A, there is no right, much less a constitutional right, to compensation in market value of the land acquired. The only requirement is that compensation awarded is not illusory.

It is finally contended that the petitioners have not answered the preliminary objection of MUD A, that as the entire acquisition proceedings have been quashed, the question of declaring that the acquisition proceedings have lapsed

by applying Section 24(2) of LA Act, 2013 does not arise.

12. The learned Senior Advocate appearing for the Counsel for the MUDA, would further contend as follows:--

Firstly, the decision in Nagpur Improvement Trust, *supra*, relied upon by the petitioners is concerned, was delivered at a point of time when there existed a fundamental right to property under Articles 19(f) and Article 31 of the Constitution. Subsequent constitutional amendments have relegated the right to property as a mere civil or constitutional right under Article 300A of the Constitution. There is no longer a requirement of compensating land owners at market value and it is only required that the compensation given must not be illusory. Further, the different compensation regime under the KUDA Act would be protected from a challenge to Article 14 by virtue of the provision of Article 31-A of the Constitution. Because of these reasons, the KUDA Act would not become "unworkable or ineffectual" merely because acquisitions under the KUDA Act would still be governed by principles of compensation as laid down under the LA Act, 1894.

Secondly, there is no violation of the right to equality under Article 14, on the basis that enactments where land acquisition is only incidental from a different class of legislations as compared to legislations such as the LA Act, 1894 which deal exclusively with the subject of land acquisition. By virtue of constituting a separate class, it is permissible for these regimes to provide for different compensation regimes, since Article 14 permits "reasonable classification."

Reliance is also placed on Section 105 of the LA Act, 2013 which provides that the provisions of the LA Act, 2013 will not apply to the enactments specified in the Fourth Schedule. It is pointed out that some of the enactments specified in the Fourth Schedule, such as the Coal Bearing Areas Acquisition and Development Act, 1957 and the Atomic Energy Act, 1962 provide incidentally for land acquisition and also have their own separate regimes for compensating the land owners in a manner different from the LA Act, 2013.

Thirdly, Section 24 of the LA Act, 2013 itself differentiates between classes of landowners based on the date of passing of the award and the satisfaction of the other conditions mentioned in the provision. This was used to substantiate that the land acquisition legislations can compensate different classes of land owners differently.

13. The learned Senior Advocate, Shri Nageshwara Rao, by way of reply, would contend that insofar as the first contention of the MUDA on the KUDA Act being rendered unworkable and ineffectual was not based on the fundamental right to property or adequacy of compensation but rather on the fundamental right against discrimination as guaranteed by Article 14 of the Constitution. The question to be asked is it constitutionally permissible to disentitle land owners from higher compensation and other benefits that they would have received under the LA Act, 2013 merely because the acquisition is done under the State

enacted KUDA Act, although the purpose of the acquisition is the same (urban planning). Viewed from this perspective, the relegation of the right to property to the status of a civil right makes no difference. The question is whether there has been a violation of Article 14, and it is as regards this aspect that the decision in Nagpur Improvement Trust vs. Vithal Rao , (1973) 1 SCC 500 has been relied on. The principle in the said decision has been applied by the Supreme Court even after the constitutional amendments removing the fundamental right to property in Savitri Cariac vs. U.P. Avas Evam Vikas Parishad , (2003) 6 SCC 255.

The reliance on Article 31-A as a shield to the Article 14 challenge is misplaced. It is well settled that the protection of Article 31A is available only for legislation pertaining to "agrarian reforms" and for acquisition of rights in "estates" as defined in the said Article. Article 31A has no relevance where the legislation in challenge has no connection with agrarian reforms and instead deals with acquisition for the purpose of urban planning or development of a city. The relevant authorities in this regard as follows:--

- (i) Vjaravelu Mudaliar vs. Special Deputy Collectors, (196) 1 SCR 614
- (ii) Nagpur Improvement Trust vs. Vithal Rao , (1973) 1 SCC 500
- (iii) Murari vs. Union of India, , (1997) 1 SCC 15

Insofar as the second contention is concerned, it is contended that the "reasonable classification" test under Article 14 is two pronged, that for a legislative classification to be valid, it is not merely sufficient that the legislature concerned has made classifications on the basis of an intelligible differential, but it is also additionally necessary that such classification has a rational nexus to the objects sought to be achieved through the legislation.

It is submitted that the counsel for the respondent - MUDA has failed to consider the objects of both the KUDA Act and the LA Act, 2013 which clearly militate against discriminatory or compensatory or rehabilitation or resettlement regimes against the interests of the land owners. This is clearly seen from the express provisions of both the LA Act, 2013 and the KUDA Act.

Reference is drawn to Section 105(3) of the LA Act, 2013 wherein it is provided as follows:

"The Central Government shall, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the second and Third Schedules, being beneficial to the affected families shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification as the case may be."

In addition, Section 108 of the LA Act, 2013 also provides the affected families the right to opt for compensation, rehabilitation and resettlement benefits under a State Law or policy if the compensation or benefits under the State Law are more beneficial than those under the LA Act, 2013.

The above provision makes it clear that the legislative intent was clearly against any discriminatory compensatory regime providing for lesser benefits to the land owners even in respect of the enactments listed in the Fourth Schedule of the LA Act, 2013.

The KUDA Act also evidences a clear legislative intent that the land owners affected by acquisitions under the KUDA Act should not face a discriminatory compensatory regime as regards the land owners who are governed by the Central Land Acquisition enactments. That is why the provisions of the LA Act, 1894 were made applicable to the KUDA Act and Section 36 without providing for a different compensation regime under the KUDA Act.

Insofar as the third contention is concerned, it is pointed out that the fact that Section 24 differentiates between classes of land owners is no answer to a charge that grant of lower compensation, resettlement and rehabilitation benefits to the KUDA Act, affected land owners as compared to LA Act, 2013 governed land owners would be discriminatory and violative of Article 14. If a legislation fails the two pronged test of reasonable classification under Article 14 it has to be held to be discriminatory and unconstitutional. It cannot be a defence to state that other legislations also differentiate between classes of land owners. Moreover, the classification under Section 24 of the LA Act, 2013 is yet to be tested and upheld by the Court, so the possibility of that classification also being found to be discriminatory still exists.

In so far as the State's contention that a "different intention appears" than what is intended by Section 8 of the GC Act is unsubstantiated and based on the wrong approach of identifying differences between individual provisions relating to the same subject matter under the Land Acquisition Acts 1894 and 2013. The test of "different intention" is not whether the substance of individual provisions are different in the repealed and re-enacted statutes (as would be the case in any repeal and reenactment of a statute), but rather whether there is an intention that references to the repealed statute in other enactments should not be construed as references to the re-enacted statute.

The State has also relied upon Section 114(2) of the Land Acquisition Act 2013, which provides that the repeal of the Land Acquisition Act, 1894, shall not affect the general application of Section 6 of the General Clauses Act, 1897. Section 6 of the GC Act reads as follows:

"Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not;

- a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
 - c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
 - d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
 - e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

It is contended that the State has erred in relying upon Section 6 of the GC Act. On a plain reading of the provision, it is clear that it deals only with saving of proceeding, rights, liabilities "under the enactment so repealed" (i.e., the Land Acquisition Act, 1894). It does not save any proceedings under any other enactment which refers to the repealed enactment (i.e., proceedings under legislations such as the KUDA Act). Therefore the reliance placed by the State on Section 6 of the GC Act, is clearly erroneous.

If the findings in *Munithimmiah vs. State of Karnataka*, (2002) 4 SCC 326 and *Offshore Holdings (Private) Limited vs. Bangalore Development Authority*, (2011) 3 SCC 139, as contended by the respondents are made applicable to the instant case upon the coming into force of the Land Acquisition Act, 2013, the same would lead to various anomalies and discriminations amongst land owners, more so when the Supreme Court in *Munithimmiah and Offshore Holdings*, supra was only concerned with the limited introduction of Section 6 and 11-A of the LA Act, 1894.

MUDA seeks to place reliance on the notification dated 18.9.2000 under Section 16(2) of the LA Act, 1894 to contend that possession has been taken from the petitioners. However, mere issuance of a Section 16(2) notification would not meet the requirements of taking actual physical possession.

It is incidentally contended in so far as the objection regarding the maintainability of the petition is concerned that these writ petitions seeking lapse of land acquisition proceedings under Section 24 of the LA Act, 2013 are not maintainable, since at present the land acquisition proceedings stand quashed and there is no land acquisition proceeding as on date that can be said to lapse. In this regard, it is contended that the pendency of the writ appeal challenging the quashing of the acquisition proceedings leaves alive the possibility that the quashing of the land acquisition proceedings may be overturned at a future date.

In such circumstances, the petitioners cannot be precluded from exhausting all avenues open to them to end the land acquisition proceedings against them. The present writ petitions are filed seeking the enforcement of a statutorily conferred right of lapse, and therefore maintainable.

14. In the light of the above, the points that arise for consideration are:

a. Whether the petitions in WP 38868-70/2015 and WP 38871-74/2015 are maintainable in view of the acquisition proceedings initiated under the KUDA Act having been quashed and the same being the subject matter of an appeal before a Division bench of this court.

b. Whether the provisions of the LA Act, 1894 or the LA Act, 2013, should be applied to acquisitions proceedings under the provisions of the KUDA Act and the BDA Act, if the proceedings are not completed as on the date of coming into force of the LA Act, 2013.

c. What order should follow in each of these petitions.

In so far as the preliminary objection to the maintainability of the petitions in WP 38868-38870 and WP 38871-38874 of 2015, on the ground that the proceedings initiated under the KUDA Act have been quashed in petitions filed by the very writ petitioners and that the acquisition proceedings are therefore non-est and consequently, the prayer for a declaration that proceedings, which are already quashed, have lapsed, is incongruous, is concerned - it is to be noticed that in the appeal preferred by the MUDA against the order quashing the acquisition proceedings, the present petitioners who are respondents therein, had filed an application seeking that the appeal be dismissed on the ground that with the coming into force of the LA Act, 2013, which was subsequent to the order passed by the learned single judge, Section 24(2) of the said Act was attracted and by virtue of the same, the acquisition proceedings would lapse in any event.

However, the above application was withdrawn with liberty to file the present petition in terms of the following Order dated 1.9.2015:

"Order in WA 6829/2013

Orders on I.A. No. 1 of 2015

Mr. Nageshwar Rao L, learned senior advocate appears and submits that he has been instructed to withdraw the interlocutory application No. 1 of 2015, for dismissal of the appeal, with liberty to file a writ petition before the Hon"ble Single Judge.

As prayed for, the interlocutory application stands disposed of as withdrawn. But, this order shall not prevent the writ petitioners the respondents to approach the Hon"ble Single Judge with afresh application under Article 226 of the Constitution of India. There will be no order as to costs."

It is also to be kept in view that the pendency of the appeal challenging the

acquisition proceedings leaves alive the possibility that the quashing of the acquisition proceedings may be overturned at a future date. In such circumstances, the petitioners cannot be precluded from urging and seeking to enforce a statutory right, which they claim has accrued to them subsequent to the Order under challenge in the pending appeals.

Therefore, the petitions are maintainable notwithstanding the earlier order in respect of the very acquisition proceedings.

In considering the second point framed above, it is necessary to notice the following provisions and to reconcile the same with settled legal principles. Section 114(1) repeals the LA Act, 1894, with effect from 1.1.2014. Section 36 of the BDA Act and Section 36 of the KUDA Act are in pari materia and are identically worded.

Sub-section (1) of Section 36 reads as follows:

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

The settled rule of statutory construction in the case of legislation by reference, is that where a statute is cited by reference into another statute, (in this case, the LA Act, 1894 is cited by reference into the BDA Act and the KUDA Act, respectively) any repeal or amendment of the statute that is cited by reference, is automatically carried over into the referring statute.

In contrast, in a case of legislation by incorporation, the repeal or amendment of the incorporated statute does not automatically affect the incorporating statute.

A plain reading of Section 36 of the BDA and the KUDA Act, respectively, it would appear that it is clearly to be construed as legislation by reference. Since the acquisition under those Acts are to be regulated by the provisions of the LA Act, 1894, in so far as they are applicable. No particular provision of the LA Act, 1894 is bodily lifted and incorporated into the BDA Act or the KUDA Act, which is normally the case in any "legislation by incorporation"

However, the Supreme Court has, in the case of Offshore Holdings (P) Ltd., supra, has held Section 36 of the BDA Act - to be a case of legislation by incorporation. This was in the context of considering the question whether Section 11-A of the LA Act, 1894 (Inserted by Act 68 of 1984, with effect from 24.9.1984) would ipso facto apply to the acquisition proceedings under the BDA Act. In the opinion of this bench, such a finding of the Supreme Court in the above decision would have no applicability in determining whether Section 36 of the KUDA or the BDA Acts is a case of legislation by reference or legislation by incorporation, in the context of the wholesale repeal of the LA Act, 1894 and its replacement by the LA Act, 2013.

The established exceptions to the rule of legislation by incorporation ought to be applied in the light of the nature and extent of the amendment that is made to a statute. An amendment by the introduction of Section 11A of the LA Act, 1894 cannot be equated with a total repeal and re-enactment of a law.

In the case of *State of Madhya Pradesh v. M.V. Narasimhan*, it is laid down by the Supreme Court, that there are the following four exceptions to the rule and even if one of the exceptions is satisfied a legislation by incorporation could be construed as a legislation by reference.

"(a) where the subsequent Act and the previous Act are supplemental to each other;

(b) where the two Acts are in *pari materia*;

(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

Exceptions (c) and (d) above are relevant to the case on hand, for they depend wholly upon the nature of the amendment to the previous incorporated enactment. In the *Offshore* case, *supra*, the introduction of Section 11-A to the LA Act, 1894, was under consideration, a relatively minor change. It was thus held that the BDA Act was workable and effectual even if Section 11-A of the LA Act, 1894 was not read into the BDA Act. It was also held that there was nothing to evidence that Section 11-A was necessarily intended to be brought into the BDA Act. However, in the present case, the amendment made is of a completely different magnitude. It involves the repeal of the LA Act, 1894 and its re-enactment in the form of the LA Act 2013, with significant and major changes. It is in this different context that the test, as to whether the BDA Act and the KUDA Act are rendered "unworkable and ineffectual", namely, exception (c) stated in *Narasimhan's* case and the stated intendment in the LA Act, 2013, namely, exception (d) stated in *Narasimhan's* case is to be applied and examined.

If the provisions of the LA Act, 1894, were still to be applied to acquisitions under the BDA Act or the KUDA Act, post 1.1.2014, the quantum of compensation payable to land owners in respect of acquisition under those Acts would be lesser than the compensation in acquisitions made under the LA Act 2013. This is notwithstanding the fact that the purpose of the acquisition is the same. In that, acquisitions contemplated under the LA Act, 2013, includes urban and town planning and allotment of house sites. Added to this, the additional benefits such as rehabilitation and resettlement of affected families would also not be available to the land owners even though the purpose of acquisition remains the same.

The following analysis indicates how the provisions of the LA Act, 2013 are more

beneficial to the land owners and affected families in land acquisition proceedings.

Sections 4 to 9 of the LA Act, 2013, deal with the preparation of a social impact assessment report prior to the publication of a preliminary notification for acquisition. Merely because land is being acquired by a development authority under the KUDA Act or the BDA Act, there is no justification in doing away with the detailed provisions pertaining to the social impact assessment.

Section 10 specifically excludes multi-cropped lands from acquisitions subject to exceptions mention in the said section. The LA Act, 1894 did not exclude such lands.

Section 14 states that ordinarily if a preliminary notification is not issued within twelve months from the date of appraisal of the Social Impact Assessment Report, a fresh Social Impact Assessment Report would have to be issued before the issuance of a preliminary notification. This would show the legislature was conscious of change in circumstances with efflux of time.

Sections 16 to 18 prescribe detailed procedures for the preparation of a Rehabilitation and Resettlement Scheme soon after the publication of the preliminary notification, which was not present in the Land Acquisition Act, 1894.

Section 30 provides for the award of solarium at 100% of the compensation payable, which was not present in the earlier Act.

Section 31 provides for Rehabilitation and Resettlement awards, which includes amongst other tings allotment of alternative land, one time subsistence allowance, special provisions for Scheduled Castes and Scheduled Tribes, etc., which was not present in the earlier Act.

Section 32 provides for infrastructural amenities in the resettlement areas, which was not present in the earlier Act.

Section 39 provides for additional compensation in cases where there are multiple displacements, which was not present in the earlier Act.

Section 41 and 42 provides for special provisions for Schedule Caste and Schedule Tribes, which was not present in the earlier Act.

Chapter VI Sections 43 and 47 provides for a detailed procedure for Rehabilitation and Resettlement which was not present in the earlier Act.

Chapter VII Section 48 to 50 provides for a National Monitoring Commission for Rehabilitation and Resettlement. The authority has been established and vested with certain so that the land owners are benefited.

Chapter VIII Section 51 to 74 provides for a Land Acquisition, Rehabilitation and Resettlement Authority, its functioning and powers. The authority has been established and vested with certain powers so that the land owners are benefited.

Section 99 states that ordinarily there shall be no change of purpose in relation

to the acquired land.

Section 101 provides that if land is unutilized for a period of five years from the date of taking possession as per the new Act, the said land shall be returned. The Act being a beneficial legislation, contemplates the return of the land to the land owner, despite payment of compensation and amount under the rehabilitation and resettlement award, such benefits never existed under the old Act.

Section 104 empowers the appropriate government to take on lease lands rather than acquiring it, which provision did not exist in the old Act.

The gross discrimination as regards compensation and other benefits is glaring, on account of the sea change in the legislation and the particular legislative approach in relation to land acquisition, rehabilitation and resettlement under the LA Act, 2013. This unconstitutional discriminatory effect would render the KUDA Act as well as the BDA Act "unworkable and ineffectual", thereby satisfying exception (c) contemplated in Narasimhan's case.

Further, a conjunctive reading of the following would clearly evidence the legislative intent.

STATEMENT OF OBJECTS AND REASONS: (Of the LA Act, 2013) The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multicropped irrigated land and there is no central law to adequately deal with

the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December, 2007 and were referred to the Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October, 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing Committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, alongwith the official amendments, were passed by the Lok Sabha on 25th February, 2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognize rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems

that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February, 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent, of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed, if multi-crop land is acquired. In districts where net sown area is less

than 50 per cent, of total geographical area, no more than 10 per cent, of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent, of the total compensation. Where land is acquired for urbanization, 20 per cent, of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs. 50,000; twenty-five per cent, additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent, of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill".

Preamble: (To the LA Act, 2013) "An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

Section 105:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.--(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. (2) Subject to sub-section (2) of section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule. (3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases

of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or Sec. 105 dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. (4) A copy of every notification proposed to be issued under subsection (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

Section 107:

107. Power of State Legislatures to enact any law more beneficial to affected families.--Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act."

Section 108:

108. Option to affected families to avail better compensation and rehabilitation and resettlement.--(1) Where a State law or a policy framed by the Government of a State provides for a higher compensation than calculated under this Act for the acquisition of land, the affected persons or his family or member of his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such State law or such policy of the State. (2) Where a State law or a policy framed by the Government of a State offers more beneficial rehabilitation and resettlement provisions under that Act or policy than under this Act, the affected persons or his family or member of his family may at his option opt to avail such rehabilitation and resettlement provisions under such State law or such policy of the State instead of under this Act."

It is hence manifest that the Parliament intended to save State enactments pertaining to land acquisitions where they are more beneficial to the land owners. This would satisfy the requirement under exception (d) contemplated in Narasimhan's case.

In so far as the contention on behalf of the respondents that the law as laid down in Nagpur Improvement Trust v. Vithal Rao, supra, not being relevant having regard to the fact that it was rendered at a point of time when there existed a fundamental right to property under Article 19(f) and Article 31 of the Constitution. And that subsequent constitutional amendments have relegated the right to property to the status of a mere civil and constitutional right under

Article 300-A of the Constitution of India and that there is no longer a requirement of compensating land owners at market value and it is only required that compensation given is not illusory etc., would be an unfair argument vis-a-vis the contention on behalf of the petitioners. Their argument, as to the BDA Act or the KUDA Act being rendered unworkable and ineffectual, is not based on the fundamental right to property but rather on the fundamental right against discrimination as guaranteed by Article 14 of the Constitution. The question is whether it is constitutionally permissible to disentitle land owners from higher compensation and other benefits that they would have received under the LA Act, 2013 merely because the acquisition is under the State Acts, although the purpose of acquisition is the same-urban planning. The question whether there would be a violation of Article 14 if the LA Act, 2013 is not applied to acquisition proceedings under the state enactments would have to be answered in the affirmative, in the light of Nagpur Improvement Trust case, *supra*. The principle laid down there in has been applied by the Apex Court even after the constitutional amendments, removing the fundamental right to property - as reported in *Savitri Cariae v. U.P. Avas Evam Vikas Parishad*, , (2003) 6 SCC 255.

Further, Article 31-A cannot be a shield to the challenge on the ground of violation of Article 14. Article 31-A is available only in respect of legislation pertaining to "agrarian reforms" and for acquisition of rights in "estates", as defined in Article 31-A. It has no relevance in the present context.

The further contention that wherever land acquisition is only incidental under an enactment as compared to a legislation such as the LA Act, 1894, which deals exclusively with the subject of land acquisition and hence since such other enactments constitute a different and separate class it is permissible for those regimes to provide for a different quantum of compensation, since Article 14 permits "reasonable classification", is also not an argument that can be accepted. The "reasonable classification" test under Article 14 of the Constitution of India, is two pronged. In that, for a legislative classification to be valid, it is not merely sufficient that the legislature concerned make a classification on the basis of an intelligible differentia, but it is also additionally necessary that such classification bear a rational nexus to the object sought to be achieved through legislation.

It is evident that in providing for the payment of compensation for compulsory acquisition of land under the State enactments it was always intended that the measure should be the same as under the general or the Central law of acquisition. In other words, the intention was apparent that there should be no discriminatory compensatory regime as regards the land owners, which is obviously the reason for making the LA Act, 1894 being made applicable to acquisitions under the State enactments. It would therefore be a travesty of justice to relegate land owners suffering compulsory acquisition, even as on date, to the provisions of the LA Act, 1894.

The further contention that Section 24 of the LA Act, 2013, differentiates

between classes of land owners is no answer to a charge that grant of lower compensation, resettlement and rehabilitation benefits to land owners affected by acquisition under the State enactments, as compared to land owners affected by acquisition under the LA Act, 2013 which would be discriminatory and violative of Article 14. If a legislation fails, the two pronged test of reasonable classification under Article 14, it has to be held to be discriminatory and unconstitutional. It is no defence to state that other legislations also differentiate between classes of land owners. Moreover, the classification under Section 24 of the LA Act, 2013 is only now being tested.

One other aspect that is to be kept in view is the effect of Section 8 of the General Clauses Act, 1897. The said Section lays down that when any Central Act repeals and re-enacts any provision of a former enactment, then references in any other enactment to the provisions so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted. Section 114 of the LA Act, 2013, repeals the provisions of the LA Act, 1894. Hence, in terms of Section 8 of the GC Act, the reference to the LA Act, 1894, in the BDA Act or the KUDA Act would have to be construed as a reference to the LA Act, 2013. From a reading of the Statement of Objects and Reasons, the Preamble and the provisions of the LA Act, 2013, it is evident that the legislative intent is to make the provisions of the LA Act, 2013, applicable to all statutes where the LA Act, 1894, is "referred". There is no other intention provided. As a result the provisions of the LA Act, 2013, would have to be read into the referred statutes, namely, the BDA Act and the KUDA Act.

Though there was an endeavour on the part of the learned Advocate General, to contend that a different intention did appear to be present by identifying differences between individual provisions relating to the same subject matter under the LA Act, 1894 and 2013, respectively, the true test of a "different intention" is not whether the substance of individual provisions are different in the repealed and re-enacted statutes, but rather whether there is an intention that references to the repealed statute in other enactments should not be construed as reference to the re-enacted statute.

The further reference to Section 114(2) of the LA Act, 2013, which provides that the repeal of the LA Act shall not affect the general application of Section 6 of the GC Act, may not also be relevant. On a reading of Section 6 of the GC Act, it is seen that it concerns saving of proceedings, rights, liabilities under a repealed enactment. It does not save any proceedings under any other enactment which refers to the repealed enactment. To wit, any proceedings under legislation such as the BDA or the KUDA Acts, in the present context.

For the above reasons, the answer to the second point for consideration is that it is the LA Act, 2013 that shall be applied to acquisition proceedings under the BDA Act and the KUDA Act, that have remained without being completed in all respects as on 1.1.2014, and proceedings that have been initiated thereafter.

Each of the petitions are now examined on facts to consider whether the acquisition proceedings have lapsed in respect of the particular items of land involved, with the coming into force of the LA Act, 2013.

Section 24(2) of the LA Act, 2013 provides for lapse of acquisition proceedings commenced under the LA Act, 1894, on the satisfaction of certain conditions, which are as follows:

a. The award of compensation should have been passed five years or more prior to the commencement of the LA Act, 2013. In that, it should have been passed prior to 1.1.2009;

AND

b. Physical possession of the land has not been taken;

OR

c. Compensation has not been paid.

The Apex court has interpreted the requirement of possession being taken under Section 24(2) of the LA Act, 2013, to mean that actual physical possession has to be taken and mere symbolic possession would not suffice.

WP 38868-38870/2015 & WP 38871-38874/2015

It is the case of the petitioners that though an award has been passed on 27.5.1994, even as on date the actual physical possession of the lands that are the subject matter of the present proceedings, it is claimed, has not been taken.

It is indeed found that the respondents appear to have admitted that physical possession of the subject lands have not been taken as stated in their pleadings before this court. In an affidavit dated 22.7.2013 filed in WP 27994/2001, it is stated on behalf of the respondents as follows:

"26. Total extent of land notified for acquisition is 491 Acres 9 guntas. Possession of an extent of 470 acres of land were taken and only a small extent of 20 acres 38 guntas could not be taken."

The statement of objections dated 27.7.2001 filed by the respondents, in the above mentioned petition, also records the fact that actual physical possession is not taken.

On three earlier occasions, while disposing of petitions filed by the very petitioners in WP 27994/2001 and 18756/2001 dated 15.12.2003, 7.2.2011 and 10.10.2013, respectively, this court has held that possession of the said lands are with the petitioners.

Reliance is placed by the respondents on a notification dated 18.9.2000 issued under Section 16(2) of the LA Act, 1894 to contend that possession had been taken from the petitioners. However, the mere issuance of a notification under

Section 16(2) would not meet the requirements of taking actual physical possession.

Therefore, when the above conditions as required under Section 24(2) have been satisfied, the acquisition proceedings lapse by operation of law. The said petitions are allowed as prayed for.

WP 35858/2013 & WP 35880-35881 OF 2013

It is admitted by the respondent - BDA in its statement of objections that an award has been passed in respect of the land in question only as on 30.4.2010. There is however, no claim that physical possession has been taken of the land in question. Five years have elapsed from the date of the Award and hence the acquisition in so far as the petitioner's land is concerned lapses by operation of law.

WP 82/2015

Though the petitioner claims to be the absolute owner of an extent of 14 guntas of land, he is actually claiming ownership under a General Power of Attorney and an agreement of sale. He cannot be countenanced as being the owner of the land. The petitioner would have no right to prosecute this petition to question the acquisition proceedings. The petition is dismissed as not maintainable on that ground alone.

WP 83/2015

It is an admitted fact that the petitioner has purchased the land in question under a sale deed dated 15.2.2012. Whereas the Preliminary notification was issued by the BDA as on 7.11.2002 and a Final Notification is issued on 9.9.2003. Hence, the petitioner's name could not have been reflected in those notifications. Whether there was any error in so far as the holder of the land as on the date of the notifications and whether the claim of the petitioner that he continues in possession as on date has not been addressed by the BDA. It would be appropriate if this petition is de-linked and reconsidered after the BDA files its pleadings. The petition is delinked and to be re-listed before the court in due course.

WP 26980-26982/2015

The petitioners have purchased the land in question much after the final notification issued under the BDA Act. The vendors of the petitioners along with some subsequent purchasers of adjacent lands are said to have challenged the very acquisition proceedings earlier, by way of a writ petition before this court in WP 8340/2003. That petition is said to have been dismissed by an order dated 21.3.2007. An appeal preferred against that order in WA 1979/2009 is said to have been dismissed on 25.5.2009. A Special Leave Petition filed before the Apex Court against that judgment in SLP (Civil) 34005/2009 is said to have been dismissed on 23.1.2012. This sequence of events is not denied by the petitioners

by filing any rejoinder to the statement of objections, hence the present petition is not maintainable and is accordingly rejected in the above circumstances.

WP 15616-15620/2013

It is not in dispute that the preliminary notification has been issued on 1.4.1981 and a final notification is issued on 29.3.1984 under the provisions of the KUDA Act. However, it is admitted that compensation has not been paid. It is only claimed by the respondents that such non-payment would not render the acquisition proceedings bad in law, as the petitioners would be entitled to interest on the compensation. Hence the petition is allowed on that ground alone, as the rigour of Section 24(2) of the LA Act, 2013, would squarely apply.

WP 40076/2014

It is established from the material on record that though an Award in respect of the land has been passed on 7.1.1987, as per an endorsement dated 1.8.2014, it is declared by the respondent that the award amount is kept in a Revenue Deposit Account and that it has not been paid to the land owners. As such a deposit is not recognized as payment made to the land owner. The petition is allowed in terms of Section 24(2) of the LA Act, 2013.