

(2010) 03 KAR CK 0223

In the Karnataka High Court

Case No : Writ Petition No"s. 22747, 30663, 30767 and 31200 of 2009

M.K. Balakrishnan, Gautam K. John and Ashwin Kumar Koneti **APPELLANT**

Vs

Government of Karnataka
 Bangalore Turf Club Ltd Vs **RESPONDENT**
State of Karnataka
 Bangalore Turf Club Staff
Association Vs The State of Karnataka and Bangalore Turf
Club Limited
 People for Animals Vs The State of
Karnataka and The Bangalore Turf Club

Date of Decision : 22-03-2010

Acts Referred:

Contract Act, 1872 — Section 20, 21
Government Grants Act, 1895 — Section 2

Citation : (2010) 5 KarLJ 328

Hon'ble Judges : V. Gopala Gowda, J;B.S. Patil, J

Bench : Division Bench

Advocate : Aditya Sondhi, in W.P. No. 31200/2009, C.S. Vaidyanathan for Just Law in W.P. No. 30663/2009, K. Kasturi for Srinivas and Badri Associates in W.P. No. 30767/2009 and Prabhuling K. Navadagi, in W.P. 22474/2009, for the Appellant; Ashok Haranahalli, General for R.G. Kolle, AGA for R-1 and 2 in W.P. Nos. 22747, 30663, 30767 and 31200/2009, C.S. Vaidyanathan for Just Law for R-3 in W.P. Nos. 22747, 30767 and 31200/2009 and Shivashankar, for R2 in W.P. No. 22747/2009, for the Respondent

Judgement

B.S. Patil, J.—The grievance made by the petitioners in these writ petitions are in relation to the Bangalore Turf Club property and an alternative land granted in favour of the Club and seeking relief of protection of horses. Therefore, they are clubbed, heard together and are disposed of by this common order by consent of the learned Counsel for the parties.

2. Petitioner - Bangalore Turb Club in W.P. No. 30663/2009 is a company registered under the provisions of the Companies Act, 1956. It is running a race club in the properties originally bearing Sy. Nos. 40 to 45, 46 & 47 of Mallenahalli and now-bearing Municipal Nos. 52, 52A and 51B of Division No. 44, Race Course Road, Bangalore. In this writ petition, petitioner-Club is challenging the action of

the State Government in trying to evict it from the premises and is seeking various reliefs including a writ in the nature of declaration to declare that the grant made vide Government Order dated 07.05.1915 Annexure-F is an absolute grant covered by the Government Grants Act, 1895 and that the lease deeds executed on 21.12.1983 and 26.07.2008 vide Annexures-M and P by the State Government in favour of the petitioner are of no legal effect and therefore the Government shall not take any coercive steps to resume the land. Notices issued by the Executive Engineer, Roads and Buildings Special Division, Bangalore, calling upon the petitioner to vacate and hand over possession of the property in question upon the expiry of the lease period are also challenged.

3. By way of amendment to the writ petition, alternative reliefs seeking a declaration that the State Government has an obligation to provide adequate alternate land, in the event the petitioner has to vacate the schedule property and shift its activities and for a consequential direction to make available a suitable land for shifting the activities providing 4? years time from the date of handing over possession of alternate land is also sought. A direction is also sought against the State Government to provide compensation/incentives/financial assistance in any form including tax exemptions, tax holidays, tax deferrals for a minimum period of seven years from the date of taking possession of suitable alternate land allotted by the respondent so as to raise financial resources to shift its racing and allied activities from the schedule property.

4. Petitioner-Club has traced its rights on the schedule property to the so-called absolute grant of the year 1863 from the then Government which are allegedly incorporated in the Government Order dated 07.05.1915. According to the petitioner, its predecessor, the Race Course Committee was established in the year 1830 in Bangalore. In the year 1860, as the army made a request for grant of land for strategic purposes, where the Race Course Committee was operating, the present property was given to the Race Course Committee in lieu of the existing property, in exchange. Proceedings of the Government of Mysore dated 15.08.1901 are referred to and relied upon stating that the fact of delivery of land in question by way of grant to the Race Course Committee in the year 1863 is mentioned. Copy of the proceedings of the Government dated 15.08.1901 is produced at Annexure-A. It is the further case of the petitioner that as there was doubt regarding the nature of the holding by the Race Course Committee over the land in question and as the original grant certificate of 1863 had been misplaced, it was found necessary to fix the terms of holding of the land. Consequently, after certain correspondences between the Race Course Committee and the then Government, the Government of the Maharaja of Mysore passed a Government Order dated 07.05.1915 defining the tenure of the Race Committee making it clear that it would be allowed to hold the lands for use as the Race Course on condition that the lands will be held in the sole possession of the Race Course Committee so long as they are utilized for a race course and should on no account be alienated and further that in the event of the Race Course Committee ceasing to maintain a race course on the land in question, the

lands will revert to the Government. A copy of this Government Order is produced at Annexure-F. Pursuant to the same, a registered agreement was executed on 01.01.1916 between the Government of Maharaja of Mysore and two stewards viz., Lt. Col. R.D.L. Faunce and Sir Leslie Miller incorporating the terms and conditions contained in the Government Order. A copy of this agreement is produced at Annexure-G.

5. On 20.05.1921, the Race Course Club Committee was transformed as the Bangalore Race Club under the new rules and bye-laws. Another registered agreement was again executed by the members of the Committee of the Bangalore Race Club with the Government of the Maharaja of Mysore on 08.09.1923 on similar terms as contained in the Government Order dated 07.05.1915. Petitioner's case is that as the terms of these two agreements dated 01.01.1916 and 08.09.1923 did not stipulate any payment of lease rent or license fee, they were not in the nature of a lease or license, but merely recognized the special right granted in favour of the Race Course Committee. These agreements, the petitioner contends, recognized that the lands would be held in the sole possession of the Race Club Committee as long as they are utilized for race course.

6. In the year 1962, the Club was incorporated as Joint Stock Company, and in 1966, it came to be renamed as the Bangalore Turf Club Limited. Further developments as adverted to by the petitioner in the writ petition would disclose that somewhere during November 1968, the Government proposed to shift the race course to Jakkur on the outskirts of the city. At that stage, petitioner offered that lease amount may be fixed for the present premises pending the shifting of the race course. Government Order dated 02.11.1968 approving the shifting of Bangalore Race Course to a location where the Government Flying Training School was functioning was issued, with a stipulation that the Race Course shall be shifted within 5 years from 01.04.1969 and the flying school be shifted to the new place within a period of 2 years as per Annexure-J. Pending shifting of the race course to the new place, the existing race course was to be continued on a lease for a period of 5 years or till the new race course was ready, whichever was later, and the lease amount was fixed at Rs. 50,000/- per annum. All this is evident from Annexure-J.

7. The petition averments further reveal that the petitioner-Club under a bonafide mistake without knowing that special rights were granted under the grant in the year 1863, agreed to enter into a lease of the land for a period of 50 years and therefore, the Government Order dated 19.01.1972 came to be issued stipulating the period of lease of the existing race course on the lands in question for 50 years with the lease amount at Rs. 5,00,000/- per annum. A copy of this order is produced at Annexure-K. No lease deed was executed. However, by another Government order dated 12.08.1981, a decision was taken to lease the existing race course for a period of 30 years as is evident from Annexure-L. This was followed by a registered deed dated 21.12.1983 executed by the public

works department of the Government of Karnataka in favour of the petitioner. This lease was terminated during August 1989 by issuing a notice by the public works department exercising its power under Clause 14 of the lease deed. However, no action was taken by the Government to evict the petitioner. The Department of Public Works, Government of Karnataka intended to raise the lease amount from Rs. 5 lakhs to Rs. 30 lakhs per annum. The Club represented to the Government to revise the lease rentals, whereupon the Government revised the tenure of the lease and the lease amount payable. The lease amount was revised to Rs. 10 lakhs per annum from 01.01.1989 to 31.12.1999 with an increase of 10% thereafter. The current rental of the premises is Rs. 25.94 lakhs per annum for the year 2009 as stated by the petitioner in paragraph 22 of the writ petition.

8. On 26.07.2008, a supplementary agreement came to be executed between the Government and the club limiting the tenure of the lease till 31.12.2009. Petitioner contends that this agreement is executed under pressure and threat. Once this agreement was signed, the authorities of the public works department started issuing notices calling upon it to vacate and deliver possession. It was at this stage, as per the petitioner, certain doubts were raised by the members of the Club about the legitimacy of the claims of the Government and a careful search was made of the documents concerning the schedule lands in the Karnataka State Archives. Thereafter, petitioner-Club was able to secure the documents which disclosed the background of grant of land to the petitioner and to the predecessor of the petitioner and found that the lease agreements entered into during the years 1983 and 2009 were all in violation of the Government Order dated 07.05.1915 and the agreement executed on 08.09.1923.

9. Petitioner has further contended that the Government has itself found out an alternate land at Doddajala and Chikkajala totally measuring about 95 acres. As these lands formed part of a tank bed, the State Government, it is alleged has filed an application in W.P. No. 31343/1995 seeking modification of the interim order granted therein to permit it to take a decision to lease 95.32 acres of the said land. Petitioner has further contended in paragraph 29 of the petition that this Court has passed an order on 13.07.2009 on the said application observing that the State Government was at liberty to take appropriate decision strictly in accordance with law. Subsequently, the State Government passed a Government Order dated 27.07.2009 taking a decision to lease the said alternate lands in favour of the petitioner for 30 years with certain conditions. A copy of the Government Order is produced at Annexure-U. However, no lease deed is executed and possession is not handed over to the petitioner.

10. Even as per the supplementary agreement dated 26.07.2008 vide Annexure-P, the term of lease has come to an end on 31.12.2009. Before the expiry of the said period, Government Order dated 27.07.2009 vide Annexure-U agreeing to lease about 85 acres of land in favour of the petitioner was passed. Pursuant to the said Government Order, communications dated 31.08.2009 and 02.11.2009

were addressed by the Government to the petitioner enclosing the draft lease deeds. According to the petitioner, this disclosed the fact that the Government was always under an obligation to provide an alternate land. When things stood at this stage, petitioner had made a proposal to the Chief Minister on 22.01.2010 allegedly without prejudice to the contentions raised in this writ petition seeking certain concessions and making certain proposals to resolve the issue. However, the State Government vide letter dated 26.01.2010 rejected the proposal and came up with a stand that the Government was not expected to provide any alternate land to the petitioner, in case the petitioner has to shift its activities. These documents are produced by amending the writ petition. It is in this background, apprehending the threat of eviction, petitioner has approached this Court seeking the aforementioned reliefs.

11. The State Government has filed a detailed counter denying the assertions and allegations made by the petitioner and of its entitlement for the reliefs sought. It has specifically denied the fact that any right was conferred in favour of the petitioner or its predecessor by way of perpetual grant. It is also urged that as the lease deed came to be executed between the petitioner and the State Government on 21.12.1983 which contained a specific narration that the said agreement was entered into in supersession of all the earlier Government Orders in that behalf and the said agreement was purely on the basis of new terms and conditions contained therein, it was not open for the petitioner to go back to the old documents to trace its so-called perpetual right. It is also contended that though this lease was for a period of 30 years starting from 01.01.1981 on an annual rent of Rs. 5 lakhs, it contained a rider that the lessor shall have the right to revise the rent during the period of lease as may be determined by the Government with a specific clause in Clause VI that upon termination of the lease, the entire property along with the buildings and structures including the fittings and fixtures will be entitled to be possessed by the Government free from all liability. Another clause at Clause VII stipulates that during the period of lease, if the premises was required for a public purpose or for any administrative purposes by the Government, it was open for the Government to take possession of the said premises with a notice of 15 days to the lessee and that the lessee shall not be entitled for any compensation in respect of the lands, buildings, etc., except refund of that portion of the premium for the unexpired period of the year. This lease was terminated in the year 1989. Petitioner has however continued in possession of the lands by paying the rents to the Government. Thereafter, a supplementary agreement dated 26.07.2008 was executed between the Government and the petitioner-Club, whereunder as per Clause I, duration of the lease is stipulated upto 31.12.2009 or till the race course is shifted, whichever is earlier. As per Clause II of the said agreement, the rent to be paid is fixed at Rs. 10 lakhs per annum with an increase by 10% per year and Clause VI stipulates that upon termination of the lease the buildings, structures, etc., along with lands shall vest in the Government. Further, Clause VII provides for taking over the said premises during the period of lease if so required by the

Government for a public purpose by giving 15 days notice. The history traced by the petitioner urging that its predecessor viz., Race Course Committee was established in the year 1830 and it was having land at Bangalore which was subsequently exchanged for the existing race course, have all been denied urging that no documents have been produced to show the nature of interest the previous Race Course Committee had in those lands. It is urged that the Government Order dated 07.05.1915 is not an order of grant, let alone an absolute grant and therefore had no effect to clothe the petitioner with the perpetual possession of the property. It is contended that in the wake of the agreements subsequently entered into on 21.12.1983 and 26.07.2008, petitioner-Club was not entitled to claim any benefit under the earlier agreements dated 01.01.1916 and 08.09.1927 as the earlier agreements would stand impliedly revoked.

12. In the light of the above pleadings, we have heard the learned Counsel for the parties.

13. Learned Senior Counsel Sri Vaidyanathan has canvassed the arguments on behalf of the petitioner and learned Advocate General Sri Ashok Haranahalli has canvassed the arguments on behalf of the State Government. Learned Senior Counsel Sri Kasturi who appears for the petitioners in W.P. No. 30767/2009 which is filed by the Bangalore Turf Club Staff Association, has contended that totally 5,000 employees are engaged by the Bangalore Turf Club. There are number of handicapped people who are employed. Substantial number of agricultural labourers and agriculturists are depending on the activities, in as much as nearly 8,000 Kgs of grass and substantial quantities of oats, grams per month is supplied for the horses, He has invited the attention of the Court to Articles 39 & 41 of the Constitution of India and has contended that the interest of all these workers and the agricultural labourers who are depending on the activities carried on in the Club cannot be ignored. He has also voiced concern regarding the fact that the Government may eventually put up a commercial building in the vast extent of land situated in the heart of Bangalore City, after evicting the Club.

14. In W.P. No. 31200/2009, challenge is made to the proposed allotment of land at Doddajala. Sri Aditya Sondhi has appeared for the petitioner who has filed this writ petition in public interest and has contended that the tank bed cannot be assigned for the purpose of establishing a turf club and to carry on racing activities. He has mainly contended that the public spirited individuals who are environmentalists have come up before this Court to impress upon the Court the obligation of the State to protect the fragile eco-system and that no private interests are created in the lakes, tanks, rivers, forests and other natural features which are held by the State as "Public Trust".

15. He has invited our attention to the various judgments of the Apex Court and this Court, wherein the principle of public trust is enunciated stating that the natural features of the Nation are held by the State in trust on behalf of the public and cannot be divested to private hands and that the said principle is now

regarded as part of Article 21 of the Constitution of India, and therefore, the State is enjoined with the duty to maintain and protect these features and desist from creating any private interest in them. He has contended that Article 51-A of the Constitution makes it a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures and hence preservation of lakes and other water bodies is of paramount national importance. In this background, he has challenged the Government Order dated 27.07.2009 resolving to lease 85 acres of tank area in Doddajala and Chikkajala of Jala Hobli, Bangalore North Taluk, to the Bangalore Turf Club on lease basis for a period of 30 years.

16. In W.P. No. 22747/2009, People for Animals, an organisation allegedly devoted towards stopping cruelty towards animals and spreading the message of Ahimsa has filed the writ petition, alleging that it had learnt about the action initiated by the State Government to evict the Club from the land in question and for resumption of the land and that it has further learnt from the newspaper reports that the Government planned to convert the land where the race club is presently situated into a site for building a 100 storied building. It is contended that there has not been any alternate suitable land with any medical facilities for the horses and without there being any such facility provided, displacing the horses would result in cruelty to the animals. It is also contended that the race horse is a very strong animal with ability of self-destruction in a sudden change of environment or diet. Everything from its diet to its environment to its exercise is required to be monitored and that it requires perfect conditions for its habitat. It is the contention of the petitioner in this case that the horses are also to be protected as per the provisions of the Prevention of Cruelty to Animals Act, 1960 and as per the broad vision of the Wild Life Protection Act, 1972. They have sought for intervention of this Court against the action of the State Government so as to ensure nourishing and caring of horses by directing the State Government to desist from evicting the Bangalore Turf Club from the present premises until alternate facilities are provided.

17. Learned Senior Counsel Sri Vaidyanathan has contended that the right of the petitioners to the Schedule Property is traceable to the grant made in the year 1863 which document though not traceable, the terms of the same were reduced into writing by way of Government Order dated 07.05.1915 issued by the then Government of His Highness, the Maharaja of Mysore in exercise of his sovereign power. As per the terms of this order, petitioner possesses irrevocable right to be in sole possession of the lands free of rent, provided they are used as a race course for carrying on racing and allied activities. This Government Order, he contends, is saved as "existing law" as per Article 366(10) of the Constitution of India. As such, any subsequent agreement cannot be inconsistent with the accepted terms of this "existing law" and therefore, the lease agreements of the years 1983 and 2008 being inconsistent with the 1915 grant, (existing law) imposition of time limit and fixing rent to be paid by the petitioner, are illegal. It is his further contention that as per Article 372 of the Constitution of India, the

law in force in the territory of India immediately before the commencement of Constitution shall continue in force until altered or repealed or amended by a competent legislature or other competent authority. The 1915 Government grant is in the nature of pre-constitutional law and the same has not been repealed or amended as contemplated under Article 372, hence the rights under this grant of the petitioner-Club continued to operate despite the subsequent lease agreements of the years 1983 and 2008. In this regard, reliance is placed on the judgment of the Apex Court in the case of Madhaorao Phalke Vs. The State of Madhya Bharat, . He has invited the attention of the Court to paragraphs 11, 12 & 18, to contend that the orders issued by the Maharaja being the supreme head of the executive would have the force of law and would amount to an "existing law" under Article 372 of the Constitution. Similarly, reliance is also placed on the judgment in the case of Promod Chandra Deb and Others Vs. The State of Orissa and Others, , paragraph 23.

18. It is next contended by him that as per the provisions of Section 2 of the Government Grants Act, 1895, the provisions of the Transfer of Property Act have no application. In this regard, reliance is placed on the judgment in the case of Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumaon Division, Nainital, U.P. and Others,

19. He has further contended that the agreements executed in the years 1983 and 2008 are under a common and mutual mistake of fact committed by both the parties viz., petitioner-Club and the State Government as to the terms of the grant of 1863 as recorded in the Government Order dated 07.05.1915. Therefore, as provided in Section 20 of the Indian Contract Act when both the parties to an agreement are under a mistake, as to a matter of fact essential to the agreement, the agreement is void. Hence, both the agreements as well as all actions taken by the Government imposing tenures on the holdings of the schedule property are void.

20. In the alternative, Sri Vaidyanathan, learned Senior Counsel for the petitioner has contended that the petitioner is willing to shift provided an alternate place/land free of litigation is made available to the Club. He has contended that taking note of the existing right of the petitioner the Government has itself passed an order on 27.07.2009 deciding to lease the alternate land comprised in the tank bed. The same is not given effect to due to the pendency of the public interest writ petition. If the Government is keen on taking possession of the present land where the race course is being run, it may be directed to make available any other suitable land. He has also contended that the petitioner is willing to protect the water body and is also ready to ensure that the tank is not in any manner affected. He contends that the petitioner cannot be displaced unless an alternate land is given. In this regard a time bound programme can be insisted to shift by showing an alternate place. The reasonable time for the petitioner to make all arrangements to shift will be around 30 months from the date the alternate land is made available.

21. Several other judgments are cited by the learned Senior Counsel in support of various contentions urged with regard to the availability of alternate remedy not being a bar to filing the writ petition and also with regard to the fact that horse racing is recognized as a game of skills and also In support of the contention that the doctrine of promissory estoppel applies against the State, as it has come up with a proposal to grant alternate land and a Government Order is passed in this regard, which is sought to be rescinded by taking a contrary stand in the present proceedings. He has relied upon the decisions in the case of U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others, and State of Punjab Vs. Nestle India Ltd. and Another, in this regard.

22. Sri Ashok Haranahalli, learned Advocate General has contended that the history traced by the petitioner in its writ petition and by the learned Senior Counsel appearing for the petitioner would only disclose that there were some group of stewards during the year 1830 who started the racing activity and at no point of time there was any grant let alone absolute grant of the land in favour of the Committee. It was pursuant to a permission given to use the land that the Race Course Committee was using the property and that there was no grant. He has contended that there is no mistake so far as the State is concerned in understanding the nature of the right that the Race Course Committee or the present petitioner has in respect of the property in question. He refers to the Government Order dated 2nd November, 1968 produced at Annexure-J and invites the attention of the Court to Clause VII of the said order to contend that the existing race course in the property had been continued on lease for a period of five years or till the new race course is ready whichever is later and the lease amount was stipulated as Rs. 50,000/- per annum. Therefore, his submission is that the nature of the right that the present petitioner has in respect of the property in question atleast as from the date of Annexure-J - Government Order dated 02.11.1968 is that of a lessee and therefore there is no mistake in the mind of the State Government in understanding the status of the petitioner vis-a-vis the enjoyment of the property by it. Subsequently, by Annexure-K order dated 19.01.1972 fresh terms of lease were agreed to be stipulated and the Government Order further stipulated that the same shall be registered. The petitioner has accepted the same and has not made any grievance even at that stage in the matter of recognition of its status as a lessee. Subsequently, by order dated 12.08.1981, the State Government vide Annexure-L has further made clear the status of the petitioner club as a lessee. In modification of the earlier order a fresh order came to be issued imposing modified conditions of lease for a period of 30 years with effect from 01.01.1981 fixing the lease amount at Rs. 5,00,000/- per annum subject to revision, etc. He has also drawn the attention of the Court to paragraphs-1 and 7 of the terms and conditions of the lease deed executed on 21.12.1983 which pertained to the duration of the lease being 30 years commencing from 01.01.1981 and the fact that if during the period of lease the premises were to be required for public purpose or for any administrative purpose by the Government, the lessor shall at the expiry of the

notice of 15 days to be served upon the lessee be at liberty to take possession of the demised premises and the lessee shall not be entitled to any compensation in respect of the lands, buildings and structures except refundable portion of the premium for the unexpired period of the lease. It is therefore contended by the learned Advocate General that there is absolutely no ground for the petitioner to trace its right to a non-existing absolute grant allegedly made in the year 1860. He has further drawn the attention of the Court to the termination of the lease by the State Government during August, 1989.

23. Emphasizing on the conditions incorporated in the deed dated 09.09.1923 Annexure-H, learned Advocate General submits that what can be gathered from the document Annexure-H is that certain concessions were given by the Government to the race club for the purpose of running the race club and there was no grant of land conferring any right in favour of the club and that the Government had always retained its absolute control and right over the property to resume the same. Thus, he contends that even prior to 1968 the right that the petitioner had over the property was noticed in the nature of a concession given to enjoy the land. In this connection, he also draws the attention of the court to the recitals in the Government Order dated 07.05.1915 - Annexure-F on which considerable reliance is placed by the petitioner in support of its case that it is an absolute grant. Learned Advocate General draws our attention to Clause-II of the Government Order to contend that the fact that the petitioner did not possess any document or title to the land in question and that Government having considered that it was desirable to define the tenure on which the Race Course Committee will have to be allowed to hold the land for use as a Race Course thought it fit to make it clear that in future the lands will be continued to be shown as Government lands and no assessment will be collected from the Race Course Committee. He submits that even in the Government Order dated 07.05.1915 there is no recognition of any right of the Race Course Committee. On the other hand, the Government Order has made it abundantly clear that the property was under the absolute control of the State Government and only a concession was shown to the Committee to be in possession of the same, which did not mean that the Government did not have any right to resume the land as and when it deemed it appropriate or as and when the land was required for public purpose by the Government. It is his contention that in fact, by executing the lease deed the Government has given greater right in favour of the petitioner. Strongly refuting the contentions urged by the petitioner that the grant made by His Highness the then Maharaja of Mysore partook the character of an existing law as per the definition of the term contained under Clause (10) of Article 366 and therefore the same was saved in terms of the provisions contained in Article 372 of the Constitution of India, he has contended that unless the concession given to the petitioner is construed as a legislative act, Article 372 has no application. In this regard, he invites the attention of the Court to explanation-I and places reliance on the judgment of the Apex Court in the case of Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and

Another, . He has drawn our attention to paragraph-8 of this judgment to contend that a law can be distinguished from a grant, because in the case of a grant, the grantor and the grantee both agree about the making and the acceptance of the grant and the same is not so in the case of a law. He has also placed reliance on the judgment of the Apex Court in the case of State of Punjab and Others Vs. Balbir Singh and Others, to contend that administrative orders made by the erstwhile State of Punjab continued to be the orders of the Government of the concerned successor States until and unless they were modified, changed or repudiated. Inviting the attention of the Court to paragraph-16, he contends that the decision in the said case supports the view taken in the judgment reported in Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, . Reliance is also placed on the judgment of the Apex Court in the case Tej Singh Rao Vs. State of Maharashtra, , wherein also it is held that even in the case of a ruler who combined in himself both executive and legislative powers of his Government and was an undisputed head of the State, the jurisprudential distinction between legislative enactment and executive action has not been obliterated and the question, whether a particular grant is a legislative grant or not depends on the facts and circumstances of each case. Reliance is also placed on another judgment of the Apex Court in the case of Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., to contend that the word "grant" is not defined in the Government Grants Act, 1895, but it is quite evident that the word has been used in the Act in its etymological sense and therefore, it should get its widest import, which includes even grant of license as defined u/s 52 of the Indian Easements Act. Placing reliance on the Memorandum of Association of the petitioner-Club and drawing attention to some of the clauses therein, learned Advocate General submits that even the Turf Club has treated the property as its leasehold property wherein reference is made in Clause VII stating that the leasehold rights to the land taken on lease from the Government shall revert to the Government and the rights to the buildings and constructions standing thereon shall be governed by the terms contained in the instrument of lease or of any contract entered into between the Club and the Government.

24. In so far as the contention urged by the Counsel for the petitioner based on Section 20 of the Indian Contract Act stating that the subsequent lease deeds were executed under a mistake of fact and any contract entered into under such mistake of fact is void as per Section 20 of the Contract Act, learned Advocate General submits that the mistake of fact as envisaged u/s 20 must be a mistake committed by both the parties and must be one which is essential to the agreement. He submits that the mistake sought to be pointed by the petitioner is in understanding the effect of the concession given by the Government to the Club and in construing the document as an absolute grant partaking the characteristic of a law which is not a mistake of fact, but a mistake of law and therefore fell u/s 21 of the Indian Contract Act and not u/s 20. Hence, mistake of law on the part of the contracting parties will not in any manner invalidate or

render void the contract. He however contends that there is no mistake so far as the State is concerned in understanding the nature of the grant and it has never acted at any stage under any mistake of fact while executing the lease deeds and therefore Section 20 is inapplicable.

25. In so far as the apprehension expressed by the petitioners in all these writ petitions repeatedly emphasizing the fact that the State Government is interested only in resuming the property to develop it by entering into a commercial venture and thus rob the city of the important lung space available affecting the public interest and jeopardizing the environmental and ecological balance, learned Advocate General has submitted that the Government does not have any such intention to deprive the city of such a vast lung space. At any rate, he submits that any decision in this regard will be taken only after giving careful thought to the entire matter and he had no hesitation in stating that if this Court intends to put any condition with regard to the prior approval to be taken by the Court before the property is put to use for any purpose, conditions can be imposed in this regard. He has also strongly contended that merely because the Government has issued a Government Order dated 27.07.2009 to grant on lease an extent of 85 acres of land comprised in Doddajala and Chikkajala villages of Jala Hobli, there is no legal obligation or duty cast on the Government to grant such vast piece of land. He has contended that mere fact that during the currency of the lease the Government offered them to allot alternate lands to enable them to shift does not mean that the State Government is under any legal obligation to grant alternate land regardless of the availability of the same or the feasibility of grant of such a vast extent of land for such purpose. His submission is once the lease is terminated no such necessity arises and the State Government is not in a position to grant any alternate suitable land for the purpose of racing and race club activities in favour of the petitioner.

26. Having heard the learned Counsel for the parties and on careful perusal of the entire pleadings and the materials on record, the points that arise for consideration in these cases are as under:

(i) Whether the lands in question are held by the petitioner-Club as per the terms of an absolute grant made in the year 1863 subsequently reduced into writing by incorporating the same in the Government Order dated 07.05.1915 issued by the then Maharaja of the erstwhile State of Mysore which partook the characteristic of "existing law" in terms of Sub-clause (10) of Article 366 and hence the said grant is saved under Article 372 of the Constitution of India?

(ii) Whether the grant in question is traceable to the Government Grants Act, 1895 and hence it will take effect according to its tenor notwithstanding any law, statute or any document to the contrary including the lease deeds dated 21.12.1983 and 26.07.2008 which have not taken effect as they were contrary to the Government grant incorporated in the Government Order dated 07.05.1915?

(iii) Whether the lease deeds dated 21.12.1983 and 26.07.2008 are the result of

a mutual mistake pertaining to an essential fact rendering void the agreements of lease entered into between the petitioner and the State Government as per Section 20 of the Indian Contract Act?

(iv) Whether the State Government is estopped from contending that it has no obligation to grant alternate land for the purpose of the petitioner-Club in the event of the resumption of the land in question?

(v) Whether the Government Order dated 27.07.2009 deciding to lease 85 acres of land situated at Doddajala and Chikkajala villages in the tank bed area of Amanikere tank, is illegal being opposed to public interest and violative of the ecology and environment and the fundamental duty cast on every citizen, the State and its instrumentality to maintain and preserve the lakes?

(vi) In the alternative, whether the petitioner is entitled as of right for allotment of an alternative lands for the purpose of running the race club and other activities?

(vii) What order?

27. Having due regard to the nature of the controversy raised in these writ petitions, particularly the one filed by the Bangalore Turf Club and the nature of the reliefs sought, we were reluctant to entertain the writ petitions apprehending that several disputed questions of facts may crop up for consideration which could not be appropriately dealt with in exercise of the writ jurisdiction. However, the learned Senior Counsel appearing for the petitioner and also the Counsel for the respondents and the learned Advocate General persuaded us contending that the questions arising for consideration are purely based on the understanding of the documents which are produced by the petitioner and therefore, there is no impediment or difficulty in examining the questions raised in exercise of the writ jurisdiction. It is in this background, we have undertaken this exercise of examining the rights of the petitioner based on the documents relied upon by it.

28. Point No. 1: At the outset, it has to be noticed that the basis for the claim made by the petitioner contending that there is an absolute grant in its favour is referable to the Government Order allegedly passed in the year 1863 and which according to the petitioner is incorporated in the Government Order dated 07.05.1915. It is on the strength of the alleged grant, the learned Senior Counsel Sri Vaidyanathan has contended that the grant made in favour of the petitioner partakes the characteristic of "existing law", which is saved under the provisions of Article 372 of the Constitution. The 1863 Government Order is not produced before this Court. In fact, the petitioner contends that it is lost and not traceable. Government Order dated 07.05.1915 is produced at Annexure-F. This Government Order makes reference to an unauthorized sale made in favour of one Mr. Chambers by the Bangalore Race Course Committee of 5 acres 23 guntas of land in Mallenahalli Village, Bangalore Taluk acquired at the cost of the Government and placed at the disposal of the Committee for the purposes of the race course on the ground that the Bangalore Race course Committee had no

power of alienation over the lands and their control being limited only to carry on the object of the original grant. The Government Order recites that the matter was reconsidered by the Government at the instance of the Stewards. It is noticed in the Government Order that the alienation of 5 acres 23 guntas in favour of Mr. Chambers was effected without being aware of the nature of the tenure on which the Race Course Committee held the lands. Hence, the Government was pleased to direct as a special case that the 5 acres 23 guntas of land has to be taken over from Mr. Chambers on payment to him of Rs. 9,000/- which shall absolutely revert to the Government and that the Race Course Committee will raise no objection to the construction of any buildings on it, public or private. The next clause i.e. Clause-II of the said Government Order which is important for our purpose states that the Race Course Committee had no proper documents in respect of the rest of the land which was in its possession and therefore the Government considered it very desirable to define the tenure on which the Race Course Committee will be allowed to hold the said land for use as race course and accordingly laid down the conditions in the Government Order in question, based on which the said lands will be held by the Race Course Committee in future. The conditions imposed in paragraph-2 (i) to (vi) will only make it clear that the lands continued to be shown as Government lands without any assessment being levied from the Race Course Committee and that they will be in possession of the Race Course Committee as long as they are utilised for race course and shall on no account be alienated. In the event the Race Course Committee ceases to maintain a race course on the lands in question, the lands will revert to Government. The lands shall not be used for building purposes except as may be necessary in connection with racing. The other conditions are of not much consequence and are therefore not necessary to be referred.

29. What emerges from the terms and conditions incorporated in the Government Order dated 07.05.1915 is that the lands in question are allowed to be in possession of the Race Course Committee and are permitted to be utilised for the race course without conferring or vesting any specific right in its favour. The contention of the learned Senior Counsel for the petitioner is that the condition in the Government Order made it clear that the Race Course Committee will hold the land as long as they are utilised for the race course and that only if any portion of the land is not required by the Race Course Committee, it shall be handed over to the Government without any claim for compensation. According to him, the only construction on this document viewed in the context of the prior grant made in favour of the Race Course Committee could be that the Race Course Committee is empowered to have perpetual possession of the land with the only rider that the land will revert back to the Government if the racing activity in the land ceases. It is in this background the twin contentions are urged by the petitioner stating that the Government Order which are drawn as the proceeding of His Highness the Maharaja of Mysore is in the nature of an "existing law" in force prior to the commencement of the Constitution which is saved under Article 372 and that it is in the nature of a

Government grant which has a special status in terms of the Government Grants Act, 1895, particularly as per Section 2 so as to supersede any contract or agreement or any other law governing the agreement including the provisions of the Transfer of Property Act.

30. A careful perusal of the order dated 07.05.1915 makes it clear that the said order was necessitated in the background of the then Bangalore Race Course Committee alienating 5 acres 23 guntas of land in Mallenahalli Village of Bangalore Taluk in favour of one Mr. Chambers which the Government viewed it as illegal and without authority of law. In that view of the matter the said extent of 5 acres 23 guntas of land came to be resumed. There is no reference in the order dated 07.05.1915 as to the nature of the right vested in the erstwhile Bangalore Race Course Committee with regard to the entire extent of land and therefore at the instance of the Stewards the Government reconsidered the matter in respect of the rest of the land in possession of the Stewards and directed, as a special case, to resume 5 acres 23 guntas of land from the purchaser Mr. Chambers by paying him Rs. 9,000/- and that as the Race Course Committee did not have any documents of title to the rest of the lands, the Government felt it desirable to define its tenure based on which it will be allowed to hold the land for use as race course. Accordingly, guidelines were laid down. The condition stipulated is that the lands could be possessed by the Race Course Committee for the purpose of using the same for running a race course and if it ceases to use the land for race course, the lands will revert back to the Government. There is no obligation on the Government that it shall not claim any right to resume the land for any reason. Nor the nature of possession recognised in the Race Course Committee was a perpetual right to enjoy. As rightly contended by the learned Advocate General the entire tenor of the Government Order shows that after resuming 5 acres 23 guntas of land which was sold in favour of Mr. Chambers by the Race Course Committee, the Government considered it desirable to allow the Race Course Committee to hold the land without paying any assessment and without any need to pay any other charges for it. The arrangement is in the nature of a concession whereunder the land was left under the control of the Race Course Committee enabling it to utilize the same for racing purpose and on condition that it should be handed over to the Government without claiming any compensation, if any portion of the land is not required by the Race Course Committee. To construe this grant as a perpetual grant of possession without retaining any right to resume the land in case the Government of the time intended to make use of it for other purposes, is totally against the tenor and effect of the document.

31. The contention urged by the learned Senior Counsel Sri Vaidyanathan placing reliance on several judgments of the Apex Court referred to in the earlier paragraph of this judgment stating that the grant made by the proceedings of the Government of His Highness the then Maharaja of Mysore is in the nature of "existing law" cannot be accepted. As rightly contended by the learned Advocate General citing the decision of the Apex Court, an Executive Order passed by a

Monarch in the matter of grant of a Sanad for maintenance by a former ruler of Dhenkanal State has been held to be not an "existing law" within the meaning of Article 372(1) of the Constitution and the modification of the said order by the successor Government was held to be valid in the decision in the case of Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, and therefore the present Government Order issued by the then Maharaja of Mysore will not partake the characteristic of an "existing law" as it is in the nature of concession shown in favour of the Race Course Committee to continue in possession of the land without recognising any right in it and not even recognising the previous grant made in its favour. Hence, it cannot be regarded as one that is saved under Article 372 of the Constitution. The facts and circumstances leading to the Government Order dated 07.05.1915 and the nature of the conditions imposed in the said Government Order coupled with the background in which the said Government Order came to be issued while cancelling the alienation made by the Race Course Committee, further lends support to our view that it is not a grant that partakes the characteristics of an "existing law so that could it be saved as a pre-constitutional law under Article 372 of the Constitution. Further reliance placed by the learned Advocate General on the decisions of the Apex Court in the case of Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., and in the case of State of Punjab and Others Vs. Balbir Singh and Others, and the decision in the case of Tej Singh Rao Vs. State of Maharashtra, amply support the contention advanced by him. The decision relied on by the learned Senior Counsel for the petitioner in the case of Madhaorao Phalke Vs. The State of Madhya Bharat, arose in a totally different set of facts and circumstances. In the said case, orders had been issued in favour of the ancestors of the appellants therein who accompanied the Sindhias to Gwalior from Maharashtra about 200 years ago and had rendered military service in conquering the territory of Gwalior. In recognition of the same they were granted a fixed amount of money per month and the said amount had been received by the appellants family for several generations in the past and the right to receive the said amount had been recognised by the rulers of the Gwalior in several statutes, orders, rules or regulations having the force of statutes. On 18.04.1952 the Government of Madhya Bharat issued an Executive Order terminating the said payment to the appellant. That is why the appellant had to file the writ petition in the High Court of Madhya Bharat urging that since the appellant's right to receive the specific amount had been statutorily recognised by the State of Gwalior, it was not open for the 1st respondent to extinguish that right merely by an Executive Order. Dealing with the question as to whether the orders issued by such an absolute Monarch amounted to law or regulation having the force of law or whether they constituted merely Administrative Order the Apex Court observed that there was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens. Referring to

the decision in the case of Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others, the Apex Court referred to what was held in that case with regard the Firman issued by the Nizam stating so long as it held the field, the said Firman alone would govern and regulate the rights of the parties concerned, though it would be annulled or modified by the later Firman at any time that the Nizam willed. The Apex Court further observed that what was held about the Firman issued by the Nizam would be equally true about the effective orders issued by the Ruler of Gwalior. In paragraph-12 the Apex Court went on to consider that an order issued by an absolute monarch in an Indian State which had the force of law would amount to an existing law under Article 372 of the Constitution. Article 372 provides for the continuance in force of the existing laws which were in force in the territories of India immediately before the commencement of the Constitution and Article 366(10) defines an existing law, inter alia, as meaning any law, ordinance, order, rule or regulation passed or made before the commencement of the Constitution by any person having a power to make such law, ordinance, order, rule or regulation. Referring to Edward Mills Co. Ltd., Beawar v. State of Ajmer (S) AIR 1955 SC 225, the Apex Court held that there was not any material difference between the expressions "existing law" and the "law in force". The definition of an existing law in Article 366(10) as well as the definition of an Indian law contained in Section 3(29) of the General Clauses Act made this position clear. Therefore, it was observed by the Apex Court that even if it is held that the Kalambandis in question did not amount to a quanon or law technically so called, they would nevertheless be orders or regulations which had the force of law in the State of Gwalior at the material time and would be saved under Article 372 of the Constitution. Thereafter, the Apex Court posed a question to itself in the following terms, "the question which then arises is whether these Kalambandis were regulations having the force of law at the material time". The Apex Court went on to consider the same in paragraph 15 observing that it was necessary to consider the character of the orders contained in the Kalambandis. The Court having considered the character of the orders contained in the Kalambandis further held in paragraph-18 that if the Kalambandis on which the appellant's right is based are rules or regulations having the force of law the impugned executive order issued by the respondent-1 would be invalid. The Court concluded holding that the right guaranteed to the appellant by an existing law cannot be extinguished by the issue of an executive order. The Apex Court answered the said question in favour of the appellant holding that the Kalambandis had the force of law as the character of the order contained in the Kalambandis were in the nature of an order or regulation which had the force of law in the State of Gwalior. It is therefore clear that the nature of the grant and the nature of the right recognised in the Kalambandis issued by the Sindhias of the Gwalior in favour of the appellants therein made the Apex Court to characterize the same as orders having the force of law. Whereas in the present case, no such grant conferring any vested right in favour of the Race Course Committee is made under the Government Order dated 07.05.1915 so as to characterize it as one that

partakes the character of an "existing law to claim that the said Government Order tantamounts to an "existing law" in terms of Article 366(10) of the Constitution. Hence, we answer point No. 1 against the petitioner and in favour of the State Government.

32. Point No. 2: Answer to point No. 2 becomes easy as we have already considered the nature of the privilege conferred on the Race Course Committee by the Government Order dated 07.05.1915. We have held that the Race Course Committee was given the benefit of enjoying the property by way of concession without vesting any legally enforceable right in it. The grant was not an absolute grant nor was there any limitation or restriction on the right of the Government to resume the same. The land continued to be the Government land not assessed to land revenue and no amount was payable by the Race Course Committee for enjoying the same, no pre-existing right was either referred to or recognised while conferring such a benefit and therefore question of applying the provisions of the Government Grants Act, 1895 and conferring on the transaction a higher status than what can be conceived in the case of any ordinary transaction such as license, lease, etc., did not arise. Therefore, in our considered view, the argument based on Section 2 of the Government Grants Act, 1895 has no legal effect and therefore the contention urged stating that the lease deeds dated 21.12.1983 and 26.07.2008 are of no legal effect is misconceived and untenable. As we have already held that the terms of the grant made in the year 1915 do not have the effect of clothing the Bangalore Race Course with perpetual right of possession without any right retained by the Government for resumption of the same, the argument advanced by the learned Senior Counsel for the petitioner placing reliance on Section 2 of the Government Grants Act, 1895 contending that the terms of the Government grant have overriding effect and the right created under the said grant interse between the Government and the grantee could not be affected by the lease deeds executed subsequently between them has no substance. In the absence of any such indefeasible right of perpetual possession having been recognised in the petitioner by the Government under the 1915 Government Order, it was always open for the Government to resume the land as and when it required for other public purpose. Therefore, nothing prevented the Government from passing the subsequent Government Order ordering that the petitioner-club shall continue to hold the land on certain conditions such as payment of rent and that it has to make alternate arrangements to shift its activities to any other place. Therefore, the Government Order dated 02.11.1968 produced at Annexure-J stipulating that until shifting of the race course to the new place the existing race course could be continued on lease for a period of five years or till the new race course is ready on annual lease amount of Rs. 50,000/- cannot be termed as illegal or violative of the provisions of the Government Grants Act, 1895. Similarly, the subsequent Government Order dated 19.01.1972 produced at Annexure-K fixing the lease amount as Rs. 5,00,000/- per annum followed by the Government Order dated 12.08.1981 vide Annexure-L wherein it is reiterated that the Bangalore Race

Course In the present premises was the property of the Government and was given on lease to the Bangalore Turf Club Limited, as the Secretary of the Bangalore Turf Club vide letter dated 20.01.1980 requested the Government for grant of long term lease so that they could take action to improve the race course premises by constructing necessary buildings and other permanent structures and agreed to pay Rs. 5,00,000/- per annum towards rent and an additional lease amount of Rs. 50,000/- per annum provided a portion of the premises of Carlton House and Shanthigruha measuring nearly 7948 sq. yards is also handed over to them and on condition that all the structures will become Government property after the expiry of the lease period. A Government Order came to be passed agreeing to lease the Bangalore Turf Club property with effect from 01.01.1981 on the lease amount of Rs. 5,00,000/- subject to revision for a period of 30 years. Pursuant to this Government Order - Annexure-L, a registered lease deed dated 21.12.1983 has been entered into. Therefore, it is clear that at an undisputed point of time both parties understood the nature of the grant and the nature of right given to the Club. In the absence of any larger right granted in favour of the Race Course Committee in the 1915 Government Order and in the wake of the subsequent Government Orders passed from time to time as referred to herein above defining the terms and conditions on which the petitioner continued to occupy the premises culminating in the registered sale deed executed in the year 1983, the argument advanced based on Section 2 of the Government Grants Act, 1895 has no substance in law. The judgment of the Apex Court in the case of Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumanon Division, Nainital, U.P. and Others, relied on in this regard by the learned Counsel for the petitioner has no application to the facts of the present case. In the facts of the said case, contrary to the terms of the Government grant which did not permit transfer of land without permission of the Government, the grantee had created sub-lease and sub-let it to certain others stating that they had become tenants. Though the conditions of the grant allowed sub-lease of the land, but the sub-lessee could not claim any independent tenancy rights. Therefore, the Apex Court found that the rights of the Government grantee were strictly regulated by the terms of the grant and in accordance with the Government Grants Act, 1895 and the so called tenants could not claim any right contrary to the terms of the Act. The facts of the present case are not similar to the facts presented in the above mentioned case. Hence, the said contention is not tenable. Accordingly, point No. 2 is also answered against the petitioner.

33. Point No. 3: In so far as point No. 3 is concerned, the contention advanced by the learned Counsel for the petitioner is that u/s 20 of the Indian Contract Act any agreement entered into by the parties under a mistake of fact relevant for the purpose of the agreement is void. It is the contention that the Government and the petitioner acted on a mistake as to the nature of the Government grant under which the property was possessed perpetually by the petitioner and that the subsequent lease deeds were entered labouring under such a mistake with

regard to the existence of the valid Government grant. As already held by us, there is nothing in the Government Order of the year 1915 issued by the then Ruler of the Princely States of Mysore to clothe the petitioner with an indefeasible perpetual right of possession. The assertion of the petitioner in this regard claiming such perpetual right of possession on the sole condition that the property in question is required to be used for the purpose of racing activities is wholly misconceived. If the petitioner had acted under such wrong assumption of factual aspects and if the petitioner has construed the terms of the grant made in the year 1915 in such a manner, such mistake cannot be termed as a mistake of fact as contemplated u/s 20 of the Contract Act so as to enable one of the parties to avoid the contract. At any rate, as rightly contended by the learned Advocate General, there was no such mistake on the part of the Government in understanding the nature of the right of the petitioner under the 1915 Government order. The fact that the Government did not act under such mistaken notion is also clear from the subsequent Government order issued from time to time imposing different conditions with regard to payment of lease amount requiring the lessee to shift the racing activities to another place. The petitioner cannot be permitted to contend at this distance of time that the registered lease deed executed by it in the year 1983 was under a mistaken notion and hence, the said document and the subsequent lease transactions stood vitiated as per Section 20 of the Indian Contract Act. Atleast from the year 1968 onwards the Government Orders issued from time to time very clearly disclose that the status of the petitioner club which is in occupation of the premises where the racing activities are conducted was that of a lessee. Therefore, the arguments advanced in this regard based on Section 20 of the Contract Act are totally untenable. Accordingly, point No. 3 is answered.

34. Point Nos. 4 and 5: This takes us to the next point pertaining to the application of the doctrine of promissory estoppel as contended by the petitioner and the alternative relief sought in the writ petition. The basis for the petitioner to canvass this argument invoking the doctrine of promissory estoppel is that right from 1972 when the Government first decided to shift the race course efforts were made by the Government to offer an alternative land to enable the club to shift its activities. The Government had taken such a decision and stuck to the said stand as is evident from the latest Government Order dated 27.07.2009, whereunder a decision is taken to lease an extent of 84 acres of land as alternate location to shift the race course in Chikkajala and Doddajala villages. It is the contention of the petitioner-Club that having taken such a consistent stand which has culminated in the Government Order issued, it is not open for the State Government to resile from its stand and contend now that the Government had no such obligation or duty to grant the alternate land. It is in this context that the petitioner has sought for a direction against the State Government as an alternative relief to grant a land as a substitute for the present land, where the race course is run. In support of the principle of promissory estoppel reliance is placed by the learned Senior Counsel for the

petitioner on the judgment in U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others, . That was the case where based on the concession shown by the UP Government, the writ petitioners had established industrial units in the hill area by making huge investments and after the entrepreneurs had altered their position to their detriment the concession given was sought to be reduced considerably by issuing subsequent notifications by the State Government. In such circumstances, the Apex Court held that invoking of promissory estoppel always depends on the facts of each case and the general principle that emerges from the case laws was that once a representation had been made by one party and the other party acted on that representation and made investments and thereafter the other party resiles from the same, such act cannot be stated to be fair and reasonable. The facts presented in the instant case are nothing in common with the facts of the case relied on by the petitioner. In fact there is nothing that is done by the petitioner on the basis of the promise made by the State Government to its detriment. Therefore, principle of promissory estoppel has no application. Likewise the judgment in the case of State of Punjab Vs. Nestle India Ltd. and Another, has no application to the facts of the present case. In the said case also, the State Government had promised exemption, but refused to exercise its discretion to issue the necessary notification abolishing or exempting the tax on milk contrary to the representation made by the higher authorities including the Finance Minister in his budget speech after considering the financial implications of the grant of the exemptions to milk. It was found in the facts of the said case that the overall benefit to the State's economy and the public would be greater if the exemptions were allowed. The respondents had passed on the benefits of that exemption by providing various facilities and concession for the upliftment of the milk producers. In such circumstances, the Apex Court held that it was inequitable to allow the State Government to resile from its decision to exempt milk and demand purchase tax with retrospective effect as the respondents could not readjust the expenditure already made.

35. In our considered view, having regard to the facts and circumstances involved in this case, the question of application of the principle of promissory estoppel does not arise at all. We have already held that the permission granted to the club to use the property as a race course was not in the nature of an absolute or perpetual grant. It is only a concession which later on resulted in a transaction of lease by virtue of registered lease deeds executed between the club and the Government. There is no other larger right that is enjoyed by the Club in the property apart from what is agreed to in the lease deeds executed from time to time. As can be seen from the conditions in the lease deed, the club has agreed to vacate the premises upon the termination of lease. The lease is terminable with 15 days notice. Merely because, in the past, Government came forward to look up for an alternate location for the race course, it cannot be said that the Club gets a right to claim allotment of alternate lands as of right and until then it cannot be asked to vacate. Such a contention is neither justified nor

tenable on the basis of the facts and circumstances of the case. Hence, we hold that the petitioner-Club cannot as a matter of right seek allotment of alternate lands for racing and other allied activities. Accordingly, point Nos. 4 and 5 are also answered against the petitioner.

36. Point No. 6: This leads us to the only question left as to whether the decision taken by the Government to lease an extent of 85 acres of tank bed area for racing activities of the turf club is against the public interest. The Doddajala Amanikere tank covers almost an extent of 159-07 acres located in Bangalore District. It is urged in the public interest writ petition that the water collected there meets the irrigation requirements of villages Chikkajala, Doddajala, Marnayakanahalli and Meenukunte. It is necessary to refer to a public interest writ petition in W.P. No. 31343/1995, which is filed seeking protection of lakes and tanks in Bangalore with directions not to transfer them in any way to private parties. The public spirited individuals in the public interest writ petition now filed have pointed out that this Court has passed an interim order on 22.08.1995 in the said writ petition directing the Government of Karnataka and the Conservators of Forests not to make any grant or allotment of tank bed lands situated within the Bangalore Metropolitan area, pending further orders. Reference is also made by the petitioners to a public interest litigation pending before the Apex Court in W.P. 230/2001 filed by the present petitioner. Petitioners have expressed serious concern pointing at a media report that the Government had expressed its view that it intended to utilize the prime land in the heart of Bangalore on which the Bangalore Turf Club is located for the purpose of building a 100 to 200 storied commercial complex and it was for this purpose that the Bangalore Turf Club was sought to be shifted to tank land area on the outskirts of Bangalore. They have produced a copy of the news report in this regard dated 01.04.2009 published in the Times of India at Annexure-B. It is also pointed out that the Under Secretary, Water Resources Department, has submitted a Note entitled "shifting of the Bangalore Turf Club", wherein it is stated that the said tank meets the irrigation requirements of the agricultural activities in the four villages and with the impounding of water in the said tank it augments the rise in the water table of the surrounding borewells in the agricultural lands. It is also pointed out therein that the inflow of water from the upper tracts has been clogged which has resulted in the complete stoppage of inflow into the tanks for the last three to four years and as such the tank had not been filled to its full capacity; if only the water is impounded to its full capacity in the tank, then the water catchment of the tank bed will be 159-07 acres. He has made a reference to the pending public interest writ petition in W.P. No. 31343/1995 and the interim order passed therein on 22.08.1995 stating that no tanks or tank beds situated in the Bangalore Metropolitan jurisdiction be granted to any other purpose. Reference is also made to the issue tabled by an MLC before the Legislative Council pertaining to the conservation of tanks vide Rule 330(a) on 25.06.2008 and the unanimous decision accepted by the Legislative Council prohibiting the assignment of tanks or tank beds to private persons or

agencies. A copy of this report of the Under Secretary, Water Resources Department dated 05.06.2009 is produced at Annexure-D along with the writ petition.

37. It is well established principle of law that the State Government acts as a trustee of the lakes, tanks, ponds, forests and other natural features. The Apex Court in the case *M.C. Mehta Vs. Union of India (UOI) and Others*, and *Intellectuals Forum, Tirupathi Vs. State of A.P. and Others*, and as also in the case of *Mrs. Susetha Vs. State of Tamil Nadu and Others*, has laid down the principle that the State holds such natural features in public trust and there can be no transfer of such lands held in such trust to private parties. The report of the Under Secretary, Water Resources Department of Government of Karnataka produced at Annexure-D supports the grievance expressed by the public interest litigants stating that but for clogging of the inflow of water from the upper tracts the entire catchment of the tank bed would be 159-07 acres. It is the duty of the State Government to ensure that the water tank in question is utilised at its full potentiality. The need of the hour is to give priority to such natural features. Article 51-A of the Constitution makes it a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. Thus, the preservation of lakes, tanks and other water bodies is a primary obligation particularly in the present context where water scarcity is posing a serious threat for the teeming population in and around Bangalore. It cannot also be forgotten that the tank acts as a source for the under water table feeding several borewells on which the farmers in nearby villages depend for irrigation of their lands and for drinking water. In such circumstances, no justification whatsoever can be found for the State Government to take a decision to lease the tank area in favour of the Bangalore Turf Club for racing and other activities. In the case of *Delhi Water Supply and Sewage Disposal Undertaking and another Vs. State of Haryana and others*, at paragraph-1, the Apex Court noting the importance of water as a precious gift of nature had this to say,

water is a gift of nature, human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put to being drinking it would be mocking nature to force the people who live on the bank of the river to remain thirsty....

38. Again in the case of *Chameli Singh v. State of U.P.* 1996 (2) SCC 349, the Apex Court in paragraph-8 has observed as under:

...right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter, These are basic human rights known to the civilized society. All civil, political, social and cultural rights enshrined in the universal declaration of human rights and convention or under the Constitution of India cannot be exercised without these basic needs.

39. We have examined carefully the impugned order Annexure-H passed by the

State Government on 27.07.2009 keeping in mind the above principles. It is clear from the order that the Government has not applied its mind to the importance of maintaining the water body in the instant case. A careful perusal of the preamble to the impugned Government Order makes it clear that none of the relevant factors are borne in mind in coming to a conclusion that an extent of 85 acres of the tank bed area could be granted in favour of the Bangalore Turf Club on lease basis for a period of 30 years subject to certain conditions. It is not in dispute that the area of 85 acres is a tank area. The only factor that is kept in mind by the State Government seems to be that in the tank in question as per the report of the Deputy Commissioner, Urban District, Bangalore, dated 05.02.2009, water was spread in 48 acres of land of Sy. No. 1 of Doddajala and 8.10 acres of land in Sy. No. 15 of Doddajala. The Deputy Commissioner has also stated that an extent of 95.32 acres of land in Sy. Nos. 1, 8, 11, 15 and 22 found to be non-water logged tank area and in this background the State Government has taken a decision that 85 acres of non-water spread tank area in Sy. No. 1 of Doddajala Amanikere, Sy. No. 15 of Doddajala, Sy. No. 22 of Chikkajala of Bangalore North Taluk could be leased in favour of the Bangalore Turf Club for a period of 30 years. It is painful to observe that such decision to meddle with the water body is taken without giving any serious thought to the fundamental obligation of the State and its instrumentalities to preserve and protect water bodies. It is high-time to drive home the imperative need on the part of the forces in power and authority to bestow serious thought in right earnest on such issues and make a scientific assessment of the situation before taking any such decision to meddle with such precious gifts of nature. Therefore, we have no hesitation to hold that the impugned order passed by the State Government produced at Annexure-H in W.P. No. 31200/2009 (PIL) is illegal and opposed to the public trust doctrine enunciated by the Apex Court. Point No. 6 is answered accordingly.

40. In this context only we need to also address the apprehension expressed by the public spirited individuals who have voiced a concern through their learned Counsel that the State Government is anxious to utilize the present race course which is situated in the heart of Bangalore City for a commercial venture to build several multi-storied buildings and complex. Bangalore had a glorious name and reputation for beautiful environment and greenery. It was rightly and proudly called as "Garden City". Things have radically changed now. In the process of widening the roads several precious old trees have been cut and removed. The roads in and around Bangalore, particularly in the close proximity where the present race course is situated, no doubt look wide and spacious, to a certain extent easing flow of traffic, but the cost of it is very heavy, in that, rows of trees on either side of the roads which stood tall in a majestic way giving shade and adding beauty and granger to the city have been razed to the ground. In such circumstances, if this vast area consisting of about nearly 90 acres which is situated in the heart of Bangalore is utilised for commercial purpose or for putting up construction, then it will certainly affect the ecology and environment

in this area and makes the life of the residents further miserable. As rightly pointed out by the petitioners, the need of the hour is to preserve and protect the environment and to ensure that a healthy environment providing fresh air for the residents is ensured. In fact, responding to this cry of the public voiced through the public interest litigants, the learned Advocate General has submitted that any use of this vast extent of land situated in the heart of Bangalore City will be consistent with the requirement of maintaining the lung space and if need be conditions can be imposed for obtaining prior permission of this Court for making use of the property for public purpose without violating the environmental requirements and the need to preserve the lung space. We appreciate the stand taken by the learned Advocate General.

41. A significant portion of the earth's population will soon recognise, if they haven't already done so, that humanity is now faced with a stark choice: evolve or die. A wide spread flowering of human consciousness in the matter of love for environment and zeal to preserve and protect the same has to still happen because we have not yet felt the imperative need of the same. A new belief system has to now arise. The change has to go deeper than the content of the mind deeper than our thoughts. This awareness of the significance of the need to preserve and protect the environment, particularly in places where the same is polluted to an extent of bringing to peril the very peaceful and healthy living, has to be total. It is said by a well known author Sri Eckhart Tolle in his book "A New Earth" that "if the structures of the human mind remained unchanged, we will always end up recreating fundamentally the same work, the same evil, the same disfunction". Therefore, a collective human consciousness where we are intrinsically connected to the love for our environment, the greenery, the other great gifts of nature, such as trees, plants and water bodies, is the need. If such consciousness is evolved, it is bound to bring about climatically, environmentally healthy atmosphere in the city.

42. We are compelled and constrained to observe that in the light of the large scale removal of trees on either side of the roads in the vicinity of the race course and in view of the fact that in the entire area we are hardly able to find any trees in the place which earlier appeared like a real garden city with flowing branches of trees providing shade, fresh air and soothing natural environment, that it is the duty of each one of us, raoreso, the State Government and its instrumentalities to compensate this inevitable interference with the nature. This can be balanced, atleast to a small extent by planting different types of flowering trees in this area and preserving the same as lung space which will beautify the place and provide atleast to a certain extent the much needed protection of the environment of the city. In our view, this has to be taken as an opportunity by the State Government to create a green paradise in Bangalore City on par with what was done in the past, centuries back in the form of establishing Lalbagh and Cubbon Park. Such contribution by the State will be remembered by the generations to come as a great gift to the residents of Bangalore. It will act as an exemplary model for others in the Country to emulate and make their own rich

contributions in the field of preservation, protection and promotion of the environment in cities. Therefore, we are inclined to issue a direction to the State Government to develop this area into a mini social forest with rich greenery and desist from putting up any construction in any portion of this area.

43. In so far as the writ petitions filed by the Turf Club Staff Association and the People for Animals Trust, we do not find any legal substance in their contentions. In the light of our findings recorded on the points raised, the reliefs sought by them cannot be granted.

44. In the result and for the foregoing reasons, we pass the following:

ORDER

i) W.P. No. 30663/2009 filed by the Bangalore Turf Club and W.P. No. 30767/2009 filed by the Bangalore Turf Club Staff Association and W.P. No. 22747/2009 filed by People for Animals Trust are dismissed.

ii) The Bangalore Turf Club, petitioner in W.P. No. 30663/2009 is granted six months time to vacate and deliver vacant possession of the premises where the present race course is run on condition that it shall pay Rs. 5,00,000/- (rupees five lakhs) per month from the date of expiry of the lease period till the date of delivery as directed, to the State Government.

iii) The petitioner-Turf Club shall vacate and hand over the premises to the State Government on or before 22nd September 2010. It shall not carry on any construction or other activities which are prejudicial to the interest of maintaining the ecology and environment in the area. The State Government is directed to ensure that the area is used by the Turf Club for the permitted activities during this period of six months in accordance with law.

iv) W.P. No. 31200/2009 filed in public interest is allowed. The Government Order dated 27.07.2009 produced at Annexure-H is quashed.

v) The State Government is directed to take all measures to preserve, protect and develop the Doddajala Amanikere Tank by removing all obstructions and clogs for smooth water flow leading to the tank.

vi) The State Government is further directed to develop the entire area where the present race course is run into a mini social forest/a theme park consisting of variety of trees and beautiful flowering plants and maintain the same as lung space to compensate for the loss of trees in the city in the drive to widen the road and so as to make it a model for protection, preservation and promotion of the environment and the lung space in the city.

vii) Parties to bear their respective costs.