
(1991) 08 KAR CK 0064
In the Karnataka High Court
Case No : W.A. No's. 1094 to 1097 of 1987

Mrs. Behroze Ramyar Batha

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4 (1), 5 A, 6

Citation : (1991) ILR (Kar) 3556 : (1992) 1 KarLJ 589

Hon'ble Judges : Mohan, C.J.;Shivappa, J

Bench : Division Bench

Advocate : V.H. Ron, for Ashok B. Patil, for the Appellant; S. Shivaram, Government Advocate for R-1, R-3 and R-4, H.B. Datar M.H. Datar, for R-2 and B.V. Acharya, for R-5, for the Respondent

Final Decision : Allowed

Judgement

S. Mohan, C.J.—All these four Appeals can be dealt with under a common Judgment. They arise out of the Judgment of Justice Murlidher Rao dated 20-7-1987 in W.Ps.10881 & 82/87 and 10895 & 86/87.

2. What are challenged in these Appeals are land acquisition proceedings taken under the Land Acquisition Act, 1894, (Central Act No. 1 of 1894), (hereinafter referred to as the Act).

3. We will now proceed to state the facts:

Lands involved in these four appeals respectively are: Sy.No. 139. of Kodihalli measuring 1 acre, Sy.No. 17 of Challaghatta measuring 2 acres 38 guntas + 38. guntas PK, Sy.No.140 of Kodihalli measuring 3 acres, and Sy.No. 144 of Kodihalli measuring 1 acre 1 guntas + 1 guntas PK.

Notification u/s 4(1) of the Act (Preliminary Notification) was made on 29-12-1981. That was published in the Karnataka Gazette on 7-1-1982. The preamble of the Notification requires to be extracted because that evidences the

public purpose, and it reads:

"Where it appears to the Special Deputy Commissioner, Bangalore District, that the lands specified in the Schedule hereto are likely to be needed for the public purpose to wit, for gold cum hotel resort near Bangalore Airport, Bangalore."

We may at once state that though under the Central Act, the satisfaction for issue of Section 4(1) Notification is to be that of the State Government, as regards Karnataka State is concerned by reason of Karnataka Act 17 of 1961 that satisfaction is to be arrived at by the Deputy Commissioner. That is why the above notification states: "Whereas it appears to the Special Deputy Commissioner". Leave alone that.

On 21-1-1982 the Preliminary Notification was notified in the village chawadi. On 14-5-1982 copies of the said notification were served on the appellants. Thereafter the statutory enquiry u/s 5A of the Act was held. The Advocate appeared on behalf of the objectors and put forth several objections. Those objections were overruled. Thereafter Section 5A Enquiry Report was sent on 5-8-1982. Ultimately the declaration u/s 6(1) of the Act was made on 16-4-1983. That was published in the Karnataka Gazette on 16-6-1983. On 18-1-1985, 6-5-1985 and 21-5-1985 time was granted to file claim petition. On 6-7-1985 on the basis of pahani indicating survey numbers as fallow, award enquiry was proceeded with, and then the award was made on 8-5-1986 proposing Rs. 10,49,797-90. The award was approved on 23-9-1986, one day prior to the expiry of the statutory period.

At this stage itself we may state that though there is a controversy whether the award came to be published on that day or not, we do not think we should go into that factual controversy because larger issues are involved, which have been argued before us hotly.

On 7-7-1987 Notice u/s 12(2) of the Act was issued to the claimants.

On 13-1-1987 comes an important development as evidenced by Annexure-H concerning these lands. We may extract it in full:

"Meeting Regarding Challaghatta Tank held on 13th Jan.. 87. Members Present:

1. Dr. H.G.V. Reddy, IAS (Retd.) Chairman, Bangalore Development Authority.
2. Sri Bapu Heddur Shetty, Chairman, K.S.T.D.C.
3. Sri S.R. Vijay, I.A.S., Commissioner, Bangalore Development Authority.
4. Sri Sreenivasan, Managing Director, K.S.T.D.C.
5. Sri Dayananda Pai, Agreement Holder.

Pursuant to the meeting held on 12th January 1987 in the Committee room of Vidhana Soudha presided over by the Hon"ble Chief Minister, the matter relating to the acquisition of approximately 39 acres of land in Challaghatta Tank Bed

area in favour of KSTDC was discussed. It was agreed that a meeting should be arranged with the Power of Attorney Holder/Agreement Holder of the lands concerned, where the Chairman, B.D.A., Chairman, KSTDC, Commissioner, BDA, and M.D., KSTDC should discuss the details and an amicable solution found in order to avoid any further delay in acquiring the lands and putting them to use by KSTDC as there has been nearly two years delay in the projects identified by them.

Sri Dayanand Pai representing the various land owners in the area stated that he has with him agreements with most of the land owners except a small portion of Rustum Bhag in Sy.No. 17 and 18 to an extent of 2 acres 33 guntas of land. Sri Dayananda Pai was very particular that the block of land comprising of 12A-34 guntas comprising the following Sy.Nos. 160/1, 160/2, 160/3, 160/4, 163/1, 163/2, 164/1, 164/2, 165/1, 165/2, 165/3, 165/4, 165/6, 166/1, 166/2, 166/3, 166/4, 153, 159, 167, should be released to him as he has got a firm commitment for putting up a Group Housing Scheme on this land. These built units would be given "only for the Central Public Sector, the State Public Sector and the State Government Employees in equal proportions. However, if there is no adequate demand from any of these sectors within 6 months after the builder/developer has notified in prominent local newspapers, such residual accommodation may be offered by them to the general public. In the complex to be built, the ground floor portion abutting the main road shall be invariably built for commercial purposes to locate services and shops.

The Managing Director, KSTDC, stated that they do not have the necessary finances available to deposit with the Deputy Commissioner for acquisition of land and therefore Sri Pai agreed to deposit the entire required amount as per the figures to be furnished by the Deputy Commissioner on behalf of the K.S.T.D.C. for the area to be acquired and K.S.T.D.C. in turn will give Bank guarantee to Sri Dayananda Pai to the extent of land to be acquired for them so that the amount will be returned to Sri Pai within 6 months together with interest as applicable to term loans of Nationalised Banks.

In view of the above decision arrived at, it was agreed that the power of attorney holder/agreement holder Sri Dayananda Pai will cause the lands to be handed over to KSTDC soon after the above formalities are finalised by KSTDC and himself and the KSTDC in turn will release 12 acres 34 guntas in favour of the agreement holder for the specific purpose of putting up Group Housing Scheme to be approved by B.D.A.

Sri Dayananda Pai further assured that the existing approach road from H.A.L. road abutting Sy.Nos. 159, 158, 157, 156 and 153 will be widened to the extent of 100 ft. by ceding the required land from his own area and it was also agreed that in respect of the initial approach Section of the road from the H.A.L. road, the Bangalore City Corporation should be approached by the K.S.T.D.C. for similarly widening the road. There being a proposal by Government to widen the main Air Port Road; Sri Dayananda Pai undertook to leave the required lands as

per Government directions for such widening.

Sd/- CHAIRMAN Bangalore Development Authority Sd/- Sd/- Sd/- Chairman
Managing Director, Commissioner Sd/- K.S.T.D.C. K.S.T.D.C. B.D.A. Dayananda
Pai, Agreement Holder."

One thing that would be evidenced from this Resolution dated 13-1-1987 is that an amicable solution was sought to be arrived at in order to avoid any further delay in acquiring the lands and putting them to use by the Karnataka State Tourism Development Corporation as there has been a delay of 2 years in the projects identified by them.

Stopping here for a moment, if this is to be understood in the proper sense, it could be nothing more than the anxiety on the part of the Tourism Development Corporation to get hold of these lands and go on with the projects as quickly as possible as the matter would not brook delay.

Then again, an agreement was entered into by Dayananda Pai referred to in the proceedings extracted above, who is now impleaded as Respondent No. 5 in these appeals, with the land owners as early as 30-9-1981 for purchase of these lands, and he was the person who was supposed to help the Tourism Development Corporation in the speedy acquisition of lands.

What is more distressing to note as far as this Resolution of 13-1-1987 is concerned is, there is a candid admission by the Tourism Development Corporation that it does not have the necessary finances required to meet the cost of acquisition. To us it is shocking. We will refer to this aspect in the succeeding paragraphs of this Judgment.

In consideration of the help to be rendered by Dayananda Pai he is to be given an extent of 12 acres 34 guntas of land. On 8-5-1987 an Agreement was entered into with Dayananda Pai conveying these lands. On 10-9-1987 a Resolution came to be passed by the Tourism Development Corporation concerning the acquisition of these lands, which reads as follows:-

"Acquisition of land at Challaghatta:

It was explained by the Managing Director that an area of 39.27 acres of land were proposed for acquisition by KSTDC in Kodihalli and Chellaghatta villages of Bangalore District. By a compromise understanding with the Power of Attorney holder of the khathadars/landlords, Sri Dayananda Pai, the various Court cases against KSTDC and the Revenue Department in connection with the acquisition were withdrawn and on our part as a part of the compromise it was proposed to allot 12.34 acres of land to Sri Dayananda Pai or his nominees for the purpose of group housing project which has since been approved by the BDA. This has already been brought to the notice of the Board. As a bank guarantee could not be procured by us to be given to Sri Pai or his company to advance the required sum of money towards the cost of acquisition, and as there was no other alternative available except to go for institutional borrowings, the Managing

Director examined the proposal of accepting a term loan from the Canara Bank towards the acquisition cost. The Power of Attorney holders, Sri Dayananda Pai also as he was not advancing the required sum of money agreed to underwrite 1% of the cost of the interest burden of the KSTDC on the sum of money invested to obtain the portions of land which are to be retained by the KSTDC, besides completely accepting the burden on the 12.34 acres. In other words, the entire cost of interest burden and the repayment for the portion of 12.34 acres of land which are proposed to be transferred to Sri Dayananda Pai or his nominees were to be met by him or his companies or his nominees. This arrangement would reduce the interest burden of the Corporation by 1% on even the loan taken to procure the land to be retained by KSTDC. This would be advantageous to the Corporation though the Managing Director accepted a sum of Rs. 45.54 lakhs from the Canara Bank as term loan and paid the same to the Deputy Commissioner, Bangalore District, on 6-6-1987. The Special Land Acquisition Officer has in turn been paying the land holders and is acquiring the land and physically handing over the land to us. Meanwhile, nearly eight acres of land in Sy.No. 17, 139, 140, 144 belonging to Smt. Behroze Ramjar Batha and Mrs. Dilnawaz Aspi Patrawalla, Brig. N.F. Master and Wing Commander Ramyar K. Batha not the nominees or the Khatedar of Sri Dayananda Pai, have approached the Hon'ble High Court of Karnataka and have obtained an interim stay. The case is pending in the High Court. Sri Pai was apprised of the situation and he has assured the Corporation that he would do his best to get the land acquired smoothly. An area of two acres of land in Sy.No. 120/2 belongs to the Defence Ministry and therefore the Deputy Commissioner is unable to acquire the land. A small portion of 23 guntas of land which is part of an old burial grounds has also been left out of the acquisition. The actual acquisition would be (provided the eight acres of land of Sri M.F. Master & others is also acquired) only about 37 acres. Action would be taken to hand over these 12.34 acres of land as per the agreement as soon as the cost is deposited with the KSTDC.

A tender notification inviting sealed tenders for allotment of nearly five acres of land for putting up a tourist resort (amusement park) for the domestic tourists was issued by the Managing Director. The tenders received in response to our publication were opened and after negotiations the highest tenderer M/s. Universal Resorts whose tender rate was Rs. 1,11,111/- was found to be acceptable. After the land in question is taken possession of action would be taken to lease out a suitable portion of the land at the rate agreed.

For the international hotel proposed on about seven acres of land as a part of this complex a tender was placed in national papers inviting sealed tenders. In response, a number of tenders were received of which only two tenderers had deposited the earnest money deposit of Rs. 7 lakhs in DD and these two tenderers were called by the Managing Director and the Chairman for discussions and negotiations. At the preliminary level the rates offered by them were found to be very low and they were advised that the rates quoted by them is unacceptable to KSTDC. The tenderers wanted time to react to this after hearing

the M.D. and the Chairman the type of land, the extent of land, the location of land and the period of lease as these were not clear in the tender notification, They were given time and they have reacted by submitting their further quotations. These have been processed and the negotiations are nearing finalisation. Both the offers seem to be attractive and the General Manager (F) has been asked to examine which of the two would be advantageous to the Corporation. On the basis of this action would be taken to finalise the lease."

Here again it is made out as though there were various Court proceedings against the Tourism Development Corporation and the Revenue Department in connection with the acquisition which came to be withdrawn, in consideration of which these 12 acres 34 guntas of land were to be transferred.

On 12-11-1987 possession of the acquired lands was taken.

On 23-3-1988 an extent of 4 acres 21 guntas were transferred in favour of Dayananda Pai (R5) as evidenced by Annexure-L the Transfer Deed. It contains telltale recitals which constitute interesting reading and they read as follows:

"A. At the instance of the Transferor the Government of Karnataka had brought under acquisition proceedings approximately 39 acres of land in Kodihalli village, Bangalore South Taluk, for the purpose of creation of infrastructure to boost Tourism Development activities in that area.

C. Sri P. Dayananda Pai had paid the consideration amount in respect of the said consolidated block of 14 acres and 19 guntas of land to the respective owners and he had been holding individual agreements of sale executed by the respective owners of land as well as power of attorney in his favour from such owners.

D. Sri P. Dayananda Pai in the above circumstances through the land owners sought to dispute the legality of acquisition proceedings commenced by the State Government on behalf of the Transferor herein.

E. In order to avoid any litigation which would have resulted in delaying the Tourism Development activities proposed by the Transferor, the Transferor negotiated with the said Sri P. Dayananda Pai to extend all cooperation and assistance thereby settled the dispute amicably and further to the protracted discussion and various meetings and considering the good objectives of Sri P. Dayananda Pai to use the lands for promoting Group Housing Scheme to meet the housing needs of the employees of public and private sector undertakings the Transferor had agreed to transfer one Consolidated Block of land comprised in various other Sy.Nos.

F. In pursuance of this the Transferor by its duly authorised Managing Director had entered into an agreement dated 8-5-1987 with Sri P. Dayananda Pai or his nominee to transfer one consolidated block of land comprised of various Sy.Nos. referred to hereinabove with an approximate extent of 12 acres 34 guntas."

The consideration fixed for transfer was Rs. 9,18,198/-.

On the succeeding day i.e., 24-3-1988, another transfer of land took place as evidenced by Annexure-M under which an extent of 8 acres 10 guntas were transferred in favour of Dayananda Pai (R5), and it contains more or less similar telltale recitals. The consideration here is Rs. 8,50,504/-.

Thus, in all, 12 acres 31 guntas of land had been transferred in favour of Dayananda Pai (R5).

The matter did not stop there. On 29-9-1988 another Resolution came to be passed by the Tourism Development Corporation, the relevant portion of which reads:

"Challaghatta Project: The Board expressed concern over the failure of this project in yielding any revenue or other benefit to the Corporation- It was also observed that Sri Dayananda Pai who was supposed to ensure that the possession of the entire land is handed over to the corporation had failed in discharging this responsibility. On the other hand, his portion of the land as per the agreement has already been handed over to him. It was also noticed that 8 acres of land was handed over to the Bangalore International Centre on a nominal lease rent which is not financially viable from the Corporation's point of view. After a detailed discussion, the Board expressed its unhappiness about the way in which the lands have been handed over to Sri Dayananda Pai and the Bangalore International Centre without taking adequate measures to safeguard the interests of the Corporation, The Board also decided to (1) obtain legal opinion on the agreement entered into with Sri Dayananda Pai and examine the ways and means of safeguarding the interest of the Corporation, (II) to discuss with the trustees of the Bangalore International Centre regarding the cost of acquisition borne by the Corporation for the land handed over to this Centre and (III) to bring all details of the transaction to the notice of the Government."

Therefore it is clear that 8 acres of land was handed over to Bangalore International Centre on a nominal lease rent. Item No. 9 of the same Resolution dated 29-9-1988 evidences yet another transfer, and it reads:

"Agenda Item No. 9.

Sub: Land for Amusement Park.

The Board examined the note submitted by the Managing Director in connection with the proposed amusement park at Challaghatta tank bed area. The Board noticed that Sri C.K. Baljee of M/s. Universal Resorts Ltd. was the successful bidder for the amusement park project and an agreement was entered into with him in this behalf. According to the agreement, the Corporation should hand over 5 acres of land to him and he should pay a lease rent of Rs. 1.11 lakhs per acre per year. Mr. C.K. Baljee deposited Rs. 5 lakhs along with his offer. In the meanwhile, in view of the stay order issued by the High Court of Karnataka on the Writ Petition filed by the owners of the land, we could not hand over the

possession of the land to Mr. C.K. Baljee. The proposal not given by Mr. C.K. Baljee is that the owners of these lands have agreed to part with the land totally measuring 4 acre and 20 guntas. In turn, they want the KSTDC to release two acres and 20 guntas of land to them for their own use. In the final bargain, these two acres from the land owners and 2 acres and 30 guntas available with us should be handed over to Mr. C.K. Baljee for the amusement park project.

The Board considered the above proposal and discussed the implications in detail. It was also noticed by the Board that the whole project has been stuck because of the litigation and we have to take some positive steps towards proceeding with the project. The Chairman expressed the view that it is not advisable for the Corporation to enter into private deals in respect of lands acquired for public purpose. It is also not in the interests of the Corporation to surrender any further lands. Therefore, the Board decided to offer Mr. C.K. Baljee 2 acres and 30 guntas of land readily available with us and for reasons beyond our control, the remainder of land as and when possession is taken on vacation of stay."

Thus an extent of 5 acres had been transferred for an Amusement Park to a third party. The result of all this is, 25 acres 31 guntas of land has been parted with. In other words, 12 acres 31 guntas by means of transfer (sale), 8 acres by means of lease, and 5 acres by means of another lease.

All that we want to state at this stage is, lands have been transferred in favour of private individuals. This fact has a great bearing, and that is the reason why we are mentioning it in the forefront.

It was under these circumstances, Writ Petitions were filed challenging the acquisition proceedings. But unfortunately this aspect of the matter was not highlighted before the learned Single Judge.

4. Two points which loomed large before the learned Single Judge were: Firstly whether there was delay in approaching this Court, and secondly whether there was any valid award. The learned Judge was of the view that there was delay of 3 1/2 years in approaching the Court, Therefore that delay was fatal. Accordingly, the learned Judge, without expressing any opinion on the validity of the award, dismissed the Writ Petitions. Hence these Appeals.

5. Before us, the case takes a different turn. Mr. V.H. Ron, learned Counsel for the appellants, would urge the following points for our consideration:

Acquisition in this case is actuated by mala fides. In other words, though Section 4(1) Notification and Section 6(1) Declaration recite a public purpose and the acquisition also proceeded on that basis, later even before taking possession on 12-11-1987, agreement was entered into on 8-5-1987 to part with substantial portion of the land of 12 acres 34 guntas (sic 14 acres 19 guntas) in favour of Respondent-5 Dayananda Pai. It would be obvious, therefore, that where with the object of providing lands to a private individual if acquisition proceedings are

resorted to or the power of eminent domain comes to be exercised, it would be nothing more than fraud on power. The Courts have gone to the extent of saying that where it is a case of fraud, it would unravel everything (See LAZARUS ESTATES LTD. BEASLEY). Learned Counsel also cites State of Punjab and Another Vs. Gurdial Singh and Others, in this regard citing NARAYANA REDDY v. STATE OF KARNATAKA, ILR 1991 KAR 2248 where a Division Bench of this Court was of the view that if ultimately it turns out that fraud had been played for acquiring the lands then the acquisitions are rendered invalid, the learned Counsel submits that the same principle applies in this case.

Wherever the actions are found to be mala fide, Courts have not failed to strike down those actions as seen from PARTAP SINGH v. STATE OF PUNJAB AIR 1964 SC 73 and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others,

The further submission of the learned Counsel is, though apparently the acquisition was intended for a public purpose, if there is a diversification of that purpose the Court should hold that there is no real public purpose at all excepting a seeming public purpose in order that the power of eminent domain can be utilised. In this regard, the citations on which the learned Counsel relies are: Union of India and Others Vs. Nand Kishore, and The Industrial Development and Investment Co. Pvt. Ltd. and Another Vs. State of Maharashtra and Others, . In the latter Decision, a Division Bench of the Bombay High Court held that such a diversification is impermissible in law. Once the illegality is made out the Court cannot refuse to give relief on the ground that the land owners accepted the compensation. The effect of it will be, where the power is expressly given for one purpose and it is used for a collateral purpose the entire action becomes invalid: In such an event the important question that would arise is whether the entire notification as well as declaration would become invalid or not. In any event, the appellants are entitled to succeed should the Court hold that this is a case of fraud on power or power of eminent "domain which is attribute of sovereignty, has been exercised improperly or for a purpose not warranted under law.

Though Mr. Ron would submit, without prejudice to the above submissions, that there was no valid award, that has not been persisted. Therefore we leave it at that.

6. Mr. H.B. Datar, learned Counsel appearing for the Karnataka State Tourism Development Corporation, submits that this is a case in which Respondent-5 Dayananda Par did not come into picture till actually the acquisition was complete. Therefore there is no justification for the appellants to complain that the power of eminent domain had come to be used for a private purpose. On the contrary, should the Court hold that the transactions took place on 23-3-1988 and 24-3-1988 are invalid in law it may only strike down the same without affecting the land acquisition proceedings because acquisition as such is valid and there are several Decisions of, this Court upholding the validity of the

acquisition. Now to say that the acquisition is actuated by mala fides and therefore it requires to be set aside would mean unsettling the matters.

7. Mr. B.V. Acharya, learned Counsel appearing for Respondent-5 Dayananda Pai, would cite V.G. Ramachandran's Land Acquisition, 7th Edition, Page 119, and submit that public purpose can be achieved through private agency as well. In this case, what the 5th respondent is embarking upon is a housing scheme for which Bangalore Development Authority had given approval on 9-8-1988 and 31-8-1988. In such an event, where another public purpose is sought to be achieved through a private agency it is impossible to contend that there is a change in the public purpose. That apart, in Gulam Mustafa and Others Vs. The State of Maharashtra and Others, where the beneficiary of acquisition was Municipality and the Municipality sold lands for housing scheme, the Supreme Court held that the acquisition was valid. Similarly, in Mangal Oram and Others Vs. State of Orissa and Another, the acquisition was for steel plant and the question was whether the lands could be diverted for an ancillary township; that was held to be valid. To the same effect is the unreported Judgment of this Court in Suresh Salaria v. State, Writ Appeal No. 263/1989 decided on 20-12-1990. Learned Counsel relies on POSTAL CO-OP. HOUSING CONSTRUCTION SOCIETY LTD. v. SECRETARY, GOVT. OF BIHAR AIR 1984 Pat 33 and draws our attention particularly to paragraph-28 where after the acquisition the unutilised land was sold away to a private samithi. Therefore, if the original acquisition was for a public purpose the subsequent diversification of the purpose will not render the original acquisition invalid nor will it enable the appellants to contend that it is a case of fraud on power. In any event, in all cases where the land-owners have accepted compensation without demur the principle laid down by this Court in V.T. Krishnamoorthy Vs. State of Karnataka, will have to be applied. In that case, a Division Bench of this Court held that the petitioners cannot approbate and reprobate. Besides there are Judgments of this Court which are conclusive that the acquisition is valid though not for the reasons urged in these Appeals. Once therefore the validity of the acquisition has been upheld the appellants cannot try to attack those Judgments collaterally by a case of fraud on power.

8. We will now take up the important question which almost baffled us whether this is a case of fraud on power. We have already referred to Section 4(1) Notification wherein the public purpose is stated to be "to wit, for golf cum hotel resort, near Bangalore Airport, Bangalore". Though Section 4(1) Notification proposed to acquire 39 acres 27 guntas, in the final Declaration u/s 6(1), 2 acres 23 guntas came to be left out and the extent was shown as only 37 acres 04 guntas. We do not think the acquisition as such could be challenged as not for public purpose. It is one of the axioms under the law of eminent domain that where a cross section of the public or even an individual is benefited as a member of the public and not as an individual thereof, certainly it will be a public purpose. Therefore, the futile attempts made by some of the land-owners to challenge the acquisition which had ended in failure need not detain us. There is a purpose in our saying so because one of the defences put forth by the learned

Counsel for the Tourism Development Corporation was that there are concluded Judgments upholding the validity of the acquisition and therefore the appellants cannot be allowed to attack the same collaterally.

The core of the matter is that the causes of action in challenging the validity of the acquisition arose on 23-3-1988 and 24-3-1988 when by means of two Transfer Deeds properties forming the subject matter of acquisition came to be transferred in favour of Respondent-5 Dayanand Pai under a regular sale to which we have made already an elaborate reference. These two sales are in fructification of the earlier agreements dated 8-5-1987. This date has got an important bearing because it was only on 12-11-1987 possession of the acquired lands came to be taken. Under those circumstances, the question would be whether it is a mala fide exercise of power or not? We have already referred to the proceedings/resolution of the meeting which took place on 13-1-1987. We have made our comments then and there. Nevertheless we cannot refrain our feelings in commenting upon the same once over again. We cannot think of anything more despicable than the candid admission by the Tourism Development Corporation that they did not have the necessary funds required to meet the cost of acquisition. If really there was no amount available, how the acquisition was embarked upon, we are left to the realm of guess. Not only that, this particular resolution makes it appear that respondent-5 Dayanand Pai was the only saviour of the Karnataka State Tourism Development Corporation from the difficult situation. For our part we do not know what exactly was the difficulty then, Land acquisition proceedings were complete in all material respects. All that required was possession to be taken. Merely because there are Writ Petitions or some cases pending, does it mean that the Tourism Development Corporation must plead helplessness? Does not it have the wherewithal to contest these litigations? Is it not a part of the Government although it be a Corporation? What is it that it wants to do? In consideration of the withdrawal of the cases which were thorns in the flesh of the Tourist Development Corporation, he is given of a silver salver an extent of 12 acres 31 guntas of land. To say the least, it appears right from the beginning respondent-5 Dayananda Pai had an eye on these lands. That would be evident because though he entered into an agreement on 30-9-1981 with the land-owners it never occurred to him to put forth any objection during Section 5A Enquiry, nor again at any point of time did he take any interest. He was patiently waiting for somebody to take chestnut out of the fire so that he could have the fruits thereof. That is also evident from the Resolution dated 13-1-1987 wherein it is stated as under:

"Sri Dayananda Pai was very particular that the block of land comprising of 12 acres 34 guntas comprising the following Sy.Nos. 160/1, 160/2, 160/3, 160/4, 163/1, 163/2, 164/1, 164/2, 165/1, 165/2, 165/3, 165/4, 165/6, 166/1, 166/2, 166/3, 166/4, 153, 159, 167 should be released to him as he has got a firm commitment for putting up a Group Housing Scheme on this land."

Yes. He might have had a commitment. What then is the purpose of eminent

domain? Eminent domain, as we consider and as it is settled law as was said by Nichols, is an attribute of sovereignty. Where the Deputy Commissioner is convinced that the lands are to be acquired for a public purpose notwithstanding the fact that the rights of the private parties might be interfered with, the acquisition will have to be gone through. In other words, the private purpose must be subservient to public purpose. Forget all that. In order to enable Dayananda Pai to fulfil his commitment if valuable portion of the lands acquired viz., 12 acres 31 guntas is transferred in his favour we cannot find a more vivid case of fraud on power than this. We hold so because the apparent object as evidenced by Section 4(1) Notification is a public purpose. If really as was sought to be made out by the Resolution dated 13-1-1987 the Tourism Development Corporation was anxious to have these lands and the delay was telling upon it, certainly selling away the lands is not the solution as we could see. Therefore, there has been a clear diversification of purpose. Not only an extent of 12 acres 31 guntas have been sold away in favour of respondent-5 Dayanand Pai as has been noted in the narration of facts, 8 acres had come to be leased for Bangalore International Centre and another 5 acres had come to be leased for the amusement park. Why all these if the Tourism Development Corporation does not have funds to meet the cost of acquisition? Therefore it appears to us this is nothing more than a conspiracy to deprive the owners of the lands by use of the power of the eminent domain which is to be used for an avowedly public purpose and for strong compelling reasons and not whimsically or to satisfy the private needs of an individual.

9. As to what would be the effect of the fraud, we would rather refer to the leading Judgment of Lord Denning in *Lazarus Estates Ltd. v. Beasley* in which it is stated at page 345 thus:-

"We are in this case concerned only with this point. Can the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the criminal Courts. The landlord can be taken before the magistrate and fined...or he can be prosecuted on indictment and (if he is an individual) sent to prison...The landlords argued before us that the declaration could not be challenged in the civil Courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No Judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates Judgments, contracts and all transactions whatever; see as to deeds, *COLLINUS v. BLANTERN* (2) (1767) (2 Wils. K.B. 342), as to Judgments, *DUCHESS OF KINGSTON'S CASE* (3) (1776) (1 Leach 146), and, as to contracts *MASTER v. MILLER* (4) (1791) (4 Term Rep. 320). So here I am of opinion that if

this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it."

This Dictum of Lord Denning which met with approval at the hands of the Supreme Court in *Partap Singh v. State of Punjab*. At page 81 it is stated thus:

"For the purpose of the present controversy the functionary who took action and on whose instructions the action was taken against the appellant was undoubtedly the Chief Minister and if that functionary was actuated by mala fides in taking that action it is clear that such action would be vitiated. In this context it is necessary to add that though the learned Attorney-General at first hinted that he would raise a legal contention that even if mala fides were established against the Chief Minister still the impugned orders could not be set aside, he did not further pursue the matter, but proceeded, if we may say so rightly, to persuade us that mala fides was not made out by the evidence on record. Such an argument, if right, would mean that even fraud or corruption leaving aside mala fides, would not be examinable by a Court and would not vitiate administrative orders. As Lord Denning said in *Lazarus Estates Ltd. v. Beasley* 1956-1 All ER 341 at page 345:

"No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud".

In the circumstances we do not consider it necessary to deal with this aspect more fully or in greater detail."

Again in *Express Newspapers Pvt. Ltd. v. Union of India* it stated in paragraphs 118 and 119 thus:-

"118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a S. Pratap Singh Vs. The State of Punjab, A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior alien purpose clearly speaks of the misuse of the power and it was observed as early as 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* 1904 SC 515, "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corporation* (1926) 1 Ch 66 that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative".

In *Lazarus Estates Ltd. v. Beasley* (1956) 2 QB 702 at pp 712-13 Lord Denning, LJ. said:

"No Judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also in *Lazarus* case at page 722 per Lord Parker, CJ:

"Fraud vitiates all transactions known to the law of however high a degree of solemnity".

All these three English Decisions have been cited with approval by this Court in *Partap Singh's* case.

119. In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be sufficient reason to strike down the action. In *State of Punjab Vs. Ramjilal and Others*, it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the abuse of authority must appear to be reasonably probable."

There again the Judgment of Lord Denning was quoted with approval.

In *State of Punjab v. Gurdial Singh*, Krishna Iyer, J. in his inimitable style, while speaking for the Court, said as follows:

"10. By these canons it is easy to hold that where one of the requisites of Section 4 or 6 viz., that the particular land is needed for the public purpose in view, is shown to be not the goal pursued but the private satisfaction of wreaking vengeance if the moving consideration in the selection of the land is an extraneous one, the law is derailed and the exercise is bad. Not that this land is needed for the mandi, in the Judgment of Government, but that the mandi need is hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. To reach this conclusion, there is a big "if" to be proved - if the real object is the illegitimate one of taking away the lands of the respondents 1 to 21 to vent the hostility of respondent 22, under

the mask of acquisition for the mandi."

A Division Bench of this Court in *Narayana Reddy v. State of Karnataka* has stated in paragraph-29 thus :-

"29. Now the final question for consideration is whether a Notification issued by the State Government u/s 6(1) of the Act notifying that certain lands are required for a public purpose is liable to be struck down on the ground that the exercise of power by the Government was colourable, in that in truth it is not for the purpose for which the lands are stated to have been acquired. It is well settled position in law that though Sub-section (3) of Section 6 of the Act makes the declaration by the Government that the land is needed for a public purpose conclusive, if on the facts and circumstances of a given case it is established that there has been colourable exercise of power, the acquisition notification is liable to be struck down." *Smt. Somavanti and Others Vs. The State of Punjab and Others, and Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal,*

These Cases fully support the appellants. We are unable to accept the argument of Mr. B.V. Acharya that subsequent transfer of property would not affect the validity of the acquisition. In *Gulam Mustafa v. State of Maharashtra* where the Municipality sold the excess lands for Housing Scheme, the Supreme Court said in paragraph-5 as follows:

"5. At this stage Shri Deshpande complained that actually the Municipal Committee had sold away the excess land making them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 5(3) declaration."

It should be remembered that this was a case where long after the acquisition when the Municipality found that there was certain excess land which could not be utilised, the same was sold for a housing scheme. Therefore this case has no application to the case on hand.

In *Mangal Oram v. State of Orissa* the Supreme Court stated in paragraph-4 thus:

"4. It is then argued by Mr. Gobind Das that part of the lands which were acquired for the purpose of steel plant and ancillary industries are being used as a civil township. It is contended that the acquired land could only be used for the steel plant and ancillary industries and not for a civil township. This contention is equally devoid of force. The establishment of a steel plant necessarily postulates the constructions of residential quarters for the workmen to be employed in the plant. In addition to that, land would be needed for shopping areas, for schools,

for the children of the employees, for playgrounds, for hospitals and for residential quarters of persons opening their shops catering to the needs of the employees of the steel plant. Lands would likewise be needed for post offices, banks, clubs, parks, cinemas, roads, police stations as also for cremation and burial of the dead. Land would also be needed for a variety of other purposes and civic amenities. A township is a necessary adjunct and concomitant of a big steel plant. The fact, therefore, that part of the land which was acquired has been used for civil township would not, in our opinion, affect the validity of the acquisition of the land."

As the facts of that case reveal, that was a case of acquisition of land for steel plant and an ancillary township was sought to be set up. That was held to be valid. Hence that Case also has no application here.

In Postal Co-op. House Construction Society Ltd. v. Secretary, Govt. of Bihar in paragraph-28 it is said as follows:

"28. The land in question had been acquired some time in the year 1956 and in spite of repeated offers made to the society, the matter lingered considerably as the Society adopted indifferent attitude. No other society representing Low Income Group came forward for purchase of the lands concerned. The Society was not prepared to take surplus land on the terms and conditions put forward by the Housing Department. At one stage in the year 1972, the Housing Board had taken a decision to construct its office building by utilising the concerned land. This will be apparent from Board's resolution No. 9 dated 22-4-1972. The resolution is Annexure-H annexed to the counter-affidavit filed on behalf of respondent No. 4 (Samiti). However, for certain reasons the Housing Board abandoned the scheme of construction of its office and consequently the excess land remained unutilised. The Samiti (respondent No. 4) approached the Board through an application dated 10-4-1980 and also dated 16-6-1980 for the settlement of the land concerned. After going through all the procedures and in accordance with law, the Board settled 86.58 kathas of land corresponding to 1,17,835 sq. ft. on consideration of a sum of Rs. 6,39,500/- with the Samiti and the Samiti readily agreed to make the payment. As a matter of fact, the Samiti has already deposited Rs. 1,60,000/- on account of the Bihar State Housing Board and has further undertook to pay the balance amount as required and demanded. Consequently, an order of allotment was communicated to the Samiti through letter No. 6021 dated 31-7-1980 which is Annexure-A to the counter-affidavit filed on behalf of the Samiti. It appears that a registered agreement of lease has also been executed for the concerned land. The agreement of lease is Annexure-B to the counter-affidavit filed on behalf of respondent No. 4."

These cases are factually distinguishable because in Gulam Mustafa's case as we have just now pointed out the Municipality sold the excess land which it could not utilise for Housing Scheme; in Mangal Oram's case it was only an ancillary purpose and therefore it was upheld; and in Patna case the acquisition was in 1956 and long afterwards in 1988 finding that some lands were unutilised they

were sold in favour of a samiti. But, in the case on hand what is most striking is negotiations took place even before taking possession of lands. On 8-5-1987 agreement was entered into and in the wake of taking possession on 12-11-1987, transfers are made on 23-3-1988 and 24-3-1988. This is where we consider that with the motive of securing lands to respondent-5 Dayanand Pai, acquisition had come to be embarked upon. This was the reason why we conclude that this is a case of fraudulent exercise of power. It is no consolation to say that the owners of lands have accepted the compensation because in *Industrial Development & Investment Co. Pvt. Ltd. v. State of Maharashtra* it is stated thus:

"...The State itself which has acted illegally and without jurisdiction cannot plead that it should be allowed to retain the sum awarded in its favour by the Land Acquisition Officer. Respondent 5 who is described as the owner of the land has conveyed to us that it would submit to the order of the Court. We also record the submission of Mr. Dhanuka, learned Counsel for the appellants, that in the event the other awardees who were awarded paltry sums by the award u/s 11 Land Acquisition Act, do not refund sums withdrawn, the appellants are prepared to refund and/or deposit the said sums. Therefore, we conclude that on the ground of delay the appellants could not be deprived of the relief to which they were otherwise entitled."

The ratio of this Case squarely applies here. Nor again, in our considered opinion, the previous Decisions upholding the validity of the acquisitions would be of any value because as we have observed earlier the causes of action arose only on 23-3-1988 and 24-3-1988 when the transfers came to be effected, or on subsequent days when leases had come to be effected. Therefore, where in ignorance of these transactions if compensation had come to be accepted we should not put that against such of those land owners. But that question does not arise in this case. Therefore, we shall relegate the same to the other cases.

10. Lastly, what remains to be seen is what is the effect of fraud. Does it render the entire acquisition bad or is it to be held to be bad only in so far as these appellants are concerned? We are of the view that if fraud unravels everything, it cannot be valid in part and invalid in other parts. But, we need not go to that extent because there are other Writ Petitions including a Writ Appeal in which this question may arise direct. We do not want to prejudice those petitioners/appellants. Therefore, this question we relegate to those cases.

In so far as it is a common case between the parties that lands which are the subject matter of these Writ Appeals are not covered by the two transactions viz., 23-3-1988 and 24-3-1988, we quash both Section 4(1) Notification as well as Section 6(1) Declaration in so far as they relate to the lands which are the subject matter of these Appeals. Accordingly, we allow these Appeals and set aside the order of the, learned Single Judge. The appellants will be entitled to costs of Rs. 2,000/- in each of the Appeals - Rs. 1,000/- to be paid by Respondent-2, and Rs. 1,000/- to be paid by Respondent-5 in each of these

cases.