

(1961) 03 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 1076, 1083 and 1087 of 1959, and 85, 270, 359 and 360 of 1960

P. Achiah Chetty and Others

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 03-03-1961

Acts Referred:

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

Citation : AIR 1962 Kar 218

Hon'ble Judges : Iqbal Husain, J; A. Narayana Pai, J

Bench : Division Bench

Advocate : T. Krishna Rao and P.R. Srinivasan in W.P. No. 1076 of 1959, S.G. Sundaraswamy in W.P. No. 1083 of 1959, B. Vaikunta Baliga in W.P. No. 85 of 1960, G.F. Murihead in W.P. No. 359 of 1960, for the Appellant; G.R. Ethirajulu Naidu in W.P. No. 1076 of 1959, General and E.S. Venkataramiah in W.P. No. 1076 of 1959, for the Respondent

Judgement

(1) These seven Writ Petitions arise out of certain land acquisition proceedings taken in respect of a certain extent of land comprised in Survey No. 2 of Raj Mahal Village, Kasba Hobli, Bangalore North Taluk, initiated under Notification No. LLH 281 IAQ 58 made by the Government of Mysore under sub-section (1) of section 4 of the Mysore Land Amending Act of 1894, (Mysore Act VII of 1894), and published in the Mysore Gazette dated the 7th of May 1959. The final notification u/s 6 of the act bearing No. RDH 4 LTB 59 dated the 14th of October 1959, was published in the Mysore Gazette dated the 15th of October 1959. The former notification opened with a statement that it appeared to the Government of Mysore that the land specified therein was needed for a public purpose to wit for Raj Mahal Vilas Lay-out. In the latter one, the Government declared that the property specified therein be the same a little more or less, was needed for a public purpose to wit for Raj Mahal Lay-out, and appointed the Special Land Acquisition Officers, City Improvement Trust Board, Bangalore, to perform the functions of the Deputy Commissioner under the land Acquisition Act.

(2) The petitioners, who before the publication of the preliminary notification had become owners of different portions of the land proposed to be acquired, impugn the validity of the two notifications mentioned above and the competence or regularity of the proceedings taken or proposed to be taken pursuant thereto. They pray for the issue of appropriate Writs or directions quashing the said notifications and/or directing the respondents to forbear from acting on the said notifications and proceeding with the acquisition of the petitioners lands and from interfering with their possession thereof.

The State of Mysore and the Special Land Acquisition Officer of the City Improvement Trust Board, Bangalore, are impleaded as respondents in all these petitions. The third respondent in W.P. No. 1076 of 1959 is a co-owner with the petitioner of the land concerned in that petition. In W.P. No. 270 of 1960, instead of the Special Land Acquisition Officer of the Board, the Board itself represented by its Chairman is impleaded as respondent in addition to the State of Mysore. In W.P. No. 360 of 1960, in addition to the State and the Special Land Acquisition Officer of the Board, the Secretary to the Government of Mysore in the Department of Local Self Government and Public Health has been impleaded as a respondent, apparently for the reason that he is the Officer who has signed or authenticated the impugned notifications.

In substance however, the prayer in all the petitions is for the issue of Writ of Mandamus against the State and the Special Land Acquisition Officer of the City Improvement Trust Board directing them to forbear from acting on the notifications and taking proceedings for acquisition pursuant thereto, on the ground that the notifications and the entire proceedings purported to be taken pursuant thereto the incompetent and opposed to law.

(3) Survey No. 2 of the Raj Mahal Village was the property of his Highness the Maharaja of Mysore. Sometime before 1955, that land appears to have been divided into plots in accordance with a sketch said to have been prepared by the Superintendent of the Bangalore Palace, and the several plots subsequently sold, gifted or otherwise transferred by His Highness. The petitioner and the third respondent in W.P. 1076 of 1959, are the purchasers of Plot No. 18 having purchased the same from Smt. L. M. Sivamma, wife of one Sardar Major Mahadeviah, Personal Secretary to the Maharaja of Mysore under a deed dated the 22nd of December 1958. Their vendor had purchased it from His Highness the Maharaja under a sale deed dated the 15th of December 1957.

The petitioners in W.P. 1083 of 1959 who are sisters purchased plot No. 15 from His Highness the Maharaja on 28.5.1956. Plot No. 5 was gifted by His Highness the Maharaja to the petitioner in W.P. 1087 of 1959, under a registered document dated 10.3.1959. The petitioner in W.P. 85 of 1960 purchased Site No. B in plot No. 11 on the 26th of May 1958, from Sivamma, wife of Mahadeviah mentioned above. The petitioner in W.P. 270 of 1960 States that she is the owner of a piece of land measuring 5.19 acres out of section No. 2 of Raj Mahal Village without giving further particulars. The petitioner in W.P. 359 of 1960 purchased plot No. 6

from His Highness the Maharaja of Mysore under a sale deed dated 25.11.1957. The petitioner in Writ Petition 360 of 1960, is the purchaser of site No. A in plot No. 6 from His Highness the Maharaja under a sale deed dated 16.12.1957.

(4) The petitioners in Writ Petition Nos. 1083, 1087, of 1959 and 270 of 1960 obtained these plots for the purpose of putting up structures for their personal residence. The petitioner in Writ Petition 85 of 1960 which is an incorporated Company wanted to construct residences for its officers. The petitioners in Writ Petition 1083 of 1959 succeeded in obtaining sanction for converting the land which was an agricultural land for non-agricultural purposes as early as in April 1957 and also paid the conversion fine and special assessment aggregating to Rs. 8029.78. The petitioner in Writ Petition 1087 of 1959 failed to secure such permission although she says she made several applications for the purpose. Likewise, the petitioner in Writ Petition 85 of 1960 could not secure such permission but was informed by the Improvement Board in December 1958 that the matter of converting the lands for non-agricultural purposes was under consideration and the petitioner may renew its application sometime later.

(5) The petitioners in Writ Petition 359 and 360 of 1960 and 1076 of 1959 had purchased the land for the purpose of preparing a private lay-out. Out of these, only the petitioner in Writ Petition 1076 of 1959 along with his co-purchaser, the third respondent therein, appears to have taken active steps for the preparation of a private lay-out of building sites and made considerable progress.

When they were about to start work thereon, they received a notice from the City Improvement Trust Board dated 21.2.1959 asking them not to proceed with the work without obtaining the express approval of the Board. Thereupon, they made the necessary application to the Board, and the Board granted them permission by an endorsement dated 23.3.1957. They were required by the Board to enter into certain agreement, the draft whereof was forwarded to them along with a letter dated 7.7.1959 by the Board. They executed the agreement, got it registered and the same was duly accepted by the Board. According to one of the conditions of the sanction, they paid to the Board a sum of Rs. 6798/- for what is described as supervision charges. They also took steps to get the land converted to non-agricultural use. The Deputy Commissioner on the recommendation of the Trust Board, granted the permission on 30.9.1959 and a conversion fine of Rs. 6696/- was also paid as demanded. Thereafter, the petitioner and the third respondent prepared the lay-out and sold some of the plots therein and entered into agreements to sell some plots.

(6) The petitioner in Writ Petition 1076 of 1959 States that he and his co-owner, the third respondent, came to know of the proposed land acquisition proceedings only on seeing the second notification u/s 6 dated the 14th of October 1959 and that upon further enquiry they came to know that the preliminary notification u/s 4 had been published in the Mysore Gazette of the 7th of May 1959.

On 7.11.1959, the petitioner presented a petition to the Government of Mysore

requesting it to withdraw acquisition proceedings. He made a similar application to the City Improvement Trust Board and the Special Land Acquisition Officer. On 23.11.1959 he made a further application to the Government asking for an order staying the acquisition proceedings pending disposal of his petition dated 7.11.1959. Not having received any reply to the said petitions, he presented the Writ Petition to this Court on 22.12.1959.

(7) The Petitioners in Writ Petition 1083 of 1959 are not residents of Bangalore, the first of them being the wife of an officer in Indian Embassy, Washington, and the second the wife of a doctor at Madras. They became aware of the land acquisition proceedings only after the publication of the notification dated the 14th of October 1959.

On 12.11.1959, their power of attorney Agent, who has sworn to the affidavit in support of the petition, made an application to the Government on behalf of the petitioners requesting withdrawal of the acquisition proceedings. He received an endorsement dated 7.12.1959 acknowledging receipt of the petition and stating that the matter was engaging the attention of the Government, but on 22.12.1959 he received a notice dated 19.12.1959 from the Special Land Acquisition Officer stating that the land in question had been acquired and that a sum of Rs. 63,963/- had been awarded by way of compensation and that possession of the land would be taken on 29.12.1959. the Writ Petition was filed on 24.12.1959.

(8) The petitioner in Writ Petition 1087 of 1959 is said to have become aware of the preliminary notification of May 1959 sometime in September 1959. Her power of Attorney Agent, who has made the affidavit in support of the petition, states that the petitioner by way of abundant caution put in her objections to the proposed acquisition immediately after she came to know of the preliminary notification as aforesaid, but that she was neither heard nor her objections considered.

It is further stated that the Special Land Acquisition Officer issued a notice dated 21.10.1959 purporting to be under Sections 9 and 10 of the land Acquisition Act and followed it up by another notice dated 19.12.1959 calling upon the petitioners power of Attorney Agent to produce relevant records on or before 29.12.1959 and receive payment of compensation amount of Rs. 88,644.23 naya paise. The petitioners Agent also states that on 9.11.1959 he had on behalf of the petitioner submitted an application to the Government of Mysore requesting withdrawal of the acquisition proceedings which , however, elicited no reply or orders. The Writ Petition was filed on 29.12.1959.

(9) In the affidavit filed in Writ Petition 85 of 1960 wherein the deponent states that he acted as the agent of the petitioner in the proceedings before the special Land Acquisition Officer, the exact date or time when the petitioner or his Agent became aware of the impugned notifications is not stated. The Writ Petition was filed on the 1st of February 1960.

(10) The petitioner in Writ Petition 270 of 1960 is the wife of a Deputy Secretary in the Ministry of External Affairs, Government of India. She states in her affidavit that on or about the second of November 1959 when she was in Delhi she received a notice dated 23.10.1959 addressed to her by the Special Land Acquisition Officer purporting to have been issued under Sections 9 and 10 of the Land Acquisition Act, calling upon her to submit her claims to compensation.

According to her, this was the first occasion when she came to know of the acquisition proceeding having been initiated. Thereafter upon enquires made, she came to know of the two notifications. On the 13th of November 1959, the legal advisor of the petitioner issued a notice to the Government of Mysore with a copy thereof to the Special land Acquisition Officer questioning the legality of the acquisition proceedings and stating that unless the proceedings are stayed within 7 days of the receipt of the notice, the petitioner would be compelled to take proceedings by way of Writ Petition or otherwise. The Writ Petition was filed on the 10th of March 1960.

(11) The petitioner in Writ Petition 359 of 1960 states that on coming to know of the preliminary notification of May 1959 sometime in September 1959, he put in objections, but he was neither heard nor his objections considered. On 21.10.59 the Special Land Acquisition Officer issued to him a notice purporting to be under sections 9 and 10 of the Land Acquisition Act and followed it up with a notice of award dated 17.12.1959 intimating that a total sum of Rs. 19,908.01 had been awarded to him by way of compensation. The Writ Petition was filed on the 31st of March 1960.

(12) The petitioner in Writ Petition 360 of 1960 states that he came to know of the preliminary notification on or about the 15th of September 1959 and filed his objections but that he was neither heard nor his objections considered. The Land Acquisition Officer issued to him a notice dated 21.10.1959 purporting to be under Sections 9 and 10 of the Land Acquisition Act and later sent a notice of award dated 18.12.1959 intimating that a total sum of Rs. 18,794-46 np., had been awarded to the petitioner by way of compensation. The Writ Petition was filed on the 1st of April 1960.

(13) In the affidavits in support of the petitions as originally filed, the principal infirmities in the impugned proceedings for acquisition which, according to the petitioners, rendered the entire proceedings invalid, were these:

The preliminary notification dated the 31st of March 1959 published on the 7th of May 1959 u/s 4(1) of the Land Acquisition Act, is defective in that it was devoid of particulars required by law, as a result of which interested parties were virtually deprived of the opportunity guaranteed u/s 5-A of the Land Acquisition Act of presenting objections to the acquisition and of being heard in support of such objections.

The Lands sought to be acquired being those lying within the Municipal Limits of the City of Bangalore and the public purpose stated for the acquisition being the

preparation of lay-out which is a scheme of improvement within the City of Bangalore, the petitioners contended that such a scheme of improvement or development by way of lay-outs could have been effected only through the instrumentality of the Board of Trustees for the Improvement of the City of Bangalore constituted under the City of Bangalore Improvement Act (Mysore Act No. V of 1945) and by strictly following the procedure laid down therefore in the said Act, especially in view of Section 52 thereof, according to which the provisions of the said Act have a overriding effect over the provisions contained in any other enactment in force in Mysore. The provisions of the City of Bangalore Improvement Act having been totally ignored in the matter of the impugned acquisition proceedings, the said proceedings were challenged as completely invalid and opposed to law.

(14) On the 9th of June 1960, the Government of Mysore promulgated an Ordinance called the City of Bangalore Improvement (Amendment) Ordinance, 1960 (Mysore Ordinance No. 1 of 1960) purporting to introduce into the City of Bangalore Improvement Act of 1945 a new section numbered 27-A with retrospective effect as from the date of the commencement of the original Act and to validate actions already taken without complying with the provisions of sections 14,15,16, 17, or 18 and clauses 1 and 2 of section 27 of the Original Act. This Ordinance was replaced by an Amending Act being the City of Bangalore improvement (Amending) Act 1960 which came into force on the 6th day of October 1960.

(15) The contesting respondents rely upon the amendment carried by the said Amending Act as a complete answer to the principal contention of the petitioners that the acquisition is bad for failure to comply with the relevant provisions of the City of Bangalore Improvement Act. With reference to this plea, the petitioners further contentions are that the Ordinance and Amending Act are both invalid or void as being opposed to the provisions of Article 213(1) and 254(1) of the Constitution, that actually they have failed to achieve the purpose for which they were intended, and that even if both these objections are satisfactorily answered, the amendment would, nevertheless, fall to be struck down for contravention of Article 14 of the Constitution.

(16) The contesting respondents have raised an alternative plea that even apart from the provisions of the City of Bangalore Improvement Act, the acquisition can be supported on the strength of the Land Acquisition Act of 1894.

The petitioners answer to this plea is two fold: Firstly, they State that having regard to the purpose stated for the acquisition, it is impossible to say that a public purpose exists within the meaning of the Land Acquisition Act without relying upon and complying with the provisions of the City of Bangalore Improvement Act. Secondly, even if it is possible to do so, the defects in the preliminary notification are such that the said notification deserves to be struck down as invalid and ineffective.

(17) The points for consideration in these petitions, therefore, are the following:

1. Whether the impugned acquisition is one which should have been made in compliance with the provisions of the City of Bangalore Improvement Act of 1945:
 2. Whether Mysore Ordinance No. 1 of 1960 is invalid for non-compliance with the provisions of Article 213 of the Constitution;
 3. Whether Mysore Act No. XIII of 1960 is invalid under Article 245(1) of the Constitution;
 4. Whether the amendment effected by the said Ordinance and the Act is unconstitutional as involving a contravention of Article 14 of the Constitution;
- and 5. Whether the impugned acquisition proceedings can be supported under the Mysore Land Acquisition Act itself without relying upon any of the provisions of the City of Bangalore Improvement Act, 1945.

(18) In Writ Petition No. 1076 of 1959, a further point has been raised. It will be remembered that the petitioner and the third respondent there in, with a view to make out a private lay-out, had applied for permission on the Board and the Board had actually granted permission pursuant to which the petitioner and the third respondent had entered into an agreement with the Board as required by it, incurred expenditure, prepared lay-out and had actually gone to the extent of selling some of the sites and entering into agreements to sell in respect of some sites.

Under clause (iv) of sub-section (6) of section 25, the Board is empowered to refuse to accord sanction to a private lay-out, if the lay-out in the opinion of the Board cannot be fitted with the existing or proposed expansion or Improvement Scheme of the Board. On these facts, it is contended that the Board is precluded by principles of equitable estoppel from making any scheme or acquiring any Land in connection with it so as to effect the private lay-out of the petitioner and the third respondent, already sanctioned by the Board.

(19) It will be obvious that points Nos. 1 and 5 really express two aspects of the same question, and in ordinary circumstances, an answer to one of them should also constitute an answer to the other. The contesting respondents, however, argue that the fifth point can and does arise independently of the first because, according to them, the special provisions of the City of Bangalore Improvement Act, the disobedience of which invalidates the proceedings according to the petitioners, are not mandatory but directory in character and that in any event, the amendment carried in the year 1960, if we uphold its validity by answering points 2,3, and 4 in favour of the respondents, permits action being validly taken by the Government under the Land Acquisition Act, irrespective of or without regard to the special provisions of the City of Bangalore Improvement Act.

The answers to the points formulated above and consequently the ultimate result of these cases must depend upon the true effect and operation of the provisions

of the City of Bangalore Improvement Act, 1945, the exact bearing they have on the provisions and operation of the Land Acquisition Act, 1894, and the validity and effect, if any, of Mysore Ordinance 1 of 1960 and Mysore Act XIII of 1960.

(20) For the sake of brevity, as shall refer to the City of Bangalore Improvement Act as "Improvement Act" and the Land Acquisition Act of 1894 as the "Acquisition Act". We shall first proceed to examine the relevant provisions of the former act as it stood before the amendment of 1960.

(21) The City of Bangalore Improvement Act was enacted in the year 1945 and brought into force on the 26th of January 1945 with a view to make provision for the improvement and future expansion of the City of Bangalore, and for the appointment of a Board of Trustees with special powers to carry out the aforesaid purposes.

(22) Chapter 1 of the Act is preliminary in nature and defines certain terms.

(23) Section 3, which is the first section in the second Chapter of the Act, states in clear terms that the duty of carrying out the provisions of the Act shall, subject to such conditions and limitations as are contained in the Act, be vested in a Board to be called "The Trustees for the Improvement of the City of Bangalore" (subsequently referred to in the Act as the Board). Under the same section, that Board is declared to be a body corporate with perpetual succession and a common seal, empowered to sue and be sued by the name first aforesaid. The rest of the sections in that Chapter viz., Sections 4 to 13 deal with the Constitution of the Board, appointment of trustees and the procedure to be adopted by the Board and its members and committees in discharging their functions under the Act.

(24) Chapter 111 deals with the duties and powers of the Board. Sections 14 to 19 bear the subheading "Improvement Schemes"; Sections 20 to 25-B the sub-heading "General" and sections 26 and 27 bear the subheading "acquisition of Land".

(25) A reading of the several provisions of Chapter 111 makes it clear that the purpose of the Act viz., improvement or expansion of the City is to be achieved by the Board drawing up detailed schemes (referred to as the Improvement Schemes in the Act) and executing the same in the manner provided in this Chapter. Section 14 refers to the duty of drawing up detailed schemes; section 15 gives details of the scheme and sections 16 to 18 prescribe the procedure to be followed to make the scheme enforceable.

Section 14 reads as follows:-

"(1) The Board may, subject to the control of the Government,

(a) draw up detailed schemes (hereinafter referred to as "Improvement scheme") for the improvement or expansion or both of the areas to which this Act applies.

(b) undertake any works and incur any expenditure for the improvement or development of any such area and for the framing and execution of such improvement schemes as may be necessary from time to time.

(2) The Board May also from time to time make any new or additional improvement schemes,

(i) on its own initiative, if satisfied of the sufficiency of its resources, or

(ii) on the recommendations of the corporation if the corporation places at the disposal of the Board the necessary funds for framing and carrying out any such scheme, or

(iii) otherwise.

(3) Notwithstanding anything to the contrary contained in this Act, or in any other law for the time being in force the Government may whenever they deem it necessary, require the Board to take up any improvement scheme or work and execute it subject to such terms and conditions as may be specified by the Government."

Section 15 provides that every improvement scheme u/s 14 shall , within the limits of the area comprised in the scheme, provide for the acquisition of any Land which is either necessary for or affected by the execution of the scheme, the relaying out of all or any Land, formation or alteration of streets the draining of streets, altering the levels of the Land for better drainage, forming open spaces for better ventilation, construction of markets, provision of sanitary arrangement, etc.

Section 16 provides for publication of the completed scheme and the issue of notices to parties affected thereby. Sub-sections (1) and (2) of that section which are of importance read as follows:-

"(1) Upon the completion of an improvement scheme, the Board shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein and a statement specifying the Land which it is proposed to acquire and of the Land in regard to which it is proposed to recover a betterment fee may be seen at all reasonable hours and shall --

"(a) communicate a copy of such notification to the Mayor of the Corporation who shall , within thirty days from the date of receipt thereof, forward to the Board, for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme;

(b) cause a copy of the said notification to be published during three consecutive weeks in the Mysore Gazette and posted up in some conspicuous part of its own office, the Deputy Commissioners office, the office of the Corporation and in such other places as the Board May consider necessary.

(2) During the thirty days next following the day on which such notification is published in the Mysore Gazette, the Board shall serve a notice on every person whose name appears in the assessment list of the Corporation or the Municipality or Local body concerned or in the Land Revenue register as being primarily liable to pay the property tax or Land Revenue assessment on any building or Land which it is proposed to acquire in executing the scheme, or in regard to which the Board proposes to recover a betterment fee, stating that the Board proposes to acquire such building or Land or to recover such betterment fee for the purpose of carrying out an improvement scheme and requiring an answer within thirty days from the date of service of the notice stating whether the person so served, dissents or not to such acquisition of the building or Land or to the recovery of such betterment fee, and if the person dissents, the reasons for such dissent."

The third sub-section describes the manner of service of notices. After complying with the provisions of section 16 with respect to publication and service of notices, section 17 requires the Board to consider any representations or answer received u/s 16 and make such modification in the scheme as the Board May think fit. Thereafter, the same section requires the Board to forward the modified scheme to the Government for sanction.

Sub-section 2 of section 17 sets out the details which the Board should furnish to the Government to enable it to accord sanction, the important among which are -

- (1) a statement specifying the Land proposed be acquired;
- (2) a schedule showing the retable value, as entered in the Municipal assessment-book, at the date of the publication of a notification relating to the Land u/s 16, or the Land assessment, of all Lands specified in the statement aforesaid.

Section 18 provides for publication of a notification on the strength of which the Board may proceed to execute the scheme. Sub-section (1) thereof reads as follows:

"(1) (a) On receipt of the sanction of the Government, the Chairman shall forward a declaration for notification under the signature of a secretary to the Government stating the fact of such sanction and that the Land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose.

(b) The declaration shall be published in the Mysore Gazette and shall State the limits within which the Land proposed to be acquired is situate, the purpose for which it is needed, its Approximate area, and the place where a plan of the Land may be inspected.

(c) The said declaration shall be conclusive evidence that the Land is needed for a public purpose, and the Board shall , upon the publication of the said declaration, proceed to execute the scheme.

Sub-section 2 of section 18 confers upon the Board the power to alter the scheme subject to the conditions mentioned therein, one which is ---

"If the scheme as altered involves the acquisition otherwise than by agreement of any Land other than that specified in the schedule accompanying the scheme u/s 17(2) (e), the provisions of sections 16 and 17 and of Sub-section (1) shall apply to the part of the scheme so altered, in the same manner as it such altered part were the scheme."

Sections 18-A to 18-L inserted by the Amending Act 111 of 1952 dealing with the subject of betterment fee are no relevant for our present purpose. Section 19 provides that if a scheme is not executed substantially within a period of seven years from the date of publication of the declaration, the scheme shall lapse and the provisions of section 27 shall become inoperative.

(26) It is not necessary at present to refer to any of the sections 20 to 25-B under the sub-heading "General".

(27) Two sections, viz., sections 26 and 27 under the sub-heading "acquisition of Land" are of considerable importance in deciding the controversy before us and should therefore be set out in full. They read as follows:

"26. Subject to the provision of this Act, it shall be lawful for the Board to agree with the owners of any Land or of any interest in Land whether situated within or without the City needed by the Board for the purpose of this Act, for the purchase of such Land or of any interest in such Land.

27. The acquisition otherwise than by agreement of Land within or without the City under this Act shall be regulated by the provisions so far as they are applicable, of the Mysore Land Acquisition Act, 1894, and by the following further provisions, namely:-

(1) Upon the passing of a resolution by the Board that an improvement scheme u/s 14 is necessary in respect of any locality, it shall be lawful for any person either generally or specially authorised by the Board in this behalf and for his servants and workmen, to do all such acts on or in respect of Land in that locality as it would be lawful for an officer duly authorised by the Government to act u/s 4(2) of the Mysore Land Acquisition Act, 1894, and for his servants and workmen to do thereunder; and the provision contained in section 5 of the said Act shall likewise be applicable in respect of damage caused by any of the acts first mentioned.

(2) The publication of a declaration u/s 18 shall be deemed to be the publication of a declaration u/s 6 of the Mysore Land Acquisition Act, 1894.

(3) For the purposes of section 50 (2) of the Mysore Land Acquisition Act, 1894, the Board shall be deemed to be the local authority concerned.

(4) After the Land vests in the Government u/s 16 of the Mysore Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the

acquisition, and upon the Board agreeing to pay any further costs which May incurred on account of the acquisition, transfer the Land to the Board, and the Land shall thereupon vest in the Board.

(28) Similarly, sections 28 and 29 occurring in Chapter IV under the sub-heading "Property and Finance", are also of importance. They read as follows:

"28. The Government may, from time to time, for the purposes of this Act and subject to such limitations and conditions as it may impose and to the provisions hereinafter contained, transfer to and vest in the Board, any Land belonging to Government or to the Corporation :

Provided that any such Land not already conveyed or agreed to be conveyed by the Board, which shall be required by the Government or the Corporation for a public purpose, may at any time be resumed by the Government, or by the Corporation with the previous sanction of the Government as the case may be, on such terms, if any, as the Government may determine.

29(1) The Board shall , for the purposes of this Act, have power to acquire and hold movable and immovable property, whether within or outside the City, and shall also subject to the restrictions contained in Sub-section (2), have power -

(a) to let on hire or lease any movable or immovable property which may have become vested in or acquired by them:

(b) to sell and otherwise convey, with or without any conditions, any movable or immovable property which may have become vested in or acquired by them; and

(c) to appropriate or apply the whole or any part of the Lands which may have become vested in or acquired by them, for the formation of open spaces, or for building purposes, or in any other manner for the purposes of any improvement scheme.

(2) No free grant of movable or immovable property shall be made without the previous sanction of Government being obtained in this behalf".

(29) Finally, there is the last section in the Act, viz., section 52 on which the petitioners place considerable reliance. That section reads as follows:

" If any provision of law contained in any other enactment in force in Mysore is repugnant to any provision contained in this Act, the latter provision shall prevail and the corner provision shall , to the extent of the repugnancy, be void."

(30) We have thought fit to make a fairly detailed reference to these statutory provisions with a view to emphasise what appears to us to be the cardinal idea underlying the Statute. Realising that improvement and development of the City is a matter which calls for detailed attention, the Legislature has made necessary provision in the Statute to ensure due attention being paid to all the smaller details which ultimately contribute to the proper effectuation of the purposes of the Statute.

In the first place, it has indicated that the basis of all actions under the Statute shall be detailed schemes and executing them to a statutory body with special powers to carry out its purposes. Consistently with the accepted necessity of attention being paid to all details, the Statute has made elaborate provisions regarding the details and particulars to which the Board shall have regard while drawing up schemes. In addition, it has provided for the application of two serious correctives to the Board's opinion regarding the details of an improvement scheme, viz., the obligation of considering the representations, if any, made by persons affected or likely to be affected by the proposed scheme, and the necessity of obtaining the sanction of the State Government.

It will be observed that these correctives subserve what may be described as a fundamental idea of harmonising the rights of the individual and the interest of the general public. The scheme, it may be pointed out, affects the rights of individuals to a considerable extent in the matter of enjoyment of property and may even amount to total deprivation of property. As the Board is the body entrusted with the duty of achieving the purposes of the Statute, the Statute has armed it with the necessary powers and also made available to it matters, particularly in the matter of acquiring the property necessary for executing a scheme.

(31) It is clear that schemes of the type contemplated by the Statute require dealing with immovable property and the doing of several acts in respect of it, some of the details whereof are indicated in section 16 of the Act. For the purpose of doing all those acts effectively, there can be hardly any doubt that the Board should have the possession and complete control over such property. That is obviously the reason why section 29 of the Act confers upon the Board the power to acquire, hold and deal with or dispose of immovable property for the purposes of the Act. u/s 28, the Government may for the purposes of the Act transfer to or vest in, the Board any Land belonging to the Government or to the Corporation of the City of Bangalore. u/s 26, it is lawful for the Board to agree with private parties for the purchase of Land or any interest in Land. When the property affected by or proposed to be dealt with under the scheme of improvement is not one already belonging to the Government or the Corporation or one which could be acquired by agreement, its compulsory acquisition is provided for u/s 27 of the Act. That section provides that any such compulsory acquisition has to be regulated by the provisions of the Acquisition Act so far as they are applicable and by further provisions made in that section itself. Those provisions equate a resolution by the Board that an improvement scheme is necessary in respect of any locality with a notification u/s 4(1) of the Acquisition Act, and equate the publication of a declaration u/s 18 of the Improvement Act with the publication of a declaration u/s 6 of the Acquisition Act.

The powers and functions exercisable by an authorised officer u/s 4(2) and section 5 of the Acquisition Act are conferred upon a person generally or specially authorised by the Board in that behalf. The esquires u/s 5-A and section 6(1) of

the Acquisition Act are substituted by the esquires provided under sections 16 and 17 of the Improvement Act and with publication of declaration u/s 18 a stage is reached which is the same as the stage reached by the publication of a declaration u/s 6 of the Acquisition Act in the case of acquisitions ordinarily made under the latter Act.

(32) The clear effect of the provisions considered in the last preceding paragraph is that in the matter of compulsory acquisitions of Lands for the purposes of the Improvement Act, the purposes of the Acquisition Act are to apply only as modified by the aforesaid provisions of the Improvement Act. That the necessity for and the importance of those modifications flow directly from the very purposes of the Improvement Act, is clear from what we have already discussed above. If acquisitions are to be made purely under the provisions of the Acquisition Act without regard to the special provisions of the Improvement Act, it is obvious that the very purpose of the Improvement Act will be defeated for two reasons; there will be a total omission to examine and consider the several minor details of a scheme of improvement which , as already stated, is the basic idea of the Improvement Act. Secondly, the consultation with owners of property affected by the improvement scheme and the right given to them to dissent from acquisition and substantiate such dissent by good and sufficient reasons which the Improvement Act considers essential in the light of what we have described as the fundamental idea of harmonising the rights of individuals with the interest of the public, cannot be fully given effect to by the type of enquiry u/s 5-A of the Acquisition Act.

Apart from the fact that these conclusions of ours flow inevitably from a consideration of the general provisions of the Improvement Act, that Act itself in its 52nd section States in clear and unmistakable terms that in the event of repugnancy between the provisions of that Act and the provisions of any other Act in force in Mysore, the latter shall be void to the extent of the repugnancy. That there is repugnancy between the provisions of sections 4 to 6 of the Acquisition Act and the provisions of sections 14 to 18 and 27 of the Improvement Act, is not even open to argument, because it is perfectly obvious that the two sets of provisions cannot stand together, and an obedience of only sections 4 to 6 of the Acquisition Act necessarily involves a disobedience of the provisions of sections 14 to 18 and 27 of the Improvement Act. The claim, therefore, made in the counter- affidavit on behalf of the respondents that the procedure prescribed in sections 14 to 18 of the Improvement Act is only directory and not mandatory and that non-compliance with the said procedure will not invalidate the acquisition proceedings, cannot be accepted.

(32a) Our finding, therefore, upon the first point is that under the City of Bangalore Improvement Act of 1945 as it stood before the amendment of 1960, a scheme for the improvement or development of the City of Bangalore as well as acquisition of any Land for that purpose could only have been made in compliance with the provisions of that Act.

(33) The contentions on behalf of the petitioners that the acquisition impugned in these cases had not been made in compliance with the provisions of the Improvement Act are not even sought to be denied. On the contrary, the principal defence to the petitions is the one based upon the amendment and validation sought to be effected by the Ordinance and the Amending Act of 1960. We shall therefore proceed to examine the questions relating to the effect and validity of the same which are the questions involved in points Nos. 2,3, and 4 formulated by us.

(33a) It is not necessary to set out the Ordinance because it has since been replaced by Mysore Act XIII of 1950, sections 2 and 3 of which are a copy of sections 2 and 3 of the Ordinance. The Act which by its fourth section repeals the Ordinance, provides in its second section that the Amending Act shall be deemed to have come into force on the 9th of June 1960, which is the date on which the Ordinance was promulgated. Sections 2 and 3 of the Act read as follows:-

"2. Insertion of section 27-A in Mysore Act V of 1945 -- After section 27 of the City of Bangalore Improvement Act, 1945, the following section shall be inserted, and shall be deemed always to have been inserted, namely:-

27-A. Acquisition of Land during the first fifteen years -- Notwithstanding anything contained in this Act -

(1) during a period of fifteen years from the date of commencement of this Act, the Government may acquire Land under the Mysore Land Acquisition Act, 1894, for the purpose of improvement, expansion or development of the City of Bangalore or any area to which this Act extends, and any Land so acquired shall , after it has vested in the Government, stand transferred to the Board and such Land may be dealt with under the provisions of sections 28 and 29 or in such manner as the Government may direct;

(2) any acquisition proceeding commenced under the Mysore Land Acquisition Act, 1894, before the expiry of the aforesaid period of fifteen years may be continued under the said Act, and the Land acquired in such proceeding shall also after it has vested in the Government stand transferred to the Board and may be dealt with in the manner specified in clause (1).

3. Validation -- Anything done, any action or proceeding taken or any order passed before the commencement of this Act, in respect of any Land acquired for the purpose of Government, expansion or development of the City of Bangalore or any area to which the City of Bangalore Improvement Act, 1945, (Mysore Act V of 1945) extends shall be deemed to have been done, taken or passed at the relevant time in accordance with the provisions of section 27-A of the said Act and no such thing, action, proceeding or order shall be called in question on the ground that it was not done taken or passed in compliance with any of the provisions of sections 14, 15, 16, 17, or 18 or clauses (1) and (2) of section 27 of the said Act."

(34) Before proceeding to examine the arguments relating to the validity of this Act, it may be convenient to examine first the argument on behalf of the petitioners that the insertion of section 27-A into the Improvement Act has not really achieved the object with which it was so inserted. The object of the Amending Act as set out in the statement of Objects and Reasons attached to the Bill which subsequently became an Act, is this:

"Lands in and around Bangalore were being acquired by the City Improvement Trust Board. Bangalore (for the formation of layouts of sites) under the provisions of the Mysore Land Acquisition Act, 1894, without having recourse to the provisions of the City of Bangalore Improvement Act, 1945. The validity of this action taken by the City Improvement Trust Board, Bangalore, was questioned and it was found necessary to amend the City of Bangalore Improvement Act, 1945. As the matter was very urgent and as both the Houses of Legislature were not in session and Ordinance called the City of Bangalore Improvement (Amendment) Ordinance, 1960, was promulgated. This bill is intended to replace the said Ordinance."

This statement proceeds upon the basis that invalidity of the previous action arose by reason of such action having been taken without having recourse to the provisions of the Improvement Act and that in order to validate the same, it was necessary to bring those actions within the purview of the Improvement Act. Hence, a new section 27-A is introduced with retrospective effect from the date of commencement of the Improvement Act itself, and action taken during the period of fifteen years from the said date of commencement is declared to have been taken under the said section 27-A and the effect of non-compliance with other provisions of the Improvement Act is sought to be wiped out by using the expression "notwithstanding anything contained in this Act" at the commencement of the said section 27-A.

(35) The argument of behalf of the petitioners that the insertion of section 27-A is by itself insufficient to achieve the aforesaid object, suggests or implies that section has made no difference to the operation of the rest of the Statute and that there is nothing in the section to excuse or condone the non-compliance with other provisions of the Statute. The correctness or otherwise of this argument depends upon the meaning to be assigned to the expression "notwithstanding anything contained in this Act" occurring at the commencement of section 27-A.

(36) Now section 27-A contains three ideas (1) that the Government is empowered to make acquisitions under the Acquisition Act for purposes which are not different from, but are identical with, the purposes of the Improvement Act, (2) that when any Land so acquired vests in the Government, it is to stand transferred to the Board and (3) that when the Land so stands transferred to the Board, such Land is to be dealt with under sections 28 and 29 or in such manner as the Government may direct. All anything contained in the Improvement Act, i.e., every one of these things can be done in spite of whatever else may be

contained in the rest of the Act. To say that the provisions of section 27-A should be given effect to in spite of other provisions of the Act, does not mean that such of other provisions in the Act as are in consonance with the object of section 27-A itself should be ignored or become inoperative.

(37) Regarding the first idea, the learned counsel for the petitioners argue that even under the unamended Act, any compulsory acquisition for the purpose of an improvement scheme had to be made by the Government themselves and had to be regulated necessity the provisions of the Acquisition Act, itself. They State that although the purpose of the Improvement Act might be the execution of an improvement scheme, the power of acquisition was no other than the power under the Acquisition Act. Hence, according to them, there is nothing in the rest of the Statute which is in conflict with this idea contained in section 27-A.

But, as we have already pointed out, although the power to acquire Land compulsorily may be the power under the Acquisition Act, when such acquisition is sought to be made for the purposes of the Improvement Act, the provisions of the Acquisition Act are to apply subject to modifications contained in the Improvement Act. When, therefore, section 27-A states that acquisitions for those purposes are to be made under the Acquisition Act notwithstanding anything contained in the Improvement Act, the clear effect, in our opinion, is that provisions of the Acquisition Act are to apply in spite of whatever may be contained in the Improvement Act. In other words, if section 27-A is to be given effect to, the Government are enabled to make acquisition even for the purposes of the Improvement Act under the Acquisition Act itself ignoring the modifications thereof contained in the Improvement Act.

(38) The second idea of a statutory transfer of property to the Board from the Government the moment it vests in the Government by virtue of the provisions of the Acquisition Act, will also in our opinion over ride the provisions of Sub-section 4 of section 27 of the Improvement Act, according to which after a Land vests in the Government u/s 16 of the Acquisition Act, the Deputy Commissioner is required to transfer the same to the Board on the Board making the payments set out in that Sub-section.

(39) Under the third idea of section 27-A Land is to be dealt with under sections 28 and 29 of the Improvement Act. Reference to section 28 to the extent it empowers the Government to transfer to the Board the Land already belonging to the Government appears to be purposeless, because by force of section 27-A, the Land is to stand transferred the moment it vests in the Government and no separate transfer by the Government is required; apparently reference is limited to the power of the Government to impose limitations and conditions while making the transfer.

Under section 29, all dealings by the Board with property including acquisition, holding and disposal must be for the purposes of the Improvement Act and for no other purpose. In this view, any conditions or limitations which the

Government may impose u/s 28 or any directions u/s 27-A itself as to the manner in which the property is to be dealt with, could only be such Association are intended to sub-serve the purposes of the Improvement Act itself. As the purpose mentioned in section 27-A for acquisitions to be made by the Government is also the purpose of the Improvement Act, the directions which the Government may give will be not different from the directions which it is already empowered to give under Sub-section (2) of section 14 of the Improvement Act, i.e., to require the Board to take up any improvement scheme or work and execute it. Any scheme prepared by the Board in obedience to such directions or requisition will be improvement scheme u/s 14. If so, by the very opening words of section 15, every improvement scheme u/s 14 must contain the particulars set out in section 15; the subsequent sections 16, 17, and 18 are clearly linked up with each other and with section 15 itself.

When section 29 requires the Board to hold and deal with property for the purposes of the Act and the basic section 3 entrusting the duty of carrying out the provisions of the acquisition to the Board provides that the Board shall do so subject to conditions and limitations contained in the subsequent provisions of the Act, the result is, the Board upon taking the property acquired by the Government in the light of section 27-A is required to deal with it in the manner provided in sections 14 to 18. In either view of the matter, section 27-A, far from absolving the Board from obeying any of the provisions of the Improvement Act, actually requires it to obey those provisions. It should therefore prepare a scheme containing all the particulars set out in section 15, publish a notification of the type described in section 15, obtain sanction of the Government u/s 17 and also get a declaration published u/s 18. Prima facie, compliance with sections 16 and 18 may appear to be unnecessary, because Land has already been acquired by the Government and no person may be entitled to dissent from acquisition. But, that is not the only purpose of the publications under sections 16 and 18.

There may be persons whose Land might not have been acquired but may nevertheless be liable to pay betterment fee and those persons are entitled to express their opinion regarding the proposal, if any, to impose a betterment fee. The Corporation of Bangalore is also entitled to have a copy of the notification and to make any representations which it may think fit to make with regard to a scheme. Sanction u/s 17 is also compulsory and does not appear to have been done away with by section 27-A. The publication of a declaration u/s 18 has a two-fold purpose or effect : the declaration is conclusive evidence that the Land in question is needed for a public purpose and it is only upon its publication that the Board becomes empowered to proceed to execute the scheme.

(40) Hence, it cannot be said that section 27-A if valid, is totally ineffective, in the sense that it adds nothing to or takes away nothing from the Improvement Act as it stood before its insertion. At the same time, it does not have, in our opinion, the effect of totally abrogating sections 14 to 18 or totally absolving the

Board from obeying such of the provisions thereof as are not in conflict with section 27-A. Such total abrogation of sections 14 to 18 and clauses 1 and 2 of section 27 of the Improvement Act is effected not by the new section 27-A, but by section 3 of the Amending Act XIII of 1960.

(41) The real effect, therefore, is that section 27-A, if valid, suspends for a space of fifteen years from the date of commencement of the Improvement Act, the operation of the provisions of that Act, to the extent to which those provisions modify the provisions of the Acquisition Act in its application for the purpose of the Improvement Act.

(42) If such is the effect of section 27-A, then, for a period of fifteen years mentioned therein, there will be no operative provision of the Improvement Act to which any of the provisions of the Acquisition Act is repugnant so as to attract the provisions of section 52 of the Improvement Act.

(43) The validity of the Ordinance, Amending Act and the amendment they seek to make is assailed on two grounds: Firstly, it is said that the Ordinance has been promulgated without the instructions of the president as required by the proviso to Article 213(1) and the Act has not received the assent of the President under clause 2 of Article 254 of the Constitution. Secondly, it is said that the amendment, if given effect to, would amount to prescribing two materially different procedures for cases falling within the same class or category which contravenes Article 14 of the Constitution.

(44) The material portion of Article 213 which empowers the Governor to promulgate Ordinances in certain circumstances, provides that the Governor shall not without instructions from the President promulgate any Ordinance if an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

One of the provisions of the Constitution which requires for the validity of a law made by a State Legislature that it should be reserved for the consideration of the President and receive his assent, is contained in Article 254 which reads as follows:

"(1) If any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to

the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall , if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

(45) Other provisions of the Constitution which have a bearing on the argument are the Entries relating to the subject of acquisition of property in Legislature List of the seventh Schedule to the Constitution. Prior to the seventh amendment, the subject was divided under three Entries, one in each of the Legislature Lists of the Seventh schedule. Under entry 33 of the first list, the Parliament had the power to make a law with respect to acquisition or requisitioning of property for the purposes of the Union; under Entry 36 of List 11 the State Legislature had the power to make law with respect to acquisition or requisitioning of property except for the purposes of the Union subject to the provisions of Entry 42 of list 111 and the said Entry 42 read as follows:

"Principles on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and manner in which such compensation is to be given."

Under the Constitution seventh amendment the above Entries occurring in the first and second Lists were totally omitted and the 42nd Entry in the Concurrent List was re-written as follows: "Acquisition and requisitioning of property". As a result of this seventh amendment, the subject of acquisition is now purely one falling within the Concurrent Legislative List of the seventh Schedule.

(46) Now, the argument of the learned counsel for the petitioners, shortly stated, is that both the Ordinance and the Amending Act of 1960 are pieces of Legislation with respect to acquisition of Land, one of the matters enumerated in the Concurrent List, that the provisions of both the Ordinance and the Amending Act are repugnant to the provisions with respect to the same matter contained in the City of Bangalore Improvement Act which is an existing law as defined in clause 10 of Article 366 of the Constitution, and that no instructions of the President under the proviso to Article 213 having been received in respect of the Ordinance and the Amending Act not having been reserved for the consideration of the President and received his assent both the Ordinance and the Amending Act are void.

The learned Advocate-General appearing on behalf of the contesting respondents, however, contends that the Ordinance and the Amending Act purport to amend, not any law with respect to the subject of acquisition of property, but only the City of Bangalore Improvement Act which , in its pith and substance, is a law with respect improvement trusts, one of the subjects enumerated in Entry 5 of the State Legislative List 11 and that, therefore, the Governor and the State Legislature were fully competent to promulgate and

enact the Ordinance and the Amending Act respectively without the need for obtaining the instructions or the assent of the President.

In reply to the argument on behalf of the petitioners that the Improvement Act whose principal purpose may be improvement and expansion, also deals with the subject of acquisition of Land, the learned Advocate-General States that the subject of acquisition of Land is merely ancillary to the main purpose of the Act and that therefore the mere fact that the Act also incidentally deals with the subject of acquisition of Land is not sufficient to remove it from the category of a law falling exclusively within the competence of the State Legislature. According to the learned counsel for the petitioners, the principle or doctrine of pith and substance is relevant only when the question is whether a State Legislature while purporting to legislate on a subject exclusively within its competence has trespassed upon the field within the exclusive competence of the Parliament or vice versa but that when a topic of Legislation is one within the Concurrent List, the question is not one of competence or incompetence but of repugnancy.

(47) There is no doubt or obscurity about the principles of Constitutional law bearing upon this controversy. The only question for investigation is what is the source of the Legislative power to which the impugned law can be traced? It is true, as the learned counsel for the petitioners contends, that in regard to a law falling within the Concurrent List there is no question about the competence of the State Legislature to make that law. The question posed by him is not one of competence of a Legislature but one of repugnancy between two pieces of Legislation falling within the Concurrent List. But, before the question of repugnancy can at all arise, it must first be determined that the two competing laws fall within the Concurrent List. For such determination it is undoubtedly necessary to have recourse to the doctrine of pith and substance. It is all the more necessary to do so when the contention on behalf of the respondents is that the Improvement Act falls exclusively within Entry 5 of the State List and that to the extent to which it may be said to deal with the topic of acquisition of Land falling within the Concurrent List it so deals with it as a topic ancillary to the main topic of improvement trusts.

The same or similar was the position in the case of *A.S. Krishna Vs. State of Madras*, . The question in that case was whether sections 4(2) and 28 to 32 of the Madras Prohibition Act were void u/s 107 of the Government of India Act of 1935 because they were repugnant to the provisions of existing Indian Laws with respect to same matter viz., the Indian Evidence Act and the Criminal Procedure Code -- a question very similar to the one now before us. The main topic of Legislation fell within Entry 31 of the State List of the Government of India Act dealing, among others, with intoxicating liquors, and the topics of criminal procedure and evidence fell within Entries 2 and 5 respectively of the Concurrent List of the same Act.

Their Lordships of the Supreme Court applied the doctrine of pith and substance and stated that in examining the vires of a Legislation one must have regard to

the enactment as a whole to its objects and to the scope and effect of its provisions and further that it would be quite an erroneous approach to the question to view a Statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of Legislation those parts would severally fall and by that process determine what portions thereof are ultra virus and what are not.

With reference to the Act there under consideration, their Lordships stated:

"Now, the Madras Prohibition Act is, as already stated, both in form and in substance, a law relating to intoxicating liquors. The presumptions in section 4(2) are not presumptions which are to be raised only in the trial of offences u/s (4) (1) of the Act. They are therefore purely ancillary to the exercise of the Legislative power in respect of Entry 31 in List 11. So also, the provisions relating to search, seizure and arrest in sections 28 to 32 are only with reference to offences committed or suspected to have been committed under the acquisition. They have no operation generally or to offences which fall outside the Act. Neither the presumptions in section 4(2) nor the provisions contained in sections 28 to 32 have any operation apart from offences created by the Act, and must, in our opinion, be held to be wholly ancillary to the Legislation under Entry 31 in List 11. The Madras Prohibition acquisition is thus in its entirety a law within the exclusive competence of the Provincial Legislature, and the question of repugnancy u/s 107(1) does not arise."

(48) The learned Advocate-General places great reliance on the principles stated by their Lordships of the Supreme Court in the passage cited above. The question is how far those principles are available in support of the contention of the learned Advocate-General.

(49) That section 2 of the Amending Act and new section 27-A introduced into the Improvement Act, deal exclusively with the topic of acquisition of Land, admits of no doubt. Nor does the learned Advocate-General dispute the proposition that the Improvement Act itself deals with the topic in certain respects for the purposes of the Improvement Act. His only contention is that analysing the Improvement Act in the way their Lordships of the Supreme Court indicate it should be the topic of acquisition must be taken to have been dealt with only as ancillary or incidental to the main topic of improvement. He contends that just as the impugned sections of the Madras Prohibition Act considered by the Supreme Court had reference only to the offences created by that Act, such of the provisions of the Improvement Act as deal with the topic of acquisition of Land do so only for the purposes of the Improvement Act and are not of any general application.

(50) This test, however, in our opinion, cannot be availed of by the Advocate-General in these cases. The ancillary nature or character of the impugned provisions of the Madras Prohibition acquisition depended upon the fact that the State List appended to the Government of India Act, 1935, contains an Entry,

viz., No. 37 relating to offences against law with respect to any of the matters in the said List. As in the case of Government of India Act, 1935, so in the case of the Constitution now in force every one of the Legislative Lists contains entries relating to offences, jurisdiction and powers of Courts, and fees in respect of any of the matters enumerated in that List. Matters or details falling under any one of these three headings are undoubtedly and demonstrably matters ancillary to other matters enumerated in the Lists. Even otherwise, the very Entries confer upon the respective Legislatures the competence to legislate on the said three matters.

(51) The above considerations are not available to support the contention that the subject of acquisition of Land should be considered to be ancillary to the topic of improvement dealt with in the Improvement Act. It is true, as we have already pointed out, that because schemes of improvement under the Improvement Act are executed in respect of immovable able property and call upon the Board to do several acts and works in respect of immovable able property, it is absolutely necessary for the Board to have possession and complete control over such property. But the fact that a certain activity is necessary to achieve a certain purpose does not lead to the inevitable conclusion that Legislation in respect of that activity must necessarily be considered ancillary to the Legislation to achieve the said purpose.

Both the terms "ancillary" and "incidental" refer primarily to subservient, subordinate or accessory matters or events and cannot be construed so as to comprise independent matters or events by reason only of the fact that one is necessary for the other. It may be necessary, for example, for gaining the object or achieving the purpose of a trading Corporation set up under an Act to buy and sell immovable able property, purchase and set up or factories, buy and sell goods, enter into contracts, engage labour, import and export raw material or manufactured goods, deal in foreign exchange, deal with banks, lend or borrow money, etc. But, for these reasons, it cannot be said that the Legislative competence in respect of the Act setting up the Corporation will comprise the competence to legislate upon every one of the other matters mentioned above or that Entries in the Legislative Lists to which the several activities of the trading Corporation mentioned above can be related, should necessarily be considered as ancillary to the Legislative Entry under which the Act setting up the Corporation may in its pith and substance be related.

(52) Analysing the provisions of Chapter 111 of the Improvement Act, we have already indicated that their clear effect is that in the matter of compulsory acquisition of Land for the purposes of the Improvement Act, the provisions of the Acquisition Act are to apply only as modified by the relevant provisions of the Improvement Act. The matter can be viewed from two points of view.

It may be said either that the entire Acquisition Act itself is imported into the Improvement Act with the modifications contained in the latter or that the provisions of the Improvement Act pertaining to the topic of acquisition of Land

amount to an amendment of the Acquisition Act in its application for the purposes of the Improvement Act. In either view of the matter, the topic of acquisition is dealt with as an independent subject, and the provisions of the Acquisition Act are so modified as to subserve the purposes of the Improvement Act.

It will be noticed that the objects of the Act as set out in its preamble are two-fold, viz., the improvement and expansion of the City and the setting up of a machinery therefore, viz., the appointment of a Board of trustees with special powers to carry out the said purposes. The special powers conferred upon the Board of Trustees set up under the Act, do not include the power of making compulsory acquisition. That power is only given to the Government under the Acquisition Act. What the Improvement Act does is to enable the Board, subject to certain conditions and limitations, to avail itself of the power of the Government under the Acquisition Act to acquire property necessary for executing the schemes of improvement.

The clear position, therefore, is that while denying to the Board set up under the Act the power of making compulsory acquisition, the Statute takes advantage of the power of compulsory acquisition already belonging to the Government under another Act, viz., the Acquisition Act, and by substituting a special procedure elaborated in sections 13 to 18 in the place of preliminary procedure prescribed in sections 4 to 6 of the Acquisition Act, the Statute has taken care so to modify the provisions of the Acquisition Act as to subserve its own purposes.

(53) The provisions, therefore, of the City of Bangalore Improvement Act modifying the provisions of the Acquisition Act are clearly provisions of an existing law with respect to one of the matters enumerated in the Concurrent List. The provisions of section 2 of the Ordinance and the Amending Act and of section 27-A which they purport to introduce into the Improvement Act, are also with respect to same matter.

(54) The next question is whether there is repugnancy between these two provisions. This question, we have already answered in the affirmative. The two cannot stand together, and the obedience to sections 4 to 6 of the Acquisition Act alone necessarily involves the disobedience to the provisions of sections 13 to 18 and section 27 of the Improvement Act, in so far as they relate to acquisition.

(55) We hold, therefore, that Mysore Ordinance 1 of 1960 is incompetent because it has been made without receiving the instructions of the President as required by the proviso to Article 213. We also hold that the Mysore Act XIII of 1960 is void because it has not been reserved for the consideration of the President and has not received his assent.

(56) The remaining Constitutional objection raised by the petitioners is that if the new section 27-A is to be considered as part of the Statute and if the validating decision 3 of the Ordinance and the Amending Act is to be given effect to, there will be a contravention of the provisions of Article 14 of the Constitution.

(57) In the absence of the purported amendment, the provisions of sections 13 to 18 and 27 of the Improvement Act operated to substitute a detailed procedure in the place of the procedure prescribed by sections 4 to 6 of the Acquisition Act. We have already pointed out that this substitution had a definite purpose, viz., that of effectuating the main purpose of the Improvement Act by ensuring that attention is paid to every detail of the improvement scheme and by providing for consultations with interested or affected persons with a view to harmonise the rights of the individuals with the interest of the public.

If the new section 27-A and the provisions of section 3 of the Amending Act are given effect to, they amount to a complete abrogation at the discretion of the Government for a space of fifteen years from the commencement of the Act of the special procedure prescribed by the Improvement Act and would even amount to defeating the purposes of that Act to a considerable extent. The two procedures are different in material particulars and in a certain sense, may well be described as mutually destructive.

It is not denied, -- but actually admitted that acquisitions made during the first fifteen years whose validity is sought to be supported by relying upon the Amending Act, were all acquisitions for the purposes of improvement and expansion or development of the City of Bangalore, and the acquisitions that have been or will be made after the expiry of the said fifteen years, in the absence of section 27-A but by having recourse to the remaining provisions of the Improvement Act, are or will be also for the purposes of improvement and expansion or development of the City of Bangalore. Prima facie, therefore, all the acquisitions whether made during the first fifteen years from the commencement of the Act or thereafter, have the same or similar purpose and must therefore fall into the same category. No distinction nor any indicating for differentiation between the cases governed by section 27-A and cases not governed by that section has or have been specified anywhere on the face of the impugned Legislation. Even the statement of objects and reasons for the amendment merely States that Lands in and around Bangalore were being acquired by the Board for formulation of layouts of sites under the provisions of Land Acquisition Act without having recourse to the provisions of the Improvement Act, that the validity of such action taken by the Board was questioned and that therefore it was found necessary to make the amendment. It will be remembered that if the amendment is given effect to section 27-A must be deemed to have been in the Statute from its commencement. In other words, from its commencement up to the expiry of fifteen years therefrom, the Statute must be taken to have provided for two sets of procedures without indicating the respective classes of cases to which the one or the other is to apply.

In fact, from the statement of objects and reasons, it is perfectly obvious that there never has been any attempt at classification. All that has happened is that the Board and the Government have taken upon themselves the responsibility of totally ignoring the basic provisions of the Improvement Act, and the only

occasion for introducing the amendment was that the validity of the action taken by the Board and the Government was being questioned.

(58) The learned Advocate-General has sought to meet these objections in three ways. Firstly, he States that in the matter of compulsory acquisition of Land, the only Constitutional guarantees are in respect of an existence of a public purpose and payment of compensation, but that there is no such guarantee in respect of procedure.

Secondly, he contends that a differentiation in the matter of certain details of procedure, without affecting the substantial purpose served by that procedure does not amount to a contravention of Article 14.

Thirdly, he relies upon the principle that a discretionary power is not necessarily a discriminatory power, especially when such discretion is vested in so high an authority as the State Government itself and that, therefore, the Statute itself on the face of it, cannot be said to involve unconstitutional discrimination contravening Article 14 but that any complaint of such discrimination must be made out in the actual executive action taken pursuant to the Statute.

(59) None of these arguments can be accepted in the circumstances of these cases.

(60) Although a law dealing with compulsory acquisition of Land must necessarily conform to the requirements of Article 31, that law as a law is not placed outside the purview of Article 14.

(61) Deviations from minor details of a procedure may not in themselves constitute unconstitutional discrimination but such a conclusion is possible if it is also established that such deviations do not affect the substantial purpose of the procedure. We have already pointed out, and need not repeat, that the details of procedure prescribed by the Improvement Act are essential for due and proper effectuation of the purposes of that Act. It is, in our opinion, impossible to suggest that a total abrogation of that procedure virtually amounting to defeat the purpose of the Statute can in any sense be described as a minor deviation not affecting the substance of the matter.

(62) The proposition that every discretionary power need not necessarily be discriminatory, is undoubtedly a sound one and is not sought to be controverted. Nevertheless, it is not a full statement of the law. Before one could say that a discretionary power vested in an authority by the Statute cannot on the face of it be taken as discriminatory or arbitrary, it must be possible for the Court to State on an examination of that Statute as a whole, that it contains within itself including its preamble a sufficiently clear indication of its objects and policies to serve as a guide to the particular authority in the exercise of the discretionary power vested in that authority.

It is also correct to say that where such discretionary power is vested in a high authority, that authority by the very position it occupies may be expected to

inform itself about the objects and policies of the Statute and to exercise the discretion in consonance with those objects and policies. But that does not preclude a party from alleging and establishing that in a given case the discretion has been exercised, not as intended by the Statute, but arbitrarily and in contravention of the Statute and the Constitution.

In the present cases, there are two substantial reasons why the contesting respondents cannot take shelter under the principle stated by the learned Advocate-General on their behalf. Neither the impugned Statute nor the Amending Act contains any indication whatever of circumstances in which , or the considerations or principles on which , the discretion vested in the Government u/s 27-A is to be exercised.

Secondly, upon admitted facts, and on the language employed in the Statement of objects and reasons for the amendment it is abundantly clear that the Government acted in the manner it has admittedly done, not in the exercise of any sound discretion after an examination of circumstances of each individual case, but by an admitted failure or omission on its part to obey the Statute, for which failure or omission no reason whatever is stated.

They may, no doubt, be cases where complete obedience to all the provisions of a Statute or law may become impossible or actual deliberate disobedience of any of the provisions may become necessary in public interest, as for example, in the case of war, civil commotion, epidemics, strong public agitation, alarming increase in crime or particular offences in a specified area or the like, justifying or actually necessitating the Government taking particular action to meet the situation by suspending the operation of certain laws or provisions of existing laws, setting up special Courts or employing special measures, etc. In such cases, the existence of those special circumstances may themselves furnish intelligible differential for classification having a distinct and reasonable relationship with the object of amending and validating Legislation undertaken by the Government. No such special circumstances have been either alleged to exist or established as having existed justifying the Government omitting to obey the basic principle of an existing law.

There is no alternative, therefore, but to hold that the amendment and validation have been undertaken for no other reason than that both the executive Government as well as the Board, which is a creature of the Statute, have for no specified reason much less with any Justification, for fifteen years after the passing of the City of Bangalore Improvement Act, acted in complete disregard of the provisions of that Act.

(63) We therefore hold that Mysore Ordinance 1 of 1960, the Mysore Act XIII of 1960 and the amendment sought to be made by them by inserting section 27-A into the City of Bangalore Improvement Act, are all unconstitutional as contravening the provisions of Article 14.

(64) In view of the finding already recorded by us on the first four points

formulated for consideration, the answer to the fifth point must also be in favour of the petitioners and against the contesting respondents. The impugned acquisitions cannot therefore be supported under the Mysore Land Acquisition Act itself without relying upon any of the provisions of the City of Bangalore Improvement Act.

(65) As those findings are sufficient to dispose of the Writ Petition in favour of the petitioners, it is unnecessary to examine the particular contention in Writ Petition No. 1076 of 1959 regarding the application of the principles of equitable estoppel.

(66) All these Writ Petitions, therefore, succeed. We make an order quashing the notifications of the State Government bearing No. LLH 281 IAQ 58 dated the 31st of March 1959, published in the Mysore Gazette dated the 7th of May, 1959, and No. RDH 4 LTB 59 dated the 14th of October, 1959, published in the Mysore Gazette dated the 15th of October, 1959, and all action or proceedings pursuant thereto, so far taken in respect of the Lands of any of the petitioners and of the third respondent in Writ Petition No. 1076 of 1959, and direct the issue of a Writ of Mandamus directing the State Government, the Board of Trustees for the improvement of the City of Bangalore and the Special Land Acquisition Officer of the said Board to forbear from taking any further action on the strength of, and pursuant to, the said notifications and proceeding with the acquisition of the said Lands. In each of these Writ Petitions, the contesting respondents will pay the costs of the petitioner or petitioners, the Advocates' fee being Rs. 100/- in each petition.

(67) Petitions allowed.