

(2019) 03 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 51417 Of 2016

Poornaprajana House Building

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 19(1), 27, 36
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Transfer Of Property Act, 1882 — Section 43, 54
Land Acquisition Act, 1894 — Section 16(2)

Citation : (2019) 03 KAR CK 0002

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : G Krishnamurthy, K N Mohan, B J Eswarappa, K Krishna, S M Chandrashekar, Lokesh K M

Judgement

1. The 1st petitioner-House Building Cooperative Society and rest of the petitioners being its members are knocking at the doors of this Court invoking writ jurisdiction, in essence, for reviewing the judgment and order dated 15.07.2016 (hereafter "subject judgment") entered by a Co-ordinate Bench of this Court in 4th respondent's W.P.No.35912/2016 (LA-BDA) c/w his another W.P.No.35913/2016 whereby, the acquisition in question has been declared to have lapsed under section 27 of the Bangalore Development Authority Act, 1976 (hereafter "BDA Act") and section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter "2013 Act").

2. R.P.Nos.512/2016 & 513/2016 are filed by the BDA and its Land Acquisition Officer seeking review of the subject judgment and order inter alia on the ground that the said respondent Sri.M. Sreenivas being the petitioner in W.P.Nos.35912 & 35913/2016 has procured the same by suppressing the material facts from the Court and that he having sold the subject lands, did not have locus standi, in the

absence of litigable interest.

3. In W.P.Nos.51417-51433/2016 and in Review Petitions, after service of notice, the 1st respondent-State has entered appearance through the learned Addl. Govt. Advocate Sri.B.J. Eswarappa; the 2nd respondent-BDA and the 3rd respondent-LAO of the BDA have entered appearance through their senior Panel Counsel Sri.K. Krishna; the 4th respondent Mr.M. Sreenivas has entered appearance through his Advocate Sri.Lokesh K.M. The respondent-BDA has filed Statement of Objections in the Writ Petitions virtually supporting the case of the petitioners. The 4th respondent has filed his Statement of Objections resisting the Writ Petitions.

4. Brief facts of the case as urged by the petitioners are:

(a) Two lands which are the subject matter of the acquisition in question are: (i) the land admeasuring 0A-37G in Sy.No.44/2 exclusively belonging to respondent-Sreenivas and (ii) the land admeasuring 4A-09G in Sy.No.97/1A, jointly belonging to the said Sreenivas and his brother Krishnappa M K; both the lands are situate at Uttarahalli hobli and village, Bangalore South Taluk.

(b) During the period between 1983 and 1999, the Petitioner-Society had entered into Agreements to Sell for buying these lands by paying a huge sum of Rs.14,57,000.00, in all, to the land owners by State Bank of India cheques of various dates and that the same have been duly encashed; this was in addition to Rs.500/-initially paid in cash on 23.06.1983; the land owners had also executed Powers of Attorney and had put the Society in the exclusive possession too; the original title deeds comprising the lands have been delivered to the Society; even the entries in the revenue records also came to be mutated in its favour.

(c) After the initial transactions as aforesaid, the Society had formed a Housing Layout; the said sites came to be allotted to the members and accordingly, sale deeds came to be registered by the land owners through their attorneys; khata also came to be transferred by the then Rajarajeshwarinagar City Municipal Council subsequent to the Agreements, these lands were brought into the acquisition vide Preliminary Notification dated 13.04.1989 followed by the Final Notification dated 07.10.1999, issued under the provisions of BDA Act. Petitioner-Society had unsuccessfully challenged the acquisition in Writ Petitions, Writ Appeals and S.L.P.

(d) The award comprising the land in Sy.No.44/2 was passed on 15.12.1999 and mediate possession was taken from the Society on 22.01.2000 and later, Government delivered the possession to the Engineering Section of the BDA on 31.01.2000. The award comprising land in Sy.No.97/1A was passed on 06.02.2008; the mediate possession of this land was taken by the Government from the Society on 17.03.2008 and on the same day, the possession was delivered to the BDA. In respect of both these lands, the Possession Notification made under Section 16 (2) of 1894 Act, was gazetted on 08.10.2009.

(e) Since challenge to acquisition failed, the Petitioner-Society inevitably applied for bulk allotment and the Government of Karnataka on the recommendation of the BDA, issued the Bulk Allotment Order dated 13.05.2008 gazetted on 29.05.2008, reciting the aforesaid fact matrix. Then came the 2013 Act. The respondent-Sreenivas got issued a Legal Notice dated 16.12.2015 at Annexure - N, seeking to cancel the aforesaid Agreements and Powers of Attorney, as a step-in-aid for the clandestine resumption of lands from the Petitioners.

(f) The respondent-Sreenivas with intent to defraud the Petitioner-Society and its members, filed two cases i.e., W.P.No.35912/2016 and W.P.No.35913/2016, laying a challenge to the acquisition as having become bad since the scheme under Section 27 of the BDA Act allegedly had lapsed. He had also invoked the provisions of Section 24 (2) of the 2013 Act. Neither the Petitioner-Society nor its members to whom the sites have been sold by him were made parties to these Writ Petitions. Nothing is pleaded in the Petitions about the Agreements, Powers of Attorney, registered Sale Deeds obtained by the Petitioner- allottees and his Legal notice purporting to recall all these.

The respondent-State or the BDA too in their Statement of Objections had not mentioned anything about all these factuals.

5. The learned Single Judge vide subject judgment dated 15.07.2016 allowed the Writ Petitions as under:

"25. In the result, I allow these petitions by declaring that the Scheme and the acquisition proceedings initiated vide the impugned notifications have lapsed by the operation of Section 27 of the B.D.A. Act and Section 24 (2) of the 2013 Act and further that the provisions of Section 36 of the B.D.A. Act have become inoperative in so far as they pertain to the petitioner's lands."

6. Their interest having been threatened by the subject judgment, the Petitioners have filed these Writ Petitions seeking review of the same, the text of the prayer notwithstanding. The respondent-BDA too has filed the aforesaid Review Petitions contending that there are certain errors apparent on the face of the record and also the sin of suppressio veri perpetrated by respondent-Sreenivas and therefore, review of the said judgment is eminently warranted. The Review Petitioners submit about the constraints the BDA had, in pointing out these things, in hearing of those Writ Petitions in which the subject judgment has been rendered, because of a kind of interdepartmental incommunicado that obtained in the organization.

7. After service of notice, the State has entered appearance through the learned Additional Government Advocate Shri. B J Eshwarappa and respondent-Sreenivas is represented by the Advocate on record, who has filed a detailed Statement of Objections, resisting the Writ Petitions.

8. Learned Senior Advocate Mr.G. Krishna Murthy and the learned Senior Panel Counsel for the B.D.A, Sri. K. Krishna, appearing for the Review Petitioners

broadly made the following submissions:

(a) the respondent-Sreenivas has obtained the subject judgment by playing fraud on the Court inasmuch as he had taken up a false plea of continuing in possession of the lands when the petitioners were given the possession decades ago too after receiving the compensation/ consideration by SBI cheques under several Agreements to Sell, registered Sale Deeds; Khatahs were transferred in favour of the petitioners; taxes have been paid since the years; approved layout has been formed; several structures are built; the Government has made bulk allotment vide Order dated 13.05.2008; all these most relevant facts have been suppressed from the knowledge of the learned Coordinate Judge, with a culpable intent nursed by the respondent-Sreenivas, and thus, a grave fraud has been played on the Court and on the Writ Petitioners, clandestinely keeping them in utter darkness.

(b) the respondent-Sreenivas having received the entire price of the land and also other huge sums of money, all by State Bank of India cheques by way of compensation for the lands acquired, having executed the Sale Deeds through his lawful Attorney, did not have any vested interest in or right to the lands in question and therefore, lacked litigable right; he could not have maintained the Writ Petitions at all even if the allegations of fraud and abuse of process are held not established.

(c) The Writ Petitioners who have been in the possession, having absolute ownership over the petition lands were proper and necessary parties to the Writ Petitions in which 4th respondent has obtained the subject judgment to their great prejudice; admittedly, in respect of land in Sy.No.97/1A, both the respondent-Sreenivas and his brother M.Krishnappa were the co-owners and therefore, the said Krishnappa too was a necessary party to the said Writ Petitions in which the subject judgment has been rendered, and therefore, it requires to be recalled on the ground of non-impleadment of necessary party or any explanation for not impleading him being offered.

(d) The subject judgment in review has been rendered with an error apparent on the face of the record inasmuch as the acquisition of lands accomplished under the provisions of special Act like the BDA Act does not lapse in terms of Section 24 (2) of 2013 Act since it is not an acquisition done under the provisions of LA Act, 1894, especially when 4th respondent had parted with possession of the lands and the custody of the original title deeds, having taken the compensation amount albeit under the Agreements to Sell and the registered Sale Deeds which are admitted in his Legal Notice. This apart, the said acquisition was done with the consent of the land owners.

(e) The documents that have been acted upon by the Co-ordinate Judge for holding that the possession of the land was not taken by the Government or by the Review Petitioner from respondent-Sreenivas are only the spot inspection mahazars and not the documents evidencing the taking of possession; in fact,

pursuant to Agreements to Sell, Powers of Attorney and registered Sale Deeds, the respondent-Sreenivas and his brother already parted with possession having accepted entire sale consideration by way of compensation/consideration with the stipulation that the Petitioner-Society should get back the compensation deposited in the court;

9. Learned Senior Advocate appearing for the respondent-Sreenivas makes the following submissions in justification of the subject judgment and in opposition to its recall:

(a) The respondent-Sreenivas or anyone has not received the compensation amount for the acquisition of the lands in question nor has he ever been deprived of the possession of the lands; the Government or the BDA or the Petitioner-Society never had taken possession of these lands from the land owners.

(b) The Writ Petitioners lack locus standi to maintain the present Writ Petitions wherein, a prayer is made for setting aside the subject judgment; the Petitioners do not have any right to or interest in the lands in question even if the alleged Agreements, Powers of Attorney and such other contemporaneous documents are for argument sake, assumed to be genuine.

(c) The respondent-Sreenivas had laid a challenge to the acquisition proceedings on the ground that the Statutory Scheme having not been executed within the period prescribed under Section 27 of the BDA Act, has lapsed; absolutely no material is produced by the BDA to show that the Government had taken the possession and delivered the same to the BDA, which in turn gave the lands to the Petitioner-Society for development; that being so, the finding recorded in the subject judgment cannot be reviewed /recalled.

(d) The challenge by respondent-Sreenivas was not to the acquisition notifications but to the acquisition as already stated above on the ground of lapse of statutory Scheme and therefore, the Writ Petitioners not being proper parties much less the necessary parties, were not arraigned as respondents to the said Writ Petitions in which the subject judgment has been rendered; the writ being a public law remedy, whatever private rights these Writ Petitioners now claim, could not have been adjudicated in the respondent-Sreenivas's Writ Petitions and therefore, their non-arraignment as parties to those Writ Petitions and non-narration of the Agreements to Sell, Powers of Attorney, Legal Notice etc., all pale into insignificance.

(e) The case of the Petitioners that they are in possession of the property, some of them having already put up construction and that whatever rights they want to urge herein on the basis of the Agreements to Sell, Powers of Attorney, Sale Deeds, Legal Notice of respondent-Sreenivas, etc., do not merit adjudication in writ jurisdiction; there is absolutely no justification to allege fraud or abuse of process of court against the respondent-Sreenivas.

10. I have heard the learned Senior Advocates Sri.G. Krishnamurthy and Sri.S.M.

Chandrashekar appearing for the counsel on record for the parties; I have heard learned Senior Panel Counsel for the BDA Sri.K. Krishna appearing for the Review Petitioners. Learned AGA Sri.B.J. Eswarappa, appearing for the Government has too assisted the Court. I have perused the record and read the Synopsis filed by the private parties.

11. Fact matrix of the case as emerging from pleadings and records is:

(a) The land in Sy.No.44/2 admeasuring 0A-37G exclusively belonged to respondent-Sreenivas, an Ex-MLA of Karnataka; the other land in Sy.No.97/1A admeasuring 4A-09G jointly belonged to the respondent-Sreenivas and his brother Sri.M. Krishnappa; these lands along with other were subject matter of acquisition, and awards having been approved by the Government, the compensation amount has been deposited before the Civil Court by the Petitioner-Housing Society which is the beneficiary of acquisition (all this is not in dispute).

(b) Respondent-Sreenivas, his brother Sri.M. Krishnappa and other family members of Sreenivas, having entered into several Agreements, Powers of Attorney and other collateral documents had parted with possession of these lands in favour of the Petitioner-Society having received Rs.14,57,000/- by State Bank of India cheques and Rs.500/- in cash during the period between June 1983 and July 1999; they have also delivered original title deeds and the possession of the lands in favour of the Petitioners as mentioned in the said agreements; all this is substantiated by the documents at Annexures - A to E3 to the Writ Petitions; this apart, the respondent - Sreenivas has admitted these Agreements and the Powers of Attorney in his Legal Notice dated 16.12.2015 [vide paragraphs 2, 3 and 10 therein], whereby he purports to rescind the same but not with retrospective effect.

(c) The acquisition in question was with the consent of the land owners is also forthcoming from the said Legal Notice [vide paragraphs 10 & 12 therein] and the Agreements to Sell and GPAs whose execution is admitted in the same Legal Notice [vide paragraphs 10 & 11 therein]; respondent-Sreenivas specifically admits Society's unsuccessful challenge to the acquisition as well, up to the level of Apex Court; however, he never had laid challenge to the acquisition and he could not have laid one either, inasmuch as along with his brother Sri.M. Krishnappa and his own son Venkatesh babu, he too had given the consent to the acquisition vide Agreements to Sell and GPAs that are admitted in his Legal Notice, having received the amount through bank cheques from the Petitioner - Society by way of compensation and not just as consideration for the Agreements.

(d) Petitioner-Society's challenge to the acquisition having been negated by the Courts, the Government took mediate possession of the lands from the Petitioners and delivered the same to the BDA way back in March 2008 which in turn left it to Society, which was in actual holding; in the meanwhile, the Petitioner-Society had formed the layout after obtaining the approved plan by

paying more than Rs.41,00,000/- including the development charges which fact is fully narrated in all the registered Sale Deeds executed by the land owners through the undisputed GPAs [several such Sale Deeds are at Annexure - G series].

(e) It is also established by cogent evidence at Annexures A to E Series and other documents which are part of the writ petitions that the sites earlier allotted in respect of which the allottees had taken the individual registered Sale Deeds from the land owners through their lawful Attorneys got the formal allotments confirmed as they were before. The khatas have also been transferred in favour of the allottees and some of whom have already put up structures after obtaining the approved plan.

12. The above fact matrix that emerges by the pleadings of the petitioners as supported by the documents at Annexures thereto having not been disclosed by the respondent-Sreenivas in his Writ Petitions, the learned Co-ordinate Judge of this Court was fraudulently driven to render the subject judgment holding the acquisition as bad on the falsely asserted ground of respondent-Sreenivas' being in possession of the lands and the scheme having not been executed within the statutory period. To ensure that the true facts contrary to his false assertions are not revealed to the Co-ordinate Judge, he intentionally had not arraigned the present petitioners as parties to his Writ Petitions, though all they were proper and necessary parties to the adjudication of the lis since they held registered conveyances transferring the title in their favour. Therefore, the subject judgment obtained by fraud not only on the petitioners but also on the learned Co-ordinate Judge, eminently needs to be reviewed and recalled since fraud vitiates everything as roared by Lord Edward Coke centuries ago and reiterated by the Apex Court in S.P. Chengaluaraya Naidu Case (1994) 1 SCC 1 and in Meghamala Case (2010) 8 SCC 383.

13. The contention of the respondent - Sreenivas that the petitioners had held only Agreements to Sell which do not create any interest in the suit lands vide Section 54 of Transfer of Property Act, 1882 apart from being factually incorrect is legally untenable inasmuch as he has specifically admitted in his undisputed Legal Notice that he, his son Venkatesh Babu and his brother Sri.M. Krishnappa have executed the Agreements to Sell which mention their acknowledgement of receipt of compensation for acquisition from the Society itself through SBI cheques; the said Agreements dated 08.11.1989, 16.10.1993 & 31.07.1999 and the corresponding GPAs [all these are admitted in his Legal Notice] comprising the petition lands mention about their consent for acquisition and delivery of possession to the Society along with all title deeds.

(a) Some relevant paragraphs in the Agreement dated 08.11.1989 are extracted as under:

"ಇದರಡಿ ಒಡೆಯನಿಗಾಗಿ ನಮೂದಿಸಿರುವ ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ, ಉತ್ತರಹಳ್ಳಿ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ 44:2 ನಂಬರಿಗೆ ಆ ಸುಮಾರು ಮುಪ್ಪತ್ತೈದು ಗುಂಟೆ (37 ಗುಂಟೆ) ವಿಸ್ತೀರ್ಣವುಳ್ಳ

ಜಮೀನು ತಾರೀಖು 26.06.1978 ರಲ್ಲಿ 1720ನೇ ನಂಬರು

ರಿಜಿಸ್ಟರು ಕ್ರಯಪತ್ರದ ಮೂಲಕ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಪಡೆದು ಒನ್ನ ಸುಪರ್ದಿಗೆ ಬಂದು ಆ ಲಾಗಾಯ್ತು ಒನ್ನ ಸ್ವಂತ ಸ್ವಾಧೀನಾನುಬವದಲ್ಲಿದ್ದವ ಸ್ವತ್ತನ್ನು ನಿಮಗೆ ಈ ಹಿಂದೆ 1983-84ನೇ ಇಸವಿಗಳಲ್ಲಿ ಎಂಬತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳಂತೆ (ರೂ. 80,000-00) ಕ್ರಯಕ್ಕೆ ಕೊಡಲು ಒಪ್ಪಿ ಒನ್ನ ಜಮೀನುಗಳನ್ನು ಲ್ಯಾಂಡ್ ಅಕ್ವಿಜಿ ನ್ ಆಕ್ಟ್ ಮೇರೆಗೆ ನಿಮ್ಮ ಸಂಘಕ್ಕೆ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ನೀವು ಸುಫದಿಆರ್ ಹೊಂದಲು ಒಪ್ಪಿಗೆ ಕೊಟ್ಟು ನಿಮ್ಮಿಂದ ನಾನು ನಗದು ಮೂಲಕ ಅಡ್ವಾನ್ಸ್ ಳಡೆದು ರಶೀದಿ ಕೊಟ್ಟು ಪಡೆದಿರುತ್ತೇನೆ.

ಜಮೀನಿನ ಸುಪರ್ದಿಯನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ವಶಕ್ಕೆ ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತೇನೆ, ನೀವು ಈ ಜಮೀನಿನಲ್ಲಿ ನಿಮಗೆ ಅಡ್ಡಕೂಲವಾದಂತೆ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿಕೊಳ್ಳಲು ನಾನು ಒಪ್ಪಿರುತ್ತೇನೆ.

ಓಡ್‌ಯರ್ ಸ್ವತಿಗೆ ಸಂಬಂಧಪಟ್ಟ ದಾಖಲೆಗಳನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಈ ಓಡ್‌ಯರ್ ಸ್ವತ್ತು ಯಾವುದೇ ವಿಧವಾದ ಗೇಣಿ, ಆಧಾರ, ಭೋಗ್ಯ, ಕ್ರಯ, ದಾನಗಳಿಗೆ ಅಥವಾ ಕೊರ್ಟು ಡಿಕ್ರಿ ಅಟ್ಯಾಚ್‌ಮೆಂಟ್ ಭಾಗಾಂಶ, ಮೈನರ್ ತೆಂಟೆ, ತಕರಾರುಗಳಿಗೆ ಒಳಪಟ್ಟಿರುವುದಿಲ್ಲ."

(b) Similarly, the relevant paragraph of General Power of Attorney dated 14.10.1993 is extracted as under: :

"(5) ಒನ್ನ ಪರವಾಗಿ ಭೂಸ್ವಾಧೀನಾಧಿಕಾರಿಗಳು ಓಡ್‌ಯರ್‌ನಿಲ್‌ ನಮೂದಿಸಿರುವ ಜಮೀನುಗಳಿಗೆ ಈಗ ಒನ್ನ ಪಾವತಿಯಾಗಿರುವ ಹಣಕ್ಕಿಂತ ಹೆಚ್ಚಾಗಿ ಮಾರುಕಟ್ಟೆ ಬೆಲೆಯನ್ನು ನಿರ್ಧರಿಸಿ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆ ಅನ್ವಯ ಸದರಿ ಜಮೀನು ನಿಮ್ಮಿಂದಲೇ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ಸಂಬಂಧಪಟ್ಟ ಸಹಕಾರ ಸಂಘಕ್ಕೆ ವಹಿಸಿಕೊಟ್ಟು ಪರಿಹಾರದ (ಕಾಂಫನೇಸ್ ನೆ) ಹಣದ ಮೊತ್ತವನ್ನು ಅವರಿಂದ ಠೇವಣಿಯಾಗಿ ಪಡೆದುಕೊಂಡು ಕೊಡುವ ಹಣಕ್ಕೆ ಒನ್ನ ಪರವಾಗಿ ನೀವೇ ನಿಮ್ಮ ಹೆಸರಿನಲ್ಲಿ ಚೆಕ್‌ನ್ನು ಪಡೆದುಕೊಂಡು ಅದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ರಶೀದಿಯನ್ನು ಸಹ ಒನ್ನ ಪರವಾಗಿ ಕೊಡಲು ಹಕ್ಕುಳ್ಳವರಾಗಿರುತ್ತೀರಿ."

(c) The relevant portion of Delivery of Possession Note at Annexure - C reads as under:

"The said Sri M. Srinivas has appointed me and authorized me to transfer the property in favour of the society by executing a General Power of Attorney dated 8.11.89. By virtue of General power of Attorney dated 08.11.89 I hereby deliver the possession of the property which is described in the schedule below for development of the land on this 18th November 1989 to the society."

(e) Similarly, the relevant paragraphs of Agreement to Sell dated 31.07.1999 read as under:

"ಈ ಜಮೀನುಗಳು ನೇರವಾಗಿ ಸಂಘಕ್ಕೆ ಕ್ರಯ ಮಾಡಿ ಕ್ರಯಪತ್ರ ರಿಜಿಸ್ಟರ್ ಮಾಡಲು ಅಥವಾ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆಯ ಪ್ರಕ್ರಿಯೆಗಳ ಮುಖಾಂತರ ಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಂಡು ನಿಮ್ಮ ಸಂಘಕ್ಕೆ ವಹಿಸಲು ಸರ್ಕಾರಕ್ಕೆ ನಾವು ಒಪ್ಪಿಗೆ ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಆ ಮೇರೆಗೆ ಒನ್ನ ಜಮೀನು ಸ್ವಾಧೀನವನ್ನು ನನ್ನಿಂದ ನೀವು ನಿಮ್ಮ ಸಂದರ್ಶಕ ಪಡೆದಿರುತ್ತೀರಿ.

ಪುನಃ 1993ನೇ ಇಸವಿಯಲ್ಲಿ ಈ ಜಮೀನುಗಳಿಗೆ ಬೆಲೆಯನ್ನು ಹೆಚ್ಚಿಸಿ ಎಲ್ಲಾ ಹೆಚ್ಚುವರಿ ಹಣವನ್ನು ಒಟ್ಟು ಜಮೀನಿಗೆ ಲೆಕ್ಕಾಚಾರ ಮಾಡಿ ನಿಮ್ಮಿಂದ ಚೆಕ್‌ವಾಗಿ ಸ್ಟೇಟ್ ಬ್ಯಾಂಕ್ ಆಫ್ ಇಂಡಿಯಾ ಬ್ಯಾಂಕಿನ ಚೆಕ್‌ಗಳ ಮೂಲಕ ಮತ್ತು ಕೆಲವು ಬಾರಿ ಒಗ್ಗಡಾಯಿಸಿ ಸಹ ಪಡೆದು ಪೂರಾ ಜಮೀನಿನ ಪೂರ್ತಾ ಹಣವನ್ನು ಬೇಬಾಕಿಯಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ.

ಈ ಜಮೀನಿ A ಮೂಲ ದಾಖಲೆಗಳನ್ನು ಸಂಘದವರ ವಶಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇವೆ. ನಂತರ ಸಂಘದವರು ಜಮೀನಿನ ಖಾತೆಗಳನ್ನು, ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ ಸಂಘದ ಹೆಸರಿಗೆ ವರ್ಗಾಯಿಸಿಕೊಂಡಿರುತ್ತೇವೆ.

ಈ ಮೇಲ್ಕಂಡ ಒಪ್ಪಂದವನ್ನು ಗೌರವಿಸಿ, ಈ ರೀತಿ ಆಗಿರುವ ಸೆಟ್ಲೆಮೆಂಟ್‌ನ್ನು ಉಭಯರೂ A ಒಪ್ಪಿ ಈ ಲಾಗಾಯ್ತು ಮುಂದೆ ಅವರುಗಳು ಯಾವುದೇ ವಿಧವಾದ ತಂಟೆ ತಕರಾರುಗಳನ್ನು ಕೋರ್ಟ್ ಕಛೇರಿಗಳಲ್ಲಿ ಅಥವಾ ಜಮೀನಿನಲ್ಲಿ ಮಾಡುವುದಿಲ್ಲ ಎಂದು ಸಹ ಮುಚ್ಚಳಿಕೆ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ. ಆದರೆ ನಾನು ಮಾತ್ರ ಯಾವುದೇ ವಿಧವಾದ ತಂಟೆ

ತಕರಾರುಗಳನ್ನು ಮಾಡಿರುವುದಿಲ್ಲ. ಸರ್ಕಾರದವರು ನಡೆಸಿರುವ ಭೂಸ್ವಾಧೀನ A ನಡವಳಿಕೆಗಳೆಲ್ಲವನ್ನೂ ನಾನು ಒಪ್ಪಿರುತ್ತೇನೆ. ಈ ಹೆಚ್ಚುವರಿ ಹಣವಾದ ಹದಿನೆಂಟು ಸಾವಿರದ ಐದನೂರ ರೂಪಾಯಿಗಳನ್ನು(ರೂ. 18,500-00) ಈ ದಿನ ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿಗಳ ಮೊತ್ತ ನಿಮ್ಮಿಂದ ಸ್ಟೇಟ್ ಬ್ಯಾಂಕ್ ಆಫ್ ಇಂಡಿಯಾ ಚೆಕ್ಕ್ ನಂಬರು 795770 ರ ಮೂಲಕ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ."

The land owners had executed another Agreement on 16.10.1993 in respect of land in Sy.No.97/1A admeasuring 4A-7G giving the possession and consent for acquisition after admitting receipt of the entire compensation. The relevant paragraphs of the same are extracted as under:

"ಇದರಡಿ ಒಡೆಯರ್‌ನವರು ನಮೂದಿಸಿರುವ ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ, ಉತ್ತರಹಳ್ಳಿ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ 97:1ಎ ಸುಮಾರು 4 ಎಕರೆ 07 ಗುಂಟೆ ವಿಸ್ತೀರ್ಣವುಳ್ಳ ಜಮೀನು ತಾರೀಖು 04-03-87 ರಲ್ಲಿ 119:87-88 ಮತ್ತು 120:87-88ನೇ ನಂಬರು ರಿಜಿಸ್ಟರು ಕ್ರಯಪತ್ರದ ಮೂಲಕ ಒಮ್ಮೆ ತಾಯಿಯವರು ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಪಡೆದು, ನಮ್ಮ ತಾಯಿಯವರು ತಾರೀಖು 17-2-89 ರಲ್ಲಿ ಪೌತಿಯಾದ ಲಾಗಾಯ್ತು ಒಮ್ಮೆ, ಆದೇಶಕ್ಕೆ ಬಂದು ಆಲಾಗಾಯ್ತು ನಮ್ಮ ಸ್ವಂತ ಸ್ವಾಧೀನಾನುಬವದಲ್ಲಿರುವ ಸ್ವತ್ತನ್ನು ನಿಮಗೆ ಈ ಹಿಂದೆ 1987-88ನೇ ಇಸವಿಗಳಲ್ಲಿ ನಮ್ಮ ತಾಯಿಯವರು ಎಕರೆ ಒಂದಕ್ಕೆ ಒಂದು ಲಕ್ಷದ ಐತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳಂತೆ (ರೂ. 1,50,000-00) ಕ್ರಯಕ್ಕೆ ಕೊಡಲು ಒಪ್ಪಿ ಜಮೀನುಗಳನ್ನು ಲ್ಯಾಂಡ್ ಅಕ್ವಿಜಿಷನ್ ಆಕ್ಟ್ ಮೇರೆಗೆ ನಿಮ್ಮ ಸಂಘಕ್ಕೆ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ನೀವು ಸುಪ್ರೀಂ ಕೋರ್ಟ್ ಹೊಂದಲು ಒಪ್ಪಿಗೆ ಕೊಟ್ಟು ನಿಮ್ಮಿಂದ ಚೆಕ್‌ಗಳ ಮೂಲಕ ಪೂರ್ಣ ಹಣ ಪಡೆದಿರುತ್ತಾರೆ.

ಆದುದರಿಂದ ಒಡೆಯರ್‌ನ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನತೆಗೆ Aನ್ನು ಈ ದಿನವೇ ಸರ್ಕಾರದ ವಶಕ್ಕೆ ಒಪ್ಪಿಸಲು ನಿಮ್ಮ ಸಂಘದ ಖಜಾಂಚಿಯವರಾದ ಶ್ರೀ ಟಿ.ವಿ. ಕೃಷ್ಣಮೂರ್ತಿಯವರಿಗೆ ನಮ್ಮ ಪರವಾಗಿ ನಡವಳಿಕೆ ಒಡಸಲು ಸಂಪೂರ್ಣವಾಗಿ ಅಧಿಕಾರವುಳ್ಳ ಒಂದು ಜಿ.ಪಿ.ಎ. ಅನ್ನು ಬರೆದು ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಇನ್ನು ಮುಂದೆ ಈ ಜಮೀನಿ A ಮೇಲೆ ನಮಗೆ ಅಗಲೀ ಅಥವಾ ಒಮ್ಮೆ ವಾರಸುದಾರರುಗಳಿಗಾದರೂ ಅಗಲೀ ಯಾವುದೇ ವಿಧವಾದ ಹಕ್ಕು, ಅಧಿಕಾರ ಯಾವುದೂ ಇರುವುದಿಲ್ಲ. ಒಂದು ವೇಳೆ ಪರಿಹಾರದ ಮೊಬಲಗಿಗಾಗಿ ನೀವೇನಾದರೂ ಸರ್ಕಾರದಲ್ಲಿ ಹಣ ಕಟ್ಟಿದಲ್ಲಿ ಅವೆಲ್ಲವೂ ನಮ್ಮ ಪರವಾಗಿ ನೀವೇ ವಾಪಸ್ಸು ಪಡೆಯಲು ಒಕ್ಕೂಟ ರಾಜ್ಯ ಸರ್ಕಾರಕ್ಕೆ.

ಒಡೆಯರ್‌ನ ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟ ದಾಖಲೆಗಳನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಈ ಒಡೆಯರ್‌ನ ಸ್ವತ್ತು ಯಾವುದೇ ವಿಧವಾದ ಗೇಣಿ, ಆಧಾರ, ಭೋಗ್ಯ, ಕ್ರಯ, ದಾನಗಳಿಗೆ ಅಥವಾ ಕೊರ್ಟ್ ಡಿಕ್ರಿ ಅಟ್ಯಾಚ್‌ಮೆಂಟ್ ಭಾಗಾಂಶ, ಮೈನರ್ ತಂಟೆ, ತಕರಾರುಗಳಿಗೆ ಒಳಪಟ್ಟಿರುವುದಿಲ್ಲ.

ಸದರಿ ಕರಾರಿನಲ್ಲಿರುವ ಆರತಗಳು ಈ ದಿನವಾ ಮತ್ತು ಇನ್ನು ಮುಂದೆಯೂ ಸಹ ಜಮೀನುಗಳನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ಸಂಘದ ಶಕ್ತಿಗೆ ತೆಗೆದುಕೊಳ್ಳುವವರೆವಿಗೂ ಚಾಲ್ತಿಯಲ್ಲಿರುತ್ತದೆಯೆ ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇವೆ. ಈ ಹಿಂದೆ ಬರೆದುಕೊಟ್ಟಿರುವ ಆಗ್ರಿಮೆಂಟ್ ಜಿ.ಪಿ.ಎ. ಪತ್ರಗಳು ಇದುವರೆವಿಗೂ ನಾನು ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ವಜಾ ಮಾಡಿರುವುದಿಲ್ಲವೆಂತಲೂ ಮತ್ತು ಹಿಂದಿ A ಹಾಗೂ ಈಗ ಬರೆದುಕೊಡುತ್ತಿರುವ ದಾಖಲೆಗಳೆಲ್ಲವೂ (ಒಪ್ಪಿಗೆ ಪತ್ರ ಆಗ್ರಿಮೆಂಟ್, ಜಿ.ಪಿ.ಎ.) ಇನ್ನು ಮುಂದೆ ಯಾವುದೇ ಕಾರಣಕ್ಕೂ ರದ್ದುಪಡಿಸುವುದಿಲ್ಲವೆಂತಲೂ ಮತ್ತು ರದ್ದಾಗುವುದಿಲ್ಲವೆಂತಲೂ ಒಪ್ಪಿರುತ್ತೇವೆ ಎಂಬುದಾಗಿ ನಮ್ಮ ಖುದ್ದು ಮನೋರಾಜಿಯಿಂದ ಬರೆಸಿಕೊಟ್ಟ ಖುಷ್ಕಿ

ಜಮೀನಿನ ಭೂಸ್ವಾಧೀನತೆಯ ಪೂರ್ತಾ ಪರಿಹಾರ ಹಣ ಸಂದಾಯವಾಗಿರುವ ಆಗ್ರಿಮೆಂಟ್ ಪತ್ರ ಕ್ರಮ ಸಹಿ."

14. On the same day i.e., on 16.10.1993, the respondent - Sreenivas, his brother Sri.M. Krishnappa and his son Sri.Venkatesh Babu, who were all parties to the aforesaid Agreements, have executed a General Power of Attorney at Annexure - E1, appointing the Honorary Treasurer of the Petitioner-Society Mr.T.V. Krishna Murthy specifically mentioning their absolute consent for acquisition and receipt of the compensation. The relevant paragraphs read as under:

"ಇದರಡಿ ಲೆಡ್‌ಯೂಸಿಲ್‌ಲಿ ನಮೂದಿಸಿಗ್ಗವ ಒನ್‌ಒ ಜಮೀನಿ ಒ ಜೊತೆಯಲ್ಲಿ ವಡ್ಡರಪಾಳ್ಳಿ ಮತ್ತು ಉತ್ತರಹಳ್ಳಿ ಗ್ರಾಮಲಿಗಿ ಸೇರಿದ ಇತರೇ ಕೆಲವು ಜಮೀನುಗಳನ್ನು ಮೇಲ್ಕಂಡ ಸಂಖ್ಯೆ ಸದಸ್ಯರುಗಳಿಗೆ, ನಿವೇಶನಗಳನ್ನು ಮಾಡಿ ಹಂಚಲು ಉದ್ದೇಶಿಸಿ ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳಲು ಭೂಸ್ವಾಧೀನ ಒ ನಡವಳಿಕೆಗಳು ನಡೆಯುತ್ತಿರುತ್ತವೆ.

ಇದರಡಿ ಲೆಡ್‌ಯೂಸಿಲ್‌ಲಿ ಒಮೂದಿಸಿರುವ ಈ ಜಮೀನುಗಳನ್ನು ಮೇಲ್ಕಂಡ ಸೊಸೈಟಿಯವರಿಗೆ ಸರ್ಕಾರದಿಂದ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆ ರೀತ್ಯಾ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳಲು ಸಂಪೂರ್ಣ ಒಪ್ಪಿಗೆಯನ್ನು ನೀಡಿ ಸದರಿ ಸೊಸೈಟಿಯವರೊಡನೆ ಹಿಂದೆ 1983-84ರಲ್ಲಿ ಒಮ್ಮೆ ತಾಯಿಯಿರು ಕರಾರು ಮಾಡಿಕೊಂಡು ಒಂತರ ಪೂರ್ತಾ ಹಣ ಪಡೆದಿರುತ್ತಾರೆ.

ನಮ್ಮ ಪರವಾಗಿ ಭೂಸ್ವಾಧೀನಾಧಿಕಾರಿಗಳು ಲೆಡ್‌ಯೂಸಿಲ್‌ಲಿ ನಮೂದಿಸಿರುವ ಜಮೀನುಗಳಿಗೆ ಈಗ ಒನಗೆ ಪಾವತಿಯಾಗಿರುವ ಹಣಕ್ಕಿಂತ ಹೆಚ್ಚಾಗಿ ಮಾರುಕಟ್ಟೆ ಬೆಲೆಯನ್ನು ನಿರ್ಧರಿಸಿ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆ ಅನ್ವಯ ಸದರಿ ಜಮೀನುಗಳನ್ನು ನಿಮ್ಮಿಂದಲೇ ಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಂಡು ಸಂಬಂಧಪಟ್ಟ ಸಹಕಾರ ಸಂಘಕ್ಕೆ ವಹಿಸಿಕೊಟ್ಟು ಪರಿಹಾರದ (ಕಾಂಫೆನ್ಸೇ ನೆ) ಂಣದ ಮೊತ್ತವನ್ನು ಅವರಿಂದ ರೇವಣಿಯಾಗಿ ಪಡೆದುಕೊಂಡು ಕೊಡುವ ಹಣಕ್ಕೆ ನಮ್ಮ ಳರವಾಗಿ ನೀವೇ ನಿಮ್ಮ ಹೆಸರಿನಲ್ಲಿ ಚೆಕ್‌ನ್ನು ಪಡೆದುಕೊಂಡು ಅದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ರಶೀದಿಯನ್ನು ಸಂ ನನ್ನ ಪರವಾಗಿ ಕೊಡಲು ಹಪ್ಪಾಳ್ಳವರಾಗಿರುತ್ತೀರಿ."

15. Subsequently, on 24.10.1993, the Attorney of the land owners have delivered peaceful possession of the petition land in Sy.No.97/1A to the Society vide Delivery of Possession Deed dated 24.10.1993, a copy whereof is at Annexure - E2. The relevant portion of the said document reads " by virtue of General Power of Attorney dated 16.10.1993, I hereby deliver the possession of the property which is described in the schedule below for development of the land on this 24th day of October 1993 to the Society". The schedule to this describes "Sy.No.97/1A which measures 4A-07G.

16. Subsequently, the Society has entered into another Agreement dated 31.07.1999 at Annexure - E3 with the land owners in respect of Sy.No.97/1A enhancing the compensation by additional Rs.20,000/- per Acre and accordingly, the same has been paid by bank cheques. This was by virtue of mediation settlement so that whatever unlawful objections the land owners had filed against the Society before the jurisdictional officials were withdrawn unconditionally. This amount too has been paid by SBI cheque dated 31.07.1999.

17. It is relevant to mention that even in respect of land in Sy.No.44/2 admeasuring 0A-37G, there was a similar Agreement dated 08.11.1999 at Annexure - A, whereunder the respondent - Sreenivas being the absolute land owner has delivered possession to the Society specifically mentioning about the receipt of entire sale price by SBI cheque that too by way of compensation

specifically worked out according to the provisions of Land Acquisition Act, 1894. The relevant paragraphs therein read as under:

" ಇದರಡಿ ಒಡೆಯರ್‌ನವರೊಡನೆ ನಮೂದಿಸಿರುವ ಬೆಂಗಳೂರು ದಕ್ಷಿಣ ತಾಲ್ಲೂಕು, ಉತ್ತರಹಳ್ಳಿ ಹೋಬಳಿ, ಉತ್ತರಹಳ್ಳಿ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಸರ್ವೆ 44:2 ನಂಬರಿಗೆ ಆ ಸುಮಾರು ಮುಪ್ಪತ್ತೈದು ಗುಂಟೆ (37 ಗುಂಟೆ) ವಿಸ್ತೀರ್ಣವುಳ್ಳ ಜಮೀನು ತಾರೀಖು 26.06.1978 ರಲ್ಲಿ 1720ನೇ ನಂಬರು ರಿಜಿಸ್ಟರು ಕ್ರಯಪತ್ರದ ಮೂಲಕ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಪಡೆದು ಒಡೆದು ಸುಪರ್ದಿಗೆ ಬಂದು ಆ ಲಾಗಾಯ್ತು ಒಡೆದು ಸ್ವಂತ ಸ್ವಾಧೀನಾನುಬವದಲ್ಲಿರುವ ಸ್ವತ್ತನ್ನು ನಿಮಗೆ ಈ ಹಿಂದೆ 1983-84ನೇ ಇಸವಿಗಳಲ್ಲಿ ಎಂಬತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳಂತೆ (ರೂ. 80,000-00) ಕ್ರಯಕ್ಕೆ ಕೊಡಲು ಒಪ್ಪಿ ಒನ್ನ ಜಮೀನುಗಳನ್ನು ಲ್ಯಾಂಡ್ ಅಕ್ವಿಜಿಷನ್ ಆಕ್ಟ್ ಮೇರೆಗೆ ನಿಮ್ಮ ಸಂಘಕ್ಕೆ ಸ್ವಾಧೀನಪಡಿಸಿಕೊಂಡು ನೀವು ಸುಪರ್ದಿಗೆ ಹೊಂದಲು ಒಪ್ಪಿಗೆ ಕೊಟ್ಟು ನಿಮ್ಮಿಂದ ನಾನು ನಗದು ಮೂಲಕ ಅಡ್ಡಾನ್ಸು ಪಡೆದು ರಶೀದಿ ಕೊಟ್ಟು ಪಡೆದಿರುತ್ತೇನೆ.

ಜಮೀನಿನ ಸುಪರ್ದಿಯನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ವಶಕ್ಕೆ ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತೇನೆ, ನೀವು ಈ ಜಮೀನಿನಲ್ಲಿ ನಿಮಗೆ ಅನುಕೂಲವಾದಂತೆ ಅಭಿವೃದ್ಧಿ ಪಡಿಸಿಕೊಳ್ಳಲು ನಾನು ಒಪ್ಪಿರುತ್ತೇನೆ.

ಒಡೆಯರ್ ಸ್ವತಃ ಸಂಬಂಧಪಟ್ಟ ದಾಖಲೆಗಳನ್ನು ಈ ದಿನವೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಈ ಒಡೆಯರ್ ಸ್ವತ್ತು ಯಾವುದೇ ವಿಧವಾದ ಗೇಣಿ, ಆಧಾರ, ಭೋಗ್ಯ, ಕ್ರಯ, ದಾನಗಳಿಗೆ ಅಥವಾ ಕೊರ್ಟು ಡಿಕ್ರಿ ಅಟ್ಯಾಚ್‌ಮೆಂಟ್ ಭಾಗವಾಗಿಲ್ಲ, ಮೈನರ್ ತೆಂಟೆ, ತಕರಾರುಗಳಿಗೆ ಒಳಪಟ್ಟಿರುವುದಿಲ್ಲ."

18. Subsequently, on 31.07.1999, a Settlement Agreement was entered into as per Annexure - C1 with the mediation of the villagers and accordingly, additional compensation was also paid by SBI cheque in respect of land in Sy.No.44/2. The relevant paragraphs therein read as under:

" ಈ ಜಮೀನುಗಳು ನೇರವಾಗಿ ಸಂಘಕ್ಕೆ ಕ್ರಯ ಮಾಡಿ ಕ್ರಯಪತ್ರ ರಿಜಿಸ್ಟರ್ ಮಾಡಲು ಅಥವಾ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆಯ ಪ್ರಕ್ರಿಯೆಗಳ ಮುಖಾಂತರ ಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಂಡು ನಿಮ್ಮ ಸಂಘಕ್ಕೆ ವಹಿಸಲು ಸರ್ಕಾರಕ್ಕೆ ನಾವು ಒಪ್ಪಿಗೆ ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಆ ಮೇರೆಗೆ ಒನ್ನ ಜಮೀನಿಗೆ ಸ್ವಾಧೀನವನ್ನು ನನ್ನಿಂದ ನೀವು ನಿಮ್ಮ ಸಂಘದ ಶಕ್ತಿ ಪಡೆದಿರುತ್ತೀರಿ.

ಪುನಃ 1993ನೇ ಇಸವಿಯಲ್ಲಿ ಈ ಜಮೀನುಗಳಿಗೆ ಬೆಲೆಯನ್ನು ಹೆಚ್ಚಿಸಿ ಎಲ್ಲಾ ಹೆಚ್ಚುವರಿ ಹಣವನ್ನು ಒಟ್ಟು ಜಮೀನಿಗೆ ಲೆಕ್ಕಾಚಾರ ಮಾಡಿ ನಿಮ್ಮಿಂದ ಚೆಕ್‌ವಾರಿ ಸ್ಟೇಟ್ ಬ್ಯಾಂಕ್ ಆಫ್ ಇಂಡಿಯಾ ಬ್ಯಾಂಕಿನ ಚೆಕ್‌ಗಳ ಮೂಲಕ ಮತ್ತು ಕೆಲವು ಬಾರಿ ಒಗ್ಗಡೆಯೂ ಸಹ ಪಡೆದು ಪೂರಾ ಜಮೀನಿನ ಪೂರ್ತಾ ಹಣವನ್ನು ಬೇಬಾಕಿಯಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ.

ಈ ಜಮೀನಿಗೆ ಆ ಮೂಲ ದಾಖಲೆಗಳನ್ನು ಸಂಘದವರ ವಶಕ್ಕೆ ಕೊಟ್ಟಿರುತ್ತೇವೆ. ನಂತರ ಸಂಘದವರು ಜಮೀನಿನ ಖಾತೆಗಳನ್ನು, ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ ಸಂಘದ ಹೆಸರಿಗೆ ವರ್ಗಾಯಿಸಿಕೊಂಡಿರುತ್ತೇರಿ.

ಈ ಮೇಲ್ಕಂಡ ಒಪ್ಪಂದವನ್ನು ಗೌರವಿಸಿ, ಈ ರೀತಿ ಆಗಿರುವ ಸೆಟ್ಲೆಮೆಂಟ್‌ನ್ನು ಉಭಯರೂ ಒಪ್ಪಿ ಈ ಲಾಗಾಯ್ತು ಮುಂದೆ ಅವರುಗಳು ಯಾವುದೇ ವಿಧವಾದ ತೆಂಟೆ ತಕರಾರುಗಳನ್ನು ಕೋರ್ಟು ಕಛೇರಿಗಳಲ್ಲಿ ಅಥವಾ ಜಮೀನಿನಲ್ಲಿ ಮಾಡುವುದಿಲ್ಲ ಎಂದು ಸಹ ಮುಚ್ಚಳಿಕೆ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ. ಆದರೆ ನಾನು ಮಾತ್ರ ಯಾವುದೇ ವಿಧವಾದ ತೆಂಟೆ

ತಕರಾರುಗಳನ್ನು ಮಾಡಿರುವುದಿಲ್ಲ. ಸರ್ಕಾರದವರು ನಡೆಸಿರುವ ಭೂಸ್ವಾಧೀನ ಆ ನಡವಳಿಕೆಗಳೆಲ್ಲವನ್ನೂ ನಾನು ಒಪ್ಪಿರುತ್ತೇನೆ. ಈ ಹೆಚ್ಚುವರಿ ಹಣವಾದ ಹದಿನೆಂಟು ಸಾವಿರದ ಐದನೂರ ರೂಪಾಯಿಗಳನ್ನು (ರೂ.

18,500-00) ಈ ದಿನ ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿಗಳ ಮೊತ್ತ ನಿಮ್ಮಿಂದ ಸ್ಟೇಟ್ ಬ್ಯಾಂಕ್ ಆಫ್ ಇಂಡಿಯಾ ಚೆಕ್ ನಂಬರು 795770 ರ ಮೂಲಕ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ."

19. The land owners including the respondent - Sreenivas have executed and

registered several Sale Deeds in favour of petitioner-allottees, to which the Petitioner-Society also joined as a Confirming Party. The copies of these Sale Deeds are produced at Annexures - G series. In the sample Sale Deed dated 05.06.2004 at Annexure - G1, the relevant paragraphs therein are texted as under:

"WITNESS AS UNDER:

Whereas the CONFIRMING PARTY, is a registered Co-operative Society. Registered under Co-operative Societies Act 1959, having its object of procuring lands in and around Bangalore City and forming residential layouts. In furtherance of its object, has owned lands in Sy.no.1, 2/1A, 2/1B, 2/2, 3, 4/1, 2, 3, 5,5 Old No.8, 8D, (new Nos.32/P, 37(P)) 12, 13(P), 14, 15/1, 15/2, 22, 23/1, 23/2A, 23/2C, 23/3, 24/1, 24/2, 25, 26/1, 26/2, 27, 28(P) 30/1A, 30/1B(P) 31 situated at Vaddarapalya Village and Sy. Nos. 43, 44/2, 50, 51, 52, 53, 91(P), 92, 93(P), 94, 95/1A, 95/1B, 96, 97/1A(P), 97/1B, 97/2, 99, 100, 101(P), 102 situated at Uttarahalli Village, Uttarahalli Hobli, Bangalore South Taluk, Bangalore through proceedings under Land Acquisition Act and also under sale agreements by paying full sale consideration and GPA in all totally measuring to an extent of 134 Acres 07 Guntas.

WHEREAS the vendor, having received the full sale consideration against the sale agreement in respect of said land has executed General Power of Attorney in favour of the lawful attorney herein i.e., First part and the General Power of Attorney holder has handed over the possession of the said land to the Confirming party herein for formation of residential layout. And

WHEREAS the Bangalore development Authority, Bangalore by its communication vide No. BDA/TPM/1493/97/98 dt.2/12/1997, has intimated the approval of layout plan in favour of the society in respect of the above lands. And

WHEREAS the confirming party herein has formed the residential layout as per the approved layout plan in accordance with specification and norms of Bangalore Development Authority in the said land by providing all the basic amenities like Roads, Drains, Under Ground Drain, Water Supply and Street Lights etc.,

WHEREAS the Govt. of Karnataka vide Notification # UDD/631/MWX/2000 dated 08-01-2002, has handed over the entire layout of Poornaprajna House Building Co-operative Society Ltd., layout formed at Vaddarapalya and Uttarahalli village to Sri. Rajarajeshwari City Municipal Council Jurisdiction, and in pursuance of the same Sri. Rajarajeshwari City Municipal council, raised demand for the payment of developmental charges and conversion fee in respect of the said land, and the same has been paid by confirming party herein. And"

20. Not only suppressing the delivery of possession of the land to the Society pursuant to the Agreements, Powers of Attorney and other several registered Sale Deeds in favour of its members wherein, the formation of the layout with

the approval has been accomplished and further after the Government vide Order dated 13.05.2008 has made Bulk Allotment, the respondent - Sreenivas had filed the Writ Petitions without making the Society and the allottees as parties thereto. He had taken up all pleas and contentions contrary to evidentiary material, and thereby obtained the subject judgment by fraud and duplicity. He has also misdirected the learned Co-ordinate Judge both in law and facts. This act and conduct of the respondent -

Sreenivas amounts to a gross abuse of process of the Court, apart from rank fraud and duplicity.

21. This apart, the Powers of Attorney which again are admitted, gave raise to registered Sale Deeds in favour of the petitioner-allottees, the 1st petitioner - Society being the confirming party. For the same reason, the contention that these petitioners were not necessary parties to his earlier Writ Petitions wherein challenge was laid to the acquisition only on the ground of lapse of scheme, is liable to be rejected. The reliance on the decision of the Apex Court in Satish Kumar Gupta Vs. State of Haryana in C.A.No.1587-1636/2017 is misconceived since the members of the Petitioner-Society herein are not the post acquisition allottees but the buyers of sites by registered Sale Deeds executed by the lawful Attorney of the land owners.

22. The fraud, the suppression of material facts and the systematic abuse of law and judicial process perpetrated by respondent-Sreenivas on all the stake holders render this Court incapable of resisting reproduction of what the Apex Court in the case of KRISHAN YADAV vs. STATE OF HARYANA, AIR 1994 SC 2166 at paragraph 17 had observed:

"Having regard to all the above, the irresistible conclusion is "fraud has reached its crescendo". Deeds as foul as these are inconceivable much less could be perpetrated. We are reminded of the words of Shakespeare:

"Thus much of these, will make Black, white; foul, fair; wrong, right; Base, noble; Ha, you gods! Why this?" (Timon of Athens, Act IV, Sc.3)

23. The learned Co-ordinate Judge was misled to believe that the respondent - Sreenivas had never parted with the possession of the lands; the lands were not developed by the Petitioner-Society and thus, the scheme was not executed within the statutory period. On that premises, the learned Judge in all solemnity has entered the subject judgment. As already mentioned above, the lands have been the subject matter of acquisition by consent of the land owners as mentioned in the Agreements to Sell which are admitted by respondent - Sreenivas in his Legal Notice; the Petitioner-Society has developed a huge layout of more than 113 Acres after obtaining the approved Layout Plan which is fully described in the registered Sale Deeds that are not in dispute; allotments have been made in favour of the members and some of them have put up the structure already after obtaining the approved building plan. Khatas have been transferred after the execution and registration of the Sale Deeds by the

Attorneys of the land owners.

24. As already stated above, the acquisition of the land was accomplished by delivery of possession and payment of compensation through SBI cheques with the consent of the land owners. The respondent - Sreenivas having retained no right whatsoever in respect of these lands, had no litigable interest to maintain his Writ Petitions in which he succeeded by fraud, duplicity and abuse of process of Court. It is only these petitioners who have the vested interest in the petition lands and therefore, the litigable interest, too. That being so, the ground urged by Sreenivas in his Writ Petitions as to the lapse of statutory scheme apart from being factually incorrect, was legally untenable. Even otherwise also, merely because allegedly the scheme lapses, that per se will not result into reversion of the acquired land to the erstwhile land owners as held by the Apex Court in Chandrashekar's Case (2012) 12 SCC 133, paras 25 to 31 and also in the case of Offshore Holdings Pvt. Ltd vide (2011) 3 SCC 139, paras 36 to 39. The Rulings of this Court cited at the Bar arguably voicing the contra, have not been specifically referred to, though they were adverted.

25. The above apart, the Government has made the bulk allotment of the petition lands in favour of the Petitioner-Society specifically narrating the circumstances repugnant to the case of respondent-Sreenivas and consistent with that of the Petitioners herein. Section 27 of the BDA Act reads as under:

"27. Authority to execute the scheme within five years - Where within a period of five years from the date of the publication in the Official Gazette of the declaration under sub-section (1) of Section 19, the authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative".

This Section by its very text, structure and architecture becomes invocable only when the BDA is executing the Scheme by forming its own layout as contradistinguished from a private body/individual like the petitioner-Housing Co-operative Society herein which has formed a private layout with the approved plan and an ex post facto Bulk Allotment of the lands has been made vide Government Order dated 13.05.2008. In other words, the land acquired by the Government and allotted to a Housing Society does not fit into the frame of Section 27 for invalidation of acquisition, may be subject to all just exceptions.

26. One more aspect relating to alleged lapse of Scheme is pertinent. In computing delay in the execution of the Scheme, the relevant date is the one when possession of the land is taken and not from the date of passing of the award. Thus the period of five years specified in Section 27 as from the date of publication in the official gazette of the declaration u/s.19(1) of the Act has to be construed as from the date of taking possession of the lands acquired vide M.B.RAMACHANDRAN vs. STATE, ILR 1992 KARNATAKA 174 (DB). Added to this, the lapse of Scheme for its non-execution within five years is not ipso facto. This Court has recognized certain circumstances as being the plausible explanation for

the delay in the execution of the Scheme. When delay is attributable to the filibustering litigations challenging the acquisition by the owners of acquired lands or by the purchasers to whom owners allegedly agreed to sell the said lands, having parted with possession thereof on receiving the sale price by way of compensation for the consent acquisition, as has happened in this case, Section 27 does not avail for invalidating the acquisition on the ground of lapse of Scheme vide *ASHIT SHETTY vs. STATE*, (2002) 3 KAR LAW JOURNAL 2408 and *KANTHAMMA vs. STATE*, ILR 1984 KARNATAKA 1494 (DB).

27. The learned Co-ordinate Judge was again mis-directed even in law as to the applicability and otherwise invocability of the provisions of Section 24 (2) of the 2013 Act to the acquisition in question, which admittedly was under the provisions of the BDA Act. The Apex Court in the case of *Anusuya Bai*, AIR 2017 SC 904, has ruled that the provisions of Section 24 of the 2013 Act do not apply to the acquisitions done under the legislations/ Acts other than the Land Acquisition Act, 1894.

28. The argument advanced on behalf of respondent - Sreenivas that the present Writ Petitioners were not necessary parties to his Writ Petitions, challenge to the acquisition having been founded on lapse of statutory scheme and consequently, these petitioners now too lack the locus standi to seek the review/recall of the subject judgment, is too farfetched. Countenancing such a contention amounts to virtually placing premium on the fraud perpetrated by respondent-Sreenivas not only on the Writ Petitioners herein but also on this Court. The Apex Court, time and again has reiterated that the party approaching the Court sans "clean hands, clean head and clean heart" and invoking the writ jurisdiction of the courts should be non-suited at the threshold, on that ground alone, without going into merits of the matter. This principle of great sanctity to the adjudicatory process squarely applies to the respondent - Sreenivas.

29. In any circumstance, the *magistra dicta* vide Subject Judgment as to the lapse of scheme under Section 27 of the BDA Act and Section 24 (2) of the 2013 Act even otherwise also presumably would have enured to the benefit of the petitioners and other allottees by virtue of doctrine of feeding the title by grant vide Section 43 of the Transfer of Property Act, 1882 inasmuch as, with them has been shown to be the possession of the petition lands all through, and in them lies the title thereto. Although Writ Court ordinarily does not take up adjudication of disputes involving private law, this Court so far as the applicability of the doctrine of feeding the title by grant has taken *prima facie* cognizance of the fact matrix as established by unimpeachable evidentiary material on record including the admission of respondent-Sreenivas in his legal notice. However, this aspect of the matter does not need deeper deliberation because of the nature of the relief now being granted to the petitioners, herein below.

30. In the above circumstances, these Writ Petitions and the Review Petitions succeed; the common Judgment and Order dated 15.07.2016 made by the learned Co-ordinate Judge of this Court in W.P.Nos.35912/2016 & 35913/2016

having been reviewed, stand recalled; the W.P.Nos.35912/2016 & 35913/2016 filed by respondent - Sreenivas are dismissed with costs as quantified down below.

31. CIRCUMSTANCES WARRANTING IMPOSITION OF COSTS:

The respondent-Sreenivas is an Ex-MLA from the State and happens to be a former member of Bangalore Development Authority. He has obtained the subject judgment now recalled, by playing fraud not only on the Petitioner-Housing Society and the allottees of the sites, the BDA but also on the Co-ordinate Judge of this Court by militantly false assertions about possession of the lands and lapse of Scheme; he had suppressed about the acquisition being with consent and he and other land owners having received huge sums of money by way of compensation for the acquisition and not just by way of consideration for the Agreements to Sell; this amount has been paid by State Bank of India cheques; he has also suppressed about the formation of approved layout of gigantic extent of 113 Acres inclusive of petition lands by the Society and execution & registration of several Sale Deeds in favour of the allottees, admittedly by his Attorneys and of his brother. Petitioners were not impleaded and so also the other land owners lest their impleadment should lead to revelation of true facts to the Court. It can be presumed by the circumstances narrated hereinabove that respondent-Sreenivas could have had a role in Review Petitioner-BDA not revealing all the facts in its Statement of Objections to his Writ Petitions. He had used law and Court process as instruments of fraud and thereby, polluted the stream of justice.

No mitigating circumstances are notified by the learned counsel for the respondent-Sreenivas, when he was specifically heard as to the likely imposition of costs, his request for adjournment on the ground of unavailability of learned Senior Counsel, having been not acceded to. Therefore, the costs are imposed as under:

The respondent-Sreenivas shall pay a sum of Two Lakh Rupees to the Petitioner - House Building Cooperative Society, and Fifty Thousand Rupees to each of the other 16 Writ Petitioners, and further, another sum of One Lakh Rupees to the Review Petitioner - BDA, by way of costs, within eight weeks.