

(2005) 04 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No's. 26601 to 26604 of 2004 connected with 32061 of 2004, 28087 and 32670 to 32702 of 2004, 20235 of 2004, 40692 to 40726 of 2004, 25807 and 28381 to 28385 of 2004, 50733 to 50747 of 2004, 31139 and 31140 of 2004, 25008 of 2004, 28244 of 2

Sharadamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 246, 254 (2)
Karnataka Land Reforms Act, 1961 — Section 109, 79 A, 83, 95, 95 (3)
Karnataka Land Revenue Act, 1964 — Section 95
Karnataka Town and Country Planning Act, 1961 — Section 69 (2), 81 B

Citation : (2005) ILR (Kar) 3710 : (2005) 4 KarLJ 481 : (2005) 2 KCCR 1166

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Jayaraj and Associates in W.P. Nos. 848-50 of 2005, Lawyers Inc in W.P. Nos. 260, 1986 and 1987-88 of 2005 and 10731-53, 41262-66, 42876-89 and 44374 of 2004, Lex Nexus, in W.P. No. 51461 of 2004, M. Ram Bhat and Sreepada, Associates in W.P. Nos. 80-82 of 2005 and 42021 of 2004, M. Shyam Prasad and Associates in W.P. No. 11417 of 2005, S.K.V. Chalapathy and Srinivas, in W.P. Nos. 1894-1895 of 2005, Vagdevi Associates in W.P. Nos. 4159 and 9244-9245 of 2005, V. Chandrappa and Associates in W.P. Nos. 967-968 of 2005, Dildar Shiralli and F. Varis Ali, in W.P. Nos. 6742-6743 and 10701 of 2005, Suguna R. Reddy, in W.P. Nos. 48514 and 48935-38 of 2004, Sumangala A. Swamy, in W.P. Nos. 560 and 810 of 2005 and 50869-50870 of 2004, Sumangala A. Swamy and V. Vijayamma, in W.P. No. 7404 of 2005, Afsarunnisa, in W.P. No. 49008 of 2004, Amaresh A. Angadi, in W.P. No. 731 of 2005, Ashok B. Hinchagiri, in W.P. No. 185 of 2005, Ashok Haranahalli, in W.P. No. 29727 of 2004, A. Gopalaiah, in W.P. No. 50072 of 2004, A. Venkatachalapathi and Associates in W.I. No. 21975 of 2004, A.N. Hegde, in W.P. Nos. 39260-83 of 2004, A.S. Mahesha, in W.P. No. 10788 of 2005, B. Papegowda, in W.P. Nos. 5181, 6697, 8429-35 and 8601-02 of 2005, B. Rudragowda, in W.P. Nos. 1576-95 of 2005, B.L. Nandakumar and Associates in W.P. Nos. 3135, 8795, 8796, 10418 and 10424 of 2005, B.L. Sanjeev and Associates in W.P. No. 23310 of 2004, B.M. Shyamprasad, in W.P. Nos. 1549-50 of 2005, B.N. Suresh, in W.P. Nos. 50180 of 2004 and 3280 of 2005, B.N. Suresh and P.M. Narayanaswamy, in W.P. Nos. 51456-51457 and 51458 of 2004, B.S. Radhanandan, in W.P. Nos. 876-877, 993,

4567 and 4716 of 2005, B.S. Vasantha Madhav and G. Gangireddy, in W.P. Nos. 49981-49986 of 2004, B.V. Mallareddy, in W.P. No. 32061 of 2004, Chandrashekar P. Patil, in W.P. No. 23308 of 2004, Chikkappa Gowda K.V., in W.P. No. 94 of 2005, C. Lakshminarayana Rao, in W.P. No. 46066 of 2004, C.G. Gopalswamy, in W.P. Nos. 37497-98, 45748, 45749, 46111, 46617 and 49459 of 2004 and 6732 of 2005, C.M. Nagabushana, in W.P. No. 21067 of 2004, C.V. Nagesh and K. Suman, in W.P. Nos. 41452-84 of 2004, G. Gangi Reddy, in W.P. Nos. 35454, 35979, 36215, 37706-07, 39761-771, 45216-45224, 46222-46233, 49045-54, 50182-50187 and 50878-885 of 2004 and 220-21 and 871-875 of 2005, G. Kumar, in W.P. Nos. 49059-60 of 2004, G. Papi Reddy, in W.P. Nos. 21829, 21830, 21967, 26601-604, 39131-33 and 51468-51474 of 2004, G. Papi Ruddy and N.S. Sheshadri, in W.P. Nos. 45613-45614 of 2004, G.D. Ashwathanarayana, in W.P. Nos. 49734-49735 and 40794 of 2004 and 3251, 5206 and 8709 of 2005, G.G. Shastri, in W.P. Nos. 43035, 43036, 43037, 44465 and 44466-44467 of 2004, G.K. Bhat, in W.P. Nos. 1060 and 1151 of 2005, G.M. Jagadeesha, in W.P. Nos. 1859-1860 and 2653 of 2005, G.R. Gurunath, in W.P. Nos. 50339-50343 of 2004, G.S.V. Associates in W.P. Nos. 50847 and 40364 of 2004, H. Kumara Swamy, in W.P. Nos. 45882-932 of 2004, H.N. Nagmohan Dasand Associates in W.P. No. 35347 of 2004, H.P. Leeladhar and Company in W.P. Nos. 28244 of 2004 and 288 and 582-98 of 2005, H.S. Nagendra, in W.P. Nos. 861, 862, 863, 864, 865, 1336, 1339, 1341 and 9981 of 2005, H.V. Subramanya, in W.P. Nos. 534 and 1088 of 2005, Janardhana G., in W.P. No. 2041 of 2005, K. Chandrashekar Achar, in W.P. Nos. 8437-8439 of 2005, K. Raghaverrdra Rao, A. Madhusudhana Rao and Vidya Iyer, in W.P. Nos. 34702-708 of 2004, K. Rajanna, in W.P. Nos. 49723 and 49724 of 2004, K. Shashikiran Shetty, in W.P. Nos. 36566, 51377 and 51404-46 of 2004, K. Shashikiran Shetty and Shetty and Hegde Associates in W.P. Nos. 706 and 801 of 2005, K. Suman, in W.P. No. 5224 of 2005, K.A. Ariga, in W.P. Nos. 2922 and 5310 of 2005, K.H. Jagadish, Associates in W.P. Nos. 50748 and 50781 of 2004, K.H. Somashekar, in W.P. Nos. 45784-88, 46478-85, 49679, 51015-51016, 51018 and 51098-51100 of 2004 and 1421 and 2129-32 of 2005, K.H. Somashekar and Sumitra G., in W.P. Nos. 45996-46000, 46140-42, 46856-46863, 49956-49960, 50821-50824, 50825, 50826-50827, 50830, 50858, 51291-51295, 51320-51323 of 2004 and 292-294, 1353, 1354, 2755-56, 3288-3290, 4596-4602, 4604-4606, 6600 and 6366-6371 of 2005, K.H. Somasekhar and Y.R.P. Shetty, in W.P. Nos. 44701-44707 of 2004, K.M. Eswarappa, in W.P. Nos. 1078 and 2056-2060 of 2005, K.S. Nagaraja Rao and Associates in W.P. Nos. 346-347, 538, 878, 2995-3019, 3245-250, 4865, 4895-4902, 5356 and 9964-9969 of 2005, K.V. Manjunath, in W.P. No. 10020 of 2005, K.V. Narasimhan, in W.P. Nos. 37697, 37897-900 and 51339-51345 of 2004, L. Mallesh, in W.P. Nos. 1132 and 3179-80 of 2005, L.T. Gopal, in W.P. Nos. 1186 and 1542 of 2005 and 51135 of 2004, Mohammed Farooq, in W.P. Nos. 51141-51181, 51182-51213, 51326-51334 of 2004 and 7294-7300 of 2005, M. Erappa Reddy, in W.P. Nos. 263, 452, 476-478 and 536 of 2005 and 50911 of 2004, M. Ravi Prakash, in W.P. No. 5857 of 2005, M. Rudraiah, in W.P. Nos. 407-408 and 576-77 of 2005, M. Shivaprakash, in W.P. Nos. 45201, 51076, 51078 of 2004 and 1189-1191 of 2005, M.G. Kumar, Law Firm in W.P. Nos. 5347-5349, 6218-19, 7436-37 and 10614 of 2005, M.H. Sawkar, in W.P. Nos. 30596 and 33862 of 2004, M.R. Achar, for K. Gopal Hegde, for ALMT Legal Associates in W.P. Nos. 25807 and 28381-85 of 2004, M.R. Achar, for ALMT Legal Associates in W.P. Nos. 50733-47 of 2004, M.R. Krishna Murthy, in W.P. No. 10925 of 2005, M.S. Narayana Rao, in W.P. Nos. 50422, 50424, 50425, 50426, 50427, 51028, 51029 and 51030-32 of 2004, Seshachala, in W.P. Nos. 51351-51864 of 2004, H.R. Ananthakrishna Murthy and Associates in W.P.

No. 371 of 2005, Rao Associates, in W.P. No. 2791 of 2005, Nagaiah, in W.P. No. 50492 of 2004, N.J. Ramesh, in W.P. No. 29996 of 2004, N.S. Sanjay Gowda, in W.P. Nos. 34488-91, 36221-225, 36368-72 and 39667-39671 of 2004, P. Krishnappa, in W.P. Nos. 46, 51, 53-59, 169-70, 171-172 and 7370-7371 of 2005 and 20182, 21560-21561, 24423-24425, 24678-24679, 26601-604, 35878-79, 43756-43757, 44200-44212, 45303-45309, 48385, 44866-68, 44870-72, 48390-48391 and 50766-50768 of 2004, P. Papegowda, in W.P. No. 10430 of 2005, P. Prasanna Kumar, in W.P. Nos. 50756-57 of 2004, P.M. Narayanaswamy, in W.P. Nos. 37888-37895 of 2004 and 4282 of 2005, P.N. Nanja Reddy, in W.P. Nos. 24505, 26756-57 and 26424 of 2004, P.S. Dinesh Kumar, in W.P. Nos. 35843-50 of 2004, P.T. Hebbar, in W.P. No. 43501 of 2004, P.T. Sreenivasa Reddy, in W.P. No. 641 of 2005, P.V. Chandra Shekar, in W.P. Nos. 25934-25936, 25937-25938, 25939, 27110-30 and 31746-50 of 2004, Rasheed Khan and K. Narayanappa, in W.P. Nos. 9130-9136 of 2005, R. Anand Kumar, in W.P. No. 46504 of 2004, R. Chandrashekar, in W.P. Nos. 22279-22292, 23285-23295, 31799-31814, 44841-42, 50890, 50891-50895 and 50912-50914 of 2004, R. Nagaraj, in W.P. Nos. 46144-190 of 2004, R. Nataraj, in W.P. Nos. 11098, 24420, 26610-14, 23514, 25008, 25007, 25117, 46140-42, 50431, 50828, 50829, 50831-50838, 50839-50843, 50844 and 50995-50998, 50999-51003 of 2004 and 413, 416, 1777, 6622 and 6623 of 2005, R. Sridhar Hiremath, W.P. Nos. 51276-51278 of 2004, R.B. Sadasivappa, in W.P. Nos. 20544 and 25650 of 2004 and 6991 and 7015-7017 of 2005, R.N. Narasimha Murthy, for K. Shashikiran Shetty, in W.P. No. 20235 of 2004, R.S. Ravi, in W.P. Nos. 5103 and 5723 of 2005, R.S. Hegde, in W.P. Nos. 23177, 25793, 26732, 27728, 31139, 31140, 34994, 45939-45944 and 34994 of 2004 and 323-325 of 2005, R.V. Srinivasa Reddy, in W.P. No. 3231 of 2005, R.V. Srinivasa Reddy and P.M. Narayana Swamy, in W.P. No. 33955 of 2004, R.V. Srinivasa Reddy and Associates in W.P. Nos. 51475-51477 of 2004, Shanmukhappa, Kesvy and Company in W.P. Nos. 45742-47 of 2004 and 1548 of 2005, Suresh D. Deshpande, in W.P. Nos. 442 and 443 of 2005, S. Chennaraya Reddy, in W.P. Nos. 276-77, 551, 1274, 1423, 1539, 2247-63 and 42591 of 2005 and 24726, 26510-26513, 51346 of 2004, S. Dikshit, Associates in W.P. No. 9355 of 2005, S. Sudarsana Reddy, in W.P. Nos. 10239 and 10256 of 2005, S.M. Hegde Kadave, W.P. Nos. 22423, 23190, 23191, 48473, 48474 and 48475 of 2004, S.N. Ashwathnarayana, in W.P. No. 2339 of 2005, S.T. Mahesh in W.P. Nos. 125, 126, 130, 131, 250, 251 and 403-04 of 2005, T. Seshagiri Rao and M. Geetha, in W.P. Nos. 21055 and 48573 of 2004, T. Sheshagiri Rao, in W.P. Nos. 66, 69, 369 of 2005, T.N. Vishwanath, in W.P. Nos. 1387-88 of 2005, T.S. Amar Kumar, for Lawyers INC in W.P. Nos. 21779-21802, 22299-301 and 26537-26543 of 2004, T.S. Mahantesh, in W.P. Nos. 50456-50460 of 2004, T.S. Mahantesh and D. Srinivasa, in W.P. No. 9508 of 2005, Vijayakumar A. Patil, in W.P. No. 37477 of 2004, Vinod Prasad, in W.P. No. 26125 of 2004, Vishnu D. Bhat, in W.P. Nos. 3434-3472, 4405-4406, 6684-89, 6666-83, 7292 of 2005 and 48046-48063 of 2004, Vishwanath R. Hegde, in W.P. Nos. 50334-37 of 2004 and V. Lakshminarayana, in W.P. Nos. 40692-726 of 2004, Y.R. Sadashiva Reddy, in W.P. Nos. 908 to 912 and 1540 of 2005, Cariappa and Company in W.P. No. 21812 of 2004, Lawyers INC and T.S. Amar Kumar, in W.P. Nos. 261, 262, 639-640 and 646 of 2005, Sivan and Siva, Associates in W.P. Nos. 25236, 25237, 25238, 25239 and 25240 of 2004 and 5564 of 2005, Dikshit Associates, in W.P. Nos. 2974 and 3994 of 2005, M.K. Shivaram, in W.P. Nos. 1285-1286 of 2005, Sridhar N. Hegde, in W.P. No. 4814 of 2005, S.V. Shastri, in W.P. Nos. 2020-2021 of 2005, T.H. Narayana, in W.P. Nos. 5861-5865 of 2005, U. Abdul Khader, in W.P. Nos. 37811-24 of 2004 and U.L. Bhat, for K. Shashikiran Shetty, in W.P. Nos. 28087 and 32670-702 of 2004, for the Appellant; S.

Sujatha, for R-1 and 2 in W.P. No. 3135, 8795, 8796, 10418 and 10424 of 2005, for R-2 in W.P. Nos. 4567 and 4716 of 2005, for R-2 and 3 in W.P. Nos. 276-77, 1894-1895, 9130-9186, 2217-63, 9355, 10256, 10614 and 10925 of 2005, A. Shivaram and Associates for R-4 in W.P. Nos. 44701-44707 and 46478-85 of 2004, A.N. Venugopala Gowda, for R-1 in W.P. Nos. 25807 and 28381-85 of 2004 and 731 and 9508 of 2005, for R-1 and 2 in W.P. Nos. 288, 371, 582-98, 848-50 and 2791 of 2005 and 21829, 21830, 21967, 21975, 48473-48475, 50425 and 50427, 50424, 50426, 51028 and 51029 of 2004, for R-2 in W.P. Nos. 25008, 21779-21802, 22299-301, 23308, 24505, 25117, 26756-57, 32061, 39667-39671, 51291-51295, 51320-51323 of 2004 and 560 and 810 of 2005, for R-2 and 3 in W.P. Nos. 50733-47 and 31140 of 2004, 125, 126, 130, 131, 250, 251, 263, 476-478, 536, 538, 551, 576-77, 1060, 1151, 1539, 1894-1895, 5356, 10239, 21055, 22279-22292, 23177, 23285-23295, 23310, 24420, 24423-24425, 24678-24679, 24726, 25236, 25237, 25238, 25239, 25240, 25650, 25793, 25934-25936, 25937-25938, 25939, 26125, 26424, 26510-26513, 26537-26543, 26601-604, 26610-14, 26732, 27110-30, 27728, 28087 and 32670-702, 29727, 30596, 31746-50, 33862, 35454, 37888-37895, 46856-46863, 50334-37, 50422 and 51030-32, 50431, 50756-57, 50821-50827, 50828 and 50289, 50830, 50831-50838, 50839-50843, 50844, 50858, 50890-50895 of 2004, 50911, 51018 and 51098-51100, 51182-51213, 51276-51278, 51326-51334, 51346, 51351-51364, 51456-51457 and 51458 of 2005 and 51, 66, 94, 80-82, 185, 292, 403-04, 407-408, 413, 452, 534, 706, 801, 861, 865, 878, 993, 1078, 1088, 1285-1286, 1387-88, 1341, 1421, 1423, 1548, 1777, 2056-2060, 2129-32, 2995-3019, 3245-250, 4405-4406, 5564, 6218-19, 6666-83, 6684-89, 7015-7016, 7017, 7294-7300, 34702-708, 10430, 11098 and 21812 of 2004, for R-2 to 4 in W.P. Nos. 35843-50, 49723 and 49724 of 2004, for R-3 and 4 in W.P. Nos. 51377 and 51404-46 of 2004, for R-2 in W.P. No. 25007 of 2004 and R-2 and 8 in W.P. Nos. 1576-95 and 3434-3472 of 2005, A.N. Venugopala Gowda and U. Abdul Khader for R-2 and 3 in W.P. Nos. 33955 and 34994 of 2004, A.N. Venugopala Gowda and Basavaraj V. Sabarad for R-2 and 3 in W.P. Nos. 46222-46233 of 2004, A.N. Venugopala Gowda and K. Krishna for R-2 and 3 in W.P. Nos. 50731 and 50748 of 2004, Basavaraj V. Sabarad, for R-1 in W.P. Nos. 2041 of 2005 and 46617 of 2004, for R-1 and 2 in W.P. No. 4159 of 2005 and 50912-50914 and 50456-50460 of 2004, for R-5 to 7 in W.P. Nos. 40692-726 of 2004, for R-2 and 3 in W.P. Nos. 46, 53-59, 69, 169-70, 171-172, 220-21, 323-325, 346-347, 416, 442, 641, 871-875, 967-968, 1186, 1274, 1336, 1353, 1542, 1353, 1354, 1859-1860, 2020-2021, 2653, 2755-56, 2922, 3231, 3280 and 6600 of 2005 and 20544, 20982, 21067, 45784-88, 48385, 48514, 48573, 48935-38, 45996-46000, 49981-49986, 50869-50870, 50878-885, 50999-51003, 51015-51016 and 51078 of 2004 and 51135 of 2004, for R-2 in W.P. No. 50847 of 2004, for R-2 to 4 in W.P. Nos. 21560-21561 of 2004, for R-3 in W.P. Nos. 45613-45614 of 2004 and for R-2 and 3 in W.P. Nos. 369, 908 to 912 and 1540 of 2005, Basavaraj V. Sabarad and K. Krishna for R-2 to 4 in W.P. Nos. 51339-51345 of 2004 and for R-2 and 3 in W.P. No. 51076 of 2004, Basavaraj V. Sabarad and A.N. Venugopala Gowda for R-1 and 2 in W.P. No. 51461 of 2004, Basavaraj V. Sabarad and M.P. Srikanth for R-2 in W.P. Nos. 876-877 of 2005, B. Srinivas and Basavaraj V. Sabarad for R-6 in W.P. Nos. 28087 and 32670-702 of 2004, B.K. Manjunath, for R-4 in W.P. Nos. 25793, 25807, 26732, 27728, 28381-85 and 31140 of 2004, B.T. Parthasarathy, - General in W.P. Nos. 50733-47, 28087, 32670-702, 31140, 25008, 32061, 25008, 35979, 37706-07 and 36216 of 2004, 125, 126, 250, 130, 131 and 251 of 2005, 10239 of 2005, 1060, 1151, 1186, 1542 of 2005, 51135 of 2004, 1339 and 9981 of 2005, 1189-1191 of 2005, 1549-50 of 2005, 1576-95 of 2005,

1894-1895 of 2005, 1132 and 3179-80, 1285-1286, 1336, 169-70, 1341, 1353 and 2755-56, 1387-88, 1423 of 2005, 1987-88, 2020-2021, 2056-2060 of 2005, 1421 and 2129-32, 220-21 of 2005, 2339 of 2005, 261 and 639-640, 262 and 646, 263 and 536 of 2005, 476-478 of 2005, 1859-1860 and 2653, 276-77 and 2247-63, 292-294, 2974 and 3994, 2995-3019 and 3245-250, 3231, 3251, 3288-3290, 3434-3472, 346-347, 4405-4406, 4567 and 4716, 4596-4602, 46, 4604-4606, 4865, 4895-4902, 1539, 7436-37, 7294-7300, 5181 and 8429-35, 5224, 5347-5349, 5356, 538, 560 and 810, 576-77, 5861-5865, 6366-6371, 6600, 6666-83, 6684-89, 6742-6743, 7015-7016, 861, 871-875, 878, 9244-9245, 10256, 10614, 10701, 1078, 10925, 11098, 185, 2922, 403-04, 442, 4814, 5310, 5564, 6622, 6623, 6991, 7017, 7370-7371, 863, 864, 865, 9130-9136, 9355, 9508, 993, 9964-9969 of 2005, 20544 and 20982, 21055, 21067, 21560-21561, 22279-22292, 23177, 23285-23295, 23308 of 2004, 24420 and 26610-14, 24423-24425 24678-24679, 24726, 25117, 25237, 25239, 25650, 25793, 25934-25936 and 27110-30, 25937-25938, 25939, 26424, 26510-26513, 26537-26543, 26732, 27728, 29727, 29996, 34488-91 and 42591, 35878-79, 36221-225, 36368-72, 37477, 37497-98, 37697 and 37897-900, 37811-24, 37888-37895, 39131-33, 39260-83, 40364, 41262-66, 41965, 42021, 42876-89, 43035 and 44465, 44374, 44841-42, 45613-45614, 45748, 45749, 45882-932, 45939-45944, 45303-45309, 45996-46000, 46140-42, 46144-190, 46478-85, 48046-48063, 48385, 49045-54, 49059-60, 49459, 50180, 50334-37, 50821-50824, 50825, 50826-50827, 50830 and 50858, 50869-50870, 50878-885, 50911, 50912-50914, 51015-51016, 51182-51213, 51291-51295, 51320-51323, 51377 and 51404-46, 51475-51 477, 51346, 20235, 21812, 23310, 25807 and 28381-85, 30596, 31746-50, 33862, 35454, 35843-50, 43051, 43501, 49723, 49724, 49981-49986, 50766-50768, 50769-72, 51078, 51468-51474 and 51526-51 of 2004 and 26601-604 of 2004, 34702-708 of 2004, 39667-39671 of 2004, 43037 and 44466-44467 of 2004, 43756-43757 and 44200-44212 of 2004, 45742-47 of 2004, 46222-46233 of 2004, 50756-57 of 2004, 50995-50998 of 2004, 51339-51345 of 2004, 51351-51364 of 2004, 51456-51457 of 2004, 25007 of 2004, 33955 of 2004, 34994 of 2004, 43036 of 2004, 45784-88 of 2004, 46111 of 2004, 48573 of 2004, 50072 of 2004, 50492 of 2004, 50731 of 2004, 50748 of 2004, 51076 of 2004, 51276-51278 of 2004, 51458 of 2004, 323-325 of 2005, 5103 and 5723 of 2005, 53-59 of 2005, 6218-19 of 2005, 6697 and 8601-02 of 2005, 706 and 801 of 2005, 7292 of 2005, 80-82 of 2005, 8437-8439 of 2005, 967-968 of 2005, 908 to 912 of 2005 and 1540 of 2005, 10020 of 2005, 10430 of 2005, 10788 of 2005, 534 and 1088 of 2005, 11417 of 2005, 1274 of 2005, 1548 of 2005, 171-172 of 2005, 1777 of 2005, 1986 of 2005, 260 of 2005, 3280 of 2005, 369 of 2005, 407-408 of 2005, 413 of 2005, 416 of 2005, 4282 of 2005, 443 of 2005, 452 of 2005, 49008 of 2005, 51 of 2005, 551 of 2005, 641 of 2005, 66 of 2005, 69 of 2005, 7404 of 2005, 862 of 2005, B.T. Parthasarathy, -General and T.A. Ramachandraiah, HCGP for R-1 to R-4 in W.P. Nos. 26125, 39761-771, 40692-726, 40731-53 and 41452-84 of 2004 and 1354 of 2005, for R-1 and R-3 in W.P. Nos. 21779-21802, 22299-301 and 23514 of 2004 and 876-877 of 2005 and for R-2 in W.P. Nos. 731, 2041 and 6732 of 2005 for R-3 in W.P. Nos. 46504, 23191 and 28244 of 2004, 288, 371, 582-98, 848-50, 4159 and 5857 of 2005, K. Krishna, for R-1 in W.P. No. 6732 of 2005, for R-1 and R-2 in W.P. Nos. 5857 and 2791 of 2005, for R-1 to R-3 in W.P. No. 5206 of 2005, for R-2 and 3 in W.P. Nos. 46478-85, 40351, 46066, 48390-48391, 49679, 49045-54 and 49956-49960, 50180, 50182-50187 of 2004 and 862, 1336, 1339, 1987-88, 2974, 3994, 4814, 5310, 5347-5349, 5861-5865, 6218-19, 6622, 6623, 6742-6743, 7404, 7436-37, 8437-8439,

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1986 of 2005, 3280 of 2005, 260 of 2005, 369 of 2005, 407-408 of 2005, 413 of 2005, 416 of 2005, 4282 of 2005, 443 of 2005, 452 of 2005, 49008 of 2005, 51 of 2005, 551 of 2005, 641 of 2005, 66 of 2005, 69 of 2005, 7404 of 2005, 862 of 2005, for R-1 and 4 in W.P. Nos. 1354 and 50756-57 of 2005, R-2 in W.P. Nos. 25807 and 28381-85 of 2004 and 9508 of 2005 and in W.P. Nos. 51141-51181 of 2004, Government Advocate for R-3 in W.P. Nos. 48473-48475 and 50456-50460 of 2004 and for R-1 in W.P. Nos. 94 of 2005 and 45216-45224 and 50182-50187 of 2004, U. Abdul Khader, for R-1 in W.P. Nos. 50339-50343 of 2004, for R-1 and 2 in W.P. Nos. 50456-50460, 46504, 28244, 35347 and 45201 of 2004, for R-1 to 3 in W.P. Nos. 49734-49735 and 40794 of 2004, for R-2 in W.P. Nos. 1549-50 of 2005 and 36221-225, 49059-60, 34488-91, 36368-72, 37497-98, 39667-39671 and 40364 of 2004, for R-2 and 3 in W.P. Nos. 31746-50, 35979, 37706-07 and 36216, 41262-66, 42021, 42591, 42876-89, 44374, 46144-190, 46140-42, 45996-46000, 44701-44707, 29996, 45303-45309, 31779-31814, 45939-45944, 44841-42, 43035, 44465, 48046-48063 and 43756-43757, 20235, 41965, 45742-47 and 37811-24 of 2004, in W.P. Nos. 5224 of 2005, 5181 and 8429-35, 3288-3290, 1421 and 2129-32, 1353 and 2755-56, 292-294, 6366-6371, 260, 261 and 639-640, 262 and 646, 2995-3019 and 3245-250, 4865, 4895-4902, 863, 864, 1189-1191 of 2005, in W.P. Nos. 6697 and 8601-02 of 2005, 5103 and 5723 of 2005, 10020 of 2005, 1986 of 2005, 443 of 2005 and 1576-95 of 2005, in W.P. Nos. 34702-708, 44200-44212, 43036, 43037 and 44466-44467, 44870-72 and 44866-68 of 2004 and for R-5 to 7 in W.P. Nos. 39761-771, 40731-53 and 41452-84 of 2004 U. Abdul Khader and A.N. Venugopala Gowda for R-2 and 3 in W.P. Nos. 4596-4602 of 2005, U. Abdul Nazeer, for R-1 in W.P. No. 6732 of 2005 and for R-2 in W.P. Nos. 36368-72 and 39131-33 of 2004, for R-2 and 3 in W.P. Nos. 35878-79, 36566 and 39260-83 of 2004 and 1132 and 3179-80 of 2005 and for R-2 to 4 in W.P. Nos. 37697 and 37897-900 and 37477 of 2004 and Venugopal Gowda and K. Krishna for R-2 and 3 in W.P. No. 50731 of 2004, V. Lakshminarayana, for R-3 in W.P. No. 25117 of 2004, for the Respondent

Judgement

V. Gopala Gowda, J.—These batches of writ petitions are filed by the owners of agricultural and/or converted lands, house sites, residential/farm houses, companies and builders and others questioning the legality, validity and correctness of the acquisition of vast extent of lands for a development scheme called ARKAVATHI LAYOUT. The main features of the layout, as mentioned in the report of the Engineering Department of the BDA, are:

(a) Total extent of land required : 2750 acres (b) Proposed residential sites : 28600 (c) Civic Amenity sites : 50 (d) Commercial sites : 150 (e) Total estimation : Rs. 933.47 Crores (f) Total amount received : Rs. 981.36 Crores (g) Saving : Rs. 47.89 Crores (h) No. of villages covered : 16 (i) No. of applicants : 2,32,000

The details of various dimensions of the residential sites, the extent of land used for various purposes such as residential sites, park and play grounds, civic amenities, roads etc., the amount that would be realised from the sites, the total expenditure to be incurred for the formation of the layout, in question are

furnished by the BDA in its report, which is available in the original files produced before this Court.

2. The brief facts that gave rise to these writ petitions are as under:

(i) The Bangalore Development Authority ("BDA" for short), issued Preliminary Notification No. BDA/Commr/ ALAO/LA9/104/2002-2003, dated 3-2-2003 u/s 17 of the Bangalore Development Authority Act, 1976 ("BDA Act" for short), originally proposing for acquisition of 3339 acres of land. The total extent was later shown as 3839 acres 12 guntas by issuing an Erratum in August 2004, Gazetted on 16-9-2004. Pursuant to such notification, notices were issued to the landowners, khatedars or persons interested in the lands, objections were filed to the same inter alia contending that the BDA is not the planning authority, it has no jurisdiction to transgress upon the Area in question as the same is covered under Byatarayanapura Town Municipal Council, K.R. Puram Municipal Council and other Grama Panchayats. Thereafter, the BDA claims to have submitted modified Scheme to the Government for approval as required u/s 18 of the BDA Act before publishing the final notifications for acquiring of 2750 acres of land for the said developmental scheme. According to the BDA, the State Government approved the same. Consequently, Final Notification No. UDD/193/MNX 205, dated 23-2-2004 u/s 19 of the BDA Act was published. Award notices under Sections 9 and 10 of the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 have been issued to some of the Khatedars or persons interested in the lands. Possession of some of the lands alleged to have been taken by the BDA and formation of layout was commenced by entrusting the civil work to the contractors for execution of the Scheme. The BDA has invited applications for allotment of sites and it is stated that a whopping 2,32,000 applications have been filed seeking allotment of sites while the number of sites yet to be formed in the proposed layout is only 20,000. The initial deposit amount received from the applicants by the BDA is the source of revenue for the purpose developing and implementing the scheme in question. In the meanwhile, these writ petitions are filed by the petitioners seeking to quash the acquisition proceedings on various grounds.

(ii) In W.P. No. 20235 of 2004, the petitioner claims to be the owner of lands bearing Sy. Nos. 21/2 and 21/3 measuring 2-08 and 2-00 acres respectively of Kempapura Village. She claims to have entered into agreements with the owners as per Annexure-C and filed suits for specific performance. It is claimed that sites are formed and 35 houses have been constructed and extensive plantation is made. Since the lands are the subject-matters of acquisition, the petitioner has prayed to quash the impugned notifications and to declare that the BDA has no authority to undertake developmental activities. (Written arguments are filed).

(iii) In W.P. No. 25807 of 2004, the petitioner is Tata Housing Development Corporation Limited. It is stated that petitioner has entered into agreement for purchase of lands in Sy. Nos. 17/1, 18, 19, 20, 26 and 94 of Hennur Village, in all measuring 26 acres 12 guntas, which are mentioned in the Schedule to the

writ petition, with the owners, respondents 3 to 5. It is also stated that petitioner obtained General Power of Attorney from the owners. It is admitted that at the time of entering into agreement, the schedule lands were under litigation. Under the agreement, petitioner had undertaken the responsibility to fight the litigation at its own cost and then develop the lands. It is further stated that the litigation ended in the dismissal of R.F.A. No. 367 of 1992 as per Annexure-C and the same is confirmed by the Supreme Court in SLP (C) No. 18867 of 1999 vide Annexure-D.

The further case of the petitioner is that since respondents 3 to 5 in the aforesaid writ petition have repudiated the agreement, Arbitration proceedings were initiated which culminated in award in favour of the petitioner. The same is challenged in the Civil Court in AS/30/2002 and the same is pending. It is further stated that proceedings were also initiated at the instance of the owners in LRF No. 1040 of 2002 u/s 83 of the Karnataka Land Reforms Act, 1961 for the alleged violation of Section 79-A and the same is pending in appeal before the Karnataka Appellate Tribunal. In the meanwhile, since the lands have been proposed for acquisition, the writ petition is filed seeking to quash the impugned notifications. It is claimed that by the Government Order at Annexure-H, dated 1-6-1995, the Government has granted approval for acquisition of lands through BDA and other authorities for Group Housing Projects under the new Housing Policy and therefore respondents are estopped from acquiring the lands of this petitioner.

(iv) In W.P. Nos. 28087 and 32670 to 32702 of 2004, the first petitioner is a Company by name M/s. Norland Investments Services Private Limited, which develops software IT Parks and most of petitioners 2 to 34 are non-resident Indians. Pursuant to the call given by the company at the World Business Meet held in Bangalore to the investors to develop IT Parks and the representation submitted, the High Level Committee constituted by the State Government, the Government Order at Annexure-C, dated 17-1-2001 was issued approving the proposal of the Company to establish an IT Park at Nagawara in Bangalore. The Karnataka Industrial Areas Development Board will acquire 53 acres of land for the same. Petitioners purchased the lands mentioned in Schedule A and the lands proposed for acquisition by KIADB are mentioned in Schedule B to the writ petitions. Since the BDA has also proposed for acquisition of these lands for the Arkavathi Layout, the petitioners have approached this Court seeking to quash the impugned notifications and to declare that BDA has no jurisdiction to undertake any developmental activities within the territorial limits of respondents 4 and 5 (Amruthahalli Village Panchayat and City Municipal Council, Byatarayanapura). It is the case of the petitioners that their lands cannot be proposed for acquisition by the BDA when already KIADB has proposed these lands for acquisition. In other words, there cannot be acquisition of same land by two authorities for different purposes. Further, the proposed acquisition by the BDA is contrary to the Government Order at Annexure-C.

(v) In W.P. Nos. 40692 to 40726 of 2004 petitioners 1 to 22 are the owners of lands mentioned in the Schedule who have entered into agreements for sale of their lands with the 23rd petitioner-BEML Employees Co-operative Society. It applied for exemption u/s 109 of the Karnataka Land Reforms Act, 1961. Similar application was also filed to the 2nd respondent. At this juncture, the schedule lands have been notified for acquisition for Arkavathi Layout. Hence, the petitioners have filed these writ petitions seeking to quash the impugned notifications and to direct respondents 1 to 3 to consider the applications of 23rd petitioner for grant of exemption for purchasing the lands. The grievance is that during the pendency of the application seeking exemption the acquisition proceedings are initiated.

3. Statement of objections is filed on behalf of the BDA traversing the petition averments in Writ Petition Nos. 26601 to 26604 of 2004 justifying the impugned action and denying the various allegations made against the BDA and learned Counsel for the BDA have sought permission in the course of submission to adopt the same for all the writ petitions which were heard. It is stated in the statement of objections that by implementing the scheme in question, the allottees can live in comfort and peacefully and the planned development of the lands will prevent pollution, unhygienic conditions, etc. It is vehemently asserted that no right of the petitioners are affected, but on the other hand they are benefited as they would get compensation amount and also the sites will be allotted under the incentive scheme, if they are eligible under the Scheme. It is further stated that there is no illegality or violation of principles of natural justice as alleged in the writ petitions. It is pleaded that the acquisition of lands being for public purpose and there is huge demand from lakhs of applicants demanding allotment of sites in then favour and that BDA in discharge of its statutory duty which is entrusted to it under the statute it has undertaken the high magnitude project and therefore it is stated that the same does not suffer from any lacuna or illegalities or irregularities as alleged by the petitioners. It is stated that there is neither colorable exercise of power nor any arbitrariness or discrimination or even legal mala fides or legal malice in acquiring the lands for implementation of the scheme as alleged by the petitioners. It is denied by it that the BDA is acting like a real estate agency, which allegation is without any factual foundation. Stating that large number of applicants who are eligible under the Bangalore Development Authority (Allotment of Sites) Rules, 1984 are awaiting for allotment of sites, it is vehemently contended placing reliance upon the notification published u/s 2(c) of the BDA Act specifying the Bangalore Metropolitan Area in 1984 u/s 4-A of the Karnataka Town and Country Planning Act, 1961 earmarking the planning area for planned development as per the CDP of 1995 and therefore it is stated that BDA being planning Authority to the planning area, has undertaken the stupendous task of framing the scheme and wanted to implement it. The same is sanctioned by the Government by discharging its statutory duty under the provisions of BDA Act. Therefore, the learned Advocate-General and the learned Counsel for the BDA have prayed for

dismissal of the writ petitions. The BDA has not chosen to file separate Counter-Statement traversing the averments and allegations made in the writ petitions against the respondents. However, it is stated by the learned Counsel appearing for the BDA that the statement of objections filed to one writ petition may be treated as common to all the writ petitions in respect of the allegations made and the contentions raised barring the difference on facts.

4. These writ petitions were heard at length giving full fledged opportunity to all the learned Counsels. Learned Senior Counsels Sriyuths T.R. Subbanna along with Ms. Vanitha, G.S. Visveswara, R.N. Narasimha Murthy, U.L. Bhat, S.P. Shankar, M.R. Achar, K. Gopal Hegde, R. Kiran, P. Krishnappa, Jayakumar S. Patil, learned Counsels Sriyuths A. Venkatachalapathi, T.S. Amar Kumar, S.M. Hegde Kadave, N.J. Ramesh, G. Gangi Reddy, C.S. Gopala Swamy, P.N. Nanja Reddy, B.V. Malla Reddy, K.H. Jagadeesh, P.V. Chandrasekhar, G. Papi Reddy, V. Lakshminarayana, K.H. Somasekhar, R.B. Sadashivappa, K.M. Nataraj, P. Sashikiran Shetty and S. Nidhi, K.S. Nagaraja Rao, Taranath, Cariappa, Vinod Prasad, R.S. Hegde and Mrs. Suma Baliga have argued on behalf of the petitioners. Learned Advocate-General Sri B.T. Parthasarathi and T.A. Ramachandraiah made submissions on behalf of the State Government. Learned Senior Counsel Sri C.B. Srinivasan and learned Advocates Sriyuths A.N. Venugopala Gowda, Basavaraj V. Sabarad, U.A. Khadar, K. Krishna and Smt. Sujatha have made submissions on behalf of the BDA.

5. Some of the writ petitions filed after reserving the batch of writ petitions, were also ordered to be connected to the writ petitions which were already heard and reserved for orders as they also involve the same or similar facts and the question of law.

6. On the basis of the pleadings and the contentions urged, the following points emerge for consideration.--

POINTS

1. Whether the definition of "Bangalore Metropolitan Area" u/s 2(c) of the BDA Act exists in view of Articles 243-ZE and 243-P(c) of the Constitution of India and Section 503-B of the Karnataka Municipal Corporations Act, 1976 and BDA has got jurisdiction to frame the developmental Scheme in Bangalore Metropolitan Area?

2. Whether the Scheme in question is properly framed by the BDA and the same is legal and valid?

3. Whether BDA submitted the modified scheme after considering the objections u/s 18(1) of BDA Act with reasons and whether the Government has considered the same as required u/s 18(3) and whether the final notification issued was legal and valid?

4. Whether the Notification u/s 17(1) of the BDA Act is bad in law for not issued by the State Government as provided u/s 4(1) of the Land Acquisition Act, 1894?

5. Whether equal protection of laws under Article 14 of the Constitution are applicable to the landowners by applying the provisions of Land Acquisition Act in the light of Section 36 of the BDA Act and Section 177 of the KMC Act to acquire lands for improvements?
6. Whether the acquisition of lands in question is for "public purpose" by exercising the eminent domain?
7. Whether the acquisition of lands in question will take away the right guaranteed under Article 19 of the Constitution and consequently deprive the livelihood under Article 21 of the Constitution and the hence bad in law?
8. Whether the Commissioner of BDA can authorise his subordinates to enter upon the lands in question to survey, measure etc.?
9. Whether the enquiry conducted to consider the objections filed to the acquisition proceedings is fair, reasonable and in compliance of principles of natural justice?
10. Whether the BDA has complied with the formalities and requirements of Land Acquisition Act and BDA Act to proceed for formation of sites and allot them?
11. Whether the object of the BDA Act is frustrated and defeated in the absence of any kind of restriction on allotted sites and paving way for sale, transfer or otherwise soon after execution of absolute sale deed, resulting in BDA becoming an Estate Agent?
12. Whether the promissory estoppels pleaded by some of the petitioners is justified?
13. Whether there is discrimination and violation of Article 14 of the Constitution in the matter of deletion from acquisition proceedings in respect of other continuous lands?
14. Whether the conversion orders passed u/s 95 of the KLR Act are in conformity with Sub-sections (3) and (4) thereof and whether there is violation of other statutes such as KLR Act, KM Act, KMC Act, Karnataka Town and Country Planning Act, etc.?
15. Can the private builders proceed with their projects on the basis of conversion orders, without any sanction of layout plan by the Metropolitan Planning Committee constituted u/s 503-B of the KMC Act?
16. What order?
7. Point No. 1.--(i) In the statement of objections filed by the owners and interested persons to Section 17 notification and to these writ petitions and in the course of arguments the learned Counsel for the petitioners, specific plea is taken that the BDA has no territorial jurisdiction to undertake development scheme in the Bangalore Metropolitan Area and to acquire the lands in question as they are beyond the Bangalore Mahanagara Palike area and situated under the

jurisdiction of other local authorities such as Town Municipal Councils and Gram Panchayats constituted under the Karnataka Municipalities Act, 1964 and Karnataka Panchayat Raj Act, 1993 which have received the Assent of the President. Hence, they prevail over the provisions of BDA Act, particularly the "Bangalore Metropolitan Area" as defined u/s 2(c) of the BDA Act when it came into force with effect from 20-12-1975. Therefore, it is urged that BDA has no jurisdiction to frame the scheme in question and to acquire the lands for the implementation of the same.

(ii) Elaborating the aforementioned contention, Mr. V. Lakshminarayana, learned Counsel appearing for some of the petitioners, has relied upon the definition of "Metropolitan Area" defined in Article 243-P(c) of the Constitution of India, Article 243-R relating to composition of Municipalities and Section 503-B of KMC Act relating to Metropolitan Planning Committee. In support of this, the learned Counsel has relied upon the following decisions.--

1. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ;
2. Chandra Mohan v. State of Uttar Pradesh and Ors., AIR 1966 SC 1987 : 1967-1-LLJ-412 ;
3. R.C. Poudyal and Others Vs. Union of India and others, ;
4. (1993) 3 SCC 441, (sic);
5. S. Ganapathraj Surana and Ors. v. State of Tamil Nadu and Ors., 1993 Supp. (2) SCC 565;
6. Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others,
8. In order to know whether BDA has got jurisdiction in the matter or not, peeping into some of the statutory provisions of relevant statutes is essential. In this regard, the relevant provisions of Section 67 of the BDA Act are extracted hereunder.--

"67. Amendment of the Karnataka Town and Country Planning Act, 1961.--(1) In the Karnataka Town and Country Planning Act, 1961 (Karnataka Act No. 11 of 1963).--

(a) in Section 2, for item (i) of Sub-clause (a) of Clause (7), the following item shall be substituted, namely.--

"(i) the local planning area comprising the City of Bangalore, the Bangalore Development Authority; and".

(b) after Section 81-A, the following section shall be inserted, namely.--

"81-B. Consequences to ensue upon the constitution of the Bangalore Development Authority.--Notwithstanding anything contained in this Act, with effect from the date on which the Bangalore Development Authority is constituted under the Bangalore Development Authority Act, 1976, the following

consequences shall ensue.--

(i) the Bangalore Development Authority shall be the Local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted;

(ii) the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this act as if it were a Local Planning Authority constituted for the b2 Bangalore City".

9. From a plain reading of the aforesaid provisions it is clear that BDA is the Local Planning Authority for Bangalore City. As per Clause (ii) it has to exercise the powers, perform functions and discharge duties for Bangalore City. That means, its jurisdiction is confined only to Bangalore City area and not beyond that. But, the Preamble of BDA Act states as under:

"An Act to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith.

Whereas, it is expedient to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith".

While Section 81-B of the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as "Planning Act") as amended by Section 67 of the BDA Act confines the jurisdiction of BDA only Bangalore City, the preamble of BDA Act adds "areas adjacent thereto". But, strangely, Section 14 of the BDA Act, which deals with the objects of BDA, extends its jurisdiction to Bangalore Metropolitan Area and does not restrict its jurisdiction only to Bangalore City area. Section 14 reads as under:

"14. Objects of the Authority.--The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto".

10. The preamble and Section 14 of the BDA Act as also Section 81-B of Planning Act are conflicting with each other insofar as the jurisdiction of BDA over Bangalore Metropolitan Area is concerned. While Section 81-B of the Planning Act restricts its jurisdiction only to Bangalore City area, the preamble of BDA Act extends the jurisdiction to adjacent areas and Section 14 enlarges the jurisdiction to Bangalore Metropolitan Area. Even Section 36(1) extends the jurisdiction for acquisition of lands within or without the Bangalore Metropolitan

Area. Keeping in view these conflicting provisions, the Court proceeds to find out the actual jurisdiction of BDA insofar as the developmental Scheme in question is concerned.

11. As per Section 14 of the BDA Act, the purpose and object of establishing BDA is to promote and secure planned development of the Bangalore Metropolitan Area. "Bangalore Metropolitan Area" is defined in Section 2(c) of the BDA Act as under:

"2(c) "Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporations Act, 1949 (Karnataka Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Karnataka Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify".

As per Explanation to Section 503-B of Karnataka Municipal Corporations Act, "Bangalore Metropolitan Area" is the area specified by the Governor under Clause (c) of Article 243-P of the Constitution.

Article 243-P(c) of the Constitution defines "Metropolitan Area" as under:

"(c) "Metropolitan Area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part".

(emphasis supplied)

Therefore, the question is, which definition should be taken into consideration to resolve the present point?

12. (i) As per Clause (c) of Article 243-P of the Constitution, the Metropolitan area shall be specified by the Governor by public notification. The Governor has to specify the Metropolitan Area on the advice of the Council of Ministers as provided under Article 163 of the Constitution.

(ii) Article 243-ZE of the Constitution stipulates constitution of Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan Area as a whole. The Legislature of concerned State shall, by law, make provision for composition of the said Committee. In this regard, Section 503-B of KMC Act stipulates that the Government shall constitute Metropolitan Planning Committee for the Bangalore Metropolitan Area. As per the Explanation of this provision, "Bangalore Metropolitan Area" means the area specified by the Governor under Clause (c) of Article 243-P of the Constitution, which is already extracted.

13. The combined reading of Clause (c) of Article 243-P of the Constitution and explanation to Section 503-B of KMC Act makes it crystal-clear that Metropolitan Area should be the area specified by the Governor by public notification and therefore the definition of Section 2(c) of BDA Act has lost its significance and it

has become redundant.

14. The Notification issued by the State Government u/s 2(c) of BDA Act specifying "Bangalore Metropolitan Area" exercising the power under the Karnataka Government (Transaction of Business) Rules, 1977 framed under Article 166(3) of the Constitution, cannot have precedence over the public notification that would be published by the Governor as provided under Article 243-P(c) of the Constitution. If such notification is given effect to, it will have the effect of overriding the constitutional provision. In this regard, Mr. V. Lakshminarayana has rightly relied upon the following decisions:

1. P.V. Narsimha Rao Vs. State (CBI/SPE), ;
2. M/s. SIEL Ltd. and Others Vs. Union of India and Others, ;
3. Ashok Kumar Gupta and Another Vs. State of U.P. and Others, ;
4. Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., ;
5. (1995)4 SCC 469, (sic);
6. Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, ;
7. State of Sikkim Vs. Surendra Prasad Sharma and others, ;
8. Peddinti Venkata Murali Ranganatha Desika Iyengar and others Vs. Government of Andhra Pradesh and another, ;
9. Synthetics and Chemicals Limited v. State of Uttar Pradesh and Ors., ;
10. Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, ;
11. The State of Punjab Vs. Ajaib Singh and Another, ;
12. Chandra Mohan's case.

15. Article 243-ZF of the Constitution pertains to continuance of existing laws and Municipalities and it reads as under:

"243-ZF. Continuance of existing laws and Municipalities.--Notwithstanding anything in this part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992 which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other Competent Authority or until the expiration of one year from such commencement, whichever is earlier".

In view of the above Article of the Constitution, the definition of "Bangalore Metropolitan Area" in Section 2(c) of BDA Act being inconsistent with the provisions of Part IX-A of the Constitution, it was in force for a period of one year only from the commencement of Constitution (Seventy-fourth Amendment) Act,

1992, and thereafter it is no more in the statute. The reason is, the definition in BDA Act was neither amended nor repealed. Thus, the definition of "Bangalore Metropolitan Area" in Section 2(c) of the BDA Act, by operation of law, automatically stood repealed after the expiry of one year from the commencement of Constitution 74th Amendment. Therefore, the definition in Section 2(c) of the BDA Act shall be treated as no more in the BDA Act. In view of this also, "Metropolitan Area" shall be the area specified by the Governor by public notification under Clause (c) of Article 243-P of the Constitution and not as defined in Section 2(c) of the BDA Act, which is no more in the statute by virtue of the aforementioned Article of the Constitution.

16. It is stated by the learned Counsel for the BDA that till now the Governor has not specified the Metropolitan Area in exercise of the power u/s 503-B of the KMC Act read with Clause (c) of Article 243-P of the Constitution. Be that as it may.

17. As already noticed, Section 503-B of KMC Act provides for constitution of Metropolitan Planning Committee to prepare development plan to Bangalore Metropolitan Area. It is this Committee that has to prepare the Development Scheme and not the BDA. In this connection it is necessary to look into Section 15 of the BDA Act and the same is extracted hereunder:

"15. Power of Authority to undertake works and incur expenditure for development, etc.--(1) The authority may.--

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefore and also for the framing and execution of development schemes".

18. It is no doubt true that the BDA Act empowers the BDA to undertake schemes for development of Bangalore Metropolitan Area. But, u/s 503-A of the KMC Act the Metropolitan Planning Committee has to undertake such developmental schemes. This is in consonance with Article 243-ZE of the Constitution. In other words, in order to undertake the development schemes in Bangalore Metropolitan Area, both BDA Act and KMC Act empowers different constituents. But, in respect of the power conferred u/s 15 of the BDA Act there is no support of the Constitution. On the other hand, the power conferred u/s 503-B of the KMC Act is in accordance with Article 243-ZE of the Constitution. Therefore, the provisions relating to development schemes in the Metropolitan Area contained in the KMC Act shall prevail over the provisions of BDA Act. In this view of the matter, it has to be held that BDA has no jurisdiction to take up developmental schemes in Bangalore Metropolitan Area.

19. It is also pertinent to note that since the Governor has not specified

Metropolitan Area as provided u/s 503-B of the KMC Act read with Clause (c) of Article 243-P of the Constitution, the claim of BDA that it has got power to exercise its jurisdiction over the area in which the lands are situated, placing reliance on *Junjamma and Others Vs. The Bangalore Development Authority and Others*, , cannot be accepted. In that case, the aforementioned provisions were not considered in the light of Constitutional Philosophy and the law laid down by the Apex Court in a catena of decisions. Hence, the said decision cannot be a binding precedent as held by the Supreme Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, , the relevant para is extracted hereunder:

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das v. Delhi Administration*, Writ Petition Nos. 981 and 982 of 1984, DD: 29-4-1985 (SC) and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, Editor of the *Salmond on Jurisprudence*, 12th Edition, explains the concept of sub silent to at p. 153 in these words:

"A decision passes sub silent to, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silent to" .

Therefore, the decision relied upon by Mr. C.B. Srinivasan is of no assistance to the BDA. That apart, in the said decisions the various provisions referred to above, are not at all considered. Hence, the said decision cannot be a binding precedent. The contention is wholly untenable and baseless. Mr. V. Lakshminarayana has rightly relied upon the decisions in support of his contention and these decisions squarely apply to the facts of the case.

20. It is also to be noted that as per Sub-section (2) of Section 503-B of the KMC Act, the Metropolitan Planning Committee shall consist of 30 members and the Commissioner of the BDA shall be its Secretary whereas u/s 3 of the BDA Act, the BDA consists of 22 only members. The number of members of Metropolitan Planning Committee is larger than the number of members of BDA. The developmental schemes to be undertaken by larger body cannot be taken by small body. The Metropolitan Planning Committee consists of two-thirds of members from elected representatives mentioned in Section 503-B of the KMC Act. The Commissioner of BDA will be the Secretary of the said Committee. The BDA constitutes only members nominated by the State Government. The elected representatives in the Metropolitan Planning Area have got sovereign character and they are accountable and answerable to the public. That is not so in the case of BDA members. For this reason also the BDA has no jurisdiction to undertake developmental schemes in Metropolitan Area. Law in this regard is laid down in the decision reported in *Synthetic and Chemicals Limited's* case, at para 66 which is extracted hereunder:

"66. It is well to remember that the meaning of the expressions used in the Constitution must be found from the language used. We should interpret the words of the Constitution on the same principle of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. A Constitution is the mechanism under which laws are to be made and not merely an Act which declares what the law is to be. It is also well-settled that a Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should, however, be so read as not to rob it of entire content. A broad and liberal spirit should, therefore, inspire those whose duty it is to interpret the Constitution, and the Courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but it must seek to declare the law but it must not try to give meaning on the theory of what the law should be, but it must so look upon a Constitution that it is a living and organic thing and must adopt itself to the changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one Legislature or the other, it is the pith and substance of the legislation in question that has to be looked into. It is well-settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. The three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the

area over which the appropriate Legislatures can operate. It is well-settled that widest amplitude should be given to the language of the three entries but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then comes the duty of the Court to find the true intent and purpose and to examine the particular Legislature in question. Each general word should be held to extent to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted that the Constitution must be interpreted as an organic document in the light of the experience gathered. In the constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well-settled by various decisions of this Court and other Courts. Some of these decisions have been referred to in the decisions of this Court in *India Cement Limited v. State of Tamil Nadu*, Civil Appeal No. 62(N) of 1970 (SC)".

Ponds India Ltd. (Merged with H.L. Ltd.) Vs. Commissioner of Trade Tax, Lucknow, :

"10. Under Article 243-G of the Constitution the Legislature of a State has been vested with the authority to make law endowing the Panchayats with such powers and authority which may be necessary to enable the Gram Panchayat to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein. Clause (b) of Article 243-G provides that Gram Panchayats may be entrusted the powers to implement the schemes for economic development and social justice including those in relation to matters listed in the Eleventh Schedule. Entries 24 and 25 of the Eleventh Schedule read:

"24. Family welfare.

25. Women and child development".

In pursuance to the powers given to the State Legislature to enact laws the Haryana Legislature enacted the Haryana Panchayat Raj Act, 1994 (Haryana Act No. 11 of 1994). Section 21 enumerates the functions and duties of Gram Panchayat. Clause XIX(1) of Section 21 reads:

"XIX. Public health and family welfare.--(1) Implementation of family welfare programme".

The family welfare would include family planning as well. To carry out the purpose of the Act as well as the mandate of the Constitution the Legislature has made a provision for making a person ineligible to either contest for the post of Panch or Sarpanch having more than two living children. Such a provision would serve the purpose of the Act as mandated by the Constitution. It cannot be said

that such a provision would not serve the purpose of the Act".

Delhi Transport Corporation's case:

"256. Sutherland, in his Statutes and Statutory Construction, Third Edition, Volume 3, paragraph 5904 at pages 131 and 132 has stated that the most reliable source of public policy is to be found in the federal and State Constitutions. Since constitutions are the superior law of the land, and because one of their outstanding features is flexibility and capacity to meet changing conditions, constitutional policy provides a valuable aid in determining the legitimate boundaries of statutory meaning. Thus, public policy having its inception in constitutions may accomplish either a restricted or extended interpretation of the literal expression of a statute. A statute is always presumed to be constitutional meaning will be inferred to preserve validity. Likewise, where a statute tends to extend or preserve a constitutional principle, reference to analogous constitutional provisions may be of great value in shaping the statute to accord with the statutory aim or objective.

Article 14 sheds the light to public policy to curb arbitrariness".

First portion of para 16 reported in Deep Chand Vs. The State of Uttar Pradesh and Others, , reads thus:

"(16) If Articles 245 and 13(2) define the ambit of the power to legislate, what is the effect of a law made in excess of that power? The American Law gives a direct and definite answer to this question. Cooley in his "Constitutional Limitations" (Eighth Edition, Volume I) at page 382 under the heading "Consequences if a statute is void" says:

"When a Statute is adjudged to be unconstitutional, it is as if it had never been in toto is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force".

In Rottschaefer on Constitutional Law, must to the same effect is stated at page 34:

"The legal status of a legislative provision insofar as its application involves violation of constitutional provisions, must however be determined in the light of the theory on which Courts ignore it as law in the decision of cases in which its application produces unconstitutional results. That theory implies that the legislative provisions never had legal force as applied to cases within that clause".

In "Willis on Constitutional Law" at page 89:

"A judicial declaration of the unconstitutionality of a statute neither annuls nor repeals the statute but has the effect of ignoring or disregarding it so far as the determination of the rights of private parties is concerned. The Courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed. . . ."

"Willoughby on Constitution of the United States", Second Edition, Volume I, page 10:

"The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it, and determines the rights of the parties just as if such statute had no application. . . " "

Prof. B.K. Chandrashekar and Another Vs. State of Karnataka and Another, :

"15. Under Article 245 subject to the provisions of the Constitution the Parliament may make laws for the whole or any part of the territory of India and the State Legislature for whole or any part of the State with respect to matters enumerated in List I (Union List) and List II (State List) in the Seventh Schedule exclusively. Articles 245 and 246 read together makes it clear that subject to the provisions of the Constitution, the Parliament and the State Legislature could make laws on any of the subjects enumerated in the Union and the State Lists. Entries in List I and List II of the Seventh Schedule are not sources of power but only heads or fields of Legislature. Legislation in respect of any subject-matter falling within the entries will always be to the provisions of the Constitution. Under Entry 5 of List II the State Legislature has the exclusive legislative power to make laws regarding local self-Government or village administration. After the 73rd Amendment comprising in Articles 243 to 243-O the State Legislature can no longer claim any power of legislation in respect of the matters enumerated in Entry 5 of List II and their exercise of power is subject to the provisions of Part IX of the Constitution which was introduced by the 73rd Amendment. In view of this the submission made by Mr. S. Vijayashankar, learned Advocate-General that the State Legislature has the plenary power to legislate in respect of matters enumerated in Entry 5 of List II irrespective of the 73rd Amendment of the Constitution cannot be accepted. Under the Constitution of India as originally framed, in the absence of any constitutional provision governing the constitutional power to the State Legislature enjoining plenary powers of legislation in respect of constitution and functioning of Panchayat under Entry 5 of List II. By the 73rd Amendment to the Constitution, the State Legislatures were denuded of their power in respect of the matters regarding which a provision has been made in the Constitution thus creating a new source of power under Part IX of the Constitution of India. The option available to State Legislature to constitute institution for local self-Government and define their compositions, duration have been taken away by the Constitutional amendment.

28. Advocate-General also argued that in view of Article 37 Directive Principles of State Policy in Part IV of the Constitution are not enforceable by any Court. That 73rd Amendment which introduced and added Part IX to the Constitution has to be read as an extension of Article 40 and therefore not enforceable in a Court of law. The argument has to be rejected on the face of it being without any substance. The Directive Principles notwithstanding their great importance may not be enforceable in a Court of law but when a constitutional provision is made in the Constitution to give effect to a Directive Principle then that provision would

certainly become enforceable through a Court of law and cannot be taken as a mere extension of the Directive Principle which it sought to achieve. Any law which is enacted contrary to the same would be liable to be struck down being ultra vires the Constitution. 73rd Amendment was introduced to achieve one of the Directive Principles of the State Policy and once it is enacted then it has to be given full effect to and cannot be taken as an extension of Directive Principles of State Policy and therefore not enforceable. Added provision would not become a part of Directive Principle under Part IV of the Constitution and hence not enforceable. It becomes enforceable in its own right being independent of Part IV of the Constitution and cannot be taken to be an extension of Article 40 and therefore falling under Part IV of the Constitution".

21. The "Planning Area" as notified u/s 4-A(1) and (3) read with Section 2(4) of the Karnataka Town and Country Planning Act, 1961 in the Notification dated 18-10-1984 was interpreted by this Court with reference to decisions of the Apex Court in Subbanna Vs. State of Karnataka, (paras 20 and 21), relied upon by the learned Counsel for the BDA is of no assistance in view of what has been observed above.

22. In the light of the discussions made above, the contention of Mr. C.B. Srinivasan and Mr. A.N. Venugopala Gowda, learned Counsel for the BDA that BDA Act is a special enactment and prevail over the other enactments referred to above, cannot be accepted. The ratio of the decision reported in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , which has been reiterated in the Constitutional Bench decision in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , will not be helpful to the BDA.

23. For the reasons stated above, Point No. 1 is answered against the BDA. It is held that BDA has no authority or jurisdiction to take-up developmental schemes in Bangalore Metropolitan Area. On the other hand, the Metropolitan Planning Committee, which is yet to be constituted, has authority and jurisdiction to undertake the developmental schemes in Bangalore Metropolitan Area.

24. Point Nos. 2 and 3.--(i) Even though Point No. 1 is held against the BDA, assuming that BDA has got jurisdiction in the matter, it is to be examined whether the scheme in question was properly framed and it is legal and valid. This point requires examination in view of the contentions urged that there is no proper scheme framed and that the scheme is not a valid scheme. The contention is rebutted by the learned Counsel for the BDA placing reliance upon Resolution No. 228 of 2002, dated 10-10-2002. Copy of the said resolution is found in the files produced by the BDA.

(ii) Section 15 of the BDA Act empowers the BDA to frame developmental schemes and with the previous permission of the Government to execute the same. Section 16 enumerates the particulars to be provided in such scheme. After preparation of Scheme, u/s 17, the authority shall draw up a notification furnishing the particulars of the scheme and the place where those particulars,

map and statement of the lands proposed for acquisition, can be seen. Within 30 days notices shall be issued to the concerned persons inviting objections, if any, for the proposed acquisition. After considering the representations received in that regard, the scheme shall be submitted to Government for sanction with modifications, if any, together with plan, estimates and other particulars. After considering the proposal, the Government has to sanction the same. Upon sanction of the scheme, u/s 19, the Government shall publish the declaration that the lands are required for public purpose. These are the formalities required to be complied with before proceeding further in the matter for the execution of the scheme. Now, it is to be examined whether BDA has complied with the aforementioned formalities to assert that the Scheme is a valid one.

25. (i) At the outset, it is pertinent to note that the BDA itself was not definite or sure about the scheme. In the first place, no layout plan was prepared. Even at the time of obtaining sanction from the Government, the scheme plan was still not finalised. This aspect will be dealt with in due course while considering the Government files.

(ii) In the second place, there is difference in the requirement of the land for the layout. There is variation in the total extent of land proposed and resolution passed for preliminary notification, the extent shown in the preliminary notification, the extent shown in the final notification etc. The details of the same are as under:

(a) Note put up and resolution passed on 3000 acres Subject No. 228 of 2002, dated 10-10-2002 for issuing Preliminary Notification: (b) Total extent of land shown in 3339 acres Preliminary Notification (c) Subsequently modified to 3839 acres (d) Difference in acreage 509 acres (e) Note put up for seeking approval of 3339-12 acres Government taking the extent as (f) Objections honoured for acres 589-12 acres (g) Final Notification issued for acres 2750-00 acres

From the above, it is clear that the note put up and resolution passed for issuing Preliminary Notification was only for 3000 acres. But, Preliminary Notification was issued notifying for 3339 acres, which was subsequently rectified to 3839-12 acres. Why the BDA issued preliminary notification for 3839 acres 12 guntas, is not known. Thus, the BDA itself was not clear in its land requirement for the scheme. Even though the exact acreage was 3839 acres 12 guntas as per the correct total of the abstract in the preliminary notification, for the purpose of issuing final notification the total extent is taken as only 3339 acres and not 3839 acres. Out of 3000 acres of land for which BDA has passed resolution, if 589-12 acres of land withdrawn from acquisition after considering the objections, is deducted, the remaining extent will be 2410-28 acres. But the final notification is issued for 2750 acres taking into consideration 3339 acres which was wrongly shown in the preliminary notification issued. The same was subsequently corrected to 3839 acres by issuing Erratum. There is no application of mind at all both by the BDA and the Government to these figures relating to requirement of land for the Scheme.

(iii) u/s 16 of the BDA Act, every development scheme shall provide for the infrastructure mentioned therein. It is no doubt true that in the Scheme BDA has provided for infrastructures like water, electricity, civil amenities etc. But, it is not mentioned how the Bangalore Water Supply and Sewerage Board will augment the water requirement, how the additional electricity for the layout will be provided, the transport facilities, hospital, police station, school/college and other public offices. The Government has made it clear that it is not responsible for any financial requirements. Mere formation of sites without making provision for water, electricity, sanitary and other amenities will not serve the purpose. Laying water pipes will not bring water to the layout unless arrangement for supply is made. The BWSSB is already unable to cope-up with the present demand. For providing drinking water to such a big layout, another Phase of Cauvery has to be implemented. Otherwise, water cannot be supplied to the proposed layout. So also the other facilities. Mere formation of roads will not provide transport facility to the locality. The State Transport Department must be in a position to provide additional busses. The Electricity Department is introducing load shedding. How power will be supplied to the layout, is not forthcoming. These aspects are not at all considered while framing the scheme in question. In this context, Mr. V. Lakshminarayana has rightly relied upon the following decisions:

1. Padma Vs. Hiralal Motilal Desarda and Others, ;
2. The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, ;
3. (2000) 8 SCC 462, (sic);
4. The State of A.P. and ors Vs. N. Audikesava Reddy and ors,

26. On the basis of the resolution dated 10-10-2002 on Subject No. 228 of 2002, Preliminary Notification was issued u/s 17(1) and (3) of the BDA Act. Though the preliminary notification states that copy of the plan is kept, factually no plan was prepared. This aspect will be dealt with while considering the file of the Government. The manner in which the objections filed to the preliminary notification, will be considered separately. Now, how Section 18 of the BDA Act is complied with, will be looked into.

27. As in the case of Section 17 notification, a Note was put up in Subject No. 43 of 2004 narrating the facts leading to issuance of Section 17 Notification and objections received. It is mentioned that the objections relating 589 acres 12 guntas could be honoured and that the objections relating to 90 acres could be rejected. The details pertaining to the Engineering Department with regard to the same are mentioned. Thereafter, matter was placed for taking decision on the five items suggested therein. Based on such note, the BDA has passed Resolution dated 3-2-2004 on Subject No. 43 of 2004 to --

(a) to implement the Arkavathi Layout as per Section 15(2) of BDA Act;

(b) to accept the objections filed in respect of 589-12 acres of land and to withdraw the preliminary notification;

(c) out of remaining 2750 acres, to reject the objections filed to 2658 acres and to issue final notification for 2750 acres including 91-07 acres for which objections were not filed;

(d) to allot sites as per the directions in W.P. Nos. 20875 to 20938 of 2001 revenue site owners;

(e) to allot sites at 25% of the present market value to the owners whose lands are acquired, subject to certain conditions mentioned therein.

There is no discussion with regard to modified scheme. In fact, no modified scheme was proposed. There is no compliance of Clause (a) of Section 18(1) of the BDA Act inasmuch as reasons for modification of the scheme is not furnished, Clause (b) plan was not furnished (d) the representations received u/s 17(2) objecting for the acquisition and (e) a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the lands u/s 17 or the land assessment of the lands specified in the statement mentioned in Clause (c), not furnished.

28. Now, let me examine how the Government has dealt with the matter. The original files of the Government in Volumes I, II and III are produced and I have perused the same. Though in the Preliminary Notification it is stated that Map of the area is kept, in Volume II of the Government file it is seen that when the BDA sought approval of the Scheme and to issue final notification by letter dated 17-2-2004, on the same day, at page 10 of the proceedings, the Government sought clarification on the following aspects:

(a) how the authority bears the expenditure to the proposed scheme; and

(b) to furnish the copies of the Scheme plan. On the same day the BDA clarified at Page No. 11 to the following effect:

(a) The authority will bear the expenditure from its own resources.

(b) So far as Scheme Plan is concerned, preparation of plan is in final stage and will be furnished after its completion.

From this, it is clear that the BDA has not at all finalised the Scheme Plan, which is the basic requirement of a developmental scheme. In the absence of Scheme Plan, it is quite understandable as to how the BDA approved the scheme and issued the preliminary notification. Plan is the elementary document for the execution of any developmental scheme. It is very elementary, essential and basic document. Without such a plan, the BDA proceeded to implement the scheme. That apart, no modified scheme was furnished to the Government except showing the reduction of total extent of the land proposed to be acquired. Even the acreage furnished was also wrong, as has been observed above. The proposal made to the Government by the BDA for sanction of the Scheme is bad in law for non-compliance of the provisions of Section 18(1) of the BDA Act. There is total non-application of mind in the matter of framing the scheme by the

BDA. Therefore, it has to be held that scheme proposed was not proper. The same is not legal and valid.

29. When the scheme was placed before the then Chief Minister to place before the Cabinet for approval, in PCSM 1180 of 2004, dated 20-2-2004, the Chief Minister passed order as under:

"Pending ratification by the Cabinet, paras (a) and (b) is approved".

Para (a) is to grant approval of the Government u/s 18(3) of the BDA Act for Rs. 981-36 crores estimated project of Arkavathi Layout. Para (b) is to issue Final Notification u/s 19(1) of the BDA Act for the 2750 acres of land available for the formation of Arkavathi Layout. Thus, without considerations of the objections filed to the preliminary notification and without the Cabinet approval of the subject under the relevant Rules, the Chief Minister himself has granted approval. On the basis of such approval of the Chief Minister the final Notification u/s 18(3) of the BDA Act was issued on 21-2-2004.

30. The question is, what was the urgency for the then Chief Minister to approve the scheme by himself pending ratification by the Cabinet, which is not permissible in law. The same is neither stated in the statement of objections nor explained by the learned Advocate-General at the time of making his submissions. No urgency or compelling circumstance or the need for such urgent action, are stated to accord approval by himself. No reasons are stated as to what will happen if the matter is placed before the Cabinet. It appears that the Chief Minister was very much eager to go ahead with the project giving go-bye to all canons of law, well-established mandatory procedure which require strict adherence and taking the law into his own hands. The said action of the Chief Minister was in anticipation of the Cabinet Approval. That means, he has taken for granted that the Cabinet will simply ratify his action as an empty formality and Cabinet is not required to apply mind to the facts of the case, consideration of objections and the requirements of statutory provisions. This is the way in which the power conferred upon the responsible Government as trustee, is being misused by none other than the then Chief Minister who was the trustee of the citizens who brought him to power. On the basis of the approval made by him pending ratification by the Cabinet, Final Notification was issued hurriedly which was wholly unwarranted. The said action is not only clear case of legal mala fides but also legal malice (see the decisions):

Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, :

"5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the allegation wrongful order

of her premature retirement so as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows in *Shearer v. Shields*, (1914) AC 808 at p. 813:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently".

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

7. The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in the *Queen on the Prosecution of Richard Westbrook v. Vestry of St. Pancras*, (1890) 24 QBD 371 : 62 LT 440.--

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion".

This view has been followed in *Sedler v. Sheffield Corporation*, (1924) 1 Ch. 483"

Babu Verghese and Others Vs. Bar Council of Kerala and Others, :

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor*, (1875) 1 Ch. D. 426 : 45 LJ Ch 373, which was followed by Lord Roche in AIR 1936 253 (Privy Council) , who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all".

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, and again in *Deep Chand Vs. The State of Rajasthan*, . These cases were considered by a Three Judges Bench of this Court in *State of Uttar Pradesh Vs. Singhara Singh and Others*, and the rule laid down in *Nazir Ahmad's* case, was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law".

Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, :

7. It is submitted on behalf of the Revenue by Mr. Sharma that reasons were communicated to the assesseees in the notice calling for objection against the proposed transfer. It is, therefore, manifest that the reasons given in that show-

cause notice, namely, "facility of investigation" can be read as a part of the impugned order although there is no mention of any reasons therein as such.

8. We are unable to accede to this submission. It appears Section 5(7-A) of the Old Act came for consideration in Pannalal Binjraj Vs. Union of India (UOI), , and this Court observed at page 589 (of ITR) = (at p. 410 of AIR SC) as follows.--

"... it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer u/s 5(7-A) of the Act is made by the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing. . . . There is no presumption against the bona fide or the honesty of an assessee and normally the Income Tax authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Section 64(1) and (2) of the Act is sought to be made against him, be it a transfer from one Income Tax Officer to another within the State or from an Income Tax Officer within the State to an Income Tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the order are reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, to transfer his case u/s 5(7-A) of the Act and it will also help the Court in determining the bona fides of the order as passed if and when the same is challenged in Court as mala fide or discriminatory. It is to be hoped that the Income Tax authorities will observe the above procedure wherever feasible".

11. We are clearly of opinion that the requirement of recording reasons u/s 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

15. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated".

31. Under Rule 20(1)(a) of the Karnataka Government (Transaction of Business) Rules, 1977 (hereinafter referred to as "Business Rules"), the cases specified in the First Schedule shall be brought before the Cabinet after submission to the Minister-in-charge of the Department. As per Rule 21, subject to the provisions of Rule 20, all cases specified in the First Schedule shall be brought before the Cabinet. Rule 24(1) provides as under:

"24(1) The Chief Minister may direct that any case referred to in Rule 21 may,

instead of being brought up for discussion at a meeting of the Cabinet, be circulated to the Cabinet Minister for opinion and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Cabinet is unnecessary, the case shall be decided without such discussion. If the Ministers are not unanimous and the Chief Minister thinks that a discussion at a meeting is necessary, the case shall be discussed at a meeting of the Cabinet".

From the above rule it is clear that the Chief Minister may circulate any case to the Cabinet Ministers for opinion and if their opinion is unanimous and discussion thereon is unnecessary, the case can be decided without Cabinet discussion. Otherwise, the case shall be discussed at the Cabinet Meeting which shall accord sanction. Since the said procedure was not followed by the State Government, a serious suspicion is cast about the bona fides of the final notification published. This is a serious lapse on the part of the Government.

32. In the instant case, the subject-matter falls under Item 16(vi) of First Schedule. According to the Note put-up in the Government file, it falls under Item 15 of First Schedule. Whatever it may be, the fact remains that the Chief Minister has not followed the procedure prescribed in Rule 24(1) of the Business Rules. Rules 66 to 72 of Business Rules pertaining acquisition of land are not followed by the State Government before publishing the impugned Notification u/s 19(1) of the BDA Act.

33. In the proviso to Item 2 in First Schedule relating to cases which shall be brought before the Cabinet, it is provided as under:

"Provided that if the urgency of the case so requires and it is not practicable to obtain the approval of the Cabinet, such attitude of the Government may be determined with the approval of the Minister-in-charge of the Department and the Chief Minister".

If at all there was any urgency in the matter and it was not practicable to obtain the approval of the Cabinet, recourse to the above proviso could have been done by the State Government. But, it is not the case pleaded or recorded by the State Government in the concerned file that there was any urgency in the matter and it was practically not possible to obtain the Cabinet Approval. The Chief Minister has accorded approval taking for granted that whatever he has done will be ratified by the Cabinet, which is not permissible under the Rules. This Court assumes that since elections to Parliament and State Legislature was contemplated during that period, the Chief Minister might have hurriedly approved the scheme. This amounts to colorable exercise of power. Therefore, the following decisions relied upon by the learned Counsel for the petitioners squarely applies to the fact situation

1. Smt. Somavanti and Others Vs. The State of Punjab and Others, ;
2. Y. Mahesh Vs. Mysore Urban Development Authority, ;
3. Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, ;

4. R.C. Poudyal's case;

5. The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, .

34. After publication of final notification declaring that the lands are required for the implementation of the scheme and during the pendency of these matters, it is seen in Volume III of the Government files that a Note was put-up on 11-8-2004 to place the matter before the Cabinet. It is stated that "as called for by the CM's office on 11-3-2004, file was returned to the Department on 16-5-2004. The file was submitted to the CM on 14-6-2004. Since the file was not received till 11-8-2004, the subject (for Cabinet approval) was moved in a separate file, for which the Chief Minister granted approval. Accordingly the matter was brought before the Cabinet for post-facto sanction for the administrative approval granted on 21-2-2004 u/s 18(3) of the BDA Act. In the Cabinet Meeting held on 30-8-2004 post-facto sanction was accorded to the proposal without consideration of the objections filed to Preliminary Notification and other legal aspects and in the absence of Scheme Plan. Consideration of the objections was mandatory as held in:

The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, ;

Madurai District Central Co-operative Bank Ltd. Vs. Third Income Tax Officer, Madurai, ;

Hochtief Gammon Vs. State of Orissa and Others, ;

D. Hemachandra Sagar and Another Vs. The State of Karnataka and Others, :

"27. The Supreme Court in The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, , while considering the meaning of expressions "considers it necessary" has stated as follows.--

"The dictionary meaning of the word "consider" is "to view attentively, to survey examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be think oneself, to reflect" (vide Shorter Oxford Dictionary). According to words and phrases -- Permanent Edn. Volume 8-A to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study, meditate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent".

From the illustrations as extracted from the notes prepared by the various Land Acquisition Officers, it is seen that they have simply noted objections and made

their remarks in the relevant column. They have not stated any reasons as to why the objections in the representations should be overruled. It is material to see that even in the case of the acquisition of land in favour of a Housing Co-operative Society having been completed the Land Acquisition Officer simply states, final notification may be issued. Even in respect of the lands where there are constructions he has stated that, the land is vacant and FN may be issued. In case of Gnanabharathi layout, even the nature of representations are not mentioned in the report. This establishes the total non-application of mind of the officer who is authorized to prepare note with reference to the representations of the owners for the consideration of the same by the authority.

The same view is taken in other decision of the Apex Court in Madurai District Central Co-operative Bank Limited's case and Hochtief Gammon's case:

State of Punjab and Another Vs. Gurdial Singh and Others, :

"8. First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land was to be taken? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection in keeps the Court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.

9. The question then, is what is mala fides in the jurisprudence of power? legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -- sometimes called colorable exercise or fraud on power and often -- times overlaps motives, passions and satisfactions -- is the attainment of ends beyond the sanctioned purposes of power by simulation or pretention of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colorable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat. . . that all power is a trust -- that we are accountable for its exercise -- that from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intend of the power, whether this be malice laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the

scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act".

35. Section 18(3) of the BDA Act specifies that after considering the proposal submitted, the Government may give sanction to the scheme. The question is, whether the Government has considered the proposal? The facts narrated above are clear that there is no proper consideration of the proposal by the Government. Therefore, it has to be held that the Scheme in question was not properly framed and it is not a valid scheme.

36. The Arkavathi Layout plan is produced by the petitioners in W.P. Nos. 28087 and 22670 to 22702 of 2004 along with affidavit of the first petitioner. It is mentioned therein that the plan is prepared by the BDA in association with Indian Resources Information and Management Technologies Limited, Bangalore. The plan is not approved by the BDA. For this reason also, it has to be held that the Scheme is not legal and valid.

37. Point No. 4. Validity Preliminary Notification.--One of the contentions raised is that the Preliminary Notification issued by the BDA u/s 17 of the BDA Act is bad in law. The contention is, the Preliminary Notification should have been issued by the Government u/s 4 of the L.A. Act. This is an important contention raised, which requires detailed examination. The reason is, Section 17 of the BDA Act states that "the authority shall draw up a notification". The notification is for acquisition of lands for a "public purpose". In the BDA Act "public purpose" is not defined but the same is defined in Section 3(f) of L.A. Act. Section 4 of the L.A. Act states that if any land is required for public purpose, the appropriate Government shall publish the notification. By Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Act 17 of 1961), the State of Karnataka substituted the words "Deputy Commissioner" for the words "appropriate Government". Again, "Deputy Commissioner" is substituted by "Assistant Commissioner of the Sub-Division" by Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Act 17 of 1961). Now, whether Section 17 of BDA Act or Section 4 of L.A. Act shall be invoked and which provision shall prevail over?

38. Section 36 of the BDA Act states that in respect of the lands to be acquired otherwise than by agreement, the provisions of L.A. Act so far as they are applicable shall regulate. The words "so far as they are applicable" means, if any specific provision is not made in the BDA Act in respect of any matter, the provisions of L.A. Act shall apply. Even though a specific provision (Section 17) is provided for issuance of Preliminary Notification by the BDA, the question to be resolved in the light of the contention raised is, whether the BDA can issue such notification by itself?

39. It is to be borne in mind that the acquisition is for a "public purpose". That can be done by exercising the eminent domain power. As held in The State of West Bengal Vs. Subodh Gopal Bose and Others, ; The State of Bihar Vs. Sir Kameshwar Singh, ; Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and

Others, and Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., , it is only the Government which has got that power and not the BDA as it is not the Sovereign Authority of the State. The learned Counsel for the BDA relies on these three judgments in support of the contention that it has got the Sovereign Authority to issue the Preliminary Notification u/s 17 of the BDA Act.--

Munithimmaiah Vs. State of Karnataka and Others, ; The Special Land Acquisition Officer, City Improvement Trust Board, Mysore Vs. P. Govindan, and The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, .

The following are the decisions of the Apex Court in support of the contention that the State Government has got the Eminent Domain power to acquire land by issuing the Preliminary Notification u/s 4 of the L.A. Act.

Jilubhai Nanbhai Khachar's case:

"32. In The State of West Bengal Vs. Subodh Gopal Bose and Others, , Patanjali Sastri, C.J., held that the word "deprived" in Clause (1) of Article 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Article 31; each case must be decided as it arises on its own facts. Broadly speaking it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of Article 31, if, in effect, it withheld the property from the possession and enjoyment by him or materially reduced its value. S.R. Das, J., as he then was, held that Clauses (1) and (2) of Article 31 dealt with the topic of "eminent domain", the expressions "taken possession of or "acquired" according to Clause (2) have the same meaning which the word "deprived" used in Clause (1). In other words, both the clauses are concerned with the deprivation of the property; taking possession of or acquired used Clause (2) is referable to deprivation of the property in Clause (1). Taking possession or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, , Mahajan, J., as he then was, similarly held that the word "deprived" in Clause (1) of Article 31 and acquisition and taking possession in Clause (2) have the same meaning delimiting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das, J., reiterated his view held in Subodh Gopal's case, Vivian Bose, J., held that the words "taken possession of or "acquired" in Article 31(2) have to be read along with the word "deprived" in Clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. The word "law" used in Article 300-A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition

or taken possession of for a public purpose.

33. It is true as contended by Sri Javery that Clause (2) of Article 31 was not suitably incorporated in Article 300-A but the obligation to pay compensation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar's "The Law Lexicon" Reprint Edition 1987, p. 385, defined "eminent domain" thus: "The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called "eminent domain". At p. 386 it was further stated that the sovereign power vested in the State to take private property for the public use, providing first a just compensation therefor. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject-matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the State is called eminent domain. The right of every Government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purpose. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use". In "Black's Law Dictionary", 6th Edition, at p. 523 "eminent domain" is defined as "the power to take private property for public use by the State, Municipalities and private persons or Corporations authorised to exercise functions of public character. In United States the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution gives the power to take for public purpose and eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as "condemnation" or "expropriation".

34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term "expropriation" is practically synonymous with the term "eminent domain".

K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, :

(9) It may be made clear at the outset that the doctrine of colorable legislation does not involve any question of "bona fides" or "mala fides" on the part of the Legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motives does not arise at all. Whether a statute is constitutional or not is thus always a question of power vide Cooley's Constitutional Limitations, Volume 1, p. 379. A distinction, however, exists between a Legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a Legislature which enjoys only a limited or a qualified jurisdiction.

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colorable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a Legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J., "Attorney-General for Ontario v. Reciprocal Insurers, 1924 AC 328 : (1924)93 LJ PC 137:

"Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the Legislature is really doing".

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that Legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The Legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the powers of the legislative authority - "Vide Attorney-General for Ontario's case. For the purpose of this investigation the Court could certainly examine the effect of the legislation and take into consideration its object, purpose or design -- "Vide Attorney-General for Alberta v. Attorney General for Canada, 1939 AC 117 : AIR 1939 PC 53. But these are only relevant for the

purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the Legislature to exercise its powers.

It is said by Lefroy in his well-known work on Canadian Constitution that even if the Legislature avow on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enacting Clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires. See Lefroy on Canadian Constitution, page 75".

Later portion of para 16 reported in Deep Chand"s case, reads thus:

(16) The validity of a statute is to be tested by the constitutional power of a Legislature at the time of its enactment by that Legislature, and, if thus tested, it is beyond the legislative power, it is not rendered valid, without re-enactment, if later, by constitutional amendment, the necessary legislative power is granted. "An after-acquired power cannot ex proprio vigore, validate a statute void when enacted".

"However, it has been held that where an act is within the general legislative power of the enacting body, but is rendered unconstitutional by reasons of some adventitious circumstances, as, for example, when a State Legislature is prevented from regulating a matter by reason of the fact that the Federal Congress has already legislated upon that matter, or by reason of its silence is to be construed as indicating that there should be no regulation, the act does not need to be re-enacted in order to be enforced, if this cause of its unconstitutionality is removed". For the former proposition, the decision in *Newberry v. United States*, (1921)256 US 232 : 65 Law Ed. 913, the validity of the Federal Corrupt Practices Act of 1910, as amended by the Act of 1911, fixing the maximum sum which a candidate might spend to procure his nomination at a primary election or convention was challenged. At the time of the enactment, the Congress had no power to make that law, but subsequently, by adoption of the 17th Amendment, it acquired the said power. The question was whether an after-acquired power could validate a statute which was void when enacted. Mr. Justice McReynolds delivering the opinion of the Court states the principle at page 920:

"Moreover, the Criminal statute now relied upon ante-dates the 17th Amendment, and must be tested by powers possessed at time of its enactment. An after-acquired power cannot, ex proprio vigore, validate a statute void when enacted".

In *John M. Wilkerson v. Charles A. Rahrer* (1891)140 US 545 : 35 Law Ed. 572, the facts were that in June 1890, the petitioner, a citizen of the United States and an agent of Maynard, Hopkins and Company received from his principal intoxicating liquor in packages. The packages were shipped from the State of Missouri to various points in the State of Kansas and other States. On August 9, 1890, the petitioner offered for sale and sold two packages in the State of Kansas. The packages sold were a portion of the liquor shipped by Maynard,

Hopkins and Company. It was sold in the same packages in which it was received. The petitioner was prosecuted for violating the prohibitory Liquor Law of the State of Kansas; for, under the said law, "any person or persons who shall manufacture, sell or barter any intoxicating liquors, shall be guilty of a misdemeanor". On August 8, 1890, an Act of Congress was passed to the effect that intoxicating liquors transported into any State should upon arrival in such State be subject to the operation and effect of the laws of such State. It will be seen from the aforesaid facts, that at the time of State Laws were made, they were valid, but they did not operate upon packages of liquors imported into the Kansas State in the course of inter-State commerce, for the regulation of inter-State commerce was within the powers of the Congress; and that before the two sales in the Kansas State, the congress made an Act making intoxicating Liquors transported into a State subject to the laws of that State, with the result that from that date the State Laws operated on the liquors so transported. Under those circumstances the Supreme Court of the United States held:

"It was not necessary, after the passage of the Act of Congress of August 8, 1890 to re-enact the Law of Kansas of 1899, forbidding the sale of intoxicating liquors in that State, in order to make such State Law operative on the sale of important liquors".

The reason for the decision is found at page 578:

"This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the Act of Congress. That Act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the State Law was required before it could have the effect upon imported which it had always had upon domestic property" ".

State of Orissa Vs. M.A. Tulloch and Co.,

(15) But even if the matter was *res integra*, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however the only criterion of repugnancy, for, if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the

present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act".

Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., :

"11. Having discussed the question of the legislative field it might be necessary to discuss the question as to what happens if it should be held that the matter under consideration in these cases falls within the Concurrent List, that is, Entry 38 in List III as contended in the alternative by some of the respondents. As already mentioned the question will arise only if it should be held that the Kerala State Act falls under Entry 38 as contended by Mr. B. Sen. If the impugned legislation falls under List III then the question of repugnancy of that legislation with the existing law or the law made by Parliament, as the case may be, will have to be considered. Both the 1910 Act as well as the 1948 Act are existing law as contemplated under Article 372 of the Constitution. An existing law continues to be valid even though the legislative power with respect to the subject-matter of the existing law might be in a different list under the Constitution from the list under which it would have fallen under the Government of India Act, 1935. But after the Constitution came into force an existing law could be amended or repealed only by the Legislature which would be competent to enact that law if it were to be newly enacted. In that sense both the 1910 Act and the 1948 Act could be amended or repealed by the Parliament and also by the State Legislature if it obtains the Presidential assent to an Act amending or repealing the 1910 Act or 1948 Act (leaving aside for the moment the question whether they fall wholly or partly under Entries 43 and 44 of List I of the Seventh Schedule to the Constitution). That the question of repugnancy can arise only with reference to a Legislation falling under the Concurrent List is now well-settled. In A.S. Krishna Vs. State of Madras, , after referring to Section 107 of the Government of India Act, 1935, which is in terms similar to Clause (1) of Article 254, this Court observed:

"For this section to apply, two conditions must be fulfilled: (1) The provisions of the provincial law and those of the Central Legislation must both be in respect of a matter which is enumerated in the Concurrent List; and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, become void".

To the similar effect is the decision in Prem Nath Kaul Vs. The State of Jammu and Kashmir, . The whole question of repugnancy is elaborately discussed in State of Jammu and Kashmir Vs. M.S. Farooqi and Others, "

BDA is only a statutory authority and not even a "Local Authority" as held in AIR 1997 SC 434 and Calcutta State Transport Corporation Vs. Commissioner of Income Tax, West Bengal, .

A.S. Krishna Vs. State of Madras, :

"(8) The appellants are right in their contention that Section 4(2) of the Act enacts a rule of evidence but does it follow from this that it is a law on evidence, such as is contemplated by Entry 5 in the Concurrent List? So also Sections 28 to 32 undoubtedly deal with matters of procedure in relation to crimes, but are they for that reason to be regarded as legislation on Criminal Procedure Code with in Entry 2 of List III? The basic assumption on which the argument of the appellants rests is that the heads of legislation set out in the several lists are so precisely drawn as to be mutually exclusive. But then, it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92, the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial Legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colorable, that is, whether in the guise of making a law on a matter within its competence, the Legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment. Vide *Citizens Insurance Company of Canada v. William Parsons*, (1881) 7 AC 96 : 51 LJPC 1(A); *Attorney General of Ontario v. Attorney General for Dominion of Canada*, 1894 AC 189 : 63 LJ PC 59; *Attorney-General for Ontario v. Attorney-General for the Dominion*, 1896 AC 348 (C); *Union Colliery Company of British Columbia v. Bryden*, 1899 AC 580 : 68 LJ PC 118(D); *Attorney General for Canada v. Attorney General for Ontario*, 1937 AC 355 : 106 LJ PC 37; *Attorney General for Alberta's case*; and *Board of Trustees of Lethe bridge Northern Irrigation District v. Independent Order of Foresters*, 1940 AC 513(G)".

Mr. C.B. Srinivasan and Mr. A.N. Venugopala Gowda have relied upon the decision reported in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, , to contend that BDA is a local authority. The contention is misplaced. Mr. T.R. Subbanna, Mr. U.L. Bhat and Mr. V. Lakshminarayana are justified in contending that BDA is not constituted by elected members and it does not enjoy the

freedom of taking decisions on policy matters. BDA is a subordinate of the Government and therefore cannot exercise the eminent domain power to acquire the lands for public purpose. Therefore, the Preliminary Notification should have been issued by the Government u/s 4 of the L.A. Act and not the BDA u/s 17 of the BDA Act.

40. Another reason is, L.A. Act is enacted by the Parliament in exercise of the powers under Article 246(2) from Entry 42 of Concurrent List III of Seventh Schedule of the Constitution and the State also got amendment to L.A. Act which has received the Assent of the President. The BDA Act having been enacted by the State Legislature under Entry 5 of State List II, it has no presidential Assent. In this view of the matter, the provisions of L.A. Act shall prevail over the BDA Act insofar as acquisition of land for public purpose is concerned. Under Article 254(2) of the Constitution the BDA Act cannot prevail over the L.A. Act. Therefore, the Preliminary Notification issued by the BDA u/s 11 of the BDA Act is bad in law. Mr. T.R. Subbanna, learned Senior Counsel was justified in his submissions in this regard. In Deep Chand's case, it is held at paragraph 13 as under:

"(13) The relevant Articles of the Constitution read as follows.--

"Article 245(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

Article 246. (1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in Clause (3), Parliament and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Article 13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights

conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Article 31. (Before the Constitution (Fourth Amendment) Act, 1955)

(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given".

The combined effect of the said provisions may be stated thus:

Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant lists in the Seventh Schedule and that power to make laws is subject to the provisions of the Constitution including Article 13 i.e., the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. A Legislature, therefore, has no power to make any law in derogation of the injunction contained in Article 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws insofar as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency be void. The clause, therefore, recognizes the validity of the pre-constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas, Clause (2) of that article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under Clause (1), a pre-constitutional law subsists except to the extent of its inconsistency with the provisions of Part III, whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception. If this clear distinction is borne in mind, much of the cloud raised is dispelled. When Clause (2) of Article 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument that the words "any law" in the second line of Article 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in

contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words "any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a still born law".

M. Karunanidhi Vs. Union of India and Another, :

"24. It is well-settled that the presumption is always in favour of the constitutionality of a Statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts, before any repugnancy can arise, the following conditions must be satisfied.--

1. That there is a clear and direct inconsistency between the Central Act and the State Act;
2. That such an inconsistency is absolutely irreconcilable;
3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

25. In Colin Howard's Australian Federal Constitutional Law, 2nd Edition the author while describing the nature of inconsistency between the two enactments observed as follows.--

"An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts".

33. In the case of State of Orissa Vs. M.A. Tulloch and Co., , Ayyangar, J. speaking for the Court observed as follows (at p. 1291).--

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however the only criterion of repugnancy, for if a competent Legislature with a superior efficacy expressly or impliedly evinces by the legislation an intention to cover the whole field, the enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation".

34. In the case of T.S. Baliah Vs. T.S. Rengachari, , it was pointed out by this Court that before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together. In other words, this Court held that when there is a direct collision between the two enactments which is irreconcilable then only repugnancy results. In this connection, the Court made the following observations (at p. 703 of AIR):

"Before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent, or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment. It is therefore necessary in this connection to scrutinise the terms and consider the true meaning and effect of the two enactments" .

41. Point No. 5. Equal Protection of Laws -- Application of Land Acquisition Act.-- Whether the provisions of L.A. Act are to be applied to the instant cases to extend equal protection of laws. Section 36(1) of BDA Act states that the provisions of L.A. Act, so far as they are applicable, shall be applied to the lands acquired otherwise than by agreement. The words "so far as applicable" is interpreted by the Supreme Court in the case reported in Narayanaiah's case and held that provisions of L.A. Act are applicable. The said view is also supported by the decision reported in Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, and H. Narayanaiah's case.

42. Learned Counsel for the BDA has distinguished the aforesaid decisions placing reliance upon the BDA Act. The same cannot be accepted. While answering Point No. 3, it is already held that the L.A. Act being enacted by the Parliament and has received the Assent of the President, it shall prevail over the BDA Act enacted by the State Legislature and which has no Assent of the President. The L.A. Act is a special statute enacted especially covering the field of acquisition of lands. It is a comprehensive enactment covering the entire field of acquisition who should exercise the power for acquisition of lands, how, when and where it should be exercised, the period within which things should be done and the detailed procedure required to be followed. It governs the entire field of acquisition of lands and all matters and circumstances are dealt with under different provisions. Such a vast coverage of the acquisition matters are not provided in any other enactment. That is the reason for applying the provisions of the same in other enactments. In fact such a provision is provided in Section 159(4) of the Karnataka Municipalities Act, 1964 and Section 177 of the Karnataka Municipal Corporations Act, 1976.

43. Even in the BDA Act also Section 36(1) is provided. Merely because the words "so far as they are applicable" is mentioned, it cannot be said that provisions of L.A. Act are not applicable. "So far as they are applicable" means that the provisions of L.A. Act shall be applied to the maximum extent and to the

close proximity of the matter. There is no bar or exclusion for application of provisions of L.A. Act. Since the acquisition of lands is for public purpose, eminent domain power cannot be exercised under the BDA Act.

44. Article 14 of the Constitution of India provides for Equal Protection of Laws. If that is not done, in the matter of acquisition of lands, when provisions of L.A. Act are applied to a class of persons, the provisions of other enactments cannot be applied to similarly placed persons. Persons whose lands are acquired constitute one class and they cannot be treated differently by applying the provisions of different enactments and give different treatment. The provisions of other enactments are inconsistent with the provisions of L.A. Act. Equal protection of laws must be given as held in *The State of West Bengal Vs. Anwar Ali Sarkar*, which is extracted hereunder:

Anwar Ali Sarkar's case:

"26. Some of my learned Colleagues have examined the provisions of the Act and shown that of the two procedures -- one laid down in the Act and the other in the Code -- the latter affords greater facilities to the accused for the purpose of defending himself than the former; and once it is established that one procedure is less advantageous to the accused than the other, any person tried by a Special Court constituted under the Act, who but for the Act would have been entitled to be tried according to the more elaborate procedure of the Code, may legitimately enquire:

Why is this discrimination being made against me and why should I be tried according to a procedure which has not the same advantages as the normal procedure and which even carries with it the possibility of one's being prejudiced in one's defence?

37. Speedier trial of offences may be the reason and motive for the legislation but it does not amount either to a classification of offence or of cases. As pointed out by Chakravarti, J, the necessity of a speedy trial is too vague and reasonable classification. In the words of Das Gupta, J., it is too indefinite as there can hardly be any definite objective test to determine it. In my opinion, it is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act. The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. Persons concerned in offences or cases needing so-called speedier trial are entitled to inquire "Why are they being made the subject of a law which has short-circuited the normal procedure of trial; why has it grouped them in that category and why has the law deprived them of the protection and safeguards which are allowed in the case of accused tried under

the procedure mentioned in the Criminal Procedure Code; what makes the Legislature or the executive to think that their cases need speedier trial than those of others like them?"

The only answer that so far as I am able to see, the Act gives to these inquiries is that they are being made the subject of this special treatment because they need it in the opinion of the provincial Government; in other words, because such is the choice of their prosecutor. This answer neither sounds rational nor reasonable. The only answer for withholding from such persons the protection of Article 14 that could reasonably be given to these inquiries would be that "Of all other accused persons they are a class by themselves and there is a reasonable difference between them and those other persons who may have committed similar offences". They could be told that the law regards persons guilty of offences against the security of the State as a class in themselves. The Code of Criminal Procedure has by the process of classification prescribed different modes of procedure for trial of different offences. Minor offences can be summarily tried, while for grave and heinous offences an elaborate mode of procedure has been laid down.

The present statute suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of the Special Act. The Act has left this matter entirely to the unregulated discretion of the provincial Government. It has the power to pick out a case of a person similarly situated and hand it over to the special Tribunal and leave the case of the other person in the same circumstance to be tried by the procedure laid down in the Criminal Procedure Code. The State Government is authorised, if it so chooses, to hand over an ordinary case of simple hurt to the special Tribunal, leaving the case of dacoity with murder to be tried in the ordinary way. It is open under this Act for the Provincial Government to direct that a case of dacoity with firearms and accompanied by murder, where the persons killed are Europeans, be tried by the Special Court, while exactly similar cases where the persons killed are Indians may be tried under the procedure of the Code.

45. As regards the first point, it cannot be disputed that a competent Legislature is entitled to alter the procedure in criminal trials in such way as it considers proper. Article 21 of the Constitution only guarantees that "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law". The word "law" in the Article means a State made law: *A.K. Gopalan Vs. The State of Madras*, but it must be a valid and binding law having regard not merely to the competency of the Legislature and the subject it relates to but it must not also infringe any of the fundamental rights guaranteed under Part III of the Constitution. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary

that "all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination: *Weaver* -- Constitutional Law, p. 407. The two cases referred to by the learned Attorney General in this connection do not really support his contention. In *Hayes v. Missouri*, (1887) 120 U.S. 68 : 30 Law Ed. 578, the subject-matter of complaint was a provision of the revised statutes of Missouri which allowed the State, in capital cases, fifteen peremptory challenges in cities having a population of 100,000 inhabitants in place of eight in other parts of the State. This was held to be a valid exercise of legislative discretion not contravening the equality clause in the Fourteenth Amendment. It was said that the power of the Legislature to prescribe the number of challenges was limited by the necessity of having impartial jury. With a view to secure that end, the Legislature could take into consideration the conditions of different communities and the strength of population in a particular city; and if all the persons within particular territorial limits are given equal rights in like cases, there could not be any question of discrimination. The other case relied upon by the learned Attorney General is the case of *Brown v. State of New Jersey*, (1899) 175 U.S. 172 : 44 Law Ed. 119. In this case the question was whether the provision of the State Constitution relating to struck jury in murder cases was in conflict with the equal protection clause. The grievance made was that the procedure of struck jury denies the defendant the same number of peremptory challenges as he would have had in a trial before an ordinary jury. It was held by the Supreme Court that the equal protection clause was not violated by this provision.

"It is true", thus observes Mr. Justice Brewer, "that here there is no territorial distribution but in all cases in which a struck jury is ordered the same number of challenges is permitted and similarly in all cases in which this is by an ordinary jury. Either party, State or defendant, may apply for a struck jury and the matter is one which is determined by the Court in the exercise of a sound discretion.... That in a given case the discretion of the Court in awarding a trial by a struck jury was improperly exercised may perhaps present a matter for consideration in appeal but it amounts to nothing more".

Thus it was held that the procedure of struck jury did not involve any discrimination between one person and another. Each party was at liberty to apply for a struck jury if he so chose and the application could be granted by the Court if it thought proper having regard to the circumstances of each individual case. The procedure would be identical in respect of all persons when it was allowed and all parties would have equal opportunities of availing themselves of this procedure if they so liked. That a judicial discretion has to be exercised on the basis of the facts of each case in the matter of granting the application for a struck jury does not really involve discrimination. These decisions, in my opinion, have no bearing on the present case.

46. I am not at all impressed by the argument of the learned Attorney General that to enable the respondents to invoke the protection of Article 14 of the

Constitution it has got to be shown that the legislation complained of is a piece of "hostile" legislation. The expressions "discriminatory" and "hostile" are found to be used by American Judges often simultaneously and almost as synonymous expressions in connection with discussions on the equal protection clause.

If a legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as "hostile" in the sense that it affects injuriously the interests of that person or class. Of course, if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain. But if it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, I do not think that it is incumbent upon him, before he can claim relief on the basis of his fundamental rights, to assert and prove that in making the law, the Legislature was actuated by a hostile or inimical intention against a particular person or class.

For the same reason I cannot agree with the learned Attorney General that in cases like these, we should enquire as to what was the dominant intention of the Legislature in enacting the law and that the operation of Article 14 would be excluded if it is proved that the Legislature had no intention to discriminate, though discrimination was the necessary consequence of the Act. When discrimination is alleged against officials in carrying out the law, a question of intention may be material in ascertaining whether the officer acted *mala fide* or not. *Sunday Lake Iron Company v. Wakefield*, (1918)247 U.S. 350, but no question of intention can arise when discrimination follows or arises on the express terms of the law itself.

54. The learned Attorney General contended that the acquisition of arrears was an acquisition of choses in action and that the compensation paid for it was fifty per cent of the amount of arrears. I regret I am unable to accept this suggestion. It is a well-accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenue of the State.

"The principle of compulsory acquisition of property", says Cooley (in Vol. II at p. 113, *Constitutional Limitations*) is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare for public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right. Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan. Money or that which in ordinary use passes as such and which the Government may reach by taxation, and "also rights in action which can only be available when made to produce money", cannot be taken under this power".

The same view is reiterated by 7 Judges Bench in In Re: The Special Courts Bill, 1978, (sub-paras 1 to 14) and para 91-A:

"73. As long back as in 1960, it was said by this Court in *Kangshari Haldar and Another Vs. The State of West Bengal*, , that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous". What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14 and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the propositions which emerge from the judgments of this Court insofar as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:

1. The first part of Article 14, which was adopted from the Irish Constitutionals a declaration of equality of the Civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of

circumstances. It only means that all persons similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to

the objective of the Legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not? members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

91-A. Article 21 is the only other provision of the Constitution which is apposite in this context. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , it was held by the majority that the procedure contemplated by Article 21 must be "right and just and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied". It is therefore imperative to examine whether the procedure prescribed by the Bill is just and fair or is in any respect arbitrary or oppressive".

Similar is the view taken by the 9 Judges Bench in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, :

4. The doctrine of equality has many facets. It is a dynamic, and an evolving concept. Its main facets, relevant to Indian Society, have been referred to in the preamble and the articles under the sub-heading "Right to equality" - (Articles 14 to 18). In short, the goal is "equality of status and of opportunity". Articles 14 to

18 must be understood not merely with reference to what they say but also in the light of the several articles in Part IV (Directive Principles of State Policy). "Justice, Social, Economic and Political", is the sum total of the aspirations incorporated in Part IV.

5. Article 14 enjoins upon the State not to deny to any person "equality before the law" or "the equal protection of the laws" within the territory of India. Most constitutions speak of either "equality before the law" or "the equal protection of the laws", but very few of both. Section 1 of the XIV Amendment to the U.S. Constitution uses only the latter expression while the Austrian Constitution (1920), the Irish Constitution (1937) and the West German Constitution (1949) use the expression "equal before the law". (Article 7 of the Universal Declaration of Human Rights, 1948, of course, declares that "all are equal before the law and are entitled without any discrimination to equal protection of the law".) The content and sweep of these two concepts is not the same though there may be much in common. The content of the expression "equality before the law" is illustrated not only by Articles 15 to 18 but also by the several articles in Part IV, in particular, Articles 38, 39, 39-A, 41 and 46. Among others, the concept of equality before the law contemplates minimising the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. Indeed, in a society where equality of status and opportunity do not obtain and where there are glaring inequalities in incomes, there is no room for equality -- either equality before law or equality in any other respect.

The L.A. Act impose certain obligations upon the acquiring body and confer certain rights upon the landowners. Mandatory procedure is laid down in L.A. Act. Such things are not provided in the other enactments. To have uniformity in the matter of acquisition and for solution to all matters, provisions of L.A. Act shall be applicable. In order to eliminate discrimination, Article 14 of the Constitution shall be complied with. Hence, Point 5 is answered in the affirmative.

45. Point Nos. 6 and 7. Public purpose and livelihood.--The petitioners have contended that acquisition of lands in question is not for public purpose and the acquisition will deprive their livelihood. According to them, there is no public purpose involved to acquire the lands in question. "Public purpose" is not defined in the BDA Act. The same is defined in Section 3(f) of the L.A. Act. In this regard, with reference to "public revenues" mentioned in the second proviso and Explanation 2 to Section 6 of L.A. Act, Mr. U.L. Bhat and Mr. T.R. Subbanna, learned Senior Counsels, Mr. Gangi Reddy, Mr. V. Lakshminarayana and Mr. Amar Kumar have relied upon the following decisions.--

Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, ;

Smt. Somawanti's case;

Syed Dilawar Hussain Vs. Collector of Madras (Land Acquisition Officer, Madras)
First Line Beach, Madras, ;

1962 Mys. L.J. 409 (sic);

Kishori Lal Vs. The State of Punjab and Others, ;

AIR 1971 A and N 1968 (sic).

They have contended that right to shelter, occupation and livelihood are fundamental rights guaranteed under Articles 19(1)(e) and (g) and 21 of the Constitution and budgetary allocations have to be made for housing provisions. It is contended that the Scheme in question is contrary to the provisions of BDA Act. According to the learned Counsel, in view of the amendments made to Rules 13 and 14 of Bangalore Development Authority (Allotment of Sites) Rules, 1984 removing the conditions relating to lease of allotted sites and providing for execution of absolute sale deeds immediately after payment of the site value, the element of "public purpose" is lost and Sections 38 and 38-A of the BDA Act are made redundant or nugatory.

46. Mr. C.B. Srinivasan and Mr. A.N. Venugopala Gowda, learned Counsels for the BDA vehemently refuted the aforesaid contentions. It is contended that vast extent of lands are acquired keeping in view the enormous demand for allotment of sites. Reservation is made to various category of persons under Rules 4 and 11 of the Allotment Rules. 52% of the total land will be utilised for civic amenities. Even sites of various dimensions are allotted to the landowners under special scheme depending upon the extent of land acquired. Therefore, the element of public purpose is very much exists for the implementation of the scheme. The decisions reported in Smt. Somawanti's case; Arnold Rodricks and Another Vs. State of Maharashtra and Others, ; State of Gujarat Vs. Shantilal Mangaldas and Others, ; Smt. Venkatamma and Others Vs. City Improvement of Trust Board, Mysore and Others, ; Sarwan Singh and Others Vs. State of Punjab and Others, ; Pathumma and Others Vs. State of Kerala and Others, ; The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, ; State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, ; Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, ; Prakash Amichand Shah Vs. State of Gujarat and Others, ; M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others, ; Chameli Singh and others etc. Vs. State of U.P. and another, ; Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, ; Jaipur Development Authority Vs. Sita Ram and others, ; Kandenkutty and others Vs. State of Kerala and others, and W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others, , are pressed into service in support of their contention that the acquisition of lands is for public purpose. Mr. A.N. Venugopala Gowda has relied upon the unreported decision of this Court in W.A. No. 72 of 2004 and connected cases (DD: 28-2-2005). It is further contended that since the acquisition is for public purpose, the rights and interest of

individual owners must yield to public interest. The Scheme is framed taking into consideration the need and demand. The Government has approved the same after considering several factors. Therefore, public interest must not suffer at the instance of these petitioners. The learned Counsel have prayed for dismissal of the writ petitions.

47. The Court now proceeds to examine the "public purpose" involved in the matter and the extent to which it can be claimed by the BDA. The Arkavathi Layout is proposed with the intention of providing 20,000 residential sites and other C.A. sites. The reason for the proposed layout is that there is large public demand for allotment of sites. Except the demand and the intention of the State and the BDA to fulfil the same, there is no other public purpose.

48. As already pointed out while answering point 2, there is much difference in the extent proposed and the extent acquired. Deletion of large extent of lands from the acquisition and un-acquisition of lands adjacent to lands proposed for acquisition speaks volumes about the "public purpose". When there is total non-application of mind both by the BDA and the Government to the factual aspects, they cannot claim that the project is for "public purpose". The alleged public purpose is exhibited by the action of the then Chief Minister in according approval by himself without placing the matter for sanction of the Cabinet and thereafter obtaining post facto sanction of the Cabinet after elections were declared by the Election Commission. Rightly the petitioners have raised their voice for non-acquisition of other lands within the vicinity. Thus, in the guise of allotting sites to the needy persons, by the impugned action the BDA and Government make the landowners landless and indirectly help the affordable class of persons without acquiring their lands.

49. By acquiring of such vast extent of lands, the occupation and the right to reside will be deprived and the landowners are deprived of the Constitutional rights guaranteed under Articles 19 and 21 of the Constitution. The acquisition of vast extent of lands also violative of Article 38 of the Constitution of India. Allotting site under the special scheme will not come to their livelihood nor payment of compensation will solve their problems. The long duration that will take for payment of compensation amount for the acquired lands also cannot be ignored. Until compensation is paid and alternative arrangements for residence, profession, studies and other basic requirements are made, one can imagine the plight of the owners standing empty hands on the streets.

50. On the other hand, the allottees of the sites, immediately after payment of value of the sites, acquire absolute ownership taking advantage of the amended Rules 13 and 14 of Allotment Rules and sell away the sites for higher price. The landowners, who have lost their lands, have to wait for years to receive compensation. In the garb of "public purpose", affluent persons enrich and poor agriculturists lose everything.

51. While lands involved in 16 villages are proposed for the project, BDA or the

Government have not thought of any rehabilitation scheme of these villagers who will be displaced. They lose their residence, occupation and livelihood and the education of their children. Mere payment of compensation will not serve the purpose. In the guise of providing shelter to site less or houseless persons, the owners of immovable property are made landless as also jobless. That amounts to robbing Peter and paying to Paul. They are compelled to go in search of alternate land in far off places forgetting their born and grown-up place to start altogether a new life in new environment. Not only they are deprived of lands and houses, profession and right to live but their sentiments are also affected. If a man living in a place right from generations is stripped of everything except payment of some meagre compensation amount, one can imagine the mental torture he will undergo thinking the future of himself, his family members, relatives and friends. Virtually these persons are displaced. They have to go in search of a new place, settle there by constructing an abode, go in search of new profession or avocation, adjust to the new environment and admit the children to school, if at all exists. When the BDA proceeded to implement the Scheme in question with all enthusiasm with all pomp and posh, it has never thought of landowners who will stand empty. Even payment of compensation amount is also not immediate. It has to undergo its own process. Without considering all these factors, the BDA boasts of "public purpose" totally forgetting the negligence shown towards the real owners who lost their immovable properties and virtually stand on streets. In this regard, in the decision reported in:

Jilubhai Nanbhai Khachar's case, it is held as under:

"36. In Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, , paragraph 41, this Court had held that the State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. It is, therefore, necessarily subject to Article 300-A. Eminent domain, therefore, is a right inherent in every sovereign State to expropriate private property for public purpose without its owner's consent which inheres in Article 300-A and it would be exercised by the authority of law and not by executive fiat or order.

38. In Waman Rao and Ors Vs. Union of India (UOI) and Others, , this Court held that "there is a strong linkage between ownership of land and person's status in social system". Private ownership entails political and legal power. Control over property amounts to control over people and their lives. Dominion over things is an imperium over fellow human beings. Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leads to his servitude. To provide facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person".

52. The acquisition of lands by exercising eminent domain in the garb of public purpose has defeated the object and purpose of the BDA Act in view of the amendments made to Allotment Rules removing the restrictions on transfer of allotted sites. The fundamental right of landowners under Articles 19 and 21 are affected. Therefore, the various decisions pressed into service by the learned Counsel for the BDA are of no assistance. The action of BDA depriving ownership rights of owners and creating ownership on the allottees is nothing but removing the eyes of a man and donating the same to a blind. In that process, the blind will get vision whereas the donor will become blind. Such an action cannot be termed as "public purpose" taking into consideration one side benefit and ignoring the loss caused to the other side. In this context, the following decisions are relevant:

Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, :

"33. Article 39(a) of the Constitution, which is a directive principle of State policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

34. Learned Counsel for the respondents placed strong reliance on a decision of this Court in *In Re: Sant Ram*, , in support of their contention that the right to life guaranteed by Article 21 does not include the right to livelihood. Rule 24 of the Supreme Court Rules empowers the Registrar to publish lists of persons who are proved to be habitually acting as touts. The Registrar issued a notice to the appellant and one other person to show cause why their names should not be included in the list of touts. That notice was challenged by the appellant on the ground, inter alia, that it contravenes Article 21 of the Constitution since, by the inclusion of his name in the list of touts, he was deprived of his right to livelihood, which is included in the right to life. It was held by a Constitution Bench of this Court that the language of Article 21 cannot be pressed in aid of the argument that the word "life" in Article 21 includes "livelihood" also. This

decision is distinguishable because, under the Constitution, no person can claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade or business, like toutism, gambling or living on the gains of prostitution. The petitioners before us do not claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honourable.

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fair-play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which is prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that "the Influence of Remedies on Rights" (Current Legal Problems 1953, Volume 6), "from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword" Per Frankfurter, J., in *Vitarelli v. Seaton*, (1959)3 Law ED 2d 1012: 359 US 535".

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53. It is an admitted fact that Government will not bear any financial responsibility and that the BDA has to execute the Scheme in question out of its own funds. The amounts that would be received from the allottees is the only source for the BDA. The entire sital value will be received only after completing the project and allotment procedures are completed. Thus, there is no public revenue for the Scheme as envisaged in the second proviso and Explanation 2 of Section 6 of the L.A. Act.

54. Petitioners have furnished the calcinations as to the exact requirement of lands required for the proposed 20,000 sites and other civic amenities like roads, parks, drains, etc. As per the said calculations, either the 3000 acres of land proposed for issuing preliminary notification or 2750 acres mentioned in the final notification, are not at all required. No reasons are assigned for deleting from

acquisition the extent of land excluded from acquisition. Under these circumstances, it cannot be said that there exists the element of "public purpose" in the scheme in question.

55. For the reasons stated above, Points 6 and 7 are also answered against the BDA.

56. Point No. 8. Power of Commissioner to authorise his subordinates.--This point relates to whether the Commissioner of BDA, after publication of Preliminary Notification by the Government, can authorise his subordinates to enter upon the lands in question for the purposes specified in Sub-section (2) of Section 4 of L.A. Act, which is extracted hereunder:

"(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf and for his servants and workmen.--

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided ...".

(emphasis supplied)

The underlined portion prescribes that only an officer and his servants and workmen authorised by the Government are lawfully allowed to carry out the works enumerated therein. There is no such provision in the BDA Act. Thus, neither the BDA Act nor the L.A. Act empower the Commissioner of BDA to carry out the works that are required to be done after publication of the preliminary notification.

57. In the instant cases, the preliminary Notification was issued by the Commissioner, BDA. It is already held that he has no power to issue the same and the Government has to issue the same u/s 4 of the L.A. Act. In the preliminary notification it is stated as under:

"In accordance with Section 36 of the BDA Act, the Additional Land Acquisition

Officer, Bangalore Development Authority, Bangalore, his staff and workmen are hereby authorised to exercise the powers conferred u/s 4(2) of the L.A. Act, 1894".

58. Under Sub-section (2) of Section 4 of the L.A. Act extracted above, only the officer authorised by the Government is permitted to discharge the functions. Therefore, the Commissioner of BDA, is not at all competent to issue the preliminary notification, cannot authorise the Additional Land Acquisition Officer to perform the duties specified in Section 4(2) of the L.A. Act. Even the BDA also cannot delegate the power to its Commissioner to discharge the said functions u/s 17 of the BDA Act read with Section 4(2) of the L.A. Act. That being so, the Commissioner of BDA could not have empowered his subordinates in the Preliminary Notification to discharge the said functions. Accordingly, Point 8 is held against the BDA.

59. Point No. 9. Validity of Enquiries.--There is no express provision in the BDA Act regarding enquiry after issuing preliminary notification and receipt of objections from the owners/interested persons. Section 18 of BDA Act merely states "after consideration of representations, if any". But, this Court has to examine whether the petitioners are entitled for enquiry in the matter before issuing final notification by the Government keeping in view their fundamental rights guaranteed under Article 19(1)(e) and (g) of the Constitution of India the right to reside and Article 21 the right to live which are most important aspects for life, which also includes livelihood as held by the Apex Court in *Olga Tellis* case.

60. Apart from the said fundamental rights provided under Part III of the Constitution, the statutory rights conferred in Section 5-A of the L.A. Act has to be followed. The said provision has to be read over to Section 17 of the BDA Act as it exclusively deals with enquiry to be conducted in respect of the lands proposed for acquisition. Sub-section (2) of Section 5-A of L.A. Act is relevant and it reads as under:

"(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such farther inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1) or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final".

61. By Act No. 17 of 1961, the State of Karnataka has brought some amendments to the above. The relevant amendment is in Sub-section (2) of Section 5-A of the L.A. Act for the words "and a report containing his

recommendations on the objections", the following is substituted.--

"and a report containing his recommendations on the objections, and the fact of having submitted the report shall be communicated to the objectors:

Provided that...".

From the above provision the following things emerge.--

- (a) Objections shall be filed to the Collector (which is substituted as Deputy Commissioner and then as Assistant Commissioner of the sub-division) in writing;
- (b) The Assistant Commissioner shall give opportunity of being heard;
- (c) Make report to the Government of the recommendations on the objections along with the records of the proceedings held by him and communicate the fact of submitting report, to the objectors;
- (d) The Government shall decide on those objections.

In the instant case, firstly, the objections were not filed to the Assistant Commissioner of the concerned sub-division as the BDA itself invited objections in the preliminary notification. The objectors had no opportunity to file their objections before the Assistant Commissioner. Secondly, the Assistant Commissioner has not conducted the enquiry. On the other hand, the officers of BDA themselves conducted the enquiry on different dates at different places. The original files relating to the lands involved in the first batch of petitions in W.P. Nos. 26601 to 26604 of 2004 produced by the BDA have been perused to ascertain how enquiries were conducted and the objections filed have been considered.

62. The first file pertains to the land in Sy. No. 1/5 of Byrathi Village, K.R. Puram Hobli. The enquiry proceeding is available at Page Nos. 189 and 190. A perusal of the same reveals that after referring to the particulars of the land, ownership, notifications of acquisition etc., it is recorded as under:

"8. The property was inspected along with the field staff. The property have factory sheds, well and pump-house. Where the structures situated that portion has been deleted, where the notified area is situated that portion included malkies.

9. The authority in its Meeting held on 10-10-2002 has resolved to acquire the land for formation of layout called Arkavathi Layout. The property in question is required for public purpose. The objectors can be compensated because of the acquisition of the property. Further, the representatives if voluntarily surrender the possession of the acquired property. Can be allotted the developed site under the Bangalore Development Authority (Incentive Scheme for Voluntary Surrender of Land) Rules, 1989, apart from payment of compensation in accordance with law.

10. In view of the above, the objections filed against the acquisition for the

property cannot be accepted and the property cannot be deleted from acquisition. The property has to be acquired for the implementation of the proposed scheme. The objections raised by the objector is opposed to the public purpose, objection may be overruled.

File is herewith submitted for kind perusal and decision of the Authority.

9-1-2004 Sd/- Additional Land Acquisition Officer, B.D.A., Bangalore".

It is pertinent to note that in the objections filed on 13-3-2003 it is stated as under:

"In this regard we would like to bring to your kind notice that this land is fully developed and no vacant land is left. All around this land the residential houses have come up and the area is already developed.

Along with this letter I am submitting nineteen number of photographs of this land. These photographs will show the development that has taken place in the land, such as residential houses, servants shed, pump house, fencing, boundary wall, open well etc. It is small piece of land measuring 8 guntas out of this survey number 1/5 which is proposed to be acquired by the BDA is of no use for BDA as no scheme of BDA can be implemented in such small bit of land".

There is no consideration of the objections by the Land Acquisition Officer which are extracted above. The same is clear from a reading of paragraphs 8, 9 and 10 reproduced above. The same is the position in the other files pertaining to lands in Sy. Nos. 1/6 and 1/4 of the same village. In these files also paragraph 8 states inspection of the property by the field staff and their description. Paragraphs 9 and 10 are the same as extracted above. The BDA has produced some files pertaining to the enquiry conducted in respect of any other lands. More or less the same procedure is followed with prototype proceedings sheets. What is consideration, is considered by this Court in D. Hemachandra Sagar's case:

"From the illustrations as extracted from the notes prepared by the various Land Acquisition Officers, it is seen that they have simply noted objections and made their remarks in the relevant column. They have not stated any reasons as to why the objections in the representations should be overruled. It is material to see that even in the case of the acquisition of land in favour of a Housing Co-operative Society having been completed the Land Acquisition Officer simply states, final notification may be issued. Even in respect of the lands where there are constructions he has stated that, the land is vacant and FN may be issued. In case of Gnanabharathi Layout, even the nature of representations are not mentioned in the report. This establishes the total non-application of mind of the officer who is authorised to prepare not with reference to the representations of the owners for the consideration of the same by the authority".

63. From what has been observed above, it is clear that the enquiries so conducted are merely an empty formality as rightly contended by learned Senior Counsels Mr. U.L. Bhat, Mr. R.N. Narasimha Murthy, Mr. P. Krishnappa, Mr.

Nagaraj Rao, Mr. Nataraj, Mr. G. Papi Reddy, Mr. K.H. Somasekhar, Mr. V. Lakshminarayana and other learned Counsels appearing for the petitioners. Enquiries were not conducted by the Assistant Commissioner as provided u/s 5-A of the L.A. Act but were conducted by the Additional Land Acquisition Officers of the BDA, who are not the Assistant Commissioners of the Sub-Division. They were appointed by the Commissioner of BDA who is not competent to do so. The objections were not properly considered. Opportunity of hearing was not given to the objectors, which is mandatory. The acquisition of lands will entail serious civil consequences and therefore principles of natural justice should be read into the provisions of Section 17 of the BDA Act. There is no compliance of principles of natural justice as held by the seven Judges Bench of the Apex Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The relevant portions of the same are extracted hereunder:

"57. x x x x ... Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, hut that is not conclusive of the question, if the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Cooper v. Wandsworth Board of Works*, (1863)14 CB(NS) 180 : 143 ER 414. "A long course of decisions, beginning with *Dr. Bentley's case*, *King v. Chancellor, University of Cambridge*, (1723)1 Str 557 : 8 Mod 148 : 93 ER 698 and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature". The principle of audi alteram partem which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, *Nemo Judex in Sua Causa* and audi alteram partem. We are not concerned here with the former since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?

58. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club:

"We can, I think take pride in what has been done in recent periods and

particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception? I believe it does. It is just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe, that it is very much more. If it can be summarised as being fair-play in action -- who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled: it lacks more exalted inspiration". (Current Legal Problems, 1973, Vol. 26, p. 16). And then again, in his speech in the House of Lords in *Wiseman v. Borneman*, 1971 AC 297 : (1969)3 All ER 275, the learned Law Lord said in words of inspired felicity:

"that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair-play in action". Nor do we wait for directions from Parliament. The common law has abundant riches; there may we find what Byles, J., called "the justice of the common law". Thus, the soul of natural justice is "fair-play in action" and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that "fair-play in action" demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, M.R. in these terms in *Schmidt v. Secretary of State, of Home Affairs*, (1969)2 Ch. D. 149 : (1969)1 All ER 904, "Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf. The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations. Vide *American Journal of International Law*, Volume 67, page 479, Magarry, J., describes natural justice "as a distillate of due process of law". Vide *Fontaine v. Chastarton*, (1968)112 Sol. Gen. 690. It is the quintessence of the process of justice inspired and guided by "fair-play in action". If we look at the

speeches of the various Law Lords in *Wiseman's* case, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or was the procedure adopted by the Tribunal "in all the circumstances unfair?" The test adopted by every Law Lord was whether the procedure followed was "fair in all the circumstances" and "fair-play in action" required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a *prima facie* case against him". The inquiry must, therefore, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?" "

59. Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair-play in action" is any the less in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi-judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially. This requirement of a duty to act judicially in order to invest the function with quasi-judicial character was spelt out from the following observation of Atkin, L.J. in *Rex v. Electricity Commissioners*, (1924)1 KB. 171 : 130 LT 164, "wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King Bench Division...." Lord Hewart, C.J., in *Rex v. Legislative Committee of the Church Assembly*, (1928)1 KB. 411 : 138 LT 399, read this observation to mean that the duty to act judicially should be an additional requirement existing independently of the "authority to determine questions affecting the rights of subjects" -- something super-added to it. This gloss placed by Lord Hewart, C.J., on the dictum of Lord Atkin, L.J., bedevilled the law for a considerable time and stultified the growth of the doctrine of natural justice. The Court was constrained in every case that came before it, to make a search for the duty to act judicially sometimes from tenuous material and sometimes in the crevices of the statute and this led to oversubtlety and over-refinement resulting in confusion and

uncertainty in the law. But this was plainly contrary to the earlier authorities and in the epoch-making decision of the House of Lords in *Ridge v. Baldwin*, 1964 AC 40 : (1963)2 All ER 66, which marks a turning point in the history of the development of the doctrine of natural justice, Lord Reid pointed out how the gloss of Lord Hewart, C.J., was based on a misunderstanding of the observations of Atkin, L.J., and it went counter to the law laid down in the earlier decisions of the Court. Lord Reid observed: "If Lord Hewart meant that it is never enough that a body has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially then that appears to me impossible to reconcile with the earlier authorities". The learned Law Lord held that the duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be super-added. This decision broad ended the area of application of the rules of natural justice and to borrow the words of Prof. Clark in his article on "Natural Justice, Substance and Shadow" in *Public Law Journal*, 1975, restored light to an area "benighted by the narrow conceptualism of the previous decade". This development in the law had its parallel in India in the *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, , where this Court approvingly referred to the decision in *Ridge's* case, and, later in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , observed that: "If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". This Court also pointed out in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said: "The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised". The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted.

61. This Court speaking through Hegde, J., in *A.K. Kraipak's* case, quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add: (at p. 156 of AIR):

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of

natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one-time are now being considered as quasi-judicial in Character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, , the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case".

This view was reiterated and reaffirmed in a subsequent decision of this Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, . The law must, therefore, now be taken to be well-settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable".

64. Mr. U.L. Bhat, learned Senior Counsel, contending that the enquiries conducted are sham and opportunity of hearing was not given to the owners/interested persons, has strongly relied upon the following decisions.--

1. 20 LR 779 (DB) (sic);
2. *M/s. Ajantha Industries case*;
3. *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ;
4. *Saij Gram Panchayat Vs. The State of Gujarat and Others*,

Thirdly, the reports containing the recommendations on the objections together with the record of proceedings conducted are not submitted to the Government as required u/s 5-A(2) of the L.A. Act. The same have been submitted to the BDA for consideration, which is not competent to do so u/s 5-A of the L.A. Act. Everything done in the guise of enquiry are contrary to the procedure prescribed in Section 5-A of the L.A. Act and violating principles of natural justice. Having regard to the vast extent of lands acquired, the duration of enquiry was not at all sufficient to hear the grievances and objections of the landowners or persons interested therein.

65. The enquiries conducted are farce and they were not valid and legal. They cannot pass the judicial scrutiny of this Court. The very object of providing right

of being heard is denied to the owners and persons interested in the lands. To say in simple words, the enquiries alleged to have been conducted were not legal and valid. The same were also not conducted by the competent person authorised in law.

66. As per Clause (c) of Sub-section (2) of Section 5-A as amended by Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Act 17 of 1961), the fact of having submitted the report shall be communicated to the objectors to have their voice in the matter or to question the legality or correctness of the reports. Such reports are neither served nor communicated to the objectors, which is a serious statutory infirmity. This has vitiated the enquiry and the further action thereon is ab initio void. Thus, there is non-compliance of the aforementioned provision. The so-called enquiries conducted were all in blatant violation of law as held by the Apex Court. The procedural safeguards given to the owners and persons interested in the lands have not at all been scrupulously followed. The matter being deprivation of their valuable ownership rights and fundamental rights to live-in and livelihood. For all these reasons, there is no enquiry conducted in the eye of law. Hence, the contentions canvassed by learned Advocate General and the learned Counsel for the BDA placing reliance upon decisions in *Bipathumma and Ors. v. Mariam Bibi* 1966(1) Mys. L.J. 162 and *Muthyala Reddy v. State of Mysore and Anr.* 1968(2) Mys. L.J. 48, are rejected as untenable and not applicable in view of the law laid down in *Maneka Gandhi's* case. Accordingly, the point No. 9 is answered against the BDA and in favour of the petitioners.

67. Point No. 10. Compliance of Formalities to Allot Sites.--Much has been made by the learned Counsel for the BDA that BDA took possession of the lands, formed layout and about 20,000 sites are ready for allotment and even permission of the Court was also sought for allotting the same. It is stated that huge investment has been made by the BDA and therefore, at this stage, interference in the matter will cause heavy loss and undue hardship to the BDA and the aspirants for allotment of site will be in doll-drums. To appreciate this, it has to be examined whether the action of the BDA is justified and can be accepted.

68. If the BDA wants to proceed with the allotment of sites, it must have formed the sites by following the procedure prescribed. In this regard, the relevant para of the decision reported in *Y. Mahesh's* case, is extracted hereunder:

"24. The layouts are not complete. Sites are not formed. A Division Bench of this Court in *M. Maniklal v. State of Mysore and Ors.*, 1968(1) Mys. L.J. 416, while dealing with a case under the City of Bangalore Improvement Act, 1945 as to what constitutes a "layout", has held as follows.--

"We do not accede to the argument that the expression "layout" means no more than the making of marks on the acquired property for dividing it into sites. A layout to which Section 16 refers, includes every step by which an area of land is

converted into building sites to render it suitable for construction of houses and buildings, and necessarily involves the formation of roads, arrangements for conservancy, sewerage, drainage, water supply and lighting, Section 25(2) of the City of Bangalore Improvement Act, 1945 which insists on the provision for such amenities in the case of a private layout, indicates that such is the true character of a layout. Section 24 which forbids the sale of sites by the Trust Board until the improvements enumerated in Section 23 are made, yields the same deduction. Such layout which is part of a development scheme reduces congestion in the existing area of the city, and contributes to the elimination of the privation caused by insufficient housing accommodation. So, it assists the expansion and the improvement of the city and so promotes the purposes of the Act. The expansion of a city and its improvement are purposes from which flows a direct public benefit and a purpose which is productive of results so advantageous to the public is a clear public purpose".

Similar provisions are contained in the Act in question (See Section 31 of the Act). Therefore, without execution of the development scheme in all respects, the authority should not have called for the applications for allotment of sites.

25. It is not possible to comprehend and appreciate how a statutory authority like the MUDA embarked upon calling for applications for allotment of sites by representing to the general public that it has completed the layout, formed sites in the development Schemes in question (See Annexure-D), even without the land vesting in it, layouts not completed and sites not formed. It is also not possible to comprehend in such a situation as averred in para 3 of the W.P. No. 19357 of 1992 how and why the then Chief Minister agreed to distribute the list of allotments (see also Annexure-A produced in that writ petition). It is also not known as to how and why the concerned Department of the Government kept quiet and did not point out that Sections 19 and 36 of the Act have to be complied with ...".

69. Despite the above decision, the BDA proceeded to invite applications for allotment of sites without forming the sites. Section 16 of the L.A. Act stipulates that after award is made, the Deputy Commissioner shall take possession of the land. The fact of taking over possession shall be notified u/s 16(2) of the L.A. Act. Thereafter, the land will absolutely vest in the Government, free from all encumbrances. What should follow thereafter, is prescribed in Sub-section (3) of Section 36 of the BDA Act and it reads as under:

"(3) After the land vests in the Government u/s 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the authority, and the land shall thereupon vest in the authority".

From a combined reading of the aforementioned provisions it is clear that after passing award, possession of the lands shall be taken and notified u/s 16(2) of

the L.A. Act. After payment of cost of acquisition by the BDA and agreeing to pay any further costs, the Deputy Commissioner shall transfer the land to the BDA. Thereupon, the land shall vest with the BDA.

70. It is pertinent to note that notifications u/s 16(2) of L.A. Act are not yet published in the Gazette for having taken possession of the lands by the Deputy Commissioner. On the other hand, a perusal of the original files shows that possession of the lands were alleged to have been taken by the Land Acquisition Officer of the BDA. Even for that also, the signatures of the owners are not obtained. That apart, it is even not placed on record that the BDA has deposited the cost of acquisition and agreed to pay further costs, if any, as provided in Section 36(3) of BDA Act. The Deputy Commissioner has not transferred the lands to BDA. From the original files it is seen that notices under Sections 9 and 10 of the L.A. Act have been merely issued. It is not even stated that the notices have been duly served on the concerned persons. The procedure contemplated is not followed. Mere taking symbolic possession, which is not permissible in law as held by the Supreme Court in *Balwant Narayan Bhagde v. M.D. Bhagwat and Ors.* AIR 1975 SC 1707. Under these circumstances, on what basis the BDA proceeded to form sites and intends to allot them, is not known. Merely because some commitment is made to allot the sites will not absolve either the BDA or the Government from following the procedure prescribed or discharging their mandatory duties.

71. For the aforesaid reasons, it is held that BDA has not complied with the requirements of law. Hence, Point No. 10 is held against the BDA.

72. Point No. 11. Effect of Conditions Removed.--In the Bangalore Development Authority (Allotment of Sites) Rules, 1984, Rule 13 pertains to conditions of allotment and sale of site. Sub-rule (2) thereof provided for execution of lease-cum-sale agreement in Form III. Condition No. 1 of the lease-cum-sale agreement stipulates that the allottee of a site shall be a tenant of the site for a period of ten years. Condition No. 5 imposes restriction on sale of the site during the period of tenancy. Condition No. 10 provided for determination of tenancy in case the allottee commits any breach of conditions of lease-cum-sale agreement or any of the provisions of the Rules. Rule 14 impose conditions and restrictions on sale of allotted sites. There are other conditions also. These conditions have been amended by Bangalore Development Authority (Allotment of Sites) (Amendment) Rules, 2000.

73. Sub-rule (2) of Rule 13 of Allotment Rules has been amended providing that immediately after payment of value of the site, the BDA shall execute sale deed in favour of the allottee. In Sub-rule (2-A) the words "lease-cum-sale agreement" is substituted by "sale deed". Form III is substituted to sale deed in place of lease-cum-sale agreement. Sub-rules (3) to (7) have been omitted. Strangely, even though Sub-rule (7) is omitted, very strangely it is renumbered as Sub-rule (3). This Court fails to understand as to how an omitted sub-rule could be renumbered. Be that as it may. Rule 14 is amended providing for

execution of sale deeds in respect of sites allotted and lease-cum-sale agreements already executed and period of 10 years is not over.

74. Section 38 of the BDA Act stipulates that the BDA has power to lease, sell or otherwise transfer any of its properties subject to such restrictions, conditions and limitations. By virtue of the aforesaid amendments made to the Allotment Rules, Section 38 of the BDA Act has been made redundant. Such a thing is impermissible in law. Rules being subordinate to Act, they cannot have the overriding the effect of provisions of the Act.

75. By virtue of the amendments made to Allotment Rules, the allottees can get the sale deeds executed in their favour immediately after payment of sital value and acquire absolute right over the site. Thereafter, they can sell the site to any prospecting buyer for higher value. As a result of this, the BDA has no control over the allottee of the site. An allottee of a site can sell the allotted site and again apply for allotment of site. In this manner, the demand for allotment of sites will be rising. To meet such a repeated demand, the BDA has to form new layouts. This will defeat the very purpose of allotment of site. The object is to provide site to site less persons. On account of the removal of the conditions and restrictions on sale or transfer of allotted site, the allottees sell away the allotted sites and again become site less persons. On the other hand, persons affordable will buy any number of sites and have monopoly over the same. Without there being any conditions and restrictions on the allotted sites, the allottees can be use the site in any manner they like and BDA cannot do anything and it will be a mute spectator. Therefore, this Court has no other option but to hold Point No. 11 against it. It is answered accordingly.

76. Point No. 12. Promissory estoppels.--One of the contentions urged in some of the writ petitions relates to promissory estoppels or justification in acquiring the lands which are either proposed for acquisition of KIADB or permission granted to start IT Park or Group Housing. In W.P. Nos. 28087 and 32670 to 32702 of 2004, the petitioners have relied upon the Government Order at Annexure-C, dated 17-1-2001. In W.P. No. 25807 of 2004 the petitioner has relied upon the Government Order at Annexure-H, dated 1-6-1995 granting approval for acquisition of lands through BDA for Group Housing.

77. In view of the findings recorded against the BDA on several points, it is not necessary to go into the contention regarding promissory estoppels by learned Senior Counsels Mr. A.N. Narasimha Murthy and Mr. M.R. Achar placing reliance upon the decision reported in State of Punjab Vs. Nestle India Ltd. and Another, . However, it is no doubt true that the Government has passed the aforementioned orders. What is sanctioned in the Government Order dated 17-1-2001 is sanction for Group Housing. In Government Order dated 1-6-1995 sanction is accorded for establishing an IT Park. There is no "promise" held out by the Government that the lands in question will not be acquired for public purpose. Public purpose is paramount consideration. In the absence of such a categorical promise or assurance, petitioners cannot claim "promissory estoppels" against the

Government or the BDA. In this connection, the law laid down by the Apex Court in Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, is relevant in Jilubhai's case. That apart, the Government cannot held out such a promise to any person. If any such promise is made, the same will be contrary to the statutory provisions of various enactments, as held by the Apex Court in M/s. Bishamber Dayal Chandra Mohan's case.

78. L.A. Act being a special enactment exclusively enacted under Entry 42 of List II of Seventh Schedule of the Constitution with the Assent of the President, for matters relating to acquisition of lands, the executive orders passed by the State Government cannot have preference. Such executive orders relatable to Article 162 of the Constitution contrary to the special enactments cannot have the effect of overriding the special enactment. The executive order of the State shall not have statutory force when the field is occupied by enactment.

79. The Government orders relied upon by some of the petitioners are contrary to the provisions of Karnataka Land Reforms Act, KMC Act, K.M. Act and hence the submissions made placing reliance upon the decisions are misplaced and the submissions cannot be accepted.

80. For the reasons stated above, the contention urged by some of the writ petitions regarding promissory estoppels must fail and the same is hereby rejected. Point No. 12 is answered accordingly.

81. Point No. 13. Discrimination.--It is the grievance of several petitioners that the BDA has acquired their lands but not the adjacent lands. Some of the lands proposed for acquisition have been deleted without there being any valid reason and for extraneous considerations. Consequently, there is arbitrariness and discrimination violative of Article 14 of the Constitution of India. According to the petitioners, the said action of BDA is arbitrary. The BDA has categorically denied the allegations of discrimination and arbitrariness and justified their action. Therefore, it has to be tested whether the action of the BDA is discriminative and arbitrary or not.

82. In W.P. No. 28087 of 2004 and connected cases the petitioners in paragraph 5 of the writ petitions have clearly pleaded thus:

"The land around the land of the petitioners is totally developed and has either been dropped from the acquisition or excluded in the acquisition proceedings. The copy of the sketch showing the land of the petitioners proposed for acquisition is marked in Red, portion of the land which are not been notified for acquisition at all is marked in Yellow and the lands which have been excluded from the Notification pursuant to 4(1) Notification is marked in Green is enclosed herewith as Annexure-G. As can be seen from the sketch, the lands surrounding the lands belonging to the petitioners has been excluded from the acquisition proceedings. When such being the case, the action of the respondent initiating to acquire the land of the petitioner is highly arbitrary and illegal. As a matter of fact, the action of the respondent in notifying the land of the petitioners and

dropping the acquisition insofar as the lands surrounding the land of the petitioners is highly arbitrary and illegal".

The land of the petitioners is marked in Red Colour in the rough sketch at Annexure-G. It is for this portion of the lands the Government Order dated 17-1-2001 was passed approving the proposal for the establishment of IT Park. The KIADB has proposed to acquire these lands for the said purpose. Strangely, the BDA has not proposed to acquire the lands marked in Yellow Colour and the lands marked in Green Colour have been excluded in the final notification. This is in respect of one batch of writ petitions. Similar facts are pleaded in several other writ petitions furnishing the survey numbers of contiguous lands. It is also stated that some of the properties of the petitioners are developed but despite such development they have been acquired indiscriminately. It is alleged that BDA has not acquired the adjacent lands or lands contiguous and the acquisition proposed have been deleted in respect of some other lands without any valid reason, which is illegal as held in the following decisions.

B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others, and Nagpur Improvement Trust and Another Vs. Vithal Rao and Others, :

"28. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law for acquiring lands for clearing slums, another for acquiring lands for Government buildings one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land was increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piecemeal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owners are directly benefited by the Scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc., must be built at the expense of the whole community".

83. The BDA has not produced any plan showing the details of the lands proposed for acquisition, lands deleted from acquisition and the built-up area. The petition averments extracted above and the rough sketch produced in the writ petitions are not denied by the BDA. Even for deletion of 500 and odd acres on the basis of the objections filed, no reasons are assigned. Hence, Mr. U.L.

Bhat has rightly placed reliance upon the decision in AIR 1964 SC (sic):

"20. It is, no doubt, true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before this and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the Courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of the authorities of the status of those with which this appeal is concerned, have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. This is precisely the situation in which we find ourselves in the present case.

21. The learned Judges of the High Court have repelled the allegations contained in the affidavits which we have set out earlier on grounds and for reasons which do not appeal to grounds and for reasons which do not appeal to us. As the learned Advocate General did not seek to support those grounds and that reasoning, we do not consider it necessary to set them out or deal with them. If the reasons given by the learned Judges of the High Court be put aside, the position resolves itself into this that allegations with particularity and detail have been made in the petition. We are here having in mind the allegations we have enumerated and categorized earlier as objective facts. As to there is no denial at all of them, not even by the Transport Minister who though he filed an affidavit, confined himself to the allegations regarding his having been dictated to by the Chief Minister when he approved the Scheme, though it is obvious they are capable of denial and if need be with the same particularity with which they have been made in the petition. The learned Judges of the High Court have not rejected the allegations regarding the objective facts on the ground of their patent improbability or absurdity, nor did the learned Advocate General make any submission on these lines.

22. The next question is as regards the inference to be drawn from these facts which in the absence of their denial have to be taken as true. It is here that we have felt the greatest uneasiness, because if the facts which serve as the foundation for the plea of mala fides are made out, the only question would be whether the inference of mala fides on the part of the Chief Minister would be a

reasonable one to draw. It is at this point that we are faced with the necessity of having to proceed without there being any effective answer to the propriety of drawing the inference which the appellants desire. There has been no denial by the Chief Minister nor an affidavit by any person who claims or can claim to know personally about the truth about these allegations. The Secretary to the Home Department - one Mr. S.A. Iyengar has filed a counter-affidavit in which the allegations we have set out earlier have been formally denied. He says,

"I have been expressly instructed and authorized by the Hon"ble Chief Minister to state that the allegations suggesting personal animus and giving mandate are false and mischievous and have been deliberately made to create an atmosphere of sympathy".

The learned Advocate General did not suggest that the Court could act upon this secondhand denial by the Chief Minister, as the statement by Sri S.A. Iyengar is merely hearsay. We are therefore, constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the appellants, stand un rebutted".

Therefore, acquisition of the lands in question and non-acquisition or deletion from acquisition of some other lands situated in the same vicinity or area, amounts to discrimination and the same is arbitrary.

Learned Advocate General and Counsel for the BDA were unable to categorically deny the allegations of discrimination and arbitrariness. Though they have made their attempts to satisfy the Court that there is neither discrimination nor arbitrariness in the action of the BDA and the State Government, in view of the factual position narrated in the course of this order, they cannot justify the same. Therefore, this Court holds that the impugned action is discriminative and violative of Article 14 of the Constitution of India. The petitioners are justified in alleging discrimination and their allegations are accepted as true.

84. For the reasons stated above and in view of the law on the subject, Point No. 13 is also answered against the BDA.

85. Point Nos. 14 and 15.--This Court has come across number of writ petitions filed by the owners of agricultural lands who got their lands converted u/s 95 of the Karnataka Land Revenue Act contrary to Comprehensive Development Plan published under the Karnataka Town and Country Planning Act and Karnataka Land Reforms Act without notice to the planning authority u/s 69(2) of the Karnataka Town and Country Planning Act and without awaiting six months. The authorities, namely the Deputy Commissioner or the Tahsildar, have granted conversion of lands which are included in the CDP indiscriminately without applying their mind to the provisions of the aforementioned statutes. The converted lands have been sold to non-agriculturists who are barred to own agricultural lands under Karnataka Land Reforms Act without obtaining permission of the State Government as provided u/s 109 of the Karnataka Land Reforms Act. The converted lands have been used for non-agricultural purposes

by large number of persons without approval of the Planning Authority. Such things are happening day-in and day-out to circumvent the existing laws. The non-agriculturists can hold limited extent of lands as provided u/s 63(7) of Karnataka Land Reforms Act for the purposes mentioned therein. Therefore, the converting authorities should not pass conversion orders in respect of the remaining lands which are proposed for acquisition and shown as conjugation area in the CDP.

86. The layout plan has to be approved by the Metropolitan Planning Committee which is not yet constituted. In the absence of such a Committee, neither private builders nor individuals entitled to engage in construction activities in the conjugation area. Any such constructions are contrary to the provisions of KMC Act, Karnataka Municipalities Act, Karnataka Panchayat Raj Act, KT and CP Act and the CDP. In the absence of control over planned development, there will be haphazard constructions without leaving requisite set-backs, without proper roads, drains and sewerage violating the zonal regulations and building bye-laws. The resultant position is, the residents in the vicinity have to face undue hardship, unhygienic living conditions, without proper civic amenities, thereby the valuable fundamental right to live happily is deprived of. There will be disputes relating to easementary rights. The facilities such as parks, schools, playgrounds, hospitals, police station, bus stands and other public offices, are not available.

87. The photographs produced by some of the writ petitioners clearly show that the constructions are not properly planned. Buildings are constructed according to their whims and fancy. No roads are earmarked nor any set backs are left.

88. For the reasons stated above, it is held that the conversion orders passed are not in conformity with Sub-sections (3) and (4) of Section 95 of Karnataka Land Revenue Act and there is violation of other statutory provisions governing the formation of layouts and construction of houses. Hence, the private builders cannot proceed with their projects on the basis of conversion orders without the sanction of Metropolitan Planning Committee or District Planning Committee, which are yet to be constituted. Accordingly, Point Nos. 14 and 15 are answered.

89. In the light of the discussions made above and for the reasons assigned, the contentions urged by the learned Counsel for the BDA cannot be accepted and the decisions relied upon are of no assistance to them.

90. For the foregoing reasons, the following orders are passed:

(i) The writ petitions are allowed. The entire acquisition proceedings pertaining to Arkavathi Layout are quashed;

(ii) It is hereby declared that the BDA has no jurisdiction to frame developmental scheme in Bangalore Metropolitan Area but either the Metropolitan Planning Committee or District Planning Committee is competent to do so under the provisions of KMC Act;

(iii) (a) The State Government is directed to take immediate steps to issue notification through the Governor specifying Metropolitan Planning Area u/s 503-B of KMC Act read with Articles 243-P(c) and 243-ZE of the Constitution and to constitute either Metropolitan Planning Committee or District Planning Committee u/s 310 of the Karnataka Panchayat Raj Act read with Article 243-ZD of Constitution as they have to frame the developmental schemes;

(b) In the meanwhile, the State Government shall issue necessary instructions to the concerned Deputy Commissioners and Local Authorities in Bangalore Districts (Urban and Rural) to see that no more conversion orders are passed and no plans are approved and licenses are issued for construction of any buildings in respect of the lands mentioned in the impugned notifications without obtaining the sanction of either the Metropolitan Planning Committee or District Planning Committee as provided under Sections 503-A and 503-B of KMC Act and Sections 309 and 310 of the Karnataka Panchayat Raj Act;

(iv) The Deputy Commissioners and/or Tahsildars who are authorised to pass conversion orders are directed to be more careful while exercising the powers u/s 95 of the Karnataka Land Revenue Act for considering the applications for conversion and satisfy themselves that there is no violation of provisions of any other enactments referred to supra;

(v) The Sub-Registrars in Bangalore while registering sale deeds and other transfer deeds in relation to the notified lands, shall satisfy themselves that there is no violation of any of the provisions of the law in force;

(vi) The State Government shall issue necessary instructions to the concerned to carry-out the aforesaid directions.

91. Before parting with these matters, the Court would like to make the following observations:

(a) It is made clear that by entertaining these writ petitions, it shall not be construed that the right, title and ownership of the petitioners in respect of the lands mentioned in their writ petitions are recognised by this Court. In other words, it shall not be construed that this Court has recognised the right, title and ownership of the petitioners by merely entertaining these writ petitions;

(b) In view of the law laid down in the case of H.M.T. House Building Co-operative Society Vs. Syed Khader and others, , the reliefs granted to the petitioners also enures to those whose lands are situated within the Arkavathi Layout and who have not approached this Court;

(c) Despite granting stay orders from demolition of existing structures or uprooting the standing trees and/or to maintain status quo, even though possession of the lands were not taken in accordance with law, the BDA, in blatant violation of the same, trespassing upon the lands, violating rule of law, during the pendency of these matters, with highhandedness, has demolished several structures and also uprooted large number of trees, including fruit

bearing coconut trees. This action of the BDA is highly deprecated;

(d) This Court placed on record the valuable assistance rendered by the learned Counsels for the petitioners Sriyuths Mr. U.L. Bhat, T.R. Subbanna along with Ms. Vanitha, R.N. Narasimha Murthy, K. Gopal Hegde, P. Krishnappa, G. Gangi Reddy, V. Lakshminarayana, M.S. Nagaraja Rao, T.S. Amar Kumar after thorough study of provisions of various enactments and the case-law on the subjects. The effective assistance with thorough and deep arguments of Mr. C.B. Srinivasan and Mr. A.N. Venugopala Gowda, learned Counsel for the BDA, justifying the action of the BDA and the Government cannot be lost sight of. They have done their best to sustain the impugned action but failed in their attempt. The failure is not on account of their inability to convince the Court or for non-application of the mind to the facts of the case and also the case-law of various Courts. They have done their best beyond what could be expected. In the light of admitted facts, the various statutory provisions in force and the law laid down in a catena of decisions, their hands were tied-up to save the Mega project. But it was beyond their control. They must console themselves in view of the legal position and facts which are against them. Despite that, their efforts are laudable and appreciable.

(e) It is hoped that in future, both BDA and Government will apply their mind to the relevant provisions of statutory enactments, the facts and figures, their limitations, powers and duties under the relevant statutes and act accordingly in future without having a casual and mechanical approach to the matters with which they are concerned. The observations made in this order will be a guide for them to set-right their functioning and see that whatever they do hereinafter will be perfect in order and there will be no scope for any comments or resistance from any quarter.

92. The applications filed u/s 109 of the Karnataka Land Reforms Act, 1961 by some of the petitioners which are pending before the Government shall be considered and disposed off expeditiously.

93. The office shall return the original files to the concerned under acknowledgment.