

(2008) 10 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petitions 20195 and 22246 of 2005 and 1937 of 2007

Smt. Sannamma Gowda and Others

APPELLANT

Vs

State of Karnataka and Karnataka Industrial Development
Board

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 1 (3), 28 (1), 3 (1)

Citation : (2008) 10 KAR CK 0075

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : S. Vijaya Shankar for M.V. Vedachala, in WPs 20195 and 22246/2005 and K.V. Narasimhan, in WP 1937/2007, for the Appellant; M. Keshava Reddy, GA for R1 and S.P. Shankar for Basavaraj V. Sabarad, for R2-3, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—These petitions are filed in respect of acquisition of properties by the respondent KIADB. For developing and establishment of industrial area, the KIADB issued notifications u/s 1(3), 3(1) and 28(1) on 15.9.2000 for which the petitioners filed objections. Pursuant to the objections filed and also pursuant to the directions issued by the Chief Executive Officer and the Executive Member, the Development Officer concluded the acquisition proceedings on 24.10.2000, as dropped. Even in the meeting held on 7.11.2003, it was resolved to drop the land from acquisition by the 2nd respondent. The 3rd respondent pursuant to the directions of the Board issued on 10.12.2003 withdrew the notifications so published. The 3rd respondent issued a letter dated 8.7.2004 regarding publication of notifications once again. However, final notification was issued on 28.4.2005 acquiring the land of the petitioners on 13.5.2005. As per the report of the Development Officer, the Board proposed to acquire 221.18 acres of land in different survey numbers of Pura and Anaganahalli Village of Mandya District for formation of industrial area. The lands

identified by the Board is adjacent to the existing industrial area and the lands are in Mandya District. 40% of the area is covered by green belt and in an extent of 37.23 acres the owners have developed teak wood plantations. In Anaganahalli Village also 37.23 of land is of coconut plantation, mango trees, etc. In Pura Village to the extent of 5.28 acres there are coconut and mango trees found. A very big natural valley is passing in between the two villages and huge development expenditure incurs for development of this area. The demand for industrial land in Mysore for the past three years is meagre when compared to the availability of vacant land and an extent of 60.00 acres has been allotted from the last three years. An extent of 125 acres of vacant land is available for allotment in Mysore Industrial Area and the same extent of land is available for allotment at Nanjangud and Thandya Industrial Area of Mysore. There is acute water shortage in Mysore whereas surplus water is available in Nanjangud and Thandya and lastly, the report states that if the proposed land is acquired and developed, the cost of industrial land approximately works out to Rs. 9 lacs per acre which is not feasible as the prevailing rate in Mysore for industrial land is Rs. 5 lacs per acre.

2. In view of the observations noted above, the Development Officer concluded that the acquisition proceedings be dropped. In the resolution of the 253rd Board Meeting, a decision was taken to drop the acquisition proceedings. By letter dated 7.11.2003 and the 2nd respondent communicated to the 3rd respondent to take further action to drop all the proceedings. Pursuant to the same, he withdrew the notification by order dated 10.12.2003 published u/s 3(1), 1(3) and 28(1) of the KIADB Act. Accordingly, he ordered for publication by letter dated 8.7.2004.

3. According to the petitioners, respondents after accepting the objections resolved to withdraw the notification u/s 28(1). Once again, they proposed to acquire the lands by notification dated 13.5.2005 u/s 28(4). The said final notification was published after four years eight months after publication of the preliminary notification and also called for tenders for development of industrial area.

4. According to the petitioners in WP 20195/2005, the land in Sy. Nos. 94, 99, 100, 103, 106, 107, 24 and 25 in all measuring about 33 acres is a forest area and also wherein more than 10,000 teak wood trees are grown and are more than 10-15 years old. According to them, even though it is a private land it is classified as forest and only for commercial purpose they have grown trees and they have developed the trees for the purpose of preserving environment and ecology and accordingly, referring to the judgment of the Apex Court in T.N. Godavarman Thirumulpad v. Union of India in WP (Civil) 202/1995, it is their contention that even Article 51A provides for fundamental duty on every citizen to protect and improve the natural environment including forests. According to the petitioners, as per the ratio laid down by the Apex Court in the said case, the State Government should constitute within one month an expert committee to

identify and protect the area covered under the plantation belonging to the Government and also private persons. Further, the Supreme Court has also directed the State to identify areas which are forests whether notified, recognised or classified irrespective of the ownership of the land of such forests. In the said decision, the Apex Court also referring to Article 21, 14, 51A(g), 48A as regards the concept of sustainable development has held that as per the Forest Policy of 1998 which has a statutory flavour we should ensure environmental stability and maintenance of ecological balance. Non-fulfillment of this principle would be violative of Articles 14 and 21 of the Constitution. It has also held that economic development at the cost of degradation of environment and depletion of forest cover would not be long lasting and such development would be counter productive.

5. In WP 22246/2005, according to the petitioners, pursuant to the objections filed by them, the CEO, KIADB inspected the land on 26.12.2002 and after detail inquiry, instructed the development officer of the KIADB to submit a report regarding feasibility of acquiring the lands in question for formation of industrial area. The Development Officer has submitted a report the contents of which are similar to that of WP 22246/2005.

6. In WP 1937/2007, the property in Sy. No. 12/1 of Anaganahalli village of Srirangapatna Taluk measuring about 4.07 acres is the subject matter of acquisition wherein the petitioner has taken a similar contention regarding the report of the Development Officer and the resolution passed thereon and also regarding the decision taken to withdraw the notification u/s 3(1), 1(3) and 28(1) of the KIADB Act. According to this petitioner also, after the said decision was taken, Section 28(4) notification was published after a lapse of 4 years 8 months without considering the objections filed and, the inordinate delay in between two acquisitions is violative of Articles 19 & 21 of the Constitution and malafides is alleged stating that there was no demand for industrial land around Mysore during 2005 and having recorded so, the Board proposed to acquire the land for commencement of software company and accordingly 228 acres of land was sought to be acquired although a large area of acquired land was available for allotment. Further according to the petitioners, law enforces an obligation on the State Government to exercise power of compulsory acquisition in a manner known to law and it must be bonafide and reasonable. The acquisition of the land in Green Belt wherein thick vegetation is found is negating the constitution mandate as provided under Article 48A of the Constitution to protect and preserve the environment. The proposed acquisition is only for the benefit of software company, although large area of acquired land is available at Mysore Industrial Area.

7. In the statement of objections filed by the respondent - KIADB, it is stated the contentions raised by the petitioners are untenable and devoid of merits. While admitting the fact that there was a notification issued u/s 1(3), 3(1) and 28(1) of the KIADB Act proposing to acquire 221.18 acres of land at Pura and

Anaganahalli Villages of Srirangapatna Taluk, it is stated, pursuant to the said notification, objections were filed u/s 28(2) and most of the land owners have agreed for acquisition of the land. Inquiry was held pursuant to the objections filed and their objections were over ruled. The report submitted through the Development Officer does not nullify doing away with the notification for acquisition u/s 28(1). The Development Officer was not authorised to give findings or make recommendation of a binding nature. According to the report, the lands proposed for acquisition at the aforesaid mentioned two villages are adjacent to the existing industrial area developed by the Board. Although there was recommendation made for dropping of acquisition proceedings on 8.7.2004, but the Government did not issue notification as requested but wrote a letter dated 31.7.2004 to furnish a report on the request that Board's opinion. Such letters were addressed till 8.11.2004. Once again, the Development Officer on such inspection having noted the increased demand for allotment of land, since no land was available for allotment at Mysore and Nanjangud Industrial Area, submitted a report to continue acquisition in respect of 122.21 acres at Anagalli and 31.25 acres at Pura Village and similarly recommended to acquire few more acres of land. In the resolution dated 7.1.2005, the Board resolved to acquire 66.06 acres afresh and to continue acquisition of 153.10 acres already notified under the preliminary notification dated 15.9.2000. Thus, by final notification dated 13.5.2005, 153.10 acres of Anagalli and Pura Villages were notified finally. However, the Mysore Urban Development Authority notified that lands at Anagalli and Pura Villages were not included in the development area. Thus, according to this respondent, these lands are situate adjacent to the Industrial Area Board in about 220 acres and 30 acres is meant for KSSIDC. The State Level Window Clearing Committee has already approved 14 units in this industrial area and these Units are commissioned in a time bound manner. It is also denied that the area in question is in Green Belt Area and agricultural zone and there is no complaint of water scarcity. Even for the lands situate in Green Belt there is no bar for acquisition by the Government for public purpose as Bangalore is overburdened and the entrepreneurs are preferring to shift to Mysore City. The Udyog Mitra has cleared projects of more than 70 acres of land. It is also stated, the plea of inordinate delay does not hold any water. The acquisition is undertaken for a bonafide and good purpose. Even after filing of the writ petition, the 8th petitioner (WP 20195/05) has also received compensation through a cheque on 17.1.2006 in respect of the land bearing Sy. No. 42 P measuring about 1.4 acres in Pura Village. Even the 11th petitioner also has received compensation on 23.1.2006.

8. In the additional statement of objections filed by the KIADB, it is stated that in the land acquired for formation of Mysore Industrial Area already the layout is formed. In WP 22246/2006, the land involved is 45 acres and on account of the interim order passed, they are not in a position to take further steps after the issuance of preliminary notification and also during pendency of the writ petitions, some of the petitioners have alienated the land in violation of the

interim order and those transactions are void and not binding on the respondents. Accordingly, it is stated an extent of 1 acre 11.1/2 guntas in Sy. No. 106 of Anagahally has been transferred by way of gift dated 2.2.2005 by Sri V. Ramaiah in favour of one V.R. Venugopal (3rd petitioner in WP 22246/05). In the land in Sy. No. 99, an extent of 1.11 acres has been sold by one Jagadeesh in favour of Sedil Narayanan on 10.2.2005. An extent of 1.10 acres in Sy. No. 29 (In WP 20195/05) has been sold by one Puttegowda in favour of M.N. Jayaprakash on 11.4.2005. Out of Sy. No. 109 (WP 20195/05), one V. Ramaiah has executed a gift deed dated 27.2.2006 in favour of V.R. Venugopal to an extent of 1.16 acres and 1.31 acres. On 7.4.2006, the said Venugopal has executed a sale deed in favour of V.R. Sridhar in respect of 1.16 acres and 1.31 acres in Sy. No. 107. On 12.9.2006, one Smt Mahadevi has executed a deed of agreement in favour of Venugopal in respect of 6.18 acres in Sy. No. 100 (WP 20195/05) of Anagahalli Village. On 24.9.2007 one Shivalingegowda (6th petitioner in WP 20195/05) has sold an extent of 20 guntas in Sy. No. 99 in favour of Smt. V.T. Deepti.

9. Further, it is contended that the said V.R. Venugopal, one of the petitioner in WP 22246/2005 is a land developer and he is taking the initiative and behind the other petitioners. He has developed housing plots varying from 10 guntas to 1 acre. In these plots he has planted teak plantation. After filing the writ petitions and after obtaining interim orders, he has also started putting up illegal constructions. In spite of police complaints filed, he is intending to show that it is a green zone or a valley and he is also marketing the plots to create encumbrance. In spite of the acquisition of land, the Sub-Registrar has registered the documents. Mysore City is a fast developing city and industrial area. Government has taken up acquisition proceedings at Mysore to meet the increasing demand. In the second phase also already allotments are made in favour of 59 Units. The Board has spent nearly Rs. 9 1/2 crores for formation of road laying etc. The sketch showing the land acquired, developed and allotted is produced wherein unauthorised activities are done by the developer. A list in this regard is produced at annexure R. It is stated the petitioners do not have any subsisting interest in the lands. The lands have been sold to others with an intention to develop them as housing plots and any development made subsequent to the acquisition is null and void. Several entrepreneurs are waiting to establish their industries, but, unable to do so on account of the interim order. The acquisition of the land was taken up much prior to the Circular of the Government issued and even the Circular issued is nothing but administrative instructions. It cannot be applied to a case where the land covered by the Circular cannot be given up for reasons of contiguity and compactness.

10. Another application dated 28.7.2008 is filed by the respondent to show that in Sy. No. 94, 99, 100 of Anagalli Gram Panchayat of Hosalli wherein the information discloses that one Venu Gopal has obtained conversion of the land in Sy. No. 94 to the extent of 3 acres and in Sy. No. 100, to an extent of 6.18 acres from the Deputy Commissioner, Mandya. As per the approval, the residential

layout in the said land has come up. They also furnished the copy of the Layout Plan and also sought to produce the documents showing the existing industrial area and the area notified for acquisition for expansion of the existing layout to throw light on the issues involved in the petition.

11. In the counter filed by the petitioners to the statement of objections, it is contended that KIADB has committed contempt of the interim order passed by this Court. Despite the interim order passed, they made allotments in other portions to some of the allottees which is in clear violation of the interim order passed by this Court although the State Government and KIADB has not taken possession of the land in question. It is denied that the II Phase of the Mysore Industrial Area is formed and no layout has been formed to an extent of 45 acres of land except the road passing through having access to the areas on the other side of the land. Such alienation/transactions alleged by the respondent has only taken place between the family members of the petitioners and do not in any way help the respondents in defending the procedure. The teak trees grown in the land were planted before the preliminary notification was issued. Buildings were built up before the publication of the final notification and when it had been decided by the KIADB not to acquire the said lands in its meeting and the Land Acquisition Officer had withdrawn the notification issued u/s 28(1) of the KIADB Act, buildings are being built up in the land which are converted for the purpose of residential use after conversion orders are passed by the appropriate revenue authorities. The respondents claim that Mysore City is a fast developing industrial city and there is increasing demand for land, but peculiarly, they have de-notified the land to an extent of 10 acres 37 guntas which were notified earlier u/s 28(1) of the notification. The petitioners have got subsisting interest in the land in question and the respondents have taken more than five years to issue the final notification. If the acquisition is set aside, in no manner it would affect the contiguity and compactness of the layout formed by the respondents.

12. Heard Sri Vijayshankar, Sr. Counsel for the petitioners in WP 22246/2005 and WP 20195/2005 and Sri K.V. Narasimhan for the petitioners in WP 9137/2005 and also Sri Basavaraj Sabarad appearing for the respondent KIADB.

13. On the lines of averments made in the petitions, it is submitted that at annexure F in WP 22246/2005, there is a report of the Development Officer wherein the Board has accepted the report of the Development Officer not to go for acquisition of the lands in question. At annexure Q, there was a decision taken for dropping of acquisition on 30.1.2007. Section 28(4) notification was issued on 15.6.2005 whereas Section 28(1) notification is of the year 15.9.2000. Learned Counsel has referred to T.N. Godavarman's case cited above wherein at para 28, it is observed not to use forest land for non-forest purpose and also relied upon the Division Bench decision in the case of Shimoga Urban Development Authority and Anr. v. State of Karnataka and Ors. ILR 2002 Kar 2078 regarding delay in finalising the notification under the Urban Development Authority Act as also the decision of the Apex Court in the case of Ram Chand

and Others Vs. Union of India (UOI) and Others, as to the delay in completing the acquisition proceedings. Learned Counsel has also relied upon another decision in the case of K.S. Chandrashekhara and others Vs. The Special Land Acquisition Officer, Bangalore and others, to contend that when the government has got alternative land, the entire acquisition proceedings initiated is vitiated and it is bad for delay in completing the acquisition proceedings.

14. Learned Counsel Sri Sabarad representing the Board submitted, most of the petitioners have not filed objections before the Land Acquisition Officer. In WP 20195/2005, petitioners 8 and 11 received the compensation and those petitioners have withdrawn the compensation. In respect of Sy. No. 106 in WP 22246/2005, the land was alienated during pendency of the proceedings; in WP 20195.2005 in respect of Sy. No. 29, 1.10 acres was sold by one Puttegowda to one M.A. Jayaprakash. Similarly, in Sy. No. 100 the 7th petitioner Madegowda sold an extent of 2.16 acres to one V.R. Venugopal, the Developer. It is also contended that the properties have been developed and already allotment letters have been issued to the beneficiaries a list is furnished in this regard and at the instance of real estate people, petitions were filed and accordingly contended that the land acquired need not be used for the very public purpose and it can be used for some other purpose. In this context, he has relied upon the judgment of the Apex Court in the case of Bhagat Singh Vs. State of U.P. and Others, .

15. Learned Sr. Counsel Sri S.P. Shankar representing the beneficiaries in WP 20195/2005 contended that about 6.18 acres has been earmarked in Sy. No. 100 of Pura and Anagalli Village, the lands were leveled and the lands vested in the government and Block No. 30 has been allotted in favour of the beneficiaries and also 1.53 crores have been paid during 2007 itself to the KIADB.

16. If, After hearing Counsel representing the respective parties, the point that arises for consideration is whether the tenders proposed for acquisition for development of Industrial Area at Mysore (II Phase) is valid and that whether the acquisition vitiates due to delay and laches.

17. In the decision in the case of Devinder Singh and Others Vs. State of Punjab and Others, , the Apex Court has observed that where an action taken is without jurisdiction, even the order which is conclusive may be subject to judicial review. When an order is passed without jurisdiction, it amounts to colorable exercise of power. Such application of mind must be on the materials brought on record. The declaration made u/s 6 of the Land Acquisition Act has to clearly satisfy the purpose of acquisition. The declaration has to be made either for public purpose or for a company, it cannot be for both. Further, it is observed that in the case of acquisition of land for a private company, existence of a public purpose is not a requisite criteria, other statutory requirements call for strict compliance, being imperative in character.

18. In the decision in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, , the Apex Court held that a owner need not be given any

notice of the intention of the State Government to withdraw the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected u/s 48(2) of the Land Acquisition Act, if he suffers any damage in consequence of the acquisition proceedings, he has to be compensated. Section 48(3) of the Act provides as to how much compensation is to be determined.

19. In the decision in the case of Smt. Nagu Bai and Ors. v. State of Karnataka ILR 2001 Kar 1169, this Court in Division Bench has held, when the final notification was issued beyond two years from the date of preliminary notification and also when the award was passed beyond the statutory period in respect of the purchaser of the land after the preliminary notification who had not received any notice regarding acquisition proceedings and who had challenged the acquisition proceedings, it was held that not passing the award within the time stipulated i.e., within two years, lapses the entire acquisition proceedings.

20. In the case of Venkataramanappa and Ors. v. State of Karnataka and Ors. 1984(2) KLJ 326, this court, referring to the Act, held that objections not filed are not objections in law and the person who has filed objections beyond the time specified is not an objector in law and the authorities constituted under the Statute are required to consider only the objections filed in the manner prescribed and only hear the objections. Section 28(2) provides for service of notice on the owner or occupier and all the interested persons to show cause within thirty days from the date of service as to why the land should not be acquired and a duty is cast on the government to consider the cause shown as per Section 28(3) by the owner and to hear the owner and the objector by providing them an opportunity.

21. In Shimoga Urban Development Authority's case cited supra, wherein with reference to the ratio laid down by the Apex Court, at para 17 it is held where the compensation is pegged down to the date of preliminary notification and there is inordinate delay, the market rate as on the date of the preliminary notification becomes a fraction of the market rate prevailing at the time of passing of the order and taking possession and that would be unjust to the land owners. Further, in para 18 it is observed that though there is explanation offered for the delay i.e., regarding the approval of the scheme by the Government for such a long period stating that there was no such reason forthcoming it is held that even if the preliminary notification is said to be valid for a reason, final notification may have to be held to be invalid on the ground of delay in issuing the same.

22. Counsel for the petitioners relying upon the decision reported in Ramji Purshotam (D) by Lrs. and Others Vs. Laxmanbhai D., Kurlawala (D) by Lrs. and Another, contended that there is promissory estoppel on the part of the respondent authority in not carrying out the decision taken by the Board on the report of the Development Officer regarding non-feasibility of the acquisition of the land. Even then, government has issued final notification contrary to the decision taken earlier after a lapse of five years. In the case noted above, the

Finance Minister had announced to abolish the purchase tax on milk in the budget speech. Relying upon the same, for the year 1996-97 the manufacturers of milk products had not paid the purchase tax. When the same was sought to be enforced, and on the State Government's refusal to exercise its discretion to issue a notification exempting tax on milk, the Apex Court held that in view of the assurance given by the Minister, the assessee's plea of promissory estoppel against the demand of tax is correct.

23. In the case on hand, the acquisition to the extent of lands situate in Pura and Anagalli Village, admittedly falls within Srirangapatna Taluk, Mandya District. It is not made clear by the respondent authorities as to whether the same could be included in the Planning Area of Mysore Industrial Area. Although it is contended by the Counsel for the respondents that the KIADB has got jurisdiction over the whole State, necessarily the development activities of Mysore District is concerned was being notified as per the provisions of the KIADB Act. But strangely enough, it has went beyond the territorial jurisdiction of Mysore District to form II Phase of industrial area of Mysore at Mandya District boundary.

24. The Scheme announced by the respondent authority for the development of industrial area at Anagalli and Pura Villages of Mandya District are as early as in the year 2000. While taking review of the situation as per the direction of the CEO, assessment was made by the Development Officer taking stock of the situation and about 250 acres of land acquired at Thandya and Nanjangud within the area of Mysore District was found available. The Development Officer has also noted the fact that the cost of acquisition of lands notified above is more on the higher side than the lands which were available. At a particular point of time having noted the demand for the past three years, since there was no such demand, decision was also taken to de-notify the land sought to be acquired more on the point of feasibility and also on the point of cost of acquisition. However, in the interregnum nearly for a period of five years all such resolutions were passed by the Board except that the Government did not take steps to de-notify such proposed acquisition. Rather one fine day, the Government issued final notification during the year 2005 after lapse of more than five years.

25. Though several contentions were taken by the respondents that the land was developed and roads were formed, while disputing the petitioners have contended that only access road has been developed and not the plots. In the circumstances, the development made if any is a subject matter of dispute. The petitioners also are shown to have approached this Court well within reasonable time. As contended by the respondents, might be some of the petitioners who have filed the petitions have withdrawn the compensation and also sought to withdrew the petition filed by them.

26. Further, it is seen that as per the submission made by the petitioners' counsel, after preliminary notification before the completion of acquisition proceedings, the respondent authority is said to have de-notified the lands from acquisition due to extraneous consideration for which no proper explanation has

been offered by the respondent. The manner in which the respondent authority has proceeded to acquire the lands in question appears to be abuse of discretion which is writ large.

27. In the decision of the Apex Court in Nestle India's case cited supra, wherein the principle of promissory estoppel has been considered and it is noted by the Apex Court that once such an assurance was given, necessarily it was to be implemented. In the instant case, the decision of the Board was throughout, to drop the acquisition proceedings. But however, to the surprise of the petitioners, a contra decision was taken by the Government in issuing the final notification. Thus, the decision taken by the Board is contrary to its own decision which they had earlier decided to take. As such, in the case on hand, as held by the Apex Court, the principle of Promissory Estoppel applies. More so, when such a decision was taken, the respondent authority is shown to have not considered the objections filed by the petitioners and has not given an opportunity of personal hearing to them. As such, the acquisition proceeding vitiates.

28. Added to the above arbitrariness on the part of the respondent, as is held by this Court in the Division Bench relying upon the decision of the Apex Court in Shimoga Urban Development Authority's case cited supra, absolutely there is no reason forthcoming for the delay of nearly five years in issuing notification u/s 28(4) of the Act. Though the preliminary notification is held to be valid, and though there is no time limit fixed for final notification in the Act, having regard to the facts and circumstances of this case, the final notification issued belatedly has to be held invalid on the ground of delay in issuing the same.

29. As per the contention of the petitioners in WP 21095/05 & WP 22246/2005, in about 37 acres of land teak plantation is shown to have been raised and the photographs produced at the annexure to the said writ petitions also depict the fact of existence of thick growth of trees almost like a forest developed on private land. In the circumstances, as per the Circular of the Government dated 3.3.2007, as is produced by the Counsel for the petitioners along with additional documents and also in view of the ratio laid down by the Apex Court in Godavarman's case noted above, as to the fact that while the Apex Court as a matter of conservation of forest as per Section 2 of the Forest Conservation Act, 1980, has observed that forest must be protected irrespective of the ownership of the land or classification thereof. As regards the factual position in the present case, there is thick density of teak plantation which satisfies the requirement of forest developed on the private land. It is the duty of the respondent as well the petitioners as a matter of fundamental duty to protect the forest either from alienating or from destroying the same. In the circumstances, such acquisition of 37 acres of land specifically would negate the ratio laid down by the Apex Court. The same should not be converted into industrial area rather, it has to be preserved keeping in view the ecological balance and protection of environment. So also not to acquire the Garden lands & other lands as far as possible as per the GO, 3-3-07 of the (sic).

30. It is the case of the respondent that one of the petitioners, after Section 28(1) notification was issued has developed the land into residential sites after obtaining conversion from the Deputy Commissioner, Mandya and also after obtaining the permission from me Hosahalli Gram Panchayat. In this regard, it is to be noted, any such conversion order obtained after the preliminary notification without bringing it to the notice of the concerned Revenue Authority viz., the Deputy Commissioner, without intimating the fact of the preliminary notification by the KIADB would be honest in the eye of law as it is subsequent to the notification for acquisition, if it is found on verification KIADB has got jurisdiction to acquire lands in Mandya District for the development of Mysore Industrial Area. Otherwise, conversion order passed by the Deputy Commissioner Mandya and the development made therein is valid if it is in accordance with law.

31. In view of what is discussed above, the decision taken by the respondent Authority to acquire the lands in question excluding the lands wherein some of the petitioners themselves have withdrawn the petition and also drawn the compensation have to be quashed.

32. An application was filed by the allottee to come on record to contend that he has already deposited Rs. 2.5 cores with the respondent for the allotment of land/ industrial plot. Of course, though the application was filed in this regard supporting the respondent, but having regard to the various illegalities noted, above, when the acquisition does not survive due to delay and laches, and also on the principle of promissory estoppel, question of allowing the application to come on record and get impleaded does not arise. Application is rejected.

33. Further, the compensation that is proposed to be awarded taking into consideration the date of preliminary notification appears to be more arbitrary as mere is astronomical escalation in the market value of me lands by the time the final notification is issued due to the long gap of five years and this aspect has not been taken note of. That is also one of the reasons to interfere with the procedure adopted in completing the acquisition proceedings.

34. For the fore going reasons, the petitions are allowed. Impugned notifications - both preliminary and final, are quashed. It is restricted to the lands of the petitioners in question. However, liberty is given to respondent Authority to proceed with the acquisition afresh in accordance with law, if it intends to go ahead with the development of the II phase of Industrial Area at Mysore. However, the land to the extent of 37 acres wherein forest is developed shall be preserved in tact without destroying the same to maintain and preserve ecological balance as per the directions of me Apex Court.