

(2003) 12 KAR CK 0074

In the Karnataka High Court

Case No : W.A. No's. 3027, 3500 and 3506 of 2003

Smt. Susheela Devi and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 17

Citation : (2004) ILR (Kar) 1214 : (2004) 1 KCCR 46 SN

Hon'ble Judges : S.R. Bannurmath, J; A.M. Farooq, J

Bench : Division Bench

Advocate : Vijay Shanker and N. Krishananda Gupta, for the Appellant; A.N. Jayaram, General, for R1 to R3, T.R. Subbanna, S.G. Pandith, for R-5 and U Abdul Khader Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Farooq, J.—The appellants are petitioners in W P Nos. 1565 of 2003 to 1572 of 2003. They are aggrieved by the dismissal of their Writ Petitions by the learned Single Judge by his order dated 17/3/2003 dismissing their Writ Petitions and directing the first petitioner, who is not an appellant, to pay costs of Rs. 10,000/-.

2. The appellants along with one Narayana Setty filed Writ Petitions seeking quashing of the notifications issued under the Land Acquisition Act acquiring the lands and for quashing the award passed by the Land Acquisition Officer and for declaring that the establishment of Cauvery IV Stage Sewerage Water Cleaning Workshop Unit put up by the respondents as contrary to Comprehensive Development Plan and Zoning Regulations issued under the Karnataka Town and Country Planning Act as illegal and void and to restrain the respondents from establishing the Water Sewerage Plant.

3. All these appellants filed their Writ Petitions in common with the Writ Petition of Narayana Setty who has now not appealed against the dismissal of his Writ

Petition. The appellants in their Writ Petitions stated that they are the permanent residents of K.R. Puram, Bangalore and that they have constructed their houses in Bank Colony there. It is their case that in the Writ Petition they are challenging the acquisition proceedings to acquire 10 acres 15 guntas of land in Sy.No. 114/2 of K.R. Pura, Bangalore South Taluk and the establishment of Cauvery IV Stage Sewerage Water Cleaning .Workshop. The said land was acquired for the purpose of setting up of a Sewerage Treatment Plant in short referred to as the "STP" hereafter. It is the case of the appellants in their Writ Petition that the respondent Bangalore Water Supply and Sewerage Board hereinafter referred to as the "BWSSB" had written a letter to the second respondent Special Deputy Commissioner, Bangalore District requesting to acquire about an extent of 16 acres 15 guntas out of which 10 acres 15 guntas in Sy.No. 114/ 2 of K R Puram Village to be used for the setting up of STP. The second respondent referred the matter to the Commissioner and Secretary, Government of Karnataka. The matter was approved without applying its mind mechanically and arbitrarily and there is absolutely no ground made out for invoking the provisions of Section 17 of the Land Acquisition Act.

4. It is alleged that the Bangalore Development Authority, (B D A in short), being the planning authority exercising power under the Karnataka Town and Country Planning Act have prepared a Comprehensive Development Plan (C D P) and they have also framed Zoning Regulations. According to the appellants, the property could not be used for any purpose except for construction of residential quarters. It is alleged that the setting up of the STP is contrary to the Zoning Regulations and C D P. It is alleged that the respondents with mala fide intention in order to oblige some political figures in the Government have acquired the land. They have also alleged that if the project is to be established in the schedule land the road leading from outer ring road to old Madras Road will be cut off and the petitioners have to reach their dwelling house taking round about way.

5. It is alleged that despite there being no urgency the second respondent invoked Section 17 of the Land Acquisition Act and issued the preliminary notification on 28/5/1999 proposing to acquire the extent of 10 acres 15 guntas in Sy.No. 114/2 of K.R. Puram Village proposing the same for the purpose of establishing the STP. That the first appellant in W P No. 1564 of 2003 (who is not a party now in this appeal) had filed his objections to the proposed acquisition and the other petitioners who are the appellants herein were not aware of the acquisition proceedings. That the petitioners were not notified about the reports etc., by the respondents and finally a final notification was issued on 11/4/2000 acquiring the land. The writ petitioners also contended that possession has not been taken from the first petitioner and it is stated that the petitioners came to know about the who of the respondents for setting up of the STP when a function was arranged on 27/11/2002. It is stated till the foundation stone was laid the petitioners were not aware of the proposal to set up the STP.

6. It is further alleged that the petitioners and other citizens gave representation

to the Chief Minister and others and also the 4th respondent explaining as to how the establishment of the STP will affect the petitioners and others since the same will be a threat to public health and environmental hazard and the resultant contamination of water sources around the area leading to cancer, liver failure and other diseases.

7. It is further alleged by the petitioners that apart from challenging the proceedings of acquisition the petitioners are also challenging the establishment of the STP on account of the setting up of the same near the residential quarters and other residential areas of the petitioners in contravention of the CDP and Zoning Regulations and hence they sought a prayer for declaring the acquisition proceedings initiated u/s 17 of the Land Acquisition Act as illegal and sought for quashing the notification of acquisition and to declare the setting up of the STP as illegal.

8. The 4th respondent filed objections to the Writ Petitions contending that the Writ Petitions challenging the acquisitions of the land in question is misconceived and speculative and contended that there is inordinate delay in approaching the High Court seeking quashing of the acquisition and further contended that the BWSSB is in possession of the land since 2.11.2001 and the construction of the STP is already in progress since 1.4.2002 and hence the petitioners were not entitled for any relief.

9. They further contended that the invoking of Section 17 of the Land Acquisition Act was quite in order in view of the urgent nature of the project. It is stated that the said project of constructing the STP is to be completed by 25.3.2004.

10. It is further stated that the BWSSB under the Cauvery Water Scheme IV Stage, Phase I is being implemented by the Board to provide additional water supply and Sewerage Facility for Bangalore City and it has taken into consideration the projected population of Bangalore up to 2011 AD incorporating 7 City Municipal Councils and Town Municipal Council and that the respondent BWSSB has taken a loan from Japan Bank for international cooperation to a tune of 28,452 million Japanese Yen guaranteed by the Government of India and the State Government for implementing the project with effect from 26.3.1996 to 25.3.2004 by which time the project has to be completed utilising the loan amount. Under the project 7 number of STP, 8 intermediate Sewage Pumping Stations and Trunk Sewers of 54 K. Ms. at different locations around Bangalore has been considered. That out of 7 STPs the STPs at K.R.Puram and Jakkur has been identified as SLC Contract and the final report during June, 1998 was prepared by a consortium of consultants namely Pacific Consultants International, Japan, MOTT Magnodanal Ltd., UK and Tata Consulting Engineers, India. That since the above project comes under International bidding, it was essential to have the possession of the land before issuing the tender notification to enable the global tenderers to visit the site and as such the BWSSB started the process through the second respondent Special Deputy Commissioner, Bangalore from 3.12.1998 in view of the time bound project and at their request

the Special Deputy Commissioner invoked the emergency provision and acquired the land and handed over the lands to the BWSSB on 2.11.2001 and thereafter necessary tenders were called for and the work was awarded to M/s. G S J ENVO Ltd., Delhi showing the date of commencement as 1.4.2002 and completion on 3.3.2004 and the work started immediately thereafter and the work is in substantial progress.

11. It is stated by the fourth respondent that the land was selected on the geographical conditions and techno feasibility as per the final report prepared by the consultants. It is stated that the STP which is being set up is purely a biological process which will be treating domestic sewage generated from the toilets, urinals and bath rooms surrounding residential houses in the locality and hence the STP will not be injurious and it cannot affect the health of the residents.

12. That opportunity was given to the parties during acquisition and objections of the parties were considered by the Special L A O before overruling the objections and issuing the notifications. They denied that the petitioners were not aware of the setting up of STP till 27.11.2002. It is stated that the contention of the petitioners about health hazard on setting up of the STP is not correct and that the domestic sewage will not contain any hazardous toxic and poisonous solid and there is no question of the ground water getting polluted. It is pointed out that the untreated sewerage from surrounding areas are directly let into the KR Puram tank which will be prevented by the setting up of the STP. The sewage from the houses will be collected by using closed and buried pipes and linked to the nearby manholes provided with covers and thereafter it will be flowing by gravity through an engineered underground drainage system up to the plant and it will be collected and transported through the underground drainage system by using RCC pipes which insures no leakage and hence there was no question of the public coming in direct contact with the sewage.

13. It is further stated that the acquiring of the land for putting up STP will not be contrary to the provisions of Zoning Regulations since the STP in the area earmarked as residential zone is a public utility service and is for the benefit of the public and hence there is no contravention of the zoning regulations. It was submitted that there is no deviation at all under any scheme. It was further stated that after the construction of the STP the letting out of water to KR Puram Tank will stop and it would end contamination. That the Karnataka State Pollution Control Board has given consent by their letter dated 17.10.2000 clearing the project.

14. It was submitted by the respondents that this Court in several Public Interest Writ Petitions has directed the State Government and the Board to put up treatment plant in order to clean drainage water for using the same for better purpose and also to prevent pollution from drainage water, that the Board is putting up STPs in several areas of Bangalore to prevent pollution that is being caused by drainage water. That the setting up of STP is beneficial to environment

and it is eco friendly. It is stated that the contract has been awarded at a contract price of Rs 26,33,99,710 + 30 million Japanese Yen. The B W S S B itself has spent by now about nearly 5.5 crores of rupees . It is stated that the contract work has been awarded is based upon international conditions and under the conditions if there is delay on account of stopping of work the BWSSB has to bear the huge loss of the contractor. The BWSSB therefore has sought for dismissal of the Writ Petitions.

15. The learned Single Judge after hearing the parties found that the background of these acquisition proceedings was in view of the several public outcry demanding the upkeep of tanks and lakes in and around Bangalore free from all sorts of pollution and contamination and to stop the health hazard in view of the pollution. Those public interest litigations were initiated alleging that there was water pollution and air pollution in view of the fact of keeping open drainage water and not regulating the sewerage discharge from residential localities particularly the hutment areas of Bangalore. This Court in those public interest Writ Petitions issued directions to the Government and BWSSB following the judgment of the Hon''ble Supreme Court in Virender Gaur and Others Vs. State of Haryana and Others, . This Court in WP. No. 33645/ 1998 and connected Writ Petitions gave directions on 27.7.1999 directing the State Government and the Board to divert the entire open drainage water through drainage channels etc., and to establish an STP to treat the sewage water before use for irrigation or gardening purpose. It further directed to divert the sewerage water from the slum area, to take steps so as not to allow polluted water to flow into tanks in the City and surrounding areas and to take steps to protect all the tanks.

16. It is thereafter that the BWSSB after consulting the State Government and other authorities proposed the setting up of the STP plants in and around Bangalore under the Cauvery Water Supply Scheme IV Stage, Phase I and this project includes 7 City Municipal Councils and one Town Municipal Council. The contention of the appellant that the BWSSB has no statutory competence to execute the STP project in the land at K R Puram is also without any substance. The BWSSB is executing the project in view of the directions issued by this Court in several Writ Petitions directing them to set up the project for the benefit of the citizens of the City. Further the Karnataka Pollution Control Board has also given its consent for the project on 17.10.2001. The STP is being set up at those places including K R Puram in view of the fact that there is no underground drainage facilities and the residents there are using soak pit for domestic sewerage and salvage is left out in the open drain thereby letting out the sewerage directly to the K R Puram Vengayanakere Lake. It is this reason the Technical consultants of the BWSSB selected the schedule property at K R Puram for construction of the STP. The learned Single Judge also found that necessary technical opinion were obtained before initiating the project. The establishment of STP was found to be urgent to be completed within a short span and on a war footing completion and hence the emergency clause u/s 17(4) was invoked.

17. We have heard the learned Senior Counsels and also the learned Advocate General and the other counsels appearing for the appellants and the respondents. It was contended by Sri S. Vijaya Shankar, the learned Senior Counsel appearing for the appellants that the BWSSB having applied to the Planning Authority for change of land use u/s 14A of the Karnataka Town and Country Planning Act and the authority having invited objections on the said application, the 4th respondent could not have set up the STP without getting the required permission from the authority and it ought to have waited for the permission from the authority. It is further contended the 4th respondent cannot execute the project and that the provisions of the Karnataka Water Supply & Drainage Board Act has been overlooked and contravened and the Town and Country Planning Act has been contravened and that the respondents have not complied with the provisions of Sections 14, 14A and that there is no post-facto compliance as that is permissible in law. It is further contended that if the law says something must be done in a particular manner that must be done in that manner only. That the respondents have contravened Section 10 of the Bangalore Metropolitan Region Development Authority Act, 1985. Section 10(4) has not been complied with. It is further submitted that the provisions of the Water (Prevention and Control of Pollution) Act, 1974 has not been complied with. It was submitted that the respondent No. 4 has applied to the Pollution Control Board and the Board has given certain conditions and the Board has not stated that whether the STP set up by the 4th respondent is a treatment and disposal system within the meaning of Section 25(1)(a) of the Act. That the procedure under the Karnataka Water (Prevention and Control of Pollution) Rules, 1976 has not been followed. That the procedure under the Environment (Protection) 1986 has not been considered and followed. It is submitted that under Article 226 the exercise of power has to be consistent with the article and not by ignoring the relevant statutory provisions. That the State and Statutory authorities are as much bound to follow the law just like a citizen. The application filed taking additional grounds and raising new grounds has to be allowed in view of the principle laid down by the judgments of the Supreme Court. The learned Senior Counsel cited several judgments on the different contentions raised by him.

18. Sri T.R. Subbanna, learned Senior Counsel appearing for the 4th respondent and Sri S. G. Pandit, learned Counsel appearing for respondent No. 5, Sri Abdul Khader, learned Counsel appearing for the respondent No. 6 contended on behalf of the respondents that the Writ Petitions were actually filed by the first Writ Petitioner who has not come up in appeal and the main intention of the Writ Petitioners was to question the acquisition of the land. It is submitted that the appellants had only joined the first petitioner whose only aim was to see that the acquisition is quashed. It is stated that the Writ Petitions were filed after exorbitant delay and the Writ Petitions have rightly been dismissed on the question of delay itself. They have also met the arguments of the appellants on all the relevant provisions of the different enactments cited by the appellant and

placed rulings in support of their contentions.

19. On considering the entire facts and circumstances of the case, we are in full agreement with the view taken by the learned Single Judge on all the aspects of the matter. Further we are also satisfied from the facts and circumstances of the case that it is the first Writ Petitioner who has not filed the appeal made the other petitioners to join him to file the Writ Petitions with ulterior motive.

20. The facts and circumstances of the case mentioned in the Writ Petition clearly point out that the petitioners in the Writ Petitions have not come before the Court with clean hands. Admittedly the first petitioner had challenged the acquisition proceedings questioning the recourse taken to Section 17 of the Land Acquisition Act. As rightly pointed out by the learned Single Judge despite dispensing with enquiry u/s 5A of the Land Acquisition Act, the first writ petitioner filed statement of objections to the acquisition proceedings and his objections were considered by the Land Acquisition Officer before overruling the same and it was only thereafter that the final notification was issued. It has also come on record and which is not disputed that the first petitioner and the other land owners who were served with notice appeared before the land acquisition Officer and claimed compensation. They had also engaged a counsel on their behalf who was heard by the Land Acquisition Officer and an award was made and the first petitioner and other owners sought reference to the Civil Court. Their claim was only to get enhanced compensation.

21. The records also disclose that the first petitioner and other claimants who were pursuing their case for more compensation were not bothered about the acquired lands and the acquired lands were taken possession of on 2.11.2001 and the same was handed over to the contractor who had taken the contract for the construction of the S T P. The Writ Petitions were filed on 14.1.2003. The Writ Petitions were filed after such exorbitant delay and in the first para itself in the Writ Petition, it is stated by the petitioners that the Writ Petition is filed challenging the acquisition proceedings and the establishment of the STP. On an entire reading of the Writ Petition, the intention of the petitioners are clear and the only intention appears to get the acquisition proceedings quashed. The Writ Petitions were filed at the time when the respondents have completed the preliminary work and handed over possession of the land to the contractors and the contractors had started the work and the work has progressed fast and huge amounts were spent. The learned Single Judge has rightly rejected the contention of the petitioners that they were not aware of the setting up of the STP till 27.11.2002 when the official foundation ceremony was arranged. The petitioners who were the residents of the place had clear knowledge of the purpose of the acquisition and even otherwise they could have been the progress of the work and by the time they had approached the Court, the respondents had spent nearly Rs. 5 crores on the project. The entire land was enclosed by a stone compound, earth was excavated and substantial civil work had been undertaken. The learned Single Judge has rightly observed that this conduct of the first

petitioner in acquiescing in the acquisition proceedings and just watching the construction work going on in a war-footing is estopped from challenging the acquisition. It has been rightly held that any interference by the Court would cause serious public prejudice and hence the challenge to the acquisition proceedings should fail only on the ground of acquiescence and laches.

22. Even though it is submitted on behalf of the appellants that the first Writ Petitioner is not now a party to these appeals and the other petitioners are not the persons who were interested in seeking enhancement of compensation towards the acquisition of lands and that the appellants are interested in safeguarding the public from the hazards of setting up of the STP. The appellants wanted to contend that the petitions filed by them should be treated as Public Interest Litigations against the setting up of STP and they are not at all concerned in challenging the acquisition of lands. We are not at all satisfied with the said submission made by the appellants. The appellants were only mute spectators watching the proceedings filed by the first Writ Petitioner and they were lending support to the first writ petitioner by joining him at his instance questioning the acquisition proceedings. The appellants appeared to be not public interested citizens. It cannot be said that the appellants have put-forth any public interest in the Writ Petition in order to safeguard the health of the citizens as contended by them. Even though the petitioners had argued that the setting up of the STP will be a health hazard, it appears that in view of the several submissions made by the respondents and the several instances shown regarding the utility of setting up of STP in other States, the appellants appear to have found that the setting up of STP is for public good and therefore it was submitted on their behalf when this Court questioned the learned Senior Counsel about their stand as to the public purpose of setting up of STP, it was submitted by the learned Senior Counsel appearing for the appellants that whatever may be the purpose of the project the appellants wanted to point out that the respondents have contravened several provisions of different enactments resulting in discarding mandatory provisions of such enactments and illegally setting up the STP and hence it is submitted that on that ground alone the appeals have to be allowed and direction should be issued to the respondents as prayed for by them in the Writ Petitions.

23. When the first petitioner failed in his attempt in getting any order from this Court, he appears to have set up the appellants only to file the appeals. Now the appellants wanted this Court to treat the appeal and the Writ Petitions of the appellants as public interest litigation. Public Interest litigation cannot be invoked by a person or body of persons who have personal interest. The public interest litigations of such persons if are entertained, it would amount to abuse of process of the Court. Personal interest cannot be enforced under the garb of a public interest litigation. The public interest litigation contemplates legal proceedings for vindication or enforcing of fundamental rights of a group of persons or a community who are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. The persons like

appellants who have joined the first writ petitioner in order to support him to see that the acquisition proceedings are quashed, should be discouraged to ensure that the course of justice is not obstructed or polluted by such unscrupulous litigants in the garb of public interest litigation. It is obvious that the appellants who had joined the first Writ Petitioner in filing the Writ Petitions knew that they had joined the first petitioner only to support him and the first petitioner was only interested in questioning the acquisition. The learned Single Judge following the judgment of the Hon''ble Supreme Court in the case of *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, . has held that once the award is passed no Writ Petition could be filed challenging the acquisition. Further the learned Single Judge also rightly held that when once the land owners have approached the reference Court seeking enhanced compensation they are not entitled to challenge the acquisition. These principles of law has not been questioned now. Therefore, the question for consideration is whether this Bench should interfere with the order passed by the learned Single Judge dismissing the Writ Petition and as to whether the appellants should be allowed to take new grounds at the appeal stage.

24. First of all it is clear that even though the first petitioner in the Writ Petition has not filed the appeal the present appellants are fighting the case of the said petitioner. As rightly observed by the learned Single Judge the appellants being the residents of the locality where the STP is being set up, did not object at any stage prior to 27.11.2002 when the foundation stone was officially laid for the proposed project in a public function. They have come before the Court after much progress has been made in the project which has been progressing on a war footing in view of the time fixed for completing the project. There can be no doubt that the appellants are not at all interested in questioning the setting up of the STP. The STP is being set up for the benefit of the residents of the locality. The Hon''ble Supreme Court in *Jai Narain and Others Vs. Union of India and Others*, has under similar situation observed that various orders and directions were issued by the Hon''ble Supreme Court from time to time for setting up of an STP and that the Court had repeatedly indicated that there was urgency in taking over possession of the land under acquisition for the construction of an STP. It observed that the capital of India was one of the worlds great and historic cities and it has come to be listed as the third or fourth most polluted and grubbiest city in the world. Apart from air pollution the waters of the Yamuna river has become contaminated and despite the water from the Yamuna being the primary source of water supply the citizens of Delhi are discharging untreated sewage into the Yamuna river. Several drains are found taking sewerage water into Yamuna river. That the Biochemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive and hence it is of utmost importance and urgent to complete the construction of STPs in the City of Delhi. That the STP project is of great public importance and indeed of national importance. The Hon''ble Supreme Court took judicial notice of urgency of the project. Therefore, it can never be said that the STP which is being constructed

in the area in question is a health hazard but on the other hand it is an important project to prevent health hazards from polluting the atmosphere in the area. The learned Counsel appearing for the appellant stated that the appellants are not bothered about as to whether the project is of any importance to the citizens but what is submitted is that if respondents have failed to take the necessary permissions, sanctions etc., under different enactments, it will be illegal.

25. The learned Single Judge on considering the arguments addressed by the writ petitioners has rightly held that the CDP provides for the use of the land and prohibits a particular land earmarked in the CDP for a particular use for being used for another purpose except by obtaining necessary change of land use and further rightly held that the land to be acquired for a public purpose need not be earmarked in the CDP for being used for such purpose before the State decides to acquire the same. The learned Single Judge has followed the judgment of the Supreme Court in *S.S. Darshan Vs. State of Karnataka and others*, where the Hon'ble Supreme Court rejected similar contention of the parties in that case and held that it is not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the Land Acquisition Act and rejected the argument of the parties.

26. Regarding the utility of a STP this Court in *Captain M V SUBBARAYAPPA v. BHARAT ELECTRONIC EMPLOYEES HOUSE BUILDING CO-OP. SOCIETY LIMITED* ILR 1990 Kar 330 observed that setting up of a STP will result in better use of civic amenities and safeguard from water pollution and the residents will be free from the pollution and bad smell being emitted from the tanks consequent to the discharge of sewerage. Therefore no body can contend that the setting up of an STP will be an health hazard to the local residents

27. There is also no substance in the contention raised by the appellant as regards the applicability of the provisions of Town and Country Planning Act when the project is being set in public interest and in discharge of social responsibility by the 4th respondent who is a statutory authority for the benefit of the general public, the same cannot be detrimental to public interest merely because a formal permission is not obtained. The project is being taken up by the authorities and there is nothing wrong in the statutory authority in consulting the concerned authorities and taking the required permission in due course. If it is found subsequently that the project should be shelved we do not think that the authorities would hesitate to do so. Several judgments have been cited by the learned Senior Counsel appearing for the appellants to contend that the required permissions are absolutely necessary to be taken for setting up of the STP as otherwise it will be opposed to law and hence illegal. Several judgments were cited. All those cases are by individual petitioners against the non taking of permission from the concerned authority for setting up their private establishments etc. None of those cases refer to a case where any statutory authority is involved in setting up a similar project.

28. In *MURADESHWAR CERAMICS LTD., AND ANR. v. STATE OF KARNATAKA AND*

ORS ILR 2002 Kar 273 it was held that under the scheme providing Sections 29-A & 80 under the Karnataka Land Reforms Act the land vests with the Government and prior exemption is necessary to acquire the land in contravention of the provisions. The scheme of the said Act is quite different and the principle laid down in the said judgment is not at all applicable to this case.

29. Even though the appellants now submit that they are not questioning the acquisition of the land as such and invoking of the urgency provision of Land Acquisition Act, it has to be observed that the main arguments addressed before the learned Single Judge was on the question of acquisition of the land especially by invoking the emergency provision. The learned Single Judge has rightly rejected the said contention by following the judgment of the Hon'ble Supreme Court in the case of JAI NARAYAN AND ORS. v. UNION OF INDIA AND ORS. (supra). The Court further found that the first petitioner and his family members have virtually acquiesced with the acquisition proceedings. That they preferred a claim petition seeking enhanced compensation and sought a reference to the Civil Court. That it was only on 27.11.2002 when an official foundation ceremony was arranged (that the first petitioner along with others made representation to the Government seeking dropping of the project. The learned Single Judge further rightly found that even after such exorbitant delay there was further delay in approaching the Court and by which time the entire land was encroached and substantial work was carried out and more than Rs. 5 crores spent on the work. The learned Single Judge therefore rightly held that the conduct of the first petitioner estops him from challenging the acquisition on the ground of emergency clause being wrongly invoked and disentitles him to the discretionary relief from the Court. The Court rightly found that any interference by the Court at that stage would cause serious public prejudice. The learned Single Judge relying upon judgment of the Hon'ble Supreme Court in Municipal Council Ahmednagar and Anr. v. Shah Hyderabadig and Ors. held that after the award is passed no Writ Petition could be filed challenging the acquisition and not only length of time but the concept of approbation and reprobation would come into operation disentitling the petitioner to the relief sought for.

30. On consideration of the facts and circumstances of the case, the learned Single Judge has rightly found that the Writ Petitions are filed nearly two and half years after the acquisition notification and therefore the petitions not only lack bona fides but it is liable to be dismissed on the ground of delay and laches.

31. In our view, the learned Single Judge very rightly found the appellants who feigning to assert their private rights independent of the first Writ Petitioner, it was clear from the way the things have happened the appellants are fighting the battle on behalf of the first petitioner. That the appellants who are the residents of the locality where the STP is set up and the work commenced on 1.4.2002, they never questioned the progress of the project and that they opened their eyes only on 27.11.2002 when the foundation stone was officially laid for the said project.

32. Even though very same arguments were addressed on behalf of the appellants in respect of the other contentions raised by the appellants before the learned Single Judge the appellants also raised some extra grounds and even though we had permitted them to address those grounds, we are of the view that it is not necessary to discuss elaborately the provisions of the different enactments brought to our notice to reject the contentions raised by the appellants in the view we are taking in these appeals. The learned Single Judge quoting the judgment of the Hon''ble Supreme Court in S.S. DARSHAN v. STATE OF KARNATAKA and JAINARAIN''s case supra rightly held that the acquisition of agricultural land which is shown in the CDP within the residential zone for the purpose of setting up a STP which had to be in the light Industrial Zone or Utilities and Services, would not vitiate the acquisition on that ground.

33. Further it is also necessary to refer to the judgment of this Court in CAPT. M.V. SUBBARAYAPPA v. BHARAT ELECTRONICS EMPLOYEES COOPERATIVE HOUSE BUILDING SOCIETY LTD. In the said case, the petitioner sought a direction to the authorities from excavation of earth from the civic amenity area. The petitioner contended that the installation of STP in the civic amenity site which is near his house will result in health hazard to the residents of the locality. This Court on considering all the aspects of the matter found that the STP will result in better use of the civic amenity site and it will also remove the water pollution and prevent it for all time to come and consequently the residents of the locality will be free from water pollution and also bad smell that is being now emitted by a reason of pollution of water in the tank consequent to discharge of sewerage water into it. As already observed by us earlier the finding of the learned Single Judge that the apprehension of the petitioners that the establishment of STP will be a health hazard is misconceived and based on imaginary apprehension unsupported by any scientific investigation. As rightly held by the learned Single Judge the Writ Petitions are liable to be dismissed on the ground of acquiescence, delay and laches. The petitioners have no right to challenge the setting up of the STP on the ground that it is opposed to several enactments. We have been told and it is not disputed that subsequently post facto sanction has been given under the BMRDA Act. The reliance placed by the appellants on the judgment of the Division Bench of this Court in Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another, and B.R. Baliga and Others Vs. Town Municipal Council, Udupi and Another, has to be repelled in view of the principles laid down by Hon''ble Supreme Court in Jainarayan''s case and the judgment of this Court in Subbarayappa''s case. We are of the view that the learned Single Judge was right in observing that even if it is mandatory to get any permission under the Planning Act etc., this is not a case where public are agitated over a private individual, but it is the statutory authority itself who is setting up a public utility project and therefore there should not be any difficulty in sanctioning the project. The Hon''ble Supreme Court in Sharda Devi Vs. State of Bihar and Another, has held that the power to acquire any land by the State hails from right of eminent domain and vesting of

the land in the State is essentially an attribute of sovereign powers of State. Under its sovereign power the State is entitled to utilize the land for public purpose and there cannot be any apprehension that the State will enter into projects which will be a health hazard.

34. The appellants brought to the notice of this Court the judgment of the Hon''ble Supreme Court in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, where it has been held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The Hon''ble Supreme Court held that the concept of public interest has changed with structural change in the society and that no legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. Further the appellants also relied upon the judgment in SPECIAL DC v. BHARGAVI MADHAVAN ILR 1987 Kar 1262 where it was held that u/s 95 of the Karnataka Land Revenue Act has no power to deal with the application for change of land use and it is vested with the Planning Authority. Relying upon another judgment of this Court in B.R. Baliga and Others Vs. Town Municipal Council, Udupi and Another, it was contended that even the Municipality or any other authority must conform to ODP and CDP and any change of land use could be permitted only by the planning authority with the approval of the State Government. Another judgment cited was SHANTHA v. COMMISSIONER, BANGALORE CORPORATION, where it has been held that in a development plan for public benefit the Corporation authority is bound to adhere strictly to the zoning Regulations. These arguments have been rightly answered in the judgment of the Hon''ble Supreme Court in SHARADADEVI's case (supra) and Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, . In those cases it was held by the Supreme Court that the power under Article 226 should be exercised only in furtherance of interest of justice and not merely on the making out a legal point and observed that the Court has to weight the public interest vis-a-vis the private interest. That the Court should keep the larger public interest in mind while exercising the power under Article 226.

35. Ultimately it is for this Court to keep in mind the larger public interest while exercising the power under Article 226. However it was submitted by the appellants that when a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other. The judgment of the "Hon''ble Supreme Court in Chandra Kishore Jha Vs. Mahavir Prasad and Others, was relied upon and also Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, There cannot be any dispute about the principles laid down in those judgments. But before applying those principles to the facts of a case, the Court should consider the facts and circumstances of the case and the applicability of the principles in the circumstances. The facts and circumstances in those cases were quite different from the facts and circumstances of this case and they cannot be made applicable to these facts.

36. Even in a given case, if the petitioners are able to bring to the notice of the Court that there has been violations of the provisions of certain enactments, the Court cannot assume jurisdiction and quash the orders of the authorities when it is shown that larger public interest is involved in the matter. The jurisdiction of the Court under Article 226 or under Article 227 of the Constitution has to be exercised only in furtherance of interest of justice and not merely on the making out a legal point. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *RAMANIKLAL GUPTHA S* case *supra*, it has been held that the power under Article 226 should be exercised only in furtherance of interest of justice and not merely on the making out a legal point. In the said case the Hon''ble Supreme Court was considering the question of the granting of tenders for putting up restaurants and snack bars at the Airport for a period of 3 years. It found that the acceptance of the tenders was in violation of the equality clause of the constitution as also the rule of administrative law inhibiting arbitrary action. But ultimately the Hon''ble Supreme Court held that even though ordinarily the Court should have set aside the decision of the respondent authority in accepting the tender, but in view of the peculiar facts and circumstances of the case, it found that the appellant in the said case was conducting the proceedings with a view to thwarting the attempt of the respondents whose tender was accepted and had filed the Writ Petition at the instance of another person to help him to obtain the contract for the restaurant and snack bars and found that there was inordinate delay and the explanation given by the appellant was found to be a rather naive explanation which was not easily acceptable. The Hon''ble Supreme Court had grave doubts as to whether the Writ Petition was commenced by the appellant bona fide with a view protecting his own interest. It further went on to consider that the Writ Petition was filed by the appellant more than five months after the acceptance of tender and during that period the tenderer had already spent considerable expenditure to make arrangements for putting up restaurant and snack bar which have already started, and hence it would now be most inequitable to set aside the contract given to the respondent. It felt that the position would have been different if the appellant had filed the Writ Petition immediately after the acceptance of the tender. It accordingly dismissed the Writ Petition.

37. In this case also the learned Single Judge as well as this Bench found that the appellants had joined the first Writ Petitioner who had not filed any appeal mainly questioning the acquisition proceedings and now in order to help the first petitioner the appellants want to submit that the Writ Petition may be treated as a public interest litigation filed on behalf of the general public questioning the setting up of a STP which is a public utility project when we find that the said project is being set up in view of the directions issued by this Court in a series of Writ Petitions and similar STPs are set up in different places throughout the country and the Hon''ble Supreme Court has issued similar directions elsewhere for setting up of a STP and when it is found that setting up of STPs is in public interest and that there is absolutely no health hazard and on the other hand it

will lead to preventing pollution and when it has been set up in public interest and even if some provisions of the certain enactments have not been complied with and when there is inordinate delay in approaching the Court, this Court is not bound to exercise power under Article 226 of the Constitution of India and issue directions as sought for by the appellants. There is thus no merit in these writ appeals and they are accordingly dismissed with cost of Rs. 5000/- each.