

(2007) 10 KAR CK 0052

In the Karnataka High Court

Case No : W.A. No's. 288 and 289 of 2006

Special Land Acquisition Officer, Karnataka Industrial Areas
Development Board and Karnataka Industrial Areas
Development Board

APPELLANT

Vs

State of Karnataka and Others
 S.B.G. Software Pvt.
Ltd. Vs State of Karnataka and Others

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4), 28 (6), 3 (1), 47

Citation : (2008) 2 KarLJ 182

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

Bench : Division Bench

Advocate : S.T. Mahesh, in W.A. No. 288/2006 and Kavitha H.C., in W.A. No. 289/2006, for the Appellant; Vidhya, G.A. for R1 and 4, Kavitha H.C., for R-2, Sreevatsa Associates for R-3, G. Krishnamurthy, for R-5 and 6, M.V. Vedhachala, for R-10, 11, 12, 13, 15, 17 and 19 and J. Prashanth, for R-7 in W.A. No. 288/2006 and Vidhya, Government Advocate for R1 and 5, S.T. Mahesh, for R-2 and 3, Sreevatsa Associates for R-4, G. Krishna Murthy, for R-6 and 7 and Lex Firm for R-8 to 14 in W.A. No. 2892006, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Bannurmath, J.—The appellants in W.A. No. 288/06 were respondent Nos. 2 & 4 in W.P. No. 4148/05, respondent Nos. 2 & 3 in W.P. No. 1058/05 and respondent No. 2 in W.P. No. 1393/05, The appellant in W.A. No. 289/06 was respondent No. 3 in W.P. No. 4148/2005 and W.R. No. 1393/05. The petitioners in the said writ petitions had questioned the notification dated 27.1.2004 issued u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966, (hereinafter referred to as the "KIADB Act" for short) whereunder the lands in Sy. Nos. 110 (3 acres 15 guntas), 112 (3 acres 38 guntas), 113/1 (00-07 guntas), 113/2 (00-07 guntas), 113/3 (1 acre 02 guntas), 113/4 (00-23 guntas), 114 (1 acre 25 guntas), 115 (1 acre 35 guntas), 116 (1 acre 14 guntas), 126 (1 acre 20 guntas)

and 127 (00-20 guntas), situate at Mahadevapura village, K.R. Puram Hobli, Bangalore South Taluk, were declared as Industrial Area, Further the notification dated 4.12.2004 issued u/s 28(4) and the notices u/s 28(6) of the KIADB Act were also questioned and consequential relief was also sought. The learned Single Judge on considering the rival contentions has allowed the writ petitions by order dated 24.01.2006. The appellants in both the above appeals claiming to be aggrieved by the said order have filed these appeals.

2. We have heard Sri Jayakumar S. Patil and Sri Nanjunda Reddy, learned Senior Counsel appearing for the respective appellants, Sri G.S. Visweswara and Sri. S. Vijayashankar, learned Senior Counsel and Sri G. Krishnamurthy, learned Counsel for the respective respondents.

3, The learned Single Judge while disposing the writ petition has raised points for consideration and has answered the same seriatim. The learned Counsel while assailing the order had referred to the same in the sequence of the points raised. Hence the relevant arguments addressed and the decisions cited would be referred as and when such point is discussed. However, one additional aspect which requires consideration is that the respondents have raised the question of maintainability of these appeals by filing an application and lengthy arguments are addressed. Hence, the said issue requires to be considered at the outset.

4. Sri Vijayashankar, learned Senior Counsel contended that the State Government which is the acquiring authority has not filed any appeal, Therefore it has accepted the order of the learned Single Judge and as such the correctness or otherwise cannot be examined at the instance of the beneficiary or the KIADB. It is contended that unlike Land Acquisition Act, beneficiary can challenge orders quashing the acquisition proceedings, the same is not applicable to acquisition under the KIADB Act as the concept under KIADB Act is different as compared to the Land Acquisition Act. The learned Senior Counsel taking us through the relevant provisions of the KIADB Act starting from the Preamble till the requirement u/s 28(6), contended that the entire satisfaction is that of the State Government and it is only with regard to Section 28(8), the KIADB steps in for the first time. Though the appellants have stated in the appeal memo that the KIADB is a delegatee of the Government. Rule 14 of the Rules 1966 does not provide for delegation of powers u/s 28(1) and (4). Section 38(c) of the Act, Rules of Business and Allocation of Business Rules, 1977 were also referred and contended that all administrative decisions should be under the order of the Minister-in-charge. Even the KIADB functions under the directions of the Government u/s 17 of the Act and as such impleading of the state Government as the first respondent is contrary to the interest of the Government. Till the transfer of land, the KIADB would not have any right and till allotment process is complete the beneficiary would not acquire right. In this regard, the decisions in the case of The State of Uttar Pradesh Vs. Mohammad Naim, and in the case of Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, were also referred.

5, Sri Jayakumar Patil and Sri Nanjunda Reddy, learned Senior Counsel however contended that the appeals filed by the KIADB as well as the beneficiary are maintainable. Section 5 of the KIADB Act provides regarding establishment of Board and the Board thus established is the second appellant Further Section 28(8) provides regarding transfer of land to the Board. According to them, the case made out by the appellants is that, the lands have been transferred to the Board and the Board has In turn transferred a part of it to the beneficiary. Since the KIADB is a juristic person who can sue or be sued in its name and being a transferee of the lands in question has sued in its name. Further the land was held by the KIADB when the action came to be set aside and the KIADB was impleaded as a party to the writ petition and acquisition in its favour was questioned. When the order in writ petition is against the appellants, they are the aggrieved persons who can challenge the same even if the Government does not challenge. Reliance was placed on the decision in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, and The AIR Craft Employees Housing Co-Operative Society Ltd v. Govt. of Karnataka W.A. No. 3682/05 c/w 3683/05 disposed of on 21.02. 2007)

6. Having considered title rival contentions on this aspect of the matter and on analysing the same, there could be no quarrel with regard to the position of law regarding the manner in which the acquisition is initiated by the Government and role of the Government till the acquired property is handed over to the KIADB u/s 28(8) of the Act Further, except for the stray sentence that the appellant is the delegate of the Government, the entire case put forth by the learned Senior Counsel for the appellant in W.A. No. 288/06 is that the KIADB is a juristic person who can sue or be sued in its individual capacity and the appellant in W.A. No. 289/06 is the beneficiary who is the transferee of the lands in question. That being so, it is the case of the appellants that they are prosecuting the appeal not as nominees of the Government or for the benefit of the Government but the attempt is to sustain the action of the Government on the position of law and the records available with KIADB for the benefit of the appellants and as such neither Rule 14 of KIADB Rules 1966 nor the Karnataka Government (Allocation of Business) Rules 1977, would be of any assistance. Admittedly, the appeal is not filed and prosecuted by the KIADB, claiming to be on behalf of the Government or the concerned Department of the Government and as such the question of deciding as to whether it is a properly instituted appeal in the absence of consent from the Government does not arise. The decision in the case of State of Uttar Pradesh v. Mohd. Nain was a situation wherein the Hon"ble Supreme Court was considering as to whether the Government had the locus standi to file an application u/s 561-A Cr.P.C. seeking to expunge certain remarks and in that context the expression "State Government" was considered. Further, in the case of Chief Conservator of Forests v. Government of Andhra Pradesh, it was a situation where two departments of the Government was litigating against each other in respect of the land which belonged to the Government In that context, the Hon"ble Supreme Court has expressed the opinion that in a lis dealing with

the property of a State, there can be no dispute that the state is the necessary party and should be impleaded as provided in Article 300 of the Constitution of India and Section 79 of CPC as otherwise it would be bad for non-joinder. It is further opined by the Hon'ble Supreme Court that every post in the hierarchy is not recognised as juristic person. Therefore, the said decisions are also not of assistance. No doubt it is another matter to consider as to whether the KIADB and the beneficiary could maintain the appeal even after this court coming to the conclusion that the appeal is not by or on behalf of the Government,

7. The KIADB and the beneficiary have filed the appeals assailing the order passed by the learned Single Judge, setting aside the notifications dated 27.1.2004 and 4.12.2004 as also the notice dated 7.12.2004. Further the learned Single Judge has quashed the proceedings of the 235th meeting of the State level Single window agency dated 15.11.2003 in so far as it relates to subject No. 10 in addition to the other reliefs granted. The notifications dated 27.1.2004 and 4.12.2004 are issued by the Government in so far as declaring the area as an Industrial area and the notice dated 7.12.2004 is issued u/s 28(6) of the KIADB Act. That being so, even though the notifications declaring the area as an industrial area is issued by the Government, the KIADB is the authority under the Act, thereafter to regulate the industrial development as a part of the process who had been notified to take possession of the property in question, Further the representative of the KIADB is a member of the single window agency and the proceedings held by the single window agency on 15.11.2003 was to consider the proposal put forth by the beneficiary and the KIADB had proceeded further on the proposal being accepted and as such the quashing of the proceedings which had decided in favour of the beneficiary would affect the interest of the beneficiary, Therefore, the order passed by the learned single Judge affecting title interest of the beneficiary would have to be necessarily questioned by the beneficiary. Despite the contention put forth by the learned senior counsel with regard to the nature of duties of the government, the Officer who could represent the government and that if an appeal is not filed by the government, it would mean that the Government has accepted the findings given by the learned Single Judge, we are unable to accept the same since the learned single Judge has set aside the action not just on the basis of the records of this case but also on interpreting the provisions of law which would require reconsideration. Hence the appellants in both these appeals would have the locus to maintain these appeals and to justify that the entire action is in accordance with law. That apart, since part of the land acquired alleged to have been made over to the KIADB and in turn to the beneficiary, they could be considered as the aggrieved persons as there is a direction to restore possession. In so far as the records relating to the acquisition, the same being available with the KIADB could be referred to justify the action of the Government. Though the Government is impleaded as a respondent, it is not the stand of the Government that they are not aggrieved by the said order passed by the learned Single Judge. Hence, there is no conflict of interest between the appellants and the

Government

8. On the other hand, though while considering the provisions of the Land Acquisition Act, the Hon''ble Supreme Court in the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, has recognised the interest of a beneficiary. What is important to be noticed is that in the said case, the question that was considered by the Hon''ble Supreme Court was with regard to withdrawal from acquisition as contemplated u/s 48 of the Land Acquisition Act. It cannot be disputed that withdrawal from acquisition is possible only when possession of the land is not taken by the acquiring authority. This assumes importance since even in such a situation, the Hon''ble Supreme Court has held that show cause notice against the proposed withdrawal is to be issued to the beneficiaries. Thus the right of the beneficiary is recognised. Even in W.A. No. 3682/05 this court has accepted the contention of the Government that the validity of the acquisition could be justified by the Government by referring to the records even though appeal is not filed. As already noticed above, it is a different question as to whether the appellants would be able to justify the action leading to acquisition, but the appellants cannot be prevented from questioning the order passed by the learned Single Judge, As such we are of the view that the appeals filed by the appellants in both these appeals are maintainable.

9. Since we are of the view that the appeals are maintainable, the challenge to the impugned order dated 24.1.2006 would have to be considered on its merits. While assailing the findings and conclusion reached by the learned Single Judge, the learned senior counsel appearing on behalf of the appellant contended that the learned Single Judge has erred in not appreciating the overriding effect of the KIADB Act as against the Karnataka Town and Country Planning Act ("the KT & CP Act" for short). Learned senior counsel would further contend that the conclusion of the learned Single Judge regarding the change of land use u/s 14A of the KT & CP Act is not sustainable in a situation where the Government notifies a particular area as an industrial area in exercise of the power u/s 1(3) and 3(1) of the KIADB Act It is further contended that this is clear from the fact that Section 47 of the KIADB Act has an overriding effect over other law and as such a declaration alone is sufficient It is further contended that this issue had arisen for consideration before a Division Bench of this Court in the case of Darshan v. State of Karnataka and Ors. 1995 (6) KarLJ 327 and the view taken by this Court has been approved by the Hon''ble Supreme Court in the decision reported in S.S. Darshan Vs. State of Karnataka and others, . Further reference is also made to the case of Heggappanavar Markandappa v. State of Mysore 1974 (1) KarLJ 71 and to the case of N. Somasekhar and Ors. v. State of Karnataka 1997 (7) KarLJ 410, The learned senior counsel therefore contended that the learned Single Judge had erred in placing reliance on the decision in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, and to the case of M.C. Mehta v. Union of India and Ors. 2004 (6) SCC 5488. It is contended that it was not open for the learned Single Judge to hold that the Hon''ble Supreme Court has rendered its decision in Darshan's case without reference to B.S.

Muddappa's case.

10. On the other hand, the learned senior counsel appearing for the respondents sought to justify the order passed by the learned Single Judge. The learned senior counsel contended that the teamed Single Judge after noticing the entire issue and considering the fact that the land which was sought to be acquired was indicated as park in the existing COP and remaining portion being residential area and also noticing the view expressed by the Hon'ble Supreme Court in so far as the zonal regulations and the need to retain the same,, the learned Single Judge has lightly referred to the case of Bangalore Medical Trust v. Muddappa, In so far as the decisions in the cases of Hdggappan Var Markandappa and Somashekar, it is contended that they are not applicable to the facts on hand. Even though certain pronouncements have been made on the question of law, the facts in the present case would have to be considered to examine whether such power was available to the Government in the present situation and as to whether the power has been exercised in a bonafide manner.

11. On hearing the learned Senior Counsel for the parties, it is seen that the aspect of the matter regarding the power available under the KIADB Act in respect of land to which KT & CP Act is applicable has been raised for consideration. Two sets of decisions arise for consideration as precedents i.e., the one referred to by the learned Single Judge and the other set of decisions in the case of Darshan and Somashekar relied on by the appellants to contend that, the issue as to whether the notification u/s 3(1) of the Act declaring the area as an industrial area is sustainable despite the same being reserved for any other purpose has been considered and is held to be sustainable,

12. Before we consider the applicability of the said decisions cited above as precedents, it would be necessary to notice the decision of the Honble Supreme Court in the case of Uttaranchal Road Transport Corporation v. Mansaram Nainwal AIR 2006 SCW 3928 wherein the Hon'ble Supreme Court has stated as follows:

13. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without booking into the factual background of the case before it is dearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority

for what it actually decided. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as precedent. (See: *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, . A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathern* (1901) AC 495 (HL), Lord of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generally of the expressions which are found therein are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Further the Hon'ble Supreme Court in the case of *State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others*, has stated as follows:

114, The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedent providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.

120. The doctrine of stare decisis is generally to be adhered to, because well settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for a fresh look.

176. In this connection, it will be relevant to refer the principle of stare decisis. The expression of "stare decisis" is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudications" It is true that law is a dynamic concept and it should change with the time. But at the same time it shall not be so fickle that it changes with change of guard, if the ground realities have not changed and it has not become irrelevant with the time then it should not be reviewed lightly.

13. Therefore keeping in view the observations of the Hon'ble Supreme Court in the above cited decisions, the facts involved, the law interpreted and the change in circumstances should be considered as compared to the decisions cited by the learned Senior Counsel for the appellants who have placed strong reliance on the case of *Heggappana Var, Darshan and Somashekar* while assailing the order impugned in these appeals. The perusal of the decisions cited by the appellants in the case of *Heggappana Var* would indicate that, this Court while considering the provisions of Mysore Industrial Area Development Act had laid down the law that even if in a particular place single industry is established, the same would

answer the definition of Industrial estate within Section 2(7) of the Act. This Court also held, the fact that the entire area of 700 acres acquired had been given to a company for establishing an industry would not establish that there has been fraud on power.

14. In the case of Darshan v. State of Karnataka the Division Bench of this Court was of the view that the prohibition of utilising lands within the green belt area for industrial purpose could be relaxed by the Government and therefore the mere acquisition of land was not prohibited. In the said case, the lands were sought to be acquired invoking the power available under the Land Acquisition Act. The contention therein was that, the same could not have been done in view of the provisions contained in KIADB Act. This Court was of the view that such power could be exercised under the Land Acquisition Act also. While deciding this issue, the acquisition of the land which was in the green belt area for industrial purposes was also considered. What is important to be noticed is that, this Court held that it is no doubt true that when an area is earmarked as coming under the green belt area, it may not be possible to utilize such land for any industrial purposes, but, in the facts of that case since part of the land had been allowed to be converted for industrial purposes, it was held that it obviously shows that the authorities concerned were not averse to allow coming up of industries in the area. The Court further observed, when in respect of an adjacent land the (conditions relating to non-establishing of the industries in the green belt area is relaxed, it is difficult to understand as to how that principle could not be extended to the petitioner's lands. This Court thereafter held that Section 14 of the KT & CP Act requires that the land needs to be utilised for the particular purpose and the relaxation thereof has to be sought for under the KT & CP Act, However, what was decided by the Court was that mere acquisition of land by itself is not prohibited. It is this decision which was questioned in Darshan's case before the Hon'ble Supreme Court. The Hon'ble Supreme Court had in brief stated that it was 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. No doubt the issue with regard to the declaration of an area as an industrial area u/s 3(1) of the KIADB Act was not an issue in the said decision and it is in this context the learned Single Judge has not thought it fit to rely on the said decision in the instant case. Therefore, it need not be understood as if the learned Single Judge has stated that the correct position of law is not indicated in the said decision, as sought to be made out by the learned senior counsel for the appellants. However on noticing and analysing the decision in the case of Darshan, it would indicate that the question before the Division Bench of this Court was not exactly similar to the one which is being considered by us in this case, since the entire issue there was with regard to the power of acquisition under the Land Acquisition Act and with regard to the change of land use after acquisition, in respect of the land situated in greenbelt and the possibility of diversion of such land.

15. However in the case of N. Somashekar, a learned Single Judge of this Court

had an occasion to consider the provisions of the KIADB Act vis-a-vis KT & CP Act. But the question therein also was as to whether a green belt area could be declared as Industrial Area. At the first instance, the learned Judge was of the opinion that there was nothing on record to indicate that the land in question was situate in the green belt area, Thereafter the learned Judge by drawing support from the decision of the Division Bench of this Court in the case of M.S. Moses Vs. State of Karnataka, and also noticing Section 47 of the KIADB Act was of the view that it could be acquired under the KIADB Act even if it is in the green belt The learned Judge has also noticed the expression "Industrial Area" and "Industrial Estate" as contained in Section 2(6) and 2(7) of the KIADB Act In this regard, a perusal of M.S. Moses's case would indicate that the contention put forth therein that agricultural and residential land cannot be put to use by an industry was negatived since Section 47 of the KIADB Act would prevail, In the said decision, this Court has gone to the extent of saying that there is no conflict between the Acts by stating that KT & CP Act states in the preamble that it is for the purpose of planning and orderly development of industry and commerce. But what we notice is that, in fact the KT & CP Act states that it is an Act to provide for the regulation of planned growth of land use and development and for the making and execution of town planning schemes. Therefore, it appears as if the Court proceeded on a wrong assumption, Be that as it may, even if there is conflict between the two Acts, Section 47 of the KIADB Act provides for overriding effect Though Sri G.S. Visweswara, learned senior counsel relied on the decision in the case of Karnataka Industrial Areas Development Board Vs. Sri. C. Kenchappa and Others, to contend that validity of Section 47 is left open to be deckled, the Hon"ble Supreme Court had said so in a different context and it has been left open for itself and insofar as this Court, the same would have to be considered as valid. Therefore conceding for a moment that Section 47 has overriding effect, there can be no doubt that it would come into play only when there is conflict between the provisions of two or more enactments. In that view of the matter, the primary task of the Government should be to harmoniously construe the objects of the two enactments to give effect to both. Only in cases where there is no option but to allow one enactment to override the other, the same should be resorted to and even that should indicate application of mind by the Government in the facts of each case and there is no gain saying that the power is available and it should be approved merely because it is the policy of the Government even if it does not indicate application of mind on judicial review. In this context, if it is examined, the view taken in Moses's case is where the Government had issued Section 3(1) notification in respect of a village in the rural district with the object of forming a planned industrial layout Further in the case of N. Somashekar, the Court was considering the acquisition of vast extents of land in different villages, where planned industrial estates were being laid out These decisions on their facts, insofar as locating the industrial estate was held as a policy decision of the Government and this Court had come to the conclusion that the notification made u/s 3(1) of the Act even in respect of green belt were valid.

16. While noticing this aspect what should be borne in mind is that in the case of N. Somashekar, there was no material on record to indicate that the area which was being acquired was within the green belt as stated by the learned Single Judge. Further, the decision was rendered assuming that the land was within the green belt area. Thus, one of the contentions which was in issue is with regard to the acquisition of the land which was within the green belt area and not regarding a park and residential area as per Zonal regulation within the planning area. An area being notified as a green belt is as contemplated under Sub-section (3-A) to Section 95 of the Karnataka Land Revenue Act R/w Rule 102-B of the Karnataka Land Revenue Rules, This would indicate that the notification of green belt is with a view to protect and improve the environment. The Rule 102-B, in this regard would indicate the distance at which the green belt area would lie considering such area being a City, City Municipality, Town Municipality or notified areas. Though Sub-rule (3-B) to Section 95 provides that no permission would be granted to divert any land or put thereof assessed or held for the purpose of agriculture lying within the limits of green belt to any other purpose, the notification to declare the said area to be industrial area would only mean that the Government would modify the earlier notification indicating the area as a green belt area and the same would become an industrial area. In such a situation, all that would happen is that the Government would have the option of re-notifying the green belt area in a different belt keeping in view Rule 102-B of the Rules so as to protect and improve the environment. On the other hand, insofar as the area being marked for a specific purpose and usage under the CDP in a planning area cannot be considered on par with greenbelt since an application for diversion as contemplated under the Karnataka Land Revenue Act is permissible by keeping in view the Town and Country Planning Act. But the change of land use contemplated u/s 14A of the KT & CP Act in so far as CDP is self contained as provided therein. As such, the rigour of the said provision is more intense as compared to the acquisition of the green belt area, Hence, it cannot be said that the decisions in the case of Moses and N. Somashekhar are directly applicable to the facts involved in the case on hand.

17. However we are in respectful agreement in so far as the law declared therein with regard to the power of the Government to declare any area as an industrial area by issue of notification u/s 3(1) of the Act, but we are of the view that it should at the first instance be in such a manner so as to avoid conflict with any other planning enactment. But after application of mind, if the Government finds that in a particular situation the conflict cannot be avoided, then no doubt the provisions of KIADB Act would prevail in terms of Section 47 of the Act. Therefore, though such notification u/s 3(1) of the KIADB Act would be issued in furtherance of the power of eminent domain, the same would still remain within the sweep of judicial review and scrutiny. That being so, the Government, in respect of every notification should be in a position to justify such action as and when the same is called in question by the affected party.

18. Keeping this in view and noticing that the facts involved in Darshan's case

and Somashekhar's case are not exactly similar to the facts involved in the present case, though the learned Single Judge was not justified in observing that the Hon'ble Supreme Court has rendered the decision in Darshan's case without noticing the decision in B.S. Muddappa's case, the fact of the matter is that the decision in B.S. Muddappa's case was not required to be noticed while deciding Darshan's case as they were on different set of facts involving different questions which in fact makes Muddappa's case more relevant to the facts on hand. Therefore, insofar as the present facts on hand, the learned Single Judge was justified in relying on the decision rendered by the Hon'ble Supreme Court both in the case of B.S. Muddappa and in the case of M.G. MEHTA.

19. We say so because in the facts on hand, the question is with regard to the declaration of an area which was reserved as park and the residential area in the CDP within the urban agglomeration of Bangalore as an industrial area. In the zonal regulation, the small pocket wherein the beneficiary sought to establish the industry was reserved as a park and residential area. Keeping in view this aspect of the matter, the proceedings undertaken by the Government before notifying the area as an industrial area as defined under the KIADB Act also requires to be noticed. As noticed repeatedly during the course of this judgment, the State Government may by notification u/s 3(1) of the KIADB Act declare an area in the State to be an industrial area for the purposes of that Act. "industrial Area" is defined in Section 2(6) of the Act to mean any area declared to be an industrial area by the State Government by notification, which is to be developed and where industries are to be accommodated and includes an industrial estate. Further "industrial estate" is defined to mean any site selected by the State Government where factories and other buildings are built for any industries or class of industries. Though the reading of the definitions would indicate that the industrial area and the industrial estate should be where the industries are accommodated, considering the decisions referred to by the learned Counsel for the appellant that even for a single industry, an area could be declared as an industrial area and in that context if the present case is examined, even from that stand point what is to be considered is as to whether the Government has applied its mind in the manner it is inquired to do while declaring an area as an industrial area u/s 3(1) of the Act Even if a Single industry is to be located, what is to be considered is as to whether such an industry should be developed in such an area and the process of consideration in arriving at such a conclusion would be the all important factor. In the decision referred to in the case of Heggappana Var and the other decisions, it was a case of acquisition of vast extent of agricultural land for setting up industry and in the case of P. Narayanappa, though relating to technology park the issue was that the name of the industry nor the nature of the industry need be referred to in the notification considering that it is the acquisition for KIADB u/s 28(1) of the Act In contradistinction to the said decisions, in the present case, the beneficiary has not merely submitted the proposal and sought for allotment of a suitable land either available with the KIADB or to be acquired at the discretion of the Government in a suitable place

to be located by the Government Instead, the beneficiary has pointed out the location, survey number and the extent of land while placing the proposal which was considered by the State level single window agency in its 235th proceedings held on 15.11.2003. The perusal of the proceedings would indicate that the single window agency referred to the proposal of the beneficiary for setting up the software development facility in 17 acres 21 guntas of lands at Mahadevapura village, K.R. Puram Hobli, Bangalore Best Taluk. It is a different matter that there is no detailed consideration with regard to the proposal put forth by the beneficiary. That being an issue with regard to the viability of the project, we do not propose to advert at this point of time. The issue however is with regard to the location of the land and the feasibility of setting up an industry in such land chosen by the beneficiary. The representative of the Bangalore Development Authority is also a part of the process of consideration. The proceedings would indicate that the single window agency has taken note of the information furnished by the representative of the Bangalore Development Authority to the Single Window Agency that a portion of the land is meant for park as per existing CDP and the remaining portion is under residential area and that the land was abutting to outer ring road in K.R. Puram area. This information would indicate that the property concerned is within the jurisdiction of the Bangalore Development Authority, and is indicated as park and residential area in the CDP. Therefore, the same would have to confirm to the zonal regulations. The proceedings does not indicate any discussion about this position of the nature of the land and as to why the proposal should be implemented in this land alone despite the said land having been reserved for park and residential area. All that the proceedings records shows is that after detailed discussion, the committee has resolved to approve investment and extend the infrastructural assistance and therefore the same land has to be recommended to be acquired. One other aspect which is also required to be noticed is that the agency was of the view that for implementation of the said proposal, the area of 17 acres 21 guntas of land is required as a single unit complex. Subsequent to the said recommendation, the Government has issued two separate notifications both dated 27.1.2004 u/s 1(3) and 3(1) of the KIADB Act. By notification u/s 3(1) of the Act, an area measuring 16 acres 6 guntas has been notified as industrial area. Neither the said notification nor the records produced along with the appeal memo would indicate the application of mind of the Government to declare the said area as an industrial area despite the same being reserved as a park and residential area in the CDF despite the same being recorded in the proceedings of the Single Window Agency. Further what was recommended by the agency was 17 acres 21 guntas whereas the notification is in respect of 16 acres 6 guntas. Why an area of 1 acre 05 guntas was given up is not forthcoming. One another aspect which requires to be noticed is that what was ultimately acquired by issue of notification u/s 28(4) is an extent of 12 acres of which 8 acres is for the benefit of the beneficiary. When the Single Window Agency after considering the feasibility of the project had recommended that for implementation of the project an extent of 17 acres 21 guntas would be required

as a single unit, then effect of reduction of the area by almost 5 acres was also required to be considered. If the Government deemed it fit, that only 8 acres is enough, then decision of Single Window Agency that 17 acres 21 guntas is required for this industry is obviously wrong. If really the beneficiary required 17 acres 21 guntas, then any appropriate area where the said extent of land was available ought to have been identified, as otherwise the entire process of consideration and recommendation by the Single Window Agency would not only be an empty formality but a mockery.

20. Therefore, keeping these aspects in view and noticing the power available to the Government and the decision which is required to be taken by the Government to declare an area as industrial area for the development of industry, in our view, the decision making process of the Government should indicate that such an area alone is the suitable area for development of that particular industry even though such declaration is for locating a single industry. Such application of mind is even more important in a matter of this nature wherein the property is within the zonal regulation and governed by the provisions contained in the Town and Country Planning Act. The first attempt of the Government should be to balance the requirements of both enactment so as to provide an harmonious construction of both the enactments. When the decision making process indicates that this is not possible and the said area is required to be declared as an industrial area considering that the development of such industry is possible only in that area and in such a situation if there is conflict in the provisions contained in such enactment, no doubt, the provisions of the KIADB Act would prevail in view of provisions contained in Section 47 of the Act, but this should be clearly evident on record and not in an arbitrary manner merely because the power is available to the Government. It is in fact at this stage, the provisions contained in Section 14A of the KT & CP Act also should be kept in view and given effect to, so as to consider whether the change of land use is inevitable and as to whether the said area requires to be developed as an industrial area in the absence of other alternative. On the contrary, if a declaration is made u/s 3(1) of the Act and thereafter if it is considered that change of land use is to be made, the mere compliance of Section 14A of the KT & CP Act would only become an empty formality and as such it may not be appropriate to hold that after acquiring, even the Government has to follow Section 14A for change of land use, Therefore, in our view the change of land use is aspect which requires consideration but should precede the action of declaring the area as an industrial area. As noticed above, the very decision making process before issuing a notification u/s 3(1) of the KIADB Act should indicate application of mind to these aspects of the matter relating to the change of land use of the said area being declared as industrial area as against the earlier zonal regulations moreso when the area is within the planning area of the Development Authority. Only on such consideration being indicated, a notification issued by the Government could be sustained. In the facts and circumstances of the present case, there is no such consideration indicated and as such we are of

the view that the learned Single Judge was justified in quashing the said notification.

21. Insofar as the other issues considered by the learned Single Judge with regard to the public purpose and the scheme to be formulated u/s 13 of the KIADB Act, the factual aspects involved and considered by the learned Single Judge is with regard to the facts involved in the present case and as such to an extent the law applied by the learned Single Judge also overlap with the reasoning adapted while deciding issue No. 1. With regard to declaring the area as an industrial area in the facts and circumstances of this case, since we have also come to the conclusion that there has been no application of mind either by the single window agency or by the government before declaring the area concerned as an industrial area, consequent action on facts of this case, cannot be held to be valid in any event. However with regard to the acquisition of lands u/s 28(1) of the KIADB Act and making over such land to an individual company for establishing technology park, the Hon'ble Supreme Court in the case of *Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others*, has considered the question with regard to the sanction/ clearance/approval for establishment of industries by the high level committee and single window agency. No doubt the said petition was a public interest litigation but the Hon'ble Supreme Court was of the view that the State of Karnataka with a view to accelerate economic development of the State adapted a policy decision of dealing with application received from entrepreneurs through one window system. The Hon'ble Supreme Court has however held that judicial review would be possible if it is considered to be malafide in the particular facts of a case. Further in the case of *Sri V. Narayanappa v. State of Karnataka* AIR 2006 SCW 4132 the Hon'ble Supreme Court on examining the provision in Section 28(1) of the KIADB Act has held that the land could be acquired for development of industries in industrial areas like technology parks, townships, trade and tourism centres etc. The Hon'ble Court was also of the view that an entrepreneur or a company may give a proposal to the State Government for setting up an industry or infrastructural facilities and the Government may thereafter acquire the land and give it to the Board. The said pronouncements of the Hon'ble Supreme Court would restate the power of the Government to acquire and make over the lands to the KIADB for the purpose of establishing technology parks etc. But the emphasis is that the entire process should be done in a bonafide manner and with application of mind. Though the position of law is clear, insofar as the facts involved in the case on hand, the learned Single Judge as well as this Court while considering the matter in its entirety, have come to the conclusion that there is no proper consideration by the Government as well as the single window agency,

22. Though in the above said decisions as well as the decisions referred to in the earlier part of the judgment, we have noticed that the law laid down is that the acquisition even for a single company would constitute acquisition for public purpose, the issue as to whether the single window agency as well as the Government would acquire the land as pointed out by the beneficiary company is

an issue which is still open for consideration. In the instant case, since the beneficiary company has chosen a particular land in an area which had been reserved for park and residential area, we are of the view that in the present facts the land could not have been acquired at the choice of the beneficiary and as already noticed above, this aspect has not received any consideration either at the hands of the Government or the single window agency. Therefore, though the learned Single Judge has come to the conclusion that the acquisition was not for public purpose and the allotment has not been made in accordance with the provisions of the KIADB Act, only the conclusion to that effect is affirmed by us since on a different reasoning, we are also of the view that the land in question could not have been acquired, In any event since we have come to the conclusion that the said area itself could not have been declared as an industrial area, we see no reason to interfere with the decision of the learned Single Judge.

23. With regard to the other issues considered by the learned Single Judge regarding the claim put forth by the petitioners in W.P. No. 1058/05, since the portion of the land belonging to the said petitioner which was a part of the land which had been declared as an industrial area has not been approved by us, the question with regard to the argument addressed by the learned Counsel regarding earlier approval granted to the said petitioner by the high level committee need not be considered in detail. Insofar as the proposal of the said petitioner being approved by the High level committee since the learned Single Judge has made it clear that the said petitioner would have to secure change of land use as contemplated u/s 14A of the KT & CP Act, the nature of consideration in that respect would have to be considered by the planning authority pursuant to the approval of the proposal of the said petitioner by the high level committee. Therefore, even on the said issues, we do not find it necessary to advert to in detail

24. Before we part, it is necessary to clarify that even though the learned Single Judge has quashed the proceedings of the 235th meeting of State High Level Single Window Agency dated 15-11-2003 insofar as it relates to subject No, 10, the same shall be limited only to the extent of identification and approval of the land. The judgment shall not effect the acceptance of the proposed investment. Therefore, it would be open for KIADB to allot any other land available with it or secure acquisition of suitable land keeping in view the above observations and allot the same to the beneficiary.

25. For the above reasons, with the clarifications stated we affirm the conclusion reached by the learned Single Judge vide order dated 24.01.2006, Consequently, both the appeals fail and the same are accordingly rejected. No order as to costs.