

(2013) 03 KAR CK 0098

In the Karnataka High Court

Case No : Writ Petition No. 17539 of 2004 (LA-KIADB) , Writ Petition No. 30979 of 2004 (LA-KIADB) and Writ Petition No. 17211 of 2009 (LA-KIADB)

Sri. P. Narayanappa

APPELLANT

Vs

The State of Karnataka, The Karnataka Industrial Area Development Board, The Special Land Acquisition Officer and M/s. Royal Fragrances Private Limited
 Kaverappa, Venkataswamy, Sakappa and Venkatesh Vs The State of Karnataka and Others
 Royal Fragrances Private Limited Vs The State of Karnataka, The Karnataka Industrial Area Development Board, Patel Jetalal Ramaji and Patel Hiralal Murji Varani

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(2), 28(4), 3(1)

Citation : (2013) 03 KAR CK 0098

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : R. Nataraj in Writ Petition No. 17539 of 2004 LA-KIADB, Shri. K. Suman in Writ Petition Nos. 17545, 17541, 17543 of 2004 LA-KIADB, Shri. R. Chandrashekar in Writ Petition No. 4631 of 2007 LA-KIADB, Shri. H. Kumara Swamy in Writ Petition Nos. 30979, 30981 of 2004 LA-KIADB and Shri. Suraj Govindaraj, for M/s. Aamstel Law Associates in Writ Petition No. 17211 of 2009 LA-KIADB, for the Appellant; H.T. Narendra Prasad, Government Pleader for Respondent No. 1 in Writ Petition No. 17539, 17545, 17541, 17543 of 2004 (LA-KIADB), Writ Petition No. 4631 of 2007 (LA-KIADB) and in Writ Petition No. 17211 of 2009 (LA-KIADB), for Respondent Nos. 1 and 3 in Writ Petition No. 30979 of 2004 (LA-KIADB), for Respondent Nos. 1 and 5 in Writ Petition No. 30981 of 2004 (LA-KIADB), Shri. P.V. Chandrashekar, Advocate for Respondent Nos. 2 and 3, in Writ Petition No. 17539, 17545, 17541, 17543 of 2004 (LA-KIADB), Writ Petition No. 4631 of 2007 (LA-KIADB), for Respondent Nos. 2 and 4 in Writ Petition No. 30979 of 2004 (LA-KIADB), Shri. Suraj Govindaraj, Advocate for Aamstel Law Associates for Caveator/Respondent No. 4 in Writ Petition No. 17539, 17545, 17541, 17543 of 2004 (LA-KIADB), Writ Petition No. 4631 of 2007 (LA-KIADB), in Writ Petition Nos. 30979, 30981 of 2004 (LA-KIADB) Shri M.P. Srikanth, Advocate for respondent No. 6 in Writ Petition Nos. 30979, 30981 of 2004 (LA-KIADB), Shri. Vijaya Kumar A. Patil, Advocate for Respondent No. 2 and 3 in Writ Petition No. 30981 of 2004 (LA-KIADB), Shri. B.C. Muddappa,

Advocate for Respondent Nos. 2 and 4 in Writ Petition No. 30981 of 2004 (LA-KIADB), Shri. M.V. Vedachala, Advocate for Respondent Nos. 3 and 4 in Writ Petition No. 17211 of 2009 (LA-KIADB) and Shri. Shivaprabhu Hiremath, Advocate for Respondent No. 2 in Writ Petition No. 17211 of 2009 (LA-KIADB), for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the parties. In WP 17539/2004, it is claimed by the petitioner that he is the owner in possession of lands bearing survey No. 54/2 measuring 22 guntas and survey No. 54/5 measuring 21 guntas of Devarabisanahalli, Varthur Hobli, Bangalore East Taluk. It transpires that notifications u/s 3(1) of the Karnataka Industrial Area Development Act, 1966, (Hereinafter referred to as the "KIAD Act", for brevity) was issued and duly published in the Karnataka gazette as on 10.12.2001, declaring an area, including the above, as an "industrial area". Notifications u/s 1(3) of the KIAD Act, applying the provisions of Chapter VII of the Act to the lands and a Preliminary notification u/s 28(1), were simultaneously issued and duly published in the Official gazette. The notifications indicated that the lands were being acquired for the benefit of the Karnataka Industrial Area Development Board (Hereinafter referred to as the "KIADB", for brevity). The petitioner is said to have filed his objections to the same, except that there was no opportunity to file any objection to the notification u/s 3(1) of the KIAD Act.

The petitioner has stated that apart from a total extent of 21 acres of land of Devarabisanahalli, vast extent of lands of Bellandur, Kariyamma Aghara etc., totally measuring 650 acres was sought to be acquired purportedly for the purpose of setting up industries. The final notification issued u/s 28(4) of the KIAD Act dated 23-2-2004 had also indicated the same purpose. However, it was thereafter learnt by the petitioner that the acquisition is for the benefit of M/s. Royal Fragrances Private Limited, the fourth respondent herein, whom the petitioner suspects to be only interested in the land as real estate and is not expected to be used by the said company to set up any industry.

The petitioner contends that the State Government and the KIADB had initiated the acquisition proceedings at the behest of the Directorate of Industries and Commerce and the Karnataka Udyog Mitra as it was intended that the lands were to be acquired for the benefit of the fourth respondent on the pretext that the said respondent had proposed to establish an Information Technology Park and a High Level Committee had mechanically accepted the claim of the fourth respondent as to its requirement of 4 lakh Square Feet of land for the said project. The petitioner would contend that as per the project report of the fourth respondent, it required only 12 acres of land and had identified various lands of Devarabisanahalli, not including the petitioner's land, for the purpose. But, however, the land of the petitioner also having been included in proposing to

earmark a total extent of 21 acres 2 guntas to be handed over to the fourth respondent, the petitioner questions the bona fides of the competent authorities in this regard. It is in this background that the present petition is filed.

WP 30981/2004

The petitioners claim to be agriculturists and permanent residents of Kariyammana Agrahara Village, Varthur Hobli, Krishnarajapura Taluk, Bangalore District. Petitioner No. 1 and the father of petitioner No. 2 and 4 were the owners of land measuring 1 acre 10 guntas, being a portion of land bearing survey No. 30/1.

It is further stated that in the Comprehensive Development Plan, the land of the petitioners is shown as residential zone and the said land is attached to the Bhovi Hatti village, Kariyammana Agrahara and Devarabisanahalli, which is a kilometre away from the village. The said land and the surrounding area is built up and developed. It is also stated that, the land in question is a well developed garden land consisting of 35 Coconut trees, 30 Sapota trees, Mulberry, certain jungle trees, and flowering plants etc., and the petitioner has constructed a farm house, part of which is being used as his residence.

Respondent No. 7 is a private limited company having its registered office at Delhi. On 29.08.2001, the seventh respondent had submitted its proposal for establishment of a Software/IT park as a single unit complex, seeking acquisition through KIADB, of 12 acres of land in Survey Nos. 10/1, 10/2, 10/3, 11/1, 11/2, 11/3 of Devarabisanahalli Village and Survey Nos. 27, 28, 29/1, 29/2 and 30/1 of Kariyammana Agrahara Village, Bangalore South Taluk, for their proposed project. Their project was approved by the third respondent - SHLCC, on 18.09.2001. Respondent No. 3 submitted its report to the State Government for further action, which in turn, forwarded the report to the second respondent - KIADB, to take action, to acquire the proposed lands. The fourth respondent - Special Land Acquisition officer, KIADB, had proposed to acquire 22 acres 21/2 guntas as against 12 acres, as required by the seventh respondent - M/s. Royal Fragrances Private Limited, and the said proposal was submitted to the first respondent.

The seventh respondent, by its letter dated 22.11.2001, requested the second respondent-KIADB to acquire lands in Survey No. 31 and 32 of Kariyammana Agrahara and Survey No. 54 of Devarabisanahalli and in lieu of the said proposal, to allot the aforesaid lands in favour of M/s. Global Tech Private Limited. Pursuant to the request, the second respondent - KIADB proposed to acquire 29 acres 71/2 guntas of land of Devarabisanahalli and Kariyammana Agrahara as against 12 acres of land sought by the seventh respondent, and the said proposal was submitted to the first respondent. The KIADB, without obtaining prior approval from the State, had proposed to allot the said 29 acres 71/2 guntas, to the seventh respondent, directing them to deposit 40% of the tentative cost of the land - a sum of " 84,26,250/-.

The State Government, by its communication dated 10.1.2002, directed the

second respondent, to consider the request of the seventh respondent only in respect of 12 acres and to retain the remaining land for industrial purposes. Subsequently, the first respondent had issued a notification, declaring the lands measuring 29 acres 71/2 guntas of Kariyamma Aghara and Devarabisanahalli Villages as industrial area and preliminary notification was also issued in that regard, to acquire 29 acres 71/2 guntas of land of Devarabisanahalli and Kariyamma Aghara Village, including the land bearing Survey No. 30/1.

It is also stated that the directors of respondent No. 7, were also the directors of M/s. Vikas Telecom Limited and M/s. Supreme Build-cap Private Limited and that M/s. Vikas Telecom Limited had secured 110 acres of land situated in Devarabisanahalli and Boganahalli Village, Varthur Hobli, and M/s. Supreme Build-cap Private Limited, had secured an extent of 1 million square feet of land, situated at Devarabisanahalli from KIADB. It is stated that respondents 1 to 3 had favoured respondent No. 7 in the matter of allotment of huge extent of lands.

The KIADB, by its communication dated 5.10.2004 addressed to the first respondent, had stated that the seventh respondent and its group of companies were not bona fide industrialists, but they were developers of real estate and they had secured the allotment of the said land by misrepresentation and political influence. The KIADB had not taken any action in allotting the lands acquired for respondent No. 7 though tentative deposit was collected by it.

The petitioners had filed objections to the preliminary notification in respect of the above land before the fourth respondent stating that, since the said area was declared as an industrial area, the petitioners intended to establish a Software Park on the land and had formed a partnership firm called M/s. KCP Electronics and a project report was submitted to the KUM and it was recommended to the KIADB to allot land for the same.

It is further stated that without considering the objection raised by the petitioners, the respondent No. 1 and 2 had issued final notification u/s 28(4) of the KIADB Act.

WP 17211/2009

The petitioner claims to be a private limited company registered under the Companies Act 1956. The petitioner had submitted a detailed project proposal to the KUM, for the Development of an Integrated Infrastructure Project for IT Infrastructure at Devarabisanahalli and Kariyamma Aghara Villages, Varthur Hobli, Bangalore Urban District. The proposed development included setting up of a Software Technology Park, Research and Development Centre etc. The SHLCC had considered and approved their project in the meeting held on 18.9.2001.

The Managing Director of the Karnataka Bio-Technology and Information Technology Services (Hereinafter referred to as the "KBITS", for brevity) had issued a formal approval dated 9.10.2001 in terms of the clearance by the Single

Window agency as per the request of the KUM and thereby the second respondent - KIADB was requested to take necessary action with regard to acquisition of lands for the implementation of the project of the petitioner. The petitioner had deposited a sum of Rs. 50,00,000/- with the second respondent - KIADB on 18.10.2001 along with copies of project report, memorandum, articles of Association Revenue Sketch etc. And in furtherance of the same, an agreement was entered into between the petitioner and the second respondent, wherein the second respondent took upon itself to make land available in Survey nos. 10/1, 10/2, 10/3, 11/1, 11/2, 11/3, of Devarabisanahalli and Survey Nos. 27, 28, 29/1, 29/2, 30/1 of Kariyammana Agrahara, Varthur Hobli, Bangalore South Taluk.

It is further contended that respondent No. 2 - KIADB initially raised a demand at the rate of Rs. 15,00,000/- per acre and requested the petitioner to deposit a sum of Rs. 32,80,000/- deducting a sum of Rs. 50,00,000/-, which was already deposited on 16.10.2001, out of Rs. 82,80,000/- towards the 40% of the tentative cost. And at that stage, it was found that the lands earmarked for the project of the petitioner overlapped with the project of one M/s. Global Tech Private Limited and the petitioner agreed to give up the lands which overlapped with the project of M/s. Global Tech Private Limited, on the condition that the second respondent should make available to the petitioner the lands bearing Survey No. 31 and 32 of Kariyammana Agrahara Village and part of Survey No. 54 of Devarabisanahalli. The second respondent accepted the proposal of the petitioner and on measurement of the said survey numbers, it was found that the lands measured approximately 29 acres 71/2 guntas and the second respondent requested the petitioner to deposit 40% of the tentative cost of Rs. 1,34,26,250/- and after deducting the amount already deposited by the petitioner, it was requested to deposit Rs. 84,26,250/-. Thereafter, respondent No. 1 issued a notification u/s 28(1) of the KIADB Act, declaring the lands as industrial area u/s 3(1) of the KIAD Act. A further notification u/s 28(1) of the KIADB Act was issued whereby the first respondent had categorically stated that the lands covered under the said survey numbers were required for industrial development and as such, acquisition proceedings were intimated to the general public. Further, the land owners were also informed that no construction activities could be undertaken in the said land and that in the event of any construction activity taking place subsequent the preliminary notification, the land owners would not be entitled to seek for compensation as regards such construction.

The petitioner contends that after the publication of a notification u/s 28(1) of the KIAD Act, objections were invited from the landlords under the provisions of Section 28(2) of the KIAD Act and some of the landlords filed their objections, which was considered. On hearing them, an order was passed by the SLAO under 28(3) of the KIAD Act on 5.2.2004. And in furtherance of the same, respondent No. 1 had issued a notification u/s 28(4) KIAD Act dated 23.02.2004 acquiring the lands under the various survey numbers stated therein and subsequent to

the issue of the said notification, the land owners of the lands covered under Survey No. 54 of Devarabisanahalli and Survey No. 30/2 of Kariyammana Agrahara, challenged the acquisition proceedings, the extent of which was approximately 7 acres 231/2 guntas and the petitioner was unaware of any challenge to the acquisition proceedings.

The petitioner herein who is the common respondent in all the connected writ petitions hence has sought to question a direction issued by the Department of Commerce and Industries to the Special LAO, KIADB directing the authority to delete lands, for the petitioners' benefit, from the acquisition proceedings.

The bare facts of the connected petitions are briefly stated hereunder.

WP 4631/2007

It is claimed by the petitioners that they are the owners in possession of land bearing Survey No. 10/1 measuring 0-17 Guntas of Devarabisanahalli, Varthur Hobli, Bangalore East Taluk, having acquired the same by virtue of the compromise decree in OS No. 8555/95 and he is also the owner in possession of 03 guntas in survey No. 10/12, having purchased the same from Smt. Indiramma and consequently, she has been recognized as the khatedar of the said lands and her name has been mutated in the Mutation Register.

The second petitioner is the owner of land bearing survey No. 10/1 measuring 0-15 guntas, situated at Devarabisanahalli, Varthur Hobli, Bangalore East Taluk, having acquired the same by virtue of the compromise Decree dt. 21/1/96 in OS No. 8555/95 and consequently she has been recognized as Khatedar and her name has been mutated in Mutation Register.

It is contended that the notification issued u/s 3(1) of the KIAD Act, declaring the land of the petitioner as industrial area. A Notification was also issued u/s 1(3) of the KIAD Act, applying the provisions of Chapter-VII of the KIAD Act to the lands in question. The intention of acquisition was to enable the second respondent to develop industries and the second respondent has not given opportunity to file objections to the notification issued u/s 3(1) of the KIAD Act, declaring the area as industrial area either before its publication or after its publication. However, it was learnt by the petitioner that the acquisition was for the benefit of M/s. Royal Fragrances Limited, the fourth respondent herein and, whom the petitioner suspects to be interested in the land as real estate and it is not expected to be used by the said company to set up any industry.

The petitioner contents that the State Government and KIADB has initiated the acquisition proceedings at the behest of the Directorate of Industries and Commerce and the KUF And it was intended that the lands were to be acquired for the benefit of the fourth respondent on the pretext that the respondent had proposed to establish an Information Technology Park. The SHLCC had mechanically accepted the claim of the fourth respondent as to its requirement of 4 lakh square feet of land for the said project at Kariyammana Agrahara and

Devarabisanahalli Village.

Further, the fourth respondent, as per its project report, required only 12 acres of land and had identified various lands of Devarabisanahalli and Kariyammana Agrahara Village, not including the petitioner's land, for the purpose. But, however, the land of the petitioner also having been included in the total extent of 21 acres 2 guntas to be handed over to the fourth respondent, that the present petition is filed.

WP 17541/2004

The petitioner in this petition claims to be the owner in possession of lands bearing Survey No. 54/1 measuring 1 acre 21/2 guntas of Devarabisanahalli Village, Varthur Hobli, Bangalore East Taluk. A Notification u/s 3(1) of the KIAD Act was issued and duly published in the Karnataka Gazette on 10.12.2001, declaring the area as an "industrial area". A notification u/s 1(3) of the KIAD Act and a Preliminary Notification u/s 28(1), were simultaneously issued and duly published in the Official Gazette. The Gazette notifications indicated that the lands were being acquired for the benefit of the KIADB. The petitioner is said to have filed his objections to the same and there was no opportunity to file objections to the notification u/s 3(1) of the KIAD Act.

The petitioner further contends that apart from a total extent of 21 acres 2 guntas in Devarabisanahalli Village, a vast extent of lands of Bellandur (Village, Devarabisanahalli, Kariyammana Agrahara etc., totally measuring more than 650 were sought to be acquired under various other acquisition notifications issued u/s 28(1) of the KIAD Act for the purpose of setting up industries.

However, it was learnt by the petitioner that the acquisition is for the benefit of M/s. Royal Fragrances Limited, the fourth respondent herein, whom the petitioner suspects to be only interested in the land as real estate and is not expected to be used by the said company to set up any industry.

The petitioner contents that the State Government and KIADB has initiated the acquisition proceedings at the behest of the Directorate of Industries and Commerce and the KUF, it was intended that the lands were to be acquired for the benefit of the fourth respondent on the pretext that the respondent had proposed to establish an Information Technology Park and the SHLCC had mechanically accepted the claim of the fourth respondent as to its requirement of 4 lakh square feet of land for the said project. The petitioner would contend that as per the project report of the fourth respondent, it required only 12 acres of land and had identified various lands of Devarabisanahalli, not including the petitioner's land, for the purpose. But, however, the land of the petitioner also having been included in the total extent of 21 acres 2 guntas to be handed over to the fourth respondent, the petitioner is before this court.

WP 17543/2004

It is claimed by the petitioner that he is the owner in possession of lands bearing

survey No. 54/3 measuring 27 guntas of Devarabisanahalli Village, Varthur Hobli, Bangalore East Taluk. A Notification u/s 3(1) of the KIAD Act was issued and duly published in the Karnataka Gazette on 10.12.2001, declaring the area as an "industrial area". A notification u/s 1(3) of the KIAD Act and a Preliminary Notification u/s 28(1) of the KIAD Act were simultaneously issued and duly published in the Official Gazette. The Gazette notifications indicated that the lands were being acquired for the benefit of the KIADB. The petitioner is said to have filed his objections to the same, except that there was no opportunity to file objections to the notification u/s 3(1) of the KIAD Act.

The petitioner further contends that apart from the total extent of 21 acres 2 guntas in Devarabisanahalli Village, a vast extent of lands of Bellandur Village, Devarabisanahalli, Kariamamana Agrahara etc., totally measuring more than 650 acres, were sought to be acquired under various other acquisition notifications issued u/s 28(1) of the KIAD Act for the purpose of setting up industries.

However, it was learnt by the petitioner that the acquisition is for the benefit of M/s. Royal Fragrances Limited, the fourth respondent herein, whom the petitioner suspects to be only interested in the land as real estate and is not expected to be used by the said company to set up any industry.

The petitioner contents that the State Government and KIADB has initiated the acquisition proceedings at the behest of the Directorate of Industries and Commerce and the KUF and it was intended that the lands were to be acquired for the benefit of the fourth respondent on the pretext that the respondent had proposed to establish an Information Technology Park and the SHLCC had mechanically accepted the claim of the fourth respondent as to its requirement of 4 lakh square feet of land for the said project. The petitioner would contend that as per the project report of the fourth respondent, it required only 12 acres of land and had identified various lands of Devarabisanahalli, not including the petitioner's land, for the purpose. But, however, the land of the petitioner also having been included in proposing to earmark a total extent of 21 acres 2 guntas to be handed over to the fourth respondent, the petitioner questions the bonafides of the competent authorities in this regard. It is in this back ground that the present petition is filed.

WP 17545/2004

It is claimed by the petitioner that he is the owner in possession of lands bearing survey No. 54/6 measuring one acre and 9 guntas and Survey No. 54/8 measuring 1 acre and 5 guntas, of Devarabisanahalli Village, Varthur Hobli, Bangalore East Taluk.

A Notification u/s 3(1) of the Karnataka Industrial Area Development Act, 1966, (Herein after referred to as the "KIADB Act", for brevity) was issued and duly published in the Karnataka Gazette on 10.12.2001, declaring the area as an Industrial area". Notifications u/s 1(3) of the KIAD Act, applying the provisions of Chapter - VII of the Act of the "lands and a Preliminary Notification u/s 28(1),

were simultaneously issued and duly published in the Official Gazette. The Gazette notifications indicated that the lands were being acquired for the benefit of the Karnataka Industrial Area Development Board (Herein after referred to as the "KIADB", for brevity). The petitioner is said to have filed his objections to the same, except that there was no opportunity to file objections to the notification u/s 3(1) of the KIAD Act.

The petitioner has stated that apart from a total extent of 21 acres 2 guntas in Devarabisanahalli Village, a vast extent of lands of Bellandur Village, Devarabisanahalli, Kariamamana Agrahara etc., totally measuring more than 650 acres under various other acquisition notifications issued u/s 28(1) of the KIAD Act for the purpose of setting up industries.

However, it was thereafter learnt by the petitioner that the acquisition is for the benefit of M/s. Royal Fragrances Limited, the fourth respondent herein, whom the petitioner suspects to be only interested in the land as real estate and is not expected to be used by the said company to set up any industry.

W.P. 30979/2004

The petitioners claim that they are agriculturists and permanent residents of Kariyammana Agrahara Village, Varthur Hobli, K.R. Pura Taluk, Bangalore District. The petitioners claim that they are the owners of land measuring 1 acre 371/2 guntas, being portion of survey No. 30/2 situated at Kariyammana Agrahara Village, Varthur Hobli, Bangalore. It is further contended that the comprehensive development plan shows that the land of the petitioner comes under the residential zone and the said land is attached to Bhovi Hatti, Kariyammana Agrahara and Devarabisanahalli villages, at a distance of one kilometre and the land under acquisition and the surrounding area is being built up and developed. The petitioner stated that the land in question is a well developed garden land, consisting of coconut trees, certain jungle trees, a pump house etc., and the income from the said land is the only source for the petitioners.

Respondent No. 7 is a private limited company having its registered office at Delhi. On 29.08.2001, the seventh respondent had submitted its proposal for establishment of a Software/IT park as a single unit complex seeking acquisition through KIADB and to provide 12 acres of land in Survey Nos. 10/1, 10/2, 10/3, 11/1, 11/2, 11/3 of Devarabisanahalli Village, and Survey Nos. 27, 28, 29/1, 29/2 and 30/1 of Kariammana Agrahara Village, Bangalore South Taluk, for their proposed project. Their project was approved by the third respondent - SHLCC, at its meeting held on 18.09.2001. Respondent No. 3 submitted its report to the State Government for further action, which in turn forwarded the report to the second respondent - KIADB, to take action, to acquire the proposed lands. The fourth respondent - SLAO, KIADB, had proposed to acquire 22 acres 21/2 guntas as against 12 acres, requested by the seventh respondent - M/s. Royal Fragrances Private Limited and the said proposal was submitted to the first

respondent. The seventh respondent, by its communication dated 22.11.2001, requested the second respondent-KIADB to acquire "lands in Survey No. 31 and 32 of Kariyammana Agrahara and Survey No. 54 of Devarabisanahalli, and in lieu of the said proposal to allot the aforesaid lands in favour of M/s. Global Tech Private Limited. Pursuant to the request, the second respondent - KIADB proposed to acquire 29 acres 71/2 guntas of land situated at Devarabisanahalli and Kariyammana Agrahara as against 12 acres of land sought by the seventh respondent, and the said proposal was submitted to the first respondent. The KIADB, without obtaining prior approval from the State Government, had proposed to allot the said 29 acres 71/2 guntas, to the seventh respondent, directing them to deposit 40% of the tentative land cost, in a sum of Rs. 84,26,250/-.

The State Government, by its communication dated 10.1.2002, directed the second respondent, to consider the request of the seventh respondent only in respect of 12 acres and to retain the remaining land for industrial purpose. Subsequently, the first respondent issued a notification declaring the land measuring 29 acres 71/2 guntas of Kariyammana Agrahara and Devarabisanahalli Villages as Industrial Area, and simultaneously, the preliminary notification was issued by the first respondent with a proposal to acquire 29 acres 71/2 guntas of land of Devarabisanahalli and Kariyammana Agrahara Village, including the land bearing Survey No. 30/1, for the purpose of industrial establishment.

The petitioners further contend that the directors of respondent No. 7, were also the directors of M/s. Vikas Telecom Limited and M/s. Supreme Build-cap Private Limited and that M/s. Vikas Telecom Limited had secured 110 acres of land situated at Devarabisanahalli and Boganahalli Village, Varthur Hobli, and M/s. Supreme Build-cap Private Limited, had secured an extent of 1 million square feet of land, situated at Devarabisanahalli from KIADB. It is claimed that respondents - 1 to 3 have shown undue favour to the seventh respondent in the allotment of huge extent of lands. The KIADB, by its letter dated 5.10.2004, to the first respondent, had stated that the seventh respondent and its group of companies were not bona fide industrialists, but they were developers of real estate and they had secured the allotment of the said land by misrepresentation and political influence. The KIADB had not taken any action in allotting the lands acquired for respondent No. 7, though tentative deposit was collective.

The petitioners contend that they had" filed objections for the preliminary notification in respect of acquisition of the said land, but the fourth respondent, without considering the objections raised by the petitioners, had issued the final notification u/s 28(4) of the KIAD Act, acquiring the land bearing Survey No. 32 of Kariyammana Agrahara, among other lands. It is also stated that as against 109 acres 28 guntas, only 105 acres 28 1/2 guntas was proposed for acquisition without valid reasons and the deletion of the portion of land from acquisition is said to be done to favour some persons.

The petitioners have stated that, the first respondent had issued certain guidelines to the KIADB in the matter of acquisition of lands for the purpose of industrial development and since the KIADB had failed to follow the guidelines, the first respondent had issued a Circular dated 3.3.2007, wherein it was clearly indicated that the KIADB should not acquire the land, which consisted of buildings, but the KIADB, with utter disregard to the such a direction, had acquired the land in question which consisted of various residential buildings.

It is further contended that respondent No. 1, on objections raised by the land owners, had deleted the land bearing Survey No. 54, under notification dated 7.8.2003 and lands in survey Nos. 31/1 and 31/2 under notification dated 28.2.2004. It is also stated that lands in Survey nos. 27, 28/1 and 28/2 were deleted under a notification dated 5.5.2004. The petitioners had filed objections to the preliminary notification stating all the developments made over the land and also informing the existence of a temple on the said land, but the fourth respondent without considering the objections, had submitted a report dated 5.2.2004 to the first respondent, to issue the final notification. Pursuant to the report submitted by the fourth respondent - SLAO, KIADB, the final notification dated 28.2.2004 was issued by the first respondent - the State.

The petitioner along with the owners of land in Survey No. 32, had approached the first respondent with an application dated 30.5.2006 seeking deletion or re-grant of land in question, since similarly situated lands adjacent to the lands in question had been deleted from the acquisition proceedings, that the case of the petitioners should also be treated similarly. Therefore, the State Government had called for the report from the KIADB in that regard.

2. For the sake of convenience the rival contentions and the arguments in the petition in W.P. 17539/2004 is addressed, as the answer to the rival contentions would equally apply to the connected petitions.

3. The learned counsel for the petitioner in W.P. No. 17539/2004 contends that the preliminary and final notifications indicated that the land in question was being acquired for the purposes of establishing industries. The said notifications did not indicate as to the entity in whose favour it was being acquired. If it had been disclosed that it was for the benefit of the fourth respondent, it is contended, it would then have been possible for the petitioner to have effectively objected to the same and could have demonstrated the falsity of the objective declared. In that, the acquisition for the sole private profit of the fourth respondent was a colourable exercise of power and mala fide.

It is contended that the conduct of the respondents 1 to 3 being arbitrary and illegal is evident from the fact that the notifications under Sections 1(3), 3(1) and 28(1), respectively, of the KIAD Act being issued on the same day, simultaneously, "would speak for the mechanical manner in which the legal requirements are sought to be complied with. It is pointed out that as evident from Annexures - J1 to J4 to the petition, many lands that were notified for

acquisition have been subsequently deleted suo motu, by the KIADB. But, however, in the face of stiff opposition to the acquisition the lands of the petitioner were being taken away mechanically.

It is alleged that the High Level Committee had mechanically cleared the project of the fourth respondent without verifying its credentials. The need and purpose of the said respondent being highly suspect, it may even be possible that there was a unholy nexus in facilitating such acquisition, apparently to deal with the land as real estate in the immediate future.

It is contended that under the Comprehensive Development Plan (Hereinafter referred to as the "CDP" for brevity), the lands proposed to be acquired have been shown as an area reserved for park and open space, while other lands are reserved for commercial and residential purposes. The purported acquisition of the lands for an industrial area and industrial development is hence contrary to the CDP formulated under the Karnataka Town and Country Planning Act, 1961 (Hereinafter referred to as the "KTCP Act", for brevity). It is contended that it is the settled legal position that change of land user in respect of an area reserved for park and open space is wholly impermissible.

It is contended that the sequence of events in the fourth respondent having identified lands on its own, as being suitable for its supposed project and having approached the competent authority, who has readily notified the very lands for acquisition has the effect of the authority relegating itself to the position of a middle man exercising the power of eminent domain to acquire land for the benefit of a private party - that too of land far in excess of its choice and need. Hence, there is a blatant colourable exercise of power.

It is alleged that the fourth respondent is part of a group of companies promoted by directors who are only known to be engaged in real estate business and do not have any record of any industrial activity. It is pointed out that one of its group companies, M/s. Vikas Telecom Limited, which has also secured land through the respondents, claiming to set up an IT park, has failed to take any steps in that direction, even after a long lapse of time, which is a clear indication of the true intention of the beneficiary of the acquisition. It is alleged that the said group of companies have with the willing co-operation of respondents 1 to 3 and by recourse to the convenient medium of compulsory acquisition, obtained 90 acres of prime land, entirely for their private benefit, with no industry in sight.

4. The learned counsel for respondent No. 2 and 3, on the other hand, would contend as follows:

That the acquisition undertaken by the State government was in keeping with its Information Technology Policy. Under the said policy, the state had invited investment from entrepreneurs while extending certain benefits and facilities. The policy had recognized the need of private investment in the creation of infrastructure. The government was thus encouraging the creation of IT parks.

The fourth respondent had approached the state government with a project to set up an IT Park. As per procedure the same was placed before a High Level Committee, constituted by the State Government in exercise of power under Article 162 of the Constitution of India, vested with the responsibility of hastening the process of clearance of the project with the minimum of bureaucratic delays. The State Level Agency had cleared the project of the fourth respondent as on 18-9-2001.

The object acquisition of land under the provisions of the KIAD Act was in order to ensure that the project fell within the supervision and control of the KIADB, instead of being subject to the necessary prior approvals of the several authorities such as the Revenue, the Bangalore Development Authority and other statutory bodies. The allotment of land in favour of the entrepreneur is on a lease basis. The implementation of the project is a must for otherwise the land would automatically be resumed in accordance with the proposal. There is a prohibition against alienation by the allottee. Payment of compensation to the land owner is ensured without any discrimination. It is under these circumstances that the land in question was notified for acquisition pursuant to the application of the fourth respondent.

It is further contended that under the amendment to the KIAD Act, by Act No. 17 of 1997, specially providing for acquisition of land for the purpose of infrastructural projects. The proposed establishment of an IT park is certainly in consonance with that objective and hence the allegations of violation of law and mala fides in the acquisition process is unfair and without basis.

It is asserted that the issuance of notifications simultaneously u/s 1(3), 3(1) and 28(1), respectively, is not prohibited in law. The acquisition process is given wide publicity and is not surreptitious. The petitioner has participated at the enquiry proceedings pursuant to the notifications. It is contended that the notification u/s 3(1) is conditional legislation and hence the question of issuance of notice or giving an opportunity of hearing is not envisaged in respect of the same.

The allegations of whimsical acquisition of land is denied. The further allegations of mala fides and non-application of mind are also denied. It is pointed out that the beneficiary or the allottee of the acquired land being indicated in the notifications for acquisition is not contemplated under the Act.

The initial request of the fourth respondent with reference to lands bearing certain survey numbers of Devarabisanahalli when actually measured exceeded 22 acres, but since certain items of those lands were already earmarked for some other project, alternative lands were identified and the fourth respondent was called upon to remit the cost of the entire extent of 29 acres 7.5 guntas. At any rate it is contended that the petitioner could not sit in judgment of the need or competence of the said respondent.

It is pointed out that the exclusion of certain lands from the acquisition is not on account of any favouritism, but on account of the fact that the land owners

therein had obtained change of land user and had diverted the land for other purposes, it was just and necessary in the wisdom of the State to exclude those lands. This by itself would not render the acquisition bad in law.

The wild allegations of there being a unholy nexus as between the respondents is without any basis. The acquisition proceedings are in strict compliance with the due process of law. Therefore the allegations of violation of principles of natural justice, colourable exercise of power, etc. is not tenable. The counsel for the fourth respondent in turn would contend that the said respondent is part of a group of companies, with extensive experience in infrastructure and developmental activities. It had submitted a proposal pursuant to the Global Investors meet - convened by the State Government, to set up an IT Park. The total outlay envisaged was Rs. 47.5 crore, which would generate direct and indirect employment for almost two thousand individuals.

The State Level Single Window Agency is said to have approved the proposal. The Karnataka Udyog Mitra, the nodal agency to aid implementation of the proposal, had called upon the first and second respondents to initiate proceedings for the acquisition of land for the project. This required the fourth respondent to deposit a initial sum of Rs. 50 lakhs, with the second respondent, which was complied with. The fourth respondent was then called upon to deposit a further sum - the said respondent had then deposited further amount, totaling in all to Rs. 1.34 crore. It is pursuant to the same that the acquisition proceedings were initiated. Apart from the above, the fourth respondent has incurred other substantial expenses in furtherance of its proposal.

It is contended that immediately on issuance of the notification u/s 28(1) of the Act, several land owners, whose lands were proposed to be acquired file writ petitions before this court, in WP 9339 - 9351/2002. The fourth respondent was a party to the same. The said petitions were dismissed on merits on 19-9-2002. The petitioners were, however, granted a further opportunity to file additional objections to the acquisition proceedings. The petitioner had also availed of the opportunity to file additional objections and was heard, it is only after the objections were considered and overruled that a final notification was issued and further proceedings were taken.

5. The fourth respondent has extensively met the petition averments in its statement of objections, both on factual as well as legal aspects, which is not reproduced here on account of its sheer length.

6. The learned Counsel for the parties have relied on several authorities, which would be considered hereunder, wherever relevant.

7. Insofar as the primary contentions raised in these petitions are concerned, the allegation that there was large scale acquisition in several villages including Devarabisanahalli, is not seriously disputed by respondents 1 to 3. However, insofar as the extent is concerned, since there are several acquisition notices, in the absence of details furnished by the petitioner, the respondents would not

totally agree that it is an extent of 650 acres This is however not relevant. The respondents have produced the Information Technology Policy of the State Government and it is apparent that the acquisition was for the purposes of an Information Technology Corridor, which is intended to connect Electronic City to the White Field Industrial area. The beneficiaries are mainly Information Technology Industries or infrastructure industries. The intention of the State Government therefore cannot be characterised as mala fide and whimsical. The contention that the notifications did not indicate the actual beneficiary, but it was vaguely indicated as for the benefit of KIADB, when it was evident that the acquisition for particular beneficiaries was decided even before the acquisition proceedings were initiated is concerned, having regard to the Scheme, under which the State Government was proceeding to invite entrepreneurs to invest in the infrastructural industries and on the basis of the project report submitted by such entrepreneurs, including the fourth respondent and the fourth respondent having specified particular lands and the State Level Single Window Agency having examined the proposal and having accepted it the acquisition proceedings being initiated in respect of those particular lands, is admitted by the respondents. As the proposal of the fourth respondent having been approved after due scrutiny by the several agencies set up by the State Government, no mala fides could be attributed to the same. That the cost of acquisition has been met by the fourth respondent by an advance deposit of Rs. 1.34 Crore cannot also-be overlooked. The allegation that the fourth respondent was not a company engaged in any Information Technology Industry is not disputed by the fourth respondent. The fourth respondent" claims to be engaged in infrastructural development projects and the intention was to provide infrastructure to the information technology industries. Therefore, this is also not a contention, which would render the acquisition as being bad in law. The contention that the lands are indicated as residential in the CDP and hence could not be diverted to industrial use without prior change in land use, may not be an argument consistent with the law laid down by the apex court, which is referred to and discussed hereunder.

Insofar as the contention that the petitioner is part of a group of companies and that one M/s. Vikas Telecom Limited has already been allotted a large extent of land, which remains unused, is refuted by the fourth respondent to claim that it has already implemented an Information Technology Park and it is the first Information Technology Special Economic Zone approved by the Government of India and that it has put up nearly 15 million Square feet of building area and that the who"s who of Information Technology are operating from the said Park.

However, the petitioner has produced a paper clipping, after the matter was reserved for orders, to claim that one M/s. Black Stones Group has struck a deal with M/s. Vikas Telecom to acquire Vrindavan Tech Park that is developed by M/s. Vikas Telecom on the outer ring road at a sum of Rs. 800 Crore to Rs. 900 Crore and that it is in the process of completing due diligence of Vrindavan Tech Village with 1 to 2 million tenanted space and 75% of undeveloped land. And it is

claimed that the suspicion of the petitioner is justified. The intention of the petitioner as well as its group companies is to ensure acquisition at nominal rates and to dispose of the land at phenomenal rates to exploit the real estate potential of the land acquired.

As already stated by the KIADB, the allotment in favour of the entrepreneurs is on a lease-cum-sale basis and the implementation of any given project is a must and alienation of the land is totally prohibited and violation of the conditions would result in resumption of the land. Therefore, if the allegations are found to be true, it would be for the KIADB to take appropriate steps to resume the land and buildings thereon. It is not a ground however, to set aside the acquisition proceedings, which is otherwise in conformity with the provisions of the law.

Insofar as the decisions relied upon by the counsel for the petitioners are concerned, the order of a learned single judge in Writ Petition No. 23084/2005 and connected cases Prudential Housing & Infrastructure Development Ltd. Vs. State of Karnataka dated 13-12-2010, was in relation to a case where the petitioners had approached the Karnataka Udyog Mitra with a project to set up an IT Park and had identified 50 acres of land of Iblur village, Bangalore South Taluk for the purpose. Their application having been processed by a High Level Committee and the same having been approved the requisite land was to be acquired by the State under the provisions of the KIAD Act. In accordance with the same, the KIADB had collected an advance deposit of over Rs. 13 crore towards the cost of acquisition and other service charges. But on account of a petition having been filed before this court by another company in respect of the very land and in the wake of interim orders passed therein, the KIADB did not proceed with the acquisition proceedings and refunded the deposit collected from the petitioners. It is in that background that the petitioners had approached this court, seeking a direction to the State to issue a final notification under the Act, in respect of the land earmarked for their project.

The learned Single Judge has frowned on the entire manner in which the land is sought to be acquired for the benefit of private individuals by recourse to the power of eminent domain and has held that the prayer cannot be granted. The acquisition proceedings were kept in abeyance by the State on its own and hence the said decision would not be a precedent to hold that the present acquisition proceedings are bad in law.

The next judgment relied upon - Bondu Ramaswamy Vs. Bangalore Development Authority and Others, had addressed the following points:

11. The said judgment is challenged by the land-losers on several grounds. On the contentions urged, the following questions arise for consideration:

(i) Whether BDA Act, in so far as it provides for compulsory acquisition of property, is stillborn and ineffective as it did not receive the assent of the President, as required by Article 31(3) of the Constitution of India.

(ii) Whether the provisions of the BDA Act, in particular section 15 read with section 2(c) dealing with the power of the Authority to draw up schemes for development for Bangalore Metropolitan Area became inoperative, void or was impliedly repealed, by virtue of Parts IX and IX(A) of the Constitution inserted by the 73rd and 74th Amendments to the Constitution.

(iii) Whether the sixteen villages where the lands have been acquired, fall outside the Bangalore Metropolitan Area as defined in section 2(c) of the BDA Act and therefore, the Bangalore Development Authority has no territorial jurisdiction to make development schemes or acquire lands in those villages.

(iv) Whether the amendment to section 6 of the LA Act requiring the final declaration to be issued within one year from the date of publication of the preliminary notification is applicable to the acquisitions under the BDA Act; and whether the declaration u/s 19(1) of BDA Act, having been issued after the expiry of one year from the date of the preliminary notification u/s 17(1) and (3) of BDA Act, is invalid.

(v) Whether the provisions of sections 4, 5A, 6 of LA Act, would be applicable in regard to acquisitions under the BDA Act and whether non-compliance with those provisions, vitiate the acquisition proceedings. (vi) Whether the development scheme and the acquisitions are invalid for non-compliance with the procedure prescribed under sections 15 to 19 of the BDA Act in regard to:

(a) absence of specificity and discrepancy in extent of land to be acquired;

(b) failure to furnish material particulars to the government as required u/s 18(1) read with section 16 of the BDA Act; and

(c) absence of valid sanction by the government, u/s 18(3) of the BDA Act.

(vii) Whether the deletion of 1089 A. 12G. from the proposed acquisition, while proceeding with the acquisition of similar contiguous lands of appellants amounted to hostile discrimination and therefore the lands of appellants also required to be withdrawn from acquisition.

After an elaborate consideration of the relevant legal provisions, the following conclusions are drawn:

In view of the foregoing, we affirm the directions of the Division Bench subject to the following further directions and clarifications:

(i) In regard to the acquisition of lands in Kempapura and Srirampura, BDA is directed to re-consider the objections to the acquisitions having regard to the fact that large areas were not initially notified for acquisition, and more than 50% of whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of the acquired lands has become illogical and impractical, and if so, whether the balance area also should be deleted from acquisition. If BDA proposes to continue the

acquisition, it shall file a report within four months before the High Court so that consequential orders could be passed.

(ii) In regard to villages of Venkateshapura, Nagavara, Hennur and Challakere where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired land, could be used as a stand alone park or playground in regard to a layout formed in different unconnected lands in other villages. Similar isolated pockets in other villages-should also be dealt with in a similar manner.

(iii) BDA shall give an option to each writ petitioner whose land has been acquired for Arkavathy layout:

(a) to accept allotment of 15% (fifteen percent) of the land acquired from him, by way of developed plots, in lieu of compensation (any fractions in excess of 15% may be charged prevailing rates of allotment).

OR

(b) in cases where the extent of land acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied with the quantum), allotment of a plot measuring 30" x 40" for every half acre of land acquired at the prevailing allotment price.

(iv) Any allotment made by BDA, either by forming layouts or by way of bulk allotments, will be subject to the above.

The counsel seeking to rely upon the caustic observations made by the court as to the manner in which acquisition proceedings are carried on and the need to revamp archaic laws, would be of little assistance in the present case on hand.

In Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, the case related to land acquired for a public purpose by the State in exercise of its power of eminent domain and later having diverted the same for the benefit of a company. The apex court held that if land is to be acquired for a company, the State and the company are bound to comply with the mandate of the provisions of Part VII of the Land Acquisition Act, 1894. Any transfer made otherwise would be a fraud on the power of eminent domain. This decision would not also aid the petitioners in the light of the context in which the present acquisition proceedings are made.

In R.K. Mittal and Others Vs. State of Uttar Pradesh and Others, the question of law that arose for consideration in the said decision was whether residential premises could be wholly or partly used by the original allottee or even its transferee, for purposes other than residential. The decision has reiterated the law that the Planning Authority has no power to permit change in land use from

the Outline Development Plan. That every change in land use must conform to the ODP and the Zoning Regulations.

In the instant case - any change in land use would follow only after the beneficiary is allotted the land and hence the issue is irrelevant for the purposes of this case.

In *Patasi Devi Vs. State of Haryana and Others*, the said decision is an authority for two propositions sought to be relied upon by the petitioners. Firstly, if there was no evidence on record of possession of the land acquired, having been taken between the date of the Award passed in the acquisition proceedings and the challenge brought before the court, the petitioner could not be denied the relief. Notwithstanding that an Award was already passed. Secondly, that the land having been acquired for a public purpose could not be diverted for the private benefit of individuals. Hence, the said decision would not also aid the petitioners.

8. The learned Counsel for the respondents, on the other hand, have relied on the following authorities, in support of the proposition that the change of land use need not precede the acquisition proceedings, in that, an area being declared as an industrial area, as for instance, under the provisions of the KIAD Act, need not be preceded by a change of land use if that particular area under the Master Plan or the Outline Development Plan is indicated as being set apart for purposes other than the industrial use.

(1) *N. Somashekhar vs. State of Karnataka*, 1997 (7) KLJ 410,

(2) Writ Appeal No. 879-886/1999 and connected cases dated 18.7.2000 affirming *Somashekar's* case,

(3) *Bhagat Singh Vs. State of U.P. and Others*,

The respondents have also relied upon the following authorities, for the proposition that the acquisition proceedings cannot be vitiated, merely on the ground that a specific public purpose was not mentioned and that acquisition of land and development by the acquiring authority and allotment of the same to an entrepreneur or a company, for setting up an industry or infrastructural facility cannot be characterised as acquisition of property for the benefit of a private party.

(1) *P. Rajappa alias B.P. Rajappa Vs. State of Karnataka and Others*,

(2) *P. Narayanappa and Another Vs. State of Karnataka and Others*,

(3) *S.S. Darshan Vs. State of Karnataka and others*,

(4) *S.S. Darshan Vs. State of Karnataka and others*, affirming the judgment of the division bench of this court.

And also for the proposition that the name of the ultimate beneficiary need not be mentioned in the notifications preceding the acquisition, reliance is placed on *Bharath Raj vs. State*, Writ Petition No. 19713/2001, decided on 10.7.2002,

affirmed by a division bench in Writ Petition No. A658/2002 and connected cases dated 15.3.2005.

Reliance is also placed on M.S. Moses Vs. State of Karnataka, for the proposition that the power of acquisition u/s 28(2) of the KIAD Act, cannot be whittled down by the application of the provisions of the KTCP Act and that by acquisition, what is sought to be done is invocation of the power of eminent domain. By that there is displacement of ownership. So long as the acquisition conforms to the Industrial Areas Development Act, 1966, there cannot be any complaint whatever with regard to displacement of ownership. The provisions of the KTCP Act would not in any manner control the power of acquisition. The two legislations operate in two different fields.

Insofar as the primary contention that there is legal malice and mala fides in the allotment of land to entrepreneurs through a single window agency, after acquiring the land by the exercise of the power of eminent domain has been negated in Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others,

Therefore, having regard to the above position of law, there is no illegality to be found in the manner in which the land is sought to be acquired albeit for the ultimate benefit of a single entity and therefore, the acquisition proceedings cannot be said to be vitiated on that or other grounds that are raised in these petitions. Accordingly, the petitions W.P. No. 17539/2004, W.P. No. 17545/2004, W.P. No. 17541/2004, W.P. No. 17543/2004, W.P. No. 4631/2007, W.P. No. 30979/2004 and W.P. No. 30981/2004 are dismissed. The petition in W.P. 17211/2009, and the prayer therein to quash Annexures-GG and HH, is allowed.