

(1990) 08 KAR CK 0033

In the Karnataka High Court

Case No : W.As. No's. 1229 of 1990 and 1696 of 1988 and W.Ps. No's. 17234 of 1988, 13818 and 14130 of 1990

Telecom Employees Co-operative Housing Society Ltd.

APPELLANT

Vs

Scheduled Castes, Scheduled Tribes, Minority Communities
and Backward Classes Improvement Centre

RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 14, 19 (3), 37, 38, 65

Citation : (1990) ILR (Kar) 3320

Hon'ble Judges : S. Mohan, C.J.;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : R. Krishna Murthy, with Nanjudaswamy, U.L. Narayana Rao and Chandrasekhara Babu and G.V. Shantharajufor Kesvy and Co, for the Appellant; R.N. Narasimha Murthy, Senior Advocate, S.R. Nayak, Government Advocate, K. Gopala Hegde, Shivaram for Kesvy and Co., Rajagopal Naidu and B.K. Sampath Kumar and A.N. Jayaram, Senior Advocate and B.V. Acharya, General, for the Respondent

Judgement

S. Mohan, C.J.—W.A.No. 1229/90. The facts leading to this appeal are as follows:

(1) The first respondent Scheduled Castes, Scheduled Tribes, Minority Communities and Backward Classes Improvement. Centre, Bangalore-26, (hereinafter referred to as the first-respondent-Society), filed Writ Petition No. 17420/87, as a public cause litigation, questioning the authority of the Bangalore Development Authority (for short "the BDA") to make bulk allotment in favour of the appellant-Society. The aims and objects of the first-respondent-Society are to take such measures for the development of classes mentioned in its name and to make such endeavours and efforts to safeguard the interests of those classes, and such other activities aimed at the development of those classes in Karnataka. The Head Office of the first-respondent-Society is in Kasturbanagar and its activities consist of safeguarding the rights of persons of the said classes and to ensure that the statutory authorities and other authorities do Implement

the provisions for the purpose of benefiting the said classes.

(2) The 3DA formulated a scheme called "Jagajivanram Nagar Layout" as early as 1978. The scheme was submitted by the BDA by its letter dated 30-1-1980 to the State Government for its approval. Approval was accorded by an order of the State Government dated 9-6-1980. According to the said Government Order a new layout was sanctioned, but it was named as Ambedkar Nagar. The said layout of Ambedkar Nagar consisted of 1965 residential sites comprising different sizes measuring 30"x40", 40"x60" and 40"x70". 1513 sites of 30"x40" each were intended for the benefit of economically weaker sections of the Society. As per Rule 11(4) of the Bangalore Development Authority (Allotments of Sites) Rules, 1982, (hereinafter referred to as the Rules), 18% of the sites have to be reserved for purposes of allotment to the Scheduled Castes and Scheduled Tribes as well as to the wandering tribes and other kinds of tribes. 18% of 1965 sites would be 350 sites. According to the Rules it is stated that there are other classes of persons also for the purpose of allotment. Except for educational institutions established for the purpose of running schools, there is no institution or individual who could be allotted sites. The provisions of the Bangalore Development Authority Act, 1976, (for the "the Act"), and the Rules made thereunder do not recognise any person or class of persons who have joined together for the purpose of allotment of residential sites. Therefore, the appellant-Society was not eligible for the benefit of allotment. No allotment consequently could be made to any Housing Society. The bulk allotment to any Society or any other similar person is not contemplated under the statute and the Rules made thereunder. Should such an allotment be made, it will be violative of the provisions of the Act and the Rules.

(3) After the approval was accorded for Ambedkar Nagar Layout on 9-6-1980, the scheme was approved. Final Notification was issued on 27-12-1980. It was published in the Karnataka Gazette on 29-12-1980. For the purposes of the scheme, several survey numbers were acquired.

(4) While the first-respondent-Society was expecting allotment being made, to its shock it came to know that the BDA had passed a resolution No. 383 on 23-7-1984 making bulk allotment of an extent of 25 acres, in Sy.Nos. 15 to 29, 31, 53 to 55 and 130 to the appellant-Society. As a consequence thereof, a letter was issued by the BDA on 20-12-1984 to the President of the appellant-Society calling upon the Society to remit the cost of the aforesaid 25 acres of land amounting to Rs. 31,25,000/- for taking further action in regard to the handing over of the land in question to the appellant-Society. The appellant-Society was trying to enter upon the property for the purpose of forming a layout of its own. It is also noticed that by the allotment made by the BDA to the appellant-Society no restriction is placed on the Society to maintain the percentage of allotment as required under Rule 11 of the Rules. Thus the allotment in favour of the appellant-Society is clearly in contravention of the mandatory provisions of the statute. It is devoid of jurisdiction and is therefore void and inoperative. The first-

respondent-Society came to know of this allotment only two weeks prior to the filing of the Writ Petition, and that is why this Court could not be approached earlier.

(5) In the Writ Petition, the contentions that were raised are to the following effect:

(i) Under the Act there is no provision for making bulk allotment, and therefore the same is without jurisdiction, running contrary to the provisions of the Act and the Rules.

(ii) The action of the BDA in making the bulk allotment ignoring the statutory provision in respect of reservation in favour of the classes of persons specified under Rule 11(4) of the Rules, amounts to an infraction of the mandatory provisions of the Statute and is therefore void.

(iii) The BDA had exceeded its jurisdiction by making, a bulk allotment which is contrary to the provisions of the scheme, which scheme had been approved and declared by the State Government.

(iv) There is a failure of public duty on the part of the State Government and the BDA in not adhering to the mandatory provisions of the Statute, resulting in favouritism to a particular class of persons which is violative of Article 14 of the Constitution.

(v) In singling out the appellant-Society which consists of only one class of persons who were the employed class of a particular institution, the BDA has favoured the appellant-Society.

(6) The appellant-Society filed its statement of objections in which the locus standi of the first-respondent-Society to file a Writ Petition was questioned. On merits it was stated therein that the combined effect of Sections 31 and 32 of the Act preserves the power of the BDA to permit the formation of a layout by parties other than the BDA. This of course is subject to the application with plans and other particulars contemplated u/s 32(2) of the Act as well as Section 14 of the Act. The provisions of the Rules are inapplicable to the private layouts sanctioned by the BDA on transfer of the property to it. Where therefore the BDA had acted in accordance with the provisions of Section 32 of the Act it cannot be called as a deviation of the scheme. What has been done by the BDA is nothing more than to sell a portion of the land acquired by it in favour of the appellant-Society. It had permitted the formation of a private layout. This is nothing more than an implementation of the approved scheme in furtherance of it and in achieving the object behind the scheme. It is true that the appellant-Society was called upon to pay Rs. 31,25,000/- as sale consideration. The object of the purchase was to have houses for the members of the Society at one place for their convenience, regularity and punctuality in attending to their office work and to bring about support and closeness among the family members. So far, the appellant-Society had invested in the housing project a sum of Rs. 67 lakhs

including the consideration for the sale, stamp duty, registration fee etc. The action of the BDA is legitimate and falls within the ambit of Section 69(2)(g) of the Act, and that the provisions of Section 69(2)(h) are not attracted.

(7) An additional statement of objections was filed by the appellant-Society wherein it was stated that an agreement with the BDA had been entered into on 11-8-1988. The same was registered. A work order was issued by the BDA along with the sanctioned plan on 14-12-1988. Thereafter the Society called for tenders and entrusted the contract to a contractor for Rs. 44 lakhs issuing the work order on 6-2-1989. The contractor has also been paid Rs. 1,75,000/- and the work is in progress under the supervision of the Engineering Department of the BDA in order to achieve the purpose of the scheme. The total extent of the project of the Society is more than a crore of Rupees out of which eighty lakhs had been contributed by the members with an assurance for further contribution.

(8) No statement of objections was filed either by the State Government or by the BDA.

(9) Our learned brother Balakrishna, J. who heard the Writ Petition Scheduled Caste, Scheduled Tribe, Minority Communities and Backward Classes Improvement Centre Vs. State of Karnataka, overruled the preliminary objection as to the maintainability of the Writ Petition holding that the aims and the objects of the first-respondent-Society are sufficient to constitute public cause and therefore the Writ Petition was not only maintainable but the petitioner did have a locus standi. Concerning the power of the BDA to make bulk allotment, the learned Judge relied on the Judgment of Rama Jois, J. reported in BDCC BANK EMPLOYEES CO-OP. SOCIETY LTD. v. THE BDA 1989(1) KarLJ 111. He also relied on the Judgment of Sopanna, J. who dealt with the scope of Section 38 of the Act in B. Venkataswamy Reddy Vs. State of Karnataka, Then he formulated his own conclusions holding that the land was acquired by the State Government and made over to the BDA for a specific purpose of executing an approved scheme and as such the land has to be utilised by the BDA solely for the purpose of execution of the scheme in the manner envisaged by the scheme and not beyond. The land is held by the BDA for the State Government in trust. A part of such land cannot be handed over to a Society however noble the purpose may be since it would be contrary to the intendment of the scheme and the Act and that would virtually amount to a fraud or a breach of trust. The appellant-Society cannot be described as an instrumentality of the BDA under the Act. Therefore, agreeing with the two decisions cited before him, the learned Judge allowed the Writ Petition and quashed the resolution of the BDA dated 23-7-1984 and the consequential letter dated 20-12-1984 calling upon the appellant to remit the cost of the land. Thus, this Writ Appeal.

2. W.A.No. 1696/88. This appeal is preferred against the decision of Rama Jois, J. dated 13th October 1988 in W.P.No. 12119/38, (BDCC Bank Employees Co-op. Society v. The BDA) holding that Section 38 of the Act will not empower the BDA to make bulk allotment. It is this decision which has been relied upon by

Balakrishna, J. as aforementioned in W.A.1229/90.

3. W.P.No. 17234/88. This Writ Petition is filed by two individuals as a public interest litigation. They have registered their names in the BDA in the year 1984. They had made attempts thrice by applying for allotment of sites in the prescribed form when the BDA formed layouts and offered sites for distribution but their applications have not been favourably considered. They have come to understand that the third-respondent-Society (NAL Employees Go-operative Housing Society Ltd.) got a bulk allotment in the first instance of 8 acres of land at Laggare Village, Yeshwanthapur Hobli. The same Society once again requested the BDA and the Government to allot some other alternative land on the ground that certain unauthorised constructions had come up on the land allotted at Laggare village and hence it was not possible to form a layout. On 9-7-1987 the BDA passed a Resolution No. 562 to ratify the action taken by the Commissioner in making bulk allotment of 8 acres of land in Sy.Nos. 50, 51 and 52 of Tavarekere village. Pursuant to that Resolution, the BDA by its letter dated 4-8-1987 addressed to the Secretary of the said Society, informed that the private layout in the said survey numbers had been approved. It is against this letter, this Writ Petition is preferred questioning the right of the BDA to make bulk allotment. Though these are the only facts as stated by the petitioners, from the chronology of events furnished by the said Society the facts are as under:-

The Society entered into an agreement with the owners of Sy.Nos. 182 and 27 (8 acres) in Laggere village to purchase the land. In 1975 the Society obtained No Objection Certificate from the Planning Authority to purchase and register the land. In June 1975, the Karnataka Vacant Lands in Urban Areas (Prohibition of Alienation) Ordinance was issued, as a result of which the Society could not purchase and register the land. Therefore in 1976 the Society approached the Government for grant of permission to purchase and register the land. In 1977 the Government approved the Society's request and issued orders to the Special Deputy Commissioner, Bangalore, to acquire this land, convert it for residential purposes and allot it to the Society. In 1978 the Society deposited Rs. 1,82,560/- with the Government as per the instructions from the Deputy Commissioner towards the cost of the land, conversion fine, statutory allowance and establishment charges. Further the Society also executed an agreement with the Government as per the Rules. In May 1978 the BDA came into existence and the Government issued instructions to the Deputy Commissioner to drop the acquisition proceedings, and simultaneously to the BDA to acquire the land, convert and develop it into sites and allot the same to the Society. In 1979 the land was acquired by the BDA. In September 1980 awards were passed and actual possession was taken by BDA in October 1980. The Chairman of the BDA wrote to the Deputy Commissioner to transfer the amount of Rs. 1,82,560/- to the accounts of the BDA. The BDA, in its Meeting held on 3-7-1987, by Resolution No.562, ratified the allotment of 8 acres in Sy.Nos. 50, 51 and 52 of BTM, approved the layout plan of the Society as modified by them and permitted the Society to take up the civil portion of the work under the supervision of the

BDA. On 4-8-1987 the Society received a letter from the BDA Commissioner conveying the said Resolution of the BDA dated 3-7-1987 to the Society. The letter also Indicated that the Society will have to pay the necessary supervision charges, development charges and the cost towards water supply under Cauvery III Stage Scheme. The Minutes of the Meeting of the BDA dated 3-7-1987 were confirmed in the Meeting of the BDA held on 7-8-1987 vide Subject No. 630. On 17-3-1988 the Society received a letter from the BDA informing the Society to pay a sum of Rs. 29,24,230/- towards layout charges excluding the charges for the civil portion of the work which was to be executed by the Society under the supervision of the BDA. Suo motu the cost of civil works inclusive of escalation charges was fixed at Rs. 8,67,324/-. The Society paid supervision charges of Rs. 65,050/-. On 2-6-1988 the Society registered the layout agreement with the BDA. The work order to execute the civil portion of the work as per the norms laid down by the BDA was issued to the Society on 13-6-1988. Thereafter the Society started the formation of the layout and is stated to have spent Rs. 6,50,000/-. It was at this stage this Writ Petition came to be filed.

4. W.P.No. 13818/90. In this Writ Petition also the challenge is to the bulk allotment made in favour of the third-respondent-Society (The Metropolitan Cooperative Housing Society Ltd., Vidhana Soudha, Bangalore), which is questioned as a public interest litigation. The BDA had made allotment of land measuring 20 acres in Hosur-Sarjapur Layout to the Society. The Society made a request to allot other alternative land on the ground that the land allotted earlier was not sufficient. The BDA at its Meeting held on 29-2-1988 in Subject No. 942 made bulk allotment of 20 acres of land comprised in S.Nos. 43 and 44 of Bommanahalli and S.Nos. 19, 27, 28, 29 and 30 of Roopena Agrahara. Sale Deed concerning this was executed on 9-6-1989. Here also it requires to be noticed that the Society applied to the State Government for bulk allotment and the State Government by its order dated 19-1-1988 directed the BDA to make bulk allotment of 20 acres of land within the jurisdiction of the BDA to the Society pursuant to which the allotment had come to take place.

5. W.P.No. 14130/90. What is challenged in this Writ Petition is the validity of the action of the BDA in allotting bulk land measuring 9 acres 25 guntas in Madivala Village in favour of the third-respondent-Society (The K.A.S. Officers Housing Building Co-operative Society, Bangalore). In the first instance, the BDA made a bulk allotment of land in favour of the Society In Doddigunta Village as per Resolution No. 625 dated 28-1-1985. Possession was also delivered. However, a request was made to allot some other alternative land as the, land allotted earlier was in litigation and it has not been possible to form a layout. The BDA at its meeting held on 13-12-1985 in Subject No. 989 made bulk allotment of 9 A 25 G of land as stated above. Subsequently the BOA also issued a Sale Deed on 23-6-1986.

6. Sri R. Krishna Murthy, learned Counsel for the appellant-Society in W.A.1229/90, after taking us through the various provisions, submits as under:-

The learned single Judge, following the decisions in *B. Venkataswamy Reddy Vs. State of Karnataka*, and 1989(1) Kar.L.J. 111 (BDCC Bank Employees" case), has held that there is no power to make bulk allotment. In the first of the cases, while discussing the scope of Section 38 of the Act a distinction is made, between two kinds of properties viz:

(i) with regard to moveable or Immovable property which belongs to the BDA; and

(ii) with regard to the property vested in or acquired by it for formation of open spaces or for building purposes of any development scheme.

His submission is that no distinction is permissible between the two kinds of properties. The method or manner of acquiring the property is of no concern because once the property is acquired or vested it means it belongs to the BDA. It does not matter how it belongs to the BDA.

No doubt Section 38 starts with the opening words:

"Subject to such restrictions, conditions and limitations as may be prescribed". But in the absence of any such prescription it cannot be contended that the power to dispose of is unavailable. For example, if the provision of a Section were to say subject to Rules, and if the Rules are not framed, that does not mean the power becomes unavailable. In support of this submission reliance is placed on *Surinder Singh Vs. Central Government and Others*, Similarly, in *T. Cajee Vs. U. Jormanik Siem and Another*, it has been held that once the power is substantially conferred under a Section, that power is not taken away in the absence of Rules. To the same effect is *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, where the language of a particular Section viz., Section 77 of the Hyderabad District Municipalities Act was subject to such exception. Where the Rules in a particular case require the prescription of form, failing such prescription it could not be said that the demand for tax would be illegal. It has been so laid down in *The Dargah Committee, Ajmer Vs. State of Rajasthan*, because the form cannot control the power to make a demand. No doubt in *K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras*, the words "subject to" have come to be interpreted as conditional upon. But that case is distinguishable because the Rules have been made. As a matter of fact this came up for interpretation in *D. Baliah and Others Vs. Secretary, Indian Detonators Limited*, and it has been interpreted as is urged now. In *Surajmull Nagarmull and Others Vs. The Commissioner of Income Tax*, which arose under the Income Tax Act, a contrary interpretation was given. But that again does not apply to the facts of this case. In *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, , *U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Others*, and *Surinder Singh's* case this principle had come to be adopted.

More than above all this, Section 14 of the Act when it delineates the objects of the Authority, it clearly says that the BDA is to promote and secure the

development of the Bangalore Metropolitan Area. With regard to this, it is to have power to acquire and dispose of moveable and Immovable property. Where therefore the object is spelt out from the Section and to carry out the objects the power is conferred it would be that it has the power. This power cannot be taken away by relying on Section 38 of the Act.

In view of the above submissions, the finding of the learned single Judges in the earlier rulings viz. B. Venkataswamy Reddy Vs. State of Karnataka, with regard to the scope of Section 38 as well as Section 19(4) of the Act cannot be held to be correct law.

7. Mr. R.N. Narasimha Murthy, Senior Advocate, appearing as intervener, adopts the arguments of Mr. Krishna Murthy, and further submits as follows:

Section 76 of the Act talks of repeal and savings. The Act does not confer exclusive power to the BDA to form layouts. u/s 32(2) the power to extend or form a layout is available to private persons also. With this background if Section 38 is looked at, it would be clear that the said Section does not exclude a development scheme formed by a person other than the BDA. Section 38 talks of two powers: (i) power of transfer and (ii) power to apply the land for the purpose of a development scheme. The latter power is not subject to such restrictions, conditions and limitations. Therefore, the power to apply or appropriate for any scheme is not controlled by any restrictions or conditions. A fortiori it cannot be contended that in the absence of prescription of such restrictions or conditions the power is unavailable.

8. Mr. U.L. Narayana Rao, learned Counsel appearing for the appellant in W.A. 1696/88, would urge that Sections 35, 36 and 37 of the Act deal with acquisition of land, property and finance of the BDA. The object of these Sections is to vest the property in the BDA. The meaning of "vest" is nothing more than vesting the title. The word "vest" has no fixed connotation as seen from Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust,

This apart, u/s 65 of the Act the Government has power to give directions for carrying out the purposes of the Act and one such direction is a direction to make bulk allotment. This shall be in accord with Section 14 of the Act.

9. Mr. G.V. Shantharaju, learned Counsel appearing for the petitioners in W.P.No. 17234/38, would urge that what is to be examined in the nature of the power, In so far as Section 38 of the Act does not confer an unconditional power, it is highly essential that there ought to have been a prescription.. In the absence of such a prescription the power cannot be exercised at all. He relies on Balakrishna Chetty's case where the words "subject to" have come to be interpreted as conditional upon. Once therefore the power is conditional upon the prescription of restrictions, limitations etc., it can never be urged that in the absence of prescription the power is available. If that be so it would amount to exercise of the power in an arbitrary fashion. It is no use contending that in such an event an individual exercise of power may be analysed to find out whether power has

been exercised arbitrarily or not. This is because there are no guidelines or conditions or restrictions on the touchstone of which it could be so examined and the arbitrariness could be so decided. Having regard to the scheme of the Act it is the BDA which has to prepare the scheme and develop the plots. That statutory duty is enjoined upon it. Therefore without doing the same contrary to the scheme and without development if a bulk allotment is made and the lands are sold away it is clearly without jurisdiction whatever.

Even Section 14 of the Act cannot be called in aid because one must have regard to the word "development" occurring in this Section. To ascertain the meaning of "development" one must look at Section 2(j) of the Act. It talks of building, engineering etc. From this it will be clear that the lands without development viz., virgin lands cannot be transferred at all. Further, Section 19 Sub-section (3) throws a mandate on the BDA to complete the scheme. In addition to the above, u/s 53 directions can be given by the BDA for developmental activities in order to carry out the purposes of the Act. It was from this point of view it was held by the learned single Judge relying on two earlier decisions which have great bearing on the issue, that the action of the BDA in making bulk allotment is unwarranted.

With regard to Section 38, there is also a classification between two kinds of land viz., lands which belong to the BDA as against lands which come to be acquired and come to be vested in it. If the Statute itself makes a distinction it is not open to obliterate that distinction. Therefore, the contention urged on behalf of the appellant cannot be supported at all.

10. Having regard to the importance of the case, we requested the learned Advocate General to assist the Court. His submissions are as under:-

Sections 35 and 33 of the Act deal with acquisition of land. These two Sections occur under Chapter IV, u/s 35 the BDA is enabled to purchase the land or any interest therein. This power again is subject to the provisions of the Act. Further the purchase must be with the previous approval of the Government.

Under Section 36 the acquisition of land otherwise than by agreement is talked of. Under Sub-section (3), after the land vests in the Government it may be transferred to the BDA whereupon it vests in the BDA.

Besides these two, the Government have also power to transfer and vest in the BDA any land belonging to Government or to a Corporation or a Local Authority. This is what is contemplated u/s 37 of the Act.

Section 38 appears in this context. Therefore, with reference to the preceding Sections the power of lease, sale or transfer is talked of 3 kinds of properties are contemplated by the Act. Hence it must be deemed that three different meanings were thought of. The property belonging would be referable to Section 35 in addition to it being a statutory successor to the C.I. Trust. Property acquired and vesting would be referable to Section 36. In case of vesting u/s 37 three kinds of

properties are covered:

- (a) land belonging to Government;
- (b) land belonging to Corporation;
- (c) land belonging to Local Authority.

The entire Act talks of development. As to what is meant by development can be gathered u/s 2(j) of the Act which includes carrying out of building, engineering etc. Therefore the development scheme is important. It is dealt with in Chapter-III. Sections 15 to 19 deal with the same. Section 19 also talks of power to acquire. Therefore with reference to lands acquired or vested, the power is to apply and appropriate only for development scheme. As to what exactly is the nature of the scheme is covered by Section 19. It was this aspect which the learned single Judge (Rama Jois, J) highlighted. From this point of view it would be clear that where the power is only for development the bulk sale is not contemplated at all.

With regard to the scope of Section 38 it clearly postulates power being exercisable subject to such restrictions, conditions and limitations as may be prescribed. If according to the appellant even in the absence of prescription such a power is available, such power then would be unguided and arbitrary. Having regard to the scheme and the object, a restricted power on the BDA alone is contemplated. "Subject to" therefore must be read as conditional upon. This was the line of interpretation in Balakrishna Chetty's case? He would commend the acceptance of this principle. In *M. Royappa Goundar and Another Vs. The Commercial Tax Officer, Erode and Another*, where again "subject, to prescription of Rules" came up for consideration, in the absence of such prescription it was held the power was unavailable. This Ruling of the Madras High Court came to be approved by the Supreme Court in *State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others*, . In exercise of the Rule making powers u/s 69 of the Act, three sets of Rules have been framed:-

- (i) B.D.A. (Allotment of Sites) Rules.
- (ii) B.D.A. (Disposal of Corner Sites and Commercial Sites) Rules.
- (iii) B.D.A. (Allotment of Buildings under Self Financing Housing Scheme) Rules.

Under all these three sets of Rules, the BDA is invested with the power to transfer. Therefore, only such of those transfers as are permitted under the Rules alone will be legal, and none else. Consequently, the question of sale cannot arise.

Section 14 of the Act confers a general power. But Section 33 specifically talks of disposal of the property. Where therefore a special power is conferred that special power excludes the general power. If it is not so construed, Section 38 may become redundant. That Rule of interpretation will have to be avoided.

Under Section 65 no doubt the Government is enabled to issue directions. But that is only to carry out the purposes of the Act. The purpose of the Act is to develop and frame schemes. Only in that regard the Government can issue directions. Therefore Section 85 also may not be available to authorise an illegal act.

11. Learned Counsel appearing for the petitioners in W.P.Nos. 13818 & 14130/90 adopt the arguments of Sri G.V. Shantharaju as well as those of the learned Advocate General. Therefore they urge that the actions questioned in the Writ Petitions will have to be set aside.

12. Mr. A.N. Jayaram, Senior Advocate, appearing for the third-respondent-Society In W.P.No. 13818/90 (The Metropolitan Co-operative Housing Society), would submit that in this case the Government being satisfied as to the bona fides of the request made by the Society issued an order dated 19-1-1988 u/s 65 of the Act directing the BDA to allot 20 acres of the land to the Society. It was In compliance with this direction the BDA passed the Resolution on 29-2-1988 and effectuated the direction of the Government issued u/s 65 by executing the Sale Deed dated 9-5-1989. The fact that the above conveyance was effected only pursuant to the direction of the Government is expressly stated in the Sale Deed itself. This fact has been suppressed specifically by the petitioners. No reference to Section 65 is made. As a matter of fact it is conspicuous by its absence. On the contrary it is made to appear that in allotting the land and effecting the conveyance in favour of this Society the BDA purported to exercise its own powers under the Act. The entire case of the petitioner is that the BDA has no power to make bulk allotment to anyone. It is submitted that no question of power of the BDA to allot 20 acres to this Society would arise for consideration. The only relevant provision will be Section 65 of the Act. First part of the said Section empowers the Government to issue statutory directions to the BDA, while the later part of the Section casts a statutory duty on the BDA to comply with the statutory direction. Once such a direction is issued it becomes the statutory duty of the BDA to effectuate it by passing a resolution and executing the conveyance. Therefore, the Writ Petition, as framed, is not maintainable, and is liable to be dismissed. This Court will have to treat a statutory order issued by the Go eminent u/s 65 as invalid only when the right remedy is sought by the right person in the right proceedings. In the Writ Petition as framed no relief is sought for as regards the Government Order. In fact that is not even referred to.

Without prejudice to the above, one must have regard to Sections 14, 37(3) and 65 of the Act. Section 14 is the repository of wider power. The object is to promote and secure the development. Therefore the BDA Itself may promote or secure the development, the meaning of development to be gathered u/s 2(j). Where therefore it could be secured by agencies other than the BDA there cannot be anything wrong in so securing the development. Section 15(2) talks of development schemes of three types viz.

(i) suo motu development;

(ii) local authority?

(iii) otherwise.

Under Section 37(3) re-vesting of such land as is not required by the BDA in the Government is also thought of. Reading the Act as a whole it appears the Government's power is not subject to any restrictions while the power of the BDA is subject to such restrictions as found in the Act. The learned Counsel refers to Wade Administrative Law Page 286 and says as to when an administrative order could be challenged. An order even when, not made in good faith must be held to be valid as laid down in *Municipal Corporation of The City of Jabalpur Vs. State of Madhya Pradesh*, .

13. Mr. B.K. Sampath Kumar, learned Counsel for third-respondent-Society (N.A.L. Employees Co-operative Housing Society) in WP. 17234/88, adopts the arguments of Mr. Jayaram and says that though Section 38 uses the words "belong", "vest" "acquire", they cannot have separate meanings. It requires to be noted that this Section corresponds to Section 29 of the City Improvement Trust Act. He also refers to Maxwell's Interpretation of Statutes 12th Edition and cites various decisions for fortifying his submission as to how a particular section or the various provisions of the Act require to be interpreted. If so construed, Sections 14 and 33 put together would clearly confer this power. In this case the Society is fortified by an order of the Government. Even if the order of the Government is bad u/s 65, it has to be upheld. He relies on the Headnote in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . Further reliance is placed in *Busching Schmitz Private Limited Vs. P.T. Menghani and Another*, .

14. Having regard to the above arguments, two questions arise for our determination namely:-

(i) Under the provisions of the Bangalore Development Authority Act, 1976, whether the Bangalore Development Authority has power to make bulk allotments, and what is the scope of Section 38?

(ii) Whether the Government have power to issue directions to make bulk allotments u/s 65?

15. We will now refer to the salient features of the Act and the Rules framed there under.

The Act was enacted in 1976. It is an Act to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. Section 2 is the Definitions Section. Section 2(j) defines "development" as under:-

"(j) "development" with its grammatical variations, means the carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes re-development."

Section 3 talks of Constitution and incorporation of the Authority and Sub-section (2) says as follows:

"(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and Immovable and to contract and shall by the said name sue or be sued."

As to what are the objects of the Authority can be gathered from Section 14 of the Act. The objects as stated therein are: (i) to promote and secure the development of the Sangalore, Metropolitan Area, (ii) for that purpose the Authority shall have the power to acquire, hold, manage and dispose of movable and Immovable property and (iii) to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto.

Chapter-III talks of Development Schemes. Section 15 deals with power of the BDA to undertake works and incur expenditure for development etc. Section 16 catalogues particulars to be provided for in a development scheme. Section 17 delineates procedure on completion of scheme. Section 18 deals with sanction of the scheme. Section 19 lays down the statutory obligation upon sanction of the scheme, of a declaration to be published giving particulars of the lands to be acquired. A combined reading of these Sections clearly postulates the following:

(a) The BDA to draw up detailed schemes for the development of the Bangalore Metropolitan Area and incur expenditure therefor;

(b) This development can take place either suo motu or on the recommendation of the Local Authority;

(c) Notwithstanding that, the Government may itself require the BDA to take up any development scheme;

(d) When a scheme is completed a notification is to be made which has to be sent to the Corporation which with its representation may send back to the BDA for forwarding to the Government;

(e) The BDA has also to publish in the Official gazette the proposed scheme and invite objections;

(f) Thereafter the representations shall be considered and the scheme be sanctioned;

(g) Should any development scheme provide for construction of houses, the BDA is to submit to Government the plans and estimate for construction of house, which alone shall sanction on consideration of all this;

(h) Upon sanction, the Government shall publish in the Official Gazette not only the fact of sanction but also the land proposed to be acquired by the Authority for the purpose of the scheme; to that effect a declaration shall be issued.

Sub-section (3) of Section 19 states in categorical terms as follows:-

"The said declaration shall be conclusive evidence that the land is needed for a public purpose and the Authority shall, upon the publication of the said declaration, proceed to execute the scheme."

Therefore, it leaves no doubt that the development scheme is to be prepared by the BDA, the Government is to sanction, and the execution of the scheme is left in the hands of the BDA.

It requires to be noted that u/s 27 within a period of 5 years from the date of publication in the Official Gazette of the declaration under Sub-section (1) of Section 19, should the BDA fail to execute the scheme substantially, the scheme shall lapse. Thereafter, the provisions of Section 36 shall become inoperative.

The next Section to be looked at is Section 32, That deals with formation of layouts or making new private streets. It opens with a non-obstinate clause which is suggestive of the fact that it is open to any person to form an Extension or Layout for the purpose of constructing buildings thereon. But that shall be subject to the sanction in writing of the BDA and only subject to those conditions.

16. Chapter-IV deals with acquisition of land. u/s 35 the BDA is empowered to enter into an agreement with the owner of the land for the purchase of the same. But this power is subject to the provisions of the Act, and further it could be so done with the previous approval of the Government.

Section 36 talks of acquisition of land under the provisions of the Land Acquisition Act, 1894. Where u/s 16 of the Land Acquisition Act the property vests in the Government, it will come to vest in the BDA on payment of the cost of acquisition and the transfer of the land by the Government to the BDA.

Besides these two modes of acquiring property, there is yet another mode u/s 37(1). It deals with the power of the Government to transfer to the BDA the lands belonging to the Government or to the Corporation or to a Local Authority. Here again that power is exercisable by the Government (i) through notification and (ii) subject to such limitations and conditions. Should any of the lands be not required by the BDA for the purpose of the Act, it shall revert in the Government.

17. Then comes the important Section to be considered viz., Section 38 of the Act. That we will extract in full:-

"38. POWER OF AUTHORITY TO LEASE, SELL OR TRANSFER PROPERTY.

Subject to such restrictions, conditions and limitations as may be prescribed, the Authority shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme."

At this juncture, it is enough to note the salient features of this Section since in

the later part of our Judgment we propose to deal with it at some detail.

- (1) Subject to such restrictions, conditions and limitations as may be prescribed;
- (2) The BDA shall have power to lease, sell or transfer any movable or immovable property which belongs to it;
- (3) And to appropriate or apply any land vested in or acquired by it;
- (4) For the formation of open spaces;
- (5) Or for building purposes;
- (6) Or in any other manner for the purpose of any development scheme.

Therefore, there are three kinds of properties that are contemplated in this Section i.e.,

- (i) land which belongs to the BDA;
- (ii) land which is vested in the BDA; and
- (iii) land acquired by the BDA.

As to whether these lands could be disposed of for any purpose other than the development, we will consider later.

18. The last Section is Section 55 dealing with Government's power to give directions to the BDA. Under this Section, the Government is enabled to give directions to the BDA as are necessary or expedient for carrying out the purposes of the Act; as and when directions are given it shall be the duty of the BDA to comply with such directions.

19. In the above legal background, we propose to deal with the two questions formulated above for determination.

The Act was passed in the year 1976 as seen above. By that Act, u/s 76, the City of Bangalore Improvement Act, 1945, stood repealed. u/s 73, this Act was to have the overriding effect notwithstanding anything inconsistent under any other law. It was further provided u/s 68 that the "Housing Board established under the Karnataka Housing Board Act, 1962, shall not undertake any housing scheme except in conformity with the layout plan approved by the BDA. Even while undertaking the housing scheme it has to be executed by the Housing Board in accordance with the scheme as published, provided the scheme was undertaken prior to the commencement of the Act, Thus it could be seen that the Act is a complete code in itself with regard to the development. As to what is the meaning of "development" we have already extracted Section 2(j) of the Act. In 1985, the Government took a policy decision to the following effect:-

"(a) The Revenue Department shall not acquire any more land in Bangalore Metropolitan Area for Housing Co-operative Societies, The Housing Co-operative Societies shall have to approach the Bangalore Development Authority for their

requirement of land. Hereafter, the Bangalore Development Authority shall be the only agency to acquire land for housing purposes in the Bangalore Metropolitan Area.

(b) The Revenue Department can continue with the acquisition for the 35 societies first referred to the Three Member Committee constituted in Government Order No. RD 100 AQB 33 dated 1-6-1984 and also the 34 additional cases sent subsequently to the Committee. Acquisition in these cases will be subject to the clearance given by the Three Member Committee.

(c) All the transfers of land in Bangalore Metropolitan Area to Housing Co-operative Societies should be frozen and should not be registered. Conversion of agricultural land in favour of Housing Societies must be prohibited. Revenue Department will take necessary steps to issue executive orders or amend the Law/Rules to implement this decision.

(d) The Bangalore Development Authority apart from distribution of sites, must take up group housing in order to tackle the housing shortage more effectively.

(e) The extent of land to be allotted by the Bangalore Development Authority to a single Housing Society must be limited to about 20 acres. A condition may be imposed at the time of allotment that the Society must go in for group housing or multistoreyed flats, keeping in view the building byelaws.

(f) The Three Member Committee consisting of Registrar of Co-operative Societies, Joint Secretary to Government, Housing and Urban Development Department and Special Deputy Commissioner, Bangalore, constituted by Government by their Order No. RD 100 AQB 83 dated 1-6-1984 may be designated as the Committee to consider all cases pertaining to registration of new House Building Co-operative Societies in Bangalore Metropolitan Area.

The departments concerned with the above decision will take further necessary action, immediately to implement the above decisions."

(G.O.No. HUD 113 MNK 85 Dated 18-6-1985)

As a matter of fact, we heard arguments saying that because of this there is no other go for the aforementioned Societies than to approach the BDA for allotment of land. It has already been seen that Section 38 of the Act deals with 3 kinds of properties. As to whether the properties can be sold for any purpose other than development, there are two cases which require to be noticed. In B. Venkataswamy Reddy Vs. State of Karnataka, Bopanna, J, in paragraph-9 at page-82 states as follows:-

"On the plain terms of Section 38, it consists of 2 parts. The first part deals with the power of the B.D.A. to lease, sell or otherwise transfer any movable or immovable property which belongs to it. The second part deals with the power of the B.D.A. to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the

purpose of any development scheme. The comma after the first part of Section 38 makes it clear that these 2 parts should be read disjunctively and not conjunctively. So there is a distinction between the power of the B.D.A. in regard to movable and immovable properties which belong to it and the power of the B.D.A. to appropriate or apply any land vested in it or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. The legislature having used 2 different expressions to indicate the powers of the B.D.A, as regards movable and immovable properties belonging to it and property vested in it or acquired by it, this Court has to go into the intendment of legislature by giving proper meaning to the words "belongs to it" and the words "vested in or acquired by it". The B.D.A. can independently of the proceedings under the Land Acquisition Act acquire land as is evident from Section 3 read with Section 35 of the Act. Sub-section (2) of Section 3 of the Act enables the B.D.A. to acquire, hold and dispose of both movable and immovable property. Section 35 and Section 36 come under Chapter IV of the Act and that Chapter deals with Acquisition of Land."

Again, about the combined reading of the various Sections, the learned Judge says at Page 84:

"In my view, Sections 13, 14 and 19 on which the learned Counsel for the petitioners have relied do not throw any light on the proper construction of Section 38 of the Act. These provisions come under Chapters II and III of the Act which deal with the general working of the B.D.A. and not with the power of the B.D.A. to acquire land otherwise than under the provisions of Section 35 of the Act. In my view, for a proper construction of Section 38 of the Act, provisions of Sections 35, 36 and 37 of the Act should be taken into consideration since these are the provisions which come under Chapters IV and V of the Act and have a bearing on the power of the B.D.A. to acquire land otherwise than by private agreement. u/s 35 of the Act, the power of the B.D.A. to enter into an agreement with the owner of any land cannot be disputed. In these cases, the land in question was not purchased by entering into private agreements. u/s 36(1) the acquisition of land under the Act otherwise than by agreement is regulated by the provisions, so far as they are applicable, of the Land Acquisition Act. That means to say, under the Land Acquisition Act the State Government, as in these cases, is the authority to acquire the land. That is also clear from Sub-section (3) of Section 36 of the Act which lays down that "After the land vests in the Government u/s 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the costs of the acquisition and upon the Authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority." This is further clear from Section 19(1) of the Act since the Government shall publish in the Official Gazette the declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose. u/s 37 of the Act the

Government has got additional power to transfer to B.D.A. or to vest in B.D.A. any land belonging to it or to the Corporation or to a Local Authority. That is in addition to the power u/s 36 to acquire the land under the Land Acquisition Act and vest the same in B.D.A. on payment of costs of acquisition and further costs u/s 36(3) of the Act. u/s 37(3) of the Act, the Government by notification in the Gazette has the power to re-vest in itself or transfer to itself or the Corporation or the Local Authority concerned the land in question if the same is not required by the B.D.A. for the purpose of the Act or any other land vesting in the B.D.A. is required by the Government or Corporation or a Local Authority. So, if Sections 36, 37 and 38 of the Act are read together it is clear that a distinction is made between the power of the B.D.A. to sell or otherwise transfer any movable or immovable property belonging to it and the power of the B.D.A. to appropriate or apply the land vested in or acquired by it for the formation of open spaces or building purposes or for any other development scheme."

On this line of reasoning, he concluded in paragraph-10 as under:-

"Now the point for consideration is whether the land in question comes under the first part of Section 38 or under the second part of Section 38 of the Act. Admittedly, the land did not belong to the B.D.A. since the same was not purchased under the provisions of Section 35 of the Act i.e., by agreement between the parties. The lands were acquired by the Government under the provisions of Section 36(1) and they vested in the B.D.A. under the provisions of Section 36(3). If that be so, these lands come under the second part of Section 38 of the Act, i.e., the B.D.A. had power to appropriate or apply any land vested in it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. That is to say, the resolutions in question passed by the B.D.A. could have been within its powers if they had related to lands belonging to it and not the land which had vested in under the provisions of Section 36 of the Act. That should be the proper construction as is evident from the entire scheme of the Act. The scheme is for the development of the City of Bangalore and the area adjacent thereto and for matters connected therewith and with that object the B.D.A. was constituted. The legislature created this authority with that object in view and it has also empowered the State Government to lend a helping hand to it by invoking the provisions of the Land Acquisition Act, So the B.D.A. is freed from the various legal procedure that will have to be complied with for acquiring the land for its development schemes. The same pattern of legislation is found in similar other acts, viz., K.I.D. Act, Karnataka Area Development Boards Act etc. If the B.D.A. were to be given the power to reconvey the land vested in it, by exercising the power u/s 13 of the Act, that would be self-defeating and destructive of the purpose of constituting a special authority for the development of the City of Bangalore. Thus construed, both the resolutions in favour of the petitioners in both the petitions are without jurisdiction and void and once it is held that the resolutions are void the petitioners cannot seek any other right either by acquiescence or by the principle of promissory estoppel."

Another case which requires to be noticed is 1989(1) Kar.L.J. 111 (BDCC Bank Employees Case). In this decision, Rama Jois, J. has followed the above decision of Bopanna, J and held that the B.D.A. has no power to make bulk allotment of lands acquired under the provisions of the Act for the purposes of a development scheme, in favour of a Co-operative Society. It may also be noticed that similar views came to be expressed by K.A. Swami, J. in B.N. Sathyanarayana Rao Vs. State of Karnataka, to which also the learned Judge (Rama Jois, J). has made a reference. We are in respectful agreement with this view.

20. We are unable to agree with Mr. Krishna Murthy and the other learned Counsel appearing for the Societies in these cases, that no distinction is permissible between the two kinds of properties. We cannot ignore the fact that the Legislature has specifically used the words "belongs", "vested" or "acquired". We accept the submission of the learned Advocate General in this regard that three kinds of properties are contemplated. It cannot be said that the word "vest" would take within it all the properties. The argument of Mr. Krishna Murthy that if compartmentalisation is made the property vested and acquired will not be belonging to the B.D.A. again is not tenable. In fact there is no anomaly because the latter half of Section 38 of the Act uses the word "acquired". In the context in which Section 38 appears, we are of the view that the words "belonging", "vest" and "acquire" must have their full meaning and the only way to construe will be the kinds of properties that are contemplated under this Section are three in number.

Mr. U.L. Narayana Rao would contend that the word "vest" would mean vesting the title, and cites in support of the same *F & V Merchants Union v. Improvement Trust, Delhi*. In paragraph-19 at page 353, it was observed as follows:

"19. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand Sections 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in

title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54A When they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

We think that this principle is unexceptionable. Having regard to the specific usage of the language denoting three kinds of properties, this principle cannot be made applicable in interpreting Section 38 of the Act.

21. There is yet another facet of Section 33 of the Act which requires to be carefully seen. It opens with the words: "Subject to such restrictions, conditions and limitations as may be prescribed". Admittedly, three sets of Rules have been framed viz:

(1) The Bangalore Development Authority (Allotment of Sites) Rules, 1982.

(2) The Bangalore Development Authority (Allotment of Buildings under Self Financing Housing Scheme) Rules, 1982.

(3) The Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) Rules, 1984.

Barring these, there are no other prescriptions. One method of construction will be, if these are taken to be the prescriptions they alone shall prevail with regard to any transfer. Outside these Rules, no other general power can be invoked. But we will consider from a larger point of view whether, when there is no prescription the BDA can transfer the properties as it likes, in which event, whether the individual action of transfer could be examined on merits or it could be determined whether it is arbitrary or not.

22. As to what is the meaning of "Subject to", we will now refer the case law on this topic.

In *T. Cajee v. U. Jormanik Singh* the question arose whether the District Council could exercise its powers to appoint and remove the personnel for carrying on administration without the necessary regulations being made. This was answered at page 281 as follows:-

".....It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration, it is not necessary - even though it may be desirable - that there must be Laws, Rules or Regulations governing the appointment of those who would carry on the administration under the control of the District Council. The Sixth Schedule vested the administration of the autonomous districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on by officers like the Stem or Chief and others below him, and it seems to us quite

clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further once the power of appointment falls within the power of administration of the district, the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under paragraph 19(1)(b) or till the District Council passed laws under para 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para 19(1)(b) or laws are passed under para 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under para 3(1)(g) cannot be sustained."

It requires to be noted that in this case paragraph 3(1)(g) of the Schedule was held to be something like a legislative list and enumerates the subjects on which the District Council is competent to make laws and the power of appointment and removal was always available under the general power.

Here there is no such power. Though reliance is placed on Section 14 of the Act, in this regard we have to hold that Section 14 is only a general power while delineating the objects of the Authority. But where there is a special power u/s 38 that would certainly exclude the general power.

In *M. Pontiah v. Veeramallappa* in para-15 at page 1112 it was observed as follows:-

"15. Even so, learned Counsel for the appellants contends that the Municipal Committee had no power to sell the land acquired by it for constructing a market. To appreciate this contention it would be convenient to notice the relevant provisions of the Act. u/s 72(f) all land or other property transferred to the Committee by the Government or the District Board or acquired by gift, purchase, or otherwise for local purposes shall vest in and be under the control of the Committee. Section 73 enables the Government, in consultation with the Committee, to direct that any property, movable or immovable, which is vested in it, shall vest in such Committee. Section 74 empowers the Government on the

request of the Committee to acquire any land for the purposes of the Act. u/s 75 the Committee may, with the sanction of the Government, transfer to the Government any property vested in the Committee u/s 72(f), 73 and 84, but not so as to affect any trust; or public right subject to which the property is held. Learned Counsel contends that, as the land was acquired by the Committee for the construction of a market, the Committee has power to transfer the same to the Government only subject to the conditions laid down in Section 76, and that it has no power to sell the land to third parties. This argument ignores the express intention of Section 77 of the Act. Section 77 says: "Subject to such exceptions as the Government may by general or special order direct, no Committee shall transfer any immovable property except in pursuance of a resolution passed at a meeting by a majority of not less than two-third of the whole number of members and in accordance with Rules made under this Act, and no Committee shall transfer any property which has been vested in it by the Government except with the sanction of the Government;

Provided that nothing in this Section shall apply to lessee of immovable property for a term not exceeding three years."

This Section confers on the Committee an express power couched in a negative form. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative. If the Section is recast in an affirmative form, it reads to the effect that the Committee shall have power to transfer any immovable property, if the conditions laid down under the Section are complied with. The conditions laid down are:

(1) there shall be a resolution passed at a meeting by a majority of not less than two-third of the whole number of members of the Committee; (2) it shall be in accordance with the Rules made under the Act; (3) in the case of a property vested in it by the Government, the transfer can be made only with the sanction of the Government; and (4) the sale is not exempted by the Government, by general or special order, from the operation of Section 77 of the Act. It is not disputed that the relevant conditions have been complied with in the present case. If so, the power of the Committee to alienate the property cannot be questioned."

Here once must have regard to the language of Section 77 which states "Subject to such exceptions". This means in the absence of such exceptions the power is still available. That is not the case before us.

In *Dargah Committee v. State of Rajasthan* the question arose whether the demand made by the Ajmeer Municipality u/s 222 Sub-section (1) of Ajmeer-Merwara Municipalities Regulation could be enforced without prescribing the manner of making demand. In paragraph-7 at page 578 it was held as under:

"Mr. Chatterjee also attempted to argue that the proceedings u/s 234 taken against the appellant by respondent-2 were incompetent because a demand has not been made by respondent-2 on the appellant in the manner prescribed by

Rule as required by Section 234. It does appear that Rules have not been framed under the Regulation and so no form has been prescribed for making a demand u/s 222(1). Therefore the argument is that unless the Rules are framed and the form of notice is prescribed for making a demand u/s 222(1) no demand can be said to have been made in the manner prescribed by Rules and so an application cannot be made u/s 234. There are two obvious answers to this contention. The first answer is that if the revisional application made by the appellant before the High Court was incompetent this question could not have been urged before the High Court because it was part of the merits of the case and so cannot be agitated before us either. As soon as it is held that the Magistrate was not an inferior criminal Court the revisional application filed by the appellant before the High Court must be deemed to be incompetent and rejected on that preliminary ground alone. Besides, on the merits we see no substance in the argument. If the Rules are not prescribed then all that can be said is that there is no form prescribed for issuing a demand notice; that does not mean that the statutory power conferred on the Committee by Section 222(1) to make a demand is unenforceable. As a result of the notice served by respondent 2 against the appellant respondent 2 was entitled to make the necessary repairs at its cost and make a demand for reimbursement of the said cost. That is the plain effect of the relevant provisions of the Regulation; and so, an amount which was claimable by virtue of Section 222(1) does not cease to be claimable just because Rules have not been framed prescribing the form for making the said demand. In our opinion, therefore, the contention that the application made u/s 234 was incompetent must be rejected."

It would be clear from a reading of the above extract that a form cannot control the power to make a demand.

Therefore, none of the above cases has any application in construing Section 38 of the Act.

23. On the contrary, the words "Subject to" have been interpreted as "conditional upon" in *Balakrishna & Sons v. State of Madras* in which it was held as follows:-

"But it was contended that the words "subject to" do not mean "conditional upon" but "liable to the Rules and the provisions" of the Act. So construed Section 5 will become not only inelegant but wholly meaningless. On a proper interpretation of the Section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the Rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon".

However, Mr. Krishna Murthy would urge that this is a case where Rules have

been framed and therefore this case is distinguishable. We are unable to accept this contention. When the very words "Subject to" have been so interpreted as "conditional upon" it is not possible for us to give any other interpretation. This Judgment K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras, has been referred to in D. Ballah v. Secretary, Indian Detonators Limited in which it was held in paragraph-7 as follows:

"7. It is however argued by the petitioners that the proviso says that this deduction is subject to Rules made in this behalf, and there " are no Rules made with regard to due deductions in the case of absence from duty. The argument is that since there are no Rules, the proviso itself cannot come into operation as the proviso says that it is subject to any Rules. We are unable to agree with this contention. According to us, the correct interpretation of the proviso is that the deductions can be made in accordance with the terms of the proviso, but if there are any .Rules framed, the deductions can be made only according to the said Rules. In other words, the proviso is subject to Rules, if any, made by the State Government. If there are no Rules made, then the deductions can be made according to the proviso. In this case the Rules have not been made. Therefore, the employers were right in making deductions in accordance with the proviso. If the contention of the petitioners is to be accepted, then no deductions can be made at all in the absence of Rules. This could not have been the intention of the Legislature, nor does the language of Section 9(2) lend itself to any such construction. The learned Counsel for the petitioners relied upon the decision in K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras, where it was observed that the expression "subject to" means "conditional upon". It was therefore argued that the operation of the proviso is conditional upon the enactment of the Rules. This argument in our view proceeded upon an improper appreciation of the decision of the Supreme Court. In that case Section 5 of the Madras General Sales Tax Act provided that subject to such restrictions and conditions as may be prescribed including the conditions as to licences and licence fees, the sale of bullion and specie, of cotton, of cotton yarn and of any cloth woven on handlooms and sold by persons dealing exclusively in such cloth shall be exempt from taxation u/s 3. The expression "prescribed" was defined in Section 2(f) as "prescribed by Rules made under the Act". A licence had been granted to the petitioners u/s 8 of the Act. The petitioners were sought to be assessed under the provisions of the Act to sales tax. They contended that as long as they held the licence, they were not liable to any assessment of sales tax as u/s 5 the sale of cotton yarn with which the petitioners were concerned was exempt from taxation. They contended that it was immaterial if they were guilty of infraction of any law or of breach of the terms and conditions of the licence. In support of their contentions, they relied on the opening part of Section 5 which said that it was subject to such restrictions and conditions as may be prescribed. The Supreme Court held that the giving of licence itself was subject to conditions to be observed by the licensee, and the licence was issued subject to the Act and the Rules. On a proper interpretation of Section 5, it only meant that the

exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the Rules or in the licence itself. In other words, the licensee was exempt from assessment as long as he conformed to the conditions of the licence and not that he was entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. It is in this context that they stated that the correct meaning of the use of the words "subject to" is "conditional upon". We do not think that the decision of the Supreme Court has any relevance to the facts and circumstances of this case. In this case, no Rules at all have been framed with reference to deductions for absence from duty. No doubt under the general Rule making power conferred u/s 26 of the Act, the Andhra Pradesh Payment of Wages Rules, 1937 were made, Rule 16 is stated to be made under the power conferred u/s 26(3)(g) of the Act which authorises Rules to be made with reference to the proviso to Section 9(2). But on a reading of Rule 16, it is found that it relates to deduction for breach of contract. Therefore, it is obviously a mistake to call that Rule as a Rule made under Section 26(3)(g) as it does not deal with, the matters referred to in the proviso at all. Hence it must be taken that there is no Rule relating to the deductions in the case of absence from duty and with regard to matters referred to in the proviso to Section 9(2). We are, therefore of the view that the decision of the Supreme Court stated above is of no assistance to the petitioners. We are unable to agree with the contention that unless and until such Rules are made, the proviso does not come into operation and the authorities are not entitled to deduct 8 days, wages which is permissible under the proviso."

In our considered view in understanding these observations, one must have regard to the proviso to Section 9(2) which says "Provided that, subject to any Rules made in this behalf by the State Government.....". The words "any Rules" have great significance. The reason why we hold so is, in *Surajmul v. I.T. Commissioner* in which the question arose was, u/s 37(2) of the Income Tax Act, 1922, when it stated "Subject to any Rules made in this behalf" whether the existence of Rules is not a condition precedent to the exercise of the power of search and seizure under that Section, *Sinha, J.* observed as follows in paragraph-67:-

"67. It will be necessary to clear the ground by deciding point No. 3(i) first. If Sub-section (2) never came into operation until Rules were framed in this behalf, then, indeed, it is unnecessary to proceed further, because the two authorisations were made and the search and seizure effected at a point of time when no Rules had been framed and consequently, the entire operation would be contrary to law. It will be observed that the expression used is "subject to any Rules made in this behalf". This should be construed with the expression used in Section 10(7) which lays down that the profits and gains of any business of insurance and the tax payable thereunder shall be computed..."in accordance with the law contained in the schedule to this Act". In Section 58(j)(3) the expression used is "subject to such Rules as the Central Board of Revenue may

make in this behalf". There must be some difference between these expressions. Where the expression used is "in accordance with the Rules" there is no difficulty. In such a case, the Rules must come first, otherwise there cannot be anything "in accordance" with it. But where the expression is "subject to Rules", I do not see why the Rules must necessarily come first. "The particular provision may itself lay down the law, which may be supplemented or modified by statutory Rules framed in that behalf. Where, of course, it is found that the existing provisions in a statute cannot possibly be given effect to, without the framing of Rules, that is a different matter. If however, it is possible to give effect to the provisions as they stand, then I do not see the justification in holding that the provision does not come into force until Rules are framed simply because it has been made "subject to any Rules made in this behalf." In my opinion, it is possible to give effect to the provisions of law contained in Sub-section (2) of Section 37, even without Rules. Consequently, this argument fails. Our attention has been drawn to Section 41 of the Arbitration Act, 1940 which lays down that "subject to the provisions of this Act and of Rules made thereunder", the provisions of the CPC should apply to all proceedings before the Court etc. It has never been argued that the Code did not apply until Rules were framed."

In paragraphs 101 and 102 P.M. Mookerjee, J. has observed as under:-

"101. The point of construction, apart from the constitutional aspect, has been put by Mr. Sanyal on the several parts of the impugned Section [Section 37(2)] as follows:-

He has argued first that, as the subsection opens with the words "subject to any Rules made in this behalf", its proper interpretation would be that until and unless Rules are made, the powers given under the Section could not and should not operate and could not and should not be exercised. He has sought to reinforce this submission by pointing to the very wide, extensive and drastic nature of the powers conferred by the impugned subsection, and has urged that, in the circumstances, it is only reasonable to hold that the legislature never intended to give these extensive and drastic powers to the Executive without appropriate check by or in the shape of necessary Rules for regulating their exercise and, from that point of view, the phrase in question should be construed as suggested by him. The importance of this submission lies in the fact that when the impugned searches and seizures were made, there were, admittedly, no Rules, relevant for purposes of this sub-section, and accordingly, if the said submission be correct, the above searches and seizures would obviously be illegal and cannot be supported or sustained.

102. I am, however, unable to accept Mr. Sanyal's contention. The words are plain and they do not suggest necessary pre-existence of the Rules. The Rules may be existing or future and if, at the point of time, the powers under the Section are sought to be exercised, there be any Rules, relevant for the purpose, the exercise of those powers must, of course, be subject to the same. The phrase, however, does not, in my opinion, necessarily suggest pre-existence of

arty Rules and does not forbid the exercise of the powers in question without the framing of Rules. The sub-section, again, as we shall see hereinafter, would be perfectly constitutional even without Rules and so there is no occasion here for construing the phrase differently to avoid unconstitutionality of this particular statutory provision. Mr. Sanyal relied on the decision of the Supreme Court in the case of Narendra Kumar and Others Vs. The Union of India (UOI) and Others, in support of his suggested construction, but it is obvious that the said decision, far from supporting Mr. Sanyal, is really against his aforesaid contention. There the relevant words were "except and in accordance with", which obviously contemplate pre-existence of the particular thing contemplated therein, as, unless it is there, no question can arise of acting "except and in accordance with" the same, or, even "in accordance with" the same. In my opinion, there is, ordinarily - and as it is usually found - a fundamental difference between the two phrases "subject to" and "in accordance with" - not to speak of the more extreme and emphatic phrase "except and in accordance with" - in that the latter contemplates necessary pre-existence of the particular thing, while, normally speaking, the former would not necessarily contemplate such pre-existence and, particularly, when the words are "subject to any Rules made in this behalf" - and here I lay special stress on the word "any" - they contemplate Rules, if any, or, in other words, the phrase is synonymous with and should be read as "subject to Rules, if any, made in this behalf". Incidentally I may point out here that Section 41 of the Indian Arbitration Act, 1940, to which our attention was specifically drawn by Mr. Meyer in the course of his argument, even though much weaker and less happily worded, the word "any" not being there in the said Section, seems to support the above view, as it has never been contended - and it is almost impossible to contend - that although the old Indian Arbitration Act of 1899 and the arbitration provisions in the Code of Civil Procedure, which constituted, at the time, the entire law of arbitration in this Country, were repealed by the new Act of 1940, - thus creating and leaving a void without the said new Act - the aforesaid Section 41 of the new 1940 Act, which provided for the procedure and powers of Courts in the matter of arbitration, could not operate without prior framing of Rules. Indeed, it seems to me that if the legislature's intention was, as suggested by Mr. Sanyal, the statute would have been differently worded as in Narendra's case, *supra*, or in a like or similar manner [Vide, for example Section 10(7) of the Indian Income Tax Act itself, which provides a fitting contract to stress the distinction]. I would accordingly reject this submission of Mr. Sanyal."

Therefore, it would be clear that there is a great deal of difference between "Subject to Rules made" and "subject to any Rules made". In the case before us, Section 38 of the Act does not say "Subject to any". This is the important aspect to be borne in mind.

24. The other Rulings which are relied upon by Mr. Krishna Murthy may now be analysed in the above background.

In U.P. State Electricity Board v. City Board, Mussoorie it was observed in paragraphs 6 and 7 as follows:

"6. The material part of Section 46 of the Act reads thus:

"46.(1) A tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Board in respect of each area for which a scheme is in force, and tariffs fixed under this Section may, if the Board thinks fit, differ for different areas.

(2) Without prejudice to the provisions of Section 47, the Grid Tariff shall apply to sales of electricity by the Board to licensees where so required under any of the First, Second and Third Schedules, and shall, subject, as hereafter provided, also be applicable to sales of electricity by the Board to licensees in other cases:

Provided that if in any such other case it appears to the Board that, having regard to the extent of the supply required, the transmission expenses involved in affording the supply are higher than those allowed in fixing the Grid Tariff, the Board may make such additional charges as it considers appropriate..."

7. The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board u/s 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on Sub-section (1) of Section 46 of the Act which provides that a tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negated the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations u/s 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff. A similar contention was rejected by this Court in Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, which was a case arising under the Road Transport Corporations Act, 1950. u/s 14 of that Act a Road Transport Corporation was entitled to appoint officers and servants as it considered necessary, for the efficient performance of its functions. u/s 34(1) of the Road Transport Corporations Act, 1950 the State Government had been empowered inter alia to issue directions to the Road Transport Corporation regarding

recruitment, conditions of service and training of its employees. u/s 45(2)(c) of that Act, the Road Transport Corporation was empowered to make regulations regarding the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer, General Manager and the Chief Accounts Officer. Admittedly no regulations had been framed u/s 45(2)(c) of that Act. It was contended that the Corporation could not appoint officers and servants referred to therein or make any provision regarding their conditions of service until such Regulations were made. This Court rejected the said plea with the following observations at page 770 (of SCR); (at page 465 of AIR):-

"The conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government u/s 34 and the regulations, if any, framed u/s 45(2)(c). But until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit".

Here also Section 46 of the Electricity (Supply) Act says "...the Grid Tariff shall, in accordance with any regulations made...". This has great significance.

In Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, it was observed in paragraph-10 as follows:

"10. We may also refer here to the decision of the Privy Council in AIR 1944 71 (Privy Council) which affirmed the Judgment of the Madras High Court in The Madras and Southern Maharashtra Railway Company Limited Vs. The Municipal Council, Bezwada, One of the questions there raised was whether in the absence of Rules made by the State Government, the Municipal Council was entitled to determine the capital value of property in the face of a provision which stated:

Provided that such percentage of rates shall not exceed the maxima, if any, fixed by the Local Government and that the capital value of such lands shall be determined in such manner as may be prescribed.

The High Court, in that case had observed, and we agree with what had been said,

"We cannot accept the contention of the appellant that, merely because the Local Government has not prescribed the manner in which the capital value should be determined, the Municipal Council is deprived of the power of levying the tax u/s 81(3)....the omission of the rule-making authority to frame Rules cannot take away the right of the Municipal Council to levy tax at the rate mentioned in the notification issued under Clause 3. If, for instance, the Local Government refrained from prescribing the manner in which the value of such lands should be determined, it cannot, we think, be said that the Municipal Council has no power at all to levy the tax at a percentage of the capital value merely because the

method of determining the capital value has not been prescribed by the Local Government. If the Local Government does not prescribe it, then the Municipal Authority is free, in our opinion to fix it in any manner it chooses."

We are of the view that the failure of the Government to specify the surplus which may be generated by the Board cannot prevent the Board from generating a surplus after meeting the expenses required to be met. Perhaps, the quantum of surplus may not exceed what a prudent public service undertaking may be expected to generate without sacrificing the interests it is expected to serve and without being obsessed by the pure profit motive of the private entrepreneur. The Board may not allow its character as a public utility undertaking to be changed into that of a profit motivated private trading or manufacturing house. Neither the tariffs nor the resulting surplus may reach such heights as to lead to the inevitable conclusion that the Board has shed its public utility character. When that happens the Court may strike down the revision of tariffs as plainly arbitrary. But not until then. Not, merely because a surplus has been generated, a surplus which can by no means be said to be extravagant. The Court will then refrain from touching the tariffs. After all, as has been said by this Court often enough "price fixation" is neither the forte nor the function of the Court."

It has to be carefully seen here again that the proviso on which the Privy Council in AIR 1944 71 (Privy Council) relied on while affirming *The Madras and Southern Maharatta Railway Company Limited Vs. The Municipal Council, Bezwada*, : "....shall not exceed the maxima if any fixed."

In *Surinder Singh v. Central Government* it was observed as follows in paragraph-7:

"7. As noted earlier Sections 8 and 20 of the Act provide for payment of compensation to displaced persons in any of the forms as specified including by sale to the displaced persons of any property from the compensation pool and setting off the purchase money against the compensation payable to him. Section 16 confers power on the Central Government to take measures which it may consider necessary for the custody, management and disposal of the compensation pool property. The Central Government had therefore ample powers to take steps for disposal of pool property by auction sale and for that purpose it had authority to issue administrative directions. Section 40(2)(j) provides for framing of Rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. Neither Section 8, 16, 20 or Section 40 lays down that payment of compensation by sale of the pool property to a displaced person shall not be done unless Rules are framed. These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotment of pool property to them in accordance with Rules, if any. Framing of Rules regulating the mode or manner of disposal of urban agricultural property by sale to displaced person is not a condition precedent for the exercise

of power by the authorities concerned under Sections 8, 16, and 20 of the Act. If the legislative intent was that until and unless Rules were framed power conferred on the authority under Sections 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the Rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of Rules could not be a condition precedent for the exercise of power."

Here again Section 20 provided that "subject to any Rules that may be made under the Act."

Therefore, none of these cases would have any direct bearing having regard to the absence of the words "if any" in Section 38 of the BDA Act.

25. In *Mohd. Hussain v. State of Bombay*, one of the attacks with reference to the levy of fees by the Agricultural Produce Market Committee was that till the maxima were prescribed the power to levy itself was unavailable. That was dealt with in paragraph-8 as under:-

"8. It has been urged on behalf of the respondents that the true construction of Section 11 is that if maxima are prescribed by the Rules, fees will be fixed by the market committee within the maxima; but if no maxima are fixed under the Rules, it will still be open to the market committee to prescribe any fees it thinks proper under its power u/s 11. We are not prepared to accept this interpretation of Section 11, for it amounts to adding the words "if any" after the word "maxima" therein. Besides, the Legislature was conferring power of taxation (using the word in its widest sense) by Section 11 on the market committee. While doing so, the Legislature apparently intended that the committee shall not have unlimited power to fix any fees it liked. It restricted that power within the maxima to be prescribed by the State Government in the Rules. Thus the power given to the committee was meant to be subject to the control of the State Government which would be in a position to view the situation as a whole and decide the maxima. At the same time, some flexibility was provided by leaving it to the committee to fix fees within the maxima. We may in this connection refer to various Municipal Acts for example, where also the power of taxation is subject to the control of the State Government though the control is provided in a different form. Section 11 also prescribes similar control by the State Government over this taxing power of the committee and this is obviously in the interest of the community as a whole. The State Government cannot practically abdicate that power as it seems to have done under Rule 53 by leaving it to the committee to fix any rates it likes. We are therefore of opinion that unless the State Government fixes the maxima by Rule it is not open to the committee to fix any fees at all and the construction urged on behalf of the respondents is not correct."

In our view, it is this line of reasoning which has to be adopted in the instant case.

The next case that can usefully be referred to is *S. Shamshuddin and Others Vs. State of Karnataka and Others*, .

In dealing with the scope of Section 63(7) of the Motor Vehicles Act, 1939, it was held in paragraph-8 as follows:

"8. While hearing this argument, a question was posed to Mr. Shanti Bhushan that if the quota of 50 permits for each State is struck down, not a single State Transport Authority in any State will be entitled to grant a single tourist permit because fixation of quota is an integral part of Section 63(7). Mr. Shanti Bhushan urged that the expression "in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf" is severable and therefore, the enabling part of Sub-section (7) will permit State Transport Authority in each State to grant the All India tourist permit keeping in view the needs of the tourist and the needs of the State. WE are not persuaded to accept this submission. The Parliament enacted Sub-section (7) conferring an enabling power on State Transport Authority to grant a permit valid for the whole of India which but for the provision contained in Sub-section (7) of Section 63 it was not entitled to grant and that this power to grant was subject to the condition that the Central Government will specify the quota. Therefore, the quota is not severable from the power to grant the permit."

If, therefore, the power was subject to or conditional upon the Central Government specifying the quota the same ratio must apply to the present case. Mr. Shantharaju is right in relying on this ruling.

One other ruling to which we may now refer is *Royappa Gounder v. Commercial Tax Officer, Erode*. That was a case in which under the Madras Entertainments Tax Act, 1939, the question arose whether under

Section 78 the power given in terms of that Section could be exercised only within the time prescribed and if no such prescription was made whether the power could be exercisable? In paragraph-8 it was observed as follows:

"8. The question is whether the amending Act has succeeded in achieving its purpose in so far as it related to the impugned reassessment. Quite obviously, if the prescription as to limitation required to be made u/s 7B had been made, the power to make the reassessment would be there from 1-4-1960 and Section 7 would then validate the reassessments. If a provision of law is made and brought into force with retrospective effect and the Legislature directs that the power shall be deemed to have come into existence from an anterior date, in construing and giving effect to it, one must take it as if it was factually there from such date. In such a case, it is not open to the Court to boggle with its imagination and conjure up things, in the light of the putative state of affairs and try to find solution in respect of it. Let us then take it that the power of reassessment was available from 1-4-1960. But then it was subject to a condition, viz., that it could be exercised only within the period prescribed by the Rules. Where power is given by a legislative provision in terms that it can be exercised only within the

time to be prescribed, it clearly follows, in our opinion, that unless the limits of time are drawn, the power itself cannot be exercised. This is because the intention of the Legislature is that the power is not available for exercise at any time but only within the prescribed time. In the absence of prescription by Rules, therefore, the intention of the Legislature is not fully effectuated and the power is incomplete and cannot be exercised. The necessary consequence of this is that when the impugned reassessments were made, they were without jurisdiction, and, therefore, without authority."

This decision was affirmed by the Supreme Court in *State of Tamil Nadu v. M. Royappa*.

We will now come to the English Law on this point. In *SIDDLE C. COOK LTD. v. HOLDEN* 1960 QB 248 the question was, what was the effect of non-compliance of Article 14 of the Motor Vehicles (Authorisation of Special Types) General Order, 1955? Posing the question, Lord Parker, C.J. observed at page 254:

"The sole question in this case is whether the effect of that non-compliance was merely to constitute an offence against the Motor Vehicles (Authorisation of Special Types) General Order, 1955, or whether it made the defendants guilty of a contravention of regulation 66 of the Construction and Use Regulations. The Justices came to the conclusion that the latter was the correct view and, accordingly, convicted the defendants of a breach of Regulation 66.

The point is of very considerable practical importance. Without going into the matter in detail, it is enough to say that the contravention of a condition in the Authorisation of Special Types General Order, if it be an offence, would involve consequences far less severe than if there is a breach of regulation 66 of the Construction and Use Order."

In answering this, it is observed at page 255 thus:-

"Sub-section (4) then goes on in these terms: "The Minister may by order authorise, subject to such restrictions and conditions as may be specified by or under the order, the use on roads - (a) of special motor vehicles or trailers, or special types of motor vehicles or trailers, which are constructed either for special purposes, or for tests or trials, (b) of vehicles or trailers, or types of vehicles or trailers, constructed for use outside the United Kingdom, and (c) of new or improved types of motor vehicles or trailers, whether wheeled or wheelless, or of motor vehicles or, trailers equipped with a new or improved equipment or types of equipment; and nothing in the foregoing provisions of this Section shall prevent the use of such vehicles, trailers, or types aforesaid in accordance with the order."

Pausing there, it seems to me that subsection (4) is really an exception provision. The Regulations made under Sub-section (1) are to apply generally to all vehicles and contravention is an offence, subject to this, that no offence is created if the Minister makes an order authorising the use of certain vehicles on

certain conditions and then, as it seems to me, providing the use is made in accordance with that Order, that is, complying with any restrictions and conditions that are laid down, the use of that vehicle is lawful notwithstanding that it would otherwise be in breach of the Construction and Use Regulations.

When one gets to the Order itself, it seems to me that the matter is even plainer. I have already referred to Article 14, but I would emphasise that the use which is there authorised is a use subject to the conditions laid down in, amongst other places, Article 18, concerning attendants. It seems to me perfectly clear that the words there, "subject to the conditions and restrictions" mean providing the conditioned and restrictions are complied with."

26. In view of what has been seen above, it would be clear that where Section 38 of the Act says "subject to such restrictions, conditions and limitations as may be prescribed", the power is unavailable unless those restrictions, conditions and limitations are prescribed. Otherwise, as the learned Advocate General rightly submits, the exercise of power would be arbitrary. There is no touchstone on which such arbitrariness could be tested because the Act does not throw any guidelines. One of the Societies may be favoured with sale of large extent of land, the other may not be so favoured or may be favoured with even a smaller extent of land. Therefore, there is no use contending that the individual action may be tested whether it is arbitrary. Thus, we conclude that when power is made available conditional upon prescription, the phrase "subject to" in the context meaning only conditional upon, the exercise of power in the absence of such prescription is illegal.

In this connection we may also note Section 37 which says that subject to such limitations and conditions as it may impose and to the provisions of the Act the Government may transfer to and vest in the Authority any land. Therefore, the Government transferring of land itself is subject to the conditions not only to be imposed but also as provided. In this regard, one cannot lose sight of the important fact that the power of the BDA is only for the utilisation of the land for the purpose of any development scheme. It cannot be urged that when Section 14 says "secure the development", the development could be secured through another agency. This argument loses sight of the comprehensive definition of "development" which includes the carrying out of building, engineering or other operations. Therefore, for instance, if the BDA is obliged to put up certain engineering structures, instead of doing it itself, it can secure the help of an outside agency. That cannot tantamount to a power u/s 14 to sell lands in favour of co-operative societies thereby altogether abandoning its statutory obligations. It is somewhat interesting to note that in Writ Appeal No. 1229/90 in the Sale Deed Annexure R-1, it is stated as follows:

"By resolution No. 383 dated 23-7-1984 the vendor/first party has agreed to sell absolutely to the purchaser/second party a land area of 25 acres only for the purpose of formation of private layout of residential sites for the benefit of their members in the schedule land premises fully described in the schedule annexed

hereto belonging to the vendor/ first party at or for the price of Rs. 31,25,000/- (Rupees Thirtyone lakhs and twenty five thousand only) and the purchaser/ second party has agreed to purchase the said property absolutely free from any encroachment in the schedule land."

This shows that undeveloped virgin land had been sold away. The contention of Mr. Shantharaju that there is no such power at all to sell without developing the land, is well founded. Such a power is wholly unavailable to the BDA.

27. Then again, the words "Subject to such restrictions, conditions and limitations as may be prescribed" cannot be said to have no meaning in the context, nor can they be regarded as surplusage. It is one of the fundamental principles of interpretation that no word of the legislation must be regarded as surplusage or superfluous. We have to take the words as we find in the Statute. In this connection, we would refer to a passage in *The Interpretation and Application of Statutes* by Reed Dickerson, 1975 Edition, Page 206:-

"The first thing to remember about the term "strict construction" is that it has been used to denote a wide variety of concepts, listed here in ascending order of "strictness":

(1) The Court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here "strict" means merely that the Court will refrain from exercising its creative function to apply the Rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute. Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law making by analogy with it.

(2) The Court will resolve and evenly balance uncertainty of meaning in favour of a criminal defendant, the common law, the "common right", a tax payer, or sovereignty.

(3) The Court will so resolve a significant uncertainty of meaning even against the weight of probability.

(4) The Court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach.

(5) Where the manifest purpose of the statute as collaterally revealed is narrower than its express meaning, the Court will restrict application of the statute to its narrower purpose. This differ from the RIGGS situation in that the narrow purpose is revealed by sources outside the statute and its proper context....20. E.g., see *Coral Gables, Inc. v. Christopher*, 108 Vt. 414, 189 A. 147 (1937). "... (Statutes in derogation of the common law are to be strictly construed... We are unable to say that the Legislature intended that the rovisions of P.L. 35 should apply to cases not within its term s". Id. at 418, 420, 189A. at 149, 150."

One other argument of Mr. Narasimha Murthy requires to be noted. According to him, Section 38 does not exclude a development scheme formed by a person other than the BDA. He also draws support from Section 32(2) which contemplates any person forming layout. Therefore, according to him, the Act does not confer exclusive power on BDA to form layout. It is thus contended that u/s 38 the power to appropriate and apply the lands for development scheme is not subject to such restrictions, conditions and limitations. We are unable to agree with this contention. First of all, the development under the Act means the development as contemplated. Of course, if a private person has lands certainly he can form a layout. That has nothing to do with the power of the BDA to transfer land "belonging to it" in bulk without even developing the land. It is necessary at this juncture to refer to Section 19 of the Act. Upon sanction of the scheme the Government has to publish a final notification stating the fact of such sanction and also that the land proposed to be acquired for the purposes of the scheme is required for a public purpose. Sub-section (3) of Section 19 enjoins or throws a statutory obligation requiring the BDA to complete the scheme.

There is one general principle touching upon the issue which may be looked at. Where the power is intended only for certain purposes, is it open to the BDA to use that power for a purpose not contemplated under the Statute? In this regard we will refer to *Indian Aluminium Company Vs. Kerala State Electricity Board*, . That case dealt with the scope of Section 49(3) of the Electricity (Supply) Act, 1948. It was observed thus in paragraphs 10 to 16:-

"10. Having analysed the provisions of Section 49, we may now turn to consider the argument advanced on behalf of the Board that a stipulation binding the Board not to charge anything more than a specific rate would be void as it would have the effect of divesting the Board of the power to fix and refix charges entrusted to it u/s 49, or hindering or fettering its future exercise. Now, if there is one principle more well settled than any other, it is that when a public authority is entrusted by statute with a discretionary power to be exercised for the public good, it cannot, when making a private contract in general terms, fetter itself in the use of that power or in the exercise of such discretion. There are a number of decisions which would establish this principle beyond doubt. We may refer to a few of them in order to appreciate the true scope and ambit of this principle - what is its area of operation and what are its limitations.

11. The first case where this principle was enunciated is (1883) App Cas 623. In this case the Harbour Trustees whose statutory power and duty were to acquire land, to be used as need might arise for the construction of works on the coast line of the Harbour, sought to save money in respect of severance on the compulsory acquisition of a particular owner's land by offering him a perpetual covenant not to construct their works on the land acquired, so as to cut off from access to the waters of the Harbour, or otherwise to affect him injuriously in respect of the land not taken but from which the acquired land was severed. It was held that such a covenant was ultra vires. Lord Blackburn stated the

principle in these terms:

"I think that where the legislature confer power on anybody to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good. Whether that body be one which is seeking to make a profit for share-holders, or, as in the present case, a body of trustees acting solely for the public good. I think in either case the powers conferred on the body empowered to take the land compulsorily are entrusted to them, and their successors, to be used for the furtherance of that object which the legislature has thought sufficiently for the public good to justify it in entrusting them with such powers, and, consequently, that a contract purporting to bind them and their successors not to use those powers is void."

12. This case was followed by Russell, J. in (1924) 1 Ch. 537. There, the plaintiff-Corporation was entrusted by statute with the control of navigation in part of the rivers houses and Foss with power to charge such tolls within limits, as the Corporation deemed necessary to carry on the two navigations in which the public had an interest. The Corporation made two contracts with the defendants under which they agreed to accept in consideration of the right to navigate the Ouse, a regular annual payment of ?600/- per annum in place of the authorised tolls. The contract in regard to navigation of the Foss was on similar lines. It was held by Russell, J., that the contracts were ultra vires and void because under them the Corporation had disabled itself, whatever emergency might arise, from exercising its statutory powers to increase tolls as from time to time might be necessary. The learned Judge, after citing Any. Harbour's case (1883) App Cas 623 (supra) and another case Staffordshire and Worcestershire Canal Navigation v. Birmingham Canal Navigation (1866) LR 1 HL 254) observed: "the same principle underlies many other cases which show the incapacity of a body charged with statutory powers for public purposes to divest itself of such powers or to fetter itself in the use of such powers."

13. Finally Lord Parker, C.J. said in South end-on-Sea Corporation v. Hodoson (Wickford) Ltd. (1961) 2 All ER 46 : "There is a long line of cases to which we have not been specifically referred which lay down that a public authority cannot by contract fetter the exercise of its discretion."

14. The principle laid down in these cases is unexceptionable and cannot be doubted. But the question is: does it apply in the present case. We do not think so. The principle is attracted when an attempt is made to fetter in advance the future exercise of statutory powers otherwise than by the valid exercise of a statutory power. The covenant in Ayr. Harbour" a case (1883) App Cas 623 tied the hands of the Harbour Trustees and prevented them from constructing works on the land acquired, however necessary they might become for the proper management of the undertaking and thus fettered the Harbour Trustees in the exercise of the statutory power entrusted to them by the Legislature for the purpose of the undertaking. But the covenant was entered into by the Harbour Trustees as a "private contract" with the owner of the land acquired in order to

save money in respect of severance and not in exercise of a statutory power and hence the principle was invoked to invalidate the covenant. So far as York Corporation's case (1924) 1 Ch 557 (supra) is concerned, it came to be severely criticised by Sargant, L.J. in *Southport Corporation v. Birkdale District Electric Supply Co.* (1925) 1 Oh 794 and the learned Lord Justice pointed out that the decision in York Corporation's case (supra) could hardly stand with the Judgment of the Court in *Southport Corporation's case* (supra). This criticism of the decision in York Corporation's case (supra) was adopted by Earl of Birkenhead when the *Southport Corporation case* (supra) was taken in appeal to the House of Lords. Lord Sumner also observed in that case that he did not think that there was a true analogy between *Any Harbour's case* (supra) and York Corporation's case (supra). The House of Lords as well as the Court of Appeal in the *Southport Corporation's case* (supra) seemed to be of the view that the York Corporation's case (supra) was wrongly decided. Of course they did not doubt the validity of the principle enunciated by Russell, J. but questioned its applicability to the facts of the York Corporation's case (supra). They appeared to think that the discharge of their statutory duties by the Harbour Trustees would be facilitated rather than fettered by a reasonable latitude of discretion in fixing tolls and both *Ouse* and *Foss* agreements must, therefore, be regarded as having been entered into by the Harbour Trustees in exercise of the statutory power of fixing tolls and hence they would be valid. But they pointed out that there were certain peculiar features in the York Corporation's case (supra) on which the actual decision of Russell, J., holding *Ouse* and *Foss* agreement to be void could be sustained. The discussion of these two cases shows that the principle that a public authority cannot by contract fetter the exercise of the statutory power, which is conferred upon it for the public good, is limited in its application to those cases where the attempts to do so is otherwise than by the valid exercise of a statutory power.

15. The position is different where a statutory power is exercised to enter into a situation with a third party which fetters the future exercise of other statutory powers where such stipulation is made not as part of "private contract in general terms" as Devlin, L.J. calls it in *Commissioners of Crown Lands v. Page* (1960) 2 All ER 726 but in exercise of a statutory power. In such a case it is difficult to see how the exercise of the statutory power could be held to be invalid as a fetter on the future exercise of other statutory powers. If it were so held, it would render the statutory power meaningless and futile. It would nullify the existence of the statutory power and that would be contrary to all canons of construction. If the statutory power is to have any meaning and content, the stipulation made in exercise of the statutory power must be valid and binding and it would, as pointed out by Pennycuik V.C. in *Dowty Boulton v. Wolverhampton Corporation* (1971) 2 All ER 277, "exclude the exercise of other statutory power in respect of the same subject-matter." To put it differently, where a stipulation in a contract is entered into by a public authority in exercise of a statutory power, then, even though such stipulation fetters subsequent exercise of the same statutory power or future exercise of another statutory power, it would be valid and the exercise

of such statutory power would pro tanto stand restricted. That would follow on the principle of harmonious construction. The public authority would not, in such a case, be free to denounce the stipulation as a nullity and claim to exercise its statutory power in disregard of it. If that were permissible, it would mean that the stipulation has no binding force and the public authority has no statutory power to enter into such stipulation. But that would be plainly contradictory of the premise on which the argument is based.

16. The distinction must always, therefore, be borne in mind whether the stipulation by which the public authority is alleged to have fettered in advance the future exercise of the statutory power is one which is entered into as part of "private contract in, general terms", or in exercise of a statutory power. If it is the former, the stipulation would be bad on the principle that a public authority cannot by contract fetter the exercise of a statutory power which is conferred upon it for the public good. But if it is the latter, the stipulation being in exercise of a statutory power would be valid and it would not be open to the public authority to disregard the stipulation and exercise the statutory power inhibited or fettered by it. This last statement must, however, be qualified by making it clear that a case may conceivably arise where there may be an overriding statutory provision which expressly or by necessary implication, authorises the public authority to set at naught, in certain given circumstances, a stipulation though made in exercise of a statutory power. Where there is such a statutory provision, the stipulation should certainly be binding, but when the specified circumstances arise, the public authority would have the power to override the stipulation and act in derogation of it. But that again would be a matter of construction."

These weighty observations have great relevance to this case. Could the BDA by selling away the land fore close the exercise of the statutory power conferred u/s 38 or the Act which power is conferred for public good for all time to come? Because of this sale it alienates the land for all time to come. Thereafter, those lands are not available for the general public. It should also be remembered in this connection that a large number of members of public have made applications by paying the necessary fees etc. and have been hoping that sooner or later, they would be allotted sites. They would all be deprived by this action of the BDA. It is poor consolation to them to be told that members of co-operative societies who are the alienees in this case are getting this property, who are also part of the public. They are getting the sites allotted qua members of the society and not as a cross-section of the public. They are not competing along with other eligible members. They get it out of turn because of this alienation as members of the society. This is not only unjust but also unethical. The contention of the Co-operative Societies that because of the Government Order dated 18-6-1985 requiring the housing co-operative societies to approach the BDA for their requirement of land, there is no other option except to approach the BDA, is also not tenable. The Government might have thought so, but the question is, within the four corners of the Statute, is there a power? If there is none, the position

cannot be bettered by issue of Government instructions. Thus, from every point of view, the conclusion is irresistible that u/s 38 of the Act, there is no power available to the BDA to make bulk allotment. This is our answer to question No. 1.

28. Coming to question No. 2 viz., whether the Government have power to issue directions to make bulk allotment u/s 65 of the Act, it has already been seen that u/s 65, the Government is enabled to give directions to the BDA "as are necessary or expedient" for carrying out the purposes of the "Act. In Writ Petitions 17234/88 and 13818/90 the respondents-Societies are armed with the orders of the Government. It is argued by Sri. A.N. Jayaram appearing for the respondent-Society in W.P.13818/90, that Section 65 is not subject to any restrictions while Section 38 is so subject, and it is merely an administrative order. Such an order, as stated in Wade's Administrative Law, Fifth Edition, Page 313, even if not made in good faith, must be held to be valid.

As we stated above, if the power of the Government is available to direct the BDA to carry out the purposes of the Act, certainly a direction in disregard of the statutory provision cannot be issued. Such a direction is not permissible in law. Therefore, the question of good faith does not arise. In Wade's Administrative Law, Page 313, Lord Radcliffe's observations in the leading case SMITH v. EAST ELLOE RURAL DISTRICT COUNCIL 1956 AC 736 @ 769 are quoted as follows:-

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders,"

But we are not here on good faith or bad faith. We are on the power whether available to the Government. Therefore, we reject this argument of Mr. Jayaram.

Mr. Sampath Kumar, appearing for the respondent-Society in W.P.17234/88 would draw our attention to Maxwell on Interpretation of Statutes and urge that a beneficial construction must be put so as to advance further the case of the respondents-Societies having regard to the fact that they have involved themselves deeply and practically burnt their bones by spending considerable amounts of money, and therefore, a construction most agreeable to justice and reason must be adopted. At page 93 of Maxwell on Interpretation of Statutes, XII Edition, it is stated as follows:

"Wilberforce J. has held (at page 792) that the words in Section 105(1) (a) of the Housing Act 1957, "purposes...necessary or desirable for, or incidental to, the development of the land as a building estate" have "nothing exclusive about them". He rejected the submission that the land could not be sold under the powers contained in the Section for ancillary purposes beneficial to other land, and held that, the language of the Section being quite general, it could not be said that the provision of schools was something which should be excluded from its scope."

Page 199.

"Presumption against intending what is inconvenient or unreasonable -

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. The question of inconvenience or unreasonableness must be looked at in the light of the state of affairs at the date of the passing of the statute, not in the light of subsequent events."

Page 208.

"A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention to bring it about has been manifested in plain words. "If the Court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice." But the possibility of injustice which leads the Court to adopt a particular construction must be a real one: if the injustices suggested in argument are purely hypothetical, and may never or only rarely occur in practice, the Court will remain unmoved."

We are afraid that these principles will have no application because, if the power is wholly unavailable we cannot supply that in the guise of interpretation. He quotes *Bengal Immunity Co. v. State of Bihar* and particularly refers to Head-note (c) and we extract the same:-

"When an order or notice emanates from State Government or any of its responsible officers directing a person to do something, then, although the order of notice may eventually transpire to be ultra vires and bad in law, it is obviously one which prima facie compels obedience as a matter of prudence and precaution. A person placed in such a situation has the right to be told definitely by the proper legal authority exactly where he stands and what he may or may not do."

We are unable to find any relevance of this because, these observations came to

be made in rejecting the contention that where an assessment was ultra vires the Article 286, the party should not have felt aggrieved and rushed up to the Court under Article 226. Therefore, this has nothing to do with the present case.

Busching Schmitz v. Menghani is yet another decision cited, and we find that case also does not help the respondents-Societies.

Accordingly, we conclude that u/s 65 of the Act, the Government have no power to issue directions to make bulk allotment of lands.

29. Having held as above, the consequences that would follow as a result thereof will have to be considered. We are fully aware that all these Housing Cooperative Societies have incurred huge expenditure treating the allotment of lands as "fait accompli". At this stage, if they are to be told that the BDA has no power and the Government also cannot give instructions to make bulk allotments, it would result in injustice is what is contended. The Court has to consider the facts or consequences which would result from it.

It is not that we are unsympathetic to these Cooperative Societies. It is not that we are un alive to the consequences. If the law is so, what is it this Court Is expected to do? In this context, we will quote the eloquent passage of Justice Story in THE TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD 4 Law Ed. U.S. Supreme Court Report 629 @ 673:-

"In pronouncing this Judgment it has not for one moment escaped me how delicate, difficult and ungracious is the task devolved upon us. The predicament in which this Court stands in relation to the nation at large is full of perplexities and embarrassments. It is called to decide on causes between citizens of different states, between a state and its citizens, and between different states. It stands, therefore, in the midst of jealousies and rivalries of conflicting parties, with the most momentous interests confided to its care. Under such circumstances, it never can have a motive to do more than its duty; and I trust, it will always be found to possess firmness enough to do that.

Under these impressions I have pondered on the case before us with the most anxious deliberation. I entertain great respect for the legislature, whose acts are in question. I entertain no less respect for the enlightened tribunal whose decision we are called upon to review. In the examination, I have endeavoured to keep ray steps SUPER ANTIQUAS VIAS of the law, under the guidance of authority and principle. It is not for Judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and having done this, our justification must be left to the impartial Judgment of our Country."

30. In Writ Petition No. 13618/90 a valid objection is taken viz., that the Writ Petition as framed is not maintainable, because the petitioner had suppressed the fact that the Government has issued a statutory direction to the BDA u/s 65 of the Act. On the contrary, it is made to appear that the BDA in making bulk

allotment had purported to exercise its own powers under the Act and the entire case proceeds on that basis. The facts as seen above are: By Government Order dated 18-6-1985 the acquisition of land in Bangalore Metropolitan Area for Housing Co-operative Societies was discontinued; the Societies were required to approach the BDA for their requirement of land so that in future the BDA would be the only agency to acquire land for housing purposes in Bangalore Metropolitan Area; therefore this Society (third-respondent-Metropolitan Co-operative Housing Society) approached the Government as well as the BDA to make available 20 acres of land in Hosur-Sarjapur Layout; the Government being satisfied as to the bona fides of the request issued orders in No. HUD 555 MNX 87 dated 19-1-1988 (Annexure-R1) directing the BDA to allot 20 acres of land in Hosur-Sarjapur Layout to the Society; in pursuance of this direction the BDA passed a Resolution on 29-2-1988 and effectuated the direction issued by the Government; accordingly a Sale Deed was executed on 9-6-1989 and that clearly sets out all these facts including the said Government Order dated 19-1-1988. But, strangely, the petitioner has not chosen to question this at all.

We are unable to fathom the reasons why the petitioner has not chosen to do so. That may be because she had merely "adopted" the affidavits in the other cases without even caring to know this important fact. In fact, from paragraph-7 onwards in the Writ Petition, it is nothing more than verbatim copy of the other Petitions. This is the reason why the allegation of suppression is made against the petitioner. This is the bane of hurried pleadings. The question, therefore, is whether without actually challenging the Government Order the petitioner could get relief notwithstanding what we have held above. The strenuous argument of Mr. Jayaram is that he cannot be called upon to answer the pleas which were not even put against him. Though a request is now made to amend the pleadings, his submission is that the petitioner cannot now be allowed to do so and set up a new case during the course of arguments, and in support of this reliance is placed on *Jabalpur Municipality v. State of M.P.* In that Ruling it was observed in paragraph-9 as follows:-

"9. The question as to who a transferor is, is obviously a question of fact or at best a mixed question of law and fact and when a party in a Writ Petition does not allege any such fact, it stands to reason that he ought not to be permitted to travel beyond the facts stated, at the stage of the arguments. To confine a party to his pleadings, particularly to his allegations as regards facts is dictated not merely by the need for orderliness in these proceedings but for avoiding surprise to the other party and consequent injustice resulting therefrom. Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter of grounds, there is need to add to or to modify the allegations either in the petition or in the counter-affidavit, the Court should insist on formal amendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences. This salutary Rule was not adhered to in this case, and the departure from the

pleadings which the appellant was permitted to adopt during the course of its arguments before the High Court has led to injustice because thereby the Counsel for the State who was apparently not prepared to meet an argument not raised in the petition, made submissions at the spur of the moment which were not justified by the true state of affairs. In our opinion, on the allegations made in the petition by the appellant-Corporation it ought not to have been permitted to put forward a case that the State Government was not the transferor of the property and the learned Judges of the High Court should have proceeded on the basis of the pleadings in the case."

To the same effect in *Netaipada Shah Vs. The State of West Bengal*, in which Head note-A reads:

"Plea that ground of detention was not read over and explained to detenu in his own language when neither averred in petition nor in representation made to Government cannot be allowed to be raised for the first time before the Supreme Court."

This fully, supports the stand of Mr. Jayaram. Therefore, in the absence of proper pleadings, we are left with no other alternative than to dismiss this Writ Petition.

31. In the result, we make the following order:-

(i) Writ Appeals Nos. 1229/90 and 1696/88 will stand dismissed with costs.

(ii) Writ Petitions Nos. 17234/88 and 14130/90 will stand allowed with costs, and the impugned resolutions are quashed. Counsel's fee Rs. 1,000/- each.

(iii) Writ Petition No. 13818/90 will stand dismissed with costs. Counsel fee Rs. 1,000/-.