

(1993) 06 KAR CK 0008

In the Karnataka High Court

Case No : W.A. No's. 506 to 509 of 1992 and W.P. No. 19357 of 1992

Y. Mahesh

APPELLANT

Vs

Mysore Urban Development Authority

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Karnataka Urban Development Authorities Act, 1987 — Section 15, 19, 35, 36
Land Acquisition Act, 1894 — Section 50 (2)

Citation : (1993) ILR (Kar) 1791 : (1993) 3 KarLJ 411

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : A.K. Subbaiah, for the Appellant; P.P. Muthanna, General and B.J. Somayaji, Government Advocate, for the Respondent

Judgement

K.A.Swami, Ag. C.J.

1. These Writ Appeals are preferred against the Order dated 26th February 1992 passed by the learned single Judge in W.P.Nos.2855 to 2858 of 1992. The learned single Judge has rejected the Writ Petitions on the ground that the appellants herein have not disclosed in the Petitions the nature of interest they have in seeking the reliefs in their Petitions; that petitioners 3 and 4 in the Writ Petitions, appellants herein, are close relations of one Sri Y.R.Aswathanarayana Rao, who is the President of Madhuvana Griha Nirmana Sahakara Sangha Niyamitha, Mysore and that the petitioners have instituted the Petitions with an oblique motive. Therefore, the learned single Judge has declined to entertain the Writ Petitions on the ground that the petitioners do not have sufficient interest to maintain the Petitions.

2. When these Appeals came up for orders on 4.8.1992 learned Counsel Sri T.S.Ramachandra, who had filed the Appeals, sought permission to retire, as learned Counsel Sri S.V.Jagannath had filed power for the appellants. Accordingly, learned Counsel Sri T.S.Ramachandra was permitted to retire. Sri

S.V.Jagannath, learned Counsel had also filed a Memo for permission to withdraw the Appeals. The Memo was ordered to be brought up for consideration along with I.A.No.III filed by one Sri Y.Mahesh for impleading. It is also relevant to mention that the aforesaid Sri Y.Mahesh has filed Writ Petition No. 19357 of 1992 on 29th June 1992 seeking the reliefs similar to those sought in W.P.Nos.2855 to 2858 of 1992(LB). Therefore, in the Order dated 4.8.1992 passed in these Appeals it was further ordered on the submission made on behalf of Sri Y.Mahesh, the petitioner in W.P.No.19357 of 1992, who had filed I.A.No.III in these Writ Appeals for impleading, that W.P.No. 19357/92 should also be heard along with these Writ Appeals. Accordingly, W.P.No.19357/1992 was ordered to be brought up along with these Appeals. On 18th August 1992 the following order was passed in the Writ Appeals.

"In the light of the fact that the subject matter of Writ Appeals Nos. 506 to 509 of 1992 is also the subject matter of Writ Petition No. 19357 of 1992 and that a person by name Y.Mahesh has made an application to implead him as the appellant and continue the appeals before considering the application filed by the appellants for withdrawing these appeals, we are of the view that Sri Mahesh can be permitted to be impleaded because the subject matter of both the proceedings is in the nature of public interest litigation. Accordingly, I.A.No.III is allowed. The applicant in I.A.No.III be impleaded as the appellant.

As requested by the appellants, their names are deleted.

These Writ Appeals shall now be heard as though the same are filed by Sri Y.Mahesh.

Cause title be amended."

xxx xxx xxx Accordingly, the names of the original appellants were struck off and the Appeals were continued in the name of Sri Y.Mahesh and the Writ Appeals and the Writ Petition were heard together.

3. It may also be mentioned here that on 24.4.1992 an Interim Order was passed in the Writ Appeals directing the respondent i.e., the Mysore Urban Development Authority "not to give possession certificate to the allottees if the allotment is made in the meanwhile". Again on 8.7.1992 the following Interim Order was passed in the Writ Appeals:

"Respondents are directed not to proceed to allot the sites on the applications received pursuant to the notification produced at Annexure-D. Liberty is reserved to the respondent to seek modification or vacation of this order".

Annexure-D is the Notification issued by the Mysore Urban Development Authority, Mysore, (hereinafter referred to as "MUDA") published in Deccan Herald dated 12th January 1992 calling for the applications for allotment of one thousand sites of various dimensions. In Writ Petition Nos.2855 to 2858 of 1992, out of which Writ Appeal Nos. 506 to 509 of 1992(LB) arise, the petitioners have sought for quashing the Notification No. MUDA.AAS - Notification 1/91-92 dated

9.1.1992 published in the Deccan Herald dated 12.1.1992, produced as Annexure-D, inviting applications from the public for allotment of sites in certain proposed extensions in the City of Mysore.

4. In Writ Petition No. 19357 of 1992 the petitioner has sought for a declaration of the aforesaid Notification produced as Annexure-D in the Writ Appeals, and also the list of applicants said to have been selected provisionally for allotment of sites pursuant to the aforesaid Notification and all further proceedings pursuant thereto, as null and void and inoperative being without jurisdiction. The petitioner has also sought for a Writ of Prohibition prohibiting the MUDA and its Chairman, respondents 1 & 2 respectively, in the Writ Petition, from proceeding any further on the basis of the impugned Notification -Annexure-D and the list of applicants selected provisionally for allotment. A Writ or Order in the nature of Mandamus is also sought for directing the Respondents Nos. 1 & 2 to refund the deposit amount collected from various applicants including those in the provisional list in question forthwith and further to direct the State of Karnataka - Respondent No. 3, to refer the charges of corruption made in the Writ Petition to the Judicial Inquiry u/s 3 of the Commissions of Inquiry Act

5. Before the averments in the Petitions are summed up, it is relevant to notice that all these Petitions are filed as Public Interest Litigation challenging the action of the MUDA affecting the public in general and also the very authority and jurisdiction of the MUDA to proceed to form Development Schemes and purport to allot sites,

6. The averments made in Writ Petitions Nos. 2855 to 2858 of 1992(LB) may be summed up as follows:

The MUDA has been constituted u/s 3 of the Karnataka Urban Development Authorities Act, 1987, hereinafter referred to as "the Act", for the purpose of planned development of Mysore City as per the provisions of the Act; that it has published an advertisement in Deccan Herald dated 12.1.1992 and other papers stating that it has decided to invite applications for allotment of sixteen thousand sites of various dimensions to certain categories of persons; that the said Notification and the act of inviting applications for allotment of residential sites is not in accordance with the provisions of the Act; that the act of MUDA in inviting the applications has misled the public to believe that the applicants would get sites in the near future; that a large number of members of public have submitted the Application forms to the MUDA under the belief that they would be the proud owners of sites in Mysore City; that under the aforesaid Notification, registration fee of Rs. 2,000/- and an advance amount of Rs. 18,225/- for a site of a dimension of 60" x 40" were required to be paid at the time of presenting the application; that one of the conditions specified in the Notification is that "in case there is any hurdle in the allotment of sites, due to any reason, such as Government Order, Court injunction order, land owners' objection, this Notification will be cancelled and the amount of deposit will be returned to the applicants without any interest"; that the Notification inviting the applications

was therefore, a clear attempt on the part of the MUDA to hood-wink the public and it was clearly an action without any authority of law; that the public authority was to act within the four corners of the law and every action advancing the cause of public must be done without injuring their interest in any manner; that the MUDA has issued a Notification on 6.2.1991 inviting applications for allotment of sites in areas of the City for allotment of nearly 3000 sites; that there are over one lakh applications in response to the said Notification; that this act of the MUDA is only intended to extract money from the public and to exploit the gullible people by holding out that sites would be allotted to them in the near future; that a sum of Rs. 15/- was to be paid for obtaining the application form; that having regard to the fact that the Notification contain allotment of large number of sites, the number of application forms sold exceeded two lakhs; that the MUDA has not acquired the land comprised in Vijaya nagar IV Stage, First and Third Phase (Hinkal), Dattagalli III Stage, First Phase and Vijaya nagar IV Stage - Second Phase in Basavanahalli village; that the Notifications u/s 17(1) of the Act are issued; that the Government orders according sanction to the Schemes under Sub-section (3) of Section 18 of the Act are passed; that the procedure contemplated in Sections 15 to 18 of the Act was not followed; that the lands are not at all acquired inasmuch as no notification u/s 19 of the Act is issued; that no layout is formed and could have been formed because the lands comprised in the Schemes in question are not vested in the MUDA; that MUDA has no jurisdiction to offer sites for allotment even before the acquisition formalities completed and developmental works are undertaken; that the MUDA has transgressed the law and thereby it has caused incalculable injury to the public; that the Notification inviting the applications has stirred the public of Mysore beyond imagination and has kindled a false hope in the public as no scheme could have been sanctioned and no layout could have been formed without the acquisition of the lands. The petitioners also contended that Rule-3 of the City of Mysore Improvement (Allotment of Sites) Rule 1972 held the field as nodules were framed under the Act; that as per Rule 3(1) of the Rules "whenever the Board has formed an extension or layout in pursuance of any scheme, the Board may subject to the general or special orders of the Government, offer any or all the sites in such extension or layout for allotment to persons eligible for allotment of sites under these Rules".

7. Along with the Writ Petitions, the petitioners have produced four documents as Annexures "A" to "D".

Annexure-A is the proforma of the Application to be submitted pursuant to the impugned notification for grant of residential sites. " Annexure-B is the Notification bearing Notification No. PLA/66/91-92 dated 19.12.1991 issued u/s 17(1) of the Act and published in the news-paper "Andolana" dated 26th December 1991, pertaining to Dattagalli scheme. Annexure-C is the Notification bearing Notification No. 3:91-92 dated 17th January 1992 issued u/s 17(1) of the Act and published in the Kannada issue of "Sanjayvani" dated 24th January

1992 pertaining to Hinakal -Vijaya nagar 4th Stage - 1st and 3rd phase/ Extension and Annexure-D is the Notification bearing Notification No. MUDA-AAS-Notification-1/ 91-92 dated 9th January 1992 inviting applications for allotment of sites, which is already referred to above.

8. The averments made in Writ Petition No. 19357 of 1992, may be summed up as follows:

The petitioner is a permanent resident of Mysore and he is a practising Advocate and a tax-payer. It is also further averred by him that he is involved in social work and is very much concerned with the object of safeguarding the public interest and to avoid mal-practices in various wings of the administration and fight against corruption.

It is averred that the 2nd respondent is appointed as the Chairman of the MUDA only because he belongs to the Arrack Contractors clan of Sri S.Bangarappa, the then Chief Minister of Karnataka; that he is the close associate of Shri S.Bangarappa; that as a quid-pro-quo for the favours he has been always receiving from Sri S.Bangarappa, the second respondent has been financing the then Chief Minister through-out notwithstanding that the damage that has caused to the purity of administration and the public interest; that the 2nd respondent has been appointed as Chairman of MUDA in the aforesaid background and that this appointment is particularly aimed at favouring the 2nd respondent and through him make an arrangement for collecting huge amount of money for the private benefits; that the 2nd respondent emboldened by the patronage and support he is receiving from the then Chief Minister, he has become a law unto himself and freely violating every provisions of law, sometimes openly declaring that he is above law; that the present attempt of the 2nd respondent is to siphon-out money for his private coffer, apparently at the instance of the then Chief Minister; that though several layouts had been formed earlier and constructions have come up, but no civic amenities such as water, electricity, drainage etc., to many of the layouts have been provided; that instead of providing civic amenities to the already formed layouts, new layouts have been taken up and applications are invited for allotment of about 16,000 house sites of various dimensions even though the land for formation of layouts comprising over 16,000 house sites has not been identified; that pursuant to the Notification bearing No. MUDA/ PA/91-92 dated 9th January 1992 several persons have applied; that 19th May 1992 was fixed for allotment of sites by the then Chief Minister; that no layout has been formed; that the programme is manipulated by making hurried arrangements to impress the general public that site seekers would get house sites if they make their applications for the purpose; that this has been done to extract funds from the applicants; that the Members of the MUDA have already been favoured with an assurance that they would have a right to distribute 50 to 100 sites each; that the first respondent is governed by the Act; that the formation of the layouts cannot be made without following the provisions of the Act; that no Rules have been framed under the

Act; that the State Government has directed the MUDA to follow the Rules comprised in Bangalore Development Authority (Allotment of Sites) Rules 1984 for the purpose of allotment of sites; that there has not been any acquisition on lands for the alleged schemes in various places as stated in the impugned Notification dated 9.1.1992; therefore, the act of calling for applications for allotment of over 16,000 house sites without acquisition of lands and without formation of layouts is nothing but a fraud and smacks of high level corruption; that after getting the allotment list released through the then Chief Minister on 19th May 1992, the 2nd respondent had persuaded all the members of the MUDA to co-operate with the Scheme by taking 50 to 100 sites for themselves, which would be distributed to such of the people identified by such members; that this is nothing but offering bribe to the members of the MUDA by enabling them to collect money for themselves and distribute house sites; that the 2nd respondent has already collected crores of Rupees in this fashion by way of kick-backs and also helped several members who are ready to follow his foot-steps to collect several lakhs of Rupees for their personal benefits; that without forming a layout and identifying the sites, respondent 1 and 2 have proceeded to mislead the people and collected the amount; that by this process, respondent No. 1 would succeed in collecting enormous amount of money at the cost of the general public and escape, which will spell disaster both to the public interest and to the State exchequer; that the provisional selection list consists of the names of several persons who own building sites and are not eligible for allotment of sites; that the entire list was prepared by the 2nd respondent himself and released to the public through the then Chief Minister of Karnataka without even getting approval of the MUDA: that the MUDA is blindly submitting to the dictates of the 2nd respondent for the simple reason that the 2nd respondent, for all practical purposes, is wielding all the powers of the Chief Minister of Karnataka; that it is the MUDA that should offer house sites in such extension or layouts formed for allotment of sites to the persons eligible for allotment; that the 2nd respondent is not the MUDA; that the 2nd respondent has exceeded the authority and is trying to exercise the jurisdiction not vested in him; that without acquisition of land and without forming layout, no steps for calling for application for allotment of sites can be taken; and as far as the entire action of the respondents 1 and 2 is concerned it is opposed to the provisions of the Act.

9. In Writ Petitions Nos.2855 to 2858 of 1992(LB), the MUDA had filed an Application (I.A.No. I) dated 25.2.1992 for vacating the interim order passed in the Writ Petitions. In that, the MUDA had stated its complete defence and also produced seven documents, which were marked as Annexures R-1 to R-7. Annexure R-1 is the invitation of the 16th Annual General Meeting of Madhuvana Griha Nirmana Sahakara Sangh Ltd. Annexures R2 to R4 are the lists of land owners to whom the amounts were stated to have been paid pursuant to agreement of sale. Annexure - R6 is the communication from the Superintending Engineer (Elec.) Mysore Circle, Mysore, to the Commissioner, MUDA, stating that the K.E.B. would make arrangements for supply of electrical energy to the newly

formed layouts after duly preparing estimates, obtaining competent sanction and establishing 66 KVB Sub-stations, as contemplated in the master plan of Mysore City for different layouts. Annexure-R6 is the list of the areas coming under the four Development Schemes in question. Annexure-R7 is the letter dated 17th July 1991 written by the State Government to the Commissioners of all Urban Development Authorities in the State to follow the Bangalore Development Authority Rules. In that application, the very locus standi of the petitioner to challenge the proceeding in question, was questioned. It has been specifically stated that more than fifty thousand applications are pending for consideration for allotment of sites; that the MUDA has taken up the formation of layout work on a war footing basis by entrusting the layout formation work to nearly 350 contractors on piece work basis; that the MUDA notified the Scheme u/s 16 in respect of these layouts; that MUDA would need three months" time to verify the particulars of the applicants" eligibility and their bona fides; that this work of verification is in progress; that by the time the MUDA finalises the list of eligible applicants for allotment of sites, complete formation of layouts with all facilities such as, water supply, sewerage, lighting etc., would be completed, that the City of Mysore Improvement (Allotment of Sites) Rules 1972, as claimed by the petitioners, are not applicable to the allotment of sites in question, as those Rules are no longer in force; that the inviting of applications and formation of layouts can go hand in hand to save time and to avoid delay in distribution of sites; that pending finalisation of the Rules, the State Government has directed all the Urban Development Authorities to follow the Bangalore Development Authority (Allotment of Sites) Rules which are in force; that there is no basis in the allegation that the collection of registration fee and earnest money deposit by the MUDA is to exploit the gullible people by holding out that sites would be allotted in future; that MUDA is not violating any rules or regulations; that Clause 6 in the impugned Notification (Annexure-D) contemplates refund of deposits in case the distribution of sites stalled for whatever reasons such as Government direction, Court order etc., that the MUDA has no motive to enrich itself as alleged by the petitioners. On the other hand, the MUDA has come forward to take up distribution programme on a crash programme basis and see that the sites are allotted to the citizens/applicants in a reasonable time on "no loss no profit" basis; that the MUDA is not transgressing the law and in this process it has not caused incalculable injury to the interest of the public, that the petitioners are only espousing the cause of vested interests on the guise of serving public interest; that nearly 1806 acres of land is covered under the Scheme; that u/s 35 of the Act, MUDA is entitled to purchase lands by entering into agreement with the owners of the lands; that by its Resolution, MUDA intended to purchase lands by offering Rs. 50,000/- per acre; that out of 1806 acres covering all the Schemes, the MUDA is able to purchase 502 acres by paying Rs. 2,51,18,125/- to the land owners; that it has taken possession of the said extent; that the negotiations to purchase the remaining portions of the lands are in progress and that the MUDA is processing the documents relating to 300-400 acres of lands which would be completed in another one week; that

MUDA will be in possession of more than 800 acres out of the notified extent of lands; that this would enable MUDA to form sites; that the acquisition in respect of the remaining portion of land is in progress; that MUDA would be in a position to complete the land acquisition proceedings in two weeks time; that in the meanwhile the owners of the lands are coming forward with their willingness to transfer the lands and have offered to submit the original documents relating to the lands so that the process of getting compensation would be speeded up; that there is incentive scheme of the Authority of offering certain number of sites to the land owners depending upon the extent of the land, the land owners lose, at concessional rate and Rs. 50,000/- is offered for one acre; that there is tremendous pressure on the MUDA by the land owners to take possession of the lands; that the MUDA expects that there may not be any problem for acquiring the lands because the land owners themselves have come forward to surrender the lands by accepting the amount of Rs. 50,000/- per acre, which they may not get if the lands are to be acquired as per the provisions of the Land Acquisition Act, and it would take years and years, to complete the acquisition.

10. In the application - I.A.IV filed on 14th August 1992 in the Writ Appeals for vacating interim order, the respondents have specifically stated that the MUDA in discharge of its statutory functions and duties, has drawn up the Development Schemes in respect of (1) Vijaya nagar 4th Stage, 1st Phase (Hinkal); (2) Vijaya nagar 4th Stage, 2nd Phase (Basavanahalli); (3) Vijaya nagar 4th Stage, 3rd Phase (Hinkai); (4) Sri S.Bangarappa Nagar 1st Phase (Dattagalli 3rd Stage); and (5) Nanjangud Extension; that the notification u/s 17 of the Act is issued; that the Government has accorded sanction u/s 18 of the Act; that by its publication dated 9.1.1992, MUDA has called for applications for allotment of sites from general public; that MUDA can acquire the land by entering into agreements with the owners of the land under the provisions of the Act, therefore, it resolved to purchase the lands by agreement by offering Rs. 50,000/- per acre; that the MUDA has not taken up any further steps in respect of Nanjangud Layout in view of the order passed in the Writ Petitions; that the owners of the land have voluntarily come forward ,to hand over possession of the land by accepting the offer of Rs. 50,000/- per acre and one site at half rate; that the MUDA has already taken possession of 1220 acres of land out of 1806 acres pertaining to the aforesaid Schemes other than Nanjangud layout.

11. The Statement of Objections filed on behalf of MUDA in Writ Petition No. 19357 of 1992 specifically states that the MUDA can acquire lands by agreement with the owners of the lands and accordingly resolved to purchase the land by agreement by offering Rs. 50,000/- per acre plus one site at half price; that the MUDA has formed the layouts pursuant to the Schemes; that 14622 sites other than corner sites and land-losers sites, are formed; that about 50,000 applications for allotment are pending before the MUDA; that all the improvements as specified in Section 30 have been provided for in the estimates; that it is not the intendment of the Act that all the civic amenities are to be provided before allotment of sites; and all other allegations made in the

Petition are denied.

In addition to this, the 2nd respondent has also filed separate Statement of Objections in which he has denied the allegations made against him in the Writ Petition.

12. In the light of these averments and the several contentions urged by both sides, the following Points arise for Consideration;

(1) Whether the petitioner is entitled to prosecute the Writ Petition and the Writ Appeals?

(2) Whether the Mysore Urban Development Authority and its Chairman have followed the provisions of the Act in forming the development schemes, such as, (1) Vijaya nagar 4th Stage, 1st Phase (Hinkal); (2) Vijaya nagar 4th Stage, 2nd Phase (Basavanahally); (3) Vijaya nagar 4th Stage, 3rd Phase (Hinkal); (4) Dattagalli III Phase; and (5) Nanjangud Extension; and calling for applications under the Notification bearing No. MUDA/ AAS.1/91-92, dated 9.1.1992 published in the Deccan Herald dated 12.1.1992, produced as Annexure-D in Writ Petitions Nos. 2855 to 2858 of 1992?

(3) Whether the action of Mysore Urban Development Authority and its Chairman is actuated by ulterior motive of making private gains?

(4) What order?

POINT NO. 1

13. As already pointed out, W.P.Nos.2855 to 2858/92 were filed by four persons by name R.Nagarajan, K.L.Ramesh, Y.A.Ramnath and Smt.Girija. Out of them, the first two persons are the residents of Mysore and the last two persons are the residents of Bangalore. W.P.No. 19357/92 is filed by one Y.Mahesh, Advocate, Mysore. During the pendency of W.A.Nos.506 to 509/92 which were preferred by the original Writ petitioners, they filed a Memo dated 3.8.1992 to withdraw the Appeals. The petitioner in W.P.No. 19357/92 had also filed an application, in the Writ Appeals to implead him as one of the appellants. In other words, he sought for permission to continue the Writ Appeals. In that application he has stated that the respondents have pressurised the appellants to withdraw the Appeals by alluring them with attractive offers and the appellants have succumbed to such attraction and have sought for withdrawing the Appeals in consideration of the huge amount of kick-backs offered to them.

13.1. Considering the averments made in the application for impleading made by the petitioner in W.P.No. 19357/92, we allowed the application by the Order dated 18.8.1992 which has been extracted in para 2 of this Judgment and permitted the applicant to continue the Appeals and directed the names of the original appellants to be deleted. Accordingly, the cause title of the Appeals was amended.

14. It is the contention of the respondents that neither the original appellants nor

the present appellant who is also the petitioner in W.P.No. 19357/92 have/has locus standi to maintain the Writ Petitions and seek the reliefs as sought for by them. The learned Single Judge, as already pointed out, has dismissed the Writ Petitions Nos. 2855 to 2858/92 on the ground that the petitioners have not established sufficient interest in maintaining the Writ Petitions. We are of the view that neither the contention of the respondents in this regard nor the conclusion of the learned Single Judge can be accepted as correct.

15. The original petitioners in W.P.No. 2855 to 2858/92 and the petitioner in W.P.No. 19357/92 have approached this Court to direct the MUDA to act in accordance with the provisions of the Act, the Rules framed thereunder and the Regulations and not to do any act Which it has not been authorised by law. In other words, their attempt is to ensure that the Rule of Law is maintained.

15.1. It is the mandate of the Constitution that the State and the Statutory Authorities must conform to the provisions of the Constitution and the Laws made thereunder. MUDA is constituted under the Act. It has to act in accordance with the provisions of the Act, more so, in the matter of execution of the Development Schemes as contemplated under Chapter III of the Act. Every citizen residing within the area of operation of the MUDA is entitled to challenge the action of the MUDA if it, in the purported execution of the Development Schemes, completely ignores the provisions of the Act, the Rules and the Regulations and tries to exercise the power not vested in it or does any act which is not authorised by law and thereby causes injury to the public interest.

15.2. In the instant case, it is the grievance of the petitioner - that the various Schemes in question are not being executed in accordance with the provisions of the Act because the lands owned by several persons covered by the Development Schemes in question have not been acquired in accordance with law, and thus they are not vested in the MUDA; that even otherwise, the title to the lands is not acquired by purchase inter-vivos, as such the steps taken by the MUDA to call for the applications along with the registration fee and advance deposits for allotment of sites and thereby collecting several crores of Rupees from the innocent applicants is nothing but a fraud committed on the public and a fraud on the power of the MUDA. Therefore, they have sought for quashing the Notification under which applications are called for, and all further proceedings pursuant thereto.

15.3. It is not possible to comprehend and appreciate the contention of the respondents as to locus standi and the Decision of the learned Single Judge in this regard. When the contentions raised by the petitioners go to the very root of the matter and challenge the very authority of the MUDA to proceed with the implementation of the Development Scheme and the manner-in-which it has tried to proceed, it is open to the petitioners to approach this Court under Article 226 of the Constitution for seeking such a relief, and when such an act of the Statutory Authority is brought to the notice of the Court, it becomes the Constitutional obligation on the part of this Court to examine and to satisfy as to

whether the action of the statutory authority which affects the public at large is in accordance with the provisions of the Act, and the Rules and Regulations framed thereunder. In the event it is found that such an act is not in conformity with the provisions of the Act and the Rules and Regulations framed thereunder and it affects the public at large, it is obligatory on the part of this Court to set aside the unauthorised act and thereby stop the mischief that is being caused by such an act.

15.4. In *Bangalore Medical Trust Vs. B.S. Muddappa and others*, a question as to whether the residents of the locality can challenge the action of the State Government in granting the land reserved for public park for establishing a hospital came up for consideration; In that case, the Supreme Court held thus:

"36. Locus standi to approach by way of Writ Petition and refusal to grant relief in equity, jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise of exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the Courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. *S.P. Gupta Vs. President of India and Others*, Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of, law raises substantial issue of accountability of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of Writ Petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, the question as to

locus standi to maintain the petition under Article 226 was also considered. In that case, the petition was filed by an organisation dedicated to the cause of Bonded Labourers in the Country. The petitioner therein pointed out exploitations of labourers in the mining and inhuman treatment meted to them and sought for appropriate remedies for stopping such cruel acts. In that case, the State Government as well as the lessees of the mine raised an objection that the letter written by the petitioner has been treated as a Writ Petition but it cannot support a Writ Petition under Article 32 of the Constitution as no fundamental right of the petitioner or the workmen on whose behalf the Writ Petition was filed, was infringed. In that Decision, the Supreme Court observed that it was incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshold an enquiry by the Court as to whether the workmen were living in bondage and under inhuman conditions. It was also further observed thus:

"We have on more occasions than one stated that public interest litigation is not in the nature of adversary litigation,...."

Again in S.P. Gupta Vs. President of India and Others, it has been held regarding locus standi that a person who has suffered a legal injury to his person or property alone is entitled to relief is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. After referring to the various stages of the development of law as to locus standi, it has been held thus:

"It may therefore, now be taken as well-established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in contravention of any Constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason is poverty, helplessness, or disability or -socially or economically disadvantaged position unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and..... The Court would therefore, unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a Writ Portion and act upon it.

Thus the conspectus of these Decisions must lead us to a conclusion that the Writ Petitions" cannot be dismissed on the ground that the petitioners have no locus standi and the Writ Petitions are entitled to be decided on merits and in accordance with law. Accordingly, Point No. 1 is answered in the affirmative.

POINTS NOS. 2&3:

16. From the case pleaded by the respondents - MUDA and its Chairman and also the State Government, and the records produced by them, the following facts

emerge:

The MUDA has taken up five Development Schemes in Mysore known as the Vijaya nagar 4th Stage - 1st Phase (Hinkal); Vijaya nagar 4th Stage - 2nd Phase (Basavanahalli); Vijaya nagar 4th Stage - 3rd Phase (Hinkal); Sri S.Bangarappa Nagar - 1st Phase (Dattagalli 3rd Stage); and Nanjangud Extension. Notifications as required by Sub-section (3) of Section 17 of the Act in respect of each of these development schemes have been published. The notices as required by Sub-section (5) of Section 17 of the Act on the persons whose names appear in the Land Revenue Register are claimed to have been served. The State Government has also accorded sanction to the schemes as per Sub-section (3) of Section 18 of the Act. Permission for using the agricultural land for non-agricultural purpose has also been accorded. Copies of the Notifications published under Sub-section (3) of Section 17 and the sanction accorded under Sub-section (3) of Section 18 of the Act and also the orders according permission for using the agricultural land for non-agricultural purpose are also produced. The detailed estimates in respect of each of the Schemes as per the provisions of Section 18 of the Act are also produced.

16.1. It is the case of the respondents that it is open to the MUDA to purchase the lands comprised in the Schemes and it is not necessary for it to proceed to acquire the same in accordance with the provisions of the Act read with the Land Acquisition Act. In the Statement of Objection filed in W.P.No. 19357/92 and the application dated 25.2.1992 filed in Writ Petitions Nos.2855 to 2858 of 1992, the respondents have specifically taken a stand that instead of acquiring all the lands comprised in the various Development Schemes in question, the MUDA has resolved to purchase the lands under agreement by offering Rs. 50,000/- per acre. It has also specifically stated that out of the total extent of 1806 acres comprised in the schemes, the MUDA has been able to purchase 502 acres by paying a sum of Rs. 2,51,18,125/- to the land owners and has taken possession of the said extent of land. In the Statement of Objections filed on 14th August 1992 in W.P.No. 19357/92, it has been stated thus:

"..... The Authority resolved to purchase the land by agreement by offering Rs. 50,000/- per acre. The Authority did not take any further steps in respect of Nanjangud Layout in view of the interim orders passed by this Hon'ble Court in Writ Petition. The owners of the lands have voluntarily come forward to handover the possession of their lands by accepting the offer of Rs. 50,000/-, plus one site at half the price. The Authority has already taken possession of about 1270 acres out of 1806 acres pertaining to above mentioned Schemes (other than Nanjangud Layout) by paying compensation of about Rs. 6 1/2 crores. The Authority has formed the Layout in pursuance of the Schemes. 14,622 sites (other than Corner Sites and land-losers sites) are formed with Site Numbers, Boundary and they are ready for allotment. About 50,000 Applications for allotment are pending before the Authority. The applications are processed through the computers....."

But in the Application dated 25.2.1992 filed in W.Ps. Nos.2855 to 2858 of 1992 only an extent of 502 acres of land was alleged to have been purchased under an agreement of sale and possession had been obtained. The Lay-outs had not been formed. Several Contractors were employed for forming the layouts and for laying the roads, erecting culverts, formation of drainages, fixation of boundary stones etc., (as per the statement made in para-6 of that Application). In this regard the case of the Respondents is that development schemes need not be fully executed before calling for the Applications for allotment of sites. Formation of layout, laying of the roads, providing drainages and all other requirements that are necessary for completing the Schemes and calling for Application for allotment of sites can go on simultaneously. Thus on the date the impugned Notification dated 9.1.1992 was published in the issue of 12th January 1992 of Deccan Herald, neither the lands involved in the Schemes were acquired in accordance with law nor the title of the said lands had vested in the MUDA and the Development Schemes were also not completed.

17. The main thrust of the arguments of the petitioners is that as per the provisions of the Act, no Development Scheme can be implemented and the Applications for allotment of sites can be notified without acquiring the lands comprised in the Development Scheme/s without completing the Development Schemes in all respects. The purchase of the lands comprised in the Development Scheme/s through negotiations is not at all permissible. The Schemes had not been fully implemented on the dates when the Applications were called for under the impugned Notification. Therefore, the action of the MUDA and its Chairman in calling for Applications for the allotment of sites on receiving registration fee and advance money deposit from each of the applicants is wholly without the authority of law and is intended to make private gains.

18. In order to determine the rival contentions it is necessary to refer to the relevant provisions of the Act. The Act has been enacted with an avowed object of providing for the establishment of Urban Development Authorities for the planned development of major and important urban areas in the State and the areas adjacent thereto and for matters connected therewith,

18.1. The Act defines the expression "amenity" to include road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purposes of the Act. The expression "Civic amenity" has also been defined to mean a market, a post office, a bank, a fair price shop, a milk booth, a school, a dispensary, a maternity home, a child care centre, a library, a gymnasium, a recreation centre run by the Government or local authority, a police station, an area office or a service station of the local authority or the Karnataka Urban Water Supply and Drainage Board or the Karnataka Electricity Board and such other amenity as the Government may by notification specify. Similarly the expression "development" is defined to mean 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

planning and development.

18.2. Chapter II of the Act relates to Constitution and incorporation of the Urban Development Authority and other matters relating thereto such as disqualification for office of the members of the Urban Development Authority; term of office and conditions of service members; removal of members; eligibility for reappointment; meeting of the Authority; appointment of Committees; powers of different authorities; appointment of Commissioner; and powers and duties of the Commissioner. Section 14 of the Act specifically provides as to the objects of the Authority. It specifically states that the objects of the Authority shall be planning and promoting and securing the development of the urban area and for those purposes the Authority shall have the power to acquire, hold, manage and dispose of moveable and Immovable property, whether within or outside the urban area under its jurisdictions, 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 purpose incidental thereto.

18.3 Chapter III of the Act deals with the schemes of development. Sections 15 to 34 fall in this Chapter. For our purpose all the provisions are not relevant to be referred to. The Sections that are relevant are Sections 15, 16, 17, 18 and 19 of the Act.

18.4. Chapter IV of the Act consists of two Sections, viz., Sections 35 and 36 which are also relevant for our purpose.

18.5. u/s 15 of the Act, the Authority is empowered to draw up detailed Schemes for the development of the urban area with the previous approval of the Government. It is also open to the Authority which in the instant case is the MUDA to take up any new or additional Development Schemes on its own initiative, if it has got sufficient resources or it can take up the Development Schemes- on the recommendation of the local Authority provided the local authority makes available the necessary funds for forming and carrying out any Scheme. The Government can also whenever it deems it necessary, require the Authority to take up any Development Scheme or work and execute it subject to such terms and conditions as may be specified by the State Government. As per Section 16 of the Act every Development Scheme u/s 15 of the Act shall within the limits of the area comprised in the Scheme, provide for the following:

- a) The acquisition of any land which in the opinion of the Authority, will be necessary for or affected by the execution of the scheme;
- b) Laying and relaying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;
- c) Drainage, water supply and electricity;
- d) Reservation of not less than fifteen per cent of the total area of the layout for public parks and play-grounds and an additional area of not less than ten per cent of the total area of the layout for civic amenities.

Sub-sections (2) and (3) of Section 16 of the Act further provide that the Authority may raise any land if it considers expedient to raise to facilitate better drainage; forming open spaces for the better ventilation of the area comprised in the Scheme or any adjoining area, and the sanitary arrangements required. It also provided for the construction of houses. Section 17 of the Act provides as to the procedure to be followed on the preparation of the Scheme as per the provisions of Section 16 of the Act. It specifically provides that when a Development Scheme has been prepared, the Authority shall draw up a notification stating the fact of a Scheme having been made and limits of the area comprised therein, and naming a place where particulars of the Scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may have to be seen at all reasonable hours; A copy of the said notification shall have to be sent to the local Authority, which shall within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government any representation which the local authority may think fit to make with regard to the Scheme. In addition to this, the Authority is also required to cause a copy of the said notification to be published in two consecutive issues of a local newspaper having wide circulation in the area and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Local Authority and in such other places as the Authority may consider necessary. In case no representation is received from the Local Authority within the time specified, the concurrence of the Local authority to the Scheme shall be deemed to have been given. Sub-section (5) of Section 17 further provides that during the thirty days next following the day on which such notification is published in the Local Newspapers, the Authority shall serve a notice on every person whose name appears in the assessment list of the Local Authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of receiving the notice as to why such acquisition of the building or land and the recovery of betterment tax should not be made. The notice shall have to be signed by or by the order of the Commissioner and shall have to be served in the manner provided in Sub-section (6) thereof. Section 18 of the Act provides for the sanction of Scheme and Section 19 provides that upon sanction of the Scheme, a declaration has to be published giving particulars of land to be acquired for the purpose of this Scheme and other matters. It is necessary to reproduce Sections 18 and 19 of the Act, which are as follows:

"18. Sanction of scheme. - (1) After publication of the scheme and service of notices as provided in Section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme making such modifications, therein as it may think fit to the Government for sanction, furnishing, --

- a) a description with full particulars of the scheme including the reasons for any modifications inserted therein;
- b) complete plans and estimates of the cost of executing the scheme;
- c) a statement specifying the land proposed to be acquired;
- d) any representation received under Sub-section (2) of Section 17;
- e) a schedule showing the rateable value as entered in the municipal assessment book on the date of the publication of a notification relating to the land u/s 17 or the land assessment of all land specified in the statement under Clause (c) and;
- f) such other particulars, if any, may be prescribed;

(2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimate for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme."

"19. Upon sanction, declaration to be published giving particulars of land to be acquired. -- (1) Upon sanction of the scheme, the Government shall publish in the official Gazette 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.

(2) The declaration shall state the limits within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(3) 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.

(4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of Sub-section (5) and (6) forthwith proceed to execute the scheme as altered.

(5) If the estimated cost of executing the Scheme as altered exceeds by a greater sum than five per cent of the estimated cost of executing the scheme as sanctioned, the Authority shall not, without the previous sanction of the Government, proceed to execute the scheme, as altered.

(6) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than the land specified in the schedule referred to in Clause (e) of Sub-section (1) of Section 18, the provisions of Section 17 and 18 and of Subsection (1) of this Section shall apply to the part of the scheme so altered in the same manner as if such altered part were the scheme.

(7) The Authority shall not denotify not reconvey and land included in the scheme without the specific orders of the Government.

(8) The Authority shall not allot any land to any individual, organisation or authority, the civic amenity area earmarked in the Scheme without the orders of the Government."

At this stage itself reference to Sections 35 and 36 of the Act, which are as follows, may also be referred to:

"35. Authority to have power to acquire land by agreement. -Subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, situated within the urban area for the purchase of such land.

36. Provisions applicable to the acquisition of land otherwise than by agreement. -- (1) The acquisition of land under this Act otherwise than by agreement within or without the urban area shall be regulated by the provisions, so far as they are applicable of the Land Acquisition Act, 1894.

(2) For the purpose of Sub-section (2) of Section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government u/s 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost 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."

19. A reading of the provisions contained in Sections 15 to 19, 35 and 36 of the Act would lead to an inevitable conclusion that the Development Schemes are to be drawn up and executed by the Authority (MUDA) as per the provisions of Sections 15 to 19 & 36 of the Act. The Authority is the creature of the Act-which prescribes in detail the manner and the mode to be adopted for drawing up detailed Development Scheme and execution of the same. The Authority cannot enjoy or exercise any power which falls outside the provisions of the Act. In other words, it has to perform its functions, discharge its duties and exercise its power only in accordance with the provisions contained in the Act. The provisions contained in Sections 15 to 19 and 36 of the Act are mandatory in nature. The expression "shall" is used in Sections 16 to 19 & 36 of the Act with reference to the acts to be performed by the Authority. Therefore, the Authority has to strictly adhere to the manner and the mode provided under Sections 15 to 19 & 36 of the Act in drawing up and execution of the Development Scheme. According to Section 16 of the Act, the Development! Scheme, comprising the lands belonging to private individuals, can be executed only by acquiring the same. Therefore, u/s 16 of the Act, the Authority i.e., MUDA has to necessarily identify the land necessary for the Scheme and to provide for acquisition of such lands which are necessary for, or affected by the execution of the scheme. The Notification

prepared u/s 17(1) of the Act, published under Sub-section (3) of Section 17 of the Act and sent to the Local Authority under Sub-section (2) thereof, has to contain a statement specifying the land which is proposed to be acquired and of the land in regard to which the betterment tax may be levied. It is because of this Sub-section (5) of Section 17 specifically provides serving of notices on the persons whose lands are proposed to be acquired and whose names appear in the Land Revenue Register, as being primarily liable to pay land revenue. Section 18 of the Act, which deals with the sanction of the Schemes by the State Government, extracted above, specifically provides that the authority shall submit the Scheme to the State Government for sanction, furnishing details of the scheme as stated in that Section. One of the requirements is to furnish a statement specifying the land proposed to be acquired. The other requirement is to furnish a complete plan and estimate of the cost of executing the scheme. In addition to this, there are other particulars which are also to be furnished as contained in that Section. After receipt of the Scheme, the State Government on considering the proposal, may accord sanction to the Scheme. After sanction is accorded by the State Government, a declaration has to be published by the State Government in the official Gazette 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 public purpose. The declaration shall have to state the limits in which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place and where the plan of the land may be inspected. Such a declaration, published as per the provisions of Sub-sections (1) and (2) of Section 19 of the Act, shall be a conclusive evidence that the land is needed for public purpose and the Authority shall upon publication of the said declaration, proceed to execute the scheme.

19.1. Thus - the Notification published under Sub-section (3) of Section 17 of the Act and the declaration published as per subsections (1) and (2) of Section 15 of the Act are equivalent to the Preliminary and Final Notifications issued under Sections 4(1) and 6(1) respectively of the Land Acquisition Act. Sub-section (3) of Section 19 of the Act also further provides that the declaration published under Sub-section (1) of Section 19 of the Act shall be conclusive evidence that the land is needed for a public purpose and it is only thereupon that the Authority can proceed to execute the scheme. Therefore, from Sub-section (3) of Section 19 of the Act it follows that the Authority can proceed to execute the Scheme only after the publication of the declaration in the Official Gazette as per Sub-sections (1) and (2) of Section 19 of the Act. It is after publication of the declaration as per Sub-section (1) of Section 19 of the Act, further proceedings as per the provisions of the Land Acquisition Act have to be followed; compensation has to be determined; amount has to be deposited; then the State Government has to take possession of the land and thereafter the land will vest in the State Government u/s 16 of the Land Acquisition Act. It is after vesting of the land in the State Government, the Deputy Commissioner shall, upon payment of the cost of 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 (MUDA) as provided u/s 36 of the Act.

20. In the instant case, admittedly, the procedure required to be followed as per the provisions of Sections 19 and 36 of the Act is not followed. No declaration as per Sub-section (f) of Section 19 of the Act containing the particulars stated in Sub-section (2) thereof is published. Consequently, no award is passed and the compensation payable to the persons interested in the land is not determined. Therefore, the extent of the land comprised in the Schemes in question has not vested either in the State or in the MUDA.

21. The contention of the respondents is that Section 35 of the Act enables the MUDA to purchase the land by agreement instead of acquiring it, therefore, MUDA has acted well within its authority in entering into an agreement with the land-owners to purchase the land at the rate of Rs. 50,000/- per acre plus one site at half the rate. The records produced before us disclose that the MUDA resolved on 22.10.1990 to purchase the land under agreement on the terms stated in the Resolution which is as follows:

"7. Consideration of payment of higher compensation to the owners of land who surrender the land on mutual consent.

After a detailed discussion it was resolved to fix the uniform rate at Rs. 50,000/- per acre to all the Villages wherever lands are acquired by M.U.D.A. under mutual consent. With regards to the incentive scheme proposed, further clarification was sought from the B.D.A. It is learnt that the B.D.A. is allotting sites at regular rates under Incentive Scheme published in the Gazette Notification No. HUD 750 MNX 87 dated 9.11.80. M.U.D.A. may adopt the same scheme without any modification. The sites shall be allotted to the land losers as per the slab given below:-

1.

0 to 1/2 acre

20" x 30" - 600 Sft.

2.

More than 1/2 acre but not exceeding 1 Acre

30" x 40" - 1200 Sft.

3.

More than 1 Acre but not exceeding 1 1/2 acre

1.30" x 40" 2.30" x 30" -1880 Sft.

4.

More than 1 1/2 acre but not exceeding 2 acres

40" x 60" - 2400 Sft.

5.

More than 2 acres but not exceeding 2 1/2 acres

i) 40" x 60"

ii) 20" x 30" - 3000 Sft.

6.

More than 2 1/2 acres but not exceeding 3 acres

i) 40" x 60"

ii) 30" x 40" - 3600 Sft.

7.

More than 3 acres but not exceeding 3 1/2 acres

i) 40" X 60"

ii) 30" X 40"

iii) 20" x 30" - 4200 Sft.

8.

More than 3 1/2 acres but not exceeding 4 acres

40" x 60" - 4800 Sft. two sites.

9.

More than 4 acres but not exceeding 4 1/2 acres

i) 40" x 60"

ii) 40" x 60"

iii) 20" x 30" - 5400 Sft.

10.

More than 4 1/2 acres but not exceeding 5 acres

i) 40" x 60"

ii) 40" x 60"

iii) 30" x 40" - 6000 Sft.

11.

More than 5 acres

40" x 60" - 7,200 Sft. three sites."

xxx xxx xxx Thus, the 1st Respondent has not acquired the land as per the provisions of the Act. The land has also not vested in it.

21.1. Section 35 of the Act reads as follows:

"35. Authority to have power to acquire land by agreement, -Subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, situated within the urban area for the purchase of such land."

The provisions contained in Section 35 of the Act enabling the Authority to purchase the land under an agreement are subject to the provisions of the Act. Further such purchase shall have to be done with the previous approval of the State Government. No such previous approval is either pleaded or produced. Even if such approval had been given, it would not have been valid as Section 35 of the Act has to be read subject to the provisions contained in Sections 15 to 19 of the Act. Further, whenever the land is required for the purpose of a Development Scheme, it would be all the more necessary to acquire as per the provisions of the Act as the extent of the land required would be several hundred acres, and the provisions of Sections 15 to 19 have to be followed.

21.2. The scope and object of Section 35 of the Act is only to enable the Authority to purchase small extent of land which is required for its purpose; in other words for its own use not necessarily for the purpose of a Development Scheme. Of course, for the purpose of completing the Development Scheme, apart from the extent of the land already acquired for the purpose of the Scheme, if an additional small extent of land is required, it can be purchased by the Authority with the previous approval of the State Government by entering into an agreement with the owner of the land to avoid delay in the completion of the Development Scheme. But it is not at all possible nor it is permissible to interpret Section 35 of the Act as empowering the Authority to purchase under an agreement several hundreds of acres of land for the purpose of a fresh Development Scheme contemplated under the Act. Section 35, as already pointed out, is subject to the provisions of the Act. Therefore, the land required for the purpose of a fresh Scheme has to be acquired as per Sections 17 to 19 and 36 of the Act. If the Authority decides to make alteration in the sanctioned Scheme for which the land has already been acquired as per Sections 17, 19 and 36 of the Act, it can do so subject to the provisions of Sub-sections (5) and (6) , of Section 19 of the Act. Sub-section (5) of Section 19 of the Act, specifically provides that if the estimated cost of execution of the altered Scheme exceeds by a greater sum than five per cent of the estimated cost of executing the Scheme as sanctioned, the Authority is required to obtain previous sanction of the Government and it is not at all permissible for the Authority to execute the Scheme as altered, without the previous sanction of the Government. Consequently, in such a case, Section 18 has to be followed. In addition to this,

Sub-section (6) of Section 19 of the Act, further makes it incumbent upon the Authority to acquire the land as per the provisions of Sections 17, 18 and 19(1) of the Act, if the Scheme as altered, involves the acquisition otherwise than by agreement of any land other than the land specified in the schedule referred to in Clause (e) of Sub-section (1) of Section 18 of the Act. Clause (e) of Section 18(1) of the Act, relates to specifying the land proposed to be acquired. Therefore, it is clear that even in the case of alteration of the Scheme also, if an additional land is required, it has to be acquired. However, if the additional land required is small in extent, instead of acquiring it, as per the provisions contained in Sections 17 to 19 of the Act, the Authority may purchase it by agreement with the previous approval of the State Government. It does not mean that it can take up Development Scheme involving vast extent of private land without acquiring it according to the provisions of the Act and the Land Acquisition Act, to the extent it is applicable.

21.3. The interpretation tried to be placed by the respondents on Section 35 of the Act to the effect that it enables the Authority (MUDA) to purchase the land under agreement without resorting to acquisition of land for the purpose of the Development Scheme, cannot be accepted. Firstly, the provisions contained in Section 35 of the Act, are subject to the provisions of the Act; therefore a fresh Development Scheme, cannot be executed without acquiring the private lands involved in the scheme. Secondly, the principles of interpretation of statute also do not permit acceptance of such an interpretation tried to be placed by respondents on Section 35 of the Act. When the statute specifically directs that the Development Scheme should be drawn up and executed in the manner provided under Sections 16 to 19 of the Act, it is not at all open to the Authority to ignore the provisions of Section 19 of the Act and proceed to purchase the land instead of acquiring. The Authority created under the Statute which directs that it shall draw up the Development Scheme, and have it sanctioned by the State Government and acquire the private land involved in the Scheme and to comply with the other requirements as stated in the statute, cannot ignore the mandate of the statute and cannot deviate from the provisions thereof.

21.4. Further, if the Authority like the MUDA is permitted to purchase hundreds of acres of land by way of agreement without resorting to acquisition, it would result in exposing the Authority to several unscrupulous, undesirable and underhand dealings and thereby resulting in commission of several illegal acts. If such a course is permitted, it would also enable the Members of the Authority to make illegal gains. Such an interpretation, apart from giving rise to several illegal acts, as pointed out above, would also endanger the very object and intendment of the Act. It would also result in ignoring the mandatory provisions of Section 19 of the Act. Therefore, we are of the view that Section 35 of the Act, has only a very limited purpose to serve. As already pointed out, u/s 35 of the Act, the Authority can purchase a small extent of land with the previous approval of the State Government either for its own use or for the purpose of completing the Development Scheme. It cannot start a Development Scheme involving hundreds

of acres of land by purchasing it under an agreement ignoring the mandatory provisions of the Act. We have already pointed out that the provisions contained in Sections 16 to 19 and 36 of the Act are mandatory in nature and they provide in specific terms as to what are the steps the Authority has to take in order to start and complete the Development Scheme as contemplated under the Act.

22. It is not known on what basis a sum of Rs. 50,000/- plus one site at half rate is determined per acre for Purchasing the land required for executing fresh Development Schemes in question. It is not the case of the 1st respondent that any sale deed is obtained from the owners of lands who, according to respondents 1 and 2, have come forward to sell their lands and deliver possession of the same. The land can vest in the MUDA on completion of the acquisition proceedings as per the provisions of the Act, and on delivering possession of the same by the Deputy Commissioner to the MUDA as per Sub-section (3) of Section 36 of the Act, or by transfer of title by the owner of the land by execution and registration of the sale deed in accordance with the provisions of the Registration Act. Mere agreement; even coupled with delivery of possession, by itself does not result in transfer of title; consequently the land does not vest in the MUDA. Without such vesting of the land in the MUDA, it is not at all permissible for the MUDA to execute the Development Schemes in question, form layouts and call for applications for allotment of sites.

23. In the instant case, undisputedly, there is no transfer of title of land as per law and as such, the land has not vested in the MUDA. Without vesting of the land covered by the several Development Schemes in question and without executing -the Development Schemes in all respects, MUDA has invited applications by the impugned Notification dated 9.1.1992 published in the Deccan Herald dated 12.1.1992 for allotment of sites on payment of Registration Fee and advance money deposit running into several thousands in respect of each application. In this way, it has received several crores of Rupees. This act of the MUDA apart from being unauthorised and opposed to the provisions of the Act, is nothing but a fraud on the power of the MUDA and it is undoubtedly a fraud committed on the general public.

24. The lay outs are not complete. Sites are not formed. A Division Bench of this Court in *M.MANIKLAL v. STATE OF MYSORE AND ORS.* 1968(1) Mys.LJ. 416, while dealing with a case under the City of Bangalore Improvement Act, as to what constitutes a "lay-out", has held as follows:

"We do not accede to the argument that the expression "lay out" means no more than the making of marks on the acquired property for dividing it into sites. A lay out to which Section 16 refers, includes every step by which an area of land is converted into building sites to render it suitable for construction of houses and buildings, and necessarily involves the formation of roads, arrangements for conservancy, swerage, drainage, water supply and lighting. Section 25(2) of the Improvement Act which insists on provision for such amenities in the case of a private lay out, indicates that such is the true character of a lay out. Section 24

which forbids the sale of sites by the Trust Board until the improvements enumerated in Section 23 are made, yields the same deduction. Such lay out which is part of a development scheme reduces congestion in the existing area of the city, and contributes to the elimination of the privation caused by insufficient housing accommodation. So, it assists the expansion and the improvement of the city and so promotes the purposes of the Act. The expansion of a city and its improvement are purposes from which flows a direct public benefit and a purpose, which is productive of results so advantageous to the public is a clear public purpose."

Similar provisions are contained in the Act in question, (See Section 31 of the Act). Therefore, without execution of the Development Scheme in all respects, the Authority should not have called for the Applications for allotment of sites.

25. It is not possible to comprehend and appreciate how a statutory Authority like the MUDA embarked upon calling for applications for allotment of sites by representing to the general public that it has completed the layout, formed sites in the development Schemes in question (see Annexure "D"), even without the land vesting in it, layouts not completed and sites not formed. It is also not possible to comprehend in such a situation as averred in para 3 of the W.P.No. 19357/92 how and why the then Chief. Minister agreed to distribute the list of allotments (see also Annexure "A" produced in that W.P.). It is also not known as to how and why the concerned Department of the Government kept quiet and did not point out that Sections 19 and 36 of the Act have to be complied with. Rules of Allotment also have not been framed under the Act. The communication from the Government that the B.D A allotment Rules may be followed, does not amount to framing the Rules nor by reason of such communication, the BDA Allotment Rules would become the Rules framed under the Act. The members constituting the MUDA and its Chairman appear to have thrown the law to the winds and have converted the public authority into a private organisation in inviting applications for allotment of sites on payment of Registration Fee and advance deposit.

25.1. Thus, we are constrained to hold that the MUDA and its Chairman have not only not followed the mandatory provisions of the Act in proceeding to form the layouts for implementation of the Development Schemes in question, and calling for applications for allotment of sites under the impugned Notification dated 9.1.1992 published in the Deccan Herald dated 12.1.1992 produced as Annexure-D, but they have also acted in wilful violation of the provisions of the Act. In the facts and circumstances of the case, we are constrained to hold that such illegal and unauthorised act in such magnitude involving 1806 acres of land could not have been done without actuated by ulterior motives to make private gains.

25.2. In these Petitions it is not necessary to determine as to who are the beneficiaries of these illegal and unauthorised acts. This aspect requires to be proved further to fix up the responsibility of the illegal and unauthorised acts and the private gains, if any, made by the concerned persons. As to what has to be

done in this regard, we will indicate before parting with the case. Thus what we have stated above in the preceding paragraphs, is sufficient to answer Point Nos. 2 and 3. Accordingly, we answer Point Nos. 2 and 3 as follows:

Point No. 2: in the negative; and

Point No. 3: in the affirmative.

Consequently, the Writ Appeals and the Writ Petitions are to be allowed. Accordingly, the Order dated 26.2.1992 passed by the learned single Judge rejecting the Writ Petitions Nos.2855 to 2858 of 1992 is set aside. The Writ Petition Nos.2855 to 2858 of 1992 and W.P.No. 19357 of 1992 are allowed in the following terms:

i) The Notification bearing No. MUDA.AAS-1/91-92 dated 9.1.1992 published in the Deccan Herald dated 12.1.1992, produced as Annexure "D" in W.P.Nos. 2855 to 2858/92 is quashed;

ii) Respondents 1 and 3, if they decide to proceed with the Development Schemes in question, it is open to them to do so by following the procedure laid down in Sections 19 & 36 and other provisions of the Act regarding Development Schemes.

iii) The 1st Respondent shall refund the Registration fee and the Advance money received by it from the various applicants within three months from to-day. In the event Respondents 1 and 3 decide to proceed with the Development Schemes and are able to complete the same within a period of three months from to-day in accordance with the directions issued above and call for the applications for allotment of sites; in such an event, it would be open to them to treat the applications received so far, as the Applications made in response to the Notification to be issued calling for the applications for allotment of sites.

However, this will not come in the way of such of those applicants who want to seek refund of the registration fee and the advance amount, and who do not want to pursue their applications and desire to have the registration fee and advance money deposit refunded; on such request being made by any of the applicants, Respondent No. 1 shall refund the registration fee and the advance money deposit within three weeks from the date of seeking refund or within 3 months from to-day whichever is earlier.

26. Before parting with the case we consider it necessary to point out that here is a case where without any acquisition, the Development Schemes covering an area of 1806 acres are taken up by the 1st Respondent. Further, without completely forming the layouts and forming the sites and without the land vesting in the 1st Respondent, it has called for and received thousands of applications for allotment of sites and received huge amounts running into several crores by way of registration fee and advance money deposit. The petitioner in W.P.No. 19357/92 has also prayed for issuing a direction to the State Government to order an inquiry u/s 3 of the Commissions of Inquiry Act,

1952. Having regard to the allegations made in the Petitions and the magnitude of the illegal act and various other acts involving an extent of 1806 acres of land, and several crores of Rupees, we consider that it would be just and necessary to appoint a Commission u/s 3 of the Commissions of Inquiry Act, 1952 for the purpose of making inquiry into the several acts which have led to calling for the applications for allotment of sites by the Notification dated 9.1.1992 and receipt of thousands of applications with crores of Rupees by way of registration fee and advance money deposit, and to fix up the responsibility on the persons concerned and other consequential and connected matters thereto. We are of the view that these observations are sufficient for the Government to move in the matter; as such, we do not consider it necessary to issue any Mandamus in this regard.

27. The petitioner in W.P.No. 19357/92 is entitled to costs. Respondents 1 to 3 pay costs of Rs. 5,000/-.

A copy of this Judgment be sent to the Chief Secretary, Government of Karnataka.