Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6662-6670 OF 2002

Vasanth Sreedhar Kulkarni and others ……Appellants

Versus

State of Karnataka and others ……Respondents

With

CIVIL APPEAL NOS. 6671-6676 OF 2002

Mumtaz Begum Imam Husen
Maribalkar and others ……Appellants

Versus

State of Karnataka and others ……Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Whether Vasanth Sreedhar Kulkarni, Eshwar Gouda Burma Gouda Patil and Ms. Mehrunnisa Mahazuz Husen Maniyar (appellants in C.A. Nos. 6662-6670/2002) had the locus to question the allotment of sites to the private respondents from land bearing survey Nos. 533/1, 534A and 534B of village Kanabargi, Belgaum despite the fact that the writ petitions filed by Vasanth Sreedhar Kulkarni and Eshwar Gouda Burma Gouda Patil had been dismissed by the High Court in 1996 and also the fact that they claim to have sold the acquired land and whether the purchasers were entitled to contest writ petitions filed by the allottees of the acquired land are the questions which arise for consideration in these appeals filed against judgments dated 14.12.1999 and 04.04.2000 of the Division Benches of the Karnataka High Court.

2. In 1976, the Legislature of the State of Karnataka enacted the Karnataka Improvement Boards Act, 1976 to provide for constitution of Improvement Trust Boards in some cities with powers and duties for ensuring regulated development of urban areas. The Belgaum City Improvement Trust Board, which was one among several Trust Boards constituted by the State Government framed Scheme Nos. 35, 43 and

43A for formation of residential and commercial layouts in Kanabargi village, Belgaum. For implementation of Scheme No. 43, notification dated 6.11.1987 was issued. However, before further steps could be taken in the matter, the State Legislature enacted the Karnataka Urban Development Authorities Act, 1987 (for short, `the 1987 Act') which envisaged the establishment of Urban Development Authorities for the planned development of major and important urban areas in the State. The Belgaum Urban Development Authority (for short, `the BDA') was constituted under Section 3 of the 1987 Act. After some time, the BDA undertook the task of implementing Scheme Nos. 35, 43 and 43A of Kanabargi covering an area measuring 336 acres 6 guntas by involving revenue survey Nos. 529, 531 to 549, 553P, 556 to 562, 564 to 570, 571P, 572 to 677 at an estimated cost of Rs.25.35 crores. Notification dated 16.8.1991 was issued under Section 17(1) of the 1987 Act in respect of land comprised in survey Nos. 533/1, 534/A and 534/B owned by Vasanth Sreedhar Kulkarni, Kashibai Patil and Eshwar Gouda Burma Gouda Patil respectively for implementing Scheme No.43. By an order dated 9.6.1994, the State Government accorded sanction under Section 18(3) of the 1987 Act for formation of

4065 sites from the aforesaid survey numbers. The relevant portions of the English translation of that order, which has been made available by learned counsel for the State of Karnataka are extracted below:

> "Belgaum Urban Development Authority, Belgaum informed the Government that, by preparing Scheme No.35,43,43 A of Kanabargi it would form totally 4065 in an area measuring 336 acres and 06 gunthas by involving R.S. Nos. 529, 531 to 549, 553P, 556 to 562, 564 to 570, 57IP, 572 to 677, and the estimated cost of the Scheme in Rs. 25.35 Crores and from the Scheme the income to the Authority is Rs. 27,88,84,000.00, and the net income to the Authority would be Rs. 2,53,81,000.00, and this is self economically aided scheme and the Authority would not claim any assistance from the Government. It is further stated that in this scheme 20 x 30 sites have reserved for economically weaker sections and a provision has been made for water supply, drainage and electricity the estimated cost of the scheme and area is reserved for garden, playground and Civic Amenity sites, as per Sub Section (c) and (d) of Section 16 of the Karnataka Urban Development Authorities Act 1987. Hence, requested for according administrative approval for the said scheme.
>
> **Government Order in No.HUD/446/MIB, Bangalore, Dated 9th June 1994.**
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> After considering the proposal of the letter the Commissioner,
> Belgaum Urban Development Authority, Belgaum in the above read, the sanction is accorded under section 18(3) of the Karnataka Urban Development Authorities Act 1987, for formation of 4065 sites at a cost of Rs. Rs. 25.35

> Crores to the Kanabargi Scheme No.35, 43, 43A of Belgaum Urban Development Authority, Belgaum in lands measuring 336 gunthas, subject to the following conditions.
>
> xxxx xxxx xxxx"

3. Thereafter the State Government issued Notification under Section 19(1), which was published in Karnataka State Gazette dated 1.9.1994 in respect of survey No.533/1 measuring 5 acres 7 guntas belonging to Vasanth Sreedhar Kulkarni and survey Nos. 534/A and 534/B measuring 3 acres and 22 guntas belonging to Smt. Kashibai Patil and Eshwar Gouda Burma Gouda Patil. The Special Land Acquisition Officer, BDA, who was appointed by the State Government to exercise the powers of the Deputy Commissioner under Section 3(c) of the Land Acquisition Act, 1894 (for short, `the 1894 Act') issued public notice dated 16.9.1994 and informed the landowners and persons having interest in the land that various survey numbers including survey Nos. 533/1, 534A and 534B have been included in Scheme Nos. 35, 43 and 43A.

4. The award prepared by the Special Land Acquisition Officer was approved by the State Government vide order dated 11.12.1995 and was published on 13.12.1995. On the next date i.e., 14.12.1995, notice was issued to the landowners under Section 12(2) of the 1894 Act. The possession of land comprised in survey No.534/A+C was taken on 1.1.1996 and name of the BDA was mutated in the revenue records.

5. In the meanwhile, Vasanth Sreedhar Kulkarni and Eshwar Gouda Burma Gouda Patil filed Writ Petition Nos. 30236 and 30237 of 1994 questioning the notifications issued under Sections 17(1) and 19(1) of the 1987 Act. Smt. Kashibai Patil and one Shri Malappa also filed similar writ petition bearing Nos. 30927/1994 and 30928/1994. All the writ petitions were dismissed by the learned Single Judge on 19.4.1996. The applications filed by the writ petitioners under Order IX Rule 13 read with Section 151 CPC for recalling that order on the ground that their counsel could not appear on the date of hearing were dismissed by the learned Single Judge vide order dated 18.6.1996 by observing that the writ petitions had been dismissed on merits.

6. After dismissal of the writ petitions, possession of land comprised in survey Nos. 533/1 and 534/B was also taken by the competent authority and entries were made in the record of rights in the name of the BDA, which then formed 112 sites, carried out development works like construction of roads at a cost of Rs.43 lacs and allotted 82 sites to the eligible persons between 31.3.1997 and 20.3.1999. 45 of the allottees executed lease-cum-sale agreement by depositing the entire amount. 8 allottees also started construction of the houses. 17 allottees took steps for execution of lease-cum-sale agreement and the remaining 22 allottees made partial payment of the cost of land.

7. After the issuance of notifications under Sections 17(1) and 19(1) of the 1987 Act, the landowners entered into some clandestine transactions with Allahuddin Khan, who was described as their General Power of Attorney and the latter created large number of documents on ten rupees stamps showing sale of small parcels of land to Smt. Mumtaz Begum and others.

8. After taking possession of the acquired land and making the allotment of sites, the BDA demolished unauthorized constructions made by some of those to whom small parcels of land are said to have been sold by Allahuddin Khan. At that juncture, Allahuddin Khan and others made representation dated 27.2.1998 to the Commissioner, BDA for release of land comprised in survey Nos. 533/1, 534/A and 534/B by stating that 120 persons belonging to weaker sections of the society have constructed houses after taking loan and even the scheme sanctioned by the State Government envisages allotment of 52% plots to the persons belonging to backward classes and weaker sections of the society.

9. The then Chairman and three other members of the BDA made spot inspection on 12.3.1998 and prepared a report with the suggestion that land measuring 8 acres 29 guntas, which had been unauthorisedly sold by the landowners to the poor persons on ten rupees stamp papers may be deleted in favour of the purchasers by collecting development charges. The matter was then considered in the meeting of the BDA held on 16.3.1998 and despite the strong opposition by the

Commissioner, it was decided to recommend regularization of the transfers made by the landowners by deleting survey Nos. 531/1, 534/A and 534/B from the notifications issued under Sections 17(1) and 19(1) of the 1987 Act. The resolution of the BDA was forwarded to the State Government vide letter dated 3/4.6.1998. After about 3 months, the Commissioner sent D.O. letter dated 2.9.1998 to the Principal Secretary, Urban Development Department, State Government detailing the reasons for not deleting land comprised in 3 survey numbers. He pointed out that the plots have already been carved out and allotted to different persons at a price of Rs.1,73,56,000/-. However, the State Government accepted the recommendations contained in the resolution dated 16.3.1998 and issued notification dated 24.3.1999 under Section 19(7) of the 1987 Act.

10. Within few days of deleting three survey numbers from the process of acquisition, Shri Shankar M. Buchadi took over as Chairman of the BDA and under the leadership of new Chairman, the Commissioner, BDA sent letter dated 3.4.1999 to the Secretary to the State Government for cancellation of notification dated 24.3.1999. The

matter was also considered in the meeting of BDA held on 15.4.1999 and a resolution was passed to make a request to the State Government to withdraw notification dated 24.3.1999. The same reads as under:

> "The meeting of the Authority discussed regarding the problem that has arisen on account of deletion of the land measuring 08 Acres – 29 Gs out of R.S. No. 533 & 534A & B of Kanbargi village from the Kanbargi Scheme of Belgaum Urban Development Authority, Belgaum under Govt. Notification No.NA.A.E./172/BEMPRA VI/98, dated:24.03.1999.
>
> In the said lands, already 112 sites have been formed out of which, 82 sites have been allotted & out of 82 sites, 45 allottees have got executed Lease-cum-Sale Agreement by depositing entire amount and 08 allottees have undertaken the work of construction of houses by expending Rs.3,00,000/- and 17 allottees are under the stage of execution of the Lease-cum-Sale Agreements by depositing entire amount @ 22 allottes have deposited the partial value of the site and this aspect has been considered in the meeting. The meeting opined that, the Authority has to face the critical position on account of deletion of the said land from the Scheme of the Authority as this stage by the Govt.
>
> Apart from this, the meeting considered the fact that, the erstwhile owners of the said lands, tried to get their names entered in the village records illegally and without knowledge the Authority. Further, the meeting also considered the fact regarding refund of Rs.1.00 Crore to 82 Allottees, who have deposited the site value & the Authority is unable to make arrangement of allotment of sites to the allottees and now, the Authority is unable to bear this financial burden. The meeting also opined that, it

> is not possible to the Authority to bear the expenditure of Rs.20.00 lakhs incurred for construction of house by the allottees and to refund the amount incurred by 45 allottees for Registration of Lease-cum-Sale Agreements. The meeting also noted that the Authority has to bear the loss of Rs.43.00 lakhs already incurred for Developmental Works, apart from this, the allottees may approach the Courts against the Authority. Hence, it has been resolved to submit detailed report to the Govt, to withdraw the D'Notification of the acquired lands from the Scheme of the Authority in the interest of public at large."

11. The new Chairman also wrote letter dated 17.4.1999 to the Karnataka Minister for Urban Development for cancellation of notification dated 24.3.1999. The relevant portions of that letter are extracted below:

> "In Government Notification No.UDD 172 BEMPRA VI/98, dated: 24.3.1999 the lands of Kanbargi village bearing R.S. No. 533, 534A and 534B measuring 8 acres 29 guntas have been deleted from the scheme of the Authority. In this already 82 sites. In the meeting of the authority dated: 15.4.1999 it has been discussed in detail regarding the problem arose on account of this notification. In the said meeting it was considered the fact regarding formation of 112 sites, allotment of 82 sites, execution of lease cum sale agreement in respect of 45 sites, constructions of houses by 7 allottees by incurring Rs.3 lakhs, 17 allottees about to get the lease cum sale agreement and deposit of part of value of the sites by 20 allottees.

Under these circumstances, it is submitted that, in the area of the said lands, 113 sites of different sizes have been formed, out of the same already 82 sites have been distributed to the public, out of these 82 sites, 62 persons have deposited full value of the sites, out of these lease-cum-sale agreements in respect of 45 sites have been got executed 20 persons then deposited part of value of the sites, as per rules there is scope for depositors the amount out of 45 allottees who have got executed the lease-cum-sale agreements, 6 persons have obtained the building person for construction of the building over the sites, and in these the work of construction of houses is under progress. These 6 houses have been constructed up to slab level and the Engineer of the Authority has estimated the cost of construction of Rs.5,50,000/- per house. Apart from this, the Authority has already formed roads in these lands by incurring expenditure about Rs.11,00,000/- and about Rs.24,00,000/- worth electrification and the work of formation of pacca gutter is under progress and Rs.5,05,000/- is incurred under land acquisition. Notwithstanding, since the lands are deleted by the Government from the scheme, 82 persons who have already been allotted the sites have sustained loss. Apart from this, it is not possible to the Authority to make alternative arrangement to them and it would be difficult to cancel the lease-cum-sale agreement in respect of the sites. In this background, the Authority has to face the severe objections from public allottees, and there may be the possibility of facing Court litigations. Therefore, from the public point of view and in the interest of the Authority it is suitable to cancel the said notification by reconsidering the notification issued by the Government by already deciding to delete these lands from the scheme. Hence, kindly considering these facts, it is requested immediate action for cancelling the notification."

12. In the meanwhile, some of the allottees of sites carved out by the BDA filed Writ Petition Nos. 16003-16008/1998 for quashing notification dated 24.3.1999 by asserting that the State Government did not have the jurisdiction to issue notification under Section 19(7) of the Act. They pleaded that after dismissal of the writ petitions filed by the landowners, the BDA had carried out development and allotted sites to eligible persons some of whom had paid full price and started construction. They further pleaded that with a view to frustrate the scheme, the landowners executed power of attorney in favour of Allahuddin Khan who, in turn, sold the plots on stamp papers of Rs.10/- obtaining permission from the competent authority and that the State Government had illegally denotified the acquired land by relying upon the recommendations made by the BDA which was headed by a political person. As a counter blast, Vasanth Sreedhar Kulkarni and two others filed Writ Petition Nos. 19264-19266/1999 questioning the allotment of sites by the BDA by asserting that the Commissioner had no authority to allot any site carved out of survey Nos. 533, 534A and 534B because the BDA had already passed resolution dated 16.3.1998 for deleting those survey numbers from the notifications issued under

Sections 17(1) and 19(1) of the 1987 Act and the State Government had issued notification under Section 19(7) of that Act.

13. During the pendency of the writ petitions, Smt. Mumtaz Begum and 50 others filed an application in Writ Petition Nos. 16003-16008/1998 for impleadment as parties. The learned Single Judge disposed of all the writ petitions by common order dated 16.7.1999. He first dealt with the application for impleadment and rejected the same by making the following observations:

> "Before taking up this writ petition on merits, it is also necessary to notice that by means of IA.II as many as 51 persons wants to come on record as contesting respondents to the writ petition. The interest claimed by them is "that all of them pursuant to an agreement of sale executed by the land owners of the acquired property, were put in possession and they have raised permanent construction. Therefore, have an interest".
>
> It is not disputed that these alleged "agreement of sale" were executed by the land owners subsequent to the dismissal of the writ petitions challenging the acquisition proceedings. Hence, on the day or dates when the land owners alleged to have executed the agreement of sale, they had no legal right to sell the property and therefore these applicant cannot be said to have acquired any interest known to law in the property. Even otherwise, the right of an agreement holder is only to sue for specific performance or to enforce the contract. It cannot be said that he would be having any right to property. Looking from any angle,

> these applicants cannot be said to have any interest in the property to come on record and contest the writ petitions. Hence, the application IA.II is rejected."

14. The learned Single Judge then considered the question whether the State Government had the power to denotify the acquired land. After adverting to the grounds on which the allottees had questioned notification dated 24.3.1999, the learned Single Judge held that power to denotify the acquired land can be exercised only before possession thereof is taken and as the BDA had already taken possession, the State Government could not have issued notification dated 24.3.1999. The learned Single Judge then referred to Section 19(7) and held that the power to denotify or reconvey land included in the scheme can be exercised only by the Authority and not by the State Government. The learned Single Judge also declared that the erstwhile landowners do not have the locus to challenge the allotment of sites because the writ petitions filed by them questioning the notifications issued under Sections 17(1) and 19(1) of the 1987 Act had been dismissed and the acquired land had vested in the BDA.

15. The writ appeal filed by Vasanth Sreedhar Kulkarni and two others was dismissed by the Division Bench, which agreed with the learned Single Judge that the State Government did not have the power to denotify the acquired land by issuing notification under Section 19(7). Writ Appeal Nos. 1711-1716/2000 and 2450-2454/2000 filed by Mumtaz Begum and others were dismissed by another Division Bench by relying upon order dated 14.12.1999 passed in the writ appeals filed by Vasanth Sreedhar Kulkarni and two others.

16. Before this Court several interlocutory applications were filed by the parties. I.A. Nos. 20-28/2010 were filed by appellants Vasanth Sreedhar Kulkarni and two others for placing on record xerox copies of notice dated 4.9.1996 issued by the Special Land Acquisition Officer, BDA under Section 16(2) of the 1894 Act read with Karnataka (Amendment) Act, 1961 and letter dated 25.10.2008 written by the Special Land Acquisition Officer to Shri Vasheemkhan stating therein that there is no mention in the record of the BDA of compensation amount regarding survey Nos. 533/1 and 534/B. Two I.As. including I.A. Nos. 56-64/2010 have been filed by Vasanth Sreedhar Kulkarni

and two others for permission to urge additional grounds. They have also filed copies of the writ petitions, order dated 14.10.1980 passed by the State Government vide HUD.172/1979, English translation of newspaper – Tarun Bharat dated 29.9.1994 and application filed under Section 151 CPC before the High Court. I.A. Nos. 38-46 and 47-55 of 2010 have been filed on behalf of the BDA for permission to file documents marked Annexures R2/2 to R2/23.

17. In compliance of the direction given by the Court, learned counsel appearing for the State filed an affidavit dated 23.9.2010 of Shri Shambhu Dayal Meena, Secretary to the Government of Karnataka, Urban Development along with copies of the gazette notifications dated 7.11.1991, 1.9.1994 and 24.3.1999, order dated 9.6.1994 passed by the State Government under Section 18(3) of the 1987 Act, the panchnamas and other documents evidencing taking of possession of various parcels of land including survey Nos. 533/1, 534A and 534B and entries made in favour of the BDA in the record of rights.

18. The first and foremost argument advanced by Shri Pallav Shishodia, learned senior counsel appearing for the appellants is that notwithstanding dismissal of Writ Petition Nos. 30236 and 30237 of 1994 filed by Vasanth Sreedhar Kulkarni and Eshwar Gouda Burma Gouda Patil, the notifications issued by the BDA and the State Government under Sections 17(1) and 19(1) respectively are liable to be quashed because the 1987 Act does not provide for the acquisition of land. Shri Shishodia submitted that the 1987 Act was enacted by the State Legislature with reference to the subject enumerated in Entry 5 of List II of the Seventh Schedule of the Constitution and that entry does not empower the State Legislature to enact law for compulsory acquisition of land. He further submitted that the State Government can acquire land only under the 1894 Act, which has been enacted by Parliament with reference to Entry 42 of List III of the Seventh Schedule. Learned senior counsel emphasized that the provisions contained in the 1987 Act empower the BDA and the State Government to frame and sanction schemes for development of urban areas and also earmark/designate the land proposed to be acquired for the execution of the development schemes, but there is no provision in the Act under

which they can compulsorily acquire the land. He argued that if Sections 17 and 19 of the 1987 Act are read as enabling the BDA and the State Government to acquire land for the development schemes, the same would become vulnerable to the attack of unconstitutionality. Learned senior counsel also referred to the provisions of Sections 35 and 36 of the Act and submitted that for the purpose of acquisition the competent authority has to comply with the mandate of Sections 4, 5A and 6 of the 1894 Act, which has not been done in these cases. He lastly submitted that the judgment in Bondu Ramaswamy v. Bangalore Development Authority (2010) 7 SCC 129 requires reconsideration because the proposition laid down therein on the scope of Sections 17 and 19 of the 1987 Act is contrary to the settled law that compulsory acquisition of land can be made only after complying with the provisions of the 1894 Act.

19. Learned counsel for the respondents argued that appellants' indirect challenge to the notifications issued under Sections 17 and 19 on the ground that the 1987 Act does not provide for the acquisition of land should not be entertained because no such plea was raised in the

pleadings of the writ petitions filed in 1994 or 1999, writ appeals filed against the order of the learned Single Judge and even the memo of special leave petitions. Shri S.N. Bhat, learned counsel appearing for the BDA further argued that even on merits, the appellants' challenge to the notifications issued under Sections 17(1) and 19(1) should be negatived because the judgment of three-Judge Bench in Bondu Ramaswamy's case has been approved by the Constitution Bench in Girnar Traders (3) v. State of Maharashtra (2011) 3 SCC 1.

20. For appreciating the rival contentions in a correct perspective, we may usefully notice Sections 16, 17, 18 and 19 of the 1987 Act. The same read as under:

> "16. **Particulars to be provided for in a development scheme**. – Every development scheme under Section 15, -
> (1) shall within the limits of the area comprised in the scheme, provide for, -
>
> (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) the 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.

(2) may, within the limits aforesaid, provide for,-

(a) raising any land which the authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required; and

(d) establishment or construction of markets and other public requirements or conveniences.

(3) may, within and without the limits aforesaid provide for construction of houses.

17. **Procedure on completion of scheme**. - (1) When a development scheme has been prepared, the authority shall draw up a notification stating the fact of a scheme having been made and the 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 be seen at all reasonable hours.

(2) A copy of the said notification shall 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 as hereinafter provided, any representation which the local authority may think fit to make with regard to the scheme.

(3) The Authority shall also 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.

(4) If no representation is received from the local authority within the time specified in sub-section (2), the concurrence of the local authority to the scheme shall be deemed to have been given.

(5) 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 the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notices shall be signed by or by the order of the Commissioner and shall be served, -

(a) by personal delivery of, if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building; or
(b) by leaving the same at the usual or last known place of abode or business of such person; or
(c) by registered post addressed to the usual or last known place of abode or business of such person.

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 under section 17 or the land assessment of all land specified in the statement under clause (c); and

(f) such other particulars, if any, as may be prescribed.

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

(3) After considering the proposal submitted to it to 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 a 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-sections (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 other wise 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 sections 17 and 18 and of sub-section (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 or reconvey any land included in the scheme without the specific orders of the Government.
>
> (8) The Authority shall not allot any land to any individual, organization or authority, the civic amenity area earmarked in the scheme without the orders of the Government."

21. The above noted provisions are *pari materia* to Sections 15, 16, 17 and 19 of the Bangalore Development Authority Act, 1976, which were interpreted in Bondu Ramaswamy's case. An argument similar to the one made before us was rejected by three-Judge Bench by making the following observations:

> "The assumption by the appellants that Chapter III of the BDA Act relating to development schemes does not provide for acquisition is erroneous. Sections 15 to 19 of the BDA Act contemplate drawing up of a development scheme or additional development scheme for the Bangalore Metropolitan Area, containing the particulars set down in Section 16 of the said Act, which includes the details of the lands to be acquired for execution of the scheme. Section 17 requires the BDA on preparation of the development scheme, to draw-up and publish in the Gazette, a notification stating that the scheme has been made, showing the limits of the area comprised in such scheme and specifying the lands which are to be acquired. The other provisions of Section 17 make it clear that the BDA has to furnish a copy of the said notification and invite a representation from Bangalore City Corporation, affix the notification at conspicuous places in various offices, and serve notice on every person whose land is to

be acquired. Thus, the notification that is issued under Section 17(1) and published under Section 17(3), is a preliminary notification for acquiring the lands required for the scheme under the Act. Section 17(5) and Section 18(1) requires BDA to give an opportunity to landowners to show cause against acquisition and consider the representations received in that behalf. Section 18(1) also requires BDA to furnish a statement of the lands proposed to be acquired to the State Government for obtaining its sanction for the scheme including the acquisition. Sub-section (1) of Section 19 requires the Government to publish a declaration upon sanctioning the scheme, declaring that such a sanction has been given and declaring that the "lands proposed to be acquired by the authority" are required for public purpose. Sub-section (3) of Section 19 makes it clear that the declaration published under Section 19(1) should be conclusive evidence that the land is needed for a public purpose and that the Authority shall, upon publication of such declaration, proceed to execute the same. Thus, it is clear that the acquisition by the Authority for the purposes of the development scheme is initiated and proceeded with under the provisions of the BDA Act.

Section 36 of the BDA Act provides that the "acquisition of land under this Act" shall be regulated by the provisions, so far as they are applicable of the LA Act. In view of the categorical reference in Section 36 of the BDA Act to acquisitions under that Act, there cannot be any doubt that the acquisitions for BDA are not under the LA Act, but under the BDA Act itself. It is also clear from Section 36 that the LA Act, in its entirety, is not applicable to the acquisition under the BDA Act, but only such of the provisions of the LA Act for which a corresponding provision is not found in the BDA Act, will apply to acquisitions under the BDA Act. In view of Sections 17 to 19 of the BDA Act, the corresponding provisions — Sections 4 to 6 of the LA Act—will not apply to acquisitions under the BDA Act. We therefore reject the

contention that the BDA Act does not contemplate acquisition and that the acquisition which is required to be made as a part of the development scheme, should be made under the LA Act, applying Sections 4, 5-A and 6 of the LA Act.

The question of repugnancy can arise only where the State law and the existing Central law are with reference to any one of the matters enumerated in the Concurrent List. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III. Article 254 has no application except where the two laws relate to subjects in List III (see Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983) 4 SCC 45). But if the law made by the State Legislature, covered by an entry in the State List, incidentally touches upon any of the matters in the Concurrent List, it is well settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. (See Hoechst, Megh Raj v. Allah Rakhia AIR 1947 PC 72, and Lakhi Narayan Das v. Province of Bihar, AIR 1950 FC 59).

Where the law covered by an entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can coexist and operate without repugnancy to the provisions of the existing law. This Court in Munithimmaiah has held that the BDA Act is an Act to

> provide for the establishment of a Development Authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is, development of Bangalore Metropolitan Area. This Court held that in pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a law for acquisition of land like the LA Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. This Court held that if at all, the BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the LA Act. The fallacy in the contention of the appellants is that it assumes, erroneously, that the BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of repugnancy and Section 6 of the LA Act prevailing over Section 19 of the BDA Act would not at all arise."
>
> (emphasis supplied)

22. The proposition laid down in Bondu Ramaswamy's case was approved by the Constitution Bench in Girnar Traders (3) v. State of Maharashtra (supra) (para 178). The Constitution Bench also referred to the doctrine of pith and substance in the context of challenge to some of the provisions of the Maharashtra Regional and Town Planning Act, 1966 and observed:

"We have already discussed in great detail that the State Act being a code in itself can take within its ambit provisions of the Central Act related to acquisition, while excluding the provisions which offend and frustrate the object of the State Act. It will not be necessary to create, or read into the legislations, an imaginary conflict or repugnancy between the two legislations, particularly, when they can be enforced in their respective fields without conflict. Even if they are examined from the point of view that repugnancy is implied between Section 11-A of the Land Acquisition Act and Sections 126 and 127 of the MRTP Act, then in our considered view, they would fall within the permissible limits of doctrine of "incidental encroachment" without rendering any part of the State law invalid.

Once the doctrine of pith and substance is applied to the facts of the present case, it is more than clear that in substance the State Act is aimed at planned development unlike the Central Act where the object is to acquire land and disburse compensation in accordance with law. Paramount purpose and object of the State Act being planned development and acquisition being incidental thereto, the question of repugnancy does not arise. The State, in terms of Entry 5 of List II of Schedule VII, is competent to enact such a law. It is a settled canon of law that courts normally would make every effort to save the legislation and resolve the conflict/repugnancy, if any, rather than invalidating the statute. Therefore, it will be the purposive approach to permit both the enactments to operate in their own fields by applying them harmoniously. Thus, in our view, the ground of repugnancy raised by the appellants, in the present appeals, merits rejection.

A self-contained code is an exception to the rule of referential legislation. The various legal concepts covering

> the relevant issues have been discussed by us in detail above. The schemes of the MRTP Act and the Land Acquisition Act do not admit any conflict or repugnancy in their implementation. The slight overlapping would not take the colour of repugnancy. In such cases, the doctrine of pith and substance would squarely be applicable and rigours of Article 254(1) would not be attracted. Besides that, the reference is limited to specific provisions of the Land Acquisition Act, in the State Act. Unambiguous language of the provisions of the MRTP Act and the legislative intent clearly mandates that it is a case of legislation by incorporation in contradistinction to legislation by reference."
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> (emphasis supplied)

23. In view of the law laid down in the aforementioned cases, we hold that the 1987 Act not only provides for development of urban areas, but also empowers the BDA and the State Government to compulsorily acquire land for the purpose of execution/implementation of the schemes.

24. The second argument of the learned senior counsel for the appellants is that under Section 19(7) of the 1987 Act, the State Government is empowered to release the acquired land and the High Court committed serious error by nullifying notification dated 24.3.1999 at the instance of those to whom sites were allotted by the

BDA. Shri Shishodia emphasized that the documents like panchnamas and record of rights prepared by the Special Land Acquisition Officer and other revenue officers are evidence only of symbolic taking over of possession, but the actual possession continued with the landowners, who carved out plots and sold the same to the members of the weaker sections and the State Government had rightly taken note of the plight of the citizens belonging to poor strata of the society and denotified the land by accepting the recommendations made by the BDA. Shri Shishodia submitted that Mumtaz Begum and others are innocent purchasers and the High Court should have rejected the plea taken by the official respondents that the State Government could not have issued notification under Section 19(7) of the 1987 Act. Learned counsel for the State and the BDA submitted that Section 19(7) is similar to Section 48 of the 1894 Act and the power to denotify the acquired land cannot be exercised after possession of the acquired land is taken by the competent authority and, in any case, that power can be exercised only by the Authority and not by the State Government.

25. In our view, there is no merit in the argument of the learned senior counsel for the appellants. The documents produced before the High Court and this Court show that possession of land comprised in survey Nos. 534/A+C was taken on 1.1.1996 and possession of land comprised in survey Nos. 533/1, 534/B was taken after dismissal of Writ Petition Nos. 30236/1994 and 30237/1994. After taking of possession, the name of the BDA was entered in the record of rights. The appellants have not produced any evidence before the Court to show that Panchnamas evidencing take over of possession were fabricated by the Special Land Acquisition Officer and entries in the record of rights were manipulated by the concerned revenue authorities. Therefore, the bald statement made by the landowners that they continued to be in possession of the acquired land cannot be relied upon for recording a finding that denotification of the acquired land was valid. In Banda Development Authority, Banda v. Motilal Agarwal (2011) 5 SCC 394, this Court examined in detail the mode and manner of taking possession of the land acquired under the 1894 Act, referred to the judgments in Balwant Narayan Bhagde v. M.D. Bhagwat (1976) 1 SCC 700, Balmokand Khatri Educational and Industrial Trust,

Amritsar v. State of Punjab (1996) 4 SCC 212, P.K. Kalburqi v. State of Karnataka (2005) 12 SCC 489, National Power Thermal Power Corporation Ltd. v. Mahesh Dutta (2009) 8 SCC 339, Sita Ram Bhandar Society v. Government N.C.T. of Delhi (2009) 10 SCC 501 and culled out the following principles:

> "(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
>
> (ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
>
> (iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
>
> (iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of

> independent witnesses and getting their signatures on such document.
>
> (v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

26. By applying clause (ii) of the aforesaid principles, we hold that possession of the acquired land had been taken by the Special Land Acquisition Officer in accordance with law and neither the BDA had the jurisdiction to make a recommendation for denotification of the acquired land nor the State Government could issue notification under Section 19(7) of the 1987 Act. It also appears to us that both, the BDA and the State Government laboured under a mistaken impression that the power under Section 19(7) of the 1987 Act can be exercised by the latter. If that was not so and the BDA genuinely felt that a case was made out for deacquisition of land comprised in survey Nos. 533/1, 534/A and 534/B, then it could have, on its own, issued notification under Section 19(7) of the 1987 Act.

27. The question whether Mumtaz Begum and others who claim to have purchased small parcels of land from Allahuddin Khan after the issuance of notifications under Section 17(1) of the 1987 Act should be allowed to retain the same despite the fact that the BDA had carved out sites and allotted plots to more than 100 eligible applicants deserves to be answered in negative in view of the law laid down in Yadu Nandan Garg v. State of Rajasthan 1996(1) SCC 334, U.P. Jal Nigam, Lucknow v. Kalra Properties (P) Ltd. (1996) 3 SCC 124, Sneh Prabha v. State of U.P. (1996) 7 SCC 426, Ajay Krishan Shinghal v. Union of India (1996) 10 SCC 721, Star Wire (India) Ltd. v. State of Haryana (1996) 11 SCC 698, Jaipur Development Authority v. Daulat Mai Jain (1997) 1 SCC 35, Meera Sahni v. Lt. Governor of Delhi (2008) 9 SCC 177 and Tika Ram v. State of U.P. (2009) 10 SCC 689.

28. In Sneh Prabha v. State of U.P. (supra), the Court referred to some of the earlier judgments and held:

> ". … It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an

> impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

The same view has been reiterated in other judgments.

29. In the result, the appeals are dismissed. Appellants – Vasanth Sreedhar Kulkarni and Eshwar Gouda Burma Gouda Patil shall pay cost of Rs.1,00,000/- each to the BDA for thrusting unwarranted litigation upon it. The BDA shall ensure delivery of possession of the sites to the allottees within 8 weeks from today. However, it is made clear that this judgment shall not preclude the State Government from allotting alternative sites to Mumtaz Begum and others, who are said to have purchased small parcels of land from the landowners through Allahuddin Khan.

……J.

[G.S. Singhvi]

…..…..……..J.
[Asok Kumar Ganguly]

New Delhi
October 14, 2011.