CASE NO.:
Appeal (civil) 5699 of 1998
Appeal (civil) 5700-04 of 1998
Appeal (civil) 5705 of 1998
Appeal (civil) 5706 of 1998
Appeal (civil) 5707 of 1998
Appeal (civil) 5708 of 1998
Appeal (civil) 5709 of 1998
Appeal (civil) 6499 of 1998
Appeal (civil) 6420-21 of 1998
Appeal (civil) 1054 of 1999
Appeal (civil) 1263 of 1999
Appeal (civil) 201 of 1999
Appeal (civil) 6589 of 2000
Appeal (civil) 3603-04 of 2002
Appeal (civil) 3613 of 2002
Appeal (civil) 6495 of 2002

PETITIONER:
M/s Kanaka Gruha Nirman Sahakara Sangha

RESPONDENT:
Sbmyt.LRNsaraanydanoatmhmears(since deceased)

DATE OF JUDGMENT: 03/10/2002

BENCH:
M. B. SHAH & D. M. DHARMADHIKARI.

JUDGMENT:

J U D G M E N T

Shah, J.

C.A. Nos. 5699, 5705, 6420-21, 5706, 5708 of 1998:

Respondentsland owners challenged the Notification dated 29th March, 1986 issued under sub-section (1) of Section 4 and the Notification dated 4.5.1987 issued under sub-section (1) of Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') for acquisition of lands for a Co-operative Housing Society by filing Writ Petition Nos.7837, 8113 and 8958 of 1987 before the High Court of Karnataka. By judgment and order dated 14.11.1995, the learned Single Judge dismissed the said writ petitions. Against the said judgment and order, Writ Appeal Nos.95 and 4630 of 1995 were preferred by the landowners and Writ Appeal No.75 of 1995 was filed by the Kanaka Gruha Nirmana Sahakara Sangha [the Group Housing Society] which was impleaded as a party respondent in writ petitions. The Division Bench of the High Court allowed the writ appeal Nos.95 and 4630 of 1995 and quashed the notification under sub-Section (1) of Section 4 of the Act and also all consequential proceedings relating to the acquisition of the land subject to the writ petitioners' depositing the amount of compensation received by them along with interest calculated @ 15% per annum from the date of payment of amount. Writ Appeal No.75 of 1995 filed by the Society was dismissed.

The Court also held that no writ appeal was filed by the land owners who had filed Writ Petition no.8958/87 and they have

acquiesced in the action of the State Government and were satisfied with the compensation. Hence, the judgment would not confer any right upon the said writ petitioners to re-open the case or re-agitate the matter by way of appeal or any other proceedings.

The Court allowed the writ appeals on the ground (a) the initiation of action by the Special Deputy Commissioner under Section 4 of the Act for issuing notification is illegal as under the Land Acquisition Act, the appropriate Government is required to be satisfied that the land is needed for public purpose; (b) respondents have also not placed on record any document to show that prior approval in terms of Section 3(f)(vi) was granted by the Government and Annexure R-1 cannot be deemed to be substitute of the powers required to be exercised under Section 3(f)(vi) and sub-section (1) of Section 4 of the Act. Hence, these appeals.

At this stage, we may note that in Writ Appeal Nos.6804-05/1996, Full Bench of the Karnataka High Court by judgment and order dated 27th March, 2002 held that the view taken by the Division Bench in case of Naveen Jayakumar and Kanaka Gruha Nirmana Sahakara Sangha was not a good law. The Full Bench arrived at the conclusion that initiation of proceedings by the Deputy Commissioner cannot be said to be illegal. There was no inconsistency or repugnancy between the State Act and the Land Acquisition Act as amended in 1984. For the reasons stated below, we agree with the said findings.

Re: Inconsistency between Mysore Act and Amended Land Acquisition Act.

We would first deal with the contention that the proceedings under the Land Acquisition (Mysore Extension and Amendment) Act 17 of 1961 (hereinafter referred to as the 'Mysore Act') are illegal, null and void because by Act 68 of 1984, the Land Acquisition Act 1894 was substantially amended and was made applicable to the whole of India except the State of Jammu and Kashmir. The Mysore Act being repugnant to the Act of Parliament, would be void. Hence, the proceedings initiated under the said Act by the approval of the Deputy Commissioner instead of the State Government would also be void.

For dealing with the said contention, we would refer to the relevant part of the Mysore Act which requires consideration. It inter alia provides thus:

"An Act to extend the Land Acquisition Act, 1894 (Central Act 1 of 1894), the whole of the State of Mysore and further to amend it in its application to the State.

WHEREAS it is expedient to extend the Land Acquisition Act, 1894 (Central Act 1 of 1894), to the whole of the State of Mysore and further to amend it in its application to the State of Mysore;

Be it enacted by the Mysore State Legislature in the Twelfth Year of the Republic of India as follows:

1. Short title, extent and commencement.(1) This Act may be called the Land Acquisition (Mysore Extension and Amendment) Act, 1961.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force at once.

2. ..

3. Extension of Central Act I of 1894 to the whole of the State of Mysore.The Land Acquisition Act, 1894 (Central Act I of 1894), as amended by this Act is hereby extended to and shall be in force in the whole of the State of Mysore.

4. Substitution of the expression "Deputy Commissioner", for the expression Collector in Central Act 1 of 1894. In the principal Act, for the word "Collector" where it occurs, the words "Deputy Commissioner" shall be substituted.

5.

6.

7. Amendment of section 4 of Central Act I of 1894In section 4 of the principal Act,

(1) in sub-section (1),

(a) after the words "the appropriate Government" the words "or the Deputy Commissioner" shall be inserted;

(b) for the words "notification to that effect", the words, notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area" shall be substituted;

(c) after the words "the said locality", the following sentence and explanation shall be added, namely:

"The Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, on the occupier of the land.

Explanation.The expression " convenient places' includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies."

By the aforesaid Mysore Act, the Land Acquisition Act was made applicable to the then State of Mysore with certain amendments. For the said amendments, assent of the President as contemplated under Article 254 was obtained. Under the Mysore Act, if it appears to the appropriate Government or to the Deputy Commissioner that the land is needed for any public purpose, Notification to that effect could be issued in the official gazette. The rest of the amendment in Section 4(1) deals with the publication of the Notification and makes additional provision for the method of its publication which we are not required to deal with in these appeals. The limited question would be whether the supplementary provision empowering the Deputy Commissioner to exercise the powers which could be exercised by the appropriate Government is repugnant? By empowering the Deputy Commissioner with the powers which could be exercised by the

appropriate Government, no question of repugnancy between Section 4 of the Land Acquisition Act (law made by the Parliament) and Section 4 of the Mysore Act would arise.

In our view, the Division Bench of the High Court materially erred in holding that in view of Article 254 of the Constitution, proceedings initiated under the Mysore Act would be void. Question of application of Article 254 of the Constitution would arise only in those cases where there is repugnancy between the State legislation and the law made by the Parliament. This would be apparent from clause (1) of Article 254 of the Constitution which reads thus:

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

The language of the aforesaid Article is crystal clear and it inter alia provides [subject to the provisions of Clause (2)] that

(a) if any provision of law made by the Legislature of State is repugnant to any provision of a law made by the Parliament, which the Parliament is competent to enact, then the law made by the Parliament whether passed before or after the law made by the Legislature of such State shall prevail and the law made by Legislature of the State shall, to the extent of repugnancy, be void; or

(b) if any provision of a law made by the legislature of State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void.

There cannot be any doubt that the Article gives supremacy to the law made by the Parliament, which Parliament is competent to enact. But, for application of this Article, firstly, there must be repugnancy between the State law and the law made by the Parliament. Secondly, if there is repugnancy, the State legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application Article 254(1) and both the Acts would prevail. Similar issue was exhaustively dealt with by the Constitution Bench of this Court in M. Karunanidhi v. Union of India and another [(1979) 3 SCC 431]. In that case, Madras Legislature, after obtaining the assent of the President of India, made an Act known as Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 (hereinafter referred to as 'State Act'). That Act was repealed in 1977. Meantime, against the appellant of that

matter, FIR was recorded on June 16, 1976 for prosecution under Sections 161, 468 and 471 of IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. It was contended that by virtue of Article 254(2) of the Constitution of India, the provisions of the Central Act stood repealed and could not revive after the State Act was repealed. In that context, the Court considered Article 254(2) and held that there must be real repugnancy resulting from an irreconcilable inconsistency between the State Act and Central Acts. The Court held thus:

"24. It is well-settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

The Court also referred to the earlier decisions including Deep Chand v. State of U.P. [1959 Supp. (2) SCR 8, 43], wherein various tests to ascertain the question of repugnancy between the two statutes were indicated and inter alia it was held that repugnancy between two statutes may be ascertained by considering whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature? The Court also referred to Megh Raj v. Allah Rakhia [AIR 1942 FC 27, 30] wherein it was observed that the safe rule to follow was that where the paramount legislation does not purport to be exhaustive or unqualified there is no inconsistency and it cannot be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law. The Court also referred to T.S. Balliah v. T.S. Rangachari [(1969) 3 SCR 65,68,69, 72] wherein it was inter alia observed that before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together. Finally, the Court held thus:

"35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or

possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Applying the propositions enunciated above, it would be difficult to hold that the amendments made by the 'Mysore Act' which are supplementary in nature, cannot stand together with the amended Land Acquisition Act. It cannot be stated that the amended Land Acquisition Act is so exhaustive and unqualified that only the 'appropriate Government' has to be satisfied before issuing the Notification under Section 4 and it excludes empowering of other authority to exercise such powers by State Legislation. The only difference is before issuing the Notification, the Deputy Commissioner is also empowered to decide whether the land is needed or is likely to be needed for public purpose. From this, it cannot be held that there is repugnancy between the two provisions as both can co-exist without any conflict. Hence, the finding recorded by the High Court is, on the face of it, illegal and erroneous. In the present case, we are not required to deal with other amendments which are carried out in the Land Acquisition Act. But prima facie it is apparent that there is no inconsistency between the Mysore Act and the amended Land Acquisition Act.

Re: Approval of the State Government as contemplated under Section 3(f)(vi).

The learned counsel for the appellant next submitted that the finding given by the High Court with regard to the non-compliance of Section 3(f)(vi) is, on the face of it, illegal. As against this, the learned counsel for the land-owners submitted that the High Court rightly arrived at the conclusion that Annexure R-I cannot be termed to be the satisfaction either in terms of Section 3(f)(vi) or sub-section (1) of Section 4 of the Act. For appreciating this contention, we would first refer to Section 3(f)(vi), which reads thus:

"3. Definitions.In this Act, unless there is something repugnant in the subject or context,

(f) the expression "public purpose' includes

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the

time being in force in any State."

On the basis of the aforesaid Section, the High Court observed that the land in dispute has been intended to be acquired for the Housing Co-operative Society for which the prior approval of the appropriate Government was necessary in terms of Section 3(f)(vi) of the Act and such approval is not on the record. Similarly, before initiation of action by the Collector under Section 4 of the Act, it is necessary that the land intended to be acquired should appear to the appropriate Government to be needed for any public purpose in terms of Section 3(f)(vi) of the Act.

In our view, aforesaid finding is, on the face of it, erroneous. It has been pointed out by the State Government and also by the Housing Co-operative Society that with a view to provide sites to the members, who were site-less, the Society requested the State Government to acquire the land in Sy. Nos.19/2, 26 and 29 of Kadirenhalli village in Bangalore South Taluk. At the direction of the State Government, the Asstt. Registrar of Co-op. Societies, Bangalore-II Circle verified the requirement of the members of the Society and recommended to the Revenue Department that the extent of land in the above-said survey numbers was required by the Society. The State Government placed the above matter before the Committee of three members for scrutiny. The three-Member Committee approved and cleared the proposal for the acquisition of the aforesaid survey numbers for the benefit of the Society. The State Government conveyed its approval for initiating the proceedings for acquisition of the aforesaid lands for the benefit of the Society by its order dated 14.11.1985 as per Annexure R-1. After issuance of Notification dated 29th March, 1986 under sub-section (1) of Section 4 of the Act, the land-owners made representations to the Government and the State Government over-ruled the objections of the writ petitioners and issued directions for taking further proceedings in the matter vide order dated 25.4.1987 which was followed by a Notification dated 4.5.1987 issued under Section 6 of the Act acquiring the above mentioned lands. The acquisition proceedings are stated to have been initiated and concluded in accordance with law.

For emphasizing that prior approval of the appropriate Government in the present case was not just an empty formality, we would refer to Annexure R-1, which is as under:

"Dated: 14.11.85
The Revenue Commissioner and
Secretary to Government, Bangalore.

The Special Deputy Commissioner,
Bangalore.

Sir,

Sub: Acquisition of Land in Sy. Nos.19/2, 26, 29 of Kadirenahalli village and Sy. No.29/3 of Konanakunt village Bangalore South Taluk in favour of Kanaka Gruhaniramana Sahakara Sangha, Bangalore.

I am directed to convey the approval of Government to initiate acquisition proceedings by issuing 4(1) notification in respect of lands measuring 8 acres 03 guntas as recommended by the Official Committee in Sy. Nos.19/2, 26, 29 of Kadirenehalli village and Sy. No.29/3 of Kenanakunte village, Bangalore South Taluk in favour of Kanaka Gruha Nirmana Sahakara Sangha Bangalore.

Yours faithfully,
Sd/-
(Mandi Hussain)
Under Secretary to Government
Revenue Department.

Copy to the President, Kanaka Gruha Nirmana Sahakara
No.435 Middle School Road, V.V. Puram, Bangalore-4."

Considering the fact that State Government directed the Assistant Registrar of Co-operative Societies of Bangalore to verify the requirement of the members of the Society and also the fact that the matter was placed before the Committee of three Members for scrutiny and thereafter the State Government has conveyed its approval for initiating the proceedings for acquisition of the land in question by letter dated 14.11.1985, it cannot be said that there is lapse in observing the procedure prescribed under Section 3(f)(vi). Prior approval is granted after due verification and scrutiny.

The learned counsel for the appellant further pointed out that three-Member Committee consisted of the Registrar of Co-operative Societies, (II) Secretary, Bangalore Development Authority, and (III) Special Deputy Commissioner, Revenue Department.It is also pointed out that State Government had constituted State level Co-ordination Committee which consisted of (i) the Revenue Commissioner and Secretary to Government (ii) Secretary, HUD Department (iii) Secretary to Cooperation Department (iv) Deputy Commissioner, Bangalore District (v) Chairman KIABD, and (vi) Commissioner, BDA and other special invitees. The recommendations of the three-Member Committee were considered by the State Level Co-ordination Committee. The constitution of the two high power committees consisting of highly placed officials of the Government only assisted the Government to re-ensure itself that the land in question and other lands were required for public purpose. It has also been pointed out that such approval by the State Government is considered to be proper approval by this Court and number of petitions, namely, A.K. Kayamma v. State of Karnataka, SLP (C) No.18239-54/96 decided on 20.9.1996 (Annexure-P6), Muniyappa v. State of Karnataka, SLP(C) No.14681/95 decided on 4.10.1996 (Annexure-P7), Sumitramma v. State of Karnataka, SLP(C) No.10270/96 decided on 4.10.1996 (Annexure-P8) etc. etc. are dismissed In Sumitramma's case, this Court has distinguished the decision rendered by this Court in H.M.T. House Building Cooperative Society v. Syed Khader and others [(1995) 2 SCC 677], but in our view, R-1 reflects a specific approval by the State Government as contemplated under Section 3(f)(vi). Hence, the decision rendered by this Court in H.M.T. House Building Cooperative Society's case does not require any further discussion.

The High Court allowed the writ appeals on the aforesaid two grounds and has quashed the land acquisition proceedings. For the reasons stated above, the impugned judgment and order passed by the High Court cannot be sustained.

In the result, these appeals are allowed and the impugned judgment and order passed by the High Court in Writ Appeals is quashed and set aside. The order passed by the learned Single Judge dismissing the writ petitions is restored.

C.A. No.5700-04/98

These appeals are filed against the judgment and order dated

15.6.1998 passed in WP Nos.3539-42/96 and C/W No.6603/96. By the impugned order, the High Court has set aside the Notification and the award passed in the land acquisition proceedings. For the reasons recorded above, these appeals are allowed, the impugned judgment and order passed by the High Court is set aside.

C.A. No. 5709, 6499/98 and 201/99

These appeals are filed against judgment and order dated 18.6.98 and 17.6.98 in W.P. 16783/91, 25283/90 and 1002 of 1991 respectively. For the reasons recorded above, these appeals are allowed, the impugned judgment and order passed by the High Court is set aside.

C.A. No.1263/99

This appeal is filed against judgment and order dated 17.6.98 in W.P. No.24792/90. For the reasons recorded above, this appeal is allowed, the impugned judgment and order passed by the High Court is set aside.

C.A. No. 6495 of 2002 @ S.L.P. (C) No. 18703/98

Leave granted. This appeal is filed against judgment and order dated 18.6.98 in W.P. No.13399/91. In view of the order passed above, this appeal is allowed, the impugned judgment and order passed by the High Court is quashed and set aside.

C.A. No. 1054/99, 3603-04/2002, 3613/2002

These appeals are filed against the judgment and order dated 5.6.1997, 27.3.2002 and 7.6.2000 passed in WP No. 4241/1995, WA NO. 4596/95 and WA No. 14902/2000 respectively. For the reasons recorded above, these appeals are dismissed.

S.L.P. (C) No. 22589/01

This petition is filed against judgment and order dated 1.8.2001 passed in WA No.1462/98. For the reasons recorded above, this petition does not call for any interference and is dismissed.

S.L.P. (C) No. 2608-11/02

The Division Bench of the High Court in WA Nos. 725-28/99 arrived at the conclusion that the Deputy Commissioner in State of Karnataka had competence to issue Notification under Section 4 of the Land Acquisition Act and therefore, set aside the order passed by the learned Single Judge. This order is challenged by filing these special leave petitions. In our view, the order passed by the High Court does not call for any interference. Hence, the SLP is dismissed.

S.L.P. (C) No. 22506/01

This petition is filed against judgment and order dated 1.8.2001 passed in WA No. 6059/98. By the impugned order, the High Court has allowed the appeal and set aside the order passed by the learned Single Judge. For the reasons recorded above, this petition does not call for any interference and, is therefore, dismissed.

C.A. No. 6589/2000:

This appeal is filed against the judgment and order dated 7.6.2002 in Writ Appeal No. 1490 of 2002. For the reasons recorded above, this appeal does not call for any interference and, is therefore, dismissed.

C.A. No. 5707/98:

This appeal is filed against the judgment and order dated 28.7.97 of High Court of Karnataka in Writ Petition No.17558/89. By the said judgment and order, the High Court dismissed the writ petition challenging the action taken by the Government in withdrawing from the acquisition proceedings. The Court dismissed the writ petition solely on the ground that in Writ Appeal No.4596 of 1995 decided on 22.7.1997, the Division Bench of the High Court has quashed the acquisition of the land and, therefore, consequential action taken in withdrawing the land from acquisition has no significance.

In our view, as the order passed by the Division Bench passed in Writ Appeal No.4596/95 quashing the land acquisition proceedings is set aside in Civil Appeal No.5708 of 1998, the writ petition requires to be decided on merits and, therefore, the matter is remitted to the High Court for deciding it afresh in accordance with law. Appeal is allowed accordingly.

There shall be no order as to costs in all these cases.