REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.711 OF 2011
(Arising out of SLP (C) No.14315 of 2009)

Offshore Holdings Pvt. Ltd. … Appellant

Versus

Bangalore Development Authority & Ors. … Respondents

J U D G M E N T

Swatanter Kumar, J.

Leave granted.

A two Judge Bench of this Court in the case of *Girnar Traders v. State of Maharashtra* [(2004) 8 SCC 505] had considered the question whether all the provisions of the Land Acquisition Act, 1894, (for short, the 'Land Acquisition Act' or the 'Central Act') as amended by the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the 'Central Act 68 of 1984'), can be read into the provisions under Chapter VII of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the MRTP Act') for acquisition of land thereunder. The Bench was of the opinion that the observations made by another Bench of this Court in the case of *State of Maharashtra* v*. Sant Joginder Singh* [(1995) Supp (2) SCC 475] did not enunciate the correct law by

answering the said question in the negative and, thus, requires reconsideration by a larger Bench. While recording variety of reasons for making a reference to the larger Bench the learned Judges in paragraphs 20 and 21 of the Order observed as under:

> **"20.** We, therefore, see no good reason as to why the provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984 should not be read into an acquisition under Chapter VII of the MRTP Act, to the extent not precluded by the MRTP Act, 1966. Section 11-A being one such section, it may have to be applied to the acquisition under Chapter VII of the MRTP Act.
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> **21.** For these reasons, in our considered view, the decision in *Sant Joginder Singh* requires reconsideration by a larger Bench."

This appeal came up for hearing before a larger Bench consisting of three learned Judges along with other matters in *Girnar Traders* v. *State of Maharashtra* [(2007) 7 SCC 555] (hereinafter referred to as '*Girnar Traders-II*). In those appeals, *inter alia*, arguments were addressed as to the interpretation of Sections 126 and 127 of the MRTP Act as well as reading the provisions of the Land Acquisition Act, including Section 11A, into the provisions of the MRTP Act as legislation by reference. There was some divergence of opinion between the learned Judges hearing that matter. P.K. Balasubramanyan, J. (as he then was) expressed an opinion that both the questions; in regard to interpretation of Sections 126 and 127 of the MRTP Act as well as incorporation of Section 11A of the Land Acquisition Act into that Act should be referred for consideration to a larger Bench. Expressing the majority view, B.N. Agrawal and P.P. Naolekar, JJ. (as they then were) agreed that Section 11A of the Land

Acquisition Act is part of the law which creates and defines rights and is not an adjective law which defines method of enforcing rights. For this and other reasons assigned by P.K. Balasubramanyan, J., they agreed that the question involved required consideration by a larger Bench. However, in para 3 of the majority judgment, they regretfully declined to make reference on interpretation of Section 127 of the MRTP Act to a larger Bench and decided the matter in that regard on merits. While setting aside the judgment of the High Court under appeal, the minority view expressed by Balasubramanyan, J. is as under:

> "123. I would, therefore, hold that there has been sufficient compliance with the requirement of Section 127 of the MRTP Act by the authority under the Act by the acquisition initiated against the appellant in the appeal arising out of SLP (C) No. 11446 of 2005 and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. But since on the main question in agreement with my learned Brothers I have referred the matter for decision by a Constitution Bench, I would not pass any final orders in this appeal merely based on my conclusion on the aspect relating to Section 127 of the MRTP Act. The said question also would stand referred to the larger Bench.
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> 124. I therefore refer these appeals to a larger Bench for decision. It is for the larger Bench to consider whether it would not be appropriate to hear the various States also on this question considering the impact of a decision on the relevant questions. The papers be placed before the Hon'ble Chief Justice for appropriate orders."

While the majority view, expressed by B.N. Agrawal and P.P. Naolekar, JJ., is as under :

> "3. A two-Judge Bench of this Court in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh* has held that Section 11-A of the LA Act is a procedural provision and does not stand on the same footing as

Section 23 of the LA Act. We find it difficult to subscribe to the view taken. Procedure is a mode in which the successive steps in litigation are taken. Section 11-A not only provides a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. Lapsing of the acquisition of the land results in owner of the land retaining ownership right in the property and according to us it is a substantive right accrued to the owner of the land, and that in view thereof we feel Section 11-A of the LA Act is part of the law which creates and defines right, not adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the right and powers of the party. For this and the other reasons assigned by our learned Brother, we are in agreement with him that the question involved requires consideration by a larger Bench and, accordingly, we agree with the reasons recorded by my learned Brother for referring the question to a larger Bench. However, on consideration of the erudite judgment prepared by our esteemed and learned Brother Balasubramanyan, J., regretfully we are unable to persuade ourselves to agree to the decision arrived at by him on interpretation of Section 127 of the MRTP Act and also reference of the case to a larger Bench.

67. In view of our decision on the interpretation and applicability of Section 127 of the MRTP Act to the facts of the present case, the appellants are entitled to the relief claimed, and the other question argued on the applicability of the newly inserted Section 11-A of the LA Act to the acquisition of land made under the MRTP Act need not require to be considered by us in this case.

68. For the aforesaid reasons, the impugned judgment and order dated 18-3-2005 passed by the Division Bench of the Bombay High Court is set aside and this appeal is allowed. As no steps have been taken by the Municipal Corporation for acquisition of the land within the time period, there is deemed dereservation of the land in question and the appellants are permitted to utilise the land as permissible under Section 127 of the MRTP Act."

(emphasis supplied)

This is how the above cases were listed before the Constitution Bench for answering the question framed in the order of Reference. A number of other matters were ordered to be tagged with *Girnar Traders-II* (supra). Similarly,

when the present appeal came up for hearing on 17th July, 2009, a two Judge Bench passed the following order:

> "Issue notice.
>
> Interim stay of the High Court judgment.
>
> Tag with *Girnar Traders* v. *State of Maharashtra* referred to the Constitution Bench."

The question in the referred matter was related to Section 11A of the Land Acquisition Act being read as part of the MRTP Act on the doctrine of legislation by reference. In the present case, we are concerned with the provisions of the Bangalore Development Authority Act, 1976 (for short, the 'BDA Act' or the 'State Act'). The statutory provisions and scheme under the two State laws, in regard to acquisition of land for planned development, are significantly different. Therefore, and rightly so, it was stated at the Bar that the case relating to BDA Act should be heard and decided separately and so was it heard separately and reserved for judgment.

Facts

The land admeasuring 2 acre and 34 guntas located in Survey No. 9/2 of Lottegollahalli Village, Kasaba Hobli, Bangalore North Taluk was owned by M/s Uttanallappa, Munishamappa etc. The Bangalore Development Authority (for short, 'the Authority') had issued a preliminary notification dated 3rd January, 1977 for acquisition of land of which, the land in question was a part. Non-finalisation of acquisition proceedings resulted in filing of the Writ Petition by the

owners of the land being W.P. Nos. 16065-69 of 1987 before the High Court of Karnataka praying for quashing of preliminary as well as the final notification dated 2nd August, 1978. On the representation of the said owners, the Authority passed Resolution No.1084 dated 28th June, 1988 de-notifying to the extent of 1 acre and 2 guntas of the land from acquisition. Thus, out of the total land of the said owners, land admeasuring 1 acre 32 guntas was acquired, while according to the appellant, remaining land was de-notified by the said resolution. In view of the resolution having been passed by the Authority, the Writ Petition was withdrawn. Thereafter the Deputy Commissioner of the said Authority issued an endorsement on 11th March, 1991 in favour of one of the owners of the land informing him that by virtue of the aforesaid Resolution No.1084 there was no acquisition of the land to the extent of 1 acre 2 guntas. The present appellant purchased the said land by means of seven different sale deeds executed by the said owners in favour of the present appellant. It is averred that permission was granted by the Authority to the erstwhile owners to construct culvert/bridge on the storm water drain abutting their land at their own cost. The appellant submitted the drawings to Respondent No.3 for permission for the said construction which was granted vide order dated 24th February, 2001 in furtherance to which the appellant commenced the construction. In the meantime, Respondent No.3 issued a letter to the appellant stating that the said permission was temporarily withdrawn until further orders. This was followed by another letter dated 30th August, 2001 in which Respondent No.3 informed the appellant that de-notification of the land for acquisition vide Resolution

No.1084 had been withdrawn vide Resolution No.325/97 dated 31st December, 1997 passed by the Authority and the appellant was not entitled to raise any construction on the land in question. The appellant made certain enquiries and it was discovered that as a result of Resolution No.325/97 acquisition proceedings had already been revived. Aggrieved by the action of the respondents, appellant filed Writ Petition No.41352 of 2001 before the Karnataka High Court praying for quashing of Resolution No.325/97 and acquisition proceedings initiated from the preliminary and final notification dated 3rd January, 1977 and 2nd August, 1978 respectively. The principal argument raised by the appellant before the High Court was that the provisions of Section 11A are applicable to the BDA Act and the award having been made after a period of more than two years from the date of declaration under Section 6 of the Land Acquisition Act, the acquisition proceedings have lapsed. The learned Single Judge of Karnataka High Court, vide his judgment dated 25th January, 2007, rejected all the contentions raised holding that the appellant herein has no *locus-standi* to question the acquisition proceedings and withdrawal of the earlier Resolution by the subsequent Resolution was not bad in law. The correctness of the judgment of the learned Single Judge was questioned before the Division Bench of that Court in Writ Appeal No.1012 of 2007. This Writ Appeal also came to be dismissed vide judgment dated 16th October, 2008 and the Court declined to interfere with the reasoning recorded by the learned Single Judge which resulted in filing of the present Special Leave Petition.

We are not concerned with various grounds on which challenge is

made to the legality and correctness of the impugned judgment as we have to answer the question of law that has been referred to the Constitution Bench. The learned counsel appearing for the appellant has contended that the provisions of Section 11A of the Land Acquisition Act are to be read into the provisions of the BDA Act and that would result in lapsing of the acquisition proceedings upon expiry of the period specified therein. Thus, the land of the appellant shall be deemed to be de-notified and available to him free of any reservation or restriction even under the provisions of the BDA Act. The learned counsel raised the following issues in support of his principal contention:

1. 'Acquisition and requisitioning of property' is relatable only to Entry 42 of the Concurrent List (List III) of Schedule VII, read with Article 246 of the Constitution of India. This, being a 'stand alone entry', cannot be incidental to any other law. The State has legislative competence to enact BDA Act with reference to Article 246 read with Entry 5 and/or 18 of List II of Schedule VII to the Constitution. State Legislature may even combine both the laws but cannot make 'Acquisition' incidental to State law.

2. Since Entry 42 in List III provides a concurrent subject matter of legislation, both the Parliament and the State Legislature would be competent to enact their respective laws covering the subject matter of acquisition and requisitioning of property. The Parliament has enacted a law with reference to Entry 42, List III. The law could be enacted by the

State in combination of subject matters covered under other entries, i.e., Entries 5 and 18 of List II. The law enacted by the Centre would take precedence and the State Act, insofar as it provides to the contrary, shall be repugnant. Thus, the field being covered by the Central law, Section 11A of the Land Acquisition Act will prevail and has to be read into the provisions of Section 27 of the BDA Act.

3. The provisions of Land Acquisition Act, as amended by the Central Act 68 of 1984, are adopted vide Section 36 of the BDA Act by the principle of legislation by reference as opposed to legislation by incorporation, i.e. writing of the provisions by pen and ink. Thus, the amended provisions of the Central Act shall be read into the State Act and Section 11A, being one of such provisions, would form an integral part of the State Legislation.

4. There is no repugnancy between the two legislations. They operate in different areas. The BDA Act does not provide for lapsing of acquisition but refers only to lapsing of the scheme under Section 27. Lapsing of acquisition is contemplated only under Section 11A of the Land Acquisition Act. Thus, the contention is that the acquisition, as a result of default in terms of Section 11A of the Land Acquisition Act, shall always lapse.

5. Provisions of Section 11A can purposefully operate as a part of the scheme under the BDA Act. Such approach would be in consonance

with the larger policy decision of balancing the rights of the individuals, who are deprived of their properties by exercise of the State power of eminent domain. The public authorities would be required to act with reasonable dispatch. Lapsing of acquisition does not take away the right of the State to issue fresh notification/declaration within the currency of the scheme.

In order to examine the merit or otherwise of these contentions, it is necessary for this Court to examine the scheme of the BDA Act read in conjunction with the provisions of the Land Acquisition Act.

Though the object of the BDA Act may be *pari materia* to the MRTP Act, there are certain stark distinctions between some of the provisions of the respective Acts, particularly, where they relate to functions and powers of the Authority in preparation of plans as well as with respect to acquisition of the land. Hence, it will be appropriate for the Court to examine the scheme of the BDA Act at this juncture itself.

Scheme under the Bangalore Development Authority Act, 1976

Different authorities like City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority were exercising jurisdiction over Bangalore City. Due to overlapping functions there were avoidable confusions, besides hampering of coordinated development.

Therefore, in order to set up a single authority to ensure proper development and to check the haphazard and irregular growth as it would not be possible to rectify or correct these mistakes in the future, the BDA Act was enacted by the Karnataka State Legislature in the year 1976. The primary object of the BDA Act was to provide for establishment of the development authority for development of the city of Bangalore and areas adjacent thereto and for the matters connected therewith. For different reasons, various provisions of this Act were amended from time to time.

The term 'Development' under Section 2(j) of the BDA Act, with its grammatical variations, means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment. Similarly, Section 2(r) defines the word 'to erect' which in relation to any building includes:

> "(i) any material alteration or enlargement of any building;
>
> (ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
>
> (iii) the conversion into more than one place for human habitation of a building originally constructed as one such place;
>
> (iv) the conversion of two or more places of human habitation into a greater number of such places;
>
> (v) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security;
>
> (vi) the addition of any rooms, buildings, houses or

other structures to any building; and

(vii) the construction in a wall adjoining any street or land not belonging to the owner of the wall, or a door opening on to such street or land."

The definitions afore-stated clearly show that they were given a very wide meaning to ensure that the check on haphazard and unauthorized development is maintained. The Authority came to be constituted in terms of Section 3 of the BDA Act. The object of the Authority has been spelt out in Section 14 of the BDA Act which states that the Authority shall promote and secure the development of the Bangalore Metropolitan Area and for that purpose, the Authority shall have the power to acquire, hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto. The language of this section shows that powers of wide magnitude are vested in the Authority and the purpose for which such powers are vested is absolutely clear from the expression 'to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto'. In other words, the primary purpose is planned development and other matters are incidental thereto. The acquisition of immoveable property is, therefore, also for the said purpose alone. Chapter III of the BDA Act deals with development plans. Under Section 15, the Authority has to draw up detailed schemes termed as 'Development Scheme'. The Government in terms of Section 15(3) is empowered to direct

the Authority to take up any development scheme subject to such terms and conditions as may be specified by it. In terms of Section 16(1) of the BDA Act, every development scheme has to provide, within the limits of the area comprised in the scheme, for the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme. It should, inter alia, also provide for laying and re-laying out all or any land including the construction/ reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, forming open spaces for betterment and sanitary arrangements. The Authority may provide for construction of houses within or without the limits of the area comprised in the scheme. It is clear that the development scheme has to provide for every detail in relation to development of the area under the scheme as well as acquisition of land, if any, required. It may be noticed, even at the cost of repetition, that such acquisition is only in regard to the development scheme. Once the development scheme has been prepared, the Authority is expected to draw up a notification stating that the scheme has been made and give all the particulars required under Section 17 of the BDA Act including a statement specifying the land which is proposed to be acquired and land on which betterment tax is to be levied. A copy of this notification is required to be sent to the Government through the Corporation which is obliged to forward the same to the appropriate Government within the specified time along with any representation, which the Corporation may think fit to make, with regard to the scheme. After receiving the scheme, the Government is required to ensure that the notification is

published in the Official Gazette and affixed in some conspicuous part of its own office as well as in such other places as the Authority may consider necessary. In terms of Section 17(5) of the BDA Act, within 30 days from the date of publication of such notification in the Official Gazette, the Authority shall serve a notice on every person whose name appears in the assessment list of the Local Authority or 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 and to issue show cause notice giving thirty days time to the person concerned, as to why such acquisition of building or land and the recovery of betterment tax should not be made. Thus, the provisions of Section 17 of the BDA Act are of some significance. They describe various time frames within which the Authority/Government is expected to take action. A deemed fiction is introduced in terms of Section 17(4) of the BDA Act where if the Corporation does not make a representation within the time specified under Section 17(2), the concurrence of the Corporation shall be deemed to have been given to enable the authorities to proceed with the matter in accordance with Section 17(5) of the Act. Having gone through the prescribed process, the Authority is required to submit the scheme for sanction of the Government. The Authority has been given power to modify the scheme keeping in view the representations received. The scheme shall also provide for the various details as required under Sections 18 (1)(a) to 18(1)(f) and 18(2) of the BDA Act. After considering this proposal, the

Government may give sanction to the scheme in terms of Section 18(3). 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. This declaration shall be conclusive evidence that the land is needed for a public purpose. The Authority has also been given the power to alter or amend the scheme if an improvement can be made. If the scheme, as altered, involves acquisition otherwise than by an agreement, then the provisions of Sections 17, 18 and 19(1) shall apply to the scheme in the same manner as if such altered part were the scheme. This entire exercise is to be taken in terms of Section 19 of the BDA Act post grant of sanction in terms thereof. The next relevant provision for our purpose, which is of significance, is Section 27 of the BDA Act which reads as under:

> "**27. Authority to execute the scheme within five years.—**Where within a period of five years from the date of the publication in the official Gazette of the declaration under sub-section (1) of Section 9, the Authority fails to execute the scheme substantially, the scheme shall lapse and the provisions of Section 36 shall become inoperative."

It places an obligation upon the Authority to complete the scheme within a period of five years and if the scheme is not substantially carried out within that period, it shall lapse and the provisions of Section 36 shall become inoperative, i.e. this is a provision which provides for serious consequences in the event the requisite steps are not taken within the specified time. Section 30

of the BDA Act provides that the streets, which are completed under the scheme, shall vest in the Corporation as well as the open spaces as per Section 30(2). The disputes, if any, between the Authority and the Corporation in respect of Sections 30(1) and 30(2) are to be referred for determination to the Government whose decisions shall be final. Section 31 of the BDA Act puts a rider on the right of the Authority to sell or otherwise dispose of sites. Sections 32 to 34 of the BDA Act deal with imposition of restriction by virtue of the provisions of the Act where no person shall form or attempt to form any extension or layout for the purposes of constructing building thereon without the express sanction in writing of the Authority and except as per the conditions stated therein. In terms of Section 32(6) of the BDA Act, the Authority may refuse such sanction but where it does not refuse sanction within six months from the date of application made under sub-section (2) or from the date of receipt of all information asked for under-sub-section (7), such sanction shall be deemed to have been granted and the applicant has the right to proceed to form the extension or layout or to make the street but not so as to contravene any of the provisions of the Act or the Rules made thereunder. Similarly, alteration, demolition of extension is controlled by Section 33 and in terms of Section 33A, there is prohibition of unauthorized occupation of land belonging to the Authority. Section 34 of the BDA Act empowers the Authority to order work to be carried out or to carry it out itself in the event of default.

It is possible that some land may have to be acquired for the purpose of completing the scheme; such land has to be identified in the scheme itself as

per Section 16 of the BDA Act. Chapter IV of the BDA Act deals with 'acquisition of land'. This Chapter contains only two sections, i.e. Sections 35 and 36 which read as under:

> "**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, whether situated within or without the Bangalore Metropolitan Area for the purchase of such land.
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> **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 Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.
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> (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.
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> (3)After the land vests in the Government under Section 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 upon the Authority agreeing to pay any further costs which may be incurred an account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority."

These provisions postulate acquisition of land by two modes. Firstly, by entering into an agreement with the owner of the land; and secondly, otherwise than by agreement which shall be regulated by the provisions of Land Acquisition Act, in so far as they are applicable. Where the lands are acquired by agreement, there would be hardly any dispute either on fact or in law.

Controversies, primarily, would arise in the cases of compulsory acquisition under the provisions of the Act. The intention of the Legislature, thus, is clear to take recourse to the provisions of the Land Acquisition Act to a limited extent and subject to the supremacy of the provisions of the State Act. A very important aspect which, unlike the MRTP Act, is specified in the BDA Act is that once the land is acquired and it vests in the State Government in terms of Section 16 of the Land Acquisition Act, then the Government upon (a) payment of the cost of acquisition and (b) the Authority agreeing to pay any further cost, which may be incurred on account of acquisition, shall transfer the land to the Authority whereupon, it shall vest in the Authority. The Government is further vested with the power to transfer land to the Authority belonging to it or to the Corporation as per Section 37 of the BDA Act. In terms of Section 69 of the BDA Act, the Government is empowered to make rules to carry out the purposes of the Act. Under Section 70, the Authority can make regulations not inconsistent with the provisions of the Act, while in terms of Section 71, the Authority is again vested with the powers to make bye-laws not inconsistent with the Rules or the Regulations. Both these powers of the Authority are subject to previous approval of the Government. Sections 73 of the BDA Act gives overriding effect to the provisions of this Act and vide Section 77, the BDA Act repealed the Karnataka Ordinance 29 of 1975. It is not necessary for us to deal with other provisions of the BDA Act as they hardly have any bearing on the controversy in question.

The provisions of the Land Acquisition Act, which provide for timeframe

for compliance and the consequences of default thereof, are not applicable to acquisition under the BDA Act. They are Sections 6 and 11A of the Land Acquisition Act. As per Section 11A, if the award is not made within a period of two years from the date of declaration under Section 6, the acquisition proceedings will lapse. Similarly, where declaration under Section 6 of this Act is not issued within three years from the date of publication of notification under Section 4 of the Land Acquisition Act [such notification being issued after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of Central Act 68 of 1984] or within one year where Section 4 notification was published subsequent to the passing of Central Act 68 of 1984, no such declaration under Section 6 of the Land Acquisition Act can be issued in any of these cases.

A three Judge Bench of this Court in the case of *Bondu Ramaswamy* v. *Bangalore Development Authority* [(2010) 7 SCC 129] while dealing with the contention that notification issued in terms of Section 17(1) and (3) of the BDA Act appears to be equivalent to Section 4 of the Land Acquisition Act and the declaration under Section 19(1) of the BDA Act appears to be equivalent to the final declaration under Section 6 of the Land acquisition Act, held that all the provisions of the Land Acquisition Act will not apply to the acquisition under the BDA Act and only those provisions of the Land Acquisition Act, relating to stages of acquisition, for which there is no corresponding provision in the BDA Act, are applicable to an acquisition under the BDA Act. The provisions of Sections 4 and 6 of the Land Acquisition Act would not be attracted to the BDA

Act as the Act itself provides for such mechanism. Be that as it may, it is clear that the BDA Act is a self-contained code which provides for all the situations that may arise in planned development of an area including acquisition of land for that purpose. The scheme of the Act does not admit any necessity for reading the provisions of Sections 6 and 11A of the Land Acquisition Act, as part and parcel of the BDA Act for attainment of its object. The primary object of the State Act is to carry out planned development and acquisition is a mere incident of such planned development. The provisions of the Land Acquisition Act, where the land is to be acquired for a specific public purpose and acquisition is the sum and substance of that Act, all matters in relation to the acquisition of land will be regulated by the provisions of that Act. The State Act has provided its own scheme and provisions for acquisition of land. The co-relation between the two enactments is a very limited one. The provisions of Land Acquisition Act would be attracted only in so far as they are applicable to the State law. Where there are specific provisions under the State Act the provisions of Central Act will not be attracted. Furthermore, reading the provisions of default and consequences thereof, as stated under the Central Act into the State Act, is bound to frustrate the very scheme formulated under the State Act. Only because some of the provisions of the Land Acquisition Act are attracted, it does not necessarily contemplate that all the provisions of the Central Act would *per se* be applicable to the provisions of the State Act irrespective of the scheme and object contained therein. The Authority under the BDA Act is vested with complete powers to prepare and execute the

development plans of which acquisition may or may not be a part. The provisions of the State Act can be implemented completely and effectively on their own and reading the provisions of the Land Acquisition Act into the State Act, which may result in frustrating its object, is not called for. We would be dealing with various facets which would support this view shortly. The provisions of Section 27 of the BDA Act mandate the Authority to execute the scheme, substantially, within five years from the date of publication of the declaration under sub-section (1) of Section 19. If the Authority fails to do so, then the scheme shall lapse and provisions of Section 36 of the BDA Act will become inoperative. The provisions of Section 27 have a direct nexus with the provisions of Section 36 which provide that the provisions of the Land Acquisition Act, so far as they are applicable to the State Act, shall govern the cases of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject matter of execution under the provisions of the BDA Act. On a conjunct reading of the provisions of Sections 27 and 36 of the State Act, it is clear that where a scheme lapses the acquisition may not. This, of course, will depend upon the facts and circumstances of a given case. Where, upon completion of the acquisition proceedings, the land has vested in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act. An argument to the contrary cannot be accepted for the reason that on vesting, the land stands transferred and vested in the State/Authority free from all

encumbrances and such status of the property is incapable of being altered by fiction of law either by the State Act or by the Central Act. Both these Acts do not contain any provision in terms of which property, once and absolutely, vested in the State can be reverted to the owner on any condition. There is no reversal of the title and possession of the State. However, this may not be true in cases where acquisition proceedings are still pending and land has not been vested in the Government in terms of Section 16 of the Land Acquisition Act. What is meant by the language of Section 27 of the BDA Act, i.e. "provisions of Section 36 shall become inoperative", is that if the acquisition proceedings are pending and where the scheme has lapsed, further proceedings in terms of Section 36(3) of the BDA Act, i.e. with reference to proceedings under the Land Acquisition Act shall become inoperative. Once the land which, upon its acquisition, has vested in the State and thereafter vested in the Authority in terms of Section 36(3); such vesting is incapable of being disturbed except in the case where the Government issues a notification for re-vesting the land in itself, or a Corporation, or a local Authority in cases where the land is not required by the Authority under the provisions of Section 37(3) of the BDA Act. This being the scheme of the acquisition within the framework of the State Act, read with the relevant provisions of the Central Act, it will not be permissible to bring the concept of 'lapsing of acquisition' as stated in the provisions of Section 11A of the Land Acquisition Act into Chapter IV of the BDA Act.

Under the scheme of the BDA Act, there are two situations, amongst others, where the rights of a common person are affected – one relates to levy

of betterment tax under Section 20 and property tax under Section 28B of the BDA Act while the other relates to considering the representation made upon drawing up of a notification in terms of Section 17(1) of the said Act in regard to acquisition of building or land and the recovery of betterment tax. For determination of the rights and claims in this regard, a complete adjudicatory mechanism has been provided under the State Act itself. The competent functionary in the Authority has to consider such representations received and alter or modify the scheme accordingly in terms of Section 18(1) of the BDA Act before its submission to the Government. With regard to levy of betterment tax, the assessment has to be made by the Authority in terms of Section 21 of the State Act. The person concerned, if he does not accept the assessment, can make a reference to the District Court for determining the betterment tax payable by such person under Section 21(4) of the BDA Act. Section 28B of that Act empowers the Authority to levy tax on the land and building and such levy is appealable to an Authority notified by the Government for that purpose being the Appellate Authority in terms of Section 62A of the BDA Act whose decision is final. Besides all this, under Section 63 of the BDA Act, the Government and the Authority are vested with revisional powers. All these provisions show that the BDA Act has provided for a complete adjudicatory process for determination of rights and claims. Only in regard to the matters which are not specifically dealt with in the BDA Act, reference to Land Acquisition Act, in terms of Section 36, has been made, for example acquisition of land and payment of compensation. This also is a pointer to the BDA Act

being a self-contained Act.

One of the apparent and unavoidable consequences of reading the provisions of Section 11A of the Central Act into the State Act would be that it is bound to adversely affect the 'development scheme' under the State Act and may even frustrate the same. It is a self-defeating argument that the Government can always issue fresh declaration and the acquisition in all cases should lapse in terms of Section 11A of the Central Act. This aspect has been dealt with by us in *Girnar Traders v. State of Maharashtra, Civil Appeal No.3703 of 2003 decided on January 11, 2011* (hereinafter referred to as 'Girnar Traders III') wherein it was held as under :

> "… If this entire planned development which is a massive project is permitted to lapse on the application of Section 11A of the Central Act, it will have the effect of rendering every project of planned development frustrated. It can hardly be an argument that the Government can always issue fresh declaration in terms of Section 6 of the Land Acquisition Act and take further proceedings. Recommencement of acquisition proceedings at different levels of the hierarchy of the State and Planning Authority itself takes considerable time and, thus, it will be difficult to achieve the target of planned development. This clearly demonstrates that all the provisions of the Land Acquisition Act introduced by later amendments would not, *per se,* become applicable and be deemed to be part and parcel of the MRTP Act. The intent of the legislature to make the State Act a self-contained Code with definite reference to required provisions of the Land Acquisition Act is clear."

When tested on the touchstone of the principles, 'test of unworkability', 'test of intention' and 'test of frustration of the object of the principal legislation'

this argument, amongst others, has been specifically rejected. As per the scheme of the two Acts, the conclusion has to be that they can be construed and applied harmoniously to achieve the object of the State Act and it is not the requirement of the same that provisions of Section 11A of the Central Act should be read into the State Act.

Another way to look at the controversy in issue is whether the provisions of the BDA Act, specifically or by implication, require exclusion and/or inclusion of certain provisions like Sections 6 and 11A of the Land Acquisition Act. The obvious animus, as it appears to us, is that the provisions providing time-frames, defaults and consequences thereof which are likely to have adverse effect on the development schemes were intended to be excluded.

A three Judge Bench of this Court in the case of *Land Acquisition Officer, City Improvement Trust Board* v. *H. Narayanaiah* [(1976) 4 SCC 9], while dealing with the provisions of the City of Bangalore Improvement Act, 1945 and the Mysore Land Acquisition Act, 1894, held that the expression used in Section 27 of the City of Bangalore Improvement Act, 1945 was somewhat similar to Section 36 of the present BDA Act. It provided that acquisition, other than by way of agreement, shall be regulated by provisions, so far as they are applicable, of Mysore Land Acquisition Act, 1894. The Court while taking the view that the provisions of Section 23 of the Mysore Act may be applicable to the acquisitions under the Bangalore Act, other provisions of the same would stand excluded as per the intention of the framers, held as under:

> "**22.** There was some argument on the meaning of the words "so far as they are applicable", used in Section 27 of the Bangalore Act. These words cannot be changed into "insofar as they are specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. Section 16) corresponding with that found in the Acquisition Act [e.g. Section 4(1)]. These words bring in or make applicable, so far as this is reasonably possible, general provisions such as Section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by a necessary implication, excluded must be applied. It is surprising to find misconstruction of what did not appear to us to be reasonably open to more than one interpretation."

Applying the above principle to the facts of the case in hand, it will be clear that the provisions relating to acquisition like passing of an award, payment of compensation and the legal remedies available under the Central Act would have to be applied to the acquisitions under the State Act but the bar contained in Sections 6 and 11A of the Central Act cannot be made an integral part of the State Act as the State Act itself has provided specific time-frames under its various provisions as well as consequences of default thereto. The scheme, thus, does not admit such incorporation.

These controversies have drawn attention of this Court on different occasions in the past as well. It will be of great help to discuss the previous judgments of this Court on the issues involved in the present case relating to the same or similar legislations. In the case of *H. Narayanaiah* (supra), while

dealing with the City of Bangalore Improvement Act, 1945 which was repealed by the BDA Act, this Court observed in para 4 of the judgment, "it does not, however, contain a separate Code of its own for such acquisition……." but, after discussing the scheme under the old Act, the Court held that the provisions of Bangalore Act, 1945 were not similar to those of the Mysore Land Acquisition Act and its general provisions, only in relation to acquisition of land, could be read into the Bangalore Act as other provisions stood excluded by the language of Section 27 of that Act. After the BDA Act came into force, the scheme was subjected to consideration of this Court in *Munithimmaiah* v. *State of Karnataka* [(2002) 4 SCC 326] wherein the Court discussed the provisions of the BDA Act vis-à-vis the provisions of the Land Acquisition Act, 1894 as amended by the Central Act 68 of 1984. The Court took the view that the BDA Act is a complete code in itself. It is an Act which provide for planned development and growth of Bangalore and not just 'acquisition of land'. The law relating to acquisition of land, i.e. the Land Acquisition Act, is a special law for a special purpose. Describing the BDA Act as complete code, the Court held that the provisions of Section 11A of the Land Acquisition need not be read into the State Act. After noting the meticulous comparative analysis of the relevant provisions of the BDA Act and the Land Acquisition Act by the High Court this Court further observed that scheme of Land Acquisition Act, as modified by the BDA Act, would only be applicable by reason of provisions of Sections 17, 18, 27 and 36 of the BDA Act and held as under :

"**15.** So far as the BDA Act is concerned, it is not an Act

for mere acquisition of land but 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 acquisition of lands, if any, therefor is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central enactment of 1894, as amended from time to time. 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 was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka Legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis-à-vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self-contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or *pari materia* legislations. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably be stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act. When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under

> the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of the BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the BDA Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11-A, which cannot also on its own force have any application to actions taken under the BDA Act. Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in *Khoday Distilleries Ltd. case*[1] to exclude the applicability of Sections 6 and 11-A as amended and inserted by the Central Amendment Act of 1984 to the proceedings under the BDA Act. The submissions to the contra on behalf of the appellant have no merit whatsoever and do not commend themselves for our acceptance."

The principle stated in *Munithimmaiah's case* (supra) that the BDA Act is a self-contained code, was referred with approval by a three Judge Bench of this Court in the case of *Bondu Ramaswamy* (supra). The Court, *inter alia*, specifically discussed and answered the questions whether the provisions of Section 6 of the Land Acquisition Act will apply to the acquisition under the BDA Act and if the final declaration under Section 19(1) is not issued within one year of the publication of the notification under Section 17(1) of the BDA Act, whether such final declaration will be invalid and held as under:

> "**79.** This question arises from the contention raised by one of the appellants that the provisions of Section 6 of the Land Acquisition Act, 1894 ("the LA Act", for short) will apply to the acquisitions under the BDA Act and

consequently if the final declaration under Section 19(1) is not issued within one year from the date of publication of the notification under Sections 17(1) and (3) of the BDA Act, such final declaration will be invalid. The appellants' submissions are as under: the notification under Sections 17(1) and (3) of the Act was issued and gazetted on 3-2-2003 and the declaration under Section 19(1) was issued and published on 23-2-2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are applicable. Section 6 of the LA Act requires that no declaration shall be made, in respect of any land covered by a notification under Section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under Section 4 of the LA Act. As the provisions of the LA Act have been made applicable to acquisitions under the BDA Act, it is necessary that the declaration under Section 19(1) of the BDA Act (which is equivalent to the final declaration under Section 6 of the LA Act) should also be made before the expiry of one year from the date of publication of notification under Sections 17(1) and (3) of the BDA Act [which is equivalent to Section 4(1) of the LA Act].

80. The BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. The BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is, issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation, etc. Section 36 of the BDA Act does not make the LA Act applicable in its entirety, but states that the acquisition under the BDA Act, shall be regulated by the provisions, so far as they are applicable, of the LA Act. Therefore it follows that where there are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of the LA Act will not apply to the acquisitions under the BDA Act. Only those provisions of the LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under the BDA Act.

> **81.** The BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under the BDA Act is different from the procedure under the LA Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the scheme for acquisition under Sections 15 to 19 of the BDA Act and the limited application of the LA Act in terms of Section 36 of the BDA Act, the provisions of Sections 4 to 6 of the LA Act will not apply to the acquisitions under the BDA Act. If Section 6 of the LA Act is not made applicable, the question of amendment to Section 6 of the LA Act providing a time-limit for issue of final declaration, will also not apply."

We may notice that, in the above case, the Court declined to examine whether the provisions of Section 11A of the Central Act would apply to the acquisition under the BDA Act but categorically stated that Sections 4 and 6 of the Central Act were inapplicable to the acquisition under the BDA Act.

It will be useful to notice that correctness of the judgment of this Court in the case of *Bondu Ramaswamy* (supra) was questioned in the case of *K.K. Poonacha* v. *State of Karnataka* [(2010) 9 SCC 671]. It was argued that the three Judge Bench judgment required reconsideration on the grounds that it had not noticed other relevant judgments of this Court as well as the BDA Act had not been reserved for and received the assent of the President as per the requirement of Article 31(3) of the Constitution and, thus, this law, being in conflict with the Central law, was void and stillborn. These contentions were rejected by the Bench and in para 13 of the judgment, it held that the judgment of this Court in *Bondu Ramaswamy* (supra) needs no reconsideration by the Constitution Bench and more importantly, it specifically referred and reiterated

the principles stated in the cases of *Munithimmaiah* and *Bondu Ramaswamy* (supra).

Sequitur to the above principle is that the BDA Act has already been held to be a valid law by this Court not repugnant to the Land Acquisition Act as they operate in their respective fields without any conflict. For the reasons afore-referred as well as the detailed reasons given by us in the case of *Girnar Traders III (supra)*, which reasoning would form part of this judgment, we have no hesitation in concluding that the BDA Act is a self-contained code. The language of Section 36 of the BDA Act clearly mandates legislation by incorporation and as per the scheme of the two Acts, effective and complete implementation of the State law without any conflict is possible. The object of the State law being planned development, acquisition is merely incidental thereto and, therefore, such an approach does not offend any of the known principles of statutory interpretation.

Points 3 to 5 of submissions raised on behalf of the appellant, as noticed above relate to:

a. Whether it is a case of legislation by reference or legislation by incorporation?

b. Whether the BDA Act is a complete code in itself?

c. Whether the BDA Act and Land Acquisition Act can co-exist and operate without conflict?

d. Whether, there being no contravention between the two laws, they can be harmoniously applied and Section 11A of the Land Acquisition Act can be read into the BDA Act without disturbing its scheme?

Most of these submissions have been specifically dealt with by us in the reasons afore recorded but usefully reference can be made to some of the important principles stated and conclusions arrived at in the case of *Girnar Traders III (supra)*.

In light of this discussion, submissions 3 to 5 advanced on behalf of the appellant are liable to be rejected.

Having dealt with contentions 3 to 5, raised by the appellant, now we will proceed to discuss the merit or otherwise of the contentions 1 and 2 respectively. Both these contentions have a common thread relating to scheme and object of the two Acts and are based on common premise in law, thus, can be conveniently dealt with together. The contention of Mr. Ganguly, Senior Advocate, is that acquisition and requisitioning of property is referable only to Entry 42 of the Concurrent List in Schedule VII to the Constitution of India and being a 'stand alone entry', it cannot be incidental to any other law. Whenever the State enacts a law with reference to other entries including Entry 5 and/or 18 of List II, it may have legislative competence to combine such law with the law enacted by the Parliament with reference to Entry 42 which is a 'stand alone entry' but it cannot make the Central law incidental to the State law.

This argument is, primarily based upon the principles of prevalence of 'stand alone entry' and 'field covered by the Central law' and where there is repugnancy between the laws enacted by two different constituents, the Central law shall prevail and the State law will be stillborn unless it falls within the exception contemplated under Article 254(2) of the Constitution.

Per contra, it is argued that there is no repugnancy between the two laws. They can be easily harmonized and co-exist without conflict. The submission is that Court should normally assume the validity of the legislation rather than declaring it invalid or stillborn on the ground of repugnancy or otherwise unless, on the facts of a given case, it is not so possible.

There cannot be any doubt that acquisition and requisitioning of property, as specified in Entry 42 of List III of Schedule VII which, read with Article 246, is a stand-alone Entry for acquisition of land. The very fact that the subject falls in the Concurrent List means that both the legislative constituents, i.e. the Parliament and the State legislatures, have legislative competence to legislate on that subject. Further, it can also not be disputed that the Land Acquisition Act has been enacted earlier, in point of time, in comparison to BDA Act. The Land Acquisition Act is a law enacted by the Parliament while BDA Act is a State legislation. Therefore, the question that really requires consideration of the Court is whether the State law is in conflict with or repugnant to Central law, if so, what would be its effect? There is no dispute that the State law, though enacted subsequent to the Central law, is not saved if repugnancy results

according to the provisions of Article 254(1) of the Constitution as the BDA Act was never reserved for consideration of the President and never received his assent in terms of Article 254(2) of the Constitution. As this was the principal argument vehemently addressed by the learned counsel appearing for the appellant, let us examine the ambit and scope of these Entries and its impact on the validity of law so enacted.

Article 246 of the Constitution of India provides the subject matters on which laws can be enacted by the Parliament or by the State legislatures, as the case may be. In terms of Article 246(1) of the Constitution, the Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List I of Schedule VII, referred to as 'Union List'. Article 246(2) empowers the Parliament and the State legislature, subject to Article 246(1), to make laws on any of the matters enumerated in List III of Schedule VII, termed as 'Concurrent List'. Subject to clauses (1) and (2) of Article 246, the State has exclusive powers to make laws for such State, or any part thereof, with respect to any of the matters enumerated in List II of Schedule VII, termed as State List under Article 246(3). Article 246(4) gives power to the Parliament to make laws with respect to any matter for any part of the territory of India not included in a 'State' and notwithstanding that such matter is a matter enumerated in the State List.

As already noticed Entry 42 of List III of Schedule VII relates to 'acquisition and requisitioning of property'. This Entry, read with Article 246 of

the Constitution, empowers the Parliament as well as the State legislatures to enact laws in that field. Development of land is not a subject that finds place either in the Concurrent List or in the Union List for that matter. We may now refer to the relevant Entries in the State List. Entry 5 of List II reads as under:

> "5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

And Entry 18 of List II reads as under:

> "18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

In other words, the State legislature has legislative competence to enact laws to constitute and define powers of the Municipal Corporation, Improvement Trust and other local authorities for the purpose of local self-governance or village administration. The State is also empowered to enact laws with respect to land, i.e. right in or over the land, transfer and alienation of agricultural land, land improvement, colonising, etc. Thus, these two Entries, which have been worded very widely, give power to the State legislature to constitute and define powers of any local authority which, in furtherance to the powers vested in it, can deal with the subject of development, colonising and even transfer of land etc. The Land Acquisition Act certainly relates to Entry 42 of List III while the

BDA Act is undoubtedly relatable to Entries 5 and 18 of List II of Schedule VII.

The Entries in the legislative Lists are not the source of powers for the legislative constituents but they merely demarcate the fields of legislation. It is by now well settled law that these Entries are to be construed liberally and widely so as to attain the purpose for which they have been enacted. Narrow interpretation of the Entries is likely to defeat their object as it is not always possible to write these Entries with such precision that they cover all possible topics and without any overlapping. We may refer to some of the judgments which have enunciated these principles over a considerable period.

While interpreting the Entries in the constitutional Lists a seven Judge Bench of this Court in the case of *Union of India* v. *Harbhajan Singh Dhillon* [(1971) 2 SCC 779], held as under:

> "**22.** It must be remembered that the function of the lists is not to confer powers; they merely demarcate the legislative field. The Federal Court, while interpreting the Government of India Act in the *Governor-General-in-Council* v. *Releigh Investment Co*. [1944 FCR 229, 261] observed:
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> > "It would not be right to derive the power to legislate on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute between the Federal and the Provincial Legislatures the powers which had been conferred by Sections 99 and 100 of the Act.
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> **23.** In *Harakchand Ratanchand Banthia* v. *Union of India* [(1969) 2 SCC 166] Ramaswami, J., speaking on behalf of the Court, while dealing with the Gold (Control) Act (45 of 1968), observed:

> "Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate."

24. We are compelled to give full effect to Article 248 because we know of no principle of construction by which we can cut down the wide words of a substantive article like Article 248 by the wording of entry in Schedule VII. If the argument of the respondent is accepted. Article 248 would have to be re-drafted as follows:

> "Parliament has exclusive power to make any law with respect to any matter not mentioned in the Concurrent List or State List, provided it has not been mentioned by way of exclusion in any entry in List I."

We simply have not the power to add a proviso like this to Article 248."

A Constitution Bench of this Court in the case of *Ujagar Prints v. Union of India*, [(1989) 3 SCC 488] described these Entries and also stated the principles which would help in interpretation of these Entries. While enunciating these principles, the Court held as under:

> "**48.** Entries to the legislative lists, it must be recalled, are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "Pith and Substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the

> legislation, looked at as a whole, is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic."

This Court, while referring to the principles of interpretation of Entries in the legislative Lists, expanded the application to all ancillary or subsidiary matters in the case of *Jijubhai Nanabhai Kachar v. State of Gujarat*, [(1995) Suppl. 1 SCC 596] and held as under:

> "**7**. It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude…."

This line of interpretation had been stated in the case of *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, [(1983) 4 SCC 45] and followed in different judgments of this Court including the judgments cited above. The Courts have taken a consistent view and it is well-settled law that various

Entries in three lists are not powers of legislation but are fields of legislation. The power to legislate flows, amongst others, from Article 246 of the Constitution. Article 246(2), being the source of power incorporates the *non-obstante* clause, 'notwithstanding anything contained in Clause (3), Parliament and, subject to clause (1), the legislature of any State' have power to make laws with respect to any of the matters enumerated in List III. Article 246 clearly demarcates the fields of legislative power of the two legislative constituents. It clearly states on what field, with reference to the relevant constitutional Lists and which of the legislative constituents has power to legislate in terms of Article 246 of the Constitution. While the States would have exclusive power to legislate under Article 246(2) of the Constitution in relation to List II; the Concurrent List keeps the field open for enactment of laws by either of the legislative constituents. In the event the field is covered by the Central legislation, the State legislature is not expected to enact a law contrary to or in conflict with the law framed by the Parliament on the same subject. In that event, it is likely to be hit by the rule of repugnancy and it would be a stillborn or invalid law on that ground. Exceptions are not unknown to the rule of repugnancy/covered field. They are the constitutional exceptions under Article 254(2) and the judge enunciated law where the Courts declare that both the laws can co-exist and operate without conflict. The repugnancy generally relates to the matters enumerated in List III of the Constitution.

The Court has to keep in mind that it is construing a Federal Constitution. It is the essence of a Federal Constitution that there should be a distribution of

legislative powers between the Centre and the Provinces. In a Federal Constitution unlike a legally omnipotent legislature like British Parliament, the constitutionality of a law turns upon the construction of entries in the legislative Lists. If a legislature with limited or qualified jurisdiction transgresses its powers, such transgression may be open, direct or overt, or disguised, indirect or covert and it may encroach upon a field prohibited to it. Wherever legislative powers are so distributed, situation may arise where two legislative fields might apparently overlap, it is then the duty of the Courts, however, difficult it may be, to ascertain to what degree and to what extent, the Authority to deal with the matters falling within these classes of subjects exist in each legislature and to define, in the particular case before them, the limits of respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result the two provisions must be read together, and the language of one interpreted, and, where necessary modified by that of the other. [Refer *A.S. Krishna v. Madras State*, AIR 1957 SC 297 and *Federation of Hotels and Restaurants* v. *Union of India*, {(1989) 3 SCC 634}].

Keeping these principles in mind and applying different doctrines, as already referred, different Benches of this Court had the occasion to deal with the BDA Act. In the case of *Munithimmaiah* (supra), the Court had taken the view that BDA Act was a self-contained code enacted with reference to Entry 5 of List II and provisions of the Central Act 68 of 1984 cannot form an integral part of the BDA Act. This two Judge Bench judgment was reiterated with approval by a three Judge Bench of this Court in the case of *Bondu*

Ramaswamy (supra) and while referring to the Entries in the constitutional Lists the Court rejected the contention that the law enacted under the BDA Act was referable to Entry 42 of List III of Schedule VII and held as under:

> **"90.** The second contention urged by the appellants is as follows: a Development Authority is a city improvement trust referred to in Entry 5 of the State List (List II of the Seventh Schedule). "Acquisition of property" is a matter enumerated in Entry 42 in the Concurrent List (List III of the Seventh Schedule). The LA Act relating to acquisition of property, is an existing law with respect to a matter (Entry 42) enumerated in the Concurrent List. The BDA Act providing for acquisition of property is a law made by the State Legislature under Entry 42 of the Concurrent List. Article 254 of the Constitution provides that if there is any repugnancy between a law made by the State Legislature (the BDA Act) and an existing Central law in regard to a matter enumerated in the Concurrent List (the LA Act), then subject to the provisions of clause (2) thereof, the existing Central law shall prevail and the State law, to the extent of repugnancy, shall be void. Clause (2) of Article 254 provides that if the law made by the State Legislature in regard to any matter enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the State Legislature, if it had been reserved for the consideration of the President and has received his assent, shall prevail in that State. It is contended that the provisions of Section 19 of the BDA Act are repugnant to the provisions of Section 6 of the LA Act; and as the BDA Act has not been reserved for consideration of the President and has not received his assent, Section 6 of the LA Act will prevail over Section 19 of the BDA Act. This contention also has no merit.
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>
> **92.** 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 v. State of Karnataka [(2002) 4 SCC 326]* 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."

Once we analyze the above-stated principle, it is obvious that Entries in the constitutional Lists play a significant role in examining the legislative field taking its source of power from Article 246 of the Constitution. BDA Act is an Act which provides for formulation and implementation of schemes relating to development of the Bangalore City. Acquisition of land is neither its purpose nor its object and is merely an incidental consequence of principal purpose of

development of land. Planned development under the scheme is a very wide concept and the concerned Authorities are accordingly vested with amplified functions and powers. We have already held that the provisions of the BDA Act constitute a self-contained code in itself, object of which is planned development under the scheme and not acquisition of land. Thus, only those provisions of the Land Acquisition Act which relate to the acquisition, and have not been enacted under the State law, have to be read into the BDA Act. It has a self-contained scheme with a larger public purpose. The State legislature is competent to enact such a law and it is referable to power and field contained in Article 246(2) of the Constitution read with Entries 5 and 18 of List II of Schedule VII. Such legislation may incidentally refer to Land Acquisition Act for attaining its own object.

We are not impressed by the submission that Entry 42 in List III of Schedule VII denudes the power of the State Legislature to the extent that in an enactment within its legislative competence, it cannot incidentally refer/enact in regard to the subject matter falling in the Concurrent List.

At the cost of repetition we need to notice that the BDA Act is relatable to the Entries which squarely fall into a field assigned to the State legislature and, thus, would be a matter within the legislative competence of the State. For that matter State legislature is equally competent to enact a law even with relation to matters enumerated in List III provided it is not a covered field. The BDA Act relates to planned development under the scheme and it has been enacted with

that legislative object and intent. An ancillary point thereto or reference to certain other provisions which will help in achieving the purpose of the State law, without really coming in conflict with the Central law, is a matter on which a State can enact according to the principle of incidental encroachment. The Court also has to keep in mind the distinction between 'ancillariness' and 'incidentally affecting'. This distinction was noticed by this Court in the case of *Federation of Hotels and Restaurants* (supra) wherein it held as under:

> "33. On the distinction between what is "ancillariness" and what "incidentally affecting" the treatise says:
>
> > "There is one big difference though it is little mentioned. Ancillariness is usually associated with an explicit statutory provision of a peripheral nature; talk about 'incidentally affecting' crops up in connection with the potential of a non-differentiating statute to affect indiscriminately in its application matters assertedly immune from control and others. But it seems immaterial really whether it is its words or its works which draw the flotsam within the statute's wake."

The distinction is that 'ancillariness' relates to a law which merely falls in the periphery of an Entry and the 'incidental effect' relates to a law which, in potential, is not controlled by the other legislation.

In support of the argument raised by the appellant, heavy reliance was placed upon the case of *Ishwari Khetan Sugar Mills* (P) *Ltd*. v. *State of U.P*. [(1980) 4 SCC 136] to emphasize the submission that an independent Entry, like the Entry for acquisition and requisitioning of property, cannot be made subject matter of an ancillary law. The Court, in paragraph 25 of this judgment,

while referring to *Rustom Cavas Jee Cooper v. Union of India* [(1970) 1 SCC 248] held as under:

> "**25**….. that power to legislate for acquisition of property is independent and separate power and is exercisable only under Entry 42 of List II and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists".

In order to examine the impact of these observations we must refer to the facts of this case. As a result of serious problems created by the owners of certain sugar mills in the State of Uttar Pradesh for cane growers and the labourers employed in those mills, having an adverse impact on the general economy of the areas where these sugar mills were situated, and with a view to ameliorate the situation posing a threat to the economy, the Governor of Uttar Pradesh promulgated an Ordinance titled as U.P. Sugar Undertaking (Acquisition) Ordinance, 1971. With a view to transferring and vesting of sugar undertakings set out in the Schedule to the Ordinance a Government Company, within the meaning Section 617 of the Companies Act, 1956, being U.P. State Sugar Corporation Limited was constituted. Subsequently, U.P. Sugar Undertaking (Acquisition) Ordinance, 1971, was repealed and replaced by the U.P. Sugar Undertaking (Acquisition) Act, 1971. The Act came to be challenged before the High Court on the grounds that the State legislature has no legislative competence to enact the same and that it was violative of Articles 19(1)(f), 19(1)(g) and 31 and it also impugned the guarantee of equality enshrined under Article 14 of the Constitution. The appellant had contended

that in exercise of legislative power with reference to Entry 52 of List I, the Parliament made the requisite declaration under Section 2 of the Industrial Development and Regulation Act, 1951 (for short the 'IDR Act'), in respect of the industries specified in the First Schedule of that Act. Sugar, being a declared industry, falls outside the purview of Entry 24 of List II and hence the U.P. State legislature was denuded of legislative powers in respect of sugar industries. This contention was countered by the Attorney General by saying that power to acquire property derived from Entry 42 in List III of Schedule VII, is an independent power. The impugned Act, in pith and substance, being an Act to acquire scheduled undertakings, meaning thereby the properties of the scheduled undertakings, the power of the State legislature to legislate in that behalf is referable to Entry 42 of List III which remained intact irrespective of the fact that 'sugar' has been declared as an industry under the control of the Union Government. The purpose of the State Act in that case was, primarily, to acquire the property, i.e. the land and the sugar factories. The taking over of management of such factory was merely an ancillary or incidental cause. Thus, the Court accepted the argument that it was a matter covered under Entry 42 of List III. Another aspect of that case was that it was a law enacted for acquisition of property and not intended to achieve any other object. Even in that case the Court had taken the view that both these legislations could co-exist without conflict and in para 30 of the judgment held as under:

> "**30.** The impugned legislation was not enacted for taking over management or control of any industrial undertaking by the State Government. In pith and

> substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of Section 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred to the acquiring body it cannot be said that this would be in violation of Section 20. Section 20 forbids executive action of taking over management or control of any industrial undertaking under any law in force which authorises State Government or a local authority do to so. The inhibition of Section 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaking stands transferred to the acquiring authority, Section 20 is not attracted at all. Section 20 does not preclude or forbid a State Legislature from exercising legislative power under an entry other than Entry 24 of List II, and if in exercise of that legislative power, to wit, acquisition of an industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20. Therefore, the contention that the impugned legislation violates Section 20 has no merit."

Reliance by the leaned counsel appearing for the appellant on this judgment of the Constitution Bench is misplaced on the facts and in law. The dictum stated in every judgment should be applied with reference to the facts of the case as well as its cumulative impact. Similarly, a statute should be construed with reference to the context and its provisions to make a consistent enactment, i.e. *ex visceribus actus*. The submission, as advanced, is also not supported by the judgment relied upon. In that case, the Court itself declared the State Legislation as not offending or *ultra vires* the Central Act as the State

had the legislative competence to enact the same. The Court also held that the provisions of the IDR Act and the U.P. Sugar Undertaking (Acquisition) Act, 1971 can co-exist without any conflict. It was for the reason that the IDR Act was related to organization and management of a declared industry placed in the Schedule to the IDR Act by Parliament, while acquisition of property was entirely a different constitutional subject. Another aspect of the case is that the observations in para 25 of the judgment were not made after discussing the law on that issue in detail, but were made with regard to the peculiar facts of the case and for the reasons afore-recorded.

In the case of *A.S. Krishna* (supra), a Constitution Bench of this Court was concerned with examining the validity of some of the provisions of the Madras Prohibition Act, 1937 as it conflicted with the provisions of the Indian Evidence Act, 1872 and Criminal Procedure Code, 1898. Two contentions were raised on behalf of the appellant; one, that in view of Section 107 of the Government of India Act, 1935, which was the Constitution Act in force when the impugned Act was passed, the provisions repugnant to the existing law are void; second, that the impugned Sections are repugnant to Article 14, and are, thus, void in terms of Article 13(1) of the Constitution. We may notice that the provisions of the Madras Act had provided for search, seizure and certain presumptions which could be raised against an accused person under that Act. The challenge was made on the ground that the field is covered by the Central law and, therefore, State Act was repugnant and consequently void. The Court relied upon previous judgments, including the judgment of Privy Council in the case of

Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna [AIR 1947 PC 60]

and held as under:

> "… After quoting with approval the observations of Sir Maurice Gwyer, C.J. in *Subrahmanyan Chettiar* v. *Muttuswami Goundan*, above quoted, Lord Porter observed:
>
> > "Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.
> >
> > No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."
>
> Then, dealing with the question of the extent of the invasion by the Provincial legislation into the Federal fields, Lord Porter observed:
>
> > "No doubt it is an important matter, not, as Their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with provincial matters, but the

question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content."

11. Then, there is the decision of the Federal Court in *Lakhi Narayan Das* v. *Province of Bihar*. There, the question related to the validity of Ordinance 4 of 1949 promulgated by the Governor of Bihar. It was attacked on the ground that as a legislation in terms of the Ordinance would have been void, under Section 107(1) of the Government of India Act, the Ordinance itself was void. The object of the Ordinance was the maintenance of public order, and under Entry I of List II, that is a topic within the exclusive competence of the Province. Then the Ordinance provided for preventive detention, imposition of collective fines, control of processions and public meetings, and there were special provisions for arrest and trial for offences under the Act. The contention was that though the sections of the Ordinance relating to maintenance of public order might be covered by Entry I in List II, the sections constituting the offences and providing for search and trial fell within Items 1 and 2 of the Concurrent List, and they were void as being repugnant to the provisions of the Criminal Procedure Code. In rejecting this contention, Mukherjee, J. observed:

"Thus all the provisions of the Ordinance relate to or are concerned primarily with the maintenance of public order in the Province of Bihar and provide for preventive detention and similar other measures in connection with the same. It is true that violation of the provisions of the Ordinance or of orders passed under it have been made criminal offences but offences against laws with respect to matters specified in List II would come within Item 37 of List II itself, and have been expressly excluded from Item 1 of the Concurrent List. The ancillary matters laying down the procedure for trial of such offences and the conferring of jurisdiction on certain courts for that

> purpose would be covered completely by Item 2 of List II and it is not necessary for the Provincial Legislature to invoke the powers under Item 2 of the Concurrent List."
>
> He accordingly held that the entire legislation fell within Entries I and 2 of List II, and that no question of repugnancy under Section 107(1) arose. This reasoning furnishes a complete answer to the contention of the appellants."

In our view the above judgments also furnish a complete answer to the contentions raised before us.

Having bestowed our careful consideration to the matter in issue, we are unable to persuade ourselves to accept the contentions that the BDA Act is a law relatable exclusively to Entry 42 of List III of Schedule VII and is beyond the legislative competence of the State legislature.

Application of different doctrines on the facts of the present case to determine repugnancy and/or overlapping

It is not necessary for us to refer to the scheme of the Act all over again. Suffice it to note that the BDA Act is a self-contained code with distinct and predominant purpose of carrying out planned development under the finalized schemes in accordance with the provisions of the Act. A Constitution Bench of this Court in the case of *A.S. Krishna* (supra), clearly stated that for application of Section 107 of the Government of India Act, which is *pari materia* to Article 254 of the Constitution, two conditions are necessary; one, that the provisions of provincial law and those of the Central legislation, both must be in respect of the matter which is enumerated in the Concurrent List and second,

that they must be repugnant to each other. Once these conditions are satisfied, then alone the repugnancy would arise and the provincial law, to the extent of repugnancy, may become void. The same view was taken by another Constitution Bench of this Court in the case of *Kerala State Electricity Board* v. *Indian Aluminium Co. Ltd.* [(1976) 1 SCC 466]. One of the settled principles to examine the repugnancy or conflict between the provisions of a law enacted by one legislative constituent and the law enacted by the other, under the Concurrent List, is to apply the doctrine of pith and substance. The purpose of applying this principle is to examine, as a matter of fact, what is the nature and character of the legislation in question. To examine the 'pith and substance' of a legislation, it is required of the Court to examine the legislative scheme, object and purpose of the Act and practical effect of its provisions. After examining the statute and its provisions as a whole, the Court has to determine whether the field is already covered. While examining these aspects, it should further be kept in mind that the legislative constituent enacting the law has the legislative competence with respect to Article 246 read with the Lists contained in Schedule VII to the Constitution. It is the result of this collective analysis which will demonstrate the pith and substance of the legislation and its consequential effects upon the validity of that law. The BDA Act is a social welfare legislation intended to achieve social object of planned development under the schemes made by the Authority concerned in accordance with the provisions of the Act. The fact that this subject falls within the legislative competence of the State is unquestionable. The attempt of the State legislation is to provide complete

measures and methodology to attain its object by establishment of a single Authority to check haphazard and irregular growth and to formulate and implement schemes providing for proper amenities and planned development of the city of Bangalore. Acquisition of land is not its primary purpose but, of course, acquisition of some land may become necessary to achieve its object which is to be specified at the outset of formation of schemes in terms of Section 16 of the BDA Act. Thus, acquisition of land is nothing but incidental to the main object of the State law.

It will be useful to notice that in the case of *State of West Bengal* v. *Kesoram Industries Ltd.* [(2004) 10 SCC 201], a Constitution Bench of this Court, while examining the scheme of allocation of legislative powers under Part XI, Chapter-I of the Constitution, examined the relevant Entries and applied different principles of interpretation including the principle of pith and substance. Referring to the law laid down in *Hoechst Pharmaceuticals Ltd.* (supra), the Court held that in spite of the fields of legislation having been demarcated, the question of repugnancy between a law made by Parliament and a law made by the State legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be *ultra vires* and shall have to give way to the Union law. Having stated the principle that the Court may apply the doctrine of pith and substance in terms of ascertaining the true character of the

legislation, it was further held that the Entries in two Lists (I and II in that case) must be construed in a manner so as to avoid conflict. While facing an alleged conflict between the Entries in these Lists, what has to be decided first is whether there is actually any conflict. If there is none, the question of application of the *non-obstante* clause does not arise. In case of a *prima facie* conflict, the correct approach to the question is to see whether it is possible to effect reconciliation between the two Entries so as to avoid such conflict. Still further, the Court held that in the event of a conflict it should be determined by applying the doctrine of pith and substance to find out, whether, between Entries assigned to two different legislatures, the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict between the Union and a Provincial legislature it is the law of the Union that must prevail. In that event the Court can proceed to examine whether an incidental encroachment upon another field of legislation can be ignored, reference can be made to paras 31, 75 and 129 of that judgment. The judgment of *Kesoram Industries Ltd.* (supra) was followed by another Bench of this Court in the case of *Central Bank of India* v. *State of Kerala* [(2009) 4 SCC 94], where, in para 32, the Court reiterated the dictum that an incidental encroachment upon the field assigned to another legislature is to be ignored.

A Constitution Bench, while answering a Presidential Reference and deciding connected cases, in the case of *Association of Natural Gas* v. *Union of India* [(2004) 4 SCC 489], stated the principle that it is the duty of the Court to

harmonize laws and resolve conflicts. In para 13 of the judgment, the Court held as under:

> "**13.** The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative powers of both the Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same."

We shall shortly examine whether there is conflict between the two laws which are the subject matter of the present appeal but, on due application of the principle of pith and substance, we have no doubt in our minds that the BDA Act is actually referable to Entry 5 of List II of Schedule VII to the Constitution.

We are dealing with a federal Constitution and its essence is the distribution of legislative powers between the Centre and the State. The Lists enumerate, elaborately, the topics on which either of the legislative constituents can enact. Despite that, some overlapping of the field of legislation may be inevitable. Article 246 lays down the principle of federal supremacy that in case of inevitable and irreconcilable conflict between the Union and the State

powers, the Union power, as enumerated in List I, shall prevail over the State and the State power, as enumerated in List II, in case of overlapping between List III and II, the former shall prevail. This principle of federal supremacy laid down in Article 246(1) of the Constitution should normally be resorted to only when the conflict is so patent and irreconcilable that co-existence of the two laws is not feasible. Such conflict must be an actual one and not a mere seeming conflict between the Entries in the two Lists. While Entries have to be construed liberally, their irreconcilability and impossibility of co-existence should be patent. One, who questions the constitutional validity of a law as being *ultra vires*, takes the onus of proving the same before the Court. Doctrines of pith and substance, overlapping and incidental encroachment are, in fact, species of the same law. It is quite possible to apply these doctrines together to examine the repugnancy or otherwise of an encroachment. In a case of overlapping, the Courts have taken the view that it is advisable to ignore an encroachment which is merely incidental in order to reconcile the provisions and harmoniously implement them. If, ultimately, the provisions of both the Acts can co-exist without conflict, then it is not expected of the Courts to invalidate the law in question. While examining the repugnancy between the two statutes, the following principles were enunciated in the case of *Deep Chand* v. *State of U.P.* [AIR 1959 SC 648]:

> "(1) There may be inconsistency in the actual terms of the competing statutes;
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the

Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter."

The repugnancy would arise in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character. Where the State legislature has enacted a law with reference to a particular Entry with respect to which, the Parliament has also enacted a law and there is an irreconcilable conflict between the two laws so enacted, the State law will be a stillborn law and it must yield in favour of the Central law. To the doctrine of occupied/overlapping field, resulting in repugnancy, the principle of incidental encroachment would be an exception. While dealing with this aspect this Court, in the case of *Fatehchand Himmatlal* v. *State of Maharashtra* [(1977) 2 SCC 670], held as under :

> "It has been held that the rule as to predominance of Dominion legislation can only be invoked in case of absolutely conflicting legislation in pari materia when it will be an impossibility to give effect to both the Dominion and provincial enactments. There must be a real conflict between the two Acts i.e. the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject-matter. The doctrine of "occupied field" applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests (Please see: *Canadian Constitutional Law by Laskin* — pp. 52-54, 1951 Edn)."

Besides the above principles, this Bench had an occasion to consider the provisions of the MRTP Act, an Act, the object of which is quite similar to the BDA Act and while examining the alleged repugnancy on the touchstone of these very doctrines, the Court in the case of *Girnar Traders-III* (supra) held as under:

> "The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the Court is called upon to examine the enactment to be *ultra vires* on account of legislative incompetence. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance find its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in the case of *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna* [AIR 1947 PC 60]. The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation. In the case of *Union of India v. Shah Gobardhan L. Kabra Teachers' College* [(2002) 8 SCC 228], this Court held that in order to examine the true character of the enactment, the entire Act, its object and scope is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of pith and substance has to be applied not only in cases of conflict between the powers of two legislatures but also in any

case where the question arises whether a legislation is covered by a particular legislative field over which the power is purported to be exercised. In other words, what is of paramount consideration is that the substance of the legislation should be examined to arrive at a correct analysis or in examining the validity of law, where two legislations are in conflict or alleged to be repugnant. An apparent repugnancy upon proper examination of substance of the Act may not amount to a repugnancy in law. Determination of true nature and substance of the laws in question and even taking into consideration the extent to which such provisions can be harmonized, could resolve such a controversy and permit the laws to operate in their respective fields. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, i.e. when both, the Union and the State laws, relate to a subject in List III [(*Hoechst Pharamaceuticals Ltd*. v. *State of Bihar* [(1983) 4 SCC 45)]. We have already noticed that according to the appellant, the source of legislation being Article 246 read with Entry No. 42 of the Concurrent List the provisions of the State Act in so far as they are in conflict with the Central Act, will be still born and ineffective. Thus, provisions of Section 11A of the Land Acquisition Act would take precedence. On the contrary, it is contended on behalf of the respondent that the planned development and matters relating to management of land are relatable to Entry 5/18 of State List and acquisition being an incidental act, the question of conflict does not arise and the provisions of the State Act can be enforced without any impediment. This controversy need not detain us any further because the contention is squarely answered by the Bench of this Court in *Bondu Ramaswami's* case (supra) where the Court not only considered the applicability of the provisions of the Land Acquisition Act vis-à-vis the Bangalore Act but even traced the source of legislative competence for the State law to Entry 5 of List II of Schedule VII and held as under:

> "92. 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 v. State of Karnataka [(2002) 4 SCC 326]* 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."

While holding as above, the Bench found that the question of repugnancy did not arise. The Court has to keep in mind that function of these constitutional Lists is not to confer power, but to merely demarcate the legislative heads or fields of legislation and the area over which the appropriate legislatures can operate. These Entries have always been construed liberally as they define fields of power which spring from the constitutional mandate contained in various clauses of Article 246. The possibility of overlapping cannot be ruled out and by advancement of law this has resulted in formulation of, amongst others, two principal doctrines, i.e. doctrine of pith and substance and doctrine of

incidental encroachment. The implication of these doctrines is, primarily, to protect the legislation and to construe both the laws harmoniously and to achieve the object or the legislative intent of each Act. In the ancient case of *Muthuswami Goundan* v. *Subramanyam Chettiar* [1940 FCR 188], Sir Maurice Gwyer, CJ supported the principle laid down by the Judicial Committee as a guideline, i.e. pith and substance to be the true nature and character of the legislation, for the purpose of determining as to which list the legislation belongs to.

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The primary object of applying these principles is not limited to determining the reference of legislation to an Entry in either of the lists, but there is a greater legal requirement to be satisfied in this interpretative process. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat*. Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law [*State of Bombay* v. *Narottamdas Jethabhai* [1951 SCR 51]. To examine the true application of these principles, the scheme of the Act, its object and purpose, the pith and substance of the legislation are required to be focused at, to determine its true nature and character. The State Act is intended only to ensure planned development as a statutory function of the various authorities constituted under the Act and within a very limited compass. An incidental cause cannot override the primary cause. When both the Acts can be implemented without conflict, then need for construing them harmoniously arises. 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 11A 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. Only those provisions of the Central Act which precisely apply to acquisition of land, determination and disbursement of compensation in accordance with law, can be read into the State Act. But with the specific exceptions that the provisions of the Central Act relating to default and consequences

thereof, including lapsing of acquisition proceedings, cannot be read into the State Act. It is for the reason that neither they have been specifically incorporated into the State law nor they can be absorbed objectively into that statute. If such provisions (Section 11A being one of such sections) are read as part of the State enactment, they are bound to produce undesirable results as they would destroy the very essence, object and purpose of the MRTP Act. Even if fractional overlapping is accepted between the two statutes, then it will be saved by the doctrine of incidental encroachment, and it shall also be inconsequential as both the constituents have enacted the respective laws within their legislative competence and, moreover, both the statutes can eloquently co-exist and operate with compatibility. It will be in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly, when the Central and State Law can be enforced symbiotically to achieve the ultimate goal of planned development. Thus, the contentions raised by the appellants are unsustainable in law as considered by us under different heads and are liable to be rejected."

Another argument, that was advanced on behalf of the respondents, is that it is not permissible in law to disintegrate the provisions of the Act for the purposes of determining legislative competence. Such approach shall be contrary to the accepted canon of interpretative jurisprudence that the Act should be read as a whole for that purpose. This argument was raised to counter the contention raised on behalf of the appellant that adopted provisions of the Land Acquisition Act, in terms of Section 36 of the BDA Act, are relatable only to Entry 42 of List III and such law enacted by the Parliament cannot be construed incidental to any other law.

It is an established principle of law that an Act should be construed as a

complete instrument and not with reference to any particular provision or provisions. “That you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it”, said Lord Halsbury. When a law is impugned as *ultra vires* the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do so one must have regard to the enactment as a whole, to its object and to the scope and effect of its provisions. It would be quite an erroneous approach to view such a statute not as an organic whole but as a mere collection of sections, then disintegrate it into parts, examine under what head of legislation those parts would severally fall and by that process determine what portions thereof are *intra vires*, and what are not [Reference can be made to *A.S. Krishna’s case* (supra)].

The BDA Act is an Act, primarily, enacted by the State Legislature for checking haphazard construction and for planned development. This is undoubtedly referable to Entries 5 and 18 of List II of Schedule VII. Undoubtedly, Land Acquisition Act is a law enacted by the Parliament with reference to Entry 42 of List III read with Article 246 of the Constitution. The only question now to be considered is whether, in this backdrop, it is advisable and possible to disintegrate the provisions of an Act for the purpose of examining their legislative competence. Emphasis was laid on the disintegration of the provisions of the Act which we prefer to refer as ‘Concept of

Fragmentation'. 'Fragmentation' has been defined and clarified by the dictionaries as follows:

> Concise Oxford English Dictionary, 11th Edition, 2008:
> ***Fragment:*** *n. a small part broken off or detached, an isolated or incomplete part, v. break into fragments. Derivatives- fragmentation n.*
>
> P. Ramanatha Aiyar's Law Lexicon, 2nd Edition, 1997:
> ***Fragmentation*****:** *the action or process of breaking into fragments.*

The meaning given to this expression in common parlance is precept to its application in law as well. In other words, it would mean that you should fragment the Act and then trace its relevant entries in the constitutional Lists to finally examine the legislative competence. The concept of fragmentation may not be an appropriate tool to be used for examining the statutory repugnancy or plea of *ultra vires*. Essentially, the statute should be examined as a whole and its true nature and character should be spelt out in the reasoning leading to the conclusion whether a law is repugnant or *ultra vires*.

Collective and cohesive reading of an Act has been considered by the Courts as a pre-requisite to interpretation. Thus, the concept of fragmentation is least applied by the Courts for proper interpretation. Fragmentation by itself is not a tool of interpretation which can lead to any final conclusion. It is a concept which can be pressed into service either to attain greater clarity of the relevant statutory provisions, its ingredients or spell out its requirements. Sometimes, it may be useful to disintegrate or fragment a statute to examine

proper legislative intent and to precisely define its requirement. Mere dissection of the language of a provision would be inconsequential unless it is coupled with, or is intended to bring into play, another accepted doctrine of statutory interpretation. In other words, fragmentation may be of great help and used as a prior step to application of principles like ancillariness, pith and substance, incidental encroachment, severability etc. Concept of fragmentation has been understood differently in different contexts vis-à-vis doctrines of severability and ancillariness.

Laskin, in his classic, *Canadian Constitutional Law,* 4th edition, 1973, whilst studying the logic of Sections 91 and 92 of the Canadian Constitution, embarked on an analysis of what constitutes "matter," which he described as a concern with 'the pith and substance' of the statute, as follows at page 99:

> "The typical statute is a composite, assembling many specific and detailed provisions into a single package, separating them into parts and sections, each with its own morsel of meaning. Since ordinary litigation arises out of the attempt to apply some one provision and even many references have addressed themselves especially to designated portions, one must start by settling on the pith and substance of what is relevant."

In this manner, he termed the determination of the "matter" of the statute as a threshold inquiry which precedes and must proceed independently of the content of the competing legal categories whose application flow from it. He acknowledges a situation where although the pith and substance of the whole statute is such as to come within an available class of subjects, the separately

considered matter of a particular provision might not. This is the very situation that has seized us in the present case and in Laskin's own words, "Does the good redeem, perish with, or survive the bad?"

The doctrine of ancillariness adds further legitimacy to the statute whose validity has been upheld on the basis of the doctrine of pith and substance. On the other hand, the doctrine of severability comes into play to determine the issue of guilt by association or salvation by disassociation. It is Laskin's submission that the doctrine of ancillariness operates by suppressing the special tendencies of special provisions and treating them as merely elements in the common structure. In such manner "it polarizes the statute so that no part of it is conceived as having an independent direction but all are seen as pointed toward the one central matter."

Thus, Laskin uses ancillariness and severability as devices in identifying the statutory 'matter'. This view paves the way for fragmenting the statute theoretically to determine whether the impugned portion is redeemed by the rest of the statute or must perish so that the remainder may survive. Such a theory of fragmentation is supported by Laskin's discourse:

> "**Ancillariness deals with fusion, severability with fission**. Each arises where there is possibly a different orientation of a statute and of some of its components. They are mutually exclusive in their operation. With ancillariness, the pith and substance of the whole swallows up the matter of the part which then has no independent significance; with severability, the difference is not only preserved but insisted on and the question is what consequences flow from a plurality of

'matters'."

In a variation of the view that the statute is to be adjudged as an integrated whole Laskin, in the above discussed backdrop, entertains the alternative of disaggregating the statute into components or fragments as preceding such judgment as follows:

> "The quality of severability becomes relevant only on the premise that one at least of the "matters," whether that of the whole statute or that of a part, may not come within any class of subjects within the ambit of the enacting legislature's authority. If, in that situation, the portion is severable, the matter of each fragment into which the statute is decomposed is assigned to the class of subjects deemed appropriate. Either the portion exscinded or the mass from which it is drawn may then be sustained despite the shakiness of the other. But if, resisting assimilation under the doctrine of ancilliarity, a part of the statute deals with some 'matter' which is alien to the pith and substance of the whole statute and they are not severable, the illegitimacy of either's matter affects the other and both must fall."

Fragmentation is neither synonymous with nor an alternative to the doctrines of severability or ancillariness. Later are the doctrines which can be applied by themselves to achieve an end result, while fragmentation, as already noticed, is only a step prior to final determination with reference to any of the known principles. In this manner fragmentation of statute may be theoretically undertaken in the process of arriving at the pith and substance of a statute or even determining the field of ancillariness. In case of repugnancy when a State Act is repugnant to a Central law, within the meaning of Article 254, what becomes void is not the entire Act but, only in so far as it is repugnant to the

Central Act and this is the occasion where the doctrine of severability would operate. For the application of this doctrine, it has to be determined whether the valid parts of statute are separable from the invalid parts thereof and it is the intention of the Legislature which is the determining factor. The test to be applied is whether the Legislature would have enacted the valid part if it had known that rest of the statute was invalid. This may not be true where valid and invalid provisions are so inextricably mixed up that they cannot be separated. Another principle used by the courts, while applying the doctrine of severability, is to find whether the separated valid part forms a single scheme which is intended to operate as a whole independent of the invalid part. Reference in this regard can be made to *R.M.D. Chamarbaugwalla v. Union of India,* [AIR 1957 SC 628]. Doctrine of severability can also be applied to the legislation which is partly *ultra vires*.

Thus, severability is not fragmentation. Fragmentation may be used to effectively consider the statutory provisions at a threshold stage prior to declaration of repugnancy or *ultra vires* of a statute, while severability is a doctrine to be applied post such declaration. In other words, fragmentation serves as a means to achieve the end, i.e. severability. The principle of severability becomes relevant only on the premise that at least one of the matters, whether that of the whole statute or part thereof, may not come within any class of the subjects within the ambit of the enacting legislature's authority. We have already noticed, in detail, the view of Laskin in regard to projection of the entire Act as a whole rather than to signify any part thereof.

With the above distinctions in mind, let us now examine the impact of fragmentation on the BDA Act while determining its pith and substance and ultimately its source in the constitutional Lists. We have already noticed that the BDA Act is an Act aimed at implementation of schemes for planned development and stoppage of haphazard construction. On the other hand, the Land Acquisition Act is an Act dealing strictly with acquisition of land. Section 36(1) of the BDA Act refers to application of the provisions of the Land Acquisition Act to that Act as far as practicable. The other provision making a reference, that too indirectly, to acquisition is Section 27 of the BDA Act which contemplates that in the event of a scheme having lapsed, the provisions of Section 36 shall become inoperative. One also finds reference to acquisition in Section 16 of the BDA Act where the scheme prepared for implementation shall also indicate the land to be acquired for proper implementation of the provisions of the BDA Act. Even if, for the sake of argument, Section 36 is said to be traceable to Entry 42 of List III of Schedule VII to the Constitution, in that event, this reference would have to be suppressed to give weightage to the provisions aimed at development which are referable to Entries 5 and 18 of List II of Schedule VII to the Constitution. The entire BDA Act is directed towards implementation of the schemes for development and acquisition is only incidental to the same as held by us in the earlier part of the judgment. Different provisions of the BDA Act are found to be pointing towards the one central matter, i.e. development, one provision in the entire scheme of the BDA Act cannot be conceived as having an independent direction. Firstly, we find no

reason to apply the concept of fragmentation to determine the pith and substance of the Act which, in fact, we have held to be 'planned development', referable to Entries 5 and 18 of List II of Schedule VII. Secondly, even if various provisions of the Act are fragmented, then it would still lead to the same result and the pith and substance of the Act would still be traceable to the same Entries. We have discussed this concept only as an alternative submission put forth by the respondents. Their contention that it is not necessary to travel into the intricacies of this concept has some merit and application of fragmentation would serve no end and would also not be in consonance with the settled canons of statutory interpretation.

Having examined the pith and substance of the impugned legislation and holding that it is relatable to Entries 5 and 18 of List II of Schedule VII of the Constitution, the question of repugnancy can hardly arise. Furthermore, the constitutionality of the impugned Act is not determined by the degree of invasion into the domain assigned to the other Legislature but by its pith and substance. The true nature and character of the legislation is to be analysed to find whether the matter falls within the domain of the enacting Legislature. The incidental or ancillary encroachment on a forbidden field does not affect the competence of the legislature to make the impugned law.

Now, on this anvil, let us examine the provisions of the BDA Act. It is an Act which has a self-contained scheme dealing with all the situations arising from the formation of the scheme for planned development to its execution. It is

not a law enacted for acquisition or requisitioning of properties. Various terms used in the Act, like amenity, civic amenities, betterment tax, building, operations, development, streets etc. are directly, and only, relatable to 'development' under a 'scheme' framed under the provisions of the Act, as observed in *K.K. Poonacha* (supra). The BDA Act also provides for an adjudicatory process for the actions which may be taken by the authorities or functionaries against the persons; except to the limited extent of acquisition of land and payment of compensation thereof. For that very purpose, Section 36 of the BDA Act has been incorporated into the provisions of Land Acquisition Act. To the limited extent of acquisition of land and payment of compensation, the provisions of the Land Acquisition Act would be applicable for the reason that they are neither in conflict with the State law nor do such provisions exist in that Act. The provisions of the Land Acquisition Act relating thereto would fit into the scheme of the BDA Act. Both the Acts, therefore, can co-exist and operate without conflict. It is no impossibility for the Court to reconcile the two statutes, in contrast to invalidation of the State law which is bound to cause serious legal consequences. Accepting the argument of the appellant would certainly frustrate the very object of the State law, particularly when both the enactments can peacefully operate together. To us, there appears to be no direct conflict between the provisions of the Land Acquisition Act and the BDA Act. The BDA Act does not admit reading of provisions of Section 11A of the Land Acquisition Act into its scheme as it is bound to debilitate the very object of the State law. The Parliament has not enacted any law with regard to

development the competence of which, in fact, exclusively falls in the domain of the State Legislature with reference to Entries 5 and 18 of List II of Schedule VII. Both these laws cover different fields of legislation and do not relate to the same List, leave apart the question of relating to the same Entry. Acquisition being merely an incident of planned development, the Court will have to ignore it even if there was some encroachment or overlapping. The BDA Act does not provide any provision in regard to compensation and manner of acquisition for which it refers to the provisions of the Land Acquisition Act. There are no provisions in the BDA Act which lay down detailed mechanism for the acquisition of property, i.e. they are not covering the same field and, thus, there is no apparent irreconcilable conflict. The BDA Act provides a specific period during which the development under a scheme has to be implemented and if it is not so done, the consequences thereof would follow in terms of Section 27 of the BDA Act. None of the provisions of the Land Acquisition Act deals with implementation of schemes. We have already answered that the acquisition under the Land Acquisition Act cannot, in law, lapse if vesting has taken place. Therefore, the question of applying the provisions of Section 11Aof the Land Acquisition Act to the BDA Act does not arise. Section 27 of the BDA Act takes care of even the consequences of default, including the fate of acquisition, where vesting has not taken place under Section 27(3). Thus, there are no provisions under the two Acts which operate in the same field and have a direct irreconcilable conflict.

Having said so, now we proceed to record our answer to the question

referred to the larger Bench as follows:

"For the reasons stated in this judgment, we hold that the BDA Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of the BDA Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof, including lapsing of acquisition proceedings ,cannot be read into the BDA Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under the provisions of the BDA Act."

The Reference is answered accordingly. Matter now be placed before the appropriate Bench for disposal in accordance with law.

…….....CJI.
(S.H. Kapadia)

…….....J.
(Dr. Mukundakam Sharma)

…….....J.
(K.S. Panicker Radhakrishnan)

...…….....J.
(Swatanter Kumar)

…….....J.
(Anil R. Dave)

New Delhi
January 18, 2011