



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 26<sup>TH</sup> DAY OF FEBRUARY, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE N.S.SANJAY GOWDA

**WRIT APPEAL No.2872/2013 (BDA)**

**Connected with**

**WRIT APPEAL No.2505/2013 (BDA)**

**WRIT APPEAL No.2708/2015 (BDA)**

**WRIT APPEAL No.2918/2013 (BDA)**

**WRIT APPEAL No.2919/2013 (BDA)**

**IN W.A. No.2872/2013 :**

**BETWEEN:**

SYNDICATE BANK  
A BANK CONSTITUTED UNDER  
THE CENTRAL ACT 5 OF 1970,  
HAVING ITS HEAD OFFICE AT MANIPAL  
REP. BY ITS CHIEF MANAGER IN  
THE WRIT PETITIONS AND PRESENTLY  
REPRESENTED IN THE APPEALS BY ITS  
ASSISTANT GENERAL MANAGER  
SRI S.S. BALAKRISHNA  
S/O. SRI S.S. BHAT  
AGED ABOUT 59 YEARS,  
GENERAL ADMINISTRATION DEPARTMENT  
CORPORATE OFFICE,  
GANDHINAGAR,  
BANGALORE - 560 009.

... APPELLANT

(BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR  
SRI SUBRAMANYA R., ADVOCATE (THROUGH V/C))

**AND:**

1. M/S. MANYATHA RESIDENTS ASSOCIATION  
REPRESENTED BY ITS SECRETARY

SRI A. SHANTHARAM  
HAVING REGISTERED OFFICE AT  
NO.9/1, I FLOOR, CLASSIC COURT,  
RICHMOND ROAD,  
BANGALORE - 560 025.

2. SRI D.N. SRIHARI  
S/O. SRI D. NARAYANASWAMY  
AGED ABOUT 49 YEARS,  
RESIDING AT NO.2-A,  
SHANTHI NIVAS, NO.4,  
SOUTH END ROAD,  
SESHADRIPURAM,  
BANGALORE - 560 020.
3. MR. C. JOSEPH  
S/O. SRI D. CHOWRAPPA  
AGED ABOUT 88 YEARS,  
RESIDING AT NO.10, NO.18/A,  
BHUVANESHWARI NAGAR,  
H.A. FARM POST,  
BANGALORE - 560 024.
4. SRI CHANDRA S. BACHU  
S/O. SRI B.R. KRISHNAMURTHY  
AGED ABOUT 46 YEARS,  
C/O. SRI RAMESH CHANDRA DUTT  
S/O. LATE SRI S. CHINNASWAMY SETTY,  
NO.57, A.E.C.S. LAYOUT,  
R.M.V. II STAGE,  
BANGALORE - 560 094.
5. SMT. AMARA RADHAKRISHNA  
W/O. SRI D. RADHAKRISHNA REDDY  
AGED ABOUT 42 YEARS,  
RESIDING AT NO.40, 4<sup>TH</sup> CROSS,  
GANESHA BLOCK, NANDINI LAYOUT,  
MAHALAKSHMI LAYOUT,  
BANGALORE - 560 086.
6. SRI Y.S.V.K. VASUDEVA RAO  
S/O. SRI PURNACHANDRA RAO  
AGED ABOUT 67 YEARS,  
RESIDING AT NO.50/A-21  
MANYATHA RESIDENCY,  
BANGALORE - 560 045.

7. SMT. A. SHILPA  
W/O. SRI SREEKAR  
AGED ABOUT 32 YEARS,  
RESIDING AT NO.50/A-21,  
MANYATHA RESIDENCY,  
BANGALORE - 560 045.
8. SRI A. SREEKAR  
S/O. SRI PURNACHANDRA RAO,  
AGED ABOUT 42 YEARS,  
RESIDING AT NO.50/A-21,  
MANYATHA RESIDENCY,  
BANGALORE - 560 045.
9. SRI G. PULLA REDDY  
S/O. SRI G. NARAYANA REDDY,  
AGED ABOUT 49 YEARS,  
RESIDING AT NO.D-15,  
MANYATHA RESIDENCY  
BANGALORE - 560 045.
10. THE STATE OF KARNATAKA  
DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT,  
REPRESENTED BY ITS PRINCIPAL SECRETARY,  
MULTISTORIED BUILDING,  
BANGALORE - 560 001.
11. THE BANGALORE DEVELOPMENT AUTHORITY  
REPRESENTED BY ITS COMMISSIONER,  
T. CHOWDAIAH ROAD,  
KUMARA PARK WEST,  
BANGALORE - 560 020.
12. MANYATA RESIDENCY NIVASIGALA  
KASHEMABHIVRUDHI SANGHA (R)  
HAVING ITS REGISTERED OFFICE AT  
NO.1, III FLOOR, MARUTHI COMPLEX,  
R.T. NAGAR MAIN ROAD,  
BANGALORE - 560 032.  
REP. BY ITS SECRETARY  
SRI K. JAYARAMAN. ... RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL FOR SRI GANAPATHI HEGDE, ADVOCATE FOR C/R-1, R-2, R-5 AND FOR R-3, R-4 & R-6 TO R-9 (THROUGH V/C); SRI T.L. KIRAN KUMAR, ADDITIONAL GOVERNMENT ADVOCATE FOR R-10; SRI HARISH CHANDRA N., ADVOCATE FOR R-12)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION No.6452 AND 6453/2011 (BDA) DATED 06/03/2013.

**IN W.A. No. 2505/2013 :**

**BETWEEN:**

GAS AUTHORITY OF INDIA LIMITED  
CORPORATE MILLER  
II FLOOR, 332/1,  
THIMMAIAH ROAD,  
VASANTHAGAR,  
BANGALORE - 560 052.

... APPELLANT

(BY SRI DHANANJAY JOSHI, ADVOCATE (THROUGH V/C))

**AND:**

1. M/S. MANYATA RESIDENTS ASSOCIATION  
REPRESENTED BY ITS SECRETARY,  
MR. A. SHANTARAM,  
WITH ITS REGISTERED OFFICE AT  
NO.9/1, I FLOOR CLASSIC COURT  
RICHMOND ROAD,  
BANGALORE - 25.
2. SRI D.N. SRI HARI  
S/O. MR. D. NARAYANASWAMY  
AGED ABOUT 49 YEARS,  
R/AT NO.2A, SHANTHINIVAS,  
NO.4, SOUTH END ROAD,  
SESHADRIPURAM,  
BANGALORE - 560 020.
3. MR. N.C.S. PARTHASARATHI  
S/O. NANDURIPANDURANGA VITHAL  
AGED ABOUT 52 YEARS,  
R/AT NO.1-2-36, DOMALGUDA,  
HYDERABAD - 500 029.
4. SRI C. JOSEPH  
S/O. D. CHOWRAPPA  
AGED ABOUT 86 YEARS,  
R/AT NO.10, 18/A,

BHUVANESHWARI NAGAR  
H.A. FARM POST,  
BANGALORE - 24.

5. SRI RAMANJENEYULA REDDY  
S/O. R. SRIRAMULU REDDY  
AGED ABOUT 43 YEARS,  
R/AT BHARGAVA TOWERS  
1<sup>ST</sup> FLOOR, FLAT NO.2  
NO.20, DINNUR MAIN ROAD,  
R.T. NAGAR, BANGALORE - 32.
6. SRI SHANKAR GOPAL  
AGED ABOUT 48 YEARS,  
S/O. DR. M.G. GOPAL  
C/O. DR. M.G. GOPAL  
AGED ABOUT 76 YEARS,  
R/AT NO.381, 1<sup>ST</sup> N BLOCK,  
19<sup>TH</sup> G-MAIN, RAJAJINAGAR,  
BANGALORE - 560 010.
7. SRI CHANDRA S BACHU  
S/O. B.R. KRISHNAMURTHY  
AGED ABOUT 46 YEARS,  
C/O. RAMESH CHANDRA DUTT  
S/O. LATE S. CHINNAWAMYSHETTY,  
NO.57, AECS LAYOUT,  
RMV 2<sup>ND</sup> STAGE,  
BANGALORE - 560 094.
8. MRS. AMARA RADHAKRISHNA  
W/O. MR. D. RADHAKRISHNA REDDY,  
AGED ABOUT 40 YEARS,  
R/AT NO.40, 4<sup>TH</sup> CROSS  
GANESHA BLOCK, NANDINI LAYOUT,  
MAHALAKSHMI LAYOUT,  
BANGALORE - 86.
9. MR. N. VASU S/O. K. NARAYAN  
AGED 47 YEARS,  
NO.12/3, 16<sup>TH</sup> CROSS,  
JAI BHARATH NAGAR,  
HARIYAMMA TEMPLE STREET,  
BANGALORE - 560 033.
10. MR. ALEYAMMAKORAH  
W/O. MR. K.P. KORAH  
AGED ABOUT 71 YEARS,

R/AT NO.5, 4<sup>TH</sup> CROSS,  
DINNUR, R.T. NAGAR,  
BANGALORE - 560 032.

11. SRI H.S. VISHWANATH  
S/O. LATE H.S. SEETARAMAIAH  
AGED ABOUT 44 YEARS,  
R/AT NO.57, SWARNAMUKHI APARTMENTS,  
GANDHINAGAR ADYAR,  
CHENNAI - 20.
12. THE BANGALORE DEVELOPMENT AUTHORITY  
REP. BY ITS COMMISSIONER  
T. CHOWDAIAH ROAD,  
KUMARA PARK WEST,  
BANGALORE - 560 020.
13. MANYATHA RESIDENCY NIVASIGALA  
KSHEMABHIVRUDHI SANGHA,  
REPRESENTED BY ITS SECRETARY,  
SRI K. JAYARAMAN,  
HAVING ITS REGD. OFFICE AT  
NO.1, 3<sup>RD</sup> FLOOR,  
MARUTHI COMPLEX,  
R.T. NAGAR MAIN ROAD,  
BANGALORE-32.
14. STATE OF KARNATAKA  
DEPARTMENT OF URBAN DEVELOPMENT  
BY ITS PRINCIPAL SECRETARY,  
VIKAS SOUDHA, BANGALORE-01. ... RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL FOR SRI GANAPATHI HEGDE, ADVOCATE FOR R-1 TO R-7 AND R-11 (THROUGH V/C); SRI D.N. NANJUNDA REDDY, SENIOR COUNSEL FOR SRI K. KRISHNA, ADVOCATE FOR R-12 (THROUGH V/C); SRI HARISH CHANDRA N., ADVOCATE FOR R-13; SRI T.L. KIRAN KUMAR, ADDL. GOVERNMENT ADVOCATE FOR R-14; R9 AND R10 ARE SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.41717/2011 DATED 06/03/2013.

**IN W.A. No. 2708/2015 :**

**BETWEEN:**

M/S. BENNET COLEMAN & CO.LTD.,  
COMMONLY KNOWN AS  
THE TIMES OF INDIA GROUP HAVING ITS  
REGISTERED OFFICE AT  
THE TIMES OF INDIA BUILDING,  
DR. D.N. ROAD, MUMBAI - 400 001.  
AND A BRANCH OFFICE AT NO.40/1,  
S & B TOWERS, M.G. ROAD,  
BANGALORE - 560 001.  
REPRESENTED BY THEIR  
AUTHORISED REPRESENTATIVE AND  
SENIOR MANAGER-CORPORATE LEGAL  
MR.R.J.PRAKASHAN.

... APPELLANT

(BY SRI BRIJESH PATIL, ADVOCATE (THROUGH V/C))

**AND:**

1. MANYATHA RESIDENTS ASSOCIATION  
REPRESENTED BY ITS SECRETARY,  
MR. A. SHANTHARAM WITH ITS  
REGISTERED OFFICE AT NO.9/1,  
I FLOOR, CLASSIC COURT, RICHMOND ROAD,  
BANGALORE - 25.
2. SRI D.N. SRIHARI  
AGED ABOUT 51 YEARS,  
S/O. MR. D. NARAYANASWAMY,  
R/AT NO.2A, "SHANTHI NIVAS",  
NO.4, SOUTH END ROAD,  
SESHADRIPURAM,  
BANGALORE - 560 020.
3. SRI C. JOSEPH  
AGED ABOUT 90 YEARS,  
S/O. D. CHOWRAPPA,  
R/A NO.10, 18/A,  
BHUVANESHWARI NAGAR,  
H.A. FARM POST,  
BANGALORE - 560 024.
4. SRI CHANDRA S BACHU  
AGED ABOUT 48 YEARS,  
S/O. B.R. KRISHNAMURTHY,

C/O. RAMESH CHANDRA DUTT,  
S/O. LATE S. CHINNASWAMY SETTY,  
NO.57, AECS LAYOUT,  
RMV 2<sup>ND</sup> STAGE, BANGALORE - 94.

5. MRS. AMARA RADHAKRISHNA  
AGED ABOUT 44 YEARS,  
W/O. MR. D. RADHAKRISHNA REDDY,  
R/AT NO.40, 4<sup>TH</sup> CROSS,  
GANESHA BLOCK, NANDINI LAYOUT,  
MAHALAKSHMI LAYOUT,  
BANGALORE - 560 086.
6. SRI Y.S.V.K. VASUDEVA RAO  
AGED ABOUT 69 YEARS,  
S/O. PURNACHANDRA RAO,  
NO.50/A, 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.
7. MRS. A. SHILPA  
AGED ABOUT 34 YEARS,  
W/O. SREEKAR,  
NO.50/A, 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.
8. MR. A. SREEKAR  
AGED ABOUT 44 YEARS,  
S/O. PURNACHANDRA RAO,  
NO.50/A, 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.
9. MR. G. PULLA REDDY  
AGED ABOUT 51 YEARS,  
S/O. G. NARAYANA REDDY,  
NO.D-15, MANYATA RESIDENCY,  
BANGALORE - 560 045.
10. THE STATE OF KARNATAKA  
DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT,  
BY ITS PRINCIPAL SECRETARY,  
MULTISTORIED BUILDING,  
BANGALORE - 01.
11. THE BANGALORE DEVELOPMENT AUTHORITY  
REPRESENTED BY ITS COMMISSIONER,  
T. CHOWDAIAH ROAD,  
KUMARA PARK WEST,



BANGALORE - 560 020.

12. SYNDICATE BANK  
CORPORATE OFFICE, GANDHINAGAR,  
BANGALORE - 560 009.  
REPRESENTED BY ITS  
CHIEF MANAGER.

13. MANYATA RESIDENCY NIVASIGALA  
KSHEMABHIVRUDHI SANGHA (R),  
REPRESENTED BY ITS SECRETARY,  
K. JAJARAMAN, HAVING ITS  
REGISTERED OFFICE AT NO.1,  
3<sup>RD</sup> FLOOR, MARUTHI COMPLEX,  
R.T.NAGAR MAIN ROAD,  
BANGALORE - 560 032.

... RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL FOR SRI  
GANAPATHI HEGDE, ADVOCATE FOR R-1 TO R-9  
(THROUGH V/C);  
SRI T.L. KIRAN KUMAR, ADDL. GOVERNMENT  
ADVOCATE FOR R-10;  
SRI D.N. NANJUNDA REDDY, SENIOR COUNSEL FOR  
R-11;  
SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR  
SRI.R.SUBRAMANYA, ADVOCATE FOR R-12  
(THROUGH V/C);  
SRI HARISH CHANDRA N., ADVOCATE FOR R-13)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
ORDER PASSED IN THE WRIT PETITION NO.6452-6453/2011  
DATED 06/03/2013.

**IN W.A. No. 2918/2013 :**

**BETWEEN:**

BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST,  
T. CHOWDAIAH ROAD,  
BANGALORE - 560 020.  
REPRESENTED BY  
ITS COMMISSIONER.

... APPELLANT

(BY SRI D.N. NANJUNDA REDDY, SENIOR COUNSEL FOR SRI  
K.KRISHNA, ADVOCATE (THROUGH VIDEO CONFERENCE))

**AND:**

1. MANYATHA RESIDENTS ASSOCIATION  
REPRESENTED BY ITS SECRETARY,  
MR. A. SHANTARAM  
WITH ITS REGISTERED OFFICE AT  
NO.9/1, 1<sup>ST</sup> FLOOR, CLASSIC COURT  
RICHMOND ROAD,  
BANGALORE – 560 025.
2. SRI. D.N. SRIHARI  
S/O. MR. D. NARAYANASWAMY  
AGED ABOUT 47 YEARS,  
RESIDING AT NO.2A  
SHANTHI NIVAS NO.4  
SOUTH END ROAD,  
SHESHADRIPURAM,  
BANGALORE – 560 020.
3. MR. N.C.S. PARTHASARATHI  
S/O. NANDURI PANDURANGA VITTAL,  
AGED ABOUT 50 YEARS,  
RESIDING AT NO.1-2-36,  
DOMAL GUDA,  
HYDERABAD – 000 029.
4. SRI JOSEPH  
S/O. MR. D. CHOWRAPPA  
AGED ABOUT 86 YEARS,  
RESIDING AT NO.10, 18/A,  
BHVANESHWARI NAGAR,  
H.A. FARM POST,  
BANGALORE – 560 024.
5. SRI RAMANJANEYULA REDDY  
S/O. R. SRIRAMULU REDDY,  
AGED ABOUT 41 YEARS,  
RESIDING AT BHARGAVE TOWERS,  
1<sup>ST</sup> FLOOR, FLAT NO.2,  
NO.20, DINNUR MAIN ROAD, R.T. NAGAR  
BANGALORE – 560 032.
6. SRI SHANKAR GOPAL  
S/O. DR. M.G. GOPAL,  
AGED ABOUT 46 YEARS,  
C/O. DR. M.G. GOPAL,

AGED ABOUT 74 YEARS,  
RESIDING AT NO.381,  
1<sup>ST</sup> N BLOCK, 19<sup>TH</sup> G MAIN,  
RAJAJINAGAR,  
BANGALORE - 560 010.

7. SRI CHANDRA S BACHU  
S/O. B.R. KRISNAMURTHY  
AGED ABOUT 44 YEARS,  
C/O. RAMESH CHANDRA DUTT  
S/O. LATE S. CHINNASWAMY SETTY  
NO.57, AECS LAYOUT  
RMV 2<sup>ND</sup> STAGE,  
BANGALORE - 560 094.
8. MRS. AMARA RADHAKRISHNA  
W/O. MR. D. RADHAKRISHNA REDDY  
AGED ABOUT 40 YEARS,  
RESIDING AT NO.40, 4<sup>TH</sup> CROSS,  
GANESHA BLOCK, NANDINI LAYOUT,  
MAHALAKSHMI LAYOUT,  
BANGALORE - 560 086.
9. MR. N. VASU  
S/O. K. NARAYAN  
AGED ABOUT 45 YEARS  
NO.12/3, 16<sup>TH</sup> CROSS,  
JAI BHARATH NAGAR,  
HARIYAMMA TEMPLE STREET,  
BANGALORE - 560 033.
10. MRS. ALEYAMMA KORAH  
W/O. MR. K.P. KORAH  
AGED ABOUT 69 YEARS,  
RESIDING AT NO.5,  
4<sup>TH</sup> CROSS, DINNUR, R.T. NAGAR,  
BANGALORE - 560 032.
11. SRI. H.S. VISHWANATHA  
S/O. LATE H.S. SEETARAMAIAH  
AGED ABOUT 44 YEARS,  
RESIDING AT NO.57,  
SWARNAMUKHI APARTMENTS,  
GANDHINAGAR ADYAR,  
CHENNAI - 20.
12. GAS AUTHORITY OF INDIA LIMITED  
CORPORATE MILLER,

II FLOOR, 332/1,  
THIMMAIAH ROAD,  
OFF QUEENS ROAD,  
VASANTHANAR,  
BANGALORE - 560 052.  
BY ITS DEPUTY GENERAL MANAGER.

13. MANYATHA RESIDENCY NIVASIGALA  
KSHEMABHIVRUDHI SANGHA (R)  
REPRESENTED BY ITS SECRETARY  
SRI K. JAYARAMAN,  
HAVING ITS REGISTERED OFFICE AT  
NO.1, 3<sup>RD</sup> FLOOR,  
MARUTHI COMPLEX,  
R.T. NAGAR MAIN ROAD,  
BANGALORE - 560 032.

14. STATE OF KARNATAKA  
DEPARTMENT OF URBAN DEVELOPMENT  
BY ITS PRINCIPAL SECRETARY,  
VIKAS SOUDHA,  
BANGALORE - 560 001.

... RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL FOR SRI  
GANAPATHI HEGDE, ADVOCATE FOR R-1, TO R-11 (THROUGH  
V/C); SRI T.RAJARAM, ADVOCATE FOR R-12 (THROUGH V/C);  
SRI HARISH CHANDRA N., ADVOCATE FOR R-13; SRI T.L.  
KIRAN KUMAR, ADDL. GOVERNMENT ADVOCATE FOR R-14)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
ORDER PASSED IN THE WRIT PETITION NO.41717/2011(BDA)  
DATED 06/03/2013.

**IN W.A. No. 2919/2013 :**

**BETWEEN:**

BANGALORE DEVELOPMENT AUTHORITY,  
KUMARA PARK WEST,  
T. CHOWDAIAH ROAD,  
BANGALORE - 560 020  
REPRESENTED BY ITS COMMISSIONER.

... APPELLANT

(BY SRI D.N. NANJUNDA REDDY, SENIOR COUNSEL FOR  
SRI K.KRISHNA, ADVOCATE (THROUGH VIDEO CONFERENCE)

**AND:**

1. MANYATHA RESIDENTS ASSOCIATION  
REPRESENTED BY ITS SECRETARY,  
MR. A. SHANTARAM,  
WITH ITS REGISTERED OFFICE AT  
NO.9/1, 1<sup>ST</sup> FLOOR, CLASSIC COURT,  
RICHMOND ROAD,  
BANGALORE - 560 025.
2. SRI D.N. SRIHARI  
S/O. MR. D. NARAYANASWAMY,  
AGED ABOUT 49 YEARS,  
RESIDING AT NO.2A,  
SHANTHI NIVAS, NO.4,  
SOUTH END ROAD,  
SHESHADRIPURAM,  
BANGALORE - 560 020.
3. SRI C. JOSEPH  
S/O. D. CHOWRAPPA,  
AGED ABOUT 88 YEARS,  
RESIDING AT NO.10, 18/A,  
BHUVANESHWARI NAGAR,  
H.A. FARM POST,  
BANGALORE - 560 024.
4. SRI CHANDRA S. BACHU  
S/O. B.R. KRISHNAMURTHY,  
AGED ABOUT 46 YEARS,  
C/O. RAMESH CHANDRA DUTT,  
S/O. LATE S. CHINNASWAMY SETTY,  
NO.57, AECS LAYOUT,  
RMV 2<sup>ND</sup> STAGE,  
BANGALORE - 560 094.
5. MRS. AMARA RADHAKRISHNA  
W/O. MR. D. RADHAKRISHNA REDDY,  
AGED ABOUT 42 YEARS,  
RESIDING AT NO.40, 4<sup>TH</sup> CROSS,  
GANESHA BLOCK, NANDINI LAYOUT,  
MAHALAKSHMI LAYOUT,  
BANGALORE - 560 086.
6. MR. Y.S.V.K. VASUDEVA RAO  
S/O. POORNACHANDRA RAO,

AGED ABOUT 67 YEARS,  
NO.50/A 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.

7. MRS. A. SHILPA  
W/O. SREEKAR,  
AGED ABOUT 32 YEARS,  
NO.50/A 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.
8. MR. A. SREEKAR  
S/O. PURNACHANDRA RAO,  
AGED ABOUT 42 YEARS,  
NO.50/A 21, MANYATA RESIDENCY,  
BANGALORE - 560 045.
9. MR. G. PULLA REDDY  
S/O. G. NARAYANA REDDY,  
AGED ABOUT 49 YEARS,  
NO.D-15, MANYATA RESIDENCY,  
BANGALORE - 560 045.
10. M/S. BENNETT COLEMAN  
AND COMPANY LIMITED,  
DR. D.N. ROAD,  
MUMBAI - 400 001.  
COMMONLY KNOWN AS TIMES  
OF INDIA GROUP,  
REPRESENTED BY ITS  
GENERAL MANAGER.
11. SYNDICATE BANK,  
CORPORATE OFFICE,  
GANDHINAGAR,  
BANGALORE - 560 009  
REPRESENTED BY ITS  
CHIEF MANAGER.
12. MANYATHA RESIDENCY NIVASIGALA  
KSHEMABHIVRUDHI SANGHA ®  
REPRESENTED BY ITS SECRETARY  
SRI K. JAYARAMAN,  
HAVING ITS REGISTERED OFFICE AT  
NO.1, 3<sup>RD</sup> FLOOR, MARUTHI COMPLEX,  
R.T. NAGAR MAIN ROAD,  
BANGALORE - 560 032.
13. STATE OF KARNATAKA

DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT,  
BY ITS PRINCIPAL SECRETARY,  
M.S. BUILDING,  
BANGALORE - 560 001.

... RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL FOR SRI GANAPATHI HEGDE, ADVOCATE FOR R-1 TO R-9 (THROUGH V/C); SRI SANDEEP S. SHAHAPUR AND SRI SHREERAM T. NAYAK, ADVOCATE FOR R-10; SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR SRI SUBRAMANYA R., ADVOCATE FOR R-11 (THROUGH V/C); SRI HARISH CHANDRA N., ADVOCATE FOR R-12; SRI T.L. KIRAN KUMAR, ADDITIONAL GOVERNMENT ADVOCATE FOR R-13)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION Nos.6452-53/11 DATED 06/03/2013.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED ON 09.12.2020, AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, TODAY, **NAGARATHNA J.**, PRONOUNCED THE FOLLOWING:

### **J U D G M E N T**

Since, these matters raise common questions of law and facts, they have been connected together, heard and disposed of by this common judgment.

2. All these five cases in this batch are filed by the entities mentioned hereunder, against order dated 06.03.2013 passed by the learned Single Judge in Writ Petition No.41717 of 2011 (BDA) connected with Writ Petition No.6452 of 2011 (BDA):

- 1) W.A. No.2872 of 2013 is filed by Syndicate Bank, Reptd. by its Chief Manager;
- 2) W.A. No.2505 of 2013 is filed by Gas Authority of India Ltd. (GAIL);
- 3) W.A. No.2708 of 2015 is filed by Bennett, Coleman and Company Limited (commonly known as The Times of India Group), Reptd. by its General Manager;
- 4) W.A. No.2918 of 2013 is filed by the B.D.A., by Reptd. its Commissioner;
- 5) W.A. No.2919 of 2013 is filed by the B.D.A., by Reptd. its Commissioner.

***BRIEF FACTS OF THE CASE:***

3. Briefly stated, the facts are, the first writ petitioner-Manyatha Residents' Association, represented by its Secretary, is an association registered under the Karnataka Societies Registration Act, 1961 and it represents the members of the Association comprising of owners of houses or sites in the residential layout, formed by Manyatha Promoters Private Limited in about 82 acres of land at Rachenahalli, Krishnarajapuram Hobli, Bengaluru East Taluk, duly approved by the Bangalore Development Authority ('BDA' for short). There are other individual writ



petitioners also who joined the Residents Association in filing the Writ Petitions.

4. Manyatha Promoters Private Limited (Developer) formed a residential layout in about 82 acres of land at Rachenahalli, Bengaluru. As per the layout plan, the areas earmarked as civic amenity sites, open spaces and roads were relinquished by the Developer in favour of the BDA. The BDA, in turn, allotted civic amenity site Nos.5 and 6 to the Gas Authority of India Limited (GAIL), for the purpose of establishing its office building and Regional Gas Management Centre. According to the writ petitioners, the said office is neither a civic amenity, nor an amenity for the residents of the area. Similarly, the BDA allotted civic amenity site Nos.2A and 2B to M/s.Bennett Coleman and Company Limited (The Times of India Group of Companies) and also civic amenity site No.4 was allotted to Syndicate Bank for the purpose of establishing their respective Corporate Office and other banking facility.

5. For a better understanding of the facts of the cases, it would be useful to peruse the following table:

Sl. No.	CASE No.	CA site No.	Name of the Allottee	Date of Allotment	Date of Lease Deed	Date of handing over possession	Lease Amount paid (In Rs.)
1	W.A. No.28 72 of 2013	<b>Site No.25/A</b> AT: Hosur-Sarjapur Road, Sector-I Extension, Bangalore, Measuring <b>4193.75</b> sq.mtr.	<b>Syndicate Bank,</b> Reptd. by its Chief Manager	Allotment Committee, BDA, Chairman's Order No.860 Dated 03.03.2007	31.07.2007  <b>(For Thirty Years)</b>	02.08.2007	₹2,09,68,750/-  (Two crores Nine Lakhs sixty-eight thousand seven hundred and fifty only)
		--"--	--"--	Cancellation Deed dated 15.12.2010 Canceling the allotment of <b>Site No.25/A</b> AT: Hosur-Sarjapur Road, Sector-I Extension, Bangalore, Measuring <b>4193.75</b> sq.mtr.			
		<b>Site No.2</b> (2A & 2B) AT: Manyatha Promoters, Rachenahalli Layout, Bengaluru Measuring <b>5421.07</b> Sq.mtr.	<b>Syndicate Bank,</b> Reptd., by its Chief Manager	Board Resolution No.342/10, Dated 25.09.2010 & BDA Allotment Letter No.371, Dated: 13.10.2010 (Annexure 'C')	30.12.2010  (Annexure 'D')  <b>(For Thirty Years)</b>	12.01.2011  (Annexure 'E')	₹2,71,65,350/-  (Two Crores Seventy-one Lakhs Sixty-five Thousand Three Hundred and Fifty only)
2	W.A. No.25 05 of 2013	<b>Site Nos.5 and 06</b> AT: M/s. Manyatha Promoters, Rachenahalli, K.R.Puram, Bengaluru Measuring <b>5282.19</b> Sq.mtr.	<b>Gas Authority of India Ltd. (GAIL)</b>	Board Resolution No.57/2010, dated 10.02.2010 & BDA Allotment Letter No.282, Dated 23.02.2010 (Annexure 'C')	20.06.2011  (Annexure 'D')  <b>(For Thirty Years)</b>	27.06.2011  (Annexure 'E')	₹4,36,42,750/-  (Four Crores Thirty-six Lakhs Forty-two Thousand Seven Hundred and Fifty only)
3	W.A. No.27 08 of 2015	<b>Site No.4</b> AT: Manyatha Promoters Layout, Rachenahalli, Bengaluru Measuring <b>5270.41</b> Sq.mtr.	<b>Bennett Coleman &amp; Co. Ltd.</b> (commonly known as The Time of India Group), Reptd. by its General Manager	G.O. No.UDD/262/B em/ Bhu.Swa /2009 dated: 17.12.2009 (Annexure 'H') & BDA Allotment Letter No.279, Dated 23.12.2009 (Annexure 'R1')	12.03.2010  (Annexure 'F')  <b>(For Thirty Years)</b>	23.03.2010  (Annexure 'G')	₹2,63,52,050/-  (Two Crores Sixty-three Lakhs Fifty-two thousand and Fifty only)

6. Before the learned Single Judge, it was contended by the writ petitioners that Rule 3 of the BDA (Allotment of Civic Amenity Site) Rules, 1989 (hereinafter

referred to as '1989 Rules', for the sake of brevity) provides for reservation and allotment of civic amenity sites. The expression "Civic Amenity Site" is defined in Rule 2(b) of 1989 Rules and the expression "Civic Amenity" is defined in Section 2(bb) of the Bangalore Development Authority Act, 1976 (hereinafter referred to as 'BDA Act', for the sake of brevity). That the allotment of aforesaid sites under the provisions of the BDA Act and the 1989 Rules is illegal as there is no compliance of the said provisions. In support of their submissions, writ petitioners relied upon certain decisions. The respondent – BDA as well as the allottees justified the allotment of civic amenity sites and also questioned the *locus standi* of the writ petitioners to assail the allotment before the learned Single Judge.

7. The learned Single Judge raised the following points for consideration:

- a) Whether the petitioners have the *locus standi* to challenge the allotment made in favour of the respondents?
- b) Whether the petitions are liable to be rejected as being barred by delay and laches?

- c) Whether the allotment of the civic amenity sites in favour of the respondents, namely, M/s.GAIL, M/s.Bennett Coleman & Company Limited and M/s.Syndicate Bank, respectively, is in accordance with law?"

8. The learned Single Judge answered the question of *locus standi* of the writ petitioners to challenge the allotment made in favour of the allottees, in the affirmative, by holding that the writ petitioners were entitled to question the same and that the writ petitions were not barred by delay and laches.

9. While considering the correctness or otherwise of the allotments of civic amenity sites in favour of allottees, the learned Single Judge considered the following aspects:

- a) The eligibility of the allottees to be entitled for allotment of a civic amenity site;
- b) The purpose for which the allotment is secured, whether could be considered as a civic amenity;
- c) Whether the notification of a "gas management centre" as a civic amenity site would indeed be in conformity with the object of the BDA Act and the 1989 Rules;

- d) Whether the respondent allottees can claim equities in their favour either on the ground that there is a completed transaction of a lease deed executed in their favour, in each of their cases, or on the ground that enormous expenditure is incurred under various heads pursuant to the same and therefore they have changed their position to an extent that it is irreversible.”

The learned Single Judge held that the allotments in favour of the allottees was in violation of the BDA Act and the 1989 Rules and consequently, quashed the lease deeds executed in favour of the allottees as well as the possession certificates.

10. The learned Single Judge in the aforementioned writ petitions, out of which these writ appeals arise, allowed the writ petitions in the following terms:

“In the result, this court is of the firm view that on a plain application of the BDA Act and the 1989 Rules, the allotment in favour of the respondents is clearly in violation of the same and cannot be sustained. Consequently, the petitions are allowed and the allotment made in respect of site Nos.5 and 6 at Manyatha Nagar, Rachenahalli, Bangalore East Taluk in favour of

respondent No.2 in WP 41717/2011, and in respect of site Nos.2A and 2B at Manyatha Nagar, Rachenahalli, Bangalore East Taluk in favour of respondent No.4 in WP 6452-53/2011, and site No.4 in favour of Respondent No.3 as per allotment dated 13.10.2010 and the consequent lease deeds and possession certificates are quashed.”

Being aggrieved, the allottees as well as the BDA have preferred their respective appeals.

**LEGAL FRAMEWORK:**

11. Before considering the contentions of learned counsel appearing for the parties, it would be useful to consider the following legal framework:

**A. Bangalore Development Authority Act, 1976: (BDA Act)**

The preamble of the Act reads as under:

“An Act to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith.

x x x

**2. Definitions.**—In this Act, unless the context otherwise requires.—

(a) .....

(b) .....

(bb) **"Civic amenity"** means.-

- (i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;
- (ii) a recreation centre run by the Government or the Corporation;
- (iii) a centre for educational, social, or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;
- (iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a Co-operative Society Registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a Society Registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a Trust Created wholly for charitable, Educational or Religious purposes;

- (v) a Police Station, an Area Office or a Service Station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and
- (vi) such other amenity as the Government may, by notification, specify.

x x x

**32. Forming of new extensions or layouts or making new private streets.-**

(1) .....

x x x

(7) No person shall form a layout or make any new private street without the sanction of or otherwise than in conformity with the conditions imposed by the Authority. If the Authority requires further information from the applicant no steps shall be taken by him to form the layout or make the street until orders have been passed by the Authority after the receipt of such information: Provided that the passing of such orders shall not, in any case, be delayed for more than six months after the Authority has received all the information which it considers necessary to enable it to deal finally with the said application.

x x x

**38. Power of Authority to lease, sell or transfer property.-**Subject to such restrictions, conditions and limitations as may be prescribed, the authority shall have power to lease, sell or



otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme.

**38-A. Grant of area reserved for civic amenities etc.**-(1) The authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved.

(2) The authority shall not sell or otherwise dispose of any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made shall be *null and void*:

Provided that where the allottee commits breach of any of the conditions of allotment, the authority shall have right to resume such site after affording an opportunity of being heard to such allottee.

x x x

**65. Government's power to give directions to the Authority.**-The Government may give such directions to the authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the authority to comply with such directions."

**B. Bangalore Development Authority  
(Allotment of Civic Amenity Sites) Rules,  
1989: (1989 Rules)**

**"2. Definitions.**—In these rules, unless the context otherwise requires.-

(a) .....

(b) **"Civic Amenity site"** means a site earmarked for civic amenity in a layout formed by the authority or a site earmarked for civic amenity in a private layout approved by the authority and relinquished to it;

(c) .....

(d) **"Institution"** means an institution, society or an association registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a trust created wholly for charitable educational or religious purpose;

(e) .....

(f) **"Lessee"** means an institution to which a civic amenity site is allotted and which has entered into an agreement with the authority in that behalf;

(g) .....

(h) Words and expressions used herein but not defined shall have the meaning respectively assigned to them in the Bangalore Development Authority Act, 1976.

**3. Offer of civic amenity sites for allotment.**-(1) The authority may out of the Civic amenity sites available in any area reserve such number of sites for the purpose of providing civic amenity referred to in sub-clauses (i) and (v) of clause (bb) of Section 2, by the Central Government, the State Government, Corporation or by a body established by the Central Government or the State Government.

(2) After making reservation under sub-rule (1) the authority may, subject to Section 38-A and general or special orders of the Government, and having regard to the particulars type of civic amenity required to be provided in any locality offer such of the remaining civic amenity sites for the purpose of allotment on lease basis to any institution:

Provided that the authority shall while so offering the civic amenity sites reserve eighteen per cent of such sites for being allotted to an institution established exclusively for the benefit of Schedule Castes the majority of members of which consists of persons belonging to Schedule Castes and three per cent of such sites to an institution established exclusively for the benefit of Scheduled Tribes the majority of members of which consists of persons belonging to Scheduled Tribes, and two per cent of such sites for being allotted to an institution established for benefit of physically and mentally disabled belonging to the Scheduled Castes and the Scheduled Tribes and if at the time

of making allotment sufficient number of such institutions are not available the remaining sites so reserved may be allotted to other institutions.

(3) Due publicity shall be given in respect of civic amenity sites so offered for leasing to the institutions, specifying their location, number, dimension, purpose, and last date for submission of application and such other particulars as the Commissioner may consider necessary, by affixing a notice on the notice board of the office of the authority and also by publishing in not less than two daily news papers in English and Kannada having *vide* circulation in the City of Bangalore.

**4. Disposal of sites reserved.-**

Notwithstanding any thing in these rules, the sites reserved under sub-rule (1) of Rule 3 may be allotted to the categories specified therein on lease basis by the authority for the purposes of provided civic amenity subject to such terms and conditions as may be specified by it.

**5. Registration.-**(1) Every institution

applying for civic amenity site shall register itself with the authority on payment of registration fee specified in the table below. If any institution withdraws the registration, the authority shall refund to such institution the entire registration fee paid by it after deducting ten per cent of the registration fee towards service charges. The Registration shall be done in Form I.

**TABLE**

Area of site in sq. metre.

1000 and below	Rs.2,500
Above 1000 but below 2000	Rs.5,000
2000 and above but below 4000	Rs.7,500
4000 and above	Rs.10,000

(2) The Registration once made shall be valid for subsequent allotment unless the institution withdraws the registration.

(3) The registration fee paid shall not be refundable or adjustable if a civic amenity site is allotted to an institution.

**6. Eligibility.**-(1) The authority may allot civic amenity site on lease basis only to an institution which is registered under Rule 5.

(2) Civic amenity site shall not be allotted to any institution unless it has capacity to provide the type of civic amenity for providing which the site is offered.

**7. Principles of Selection of institutions for leasing out civic amenity sites.**-(1) The authority shall consider the case of each institution on its merits and shall have special regard to the following principles in making the selection.-

(a) The objectives and activities of the institution and public cause served by it since its establishment;

(b) The financial position of the institution;

- (c) The present location of the institution;
- (d) The benefit likely to accrue to the general public of the locality by allotment of the civic amenity site;
- (e) The *bona fide* and genuineness of the institution as made out in the annual reports, audit report *etc.*;
- (f) The need of the civic amenity site by the institution for providing the civic amenity in question.

(2) For the purpose of sub-rule (1), the authority may constitute a separate committee to be called "civic amenity site allotment committee" consisting of three official members and three non-official members. The Chairman of the authority shall be the Chairman of the Civic Amenity Site Allotment Committee.

(3) Subject to the approval of the authority, the decision of the Civic Amenity Site Allotment Committee shall be final."

**SUBMISSIONS:**

12. Learned senior counsel Sri. D.N.Nanjunda Reddy, appearing for BDA, while drawing our attention to the facts of the cases extracted above in the tabular form, contended that, Manyata Promoters Private Limited formed a layout called Manyata Layout at Rachenahalli, Bengaluru on 82.5 Acres of land. The promoters relinquished, *inter*

*alia*, civic amenity site Nos.2A, 2B, 4, 5 and 6 to BDA under relinquishment deed dated 01.08.2003. Thereafter, BDA issued a notification dated 28.01.2005 calling for applications from general public for allotment of certain civic amenity sites under the provisions of 1989 Rules. Subsequently, civic amenity sites were allotted on various dates to the appellant-allottees referred to above.

13. In fact, Manyatha promoters had filed W.P. No. 12500 of 2005 (BDA) before this Court assailing the allotment of civic amenity site No.4 to Nightingales Medical Trust. The said writ petition was dismissed by the learned Single Judge on 18.09.2007 and the said order has attained finality.

14. Thereafter, Manyatha Residents' Association and certain other individuals assailed the allotment of civic amenity sites to Syndicate Bank, Bennett Coleman and Company Ltd., and GAIL. The said writ petitions have been allowed by the learned Single Judge without referring to the order dated 18.09.2007 passed in W.P. No.12500 of 2005 which is a precedent. Being aggrieved, these appeals have been filed by the BDA and also the allottees.

15. Learned senior counsel, Sri. Reddy contended, the writ petitioners have no *locus standi* to maintain the writ petitions as they are not aggrieved persons. The promoters of Manyata layout relinquished the civic amenity sites to BDA for the purpose of allotment under the Act and the Rules. The writ petitioners were not rival applicants for any civic amenity site. They have no right, title and interest in the sites that have been allotted to the allottees in these cases. Therefore, they could have no grievance with regard to the allotment made in these cases. In this regard, learned senior counsel contended that the writ petitions were not filed as public interest litigation, but in their private capacity without being aggrieved by the allotment. He contended that, the 1st Petitioner is Residents' Welfare Association and the capacity in which petitioner Nos.2 to 11 have filed the writ petitions is not known. They have not even averred that they are residents of the locality nor have they said that they are the members of Manyatha Residents' Association (1st Petitioner). It is also not known as to, whether, they have been allotted sites by the promoter or they have



constructed any house therein. Despite this, they have challenged the allotment of civic amenity sites by the BDA.

16. Learned senior counsel submitted that the promoters having failed in W.P.No.12500 of 2005, have set up Manyatha Residents' Association and certain individuals to file the writ petitions, although they have no *locus standi* to do so.

17. Learned senior counsel next contended that, the learned Single Judge has erroneously applied the judgment of Hon'ble Supreme Court in ***Bangalore Medical Trust vs. B.S.Muddappa [(1991) 4 SCC 54]***, (*B.S.Muddappa*) without appreciating the distinctive facts in the said case and present cases. He submitted, there is no challenge to the land user in the instant cases, but without there being any basis, the writ petitioners assailed the allotment of civic amenity sites to these three allottees. Learned senior counsel drew our attention to various paragraphs of *B.S.Muddappa*, to contend that, the facts in the said case being totally distinct to the facts of present cases, the judgment relied upon by the learned

Single Judge could not have been applied as a precedent in the instant cases.

18. Learned senior counsel, Sri. Reddy, next contended that, the learned Single Judge has not appreciated the aspects regarding the applicability of 1989 Rules to these allottees as these allottees are not 'institution' as defined under Rule 2(d) of the 1989 Rules. It is only when an institution is allotted civic amenity site, the same could be offered pursuant to Rule 3(2) of 1989 Rules and the subsequent Rules thereto. In the instant cases, the allottees, not being institutions within the meaning of Rule 2(d) of the 1989 Rules, the same do not apply to them. He contended that, the criteria referred to under 1989 Rules could apply when only civic amenity sites are to be offered to institutions. In the instant cases, the allottees herein not being institutions within the meaning of Rule 2(d) of the said Rules, the same would not apply to them.

19. In this context, learned senior counsel drew our attention to Rule 3 of 1989 Rules and contended, the BDA may, out of the civic amenity sites in any area,

reserve such number of sites for the purpose of providing civic amenity sites referred to in sub-clauses (i) and (v) of clause (bb) of Section 2 of the Act for the Central Government, State Government, Corporation or any body established by the State Government or Central Government. After making the said reservation under Rule 3, BDA may, subject to Section 38-A of the Act and general and special orders of the Government, offer the remaining civic amenity sites for allotment on lease to any institution.

20. Learned Senior Counsel, Sri. Reddy, contended that, the reservation of sites for Central Government and State Government and their instrumentalities and agencies is of top-most priority; next, would be the power or authority to transfer any area reserved for civic amenity for any purpose for which such area is reserved. Also, if any general or special orders are made for allotting a civic amenity site to any entity, then, the BDA has a duty to comply with such orders as per Section 65 of the BDA Act. It is only thereafter that the available civic amenity sites could be allotted to institutions as per the 1989 Rules by the BDA.

21. Learned senior counsel contended that, in the instant cases, the allotment of civic amenity sites to Bennett Coleman & Company Limited, is as per the order of the Government under Section 65 of the BDA Act and is an allotment made to a media house which is fourth estate and there is no illegality in the same. So also, in the case of allotment made to GAIL, the State Government has the power to notify any other amenity as a civic amenity as per Section 2(bb)(vi) of the BDA Act. In the case of GAIL, there is such a Notification issued with regard to provisions of a gas agency and its ancillary, dated 23.11.2012. In the case of allotment made to Syndicate Bank is concerned, the same is as per Rule 3(1) of 1989 Rules, as a bank is a civic amenity within the meaning of Section 2(bb) of the BDA Act.

22. Learned senior counsel further submitted that even in the absence of any reservation of sites being made under Rule 3(2) of 1989 Rules, power is available under Section 38-A to the BDA to allot a civic amenity site to an entity. Similarly, the State Government under Section 65 of the BDA Act can direct BDA to allot a civic amenity site

to any Governmental or Non-Governmental entity. In support of his submissions, learned senior counsel placed reliance on certain decisions/judgments which shall be adverted to later.

23. Learned senior counsel, Sri. Ashok Haranahalli, appearing for Syndicate Bank, one of the appellant-allottees, submitted that, the learned Single Judge erred in holding that there was no reservation of civic amenity site made in favour of appellant-Syndicate Bank under Rule 3(1) of the 1989 Rules or that the Bank does not benefit the residents of Manyatha Layout and further, the Bank is not an institution under the 1989 Rules. Learned senior counsel contended that, the Bank is a civic amenity within the meaning of Section 2(bb)(i) of the BDA Act and there can be no illegality in the allotment of a civic amenity site to a nationalized bank.

24. Learned senior counsel further contended that, the writ petitioners cannot have a say as to whom a civic amenity site has to be allotted to. Even the residents of Manyata Layout cannot question the allotment after the relinquishment of civic amenity sites by the promoters of

the layout, as the same became property of BDA. BDA has to allot civic amenity sites in accordance with law and Rules referred to above.

25. Learned senior counsel submitted that Syndicate Bank will house its corporate office and a branch office along with an ATM facility on the site allotted to it. There would be banking facility available to the residents of Manyata layout as well as to other residents and establishments in the vicinity. He submitted that there is no infirmity in the allotment of civic amenity site in favour of the appellant-Bank and therefore, the order of the learned Single Judge may be set-aside and writ petitions may be dismissed.

26. Learned counsel, Sri. Dhananjay Joshi, appearing for GAIL, one of the appellant-allottees submitted that the civic amenity sites allotted to the appellant-allottee was after deliberations held between the State and Central Government. He submitted that GAIL would house its Office there for monitoring its natural gas pipelines which have been laid from Dabhol in Maharashtra upto Bidadi and thereafter upto Kochi. He contended that

the monitoring activity would be through satellite and there is an apex level co-ordination group handling the Project. The State Government has the power to direct BDA under Section 65 of the BDA Act to allot sites to entities such as GAIL. That a sum of Rs.4.36 crores has been paid by GAIL to BDA for taking possession of the civic amenity site as a lessee. In support of his submissions, he placed reliance on the judgment in ***NAL Layout Residents' Association, Bangalore vs. Bangalore Development Authority, [(2005) 3 KLJ 86]***, (*NAL Layout Residents' Association*).

27. Sri Brijesh Patil, learned counsel appearing for Bennett Coleman and Company Limited submitted that the civic amenity site allotted to the said Company would be used by the Times of India Group for housing Times Foundation which is a society registered in New Delhi, and its newspaper office. That the appellant - Company has paid a sum of Rs.2.63 crores to BDA as per the details which are at Paragraph No.12 of the C.A. Site Lease Agreement dated 12.03.2010. He further submitted that, under Rule 3 of the 1989 Rules, allotment of civic amenity sites to an *institution* defined under Rule 2(d) of the said

Rules could be made only after reservation of such sites, if any, which could be made to any Central or State Government or their entities or their instrumentalities; orders being made under Section 38-A of the Act by the BDA which has also the power to allot such sites to deserving entities or power could be exercised under Section 65 of the Act by the general or special order to be passed by the State Government directing sites to be allotted to an entity. Thereafter, the remaining sites could be allotted to institutions coming within the definition of civic amenity under the BDA Act.

28. Learned counsel further contended, the sites in question are facing the main road (Ring Road) and not facing any area within the Layout. Allotment of civic amenity sites to the appellant-entities would in no way cause any inconvenience to the residents of the area. The promoters, namely Manyata Promoters Private Limited, had earlier challenged allotment of a civic amenity site to Nightingales Medical Trust before this court in W.P. No.12500 of 2005 (BDA), the same was dismissed on 18.09.2007 and the said order has attained finality. Now, the Residents' Association and certain individuals have



filed the writ petitions without having any *locus standi* to do so, there is no merit in the writ petitions and the same may be dismissed.

29. *Per contra*, learned senior counsel Sri.K.G.Raghavan, at the outset submitted that, this is not a public interest litigation. The individual petitioners are members of the 1st petitioner Association which comprises of members who are the owners of sites. He contended that, the petitioners have the *locus standi* to challenge the allotment of civic amenity sites in their locality. In this regard, he placed strong reliance on *B.S.Muddappa* and emphasized on certain paragraphs in the said judgment. The Residents' Association and its members have the *locus standi* to challenge the said allotments, as they are persons aggrieved and not strangers or interlopers. He contended that, the plea of *locus standi* must be considered in a broad manner and not in a narrow or myopic sense in the instant case.

30. He next contended that, under the 1989 Rules and particularly Rule 7(d) thereto, the allotment of civic amenity site to a particular entity must have a benefit

likely to accrue to the residents of the locality, but the allotment of civic amenity sites in the instant cases is contrary to the said Rules.

31. Learned Senior Counsel further submitted that the allotments could not have been made to GAIL as it is not a civic amenity within the meaning of Section 2(bb) of the BDA Act. But, on 23.11.2012, an amendment was made, during the pendency of the writ petition, to earlier Notification dated 29.08.1990, which is by way of a substitution, which would not cure the initial defect at all. He submitted that when the allotment made to GAIL does not come within the scope of the expression "Civic Amenity" as the user is for management of the gas pipeline, the very allotment is not in accordance with law. Therefore, the subsequent Notification dated 23.11.2012 does not cure the allotment made to GAIL.

32. Learned counsel next drew our attention to Section 38 of the BDA Act to contend that the same is a general power of BDA to lease, sell or transfer property. Subject to such restrictions, conditions and limitations, as may be prescribed, the BDA has the power to lease, sell or

otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme. Further, Section 38-A of the BDA Act which was inserted with effect from 21.04.1984 deals with the power of the BDA to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved. Further, if the authority dispose of any area, reserved for public parks and play-grounds and civic amenities, for any other purpose, such disposition is *null and void*. (Section 38-A is a special power vested with the BDA as contrasted with Section 38, which is a general power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any development scheme.)

33. Further, Section 69(2)(g) of the BDA Act empowers the BDA to make Rules and that is how the 1989 Rules have been made with regard to the allotment

of civic amenity sites. He submitted that the Rules have to be read with part and parcel of Section 38-A of BDA Act and in that context, he drew our attention to the scheme of the Rules and particularly, Rule 2(b)—which defines a "Civic Amenity Site", Rules 3, 4, 5, 6 and 7.

34. In that context, learned Senior Counsel contended that in *B.S.Muddappa's* case, the area reserved for park was allotted to a hospital which is no doubt a civic amenity, but there was a change in the user of the area reserved for a park. Hence, this Court held that the allotment to a hospital was bad in law.

35. Learned senior counsel submitted that in the instant cases, the allotment to the Bank is not under the Rules. Further, the allotment to GAIL is contrary to Rule 3(1) of the 1989 Rules as GAIL is not a Central, or State Government, Corporation or by a body established by the Central or a State Government. Further, it was contended that the allotment of the civic amenity site to M/s.Bennett Coleman and company Limited, which is a private newspaper company, invoking Section 65 of the BDA Act by the State Government directing the BDA to do so, is

also not in accordance with law. That, in all these cases, Rule 7(d) of 1989 Rules has not been followed and therefore, it is the process of allotment in the instant cases is questioned by the petitioners and the learned Single Judge rightly quashed the allotments, which would not call for any interference in these appeals.

36. In support of his submissions, learned senior counsel referred to the following decisions, namely:

- (i) ***K. Ramadas Shenoy vs. The Chief Officers, Town Municipal Council, Udupi, (1974) 2 SCC 506, (K.Ramadas Shenoy);***
- (ii) ***Bangalore Development Authority vs. R. Hanumaiah, (2005) 12 SCC 508, (R.Hanumaiah);***
- (iii) ***S.G.R. Technical and Education Society, Bangalore vs. State of Karnataka, 2008 (1) Kar.L.J. 642, (S.G.R. Technical and Education Society, Bangalore);***
- (iv) ***A.K.Brindal and another vs. Union of India, (2003) 114 CompCas 590, (A.K.Brindal);***

37. Learned Additional Government Advocate appearing for the State submitted that the allotments in

the instant cases, particularly to GAIL as well as M/s. Bennett Coleman Company are in accordance with Section 65 of the BDA Act. The State can exercise its power under the said provisions and issued directions to the BDA to carry out the orders of the State. Further, Syndicate Bank is a civic amenity within the meaning of Section 2(bb) of the BDA Act and hence, the allotments made to these three entities could not have been assailed by the writ petitioners. This is because the writ petitioners had no cause of action to assail the same. They are not aggrieved persons and therefore, on that score, the writ petitions ought to have been dismissed.

38. By way of reply, learned senior counsel, Sri.D.N.N.Reddy, submitted that 1989 Rules pertaining to the allotment of civic amenity sites do not cover the entire field. That Section 38-A of the BDA Act gives the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved. This power is absolute and sacrosanct. It cannot be denuded by virtue of 1989 Rules. Rather, 1989 Rules and particularly, Rule 3 states that the power of the Authority to allot civic amenity sites is only to *institutions* as defined

in Rule 2(d) of the 1989 Rules. The said power of allotment of civic amenity sites to institutions could be exercised by the BDA only in case no reservation has been made for the purpose of providing a civic amenity site for the Central Government, State Government, Corporation or a body established by the Central Government or the State Government. If any such reservation is made under sub-rule (1) of Rule (3), BDA can also, *de hors* the said reservation of civic amenity sites under Section 38-A, lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved. This is only in the event that there is no general or special order of the Government *vis-a-vis* a particular civic amenity site and having regard to the particular type of civic amenity required to be provided in any locality. Thereafter, the remaining civic amenity sites are allotted on lease to any institution. It is only when a civic amenity site is allotted under sub-rule (2) of Rule 3 to an institution, that the other Rules concerned apply. Section 38-A and Section 65 of the BDA Act are *de hors* 1989 Rules. The power can be exercised by the State Government under Section 65 of the BDA Act to direct

allotment of any civic amenity site to an entity and the BDA has to comply with the same. Further, under Section 38-A, BDA, on its own, has the power to lease, sell or otherwise transfer any area reserved for civic amenity for the purpose for which such area is reserved. Thus, 1989 Rules are subject to Section 65 and Section 38-A of the BDA Act.

39. That, in the instant cases, the Promoters have relinquished 15 per cent of the layout sites for civic amenity space and open space by virtue of a Relinquishment Deed dated 22.06.2007. The petitioners have no right, title or interest in respect of the civic amenity sites relinquished to the BDA. Hence, the writ petitioners can have no grievance with regard to the allotment of said sites to the three organisations. That the writ petitioners have not stated as to how their rights, if any, have been infringed by the allotment of the civic amenity sites to the three organisations. They are not in any way aggrieved by the action taken by the BDA. Hence, the petitioners have no locus to file the writ petitions by assailing the allotments made to the three organisations.



40. On hearing learned senior counsel as well as the learned counsel for the respective parties, the following points would arise for our consideration:

- (i) Whether the learned Single Judge was right in holding that the respondent/writ petitioners had the *locus standi* to challenge the allotments made in favour of the allottees?
- (ii) Whether the allotment of the civic amenity sites in favour of Syndicate Bank, GAIL and Bennett Coleman Company Private Limited is in accordance with law?
- (iii) What order?

**REG. POINT No.1:**

41. At the outset, we state that the writ petition is not in the nature of the public interest litigation. Petitioner No.1 is Manyata Residents' Association and it is not pleaded that the other petitioners are site owners and/or members of petitioner No.1/Association. Their addresses are also of different places and not in the area under consideration. They have assailed the allotment of civic amenity sites by the BDA to three entities namely, Syndicate Bank, GAIL and Bennett Coleman and Company

Limited, under the provisions of the BDA Act and 1989 Rules. These sites were ear-marked by the BDA as civic amenity sites pursuant to the relinquishment of the said sites by the promoters of the layout to the BDA, at the time of seeking plan sanction in terms of Section 32 of the BDA Act. The said provision states that, notwithstanding anything to the contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the Authority may specify. Thus, while granting sanction of the plan submitted by the Promoters of the layout in the instant cases, the civic amenity sites were relinquished to the BDA and they were so relinquished by the Deed of Relinquishment dated 01.08.2003. Once the civic amenity sites including the sites in question were relinquished to the BDA, the Promoters lost all right, title and interest in the said sites and the BDA acquired ownership and title to the civic amenity sites.

42. In view of the above stated position in the instant cases, the question is, whether, the respondent / writ petitioners had the *locus standi* to assail the allotment of the civic amenity sites in question to the respective allottees by filing the writ petitions under Article 226 of the Constitution of India.

43. In the context of filing a writ petition under Article 226 of the Constitution, it is well settled by several decisions of the Hon'ble Supreme Court that only persons aggrieved can file writ petition in their personal / private capacity. In other words, there must exist some legal or constitutional right which has been violated or infringed and in such a case, a person can file a writ petition.

44. The term "*locus standi*" or "*standing to sue*" denotes the existence of a right of an individual or group of individuals to have a Court enter upon adjudication on an issue brought before that Court by proceedings instituted by the individual or the group of persons. The question of *locus standi* assumes importance when petitions are filed by incompetent persons. Ordinarily, a writ petition can be filed by a person aggrieved and not by a stranger except in

public interest litigation and in the case of a writ of *quo-warranto*.

45. Article 226 of the Constitution does not lay down as to who are the persons entitled to invoke the jurisdiction of the High Court under that Article. The question of *locus standi* has been decided from time to time in a large number of cases. Generally, individual person or a group of persons aggrieved by any action or inaction on the part of the State or its Authorities can institute a writ petition under Article 226 of the Constitution on the premise that, there is an infringement of their right or they have been prejudicially affected by any order. Thus, the right which is the foundation for exercising the jurisdiction under Article 226 of the Constitution is the personal or individual right of the petitioner himself, though in the case of writs like, *habeas corpus* or *quo-warranto*, this rule stands modified.

46. But, in the case of issuance of a writ of *mandamus*, so as to compel the Authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party has a legal right under

the statute to enforce its performance. But, where no right of the petitioner is affected, such a person has no *locus standi* to file the writ petition. Thus, no person can ask for a *mandamus* without a legal right. There must be a judicially protected right before one suffering a legal grievance can ask for a *mandamus*. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or abstain from doing something. Existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under Article 226. For instance, a rival in a trade has no *locus standi* to challenge the grant of licence to other trader on the ground that the licence was granted illegally or suffers from defect of jurisdiction, vide ***J.M.Desai vs. Roshan Kumar, [AIR 1976 SC 578]***, (*J.M.Desai*); ***Nagpur Rice and Flour Mills vs. Teekappa Gowda and Brothers, [AIR 1971 SC 246]*** (*Nagpur Rice and Flour Mills*). In *J.M.Desai*, provisions of Bombay Cinemas Registration Act, 1953 and the Bombay Cinema Rules, 1954 came up for consideration and paragraphs 36 to 41 of the said judgment read as under:

"36. It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of *Pro Bono Publico*, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busy bodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a

sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer-zone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some board tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him

something or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

39. Now let us apply these tests to the case in hand. The Act and the Rules to which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, "person aggrieved" must receive a strict construction.

40. Did the appellant have a legal right under the statutory provisions or under the



general law which has been subjected to or threatened with injury? The answer in the circumstances of the case must necessarily be in the negative.

41. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellants did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the No-Objection-Certificate before the District Magistrate or the Government. Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a license, or revoking or suspending any license under Section 8. Obviously, the appellant was not a "person aggrieved" within the contemplation of Section 8A."

*(underlining by us)*

Thus, a person who is not aggrieved by any discrimination complained of, cannot maintain a writ petition. **[D.Nagaraja vs. State of Karnataka, AIR 1977 SC 876]** (D.Nagaraja).

47. It is further observed that in India, there are four categories of persons for *locus standi*: first category is individual standing; second category is statutory standing or in other words, when statute has provided standing to a person or a class of persons and on the strength of the standing conferred by the statute, one may move the Court; third category is public interest litigation; fourth category of *locus standi* is representative action or class action.

48. The principle of standing or *locus standi* in all public interest litigation if applied to individual standing, it would result in destroying the time-tested concept of "standing" which has authority in India from the Anglo-Saxon Jurisprudence as well as American Law Jurisprudence. This means that, the requirement of injury is a test to be applied for having *locus standi* to file a petition under Article 226 of Constitution unless it is a

public interest litigation. Thus, there is a need to regulate in the context of individual standing and a careful consideration of the case must be made in order to examine and appreciate as to whether the person is aggrieved. Such an examination is required in order to avoid frivolous litigation being flooded to the High Court, thereby driving away genuine litigations.

49. However, over a period of time, there may have been a lowering of the barrier imposed by the standing requirement or taking a liberal approach in the matter. But, it is necessary to follow certain principles having regard to the law. Thus, the doors of the court could be made open at the instance of the persons or authorities under certain categories and every other person cannot move a writ petition challenging actions of the State Government or its authorities when not individually or personally aggrieved, unless it is in the nature of public interest litigation. Otherwise, the doctrine of *locus standi* or a standing requirement would be rendered meaningless and thereby introduce a procedure which is not judicially recognised.

50. However, the above must be contrasted to public interest litigation. In case of a public interest litigation, the person or an authority concerned who move such a petition is not enforcing his/its personal or legal right. Such a litigation is filed by public spirited persons to espouse the cause of large number of people who are suffering under some legal wrong or injury or such person or determinate class of persons is by reason of poverty, helplessness or disability, or social, economical, disadvantaged position, unable to approach the Court for relief and in such case, any number of the public can file a writ petition for securing justice to them. In this context also, it has been observed that the Court should not be indirectly used as an instrumentality by anyone to attain or obtain any beneficial achievement, which one cannot get through normal legal process. If anyone approaches the Court with ulterior motive, design to wrench some personal benefit by putting another within the clutches of law and using the Court as a device only for that end, but not to get any legal remedy, then in such a situation the Court should heavily come upon such a person and see that the authority of Court is not misused. **[Sampat Singh vs.**

***State of Haryana, (1993) 1 SCC 561, (Sampat Singh)***].

Thus, only a person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation alone have *locus standi* and can approach the Court for the poor and needy. But, a person for personal gain or private profit or political motive or in oblique consideration has no *locus standi*. Similarly, a vexatious petition in the guise of a public interest litigation brought before the Court for vindicating any personal grievance deserves rejection on the threshold. The Court should not allow its process to be abused by mere busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivations or for glare of publicity. [***Janata Dal vs. H.S.Chowdhary (1992) 4 SCC 305, (Janata Dal)***].

51. Even in a case of representative action or class action which could be initiated by any member of the class affected by any order or action or inaction on the part of the Government and/or authority, the same must affect a large number of persons of the same class. In order that

the representative action should be properly constituted, the conditions that might be satisfied are :

- (a) all the members of the alleged class should have a common interest;
- (b) that all should have common grievances; and
- (c) that the relief is in its nature beneficial to each of them. In a representative proceeding, the judgment or order is binding on all persons represented by the petitioner and the respondent, as the case may be.

52. Even in England, Lord Denning in various judgments liberalised and lowered the standing requirements in series of cases which are known as Blackburn Series of Cases. But, later, Section 31(3) of the Supreme Court Act, 1981 provided that the Court shall not grant leave to make an application for judicial review unless it considers that the applicant has sufficient interest to which the matter relates. The justification for such requirement lies in the need to limit challenge of administrative decision-making in genuine cases of grievances and to avoid unnecessary interference in the

administrative process by those, whose objectives are not authentic.

53. But, in India, such statutory provision is absent. In fact, the "person aggrieved" concept is the foundation for a writ petition being filed in a personal or individual capacity. That means a person who has suffered legal grievance who has right under a statute and he would thus be a person aggrieved.

54. The question of standing is held to go to the jurisdiction of the Court and it is not open to the respondents to waive the objection and thus, confer jurisdiction by agreement. A member of the public who has been inconvenienced can apply for *certiorari*. A particular party or person who has a particular grievance of his own can also apply for *certiorari*. If the application is made by a stranger, the remedy is purely discretionary. In a case where an association or a group of persons file a writ petition, it must be shown that the members of the association were aggrieved, because they were persons whose interest might be prejudicially affected by what had taken place and who had genuine grievances because

some thing had been done which affected them. But, if their interest is not affected and there is no prejudice caused to them by any action initiated by the authority, they would have no *locus* to apply for relief. [*Source: "Writ Remedies", by Justice B.P.Banerjee, III Edition, 2004]*

55. Thus, it is necessary to examine the question as to whether the writ petitioners in these cases are aggrieved persons or have been prejudicially affected by the action of BDA in allotment of the civic amenity sites to the three allottees so as to question the same in writ petitions.

56. In W.A. No.2872 of 2013, **Site No.25/A**, situated at Hosur-Sarjapur Road, Sector-I Extension, Bangalore, admeasuring 4193.75 sq.mtr. was allotted to Syndicate Bank by the BDA Allotment Committee, vide Chairman's Order No.860 dated 03.03.2007 and the said site was leased for a valuable consideration of Rs.2,09,68,750/- (Rupees Two crores nine lakhs sixty-eight thousand seven hundred and fifty only) by Lease Deed dated 31.07.2007 and the possession was handed over on 02.08.2007.



57. However, the aforesaid allotment was cancelled vide cancellation deed dated 15.12.2010 and instead, **Site No.2** (2A & 2B) at Manyatha Promoters Layout, Rachenahalli Layout, Bengaluru measuring 5421.07 Sq.mtr. was allotted to Syndicate Bank, vide BDA Board Resolution No.342/10, dated 25.09.2010 and Allotment Letter No.371, dated: 13.10.2010 (Annexure 'C') and the same was leased for a valuable consideration of Rs.2,71,65,350/- (Rupees Two Crores seventy-one lakhs sixty-five thousand three hundred and fifty only) by Lease Deed dated 30.12.2010 (Annexure 'D'). The possession was handed over by BDA to Syndicate Bank on 12.01.2011 (Annexure 'E').

58. In W.A. No.2505 of 2013, Gas Authority of India Limited (GAIL), was allotted **Site Nos.5 and 06**, situated at Manyatha Promoters, Rachenahalli, K.R.Puram, Bengaluru, admeasuring 5282.19 Sq.mtr., vide BDA Board Resolution No.57/2010, dated 10.02.2010 and Allotment Letter No.282, dated 23.02.2010 (Annexure 'C') and the same was leased for a valuable consideration of Rs.4,36,42,750/- (Rupees Four Crores Thirty-six lakhs

forty-two thousand seven hundred and fifty only) vide Lease Deed dated 20.06.2011 (Annexure 'D'). The possession was handed over by BDA on 27.06.2011, (Annexure 'E').

59. In W.A. No.2708 of 2015, M/s.Bennett Coleman and Company Limited (commonly known as The Times of India Group), Represented by its General Manager, was allotted **Site No.4**, situated at Manyatha Promoters Layout, Rachenahalli, Bengaluru, admeasuring 5270.41 sq.mtr., vide Government Order No.UDD/262/BA/BUSWA/2009, dated: 17.12.2009, and the same was leased for a valuable consideration of Rs.2,63,52,050,- (Rupees Two Crores sixty-three lakhs fifty-two thousand and fifty only), vide Lease Deed dated 12.03.2010 (Annexure 'F'). The possession was handed-over on 23.03.2010 (Annexure 'G') to Bennett Coleman and Company Limited.

60. On consideration of the facts of the aforesaid cases, we hold that the writ petitioners had no *locus standi* to file the writ petitions in their individual or personal

capacity as they are in no way aggrieved, for the following reasons:

a) Firstly, they have no right, title and interest in the civic amenity sites which have been relinquished by petitioner No.1 in favour of BDA for allotment of the same to the allottees.

b) Secondly, the petitioners were not seeking allotment of those sites for themselves. In other words, they were not rival applicants.

c) Thirdly, the writ petitioners have no right to question the allotment, as the petitioners have not stated as to how the allotment has affected them inasmuch as there is nothing on record to show that the allotment has caused any legal injury to them or in any way affected them.

d) Fourthly, the petitioners have not stated as to how the writ petitioners are aggrieved by the allotment of the civic amenity sites to the allottees in these cases. In other words, which is the right of the petitioners that has been infringed in the instant cases is not stated. In other words, in the absence of any right of the petitioners being infringed, they cannot approach the High Court by filing a

writ petition under Article 226 of the Constitution assailing the action of the State Government or the BDA.

e) If the writ petitioners have no right, title and interest in respect of the civic amenity sites, they cannot assail the allotment of the said sites by the BDA, merely because the said sites are located on the edge of layout formed by the promoter, who has sold the sites to the members of the 1st petitioner-Association.

f) Also, the case does not come within the scope and ambit of "sufficient interest" or conferment of any right on the writ petitioners to assail the allotment of the civic amenity sites.

61. Day-in and day-out, the State, its instrumentalities and agencies would be engaged in governance and in passing various orders. It is only when an action taken by the State, its instrumentalities or agencies or an order passed by them, which would have a direct effect/impact on a person or a group of persons, then they could become aggrieved persons and have the *locus standi* to move a writ petition before the High Court under Article 226 of the Constitution. In the absence of

any right of the petitioners being violated, such petitioners would not be persons aggrieved. Then, they have no locus to file a writ petition under Article 226 of the Constitution in their personal or individual capacity.

62. The above is in contra-distinction to a petition filed purely in public interest. In the case of public interest litigation, the petitioners would have no personal or individual interest in the subject matter of the petition. It is filed purely in public interest so as to secure justice for those who cannot approach the Court or in order to assail an illegal action initiated by the State Government, its agencies or instrumentalities. In such a case, doctrine of *locus standi* is relaxed and the same is for the purpose of bringing to the notice of the High Court (or Supreme Court under Article 32 of the Constitution) for securing justice, in the realm of enforcement of fundamental rights, constitutional rights, or other legal rights for the benefit of those persons who are not in a position to approach the Constitutional Courts and in the larger interest of the general public. In all other cases, where a writ petition is filed under Article 226 of the Constitution, for enforcement of a fundamental right or any legal right, such a petitioner

must have a *locus standi* to do so by demonstrating that there is a legal wrong done to him by violation of his right and therefore, being an aggrieved person, has the right to file the writ petition and not otherwise.

63. In the instant cases, the writ petitioners do not come within the scope and ambit of any of the conditions required for filing the instant writ petitions assailing the allotment of sites to the allottees. Hence, they have no *locus standi* to file the writ petitions.

64. On the question of *locus standi*, Sri Joshi, learned counsel for the appellant-GAIL relied on a decision of this Court on the aspect of *locus standi* of the writ petitioners to file writ petition. In ***Aicoboo Nagar Residents Welfare Association & Another Vs. BDA, Bangalore & Another (ILR 2002 KAR 4705)***, (*Aicoboo Nagar Residents Welfare Association*), two writ petitions were filed under Article 226 of the Constitution of India as public interest litigation challenging the lease granted by the BDA in favour of Bharat Petroleum Corporation - respondent No.2 therein in respect of civic amenity site No.3 (Part), BTM-I Stage, I Phase Layout, Bengaluru. In

the said case, objection was raised that a public interest litigation was not maintainable. This Court observed that since no directions were issued in the said case, it was not necessary to go into the question whether a public interest litigation was maintainable by a Secretary of the Association without any resolution that the Secretary was duly authorized to file the said cases. It was further held that violation of conditions of lease or sanctioned plan was a disputed question of fact which could not be gone into in the writ petitions that too in the absence of relevant material in that regard and the same could be considered by a competent fact finding Authority. Hence, the public interest litigation petitions were dismissed.

65. Sri Raghavan, learned Senior counsel appearing for respondents 1 to 9 (writ petitioners) placed heavy reliance on *B.S.Muddappa* on the aspect of *locus standi* of the writ petitioners to file writ petitions questioning allotment of civic amenity sites to the three appellants-allottees herein.

66. In *B.S.Muddappa*, the facts were that a site near Sankey Tank in Rajamahal Vilas Extension in the city

of Bengaluru which was reserved as an open space in an Improvement Scheme adopted under the City of Bangalore Improvement Act, 1945 was allotted in favour of the appellant therein (Bangalore Medical Trust) pursuant to Government Orders dated 27.05.1976 and 11.06.1976 and followed by Resolution of BDA dated 14.07.1976. Thus, the BDA allotted the open space in favour of appellant therein for the purpose of constructing a hospital. The site was stated to be only available space reserved in the Scheme for a public park or playground with a legislative intent to protect and preserve the environment by reserving open space for 'ventilation', recreation, playgrounds and parks for the general public. Writ Petitioners, being aggrieved members of the general public and residents of the locality, challenged the diversion of the user and allotment of site to private persons for construction of a hospital.

67. The learned Single Judge of this Court had dismissed the writ petition. But, on appeal, the Division Bench held that the area, having been reserved in the sanctioned scheme for a public park, its diversion from the object and allotment in favour of a private body was not



permissible under the Act even if the object of allotment was for construction of a hospital. The Division Bench allowed the appeal without prejudice to make a fresh allotment to the Bangalore Medical Trust by the BDA of an alternative site. Being aggrieved by the writ petition being allowed, the Bangalore Medical Trust filed a Special Leave Petition before the Hon'ble Supreme Court and the same was converted into a Civil Appeal and the appeal was dismissed.

68. One of the questions raised in the said case was, whether, the members of the public, being residents of the locality, had a right to object to diversion of the user of the space and deprivation of the park meant for general public and for protection of the environment and were they aggrieved in law by such diversion and allotment. On perusal of the provisions of the Act, particularly Section 16(1)(d) of the BDA Act which deals with development schemes providing for compulsory reservation of portions of the layout for public parks and playgrounds and for civic amenities (15% and 10% respectively of the total area of the layout) and Section 38-A of the Act, which deals with prohibition of the use of areas reserved for parks,

playgrounds and civic amenity for other purposes, it was held that the residents of the locality were persons intimately, vitally and adversely affected by the action of the BDA and the Government, which was destructive of the environment and which deprived them of all the facilities reserved for the enjoyment and protection of the health of the public at large. It was observed that the residents of the locality, such as the writ petitioners therein, were naturally aggrieved by the impugned orders and therefore, had the necessary *locus standi* to file the writ petitions (*per T.K.Thommen, J. - paragraph 29*).

69. In paragraph 35, *per Sahai, J.*, it was further observed that *locus standi* to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One, relates to maintainability of the petition and the other, to exercise of discretion. The restricted meaning of aggrieved person and narrow outlook of specific injury had yielded in favour of broad and wide construction in the wake of public interest litigation. Even in a private challenge to executive or administrative action having extensive fall out, the dividing line between personal injury or loss and injury of a

public nature is fast vanishing. According to Sahai J., it was too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke the equity jurisdiction of the High Court. The residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. That when there was cause of action either for the individual or community in general to approach by way of writ petition, the authorities cannot be permitted to seek shelter under cover of technicalities of *locus standi* nor can they be heard to plead for restraint in exercise of discretion, as grave issues of public concern would outweigh such considerations. Discussing on the importance of public parks and playgrounds in a locality and holding that exercise of power by the State Government was vitiated and *ultra vires* as the Government could not convert the site reserved for public parks to a civic amenity site and to allot it for private nursing home i.e., to the Medical Trust and the Resolution of the BDA in compliance of it, being null and void and

without jurisdiction, the appeal of the Medical Trust was dismissed.

70. The Judgment in *B.S. Muddappa* does not apply to these cases owing to the distinctive facts that obtain in two cases. In *B.S.Muddappa*, an area reserved as park or open space near Sankey Tank was allotted in favour of a medical trust to build a hospital thereon. It was contended by the residents of the locality that they were deprived of the open space and the park meant for general public by a hospital coming up on the said space. As a result, the residents of the locality would have lost lung space and the entire eco-system of the area would have been adversely affected. The residents of the locality, therefore, filed the writ petitions contending that they were aggrieved by the allotment of the park space to a medical trust for the purpose of construction of a hospital. Their contention in substance was based upon Section 38-A of the BDA Act which specifically prohibits the disposition of any area reserved for public parks and playgrounds and civic amenities, for any other purpose, as the case may be, as null and void. It was in that context, that on the plea made by the residents of the locality of

Rajmahal Vilas Extension wherein the park was located and the area was reserved for a park, which was construed by the Hon'ble Supreme Court as giving them the right to question the diversion of the user of the park to a hospital being constructed thereon and hence, it was held that the residents had the *locus standi* to approach the High Court to question the allotment of the area reserved as park for hospital.

71. But, in the instant cases, there is no plea raised with regard to the change of land user or with regard to the allotments being made contrary to Section 38-A of the BDA Act. What is the right of the petitioner that has been violated has not been stated. In this regard, we have considered the pleadings in the writ petitions.

72. In Writ Petition No.6452/2011 assailing the allotments made to Syndicate Bank and M/s.Bennett Coleman and Company Limited, it has been contended that the civic amenity sites were relinquished by the promoter to the BDA, same has not been reserved under Section 2(bb)(i) and (v) of the BDA Act by the BDA as per sub-rule (1) of Rule 3 of the 1989 Rules. It has been further averred that BDA had identified the requirement of specific

civic amenity sites / the civic amenity abutting the information technology park without identifying any civic amenity required in the area. Also, without any publicity or inviting applications from interested persons, civic amenity site Nos.2A and 2B were allotted to Syndicate Bank and Civic Amenity Site No.4 was allotted to M/s.Bennett Coleman Company for the purpose of establishing their corporate offices. It is averred that Manyata Nagar deserves basic amenities, such as Post-office, police station, school, bus-stand, hospital, etc. But, without considering the requirement of the residents of the said area, two civic amenity sites were allotted to two corporate companies which are not civic amenities. In the context of 1989 Rules, reference is made to Rules 7(d) and 7(f) thereof to state that any civic amenity site to be allotted in an area, must benefit the general public of the locality. That the BDA had acted arbitrarily in allotting the civic amenity sites to the aforesaid two entities without causing due publicity. That the civic amenity sites in a private residential layout could not have been allotted for commercial purposes. That there has been colourable and arbitrary exercise of power in allotting the said sites to the

said entities by way of lease and hence, on the aforesaid basis, the allotment was questioned.

73. Insofar as the allotment made to GAIL is concerned, it is averred in the writ petitions that the Office building and Regional Gas Management Center to be located in the civic amenity site allotted to GAIL was neither a civic amenity site nor an amenity for the residents. It is averred that the Central or State Government offices are not civic amenity which would subserve the interest of the residents. That the allotment of the site for the purpose of office building and regional gas management center is contrary to Section 2(bb) of the BDA Act, as the same is not a civic amenity.

74. Hence, on perusal of the averments, it is clear that the petitioners have not raised any plea with regard to there being any change in the land user or any right of the petitioners being violated on that score. The main contentions sought to be raised by the petitioners is that the rules have been violated in making allotments to the three entities. That there can be no allotment of civic amenity sites *de hors* the Rules and hence, the petitioners

have the *locus standi* to assail the same. We do not think that the aforesaid reasons are sufficient in law for the petitioners to have the locus to assail the allotments.

75. It is necessary to reiterate that this is not a public interest litigation but a litigation filed in private interest, then the fundamental principles pertaining to *locus standi* have to be complied with by the petitioners inasmuch as they have to demonstrate as to how their rights have been violated or in what manner they have been aggrieved by the allotment of sites to the three entities. In the absence of any pleadings to that effect, we do not think that the petitioners had any locus to file the writ petitions.

76. As already stated, the facts in these cases are neither similar nor identical to the facts in *B.S.Muddappa*. In *B.S.Muddappa*, there was a clear averment that the open space reserved for park was allotted to a medical trust for the purpose of establishing a hospital. That was a case of diversion of the area reserved for park or open space to the construction of a hospital. Therefore, the residents of the locality took up the cause and contended



that they were aggrieved by the said diversion of a park as their right to use the open space and park had been jeopardised and as a result, if the hospital was to be constructed on the open space/park, the residents would have lost a right to utilise and enjoy the eco-system of the park and thereby result in loss of lung space and consequently, affecting the eco-system and health of the residents of the locality.

77. No such contention has been raised in the instant cases at all. But, the learned Single Judge without appreciating the distinctive facts of these cases and in *B.S.Muddappa*, has, in a straightjacket manner, applied the ratio of the decision in *B.S.Muddappa* to the instant cases. We think that the petitioners had no right to maintain the writ petitions and hence, the writ petitions ought to have been dismissed on the ground of the petitioners lacking the *locus standi* to do so. The observations of the Hon'ble Supreme Court in paragraph Nos.20, 29 and 35 in *B.S.Muddappa* do not apply to the present cases. Hence, we hold that the petitioners having no *locus sandi* to file the writ petitions ought to have been dismissed on that ground. In view of the aforesaid

discussion, **point No.1** is answered **against the writ petitioners.**

**REG. POINT No.2:**

78. Keeping aside the aforesaid conclusion, we shall also consider the matter on merits in order to examine whether the petitioners have made out a case for seeking quashing of the allotment of the civic amenity sites made to three entities in the instant cases. But, before that, it is necessary to analyse the provisions of the BDA Act as well as the 1989 Rules.

79. Under Clause (bb) of Section 2 of the BDA Act, the expression "Civic Amenity" is an exhaustive definition. It means, *inter alia*, a bank, a post office, a recreation centre run by the Government or the Corporation, a centre for education, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government; a centre for educational, religious, social or cultural activities or for philanthropic service run by entities referred to therein; a police station; and such

other amenity as the Government may, by notification, specify.

80. Section 32(5) of the BDA Act states that the BDA may require the applicant to deposit before sanctioning the application, the sums necessary for meeting the expenditure for making the roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as such applicant may be called upon by the BDA. Provided, the applicant also agrees to transfer the ownership of the roads, drains, water supply mains and open spaces laid out by him to the BDA permanently without claiming any compensation therefor. Sub-section (7) of Section 32 states that, no person shall form a layout or make any new private street without the sanction of or otherwise than in conformity with the conditions imposed by the Authority.

81. One of the conditions to be generally imposed by the BDA while sanctioning a private layout is that the open spaces must be relinquished to the BDA. The expression 'Open space' is not defined under the BDA Act. However, the same is defined under the Karnataka Parks,

Play-fields and Open Spaces (Preservation and Regulation) Act, 1985 (for short '1985 Act'). Section 2(f) of 1985 Act reads as under:

**"2. Definitions.-** In this Act, unless the context otherwise requires,-

x x x

(f) "open space" means any land on which there are no buildings or of which not more than one twentieth part is covered with buildings and the whole or the remainder of which is used or meant for the purposes of recreation, air or light or set apart for civic amenity purposes;"

The definition of open space under the 1985 Act could be read into the expression 'open space' under subsection (5) of Section 32 of the BDA Act.

82. Section 38-A of the BDA Act states that the BDA shall not have the power to lease, sell or otherwise transfer any area reserved for civic amenity for the purpose for which such area is reserved. It also states that the BDA shall not sell or otherwise dispose of any area reserved for public parks, play grounds and civic amenities, for any other purpose and any such disposition

so made shall be null and void. Even the expressions public 'park' and 'play-ground' are defined in Sections 2(g) and 2(h) (play-field) of the 1985 Act.

83. The expression 'open space' under Section 2(f) of the 1985 Act means, *inter alia*, lands set apart for civic amenity purposes. The expression 'civic amenity' is defined under Section 2(bb) of the BDA Act. Therefore, an open space could be used for establishing a civic amenity. Such open spaces have to be relinquished by the promoter or developer of a layout to the BDA at the time of getting the private layout sanctioned as per Section 32(5) of the BDA Act. On such relinquishment, the BDA has the power to transfer by lease or sale or otherwise any area reserved for civic amenity, i.e., the open spaces relinquished by a private developer to the BDA, *inter alia*, for utilising it for civic amenity purposes. Therefore, when an area is reserved for civic amenity purpose, it cannot be sold or otherwise disposed of for any other purpose and any such disposition shall be null and void. In other words, an area reserved for a civic amenity purpose by the BDA at the time of sanctioning of the plan as per sub-sections (5) and (7) of section 32 of the BDA Act has to be utilised for a

civic amenity purpose and not otherwise. The proviso thereof states that where the allottee commits breach of any of the conditions of allotment, the Authority shall have right to resume such site after affording an opportunity of being heard to such allottee.

84. In this regard, reliance could also be placed on a decision of His Lordship Shanatangoudar J. (as a Judge of this Court) in ***Bhavani Housing Co-operative Society Limited (Registered), Bangalore, vs. Bangalore Development Authority, (2006) 4 KLJ 598*** (*Bhavani Housing Co-operative Society Limited*).

85. On a reading of the said provision, it is clear that the BDA has the power to transfer any area reserved for civic amenities for the purpose for which such area is reserved. An area reserved for civic amenity, shall not be sold or otherwise disposed of for any other purpose and if so disposed of, it shall be null and void. This is the first mode under which BDA has the power to transfer an area reserved for civic amenity.

86. Section 65 of the BDA Act empowers the State Government to give such directions to the BDA as in its

opinion are necessary or expedient for carrying out the purposes of the Act, and it shall be the duty of the BDA to comply with such directions. The said Section is an enabling provision under the Act so as to enable the Government to issue directions to carry out the objects of the BDA Act including one to allot a civic amenity site to a particular entity.

87. It is necessary to advert to the 1989 Rules made under Section 69 of the BDA Act, which is the third mode under which civic amenity sites could be distributed.

(a) The 1989 Rules, defines a 'civic amenity site' in Clause (b) of Rule 2 to mean a site earmarked for a civic amenity in a layout formed by the BDA or a site earmarked for civic amenity in a private layout approved by the BDA and relinquished to it. A civic amenity site would necessarily be in an area reserved for a civic amenity, formed either by the BDA or in a private layout.

(b) The expression 'institution' in clause (d) of Rule 2 means, an institution, society or an association registered under the Karnataka Societies Registration Act, 1960 or a Co-operative Society registered under the

Karnataka Co-operative Societies Act, 1959 or a trust created wholly for charitable, educational or religious purpose. The expression 'institution' under the 1989 Rules has to be related to Section 2(bb)(iv) of the BDA Act.

(c) Sub-rule (1) of Rule 3 of the 1989 Rules states that the BDA may, out of the civic amenity sites available in any area, reserve such number of sites for the purpose stated in sub-clauses (i) and (v) of clause (bb) of Section 2 for the benefit of the Central or State Government or their authorities. Sub-rule (2) of Rule 3 states that after making the reservation under sub-rule (1) as stated above, the BDA may, subject to Section 38-A of the BDA Act and general or special orders of the Government and having regard to the particular type of civic amenity required to be provided in any locality, offer such of the remaining civic amenity sites for the purpose of allotment on lease basis to any 'institution' as defined in Rule 2(d) of the 1989 Rules. Therefore, before power could be exercised for allotment of any civic amenity site for the purpose of allotment on lease basis to any institution (as defined under Rule 2(d) of the 1989 Rules), the following aspects have to be considered:



- (i) Whether any reservation under Rule 3(1) has been made by the BDA? or
- (ii) Whether any order has been made under Section 38-A of the BDA Act regarding a particular civic amenity site? or
- (iii) Whether there are General or Special orders of the Government under Section 65 of the BDA Act regarding allotment of a particular civic amenity site?

(d) Thus, before steps are taken for the purpose of allotment on the basis of lease to any institution, it is necessary to ascertain about the aforesaid aspects. It is only after ascertaining that there is no reservation made under Rule 3(1) or there is no order passed under Section 38-A of the BDA Act by the BDA or there is no general or special order of the Government, that a civic amenity site would become available for allotment on lease to any institution.

(e) Rule 4 of the 1989 Rules states that notwithstanding anything contained in the Rules, any site reserved under sub-rule (1) of Rule 3 may be allotted to the categories specified therein on lease by the BDA for

the purpose of providing civic amenity subject to such terms and conditions as may be specified by it. This Clause refers to sub-clauses (i) and (v) of Clause (bb) of Section 2 of the BDA Act. This includes a Bank also. Rule 4 of the 1989 Rules begins with a *non-obstante* clause and has an over-riding effect on the other Rules.

(f) Rules 5 to 9 of the 1989 Rules deal with the procedure for allotment of civic amenity sites to an institution, as defined under Rule 2(d) of the Rules. Therefore, in our view, Rules 5 to 9 would apply only when a civic amenity site has to be allotted to an institution and if the allottee is not an institution within the meaning of Rule 2(d), then Rule 5 to Rule 9 would not apply.

(g) Rule 10 deals with the conditions of allotment of civic amenity sites, while Rule 11 states that the allottee, at any time after the allotment, may surrender the civic amenity site allotted to the BDA. On such surrender, the said Authority has to refund the amount paid by the institution to the Authority in respect of the said civic amenity site.

(h) This would make it apparent, if any civic amenity site has been reserved under Rule 3(1) or any order under Section 38-A of the BDA Act has been passed or any general or special order has been made by the State Government regarding a particular civic amenity site, then the said site will not be available for the purpose of allotment to any institution. This is because of the expression "*such of the remaining civic amenity sites*" in Rule 3(2). Therefore, it is clear that the allotment in these cases is not on the basis of the Rules 4 to 9 as the allottees are also not institutions as defined under Rule 2(d) of the 1989 Rules. Therefore, it is necessary to examine the basis of allotment of sites to each of the appellants/allottees.

88. At the outset, it is noted from the location plan of the residential layout of the 1<sup>st</sup> petitioner, the area is surrounded by a Bio-Technology (BT Park) and Information Technology (IT Park) on two sides and a private property on one side and Rachenahalli village on the other side. The Bio-Technology Park and Information Technology Park would envisage Technology Parks comprising of offices, research centres, etc., and all other ancillary amenities and

facilities for the said technology parks concerning Bio-Technology and Information Technology. Therefore, it is not that the Layout is located in a purely residential zone inasmuch as it is surrounded by Technology Parks.

89. The allotment to M/s. Bennett Coleman and Company Limited has been made on the basis of order passed by the State Government under Section 65 of the BDA Act. Under the said Section, the State Government is empowered to issue directions to BDA to make an allotment of a civic amenity site. But, the same would have to comply with Section 38-A of the BDA Act inasmuch as even if a direction is issued under Section 65 of the BDA Act by the State Government to the BDA to allot any civic amenity site to a particular entity or allottee, the same must be in conformity with the stipulations under Section 38-A of the Act, namely:

- (i) That the BDA can lease any area reserved for civic amenity for the purpose for which such area is reserved.
- (ii) The BDA cannot sell or otherwise dispose off any area reserved for civic amenity for any other purpose, otherwise it would be null and void.

90. As far as the allotment of civic amenity Site No.4 to M/s. Bennett Coleman and Company Limited is concerned, the lease agreement states that the same has been made on the basis of Government Order No.UDD/262/Bem.Bhu.Swa-2009 dated 17.12.2009 subject to terms and conditions mentioned in the Lease Agreement. On the basis of the said Order, which is one made under Section 65 of the BDA Act, BDA allotted the said site to M/s.Bennett Coleman and Company Limited. The writ petitioners have contended that the said allotment is contrary to 1989 Rules. But, we have examined the said Rules and we have held that those Rules are not applicable to an entity such as M/s. Bennett Coleman & Company as it is not an 'institution' within the meaning of Rule 2(d) of the 1989 Rules, which apply only to the allotment of sites to an 'institution'. But, *de hors* the said Rules, there could be an allotment made on the strength of Section 65 of the BDA Act. In fact, sub-Rule (2) of Rule 3 makes that position amply clear inasmuch as it states that, subject to Section 38-A and general or special orders of the Government, a civic amenity site could be allotted on the basis of the said Rules to any institution. That means any

civic amenity site could be leased to an entity even though it is not an 'institution' within the meaning of Rule 2(d) of the 1989 Rules. Then, it would be on the strength of Section 65 or Section 38-A of the BDA Act. But, if an entity is an 'institution' within the meaning of Rule 2(d) of 1989 Rules, then the procedure contemplated under 1989 Rules must be complied bearing in mind sub-rules (1) and (2) of Rule 3 of 1989 Rules.

91. A civic amenity is defined under Section 2(bb) to also include a center for educational, religious, social or cultural activities or for philanthropic services run by a Trust created wholly for charitable educational or religious purposes. It is stated at the Bar that the object of seeking allotment of site in the instant case to M/s. Bennett Coleman & Company is to house the Times Foundation which is a philanthropic, charitable organisation, apart from the offices of the Times of India Group. Therefore, we do not find any illegality in the allotment of the site to M/s. Bennett Coleman & Company Limited.

92. The petitioners have failed to demonstrate as to how the order dated 17.12.2009 made by the State

Government under Section 65 of the BDA Act directing the BDA for the purpose of allotment of site on the basis of lease to M/s. Bennett Coleman & Company, is contrary to law in the instant case.

93. The civic amenity site allotted to Syndicate Bank is as per site Allotment Letter dated 13.10.2010 and site No.2 (2A and 2B) has been leased on 30.12.2010 for a period of thirty years. The allotment made to Syndicate Bank cannot be questioned as such, as a bank is a civic amenity within the meaning of Section 2(bb) of the BDA Act. It may be that the Syndicate Bank will house its corporate office on the said site. However, it is stated at the Bar that it will also have a branch office and ATM facility, which would be for the benefit of the residents and other establishments in the locality. Therefore, we do not understand as to how the petitioners could assail the allotment of site No.2 (2A, 2B) to Syndicate Bank. Syndicate Bank being a nationalised bank is a civic amenity within the meaning of Section 2(bb)(i) of the BDA Act and the allotment could be traced to Section 38-A of the BDA Act.

94. As far as allotment of civic amenity site Nos.5 and 6 to GAIL is concerned, the contention is that the purpose of allotment is not for a civic amenity and the same does not fall within the meaning of Section 2(bb) of the BDA Act and there has been no reservation made under Rule 3(1) of the 1989 Rules. The letter of allotment is dated 23.02.2010 subject to certain terms and conditions. The lease agreement is dated 20.06.2011. Possession was handed over to GAIL on 27.06.2011.

95. The State Government issued a Notification on 03.11.2009 (Annexure 'R10' to W.A. No.2505 of 2013) in exercise of the powers conferred under Section 2(bb)(vi) of the BDA Act to state that a civic amenity would include Central Government / State Government offices.

96. In this regard, the contention of learned senior counsel for the writ petitioners/respondents herein is that GAIL is neither a central government nor a State Government office. But, learned counsel for the GAIL drew our attention to the proceedings that took place between the State and the Central Government under which by Government Order dated 10.07.2009, the Government of



Karnataka constituted the Apex-Level Co-Ordination Group (COG) for overseeing the implementation of Dabhol-Bengaluru (Bidadi) Gas Pipeline Project. In order to promote the same, vide Annexure 'R1' and thereafter the Principal Secretary to Government of Karnataka, Infrastructure Development Department, wrote to the Chief Commissioner, BDA to allot suitable land/sites for the purpose of the Project to GAIL. In fact, the State Level Clearance Committee of Karnataka Udyoga Mitra had approved the establishment of a natural gas pipeline project and the proposed project to lay transportation of natural gas pipeline from Dabhol, Maharashtra-Bengaluru via. Belagavi, a total distance of 870 km in several districts. Further, pursuant to 20th State High Level Clearance Committee Meeting held on 05.01.2010 and on the communication made to the Commissioner, BDA on behalf of the State Government, BDA allotted civic amenity site Nos.5 and 6 to GAIL and on 20.06.2011 entered into a lease agreement. The object of the allotment is to house a Centre (office) for Monitoring the Project.

97. Thereafter, on 23.11.2012, the State Government in exercise of its powers under Section

2(bb)(vi) of the BDA Act read with Section 21 of the Karnataka General Clauses Act, 1899 issued a Notification (Annexure 'R12' to W.A. No.2505/2013) making amendment to earlier Notification dated 29.08.1990 (Annexure 'R20' to W.A. No.2505/2013) and substituting the same as under:

"Liquified Petroleum Gas Godowns,  
including Gas Management Centre/Gas  
Storage Centre / Natural Gas Storage and  
Associated Activities / S.V. Station."

98. Therefore, what was to be housed in the civic amenity site leased to GAIL is a Management Center. In what way the location of the said office has prejudiced the rights of the petitioners has not been pleaded by the petitioners.

99. In the instant cases, since all the three entities which have been allotted sites are not 'institutions' within the meaning of Rule 2(d) of 1989 Rules, the procedure contemplated for the allotment of the sites to institutions would not *per se* apply. However, while allotments being made to organisations which are not institutions within the

meaning of Rule 2(d) of the 1989 Rules, the criteria or conditions stipulated in the 1989 Rules may be imposed on the allottee or lessee, if thought fit.

100. Sri Joshi, learned counsel for the appellant-GAIL relied on *NAL Layout Residents' Association*. The facts in the said case were that petitioners therein had surrendered certain lands for the purpose of civic amenity and after surrender, they were allotted to respondent No.2 therein. The question was, whether, the area was earmarked for school and playground and whether the allotment of the same for the purpose other than for which it was reserved in the layout plan was illegal. It was held that the Government chose to make an order under Section 38-A of the Act on 18.05.2001 which provides for grant of area reserved for civic amenity sites. That when there is a standing order of the Government in the matter of lease of the land to BDA, question of violating Rule 3 of 1989 Rules did not arise as it did not apply to the case which was governed under Section 38-A of the Act. In that case, the learned Single Judge of this Court considered the question whether the grant of the site in question to the contesting respondent ran counter to the

BDA Act and Rules and it was held that when the Government had chosen to exercise power and had passed an order on 18.05.2001, the BDA had no option, but to obey the same. It was in terms of the order dated 18.05.2001, the BDA has chosen to provide the lease in favour of the allottee therein. Admittedly, the Government Order dated 18.05.2001 had not been challenged by the petitioner.

101. It was further held that admittedly the petitioner had chosen to relinquish the lands in favour of the BDA and the Government Order under Section 38-A of the Act dated 18.05.2001 was to allot the said land to respondent No.2 therein. The Lease Agreement was entered on 16.07.2002 and the petition was filed in the year 2004. It was held that there was delay in filing the writ petition. It was further observed that Rule 3(2) of 1989 Rules was subject to Section 38-A of the Act and general or special orders of the Government. When there was a standing order of the Government in the matter of lease of the land to BDA, question of violating Rule 3 of 1989 Rules did not arise. That even as per Rule 3 of 1989

Rules Section 38-A of the BDA Act would prevail. Writ Petitions were hence dismissed.

102. Sri Raghavan, learned senior counsel appearing for respondents 1 to 9, placed reliance on *S.G.R. Technical and Educational Society* to contend that when a civic amenity site was notified for starting an educational institution and when the petitioner therein had made an application for allotment of said civic amenity site and had also deposited the initial deposit amount, the application not being considered and the allotment being made to respondent No.3 therein to start an educational institution, which was not for the purpose for which the site was notified, was contrary to law. Hence, it was held that the Resolution dated 03.10.2002 passed by the Civic Amenity Site Allotment Committee surrendering the power of allotment to the Chairman and the Commissioner of the BDA was a clear case of abdication of power. Hence, the allotment made to respondent No.3 therein was held to be illegal and unsustainable. The aforesaid case does not apply to the instant cases, as the petitioners have not made any application for allotment of the sites in question. Also, the allottees in these cases are not 'institutions'

within the meaning of Rule 2(d) of the 1989 Rules unlike in the aforementioned case.

103. In this context, it is relevant to refer to order passed by a learned Single Judge of this Court in Writ Petition No.12500 of 2005 disposed of on 18.09.2007 (Between M/s.Manyata Promoters Private Limited and BDA & others) wherein the allotment of civic amenity site No.4 to M/s. Nightingales Medical Trust (respondent No.3 in the aforesaid writ petition) was assailed. That was for the purpose of running of a geriatric institute to provide health and medical care facility to aged persons, mentally and physically challenged persons and also to persons who are in constant and regular need of medical care, etc. In that writ petition, it was observed that the writ petitioner therein i.e., M/s.Manyata Promoters Private Limited had no right in Site No.4 allotted to M/s. Nightingales Medical Trust and the writ petition was not filed espousing a public cause. Hence, it was dismissed. The ratio of the said judgment squarely applies in these cases also.

104. In view of the aforesaid discussion, we answer **Point No.2 against the writ petitioners and in favour**

**of the appellants** as the writ petitioners have not been able to demonstrate in what way, in what manner, their rights, if any, have been prejudiced or violated. Consequently, the writ petitioners, not being aggrieved persons, could not have maintained these Writ Petitions.

105. We may also add that even if these writ petitions were filed in public interest, in view of the aforesaid discussion, we do not find any illegality in the allotment of the civic amenity sites to the respondents / allottees on the basis of the lease to the three organisations in these cases.

106. Learned Single Judge has misdirected himself in considering the eligibility of the allottees to be allotted the civic amenity sites and the purpose of allotment in terms of the 1989 Rules, which we have held do not apply to these allotments in the present cases. Consequently, the learned Single Judge was also not right in holding that the petitioners had the *locus standi* to challenge the allotments.

107. In the result, these **appeals are allowed with costs** being imposed on the petitioners.

108. The reasons for imposing costs on the petitioners are apparent. Without having a right to challenge the allotment of civic amenity sites in these cases and not being able to establish any illegality in the allotment of sites in these cases, the petitioners filed these writ petitions. The litigation has been pending for a decade in this Court. The allottees have paid lease amount in crores to the BDA. The allotment is for a period of thirty years from the date of the lease deeds and over a decade has been lost in litigation before this Court. The uncertainty caused to the allottees on account of this frivolous litigation and not being able to make use of the sites for over a decade must be compensated. In the circumstances the writ petitioners are directed to pay a sum of Rs.1,00,000/- (*Rupees One Lakh*) to each of the allottees in the instant cases, namely, to Syndicate Bank, Gas Authority of India Limited (GAIL) and M/s. Bennett Coleman and Company Limited.



109. The said cost shall be paid to them within a period of **four weeks** from the date of receipt of certified copy of this judgment.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

*PKS/ RK/-  
Ct: R\**