



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

**DATED THIS THE 01<sup>ST</sup> DAY OF DECEMBER, 2020**

**PRESENT**

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

**AND**

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

**W.A.No.1415/2018 (LA – BDA)**

**BETWEEN:**

SRI. L.RAMAREDDY,  
SON OF LATE LINGA REDDY,  
AGED ABOUT 73 YEARS,  
RESIDING AT No.10/1, 26<sup>TH</sup> MAIN ROAD,  
HSR LAYOUT, AGARA VILLAGE,  
AGARA POST,  
BENGALURU – 560 034.

... APPELLANT

(BY SRI. SAMPATH BAPAT, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA,  
URBAN DEVELOPMENT DEPARTMENT,  
VIDHANA SOUDHA,  
BENGALURU – 560 001.  
REPRESENTED BY SECRETARY.
2. THE COMMISSIONER,  
BENGALURU DEVELOPMENT AUTHORITY,  
KUMARA PARK WEST,  
BENGALURU – 560 020.
3. THE SPECIAL LAND ACQUISITION OFFICER,  
BENGALURU DEVELOPMENT AUTHORITY,

KUMARA PARK WEST,  
BENGALURU – 560 020.

4. NANDA RANGASWAMY,  
WIFE OF RANGASWAMY,  
AGED ABOUT 38 YEARS,  
RESIDING AT No.213, D BLOCK,  
BRIGADE PALM SPRING  
APARTMENT,  
J.P.NAGAR 7<sup>TH</sup> PHASE,  
BENGALURU – 560 078.
5. SHAMEEM FATIMA,  
WIFE OF M.ENAYATH  
ULLA SHARIFF,  
AGED ABOUT 59 YEARS,  
REPRESENTED BY GPA HOLDER,  
M.BARKATHULLAH SHARIFF,  
S/O.MR. M ENAYATH ULLA SHARIFF,  
RESIDING AT NO.16, 5<sup>TH</sup> CROSS,  
17<sup>TH</sup> MAIN, 5<sup>TH</sup> BLOCK,  
KORAMANGALA LAYOUT,  
BENGALURU – 560 095.

... RESPONDENTS

(BY SRI. T.L. KIRAN KUMAR, AGA FOR R-1, SRI  
I.G.GACHCHINAMATH, ADVOCATE FOR R-2 & R-3, SRI.  
JOSEPH ANTHONY, ADVOCATE FOR R-4 & R-5)

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THIS APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
ORDER DATED 16/04/2018 IN W.P.NO.17432/2014  
[LA-BDA] AND ALLOW THE WRIT PETITION AS PRAYED FOR.

THIS APPEAL COMING ON FOR ORDERS THIS DAY,  
NAGARATHNA, J., DELIVERED THE FOLLOWING:

## **JUDGMENT**

Though this appeal is listed for orders with the consent of learned counsel on both sides, it is heard finally.

2. The petitioner in W.P.No.17432/2014 has preferred this intra Court appeal assailing the order of the learned Single Judge dated 16.04.2018. By the said order, the writ petition filed by the petitioner/appellant herein has been dismissed.

3. Briefly stated the facts are that the petitioner claims to be the owner of 20 guntas of land in Sy.No.146 of Agara Village [hereinafter, referred to as "the land in question", for the sake of convenience]. The said land was a part of larger extent of land measuring 21 acres and 33 guntas, out of which, the subject land of 20 guntas is stated to be in the ownership of the petitioner. The respondent/Bangalore Development Authority ('BDA' for the sake of convenience) issued preliminary notification dated 15.12.1984 under Section 17(1) of the Bangalore Development Authority Act, 1976 (hereinafter referred to as

'the BDA Act' for the sake of brevity) intending to acquire, *inter alia*, the land in question. The said notification was followed by a declaration and final notification dated 28.12.1986 issued under Section 19(1) of the BDA Act. It is stated at the Bar that the award in respect of the subject land was passed on 07.07.1987 and the possession was taken on 15.07.1987.

4. When the matter stood thus, the petitioner had filed W.P.No.18044/2000 before this Court. A Division Bench of this Court by judgment dated 18.08.2000 dismissed the said writ petition. While dismissing the writ petition, the Division Bench had recorded that the petitioner was not entitled to the relief sought for in the writ petition under Section 38C(2) of the BDA Act as amended by the Amended Act, 1999 (Karnataka Act 1 of 2000). As the said provision was not brought into force and subsequently repealed by Karnataka Ordinance 4 of 2000, the said Section was no more in the statute book and the validity of the said repealing Ordinance had been upheld by this Court in ***John B. James vs.***

***Bengaluru Development Authority [ILR 2000 KAR 4134].***

5. Thereafter, the petitioner had filed Original Suit No.8279/2000 before XVI Additional City Civil Judge, Bengaluru City. It was a suit for declaration of title by way of adverse possession against the defendant/BDA and consequential reliefs in respect of the land in question. By judgment dated 15.11.2010, the said suit was dismissed. Being aggrieved, the petitioner had preferred RFA.No.306/2011, which was also dismissed by this Court by judgment dated 04.10.2012. Subsequently, the petitioner had preferred SLP No.8132/2013 before the Hon'ble Supreme Court, which was also dismissed on 10.01.2014. However, the Hon'ble Supreme Court granted liberty to the petitioner to make a representation seeking de-notification of the subject land. Instead the petitioner filed W.P.No.17432/2014 seeking the following reliefs:

“Wherefore it is prayed that this Hon'ble Court be pleased to:

- (a) Call for the record from the respondents.
- (b) Issue a Writ of mandamus directing the respondents not to enforce the scheme called "HSR Layout as against Petitioners land bearing Sy.No.146 measuring 0.20 guntas of Agara Village, Begur Hobli, Bangalore South Taluk more fully described in the schedule below in view of lapsing of acquisition in terms of Section 27 r/w Section 36 of the Bangalore Development Authority Act 1976, based on the judgment of the Hon'ble Supreme Court in Offshore holdings private limited Vs. Bangalore Development Authority, reported in (2011) 3 SCC 139 para - 124.
- (c) Declare that the acquisition proceedings initiated under the provisions of BDA Act, 1976 for the scheme called "HSR layout" has lapsed under Section 27 in view of the fact that there is no vesting of the land and land is free from acquisitions (Annexures - A & B)
- (C(i)) Issue any appropriate writ or order or directions declaring that the acquisition

proceedings under the preliminary notification dated 15.12.1984 (Annexure-A) and the final Notification dated 28.11.1986 (Annexure-B) have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in so far as 20 guntas of Petitioner's Lands in Sy.No.146 of Agara Village Begur Hobli, Bangalore South Taluk is concerned;

(C-ii) Issue a writ of certiorari quashing the Mahazar dated 15.07.1987 (Annexure-Z) insofar as it pertains to Petitioners lands.

(d) Grant such other reliefs as this Hon'ble Court may deems fit under the facts and circumstances of case."

6. Pursuant to liberty reserved by the Hon'ble Supreme Court to seek de-notification of the subject land, the petitioner also made a representation dated 29.01.2014 seeking issuance of NOC to the effect that the land in question may be deleted from acquisition. But in reply, there

was an endorsement issued on 01.06.2015 by the BDA stating that the land in question had been acquired.

7. In the writ petition filed by the petitioner/appellant herein, the learned Single Judge considered the rival contentions and on noting the aforesaid facts came to the conclusion that there was no merit in the writ petition, accordingly, dismissed the petition by impugned order dated 16.04.2018. Being aggrieved, the petitioner/appellant herein has preferred this appeal.

8. We have heard Sri.Sampath Bapat, learned counsel for the appellant, learned Additional Government Advocate for respondent No.1, Sri.I.G.Gachchinamath, learned counsel for respondent Nos.2 and 3 and Sri.Joseph Anthony, learned counsel for respondent Nos.4 and 5. We have perused the material on records.

9. Appellant's counsel contended that the land in question in fact has not been utilized by the BDA and the same continues in his possession. Therefore, he is entitled to



de-notification of the said land and the said aspect of the matter ought to have been considered by the learned Single Judge. If the same had been considered in that perspective, the appellant would have been granted the reliefs sought for in the writ petition. He submitted that the Hon'ble Supreme Court in SLP.No.8132/2013 had reserved liberty to the appellant to seek de-notification of the land in question. In fact, there was a prima facie approval for the said de-notification but there had been no further steps taken in that regard. Therefore, the appellant was constrained to file the writ petition seeking the reliefs. The learned Single Judge ought to have considered the reliefs sought for by the appellant and allowed the writ petition. He submitted that the order of the learned Single Judge may be set aside and the relief sought for by the petitioner/appellant herein may be granted on the basis of Section 27 of the BDA Act and Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, referred to as "the Act, 2013" for the sake of convenience).

10. *Per contra*, learned Additional Government Advocate appearing for respondent No.1 submitted that there is no merit in the writ petition as the land has already been acquired, award has been passed, possession has been taken and allotments have been made to third parties. Therefore, at this point of time, issuance of de-notification would not arise at all. He submitted that as there is no merit in the appeal, the same may be dismissed.

11. Learned counsel for the respondent/BDA also submitted that the acquisition of the land is complete and the scheme has been implemented. It is called 'HSR Layout' and the preliminary and final notifications were issued way back at 1984 and 1986. The award was passed on 07.07.1987 and the possession was taken on 15.07.1987. Subsequently, the allotments have been made to respondent Nos.4 and 5. The appellant has been unsuccessful in the suit and the first appeal, in respect of the land in question. The Hon'ble Supreme Court has held in several cases that once the possession of the land has been taken, the issue of de-notification would pale into insignificance. The learned Single

Judge has rightly dismissed the writ petition. Therefore, there is no merit in this appeal.

12. Learned counsel for respondent Nos.4 and 5/allottees also contended that the allotments have been made by the BDA on the acquisition of the land in question and by execution of the scheme. The petitioner/appellant herein has been repeatedly filing the cases before this Court or before the City Civil Court and has not been successful in any of them. The object of the appellant is only to fester litigation and harass the *bona fide* allottees or purchasers from the allottees such as, respondent Nos.4 and 5. Therefore, there is no merit in the appeal and hence may be dismissed.

13. Having heard learned counsel for the respective parties, the following points would arise for consideration:

1. Whether the learned Single Judge was right in dismissing the writ petition filed by the petitioner/appellant herein?

2. What order?

14. The detailed narration of facts and contentions would not call for reiteration except highlighting the relevant facts. It is not in dispute that the subject land measuring 20 guntas, out of a larger extent of 21 acres and 33 guntas was a part of preliminary notification dated 15.12.1984 issued under Section 17(1) of the BDA Act. It was followed by declaration and final notification dated 28.02.1986. The award in respect of the land in question was made 07.07.1987 and possession of the same was taken on 15.07.1987. Ultimately, in the year 2014, the allotment was made in favor of Respondent Nos.4 and 5. The appellant herein had filed several proceedings which have been narrated above including the W.P.No.18044/2000 before this Court and subsequently W.P.No.17432/2014, out of which this appeal arises. In the interregnum, the appellant had filed OS.No.8279/2000, RFA No.306/2011 and SLP.No.8132/2013 seeking declaration of the title on the basis of adverse possession and consequential reliefs, in all of which the appellant has been unsuccessful. On the strength of liberty reserved by the Hon'ble Supreme Court to make representation at Annexure - M and was made on

29.01.2014, which was also responded to by the BDA on 01.06.2015. In the interregnum, the writ petition was filed seeking the aforesaid reliefs.

15. The basis for seeking the reliefs in this second writ petition is under Section 27 read with Section 36 of the BDA Act. Secondly, Section 24(2) of the 2013 Act has been invoked.

16. Though the appellant has relied upon ***Offshore Holding Private Limited vs. Bengaluru Development Authority, reported in [(2011) 3 SCC 139]*** (*Offshore Holding Private Limited*), it is relevant to note that the said judgment itself stated that even if for any reason the scheme lapses, the acquisition would not. Moreover, on the facts of this case, it is pertinent to note that the 'HSR layout' scheme for the purpose of which the acquisition of the subject land, amongst the other lands, was initiated and has not lapsed, inasmuch as, the scheme has been implemented and there is a full fledged HSR layout, which has come into existence.

Thus, we have considered the contentions of learned counsel for appellant on the basis of the aforesaid provisions.

17. Learned counsel for the appellant submitted that the benefit under Section 24 of the LA Act, 1984 must be given to the appellant. According to him, any acquisition made under the provisions of the BDA Act, is akin to an acquisition made under the provisions of the LA Act, 1894. Hence, it is necessary to delve further on the question despite the use of the expression "***in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894***" in both sub-section(1) as well as sub-section (2) of Section 24 of the 2013 Act. In this regard, it will be useful to compare the provisions of the LA Act, 1894, with the provisions of the BDA Act. The LA Act, 1894, though a pre-constitution legislation and since repealed, could be traced to Entry-42, List-III (Concurrent List) of the Seventh Schedule of the Constitution, whereas the BDA Act has been enacted by the State Legislature on the strength of Entry-5, List-II (State List) of the Seventh Schedule of the Constitution. The said entries are extracted for immediate reference as under:

**“Seventh Schedule, List III-Concurrent List, Entry 42 - Acquisition and requisitioning of property.”**

**“Seventh Schedule, List II- State List, Entry- 5 - Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.”**

Thus, both the Acts have been enacted under two different Entries of two distinct Lists of the Seventh Schedule. Moreover, the object and purpose of the two Acts are distinct.

18. The object and purpose of the LA Act, 1894, is for acquisition of the land for public purposes and for companies. The expression public purpose is defined in Section 3(f) of the said Act. It is an inclusive definition and not an exhaustive one. Section 3(f) is substituted by the Karnataka Amendment with effect from 24.08.1961. On the other hand, the object of the BDA Act, which has substituted City Improvement Trust Board Act, is to provide for the establishment of a Development Authority for the development of the city of

Bangalore, now Bengaluru, and areas adjacent thereto and matters connected therewith. Whereas, the provisions of LA Act, 1894, is to acquire land for public purposes, determination of compensation and matters connected therewith and is a general enactment, the object and purpose of the BDA Act is for planned development of Bangalore Metropolitan Area and acquisition of land under Sections 17 and 19 of the BDA Act by issuance of Preliminary and Final Notifications is incidental which is for the purpose of development schemes, as enunciated in Chapter III of the BDA Act, for Bangalore Metropolitan Area. For that purpose, the BDA has authority to acquire land by agreement with the land owners as per Section 35 of the said Act or the State Government could transfer land to the BDA belonging to it or to Corporation or a local authority as per Section 37 or, BDA could directly acquire land from land owners under Chapters III and IV of the said BDA Act.

19. The object and purpose of the BDA Act has been considered by the Hon'ble Supreme Court in the case of ***Bondu Ramaswamy and others vs. Bangalore***



***Development Authority and others [(2010) 7 SCC 129]***

*(Bondu Ramaswamy)*, which was a case concerning challenge to acquisition made by BDA for the purpose of formation of Arkavathi Layout, at Paragraph No.47, by holding that, the purpose and object of the BDA is to act as a development authority for the development of the city of Bangalore and areas adjacent thereto. The Preamble of the BDA Act describes it as "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". The development contemplated by the BDA Act is "carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment" (vide Section 2(j) of BDA Act). Therefore, the purpose of BDA Act is to make lay outs, construct buildings or carry out other operations in regard to land."

20. Further, on comparing the provisions of LA Act, 1894, with BDA Act, the Hon'ble Supreme Court has held as under:

“79. This question arises from the contention raised by one of the appellants that the provisions of section 6 of the Land Acquisition Act, 1894 (“the LA Act”, for short) will apply to the acquisitions under the BDA Act and consequently if the final declaration under section 19(1) is not issued within one year from the date of publication of the notification under sections 17(1) and (3) of the BDA Act, such final declaration will be invalid. The appellants’ submissions are as under: the notification under Sections 17(1) and (3) of the Act was issued and gazetted on 3-2-2003 and the declaration under Section 19(1) was issued and published on 23-2-2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are applicable. Section 6 of LA Act requires that no declaration shall be made, in respect of any land covered by a notification under Section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under section 4 of LA Act. As the provisions of LA Act have been made applicable to acquisitions under the BDA Act, it is necessary that the declaration under Section 19(1) of BDA Act (which is equivalent to the final declaration

under Section 6 of the LA Act) should also be made before the expiry of one year from the date of publication of notification under Sections 17(1) and (3) of BDA Act (which is equivalent to Section 4(1) of LA Act).

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

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

(underlining by us)

21. Further, in ***Offshore Holdings Private Limited vs. Bangalore Development Authority [(2011) 3 SCC 139]*** (*Offshore Holdings*), the scheme under the BDA Act, 1976, has been alluded to in detail by the Hon'ble Supreme Court as under:

**"Scheme under the Bangalore Development Authority Act, 1976**

17. ... The primary object of the BDA Act was to provide for establishment of the development authority for development of the city of Bangalore and areas adjacent thereto and for the matters connected therewith.

18. For different reasons, various provisions of this Act were amended from time to time. The term "development" under Section 2(j) of the BDA Act, with its grammatical variations, means "the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment". Similarly, Section 2(r) defines the word "to erect" which in relation to any building includes:

"2. (r)(i) any material alteration or enlargement of any building;

(ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;

(iii) the conversion into more than one place for human habitation of a building originally constructed as one such place;

(iv) the conversion of two or more places of human habitation into a greater number of such places;

(v) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security;

(vi) the addition of any rooms, buildings, houses or other structures to any building; and

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

The definitions aforesaid clearly show that they were given a very wide meaning to ensure that the check on haphazard and unauthorized development is maintained.

19. The Authority came to be constituted in terms of Section 3 of the BDA Act. The object of the Authority has been spelt out in Section 14 of the BDA Act which states that the Authority shall

“promote and secure the development of the Bangalore Metropolitan Area and for that purpose, the Authority shall have the power to acquire, hold, manage and dispose of

moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto”.

The language of this section shows that powers of wide magnitude are vested in the Authority and the purpose for which such powers are vested is absolutely clear from the expression “to do all things necessary or expedient for the purpose of such development and for purposes incidental thereto”. In other words, the primary purpose is planned development and other matters are incidental thereto. The acquisition of immoveable property is, therefore, also for the said purpose alone.

20. Chapter III of the BDA Act deals with development plans. Under Section 15, the Authority has to draw up detailed schemes termed as “Development Scheme”. The Government in terms of Section 15(3) is empowered to direct the Authority to take up any development scheme subject to such terms and conditions as may be specified by it. In terms of

Section 16(1) of the BDA Act, every development scheme has to provide, within the limits of the area comprised in the scheme, for the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme. It should, *inter alia*, also provide for laying and re-laying out all or any land including the construction/ reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, forming open spaces for betterment and sanitary arrangements. The Authority may provide for construction of houses within or without the limits of the area comprised in the scheme. It is clear that the development scheme has to provide for every detail in relation to development of the area under the scheme as well as acquisition of land, if any, required. It may be noticed, even at the cost of repetition, that such acquisition is only in regard to the development scheme.

21. Once the development scheme has been prepared, the Authority is expected to draw up a notification stating that the scheme has been made and give all the particulars required under Section 17 of the BDA Act including a statement specifying the land which is proposed to be acquired and land on which betterment tax is to



be levied. A copy of this notification is required to be sent to the Government through the Corporation which is obliged to forward the same to the appropriate Government within the specified time along with any representation, which the Corporation may think fit to make, with regard to the scheme. After receiving the scheme, the Government is required to ensure that the notification is published in the Official Gazette and affixed in some conspicuous part of its own office as well as in such other places as the Authority may consider necessary.

22. In terms of Section 17(5) of the BDA Act, within 30 days from the date of publication of such notification in the Official Gazette,

“the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax”

and to issue show-cause notice giving thirty days' time to the person concerned, as to why such

acquisition of building or land and the recovery of betterment tax should not be made.

23. Thus, the provisions of Section 17 of the BDA Act are of some significance. They describe various time-frames within which the Authority/Government is expected to take action. A deemed fiction is introduced in terms of Section 17(4) of the BDA Act where if the Corporation does not make a representation within the time specified under Section 17(2), the concurrence of the Corporation shall be deemed to have been given to enable the authorities to proceed with the matter in accordance with Section 17(5) of the Act. Having gone through the prescribed process, the Authority is required to submit the scheme for sanction of the Government.

24. The Authority has been given power to modify the scheme keeping in view the representations received. The scheme shall also provide for the various details as required under Sections 18 (1)(a) to 18(1)(f) and 18(2) of the BDA Act. After considering this proposal, the Government may give sanction to the scheme in terms of Section 18(3). Upon sanction of the scheme, the Government shall publish, in the Official Gazette, a declaration stating the fact of

such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose. This declaration shall be conclusive evidence that the land is needed for a public purpose.

25. The Authority has also been given the power to alter or amend the scheme if an improvement can be made. If the scheme, as altered, involves acquisition otherwise than by an agreement, then the provisions of Sections 17, 18 and 19(1) shall apply to the scheme in the same manner as if such altered part were the scheme. This entire exercise is to be taken in terms of Section 19 of the BDA Act post grant of sanction in terms thereof.”

22. Adverting to Section 27 of BDA Act, the Hon’ble Supreme Court has observed that it places an obligation upon the Authority (BDA), to complete the scheme within a period of five years and if the scheme is not substantially carried out within that period, it shall lapse and the provisions of Section 36 shall become inoperative, i.e. this is a provision which provides for serious consequences in the event the requisite steps are not taken within the specified time.

23. Observing that some land may have to be acquired for the purpose of completing the scheme; such land has to be identified in the scheme itself as per Section 16 of the BDA Act. Chapter IV of the BDA Act deals with "acquisition of land". Adverting to Sections 35 and 36 of the BDA Act, the Hon'ble Supreme Court has observed that these provisions postulate acquisition of land by two modes. Firstly, by entering into an agreement with the owner of the land; and secondly, otherwise than by agreement which shall be regulated by the provisions of the Land Acquisition Act, in so far as they are applicable. Where the lands are acquired by agreement, there would be hardly any dispute either on fact or in law. Controversies, primarily, would arise in the cases of compulsory acquisition under the provisions of the Act. The intention of the Legislature, thus, is clear to take recourse to the provisions of the Land Acquisition Act to a limited extent and subject to the supremacy of the provisions of the State Act.

24. Comparing BDA Act with Maharashtra Act, the Hon'ble Supreme Court has observed that a very important

aspect which, unlike the MRTP Act, (Maharashtra Regional and Town Planning Act), is specified in the BDA Act is that, once the land is acquired and it vests in the State Government in terms of Section 16 of the LA Act, 1894 then the Government, upon (a) payment of the cost of acquisition and (b) the Authority, agreeing to pay any further cost, which may be incurred on account of acquisition, shall transfer the land to the BDA whereupon, it shall vest in the BDA. The Government is further vested with the power to transfer land to the BDA belonging to it or to the Corporation as per Section 37 of the BDA Act.

25. By contrast, the scheme of the LA Act, 1894, which is since repealed by 2013 Act was an expropriatory legislation to provide for acquisition of land for public purposes and for companies. Section 4 of the said Act dealt with publication of Preliminary Notification while Section 5-A provided for hearing objections with regard to the proposed acquisitions. Section 6 dealt with the issuance of a declaration and Final Notification that the land was required for a public purpose. The said declaration was conclusive evidence that the land

was needed for a public purpose or for a Company, as the case may be. After making such a declaration, the appropriate government could acquire the land in accordance with the Act. In fact, Part II of the LA Act, 1894, dealt with acquisition which contemplated procedure for the passing of an award; notifying persons interested and taking possession of the land. Part II of the said Act, dealt with the provisions dealing with enhancement of compensation by the reference Court by the land owner seeking a reference for a higher compensation. Part IV dealt with apportionment of compensation, while Part V of the said Act concerned with payment. Acquisition of land for companies was dealt with in Part VII of the said Act and a special procedure was prescribed. Part VIII pertained to miscellaneous provisions. Thus, the whole object and scheme of LA Act, 1894, was to acquire land for a public purpose or for the benefit of companies, whereas the object and scheme of the BDA Act is to have planned development of Bangalore Metropolitan Area and in that regard acquisition of land under the BDA Act read with the provisions of the LA Act, 1894 is only incidental to and not the primary object of BDA Act.

26. More specifically, the controversy as to, whether, Sections 6 and 11-A of the LA Act, 1894, were applicable to provisions of the BDA Act or not were considered by the Hon'ble Supreme Court in the cases of ***Munithimmaiah vs. State of Karnataka and others [(2002) 4 SCC 326]***; *Offshore Holdings Private Limited*, and *Bondu Ramaswamy*, the latter two cases have been referred to above as well as two other cases which are referred to as under:

a) In ***Munithimmaiah vs. State of Karnataka and others [(2002) 4 SCC 326]*** (*Munithimmaiah*), while referring to the decisions of this Court in ***Khoday Distilleries Ltd., vs. State of Karnataka [ILR 1997 Kar. 1419]***, in the context of whether Section 6 of the LA Act, 1894, was applicable to Section 19 of the BDA Act (both dealing with declaration and final notification), Hon'ble Supreme Court has at Paragraph No.15, categorically observed as under:

"15. So far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure a planned growth and development of the city of Bangalore and areas adjacent thereto and

acquisition of lands, if any, therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central Enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of the BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it the Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis-à-vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self-



contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or *pari materia* legislations. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act. When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a

special law falling under a topic of legislation exclusively earmarked for the State Legislature. A scheme formulated, sanctioned and set for implementation under the BDA Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Sections 6 and 11-A, which cannot also on its own force have any application to actions taken under the BDA Act. Consequently, we see no infirmity whatsoever in the reasoning of the Division Bench of the Karnataka High Court in *Khoday Distilleries Ltd.* case to exclude the applicability of Sections 6 and 11-A as amended and inserted by the Central Amendment Act of 1984 to proceedings under the BDA Act. The submissions to the contra on behalf of the appellant has no merit whatsoever and do not commend for our acceptance.”

*(underlining by us)*

b) While considering the question as to whether Section 11-A of the LA Act, 1894, applies to acquisitions made under the BDA Act, the Hon'ble Supreme Court in *Offshore Holdings Private Limited*, has emphatically held that Section 11-A does not apply to acquisitions made under the BDA Act, by observing as follows:

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

34. A three Judge Bench of this Court in the case of *Bondu Ramaswamy v. Bangalore Development Authority* while dealing with the contention that notification issued in terms of Section 17(1) and (3) of the BDA Act appears to

be equivalent to Section 4 of the Land Acquisition Act and the declaration under Section 19(1) of the BDA Act appears to be equivalent to the final declaration under Section 6 of the Land acquisition Act, held that all the provisions of the Land Acquisition Act will not apply to the acquisition under the BDA Act and only those provisions of the Land Acquisition Act, relating to stages of acquisition, for which there is no corresponding provision in the BDA Act, are applicable to an acquisition under the BDA Act. The provisions of Sections 4 and 6 of the Land Acquisition Act would not be attracted to the BDA Act as the Act itself provides for such mechanism.

35. Be that as it may, it is clear that the BDA Act is a self-contained code which provides for all the situations that may arise in planned development of an area including acquisition of land for that purpose. The scheme of the Act does not admit any necessity for reading the provisions of Sections 6 and 11-A of the Land Acquisition Act, as part and parcel of the BDA Act for attainment of its object. The primary object of the State Act is to carry out planned development and acquisition is a mere incident of such planned development. The provisions of the Land Acquisition Act, where the land is to be acquired

for a specific public purpose and acquisition is the sum and substance of that Act, all matters in relation to the acquisition of land will be regulated by the provisions of that Act. The State Act has provided its own scheme and provisions for acquisition of land.

36. The co-relation between the two enactments is a very limited one. The provisions of the Land Acquisition Act would be attracted only in so far as they are applicable to the State law. Where there are specific provisions under the State Act the provisions of Central Act will not be attracted. Furthermore, reading the provisions of default and consequences thereof, as stated under the Central Act into the State Act, is bound to frustrate the very scheme formulated under the State Act. Only because some of the provisions of the Land Acquisition Act are attracted, it does not necessarily contemplate that all the provisions of the Central Act would *per se* be applicable to the provisions of the State Act irrespective of the scheme and object contained therein. The Authority under the BDA Act is vested with complete powers to prepare and execute the development plans of which acquisition may or may not be a part. The

provisions of the State Act can be implemented completely and effectively on their own and reading the provisions of the Land Acquisition Act into the State Act, which may result in frustrating its object, is not called for. We would be dealing with various facets which would support this view shortly.

37. The provisions of Section 27 of the BDA Act mandate the Authority to execute the scheme, substantially, within five years from the date of publication of the declaration under subsection (1) of Section 19. If the Authority fails to do so, then the scheme shall lapse and provisions of Section 36 of the BDA Act will become inoperative. The provisions of Section 27 have a direct nexus with the provisions of Section 36 which provide that the provisions of the Land Acquisition Act, so far as they are applicable to the State Act, shall govern the cases of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject-matter of execution under the provisions of the BDA Act.

38. On a conjunctive reading of the provisions of Sections 27 and 36 of the State Act,

it is clear that where a scheme lapses, the acquisition may not. This, of course, will depend upon the facts and circumstances of a given case. Where, upon completion of the acquisition proceedings, the land has vested in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act. An argument to the contrary cannot be accepted for the reason that on vesting, the land stands transferred and vested in the State/Authority free from all encumbrances and such status of the property is incapable of being altered by fiction of law either by the State Act or by the Central Act. Both these Acts do not contain any provision in terms of which property, once and absolutely, vested in the State can be reverted to the owner on any condition. There is no reversal of the title and possession of the State. However, this may not be true in cases where acquisition proceedings are still pending and land has not been vested in the Government in terms of Section 16 of the Land Acquisition Act.

39. What is meant by the language of Section 27 of the BDA Act, i.e. "provisions of Section 36 shall become inoperative", is that if

the acquisition proceedings are pending and where the scheme has lapsed, further proceedings in terms of Section 36(3) of the BDA Act, i.e. with reference to proceedings under the Land Acquisition Act shall become inoperative. Once the land which, upon its acquisition, has vested in the State and thereafter vested in the Authority in terms of Section 36(3); such vesting is incapable of being disturbed except in the case where the Government issues a notification for re-vesting the land in itself, or a Corporation, or a local Authority in cases where the land is not required by the Authority under the provisions of Section 37(3) of the BDA Act.

40. This being the scheme of the acquisition within the framework of the State Act, read with the relevant provisions of the Central Act, it will not be permissible to bring the concept of "lapsing of acquisition" as stated in the provisions of Section 11-A of the Land Acquisition Act into Chapter IV of the BDA Act.

44. One of the apparent and unavoidable consequences of reading the provisions of Section 11-A of the Central Act into the State Act would be that it is bound to adversely affect the "development scheme" under the State Act and



may even frustrate the same. It is a self-defeating argument that the Government can always issue fresh declaration and the acquisition in all cases should lapse in terms of Section 11-A of the Central Act.”

(underlining by us)

c) Further, in the case of ***Girnar Traders (3) vs. State of Maharashtra and others [(2011) 3 SCC 1]***, (*Girnar Traders*), the Hon'ble Supreme Court on comparing the provisions of Maharashtra Regional and Town Planning Act, 1966, (MRTP Act) which is an Act similar to BDA Act with the provisions of the LA Act, 1894, has observed as under:

“130. While referring to Section 6 of the Land Acquisition Act, the State Legislature has not adopted, specifically or otherwise, the period mentioned in proviso to Section 6(1) of the Land Acquisition Act. On the contrary, different time-frames have been postulated under different provisions of the MRTP Act. If those limitations of time are not adhered to by the authorities concerned, the consequences have also been provided therefor. From the stage of initiation of steps for preparation of draft plans to the finalization of the scheme, it takes considerable time. Furthermore, its implementation at the

ground level, takes still much more time. If this entire planned development which is a massive project is permitted to lapse on the application of Section 11-A of the Central Act, it will have the effect of rendering every project of planned development frustrated. It can hardly be an argument that the Government can always issue fresh declaration in terms of Section 6 of the Land Acquisition Act and take further proceedings. Recommencement of acquisition proceedings at different levels of the hierarchy of the State and Planning Authority itself takes considerable time and, thus, it will be difficult to achieve the target of planned development.

131. This clearly demonstrates that all the provisions of the Land Acquisition Act introduced by later amendments would not, *per se*, become applicable and be deemed to be part and parcel of the MRTTP Act. The intent of the legislature to make the State Act a self-contained Code with definite reference to required provisions of the Land Acquisition Act is clear.”

X X X

134. However, if the provisions of section 11-A of the Central Act were permitted to punctuate a scheme of the State Act and the award is not made within two years from the date

of declaration under Section 6 of the Central Act, the acquisition proceedings will lapse which will frustrate the rights of the State as well as the scheme contemplated under Section 126 as well as Section 127 of the State Act and that would not be permissible in law. This being legislation by incorporation, the general reference to the provisions of the Land Acquisition Act shall stand excluded.

X X X

137. The Court cannot lose sight of one very important fact that the MRTP Act is an Act relating to planned development and acquisition is an incidental aspect thereof. Planned development is quite different from merely "achieving a public purpose" for which the land is acquired under the provisions of the Land Acquisition Act. Development plan, Regional Plan and town planning scheme are major events in the development of a State. They are controlled and guided by different financial, architectural and public interest for the development including macro and micro planning of the entire State.

138. The provisions relating to planned development of the State or any part thereof, read in conjunction with the object of the Act, show that different time-frames are required for

initiation, finalization and complete execution of such development plans. The period of 10 years stated in Section 127 of the MRTP Act, therefore, cannot be said to be arbitrary or unreasonable *ex facie*. If the provisions of Section 11-A of the Land Acquisition Act, with its serious consequence of lapsing of entire acquisition proceedings, are bodily lifted and read into the provisions of MRTP Act, it is bound to frustrate the entire scheme and render it ineffective and uncertain. Keeping in view the consequence of Section 11-A of the Central Act, every development plan could stand frustrated only for the reason that period of two years has lapsed and it will tantamount to putting an end to the entire development process.

X X X

140. Thus, in our view, reading of Section 11-A of the Land Acquisition Act into Chapter VII of the MRTP Act will render the substantive provisions of the State Act ineffective, unworkable and may frustrate the object of the Act materially.”

(underlining by us)

d) Recently, in ***Special Land Acquisition Officer, KIADB, Mysore and another vs. Anasuya Bai (D) by LRs. and others (AIR 2017 SC 904)*** (*Anasuya Bai*), the

question under consideration before the Hon'ble Supreme Court was, as to, whether relief under Section 24 of the 2013 Act could be granted to landowners when acquisition was made under the provisions of the Karnataka Industrial Areas Development Act, (KIAD Act). After referring to the judgment of this Court which was appealed against before the Hon'ble Supreme Court in light of Section 24 of the 2013 Act, Hon'ble Supreme Court noted the observations made by the Division Bench of this Court in the following words:

"24. The Division Bench of the High Court by the impugned judgment, however, has quashed the acquisition proceedings itself holding that they have lapsed. For this purpose, the High Court has taken aid of Section 24 of the New LA Act in the following manner:

"13. It is also noted that the acquisition proceedings including preliminary and final declaration have been passed under the provisions of the KIADB Act. But there is no provisions under the KIADB Act to pass an award and award has to be passed only under the provisions of the LA Act, 1894. If the award has to be passed under LA Act, whether the new act can be pressed into service to hold

the acquisition proceedings are lapsed on account of non-passing of award within a period of 5 years u/S 11. If the award is passed under LA Act, the enquiry has to be conducted by the Deputy Commissioner or Collector before passing the award. Section 11-A contemplates if the award is not passed within 2 years from the date of publication of the final declaration, the entire proceedings for acquisition of the land shall automatically stands lapsed. It is no doubt true the Hon'ble Supreme Court in the case of M.Nagabhushana Vs. State of Karnataka and Others (2011) 3 SCC 408: (AIR 2011 SC 1113) has held that Section 11-A of the Act is no application in respect of the land acquired under the provisions of the Karnataka Industrial Areas Development Act. We have to consider in this appeal as to whether Section 24(2) of the New Act is applicable in order to hold that the acquisition proceedings deemed to be lapsed due to non-payment of compensation and non-passing of the award within a period of five years from the date of declaration and with effect from non-payment of compensation to the land owners.

14. The New Act does not say whether the Act is applicable to the land acquired under the provisions of the Karnataka Land Acquisition Act 1894. What Section 24 says that if the award is not passed u/S.11 of the Act and the compensation is not paid within 5 years or more prior to new act, if the physical possession of the land is taken or not especially the compensation is not paid or deposited in Court such proceedings deem to have been lapsed. In the instant case, it is not case of the respondent that award is not required to be passed under the provisions of LA Act. When the award is required to be passed under LA Act, the respondents cannot contend that the provisions of New Act cannot be made applicable on account of non payment of compensation within a period of five years."

25. This approach of the High Court, we find, to be totally erroneous. In the first instance, matter is not properly appreciated by ignoring the important aspects mentioned in para 24 above. Secondly, effect of non-applicability of Section 11A of the Old LA Act is not rightly understood."

27. In the aforesaid case, after comparing the provisions of the LA Act, 1894 with KIAD Act, Hon'ble Supreme Court on

the basis of the decisions rendered under the provisions of the BDA Act, in the cases of *Munithimmaiah, Offshore Holdings Private Limited and Girnar Traders (3)* (referred to above) has held as under:

"32. In *Munithimmaiah v. State of Karnataka* [(2002) 4 SCC 326] : (AIR 2002 SC 1574) this Court held that the provisions of Sections 6 and 11-A of the said Act do not apply to the provisions of the Bangalore Development Authority Act, 1976 (the BDA Act). In SCC para 15 at p. 335 of the Report this Court made a distinction between the purposes of the two enactments and held that all the provisions of the said Act do not apply to the BDA Act. Subsequently, the Constitution Bench of this Court in *Offshore Holdings (P) Ltd. v. Bangalore Development Authority* [(2011) 3 SCC 139 : (2011) 1 SCC (Civ) 662 : (2011) 1 Scale 533], held that Section 11-A of the said Act does not apply to acquisition under the BDA Act.

33. The same principle is attracted to the present case also. Here also on a comparison between the provisions of the said Act and the KIAD Act, we find that those two Acts were enacted to achieve substantially different purposes. Insofar as the KIAD Act is concerned, from its Statement of Objects and Reasons, it is



clear that the same was enacted to achieve the following purposes:

“It is considered necessary to make provision for the orderly establishment and development of industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for industrial development and establish a board to develop such areas and make available lands therein for establishment of industries.”

28. Next, it is necessary to discuss ***Smt. K.M. Chikkathayamma and others vs. The State of Karnataka and others [ILR 2016 KAR 1603]***, which is a judgment rendered by a learned Single Judge of this Court.

(a) One of the points for determination in the said case was:

“Whether the provisions of the LA Act, 1894 or the LA Act, 2013, should be applied to acquisition proceedings under the provisions of the KUDA Act and the BDA Act, if the proceedings are not completed as on the date of coming into force of the LA Act, 2013”.

Learned Single judge has culled out the ingredients of the said sub-section which is extracted later.

b) The primary contention canvassed in the aforesaid case was, as to, whether 2013 Act would be applicable to acquisitions initiated under the provisions of the Karnataka Urban Development Authorities Act, 1987 (KUDA Act) and BDA Act. If the answer to the same was in the affirmative, then the acquisition proceeding in the aforesaid case which concerned BDA Act also was deemed to have lapsed.

c) In that case, the contention of learned Senior Counsel and learned Counsel for the petitioners was, where a statute is cited by a reference (the cited statute) (LA Act, 1894) into an another statute (the referring statute) (BDA Act/KUDA Act) any repeal or amendment of the cited statute is automatically carried over or reflected in the referring statute. This was in contrast, to a case of legislation by incorporation wherein the repeal or amendment of the

incorporated statute does not automatically affect the incorporating statute. It was further contended in the said case that in *Offshore Holdings Private Limited*, the Hon'ble Supreme Court held, Section 36 of the BDA Act (a provision *in pari materia* with Section 36 of KUDA Act) to be a case of legislation by incorporation. But, the repeal of LA Act, 1894 and substitution of 2013 Act created an exception and when the exception applied, the effect would be one of legislation by reference. It was contended that, if LA Act, 1894, was to be applied to acquisitions made under the KUDA Act post 01.01.2014, the quantum of compensation to the land owners in relation to acquisitions under the KUDA Act would be lesser than the compensation vis-à-vis acquisition made under 2013 Act, even though the purpose of the acquisition is same (urban or town planning and allotment of house sites). Similarly, the additional benefits in relation to rehabilitation and resettlement of affected families would also not be available to the land owners even though the purpose of the acquisition remains the same. It was emphasized in that case that the provisions of 2013 Act are more beneficial to the land owners and affected families in land acquisition

proceedings. The discriminatory effect as regards compensation and other benefits would occur because there is a complete change in the legislative approach in relation to land acquisition, rehabilitation and resettlement under 2013 Act which is more beneficial to the land owners. It was further contended in the said case that the land owners would thus be entitled to different rates of compensation and other resettlement and rehabilitation benefits, depending upon which Act the acquisition is made, whether under the BDA Act or KUDA Act or the central land acquisition enactments resulting in a discriminatory effect being in violation of Article 14 of the Constitution.

d) *Per contra*, the State through learned Advocate General submitted in the said case that the intention of Section 24 in 2013 Act is different and distinct in that the said section has specific reference to acquisition proceedings initiated under LA Act, 1894. That the object and purpose of Section 24 is not only to save acquisition initiated under LA Act, 1894, but also to declare lapse of acquisition under sub-section (2) of Section 24 and to also give the benefit of the

2013 Act under certain circumstances. It was further contended that Section 27 of KUDA Act as well as BDA Act provide for lapse of scheme of development and consequent in-operation of Section 36 of the Act. That BDA Act being a complete code by itself, lapse of acquisition has to be considered under that Act only. It was further contended that Section 24 is more in the nature of a transitory provision and an exception and operates as a link between LA Act, 1894 and 2013 Act.

e) While considering point No.2 extracted above, learned Single Judge in the said case held with regard to interpretation of sub-section (2) of Section 24 of the 2013 Act as under:-

“Section 24(2) of the LA Act, 2013 provides for lapse of acquisition proceedings **commenced under the LA Act, 1894**, on the satisfaction of certain conditions, which are as follows:

a. The award of compensation should have been passed five years or more prior to the commencement of the LA Act, 2013. In that, it should have been passed prior to 01.01.2009;

AND

b. Physical possession of the land has not been taken;

OR

c. Compensation has not been paid.

The Apex Court has interpreted the requirement of possession being taken under Section 24(2) of the LA Act, 2013, to mean that actual physical possession has to be taken and mere symbolic possession would not suffice."

(emphasis by us)

Although learned Single Judge has noticed that sub-section (2) of Section 24 of the 2013 Act applies to acquisition proceedings commenced under the LA Act, 1894, nevertheless has also held that the *"answer to the second point for consideration is that it is the LA Act, 2013 that shall be applied to acquisition proceedings under the BDA Act and KUDA Act, that have remained without being completed in all respects as on 1.1.2014, and proceedings that have been initiated thereafter"*.

f) Thus, learned Single Judge after referring to Section 24 of 2013 Act, held that it was applicable even to acquisitions made under the provisions of the BDA Act as well as KUDA Act. Learned Single Judge however noted that sub-

section (2) of Section 24 is a substantive provision of law which saves acquisition as well as affords the prospect of land sought to be acquired reverting to the land owner under certain conditions.

29. The said decision was rendered on 10.03.2016. The said decision has been appealed against by the BDA and a Division Bench of this Court has stayed the order passed in the said case. In the case of ***M/S. Evershine Monuments vs. State of Karnataka*** reported in ***ILR 2018 Kar. 731***, one of us (*Nagarathna. J.,*) considered the correctness of the decision in *Chikkathayamma* and several other similar decisions were considered at length and it was observed at paragraph Nos.37-39 as under:-

“37. In my humble opinion, the judgment in *Chikkathayamma's* case as well as similar judgments in other cases, in the context of KUDA, 1987 and BDA Act have been rendered without making an analysis of Section 24 of the 2013 Act, with regard to its applicability to acquisitions initiated under those Acts as opposed to acquisitions initiated under LA Act, 1894. Further, judgments of Hon'ble Supreme Court in that

regard have not been considered and followed and without bearing in mind the distinction in the object and scheme of the LA Act, 1894 and the BDA Act, as well as the decisions rendered by the Hon'ble Supreme Court in that regard. Learned Single Judge by his order has granted relief under sub-section (2) of Section 24 of 2013 Act. While a reference has been made to the decisions of the Hon'ble Supreme Court in the case of *Bondu Ramaswamy, Munithimmaiah, and Offshore Holdings Pvt. Ltd.*, the said reference is not in depth, as a detailed consideration of the aforesaid judgments, which have been rendered on a detailed comparison of LA Act, 1894 with BDA Act, would have thrown light on the object and scope of Section 24 of 2013 Act.

38. Reliance placed on the observations made by Hon'ble Supreme Court in the aforesaid decisions referred to above in detail would clearly indicate that the object and scheme of the LA Act, 1894 and the BDA Act, being distinct and meant for different purposes, it cannot be construed that acquisition initiated under the provisions of the BDA Act, is an acquisition initiated under the provisions of the LA Act, 1894. More significantly, the judgment in *Chikkathayamma's* case does not take into consideration the dicta of the Hon'ble



Supreme Court in the case of *Sukhbir Singh* which is directly on the issue of applicability of sub-section (2) of Section 24 of the 2013 Act to only acquisitions initiated under LA Act, 1894.

39. With respect, the judgment in the case of *Chikkathayamma* and other judgments which are similar in nature cannot be considered to be binding precedent as they are contrary to the dicta of the Hon'ble Supreme Court referred to above as well as the provision of Section 24 of the 2013 Act and hence cannot be applied to the present cases which deal with acquisition under BDA Act. There are also additional reasons for holding so."

We are in complete agreement with the aforesaid observations.

30. Further, from the words of Section 24 of the 2013 Act, what is significant to note is the fact that the said Section expressly refers to land acquisition proceedings initiated under the LA Act, 1894. The said Section does not incorporate the words "**or proceedings initiated under any other enactment**". Therefore, the expression "land acquisition proceedings initiated under the LA Act, 1894" are

significant and must be given its natural and plain meaning and the said expression cannot be given an expansive interpretation by adding words to the provision, in the absence of the provision itself giving rise to any such implication. In this regard, the rules of interpretation of a statute would become relevant and reliance could be placed on guiding principles of interpretation of statute. One such principle is that the Court is not entitled to read words into a provision of an Act or Rule for, the meaning is to be found within the four corners of the provision of an act or rule, as in the instant case. Therefore, while it is not permissible to add words or to fill in a gap or lacuna, on the other hand, effort should be made to give meaning to each and every word used by the legislature. Thus, the golden rule of construction is that the words of a provision of a statute, or rule must be first understood in the natural, ordinary or popular sense. Phrases and sentences must be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. In other words, the golden rule is that the words of a statute *prima facie* be given

an ordinary meaning. Natural and ordinary meaning of words should not be departed from “unless it can be shown that the legal context in which the words are used requires a different meaning”. Such a meaning cannot be departed from by the judges “in light of their own views as to policy” unless it is shown to adopt a purposive interpretation of the statute, which does not arise in the instant case. [Source – G.P.Singh *Principles on Statutory Interpretation – Fourteenth Edition*].

31. In this context, ***Harbhajan Singh vs. Press Council of India*** reported in ***AIR 2002 SC 1351*** could be relied upon wherein, Cross on “Statutory Interpretation” (Third Edition, 1995) has been relied upon as follows:-

“Thus, an ‘ordinary meaning’ or ‘grammatical meaning’ does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used.”

32. The aforesaid principles being squarely applicable to Section 24 of the 2013 Act, the same must be interpreted

having regard to the intention of the Parliament. In this regard, one cannot lose sight of the fact that 2013 Act repeals only LA Act, 1894, and not any other Central or State enactment dealing with acquisition. Therefore, what are sought to be saved under Section 24 of the 2013 Act, are those acquisitions initiated only under LA Act, 1894 and not any acquisition initiated under any other Central or State enactment. Therefore, the words "*acquisition proceedings initiated under any other enactment*" cannot be added or supplemented by the Court after the expression "*in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894*" under both sub-sections (1) and (2) of Section 24 of 2013 Act. Further, the short title of Section 24 of 2013 Act reads as "*Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.*" This is another indication that Section 24 applies only to those acquisition "**initiated**" under the provisions of LA Act, 1894.

33. Further, Section 24 creates a new right in favour of land owners in as much as they are entitled to relief under

certain circumstances as stipulated in Section 24 of the Act. One such relief is under sub-section(2) of Section 24 of the Act, dealing with lapse of acquisition by a fiction. It is a deeming provision, provided the stipulations therein are complied with or the conditions mentioned therein exist. One overbearing condition is that the acquisition must have been initiated under the provisions of LA Act, 1894. Thus, if acquisition is initiated under any other Central or State enactment, Section 24 does not apply.

34. The reasons as to why Parliament has incorporated Section 24 in the 2013 Act are evident and not far to see. The said section creates a new right in favour of land owners whose lands have been acquired under the provisions of LA Act, 1894, which has been repealed and substituted by 2013 Act. The 2013 Act is not a substitution for other Central enactments pertaining to acquisition of land or for that matter any other State enactment. Therefore, Section 24 uses the expression that the acquisition must have been initiated under the provisions of LA Act, 1894. But while creating a new right in favour of land owners under Section 24,

Parliament at the same time has intended two further aspects: first, saving acquisition under LA Act, 1894 and second, not encroaching upon other Central or State enactments. As far as State enactments dealing with acquisitions are concerned, Parliament intentionally has not touched upon any State enactment. The reason being that several State enactments have been made drawing sustenance from Entry 5, List II or State List of Seventh Schedule of the Constitution, whereas LA Act, 1894 as well as 2013 Act could be traced to Entry 42 List III (Concurrent List of the Seventh Schedule). Moreover, as has been explained above, the object and scope of the BDA Act made under Entry 5 List II (State List) are distinct from LA Act, 1894 substituted by 2013 Act.

35. Further, the State enactments have their own provisions concerning lapse of acquisition such as Section 27 of BDA Act or KUDA Act and Section 24 of 2013 Act cannot trammel upon those provisions of the State Acts such as BDA Act or Karnataka Urban Development Authority Act, 1987 (KUDA Act). The State enactments may have referred to certain provisions of LA Act, 1894, particularly with regard to

determination of compensation and such other matters. Reference to LA Act, 1894 in the State enactments for certain purposes does not imply that the acquisition is initiated under LA Act, 1894. What is of prime importance for Section 24 of 2013 Act to apply is that acquisition proceedings must have been initiated under LA Act, 1894 and not any other law. Losing sight of this aspect would create confusion in the applicability of Section 24 of 2013 Act. If the said provision is to apply to acquisitions initiated under a State enactment, such as, BDA Act or KUDA Act, then Section 27 of the said Acts which also deal with lapse of acquisition under certain circumstances will be rendered nugatory, otiose or redundant on prevailing of circumstances mentioned in Section 24 of the 2013 Act. In this regard, it is also observed that when State Acts such as, BDA Act or KUDA Act, have specific provisions in the form of Section 27 concerning lapse of acquisition, Section 24 of the Parliamentary enactment i.e., 2013 Act, cannot be applied, when acquisitions are under State enactments. This is because, the State or Central Laws concerning acquisition are enacted under different entries and

in different Lists of the Seventh Schedule of the Constitution and therefore, they operate in different fields. This is so, although, the State enactments may refer to the provisions of LA Act, 1894 for certain purposes.

36. At this stage itself, it may be observed that the issue as to whether LA Act, 1894 has been incorporated into BDA Act by the device of legislation by incorporation or legislation by reference is wholly foreign and outside the scope of controversy while considering the applicability of Section 24 to acquisition initiated under any law (whether State or Central), *de hors* LA Act, 1894. The dicta of the Hon'ble Supreme Court in this regard after comparing the scheme of LA Act, 1894 and BDA Act, are binding and authoritative and the same cannot be brushed aside or ignored by not applying the same in appropriate cases, such as the present one.

37. Thus, 2013 Act has not only repealed the LA Act, 1894, but has substituted the said Act. The 2013 Act is a totally distinct enactment and a complete code by itself. Hence, for the aforesaid reasons, initiation of acquisition



under State enactments such as BDA Act is not the same as initiation of acquisition under LA Act, 1894.

38. Further, it is noted that 2013 Act has, by virtue of Section 114 thereof, repealed LA Act, 1894. Section 114 reads as under:

**"114. Repeal and Saving:** (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

Therefore, what is saved under Section 114 of 2013 Act are only those acts and actions initiated under the provisions of the LA Act, 1894, which ought to be saved having regard to the provisions of Section 6 of the General Clauses Act, 1897. Section 6 of the General Clauses Act, 1897, reads as under:

**"6. Effect of repeal.-** Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be

made, then, unless a different intention appears, the repeal shall not.-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

However, Section 6 of the General Clauses Act would apply only when a saving clause as per sub-section 2 of Section 14 is not expressly provided under 2013 Act. Section 24 of the 2013 Act, which is in the nature of a saving clause

has created new rights in favour of land owners whose lands had been acquired under LA Act, 1894. Sub-section (1), lays down the conditions when the land acquisition proceedings initiated under the LA Act, 1894, would be amenable to the provisions of 2013 Act or, continued under the provisions of the LA Act, 1894, on certain conditions or circumstances prevailing. Under sub-section (2) of Section 24, the Parliament has, by a deeming provision, intended that if certain conditions are satisfied, the acquisition proceedings initiated under the LA Act, 1894, shall be deemed to have lapsed.

39. Sub-section (2) of Section 24, which has been invoked in the instant case was interpreted by the Hon'ble Supreme Court in the case of ***Pune Municipal Corporation vs. Harakchand Misirimal Solanki [(2014) 3 SCC 183]***. The said judgment is no longer good law on the interpretation placed on Section 24(2) of the Act, but we only notice the fact that in paragraph No.11 of the said judgment, it was observed that for Section 24 to apply, the land must be a subject matter of acquisition under LA Act, 1984.

40. Subsequently, the law has been re-stated in the case of ***Indore Development Authority vs. Manoharlal [AIR 2020 SC 1496]*** and the relevant portions of the said judgment insofar as it is applicable to the present appeal are extracted as under:-

95. Section 24(1)(a) of the Act of 2013 read with the non-obstante clause provides that in case of proceedings initiated under the Act of 1894 the award had not been made under Section 11, then the provisions of the Act of 2013, relating to the determination of compensation would apply. However; the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11 is made, then such proceedings shall continue under the provisions of the Act of 1894. It contemplates that such pending proceedings, as on the date on which the Act of 2013 came into force shall continue, and taken to their logical end. However, the exception to Section 24(1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed five years or more prior to the commencement of the Act of 2013, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings

shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the Act of 2013.

96. Section 24(2) carves out an exception to Section 24(1)(b), where the award has been passed, and the proceedings are pending, but in such proceedings, physical possession of the land has not been taken, or compensation has not been paid, proceedings shall lapse. There are twin requirements for the lapse; firstly, physical possession has not been taken and, secondly, compensation has not been paid. In case, possession has been taken but compensation has been paid, there is no lapse of the proceedings. The question which is to be decided is whether the conditions are cumulative, i.e., both are to be fulfilled, for lapsing of acquisition proceedings, or the conditions are in the alternative (“either/or”).

(underlining by us)

X X X

127. Under Section 48 of the Act of 1894, withdrawal of the land acquisition proceedings was permissible only if the possession has not been taken under Section 16 or 17(1). Section 48(1) is extracted hereunder:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section”. In case possession has been taken, there cannot be any withdrawal from the land acquisition proceedings under the Act of 1894.

In re: Vested rights under Section 24 of the Act of 2013

148. This Court is of opinion that Section 24 of the Act of 2013 does not intend to take away vested rights. This is because there is no specific provision taking away or divesting title to the land, which had originally vested with the State, or divesting the title or interest of beneficiaries or third-party transferees of such land which they had lawfully acquired, through sales or transfers. There is a (*sic!* 'no') specific provision made for divesting, nor does the Act of 2013 by necessary intendment, imply such a drastic consequence. Divesting cannot be said to have been intended.

x      x      x

151. The Section 24(2) of the Act of 2013 is to be interpreted consistent with the legislative intent, particularly when it has provided for the lapse of the proceedings. It has to be interpreted in the light of provisions made in Sections 24 and 114 of the Act of 2013 and Section 6 of the General Clauses Act, what it protects and to what extent it takes away the rights of the parties. Undoubtedly, Section 24(2) has retroactive operation with respect to the acquisitions initiated under the Act of 1894 and which are not

completed by taking possession nor compensation has been paid in spite of lapse of 5 years and proceedings are kept pending due to lethargy of the officials. The drastic consequences follow by the provisions contained in Section 24(2) in such cases.

(underlining by us)

X X X

172. A reading of section 24(2) shows that in case possession has been taken even if the compensation has not been paid, the proceedings shall not lapse. In case payment has not been made nor deposited with respect to the majority of the holdings in the accounts of the beneficiaries, then all the beneficiaries specified in the notification under Section 4 of the Act of 1894 shall get the enhanced compensation under the provisions of the Act of 2013."

(underlining by us)

41. Therefore, for a declaration of lapse of acquisition, the pre-conditions or conditions precedent mentioned under sub-section (2) of Section 24 of the 2013 Act must apply. Most importantly the said conditions must prevail in an acquisition initiated under the provisions of the LA Act, 1894,



and not with regard to acquisition initiated under any other enactment be it Central or State enactment. Hence, before land owners could seek relief under sub-section (2) of Section 24 of 2013 Act, which is a right created in their favour, the basic postulate that must be borne in mind is to ascertain, in the first instance, as to under which law, acquisition has been initiated; whether under the provisions of the LA Act, 1894 or any other law. If it is under any other law, then in my view Section 24 would not be applicable to such acquisitions. The dicta of the Hon'ble Supreme Court in the case of *Munithimmaiah, Bondu Ramaswamy, Offshore Holdings Private Limited* clearly enunciate that an acquisition initiated under the provisions of the BDA Act being distinct from an acquisition initiated under the provisions of the LA Act, 1894, it cannot be held that acquisition process initiated under the provisions of the LA Act, 1894, would also encompass acquisition proceedings initiated under any other law such as, the BDA Act. As already noted, the two enactments being distinct having a different object and scope and acquisition of lands being only incidental to the main object and scope under the BDA Act, the acquisition proceedings initiated

under the two Acts cannot be considered on par, so as to hold that land acquisition proceedings initiated under the provisions of the BDA Act is "land acquisition proceedings initiated under the provisions of the LA Act, 1894."

42. As already observed, Section 24 of the 2013 Act creates a new right in the land owners. For the exercise of said right, certain conditions have to exist, the most significant of them being, the initiation of proceedings for acquisition under the provisions of the LA Act, 1894. Therefore, the said words must be given a natural interpretation and not an expansive or wide interpretation, so as to extend the right under Section 24 even in respect of land owners whose lands are subjected to acquisition under any State enactment, such as the BDA Act or KUDA Act. In fact, the Parliament itself has been conscious of the fact that 2013 Act repeals and substitutes only LA Act, 1894, and not any other Central enactment or for that matter any other State enactment dealing with acquisition of lands. This is evident from Section 105 of the 2013 Act, which reads as under:

**“105. Provisions of this Act not to apply in certain cases or to apply with certain modifications:** (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of Section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

The enactments relating to land acquisition specified in the Fourth Schedule referred to in sub-section (1) of Section 105 consists of the following thirteen Parliamentary enactments, namely:

"THE FOURTH SCHEDULE  
[See section 105]  
LIST OF ENACTMENTS REGULATING LAND  
ACQUISITION AND REHABILITATION AND  
RESETTLEMENT

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).

3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886).
5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).
7. The National Highways Act, 1956 (48 of 1956).
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).
9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
12. The Electricity Act, 2003 (36 of 2003).
13. The Railways Act, 1989 (24 of 1989)."

43. Therefore, Parliament itself has listed the Central enactments to which 2013 Act does not apply. This is because Parliament was conscious of the fact that LA Act, 1894 was substituted by the 2013 Act, which is distinct and different from the other Central enactments enumerated in the Fourth Schedule to the 2013 Act or State enactments.

44. In the circumstances, it is concluded and held that Section 24 does not take within its scope nor does it apply to acquisitions which have been initiated under the provisions of any other enactment particularly, State enactment, such as, BDA Act. The said Section is restricted to only those acquisitions which have been initiated under the provisions of the LA Act, 1894 only. Subject to compliance of the conditions mentioned under sub-section (2) of Section 24, the land owner would be entitled to the deeming provision regarding lapse of acquisition and not otherwise.

45. It is further held, with respect, that the order in *Chikkathayamma* and other orders which have followed the said case, having regard to the dicta of Hon'ble Supreme Court in the case of *Munithimmaiah, Bondu Ramaswamy, Offshore Holdings Private Limited*, are *per incuriam* and not applicable as binding precedent in the present case. Further, most of the decisions referred to above have granted relief on the basis of factual determination as per sub-section 2 of Section 24 and without considering the question of law which arises in these cases. Further, in some cases, the petitioners

have themselves not pressed sub-section (2) of Section 24 of 2013 Act. Even then, relief has been granted on a determination made on facts and by holding that there has been abandonment of acquisition/lapse of acquisition.

46. Therefore, in our view, Section 24(2) of the Act, 2013 would also not apply in the instant case, in view of the position of law discussed above. Also, the acquisition has attained the finality inasmuch as the award was passed as earlier as 07.07.1987. The possession was taken on 15.07.1987. The appellant in the year 2014 could not have assailed the Mahazar dated 15.07.1987 (Annexure-Z) in the writ petition.

47. It is also pertinent to note that when the appellant filed W.P.No.18044/2000, neither he assailed the acquisition notification nor he did take up the contention under section 27 read with Section 36 of the BDA Act. Therefore, the writ petition filed in the year 2014 was only an after thought subsequent to the appellant being unsuccessful in the civil litigation right up to the Hon'ble Supreme Court. Therefore,

the writ petition also has been dismissed on the ground of delay and laches and on the principle of constructive *res judicata*.

48. We find that the learned Single Judge has considered all aspects of the matter including the fact that the compensation of Rs.19,86,749.69/- awarded in respect of the subject land was deposited before the City Civil Court on 31.08.1987, thereafter, notice under Section 16(2) of the LA Act, has also been issued, has dismissed the writ petition. We find no merit in the appeal. Hence, the appeal is ***dismissed***.

Parties to bear their respective costs.

In view of the dismissal of the appeal, all pending applications stand dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**