



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST 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.5712/2012 (LA – KHB)

BETWEEN:

1. The Karnataka Housing Board,
Cauvery Bhavan,
Kempegowda Road,
Bengaluru – 560 009.
Represented by its Commissioner.
2. The Special Land Acquisition Officer,
Karnataka Housing Board,
Cauvery Bhavan,
Kempegowda Road,
Bengaluru – 560 009.

... Appellants

(By Sri. Basavaraj .V.Sabarad, Advocate)

AND:

1. The State of Karnataka,
Housing & Urban Development
Department, M.S.Building,

Dr.Ambedkar Road,
Bengaluru – 560 001.
Represented by its Secretary.

2. Mrs. Dawn D' Souza,
Dead, by his LR's

2(a) Mr David D'Souza,
Son of Mrs. Dawn D'Souza, Aged Major,
Residing at No.19, Marwill Hall,
Rest house Road,
Bengaluru – 560 001.

2(b) Mrs. Prudence Chittiappa,
Daughter of Mrs Dawn D'Souza,
Aged Major,
Residing at No.72, Cunningham Road,
Bengaluru – 560 052.

... Respondents

(By Sri.T.L.Kiran Kumar, AGA for R-1,
Sri. Manmohan P.N, Advocate for R-2(A & B))

This appeal is filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in the Writ Petition No.25184/2011 dated: 29/05/2012.

This appeal coming on for Orders this day,
NAGARATHNA, J., delivered the following:

JUDGMENT

This appeal is listed to consider I.A.1/2020 which has been filed by the legal representatives of respondent No.2 seeking dismissal of the writ appeal.

2. Sri Manmohan P.N., learned counsel for the legal representatives of respondent No.2 submitted that this appeal has been filed by the Karnataka Housing Board (hereinafter referred to as 'Housing Board' for the sake of convenience) assailing the order of the learned Single Judge dated 29.05.2012 passed in W.P.No.25184/2011. By the said order, learned Single Judge upheld his earlier order of the same date passed in W.P.No.9593/2007 and connected matters and quashed the acquisition notifications and allowed the writ petitions. Being aggrieved by the same, the Housing Board has preferred this appeal.

3. Briefly stated, the facts are that the appellant – Housing Board which is a statutory body established

under the provisions of the Karnataka Housing Board Act, 1962 (hereinafter referred to as 'the Act', for the sake brevity) had issued notification bearing No.KHB/LAq.1/2007-08 dated 18.04.2007 by exercising power under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "LA Act", for the sake of brevity). The said notification was published in the Official Gazette on 12.07.2007 and thereafter, in two daily newspapers on 18.08.2007 and local offices during the period from 13.08.2007 to 24.08.2007. The said notification was with regard to acquisition of an extent of 56 acres 37 guntas of land situated at Kowdenahalli Village, K.R.Puram Hobli, Bengaluru East Taluk, Bengaluru (hereinafter referred to as "the subject land or land in question" for the sake of convenience). Respondent No.2, in response to the said notification, filed his objections on 17.09.2007. Thereafter, an enquiry under Section 5A of the LA Act was held and subsequently, the State Government issued the

declaration and notification under Section 6(1) of the LA Act bearing No.RD 30 L.Aq. 2009 dated 26.03.2009. The said declaration and final notification was published in the Official Gazette on 11.06.2009 and in two local newspapers on 12.07.2009. Being aggrieved by the issuance of said acquisition notifications, respondent No.2 filed W.P.No.25184/2011 seeking quashing of the same.

4. By order dated 29.05.2012, learned Single Judge quashed the acquisition proceedings. Being aggrieved, Housing Board has preferred this appeal.

5. Since the application has been filed by the legal representatives of deceased respondent No.2 seeking dismissal of appeal, we have heard Sri Manmohan P.N., learned counsel appearing for legal representatives of respondent No.2, Sri Basavaraj V.Sabarad, learned counsel for the appellant and learned Additional

Government Advocate appearing for the State, on the said application at length.

6. Sri Manmohan P.N., learned counsel appearing for legal representatives of respondent No.2, at the outset, submitted that the main reason as to why the learned Single Judge quashed the acquisition proceedings was on account of the fact that the appellant – Housing Board had not secured sanction for the housing scheme under sub-section (2) of Section 24 of the Act. Therefore, learned Single Judge held that there was no compliance of the conditions mentioned in sub-section (2) of Section 24 of the Act even prior to issuance of the acquisition notifications. Therefore, the very issuance of the notifications was without sanction of the State Government and the issuance of said notifications being for execution of the housing schemes, in the instant case, in the absence of sanction by the State Government, there was violation of conditions stipulated under sub-section (2) of Section 24 of the Act and in that

regard, learned Single Judge placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu & another Vs. A. Mohammed Yousef & Others - AIR 1992 SC 1827*** (Mohammed Yousef) and also considered the judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu & Others Vs. L.Krishnan & Others - AIR 1996 SC 497*** (L.Krishnan) as well as other judgments and has rightly concluded that in the absence of sanction being accorded by the State Government under sub-section (2) of Section 24 of the Act, the Housing Board cannot commence or execute the housing schemes. Therefore, there is no merit in the appeal and it may be dismissed.

7. In furtherance of the aforesaid submissions, learned counsel appearing for legal representatives of respondent No.2 drew our attention to the provisions of the Act and contended that the Act is to provide for measures to be taken to deal with and satisfy the need of housing accommodation. In that regard, Section 2 of

the Act is the definition clause, Section 2(f), (h), (i), (i-1) and (n) define "Competent Authority", "Housing Scheme", "Land", "Land Development Scheme" and "Programme" respectively.

8. Chapter-III of the Act deals with Housing Schemes and Land Development Schemes. Section 17 of the Act deals with duty of Board to undertake housing schemes and land development schemes. Matters to be provided for by housing schemes is dealt with, in Section 18 of the Act. Section 18-A deals with matters to be provided for by Land Development Schemes. Preparation and submission of annual housing programme and land development programme, budget and establishment schedule are as per Section 19 of the Act. Section 20 deals with sanction to programme, budget and establishment schedule, while Section 21 deals with publication of sanctioned programme. Section 22 is with regard to supplementary programme and budget.

Variation of programme by Board after it is sanctioned is dealt with in Section 23. Section 24 of the Act concerns sanctioning of housing schemes and land development schemes to be executed.

9. In that regard, learned counsel appearing for legal representatives of respondent No.2 stated that sub-section (1) of Section 24 deals with sanction of the programme under Sections 20 and 21 and that subject to provisions of Section 23 of the Act, the Housing Board can proceed to execute the housing schemes, land development schemes and labour housing schemes included in the programme. But under sub-section (2) of Section 24, it is provided that unless the housing schemes, land development schemes and labour housing schemes are sanctioned by the State Government, the Board shall not execute any such schemes.

10. He contended that what is sanctioned under sub-section (1) of Section 24 of the Act is the programme as

defined in Section 2(n) which means the annual housing programme and land development programme prepared by the Board under Section 19 of the Act. What is required to be sanctioned under sub-section (2) of Section 24 is a particular housing scheme, land development scheme and labour housing scheme. In that context, what was sought to be contended was that the programme prepared by the Housing Board may contain several schemes, but when it comes to execution of a particular housing scheme, land development scheme and labour housing scheme, there must be an express sanction to that particular scheme and until and unless the same has been sanctioned by the State Government, the Board cannot execute the scheme. In this context, learned counsel appearing for legal representatives of respondent No.2 drew our attention to Section 32 of the Act which deals with the schemes entrusted to the Board by the Government, wherein it has been categorically stated that where any housing

scheme, land development scheme or a labour housing scheme is entrusted to the Board by the State Government, then Sections 18 to 24 (both inclusive) shall not be applicable. But under sub-section (2) of Section 24, where the scheme is prepared by the Housing Board by contrast, an express sanction by the State Government is required under the provisions of sub-section (2) of Section 24 as the provisions of Sections 18 to 24 (both inclusive) are applicable.

11. Learned counsel further referred to sub-section (2) of Section 33 of the Act which deals with acquisition and disposal of land in Chapter IV of the Act and contended that the learned Single Judge was justified in placing reliance on the judgment of the Hon'ble Supreme Court in *Mohammed Yousef* and allowing the writ petition and there is no merit in this appeal.

12. Referring to the judgment of the Hon'ble Supreme Court, learned counsel appearing for legal

representatives of respondent No.2 contended that in *Mohammed Yousef* (supra), the Hon'ble Supreme Court categorically held that when the acquisition is included in the scheme, the process of execution of the scheme starts immediately when steps for acquisition are taken. Therein, it has been held that if the notification under Section 4 of the LA Act (or for that matter, any other Acquisition Act) is published without waiting for sanction of the scheme, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all and therefore, does not serve any public purpose or that another piece of land in the area concerned is far more suitable, leading to the possible conclusion that the proposed acquisition is malafide. He also drew our attention to the subsequent judgment of the Hon'ble Supreme Court in *L.Krishnan's* case to contend that in the said judgment, the Bench of three Hon'ble Judges had taken into consideration the amendment made to

the Tamil Nadu Housing Board Act ("Tamil Nadu Act" for short) by Amendment Act 5 of 1992 so as to insert sub-section (2) of Section 17 therein in order to get over the basis of the judgment in *Mohammed Yousef*. That by virtue of the amendment made to Tamil Nadu Act, non-obstante clause was inserted and it was expressly stated that proceedings for acquisition of land may be taken for acquiring any land or any interest therein even before framing any housing or improvement scheme. But such a provision does not find a place under the Karnataka Act and therefore, the judgment of the Hon'ble Supreme Court in the case of *Mohammed Yousef* (supra) would still apply insofar as Karnataka Act is concerned.

13. Sri Manmohan P.N., learned counsel for legal representatives of respondent No.2 further submitted that acquisition of land in question in the instant case is for a housing scheme and in the absence of there being any sanction to the said scheme as per sub-section (2) of Section 24 of the Act, acquisition of land is not in

accordance with the Act. That in the absence there being any express sanction issued by the State Government, learned Single Judge was justified in quashing the acquisition proceedings. Therefore, learned counsel submitted that there is no merit in the appeal and the same may be dismissed.

14. *Per contra*, Sri Basavaraj V.Sabarad, learned counsel appearing for the appellant contended that the impugned judgment is contrary to the judgment of the Hon'ble Supreme Court in the case of *L.Krishnan* (supra) and further the Division Bench of this Court in the case of ***Sri M.Nagaraju & Another Vs. Government of Karnataka, Revenue Department, represented by its Secretary & Others - ILR 2013 KAR 2369*** (*M.Nagaraju*), which has interpreted the provisions of the Act which is in line with the judgment of the Hon'ble Supreme Court in the case of *L.Krishnan* (supra). He contended that the Division Bench of this Court, on examining the relevant provisions of the Act, has rightly

held that it is not necessary for the State Government to give sanction to any housing scheme or land development scheme prior to issuance of acquisition notifications. In that regard, learned counsel for the appellant contended that the Division Bench has rightly held that no prior permission is required under Section 24 of the Act in order to identify or to acquire the land, it is only before actual execution of the housing scheme or land development scheme that sanction would have to be obtained under Section 24 of the Act. Therefore, the said judgment of the Division Bench is binding and would be applicable in the instant case. Consequently, the impugned judgment may be set aside by allowing the appeal.

15. Learned counsel for the appellant also submitted that the scheme of the Tamil Nadu Act is quite distinct from the Karnataka Act and therefore, it is not necessary to rely upon the Tamil Nadu Act while considering Section 24 of the Act in question.

16. Learned Additional Government Advocate appearing for the State submitted that the judgment of the learned Single Judge is just and proper and would not call for any interference in this appeal as sub-section (2) of Section 24 of the Act is categorical as it has used the expression “unless the same has been sanctioned by the State Government” which means that the Board cannot execute any housing scheme unless the housing scheme has been sanctioned by the State Government. He submitted that the State Government must be aware of the particular housing scheme that is sought to be executed by the Housing Board as it has to make arrangements for payment of compensation to the land owners when their lands are acquired for the purpose of execution of housing scheme and hence, right at the beginning of the acquisition process, the sanction of the State Government must be in place. Learned Additional Government Advocate therefore submitted that there is no merit in the appeal.

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

- i) Whether the order of the learned Single Judge would call for any interference in this appeal?
- ii) What order?

18. The detailed narration of facts and contentions would not call for reiteration, except highlighting the fact that in the instant case, the appellant – Housing Board issued preliminary notification under Section 4(1) of the LA Act on 18.04.2007 intending to acquire inter alia the subject land or the land in question for the purpose of a housing scheme. A perusal of the impugned notification issued under Section 4(1) of the LA Act would clearly indicate that the purpose of acquisition was for execution of a housing scheme. Thereafter, the declaration and

final notification under Section 6(1) of the LA Act was issued on 26.03.2009 by the State Government.

19. It is an admitted fact that there was no sanction of the State Government under sub-section (2) of Section 24 of the Act when the preliminary and final notifications under Sections 4(1) and 6(1) of the LA Act were issued by the Housing Board. Admittedly, no award has been passed in respect of land in question and possession has also not been taken. Subsequently, it appears a resolution was passed by the Housing Board on 10.01.2017 to go ahead with the housing scheme and thereafter, on 29.01.2018, it was resolved to review the earlier notification.

20. Before proceeding to answer the points for consideration, the pertinent point that would arise for consideration in this appeal is, whether sanction under the provisions of sub-section (2) of Section 24 of the Act for execution of a housing scheme, land development

scheme or labour housing scheme is a mandatory requirement or not has to be answered. Before venturing to answer the said point, it would be useful to deal with the scheme of the Act.

21. As already noted, the Act was passed by the State Legislature to provide measures to be taken to deal with and satisfy the scheme of housing accommodation.

22. Section 2 of the Act is the definition clause. The relevant definitions are extracted as under:

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

(a) "**Board**" means the Housing Board constituted under Section 3;

x x x

(f) "**Competent Authority**" means any person authorized by the State Government, by notification to perform the functions of the Competent Authority under Chapter VI for such area as may be specified in the notification;

x x x

- (h) **“housing scheme”** means a housing scheme under this Act;
 - (i) **“Land”** includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
 - (i-1) **“Land Development Scheme”** means a scheme framed under this Act for the purpose of providing house sites in any Area;
- x x x
- (n) **“Programme”** means the annual housing programme and land development programme prepared by the Board under Section 19;”

23. Chapter III of the Act deals with Housing Schemes and Land Development Schemes. Sections 17 to 32-A are found in Chapter-III. The relevant sections for the purpose of this case are Sections 17, 18, 18-A, 19, 20, 21, 22, 23, 24 and 32, which are extracted as under:

“17. Duty of Board to undertake housing schemes and land development schemes.- Subject to the provisions of this

Act and subject to the control of the state Government, the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes and land development schemes as it may consider necessary from time to time, or as may be entrusted to it by the State Government.

18. Matter to be provided for by housing schemes.- Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely.-

- (a) the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme;
- (b) the laying or relaying out of any land comprised in the scheme;
- (c) the distribution or redistribution of sites belonging to owners of property comprised in the scheme;
- (d) the closure or demolition of dwellings unfit for human habitation;
- (e) the demolition of obstructive buildings or portions of buildings;

- (f) the construction and reconstruction of buildings, their maintenance and preservation;
- (g) the sale, letting or exchange of any property comprised in the scheme;
- (h) the construction and alteration of streets and back lanes;
- (i) provision for the draining, water-supply and lighting of the area included in the scheme and carrying out by the Board in such area, drainage, sewerage and water supply works;
- (j) the provision of parks, playing-fields and open spaces for the benefit of any area comprised in the scheme and the enlargement of existing parks, playing fields, open spaces and approaches;
- (k) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water-supply;
- (l) the provision of accommodation for any class of inhabitants;
- (m) the advance of money for the purposes of the scheme;

- (n) the provision of facilities for communication and transport;
- (o) the collection of such information and statistics as may be necessary for the purposes of this Act;
- (p) any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to provide housing accommodation and to the improvement or development of any area comprised in the scheme or the general efficiency of the scheme.

**18-A Matters to be provided for by
Land Development Schemes.-**

Notwithstanding anything contained in any other law for the time being in force, a land development scheme may within the limits of the area comprised in the scheme, provide for all or any of the following matters, namely:—

- (a) the acquisition by purchase, exchange or otherwise, of any land which in the opinion of the Board will be necessary for or affected by the execution of scheme;
- (b) laying or re-laying of all or any land comprised in the scheme and formation and alteration of streets;

- (c) drainage, water supply and electricity and carrying out by the Board in the area included in the scheme, drainage sewerage and water supply works;
- (d) the distribution or redistribution of sites comprised in the scheme;
- (e) raising the level of any land which the Board may consider expedient to raise to facilitate better drainage;
- (f) forming open space for the better ventilation of the area comprised in the scheme or any adjoining area;
- (g) sanitary arrangements required;
- (h) sites for Parks, Playgrounds, Stadium, recreation grounds, School buildings, Markets, Motor Vehicle Stands, Theatres, Police Stations, Post Offices, Co-operative Societies, Public Urinals and Latrines, Petrol Service Stations, Hospitals, Dispensaries, Banks, Burial and Cremation Grounds and Sites for public purposes of other kinds.]

19. Preparation and submission of annual housing programme and land development programme budget and establishment schedule.—(1) Before the

first day of December in each year, the Board shall prepare and forward,—

- (i) a programme,
- (ii) a budget for the next year,
- (iii) a schedule of the staff of Officers and servants already employed and to be employed during the next year;

to the State Government in such form as may be prescribed.

(2) The programme shall contain.—

- (a) such particulars of housing schemes, land development schemes and labour housing schemes which the Board proposes to execute whether in part or whole during the next year as may be prescribed;
- (b) the particulars of any undertaking which the Board proposes to organise or execute during the next year for the purpose of the production of building materials; and
- (c) such other particulars as may be prescribed.

(3) The budget shall contain a statement showing the estimated receipts and

expenditure on capital and revenue accounts for the next year.

20. Sanction to programme, budget and establishment schedule.—The State Government may sanction the programme, the budget and the schedule of the staff of Officers and servants forwarded to it with such modifications as it deems fit.

21. Publication of sanctioned programme.—The State Government shall publish the programme sanctioned by it under section 20 in the official Gazette.

22. Supplementary programme and budget.—The Board may, at any time, during the year, in respect of which a programme has been sanctioned under section 20 submit a supplementary programme and budget and the additional schedule of the staff, if any, to the State Government and the provisions of sections 20 and 21 shall apply to such supplementary programme.

23. Variation of programme by Board after it is sanctioned.—The Board may, at any time, vary any programme or any part

thereof included in the programme sanctioned by the State Government:

Provided that no such variation shall be made if it involves an expenditure in excess of twenty per cent of the amount as originally sanctioned for the execution of any housing scheme or land development scheme included in such programme or affects its scope or purpose.

24. Sanctioned housing schemes and land development schemes to be executed.—(1) After the programme has been sanctioned and published by the State Government under sections 20 and 21, the Board shall, subject to the provisions of Section 23, proceed to execute the housing scheme, land development scheme or labour housing scheme included in the programme.

(2) The Board shall not execute any housing scheme, land development scheme or labour housing scheme unless the same has been sanctioned by the State Government.

x x x

32. Schemes entrusted to Board by Government, etc.—(1) The provisions of sections 18 to 24 (both inclusive) shall not be applicable to any housing scheme, land development scheme or labour housing scheme entrusted to the Board by the State Government except to such extent and subject to such modifications as may be specified in any general or special order made by the State Government, and every such order shall be published in the Official Gazette.

(2) Notwithstanding anything contained in this Act, the Board shall not be competent to carry on any trading or financing activity for profit, whether in the execution of any scheme undertaken by, or entrusted to it, or otherwise.”

24. Chapter-IV of the Act deals with acquisition and disposal of land. Section 33 of the Act reads as under:

“33. Power to purchase or lease by agreement.- (1) The Board may enter into an agreement with any person for the acquisition from him by purchase, lease or exchange, or any land which is needed for

the purposes of a housing scheme or land development scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith:

Provided that the previous approval of the State Government shall be obtained in case of purchase or exchange involving land worth more than rupees ten lakhs or lease for more than five years.

(2) The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme or land development scheme in the manner provided in the Land Acquisition Act, 1894, as modified by this Act and the acquisition of any land or any interest therein for the purposes of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894."

25. A cumulative reading of the aforesaid provisions would indicate that it is the duty of the Housing Board to undertake housing schemes and land development

schemes as it may consider necessary from time to time and as may be entrusted to it by the State Government. What has to be provided for in a housing scheme is stated in Sections 18 and 18-A of the Act which would include, *inter alia*, the acquisition of property by purchase, exchange or otherwise i.e., by way of acquisition of any property necessary for or affected by the execution of the scheme. Under Section 19 of the Act before the first day of December in each year, the Board has to prepare and forward, *inter alia*, a programme and a budget for the next year and the programme shall contain the particulars of the housing schemes, land developments schemes and labour housing schemes which the Board proposes to execute whether in part or whole during the next year as may be prescribed and such other particulars as may be prescribed. The State Government may sanction the programme, the budget and the schedule of the staff of officers and servants forwarded to it with such

modifications as it deems fit. The State Government has to then publish the programmes sanctioned by it under Section 20 in the Official Gazette. A supplementary programme and budget may also be sought by the Board and the State Government may sanction such a supplementary programme. The Board can vary any programme or any part of it, even after the sanction made by the State Government, provided that no such variation shall be made if it involves an expenditure in excess of 20% of the amount as originally sanctioned for execution of any housing scheme or land development scheme included in such programme or affects its scope or purpose.

26. After the programme has been sanctioned and published by the State Government under Sections 20 and 21, the Board, subject to any variation to be made under Section 23 of the Act can proceed to execute the housing schemes, land development schemes or labour housing schemes included in the programme. This is as

per sub-section (1) of Section 24. Therefore, this sub-section states that the Board can proceed to execute the scheme included in the programme after it has been sanctioned and published by the State Government. But sub-section (2) of Section 24 of the Act assumes significance, inasmuch as it states that the Board shall not execute any housing scheme, land development scheme or labour housing scheme, unless the same has been sanctioned by the State Government.

27. Sub-section (2) to Section 24 was inserted by Act No.10 of 1974 and is deemed to have come into force on 03.11.1973. What is the object and purpose of insertion of sub-section (2) to Section 24 of the Act has to be unraveled. It is noted that the Act is of the year 1962 and it came into effect from the day it was notified in the Official Gazette on 27.01.1965, but with effect from 03.11.1973, sub-section (2) of Section 24 has been inserted, which creates an embargo on the Board to execute any housing scheme, land development scheme

and labour housing scheme, unless the same has been sanctioned by the State Government.

28. In this regard, it is necessary to emphasize the expressions 'the Board shall not execute' and 'unless the same has been sanctioned by the State Government' which mean that no housing scheme, land development scheme and labour housing scheme can be executed, unless it has received the sanction of the State Government. The object and purpose of insertion of sub-section (2) to Section 24 are not for to seek, the same being to ensure that the State Government is made aware of which one of the housing schemes, land development schemes or labour housing schemes, included in the programme, which has been sanctioned under Section 20 of the Act would be executed and further, where such a scheme involves acquisition of land, the State Government is appraised of the said fact also, as it has to make available the budget for the purpose of paying compensation to the land owners,

where the land is sought to be acquired for execution of the housing schemes, land development schemes or labour housing schemes.

29. This aspect becomes clearer when sub-section (2) of Section 24 of the Act is juxtaposed with Section 32 of the Act. The latter Section states that the provisions of Sections 18 to 24 (both inclusive) shall not be applicable to any housing schemes, land development schemes or labour housing schemes entrusted to the Board by the State. This is because such a scheme would emanate from the State Government and it being aware that such a scheme would entail acquisition of land, it is not necessary for the very State Government to once again sanction such a scheme, which in the first place has emanated from the State Government itself. On the other hand, when such a scheme is initiated from the Housing Board, it is necessary that not only Sections 18 to 23, but also Section 24 is complied with.

30. The reason being, the Board, which intends to execute a scheme must keep the State Government informed about the programme to execute such a scheme in terms of Sections 18 to 23 and further under Section 24 of the Act. On such programme being sanctioned by the State Government, it is necessary that the State Government also sanctions a particular housing scheme, land development scheme or labour housing scheme. The reason as already noted being that there may be several schemes incorporated in the programme submitted to the State Government by the Housing Board under Section 19(1)(i) of the Act containing particulars as per sub-Section (2) of Section 19 of the Act. Even on the sanction of such a programme and it is published in terms of Section 20 of the Act by the State Government, it is just and necessary that there is application of mind to a particular housing scheme, land development scheme or labour housing scheme intended to be executed by the Board. This is because though

several schemes may be incorporated in the programme submitted before the first day of December in each year by the Board to the State Government, it is left to the Board to execute a particular housing scheme.

31. The decision of the Board to execute a particular housing scheme, land development scheme or labour housing scheme must therefore be brought to the knowledge of the State Government particularly when it entails acquisition of land. This is because the State Government has to make budgetary allocation and find source of funds to pay compensation to the land losers, if the Housing Board intends to execute any such scheme on the land belonging to private land owners. Therefore, the use of the words "shall not execute" and the words "unless the same has been sanctioned by the State Government" have been intentionally used by the State Legislature so as to make it a mandatory requirement.

32. Then, the next question that would arise is, when does the Board commence execution of any scheme, particularly when it entails acquisition of land. There is no explanation to the expression "proceed to execute the housing scheme, land development scheme or labour housing scheme" in Section 24 of the Act, but the absence of any explanation would not cause much difficulty as the Hon'ble Supreme Court in the case of *Mohammed Yousef* considered the pertinent question, as to, when the process of execution of a housing scheme would commence, when acquisition of land is necessary. In the said judgment, question for decision was, whether, the acquisition proceeding can be initiated only after commencement of the proposed scheme and not earlier. In the said judgment, the Hon'ble Supreme Court was considering the provisions of Tamil Nadu Housing Board Act, 1961 and it held that where acquisition is included in the scheme, the process of execution of the scheme starts immediately when steps

for acquisition are taken. In that context, it was observed that if the notification under Section 4 of the LA Act is published without waiting for the sanction of the scheme, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all or would not serve any public purpose or another piece of land in that area is far more suitable and that the acquisition of land which is not suitable may bristle with *mala fide*. The aforesaid judgment is relied upon by the learned counsel appearing for the legal representatives of respondent No.2.

33. On the other hand, learned counsel for the appellant placed reliance on another judgment of the Hon'ble Supreme Court in *L.Krishnan* to contend that the judgment in *Mohammed Yousef* has been rendered *per incuriam*. In that regard, detailed reference was made to several judgments in *L.Krishnan's* case.

34. In *L.Krishnan*, there was a challenge to the acquisition notifications, which were issued for the purpose of acquiring land for a housing project under the provisions of the Tamil Nadu Act and LA Act for the purpose of execution of a scheme under the Tamil Nadu Act. The Hon'ble Supreme Court, after considering in detail the scheme of the Tamil Nadu Act referred to Sections 35 and 36 of the said Act and held that the said sections were not brought to the notice of the Bench which passed a judgment in *Mohammed Yousef*. In that regard, it was observed that subsequent to the judgment of the Hon'ble Supreme Court in *Mohammed Yousef*, the Tamil Nadu Legislature amended the Tamil Nadu Act with retrospective effect with a view to remove the basis of the said judgment and to provide that sanction of the scheme framed by the Housing Board is not a pre-condition for acquiring land for the purpose of Board. The validity of the said amendment had not been questioned. Therefore, it was held that merely because the Tamil

Nadu Act contemplated acquisition of land as part of housing or improvement scheme, it did not follow that no land needed for the purpose of housing scheme could be acquired until and unless a scheme was prepared and finalized by the Board and became effective under the provisions contained in Chapter VII of the said Tamil Nadu Act. In that regard, the Hon'ble Supreme Court also considered the provisions of the Delhi Development Act and ultimately observed that the reasoning in *Mohammed Yousef* to the effect that no land could be acquired for the purpose of scheme by the Board unless a final and effective scheme was framed by the Housing Board was not correct and that the said limitation would apply only where the land was sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter VII of the Tamil Nadu Act. In other words, unless notification under Section 4 of the LA Act expressly stated that land proposed to be acquired was

required to execute a housing or improvement scheme that is a final and effective scheme framed by the Housing Board under the provisions of the Tamil Nadu Act, the principle and ratio laid down in *Mohammed Yousef* was not attracted.

35. In *L.Krishnan*, the Hon'ble Supreme Court also noted the amendment brought about to Section 70 of the Tamil Nadu Act by insertion of sub-section (2) of Section 70 subsequent to the judgment in *Mohammed Yousef*, which has been extracted in the judgment itself and it reads as under:

“Notwithstanding anything contained in this Act, proceedings under the Land Acquisition act,1894 (Central Act 1 of 1894) may be taken for acquiring any land or any interest therein under sub-section(1) even before framing any housing or improvement scheme.”

36. It is on the basis of the said amendment made to Tamil Nadu Act with a non-obstante clause that the

Hon'ble Supreme Court held that even in respect of housing scheme under Chapter – VII of the said Act, it was not necessary that there has to be prior sanction by the State Government before commencement of acquisition proceedings.

37. But such is not the position insofar as the Act under consideration (Karnataka Act). In fact, by contrast, the State Legislature has inserted sub-section (2) of Section 24 of the Act with effect from 03.11.1973 to expressly state that the Board shall not execute any housing scheme, land development scheme or labour housing scheme unless the same has been sanctioned by the State Government. Therefore, the judgment in *L.Krishnan* proceeds on the basis of an amendment made to Section 70 of the Tamil Nadu Act by insertion of sub-section (2) to Section 70 to the said Act, which is totally contrary to what sub-section (2) of Section 24 of the Karnataka Act states. Therefore, the amendment made to Tamil Nadu Act subsequent to the judgment in

Mohammed Yousef's case gives rise to a clear distinction under the Tamil Nadu Act and the judgment in *L.Krishnan*, which has taken cognizance of the said amendment cannot be made applicable to the Act under consideration, where the provision under Section 24 is worded differently.

38. Subsequently, in ***Jaipur Development Authority vs. Sita Ram and others [AIR 1997 SC 1104]*** (*Jaipur Development Authority*), Section 39 of the Rajasthan Development Authority Act was considered. In that case, a Notification under Section 52 of the Rajasthan Urban Improvement Act, 1959 was published on 8.10.1979. Thereafter, the Jaipur Development Authority took a decision to continue the acquisition under repealing Act and a fresh Notification was issued on 20.04.1984, but the same was challenged. In that case, a Division Bench of the High Court of Rajasthan held that unless the scheme under the Jaipur Development Authority had been properly framed,

Notification issued was not valid in law. It was further contended that without framing of a scheme, land could not be acquired under Section 52 of the Rajasthan Urban Improvement Act and the same was accepted by placing reliance on *Mohammed Yousef*. In the said case, Hon'ble Supreme Court held, *Mohammed Yousef* had been overruled by a later decision in *L.Krishnan*, which we have discussed above. Therefore, it was held that framing of a scheme is not a condition precedent for acquisition of land and Notification of acquisition cannot be quashed on that ground.

The aforesaid judgment could be distinguished owing to the following reasons:- Firstly, the judgment in *Mohammed Yousef* has not been followed in *L.Krishnan*, on account of the amendment made to the Tamil Nadu Housing Board Act, which removed the basis of the judgment in *Mohammed Yousef*. Therefore, on account of the Amendment made which is extracted above, it was held that *Mohammed Yousef* was not good law. But

in the instant case, there is no Amendment made to the Act as in the Tamil Nadu Housing Board Act.

Secondly, sub-section (2) of Section 24 has been inserted with effect from 3.11.1973. The words of the said provision will have to be given their due meaning and cannot be ignored as a surplusage. Thirdly, the judgment of Jaipur Development Authority is under the provisions of Jaipur Development Authority Act, 1982 and Rajasthan Urban Improvement Act, 1959 and the object and scheme of the aforesaid Acts are distinct as compared to the scheme of the Karnataka Act under consideration.

39. In *Prathap vs. State of Rajasthan [AIR 1996 SC 1296]*, Section 52 of the Rajasthan Urban Improvement Act, 1959 was considered and it was held that even if there is no scheme prepared or finalized under a Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act, for a public purpose or for the

purpose of improvement or for any other purposes under the Act. This is when the State *suo motu* initiates acquisition of land for a housing project/scheme akin to Section 32 of the Act.

40. Also, in ***Gandhi Grah Nirman Sahkari Samiti Ltd., vs. State of Rajasthan [AIR 1994 SC 2329]***, it was observed that the expressions “where it appears to the State Government” in Section 52(1) of the Rajasthan Urban Improvement Act, 1959, clearly indicated that it was not necessary for the State Government to frame a detailed scheme or development plan before exercising powers of acquisition under the said provision. It is sufficient if a decision in that respect is taken and the detailed scheme is left to be worked out at the stage of execution of the plan. This is also akin to Section 32 of the Act under consideration. Hence, the aforesaid judgment is not applicable to the instant case, as herein, it is not the State which has initiated the acquisition

proceeding but the Karnataka Housing Board by issuance of Notification under Section 4(1) of the LA Act, 1984.

41. Under the Act, in sub-section (2) of Section 24, the expression "the Board shall not execute any housing scheme, land development scheme or labour housing scheme unless the same has been sanctioned by the State Government" must be given its proper meaning. The expression "unless" in the Law Lexicon by P.Ramanatha Aiyar, 2nd Edition Reprint 2008, means, "promising to do or not to do a thing with a reservation or option about the happening of an event for doing or not doing the thing". Therefore, it is to be viewed as a limitation or a restriction. In this context, reference could be made to the use of the expression "unless otherwise agreed" in Section 26 of the Sale of Goods Act, 1930, which means that the section is subject to the contract to the contrary (***State of Orissa vs. Titaghur Paper Mills - (1985) SC 1293***). Similarly, the expression "unless the contrary is proved" in sub-section

(1) of Section 4 of the Prevention of Corruption Act, 1947 would mean that the presumption raised by Section 4 has to be rebutted by proof and not by mere explanation which may be merely plausible (***State of Assam vs. Krishna Rao - AIR 1973 SC 28***). Therefore, we reiterate the object and purpose of subsection (2) of Section 24 of the Act is the requirement of a prior sanction before execution of a housing scheme, land development scheme or labour housing scheme is mandatory as the State Government must be aware of a particular scheme that the Board intends to execute, as the initiation of the housing scheme is by the Board itself. In that regard, if acquisition of land is entailed, then the initiation of acquisition process would also be by the Board by issuance of notification under Section 4(1) of the LA act. Therefore, in that context, the State Government must be aware of the expenditure that it would have to incur when acquisition of land is to be

made for execution of any particular scheme as it has to make budgetary allocation for payment of compensation.

42. In this context, it is necessary to refer to the judgment of a co-ordinate Bench of this Court in the case *M.Nagaraju* (supra) on which heavy reliance was placed by Sri Basavaraj Sabarad, learned counsel appearing for the appellant/Housing Board. The said judgment also notices the provisions of the Act including Section 24 of the Act. The Division Bench has further observed that only after strict compliance of Sections 18 to 23, before “actual” execution of the housing schemes or land development schemes, question of obtaining of sanction under Section 24 would arise. The observations made in paragraph 15 of the said judgment in *M.Nagaraju* being contrary to the judgment of the Hon’ble Supreme Court in *Mohammed Yousef* cannot be a precedent, in view of the aforesaid discussion made by us. It is relevant to observe that in *M.Nagaraju*, there was no reference to the judgments of the Hon’ble Supreme Court namely

Mohammed Yousef or L.Krishnan, discussed above and there is also no reference to Sections 31, 32 and 33 of the Act in the said judgment.

43. On the other hand, we approve the judgment of a learned Single Judge of this Court in the case of ***Chickrangaiah Vs. State of Karnataka - 1996 (7) Kar.L.J. 846*** has observed with reference to Section 33(2) of the Act that the said provision authorizes the Board to take steps for compulsory acquisition of any land which is required for the execution of the housing scheme and the scheme can be executed after the same is sanctioned by the Government under sub-section (2) of Section 24 of the Act.

44. The contention that the scheme had to be framed and sanctioned only after acquisition of land was rejected in the aforesaid judgment. Reliance was also placed on the judgment of the Hon'ble Supreme Court in *Mohammed Yousef* unlike in the judgment of the Division Bench in *M.Nagaraju*.

45. In the circumstances, we are of the view that the sanction of a scheme by the State Government under

sub-section (2) of Section 24 of the Act is a condition precedent and a mandatory requirement before the Housing Board would execute any housing scheme, land development scheme or labour housing scheme. This is irrespective of whether any housing scheme would entail acquisition of land or not as opposed to a scheme entrusted by the Board under Section 32 of the Act.

46. In view of the aforesaid discussion, we find that the judgment of the learned Single Judge is just and proper and it would not call for any interference in this appeal. Hence, I.A.1/2020 filed by the legal representatives of respondent No.2 is allowed.

Appeal being devoid of merit is dismissed.

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**