Karnataka High Court John B. James And Others vs Bangalore Development Authority ... on 7 August, 2000 Equivalent citations: ILR 2000 KAR 4134, 2001 (1) KarLJ 364 Bench: R Raveendran, V Sabhahit ORDER These petitions involving common questions of facts and law are heard together by consent and disposed of by this common order. For convenience, the following abbreviations are used in this order: 'BDA' for Bangalore Development Authority; 'BDA Act' for the Bangalore Development Authority Act, 1976; 'Amendment Act' for the Bangalore Development Authority (Amendment) Act, 1999 (Karnataka Act 1 of 2000); and 'Repealing Ordinance' for the Bangalore Development Authority (Amendment) (Repealing) Ordinance, 2000 (Karnataka Ordinance No. 4 of 2000); 'KMC Act' for Karnataka Municipal Corporations Act, 1976; 'Planning Act' for Karnataka Town and Country Planning Act, 1961; 'Public Premises Act' for Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974; and 'Regularisation Act' for Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991. 1.1 These petitions have been heard with several other batches relating to other layouts of BDA, the common factor being the relief sought, based on Section 38-C(2) of the BDA Act, which was inserted by Karnataka Act 1 of 2000. For convenience, the main order is made in these cases and separate orders will be made in other cases, following this decision. In view of it, several aspects which may not arise directly in these three batches are also considered and decided in this order. 2. Petitioners in these petitions claim that they are owners of sites in a private layout known as Eranna Layout, formed in Sy. No. 73 of Banaswadi-Channasandra Village, K.R. Puram Hobli, Bangalore South Taluk. Petitioners in seventy petitions, i.e., Writ Petition Nos. 11779, 11785, 11786, 11790, 11793 to 11795, 11797 and 11798, 11800 to 11822 of 2000 (in Writ Petition Nos. 11779 to 11822 of 2000) and petitioners in Writ Petition Nos. 20548 to 20557, 20559 to 20562, 20564 to 20567. 20569 to 20573, 20575 and 20576, 20578 to 20590 of 2000 (in Writ Petition Nos. 20547 to 20591 of 2000), state that they own vacant sites in the said survey number. The petitioners in twenty petitions, i.e., Writ Petition Nos. 11055 to 11059 of 2000, petitioners in Writ Petition Nos. 11780 to 11784, 11787 to 11789, 11791, 11792 and 11799 of 2000 (in Writ Petition Nos. 11779 to 11822 of 2000) and petitioners in Writ Petition Nos. 20558, 20568, 20574 and 20577 of 2000 (in Writ Petition Nos. 20547 to 20591 of 2000) have stated that they have put up structures in their sites. The petitioner in Writ Petition No. 20547 of 2000 claims that there is only a compound wait but no building in this site. Petitioners in three petitions, i.e., Writ Petition Nos. 11796, 20563 and 20591 of 2000 have stated that there is existing foundation, but no building, in their sites. 3. Petitioners in Writ Petition Nos. 11055 to 11059 of 2000 claim to be the holders of site Nos. 4, 1, 75, 76 and 53 respectively of Eranna Layout formed in Sy. No. 73. Each site, according to them measures 30' x 40'. 3.1 Petitioners in Writ Petition Nos. 11779 to 11822 of 2000 claim to be the owners of site Nos. 65 and 66 (45' x 40'), 39, 38, 91, 81, 37, 21, 83, 15, 43 and 45 (measuring 40' x 60'), 79, 35, 61, 12, 56, 58, 33, 96 and 97 (measuring 49' x 54'), 98 (30' x 54'), 27, 89, 31, 29 and 30 (40' x 63'), 70, 71, 10 and 11 (40' x 60'), 63, 20, 67 and part of 66 (45' x 40'), 72, 64 and 73-A (45' x 40'), 50, 51, 34 (15' x 40'), 73-B

(15' x 40'), 12-A (15' x 32'), 3, 32, 55, 54, 68, 77 (59' x 60'), 6 and 7 respectively of Eranna Layout formed in Sy. No. 73. The measurements of each site is 30' x 40' except those whose measurements are given in brackets. 3.2 Petitioners in Writ Petition Nos. 20547 to 20591 of 2000 claim to be the owners of site Nos. 25, 92 (46' x 46'), 101 and 102 (35' x 47'), 34-B (40' x 15'), 93-B (44' x 15'), 22-A (40' x 15'), 52 (20' x 30'), 69, 103 (22' x 33'), 82, 93-A (44' x 15'), 88, 5 (35' x 30'), 26, 19, 60 (20' x 41'), 99 (30' x 49'), 107 (20' x 40'), 22-B (40' x 15'), 87, 74, 62, 2, 23, 86, 28, 24, 9, 41, 78, 59, 13, 14, 17, 42, 44, 45, 46, 47, 48, 49, 36, 95 (30' x 52'), 57 and 8 respectively of Eranna Layout formed in Sy. No. 73. The measurements of each site is 30' x 40' except those whose measurements are given in brackets. 4. Petitioners in Writ Petition Nos. 11055 to 11059, 11779 to 11792 and 20568 of 2000 state that they are residing in their respective properties. None of the other petitioners claim to be in actual possession of their respective sites claimed by them. Some of the petitioners claim to be owners of sites claimed by them, as legal heirs of original owner. Some claim that they have purchased the sites under registered sale deeds from either the original owner or his successors-in-title. Most of them claim that they are in possession of the sites in pursuance of general powers of attorney executed in their favour by the original owner or his successors-in-title. 4.1 The petitioners in Writ Petition Nos. 11055 to 11059 of 2000 claim that they were put in possession under General Powers of Attorney dated 6-10-1986, 6-10-1986, 21-11-1986, 6-10-1986 and 31-12-1986 and the structures in their sites were constructed in the year 1986. 4.2 The petitioners in Writ Petition Nos. 11786 to 11789 of 2000 claim to be the members of the family of original owner who have continued in possession. Petitioners in Writ Petition Nos. 11796, 11806, 11809 to 11811 of 2000 claim to be owners under sale deeds dated 5-7-1991, 27-3-1995, 26-11-1994, 24-11-1994 and 24-11-1994 (following earlier GPAs). The petitioners in Writ Petition Nos. 11779 to 11785, 11790 to 11795, 1J797 to 11805, 11807, 11808, 11812 to 11822 of 2000 claim that they are in possession in pursuance of powers of attorney executed in their favour between 1986 to 1993. 4.3 The petitioners in Writ Petition Nos. 20578 to 20587 of 2000 claim to be the legal heirs of the deceased original owner. Petitioners in Writ Petition Nos. 20547 to 20577 and 20588 to 20591 of 2000 claim to be in possession in pursuance of GPAs executed in their favour between 1986 and 1992. 5. Sy. No. 73 of Banaswadi-Channasandra Village, measuring 4 acres 13 guntas, along with other lands situated in the said villages as also Banaswadi and Benniganahalli Villages, were acquired for the purpose of formation of East of NGEF Layout, now known as Kasturi Nagar, by Bangalore Development Authority, under preliminary notification dated 28-5-1984, and final notification dated 23-10-1986, issued under the BDA Act. The award in regard to the land was passed on 13-4-1987. 6. According to petitioners, Eranna and his sons, who were the owners of said land, challenged the acquisition proceedings in Writ Petition No. 10570 of 1987 (and connected cases). The said writ petitions were dismissed by a Division Bench of this Court on 19-1-1988. O.S. Nos. 1281 to 1285 of 1988 and O.S. Nos. 1291 to 1295 of 1988, were also filed by some of the petitioners before the City Civil Court, Bangalore, seeking the relief of permanent injunction against BDA. Those suits

were dismissed on 17-2-1993 and the appeals filed in RFA Nos. 159 to 165 of 1993 were also dismissed on 3-6-1993. 7. The petitioners allege that the persons possessing sites in the said Sy. No. 73 gave several representations for deleting the said survey number from acquisition or for denotifying the same, on the ground that said land was not contiguous to other lands, acquired for formation of East of NGEF Layout; that it was an isolated piece of land situated far away from main layout, separated by a railway line and other private properties; that the then Chief Minister and local MLA had recommended to the BDA to denotify the said land; and that pursuance of the said request for denotification and in view of the pendency of the writ petitions and original suits filed by them, no developmental activities (in the nature of formation of roads, drains etc.) were taken up by BDA for several years and the land continued to remain as it was prior to acquisition. Status quo was also maintained in regard to possession of land. 8. When matters stood thus, Bangalore Development Authority Act, 1976 was amended by Bangalore Development Authority (Amendment) Act, 1999 (Karnataka Act 1 of 2000), amending Section 38-C of the Act, by inserting sub-section (2) providing for allotment by way of sale in favour of persons in unauthorised possession of sites, in lands which are acquired by or vested in BDA, subject to the conditions stated therein. Though the said Amendment Act received the assent of the President of India on 28-12-1999 and was published in the Karnataka Gazette, dated 5-1-2000, the said newly inserted Section 38-C(2) was not brought into force. Sub-section (2) of Section 1 of the Amendment Act provided that the provisions thereof shall come into force on such date as the Government may, by notification, appoint. The Government did not, however, issue any notification appointing the date on which the said Section 38-C(2) will come into effect. 9. Petitioners claim that they were legitimately expecting that the said Section 38-C(2) will be brought into force within a short time by issuing a notification, as the said section had been introduced to fulfill the promises held out by successive Governments in power from 1987, to regularise unauthorised constructions; and that in accordance with Section 38-C(2), the sites held/possessed by them will have to be allotted and sold to them. According to petitioners, the representations held out by the Government from time to time by issuing notifications for regularisation of unauthorised constructions on 12-10-1987, 27-9- 1990 and circulars dated 26-2-1996 and 30-6-1997 had led them to believe that the persons who are purchasers of revenue sites (either under sale deeds or under general powers of attorney) formed in lands which were acquired by BDA or vested in BDA, will be granted title by way of regularisation. It is contended that in view of the representations made and assurances held out from time to time, the State Government is bound to issue a notification appointing a date on which Section 38-C(2) will come into force and failure to do so would amount to violation of promise held out by the State Government. They also contend that in view of said notifications/circulars assuring regularisation and having regard to the fact that their possession was not disturbed for several years in pursuance of such assurances, they have a legitimate expectation to obtain regularisation of their possession, by sale of the respective sites in their favour. 10. The petitioners also allege that instead

of regularisation of their unauthorised occupation by conveying the said sites to them, by bringing into effect the said Section 38-C(2), all of a sudden, officials of the Engineering Department of BDA attempted to form roads and sites in Sy. No. 73, in their possession. The petitioners contend that many of them have been in open, peaceful, uninterrupted possession for more than 12 years and perfected title by adverse possession; that others are in settled possession; and therefore they cannot be forcibly dispossessed and their buildings cannot be demolished without recourse to law. 11. Hence, petitioners have filed these petitions seeking the following reliefs: (i) a direction to BDA to send a proposal to State Government seeking approval to sell the sites formed in Sy. No. 73 to the respective occupants (petitioners) and consider their cases under Section 38-C(2) of the BDA Act and allot and sell them, the respective sites in their possession; (ii) a direction to BDA to maintain status quo in regard to sites in question and not to attempt to demolish the houses constructed by them or form a layout in Sy. No. 73; (iii) a direction to State Government to appoint a date for implementation of Act 1 of 2000 which has inserted Section 38-C(2). During the pendency of these petitions, the Governor of Karnataka, in exercise of the power conferred under Article 213(1) of the Constitution of India, promulgated Bangalore Development Authority (Amendment) (Repealing) Ordinance, 2000 (Karnataka Ordinance 4 of 2000), repealing Bangalore Development Authority (Amendment) Act, 1999 (Karnataka Act 1 of 2000). Thus Section 38-C as still-born as it was repealed even before it was brought into force. Feeling aggrieved, the petitioners have amended their writ petitions challenging the validity of the Ordinance and seeking quashing of said Ordinance as being unconstitutional. 12. The petitioners in these petitions have specifically stated in their petitions that they are not reagitating any of the issues adjudicated in the earlier writ petitions and suits filed by them and that they are claiming relief only on the basis of Section 38-C(2) of the BDA Act inserted by Karnataka Act 1 of 2000. The petitioners have alternatively contended that even if their submissions on the basis of Section 38-C(2) were to be rejected, BDA should be prevented from forcibly dispossessing them by demolishing their structures as BDA did not have the power or authority to forcibly dispossess them, otherwise than in accordance with law. 13. Many of the petitioners had not furnished the survey numbers in which the sites claimed by them are situated. They had referred to the sites by either site number or house list number or katha number. According to BDA, it was not possible to correlate such sites to the lands acquired by it. Many petitioners were lacking in other particulars also. Hence, this Court by order dated 13-7-2000 directed the petitioners to furnish particulars of their sites i.e., measurements, boundaries, survey number in which the sites claimed are situated, the basis and documents on which they were claiming title and/or possession, particulars of any construction put up and whether the construction if any was done after obtaining a licence from the local authority and whether they have been shown as khatedars or owners or persons in possession, in the records of the local authority, and the particulars of past litigations in regard to the sites. In pursuance of it, the petitioners in these batches and some other batches have furnished some particulars. BDA has also filed a consolidated

statement showing the position in regard to each of the sites claimed by the petitioners, as per its records. 14. BDA has filed common objections. It has contended that several lands including Sy. No. 73 of Banaswadi-Channasandra Village were acquired for formation of East of NGEF Layout under preliminary notification dated 28-5-1984 followed by final notification dated 23-10-1986; and that possession of Sy. No. 73 was taken on 30-4-1987, after passing an award dated 13-4-1987 and a notification dated 24-10-1987 under Section 16(2) of the Land Acquisition Act, 1894 was published in Karnataka Gazette, dated 3-3-1988, confirming that the said land has vested in BDA in pursuance of taking of possession. It has stated that it could not take up any development activities like formation of roads, drains and sites in the said land in view of the pendency of the writ petitions and original suits filed by petitioners (Writ Petition No. 10570 of 1987, O.S. Nos. 1281 to 1285 of 1988 etc.). According to BDA, out of 94 petitioners, 71 petitioners have not put up any structure at all; and only 20 sites have temporary structures measuring between 100 sq. ft. to 350 sq. ft. and three sites have only foundation but no buildings; and none of the petitioners have any manner of right, title or interest in the said land, as it has already vested in BDA; and BDA has now formed a layout in the said land [Sy. No. 73] and has even made allotments; and therefore all the petitions should be dismissed as not maintainable. The State has filed common objections in these petitions and the connected batches contending that the repealing Ordinance is valid. 15. On the grounds urged and submissions made, the following three points arise for consideration: (I) Whether the Karnataka Ordinance No. 4 of 2000, repealing Bangalore Development Authority (Amendment) Act, 1999 [Karnataka Act 1 of 2000] is unconstitutional and invalid?

(II) Whether the State Government should be directed to issue a notification appointing the

(III) Whether BDA should be directed not to forcibly dispossess the petitioners with a furthe

Point (I) - Validity of Ordinance 4 of 2000:

16. Bangalore Development Authority Act, 1976 was amended by Bangalore Development (Amendment) Act, 1999 (Karnataka Act 1 of 2000), inserting the following as sub-section (2) of Section 38-C:

"(2) Notwithstanding anything contained in this Act or any other law or any development scheme sanctioned under this Act or the City of Bangalore Improvement Act, 1945, but without prejudice to sub-section (1), where the Authority after carrying out a survey of land, vested in or acquired by it, is of the opinion that such land cannot be used by it on account of existing structure or building thereon or it is not practicable to include such land for the purpose of development scheme or formation of sites, the Authority may with prior approval of the Government, allot such land by sale in favour of the original owner of the land or the purchaser from the original owner or a General Power of Attorney holder

from such original power or purchaser in respect of the land, who has put up the structure or building on the land or in favour of such original owner, purchaser or General Power of Attorney holder who is in possession of the land, subject to the conditions that.- (i) the structure or building was in existence on such land prior to the first day of January, 1995 or such original owner, purchaser or General Power of Attorney holder has been in possession of the land since prior to the first day or January, 1995 and has continued to be in possession of the land as on the date of commencement of the Bangalore Development Authority (Amendment) Act, 1999;

(ii) the allottee makes payment towards the allotment of land, such amount as the Authority may, subject to the general or special order of the Government determine from time to time; and

(iii) the total extent of the land allotted under this sub-section together with the land alr

Explanation.-For the purpose of sub-section.-

(a) 'land' includes site;

(b) 'Original owner of the land' means a person who was occupant of the land immediately be

Section 38-C(2) thus provides for allotment of any land which was acquired by or vested in BDA, by way of sale, in favour of the original owner of the land or any purchaser from the original owner or a General Power of Attorney holder from the original owner, in certain circumstances, subject to the conditions stated therein. The Amendment Act was published in the Karnataka Gazette, dated 5-1-2000. Sub-section (2) of Section 1 of the Amendment Act provided that the Amendment Act shall come into force on such date as the State Government may, by notification, appoint. The State Government did not issue any notification appointing the date on which the said Amendment Act will come into force. Consequently Section 38-C(2) did not come into force. 17. A large number of writ petitions (including these petitions) were filed seeking a direction to the State Government, to appoint the date on which the Amendment Act will come into force and extend the benefit of Section 38-C(2) to them. Petitioners alleged that even before Section 38-C(2) was brought into force and they could get relief under it, BDA was taking steps to demolish their structures and to dispossess them. This Court granted an interim stay upto 31-7-2000, directing the BDA not to dispossess the petitioners or demolish the structures in the land/sites which are the subject-matter of the writ petitions. 18. At that stage, on 22-6-2000, the Governor of Karnataka, in exercise of power conferred by clause (1) of Article 213 of the Constitution of India, promulgated Bangalore Development Authority (Amendment) (Repealing) Ordinance, 2000 (Karnataka Ordinance 4 of 2000), repealing Bangalore Development Authority (Amendment) Act, 1999 (Karnataka Act 1 of 2000). Petitioners have thereafter

amended their writ petitions challenging the constitutional validity of said Ordinance on several grounds. We will refer to each of those grounds and deal with them. 19. Ground (a): Where any Amending Act has received the assent of the President, any Act repealing such Amendment Act, to be valid, should also receive the assent of the President of India. Any Ordinance purporting to repeal an Amendment Act which has received the assent of the President under Article 254(2) can be promulgated only on the instructions from the President. In this case, the Amendment Act has received the assent of the President. But, the Ordinance has been promulgated without instructions from the President. Therefore, the Ordinance is unconstitutional being violative of proviso (c) to clause (1) of Article 213 of the Constitution of India. 20. Article 213 of the Constitution of India empowers the Governor of a State to promulgate Ordinances. It is extracted below: "Article 213. Power to promulgate Ordinances during recess of Legislature.-(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require: Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if.- (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for

(c) an Act of the Legislature of the State containing the same provisions would under this

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance.-

(a) shall be laid before the Legislative Assembly of the State; or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period of resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor. Explanation.-Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause. Therefore, the petitioners will not be entitled to any relief based on Section 38-C(2), even if it had not been repealed and had remained in the statute book, unless and until it was brought into force. The petitioners have

clearly stated that reliefs sought in these petitions are entirely based on Section 38-C(2). As Section 38-C(2) no longer exists and even if it existed, as it was not enforce, these petitions are liable to be rejected as having no merits.

(3) If and so far as an Ordinance under this Article makes any provision which would not be valid or enacted in an Act of the Legislature of the State assented to be the Governor, it shall be void: Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him".

21. Clause (1) of Article 213 enables the Governor to promulgate an Ordinance, when both houses of Legislature of the State are not in session, if he is satisfied that circumstances exist which render it necessary for him to take immediate action. The Repealing Ordinance was promulgated on 22-6-2000. The preamble of the Ordinance stated that the Karnataka Legislative Council was not in session and the Governor of Karnataka was satisfied that circumstances existed which rendered it necessary for her to take immediate action to repeal the Bangalore Development Authority (Amendment) Act, 1999 (Karnataka Act 1 of 2000). Thus, the condition specified in clause (1) of Article 213 of the Constitution for promulgation of an Ordinance is fulfilled.
22. The contention of the petitioners is that the proviso to clause (1) of Article 213 provides that the Governor shall not promulgate an Ordinance without the instructions from the President of India, in case any one of the three conditions specified therein exists, and the Repealing Ordinance challenged in these petitions fall under the proviso and therefore requires the instructions from the President. The petitioners admit that conditions (a) and (b) of the proviso are inapplicable. They contend that condition (c) of the proviso applies. According to them, if an Act of the Legislature of the State had contained the same provisions (as in the Ordinance), it would have been invalid unless, it had been reserved for the consideration of the President and had received the assent of the President. Petitioners contend that the Amendment Act was reserved for consideration of the President and had received the assent of the President that the State had thus admitted that Section 38-C(2), inserted in the BDA Act was repugnant to a law made by the Parliament or existing law; and that as the Amendment Act was reserved for the consideration of the President and received his assent, any subsequent amendment to amend or repeal such provision, to be valid, should also necessarily be reserved for consideration of the President and receive his assent.

23. On the other hand, the State has contended that the Act deals with a subject which falls under the State List. The Act was not reserved for the consideration of the President. When the Act was amended by the Amendment Act, it was felt that its provisions were in some manner repugnant to certain provisions of some Central enactments. Therefore, the Governor reserved the bill for consideration of the President and the President gave his assent. But the Repealing Ordinance does not contain any provisions which is repugnant to any law made by the Parliament or any existing law. As none of the conditions listed in the proviso to clause (1) of Article 213 existed, the Governor had the power to promulgate the Ordinance without obtaining instructions from the President. It is also pointed out that the effect of repeal by the Ordinance is to remove the repugnancy, if any introduced by insertion of Section 38-C(2), and not to create any repugnancy. If the State Legislature had made an Act containing the same provision, there would have been no need to reserve it for the consideration of the President. Therefore the Ordinance did not require instructions from the President before its promulgation.
24. What then is the legal position? Whether President's assent is required only if the Amendment Act or Repealing Act itself creates a repugnancy with a law made by the Parliament or an existing law; or whether President's assent is required (even if the Amendment Act or Repealing Act does not contain anything repugnant to a law made by the Parliament or an existing law) merely because the provision which is sought to be amended or repealed, being repugnant to a law of Parliament or existing law, had received the assent of the President. The question is not res integra.
25. In Lakhi Narayan Das v Province of Bihar, the Federal Court considered a similar question with reference to Sections 88 and 107 of the Government of India Act, 1935 (Corresponding to Articles 213 and 254 of the Constitution of India]. Section 88 of the Government of India Act read as follows: "(1) If at any time when the Legislature of a province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require: Provided that the Governor shall not, without instructions from the Governor General, promulgate any such Ordinance if an Act of the Provisional Legislature containing the same provisions would under this Act have been invalid unless, having been reserve for the consideration of the Governor-General, it had received assent of the Governor General". The contentions urged by the appellants before the Federal Court was that the Bihar Maintenance of Public Order Ordinance, 1949 under which they were detained, contained provisions which, if they were contained in an Act of the provincial Legislature, would have been invalid without the assent of the Governor General and therefore previous instructions of the Governor General were necessary to validate the Ordinance and as there was no such instructions, the Ordinance was invalid. The said contention was rejected by the Fed-

eral Court, on the following reasoning: "The contention of the appellants is that the impugned Ordinance is in conflict with certain provisions of the Criminal Procedure Code and has created new offences for the first time, and these matters are clearly included under items (1) and (2) of the Concurrent Legislative List. Had this been an Act of the Provincial Legislature, there would have been a conflict between these provisions and those of the existing law contained in Criminal Procedure Code and other Acts and under sub-section (2) of Section 107, the assent of the Governor General would have been necessary to validate such provisions. Under the proviso to Section 88(1), Government of India Act, therefore, the Governor could not promulgate such Ordinance without instructions from the Governor General. The contention does not appear to us to be sound. In order to succeed in their contention and attract the operation of Section 107 read with Section 88(1), Government of India Act, two things have got to be established by the appellants. In the first place, the provisions of the impugned Ordinance and those of an existing law must be in respect of the same subject-matter and that subject-matter must be covered by one of the items in the Concurrent List. In the second place, there must be repugnance between the two provisions". The Federal Court held that the Ordinance was covered entirely by Items 1 and 2 in the Provincial List and as, for no part of those provisions, it was necessary to have recourse to the concurrent powers provided for in List III, the question of repugnancy under Section 107(1) of the Government of India Act would not arise. It then proceeded to examine as to what could be the position if the provisions of the Ordinance also came within the purview of Item 2 of the Concurrent List and observed thus: ". . . .The Concurrent List is not a forbidden field to the Provincial Legislature and the mere fact that the Provincial Legislature has legislated on any matter in the concurrent list is not enough to attract the mischief of Section 107, Government of India Act. There must be repugnancy between such legislation and an existing law, and then and then only would the existing law prevail unless the procedure laid down in sub-section (2) of Section 107 was followed. In our opinion, there is no repugnancy between the provisions of the impugned Ordinance and those of the Criminal Procedure Code. ... As there is no repugnance, Section 107 of the Government of India Act, cannot have any application to the present case".

26. The question was considered by the Patna High Court in Kameshwar Singh v Province of Bihar, The relevant facts of that case were that on 6-7-1949, the Governor General gave his assent to an Act entitled the Bihar Abolition of Zamindari Act, 1948, which empowered the provincial Government to deprive proprietors and tenure holders of their estates and tenures. Subsequently, the Bihar Abolition of Zamindari Repealing Act, 1950, was passed by the Bihar Legislature and assented to by the Governor General on 18-1-1950. It was contended that the Legislative Body which enacted the Bihar Abolition of Zamindari Act, 1948 consisted of the two chambers of the Legislature and the Governor General, whereas

the Legislative Body which enacted the Repealing Act, 1950 consisted of the two chambers of the Legislature and the Governor; and that the Legislative Body competent to repeal an Act is only the Legislative Body which enacted it and as the Zamindari Abolition Act, 1948 had received the assent of the Governor General, such assent was also necessary for the Repealing Act, 1950. The said contention was negatived by the Patna High Court on the following reasoning: ". . .A Provincial law even with regard to a matter enumerated in the Concurrent List does not become bad, merely because the assent of the Governor General has not been taken. The only effect of Section 107 (of Government of India Act) is that in the absence of such assent, the Provincial Law will be void to the extent of the repugnancy, may be in part or entirety. But, surely Section 107 can have no application, when there is no repugnancy. The short answer to the argument of Mr. Das, based on Section 107, is that the Repealing Act does not create any repugnancy; on the contrary, it removes the repugnancy; if any, created by the Abolition Act. . . The absence of the assent of the Governor- General does not, therefore, invalidate the Repealing Act, which has been enacted by the proper legislative authority of the province, viz., the two Chambers and His Majesty represented by the Governor".

27. In Aea Constructions v Chief Engineer, Municipal Corporation of Hyderabad , the Andhra Pradesh High Court held that where there is no repugnancy between an Ordinance and the provisions of any Central Act or existing law, the President's prior instructions are not required, even if the Ordinance amended an earlier law which had received the assent of the President. A similar view has been expressed earlier by the Andhra Pradesh High Court in another decision in Sri Durga Rice and Baba Oil Mills Company, Nidubrole v State of Andhra Pradesh and by the Rajasthan High Court in Jugraj u Rajasthan State .

28. In Hanuman Dall and General Mills, Hissar v State of Haryana, the Punjab and Haryana High Court held as follows: "An amending Act does not require the assent of the President merely because the parent Act has received such assent. The President does not become a limb of the State Legislature merely because he gives his assent to certain Bills reserved for his consideration. It is not every amendment that should not submitted for the assent of the President irrespective of whether the amendment involves anything which calls for the assent of the President or not, merely because the main Act was reserved for his assent. . .."

29. The Parliament and the State Legislature have power to make laws with respect to any of the matters enumerated in List III of Seventh Schedule of the Constitution of India. Article 254(1) provides that when any provision of a law made by a State Legislature is repugnant to a provision of a law made by the Parliament which the Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the law made by the Parliament or the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. It is evident

from Article 254(1) of the Constitution that what will be void is not the entire enactment made by the State Legislature, but only the repugnant provision. Clause (2) of Article 254 of the Constitution, however, provides that where a law made by the State Legislature (with respect to one of the matter:, enumerated in the Concurrent List), contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, the law so made by the State Legislature shall, if it has been reserved for the consideration of the President and has received his assent, shall prevail in that State.

30. Karnataka Act 1 of 2000 was an Amendment Act. The only amendment brought about by the said Amendment Act was insertion of Section 38-C(2). Act 1 of 2000 was reserved for consideration of the President, as it was felt that the said Section 38-C(2) contained matters which may be considered as repugnant to an existing law like Transfer of Property Act/Land Acquisition Act. It is unnecessary to examine, whether Section 38-C(2) in fact contained any provision which was repugnant to any law made by the Parliament or existing law. For our purpose, it can be assumed that Section 38-C(2) was repugnant to a law made by the Parliament or an existing law, and that is why it was reserved for consideration of the President and received the assent of the President. But, it is nobody's case that Ordinance 4 of 2000 contains any provision which is repugnant to any law made by the Parliament or an existing law. As noticed above, the said Ordinance merely repeals Karnataka Act 1 of 2000 which inserts Section 38-C(2) in the BDA Act, and contains no other provision. Therefore, it cannot be said that it contains any provision which is repugnant to a law made by the Parliament or an existing law. Even if Section 38-C(2) contained any provision, repugnant to a Central Act or an existing law, the repeal of Section 38-C(2) by the Repealing Ordinance has the effect of removing such repugnancy. Only an Ordinance which contains a provision, which if contained in any Act of the Legislature would have been invalid unless it had been reserved for the consideration of the President and received assent of the President, requires instructions from the President before its promulgation. Promulgation of an Ordinance would require the prior instructions of the President only where the said Ordinance contains some provision which is repugnant to a law made by the Parliament or existing law, and not when the provision which is repealed by the Ordinance was repugnant to a law made by the Parliament or on existing law. Karnataka Ordinance 4 of 2000 does not contain any provision repugnant to any Central Act or an existing law, and therefore there was no need for the Governor to take instructions from the President before promulgating the Ordinance in question. Hence, we hold that the first ground of attack is liable to be rejected.

31. Ground (b): If a law made by the State Legislature contains a provision repugnant to provision of a law made by the Parliament or an existing law, and receive the assent of the President, then such State law which has received the assent of the President cannot be repealed by the State

Legislature, but it can be amended, added, varied or repealed only by the Parliament, having regard to the proviso to clause (2) of Article 254 of the Constitution.

32. The proviso to clause (2) of Article 254 of the Constitution, relied on by the petitioners reads as follows: "Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State". Clause (1) of Article 254 deals with the effect of repugnancy between a State law and a law made by the Parliament, or an existing law with respect to/one of the matters enumerated in the Concurrent List. It is a general provision declaring that the State law, to the extent of repugnancy shall be void. It is however subject to clause (2), which contains an exception to the general rule contained in clause (1). Clause (2) provides that the repugnant provision in the State law made with respect to one of the matters enumerated in the Concurrent List, will however prevail in the State, if such State law had been reserved for the consideration of the President and received his assent. The proviso to clause (2) of Article 254 contains a qualification to clause (2) and enables the Parliament to enact at any time any law with reference to the same matter including a law adding to, varying or repealing the law so made by the State Legislature of the State.

33. The argument advanced by the petitioners is that when an express power is conferred on the Parliament to add, vary or repeal a State law which has received the assent of the President, conferment of a similar power in express terms on the State Legislature, is necessary to enable the State Legislature to enact a law adding, varying or repealing a State law which has received the assent of the President. The argument is without merit. It is axiomatic that the power to legislate includes and implies a power to add, amend, vary or repeal the legislation. In Ram Krishna Ram Nath v Janpad Sabha , the Supreme Court observed that power of a Legislature to repeal a law is co-extensive with its power to enact such a law. Therefore, the contention that State Legislature cannot repeal a law made by it, unless such power is expressly conferred on it, is untenable.

34. In this context it is necessary to notice the historical background and the reason for conferment or recognition of a power in the Parliament, to amend or repeal a State law which has received the assent of the President, under the proviso to clause (2) to Article 254. The Supreme Court in Zaverbhai Amaidas v State of Bombay, has considered this matter. After extracting Article 254(2), the Supreme Court stated thus: "This is, in substance, a reproduction of Section 107(2) of the Government of India Act, the concluding portion thereof being incorporated in a proviso with further additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that under Section 107(2) of the Government of India Act, it was observed by Lord Watson in 'Attorney-General for Ontario v Attorney-General for the Dominion', 1896 AC 348 (A), that though

a law enacted by the Parliament of Canada and within its competence would override provincial legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any provincial statute. That would appear to have been the position under Section 107(2) of the Government of India Act with reference to the subjects mentioned in the Concurrent List. Now, by the proviso to Article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under Section 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can acting under the proviso to Article 254(2), repeal a State law".

35. Clauses (1) and (2) of Article 254 of the Constitution correspond to sub-sections (1) and (2) of Section 107 of the Government of India Act, 1935. The State Legislature and the Parliament referred to in clauses (1) and (2) of Article 254 correspond to Provincial Legislature and the Dominion Legislature referred to in sub-sections (1) and (2) of Section 107 of the Government of India Act. Having regard to the scheme of the Government of India Act, there was a doubt as to whether Dominion Legislature referred to could make a law repealing a provincial statute. Therefore, apparently a specific provision was made by way of a proviso to Article 254(2) clarifying that the Parliament may make a law adding to, amending, varying or repealing any law made by the State Legislature. But, the enactment of any such law by the Parliament under the proviso to clause (2) of Article 254 will not come in the way of the State Legislature again enacting a law containing provisions repugnant to the law made by the Parliament (including the subsequent law made by the Parliament under proviso to clause (2) of Article 254 of the Constitution of India) or an existing law and if such subsequent State law is again reserved for the consideration of the President and receives the assent of the President, that will prevail. The decision of the Supreme Court in Vijay Kumar Sharma v State of Karnataka, relied on by the petitioners does not lay down anything contrary to the above position. Hence, the second ground is rejected.
36. Ground (c): Section 38-C(2) of the BDA Act introduced by the Amendment Act is intended to give effect to the promise held out by the State (in its notifications dated 12-10-1987 and 27-10-1990 and the circulars issued thereafter from time to time) that persons who have unauthorisedly occupied the land acquired or vested in BDA will be conferred, with title thereto, by either regularising their unauthorised possession or by conveying the land to them. Therefore, the Ordinance repealing such a provision, would be invalid, as it is hit by the doctrines of promissory estoppel and legitimate expectation.
37. Promissory estoppel is a doctrine applicable to administrative law and administrative action. It is not available as a ground to challenge legisla-

tions. The doctrine of promissory estoppel has been explained in Motilal Padampat Sugar Mills Company Limited v State of Uttar Pradesh, thus: "Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government, at the instance of the promisee, notwithstanding that there is no consideration for the promise". The position regarding the doctrine is clarified in State of Himachal Pradesh v Ganesh Wood Products, as follows: ". . . . All that we wish to emphasise is that anything and everything done by the promisee on the faith of the representation does not necessarily amount to altering his position so as to preclude the promisor from resiling from his representation. If equity demands that the promisor is allowed to resile and the promisee is compensated appropriately, that ought to be done. If, however, equity demands, in the light of the things done by the promisee on the faith of the representation, that the promisor should be precluded from resiling and that he should be held fast to his representation, that should be done. To repeat, it is a matter of holding the scales even between the parties to do justice between them. This is the equity implicit in the doctrine. ... To wit, the rule of promissory estoppel being an equitable doctrine, has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. If it is more just from the point of view of both promisor and promisee that the latter is compensated appropriately and allow the promisor to go back on his promise, that should be done; but if the Court is of the opinion that the interests of justice and equity demand that the promisor should not be allowed to resile from his representation in the facts and circumstances of that case, it will do so. This, in our respectful opinion, is the proper way of understanding the words"promisee altering his position". Altering his position should mean such alteration in the position of the promisee as it makes it appear to the Court that holding the promisor to his representation is necessary to do justice between the parties.. . .".

38. But, there can be no promissory estoppel against a Legislature in the exercise of its legislative power or function. Nor can it be used to enforce a promise contrary to law or to bar the State from enforcing any provision of law. The doctrine of promissory estoppel cannot also be called in aid to enforce any promise made outside the authority of law or power of the Government or person making the promise. Nor will it be enforced, if doing so will be inequitable or unjust vide the decisions in Jit Ram Shiv Kumar v State of Haryana; Union of India v Godfrey Phillips India Limited; Delhi Cloth and General Mills Company Limited v Union of India; Kasinka Trading v Union of India and Shabi Construction Company v City and Industrial Development Corporation . Having regard to the well-settled position that the doctrine of promissory estoppel cannot be

pressed into service as a ground to challenge a statutory provision, nor as a ground to avoid performance of a statutory obligation, the contention of the petitioners based on the doctrine of the promissory estoppel will have to he rejected in limine. It is not, therefore, necessary to examine whether there was in fact any promise to regularise unauthorised occupation/constructions in BDA land, whether such promise was made acting within authority and power of the person making such a promise, and whether petitioners altered their position based on such promise. Suffice it to notice that even according to petitioners, there was never any promise to regularise any future unauthorised occupation, and therefore the question of petitioners altering their position after any promise by the Government, does not arise.

39. Claims based on the doctrine of 'legitimate expectation' also require reliance on representations and resulting detriment to the claimant, in the same way as claims based on the doctrine of promissory estoppel. The doctrine can be invoked if the decision which is challenged in the Court has some person aggrieved, either by altering rights or obligations of that person, which are enforceable by or against him in private law or by depriving him of some benefit or advantage, which either (i) he had in the past being permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse or discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of legitimate expectation was evolved - vide National Building Construction Corporation v S. Raghunathan.

40. The doctrine of legitimate expectation is also a principle which has its genesis in the field of administrative law and has no relevance while examining the legislative power of the State. It cannot be used to challenge the legislative power of the State or to challenge any legislation - vide Sri Srinivasa Theatre v Government of Tamil Nadu and Union of India v Hindustan Development Corporation. The doctrine is essentially procedural in character intended to assure fair play in administrative action, though in a given situation it may become a source of substantive right. But, this doctrine can never be used to invalidate a legislation. In the case of Sri Srinivasa Theatre, supra, the Supreme Court observed that: "Another argument urged by Sri Parasaran is that the petitioners had come to entertain a legitimate expectation based upon legislative practice that they would not be brought over to admission system. . . . Even otherwise, we

are not satisfied that the said theory can be brought into defeat or invalidate a legislation. It may at the most be used against an administrative action, and even there it may not be an indefeasible right. No case has been brought to our notice where a legislation has been invalidated on the basis that it offends the legitimate expectation of the persons affected thereby". (emphasis supplied) No law can be challenged on the ground that it offends the legitimate expectation of any person. It is therefore unnecessary to examine whether there was any factual basis for the petitioners to legitimately expect that their unauthorised occupation will be permitted to be continued uninterruptedly followed by regularisation. Hence, the third ground is rejected.

41. Ground (d): The Ordinance is an temporary measure being of a limited duration and not a permanent law. It is issued as an emergency measure to be a stop-gap arrangement till the Legislature considers the matter and either passes an appropriate law or disapproves it or allows it to lapse. Such a temporary law should only be promulgated either to maintain status quo or to enable acts which are not irreversible in nature or to meet emergency situations. But, no emergency situation requiring exercise of power under Article 213, arose in June 2000. Further, if the structures put up by the petitioners are demolished, on account of Section 38-C(2) being treated as repealed by the Ordinance, and subsequently if the Ordinance is allowed to lapse or is disapproved and the State Legislature considers it necessary to restore Section 38-C(2), then petitioner, who were assured of benefit under the Section 38-C(2) will be irreversibly and permanently denied the benefit under the said section, thereby rendering Section 38-C(2) nugatory. In such a situation, exercise of power under Article 213, to promulgate a repealing Ordinance, is arbitrary, unreasonable and unjust and therefore unconstitutional.

42. An Ordinance is a legislation. It is an exercise of legislative power by the Executive, under Article 213 of the Constitution. Such law is no less potent because it is made by the Executive and not by the Legislature. The power of the Governor to legislate by an Ordinance is co-extensive with the power of the Legislature to enact laws. An Ordinance has the same force and efficacy as a law made by the State Legislature. Whatever can be achieved by a regular legislation can be achieved by an Ordinance, irrespective of the fact that the Ordinance is intended to be a measure of limited duration. In fact clause (2) of Article 213 specifically states that an Ordinance promulgated under Article 213 of the Constitution shall have the same forced effect as an Act of the Legislature of the State, assented to by the Governor. Clause (2) of Article 367 of the Constitution provides that any reference in the Constitution to any Act or law made by the State Legislature, shall be construed as including reference to an Ordinance made by the Governor. Therefore, any law made by the Legislature can be amended or repealed by an Ordinance.

43. The status and effect of an Ordinance was considered by the Supreme Court in A.K. Roy v Union of India. The Supreme Court held that an

Ordinance issued by the Governor is as much law as an Act passed by the Legislature and an Ordinance issued by the Governor partakes fully of legislative character, being made in the exercise of legislative power. It is also held that as an Ordinance is a valid law, the fact that it will be of a limited duration is immaterial for considering the effectiveness and validity thereof. In T. Venkata Reddy v State of Andhra Pradesh , the Supreme Court considered the effect of the Ordinance, if the Legislature fails to pass a law in terms of the Ordinance. It held: ". . . . It is argued on their behalf that on the failure of the State Legislature to pass an Act in terms of the Ordinance it should be assumed that the Ordinance had never become effective and that it was void ab initio. This contention overlooks two important factors namely, the language of clause (2) of Article 213 of the Constitution and the nature of the provisions contained in the Ordinance. Clause (2) of Article 213 says that an Ordinance promulgated under that Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor but every such Ordinance (a) shall be laid before the Legislative Assembly of the State, or, where there is a Legislative Council in the State, before both the Houses and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period, a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution being agreed to by the Council and (b) may be withdrawn at any time by the Governor. It is seen that Article 213 of the Constitution does not say that the Ordinance shall be void from the commencement on the State Legislature disapproving it. It says that it shall cease to operate. It only means that it should be treated as being effective till it ceases to operate on the happening of the events mentioned in clause (2) of Article 213. . . . .".

44. Therefore, the fact that an Ordinance is of a limited duration or the fact that it may cease to operate on the expiration of six weeks of the reassembly of the Legislature or the fact that it may cease to operate if the Legislature passes a legislation disapproving it, are not grounds to hold that the Ordinance is invalid or to contend that it should not be given effect, till the Legislature has occasion to consider the need for a law in terms of the Ordinance. The Ordinance is effective law, as long as it is in force. Ground (d) also has no merit.
45. Ground (e): Several writ petitions have been filed by affected persons, seeking enforcement of Section 38-C(2). This Court was in the process of adjudicating upon the claim of petitioners for bringing the said section into force and determine whether the petitioners were entitled to the relief under that section. The repealing Ordinance interferes with the adjudicatory process regarding enforcement of Section 38-C(2). Therefore, the Ordinance is invalid.
46. Pendency of a writ petition or litigation in a Court of law in regard to a particular subject does not come in the way of the power of the Legislature

or the Executive to legislate on the subject. A law made by the Legislature can be struck down by the Courts only on two grounds, viz., lack of legislative competence and/or violation of fundamental rights guaranteed in Part III of the Constitution and/or violation of any other Constitution provision [see State of Andhra Pradesh v McDowell and Company).

47. Learned Counsel for the petitioners placed reliance on the following observations of the Supreme Court in the decision in In the matter of: Cauvery Water Disputes Tribunal: ". . . . Hence, any Executive order or legislative enactment of a State which interfere with the adjudicatory process and adjudication by such Tribunal is an interference with the Judicial power of the State. In view of the fact that the Karnataka Ordinance seeks directly to nullify the order of the Tribunal passed on 25th June, 1991, it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution". The above observation will not assist the petitioners, as the same will have to be read in the context of the earlier observations of the Supreme Court in the very same decision, extracted below: "Principle which emerges from these authorities is that Legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the Legislature amounts to exercising the judicial power of the State and to functioning as an Appellate Court or Tribunal". The impugned Ordinance does not interfere with any individual decisions. In fact no decision had been rendered when the Ordinance was issued on 22-6-2000. Further, the Ordinance was issued repealing a provision viz., Section 38-C(2), which had not been brought into force. Therefore, the question of any of the petitioners seeking any relief under Section 38-C(2) or the question of this Court granting any relief based on the said section does not arise. Hence Ground (e) is also rejected.

48. Ground (f): Section 38-C(2) was inserted by the State Legislature when a different Political Party was in power. The party now in power has advised the Governor to repeal Section 38-C(2) by promulgating the Ordinance, so as to deny the benefit sought to be extended by the previous Government. The hurry shown in the promulgation of the Ordinance repealing Section 38-C(2), discloses mala fides and ulterior motive on the part of the present Government, apart from non-application of mind to the relevant issues. It also amounts to colourable exercise of power.

49. It is now well-settled that the propriety, expediency and need to promulgate an Ordinance is within the satisfaction of the Governor and it is not open to judicial scrutiny. Nor is the ground of mala fides available to challenge any law, including an Ordinance. If the legislative competence is not open to challenge, then the question of challenging it on the ground of colourable exercise of power does not arise. We will briefly refer to a few decisions wherein the above position is made clear.

50. In Lakhi Narayan Das case, supra, the Federal Court was held as follows:

". . . .that, it is the Governor and the Governor alone who has got to satisfy himself as to the existence of circumstances necessitating the promulgation of an Ordinance. The existence of such necessity is not a justiciable matter which the Courts could be called upon to determine by applying an objective test. .. .". 50.1 In T. Venkata Reddy's case, supra, the Supreme Court held thus: ". . . . An Ordinance promulgated under either of these two Articles has the same force and effect as an Act of the Parliament or an Act of the State Legislature, as the case may be. When once the above conclusion is reached, the next question which arises for consideration is whether it is permissible to strike down an Ordinance on the ground of non-application of mind or mala fides or that the prevailing circumstances did not warrant the issue of the Ordinance. In other words, the question is whether the validity of an Ordinance can be tested on grounds similar to those on which an Executive or Judicial action is tested. The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no other. Any law made by the Legislature, which it is not competent to pass, which is violative of the provisions in Part III of the Constitution or any other constitutional provision is ineffective. It is a settled rule of constitutional law that the question whether a statute is constitutional or not, is always a question of power of the Legislature concerned. Dependent upon the subject-matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the Court can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the Legislature in passing a statute is beyond the scrutiny of Courts. Nor can the Courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the Courts. An Ordinance passed either under Article 123 or under Article 213 or the Constitution stands on the same footing. When the Constitution says that the Ordinance making power is legislative power and an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of Legislature carrying with it all its incidents, immunities and limitations under the Constitution. It cannot be treated as an Executive action or an administrative decision". . 50.2 In R.S. Joshi v Ajith Mills Limited, the Supreme Court observed thus: "..... If a legislation, apparently enacted under one entry in the List, falls in plain truth and fact, within the content, not of that entry but of one assigned to another Legislature, it can be struck down as colourable even if the motive were most commendable. . . Malice or motive is beside the point, and it is not permissible to suggest parliamentary incompetence on the score of mala fide". 50.3 In K. Nagaraj v State of Andhra Pradesh , the Supreme Court held: ". . . . .The Ordinance making power being a legislative

power, the argument of mala fides is misconceived. The Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose- Its reasons for passing a law are those that are stated in the objects and reasons and if none are so stated, as appears from the provisions enacted by it. Even assuming that the Executive in a given case has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide this kind of 'transferred malice' is unknown in the field of legislation". Hence, the ground urged on the basis of mala fides, ulterior motives and 11 non-application of mind is wholly misconceived and is liable to be rejected. 50.4 In SKG Sugar (Private) Limited v State of Bihar, the Supreme Court held that the necessity of immediate action and of promulgating an Ordinance is a matter purely for the subjective satisfaction of the Governor, and he is the sole Judge as to the existence of the circumstances necessitating the making of the Ordinance and his satisfaction is not justifiable and cannot be questioned on ground of error of judgment or otherwise. In C. Narayanaswamy and Others V State of Karnataka and Another, this Court held that an Ordinance being a law, Court will not examine the existence of adequate circumstances for promulgating the Ordinance. If the Ordinance is within legislative competence and does not violate the fundamental rights or other provisions of the Constitution, it is not for the Court to examine the wisdom and justification for promulgating the Ordinance.

51. Two fundamental principles evolved by Courts as rules of guidance in discharge of their constitutional function of judicial review are:

(1) There is always a presumption in favour of the constitutionality of a statute and the b

(2) Courts do not substitute their social and economical beliefs for the judgment of legisl

52. It is not, therefore, permissible to examine the validity of the Ordinance on the ground whether there were adequate and proper reasons for promulgating the Ordinance. The propriety, expediency and need to promulgate an Ordinance is within the satisfaction of the Governor and will not be subjected to judicial scrutiny.

53. None of the grounds urged by petitioners to challenge the Ordinance has any merit. There is no challenge on the ground of want of legislative competence. No violation of fundamental rights or constitutional provision is made out. We, therefore, uphold the validity of Karnataka Ordinance 4 of 2000.

Point (II) - Prayer relating to Section 38-C(2):

54. As we have upheld the validity of the Repealing Ordinance, Section 38-C(2) which has been repealed under the said Ordinance does not exist

in the BDA Act. Therefore, the question of either directing the State Government to appoint a date to bring into force the said section, or directing BDA to examine the cases of petitioner? with reference to the provision of Section 38-C(2) does not arise. We may add that the position may not have been much different, even if the Ordinance had not been promulgated or even if it is held that the Ordinance was invalid. Though the said section was inserted by Amendment Act 1 of 2000, the Legislature did not give effect to it, but left it to the discretion and wisdom of the Executive to appoint the date from which the said provision should be brought into force. As the State Government did not appoint any such date and bring the section into force, for all practical purposes, it is as if the said provision is not in the statute book. Therefore, petitioners will not be entitled to claim any benefit with reference to the said section, even if it had remained in the Statute Book.

55. Even a law that is duly passed by the Legislature can have no effect unless it comes or is brought into force. Where the Legislature has expressed its legislative intent by making a law, but gives the discretion as to when it should be brought into force, to the Executive, the Judiciary will not issue a mandamus to the Executive to give effect to the legislative intent by notifying the date on which the law will come into force. This position is also made clear by A.K. Roy's case, supra, thus: ". . . The Parliament having left to the unfettered judgment of the Central Government, the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the Court to compel the Government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The Executive is responsible to the Parliament and if the Parliament considers that the Executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the Executive. It would be quite anomalous that the inaction of the Executive should have the approval of the Parliament and yet we should show our disapproval of it by issuing a mandamus.. .". ". . . But the remedy according to us, is not the writ of mandamus. If the Parliament had laid down an objective standard or test governing the decision of the Central Government in the matter of enforcement of the Amendment, it may have been possible to assess the situation judicially by examining the causes of the inaction of the Government in order to see how far they bear upon the standard or test prescribed by the Parliament. But, the Parliament has left the matter to the judgment of the Central Government without prescribing any objective norms. That makes it difficult for us to substitute our own judgment for that of the Government on the question whether Section 3 of the Amendment Act should be brought into force. .. ..".

56. This position was reiterated by the Supreme Court in Aeltemesh Rein v Union of India and Others, by observing that it is not open to Courts to issue a writ in the nature of mandamus to the Government to bring a statute or a statutory provision into force, when under the said statute,

the date on which it should be brought into force, is left to the discretion of the Government.

57. Therefore, the petitioners will not be entitled to any relief based on Section 38-C(2), even if it had not been repealed and had remained in the statute book, unless and until it was brought into force. The petitioners have clearly stated that reliefs sought in these petitions are entirely based on Section 38-C(2). As Section 38-C(2) no longer exists and even if it existed, as it was not enforce, these petitions are liable to be rejected as having no merit. Point (III) - Forcible dispossession:

58. The last point that arises for consideration is whether a direction should he issued to BDA not to forcibly dispossess the petitioners or not to demolish the structures in the sites claimed by them, otherwise than in accordance with law. The petitioners contend that even a true owner, including the State or a statutory Authority, is not entitled to take possession forcibly from a trespasser or unauthorized occupant. According to them, a true owner can dispossess a trespasser or a person in unauthorized possession, only by having recourse to law and not otherwise. Petitioners, therefore, contend that irrespective of the outcome of their challenge to the Ordinance or their contentions based on Section 38-C(2), there should be a direction to BDA not to dispossess them and not to demolish their structures, otherwise than in accordance with law.

59. On the other hand, BDA contends that as a true owner, it has the right to protect its possession and such right enables and entitles it to prevent any one from unauthorisedly encroaching upon or trespassing into its land and occupying the land; and such right includes the right to forcibly evict any encroacher or trespasser. It is also contended that as a statutory authority, it is vested with the right to forcibly dispossess unauthorised occupants and encroachers, having regard to Sections 29, 33 and 33-A of the BDA Act, Section 8 of the Karnataka Regularisation of Unauthorized Constructions in Urban Areas Act, 1991 and Section 15(4) of the Karnataka Town and Country Planning Act, 1961.

60. While referring to persons in illegal occupation or unauthorized possession, learned Counsel for BDA sought to make a distinction between two categories of unauthorized occupants. The first are those whose entry into occupation/possession of the premises was legal and whose occupation/possession subsequently became illegal on account of the cessation of the authority to continue in occupation or possession, (e.g.: Lessees continuing in possession after termination of the lease or licensees continuing in occupation after cessation of the licence). The second are those whose entry into the premises itself is illegal apart from the continuation being illegal, (e.g.: encroachers,' trespassers putting up unauthorized structures in the land belonging to others). He contended that forcible dispossession by the true owner is impermissible in regard 10 first category of unauthorized occupants, but permissible in the case of second category of unauthorised occupants.

61. The aforesaid contentions give rise to the following points for considera-

tions:

(i) Whether BDA as a statutory authority, has the right to forcibly dispossess a trespasser

(ii) Whether BDA, as the true owner of the property, has the right to forcibly dispossess an

Re: Point (i):

62. Section 29 of the BDA Act provides that in any area, to which the provisions of the Act applies, the Government may. by notification, declare that from such date and for such period as may be specified therein and subject to such restrictions and modifications, if any, as may be specified in the notification, and powers and functions of the Bangalore City Corporation, under the Karnataka Municipal Corporations Act, shall be exercised and discharged by the Authority; and the powers and functions of the Commissioner of the Corporation shall be exercised and discharged by the Commissioner. Section 321 read with Section 461 of the Karnataka Municipal Corporations Act provides for demolition of any building which has been commenced or is being carried on, or bas been completed otherwise than in accordance with the sanctioned plan etc., by following the procedure laid down therein. BDA contends that a combined reading of Section 29 of BDA Act and Sections 321 read with Section 461 of the Karnataka Municipal Corporations Act, vests in it the power of demolition of illegal/unauthorized structures. It is no doubt true that BDA has such power of demolition, but such power under Section 29, BDA Act read with Sections 321 read with Section 461 of the Karnataka Municipal Corporations Act, can be exercised by BDA only when the following conditions are fulfilled.-

(i) A notification issued by the State Government under Section 29 of the BDA Act empowerin

(ii) The unauthorized construction to be demolished should be situated in an area to which s

(iii) The unauthorized construction should have been commenced or completed after the issue o

(iv) The procedure prescribed by Section 321 read with Section 461 of the Karnataka Municipa

63. Bangalore Development Authority, in its capacity as the Planning Authority for the City of Bangalore, has also a statutory power of demolition under the Planning Act, to remove or pull down any work commenced or earned on in any property, in contravention of Sections 14 and 15(1) of the said Act. Sub-section (4) of Section 15 of the Planning Act provides that if any person does any work on or makes any use of, any property in contravention of Section 14 and 15(1), the Planning Authority may direct such person by notice in writing to stop any such work in progress or discontinue any such use; and may, after making an enquiry in the prescribed

manner, remove or pull down any such work and restore the land to its original condition or, as the case may be, take any measure to stop such use. But, the power of demolition under the Planning Act is restricted only to violations of Sections 14 and 15(1) of that Act.

64. The power of a local Municipal Authority extended to BDA under Section 29 of the BDA Act (read with Sections 321 read with Section 461 of the KMC Act) and the power of a Planning Authority extended to BDA under Section 15(4) of the Planning Act are intended to be used to enforce the Building Bye-laws and Zoning Regulations, to ensure orderly development of the City. Such power is not intended to be used by BDA, in its capacity as owner of a land, against a trespasser or unauthorized occupant of its land. Further, such power can be used only to demolish unauthorized structures, but not to dispossess any unauthorized occupant/trespasser.
65. Section 8 of the Karnataka Regularisation of Unauthorized Constructions in Urban Areas Act, 1991, provides that all unauthorized constructions which are not regularized under that Act shall be liable for demolition and the persons who have made such constructions shall be liable to be evicted summarily in accordance with law. It is contended by BDA that Section 4(viii) of the Regularisation Act bars any regularisation of unauthorized constructions in any land belonging to or vested in BDA. Though Section 8 contains a general provision that unauthorized constructions shall be liable to be demolished, it does not specifically refer to BDA nor authorises BDA to forcibly dispossess the unauthorised occupants by demolishing the structures. On the other hand, it provides that persons who have made such constructions shall be liable to be evicted summarily in accordance with the relevant law. This provision, therefore, contemplates dispossession only in accordance with law, that is, by having recourse to the public premises Act or by filing a Civil Suit.
66. BDA has not been able to point out any other provision which empowers or authorises it to forcibly dispossess any persons in unauthorised occupation of its land. We therefore, hold that as the law stands now, BDA as owner of any land, has no authority to forcibly dispossess anyone of settled possession of any portion of its land. Re: Point (ii):
67. If the power of forcible dispossession an demolition is not conferred on BDA (as owner of land), necessarily BDA will have to make out such a right with reference to general law applicable to true owners and trespassers. The rights of a true owner vis-a-vis trespasser in possession has been considered by the privy Council and the Supreme Court and this Court in several cases.
68. We will first refer to those decisions which lay down the principle that no one in India, including the State, has the power to forcibly dispossess an unauthorized occupant, otherwise than in accordance with law. 68.1 In Midnapur Zamindary Company Limited v Naresh Narayan Roy, the Privy Council observed thus: ". . . . In India, persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to, through a Court. . ..". Relying on the said decision, the

Supreme Court in Lallu Yeshwant Singh v Rao Jagdish Singh , held that a landlord who forcibly enters on his land which is in the possession of a tenant whose tenancy has expired, and dispossesses or attempts to dispossess such tenant, commits trespass. 68.2 In State of Uttar Pradesh v Maharaja Dharmander Prasad Singh, while dealing with the rights of the State Government on cancellation of a lease granted by it, the Supreme Court held that the fact that the lessor is the State does not place it in any higher pedestal or better position. The Supreme Court observed thus: "Under law, the possession of a lessee, even after the expire or its earlier termination is juridical possession and forcible dispossession is prohibited. . ..... .Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is accordingly prohibited from taking possession otherwise than in due course of law". 68.3 In Krishna Ram Mahale v Shobha Venkat Rao , while considering the claim of a licence, who has been wrongly dispossessed by the licenser before the expiry of licence period, for restoration of possession, the Supreme Court observed thus: "It is well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot he dispossessed by the owner of the property except by recourse to law". The Supreme Court held that the dispossessed licence was entitled to restoration of possession in spite of the fact that by then the term of licence has expired. 68.4 In State of Haryana v Mohinder Pal, the Supreme Court rejected an appeal filed against a decision of the Punjab and Haryana High Court which had held that the Government cannot take law into its own hand while dispossessing persons in possession of land by putting up khokhas (on the ground that they were unauthorised occupants of Government land) but should have followed the due procedure prescribed by law. The Supreme Court held that: ".... .Question of examining the title of the parties does not arise at all as admittedly respondents were in possession of the properly in question and put up structures thereon. On that admitted position, High Court took the view that ejectment of the respondents forcibly without due recourse of law was not in due process. No exception can be taken to that view at all- In fact, this view is consistent with what has been stated by this Court". 68.5 In Patil Exhibitors (Private) Limited v Corporation of the City of Bangalore, a Division Bench of this Court observed thus:"It is part of the concept of "Rule of law" that no claim to a right to dispossess by the use of force without recourse to procedure in accordance with law is recognized or countenanced by Courts. Such a right in the respondent cannot be recognized regardless of the question whether or not the appellant (licensee) itself has any subsisting right to remain in possession. The protection that the Court affords is not of the possession which in the circumstances is litigious possession and cannot be equated

with lawful possession but a protection against forcible dispossession- The basis of relief is a corollary of the principle that even with the best of title, there can be no forcible dispossession. .... Under our jurisprudence, even an unauthorised occupant can be evicted only in the manner authorised by law. This is the essence of the Rule of law".

69. We will next refer to those decisions which explain what is settled possession and at what stage the true owner losses the right to defend its possession by use of force. 69.1 In Munshi Ram v Delhi Administration, the Supreme Court Succinctly stated the legal possession regarding settled possession thus: "It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. But, stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitle to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he dues not use more force than necessary. Such entry wilt be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time to remove the obstruction even by using necessary force". (emphasis supplied) 69.2 The above principles laid down in Munshi Ram's case, supra, were referred to, reiterated and elaborated by the Supreme Court in Puran Singh v State of Punjab', as follows: ". . . The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellant in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a strait-jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. . Thus, in our opinion, the nature of possession in such cases which may entitle a trespasser to exercise the right of private

defence of property and person should contain the following attributes:

(i) that the trespasser must be in actual physical possession of the property over a suffic

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and f

(iv) that one of the usual tests to determine the quality of settled possession, in the case

(emphasis supplied)

69.3 The principle was further elaborated by the Supreme Court in Ram Rattan v State of Uttar Pradesh1, as follows:

". . . It is well-settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or prices of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. .... it may not be possible to lay down a rule of universal application as to when the possession of a trespasser becomes compete and accomplished". (emphasis supplied) 69.4 In Nair Service Society Limited v K.C. Alexander, the Supreme Court held that the law does not countenance the doctrine of "findings keeping" in regard to immovable properties and no one can claim to have acquired a right or claim to be in possession merely by intruding upon a land in the night and putting up a hut or shed and occupying it before morning. 70. Lastly, it is also necessary to notice the position of a trespasser who is in peaceful, open, continuous and uninterrupted possession of another's property, in denial of the title of the true owner, for a long period. Section 27 of the Limitation Act, 1963 provides that at the determination of the period limited under that Act, to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Article 65 provides the period of limitation for a suit for possession of immovable property based on title as twelve years from the date when the possession of the defendant becomes adverse to the plaintiff. Article 112 provides the period of limitation for such a suit, if filed by or on behalf of the Central Government, or State Government is thirty years instead of twelve years. Article 112 will not however apply to BDA as it is neither the State nor Central Government. In Nair Service Society's case, supra, the Supreme Court quoted with approved the following passage from Perry v Clissold: "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights

of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provision of the statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title". 71. Having regard to the principles laid down in the said decisions, we may conveniently cull out the legal position in regard to a true owner vis-a-vis a trespasser as under: (i) A true owner [even if it is the State or a statutory body] has no right to forcibly dispossess an unauthorized occupant [including a trespasser] in settled possession, otherwise than in accordance with law; (ii) A trespasser or unauthorized occupant in settled possession, can be dispossessed, only in accordance with an order/decree of a competent Court/Tribunal/Authority or by exercise of any statutory power of dispossession/demolition entrusted to the State or Statutory Authority; (iii) A person in unauthorized possession shall be deemed to be in settled possession, if his entry into the property was lawful or authorized;

(iv) A person in unauthorized possession, whose entry into the property is illegal or unauth

(v) A surreptitious and unauthorized entry into another's land and stealthy trespasser, wil

(vi) Where the trespasser is not in settled possession, all acts of the trespasser in regard

(vii) Where however the trespasser is in settled possession and such settled possession adver

72. We have already noticed that the length of uninterrupted possession required to infer settled possession may vary depending on the facts of each ease. BDA owns vast tracts of land spread around Bangalore, running to several square kilometres. Those lands were acquired by BDA to form layout and allot sites to needy public. But, for several reasons beyond its control, it may not able to complete formation of layouts or make allotments for several years. The difficulties faced by Bangalore Development Authority in forming layouts and protecting its possession were judicially noticed by this Court in K.C. Raju Reddy v Commissioner, BDA, Bangalore . ". . . . But formation of proper layouts is a time consuming and complex task involving planning, levelling of land and execution of development works like roads, drains, culverts, bridges in uneven and undulating terrains. The delay in formation of layout is aggravated by lack of adequate co-ordination and co-operation among several wings and departments of BDA as also other statutory bodies like Karnataka Electricity Board and Karnataka Water Supply and Sanitary Board. There is also considerable delays on account of litigations by land owners, unauthorized constructions by encroachers, ex-owners and revenue site holders and stay orders by Courts. Sometimes the acquired land consist in its midst, clusters of habitations, and the owners/occupants of the buildings resist acquisition and also initiate litigation. The layout and development work cannot be completed unless the pockets of resistance involving lands

which are subject-matters of stay orders and lands occupied by unauthorized structures and inhabited clusters are removed. This results in the entire layout work being delayed for long periods and further developmental activities come to a grinding halt. Where development work and activities are stopped for long periods, that gives room for further encroachments and illegal constructions followed by applications for regularisation. It is impossible for BDA to police its vast lands day and night continuously for years to prevent overnight unauthorized constructions.. ..".

73. The Supreme Court has repeatedly pointed out that to claim settled possession, a trespasser's possession must be effective, undisturbed and to the knowledge of the true owner and for a sufficiently long period to show acquiescence by the true owner. 'What is sufficiently long period' depends on the facts of each case. It has been held that in the case of a cultivable land, if a trespasser enters possession and grows any crop with the knowledge of the true owner, then it is possible to say that he completes and accomplishes the act of settled possession. In the case of BDA land, the position is completely different. The land is urban land and not cultivable land. BDA being a statutory authority owning large tracts of land, cannot be expected to take action for demolition or effect resistance immediately after it comes to know about the unauthorized construction. Firstly, the unauthorized occupation and construction should come to the notice of BDA. Secondly, BDA has to verify whether the occupant has obtained any order of stay or injunction. Thirdly, the matter should be brought to the concerned section and appropriate orders should be obtained to obstruct or demolish the construction. Having regard to the verification process involved and hierarchal system in vague, the administrative machinery moves slowly and by the time a demolition squad visits the site, three to four months might elapse from the date of knowledge. Therefore a trespasser cannot, merely by putting up a shed clandestinely in BDA land or by staying in such shed for a few months claim that he is in settled possession and that BDA cannot demolish his structure or that BDA can dispossess him only by initiating legal action in a Court or law or under the public premises Act. Unless and until the possession of a trespasser or unauthorized occupant becomes settled possession, BDA continues in possession and can therefore demolish the unauthorized structures put up in its land and forcibly evict the unauthorized occupant or trespass by using the minimum force.

74. There may be cases where a trespasser or unauthorized occupant may be in possession for even three to four months, without BDA coming to know about the such occupation. There may be cases where the unauthorized occupant or trespasser might have stayed for several years with the knowledge of BDA, but preventing BDA from taking action for immediate dispossession by obtaining an order of interim stay or temporary injunction. It cannot be said that in such cases, the unauthorized occupant or trespasser is in settled possession. BDA may demolish the structure

and dispossess the unauthorized occupant immediately after knowledge or immediately after the temporary injunction or interim stay is vacated. Whether the possession is a settled possession, or whether it is incomplete and unaccomplished possession will have to be decided with reference to the facts in each case, on evidence. This Court, in exercise of its writ jurisdiction, will not decide whether a particular petitioner, has settled possession or not. If any petitioner wants relief against demolition or dispossession by claiming that he is in settled possession, he has to approach the Civil Court for appropriate relief. But, having regard to the power of BDA to initiate action against such persons under the provisions of the Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974 or imitate prosecution under Section 33-A of the BDA Act, in regard to unauthorized occupant, filing of civil suits by the unauthorized occupant may only buy him some breathing time and nothing more, unless he has perfected their title by adverse possession.

75. The above observations are necessarily in regard to land which have vested in BDA. But, there are some cases where some petitioners may have been staying in revenue pockets and clusters and BDA has not passed awards or taken possession for more than 12 years or several decades. There are also cases wherein regard to some fully developed revenue clusters (constructed areas), BDA has shown taking of possession only on record, by drawing a nominal mahazar that it has taken possession, but did not in fact take actual physical possession and permitted the occupants to continue in possession for decades. In Balwant Narayan Bhagde v M.D. Bhagwat, the Supreme Court pointed out that if the acquired land should vest in the acquiring body, then it must take actual possession of the land; and taking 'symbolic possession' or paper possession would not be sufficient. It is not however necessary to examine this aspect further, as this is basically a question of fact. If the contention is that the land has not vested at all in BDA, then the remedy of such petitioners lies in a suit where they can prove their possession. Such a contention has nothing to do with the relief contemplated under Section 38-C(2).
76. We will now examine the different types of cases and their rights and remedies. Re: Vacant sites:
77. Many of the petitioners have contended that they are in possession of vacant sites in pursuance of sale deeds/general powers of attorney executed in their favour by the original owners. 77.1 Law raises a presumption that possession follows title. This of course is a presumption which is rebuttable. In the case of waste land, forest land, uncultivable land and vacant urban land, which are lying unused, there can be little or no evidence to prove the contrary. Therefore in case of such vacant unused lands, in particular vacant urban land, it can be taken as a well-settled principle that possession follows title. A person other than the real owner, can claim to be in possession of a land as trespasser or unauthorized occupant, only if he has actual physical possession or has effective and demonstrable possession. Courts do not countenance a claim for possession in regard to

a vacant urban land by a person who does not have title more actual possession. 77.2 Where the vacant urban land has vested in BDA as a consequence of acquisition followed by taking over of possession, BDA becomes the absolute owner of such land in possession, freed from all claims and encumbrances. Consequently, the original owner ceases to have any right, title or interest in such vacant land. Therefore, the question of such ex-owner continuing in possession of such vacant land or transferring title or delivering possession of such land or any part thereof to anyone else either by executing a sale deed or an agreement of sale or a power of attorney, does not arise. Consequently, neither the original owner nor any alleged transferee agreed holder or attorney holder can claim to be in possession of such vacant land, belonging to BDA. Therefore, the claim of possession of all petitioners in regard to BDA land, which continues to be vacant, is liable to be rejected. Re: Sites/land with compound wall or foundation or unoccupied dilapidated structures:

78. As stated above, any trespasser or other person can be said to be a person in possession of a land belonging to another only if he has actual physical possession or effective possession. While there can be an absentee landlord or absentee owner, there cannot be an absentee trespasser or absentee unauthorized occupant, in regard to vacant land. A person who does not have title can claim a right over a property only on the basis of possession and not otherwise. It will be absurd for a person who admittedly does not have title, to say or contend that he is in possession of a vacant land belonging to another person, unless he has actual physical possession. Supreme Court has repeatedly held that to claim settled possession, a trespasser or unauthorized occupant should be in actual physical possession of the property continuously for a sufficiently long period demonstrating the accomplishment of possession. Supreme Court has held that a stray or casual act of possession cannot give raise to possession. 78.1 Therefore, a person cannot, merely by entering BDA land and putting up a compound wall or a foundation contend that he is in possession. Such act or acts would at best amount to casual or stray acts of possession. If such a person who puts merely a compound wall or foundation does not continue in actual possession, he will not be entitled to contend that he is in settled possession. Therefore, petitioners who have merely put up a foundation or compound wall in BDA land, cannot claim to be in possession of such land and BDA continues in possession of such land and any act done by BDA to demolish such foundation or compound wall, will be well within its right to protect its possession against trespass/encroachment. 78.2 The same would be the position even where some structure is unauthorizable put up (either temporary or permanent or dilapidated) in a BDA land, but the same is kept empty and unoccupied. The act of putting up such structure can at best be a stray act of possession and not actual continuous physical possession giving raise to settled possession. BDA which continues to be in possession of such land is at liberty to demolish such empty structures. Re: Plots with structures:

79. Where the unauthorized occupant or trespasser has put up a structure and obtained electricity and/or water connections and is staying/residing/using such structure, and such act are within the knowledge of BDA, and BDA does not take any steps to either resist trespasser's attempt to complete and accomplish the possession or to remove the unauthorized structures, but acquiesces in such illegal or unauthorized occupation, then the unauthorized occupant or trespasser can be said to be in settled possession. But, as noticed above, the person who claims settled possession must be able to demonstrate by evidence that BDA in fact had notice and in spite of such notice and in spite of his continuing in unauthorized possession for sufficiently long time, it did not take any steps. 79.1 On the other hand, if the unauthorized occupant, approaches a Court immediately after putting up a structure, and obtains an order of interim stay or injunction, restraining BDA from interfering with his possession (or first obtains an ex parte order of stay/injunction by misrepresenting or suppressing fact and then under the cover of such interim order, put up some structure, as has happened in several cases), then it cannot be said that there was acquiescence on the part of BDA to the acts of possession by the trespasser or unauthorized occupant. In such cases, though possession may continue for a long time by virtue of the interim orders, such possession will merely be litigious possession and not settled possession; and immediately after the interim injunction or stay is vacated or modified, BDA will be entitled to protect its possession by demolishing the structure and dispossessing the trespasser/unauthorized occupant. Re: Persons who have put up structures and have remained in settled possession for more than 12 years without any kind of interference from BDA:

80. If anyone, who has trespassed into BDA land or in unauthorized possession of BDA land, has put up a structure and completes and accomplishes the act of possession and continues in such settled possession asserting possession and ownership in himself, openly, peacefully and uninterruptedly to the knowledge of BDA, for more than 12 years, then it is possible for him to contend that he has perfected his title to such property by adverse possession and consequently the title of BDA stood extinguished. It is needless to say that such adverse possession for 12 years should be subsequent to the date of vesting of land in BDA. The person claiming such title by adverse possession cannot call in aid any possession on his part or his predecessor, for any period prior to date of vesting of land in BDA, to establish adverse possession, or possession during the pendency of any litigation regarding the property, cannot be considered as possession adverse to BDA. Position in these cases:

81. In these cases, 70 out of 94 petitioners have admitted that the sites claimed by them are vacant sites and there are no constructions. Four claim to have put up either foundation or compound wall. Only 20 petitioners claim to have put up structures and in settled possession (as detailed in para 2 above).

82. Some of the petitioners claim to be in possession by virtue of sale executed in their favour. Some claim to be in possession virtue of powers of attorney executed by the original owner or legal heirs of original owners. Some of the petitioners claim to be members of family of original owners. The land bearing Sy. No. 73 has been acquired by Bangalore Development Authority and has vested in it. This has been confirmed by issue of a notification dated 24-10-1987, under Section 16(2) of the Land Acquisition Act, 1894 published in the Karnataka Gazette, dated 3-3-1988. If the original owner or his successors who executed the sale deeds or powers of attorney in favour of petitioners, did not have title, after the land vested in Bangalore Development Authority on 30-4-1987, the question of any alleged transferee from such original owner or his successors getting title under sale deeds or powers of attorney executed by such original owner or his successors does not arise. Any deed executed by any person claiming to be original owner or successors of original owner, after the land vested in Bangalore Development Authority, is not worth the paper on which it is written. If the sale deed had been executed by the original owner prior to vesting, it may at best entitle the alleged transferee to step into the shoes of the original owner to receive the compensation, but will not entitle him to claim possession, ignoring the acquisition and vesting. Thus, 74 petitioners who claim to be in possession of vacant sites (or who claim to have put up foundation/compound) are not entitled to any relief.
83. Insofar as the 20 petitioners who claim to be in possession by putting up structures, whether their possession is settled possession, is a disputed question of fact requiring evidence and such a question will not be decided by this Court in a writ proceeding. It is open to the twenty petitioners, who claim to be in settled possession, to approach Civil Court for appropriate relief.
84. Where the land has vested in BDA and the petitioners claim to be in settled possession, but such settled possession is less than 12 years, the limited relief to which the petitioners will be entitled is a right to avoid forcible dispossession and nothing more. They do not get any right to continue in possession and they can be evicted by initiating proceedings for eviction/possession either in a Civil Court or by initiating action under the provisions of the Public Premises Act.
85. Where the petitioners claim that they are in settled possession for more than 12 years after the land had vested in BDA, it is open to them to approach the Civil Court for a declaration of title by establishing adverse possession for more than 12 years.
86. On the other hand, BDA is also entitled to initiate action for demolition of structures and forcible eviction of unauthorized occupants/trespassers where they are not in settled possession. It is also entitled to initiate proceedings for eviction of persons in settled possession either in Civil Courts or under Public Premises Act.
87. BDA may do well to formulate some scheme or sale of sites where possession of the trespasser/unauthorized occupant is more than 12 years, but

there is a dispute whether such possession is adverse possession or mere litigious or interrupted possession. Be that as it may.

88. Learned Counsel for several petitioners aired a grievance that many of the petitioners were misled into buying plots in the said land as they had no way of knowing whether the land in question was acquired land [by Bangalore Development Authority or by the Government or other Authority]. The said grievance appears to be genuine. When a transfer is effected in regard to an immovable property and it is registered, the transaction is recorded in the Registers maintained by the jurisdiction Registering Authority under the Registration Act, 1908 and it is possible to obtain a certificate of encumbrances which discloses the transactions which have taken place in regard to the property in question. Members of public dealing with immovable properties or intending to purchase any immovable property regulate their transactions and affairs by effecting a search in the office of the Registering Authority and obtaining an encumbrance certificate to know whether there are any transactions or encumbrances in regard to the property. Legal practitioners also give advice and opinion in regard to title and recommend purchase of properties on the basis of encumbrance certificates obtained from the jurisdictional Registration Officer, Banks and financial institutions also advance loans on the basis of such ascertainment of title. In fact several of the petitioners in the batch of cases heard by us claim to have obtained Bank Loans by showing title. But, if a bona fide prospective purchaser wants to know whether the land which he wants to purchase is not subject to any acquisition, there is no way of knowing for certain whether the land is subjected to acquisition and the stage of the acquisition. There is at present no method by which the acquisition proceedings can be reflected in any centralized records, from which certified extracts can be obtained by a member of public intending to deal with a property. Acquisition can be under the Land Acquisition Act, 1894 or under Bangalore Development Authority Act, 1976, or Karnataka Industrial Areas Development Act, 1966 or other enactments. We find that a large number of sale deeds have been registered, after issue of acquisition notification and after vesting of land in the acquiring bodies or beneficiaries of acquisition. If the State wants to safeguard the interest of the public and if legal practitioners and persons dealing with property are to safeguard the interests of their clients, and if citizen should proceed safely in investing their life savings in a land or house, there should be some procedure by which notifications in regard to acquisition are also recorded as a transition or encumbrance in regard to the property, in the Registers maintained by the jurisdictional Sub-Registrars. Alternatively a centralised Agency should be created to record the progress of all acquisitions and issue certified extracts or certify whether any land is acquired or not. This can be done by acquiring authorities informing the registering Authorities or a centralised Agency about the issue of preliminary and final notification and a provision being made to record such notifications as transactions/encumbrance in respect of respective properties. This will

reduce litigation and suffering of members of the public. If the Executive or Legislature bestows its attention to this matter and take appropriate steps, it will go a long way to prevent public being taken for a ride by unscrupulous middlemen and ex-landowners.

89. It is contended that some of the petitioners in these cases and connected batches are in settled possession for more than 12 years and in some cases for many decades. In these batch of cases, it is contended that the date of taking possession is 30-4-1987, which is more than 12 years ago and that some petitioners who were in possession before the date of vesting have continued in possession and have perfected their title by adverse possession. On the other hand, Bangalore Development Authority contends that no one has perfected his/her title by adverse possession; and that unauthorised occupants have continued in possession by virtue of stay orders and interim orders obtained from the Courts. As stated above, this Court in exercise of its writ jurisdiction, will not decide disputed question as to whether any particular petitioner has perfected his/her title by adverse possession. But, if there is any pocket or area, where persons have been in open, peaceful and uninterrupted possession without any interference from Bangalore Development Authority for more than 12 years, the Bangalore Development Authority, instead of fighting series of litigations, my consider formulating a scheme whereby, it can grant respective sites at such prices as it may determine and settle the dispute. This is only a suggestion to reduce unnecessary litigation and not a direction to BDA. Nor is it intended to create or recognise any right in any of the petitioners.

90. For the reasons stated above, we find that petitioners are not entitled to any relief, and these petitions are dismissed, subject to the observations above, reserving liberty as follows:

(i) to petitioners to approach Civil Court for appropriate relief where they are entitled t

(ii) to Bangalore Development Authority to take action for eviction dispossession, either be

(iii) to Bangalore Development Authority to take action for demolition and dispossession, whe