Karnataka High Court The Commissioner, Bangalore ... vs State Of Karnataka And Anr. on 25 November, 2005 Equivalent citations: ILR 2006 KAR 318, 2006 (1) KarLJ 1 Author: N Kumar Bench: N Sodhi, N Kumar JUDGMENT N. Kumar, J. 1. The appellants-Bangalore Development Authority (for short, 'the BDA'), the State of Karnataka, the former Chief Minister Sri S.'M. Krishna and two others have challenged in this batch of eight writ appeals the order of the learned Single Judge quashing the acquisition proceedings pertaining to "ARKAVATHI LAYOUT" as well as the declaration made to the effect that the BDA has no jurisdiction to frame developmental schemes in Bangalore Metropolitan Area and against other reliefs granted in the writ petitions. Some writ petitions have also been filed challenging the acquisition of land for the formation of the "Arkavathi Layout" on the grounds, which have been upheld by the learned Single Judge, in the impugned judgment under appeal. Since identical questions of law and fact arise for consideration in the writ appeals and the writ petitions they are taken up for consideration together and are being disposed of by this common order. The facts leading to the present proceedings are briefly stated hereunder: 2. The BDA for the purpose of formation of Arkavathi Layout formulated a developmental scheme and issued a notification dated 3-2-2003 under Sub-sections (1) and (3) of Section 17 of the Bangalore Development Authority Act, 1976 (for short, "the BDA Act"), which was duly published in the Karnataka Gazette on the very same day. In accordance with Section 36 of the BDA Act, the Additional Land Acquisition Officer, BDA, Bangalore, its staff and workmen were authorized to exercise the powers conferred under Section 4(2) of the Land Acquisition Act, 1894 (for short, "the LA Act"). All persons interested in the land which was notified for acquisition were called upon to file objections within thirty days from the date of publication of the notification to the Land Acquisition Officer, BDA, Bangalore. The notification made it clear that the particulars of the scheme, the map of the area, statements specifying the lands which it proposes to acquire could be seen in the office of the LAO, BDA, during the office hours on all working days. The BDA proposed to acquire 3,339.12 acres of land situated in Yelahanka, K.R. Puram and Kasaba Hobli in Bangalore North and East Taluk situated in Bangalore District. There was an error in the total acreage sought to be acquired which was corrected by-issuing a corrigendum according to which the total extent of land sought to be acquired was 3,839 acres. Thereafter, individual notices were issued under Section 17(5) of the BDA Act to the landowners. The substance of the notification was published in the daily newspapers having wide circulation for the information of the public at large. Some of the landowners preferred W.P. Nos. 19G03 to 19621 of 2003 challenging the aforesaid preliminary notification before this Court on the ground that the said notification is violative of Article 243-P of the Constitution of India and ultra vires the provisions of Sections 2(c) and 15(2)(ii) of the BDA Act. After considering the aforesaid contentions the writ petitions were rejected by order dated 1-7-2003. In the meanwhile several landowners whose lands were sought to be acquired had filed objections/representations, in response to the preliminary notification. Therefore, notices were issued to all those persons to appear for personal hearing. The objections/representations received were duly

considered. The BDA in its meeting held on 3-2-2004 in Subject No. 43 of 2004 resolved to implement the Arkavathi Scheme under Section 15(2) of the BDA Act; to seek approval of the Government under Section 18(3) of the BDA Act; to accept the objections/representations filed by the interested persons in respect of 518.12 acres and to withdraw the notification to the said extent; to overrule the objections/representations in respect of 2,658 acres of notified land and to seek the declaration in respect of 2,758 acres of notified land; to grant alternate sites to revenue site holders in terms of the orders passed in W.P. Nos. 20875 to 20938 of 2001, dated 20-7-2001 and to grant sites under the Bangalore Development' Authority (Incentive Scheme for Voluntary Surrender of Land) Rules, 1989. Out of the total extent sought to be acquired an extent of 487.11 acres belongs to the Government. In respect of 92 acres of land interested persons did not file any objections to the proposed acquisition at all. The BDA accordingly made certain modifications to the scheme. Thereafter, it submitted the modified scheme to the Government for its sanction. The Government after considering the proposal submitted by the BDA accorded sanction under Section 18(3) of the BDA Act for the scheme by its order dated 21-2-2004. Thereafter, the Government issued the declaration under Section 19(1) of the BDA Act on 23-2-2004 which was also published in the Karnataka Gazette on the same day. The substance of the notification was also published in the daily newspaper on 12-5-2004. Notices under Sections 8 and 9 of the LA Act were issued during May 2004 to the interested parties. Enquiry was conducted and awards in respect of 1,618.38 acres of notified land have been passed. The BDA took up the developmental work relating to the scheme by entrusting the same to 22 contractors. The developmental works had been taken up under the supervision and guidance of the engineers of the BDA, the lands were levelled, drainages were formed and other layout works were carried out. 14,103 sites of different dimensions have been formed. BDA has spent crores of rupees in the formation of the layout. BDA also notified its proposal to form layout and invited applications for allotment and received 2,29,000 applications for allotment. The BDA processed the applications in accordance with the Rules. They intended to allot of about 28,000 sites immediately after its development. 3. The landowners and site owners who are the respondents in these appeals preferred writ petitions challenging the said acquisition on various grounds. It was contended that after the Seventy-third and Seventy-fourth Amendments to the Constitution adding Parts IX and IX-A and Eleventh and Twelfth Schedules, the BDA has no power to take up any scheme for development of any part of Bangalore Metropolitan Area and that such powers are now vested with Municipalities and Corporation. There is no public purpose in acquisition of these lands. It violates Articles 19 and 21 of the Constitution. The provisions of the LA Act have to be followed in acquisition and the said Act prevail over the provisions of the BDA Act. The Commissioner of BDA has no power to appoint Land Acquisition Officer and other officers under Section 4(2) of the LA Act, only the Government could appoint such an officer. The Government is estopped from going back on its promise made under several Government orders and in acquiring lands, as such, the doctrine of promissory estoppel is attracted. There is discrimination and

arbitrariness in acquiring the land. The BDA and Government has adopted the policy of pick and choose. Lands belonging to powerful persons have not been touched. While upholding the objections of some of the landowners and excluding such lands from acquisition, the lands belonging to others and similarly situated have been notified for acquisition. There is no valid scheme. Sections 15, 16, 17 and 18 of the BDA Act have not been complied with. There is no application of mind by the BDA in preparing the scheme. There is no application of mind by the Government while according sanction to the scheme under Section 18(3) of the BDA Act. Therefore, the writ petitioners and respondents contend that these acquisitions are liable to be quashed. 4. The learned Single Judge who heard the matter formulated the following points for consideration.– 1. Whether the definition of "Bangalore Metropolitan Area" under Section 2(c) of the BDA Act exists in view of Articles 243-ZF and 243-P(c) of the Constitution and Section 503-B of Karnataka Municipal Corporations Act, 1976 and BDA has got jurisdiction to frame the developmental scheme in Bangalore Metropolitan Area? 2. Whether the Scheme in question is properly framed by the BDA and the same is legal and valid? 3. Whether BDA submitted the modified scheme after considering the objections under Section 18(1) of the BDA Act with reasons and whether the Government has considered the same as required under Section 18(3) and whether the final notification issued was legal and valid? 4. Whether the notification under Section 17(1) of the BDA Act is bad in law for not issued by the State Government as provided under Section 4(1) of the LA Act? 5. Whether equal protection of laws under Article 14 of the Constitution are applicable to the landowners by applying the provisions of LA Act in the light of Section 36 of the BDA Act and Section 177 of the KMC Act to acquire lands for improvements? 6. Whether the acquisition of lands in question is for "public purpose" by exercising the eminent domain? 7. Whether the acquisition of lands in question will take away the right guaranteed under Article 19 of the Constitution and consequently deprive the livelihood under Article 21 of the Constitution and hence bad in, law? 8. Whether the Commissioner of BDA can authorise his subordinates to enter upon the lantts in question to survey, measure etc.? 9. Whether the enquiry conducted to consider the objections filed to the acquisition proceedings is fair, reasonable and in compliance of principles of natural justice? 10. Whether the BDA has complied with the formalities and requirements of LA Act and BDA Act to proceed for formation of sites and allot them? 11. Whether the object of the BDA Act is frustrated and defeated in the absence of any kind of restriction on allotted sites and paying way for sale, transfer or otherwise soon after execution of absolute sale deed, resulting in BDA becoming an Estate Agent? 12. Whether the promissory estoppel pleaded by some of the petitioners is justified? 13. Whether there is discrimination and violation of Article 14 of the Constitution in the matter of deletion from acquisition proceedings in respect of other continuous lands? 14. Whether the conversion orders passed under Section 95 of the Karnataka Land Revenue Act, 1964 are in conformity with Sub-sections (3) and (4) thereof and whether there is violation of other statutes such as KLR Act, Karnataka Municipalities Act, 1964, Karnataka Municipal Corporations

Act, 1976, Karnataka Town and Country Planning Act, 1961 etc.? 15. Can the private builders proceed with their projects on the basis of conversion orders, without any sanction of layout plan by the Metropolitan Planning Committee constituted under Section 503-B of the KMC Act? 16. What order? 5. The learned Single Judge after considering the material placed before him, arguments of the parties and after looking into the files of BDA and Government, has held that in view of the amendment to the Constitution of India by the Constitution (Seventy-fourth Amendment) Act, 1992, Part IX-A and in particular and definition of Metropolitan Area defined in Article 243-P(c), Article 243-R relating to composition of municipalities and corresponding amendment carried out to the Karnataka Municipal Corporations Act by inserting Section 503-B which provides for constitution of Metropolitan Planning Committee and the effect of Articles 243-ZE and 243-ZF, the BDA has no authority or jurisdiction to take up developmental scheme in Bangalore Metropolitan Area. On the other hand, the Metropolitan Planning Committee which is yet to be constituted has authority and jurisdiction to undertake developmental schemes in Bangalore Metropolitan Area. On point Nos. 2 and 3 the learned Single Judge held after referring to the original file, the Karnataka Government (Transaction of Business) Rules, 1977 and the discrepancy in the number of acreage sought to be acquired, coupled with the fact that layout plan was not forwarded to the Government before according sanction that the scheme in question had not been properly framed by the BDA and that there was no application of mind by the Government before according sanction and, therefore, the scheme was not legal and valid. On point No. 4, it was held that BDA is not constituted by elected members and it is subordinate to the Government and therefore cannot exercise the power of eminent domain to acquire the lands for public purpose. Further, it was held that the BDA Act has not received the Presidential assent and therefore, under Article 254(2) of the Constitution, the LA Act prevails over the BDA Act and the Government ought to have issued preliminary notification under Section 4 of the LA Act and the notification issued under Section 17 of the BDA Act is one without authority and as such it is bad in law. On point No. 5, it was held that LA Act imposes certain obligations upon the acquiring body and conferred certain rights upon the landowners and mandatory procedure laid down in the LA Act is not available in the BDA Act and therefore to have uniformity in the matter of acquisition and for solution to all matters, provisions of LA Act ought to have been resorted to. It was further held that to eliminate discrimination, the LA Act and Section 177 of the Karnataka Municipal Corporations Act should have been resorted to and not the BDA Act. On point Nos. 6 and 7 the learned Judge held that the acquisition of land was not for public purpose and that it offends Articles 19 and 21 of the Constitution and deprives the owners of the land of their livelihood. On point No. 8, it was held that the Commissioner of the BDA, could not authorise the Additional Land Acquisition Officer to perform the duties specified in Section 4(2) of the LA Act. On point No. 9, it was held that the enquiry conducted was a farce, contrary to Section 5-A of the LA Act and not valid and legal and that the report of the Land Acquisition Officer had not been communicated to the objectors. On point No.

10, it was held that no notification under Section 16(2) of the LA Act had been issued declaring that possession of the land acquired had been taken. Awards had not been passed, compensation is not paid and possession not taken. It was also held that even before these formalities were completed the BDA had proceeded to form sites which was in contravention of LA Act and BDA Act. On point No. 11 the learned Judge found that the substitution of the words "sale deed" instead of "lease-cum-sale agreement" contained in Sub-rule (2-A) of Rule 13 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984 would defeat the very object for which the Authority had been constituted. On point No. 12, the plea of promissory estoppel raised by some of the landowners was rejected. On point No. 13, it was held that the acquisition of lands in question and non-acquisition of similar lands, amounts to discrimination and therefore the entire acquisition was quashed. On point Nos. 14 and 15 he has issued directions to take appropriate action. In view of these findings, the writ petitions were allowed by a detailed common order, W.P. No. 26601 to 26604 of 2004, dated 15-4-2005 (Sharadamma and Ors. v. State of Karnataka and Ors. 2005(4) Kar. L.J. 481). It is against this order that the writ appeals have been filed. 6. We have heard the learned Counsels appearing for all the parties, looked into the BDA and Government files, which contain the scheme, plans, maps, orders and other papers; and also perused the various decisions relied on by them and having gone through the written submissions filed by some of them the following points arise for consideration in these appeals: (1) Whether in view of the Seventy-third and Seventy-fourth Amendments to the Constitution, incorporating Parts IX and LX.-A and the consequential amendments carried out by the State Legislature in the Karnataka Municipal Corporations Act, 1976, Karnataka Municipalities Act, 1964, Karnataka Panchayat Raj Act, 1993, the provisions of the Bangalore Development Authority Act, 1976, in particular Section 2(c) defining Bangalore Metropolitan Area; and Section 15 dealing with preparation of a development plan, have become inoperative and void; and whether they stand impliedly repealed? (2) Whether the provisions of Sections 4, 5-A and 6 of the Land Acquisition Act, 1894, override the provisions of Sections 17 and 18 of the BDA Act and whether the latter provisions violate Article 14 of the Constitution? (3) Whether the acquisition of land is for a public purpose and whether the acquisition offends Articles 19, 21 and 300-A of the Constitution? (4) Whether the Commissioner, BDA could authorise his subordinates to enter upon the lands in question to carry out survey, measurements, etc. ? (5) Whether the approval accorded by the Government under Section 18(3) of the BDA Act to the scheme, is in accordance with law and whether it suffers from the vice of non-application of mind? (6) Whether the remarks made against the then Chief Minister were justified in the facts and circumstances of the case? (7) Whether the doctrine of promissory estoppel is attracted to the instant case? (8) Whether point Nos. 11, 14 and 15 as formulated by the learned Single Judge arose for consideration and if so, whether the findings thereon are justified? (9) Whether the acquisition is liable to be set aside on the ground of arbitrariness and discrimination? We shall deal now deal with these points seriatim. 7. Point No. 1: Re. Effect of Parts IX, IX-A of the

Constitution.–Sri S. Vijayashankar, the learned Senior Counsel, appearing for the appellant-BDA as well as the learned Advocate General appearing for the State in the connected appeals contended that, BDA Act is not a law relating to Municipalities or Panchayats and that the BDA constituted under the Act is not a Municipality and, therefore, the BDA Act need not be in conformity with Parts IX and IX-A of the Constitution. The argument, indeed, is that it is only a law relating to Municipalities which has to be brought in conformity with the said constitutional provisions. It was pointed out by the learned Senior Counsel that the Karnataka Municipalities Act (for short, 'the KM Act') and the Karnataka Municipal Corporations Act (for short, 'the KMC Act') as well as the Panchayat Raj Act were amended and were brought in conformity with Parts IX and IX-A of the Constitution and that the amended provisions of these acts are not in any way inconsistent with the provisions of the BDA Act. It is argued that the finding recorded by the learned Single Judge to the effect that Sections 2(c) and 15 of the BDA Act have lost their significance and have become redundant or the provisions of the KMC Act prevail over the BDA Act is unsustainable. 8. The learned Senior Counsel Sri Dushyant Dave appearing for some of the respondents contended that after the Seventy-fourth Amendment to the Constitution introducing Part DX-A, no authority, other than a municipality can prepare plans for economic development of an area which falls within its jurisdiction in respect of matters listed in the Twelfth Schedule to the Constitution. It was argued that Article 243-W of the Constitution which falls in Part IX-A requires a Municipality to prepare plans for economic development of an area lying within its jurisdiction and in order to comply with these provisions, Section 503-B was introduced under the KMC Act and therefore the development scheme could only be prepared by the Municipal Corporation or the Metropolitan Planning Committee and not by the BDA. It was further contended that the provisions of the BDA Act and in particular Section 15 thereof which enable the BDA to frame a development scheme is contrary to Part IX-A of the Constitution and has become unconstitutional. According to the learned Senior Counsel, these provisions when originally enacted, were valid but after the coming into force of Part IX-A of the Constitution, they have become invalid. It was also urged that the provisions of the KMC Act as amended after the introduction of Part IX-A would prevail over the provisions of the BDA Act and therefore the power to frame a development scheme would be only with the Metropolitan Planning Committee. The learned Senior Counsel went to the extreme to contend that the State Legislature has been denuded of its power to enact a law like the BDA Act for the development of an area of special importance like Bangalore. 9. Sri V. Lakshminarayana, the learned Counsel appearing for some of the respondents while supporting the order of the learned Single Judge contended that, definition of Bangalore Metropolitan Area as contained in Section 2(c) of the BDA Act has lost its significance in view of the definition of the Metropolitan Area in Clause (c) of Article 243-P of the Constitution and therefore in view of Article 243-ZF, the definition automatically stood repealed after the expiry of one year from the commencement of the Constitution (Seventy-fourth Amendment) Act. According to the learned

Counsel both BDA Act and KMC Act empower different bodies/authorities to frame development schemes for Bangalore and that the provisions of the KMC Act as amended and brought in conformity with Part IX-A of the Constitution would prevail over the BDA Act and that the BDA would have no jurisdiction to frame a development scheme for Bangalore. He argued that Metropolitan Planning Committee as contemplated by Section 503-B of the KMC Act which has not been constituted by the State Government could alone take up a scheme for the development of the Bangalore Metropolitan Area. 10. In order to appreciate these contentions, it is necessary to look into various provisions of the Constitution and the relevant statutes. Part XI, Chapter I of the Constitution deals with distribution of legislative powers between the Parliament and Legislature of States. Article 245 provides for the extent of such powers and Article 246 confers power to make laws in respect of any of the matters enumerated in the relevant lists in the Seventh Schedule. It is settled law that entries in the Seventh Schedule do not give power to legislate and that these are fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. The three lists demarcate the area over which the appropriate Legislatures could legislate. There is a distinction between Parliament making a law in exercise of its legislative power contained in Articles 245 and 246 and the law made in exercise of the constituent power under Article 368. Parliament in exercise of its constituent power amended the Constitution and inserted Parts IX and IX-A and Eleventh and Twelfth Schedules, thereto. 11. Entry 5 of List II in the Seventh Schedule enables a State Legislature to make laws pertaining to local Government, that is to say, the constitution and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration. Local Government includes a local self-Government and other authorities such as improvement trust and mining settlement authorities. The Karnataka Legislature has enacted the KM Act and KMC Act which pertain to Municipal Corporations, within the meaning of Entry 5 of List II. The Karnataka Legislature has also passed laws such as Karnataka Town and Country Planning Act, 1961 (for short 'KTCP Act') and 'BDA Act' which falls under the category of improvement Trusts. All these legislations are operating in separate and distinct fields. Even if there is any overlapping, there is no inconsistency between any of the provisions. 12. By the Seventy-fourth Amendment to the Constitution, Part IX-A was added. The said part applies to "Municipalities" only. Article 243-P(e) defines "Municipality" to mean an institution of self-Government constituted under Article 243-Q. Article 243-Q sets put how a Municipality shall be constituted. According to the said Article a Nagar Panchayat for a transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area shall be constituted. A reading of Part IX-A of the Constitution would make it clear that it deals with 'Municipalities' and that the State Legislatures were required to amend their laws relating to Municipalities so as to bring them in conformity with this part. It necessarily follows that this part would not apply to any body or authority which is not a Municipality and that the laws pertain-

ing to fields other than the Municipalities need not be brought in conformity with this part. 13. Article 243-W empowers the Legislature of a State to endow by law the Municipalities with such powers and responsibilities subject to such conditions as specified therein, with respect to the preparation of plans for economic development and social justice and with respect to performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. Therefore, if any law is made under Entry 5 in respect of Municipalities, the State Legislature has been given additional power under Article 243-W to make law in respect of the entries in the Twelfth Schedule. 14. A look at the objects and reasons to the Seventy-third and Seventy-fourth Amendments, would reveal that though Panchayat Raj Institutions have been in existence for a long time, it was observed that these institutions were not able to acquire the status and dignity of viable and responsive peoples bodies due to a number of reasons. Similarly local bodies had become weak and ineffective on account of variety of reasons. The reasons so identified are, absence of or failure to hold regular elections, prolonged supersessions, insufficient representations of weaker sections like Scheduled Castes and Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources. It is to remedy this malady Parts IX and IX-A was added to the Constitution. 15. The development plan referred to in the said Chapters is not for carrying out building, engineering or other operations in or over or under land or the making of any material change in any building or land. It is a plan for economic development and social justice for the whole area comprised in the Panchayat or the Municipality. It is a plan for all round economic and social developments of the people of the area, who have been denied a say in the institution of self-Government, by giving them the power and authority to enable them to perform effectively as vibrant democratic units of self-Government. The stress was on holding elections regularly, conferring power to levy taxes and duties, implementation of developmental schemes, as may be required to enable them to function as institutions of self-Government. In the committee constituted, they want to ensure 2/3rd of the members are elected representatives. In other words those committees in the nature of things are elected bodies and not specialised agencies. 16. Therefore, the legislative intent was to give additional powers to Panchayats and Municipalities. That is achieved by enacting Parts IX and IX-A and Eleventh and Twelfth Schedules. Then power is conferred on the State Legislature under Articles 243-G and 243-W to make laws in respect of matters listed in Eleventh and Twelfth Schedules. The provisions contained in Parts IX and IX-A may be in conflict with the existing laws in respect of Panchayats and Municipalities or the existing law may not be sufficient to achieve the object of the amendment. Therefore, in Articles 243-N and 243-ZF. "non obstante clause", namely "notwithstanding anything in this part" is employed to give overriding effect to the provisions contained in Parts IX and IX-A, over any provision of any law relating to Panchayats and Municipalities in force in a State immediately before the commencement of the Seventy-third and Seventy-fourth Amendments respectively. An opportunity was given to the State Legislatures to bring the aforesaid existing law in conformity with the

constitutional provisions, within a period of one year from the commencement of the aforesaid parts, failing which the inconsistent provisions in the law relating to Panchayats and Municipalities cease to exist. Therefore, the legislative intend is manifest and expressed in clear words, without leaving any scope for interpretation by the Courts. 17. As is clear from the words used, there was no intention to denude the power of the State Legislature to pass laws in respect of Entry 5 of List II of Seventh Schedule and in particular improvement trusts. No obligation was cast upon the State Legislature to bring any provision in any other law which has been validly enacted in respect of Entry 5 in List II, in conformity with Part IX and LX-A of the Constitution. Therefore, when once the State Legislature makes a law in respect of matters listed in the Eleventh and Twelfth Schedule in the law relating to Panchayats and Municipalities or brings the said laws in conformity with Parts IX and LX-A of the Constitution, the obligation cast on the State Legislature is fulfilled. 18. If the legislative intention in introducing Part IX-A to the Constitution, was to repeal all laws which are inconsistent with the said Chapter they would have said so. They would not have said all laws relating to Municipalities which are inconsistent with Part IX-A cease to exist after the expiry of one year from the date of the Seventy-fourth Amendment. If they have expressly declared that it is only the laws relating to Municipalities which are inconsistent with Part IX-A cease to operate, by applying the doctrine of implied repeal it is not proper for the Court to hold other laws which do not fall within the category of laws relating to Municipalities even if they are inconsistent with Part IX-A of the Constitution, are repealed by implication. In fact, it is not a case of implied repeal. It would be a case of Municipal law contrary to the provisions of Constitution to the extent of repugnancy being void. Therefore, there was no intention to override the power of the State Legislature in making laws conferred under Articles 245 and 246 and also in respect of Entry 5 of List II of the Seventh Schedule, more so in respect of matters covered under the heading improvement trust and mining settlement authorities. Therefore the State Legislature was not denuded of the power to make laws in respect of Entry 5 and the laws made continued to be valid notwithstanding additions of Parts IX and LX-A to the Constitution. 19. In interpreting the constitutional provisions, the Supreme Court has emphasized that it will confine itself to the written text of the Constitution for the purpose of judicial review and not take recourse to any abstract concept like the spirit of the Constitution. In A.K. Gopalan v. State of Madras , the Supreme Court observed that, the Courts are not at liberty to declare an Act void because in their opinion it is opposed to spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general power conferred on the Legislature, we cannot declare a limitation under the notion of having discovered something in the Constitution which is not even mentioned in the instrument. It is difficult upon any general principle to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority. The said theme has been reiterated by the Supreme Court in the case of State of Bihar v. Kameshwar Singh . It was held

that, it is well-settled that recourse cannot be had to the spirit of the Constitution when its provisions are explicit in respect of a certain right or matter. It is not possible to deduce a limitation from something supposed to be inherent in the spirit of the Constitution. This elusive spirit is no guide in this matter. The spirit of the Constitution cannot prevail as against its letter. The Courts are not at liberty to declare an Act void because in their opinion it is opposed to the spirit supposed to pervade the Constitution but not expressed in words. It is equally important that as held in the case of Goodyear India Limited v. State of Haryana . Constitution is to be construed not in a narrow or pedantic sense. Constitution is not to be construed as mere law but as the machinery by which laws are to be made. Constitution is a living and organic thing. It has to be construed broadly and liberally. In the case of State of Uttar Pradesh and Ors. v. Hindustan Aluminium Corporation and Ors. , it was held that the power to legislate is both positive in sense of making a law and negative in the sense of repealing a law or making it inoperative. In either case it is a power of the Legislature and should lie where it belongs. Any other view will be hazardous and may well be said to be an encroachment on the legislative field. But the Judge of the change should be the Legislature and Courts are not expected to undertake that duty unless that becomes unavoidable and the circumstances are so apparent as to lead to one and only one conclusion. 20. It is competent for the State Legislature even after the introduction of Parts IX and IX-A to pass laws in respect of entries in List II in respect of matters which do not pertain to Panchayat or a Municipality. It is only in respect of laws either already passed or to be passed in future they must take care to see that the provisions of such law relating to Municipalities or Panchayats are in conformity with Parts IX and IX-A of the Constitution. The entries in the Eleventh and Twelfth Schedules only denotes the area over which the State Legislature can pass laws in respect of matters connected with Municipalities. In this context the opening words of both Articles 243-G and 243-W assumes importance. The said law making power is "subject to the provisions of the Constitution" and not "notwithstanding the provisions of the Constitution". Non obstante clause is not employed. 21. The preamble to the BDA Act provides for the establishment of a development authority for the development of the City of Bangalore and areas adjacent thereto and Section 14 of the BDA Act deals with the object of the authorities which provides that the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction. The Bangalore Metropolitan Area has been defined under Section 2(c) of the BDA Act. It consists of the following areas: (a) area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 which is now replaced by the Karnataka Municipal Corporations Act, 1976; (b) the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of the BDA Act, 1976 was in force; and (c) such other areas adjacent to the aforesaid as the Government from time to time by notification specify. It is clear in respect of areas which are adjacent to the city of Bangalore or outside the City of Bangalore, the Government has to issue a notification specifying the

said area for it to fall within the Bangalore Metropolitan Area. Thus, once a notification is issued as aforesaid the Bangalore Metropolitan Area includes the areas which fall within the City Municipal Councils adjoining and around the City of Bangalore. 22. "BDA" is constituted for the specific purpose of 'the development of Bangalore according to plan'. Planned development of towns is a governmental function which is traditionally entrusted by the various Municipal Acts in different States to Municipal Bodies. With growing specialization, along with the growth of titanic metropolitan cities, Legislatures have felt the need for the creation of separate town planning or development authorities or improvement trusts for individual cities. The BDA is one such authority. It is thus an authority, to which is entrusted by statute, a governmental function, ordinarily entrusted to Municipal bodies. The BDA is constituted for performing one of the several functions which a local authority may perform. It is a local authority but not a local self-Government. 23. Relying on Sections 28, 28-A, 28-C and 29 of the BDA Act it was contended by Sri M.G. Kumar, the learned Counsel appearing for some of the writ petitioners that, the nature of functions which the BDA performs under those provisions are the functions of the Municipal Corporation and, therefore, the BDA is also a Municipality and as such the provisions of the BDA Act inconsistent with Part IX-A of the Constitution cease to be in operation as the same was not brought in conformity with Part IX-A within one year from the date of the Constitution (Seventy-fourth Amendment) Act. Section 28 of the BDA Act deals with land which is vested in the Corporation but required by the BDA for formation of street to be vested temporarily in the BDA. Section 28-A deals with duty to maintain streets till the streets formed by the BDA are vested in the Corporation and the drainage sanitary arrangement and water supply which is formed by the BDA. During the period of maintenance under Section 28-B of the BDA is empowered to levy tax on land and buildings. Only for the purpose of levy and collection of education cess, health cess, library cess, beggary cess under Section 28-C of the BDA shall be deemed to be a local authority. However, Section 29 empowers the Government by a notification to confer on the BDA or the Commissioner the powers and functions of the Corporation. A reading of the aforesaid provisions makes it very clear that the powers conferred on the BDA under the BDA Act to perform the aforesaid functions are not in respect of the entire area which falls within the Corporation. It is in respect of the area which the BDA develops, before it is handed over to the Corporation or during the said period temporarily handed over to the BDA by the Corporation. The very fact that the Government has to issue a notification conferring the powers on the BDA or the Commissioner, shows that without the said notification the BDA or the Commissioner has no power of the Corporation. Again such power is conferred for a temporary period to meet a particular situation and mostly in respect of the areas/layouts which are developed by the BDA till it is fully developed and handed over to the Corporation. Once this scheme is so understood, the legislative intent becomes clear and by no stretch of imagination or by liberal interpretation it could be said that the BDA is a municipality as defined under Part IX-A of the Constitution. Therefore, we do not find any substance in the said contention. Therefore, Part

IX-A of the Constitution has no application to the BDA Act. None of the provisions of the BDA Act could be said to be inconsistent with any of the provision contained in Part IX-A of the Constitution and therefore none of the provision of the BDA Act cease to be in force after the expiry of one year from the date of the Seventy-fourth Amendment Act. 24. The next question is, whether the amended provisions of KM Act and KMC Act override or impliedly repeal the provisions of BDA Act. The KMC Act was enacted in order to bring a single enactment governing Municipal Corporations in the State. The KM Act was enacted to consolidate and amend the law relating to the management of municipal affairs in towns and cities, other than the cities for which Municipal Corporations are established in the State of Karnataka. These Municipal Corporations are Municipalities are self-Governments constituted by elected representatives in an election held at regular intervals and are conferred with the power to impose and collect taxes and licence fees, to borrow money, to decide disputes in the first instant in respect thereof, constitute the amounts so collected as the fund of the authority, from and out of which the liabilities of the Municipality are met and the salaries of its employees paid, imposed on its duties, to carry out various welfare activities in the interest of the public, confers on it powers for implementing their duties satisfactorily and also empowers them to make bye-laws for regulating its various functions. Both these authorities fall within the definition of Municipality under Part IX-A of the Constitution and these two laws are laws relating to Municipalities. In fact by Act 35 of 1994 and Act 36 of 1994, the KM Act and the KMC Act, have been amended to bring them in conformity with the provisions contained in Part IX-A of the Constitution. 25. The word "development" in the BDA Act is defined as development with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment. Therefore, the meaning of the word "development" as given in the BDA Act is very narrow. In this context we have to understand the word "development" used in the preamble and in Sections 14 and 15 of the Act. So understood the scheme to be prepared under Section 15 and the plan to be submitted under Section 18 of the Act is only for the development of a portion of the land within the Bangalore Metropolitan Area. In contrast if we look into Articles 243-G and 243-W, the law to be made in respect of Panchayats and Municipalities are for the preparation of plans for economic development and social justice and implementation of schemes as may be entrusted to them, including those in relation to the matters listed in Eleventh and Twelfth Schedule, as the case may be. Whereas, Articles 243-ZD and 243- ZE, mandates consolidation of the plans prepared by the Panchayats and the Municipalities in the district and preparing a draft development plan for the district or metropolitan area as a whole. However, Section 302-A of the KM Act and Section 503-A of the KMC Act mandates preparation of development plan every year and submitting the same to the appropriate authorities. Articles 243-ZD and 243-ZE mandates that in preparing the draft development plan, the committee shall have regard to the plans prepared by Municipalities and Panchayats and matters of common interest between Panchayats and

Municipalities and other factors mentioned therein. However, Clause (a) of Sub-section (7) of Section 503-B, mandates the committee to have regard to the plans prepared by the local authorities in the metropolitan area which includes the BDA. The word "development" in this context means a comprehensive economic, social and political process which aims at the constant improvement of the well-being of the entire population in the Municipality or Panchayat and in the fair distribution of the benefits therefrom and it has nothing to do with the development of a small area of undeveloped land. 26. The detailed scheme to be drawn up by the authority under Section 15(1) of the BDA Act, though is for the development of Bangalore Metropolitan Area, it is not a scheme or development plan for the whole area. The said scheme is confined to the areas comprised in the scheme, for development of which, the land is yet to be acquired. The said scheme has to provide for the particulars mentioned in Section 16 of the BDA Act This development scheme refers to undeveloped area within or adjacent to the city of Bangalore. The Act has no application to the developed areas within the city of Bangalore, which has already vested with the Municipality or the city of Corporation. Therefore, this development scheme is only in respect of a portion of the land which is yet to be acquired and developed and the words "complete plans" referred to in Section 18(1)(b) refers to the plan of this development scheme. This complete plan does not refer to the whole of the city of Bangalore or the Bangalore Metropolitan Area. It also does not refer to any other aspect of development other than development of land as defined under Section 2(j) of the BDA Act. 27. The plans for economic development and social justice is an all-round development plan, for the whole area covered under the Panchayat and Municipalities. It is not a plan for development of land, which is not yet developed. Similarly draft development plan for the Metropolitan Area as a whole, is again not a plan for development of land, which is yet to be acquired and developed. In preparing such plans, the committee shall have regard to the plans prepared by the Municipalities, Panchayats and Local Authorities like BDA. The plan prepared by Panchayats and Municipalities are for economic development and social justice for the whole area whereas the plans prepared by the local authorities such as BDA is only a plan for development of land in a small area, may be falling within the area of the Panchayats or the Municipality, which is undeveloped, yet to be acquired, only for the purpose of land development. Draft development plan should take note of other factors mentioned in Section 503-B of the KMC Act. 28. Much of the arguments were centered on the meaning of the word "plan". It is because, the BDA Act refers to scheme, plan and complete plan. However, the Articles 243-G and 243-W refers to plans for economic development and social justice and also refers to schemes. Whereas Articles 243-ZD and 243-ZE and Section 503-B refers to draft development plan and Section 302-A of the KM Act and Section 503-A of KMC Act refers to preparation of development plan every year. The word plan or the scheme is not denned in any of these statutes. 29. The word 'plan' used in the BDA Act is not synonymous with the word plan used in Articles 243-G, 243-W, 243-ZD and 243-ZE of the Constitution, Sections 503-A and 503-B of the KMC Act and Section 302-A of the KM Act. In the BDA

Act the said word has been used in a very narrow sense and confined to only development of a small area of undeveloped land for formation of residential and civic amenities sites, roads, drainage and parks. Whereas in all the aforesaid other provisions it is used in a very broader sense. It connotes the systematic development of a community or an area so falling within the Municipality, or a Panchayat, including political, economic and social rights. 30. Section 17(2) of the BDA Act mandates that a copy of the notification under Section 17(1) shall be sent to the Corporation for consideration and for making any representation which the Corporation may think fit to make with regard to the scheme. If no such representation is received within thirty days from the date of the receipt thereof Sub-section (4) of Section 17 provides that the concurrence of the Corporation to the scheme shall be deemed to have been given. Clause (d) of Sub-section (1) of Section 18 mandates that, any such representation received by the Corporation should be forwarded to the Government for consideration before giving sanction to the scheme. Correspondingly newly amended Section 503-B mandates that the Metropolitan Planning Committee shall, in preparing the draft development plan have regard to the plans prepared by the local authorities in the Metropolitan Area which includes the BDA and after preparing such draft developmental plan shall forward the development plan to the State Government. 31. The Legislature was conscious of the fact that in the Bangalore Metropolitan Area, a development authority is constituted which undertakes developmental works and, therefore, in addition to the words Municipalities and Panchayats in Metropolitan Area found in Article 243-ZE(3)(a) they have used the words local authority in Section 503-B(7)(a)(i) of the KMC Act. They amended the KMC Act and KM Act, to bring it in conformity with Part IX-A of the Constitution. Similarly, having applied their mind they did not find it necessary either to repeal or amend the BDA Act but they chose to retain the said legislation by making appropriate provision in Section 503-B of the KMC Act. They have taken care to see that there is no inconsistency between the amended provisions and the existing law. In fact under Section 45 of the Karnataka Act No. 35 of 1994 which was passed to amend the KMC Act to bring it in conformity with the Part IX-A of the Constitution, on the constitution of the Bangalore Metropolitan Planning Committee under Sub-section (1) of Section 503-B, the Bangalore Metropolitan Region Development Authority Act, 1985 (Karnataka Act 39 of 1985) shall stand repealed. Thus, the existing law which was contrary to Part IX-A is repealed. Therefore, there is complete harmony in the wording of these provisions without giving room for any repugnancy, which also clearly demonstrates the legislative intent not to discard the provisions of the BDA Act. 32. The main ground for nullification of Sections 2(c), 15, 16, 17 and 18 of the BDA Act are that they are inconsistent with the aforesaid provisions. 33. “Inconsistent”, according to Blacks Legal Dictionary means, “mutually repugnant or contradictory, contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other”. If they relate to the same subject-matter, to the same situation and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms

and impact that one must perish wholly if the other were to prevail at all", then, only then, are they inconsistent. 34. It is well-settled that the presumption is always in favour of the constitutionality of a Statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not however the only criterion of repugnancy, for if a competent Legislature with a superior efficacy expressly or impliedly evinces by the legislation an intention to cover the whole field, the enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnancy. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes, but by the mere existence of the two pieces of legislation. Before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent, or repugnant that they cannot stand together and the repeal of the express first enactment must flow from necessary implication of the language of the later enactment. The important thing to be considered with reference to this provision is whether the legislation is in respect of the same matter. If the later legislation deals not with the matters which formed the subject-matter of the earlier legislation, but with other and distinct matters, though of a cognate and allied character, then Article 254(2) will have no application. It has no application to a case where the same Legislature enacts two enactments within its competence and they are repugnant to each other, even though obedience to each of them is not possible, or possible without disobeying the other. Then which enactment overrides the other, has to be considered in the light of the principles of statutory interpretation applicable to laws made by the same Legislature. 35. One such principle of statutory interpretation which is applied is contained in the Latin Maxim leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a occupation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. 36. The rule is that general provisions should yield to specific provision. Since statutory interpretation has no conventional protocol, cases of conflict have to be decided with reference to the object and purposes of the laws under consideration. Focus must be on the principal subject-matter plus the particular perspective overriding effect of a legislation has to be considered on much broader considerations of the purpose and policy underlying two enactments and the clear intendment conveyed by the language of the relevant provisions therein. It is equally well-known rule

that subsequent general Act does not affect a prior appeal Act by implication. When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms. What applies to subsequent general Act, equally applies to the amendments carried out to the general Act, which amended provisions tend to be in conflict with the provisions in the special enactment. The peaceful co-existence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field of play. In this sense we have to examine the two provisions. We must try and construe a statute in such a way, where it is possible to so construe it, as to obviate a conflict between provisions and also so as to render the statute or any of its provisions constitutional. 37. But, when the superior Legislature which has passed the subsequent law, provides a provision in the said law, expressly declaring which portion of the existing law is inconsistent, the application of the doctrine of implied repeal has no application to such cases. When the superior Legislature expressly provides for repeal, the area which is not covered under the said provision cannot be said to be repealed by the application of doctrine of implied repeal. 38. So construed, the aforesaid analysis shows, the absence of basic inconsistency and presence of intelligent method, in achieving the object of economic development and social justice. Therefore, the legislative intent is manifest and clear. When the Legislature has applied its mind to the existing laws and the effect of amendment in pursuance of the constitutional amendment to the law relating to municipalities in force in the State, it cannot be said by virtue of these amendments the existing laws are impliedly overruled. 39. From the foregoing discussions it is clear BDA is not a Municipality. BDA Act is not a law relating to Panchayats or Municipalities. The President's assent is not required. It is a special legislation. Though Section 73 of the said Act has an overriding effect, it cannot override the provisions of the Constitution, but it certainly has overriding effect on other laws passed by the State Legislature. None of the provisions of the BDA Act are inconsistent with Parts IX and LX-A of the Constitution. Similarly, none of the provisions of the said Act are inconsistent with the provisions of KM and KMC Acts. It operates altogether in a different and specific field. Neither the Act nor any of the provisions of the Act are expressly or impliedly repealed being inconsistent with Parts IX and IX-A of the Constitution or being contrary to KM and KMC Acts. Though it is a local authority it is not a local self-Government. It does not deal with the matters which are the subject-matter of the aforesaid legislation but deals with other distinct matters. Therefore, the finding of the learned Single Judge that Sections 2(c) and 15 of the BDA Act is not on the statute book and, therefore, the BDA has no jurisdiction to initiate acquisition proceedings under the Act is contrary to law and cannot be sustained. 40. Point No. 2. Whether LA Act prevails over BDA Act.–It is contended that Entry 42 of List III of Seventh Schedule provides for acquisition and requisition. When the BDA Act provides for acquisition of lands, though it also falls under Entry 5 of List II insofar as acquisition is concerned, it falls within Entry 42 of List

III, the law made by the Parliament insofar as it is inconsistent with the law made by the State Legislature should prevail. In that view of the matter, as the BDA Act has not received the assent of the President, all those provisions and in particular Section 5-A of the LA should prevail over the provisions of the BDA Act. The Supreme Court in the case of Land Acquisition Officer, City Improvement Trust Board, Bangalore v. H. Narayanaiah , examining the various provisions of the Improvement Act observed, that the Bangalore Act, as its preamble states, is really concerned with the"improvement and future expansion of the City of Bangalore and for the appointment of a Board of Trustees with special powers to carry out the aforesaid purposes. As an incident of this improvement and expansion it provides for acquisition of land also. It does not, however, contain a separate code of its own for such acquisitions. Relying on the aforesaid judgment a Division Bench of this Court in the case of Khoday Distilleries Limited and Ors. v. State of Karnataka and Ors. , after considering the said argument held that the provisions of the BDA Act is in pith and substance for improvement of the Bangalore Metropolitan Area and acquisition of land is only part of such activity and not the main activity. Acquisition of land is part of the power and not incidental thereto. Such power is conferred on the BDA as part of the improvement itself. For purpose of improvement of the City of Bangalore, if necessarily land has to be acquired the said contention has no substance. Two sets of provisions under Sections 4, &A and 6 of the LA Act are comparable with the provisions of Sections 17 and 18 of the BDA Act. Thus in substance there are provisions under the BDA Act to indicate the proposals for acquisition considering the objections thereto, sanctioning the proposal for acquisition and if such acts do not take place within a period of five years the proceedings would lapse. Further it has been held, under the BDA Act oral hearing is not at all contemplated. The requirement of the provisions of the Act would fee satisfied, if opportunity for filing objections had been given. The judgment in Khoday Distilleries case has been affirmed by the Supreme Court in the case of Munithimmaiah v. State of Karnataka and Ors. , where it was held that, they are in entire agreement with the reasoning and also affirming the ultimate conclusions arrived at by the High Court in Khoday Distilleries case which in their view is squarely in conformity with the ratio of the earlier decision of the Court in the case of H. Narayanaiah. It was held, so far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure a planned growth and development of the City of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefor is merely incidental thereto. In pith and substance the Act is one which will squarely fall under and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894 traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central Enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing

for acquisition for the special purpose of the BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka Legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different Legislature, be it the Parliament, to the Land Acquisition Act, 1894. The BDA Act constitute a special and self-contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or pari materia legislations. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. 41. Therefore, it is clear that the BDA Act is one which will squarely fall under the traceable to the powers of the State Legislature under Entry 5 of List II of Seventh Schedule in the Constitution of India. The BDA Act so far as acquisition of land for its developmental activities are concerned in substance and effect will constitute a special law providing for acquisition for the said purpose of the BDA and, therefore, it cannot be considered to be part of the LA Act. Thus a scheme formulated, sanctioned and set for its implementation under BDA Act, cannot be stultified or rendered ineffective and unenforceable by a provision in the Central Act, particularly of the nature of Section 4 or 5-A which has no application to the actions taken under the BDA Act. Therefore, the finding recorded by the learned Single Judge in this regard is liable to be set aside. 42. Point No. 3. Public Purpose and Right to livelihood.-The learned Single judge has held that there is no public purpose involved in the proposed acquisition and the landowners are deprived of the fundamental right guaranteed under Articles 19 and 21 of the Constitution. Though the learned Judge has set out in detail the reasons for coming to the aforesaid conclusion, it is unnecessary for us to go into the aforesaid reasoning as the law on the point is well-settled by the pronouncement of the Supreme Court and the learned Single Judge has recorded the said findings completely ignoring the law declared by the Supreme Court where all the reasons set out by the learned Single Judge has been considered and rejected as without any substance. 43. Dealing with the question of public purpose, the Supreme Court in the case of State of Bombay v. Bhanji Munji , upheld the requisitioning of premises for housing a person having no housing accommodation on the ground that it was a public purpose. In Babu Barkya Thakur v. State of Bombay , it was held that an industrial concern employing a large number of workmen away from their homes, it is a social necessity, that there should be proper housing accommodation available for such workmen. Where a large section of the community is concerned, its welfare is a matter of public concern. In Jhandu Lal v. State of Punjab , it was held that the private benefit of a large mimber of industrial workers becomes public benefit within the meaning of the Land Acquisition Act and therefore acquisition of building sites for residential houses for industrial labourers was upheld. In Smt. Somawanti v. State of Punjab , it was observed that broadly speaking the expression public purpose would however, include a purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and exactly concerned. Public

purpose is bound to vary with the times and the prevailing conditions in a given locality and therefore it would not be a practical proposition even to attempt a comprehensive definition. In Babu Barkya Thakur's case, it was pointed out that a very large section of the community is concerned, its welfare is a matter of public concern. In Arnold Rodricks v. State of Maharashtra , it was held that it is true that these residential and industrial sites will be ultimately allotted to member of the public and they would get individual benefit, but it is in the interest of the general community that these member of the public should be able to have sites to put up residential houses and sites to put factories. The main idea in issuing the impugned notifications was not to think of private comfort or advantage of the members of the public but the general public good. A Constitution Bench of the Supreme Court in the case of Sarwan Singh v. State of Punjab , dealing with Punjab Town Improvement Act, 1922, held that the object of the Improvement Act, being improvement of the towns covers a specific, though a wide field as may be evidenced by the elaborate provisions for preparation and implementation of the schemes by the Trust under the said Act. Although acquisition under the Acquisition Act is also generally for public purpose, the charter of the requisition under the Improvement Act is different and the difference has a definite and intimate nexus with the principal object of the Act, namely, improvement of towns which is the dominant purpose. Another Constitution Bench of the Supreme Court in the case of Aflatoon v. Lt. Governor, Delhi , held that the acquisition for planned development of Delhi is a public purpose. When an authority constituted under the Act, has initiated the action for acquisition of a large area of land comprising several plots for planned development, such acquisition would be for a public purpose. Therefore, in view of the aforesaid authoritative pronouncement of the Supreme Court on the point, the finding recorded by the learned Single Judge that there is no public purpose in the proposed acquisition is liable to be quashed. 44. It was contended that the action of the BDA in inviting applications for allotment and collecting money along with the application even before the formation of layout is illegal and vitiates the acquisition and the decision of this Court in Y. Mahesh v. Mysore Urban Development Authority , is relied on in support of the said contention. In the aforesaid case, the authority did not follow the procedure prescribed under the Act for acquisition of land for implementation of the same. On the contrary they entered into agreements with the landowners to purchase the land, without the permission of the Government which the Court held was illegal. In that context it was held that the Act of the authority apart from being unauthorised and opposed to the provisions of the Act, is nothing but a fraud on the power of the authority and a fraud committed on the general public. In the instant case, a scheme was formulated under Sections 15 and 16 of the BDA Act and preliminary notification was issued under Section 17(1) and after obtaining sanction from the Government under Section 18(3), final notification was issued under Section 19(1) of the Act. It is only after following the aforesaid procedure prescribed under law, applications were called for under the Rules prescribed. Therefore, the action of the BDA was not only authorised and it was not opposed to any provisions of the BDA Act.

In fact after the impugned order the BDA has returned the money paid by all the applicants which shows their bona fides and absence of any fraud on the public as alleged. Therefore, there is no substance in that contention also. 45. Insofar as the said acquisition offending the fundamental rights guaranteed under Articles 19 and 21 of the Constitution is concerned it also has no substance. Article 19(f) which conferred right on a citizen to acquire, hold and dispose of property as a fundamental right is no more in the statute book. The said right was omitted by the Constitution (Forty-fourth Amendment) Act, 1978 which came into force from 20-6-1979. Therefore, when the State acquires the land belonging to a citizen it does not amount to the fundamental right of a citizen being taken away. Insofar as acquisition offending Article 21 is concerned, the Supreme Court in categorical terms has held that acquisition of land for providing housing accommodation cannot be struck down by invoking Article 21 of the Constitution. The Supreme Court in the case of State of Maharashtra and Anr. v. Basantibai Mohanlal Khetan and Ors. has held that, Article 21 essentially deals with personal liberty. It has little to do with the right to own property as such. Here we are not concerned with a case where the deprivation of property would lead to deprivation of life or liberty or livelihood. On the other hand, land is being acquired to improve the living conditions of a large number of people. To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21. We have no hesitation in rejecting the argument. Land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc., cannot be struck down by invoking Article 21 of the Constitution. 46. The Supreme Court in the case of New Reviera Co-operative Housing Society v. Special Land Acquisition Officer , dealing with the question of acquisition of land by State exercising its power of eminent domain, whether it offends the right to livelihood or right to shelter or dignity of a person as enshrined in Article 21 has held that, right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence, no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property, he is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person. 47. Again the Supreme Court in the case of Chameli Singh and Ors. v. State of Uttar Pradesh and Anr. , repelling a similar contention held that, in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acqtiires the land. So long as the exercise of the

power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation, interest is payable under Section 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable. 48. Therefore, it is clear though right to livelihood or right to shelter is undoubtedly a fundamental right a person may be rendered shelterless but it may be to serve a larger public purpose. If that contention is given credence to no land can be acquired for any public purpose since in all such cases the owner/interested persons would be deprived of his property. So long as the exercise of the power is for public purpose, the individual's right of a owner must yield place to the larger public purpose. Therefore, it would not amount to deprivation of right to livelihood or shelter. Thais, the plea of deprivation of right to livelihood or shelter under Article 21 is unsustainable. Therefore, the finding recorded by the learned Single Judge ignoring the aforesaid law declared by the Supreme Court is liable to be quashed. 49. Point No. 4. Power of BDA to appoint LAO.–Sri Gangi Reddy, learned Counsel appearing for some of the respondents contended that under Section 4(2) of the Land Acquisition Act, an officer specially authorised by Government only can perform the functions mentioned under Section 4(2) of the LA Act. The Commissioner of the BDA has no such power to authorize any officer to perform such functions. We do not find any substance in this contention. Firstly, Section 36 of the BDA Act makes the provisions of the Land Acquisition Act so far as they are applicable, to the acquisitions under the BDA Act. Section 52 of the BDA Act empowers the authority to authorize any person to enter into or upon any land or building with or without the assistants or workmen for the purpose of making any enquiry, inspection, measurement or survey or taking levels of such land or building; digging or boring into the sub-soil; setting out boundaries and intended lines of work; marking such levels, boundaries and lines by placing marks and cutting trenches and doing any other thing necessary for the efficient administration of the BDA Act. 50. It is the Bangalore Development Authority which has issued the Section 17(1) notification under the BDA Act and has authorized the Additional Land Acquisition Officer, BDA, its staff and workmen to exercise the powers conferred under Section 4(2) of the LA Act which is almost identical with Section 52 of the BDA Act. The Commissioner of the BDA who is the Chief Executive and Administrative Officer of the Authority has authenticated the same by his signature. Instead of mentioning Section 52 of the BDA Act, Section 4(2) of the LA Act has been mentioned. It is settled

law that mere mentioning of a wrong provision of law would make no difference. Power is vested in the authority and in exercise of the said power appointments are made. Therefore, there is no substance in the aforesaid contention. 51. Point No. 5. Application of mind.–Sri U.L. Bhat, the learned Senior Counsel challenging the acquisition contended that mandatory requirements of Sections 15, 16, 17 and 18 of the BDA Act have not been complied with. BDA in its meeting held on 20-12-2002 resolved to acquire about 3,000 acres of land in 16 villages whereas the total extent of land which is notified for acquisition in the preliminary notification is more than 3,000 acres of land, one village has been deleted and two more villages have been included in the scheme without the approval of the authority. The plan of the scheme was not kept at the office of the BDA for inspection by the owners of the land and in fact no plan had been prepared at all on the date of the preliminary notification for it to be exhibited. The boundaries of the land which is sought to be acquired out of the total extent was not mentioned either in the notification; in the scheme or in the plan; the objections filed by the owners of land has not been considered in the manner it requires to be considered. While BDA upheld the objections of 580 owners of the land, similar objections raised by other owners have been wrongly overruled; Neither the BDA nor the Government had noticed that about 530 acres belonged to the Government itself and, therefore, there was no question of acquiring the said lands; Two items of lands which are notified in the final notification were not notified in the preliminary notification at all. If one were to calculate the total extent of land to be notified it comes to 4,020 acres. In the last page of the preliminary notification it is mentioned that the total extent of land 3,339 acres whereas after the issue of final notification, a corrigendum was issued showing that the total extent of land notified for acquisition is 3,839 acres. In fact, there are number of instances wherein the lands notified for acquisition both in the preliminary and the final notification neither the name of the Kathedar nor the name of Anubhavadar is mentioned against the lands. Even though any one of the discrepancies pointed out, may not vitiate the acquisition, but the cumulative effect of these deficiencies would certainly point out that there was no application of mind either by the authority in preparing the scheme and publishing preliminary notification or in according sanction by the Government. Therefore, the sanction accorded is illegal and invalid. Admittedly the Chief Minister had granted approval subject to ratification by the Cabinet. Immediately after the administrative approval as elections were held, it was not placed before the Cabinet. After the elections were held a new Government was formed; The matter was placed before the Cabinet which granted a post facto approval of the scheme. Therefore, it was contended if the administrative approval granted by the Chief Minister initially was void, this post facto approval given by the Cabinet of something which was not in existence at all would not cure the initial defect and, therefore, it has no value in the eye of law. In that view of the matter, the acquisition has to be quashed. 52. It is in this background we called upon the BDA as well as the Government to make available the original records for our perusal, which were made available to us. The records produced by the BDA shows that the authority intended to form a

residential layout and originally it was called as Hennur-Banaswadi Extensions 1, 2 and 3 which is situated adjoining Bellary Road. In K.R. Puram Hobli of Bangalore East Taluk they proposed to acquire 1,600 acres, in Yelahanka Hobli they proposed to acquire 1,200 acres and in Bangalore South Taluk, Kasaba, Hennur 200 acres, thus in all about 3,000 acres. The first mistake which has crept in is in the resolution of the BDA passed on 10-10-2002 in Subject No. 228/02. It was resolved in acquire 1,000 acres in K.R. Puram Hobli as against 1,600 acres proposed. However, on noticing the aforesaid mistake a note was put up for rectification of the said mistake and by virtue of a resolution passed by the authority on 22-5-1984 in Subject No. 338 where the Commissioner is authorised to rectify such minor mistakes without placing the subject before the authority the said mistake was rectified. Similarly, in the resolution passed on 10-10-2002 the Hebbal-Nagavara Villages had not been included and they were included in the scheme pending ratification by the authority as it is only through two villages one could have access to the layout to be formed. In the preliminary notification issued the total area mentioned was 3,339 acres 12 guntas, whereas the total extent of land sought to be acquired was 3,839.12 acres. A corrigendum was issued to rectify the said mistake. In fact on an actual calculation made the respondents contend the total area which is notified comes to 4,024.19.5 acres which also includes about 550 acres of Government land. However, the statement filed by the BDA shows that the total extent of land notified is about 3,839 acres out of which an extent of 1,089.12 acres is given up and only final notification is issued in respect of 2,750 acres. In terms of the resolution of the authority, a draft preliminary notification under Section 17(1) and (3) of the BDA Act was prepared and it is at that stage it was named as "Arkavathi" layout. Before issue of the preliminary notification, detailed plan was prepared, which gave the particulars of the main features of the extension to be formed, land which is required for execution of the scheme, how laying and relaying of land and formation and alteration of streets to be carried out, the drainage, water supply and electricity particulars, how the roads have to be asphalted, appropriate expenditure required for the same, how much area is earmarked for sites, how much area for parks and playgrounds, how much area for commercial purposes, industrial purposes, civic amenity sites, total extent to be covered by roads, total amount required for water supply, drainage, street lights, amount required for laying pipes of water supply and for drainage facilities, the amount required for conversion of land use, amount required for planting trees, amount required for paying compensation to the landowners, amount required for construction of bridges and it also contain a map of the layout (1st to 3rd stages). The record also discloses that personal notice was sent to all the kathedars, notice was published in newspapers apart from being gazetted. Kathedars and owners of the land on receipt of such notice had filed their objections opposing the acquisition. Though the BDA Act do not provide for any enquiry and a personal hearing, notices were issued and duly published informing all the objectors the place and the date and time of hearing of their objections and accordingly they were personally heard in support of their objections and after consideration of the said objections, the authority upheld the

objections to the extent of 589.12 acres. In fact there were no objections in respect of 91 acres 7 guntas at all and the objections filed in respect of 2,658 acres was rejected. It took note of the objections filed by various revemie site owners. In respect of those objections, it was resolved that all those persons may be allotted a site in terms of the order passed by this Court on 20-7-2001 in W.P. Nos. 20875 to 20938 of 2001 and other connected matters in respect of the formation of Anjanapura layout. Similarly, they resolved to grant sites to the landowners under the incentive scheme formulated by the authority. Accordingly, they resolved to request the Government to accord sanction for approval of the scheme for acquiring 2,750 acres. Thereafter, the authority submitted the scheme making such modifications therein and furnished a description with full particulars of the scheme including the modifications inserted therein and also submitted complete plans and estimates of cost of executing the scheme, a statement specifying the land proposed to be acquired and other details as aforesaid. Thus, the authority on their part has complied with the requirements of Sections 15, 16, 17 and 18 of the BDA Act. 53. The records produced by the Government discloses on receipt of the scheme from the BDA a detailed note was prepared giving full particulars of the scheme. The total extent of land proposed for acquisition, total extent of land actually sought to be acquired with reference to the resolution of the authority, total cost of implementation of the scheme, total amount sought to be recovered, saving, total extent of land required, the boundaries within which the layout would be situated, total number of sites to be allotted, civic amenities and commercial sites to be formed in the said layout. Full particulars of the measurement of sites and the number of sites to be formed are also set out. It also discloses the particulars such as extent of land utilized for residential sites, extent of land utilized for parks and playgrounds and extent of land utilized for providing civic amenities, extent of land required for formation of roads. 54. Thereafter, a note was put up stating that (a) as the total expenditure for the implementation of the scheme is 981.36 crores it requires Cabinet approval; (b) it is necessary to place before the Cabinet the particulars such as how the aforesaid amount is to be raised, the map of the layout plan and also a copy of the final notification to be issued. An order was passed calling for the said particulars from the BDA. The BDA replied by stating that the entire cost of the scheme would be borne by the authority. Insofar as the modified map of the scheme is concerned it was stated that it is under preparation and it will be furnished after preparation. A request was also made that as there is an urgency in formation of layout and allotment, the Government was requested to issue the final notification. On receipt of such reply a note was put up stating that as the BDA is going to bear the entire expenditure, the approval of the Finance Department of the Government is not necessary. However, it was stated that the approval of the Cabinet was required. Therefore, a note is put up stating that before placing this file for approval before the Cabinet, the Chief Minister's administrative approval could be obtained. Accordingly, on 20-2-2004 file was placed before the Chief Minister for administrative approval. The file discloses that the Chief Minister after perusing the entire file approved the scheme pending ratification by the

Government. The said file contains the scheme containing all the particulars which are required to be submitted to the Government under Section 18(1) of the Act. 55. In pursuance of the administrative approval granted by the Chief Minister, a final notification came to be issued under Section 19(1) on 23-2-2004. It is thereafter as per the orders of the Chief Minister the matter was placed before the Cabinet on 30-8-2004. On 30-8-2004, the Cabinet, after considering the scheme accorded the sanction. 56. Now the infirmities pointed out has to be considered in the light of the aforesaid record. Nowhere in the BDA Act it is mentioned that the exact land required for the scheme is to be mentioned. On the contrary what is to be mentioned is the limits of the area comprised in the scheme. When the BDA passed a resolution to form a layout they have proposed to acquire about 3,000 acres of land spread over in 16 villages. It is after the said resolution the machinery is set in motion to identify lands in those villages and thereafter to prepare the scheme. While identifying the 3,000 acres of land for the scheme, if it was found that the lands mentioned in any particular village are not suitable/or not available, that village was left out and to make up the deficiencies if lands are identified in two other villages, which do not find a place in the resolution of the authority, it cannot be said that the authorities have acted in excess of the powers conferred on them. The BDA while passing the resolution should broadly give them guidelines and authority to achieve the object. These are practical problems which the authorities will face while identifying the lands. In fact resolution dated 22-5-1984, confers such power on the Commissioner. Other contentions canvassed are contrary to the record and there is no substance. It is true there is some discrepancy in the total extent of land notified for acquisition as noted in the records of the BDA and as mentioned in the preliminary notification. In this regard it cannot be lost sight of that in the total extent of land sought to be acquired there are tanks, Government lands, lands for which there is no name of the kathedar and anubhavadar mentioned in the revenue records. Therefore, the said discrepancy is understandable. That by itself would not vitiate the acquisition. The final notification issued acquiring only 2,750 acres of land which affects the owners and interested persons of the land. All those persons have been given personal notice of acquisition and the said notification was duly published in the Official Gazette and also duly published in two newspapers. They have filed their objections which has been considered. While submitting the modified scheme and complete plan, there is no requirement of furnishing a layout plan or map of the modified scheme as contended. Only after sanction by the Government a finality is reached, the layout plan and modified map has to be prepared. The plan is different from map, which should not be confused. Therefore, none of the aforesaid discrepancy pointed out would vitiate the acquisition validly made. 57. Insofar as the contention there was undue haste by the Chief Minister in according sanction to the scheme, in view of the advancement of the election to the Assembly is concerned, there is no merit. The scheme was formulated and a preliminary notification was issued nearly more than one year before the advancement of the election. At that point of time, no one ever imagined such a contingency would arise in future. The scheme was formulated only in pub-

lic interest. Chief Minister is in no way personally benefited by such scheme. There are no allegation in this regard. If the Chief Minister who is also the Minister-in-charge of BDA, has taken a decision to accord sanction to a scheme, which was conceived in public interest, keeping in mind the beneficiaries of such scheme, namely, economically weaker section of the society, who cannot afford to purchase residential sites in open market, to have a roof over their head and in terms of the allotment rules, majority of the sites would be allotted to persons belonging to Scheduled Caste, Scheduled Tribe, Backward Communities, Physically Handicapped, Ex-servicemen, it cannot be termed as actuated with any mala fide intention merely because such a sanction was accorded in haste. 58. Undue haste also is a matter which by itself would not have been a ground for exercise of the power of judicial review unless it is held to be mala fide. What is necessary in such matters is not the time taken for decision, but the manner in which the decision had been taken. The Court, it is trite, is not concerned with the merit of the decision, but the decision making process. The question as to whether any undue haste had been shown in taking an administrative decision is essentially a question of fact. What was only necessary to be seen was, as to whether there had been fair-play in action. A decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law on the ground that there had been undue haste on the part of the Chief Minister or the Government, especially when there is no allegation of mala fides. 59. It is contended that while according sanction under Section 18(3) of the BDA Act, the Government has not applied its mind and admittedly there is no Cabinet approval of the scheme as required under Rules as such the acquisition is liable to be quashed. 60. In exercise of the powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India, the Governor of Karnataka has made rules for the more convenient transaction of the business of the Government of Karnataka called the Karnataka Government (Transaction of Business) Rules, 1977 (for short, "Business Rules"). The said rules defines "Minister-in-charge" means the Minister appointed to be incharge of the Department of the Government to which a case belongs. Rule 10(1) provides that, without prejudice to the provisions of Rules 13 and 17, the Minister-in-charge, shall be primarily responsible for the disposal of the business pertaining to his Department. Rule 11 provides, the Council of Ministers shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these Rules whether such orders are authorised by the Cabinet or by an individual Cabinet Ministers, a Minister of State on a matter appertaining to his portfolio or of the result of discussion at meeting of the Council or of the Cabinet or howsoever otherwise. Rule 12 provides that, there shall be a Committee of the Council of Ministers to be called the Cabinet which shall consist of the Cabinet Ministers except when the Council of Ministers meets on any occasion, all matters referred to in the First Schedule shall ordinarily be considered at a meeting of the Cabinet. 61. The said Rule contains three Schedules. First Schedule deals with cases which shall be brought before the Cabinet; Second Schedule deals with cases which shall be submitted to the Chief Minister and Third Schedule deals with cases which shall submitted

to the Governor. Item 15 of the First Schedule provides that, administrative approval of works estimates exceeding rupees five crores, shall be placed before the Cabinet. The proviso makes it clear that, the Chief Minister may, if the urgency of the case so requires permit the Minister-in-charge to take action at once in a case which would otherwise be required, by this rule, to be brought before the Cabinet. Item 16(vi) states that proposals relating to expansion of existing schemes or establishing of new schemes or new lines of production by any State owned Public Corporation, company, enterprise or project, which involves any capital outlay of not less than rupees three crores where the capital outlay exceeds 25 per cent of the gross block of such Corporation, requests Cabinet approval. The scheme proposed by the BDA is a self-financing scheme, the Cabinet approval tinder those rules was not necessary. On the contrary all cases relating to acquisition of land under the Land Acquisition Act for any Department of Government shall be dealt within the Revenue Department; but all administrative decisions connected with the acquisition shall be taken in the Administrative Department concerned in the Secretariat, under orders of the Minister-in-charge. If at all a self-financing scheme falls under Item 36 of First Schedule, in which event Cabinet approval may be necessary, which is not the case pleaded or considered by the learned Single Judge. Even if such Cabinet approval is required under the Rules, the question is whether these Business Rules are mandatory or directory and how far compliance of the relevant rules on which reliance has been placed could be regarded as mandatory. 62. The question as to whether the provisions of Article 166 itself are mandatory or directory in character and the further question as to whether the rules framed thereunder can be regarded as mandatory or directory have come up for consideration before the Courts on more than one occasion and the tenor of the judicial decisions appear to be, the provisions of Article 166 of the Constitution are themselves directory in nature and so are the rules framed thereunder. A Constitution Bench of the Supreme Court in the case of R. Chitralekha v. State of Mysore , held that it is settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. In the case of State of Uttar Pradesh v. Om Prakash Gupta , the Supreme Court observed that the Court had repeatedly held that the provisions of Article 166(1) are directory and substantial compliance with these provisions was sufficient. So far as Clause (3) of Article 166 of the Constitution is concerned, in the case of A. Sanjeevi Naidu v. State of Madras , it was held that, under the Constitution, the Governor is essentially a constitutional head and the Administration of State is run by the Council of Ministers. The Constitution has authorised the Governor under Article 166(3) to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the

advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. The Cabinet is responsible to the Legislature for every action taken in any of the Ministries and that is the essence of joint responsibility; that does not mean that each and every decision must be taken by the Cabinet. Neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, they are doing so as limbs of the Government and not as persons to whom the power of the Government had been delegated. 63. In the case of Arun Kumar Bhattacharjee v. State of West Bengal , the law with regard to Rules of Business has been enunciated by the Calcutta High Court thus: The Rules of business have been made for the convenience of public business. The opening words of Clause (3) of Article 166 make it clear that the Rules of Business are framed by the Governor for more convenient transaction of business of the Government of the State. These rules have not been framed and indeed were not intended, to create or confer a right upon a public servant to come and apply for a writ under Article 226 of the Constitution for violation of these rules. 64. A Full Bench of the Bombay High Court in the case of Chandrakant Sakharam Karkhanis and Ors. v. State of Maharashtra and Ors. , after noticing the aforesaid judgments held that, the aforesaid decisions make the position quite clear that the provisions of Article 166 of the Constitution themselves are directory in nature and further that the rules framed by the Governor under Clause (3) of Article 166 must be regarded as rules having been framed for more convenient transaction of business of the Government and are directory in character and not mandatory and any non-compliance thereof would be a mere procedural defect but would not confer any right upon any citizen to approach the Court under Article 226 of the Constitution. Since the Business Rules cannot be regarded as mandatory, it would not be possible to take the view that if any rules were framed by the Governor under the proviso to Article 309 without strictly following the procedure prescribed by such Business Rules, the same will not be effective or not have the force of law or that any rule framed in violation of strict compliance with the formality prescribed by such Business Rules will not amount to a rule framed under the proviso to Article 309 of the Constitution; a substantial compliance therewith would be enough. 65. In Gulab Rao v. State of Gujarat , it was held that a decision of Revenue Minister was not an order of the Government because of non-compliance with Article 166. But in that case there was a conflict between the Revenue Department and Urban Housing Department, whether proceedings under Section 4(1) of the Act were to be dropped or not. The Revenue Department was of the view that it should be dropped. The Urban Development Department disputed this. The Rules of Business framed by the State under Article 166(3) specifically provided, that in such a controversy, the matter was to be submitted to the Chief Minister for placing before Cabinet. This was not done nor was the order of the Revenue Minister communicated to the appropriate authority. The Revenue

Minister's decision which was noted on the file was sought to be enforced by the owners. This was negatived by the Supreme Court. 66. When this decision was cited before the Supreme Court in the case of State Government Houseless Harijan Employees Association v. State of Karnataka ILR 2001 Kar. 1086 (SC) : AIR 2001 Kant. HCR 2273 : AIR 2001 SC 437 : (2001)1 SCC 610, the Court held that this decision is factually distinguishable and cannot be construed as upsetting the law settled by the Constitution Bench in Chitralekha's case and the legal position that there these rules are not mandatory was reiterated. 67. The Supreme Court in the case of Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh , held that, the word "law" in the context of Article 300-A must mean an act of the Parliament or of a State Legislature, a rule, or a statutory order having the force of law, that is positive or state made law. The executive order passed under Article 162 of the Constitution of India would not fall within the phrase "law". Therefore, any rules framed by virtue of the power conferred under Articles 162 and 166 cannot be regarded as law. 68. Therefore, it is well-settled that the provisions of Article 166 itself are directory in nature and not mandatory. Rules framed by the Governor under Clause (3) of Article 166 must be only regarded as rules having been framed for more convenient transaction of business of the Government and are directory in character and not mandatory. Non-compliance thereof would be a mere procedural defect. If there is any violation of the aforesaid rules it would not confer any right upon any citizen to approach the Court under Article 226 of the Constitution complaining of non-compliance of the said rules and contend that the action of the Government is vitiated. The Cabinet is responsible to the Legislature for every action taken in any of the Ministries and that is the essence of joint responsibility. That does not mean that each and every decision must be taken by the Cabinet. In fact Rule 11 of the Rules categorically state that the Council of Ministers shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these rules whether such orders are authorised by the Cabinet or by an individual Cabinet Minister. Rule 12 states that all matters referred to in the First Schedule shall ordinarily be considered at a meeting of the Cabinet. Therefore, when a Cabinet Minister-in-charge of a particular subject takes a decision and an order is issued in the name of the Governor, in law the Cabinet is collectively responsible for the said order, whether it is authorised by the Cabinet or only by an individual minister. If there is no strict compliance of the aforesaid rules it cannot be said that the said order of the Government is vitiated or void and is liable to be struck down by this Court, that too at the instance of a citizen, who cannot found his right on the basis of an irregularity in following the procedure. 69. Sri G.S. Vishveshwara and Sri S.G. Naganand, learned Senior Counsels contended that the notification issued under Section 2(c) of the BDA Act do not include the villages mentioned in the notification issued on 1-11-1965 under Section 4-A of the KTCP Act, 1961 within Bangalore Metropolitan Area, for them to exercise power of framing of scheme, acquiring land for the purpose of developmental activities and therefore, the notifications issued for the acquisitions are one without jurisdiction and liable to be quashed. 70. In exercise of powers conferred by Sub-section (1) of Section

4-A of the KTCP Act, 1961, the Government of Karnataka declared with effect from 1st November, 1965 the area comprising the City of Bangalore and other areas indicated in Schedule I to the Local Planning Area for the purposes of the said Act shall be called by the name of Bangalore City Planning Area and the limitation of the said planning area shall be as indicated in Schedule II. Schedule I contains 218 villages. The 16 villages which are the subject-matter of this acquisition proceedings fall within the Schedule I. Schedule II contains the boundaries of 218 villages. Again the Government of Karnataka by notification dated 13-3-1984 under Sub-section (1) of Section 4-A of the KTCP Act, declared with effect from 15th March, 1984, the area comprising peripheral villages around Bangalore as indicated in Schedule I to be a Local Planning Area for the Environs of Bangalore and the limitation of the said Planning Area was indicated in Schedule II. Schedule I consists of 325 villages and Schedule II sets out the running boundary of the proposed local planning for the environs of Bangalore. 71. The Government of Karnataka by a notification dated 6-4-1984 exercising powers conferred by Sub-section (3) of Section 4-A of the KTCP Act, 1961 amalgamated the Local Planning Area of Bangalore declared in the notification dated 1st November, 1965 referred to supra and the local planning area declared for the environs of Bangalore in notification dated 13th March, 1984 referred to supra. After amalgamation, the amalgamated local planning area was called by the name Bangalore City Planning Area with effect from 1st April, 1984. It is made clear that the names of the villages and towns included in the amalgamated local planning area are as indicated in Schedule I and the limitations of the said planning area shall be indicated as in Schedule II annexed to the notifications dated 1st November, 1965 and 13th March, 1984. In Schedule I to the said notification they included in all 538 villages, i.e., 218 villages mentioned in Schedule I to the notification dated 1-11-1965 and 325 villages mentioned in notification dated 13th March, 1984 in Schedule I in all 538 villages. The limitations of the said amalgamated planning area is as indicated in Schedule II to the notification dated 13th March, 1984. 72. While the Government issued notification on 1st March, 1998 under Section 2(c) of the BDA Act, they referred to the Schedules mentioned in the notification dated 13th March, 1984 and the areas mentioned within Schedule II of the said notification as forming part of Bangalore Metropolitan Area. The learned Counsel contends that in the said notification there is no specific reference to the villages mentioned in notification dated 1-11-1965 and on the contrary in the Notification No. HUD 496 TTP 83 issued on 13-3-1984 on the foot of Schedule II a note has been appended which reads as under: Note.–This excludes the Bangalore City Local Planning Area. Declared Government Notification No. PLM 42 MNP 65 (S.O. 3446), dated 1st November, 1965. They contend that the villages which are mentioned in the notification dated 1st November, 1965 are excluded from the Bangalore Metropolitan Area and therefore the. acquisition proceedings are void, ab initio. 73. The requirement of law as contemplated under Section 2(c) of the BDA Act is, the Government may from time to time by notification specify other areas adjacent to the Bangalore City as Bangalore Metropolitan Area. There is no obligation cast to mention the names of the villages. What is to be

mentioned is the areas. Now in Schedule II to the notification dated 13th March, 1984, the running boundary of the proposed local planning for the environs of Bangalore is clearly mentioned. It is not in dispute that 218 villages mentioned in notification dated 1st November, 1965 are within this boundary. Therefore, by issue of the said notification dated 13-3-1984 giving the area covered under the running boundary of the proposed local planning for the environs of Bangalore, the 16 villages which are the subject-matter of this acquisition proceedings are brought within the Bangalore Metropolitan Area. Therefore, the said contention is without any substance. 74. Insofar as the contention that the note appended to Schedule II in the notification dated 13-3-1984 excludes the villages mentioned in the notification dated 1st November, 1965 is concerned, it also has no substance. The said note clarifies the position that, when it says excludes the villages mentioned in the notification dated 1st November, 1965, it only means the name of those villages are not mentioned over again in Schedule II as the said running boundary includes those villages. 75. It is true that the notification issued under Section 2(c) could have been more specific, clear and could have avoided any possible doubt. But merely because the language employed is not clear, the legal effect flowing from such expression would in no way be affected. A proper reading of the notification issued under Section 2(c) of the BDA Act and the wordings of the notification issued on 13th March, 1984 makes it clear that 218 villages which includes 16 villages which are the subject-matter of the notification dated 1st November, 1965 did form part of the Bangalore Metropolitan Area. Therefore, there is no substance in the said contention. 76. In this background, it is also necessary to notice the power of the High Court under Article 226 of the Constitution to interfere with acquisition proceedings which are in public interest. The Supreme Court in Ramniklal N. Bhutta v. State of Maharashtra , held that whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power under Article 226, which is a discretionary remedy. It will be exercised only in furtherance of interests of justice and not merely on the making out a legal point. In the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. The Courts have to weigh the public interest vis-a-vis the private interests while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement, that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong. Quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. 77. Therefore, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, to ensure that injustice is not done to any party who has a just cause. As far as

possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. 78. A memo filed by the BDA discloses that, in the total extent of 2,750 acres which is notified for acquisition in the final notification, challenge to the acquisition is only to the extent of about 748 acres. There is no challenge to the acquisition regarding rest of the land. About 538 acres of land belongs to the Government itself. In respect of 92 acres, no objections were filed. It is on record that to the extent of about 1228 acres awards have been passed; compensation paid, possession taken; layout is formed, 14,103 sites carved out. 2,29,000 applications received for allotment of sites. Under these circumstances to quash acquisition proceedings of this magnitude on the aforesaid grounds would be wholly unjustified and would be against public interest. 79. Point No. 6. Disparaging Remarks.–Sri S.M. Krishna, the former Chief Minister, who had accorded the sanction to the scheme, being aggrieved by the disparaging remarks made against him in the judgment under challenge has preferred a separate Writ Appeal No. 2712 of 2005 seeking quashing of the said disparaging remarks. Sri B.V. Acharya, the learned Senior Counsel appearing for him contends, firstly, that the aforesaid remarks are liable to be expunged on the short ground of violation of principles of natural justice, inasmuch as, the former Chief Minister was not a party to the proceedings at all and he was not heard before passing the said remarks. Secondly, he contended in none of the writ petitions filed challenging the acquisition proceedings, there is a whisper of mala fides alleged by any of the petitioners against the former Chief Minister. No arguments were addressed by any learned Advocate at the Bar while arguing the matter. Under those circumstances these disparaging remarks made against the former Chief Minister is like a bolt from the blue and not made in good taste, contrary to the settled legal position and, therefore, requires to be expunged. He also sought to support the decision of the former Chief Minister by referring to the various provisions of the Business Rules, as well as the Karnataka Government (Allocation of Business) Rules, 1977. 80. The learned Advocate General appearing for the State submitted, in terms of the directions of the learned Single Judge, the entire file maintained by the Government with reference to the acquisition proceedings were handed over to him. In the course of the arguments no learned Counsel who appeared for the petitioners ever made any submission attributing mala fides on the part of the Chief Minister in according sanction to the scheme. In fact no such plea was ever made in any of the writ petitions. Learned Single Judge did not ask the Advocate General to clarify the nothings in the file pertaining to according sanction by the Government to the scheme in question. He was surprised to see the disparaging remarks made against the Chief Minister after the judgment was delivered. 81. This problem of adverse disparaging remarks made against persons who are not party to the proceedings has engaged the attention of the Supreme Court for considerable time. In the case of Ishwari Prasad Mishra v. Mohammad Isa , it was held that, the use of intemperate language may, in some cases, tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance. In the case of State of Uttar Pradesh v. Mohammad Nairn , it was held, in expressing their opinions Judges and Magistrates must be guided

by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider: (a) Whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself? (b) Whether there is evidence on record bearing on that conduct justifying the remarks? and (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct? It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. 82. In Niranjan Patnaik v. Sashibhusan Kar and Anr. , after reiterating the aforesaid proposition held that, the higher the forum and greater the powers, the greater the need for restraint and the more mellowed the reproach should be. In S.K. Viswambaran v. E. Koyakunju and Ors. , the Supreme Court held, it is indeed regrettable that the High Court should have lightly passed adverse remarks of a serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to respondents 2 and 3. In the case of Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr. , it was held that, we are surprised to find that inspite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice. The learned Judge ought to have used temperate language and moderate expressions while criticising the appellants, for judicious restraint in such matters only lends more dignity to the high office the learned Judge holds and imparts greater respect for the judiciary. In Braj Kishore Thakur v. Union of India and Ors. , the Supreme Court held that, judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. In the case of Manish Dixit and Ors. v. State of Rajasthan AIR 2001 SC 93 : (2001)1 SCC 596 : 2001 Cri. L.J. 133 (SC), the Supreme Court held that, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. 83. A perusal of the Government records produced before the Court in Volumes I, II and III discloses that the BDA submitted the scheme to the

Government for sanction. The Government sought clarification regarding two aspects: (a) How the authority bears the expenditure to the proposed scheme; (b) to furnish the copies of the scheme plan. On the same day the BDA clarified at page No. 11 to the effect that: (a) the authority will bear the expenditure from its own resources; (b) insofar as the scheme plan is concerned it was stated it was under preparation and was in final stage and will be furnished after its completion. Thereafter, the matter was placed before the Chief Minister who passed the order on 20-2-2004 approving the scheme pending ratification by the Cabinet. The learned Single Judge has taken exception to this approval. It is in that context he has made the following remarks which is sought to be expunged. They are: What was the urgency for the then Chief Minister to approve the scheme by himself pending ratification by the Cabinet, which is not permissible in law. No urgency or compelling circumstances or the need for such urgent action, are stated to accord approval by himself. No reasons are stated as to what will happen if the matter is placed before the Cabinet. It appears that the Chief Minister was very much eager to go ahead with the project giving go-bye to all canons of law, well-established mandatory procedure which require strict adherence and taking the law into his own hands. The said action of the Chief Minister was in anticipation of the Cabinet Approval. That means, he has taken for granted that the Cabinet will simply ratify his action as an empty formality and Cabinet is not required to apply mind to the facts of the case, consideration of objections and the requirements of statutory provisions. This is the way in which the power conferred upon the responsible Government as trustee, is being misused by none other than the then Chief Minister who was the trustee of the citizens who brought him to power. On the basis of the approval made by him pending ratification by the Cabinet, Final Notification was issued hurriedly which was wholly unwarranted. The said action is not only clear case of legal mala fides but also legal malice. 84. In para 30 of the judgment the learned Judge observes referring to the urgency in approving by the Chief Minister, "the same is neither stated in the statement of objections nor explained by the learned Advocate General at the time of making his submissions". The question of meeting the 'case of urgency in the statement of objections by the State would have arisen, if any of the writ petitioners in the writ petitions had alleged any mala fides on the part of the former Chief Minister in approving the scheme urgently. No such occasion arose. The learned Advocate General submitted that he was never asked to explain any of the doubts which the learned Judge had in mind after looking into the records. Therefore, the observation of the learned Judge, that the learned Advocate General did not explain at the time of making his submissions, the reason for the urgency, is not proper. 85. In view of these facts, it is clear the former Chief Minister against whom these disparaging remarks are made by the learned Single Judge was not a party to any of the writ petition. None of the writ petitioners made any allegation against the former Chief Minister. In the absence of any such allegation the State of Karnataka which filed the counter had no occasion to meet any such allegations. Even at the time of arguments none accused the former Chief Minister of any mala fides. As per the directions of the Court the State made available its file in III

Volumes and the learned Judge did not seek any clarification from the learned Advocate General regarding contents of the said file or with reference to the order made by the former Chief Minister according administrative approval to the scheme. 86. Under these circumstances, it is regrettable that the learned Single Judge should have lightly passed adverse remarks of a serious nature affecting the character, integrity and future career of a Chief Minister who is a respected public figure. The said remarks do not confirm with the settled practice of Courts to observe sobriety, moderation and reserve. They are not judicious in nature. Judicial restraint is a virtue. Intemperate language used, tend to show an absence of judicial poise and balance. Judges while expressing their opinions should be guided by considerations of justice, fair-play and restraint. Judicial restraint in such matters only lends more dignity to the high office the learned Judge holds and imparts greater respect for the judiciary. We are sorry to note, that the learned Single Judge did not remind himself of the above precautions which time and again have been exhorted. Before castigating remarks are made against any person, particularly when such remarks could ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. Condemnation of the Chief Minister without giving him an opportunity of being heard was a complete negation of the fundamental principle of natural justice. The learned Judge ought not to have used those expressions. Therefore, the offending remarks set out above are liable to be expunged on the short ground of being made in violation of the principles of natural justice. 87. Even on merits we do not find any justification for the remarks made by the learned Single Judge against the former Chief Minister. What the learned Single Judge did not notice is, the former Chief Minister was also the Minister-in-charge of BDA. As is clear from the said rules, in a matter of acquisition under the LA Act, it is the Minister-in-charge who is the final authority to approve such final acquisitions and it shall not go before the Cabinet. Even in respect of matters which has to go before the Cabinet the papers had to be placed first before the Minister-in-charge and on his order the matter has to go before the Cabinet. A reading of Items 15 and 16(vi) goes to show whenever there is a financial commitment from the Government for the approval of works estimates and proposal relating to existing schemes or establishing a new scheme, Cabinet approval is required. In other words, if there is no financial commitment on the part of the Government the said matters need not be placed before the Cabinet for approval at all. In fact proviso to Item 15 makes it clear, that the Chief Minister, if the urgency of the case so requires may permit the Minister-in-charge to take action at once, in a case which would otherwise be required by the said rule to be brought before the Cabinet. Under those circumstances, when the former Chief Minister himself was the Minister-in-charge of BDA, when the entire scheme was funded by the funds of the BDA and there was no commitment on the part of the Government, having regard to the urgency of the matter namely implementation of a housing project which is a public purpose, if the former

Chief Minister has granted the administrative approval subject to approval by the Cabinet it cannot be said that the Chief Minister committed any impropriety or illegality or ignored any mandatory requirement of law. Strictly speaking it is doubtful whether the said items needed any Cabinet approval at all. In fact we have already held that these rules are only directory and not mandatory. Therefore, in the absence of any mala fides or ulterior motives alleged against the former Chief Minister by the petitioners, nor any such fact is evidenced from the material on record, the inference which the learned Single Judge has drawn cannot be sustained. It is to be remembered Chief Minister is holding a constitutional post and the act of according sanction to a scheme of the magnitude of providing residential sites to more than twenty thousand citizens, the majority of whom belong to weaker sections of the society and economically backward and the Chief Minister has nothing to gain personally, the remarks made against him are wholly unwarranted in the facts and circumstances of the case, which could have been avoided, if only the learned Single Judge had reminded himself of the law declared by the Supreme Court on this point as referred to supra. 88. In fact subsequent events fortify this conclusion of ours. When the scheme was placed before the Cabinet for approval on 30-8-2004, a new Government had been installed, in fact coalition Government. Political opponents who bitterly criticized the Chief Minister had become part of the Government. Those differences did not come in the way for according sanction to the scheme, for which administration approval had been given by the former Chief Minister who was not a part of the new Government. When the new Cabinet considered the scheme, applied their mind and found all the legal requirements has been met and it was in public interest, they accorded the sanction. Thus there is no substance in the allegation of legal malice or mala fides attributed to the former Chief Minister. 89. Point No. 7. Promissory Estoppel.–The petitioners in W.P. No. 28087 of 2004 who have filed W.A. No. 2760 of 2005 most of them are non-resident Indians and the first petitioner is a company which develops software IT Parks. Their specific case is, the first respondent-State of Karnataka at the World Business Meet held in Bangalore had called various investors to develop IT Parks for software industries so as to attract multinational software companies to invest in Karnataka, whereby software exports from Karnataka will increase and employment for software engineers will be provided. The petitioners approached the 1st respondent to develop IT Parks and requested for land. The first respondent at the High Level Committee Meeting, issued a Government Order dated 17-1-2001 approving the proposal given by the first petitioner to set up IT Parks on 53 acres of land in Nagavara Village as per Annexure-C, which contains several incentives, concessions and infrastructural facilities the Government agreed to extend to the first petitioner. In pursuance of the said Government Order, the 6th respondent-Karnataka Industrial Area Development Board was instructed to acquire the aforesaid land for the benefit of the petitioners. In the meanwhile to expedite the project the petitioners purchased the lands from various owners directly as per Annexure-D. Lands proposed to be acquired by the 6th respondent for the first petitioner are set out in the Schedule "B" to the writ petition. The said lands were notified for acquisition for the

formation of Arkavathi Layout. When this fact was brought to the notice of the KIADB they wrote a letter dated 27-10-2003 to the third respondent-BDA requesting them to drop the acquisition of the lands in question as they intend to acquire the land for the first petitioner as per Annexure-E. Therefore, the petitioners contend that the first respondent being an instrumentality of the State cannot acquire the land contrary to the Government Order. The High Power Committee consists of all Secretaries of all the Departments including the BDA. The BDA being a part of the High Power Committee, when once approval for the project has been given, they could not have proceeded to acquire the very same land. The petitioners filed their objections to the preliminary notification. However, overruling the said objections final notification came to be issued by the Government to acquire the said land. Therefore, the petitioners preferred this writ petition. Apart from other grounds such as want of jurisdiction of the BDA to acquire the land, discrimination, they also contend that the acquisition is bad being barred by the principles of promissory estoppel. Though the learned Single Judge accepted the challenge to the acquisition on all other grounds, he negatived the challenge on the ground of promissory estoppel which point is considered at paragraph 76 as point No. 12. The learned Judge rejecting the said contention held that there is no 'promise' held out by the Government that the lands in question will not be acquired for public purpose. Public purpose is paramount consideration and in the absence of such a categorical promise or assurance, petitioners cannot claim "promissory estoppel" against the Government or the BDA. That apart, the Government cannot held out such a promise to any person. If. any such promise is made, the same will be contrary to the statutory provisions of various enactments. Aggrieved by the said finding, the appellants have preferred this writ appeal challenging the said finding. 90. Sri A.G. Holla, the learned Senior Counsel, assailing the said finding contended that the said finding is contrary to the law declared by the Supreme Court in the case of State of Punjab v. Nestle India Limited and Anr. and submits that the plea of promissory estoppel is available against the Government. On the admitted facts of this case, as petitioners have altered their position on the basis of the representation made to them, the Government should be held to its promise and consequently the acquisition of the land belonging to and meant for the first petitioner is to be quashed. 91. The facts in W.P. No. 25807 of 2004 which has given rise to W.A. No. 2757 of 2005 are that the petitioner-Tata Housing Development Company entered into an agreement with owners of land for purchase of agricultural lands bearing Sy. Nos. 17/1, 18, 19, 20, 26 and 94 situated at Hennur Village, Kasaba Hobli, Bangalore, in all measuring about 26 acres 12 guntas, for the purpose of development of the said property by constructing buildings and structures. The said agreement was entered into in pursuance of the Government New Housing Policy encouraging investment by private sector/co-operative sector in Housing Projects. Clause (6) of the said policy provided that landowners are permitted individually or in group to take up Group Housing Scheme in association with developers. The BDA while according approval to the scheme/layout plan would impose a condition that a specific number of dwelling units shall be constructed for allotment in

favour of middle and low income groups. Once the approval is given, necessary exemption would also be granted under the provisions of the Karnataka Land Reforms Act, 1961. Accordingly, the Government passed an order on 1-6-1995 authorising the BDA to permit Group Housing Projects to be undertaken by landowners in association with developers/institutions as suggested in Clause (6) referred to supra. The case of the petitioners is, the aforesaid agreement was entered into because of the said representation by the Government. The owners have executed Power of Attorney in their favour. Thereafter disputes arose between the petitioners and the landowners, which matter was referred to the arbitration and the validity of the agreement has been upheld by the Arbitrator. The landowners have challenged the same before the Civil Court and the same is pending. In the meanwhile, the Assistant Commissioner initiated proceedings under the provisions of the Land Reforms Act under Section 79-B and has held that the petitioners cannot hold agricultural lands. Aggrieved by the same they have preferred an appeal and the same is also pending. In the meanwhile these notifications have been issued acquiring the very same lands. These petitioners have filed statement of objections pointing out the aforesaid facts and pleaded promissory estoppel. When their objections are overruled they were constrained to file the writ petition. Sri M.R. Achar, the learned Senior Counsel, submits that though the learned Single Judge held, it is not necessary to go into the contention regarding promissory estoppel, still he has recorded a finding that the plea of promissory estoppel should fail, as such a plea is not available against the State and contends that finding on merits is liable to be set aside. 92. The law on the point is well-settled. The Supreme Court in the case of Nestle India Limited, has held that, the promissory estoppel long recognized as a legitimate defence in equity was held to found a cause of action against the Government, even when, the representation sought to be enforced was legally invalid in the sense, that it was made in a manner which was not in conformity with the procedure prescribed by statute. In Union of India v. Anglo Afghan Agencies , where it was held that, under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arise. In Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh , it was held that where the Government makes a promise known 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 and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. The only

recognized limitations of this principle are, firstly, since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. Secondly, no representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promisee to exempt the promise from payment of sales tax. 93. In view of the aforesaid law, it is clear the Government is not exempt from liability to carry out the representation made by it as to its future conduct. A clear and unequivocal promise knowing and intending that it would be acted upon by the promisee and such acting upon the promise by the promisee so that it would be inequitable to allow the promise to go back on the promise. If the promisee acting in reliance of such representation alters his position the Government would be held bound by the promise and the promise would be enforceable against the Government. However, since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. The Government should place proper and adequate material before the Court showing the overriding public interest, which compels them not to honour the promise. It is equally well-settled that no representation which is prohibited by law can be enforced. However, the Government must have the power to carry out the promise. If the statute confers power on the Government to enforce the promise made and there is no prohibition in law, then the Government is bound by such promise. 94. In the Global Meet the Government made a promise to all the investors to invest in Karnataka and they would provide the necessary infrastructures, such as land, power, water supply and other concessions and incentives. Acting on the said representation the first petitioner made a request for 53 acres of land to set up a IT Park. High Power Committee constituted by the Government which includes all Departmental Heads passed an order granting the request made by the petitioners. Thereafter, KIADB was directed to identify lands to meet the requirements of the petitioner. In the meanwhile, petitioners negotiated with the owners of the land with the full knowledge of the Government; paid consideration; purchased the lands with the fond hope of immediately starting the project by avoiding litigation and delay. In the meanwhile KIADB also identified the lands. When the impugned notifications were issued notifying acquisition of lands purchased by the petitioners as well as the lands by the KIADB for the petitioners. KIADB wrote to the BDA who is a party to the Government Order to drop the acquisition proceedings. Petitioners also filed a detailed objections to the pro-

posed acquisition. BDA had the jurisdiction not to acquire the land as they have given up acquisition of land to the extent of 580 acres of land notified in the preliminary notification. Even though they did not uphold the objections of the petitioners and submitted the scheme for approval before the Government, the Government had jurisdiction to refuse to acquire the land of the petitioners in view of the Government Order and the promise made by them. They also did not act promptly. The aforesaid facts make it clear that the petitioners have altered their position, spent huge amounts in acquiring the land and in making other preparations on the representation of the Government which is in writing and evidenced by a Government Order. Before the Court they neither pleaded nor placed any material to show the overriding public interest which compels them not to honour the promise. In law there was no prohibition to delete the said lands from acquisition. On the contrary the Government had the jurisdiction to give up the acquisition. Therefore, all the conditions requisite for application of the doctrine of promissory estoppel are established and the acquisition of the lands purchased by the petitioners and intended for them is hit by the doctrine of promissory estoppel. In view of the discussion made above, the finding of the learned Single Judge that the plea of estoppel is not available against the State is not correct. Consequently, the acquisition of lands in respect of what the first petitioner has already purchased and what is proposed by the KIADB for the first petitioner is accordingly quashed. 95. However, in W.P. No. 25807 of 2004, the material on record is not sufficient to grant the relief sought for. Firstly, the petitioners are only agreement holders. Though there is an award in their favour, the same is under challenge. Secondly, the said agreement is held to be invalid under the provisions of the Karnataka Land Reforms Act and the said order is also under challenge in appeal. Thirdly, the landowners are contesting the claim of the petitioner and in fact they have filed memo before this Court stating that they have no objection for the acquisition. Though not much credence can be given to the said memo, still the title of the petitioners is to be established. Under these circumstances the proper course would be to direct the petitioners to approach the BDA with an application setting out their claim and the BDA shall decide the said claim on its merits in the light of what we have said above. If the BDA were to uphold the claim of the petitioners, then the lands covered in this writ petition would stand excluded from acquisition. If the claim is negatived, as the landowners have no objection for acquisition, the acquisition of the lands stand affirmed and the BDA would be at liberty to form the layout in the land as part of Arkavathi Layout. Till such adjudication the BDA shall stay its hands. 96. Point No. 8.–The BDA (Allotment of Sites) Rules, 1984, provides for allotment of sites in the layout formed by the BDA. Rule 13 provided for execution of a lease-cum-sale agreement and a prohibition for alienation of the site for a period of 10 years. If there is any breach of the said term BDA has the power to cancel the allotment and restore the site allotted. The said rule was amended and the period of non-alienation clause was deleted. Therefore, it was held persons affordable will buy any number of sites and have monopoly over the same and BDA has no control over the allottees of the sites and that would defeat the very purpose

of the rules. In a writ petition filed for challenging the acquisition, the acquisition proceedings, the aforesaid fact had no relevance in deciding the validity of acquisition. However, the BDA after taking note of the aforesaid observations has restored the non-alienation clause which was there earlier with effect from 27-4-2005. 97. Insofar as findings on point Nos. 14 and 15 are concerned, they did not arise for consideration in deciding the contentious matter in the writ petitions. They are general observation. Whether the petitioners have obtained conversion orders, whether they are validly passed, whether they contravene the provision of Land Reforms Act, the said questions were outside the purview of the writ petitions. Even the directions issued to various authorities also fell outside the scope of those writ petitions. Under the circumstances, those findings and directions are hereby set aside. 98. Point No. 9. Discrimination.–The main grievance of the writ petitioners is the discrimination and arbitrariness on the part of the BDA in notifying their lands for acquisition. It is contended that the lands belonging to influential and powerful persons, which is adjoining their lands and which are similarly situated are not notified for acquisitions at all. Secondly, the lands which were notified in the preliminary notification were excluded from the final notification for extraneous considerations. If reasons given by the BDA for such exclusion is to be accepted, their lands also has to be excluded as those criteria equally applies to their lands. Though they have filed objections setting out the aforesaid circumstances, their objections are not considered, or rejected arbitrarily. Some of the petitioners have also produced maps of the area, showing the discrimination and arbitrariness in the action of the BDA as is demonstrated in the said maps. Though the case of arbitrariness and discrimination is specifically pleaded in the writ petition, the BDA has not filed any objection traversing those allegations and therefore it is contended that the said allegations have to be accepted as correct and the petitioners are entitled to the relief. 99. It is true the BDA has not filed any objection in those writ petitions meeting those allegations. They have filed a common or general statement of objections to all the writ petitions. They contend merely because some lands are notified and notified lands are left out of acquisition, that would not confer any right on the petitioners to claim the said benefit and they rely on the law laid down by the Supreme Court, which has not negatived such contentions. Therefore they contend that, on that ground this Court cannot quash the acquisition. 100. The learned Single Judge who dealt with such contention took note of the facts in one such writ petition, looked into the map produced, in the absence of a specific denial by the BDA in their statement of objections, held that the case of discrimination is proved and accordingly has quashed entire acquisition proceedings relating to 2,750 acres 101. At the time of the hearing of this appeal, the BDA has produced maps of the area showing the lands in the villages which are not notified for acquisition, the lands which were notified under Section 17(1) of the BDA Act, the lands which are notified under Section 19(1) of the BDA Act and the said areas are marked in different colours. A bare perusal of the said map shows the 2,750 acres sought to be acquired do not form a contiguous area. In particular lands situate at Kempapura and Srirampura Villages. In other villages also small extents of land notified under final notifi-

cation are surrounded by large chunks of area which is not acquired, making the access to the said land difficult. This appears to be the cause for heart burning. When the BDA was confronted with these hard facts, though the learned Senior Counsel sought to support the stand of BDA by relying on the Supreme Court judgments and the fact that the lands left out were built up area, nursery lands, factories, green belt area and there was no mala fides, but without prejudice to their submission filed a memo to the following effect.– "Memo filed by appellant, the Bangalore Development Authority 1. Without prejudice to the submission that there is no discrimination in the matter of deletion of lands in the final notification and that deletion of certain lands will not invalidate either the Preliminary or the Final Notifications, it is submitted as follows. 2. If this Hon'ble Court were to come to the conclusion that the objections of certain landowners/writ petitioners to the final notification are to be considered afresh by the Bangalore Development Authority, directions on the following lines may kindly be issued. 3. The writ petitioners who are landowners seeking dropping of the acquisition proceedings insofar as their respective lands are concerned, on the ground that: (a) their lands are situated within green belt area; (b) they are totally built up; (c) properties wherein there are buildings constructed by charitable, educational and/or religious institutions; (d) nursery lands; (e) who have set up factories, may be permitted to make appropriate application to the BDA seeking reconsideration for exclusion of their lands from acquisition by producing documents to substantiate their contentions within one month from the date of the order. 3.1 The BDA will consider such requests keeping in mind the status of the property as on the date of preliminary notification. Properties developed, improved, constructed upon, subsequent to the preliminary notification will not be considered for deletion. Apart from this 3.2 The writ petitioners whose revenue sites have been acquired they shall be allotted with the site of 30 ft. x 40 ft. dimension in terms of the order/direction of this Hon'ble Court dated 20-7-2001 passed in W.P. Nos. 20875 to 20938 of 2001 (Anjanapura Scheme). 3.3 The writ petitioners/landowners shall make appropriate applications within 30 days from the date of this order and thereafter the authority shall consider the applications and pass appropriate orders within period of three months. 102. Though the learned Single Judge may be justified in holding that there is discrimination and arbitrariness in acquiring the land of the petitioners in W.P. No. 28087 of 2004, after referring to the pleadings in para 5 of the writ petition, which was not rebutted by the BDA or the Government in their statement of objections, he should have confined the relief only to those petitioners who have proved" their case. On that ground he could not have quashed the entire acquisition relating to 2,750 acres. We are also satisfied that the plea of discrimination taken by some of the landowners is well-founded. However, it is a disputed fact, which cannot be gone into in these appeals, without there being enough material on record. In fact the BDA and Government have not traversed those allegations of discrimination specifically. Under these circumstances and in the light of the aforesaid memo, we deem it is proper to give an opportunity to all those landowners (excluding site owners) who have taken the plea of discrimination to file an appropriate application before the BDA for deletion of

their lands from acquisition and to substantiate their contention by producing such evidence which are available with them. On such application being filed and after holding an enquiry, the BDA shall consider their requests. If they are able to establish that their lands are similarly situated as that of the other landowners, whose land was not at all notified for acquisition, or having been notified under Section 17(1) of the BDA Act, excluded from acquisition after upholding the objection, the said lands shall be excluded from acquisition. On receipt of such a report, the scheme already sanctioned by the Government shall stand amended accordingly and the Government shall pass appropriate orders in this regard. 103. Insofar as revenue site holders are concerned, their interest is protected in terms of the order passed by this Hon'ble Court dated 20-7-2001 in W.P. Nos. 20875 to 20938 of 2001 (Anjanapura Scheme). 104. In W.P. Nos. 1353 and 1354 of 2005, the University of Agricultural Science Employees House Building Co-operative Society has challenged the acquisition of land bearing Sy. No. 9/1 measuring 0.27, 10/2 measuring 1.16 and 10/3 measuring 1.02 of land. Their case is the said lands were acquired by the Government for their society under the LA Act, 1894 and they have paid the entire cost of acquisition. Their objections in this regard has been wrongly rejected. The learned Counsel for the BDA fairly submits that the BDA will look into this matter and will exclude the said land from acquisition, if it is included in their scheme, as according to him it is doubtful whether it is included or not. 105. In the writ petitions which are listed along with these writ appeals the acquisition of the lands for Arkavathi Layout are challenged on identical grounds and in fact they rely on the impugned order passed by the learned Single Judge in support of their contentions. As in these appeals the aforesaid contentions have been gone into and the order of the learned Single Judge has been set aside, all these writ petitions are also disposed of in terms of the order passed in these appeals. 106. For the aforesaid reasons, we pass the following: ORDER (1) W.A. Nos. 2624 to 2626 and 2778 of 2005 filed by BDA, W.A. No. 2721 of 2005 filed by the Government, W.A. No. 2712 of 2005 filed by the former Chief Minister and W.A. No. 2760 of 2005 are allowed: (A) The impugned order passed by the learned Single Judge dated 15-4-2005 is hereby set aside; (B) The impugned remarks made against Sri S.M. Krishna, the former Chief Minister of Karnataka, as set out in paragraph No. 30 of the impugned order as extracted in paragraph No. 83 of this order, are hereby expunged; (C) The acquisition of the lands for the formation of Arkavathi Layout is upheld subject to the following conditions.– (a) Insofar as the site owners are concerned they are entitled to the following reliefs.– (i) These site owners/writ petitioners shall register themselves as applicants for allotment under the Bangalore Development Authority (Allotment of Sites) Rules, 1984 within a period of two months from today (extendable by another one month by BDA, if sufficient cause is shown). Petitioners will have to pay only the registration fee. They need not pay initial deposit as their sites have been acquired and they have agreed not to receive compensation in regard to the sites under this arrangement; (ii) The petitioners shall file applications for allotment of sites to BDA within three months from today in the prescribed form stating that they are applicants who were the petitioners in these writ petitions. Petitioners shall

file their documents with BDA within a period of two months to enable BDA to verify the same; (iii) BDA will treat them as applicants entitled to priority in allotment and allot each of them a site measuring 30' x 40' in Arkavathi Layout or in any other nearby layouts in Bangalore at the prevailing allotment prices subject to petitioners satisfying the twin requirements for allotment under the BDA (Allotment of Sites) Rules, 1984, that they must be the residents of Bangalore (ten year domicile) and should not be owning any residential property in Bangalore; (iv) If there are no rival claimants for compensation in regard to the plots claimed by petitioners and if the ownership of the petitioners in regard to their respective sites which have been acquired is not disputed, BDA shall calculate the compensation payable to the petitioners and give credit to the same by adjusting the same towards the allotment price for the site to be allotted and call upon the petitioners to pay the balance. Petitioners shall be given six months time for making payment. (To enable petitioners to know the amount of compensation which they will be entitled and to ascertain how much balance they should pay); (v) If there are rival claimants in regard to the survey numbers or the sites or if any petitioners title in regard to the sites are challenged, BDA shall make a reference in regard to the compensation in regard to such site/land in question, to the Civil Court under Section 30 of the Land Acquisition Act, 1894 and the petitioners will have to sort out the matter before the Reference Court. In that event, such petitioners will have to pay the full allotment price within the time stipulated, without seeking adjustment of compensation for the acquired site; (vi) If any of the petitioners does not fulfill the requirements for allotment, under the Allotment Rules, their cases may be considered for allotment of 20' x 30' sites as per the Rules containing incentive scheme for voluntary surrender of lands. For the purpose of the said scheme, such petitioners will be deemed to have voluntarily surrendered the sites; (vii) The above scheme will be available to only those who are owners, as a consequence of execution of registered sale deeds in their favour prior to the date of preliminary notification (and not to GPA/Agreement Holders). (D) Insofar as the landowners excluding the site owners, are entitled to the following reliefs.– (i) All the petitioners who are the landowners who are seeking dropping of the acquisition proceedings insofar as their respective lands are concerned, on the ground that: (a) their lands are situated within green belt area; (b) they are totally built up; (c) properties wherein there are buildings constructed by charitable, educational and/or religious institutions; (d) nursery lands; (e) who have set up factories; (f) their lands are similar to the lands which are adjoining their lands but not notified for acquisition at all, are permitted to make appropriate application to the authorities seeking such exclusion and exemption and producing documents to substantiate their contentions within one month from the date of this order. It is made clear that the BDA shall consider such request keeping in mind the status of the land as on the date of preliminary notification and to exclude any developments, improvements, constructions put up subsequent to the preliminary notification and then decide whether their cases are similar to that of the landowners whose lands, are notified for acquisition, notified and whose objections were upheld and no final notification is issued. In

the event the BDA comes to the conclusion that the lands of those persons are similarly placed, then to exclude those lands from acquisition; (ii) Petitioners who are interested in availing this benefit shall make appropriate application within 30 days from the date of this order and thereafter the BDA shall give notice to those persons, hear them and pass appropriate orders expeditiously; (iii) Till the aforesaid exercise is undertaken by the BDA and the applications filed by the petitioners either for allotment of site or for denotifying or exemption sought for are considered their possession shall not be disturbed and the existing construction shall not be demolished. After consideration of the applications, in the light of the aforesaid directions, if the lands are not excluded then the BDA is at liberty to proceed with the acquisition. (E) The BDA is directed to exclude the land bearing Sy. No. 9/1 measuring 0.27,10/2 measuring 1.16 and 10/3 measuring 1.02 of land which are the subject-matter of W.P. Nos. 1353 and 1354 of 2005 filed by University of Agricultural Science Employees House Building Co-operative Society from acquisition; (F) W.P. No. 28087 of 2004 is allowed and acquisition of land in respect of 53 acres of land in Nagavara Village which is the subject-matter of the aforesaid writ petition is quashed. (2) W.A. No. 2757 of 2005 is partly allowed. In W.P. No. 25807 of 2004 filed by Tata Housing Development Company in respect of land bearing Sy. Nos. 17/1, 18, 19, 20, 26 and 94 situated at Hennur Village, Kasaba Hobli, Bangalore, in all measuring about 26 acres 12 guntas, the finding of the learned Single Judge is set aside. Liberty is granted to the petitioners therein to make appropriate application before the BDA for deleting the said land from acquisition in view of the policy decision of the Government dated 1-6-1995. On such representation the BDA shall consider the request and pass appropriate orders. In the event their contention is upheld the said extent of land shall stand excluded from acquisition. Otherwise acquisition in respect of the said lands stand and the BDA is at liberty to form the layout. (3) All the writ petitions which are listed with these writ appeals are disposed of in terms of the order passed in these writ appeals. (4) Parties to bear their own costs.