S.Nagaraj (D) By Lrs.& Ors vs B.R.Vasudeva Murthy & Ors on 8 February, 2010

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Author: A.K. Patnaik

Bench: Dalveer Bhandari, A.K. Patnaik

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3038 OF 2007

S. Nagaraj (dead) by LRs. & Ors. .....Appellants

Versus

B.R. Vasudeva Murthy & Ors. Etc. Etc. .....Respondents

With

Civil Appeal Nos. 3037/2007, 3049/2007, 3040-3047/2007, 3050/2007, 3941-3953/2007, Civil Appeal No. 1477 of 2010 (Arising out of SLP (C) No. 18843/2007, Civil Appeal No. 1478 of 2010 (Arising out of SLP (C) No. 18845/2007) and Civil Appeal No. 1479 of 2010 (Arising out of SLP (C) No. 18846/2007)

JUDGMENT

A.K. PATNAIK, J.

Permission to file Special Leave Petition (C) Nos.18843/2007 and 18846/2007 granted. Delay condoned and leave granted in the Special Leave Petitions. We also condone the delay in filing the applications for substitution and allow the applications for substitution. We also allow the applications for impleadment.

2. These Civil Appeals are directed against the common judgment dated 22.12.2006 of the Division Bench of the High Court of Karnataka in a batch of Writ Petitions in relation to 34 acres and 3 guntas of Inam land in Bangalore District which was allotted by the State Government to an association of teachers for construction of houses and for which the Bangalore Development Authority has sanctioned a lay out plan. The Bangalore Development Authority has filed Civil Appeal No.3037/2007, the legal representatives of Inamdars have filed Civil Appeal No.3038/2007, the Teachers' Colony Residents Association has filed Civil Appeal No.3049/2007 and several owners of the house sites have filed the remaining Civil Appeals.

Facts

3. The relevant facts briefly are that the Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954 (for short `the Inam Abolition Act') was enacted for abolition of personal Inams and other miscellaneous Inams in the State of Mysore, except Bellari District. On the Inam Abolition Act coming into force on 1.2.1959, all rights, title and interests vested in the Inamdars ceased and vested absolutely in the State of Mysore free from all encumbrances. Every Inamdar, however, was entitled to be registered as an occupant of land and could make an application before the Special Deputy Commissioner, Inam Abolition, for such registration as an occupant.

4. Sreenivasa Rao and Babu Rao, two Inamdars, filed applications for registration as occupants in respect of some lands in Survey Nos. 45 and 47 of Jakkasandra village, Bangalore South Taluk. When these applications were pending before the Special Deputy Commissioner, Kendra Upadhyayara Sangha (for short `the Sangha'), an association of teachers, applied for grant of land for house sites to its members and the Special Deputy Commissioner, Bangalore District, proposed grant of land measuring 34 acres 3 guntas in Survey Nos. 45 and 47 of Jakkasandra village in favour of the Sangha. The Divisional Commissioner, Bangalore, while recommending the proposal of the Special Deputy Commissioner, Bangalore District, for grant of the land in favour of the Sangha, reported that the land in question was a Devadaya Inam Land in respect of which applications for occupancy rights were still pending settlement before the Special Deputy Commissioner, Inam Abolition. The Government of Karnataka in the Revenue Department by an order dated 15.6.1979 accorded sanction for grant of the land measuring 34 acres 3 guntas out of Survey Nos.45 and 47 of Jakkasandra village in favour of the General Secretary of the Sangha for providing house sites to the Members of the Sangha subject to the decision in the dispute pending before the Special Deputy Commissioner, Inam Abolition. The Government also fixed a price of Rs.10,000/- per acre amounting to Rs.3,40,750/- for grant of the land and a conversion fine of Rs.4,000/- per acre in its order dated 15.06.1979 and the amounts were deposited by the Sangha.

5. On 4.8.1979, Sreenivasa Rao filed O.S. No.687/1979 in the Civil Court, Bangalore, questioning the grant made by the State Government in favour of the Sangha and praying for a decree of permanent injunction against the Sangha in respect of the land. On 1.11.1980, however, Sreenivasa Rao and Babu Rao entered into an agreement with the Sangha to withdraw the suit on receipt of Rs.2,000/- per acre in respect of 34 acres and 3 guntas of land in addition to the amount of Rs.3,40,750/- deposited by the Sangha towards the price of the entire land with the Government. Accordingly, on 8.11.1980 Sreenivasa Rao filed a memo in the Court saying that he does not want to press O.S.

No.687/1979 as the suit has been settled out of court and on 10.11.1980 the Principal Munsif, Bangalore, dismissed the suit as not pressed.

6. In the meanwhile, the Karnataka Inam Abolition Laws (Amendment Act) 1979 amended the Inam Abolition Act providing that the Tribunal constituted under Section 48 of the Karnataka Land Reforms Act, 1961 (for short `the Tribunal') instead of the Special Deputy Commissioner, Inam Abolition, will decide the claims for occupancy rights under the Inam Abolition Act. Thereafter, the Tribunal by its order dated 23.6.1982 passed in Case No. I.R.F. INA 419/1979-80 decided the claims of Sreenivasa Rao and Babu Rao for occupancy rights in respect of the land and ordered the confirmation of the occupancy rights in the suit land in favour of Sreenivasa Rao and Babu Rao jointly. Pursuant to the order dated 26.6.1982 of the Tribunal, Sreenivasa Rao and Babu Rao withdrew the amount of Rs.3,40,750/- deposited with the Government by the Sangha. During the years 1982 to 1990, the Sangha got the layout plan of the land of 34 acres 3 guntas allotted to the Sangha sanctioned from the Bangalore Development Authority (for short the `BDA') and allotted sites to its members and the members of the Sangha built houses on some of these sites and some members also transferred their house sites to others.

7. In the year 1990, however, Nagaraj, Venkojirao and Narhari, the legal representatives of Sreenivasa Rao filed W.P. No.11412/1990 in the Karnataka High Court challenging the order dated 15.6.1979 of the State Government of Karnataka granting the land in favour of the Sangha. On 8.7.1992, the legal representatives of Sreenivas Rao, namely, Nagaraj, Venkojirao and Narhari also filed the suit O.S. No.4349/1992 for declaring the grant of the aforesaid land in favour of the Sangha as null and void and for declaring all acts of the BDA sanctioning the layout in respect of the suit land in favour of the Sangha as illegal and for delivery of vacant possession of the suit land to them. On 17.6.1995, the three legal representatives of Sreenivasa Rao filed a memo in the Court of Additional Civil Judge, Bangalore, for withdrawal of the suit O.S. No.4349/1992 and on 24.9.1995 the suit was dismissed as withdrawn by the Court. On 28.6.1996, W.P. No. 11412/1990 was dismissed by the learned Single Judge of the Karnataka High Court. Nagaraj, Venkojirao and Narhari, however, filed Writ Appeal No.7574/1996 against the order passed by the learned Single Judge but the Division Bench of the Karnataka High Court by its order dated 15.9.1998 after deciding various issues raised by the parties dismissed the writ appeal. Nagaraj and Narhari then filed SLP (C) No.2833/1999 against the order dated 15.9.1998 passed by the Division Bench before this Court and on 9.4.1999 this Court, without issuing notice in the SLP and while disposing of the SLP, made observations that if the proceedings pending before the Special Deputy Commissioner with regard to the claim of Inamdars have ended in favour of the petitioners who have filed the SLP, it will be open to them to approach the State Government for modification of the order granting land to the Sangha. The Teachers' Colony Residents Association (for short the `Association') which was impleaded as respondent No.5 in SLP(C) 2833/1999 filed an application before this Court for recalling the order dated 9.4.1999, but this Court in its order dated 28.8.2000 in SLP(C) 2833/1999 observed that there was nothing adverse to respondent No.5- Society and accordingly dismissed the application for recalling.

8. Thereafter, on 6.8.2002 the State Government of Karnataka directed the Special Commissioner to acquire 14 sites in the layout developed by the Association with a further direction to the Special

Deputy Commissioner to allot 14 sites to the family members of the Inamdars. The owners of the 14 sites filed W.P. Nos.32462-473/2002 in the Karnataka High Court, challenging the order dated 6.8.2002 of the State Government and by an order dated 28.11.2002 the learned Single Judge of the High Court allowed the Writ Petitions and remitted the matter to the State Government with the direction to comply with the order dated 9.4.1999 of this Court after hearing the petitioners and the respondents in the writ petitions and any other person interested in the matter. The legal representatives of the Inamdars also filed Writ Petition Nos.39046-48/2002 seeking deletion of a condition of the grant made in their favour, but on 9.1.2003 they withdrew the writ petitions as not pressed. The State Government of Karnataka by its order dated 10.2.2003 then directed the Special Deputy Commissioner to stop construction on the land in dispute till disposal of the final proceedings and this order dated 10.2.2003 was challenged before the Karnataka High Court in W.P. No.8551/2003, but by an order dated 6.3.2003 the High Court while dismissing the writ petitions directed the State Government to decide the matter within two months. The Special Deputy Commissioner then submitted his report to the Statement Government on 28.5.2003 and when the State Government did not pass any order in compliance of the order of this Court in SLP(C) 2833/1999, the Inamdars filed I.A. No.3 in the aforesaid SLP alleging contempt and this Court issued notice in the I.A. on 8.9.2003.

9. The Minister, Revenue, Government of Karnataka, then passed the order on 22.12.2003 directing that :

> (a) The vacant civic amenity sites to an extent of 2 acres 34 guntas available be handed over to the Inamdars free of cost.
>
> (b) The land which is utilized by the BDA for formation of the ring road has to be acquired by the BDA and the compensation paid as this was private property.
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> (c) The vacant 182 sites which were available as on the day of the inspection by the Special Deputy Commissioner, Bangalore, on 28.5.2003 would be transferred to the Inamdars or if the same was not available on date, compensation in lieu of it from Sangha be paid to the Inamdars.
>
> (d) The Government will examine to allot 20 acres of land in Survey No.148 of Kudlu village of Jigani Hobli, Anekal Taluk, to compensate for the losses.

10. This order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, was challenged before the Karnataka High Court by the BDA in W.P. No.15614 of 2004, the Sangha in W.P. No.26218 of 2004, the Teachers' Colony Residents Association in W.P. No.7332 of 2004 and different owners of house sites in W.P. Nos.20331, 10303, 12024, 12094, 14771, 14858, 16833, 17883, 20678, 22145, 25372, 32203, 36796 of 2004 and 21620 of 2005. The writ petitions were heard analogously and decided by a common judgment delivered by a Division Bench of the Karnataka High Court on 22.12.2006. The legal representatives of the Inamdars filed Review Petition No.107/2007 against the common judgment dated 22.12.2006 of the Division Bench of the Karnataka High Court but the same was dismissed on 19.04.2007. Findings in the impugned

Judgment of the High Court

11. In the impugned judgment dated 22.12.2006, the High Court has recorded the following findings and conclusions:

> (i) The 34 acres 3 guntas of land in Survey Nos. 45 and 47 of Jakkasandra village, Bangalore South Taluk, did not vest in the Government on 15.6.1979 because the applications of the Inamdars for registration as occupants in respect of the land under in Sections 9 and 10 of the Inam Abolition Act were pending before the Special Deputy Commissioner and therefore the State Government had no power to pass the order dated 15.6.1979 according sanction for grant of the land in favour of the Sangha and the Minister, Revenue, Government of Karnataka, was justified in passing the order dated 22.12.2003 cancelling the grant in favour of the Sangha and ordering resumption and restoration of 182 house sites in favour of the Inamdars pursuant to the order dated 9.4.1999 of this Court.

(ii) The order dated 15.6.1979 of the State Government sanctioning the grant of the land in favour of the Sangha for allotment of house sites to its members was void ab initio in law as Sections 79-A, 79-B and 63(7) of the Karnataka Land Reforms Act provided for allotment of land only for agricultural purposes and the rights given under the provisions of the Act to Inamdars in respect of land in question could not be whittled down by the State Government in exercise of its power under the Karnataka Land Grant Rules, 1969.

(iii) The Agreement executed by the Inamdars on 1.11.1980 in favour of the Sangha when the claim of the Inamdars for registration had not been decided by the Tribunal was not legal and was void and being an unregistered agreement could not affect the rights of the Inamdars to immovable property.

(iv) The orders passed by the Karnataka High Court in the earlier proceedings in W.P. No.11412/1990 and W.A. No.7574/1996 do not operate as res judicata as the case of the Inamdars with reference to the provisions of the Inam Abolition Act and law laid down by this Court on various aspects were not considered in the earlier writ petitions and writ appeal and the decisions rendered by the Division Bench of the Karnataka High Court in W.A. No.7574/1996 was per incurium.

(v) The writ petitions filed by the allottees/purchasers of the house sites against the order passed by the Minister, Revenue, Government of Karnataka dated 22.12.2003 directing the Deputy Commissioner to resume and restore 182 sites from the land earlier sanctioned in favour of the Sangha to the Inamdars were maintainable as the order entailed serious consequences for the allottees/purchasers of the sites.

(vi) The order dated 22.12.2003 passed by the Minister, Revenue, Government of Karnataka, pursuant to the order of this Court dated 9.4.1999 in SLP(C) 2833 of 1999 canceling the grant in favour of the Sangha and directing the Deputy Commissioner of the district to resume and restore

the lands to the extent of 182 sites which were vacant was legal and valid.

(vii) In the facts and circumstances of the case, particularly, when the members of the Sangha have already constructed houses in the house sites and have been residing for more than two decades, the reliefs claimed in the writ petitions should be moulded. The High Court accordingly quashed the direction in the order dated 22.12.2003 of Minister, Revenue, Government of Karnataka for resumption and restoration of 182 sites in favour of the Inamdars and directed the Sangha to allot to each legal representative of the Inamdars a site measuring 40 X 60 feet in the same layout and in lieu of the 182 sites, pay compensation for each site @ of Rs.1,00,000/- for 30 X 40 feet, Rs.1,75,000/- for 40 X 60 feet or proportional amount for any other lesser or higher dimension sites to the legal representatives of the Inamdars equally. The High Court further directed that until allotments of the sites and payment of the compensation are made by the Sangha, no construction shall be put up on the vacant sites and status quo shall be maintained. The High Court further held that the legal representatives of the Inamdars are entitled to receive compensation in respect of the land acquired by the BDA for formation of the road, if any. The High Court also quashed the direction in the order dated 22.12.2003 to examine whether further 20 acres of land can be allotted to the Inamdars.

Contentions of the parties before this Court

12. Mr. Dushyant Dave, learned senior counsel appearing for the legal representatives of the Inamdars (the appellants in Civil Appeal No.3038 of 2007), referred to sub-Section (1) of Section 3 of the Inam Abolition Act which states the consequences of a notification under sub-Section (4) of Section 1 in respect of any inam and submitted that the expression "save as otherwise expressly provided in the Act" in this provision saves the right of Inamdar under Section 9 of the Act to be registered as an occupant in respect of the land from the consequences of vesting even after a notification was issued under sub-section (4) of Section 1 of the Act. He submitted that clause (c) of sub-section (1) of Section 3 makes this position further clear by stating that upon an issue of a notification under sub-section (4) of Section 1 of the Act in respect of any inam, the Inamdar shall cease to have any interest in the inam "other than the interests expressly saved by or under the provisions" of the Act. He contended that clause (a) of sub-Section (3) of Section 10 of the Inam Abolition Act further provides that no person shall be entitled to be registered as an occupant under Section 9 unless the claimant makes an application to the Tribunal (earlier the Special Deputy Commissioner) within three years from the date of vesting of the inam concerned or 31.12.1999 whichever was later and clause (b) of sub-section (3) of Section 10 provides that where no application is made within a period specified in clause (a), the right of any person to be registered as an occupant shall stand extinguished and the land shall vest in the State absolutely and such land shall be disposed of in accordance with the rules relating to grant of land. He submitted that the legislative intent of the Inam Abolition Act, therefore, was that so long as the application of Inamdar to be registered as an occupant has been filed within the period specified in clause (a) of sub-section (3) of Section 10 of the Act and such application is pending before the Tribunal (earlier the Special Deputy Commissioner) the land in respect of the inam does not vest in the State and such land cannot be disposed of in accordance with the rules relating to grant of land. He submitted that the High Court was thus right in coming to the conclusion in the impugned order that the State

Government had no power to pass the order dated 15.6.1979 according sanction for grant of land in favour of the Sangha, because on 15.6.1979 the application of the Inamdars to be registered as occupants in respect of the land was still pending before the Special Deputy Commissioner. Mr. Dave submitted that a reading of the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha was "subject to" the pending proceedings of the Inamdars for grant of occupancy rights and therefore once the Tribunal passed the order dated 23.6.1982 in favour of the Inamdars confirming their occupancy rights, the Inamdars were entitled to become occupants of the land and the order dated 15.6.1979 of the State Government was liable to be cancelled. He submitted that since the Sangha did not challenge the order of the Tribunal, the Sangha or its members cannot, at this stage, question the right, title and interest of the Inamdars to the land.

13. Mr. Dave next submitted that the High Court was also right in coming to the conclusion in the impugned order that the grant of land by the State Government by the order dated 15.6.1979 in favour of the Sangha for allotment of house sites to its members was void ab initio as the land could only be allotted for agricultural purposes and not for house sites under the Karnataka Land Reforms Act (for short `the Land Reforms Act'. He also submitted that Section 79-A of the Land Reforms Act prohibits acquisition of any land by any person or a family or a joint family which has an assured annual income of not less than Rs.2 lakhs from sources other than agricultural lands. He further submitted that Section 79-B of the Land Reforms Act prohibits any person other than the person cultivating land personally from holding any land and Section 80 of the Act further prohibits transfer of land to non- agriculturists. He submitted that Section 81 of the Land Reforms Act, however, provides that nothing in Section 79-A or Section 79-B or Section 80 of the Act shall apply to the transactions or to the institutions and companies mentioned therein, but this Section does not exempt the grant of the land made in favour of the Sangha. He argued that the order dated 15.6.1979 of the State Government making the grant or land in favour of the Sangha was, therefore, hit by the statutory provisions of Sections 79-A, 79-B and 80 of the Land Reforms Act.

14. Mr. Dave further submitted that the finding of the High Court in the impugned order that the agreement executed by the Inamdars in favour of the Sangha was not legal and void and did not affect the rights of the Inamdars in respect of the immovable property was also correct. He argued that under Section 23 of the Contract Act, an agreement which is opposed to public policy is void and the agreement dated 1.11.1980 is contrary to the public policy laid down in Sections 9 and 10 of the Act conferring a statutory right of occupancy on the Inamdar in respect of the inam land. He cited the decision of this Court in Murlidhar Aggarwal and Another v. State of Uttar Pradesh and Others [(1974) 2 SCC 472] in which Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 was held to be based on public policy. He also relied on the decision of this Court in Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and Another [(1995) Supp. (2) SCC 549] in which an agreement entered into with a tribal for purchase of 5 acres of land without prior permission of the competent authority was held to be contrary to public policy laid down in Article 46 of the Constitution of India and as void under Section 23 of the Contract Act. He also referred to the decision of this Court in Papaiah v. State of Karnataka and Others [(1996) 10 SCC 533] for the proposition that there can be no estoppel against a statute. He submitted that in Jayamma v. Maria Bai Dead by proposed L.Rs. and Another [(2004) 7 SCC 459], this Court has held that when an

assignment or transfer is made in contravention of statutory provisions, the consequence whereof would be that the same is invalid and thus opposed to public policy and the same shall attract the provisions of Section 23 of the Indian Contract Act.

15. Mr. Dave submitted that Section 17 of the Registration Act provides that any non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards to or in immovable property has to be registered compulsorily. He submitted that since the agreement dated 1.11.1980 executed by the Inamdars in favour of the Sangha is not registered, it cannot affect the right, title and interest of the Inamdars in respect of the land. In support of this proposition, he relied on Bhoop Singh v. Ram Singh Major and Others [(1995) 5 SCC 709] and Appineni Vidyasagar v. State of A.P. and Others [(2004) 11 SCC 186].

16. Mr. Dave also supported the conclusion of the High Court in the impugned order that the orders passed by the Karnataka High Court in earlier proceedings in W.P. No.11412/1990 and W.A. No.7574/1996 do not operate as res judicata. He submitted that the question of res judicata does not arise because the order dated 15.6.1979 of the State Government sanctioning the land in favour of the Sangha was void ab initio. He cited the decisions of this Court in Mathura Prasad Bajoo Jaiswal and Others. v. Dossibai N.B. Jeejeebhoy [(1970) 1 SCC 613] and Smt. Bismillah v. Janeshwar Prasad and Others [(1990) 1 SCC 207] in which it has been held that an earlier decision will not be res judicata when the earlier decision declares valid a transaction which is prohibited by law. He submitted that in any case the order dated 15.9.1998 passed by the Division Bench of the Karnataka High Court in W.A. No.7574/1996 was challenged before this Court by the legal representatives of the Inamdars in SLP(C) No.2833/1999 and by an order dated 9.4.1999 passed in the SLP, this Court permitted the legal representatives of the Inamdars to apply to the State Government for modification of the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha. He argued that since there was a merger of the order passed by the Division Bench of the Karnataka High Court in W.A. No.7574/1996 in the order dated 9.4.1999 passed by this Court in SLP(C) 2833/1999, the order passed by the Division Bench of the Karnataka High Court cannot operate as res judicata. In support of this submission he relied on Union of India v. All India Services Pensioners' Association and Another [(1988) 2 SCC 580] and Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC 359].

17. Mr. Dave submitted that in any case this Court has held in State of Haryana and Others v. M.P. Mohla [(2007) 1 SCC 457] that if a subsequent cause of action arises in the matter of implementation of a judgment and order, the fresh cause of action can be subjected to a legal challenge. He also cited the decision of this Court in Dharam Dutt and Others v. Union of India and Others [(2004) 1 SCC 712] in which it was held that a challenge to Ordinance withdrawn does not operate as res judicata to challenge the Act. He also relied on Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1] for the proposition that if a jurisdictional question is wrongly decided, the principle of res judicata would not be attracted.

18. Mr. Dave vehemently contended that the High Court having recorded its findings and conclusions in favour of the representatives of the Inamdars on all points should not have denied

the reliefs sought by the legal representatives of the Inamdars and should not have quashed the directions in the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, for resumption and restoration of 182 sites in favour of the Inamdars. He submitted that in this appeal this Court should restore the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, for resumption and restoration of 182 sites in favour of the Inamdars and for examination to allot 20 acres of land in favour of the Inamdars and should set aside the order passed by the Division Bench of the Karnataka High Court.

19. Mr. P.P. Rao, learned senior counsel appearing for the Teachers' Colony Residents Association (the appellants in Civil Appeal Nos.3049/2007), on the other hand, submitted that Inamdars were only entitled to the occupancy price of Rs.10,000/- per acre amounting to Rs.3,40,750/- for the entire land measuring 34 acres 3 guntas which was given as grant by the State Government to the Sangha and they have in fact withdrawn the amount of Rs. 3,40,750/-. He submitted that in addition to the price of Rs.10,000/- per acre, the Inamdars agreed by the agreement dated 1.11.1980 to take from the Sangha a further amount of Rs.2,000/- per acre and on receipt of Rs.2,000/- per acre withdrew O.S. No.687/1979 from the Court of Principal Munsif, Bangalore, in which the grant of land made by the State Government in favour of the Sangha by order dated 15.6.1979 had been challenged. He submitted that after the suit of the Inamdars were dismissed as withdrawn, the right to challenge the grant made in favour of the Sangha by the State Government by order dated 15.6.1979 did not survive and, therefore, the legal representatives of the Inamdars had no locus standi to approach the Court again to challenge the grant of land made by the State Government in favour of the Sangha. He submitted that after the Inamdars have opted to receive the price or compensation in lieu of the land, their legal representatives cannot claim occupancy rights in respect of the land now granted to the Sangha by the order dated 15.6.1979 of the State Government.

20. Mr. Rao next submitted that by the order dated 9.4.1999 passed by this Court in SLP (C) No.2833/1999 no special leave to appeal against the order dated 15.9.1998 of the Division Bench in W.A. No.7574/1996 was granted and, therefore, the order of the Division Bench of the Karnataka High Court, which was challenged by the SLP, was not disturbed by the ex-parte order dated 9.4.1999 of this Court. He submitted that this is also clear from the order dated 28.8.2000 passed in I.A. No.1 in which this Court has observed that the Court did not find anything adverse to the respondent-society in the order dated 9.4.1999 and with this observation dismissed I.A. No.1 which was filed by the respondent-society to recall the order dated 9.4.1999. He cited Taherakhatoon (D) by L.Rs. v. Salambin Mohammad [(1999) 2 SCC 635] in which this Court has taken a view that even where SLP is admitted and special leave is granted, the appellant has to show special circumstances to justify this Court's interference. He relied on Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC 359] in which this Court has further held that an order refusing special leave to appeal does not stand substituted in place of the order under challenge and, therefore, an order refusing special leave to appeal does not attract the doctrine of merger. He vehemently argued that the judgment of the Division Bench of the Karnataka High Court in W.A. No.7574/1996 did not get merged in the order dated 9.4.1999 of this Court in the SLP in which the judgment of the Division Bench of Karnataka High Court was under challenge. He agued that as no special leave was granted by this Court against the said order of the Division Bench of the Karnataka High Court in W.A. No.7574/1996, the contention of Mr. Dave that the judgment of the Division Bench of the Karnataka

High Court in W.A. No.7574/1996 got merged with the order dated 9.4.1999, is misconceived.

21. Mr. Rao next submitted that the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in W.A. No.7574/1996 had, therefore, become final and binding on the parties and the rights which had accrued in favour of the Sangha and its members to occupy the land granted to its members by the Sangha under the judgment dated 15.9.1998 could not be taken away by an executive order and yet the Minister, Revenue, Government of Karnataka, passed orders on 22.12.2003 canceling the grant of land made in favour of the Sangha and issuing directions for resumption and restoration of land to the extent of 182 sites in favour of the legal representatives of the Inamdars. Mr. Rao relied on the decision of this Court in Madan Mohan Pathak and Another v. Union of India and Others [(1978) 2 SCC 50] in which the Life Insurance Corporation claimed that it was absolved of its obligation to carry out the writ of mandamus issued by the Court because of the provisions of an amending Act but this Court did not accept this plea of the Life Insurance Corporation and held that there was nothing in the amending Act which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of mandamus issued against the Life Insurance Corporation. He also cited Virender Singh Hooda and Others v. State of Haryana and Another [(2004) 12 SCC 588] in which this Court has held that the legislature can change the basis on which a decision is given by the Court but without changing the basis of a decision given by the Court cannot set aside the individual decision of the Court inter parties because this will amount to exercise of the judicial power by the legislature which is against the concept of separation of power. Learned counsel appearing for the owners of the house sites in the Civil Appeals and the Special Leave Petitions adopted all the arguments of Mr. Rao.

22. Mr. S.S. Javali, learned senior counsel appearing for the BDA (the appellant in Civil Appeal No.3037 of 2007) submitted that after the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha, a private layout plan was submitted by the Sangha in respect of the land and the BDA sanctioned the private layout plan subject to conditions inter alia that the roads, civic amenity sites, parks and all connections such as underground drainage, water supply lines, shall vest with the BDA free of cost. He referred to sub-section (5) of Section 32 of the Bangalore Development Authority Act, 1976 to show that the BDA may call upon an applicant for layout plan to agree to transfer the ownership of the roads, drains water supply lines and open space laid out to the BDA permanently without claiming any compensation therefor. He submitted that the road, civic amenity sites, parks in the Survey Nos.45 and 47 in Jakkasandra village had, therefore, become the property of the BDA and yet by the order dated 22.12.2003 passed by the Minister, Revenue, Government of Karnataka, the vacant civic amenity sites to an extent of 2 acres 34 guntas of the layout plan were directed to be handed over to the Inamdars free of cost and the land utilized by the BDA for formation of the Ring Road as per the sanctioned layout plan was directed to be acquired by the BDA and compensation paid to the Inamdars as if such land was the private property of the Inamdars. He submitted that the BDA, therefore, filed Writ Petition No.15614/2004 before the Karnataka High Court challenging the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, directing handing over of the civic amenity sites to the Inamdars free of cost and directing acquisition of the land forming the Ring Road and payment of compensation to the Inamdars for such acquisition, but these directions in the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, have not been set aside by the

Division Bench of the Karnataka High Court in the impugned judgment.

23. Mr. Javali referred to earlier judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in W.A. No.7574/1996 to show that the Inamdars had filed petitions before the BDA saying that they had entered into an agreement with the Sangha and waived their right to challenge the grant of land by the State Government in favour of the Sangha and had also agreed not to take or prosecute legal proceedings in respect of the disputed land and, therefore, had acquiesced to the grant in favour of the Sangha. He also referred to the aforesaid order of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 to show that the Inamdars had agreed to carry out some work in the land by the Sangha to co-operate with the Sangha for removal of sheds which they claimed to be belonging to them. He submitted that considering all these aspects, the BDA went ahead and sanctioned the private layout plan of the Sangha.

24. Mr. Javali submitted that sub-section (2) of Section 38-A of the Bangalore Development Authority Act, 1976 prohibits the BDA to sell or dispose of any area reserved for public parks and playgrounds and civic amenities for any other purpose and it further provides that any disposition so made by the BDA shall be null and void. He submitted that in Bangalore Medical Trust v. B.S. Muddappa and Others [(1991) 4 SCC 54], this Court interpreting Section 38-A of the Act held that the legislative intent of Section 38-A of the aforesaid Act was to prevent the diversion of the user of area reserved for public parks or civic amenities or for any other purpose. He submitted that under Section 65 of the Bangalore Development Authority Act, 1976, the Government has the power to give such directions to the authority as in its opinion are necessary or expedient for carrying out the purposes of the Act but in exercise of such power the State Government cannot direct the BDA to hand over the properties of the BDA free of cost to the Inamdars or to acquire the roads which were already owned by the BDA and pay compensation to the Inamdars. He relied on Bangalore Development Authority and Others v. R. Hanumaiah and Others [(2005) 12 SCC 508] in which this Court has held that the power of the Government under Section 65 of the Bangalore Development Authority Act, 1976 is not unrestricted and the directions which can be issued are those which are to carry out the objective of the Act and not those which are contrary to the Act and further held that the directions issued by the Chief Minister to release the lands were destructive of the purposes of the Act and the purposes for which the BDA was created. He submitted that the directions in the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, to handover the vacant civil amenities sites to the Inamdars and to acquire the land forming the Ring Road, therefore are contrary and destructive of the objects of the Act and cannot be sustained.

25. Mr. Sanjay Hegde, learned counsel appearing for State of Karnataka, supported the order dated 22.12.2003 passed by the Minister, Revenue, Government of Karnataka, by referring to the reasons indicated in the order itself. He further submitted that this order was passed by the Minister, Revenue, Government of Karnataka, because of the pressure of contempt put by the legal representatives of the Inamdars on the Government saying that the order dated 9.4.1999 of this Court in SLP (C) No.2833/1999 was not being complied with by the State Government. He submitted that Minister, Revenue, Government of Karnataka, has taken an equitable view of the entire matter and has not disturbed those members of the Teachers' Association or Sangha who have already utilized the house sites for construction of the houses and has directed resumption and

restoration of only the 182 vacant sites in the land in favour of the Inamdars and cancelled the earlier grant of land in respect of these 182 sites in favour of the Sangha in exercise of powers under Rule 25 of the Karnataka Land Grants Rules, 1969.

Our conclusions with reasons

26. The order dated 15.6.1979 of the State Government sanctioning the grant of 34 acres 3 guntas of land in favour of the Sangha was earlier challenged before the Karnataka High Court by the legal representatives of the Inamdars first before the learned Single Judge in W.P. No. 11412/1990 and on dismissal of the writ petition by learned Single Judge, before the Division Bench in W.A. No.7574/1996 and the Division Bench dismissed the writ appeal of the legal representatives of the Inamdars by its judgment dated 15.9.1998. We also find that some of the contentions raised before us were also raised before the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 and the Division Bench of the Karnataka High Court has recorded its findings on the contentions in the judgment dated 15.9.1998. Hence, the main question that we will have to decide is whether findings recorded by the Division Bench in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996 had become final and binding on the parties, namely, the legal representatives of the Inamdars, the State of Karnatka and the Sangha or Teachers' Colony Residents Association.

27. On a reading of the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996, it appears that contentions were raised on behalf of the legal representatives of the Inamdars that so long as the claim petition for registration of the occupancy rights under Sections 9 and 10 of the Inam Abolition Act was pending decision before the Special Deputy Commissioner, the State Government had no power to sanction grant of the land measuring 34 acres 3 guntas in Survey Nos. 45 and 47 of Jakkasandra village in favour of the Sangha and that in any case the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha was subject to claim of the Inamdars to occupancy rights in respect of the inam land. In the judgment dated 15.9.1998, the Division Bench of the Karnataka High Court held:

> "In the order it is specifically mentioned that the land in question is required for public purpose and if there are claims, they are eligible for occupancy certificate by price payable for the land. Therefore, it is manifestly clear that in case the rights of the claimants/inamdars are upheld, they are entitled for price payable for the land. Though the grant is subject to the order of the grant in favour of inamdars, it is made clear that the grant order in favour of Respondent No.3 that the Inamdars are entitled for the price of the land. Therefore, on this count, the order cannot be set back."

Thus, the Division Bench of the Karnataka High Court in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996 negatived the contention that the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha was bad because the claim of the Inamdars for registration under Sections 9 and 10 of the Inam Abolition Act was pending before the Special Deputy Commissioner and instead held that in case the claims of the Inamdars to occupancy in respect of the inam land were upheld, they would be entitled for the price payable for the land.

28. On a reading of the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996, we further find that it was contended on behalf of the Sangha that the Inamdars have waived their occupancy rights in respect of the inam land by entering into the agreement dated 1.11.1980 and by receiving the amounts towards the land price apart from the compensation of Rs.3,40,750/- and the Division Bench of the Karnataka High Court accepted the contentions raised on behalf of the Sangha and recorded the following findings:

> "The above two paras in the Agreement make it clear that the Inamdars have agreed not to claim any right, not to prosecute with any legal proceedings and the agreement further shows that they agreed that it is open to Respondent No.3 - Society Members to enjoy the lands as they like and it is also stated that the existing sheds can be removed by Respondent No.3 - Society itself, for which they will co-operate and they also agreed to withdraw the suit filed in O.S. No.687/1979 pending on the file of the II Munsiff's Court, Bangalore. In pursuance of the agreement, they have filed a petition to withdraw the suit and the suit came to be withdrawn as settled out of court by an order dated 3.11.1980. Thus, the Inamdars have acted upon the agreement by withdrawing the suit voluntarily. It is also not disputed that the Inamdars have received an amount of Rs.2,000/- per acre in one installment and another sum of Rs.49,000/- and thus, the conduct of the Inamdars shows that they have agreed not to prosecute the legal proceedings and they relinquish their right in the land and then they permitted respondent No.3 - Society to enjoy the land as they like and acted on the said agreement, they have withdrawn the suit and received the amount. Thus, the Inamdars have waived their right in the land."

29. It is thus clear that the Division Bench of the Karnataka High Court decided three issues in its judgment dated 15.9.1998 in Writ Appeal No.7574/1996: first, that the State Government had the power to sanction grant of the land in Survey Nos.45 and 47 in Jakkasandra village in favour of the Sangha by the order dated 15.6.1979 notwithstanding the pendency of the claim of the Inamdars to be registered as occupants of the land before the Special Deputy Commissioner, Inam Abolition, and therefore the order dated 15.6.1979 of the State Government of Karnatka sanctioning the land in favour of the Sangha cannot held to be bad; second, in the event the claim of the Inamdars to be registered as occupants of the land was subsequently allowed by the Special Deputy Commissioner or by the Tribunal, the Inamdars were not entitled to restoration of the land from the Sanngha but were entitled for the price of the land; third, the Inamdars had waived their right of occupation of the land by the agreement dated 1.11.1980 and by withdrawing the suit O.S. No.687/1979 in which they challenged the order dated 15.6.1979 of the State Government of Karnataka, sanctioning the grant of land in favour of the Sangha and by receiving Rs.2,000/- per acre and Rs.49,000/- in addition to the price of Rs.10,000/- per acre totaling to Rs.3,40,750/-.

30. The judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 was sought to be challenged by the legal representatives of the Inamdars before this Court in SLP (C) No.2833/1999, but this Court did not grant special leave to the legal representatives of the Inamdars to appeal and instead disposed of the SLP with the following order:

> "It appears from the order of grant made in favour of the respondent-society that it was made condition upon the outcome of the dispute which was pending then before the Special Deputy Commissioner for Abolition of Inam. We are now told that the said proceedings have resulted in favour of the petitioners. If that is so, it would be open to the petitioners to approach the State Government for modification of the order granting land to the respondent-society. If such application is made, the State Government shall dispose of the same within the period of three months from the receipt of the application. The Special Lave Petition is disposed of accordingly."

Thereafter, an I.A. was filed by the Teachers' Colony Residents Association which was the fifth respondent in the SLP and this Court dismissed the I.A. by order dated 28.8.2000 with the following order:

> "We do not find anything adverse to the fifth respondent society in the order of this Court dated 9.4.1999 so as to recall the same. I.A. No.1 is therefore dismissed."

31. On interpreting the two orders dated 9.4.1999 and 28.8.2000 of this Court, we have no doubt that the decisions on the three issues in the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 were not disturbed by this Court in the SLP and, therefore, the decisions on the three issues of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 became final and binding on the parties, namely, the legal representatives of the Inamdars, the State Government and the Sangha and its members.

32. In Kunhayammed and Others v. State of Kerala and Another (supra), this Court considered the question whether there was any merger of the order under challenge in the event this Court refuses special leave to appeal against the order and R.C. Lahoti, J., as he then was, speaking for a Bench of three Judges summed up the conclusions of the Court in para 44 of the judgment on this question thus:

> "(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.
>
> (v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution.

Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal

or authority below has stood merged in the order of the Supreme court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties." Hence, an order refusing special leave to appeal does not stand substituted in place of order under challenge and all that it means is that this Court was not inclined to exercise its discretion so as to allow the appeal being filed. The aforesaid law laid down by this Court however makes it clear that if the order refusing leave to appeal makes a statement of law, such statement of law is declaration of law by this Court within the meaning of Article 141 of the Constitution of India and if the order records some finding other than the declaration of law such finding would bind the parties thereto and also the Court, Tribunal or Authority in any proceeding subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country.

33. Applying the law laid down by this Court in Kunhayammed and Others v. State of Kerala and Another (supra) to the facts of the present case, the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996, which was challenged in SLP (C) No.2833/1999 before this Court, does not stand substituted by the order dated 9.4.1999 of this Court in the SLP because this Court has not granted special leave to appeal against such judgment dated 15.9.1998 in Writ Appeal No.7574/1996 of the Division Bench of the Karnataka High Court. Further, the order dated 9.4.1999 of this Court in SLP (C) No.2833/1999 does not contain any statement of law which would amount to declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution of India. The order dated 9.4.1999 of this Court in SLP (C) No.2833/1999, however, has taken note of the condition in the order of grant made in favour of the Sangha that the grant was subject to the outcome of the dispute which was pending before the Special Deputy Commissioner, Inam Abolition, and has further taken note of the fact that the proceedings have resulted in favour of the legal representatives of the Inamdars and thereafter left it open to legal representatives of the Inamdars to approach the State Government for modification of the order granting land to the Sangha and directed the State Government to dispose of such application made on behalf of the legal representatives of the Inamdars within a period of three months from the receipt of the application. In the aforesaid order dated 9.4.1999 in SLP (C) No.2833/1999, this Court has therefore also not recorded any finding which would be binding on the legal representatives of the Inamdars, the State Government, the Sangha and its members, but has only granted liberty to the legal representatives of the Inamdars to approach the State Government for modification of the order granting land in favour of the Sangha and has given further direction to the State Government to dispose of such application within the period of three months from the receipt of the application of the legal representatives of the Inamdars. Hence, the contention raised on behalf of the legal representatives of the Inamdars before us that the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 got merged in the order dated 9.4.1999 in SLP (C) No.2833/1999 and the findings on the three issues in the order dated 15.9.1998 in Writ Appeal No.7574/1996 did not operate as res judicata and were not binding on the legal representatives of the Inamdars, the State Government, the Teachers' Colony Association or the Sangha and its members, is misconceived.

34. In the common judgment impugned in the present appeals, however, the High Court has taken a view that the orders passed by the Karnataka High Court in the earlier proceedings in W.P.

No.11412/1990 and W.A. No.7574/1996 do not operate as res judicata as the case of the Inamdars with reference to the provisions of the Inam Abolition Act and the law laid down by this Court on various aspects were not considered in the earlier writ petitions and writ appeal and the decisions rendered by the Division Bench of the Karnataka High Court in W.A. No.7574/1996 were per incurium. The High Court has failed to appreciate that the principle of per incurium has relevance to the doctrine of precedents but has no application to the doctrine of res judicata. To quote Rankin, C.J. of the Calcutta High Court in Tarini Charan Bhattacharjee and Others v. Kedar Nath Haldar [AIR 1928 Calcutta 777 at 781]:

> "The question whether decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it `conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law, or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party."

35. We now come to the argument of Mr. Dave that the order dated 15.6.1979 of the State Government sanctioning grant of land in favour of Sangha for house sites was void ab initio because of the prohibitions in Sections 79-A, 79-B and 80 of the Land Reforms Act and that if the Court holds that the order dated 15.6.1979 was void ab initio on this ground, the earlier decision dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 would not operate as res judicata. This argument of Mr. Dave is based on the observations in Mathura Prasad Bajoo Jaiswal and Others. v. Dossibai N.B. Jeejeebhoy (supra) that "when the earlier decision declares valid a transaction which is prohibited by law" it does not operate as res judicata. We find from a reading of the order dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 that a contention was raised on behalf of the legal representatives of the Inamdars that there was no power to grant land for house sites under the Karnataka Land Grants Rules, 1969 but the Division Bench of the Karnataka High Court negatived the said contention and held that under Rule 20 of the Karnatka Land Grants Rules, 1969, the State Government had the power to grant land to the Sangha for house sites. We do not find from the judgment of the Division Bench of the Karnataka High Court in Writ Appeal No. 7574/1996 that any contention was raised on behalf of the legal representatives of the Inamdars that grant of land in Survey Nos.45 and 47 of Jakkasandra village could not be sanctioned in favour of the Sangha for house sites because of the restrictions in Sections 79-A, 79-B and 80 of the Land Reforms Act. If this ground of attack had not been taken by the legal representatives of the Inamdars while challenging the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha, this contention could not be raised by them before the High Court in a subsequent proceeding because of the principle of constructive res judicata underlying Explanation IV of

Section 11 of the Code of Civil Procedure which has been applied to writ petitions. In Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Others [(1990) 2 SCC 715] a Constitution Bench of this Court observed at Page 741:

> "The decision in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri [(1986) 1 SCC 100] further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case."

36. Nonetheless, as the Division Bench of the Karnataka High Court had not decided this question in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996 and the High Court has decided this question in the impugned common judgment dated 22.12.2006, we think it necessary to examine this question in these Civil Appeals against the impugned common judgment dated 22.12.2006. We find that Chapter V of the Land Reforms Act is titled "Restrictions on holding on transfer of agricultural lands" and the language of Sections 79- A, 79-B and 80 shows that these provisions apply to only "agricultural lands". We also find from the provisions of sub- sections (2) and (7) of Section 95 of the Karnataka Land Revenue Act, 1964 (for short `the Land Revenue Act') that the land held for agricultural purpose can be permitted to be diverted for other purposes on payment of fine. In the order dated 15.6.1979 of the State Government sanctioning the grant of the land in favour of the Sangha, it is clearly stipulated that the Sangha shall pay such conversion fine to be levied as per the rules made under the Revenue Act. The Karnataka Land Grants Rules, 1969 made under Section 179 of the Land Revenue Act and in particular Rule 18 has also made elaborate provisions for grant of building sites on payment of price. Justice G.P. Singh in Principles of Statutory Interpretation, 12th Edition at page 298 says:

> ".....a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia, i.e. statutes dealing with the same subject-matter or forming part of the same system."

Sections 79-A, 79-B and 80 of the Land Reforms Act, therefore, have to be read together with Section 95 of the Land Revenue Act as all these provisions deal the same subject matter, namely, agricultural lands. We therefore hold that the law permitted the grant of the agricultural land in favour of the Sangha for house sites on payment of conversion fine and the grant made by the State Government in favour of the Sangha by the order dated 15.6.1979 was not void ab initio on this count.

37. Mr. Dave, however, is right in his submission that res judicata will not operate as a bar for entertaining a fresh cause of action and in the present case the order dated 22.12.2003 passed by the

Minister, Revenue, Government of Karnataka, gave rise to a fresh cause of action. But even where a fresh cause of action arises, issues between the parties which have been decided cannot be re-opened before the Court for fresh adjudication between the same parties. In State of Haryana and others v. M.P. Mohla [(2007) 1 SCC 457] (supra) cited by Mr. Dave, this Court has held:

> "22. ..... The dispute between the parties has to be decided in accordance with law. What, however, cannot be denied or disputed is that a dispute between the parties once adjudicated must reach its logical conclusion. If a specific question which was not raised and which had not been decided by the High Court the same would not debar a party to agitate the same at an appropriate stage, subject, of course, to the applicability of principles of res judicata or constructive res judicata.
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> 23. It is also trite that if a subsequent cause of action has arisen in the matter of implementation of a judgment a fresh writ petition may be filed, as a fresh cause of action has arisen."

38. The result of our aforesaid discussion is that the findings of the Division Bench of the Karnataka High Court in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996 that the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha was valid and that the Inamdars were only entitled to the price payable for the land when their claims for registration under Sections 9 and 10 of the Inam Abolition Act were allowed and that the Inamdars have waived their right of occupation in the land by entering into the agreement dated 1.11.1980 and by accepting the price of Rs.10,000/- per acre deposited by the Sangha and the additional amount paid by the Sangha were binding not only on the legal representatives of the Inamdars and the Sangha but also on the State Government. While deciding the application of the legal representatives of the Inamdars for modification of the order dated 15.6.1979 sanctioning the grant of land in favour of the Sangha, therefore, the State Government could not ignore these findings of the Division Bench of the Karnataka High Court in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996. In the order dated 9.4.1999 of this Court in SLP(C) No.2833/1999 there was no mandamus to the State Government to modify or cancel the order dated 15.6.1979 of the State Government sanctioning the grant of land in favour of the Sangha, but there was only a direction to the State Government to consider the application of the legal representatives of the Inamdars for modification of the order dated 15.6.1979. In the instant case, however, the Minister, Revenue, Government of Karnataka, while considering the application of the Inamdars, ignored the findings of the Division Bench of the Karnataka High Court in the judgment dated 15.9.1998 in Writ Appeal No.7574/1996 and took the view in his order dated 22.12.2003 that on the competent authority granting occupancy right to the Inamdars by the order dated 23.6.1982, the Inamdars had become the rightful owners of the land and action would have to be taken to cancel the grant made in favour of the Sangha.

39. In Madan Mohan Pathak and Another v. Union of India and Others (supra), the Calcutta High Court in Writ Petition No. 371 of 1976 had delivered the judgment dated 21.5.1976 issuing a writ of mandamus directing the Life Insurance Corporation to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to March 31, 1976 along with their salary for the month of

April, 1976. Against the said judgment of learned Single Judge of the Calcutta High Court, Letters Patent Appeal was filed but by the time Letters Patent Appeal came up for hearing, the Life Insurance Corporation (Modification of Settlement) Act, 1976 came into force and there was no provision in this Act absolving the Life Insurance Corporation from its obligation to carry out the writ of mandamus issued by the learned Single Judge of the Calcutta High Court. For some reason or the other, the Letters Patent Appeal against the judgment of the learned Single Judge was withdrawn by the Life Insurance Corporation. P.N. Bhagwati, J., as he then was, delivering the judgment on behalf of himself, Krishna Iyer and Desai, JJ. held that since the Life Insurance Corporation did not press the Letters Patent Appeal, the judgment of the learned Single Judge of the Calcutta High Court granting the writ of mandamus became final and binding on the parties and in these circumstances, the Life Insurance Corporation could not claim to be absolved from the obligation imposed by the judgment to carry out the writ of mandamus by relying on the Life Insurance Corporation (Modification of Settlement) Act, 1976. Bhagwati, J. held:

> "9.....If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation."

The judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996 had held that on the occupancy rights of the Inamdars being confirmed, the Inamdars would be entitled to only the price and that the Inamdars had waived their right to occupy the land by accepting the price and by accepting further additional amounts from the Sangha and this judgment of the Division Bench of the Karnataka High Court had not been disturbed by this Court in SLP(C) No.2833/1999 and the Minister, Revenue, Government of Karnataka, could not have taken a view that on the confirmation of the occupancy rights of the Inamdars, the grant of the land made in favour of the Sangha was liable to be cancelled.

40. Once we hold that the grant made in favour of the Sangha was not liable to be cancelled, the order of the Minister, Revenue, Government of Karnataka, directing that the vacant 182 sites have to be transferred to the Inamdars or compensation in lieu of the vacant 182 sites were to be paid by the Sangha to the Inamdars, has to be set aside. Further, the order of the Minister, Revenue, Government of Karnataka, that the vacant civic amenity sites to an extent of 2 acres 34 guntas must be handed over to the Inamdars free of cost and the land, which is used by the BDA for formation of the ring road, has to be acquired by the BDA and the compensation has to be paid for this land to the Inamdars as if the same was private property, has also to be set aside. This is because the civic amenity sites measuring 2 acres 34 guntas and the ring road were part of the land measuring 34.03 acres given on grant to the Sangha. Moreover, at the time of sanctioning the layout plan of the Sangha, the BDA had stipulated that the roads, civic amenity sites, parks and all connections such as underground drainage, water supply lines, shall vest with the BDA free of cost. The civic amenity sites and the road, therefore, had become properties of the BDA and it was the BDA only which was empowered to deal with such properties subject to Section 38-A and other provisions of the Bangalore Development Authority Act, 1976. The order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, directing that the civic amenity sites be handed over to the Inamdars free

of cost and directing that the BDA will acquire the land comprised in the ring road after paying compensation for the same, was thus without the authority of law.

41. For the aforesaid reasons, the directions in the order dated 22.12.2003 of the Minister, Revenue, Government of Karnataka, for cancellation of grant made in favour of the Sangha and for transfer of vacant 182 sites from the Sangha to the Inamdars or for payment of compensation in lieu thereof by the Sangha to the Inamdars and the directions in the order dated 22.12.2003 to the BDA to handover the vacant civic amenity sites to the Inamdars free of cost and to acquire the land forming the ring road and pay compensation for such acquisition, are set aside. The impugned common judgment dated 22.12.2006 of the Karnataka High Court is also set aside and the writ petitions filed before the Karnataka High Court are allowed. The Civil Appeals are disposed of accordingly. No costs.

.....J. (Dalveer Bhandari) .....J. (A.K. Patnaik) New Delhi, February 08, 2010.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Arising out of SLP (C) No. 15209 of 2009)

S. Narahari Rao ..... Appellant

Versus

Sathyanarayana & Ors. ..... Respondents

ORDER

A.K. PATNAIK, J.

Leave granted.

The background facts in which this Civil Appeal has been filed are that the appellant filed a suit being O.S. NO.1150 of 2009 in the City Civil Court, Bangalore, along with an application for temporary injunction (I.A.No.1 of 2009) for restraining the respondents from putting up any construction on the suit property. On 18.02.2009, the City Civil Court, Bangalore, while issuing summons/notices to the respondents, directed the parties to maintain the status quo in respect of

the suit property. In response to the summons/notices, the respondents appeared in the suit and filed I.A. No.2 of 2009 praying to the City Civil Court to vacate the order of status quo on the ground that the entire dispute was pending before this Court in S.L.P. (C) No.10352 of 2007 and other connected SLPs filed against the common judgment dated 22.12.2006 of the Division Bench of the Karnataka High Court. The Trial Court took the view that since the entire dispute is pending before this Court, this Court alone has jurisdiction to consider grant of interim relief and by its order dated 02.04.2009 rejected the application for temporary injunction. The appellant thereafter filed Miscellaneous First Appeal No.2519 of 2009 before the Karnataka High Court against the order dated 02.04.3009 of the City Civil Court, but the Karnataka High Court by its order dated 08.06.2009 also dismissed the Miscellaneous First Appeal on the ground that the subject-matter of the suit was also the subject-matter of S.L.P. (C) No.10352 of 2007 before this Court.

We have heard learned counsel for the parties. On 12.07.2007, this Court granted leave in S.L.P. (C) No.10352 of 2007 and other connected SLPs. On grant of such leave, the matters were re-numbered as Civil Appeal Nos.3038 of 2007 and other connected Civil Appeals. We have heard these Civil Appeals and delivered a common judgment today setting aside the common judgment dated 22.12.2006 of the Division Bench of the Karnataka High Court and allowing the writ petitions filed in the High Court.

Since we have decided the dispute pending before this Court, we set aside the impugned order dated 08.06.2009 passed by the Karnataka High Court in Miscellaneous First Appeal No.2519 of 2009 and the order dated 02.04.2009 passed by the City Civil Court, Bangalore, in I.A.Nos.1 and 2 of 2009 and remand the matter to the City Civil Court, Bangalore, to hear the parties and decide the application for temporary injunction and the suit in accordance with our judgment delivered today in Civil Appeal Nos.3038 of 2007 and other connected Civil Appeals.

The appeal stands disposed of accordingly. No costs. A copy of the judgment passed today in Civil Appeal Nos.3038 of 2007 and other connected Civil Appeals be sent to the City Civil Court, Bangalore.

.....J. (Dalveer Bhandari) .....J. (A.K. Patnaik) New Delhi, February 08, 2010.