Bondu Ramaswamy & Ors vs Bangalore Development Authority & Ors on 5 May, 2010

Equivalent citations: AIRONLINE 2010 SC 216

Bench: D. K. Jain, R. V. Raveendran, K. G. Balakrishnan

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4097 OF 2010
(Arising out of SLP (C) No. 4318 of 2006)

Bondu Ramaswamy ..... Appellant

Vs.

Bangalore Development Authority & Ors. ..... Respondents

WITH C.A.No. 4133 of 2010 @ SLP(C) No. 3414 of 2006 C.A.No. 4098 of 2010 @ SLP(C) No. 3573 of 2006 C.A.No. 4099 of 2010 @ SLP(C) No. 4320 of 2006 C.A.No. 4100 of 2010 @ SLP(C) No. 4596 of 2006 C.A.No. 4101 of 2010 @ SLP(C) No. 5410 of 2006 C.A.No. 4102 of 2010 @ SLP(C) No. 5411 of 2006 C.A.No. 4103 of 2010 @ SLP(C) No. 5412 of 2006 C.A.No. 4104 of 2010 @ SLP(C) No. 5413 of 2006 C.A.No. 4105 of 2010 @ SLP(C) No. 5414 of 2006 C.A.No. 4106 of 2010 @ SLP(C) No. 5415 of 2006 C.A.No. 4107 of 2010 @ SLP(C) No. 5416 of 2006 C.A.No. 4108 of 2010 @ SLP(C) No. 6224 of 2006 C.A.No. 4109 of 2010 @ SLP(C) No. 6225 of 2006 C.A.No. 4110 of 2010 @ SLP(C) No. 7049 of 2006 C.A.No. 4111 of 2010 @ SLP(C) No. 7050 of 2006 C.A.No. 4112 of 2010 @ SLP(C) No. 7051 of 2006 C.A.No..4113 of 2010 @ SLP(C) No. 8118 of 2006 C.A.No. 4114 of 2010 @ SLP(C) No. 8119 of 2006 C.A.No. 4115 of 2010 @ SLP(C) No. 8120 of 2006 C.A.No. 4116 of 2010 @ SLP(C) No. 8127 of 2006 C.A.No. 4117 of 2010 @ SLP(C) No. 8742 of 2006 C.A.No. 4118 of 2010 @ SLP(C) No. 9044 of 2006 C.A.No. 4119 of 2010 @ SLP(C) No. 9046 of 2006 C.A.No. 4120 of 2010 @ SLP(C) No. 9104 of 2006 C.A.No. 4121 of 2010 @ SLP(C) No. 9105 of 2006 C.A.No. 4122 of 2010 @ SLP(C) No. 9159 of 2006 C.A.No. 4123 of 2010 @ SLP(C) No. 9491 of 2006 C.A.No. 4124 of 2010 @ SLP(C) No. 12683 of 2006 C.A.No. 4125 of 2010 @ SLP(C) No. 13854 of 2006 C.A.No. 4126 of 2010 @ SLP(C) No. 13855 of 2006 C.A.No. 4127 of 2010 @ SLP(C) No. 13857 of 2006 C.A.No. 4128 of 2010 @ SLP(C) No. 14201 of 2006 C.A.No. 4129 of 2010 @ SLP(C) No. 14202 of 2006 C.A.No. 4130 of 2010 @ SLP(C) No. 14537 of 2006 C.A.No.4131 of 2010 @ SLP(C) No. 14538 of 2006 C.A.No. 4132 of 2010 @ SLP(C) No. 15496 of 2006 C.A.No. 4179-4180 of 2010 @ SLP(C)No.14099-14100 of 2010 @ J UDGMENT R. V. RAVEENDRAN J., Leave granted. These appeals relate to the challenge of acquisition of lands for formation of Arkavathi layout on the outskirts of Bangalore by the Bangalore Development Authority [for short `BDA'] under the Bangalore Development Authority Act, 1976 (`BDA Act' or `Act' for short).

2. On 2.1.2001 the Executive Engineer (North) of BDA submitted a scheme report with detailed estimates for formation of a proposed new layout in an area of 1650 acres spread over twelve villages, to be called as `Hennur Devanahalli Layout'. On 7.10.2002 after an initial survey, the Additional Land Acquisition Officer of BDA submitted a report proposing that 3000 acres of land in the said twelve villages and two adjoining villages (Chellakere and Kempapura) and suggested that scheme may be called as `Arkavathi Town or layout' instead of `Hennur Devanahalli layout'. The Commissioner agreed with the proposal on 8.10.2002 and placed the matter before the Authority (that is the members constituting the Bangalore Development Authority). The Authority in its meeting held on 10.12.2002 considered the proposal and decided to issue preliminary notification under sub-sections (1) and (3) of section 17 of BDA Act proposing to acquire in all about 3000 acres of land in 14 villages. After the said resolution, lands in two more villages (Nagavara and Hebbala) were also included to provide better access to the layout. A preliminary notification dated 3.2.2003 under sub-sections (1) and (3) of section 17 of BDA Act was issued proposing to acquire 3339 acres 12 guntas. Certain government lands, tanks, grazing lands, tank catchments area, stone quarry, burial grounds were shown in the Schedule to the notification dated 3.2.2003, but their extent was not included in the abstract of lands proposed to be acquired. The abstract apparently referred only to the private lands to be acquired. In the circumstances, a modified preliminary notification was issued in August 2003 published in the Gazette dated 16.9.2003 showing the total extent of land likely to be needed for the purpose of formation of Akravathi Layout as 3839 A, 12 G of land. The said extent of land was situated in the following 16 villages : (1) Dasarahalli (2) Byrathikhane (3) Chellakere (4) Geddalahalli (5) K. Narayanapura (6) Rachenahalli (7) Thanisandra (8) Amaruthahalli (9) Jakkur (10) Kempapura (11) Sampigehalli (12) Srirampura (13) Venkateshapura (14) Hennur (15) Hebbala and (16) Nagavara.

3. Notices were issued to land owners under section 17(5) of the Act giving an opportunity to show cause why the acquisition should not be made. Public notice was also issued in the newspapers inviting objections. No objections were received in regard to 91 acres 7 Guntas. The objections received in regard to 2658 acres were considered and rejected. The Authority decided to seek the sanction of the government for the acquisition of 2750 acres of land, after deleting 1089 A 12 G acres of land from the proposed scheme. On 3.2.2004, the authority passed a resolution to obtain the approval of the state government for implementation of the Arkavathi layout under Section 15(2) of BDA Act and requesting sanction for acquisition of 2750 acres for formation of 28600 sites of different dimensions. The scheme as modified at an estimated cost of Rs. 981.36 crores (in view of the reduction of the area to 2750 acres), along with the draft final notification and relevant records was forwarded by the BDA to the State Government, under cover of letter dated 13.2.2004. After securing certain clarification, by Government Order dated 21.2.2004, the State government accorded sanction for the scheme under Section 18(3) of the Act. In pursuance of it, the final declaration dated 23.2.2004 was issued by the State Government, under section 19(1) of the Act (published in the Karnataka Gazette on the same day) stating that sanction had been granted for the scheme and declaring that the lands specified in the Schedule thereto in all 2750 acres (a little more or less) were needed for the public purpose of formation of Arkavathi Layout. According to BDA, in pursuance of the same, it made several awards from 12.5.2004 onwards in regard to extent of 1618.38 acres took possession of 1459.37 acres of private land and 459.16 acres of government land in all 1919.13 acres, and formed the layout by laying 14103 plots, apart from roads, drains etc.

4. Several writ petitions were filed challenging the acquisition. A learned Single Judge of the Karnataka High Court by order dated 15.4.2005 allowed the writ petitions and quashed the entire acquisition holding as follows:

> (i) BDA had no jurisdiction or authority to take up any development scheme in Bangalore Metropolitan Area having regard to parts IX and IXA of the Constitution read with section 503B of the Karnataka Municipal Corporation Act, 1976.
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> (ii) There were several discrepancies in the scheme and the scheme was not properly framed. There was also no application of mind by the State Government or proper consideration of the scheme, before according sanction under section 18(3) of the BDA Act.
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> (iii) BDA Act has to yield to the provisions of the Land Acquisition Act, 1894 (`LA Act' for short) which is a central legislation and the mandatory procedures laid down in the said Central Act had to be applied and followed even in regard to acquisitions under the BDA Act to have a uniformity. Neither the procedures laid down under the LA Act nor the procedures laid down under BDA Act were followed by BDA in regard to this acquisition.
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> (iv) As BDA is not elected body having the mandate of the people, and as BDA is subordinate to the state government, it cannot acquire lands for public purpose and the notification under Section 17(1) of BDA Act is bad in law, for non-issue of a notification under Section 4(1) of LA Act by the State Government.
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> (v) The Acquisition cannot be said to be for public purpose, as BDA did not demonstrate that 3000 acres were required for 28600 plots and no valid reasons were assigned for deleting a large extent of land from the acquisition.
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> (vi) The Commissioner of BDA could not authorise his subordinate, namely, the Addl. Land Acquisition Officer, to perform duties under section 4(2) of LA Act.
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> (vii) The `enquiry' by the Authority to consider the objections to the acquisition was not fair, reasonable or in compliance with the principles of natural justice.
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> (viii) The action of BDA in forming sites for allotment, even before issuing a notification under section 16(2) of the LA Act (as amended in Karnataka), declaring that possession has been taken, was bad in law.
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> (ix) The amendment to BDA (Allotment of Sites) Rules, 1984, removing the restrictions on the allottee in regard to alienation/use, had the effect of reducing BDA, a statutory development authority, into a mere dealer/estate agent in real estate.

(x) Deletion of lands similar to and contiguous to the lands of the appellants, while acquiring their lands, amounts to hostile discrimination violative of Article 14 of the Constitution.

5. Feeling aggrieved, the BDA filed writ appeals which were allowed by a division bench of the High Court, by a common judgment dated 25.11.2005 and upheld the acquisition. The Division Bench however affirmed the finding of discrimination in acquisition of some lands while deleting similarly placed adjacent lands and gave liberty to land owners to file applications seeking withdrawal from acquisition on the ground of discrimination. The Division Bench held:

(i) BDA is not a municipality and the provisions of the BDA Act, which is a special legislation, are not inconsistent with Parts IX and IX(a) of the Constitution of India or the provisions of the Karnataka Municipal Corporations Act, 1976 or the Karnataka Municipalities Act, 1964; and the provisions of BDA Act are neither impliedly nor expressly repealed by Part IX or IX(A) of the Constitution.

(ii) BDA Act is a special self-contained Code enacted by the State Government for development of Bangalore Metropolitan Area under power traceable to Entry 5 of List II of Seventh Schedule. Sections 4, 5A and 6 of LA Act are not applicable and do not override the provisions of Section 17 to 19 of the BDA Act and the provisions of LA Act do not override the provisions of BDA Act.

(iii) The acquisition was for a public purpose and there is no violation of Article 19 or Article 21 of the Constitution of India.

(iv) The Commissioner of BDA, in his capacity as its Chief Executive and Administrative Officer is empowered to authorise his subordinates to enter upon the lands in question to carry out survey and measurements.

The error in invoking Section 4(2) of LA Act instead of Section 52 of BDA Act for entry and measurements is only mentioning of a wrong provision of law and does not vitiate the authorisation under Section 52 of BDA Act.

(v) The sanction accorded by the State Government under Section 18(3) of BDA Act is valid and does not suffer from the vice of non- application of mind. The procedure adopted namely Chief Minister approving the scheme subject to ratification by the Cabinet and the subsequent ratification is valid and not open to question by appellants.

(vi) Though there was discrimination in the matter of acquisition, that would not invalidate the acquisition and the same could be set right by consequential directions.

6. The Division Bench therefore set aside the order of the learned Single Judge. It also allowed a writ appeal filed by a former Chief Minister and expunged certain unwarranted remarks against the former Chief Minister in para 30 of the learned Single Judge's order and further held as follows :

(C). The acquisition of the lands for the formation of Akravathi Layout is upheld subject to the following conditions :

(a) In so far 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 Site) 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 the registration fee. They need not pay initial deposit as their sites have been acquired and they have agree 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 fulfil 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) In so far as the land owners excluding the site owners, are entitled to the following reliefs : -

> (i) All the petitioners who are the land owners who are seeking dropping of the acquisition proceeding in so far 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;
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> (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 they decided whether their cases as similar to that of the land owners whose lands, are notified for acquisition, notified and whose objections were upheld and no final notification is issued.

In the event of 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 these persons, hear them and pass appropriate orders expeditiously.

(iii) Till the aforesaid exercise is undertaken by the BDA and the application 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 WP Nos. 1353-54 of 2005 filed by

University of Agricultural Science Employees House Building Cooperative 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.

7. The said judgment is challenged by the land-losers on several grounds. On the contentions urged, the following questions arise for consideration :

(i) Whether BDA Act, in so far as it provides for compulsory acquisition of property, is still-born and ineffective as it did not receive the assent of the President, as required by Article 31(3) of the Constitution of India.

(ii) Whether the provisions of the BDA Act, in particular section 15 read with section 2(c) dealing with the power of the Authority to draw up schemes for development for Bangalore Metropolitan Area became inoperative, void or was impliedly repealed, by virtue of Parts IX and IX(A) of the Constitution inserted by the 73rd and 74th Amendments to the Constitution.

(iii) Whether the sixteen villages where the lands have been acquired, fall outside the Bangalore Metropolitan Area as defined in section 2(c) of the BDA Act and therefore, the Bangalore Development Authority has no territorial jurisdiction to make development schemes or acquire lands in those villages.

(iv) Whether the amendment to section 6 of the LA Act requiring the final declaration to be issued within one year from the date of publication of the preliminary notification is applicable to the acquisitions under the BDA Act; and whether the declaration under section 19(1) of BDA Act, having been issued after the expiry of one year from the date of the preliminary notification under section 17(1) and (3) of BDA Act, is invalid.

(v) Whether the provisions of sections 4, 5A, 6 of LA Act, would be applicable in regard to acquisitions under the BDA Act and whether non-

compliance with those provisions, vitiate the acquisition proceedings.

(vi) Whether the development scheme and the acquisitions are invalid for non-compliance with the procedure prescribed under sections 15 to 19 of the BDA Act in regard to :

(a) absence of specificity and discrepancy in extent of land to be acquired;

(b) failure to furnish material particulars to the government as required under section 18(1) read with section 16 of the BDA Act; and

(c) absence of valid sanction by the government, under section 18(3) of the BDA Act.

(vii) Whether the deletion of 1089 A.12G. from the proposed acquisition, while proceeding with the acquisition of similar contiguous lands of appellants amounted to hostile discrimination and therefore the lands of appellants also required to be withdrawn from acquisition.

Question (i) - Re : Invalidity on account of non-compliance with Article 31(3) of the Constitution.

8. The contention of the appellants is as under : BDA Act was enacted by the Karnataka Legislature, received the assent of the Governor on 2.3.1976, was published in the Karnataka Gazette dated 8.3.1976 and brought into force with retrospective effect from 20.12.1975. BDA Act provides for compulsory acquisition of property, vide provisions contained in Chapters III and IV. When the BDA Act was enacted and brought into effect, Articles 19(1)(f) and 31 of the Constitution were in force. Article 31(3) provided that no law providing for acquisition of property for public purposes, made by a State Legislature shall have effect unless such law has been reserved for the consideration of the President and has received his assent. BDA Act was not reserved for the consideration of the President, nor received his assent. Therefore, the BDA Act, in so far as it provides for acquisition of property, is still-born and ineffective. It is submitted that though Article 19(1)(f) and Article 31 were omitted from the Constitution with effect from 20.6.1979, as such omission was not with retrospective effect, any law made prior to 20.6.1979 should be tested on the touchstone of the said articles.

9. Article 31 of the Constitution dealt with compulsory acquisition of property. Clauses (1) to (3) of the said Article relevant for our purpose are extracted below:

"(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession of such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent."

By the Constitution (Forty Fourth Amendment) Act, 1978, the right to property was deleted from the list of fundamental rights by omitting sub- clause (f) of clause (1) of Article 19. Simultaneously, Article 31 was also deleted with effect from 20.6.1979 by the Constitution (Forty Fourth Amendment) Act, 1978. It is no doubt true that the BDA Act received only the assent of the Governor and was neither reserved for the assent of the President nor received the assent of the President. As clause (3) of Article 31 provided that a law providing for acquisition of property for

public purposes, would not have effect unless such law received the assent of the President, it was open to a land owner to contend that the provisions relating to acquisition in the BDA Act did not come into effect for want of President's assent. But once Article 31 was omitted from the Constitution on 20.6.1979, the need for such assent disappeared and the impediment for enforcement of the provisions in the BDA Act relating to acquisition also disappeared. Article 31 did not render the enactment a nullity, if there was no assent of the President. It only directed that a law relating to compulsory acquisition will not have effect unless the law received the assent of the President. As observed in Munithimmaiah v. State of Karnataka [2002 (4) SCC 326], acquisition of property is only an incidental and not the main object and purpose of the BDA Act. Once the requirement of assent stood deleted from the Constitution, there was absolutely no bar for enforcement of the provisions relating to acquisition in the BDA Act. The Karnataka Legislature had the legislative competence to enact such a statute, under Entry 5 of List II of the Seventh Schedule to the Constitution. If any part of the Act did not come into effect for non-compliance with any provision of the Constitution, that part of the Act may be unenforceable, but not invalid.

10. Our view is fortified by the following observations of a Constitution Bench of this Court in M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh & Anr. [AIR 1958 SC 468] :

> "Now, in considering the question as to the effect of unconstitutionality of a statute, it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter not within the competence of the legislature, or because the matter itself being within its competence, its provisions offend some constitutional restrictions. In a Federal Constitution where legislature powers are distributed between different bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the Constitution Act to that legislature. Thus, a law of the State on an Entry in List I, Schedule VII of the Constitution would be wholly incompetent and void. But the law may be on a topic within its competence, as for example, an Entry in List II, but it might infringe restrictions imposed by the Constitution on the character of the law to be passed, as for example, limitations enacted in Part III of the Constitution. Here also, the law to the extent of the repugnancy will be void. Thus, a legislation on a topic not within the competence of the legislature and a legislation within its competence but violative of constitutional limitations have both the same reckoning in a court of law; they are both of them unenforceable. But does it follow from this that both the laws are of the same quality and character, and stand on the same footing for all purposes? This question has been the subject of consideration in numerous decisions in the American Courts, and the preponderance of authority is in favour of the view that while a law on a matter not within the competence of the legislature is a nullity, a law on a topic within the competence but repugnant to the constitutional prohibitions is only unenforceable. This distinction has a material bearing on the present discussion. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in

> respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment."

(emphasis supplied)

11. The appellants relied upon the following observations in Mahendra Lal Jain v. State of UP & Ors. [1963 Supp (1) SCR 912] :-

> "Parliament and the Legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant Lists in the Seventh Schedule and that power to make laws is subject to the provisions of the Constitution, including Art. 13, i.e., the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. The Legislature, therefore, has no power to make any law in derogation of the injunction contained in Art. 13. Art. 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws insofar as they are inconsistent with the provisions of Part, III shall to the extent of such inconsistency be void. The clause, therefore, recognises the validity of the pre-Constitution laws and only declares that said laws would be void thereafter to the extent of their inconsistency with Part III; whereas clause (2) of that Article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III, and declares that laws made in contravention of this clause shall to the extent of the contravention be void. There is a clear distinction between the two clauses. Under clause (1) a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III, whereas no post-Constitution law can be made contravening the provisions of Part III and therefore the law to that extent, though made, is a nullity from its inception".

(emphasis supplied) On a careful consideration of the aforesaid observations, we are of the view that the said decision does not in any way express any view contrary to the clear enunciation of law in Sundaramier. In Mahendra Lal Jain, this court explained the difference between pre-constitutional laws governed by Article 13(1) and post-constitutional laws which are governed by Article 13(2) and held that any post-constitutional law made in contravention of provisions of Part III, to the extent of contravention is a nullity from its inception. Let us now examine whether any provision of the BDA Act violated any provisions of Article 31 in part III of the Constitution. Clause (1) of Article 31 provided that no person shall be deprived of his property save by authority of law. As we are examining the validity of a law made by the state legislature having competence to make such law, there is no violation of Article 31(1). Clause (2) of Article 31 provided that no law shall authorise acquisition unless it provided for compensation for such acquisition and either fixed the amount of compensation, or specified the principles on which, and the manner in which, the compensation was to be determined and given. BDA Act, does not fix the amount of compensation, but Section 36 thereof clearly provides that the acquisition will be regulated by the provisions of the Land Acquisition Act, 1894 so far as they are applicable. Thus the principles on which the compensation is

to be determined and the manner in which the compensation is to be determined set out in the LA Act, become applicable to acquisitions under BDA Act. Thus there is no violation of Article 31(2). Article 31(3) merely provides that no law providing for acquisition shall have effect unless such law has received the assent of the President. Article 31(3) does not specify any fundamental right, but relates to the procedure for making a law providing for acquisition. As noticed above, it does not nullify any laws, but postpones the enforcement of a law relating to acquisition, until it receives the assent of the President. There is therefore no violation of Part III of the Constitution that can lead to any part of the BDA Act being treated as a nullity. As stated above, the effect of Article 31(3) was that enforcement of the provisions relating to acquisition was not possible/permissible till the assent of the President was received. Therefore, once the requirement of assent disappeared, the provisions relating to acquisition became enforceable.

Question (ii) - Re : Invalidity with reference to Parts IX and IX-A of the Constitution

12. Part IX and IX-A of the Constitution, relating to Panchayats and Municipalities were inserted by the Constitution (Seventy-third Amendment) Act, 1992 and Constitution (Seventy-fourth Amendment) Act, 1992. Part IX and IX-A came into force on 24.4.1993 and 1.6.1993 respectively. The object of Part-IX was to introduce the Panchayat system at grass root level. As Panchayat systems were based on state legislations and their functioning was unsatisfactory, the amendment to the Constitution sought to strengthen the Panchayat system by giving a uniform constitutional base so that the Panchayats become vibrant units of administration in the rural area by establishing strong, effective and democratic local administration so that there can be rapid implementation of rural development programmes. The object of Part-IX as stated in the Statement of Objects & Reasons is extracted below:-

> "In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.
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> Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for -
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> (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to:
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> (a) the functions and taxation powers, and
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> (b) arrangements for revenue sharing.
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> (ii) ensuring regular conduct of elections.
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> (iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women".

13. We may first refer to the provisions of Part IX in brief. Clause (d) and (e) of Article 243 define `Panchayat' and `Panchayat area'. Article 243B deals with constitution of Panchayats, Article 243C deals with composition of Panchayats. Article 243D relates to reservation of seats. Article 243E stipulates the duration of Panchayats. Article 243F prescribes the disqualification for membership. 243G refers to powers, authorities and responsibilities of Panchayats. Article 243H refers to power to impose taxes by Panchayats and funds of the Panchayats. Article 243I directs the constitution of Finance Commissions to review the financial position. Article 243J relates to audit of accounts of Panchayats. Article 243K relates to election to Panchyats. Article 243M enumerates the areas to which the part will not apply. Article 243N provides for continuance of existing laws and Panchayats.

14. Similarly, in Part IX-A relating to Municipalities, the terms `Metropolitan Area', `Municipal Area', and `Municipality' are defined by Clauses (c), (d) and (e) of Article 243P. Article 243Q and Article 243R deals with the constitution and composition of Municipalities. Article 243S deals with constitution and composition of Ward Committees. Article 243T deals with reservation of seats. Article 243U deals with duration of Municipalities. Article 243V prescribes the disqualifications for membership. Article 243W enumerates the powers, authority and responsibilities of Municipalities. Article 243X empowers the legislature by law authorise municipalities to levy, collect and appropriate taxes, duties, tolls and fees. Article 243Y requires the Finance Commission constituted under Article 243I to review the financial position of Municipalities and make recommendations, Article 243Z requires audit of accounts of Municipalities. Article 243ZA relates to elections. Article 243ZC refers to the areas to which the part will not apply. Article 243ZD requires the constitution of Committees for district planning. Article 243ZE requires the constitution of Metropolitan Planning Committees for every Metropolitan Area and preparation of a draft development plan for the Metropolitan Area as a whole. Article 243ZF provides for the continuance of existing laws and Municipalities for a period of one year.

15. We may now extract some of the Articles in Part-IXA with reference to Municipalities, relevant for our purpose:-

"243P. Definitions.- In this Part, unless the context otherwise requires-

xxx xxx xxx

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under article 243Q;

xxx xxx xxx

"243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name callled) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:"

xxx xxx xxx "243W. Powers, authority and responsibilities of Municipalities, etc.--- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule".

xxx xxx xxx "243ZD. Committee for district planning.-(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole."

xxx xxx xxx "243ZE. Committee for Metropolitan planning.-(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) the plans prepared by the Municipalities and the Panchayats inthe Metropolitan area;

(ii) matters of common interest between the Municipalities and thePanchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, theintegrated development of infrastructure and environmentalconservation;

(iii) the overall objectives and priorities set by the Government ofIndia and the Government of the State;

(iv) the extent and nature of investments likely to be made in theMetropolitan area by agencies of the Government of India and of the Government of the State and other available resources whetherfinancial or otherwise;

(b) consult such institutions and organisations as the Governor may,by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shallforward the development plan, as recommended by such Committee, to the Government of the

State.

"243ZF. Continuance of existing laws and Municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State".

In Karnataka, the Municipal Corporations for larger urban areas are constituted and governed by the Karnataka Municipal Corporations Act, 1976 (`KMC Act' for short) and the Municipal Councils for smaller urban areas are constituted and governed by the Karnataka Municipalities Act, 1964 (`KM Act' for short). Regulation of planned growth of land use and development and making and execution of town planning schemes in the State of Karnataka is governed by the Karnataka Town and Country Planning Act, 1961 (`Town Planning Act' for short).

16. The KMC Act was exhaustively amended by Amendment Act 35 of 1994 to bring the said Act in conformity with Chapter IXA of the Constitution of India. Section 3 empowers the Governor to specify by notification larger urban areas, having regard to the factors mentioned in Clauses (a) to (f) of Sub-section (1) and the requirements of Clause (a) to

(d) of the proviso to that Sub-Section. Sub-section (1A) provides that any area specified as a larger urban area by the Governor under sub-section (1) shall be deemed to be a city and a Corporation shall be established for the said city. Section 503-A relating to preparation of a development plan and Section 503-B relating to constitution of Metropolitan Planning Committees, inserted in KMC Act by Amendment Act 35 of 1994 are extracted below:

"503-A. Preparation of development plan: Every Corporation shall prepare every year a development plan and submit to the District Planning Committee constituted under Section 310 of the Karnataka Panchayat Raj Act, 1993, or as the case may be the Metropolitan Planning Committee constituted under Section 503B of this Act.".

"503-B. Metropolitan Planning Committee: (1) The Government shall constitute a Metropolitan Planning Committee for the Bangalore Metropolitan Area to prepare a draft development plan for such area as a whole.

Explanation: For the purpose of this section "Bangalore Metropolitan Area" means an area specified by the Governor to be a metropolitan area under clause (c) of Article 243-P of the Constitution of India.

(2) The Metropolitan Planning Committee shall consist of thirty persons of which -

(a) such number of persons, not being less than two-thirds of the members of the committee, as may be specified by the Government shall be elected in the prescribed manner by, and from amongst, the elected members of the Corporations, the Municipal Councils and Town Panchayats, and the Adhyakshas and Upadhyakshas of Zila Panchayats, Taluk Pachayats and Grama Panchayats in the metropolitan area in proportion to the ratio between the population of the city and other municipal area and that of the areas in the jurisdiction of Zilla Panchayat, Taluk Panchayat and Grama Pachayat;

(b) such number of representatives of -

(i) The Government of India and the State Government as may be

determined by the State Government, and nominated by the Government of India or as the case may be, the State Government;

(ii) such organisations and institutions as may be deemed necessary for carrying out of functions assigned to the committee, nominated by the State Government;

(3) All the members of the House of the People and the State Legislative Assembly whose constituencies lie within the Metropolitan area and the members of the Council of State and the State Legislative Council who are registered as electors in such area shall be permanent invitees of the committee.

(4) The Commissioner, Bangalore Development Authority shall be the Secretary of the Committee.

(5) The Chairman of the Metropolitan Planning Committee shall be chosen in such manner as may be prescribed.

(6) The Metropolitan Planning Committee shall prepare a draft development plan for the Bangalore Development Area as a whole.

(7) Metropolitan Planning Committee shall, in preparing the draft development plan -

(a) have regard to-

(i) the plans prepared by the local authorities in the Metropolitan Area;

(ii) matters of common interest between the local authorities including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the State Government;

(iv) the extent and nature of the investments likely to be made in the Metropolitan area by agencies of the Government of India and of the State Government and the available resources whether financial or otherwise;

(a) Consult such institutions and organisations as the Governor may, by order, specify.

(8) The Chairman of the Metropolitan Planning Committee shall forward the development plan, as recommended by such committee, to the State Government".

17. The BDA Act was enacted to establish a development authority for the development of city of Bangalore and areas adjacent thereto and for matters connected therewith. The statement of objects and reasons of the said Act reads thus:

"Bangalore City with its population (as per last census) is a Metropolitan City. Different Authorities like the City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority are exercising jurisdiction over the area. Some of the functions of these bodies like development, planning etc., are overlapping creating thereby avoidable confusion, besides hampering co-ordinated development. It is, therefore, considered necessary to set up a single authority like the Delhi Development Authority for the city areas adjacent to it which in course of time will become part of the city.

For the speedy implementation of the above said objects as also the 20-point programme and for establishing a co-coordinating Central Authority, urgent action was called for. Moreover, the haphazard and irregular growth would continue unless checked by the Development Authority and it may not be possible to rectify or correct mistakes in the future."

Section 3 of BDA Act relates to constitution and incorporation of the Bangalore Development Authority. It provides for the State Government, by notification, constituting an Authority for the Bangalore Metropolitan Area, to be called as Bangalore Development Authority. Section 2(c) of the BDA Act defines `Bangalore Metropolitan Area' as follows:

"Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Karnataka Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Karnataka Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify.

Clause (j) of Section 2 of the BDA Act defines "development" as follows:

"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.

Section 15 empowers Authority to undertake works and incur expenditure for development etc. The said section is extracted below:-

"15. Power of Authority to undertake works and incur expenditure for development, etc .- (1) The Authority may,-

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area ;

and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development schemes.

(2) The Authority may also from time to time make and take up any new or additional development schemes,-

(i) on its own initiative, if satisfied of the sufficiency of its resources, or

(ii) on the recommendation of the local authority if the local authority places at the disposal of the Authority the necessary funds for framing and carrying out any scheme; or

(iii) otherwise.

(3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems necessary require the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government".

Section 16 enumerates the particulars to be provided in a development scheme and the said section is extracted below:-

> "16. Particulars to be provided for in a development scheme.- Every development scheme under section 15,-
>
> (1) shall, within the limits of the area comprised in the scheme, provide for,-
>
> (a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme ;
>
> (b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;
>
> (c) drainage, water supply and electricity ;
>
> (d) the reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civic amenities.
>
> (2) may, within the limits aforesaid, provide for,-
>
> (a) raising any land which the Authority may consider expedient to raise to facilitate better drainage ;
>
> (b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area ;
>
> (c) the sanitary arrangements required ;

[(d) x x x [omitted by Act 17 of 1984].

(3) may, within and without the limits aforesaid provide for the construction of houses".

Section 17 lays down the procedure on completion of scheme and is extracted below:-

> "17. Procedure on completion of scheme .- (1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.

(2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.

(3) The Authority shall also cause a copy of the said notification to be published in [x x x] the official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Corporation and in such other places as the Authority may consider necessary.

(4) If no representation is received from the Corporation within the time specified in sub-section (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.

(5) During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.

(6) The notice shall be signed by or by the order of the (Commissioner) and shall be served,-

(a) by personal delivery or if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building ; or

(b) by leaving the same at the usual or last known place of abode or business of such person ; or

(c) by registered post addressed to the usual or last known place of abode or business of such person.

Section 18 requires sanction of the scheme by the Government and reads thus :

"18. Sanction of scheme .- (1) After publication of the scheme and service of notices as provided in section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit, to the Government for sanction, furnishing,-

(a) a description with full particulars of the scheme including the reasons for any modifications inserted therein ;

(b) complete plans and estimates of the cost of executing the scheme;

(c) a statement specifying the land proposed to be acquired ;

(d) any representation received under sub-section (2) of section 17;

(e) a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land under the section 17 or the land assessment of all land specified in the statement under clause(c) ; and

(f) such other particulars, if any, as may be prescribed. (2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.

(3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme". Section 19 requires declaration to be published giving particulars of the land to be acquired, upon sanction of the scheme by the Government.

18. The contentions urged by learned counsel for appellants based on Parts IX and IX-A of the Constitution can be summarised thus :

> (i) BDA Act is a legislation relatable to Article 243W and some of the matters listed in the Twelfth Schedule. Therefore BDA Act is deemed to be a law relating to Municipalities. Having regard to Article 243 ZF, any provision inconsistent with the provisions of Part IXA of the Constitution, law relating to municipalities ceased to be in force on the expiry of one year from 1.6.1993 - the date of commencement of the Constitution 74th Amendment Act, 1992.
>
> (ii) After the insertion of Part IXA of the Constitution, there cannot be any `metropolitan area' other than what is declared by the Governor as a metropolitan area, as provided under Article 243P(c). Only an area having a population of 10 lakhs or more in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas and specified by the Governor by a public notification to be a Metropolitan Area can be a `Metropolitan Area'. Consequently, the `Bangalore Metropolitan Area' as defined under section 2(c) of the BDA Act had ceased to exist and therefore BDA could not draw up any development scheme for Bangalore Metropolitan Area.
>
> (iii) A development scheme or an additional development scheme for Bangalore Metropolitan area which the BDA is required to draw up under Section 15 of the BDA Act are conceptually and in effect same as the development plan with reference to a

municipality referred to in Article 243W and a development plan for a metropolitan area referred to in Article 243ZE. After the insertion of Part IXA in the Constitution, a development plan for a metropolitan area can only be drawn up by a democratically elected representative body that is the Metropolitan Planning Committee by taking into account the factors mentioned in Clause (3) of Article 243ZE. Therefore on the expiry of one year from 1.6.1993 (the date on which Part IXA of the Constitution was inserted), BDA has no authority to draw up any development scheme.

19. Any statute or provision thereof which is inconsistent with any constitutional provision will be struck down by courts. Consequently, if BDA Act or any provision of the BDA Act is found to be inconsistent with any provision of Part IXA of the Constitution, it will be struck down by courts as violative of the constitution. In regard to any provision of any law relating to municipalities, Article 243ZF suspends such invalidity or postpones the invalidity for a period of one year from 1.6.1993 to enable the competent Legislature to remove the inconsistency by amending or repealing such law relating to municipalities to bring it in consonance with the provisions of Part IXA of the Constitution. Article 243ZF is a provision enabling continuance of any provision of a law relating to municipalities in spite of such provision being inconsistent with the provisions of Part IXA of the Constitution for a specified period of one year. It does not extend the benefit of continuance to any law other than laws relating to municipalities; it also does not provide for continuance of a law for one year, if the violation is in respect of any constitutional provision other than Part IXA; and it does not declare any provision of a statute to be inconsistent with it nor declare any statute to be invalid. The invalidity of a statute is declared by a court when it finds that a statute or its provision to be inconsistent with a constitutional provision.

20. The benefit of Article 243ZF is available only in regard to laws relating to `municipalities'. The term `municipality' has a specific meaning assigned to it under Part IX-A. Article 243P(c) defines the word as meaning an institution of self-government constituted under Article 243Q. Article 243Q refers specifically to three types of municipalities, that is, a Nagar Panchayat for a transitional area, a municipal council for a smaller urban area and a municipal corporation for a larger urban area. Thus, neither any city improvement trust nor any development authority is a municipality, referred to in Article 243ZF. Thus Article 243ZF has no relevance to test the validity of the BDA Act or any provision thereof. If BDA Act or any provision thereof is found to be inconsistent with the provisions of Part IXA, such inconsistent provision will be invalid even from 1.6.1993, and the benefit of continuance for a period of one year permitted under Article 243ZF will not be available to such a provision of law, as BDA Act is not a law relating to Municipalities.

21. The Constitution (Seventy-Fourth Amendment) Act, 1992 inserting Part IX-A in the Constitution, seeks to strengthen the system of municipalities in urban areas, by placing these local self-governments on sound and effective footing and provide measures for regular and fair conduct of elections. Even before the insertion of the said Part IX-A, Municipalities existed all over the country but there were no uniform or strong foundations for these local self-governments to function effectively. Provisions relating to composition of Municipalities, constitution and composition of Ward Committees, reservation of seats for weaker sections, duration of Municipalities, powers, authority, responsibilities of Municipalities, power to impose taxes, proper

superintendence and centralised control of elections to Municipalities, constitution of Committees for District Planning and Metropolitan Planning, were either not in existence or were found to be inadequate or defective in the state laws relating to municipalities. Part IX-A seeks to strengthen the democratic political governance at grass root level in urban areas by providing constitutional status to Municipalities, and by laying down minimum uniform norms and by ensuring regular and fair conduct of elections. When Part IX-A came into force, the provisions of the existing laws relating to municipalities which were inconsistent with or contrary to the provisions of Part IX-A would have ceased to apply. To provide continuity for some time and an opportunity to the concerned State Governments to bring the respective enactments relating to municipalities in consonance with the provisions of Part IX-A in the meanwhile, Article 243ZF was inserted. The object was not to invalidate any law relating to city improvement trusts or development authorities which operate with reference to specific and specialised field of planned development of cities by forming layouts and making available plots/houses/apartments to the members of the public.

22. To enable the municipalities (that is municipal corporations, municipal councils and Nagar Panchayats) to function as institutions of self-government, Article 243W authorises the legislature of a state to endow to the municipalities, such powers and authority as may be necessary, by law. Such law made by the state legislature may contain provision for the devolution of powers and responsibilities upon municipalities, with respect to the following:

> (i) The preparation of plans for economic development and social justice; and
>
> (ii) The performance of functions and implementation of schemes as may be entrusted to them including those in relation to the following matters (earmarked in the twelfth schedule):
>
> 1. Urban planning including town planning.
>
> 2. Regulation of land-use and construction of buildings.
>
> 3. Planning for economic and social development.
>
> 4. Roads and bridges.
>
> 5. Water supply for domestic, industrial and commercial purposes.
>
> 6. Public health, sanitation conservancy and solid waste management.
>
> 7. Fire services.
>
> 8. Urban forestry, protection of the environment and promotion of ecological aspects.
>
> 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

The aforesaid powers and authority (enumerated in the twelfth Schedule) may also be endowed to the Ward Committees which are required to be constituted, by Article 243S.

23. On the other hand, the purpose and object of the BDA is to act as a development authority for the development of the city of Bangalore and areas adjacent thereto. The Preamble of BDA Act describes it as `an Act to provide for the establishment of a Development Authority for the development of the city of Bangalore and areas adjacent thereto and for matters connected therewith. The development contemplated by the BDA Act is "carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment" (vide Section 2(j) of BDA Act. Therefore, the purpose is to make lay outs, construct buildings or carry out other operations in regard to land. Municipalities are not concerned with nor entrusted with functions similar to those entrusted to BDA under the BDA Act, that is building, engineering or other operations by forming layout of plots with all amenities, construction of houses and apartments, as a part of any scheme to develop a city. Municipalities are concerned with the overall economic development providing social justice (urban poverty alleviation and slum improvement) regulating land use and constructions, providing amenities (roads, bridges, water supply, fire services, street lighting, parking, bus stops, public conveniences), promoting education and culture etc. Neither urban town planning nor regulation of land use and construction, is similar to the `development' as contemplated in BDA Act, that is carrying out building, engineering operations in or over or under land. It would thus be seen that the object and functions of a Municipal Corporations are completely different from the object and purpose of a development authority like BDA. BDA is not a municipality. Therefore, it cannot be said that mere existence of Municipal Corporations Act, duly amended to bring it in conformity with Part IX-A of the Constitution, will nullify or render redundant, the BDA Act.

24. Article 243ZE no doubt provides that there shall be constituted in every metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the metropolitan area as a whole. The metropolitan area is defined in clause (c) of Article 243P as an area having a population of 10 lakhs or more comprised in one or more districts and consisting of two or more municipalities or panchayats or other contiguous areas specified by the Governor by a public notification to be a metropolitan area for the purpose of Part IXA. The Bangalore Development Authority is constituted inter alia to draw up a detailed scheme for the Bangalore Metropolitan Area. The Bangalore Metropolitan Area is defined in Section 2(c) of the BDA Act and the said definition need not necessarily be the same as or equivalent to any metropolitan area declared with reference to Bangalore under Article 243P(c) of the Constitution. It was submitted before the High Court that the Governor had not issued any public notification specifying any area as metropolitan area, with reference to Bangalore city. Further the declaration of metropolitan area by the Governor, as provided in clause

(c) of Article 243P is specifically with reference to the law relating to municipalities. The Bangalore Metropolitan Area as defined in the Bangalore Development Authority Act is only for the purpose of development i.e. development by way of building or engineering operations in or over or under land. Therefore neither the provision defining `metropolitan area' in Article 243P(c) nor the provision for constitution of a Metropolitan planning committee for preparing a draft development plan for such metropolitan area under Article 243ZE has any relevance or bearing to the Bangalore Metropolitan Area with reference to which BDA has been constituted.

25. Next contention urged by the appellant is that in pursuance of Article 243ZE, KMC Act has been amended inserting Section 503-B providing for constitution of a Metropolitan Planning Committee for preparing a draft development plan for the Bangalore Metropolitan Area and therefore the Bangalore Development Authority can no longer function as an authority for development of metropolitan area, nor can it draw development schemes therefor. Development scheme to be drawn up by the BDA for development of Bangalore Metropolitan Area is specific i.e. acquisition of land, laying out or re-laying plots, formation of roads, construction of buildings, providing drainage, water supply and electricity and allot them to members of the public. On the other hand, the development plan for the metropolitan area as a whole, to be prepared by Metropolitan Planning Committee constituted under the KMC Act involves making a plan for overall development with reference to the various functions enumerated in the twelfth Schedule, that is, plans for economic and social justice, planning for economic and social development, slum improvement and upgradation, urban poverty alleviation, and providing several urban amenities and facilities referred to in the twelfth Schedule. It would thus be seen that the `development scheme' formulated for Bangalore Metropolitan Area by BDA has nothing to do with a `development plan' that has to be drawn by a municipality or by Metropolitan Planning Committee. The development plan to be drawn for a metropolitan area, by a Metropolitan Planning Committee should not be confused with a development scheme to be drawn by a development authority like BDA for a metropolitan area. It should also be noticed that insofar as Bangalore is concerned, the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act is the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949, the area where the city of Bangalore Improvement Act, 1945 was immediately before the commencement of the BDA Act in force, and

such other areas adjacent to the aforesaid, as the Government may from time to time by notification specify. On the other hand, the Bangalore Metropolitan Area, referred to in Section 503-B of KMC Act is an area to be specified by the Governor by public notification under Article 243P(c) of the Constitution of India. In fact the Governor had not even specified the Bangalore Metropolitan Area for the purpose of KMC Act. Neither the Bangalore Metropolitan Area nor a Metropolitan Planning Committee is in existence under the KMC Act. In these circumstances, the contentions that the BDA Act, is no longer in force and that BDA has no jurisdiction or authority to draw up a development scheme to form layouts and acquire land to form lay outs in pursuance of any development scheme for Bangalore Metropolitan Area, is wholly untenable.

26. The appellants submitted that the powers, authority and responsibilities, to be endowed by the State Legislatiure upon the Municipalities are enumerated in Article 243W read with Twelfth Schedule; that Articles 234ZD and 243ZE require the state government to constitute a District Planning Committee at District Level and a Metropolitan Planning Committee for every Metropolitan Area; that such Metropolitan Planning Committee is required to prepare a draft development plan for the Metropolitan Area as a whole. It was contended that the BDA Act was a Legislation which related to some of the responsibilities and functions of Municipalities, enumerated in the Twelfth Schedule to the Constitution read with Article 243W and that its provisions, in particular, sections 15 to 19 were inconsistent with the provisions of Part IXA of the Constitution; that no law can entrust powers and responsibilities referred to in Article 243W including those relating to matters listed in Twelfth Schedule to an authority other than an authority having popular mandate; and that therefore the BDA Act entrusting such powers and responsibilities to a non-elected authority ceases to be in force.

27. While it is true that BDA is not an elected body like the municipality, it has several elected representatives as members. Section 3 relates to the Constitution of the Authority and provides that the Authority shall consist of 22 members and made up as follows :

- Six officers of the BDA viz., The Chairman, The Finance Member, The Engineering Member, The Town Planning Member, The Commissioner and Secretary of the Authority. (All of them are full-time employees, three of them are specialists in finance, engineering and town planning.

- Four elected representatives, that is, two members of state legislature assembly and two counsellors of Bangalore Municipal Corporation.

- One representative of the state government and four representatives of statutory corporations, that is, the Commissioner of Bangalore Municipal Corporation and representatives of Bangalore Water Supply Sewerage Board, Karnataka Electricity Board, and Karnataka State Road Transport Corporation.

- Six members of the public (with minimum of one woman, one person belonging to SC/ST, and one representing labour)

- One Architect.

It would thus be seen that members of the BDA represent different interests and groups, technical persons and elected representatives.

Further, no development scheme can be finalised or put into effect without the sanction of the State Government which in turn has to take note of any representation by the Bangalore Municipal Corporation in regard to the development scheme. Therefore, the mere fact that BDA is not wholly elected body as in the case of a municipal corporation will make no difference. The membership pattern is more suited to fulfil the requirements of a specialist agency executing development schemes. We therefore find no merit in the contention that provisions of BDA Act become inoperative, on Parts IX and IX-A of the Constitution coming into force.

28. The BDA Act empowers the Bangalore Development Authority to formulate schemes for the development of Bangalore Metropolitan Area. The word `development' refers to building, engineering or other operations in regard to land, that is making layouts and making available plots for allotment to members of the public. It is authorised to acquire lands for execution of development schemes, prepare layouts and construct buildings, provide drainage, water supply and electricity, provide sanitary arrangements, form open spaces, lease, sell or transfer the plots/immovable properties. The area in which the BDA Act operates is totally different from the areas in which Part IX A of the Constitution and KMC Act which relate to local self-government operate. Question (iii) - Re : BDA lacking territorial jurisdiction to draw up the development scheme

29. The contention of appellants is that the villages in which the acquired lands are situated do not fall within the Bangalore Metropolitan Area as defined in section 2(c) of the BDA Act, and consequently the BDA has no jurisdiction to either acquire lands or make a development scheme in regard to those areas. As noticed above, section 15 empowers the BDA to draw up development schemes or additional development schemes for the development of the Bangalore Metropolitan Area. Bangalore Metropolitan Area is defined in section 2(c) as the area comprising (i) the City of Bangalore as defined in the City Bangalore Municipal Corporation Act, 1949; (ii) the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of this Act was in force; (iii) such other areas adjacent to the aforesaid areas as the government may from time to time by notification specify. The areas in which the City of Bangalore Improvement Act, 1945 was in force immediately before the commencement of BDA Act was the City of Bangalore and other areas adjoining the city specified by the state government from time to time by notification (vide section 1(2) of the said Act).

30. The Government of Karnataka issued a notification dated 1.11.1965, under section 4A (1) of the `Town Planning Act' declaring the area comprising the City of Bangalore and other areas (218 villages) enumerated in Schedule I thereto to be the `Local Planning Area' for the purposes of the said Act to be called as the Bangalore City Planning Area and the limits of the said planning area were as described in Schedule II thereto. All the 16 villages in which the lands were acquired for Arkavathi Layout fell within the said Bangalore City Planning Area (that is within the `other areas'

described in the I Schedule).

31. The Government of Karnataka issued another notification dated 13.3.1984 under section 4A (1) of the Town Planning Act declaring that the area comprising 325 peripheral villages around Bangalore as indicated in Schedule I to be Local Planning Area for the environs of Bangalore and the limits of the said planning area shall be as indicated in Schedule II thereto. It may be mentioned that the areas added by this notification were beyond the core area (Bangalore City) and the first concentric circle area which were already notified as the Bangalore City planning area under the notification dated 1.11.1965. Schedule II to the notification dated 13.3.1984 gave the boundaries of the entire local planning area of Bangalore which included not only 325 villages which were added by the said notification but the original planning area described and declared in the notification dated 1.11.1965. The following note was added after the Schedule II to the notification dated 13.3.1984 :

> "This excludes the Bangalore city local planning area declared (by) government notification No.PLN/42/MNP/65/SO/3446 dated 1.11.1965."

32. Thereafter, the Government of Karnataka issued a notification dated 6.4.1984 under section 4A (3) of the Town Planning Act, amalgamating the `Local Planning Area of Bangalore' declared under notification dated 1.11.1965 and the `Local Planning Area' declared for the environs of Bangalore by notification dated 13.3.1984. The said notification called the amalgamated Local Planning Area as the `Bangalore City Planning Area' with effect from 1.4.1984. Schedule I to the said notification consolidated the areas shown in Schedule I to the notification dated 1.11.1965 and the Schedule I to the notification dated 13.3.1984 and contained the names of 538 villages. It also confirmed that the limits of the planning area shall be as indicated in II Schedule to the notifications dated 1.11.1965 and 13.3.1984.

33. The Government of Karnataka issued a notification dated 1.3.1988 in exercise of the power under section 2(c) of the Bangalore Development Authority Act, 1976 specifying the villages, indicated in I Schedule and within the boundaries indicated in II Schedule to the notification dated 13.3.1984, to be the areas for the purpose of the said clause. The contention of the petitioner is that the notification dated 1.3.1988 only specifies the villages indicated in the notification dated 13.3.1984 as Bangalore Metropolitan area; that therefore, the areas that were earlier declared as a local planning area under the notification dated 1.11.1965, were not part of Bangalore Metropolitan area; and that as all the 16 villages which were the subject matter of the impugned acquisition, were part of the local planning area declared under notification dated 1.11.1965, but not part of the local planning area declared under the notification dated 13.3.1984, the said 16 villages do not form part of the Bangalore Metropolitan Area for the purpose of section 2(c) of the BDA Act; and consequently, BDA cannot execute any development scheme in regard to the said 16 villages under section 15 of the BDA Act.

34. A careful reading of the notification dated 1.3.1988 would show that the clear intention of the state government was to declare the entire area declared under the notification dated 1.11.1965 and the notification dated 13.3.1984, together as the Bangalore Metropolitan Area. The notification

dated 1.3.1988 clearly states that the entire area situated within the boundaries indicated in Schedule II to the notification dated 13.3.1984 was the area for the purpose of section 2(c) of BDA Act. There is no dispute that the boundaries indicated in Schedule II to the notification dated 13.3.1984 would include not only the villages enumerated in I Schedule to the notification dated 13.3.1984 but also the area that was declared as planning area under the notification dated 1.11.1965. This is because the areas declared under notification dated 1.11.1965 are the core area (Bangalore City) and the area surrounding the core area that is 218 villages forming the first concentric circle; and the area declared under the notification dated 13.3.1984 (325 villages) surrounding the area declared under the notification dated 1.11.1965 forms the second concentric circle. Therefore, the boundaries of the lands declared under the notification dated 13.3.1984, would also include the lands which are declared under the notification dated 1.11.1965 and therefore, the 16 villages which are the subject matter of the impugned acquisition, are part of the Bangalore Metropolitan Area.

35. The learned counsel for the Appellants contended that the note at the end of II Schedule to the notification dated 13.3.1984 excluded the Bangalore city planning area declared under the notification dated 1.11.1965. As the planning area that was being declared under the notification dated 13.3.1984, was in addition to the area that was declared under the notification dated 1.11.1965, it was made clear in the note at the end of the notification dated 13.3.1984 that the area declared under the notification dated 1.11.1965 is to be excluded. The purpose of the note was not to exclude the area declared under the notification dated 1.11.1965 from the local planning area. The intention was to specify what was being added, to the local planning area declared under the notification dated 1.11.1965. But in the notification dated 1.3.1988, what is declared as the Bangalore Metropolitan Area is the area that is within the boundaries indicated in schedule II to the notification dated 13.3.1984, which as noticed above is the area notified on 1.11.1965 as also the area notified on 13.3.1984. The note in the notification dated 13.3.1984 was only a note for the purposes of the notification dated 13.3.1984 and did not form part of the notification dated 1.3.1988. There is therefore no doubt that the intention of the state government was to include the entire area within the boundaries described in Schedule II, that is the area declared under two notifications dated 1.11.1965 and 13.3.1984, as the Bangalore Metropolitan Area.

36. In fact ever since 1988, everyone had proceeded on the basis that the Bangalore Metropolitan Area included the entire area within the boundaries mentioned in Schedule II to the notification dated 13.3.1984. Between 1988 and 2003, BDA had made several development schemes for the areas in the first concentric circle around Bangalore City (that is, in the 218 village described in I Schedule to the notification dated 1.11.1965) and the state government had sanctioned them. None of those were challenged on the ground that the area was not part of Bangalore Metropolitan Area.

37. It is true that the wording of the notification is clumsy and ambiguous. It refers to the villages indicated in Schedule I and it also refers to villages within the boundaries of Schedule II. It also states that the area stated in the notification is the area for the purpose of section 2(c) of BDA Act. It is well settled that when there is vagueness and ambiguity, an interpretation that would avoid absurd results should be adopted. The interpretation put forth by the appellants, if accepted would mean the outer centric circle of Bangalore which consists of only the peripheral villages would be the Bangalore Metropolitan Area and neither the Bangalore city nor the 218 villages immediately

adjoining and surrounding the Bangalore city would form part of Bangalore Metropolitan Area. This, to say the least, is absurd and will be in direct violation of section 2(c) of BDA Act which states that Bangalore City and the areas surrounding it where City of Bangalore Improvement Act, 1945 was in force, will form part of Bangalore Metropolitan Area.

38. Let us view it from another angle. Bangalore City forms the central core area or the innermost circle. The adjoining 218 villages enumerated in the notification dated 1.11.1965 surrounding Bangalore City form the first concentric circle. The peripheral villages described in Schedule I to the notification dated 13.3.1984 form the second concentric circle which surrounds the central core area and the areas within the first concentric circle. To interpret Bangalore Metropolitan Area as referring only to the peripheral villages and not the core city area and its adjoining villages would be like saying the outer skin of a fruit is the fruit and the entire fruit inside does not form part of the fruit.

39. The learned counsel for the appellants submitted that if the notification dated 1.3.1988 is interpreted as including the inner areas, then it would amount to reading the words "Government of Karnataka hereby specifies the villages indicated in Schedule I and within the boundaries indicated in Schedule II to the notification dated 13.3.1984 to be the area for the purpose of the said Clause" as follows :

> "Government of Karnataka hereby specifies the villages indicated in Schedule I and the villages within the boundaries indicated in Schedule II to the notification dated 13.3.1984 to be the areas for the purpose of the said clause".

It is submitted that a casus omissus cannot be supplied by courts where the language is clear and unambiguous and is capable of an intelligible interpretation. Reliance is placed on the decisions of this court in Dr. Baliram Waman Hiray v. Justice B. Lentin & Ors. - 1988 (4) SCC 419, and S.R. Bommai & Ors. v. UOI & Ors. - 1994 (3) SCC 1 and several decisions following them, to contend that the court cannot, in interpreting a provision, supply any casus omissus. The doctrine of casus omissus was explained thus in American Jurisprudence, 2nd Series Vol. 73 at page 397 : "It is a general rule that the court may not by construction insert words or phrases in a statute or supply a casus omissus by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the mind of the legislature at the time of the enactment of law". But the position will be different where the language is ambiguous and an intelligible interpretation would require addition of words particularly when the intention of the State Government is clear and evident and it is reiterated by the State Government and the BDA. Justice G.P. Singh in his Principles of Statutory Interpretation (2008 Edition - Page 65) expresses the view that when the object or policy of a statute can be ascertained, imprecision in its language should not be readily allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy. This Court has also repeatedly emphasised that although a court cannot supply a real casus omissus, nor can it interpret a Statute to create a casus omissus when there is really none. In Padma Sunder Rao v. State of Tamil Nadu 2002 (3) SCC 533, a Constitution Bench of the this Court held :

> "..... a casus omissus cannot be supplied by the court by judicial interpretative process, except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a Statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole Statute."

40. Let us now refer to the wording and the ambiguity in the notification. Section 2(c) of BDA Act makes it clear that the city of Bangalore as defined in the Municipal Corporation Act is part of Bangalore Metropolitan Area. It also makes it clear that the areas where the city of Bangalore Improvement Act, 1945 was in force, is also part of Bangalore Metropolitan Area. It contemplates other areas adjacent to the aforesaid areas being specified as part of Bangalore Metropolitan Area by a notification. Therefore, clearly, the area that is contemplated for being specified in a notification under Section 2(c) is "other areas adjacent" to the areas specifically referred to in Section 2(c). But it is seen from the notification dated 1.3.1988 that it does not purport to specify the "such other areas adjacent" to the areas specifically referred to in section 2(c), but purports to specify the Bangalore Metropolitan Area itself as it states that it is specifying the "areas for the purpose of the said clause". If the notification specifies the entire Bangalore Metropolitan Area, the interpretation put forth by the appellants that only the villages included in Schedule I to the notification dated 13.3.1984 would be the Bangalore Metropolitan Area, would result in an absurd situation. Obviously the city of Bangalore and the adjoining areas which were notified under the city of Bangalore Improvement Act 1945 are already included in the Bangalore Metropolitan Area and the interpretation put forth by the appellants would have the effect of excluding those areas from the Bangalore Metropolitan Area. As stated above, the core area or the inner circle area, that is Bangalore City, is a part of Bangalore Metropolitan Area in view of the definition under Section 2(c). The 218 villages specified in the notification dated 1.11.1965 are the villages immediately surrounding and adjoining Bangalore city and it forms the first concentric circle area around core area of Bangalore city. The 325 villages listed in I Schedule to the notification dated 13.3.1984 are situated beyond the 218 villages and form a wider second concentric circle around the central core area and the first concentric circle area of 218 villages. That is why the notification dated 1.3.1988 made it clear that the Bangalore Metropolitan Area would be the area within the boundaries indicated in II Schedule to the notification dated 13.3.1984. It would mean that the three areas, namely, the central core area, the adjoining 218 villages constituting the first concentric circle area and the next adjoining 325 villages forming the second concentric circle are all included within the Bangalore Metropolitan Area. What is already specifically included by Section 2(c) of BDA Act cannot obviously be excluded by notification dated 1.3.1988 while purporting to specify the additional areas adjoining to the areas which were already enumerated. Therefore, the proper way of reading the notification dated 1.3.1988 is to read it as specifying 325 villages which are described in the First Schedule to the notification dated 13.3.1984 to be added to the existing metropolitan area and clarifying that the entire areas within the boundaries of Second Schedule to the notification dated 13.3.1984 would constitute the Bangalore Metropolitan Area. There is no dispute that the boundaries indicated in the notification dated 13.3.1984 would clearly include the 16 villages which are the subject mater of the acquisition.

41. We therefore, reject the contention of the appellant that Bangalore Development Authority does not have territorial jurisdiction to form any development scheme in regard to the 16 villages which are the subject matter of the final declaration dated 23.2.2004.

Question (iv) - Re : Invalidity of final declaration with reference to time limit in section 6 of Land Acquisition Act.

42. This question arises from the contention raised by one of the appellants that the provisions of section 6 of the Land Acquisition Act, 1894 (`LA Act" for short) will apply to the acquisitions under the BDA Act and consequently if the final declaration under section 19(1) is not issued within one year from the date of publication of the notification under sections 17 (1) and (3) of the BDA Act, such final declaration will be invalid. The appellants submissions are as under : The notification under sections 17(1) and (3) of the Act was issued and gazetted on 3.2.2003 and the declaration under section 19(1) was issued and published on 23.2.2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are applicable. Section 6 of LA Act requires that no declaration shall be made, in respect of any land covered by a notification under section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under section 4 of LA Act. As the provisions of LA Act have been made applicable to acquisitions under BDA Act, it is necessary that the declaration under Section 19(1) of BDA Act, (which is equivalent to the final declaration under Section 6 of the LA Act), should also be made before the expiry of one year from the date of publication of notification under Sections 17 (1) and (3) of BDA Act (which is equivalent to Section 4(1) of LA Act).

43. BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation etc. Section 36 of BDA Act does not make the LA Act applicable in its entirety, but states that the acquisition under BDA Act, shall be regulated by the provisions, so far as they are applicable, of LA Act. Therefore it follows that where there are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of LA Act will not apply to the acquisitions under the BDA Act. Only those provisions of LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under BDA Act. BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under BDA Act is different from the procedure under the LA Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the Scheme for acquisition under sections 15 to 19 of BDA Act and the limited application of LA Act in terms of section 36 of BDA Act, the provisions of Sections 4 to 6 of LA Act will not apply to the acquisitions under BDA Act. If section 6 of LA Act is not made applicable, the question of amendment to section 6 of LA Act providing a time limit for issue of final declaration, will also not apply.

44. Learned counsel for the BDA submitted that the issue is no longer res integra. He submitted that in Munithimmaiah vs. State of Karnataka - 2002 (4) SCC 326, this Court held that the BDA Act is a special and self-contained code; that BDA and LA Act cannot be said to be either supplemental to each other, or pari materia legislations; that BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the LA Act are not imported into BDA Act; and that the amendments to LA Act subsequent to the enactment of the BDA Act did not get attracted or become applicable to acquisitions under the BDA Act either by express provision or by necessary intendment or implication. He therefore submitted that the appellants cannot rely upon the amendment to Section 6 of LA Act requiring publication of the final declaration within one year from the date of publication of the preliminary notification, to contend that the final declaration under the BDA Act should be made within one year from the date of preliminary notification. The learned counsel for the appellants submitted that the issue whether the provisions of LA Act as amended would apply to acquisitions under laws relating to town planning has been referred to a larger Bench of this Court and the decision therein will have a bearing on the issue whether amendments to the provisions of LA Act would apply to acquisition under laws relating to City Improvement Trusts and development authorities. It is unnecessary to enter into the controversy whether the amendments to LA Act inserting Section 11A would apply to acquisitions under Town Planning Laws or City Improvement/ Development Laws, as that issue does not arise here. As noticed above, when section 6 of the LA Act itself is inapplicable to acquisition under BDA Act, the question whether amendment to Section 6 will apply will not arise. We accordingly hold that the final declaration dated 23.2.2004 does not suffer from any infirmity on account of the same having been published a few days beyond one year from the date of publication of the preliminary notification under sections 17 (1) and (3) of the BDA Act. Question (v) - Re : Applicability of sections 4, 5A and 6 of LA Act

45. The appellants contend that the provisions of sections 4, 5A and 6 of LA Act apply to the acquisitions under the BDA Act and the acquisition is liable to be quashed, as being in violation of the said provisions. Different appellants have raised two distinct and somewhat inconsistent contentions to say that sections 4 to 6 of LA Act are applicable.

46. The first contention is as follows : The BDA Act relates to development of Bangalore Metropolitan Area. It is not an Act for acquisition of property. Sections 15 and 19 when read with section 36 of BDA Act, can lead to only a conclusion that for acquisition of lands for its development schemes, BDA has to resort only to the provisions of LA Act, in entirety and BDA Act does not provide for or empower BDA to make acquisitions. Section 15 enables the authorities to draw-up development schemes or additional development schemes for development of Bangalore Metropolitan Area. Section 15 does not confer any power to acquire land. Section 16 only specifies the particulars to be provided for in the development schemes and does not empower BDA to acquire land. The reference to acquisition in clause (1)(a) of section 16 is not to empower acquisition, but merely to provide that every development scheme shall, within the limits of the area comprised in the scheme provide for acquisition of any land which will be necessary for or affected by the execution of the scheme. Section 16(1)(a) therefore refers to only identifying the lands to be acquired and does not authorise acquisition. Section 17 contains the procedure to be followed when the development scheme has been prepared. Section 18 refers to the need for the BDA to submit the

scheme to the Government for its sanction, and grant of sanction by the Government. Neither section 17 nor section 18 authorise the BDA to acquire land. Section 19 requires a declaration to be published by the Government stating that it had sanctioned a development scheme of BDA, and the lands proposed to be acquired by the authority are required for a public purpose. Therefore, the actual acquisition as such should follow the declaration under section 19 of the BDA Act by issuing a preliminary notification under section 4, by an inquiry under section 5A and a final declaration under section 6 of the LA Act, followed by an award, reference etc. Section 36 of the BDA Act provides that acquisitions shall be regulated by the provisions of LA Act, as far as they are applicable. This makes it clear that the entire acquisition will have to be made under the provisions of the LA Act. BDA has all along proceeded on a wrong assumption that it has the power to acquire property under the BDA Act when it has no such power.

47. The assumption by the appellant that Chapter III of the BDA Act relating to development schemes does not provide for acquisition is erroneous. Sections 15 to 19 of the BDA Act contemplate drawing-up of a development scheme or additional development scheme for the Bangalore Metropolitan Area, containing the particulars set down in section 16 of the said Act, which includes the details of the lands to be acquired for execution of the scheme. Section 17 requires the BDA on preparation of the development scheme, to draw-up and publish in the Gazette, a notification stating that the scheme has been made, showing the limits of the area comprised in such scheme and specifying the lands which are to be acquired. The other provisions of section 17 make it clear that the BDA has to furnish a copy of the said notification and invite a representation from the Bangalore City Corporation, affix the notification at conspicuous places in various offices, and serve notice on every person whose land is to be acquired. Thus, the notification that is issued under section 17(1) and published under section 17(3), is a preliminary notification for acquiring the lands required for the scheme under the Act. Section 17(5) and section 18 (1) requires BDA to give an opportunity to landowners to show cause against acquisition and consider the representations received in that behalf. Section 18 (1) also requires BDA to furnish a statement of the lands proposed to be acquired to the State Government for obtaining its sanction for the scheme including the acquisition. Sub-section (1) of section 19 requires the Government to publish a declaration upon sanctioning the scheme, declaring that such a sanction has been given and declaring that the "lands proposed to be acquired by the authority" are required for public purpose. Sub-section (3) of section 19 makes it clear that the declaration published under section 19(1) should be conclusive evidence that the land is needed for a public purpose and that the Authority shall, upon publication of such declaration, proceed to execute the same. Thus, it is clear that the acquisition by the Authority for the purposes of the development scheme is initiated and proceeded with under the provisions of the BDA Act. Section 36 of BDA Act provides that the "acquisition of land under this Act", shall be regulated by the provisions, so far as they are applicable of the LA Act. In view of the categorical reference in section 36 of the BDA Act, to acquisitions under that Act, there cannot be any doubt that the acquisitions for BDA is not under the LA Act, but under the BDA Act itself. It is also clear from section 36 that LA Act, in its entirety, is not applicable to the acquisition under the BDA Act, but only such of the provisions of the LA Act for which a corresponding provision is not found in the BDA Act, will apply to acquisitions under the BDA Act. In view of sections 17 to 19 of the BDA Act, the corresponding provisions - Sections 4 to 6 of the LA Act--will not apply to acquisitions under the BDA Act. We therefore reject the contention that the BDA Act does not contemplate acquisition and

that the acquisition which is required to be made as a part of the development scheme, should be made under the LA Act, applying sections 4, 5A and 6 of LA Act.

48. The second contention urged by the appellants is as follows : A development authority is a City Improvement Trust referred to in Entry 5 of the State List (List II of the Seventh Schedule). `Acquisition of property' is a matter enumerated in Entry 42 in the Concurrent List (List III of the Seventh Schedule). LA Act relating to acquisition of property, is an existing law with respect to a matter (Entry 42) enumerated in the Concurrent List. BDA Act providing for acquisition of property is a law made by the State Legislature under Entry 42 of the Concurrent List. Article 254 of the Constitution provides that if there is any repugnancy between a law made by the State Legislature (BDA Act) and an existing central law in regard to a matter enumerated in the Concurrent List (LA Act), then subject to the provisions of clause (2) thereof, the existing Central law shall prevail and the State law, to the extent of repugnancy, shall be void. Clause (2) of Article 254 provides that if the law made by the State Legislature in regard to any matter enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the State Legislature, if it had been reserved for the consideration of the President and has received his assent, shall prevail in that State. It is contended that the provisions of section 19 of the BDA Act are repugnant to the provisions of section 6 of the LA Act; and as BDA Act has not been reserved for consideration of the President and has not received his assent, section 6 of LA Act will prevail over section 19 of BDA Act.

49. This contention also has no merit. The question of repugnancy can arise only where the State law and the existing Central law are with reference to any one of the matters enumerated in the Concurrent List. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, that is, when both the Union and State laws relate to a subject in List III. Article 254 has no application except where the two laws relate to subjects in List III [See: M/s. Hoechst Pharmaceuticals vs. State of Bihar - 1983 (4) SCC 45]. But if the law made by the State Legislature, covered by an Entry in the State List, incidentally touches upon any of the matters in the Concurrent List, it is well-settled that it will not be considered to be repugnant to an existing Central law with respect to such a matter enumerated in the Concurrent List. In such cases of overlapping between mutually exclusive lists, the doctrine of pith and substance would apply. Article 254(1) will have no application if the State law in pith and substance relates to a matter in List II, even if it may incidentally trench upon some item in List III. (See Hoechst (supra), Megh Raj v. Allah Rakhia AIR 1947 PC 72, Lakhi Narayan v. Province of Bihar AIR 1950 FC 59). Where the law covered by an Entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can co-exist and operate without repugnancy to the provisions of the existing law. This Court in Munithimmiah (supra) has held that the BDA Act is an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the City of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is development of Bangalore Metropolitan area. This Court held that in pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a

law for acquisition of land like the LA Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. This Court held that if at all, BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the LA Act. The fallacy in the contention of the appellants is that it assumes, erroneously, that BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of repugnancy and Section 6 of the LA Act prevailing over Section 19 of BDA Act would not at all arise.

50. We may next refer to the argument that there is no enquiry as contemplated under section 5A of the LA Act. The assumption that a final declaration under section 19 has to be preceded by an inquiry, similar to what is contemplated under section 5A of LA Act, is without any basis. Section 5A of LA Act relates to hearing of objections. Sub-section (1) thereof provides that any person interested in any land which has been notified under section 4(1) as being needed or likely to be needed, for a public purpose, may, within thirty days from the date of the publication of the notification, object to the acquisition. Sub-section (2) of section 5A of LA Act provides that every objection under sub-section (1) of section 5A shall be made to the Collector and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in that behalf or by a pleader and shall after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make report/s in respect of the land which has been notified under section 4(1) to the appropriate Government, containing the recommendations on the objections, together with the record of the proceedings held by him for the decision of the Government, and the decision of the appropriate Government on the objection shall be final. We have already held that section 5A is inapplicable to acquisitions under the BDA Act. The scheme of BDA Act also contemplates consideration of objections but does not require any personal hearing or inquiry. Sub-section (5) of section 17 of the BDA Act requires that during the thirty days next following the date on which the preliminary notification under section 17(1) and (3) is published, the authorities shall serve a notice on every person whose name appears in the assessment list/land revenue register, requiring such person to show-cause within thirty days from the date of receipt of the notice why such acquisition should not be made. Sub-section (1) of section 18 provides that the authority shall, after service of notices as provided in section 17 and after consideration of the representations, if any received in respect thereof, shall submit the scheme, making such modifications therein as it may think fit for Government for sanction. It would thus be seen that while the scheme for acquisition under the LA Act and the BDA Act contemplates notice to the landholders/persons interested, the procedure thereafter is markedly different. While LA Act requires an `enquiry' where the Dy. Commissioner is required to give the objectors opportunity of being heard in person and conducting such further inquiry as he thinks necessary, BDA Act requires issuing notices to the persons interested to show-cause why acquisition should not be made and consider the representations received. No personal hearing or `enquiry' is contemplated. Therefore, it is impermissible to import the requirement of section 5A of LA Act in regard to acquisitions under the BDA Act.

51. In view of the above, the contention that the BDA Act has to yield to LA Act and consequently, the provisions of sections 4, 5 and 6 of LA Act will be applicable and have to be complied with for acquisitions under the BDA Act, does not have any merit and the same is rejected. Question (vi) - Re

: Non-compliance with section 15 to 19 of the BDA Act.

52. The appellants contend that a clear and specific development scheme is fundamental pre-requisite for an acquisition and in the present case there was no such scheme before the acquisition was initiated. It is submitted that sanction of the Government to the development scheme is a condition precedent for publication of a declaration under Section 19(1) of the Act. It is submitted that the requirement of a sanction has been reduced to an empty formality, firstly by BDA not placing the necessary material before the Government, secondly, by government by rushing through the entire process without proper application of mind and thirdly by the Chief Minister giving administrative sanction, without placing the matter before the Cabinet as required by the relevant Transaction of Business Rules. We will deal with each of these submissions separately.

(a) Absence of specificity and discrepancy in extract.

53. Chapter III of BDA Act relates to development schemes. Section 15 provides that authority may draw up a detailed scheme for the development of the Bangalore Metropolitan Area. It also provides that the Authority can also from time to time make and take up new or additional development schemes either on its own initiative or on the recommendation of the local authority or otherwise. Section 16 provides that the development scheme under section 15 shall, within the limits of the area comprised in the scheme, provide for acquisition of land which will be necessary for execution of the scheme, laying and re-laying out of land (including construction or reconstruction of buildings) and formation and alteration of streets, drainage, water supply, electricity, and reservation of space for public parks and playgrounds and civic amenities. When the development scheme is prepared the authority is required to draw up a notification as stated in Section 17(1). The said notification has to be published in the Official Gazette, and a copy thereof sent to the Bangalore City Corporation for its comments. Notices have to be served on the land holders to show cause why the land should not be acquired. After such publication and service of notices and after consideration of the representations the authority is required to submit the scheme making such modification as it may think fit to the Government for sanction furnishing the documents/details as stated in Sub-section (1) of Section 18. On consideration of the development scheme, the Government may grant sanction for the same. Upon such sanction, the Government shall publish a declaration stating that sanction has been granted and the land proposed to be acquired by the authority for the purpose of the scheme is required for the public purpose.

54. Let us consider whether the said provisions have been complied with in this case. On 2.1.2001 the Executive Engineer (North) of BDA, submitted a scheme report dated 1.1.2001 for development of Hennur Devanahalli Road Extension covering an area of 1650 acres in 12 villages (that is Hennur, Geddalahalli, Byrathi Khare, Thanisandra, K. Narayanapura, Rachenahalli, Sriramapura, Venkateshpura, Sampigehalli, Amruthahalli, Dasarahalli, and Jakkur). It contemplated the execution of the development in three stages: laying 4524 sites in 300 acres in the first stage, 12817 sites in 850 acres in the second stage and 7539 sites in 500 acres in the third stage, in all 24880 sites. It also gave the detailed working of the cost of the development scheme and the amount expected to be realised by allotment/sale of plots and made it clear that it will be a self-financing scheme.

55. On receipt of the said scheme report, the Surveyors of BDA made a survey and reported that about 3000 acres of land will be available in 14 villages, that is, the twelve villages mentioned in the report dated 2.1.2001 and two other villages namely Kempapura and Challakere. Therefore, the Addl. Land Acquisition Officer placed a note, reporting that surveyors had located about 3000 acres of land and suggesting that the layout may be named as Arkavathi layout instead of Hennur Devanahalli Road layout. The Commissioner agreed with the proposal on 8.10.2002 and placed the scheme before the Authority. The Authority considered it in its meeting dated 10.10.2002 and approved the proposal and decided to issue a preliminary notification for 3000 acres of land in regard to 14 villages. Subsequently with a view to have proper access to the layout certain lands in Hebbala and Nagavara were also added. Thereafter, the preliminary notification dated 3.2.2003 under section 17(1) was published by the Commissioner, BDA, proposing to acquire the lands shown in the Schedule to the notification. The preliminary notification also contained an abstract of the extents of lands proposed to be acquired for formation of Arkavathi layout. It is stated that the proposal contemplated of utilisation of about 500 acres of government land also which did not require acquisition and consequently, the total extent was shown as 3389A.12G in the abstract. A corrigendum was issued showing the extent as 3889A.12G. A copy of the notification was forwarded to the Bangalore City Corporation and notices were also issued to the persons registered as the owners of the lands proposed to be acquired requiring them to show cause why such acquisition should not be made. After consideration of the representations the authority modified the scheme by deleting 1089.12 acres and submitted the modified scheme for acquisition of 2750 acres in 16 villages to the Government for its sanction. The Government sanctioned the scheme for formation of Arkavathi layout vide Government Order No. UDD 193 MNX 204 dated 21.2.2004. Thereafter a final notification dated 23.2.2004 was issued by the Government of Karnataka under section 19(1) of the Act and published in the Gazette on the same day. The said notification stated that the Government has sanctioned the layout and the lands stated in the Schedule therein were required for the public purpose for formation of the Arkavathi layout. We have repeated the reference to the events in detail to show that there has been due compliance with the provisions of Sections 15 to 19 of the Act.

56. The mere fact that there were modifications from time to time or that some of the lands originally proposed were thereafter omitted will not in any way affect the validity of the scheme. Similarly the fact that acquisition was initially contemplated in regard to lands in only 12 villages and that two villages were added by the authority in October, 2002 for making a bigger layout or the fact that two other villages were also added to provide better access to the layout will not be in violation of the scheme. Such additions were all made by the Authority prior to the issue of preliminary notification. The fact that there were changes in extent does not make the scheme vague or uncertain. Necessarily a preparation of a development scheme would contemplate survey and ascertainment of suitable available land for acquisition and preparation of a scheme. Before the scheme is finalised there will necessarily be modifications and changes. Even publication of a notification under sections 17(1) and (3) of the Act stating that the scheme has been made and specifying the lands which are proposed to be acquired is subject to a revision on consideration of representations/objections and deletions warranted. Therefore the mere fact that there were some modifications from time to time between 2001 when the initial proposal was mooted till the issue of the notification under Sections 17(1) and (3) or that some lands were omitted/deleted in the

declaration under Section 19(1) will not effect the validity of the scheme. In fact deletion of some items of land or reducing the extent proposed to be acquired in some items of land, when issuing final declaration is made is quite common and is indeed a result of the process prescribed under any Act providing for acquisitions. The changes and modifications are infact contemplated in the process of making the scheme under Sections 15 to 19 of BDA Act.

(b) Non-furnishing of material particulars to the Government for purpose of sanction.

57. The appellants submitted that for obtaining sanction the BDA had to submit the scheme, after making such modifications as it may think fit, to the Government for sanction, furnishing (a) a description with full particulars of the scheme including the reasons for any modifications inserted therein; (b) complete plans and estimates of the cost of executing the scheme; (c) a statement specifying the land proposed to be acquired; (d) any representation received under section 17(2) of the BDA Act from the Bangalore City Corporation; (e) a schedule showing the rateable value, as entered in the Municipal assessment Book relating to the land under section 17 or the land assessment of all lands specified in the statement under clause (c); and (f) any other particulars as may be prescribed.

58. The Commissioner, addressed a letter dated 13.2.2004 to the Principal Secretary to Government, Urban Development Department, seeking sanction. The said letter referred to the preliminary notification, the subsequent consideration of representations/objections and the resolution dated 3.2.2004 to acquire 2750 acres of land, preparation of a project for formation of a layout with 28,600 sites at a cost of Rs.981.36 crores under Section 15(2) of BDA Act and requested for sanction under section 18(3) of the BDA Act and publication of the final declaration in the Official Gazette under section 19(1) of the Act. The Government having examined the proposal, sent a letter dated 17.2.2004 seeking the following clarifications/particulars: (a) Information as to how the Authority will bear the expenses for the proposed project and whether it will bear it from its own sources; (b) Copies of the project map; and (c) Copies of the final declaration. The required particulars were furnished by BDA. The state government, after considering them made an order dated 21.2.2004 granting permission as under (vide Government Order No.NAE 193 BLA 2004 made in the name of the Governor) :

> "(3) The Bangalore Development Authority has obtained the approval of the General Body to procure the sanction of the Government to the Arkavathi Layout Scheme and to procure issuances of a final notification under Section 19(1) of the Bangalore Development Authority Act, 1976 for the purpose of formation of the layout over available 2750 acres of land as per the No.43/2004 in the meeting of the Authority dated 2.3.2004.

As per the approval of the General Body, the Authority has in the letters referred to above put forward a proposal seeking for the sanction of the Government for the Arkavathy Layout Scheme as well as for the issuance of the Final Notification. The Authority has informed that it will meet out of its coffers the entire expenditure that would be incurred for the proposed scheme. After executing 589 acres 12 guntas from the total extent of 3339 acres 12 guntas notified in the preliminary

notification, the proposal for sanction of the scheme as per Section 18(3) of the Bangalore Development Authority Act, 1976 for the Arkavathy Layout Scheme in 2750 acres of land involving the following scheme particulars have been considered.

Sy. No.	Name of the Layout	Approximate Extent Acres Guntas	Extent of land proposed to be acquired Acres Guntas	No. of sites proposed to be formed	Executed recovery (Rs. In crores)	Expected total saving (Rs. in crores)
1	Arkavathy	933-47	2750-00	28600 varying dimensions	of 981.36	47.89

The approximate cost of the Arkavathy Layout, which is being referred to in the Proposal of the Bangalore Development Authority, is Rs.933.47 crores. The approval has been given under Section 18(3) of the Bangalore Development Authority Act, 1976 subject to the following conditions:

> 1. The Bangalore Development Authority shall bear all the expenses to be incurred for the implementation of the scheme from its own resources and shall not expect any financial assistance from the Government for the same.
>
> 2. For the implementation of the said scheme, the Government shall not be the guarantor for any of the loans that may be taken by the BDA. It shall be the sole responsibility of the BDA to repay the said loan amount.
>
> 3. The Government shall to be party to any transactions that the BDA may enter into with respect to the proposed scheme.
>
> 4. With respect to the proposed scheme if the land has to be converted for using it, it shall be mandatory to get pre-approval from the Government".

The zonal regulation shall be strictly followed and the requisitions shall be complied with."

59. The appellants contended that the fact that the non-furnishing of the said information/documents showed that the scheme was not finalised or complete when the proposal was sent to the Government for approval and BDA had not even prepared a map of the area to be acquired and therefore there was non-compliance with the requirements of section 18(1) of the BDA Act by BDA and that in the absence of necessary material, there could not have been proper application of mind by the Government for granting the sanction.

60. Section 18 is clear about the material to be furnished by the BDA for seeking sanction of the scheme. On examining the records of the BDA and the Government, the Division Bench recorded a finding that all the required particulars had been furnished so that the Government can apply its

mind. In fact, the notings show that in response to the further information sought by the Government on 17.2.2004, the Authority furnished the required information, that is, the Authority will bear the entire expenses for Akravathi layout project from its own sources, it also noted that the BDA had informed that the preparation of the project map was at the final stage and will be furnished after completion thereof. This of course shows that the project map was not ready either on 17.2.2004 when the BDA sent its reply to the letter dated 17.2.2004 or at the time the Government granted sanction on 21.2.2004. But what is relevant to be noticed is that the project map was not one of the documents that had to be furnished by the BDA while seeking sanction of the scheme. We have already referred to the documents and particulars to be furnished by the BDA. The project map was not one of the items that had to be furnished. In fact the scheme report had been submitted by the Executive Engineer, North Division of BDA to the Engineer Member on 5.2.2004 itself and that had been made available to the Government. The Government in its reply stated that whatever particulars that were required to be furnished, had been furnished and they were satisfied that the scheme required to be sanctioned. It is only thereafter sanction was granted. We therefore reject the contention that the material required for seeking sanction had not been furnished by the BDA to the Government.

(c) Absence of valid sanction by the Government

61. As far as the BDA is concerned, there is thus due compliance with Sections 18 and 19 also. But the appellants would contend having regard to the provisions of the Karnataka Government Transaction of Business Rules, 1977, the sanction for the scheme under Section 18(3) could validity be given only by a decision of the Cabinet; and that in these cases, the decision of the Government was based on the order of the Chief Minister and not the Cabinet, and therefore, sanction was not a valid sanction in law. As noticed above, the BDA sent the scheme approved by the authority for the sanction of the Government by writing a letter to the Principal Secretary to the Government Urban Development Department on 13.2.2004. By the time the communication reached the Government, there was a demand for dissolution of the House on 16.2.2004 and the House was dissolved on 21.2.2004. In the meanwhile, certain clarifications were sought on 17.2.2004 which were furnished on the same day. The file was processed and the matter was placed before the Chief Minister who had the dual capacity of Chief Minister and the Minister-in-charge of Bangalore Development Authority. The Chief Minister approved the proposal on 20.2.2004. The noting placed by the concerned Ministry and the order of the Chief Minister thereon are extracted below :

> "(10) The above receipt is kept at page no.11. Kindly peruse note para 1 to 6. On the background of paras 6 to 9, few information from authority (page 10) was sought, the authority has furnished to the required information (page-11). The authority has informed in the said letter that it will bear the expenses required for the Arkavati layout Extension Project from its sources itself and the preparation project map is at final stage, it will be furnished after completion. And also the construction work of the Arkavati layout extension has to be taken immediately and the sites has to be distributed to the publics hence the authority has requested to give approval for the Arkavathi layout extension and the final notification has to be published.

(11) The authority has informed that it will bear the expenses for the proposed project out of its source its self hence the necessity of getting ratification of the Finance Department for this proposal does not arise.

(12) According to Rule 15 of Government of Karnataka (Execution of Business) Rules 1977, the ratification of the Cabinet is required for the expenses of project works which is more than 500 lakh rupees. On this background, the ratification of Cabinet has to be obtained for the below mentioned points :

(a) To issue Government's approval for the Arkavathi Layout extension project approximately of Rs.981.36 crores under section 18(3) of Bangalore Development Authority Act.

(b) To publish final notification under section 19(1) of Bangalore Development Authority Act for the available 2750 acres land for construction of Arkavathi layout extension (page 138-1212). It may be requested Hon'ble Chief Minister for according ratification before tabling the file for ratification of the Cabinet.

xxxxxxxx Chief Minister, PSCM 1180/2004/20.2.2004 (14) Pending ratification by the Cabinet, para 12(a) and (b) is approved.

Sd/-

(S.M. Krishna) Chief Minister"

Subsequently the matter was placed before the Cabinet and ratified.

62. The appellants contend that such an order by the Chief Minister and ratification thereof were invalid, having regard to Rules 12, 20 and 21 read with Entry 36 in the First Schedule of the Karnataka Government (Transaction of Business) Rules 1977. Rule 12 provides that there shall be a Committee of the Council of Ministers to be called the Cabinet and all matters referred to in the First Schedule to the Rules shall ordinarily be considered at a meeting of the Cabinet. Rule 20 provides that cases specified in the First Schedule to the Rules shall be brought before the Cabinet after submission to the Minister-in-charge of the Department;

and cases other than those specified in the First Schedule should be brought before the Cabinet by the direction of the Chief Minister, or the Minister-in-Charge of the Department with the consent of the Chief Minister. Rule 21 provides that subject to provisions of Rule 20 all cases specified in the First Schedule to the Rules shall be brought before the Cabinet. Entry 36 of the First Schedule relates to "all self-financing schemes of local bodies including the Urban Development Authorities, the Karnataka Housing Board and such other statutory bodies". In this case the matter (relating to sanction under section 18(3) of BDA Act) was placed before the

Chief Minister who also happened to be the Minister-

in-Charge on 20.2.2004. He granted the approval subject to ratification by the Cabinet. In view of the subsequent ratification by the Cabinet there is nothing irregular in the procedure adopted. The delay in ratification was on account of the dissolution of the house.

63. The contentions that the sanction is void, is untenable. As noticed above, Rule 12 requires that the matter should ordinarily be considered at a meeting of the Cabinet. This itself shows that there can be exceptional circumstances where it will not be possible to place it before the Cabinet.

The approval granted by the Chief Minister, subject to the ratification of the Cabinet was treated by the Urban Development Department as approval for the sanction under Section 18(3) and a Government order was made on 21.2.2004 in the name of the Governor granting sanction under section 18(3) of the BDA Act. The State Government also issued a final declaration under Section 19(1) of BDA Act. It is thus evident that the State Government proceeded on the basis that the order of approval of the Chief Minister for the sanction, was sufficient for grant of sanction.

Even if it is to be assumed that such approval was irregular as it was made subject to ratification, as the ratification was subsequently made, the challenge for want of proper approval of the Cabinet for the sanction cannot be accepted.

Question (vii) : Re : Discrimination, malafides and arbitrariness :

64. We may start with the following preliminary facts :

	Date	Stage	Area proposed to be acquired
(i)	2.1.2001	Initial proposal by the Executive Engineer (North)	1650 Acres (12 villages)
(ii)	10.12.2002	Resolution of Bangalore Development Authority to issue a preliminary notification (14 villages) under sections 17(1) and (3) of the Act	3000 Acres
(iii)	3.2.2003	Area notified in the preliminary notification under section 17(3) of BDA Act	3339 acres 12 guntas (in 16 villages)
(iv)	16.9.2003	Corrigendum regarding notification u/s. 17(3) of BDA Act	3839 acres 12 guntas (in 16 villages)

(v) 3.2.2004 Resolution of BDA to implement Arkavathy 2750 acres Scheme (in 16 villages)

(vi) 23.2.2004 Declaration under section 19(1) of BDA Act. 2750 acres (in 16 villages) The proposal placed before the Authority and resolution dated 3.2.2004 of the Authority (approving the scheme to be placed before the Government for sanction) proceeded on the basis that the total area notified proposing acquisition was 3339 acres 12 guntas, and the area deleted/withdrawn from the said area notified in the preliminary notification on examining the representations was 589 acres 12 guntas and therefore the final declaration for acquisition was for 2750 acres. This was the scheme that was placed for approval before the state government. The state government also in the sanction order dated 21.2.2004 granted sanction for acquisition of 275 acres after noting that 589 acres 12 guntas was excluded from the proposed extent of 3339 acres 12 guntas, after considering the representations received in pursuance of notices issued under Section 17(5) of BDA Act. But when the cases came up before the High Court and this court, the categorical case of BDA is that the total area notified under section 17(1) and (3) of the BDA Act, was 3839 acres 12 guntas and that the area deleted/excluded was 1089 acres 12 guntas. How the preliminary notification extent area increased by 500 acres and how the area deleted also increased exactly by 500 acres is not properly explained and is virtually a mystery. Different explanations have been given at different points of time.

65. On behalf of BDA, an affidavit dated 14.3.2007 was filed before us wherein it is disclosed that in regard to a question put regarding deletion in the Karnataka Legislative Assembly, the following particulars were furnished on 25.1.2006:

(i)	Extent of land acquired	:	2626 acres 13 guntas
(ii)	Extent dropped in the final Notification	:	1089 acres 12 guntas
(iii)	Extent of government lands Included in formation of Arkavathi layout	:	487 acres 11 guntas

In a statement furnished in this Court on 20.3.2006, BDA gave the break up as under:

(i)	Extent as per preliminary Notification	:	3839 acres 12 guntas
(ii)	Extent deleted after preliminary Notification	:	1089 acres 12 guntas
(iii)	Extent of government lands	:	459 acres

acquired as per final notification

(iv) Extent of private land acquired : 2291 acres 2750 acres
as per final notification

Another statement furnished to us shows 500 acres have been deleted under the heading "religious institutions".

66. The appellants contended that the deletion of as much as 1089 acres 12 guntas from out of 3839 acres 12 guntas proposed to be acquired under the preliminary notification would mean that more than 28% was deleted. Several deletions formed islands within the acquired areas. Some of the deletions in some villages were of such a magnitude that what remained of the acquisition in those villages were small and negligible islands completely surrounded by acquired/deleted lands making it difficult or impossible to effectively use such remaining land for development. Such an extensive deletion can lead to the following two inferences: (i) that there was total non application of mind when the proposal was made and without proper survey and by completely ignoring the ground realities about the constructed areas, suitability and availability for acquisition and other relevant circumstances, BDA in extreme haste had proposed acquisition; and/or (ii) the deletion of such vast areas showed that the deletions were arbitrarily made or to favour a chosen few.

67. The learned Single Judge after examining the facts held that there were improper inclusions and exclusions which amounted to hostile discrimination. He held that the acquisition of certain lands and non-

acquisition or deletion from acquisition of some other similarly situated lands situated in the same area, was arbitrary and discriminatory, violative of Article 14 of the Constitution. He further held that the BDA had failed to furnish any plan showing the details of the lands proposed for acquisition, lands deleted from acquisition, built up areas and the lands originally not included in the acquisition, even though they were in the midst of the acquired lands. The learned Single Judge also noticed that in regard to the deletion of 500 acres, no reasons have been assigned.

68. The Division Bench agreed with the single Judge that there were improper inclusions and exclusions amounting to discrimination. The Division Bench was of the view that though the single Judge was justified in holding that there was discrimination in acquiring the land, that alone cannot be a ground for quashing the entire acquisition of 2750 acres. The Division Bench also noticed that the BDA had not traversed the allegations regarding discrimination specifically and even a bare perusal of the map showed that 2750 acres sought to be acquired, did not form a contiguous area. In particular he referred to the haphazard manner in which the acquisition of deletions were made in Kempapura and Srirampura villages. The Division Bench noticed that even in other villages small extents of acquired lands were completely surrounded by large chunks of areas which were either

not acquired or deleted from acquisition, making access to such notified land difficult. In the circumstances instead of setting aside the acquisition, in view a memo and the memo filed by the BDA proposing certain remedial measures, the Division Bench decided to give an opportunity to all the landowners (excluding site owners) who had 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 as was available with them.

69. The BDA does not seriously dispute the fact that there were some amount of arbitrariness and discrimination in the matter of inclusions and exclusions. Apart from that we find that even in this court the BDA has not come up with true and correct position. As noticed above the break up of deletions and the reasons for such deletions have not been disclosed. The extent of deletion without explanation has jumped from 589.12 acres to 1089 acres 12 guntas. The BDA has not chosen to explain the exact extent of the government land involved.

70. Even the map produced showing the 2750 acres of acquired land and 1089 acres 12 guntas of deleted area contains several discrepancies. For example, in regard to Sampigehalli, the map produced before us shows that the entire extent of the village has been acquired except the village proper (Abadi) and survey Nos.10 and 11. But we find that survey Nos.10 and 11 are not in fact deleted and the declaration shows those survey nos. as acquired. In the same village a perusal of the preliminary notification and final declaration shows that Survey Nos.38/2A, 44/10, 44/11, 44/13, 44/14, 44/15 and 46/4 have been omitted in the final declaration but the plan shows no such omission. On the other hand, it shows the entire village as having been acquired.

71. We give below the particulars of the area notified and deleted to get a true picture of the magnitude of deletions and the resultant discrimination:

S.No. Name of the Extent notified Total extent Extent dropped village in the notified in the from acquisition preliminary final while issuing final notification dt. declaration declaration 3.2.2003 dated 23.2.2004 (in Acre.Gunta) (in Acre.Gunta)

1. Dasarahalli 380.04 225.18 154.22

2. Byrathikhare 86.07 77.25 8.22

3. Chellakere 155.03 135.14 19.29

4. Geddalahalli 210.22 133.24 76.38

5. K. Narayanpura 195.13 133.05 62.08

6. Rachenahalli 396.29 298.03 98.26

7. Thanisandra 557.04 482.07 74.37

8. Amruthahalli 196.11 139.01 56.10

9. Jakkur 422.28 360.24 62.04

10. Kempapura 55.13 26.38 28.15

11. Sampigehalli 401.39 256.20 145.21

12. Sriramapura 196.35 94.13 102.22

13. Venkateshpura 95.65 60.13 34.28

14. Hennur 262.22 140.21 122.01

15. Hebbala 59.01 59.14

16. Nagavara 169.16 127.00 42.16 Total 3839 A.12G. 2750 A. 1089 A. 12 G.

72. The acquisition was for planned development of the city and to avoid haphazard growth. But when the layout plan is examined with reference to the preliminary notification and final declaration, several startling facts emerge. We may first refer to the pick and choose method adopted with reference to Kempapura and Sriramapura villages, to which the division bench made specific reference.

(i) In Kempapura village, large areas, that is nearly 50% of the area of the village (Sy. No.2, 4 to 16, 23, 24, 30, 31) had not been included in the preliminary notification, even though the entire surrounding area had been notified. Only 55.13 acres were notified in the preliminary notification but the final declaration was only in regard to 26A.38G and the remaining 28A.15G (more than 51% of what was notified) were deleted. After deletion of Sy. No.1, 3, 18(Part) and 33 the entire northern portion (north of the Road bisecting the village) is free from acquisition (except part of Sy. No.17). Even in the southern portion of the village, there are haphazard deletions.

(ii) In Srirampura village, quite a few lands (Sy. No.2, 3, 7(Part), 13, 62, 64, 65) were not included in the preliminary notification even though all the surrounding areas had been notified. Further, out of total area of 196A.35G notified in the preliminary notification, only 94A.13G find a place in the final declaration and the remaining 102A.22G (more than 52% of what was notified) were deleted. The acquired lands of 94A.13G are not in a contiguous block, but in eleven odd shaped pockets. The deletions and initial omissions make it impossible to have orderly development in regard to acquisition in this village. Some of the pockets are of such odd shape and size that BDA proposes to leave them as stand alone parks/open spaces/community centres, without any development.

73. We find the haphazard and arbitrary exclusions are in several other villages also, though not to the extent in Kempapura and Sriramapura. We may refer to some of them :

(i) Venkateshapura is a comparatively small village. All the lands were proposed for acquisition under the preliminary notification (except a block consisting of Sy. No.6, 7 and 8) in all measuring 95A.05G. Virtually the entire southern and western portions of the village have been omitted in the final declaration and only 60A.13G are included in the final declaration. But the entire southern portion of the village (about 30 acres) have been deleted except four small pockets which have not been deleted :

(a) Sy. No.30 and 31 measuring 24 Guntas and 25 Guntas in all one acre and nine guntas.

(b) Sy. No.33 and 34 measuring 2A.06G and 1A.18G, in all 3A.24G;

(c) Sy No.37/2 measuring 2A.10G.

(d) Sy. No.19/1 measuring 3A.31G.

There is no explanation as to why, when all surrounding lands are deleted these small four pockets are acquired.

(ii) In Nagavara and Hennuru villages, the southern portions of the villages were not notified for acquisition. But deletions are haphazard and have left some small pockets of acquired lands. For example, in Nagavara, Sy. No.107 measuring 1A.4G, portion of Sy. No. 7 measuring 21 Guntas, Sy. No.70 measuring 25 Guntas, Sy. No.152 measuring 6A.4G bifurcated by a road form islands of acquired lands. In the entire southern part of Nagavara which runs into hundreds of acres, only part of Sy. No.152 is proposed to be acquired. In Hennuru Sy. No.103 is a small pocket (28 Guntas) which is acquired, is surrounded by lands not acquired/deleted.

There are several other islands in Hennuru which are not capable of being developed due to their small extents. Their Survey Numbers are not clear in the map produced.

(iii) In Challakere also we find haphazard deletions. We may refer to two stand alone pockets, that is land to the east of Sy. No.104 and the land to the east of 100.

What we have referred above is illustrative and not exhaustive. Similar pockets of small extents of acquired lands surrounded by lands which are not acquired/deleted, exist in other villages also.

74. The object of establishing a development authority like BDA is to provide for orderly and planned development so that the haphazard growth of a city is checked. The disastrous effects of unauthorised and illegal development by some unscrupulous colonisers/developers are well known. In a planned and authorised standard residential developments, about 30% to 35% of the total area is used to provide broad and adequate roads and footpaths, drains etc., and at least another 10% to 15% of the land is earmarked for parks, playgrounds and community development or civic amenities

(schools, hospitals, police stations, post offices, mini markets, community halls etc). Further the layout will have adequate provision for drainage of rain water as well as sewerage water, adequate water supply and electricity, well laid metalled roads which properly connect the layout to Main Roads and other surrounding areas, by providing approaches and linkages. But in an unauthorised or illegal development, the roads are narrow and minimal, virtually no open spaces for parks and playgrounds, and no area earmarked for civic amenities. There will be no proper water supply or drainage; and there will be a mixed use of the area for residential, commercial and industrial purposes converting the entire area into a polluting concrete jungle. The entries and exits from the layouts will be bottlenecks leading to traffic jams. Once such illegal colonies come up with poor infrastructure and amenities, it will not be possible to either rectify and correct the mistakes in planning nor provide any amenities even in future. Residents of such unauthorised layouts are forever be condemned to a life of misery and discomfort. It is to avoid such haphazard, unhealthy development activities by greedy illegal colonisers and ignorant land-owners, the State Legislatures provided for City Improvement Trusts and Development Authorities so that they could develop well planned citizen friendly layouts with all amenities and facilities. In this background large tracts of lands running into hundreds of acres are acquired to have integrated layouts. Only when a layout is formed on a large scale, adequate provision can be made for good size parks, playgrounds and community/civil amenities. For example, if a layout is made in 1000 acres of land, the developer can provide a good sized park of twenty acres and one or two small parks of 2 to 5 acres, have playgrounds of 5 to 10 acres. Instead of such an integrated large layout, if 200 small individual layouts are made in areas ranging from 2 to 10 acres, there will obviously be no provision for a park or a playground nor any space for civil amenities. Further small private colonies/layouts will not have well aligned uniform roads and accesses. While it is true that Municipal and Town Planning authorities can by strict monitoring and licensing procedures arrest haphazard development, it is seldom done. That is why formation of small layouts by developers is discouraged and development authorities take up large scale developments. If 200 acres of land on the outskirts of a city, has to be developed, and if 30 to 50 private developers proceed to develop areas ranging from 2 to 15 acres, it will be impossible for them to provide for parks or any playgrounds of reasonable size or make provision for planned civil amenities. Further, there will be no alignment in regard to roads. Each layout will have roads to suit their own convenience and this will lead to mis-alignment and bottlenecks leading to traffic snarls. The width of the roads also will differ from layout to layout depending upon the `greed' of each private developer, resulting in the size, shape and alignment of roads varying for every stretch of 200 to 500 meters. There will be no proper drainage of rain water or sewerage water leading to constant flooding or stagnation. Therefore large integrated layouts were found to be the answer for orderly development. No small developer can develop a good township in a few acres of land. It was also thought that developers will be mainly profit motivated and will try to minimise the roads, open spaces and community areas. It is therefore that legislature constituted statutory development authorities to undertake large scale developments without any profit motive.

75. If authorities like BDA notify 3000 acres of land for development and then delete from the proposed acquisition several pockets which aggregate to about 1000 to 1500 acres, then the result is obvious. There will be no integrated development at all. What was intended to be a uniform, contiguous and continuous layout of 3000 acres will get split into small pockets which are not

connected with the other pockets or will be intersected by own illegal pockets of private colonies thereby perpetuating what was intended to be prevented, that is haphazard growth without proper infrastructure. It will then not be possible to provide proper road connections and drainage and impossible to provide appropriate parks, playgrounds and civic amenities of appropriate and adequate size and situation. When a development authority starts developing pockets of lands measuring 2 acres to 5 acres, obviously it also cannot provide open spaces and civic amenities and may end up with one pocket having plots, another far away pocket having a playground and another far away pocket having a park and their being no uniformity or continuity of roads. As noticed above, a large layout enables formation of long and straight roads for easy movement of traffic. On the other hand, short and disjointed roads affect smooth movement of traffic. Therefore, if a development authority having acquired a large tract of land withdraws or deletes huge chunks, the development by the development authority will resemble haphazard developments by unscrupulous private developers rather than being a planned and orderly development expected from a Development Authority. Therefore when a large layout is being planned, the development authorities should exercise care and caution in deleting large number of pockets/chunks of land in the middle of the proposed layout. There is no point in proposing a planned layout but then deleting various portions of land in the middle merely on the ground that there is a small structure of 100 sq.ft or 200 sq.ft. which may be authorized or unauthorized. Such deletions make a mockery of development. Further such deletions/exclusions encourage corruption and favouritism and bring discontent among those who are not favourably treated.

76. The complaint by appellants is that in the proposed Arkavathi layout, rich and powerful with "connections" and "money power" were able to get their lands, (even vacant lands) released, by showing some imaginary structure or by putting up some unauthorised structure overnight. Though we do not propose to go into motives, the concurrent finding by the learned Single Judge and Division Bench is that there are arbitrary unexplained deletions. While we may not comment on policy, it is obvious that deletion from proposed acquisition should be only in regard to areas which are already well developed in a planned manner. Sporadic small unauthorised constructions in unauthorised colonies/ layouts, are not to be deleted as the very purpose of acquisition for planned development is to avoid such unauthorised development. If hardship is the reason for such deletion, the appropriate course is to give preference to the land/plot owners in making allotments and help them to resettle and not to continue the illegal and haphazard pockets merely on the ground that some temporary structure or a dilapidated structure existed therein. A development authority should either provide orderly development or should stay away from development. It cannot act like unscrupulous private developers//colonisers attempting development of small bits of land with only profit motive. When we refer to private developers/colonisers by way of comparison, our intention is not to deprecate all private developers/colonisers. We are aware that several private developers/colonisers provide large, well planned authorized developments, some of which are even better than developments by development authorities. What is discouraged and deprecated is small unauthorized layouts without any basic amenities. Be that as it may.

77. What do we say about a `development', where with reference to the total extent of a village, one-third is not notified at all, and more than half is deleted from proposed acquisition of the remaining two-third and only the remaining about 20% to 30% area is acquired, that too not

contiguously, but in different parcels and pockets. What can be done with such acquisition? Can it be used for orderly development? Can it avoid haphazard and irregular growth? The power of deletion and withdrawal unless exercised with responsibility and fairly and reasonably, will play havoc with orderly development, will add to haphazard and irregular growth and create discontent among sections of society who were not fortunate to have their lands deleted.

78. Learned Single Judge as also the Division Bench have concurrently found that BDA had indulged in pick and choose deletions and acquisitions. The learned Single Judge and the Division Bench have found discrimination and irregularities, both in initial omission of certain lands and in deleting of some lands which were notified. They have also recorded a finding that having regard to the nature of deletions, the acquisition lands do not form a continuous or contiguous area and acquisition of small extents of land surrounded by large chunks of un- acquired lands and lands which have been omitted from acquisition would make the development of acquired pockets exceedingly difficult.

79. The Division Bench was of the view that quashing of the entire acquisition may not the remedy. It, therefore, decided to salvage the situation by issuing a series of directions, whereby the land owners were permitted to apply for deletion of their lands also from acquisition on the ground that (a) the lands were situated within green belt area; (b) the lands were totally built up; (c) the lands had buildings constructed by charitable, educational and/or religious institutions; (d) the lands were used for nurseries; (e) lands where running factories had been set up; and

(f) lands were similar to the adjoining lands which were not notified for acquisition. The Court directed that if the BDA comes to the conclusion that the lands of applicants were released are similar to those which have been excluded from acquisition their lands should also be deleted from acquisition. This direction requires clarification.

80. The principles relating to grant of relief in cases of discrimination are well settled. The classic statement is found in Chandigarh Admn. & Anr. v. Jagjit Singh & Anr. [1995 (1) SCC 745], wherein this Court held:

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be

> corrected, if it can be done according to law - indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent- authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles".

In Gurshanan Singh & Ors. v. New Delhi Municipal Committee & Ors. 1996 (2) SCC 459 this court held:

> "There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and

> perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been discrimination".

In State of Haryana v. Ram Kumar Mann -- 1997 (3) SCC 321 -- this court held that the doctrine of discrimination is found upon existence of an enforceable right and that Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. This court further held that a person who has no legal right cannot be given relief merely because such relief has been wrongly given to others and a wrong order cannot be the foundation for claiming equality, nor does a wrong decision by the Government give a right to enforce the benefit thereof and claim parity or equality. There are several other decisions which reiterate this position. It is not necessary to refer to all of them.

81. We are conscious of the fact that when a person subjected to blatant discrimination, approaches a court seeking equal treatment, he expects relief similar to what others have been granted. All that he is interested is getting relief for himself, as others. He is not interested in getting the relief illegally granted to others, quashed. Nor is he interested in knowing whether others were granted relief legally or about the distinction between positive equality and negative equality. In fact he will be reluctant to approach courts for quashing the relief granted to others on the ground that it is illegal, as he does not want to incur the wrath of those who have benefited from the wrong action. As a result, in most cases those who benefit by the illegal grants/actions by authorities, get away with the benefit, while others who are not fortunate to have `connections' or `money power' suffer. But these are not the grounds for courts to enforce negative equality and perpetuate the illegality. The fact that an Authority has extended favours illegally in the case of several persons cannot be a ground for courts to issue a mandamus directing repetition thereof, by applying the principle of equality. Article 14 guarantees equality before law and not equality in subverting law nor equality in securing illegal benefits. But courts cannot be silent bystanders if acquisition process is used by officers of the Authority with ulterior or malafide motives. For example, let us take a case where 2000 acres are required for a project as per the Development Scheme, but the preliminary notification is issued in respect of 3000 acres; and when the land owners `apply' or `approach' the Authority, 1000 acres of lands are released. Or take a case where a project required 1000 acres of contiguous land for a development project, and preliminary notice is accordingly issued for acquisition of a compact contiguous extent of 1000 acres; but thereafter without any logical explanation or perceivable reason, several large areas in the midst of the proposed layout, are denotified or deleted making it virtually impossible to execute the development scheme, as proposed. In the absence of satisfactory explanations in such a case, it may be necessary to presume that there was misuse or abuse of the acquisition process. Be that as it may.

82. We may illustrate the principle relating to positive and negative equality with reference to following notional acquisition cases:

> (i) Where a petitioner's land and his neighbour's land are of similar size and have similar structures and are similarly situated, and the policy of the Development

Authority is to withdraw the acquisition in respect of lands which are `constructed', if the neighbour's land is deleted from the proposed acquisition on the ground that it has a construction of 1000 sq.ft. and the petitioner's land is not so deleted, the petitioner will be entitled to relief on the ground of discrimination. But if the neighbour's land measures 2000 sq.ft. and contains a house of 1000 sq.ft and the petitioner's land measures one acre and contains a house measuring 1000 sq.ft., the petitioner cannot obviously contend that because his neighbour's property was deleted from acquisition, being a land with a construction, his one acre land should also be deleted in entirety from the acquisition, as it had a 1000 sq.ft. construction. But it may be possible for him to contend that an extent equal to what was released to his neighbour, should be released.

(ii) Where the lands owned by two neighbours are equal in size having similar structures, but one was constructed before the preliminary notification after obtaining a licence and the other was constructed after the preliminary notification unauthorisedly, the owner of the land with the unauthorised structure cannot obviously claim parity with the owner of the land with the authorised structure, for seeking deletion from acquisition.

(iii) Where the vacant lands of `A' and `B' - two neighbours are acquired. The Authority had a policy to delete properties with constructions, as on the date of preliminary notification. Both put up unauthorised structures clandestinely overnight, after the preliminary notification. The land of `B' is deleted from acquisition on the ground that it has a construction. If `A' approaches court and claims release of his land claiming parity with `B', the claim will have to be rejected. But, where the Authority admits that B's land was deleted even though the construction was subsequent to preliminary notification, the court may direct the Authority to take appropriate action in accordance with law for cancelling the deletion.

(iv) If in a village all the lands are notified and subsequently all lands except two or three small pockets are deleted without any valid ground, the persons whose lands were acquired can also seek deletion, on the ground that all the surrounding lands have been deleted. Court cannot direct deletion merely because the surrounding lands were deleted, as those deletions were illegal and not based on any valid policy. But the petitioners can contend that the very purpose of acquisition had been rendered infructuous by deletion of the majority of lands from the proposed acquisition, and the project or the scheme has ceased to exist and cannot be executed only with reference to their lands. In such a case, relief can be granted not on the ground that there has been discrimination, but on the ground that the proposed development scheme became non-

existent on account of most of the lands being deleted from acquisition. Therefore, a land owner is not entitled to seek deletion of his land from acquisition, merely on the ground that lands of some

others have been deleted. He should make out a justifiable cause for deleting his land from acquisition. If the Rules/Scheme/Policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the Rules or Scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme. Alternatively, if a common factor can be identified in respect of other lands which were deleted, and if the petitioner's land also has that common factor, relief can be granted on the ground that the Authority had adopted the common factor as the criterion in the case of others and therefore adopting the same yardstick, the land of petitioners also should be deleted. These principles may be kept in view while implementing direction in para 105D(i)(f) of the Judgment of the Division Bench of the High Court.

83. It is necessary to refer another aspect of land acquisition for urban development. `Public purposes' may be of different degrees of importance/priority/urgency. An acquisition for laying a road or a water supply canal may be of higher priority category when compared to acquisitions for formation of an urban residential layout. Planned urban development by forming residential layouts, is carried out not only by statutory development authorities, but also by private developers/ colonisers. The reason why legislature has created Development Authorities for executing development schemes, is because they can undertake large scale developments providing better quality facilities with no profit motives. But in trying to achieve planned development and thereby benefit the urban middle class or urban poor by providing them housing plots, the interests of agriculturists/land owners who lose their livelihood on account of such acquisition, should not be ignored. Though the legislature intended that the land-loser should get reasonable compensation at the time of dispossession or immediately thereafter, it seldom happens in practice. This court had occasion to refer to the travails of land-losers in getting the compensation in Special Land Acquisition Officer v. Mahaboob [2009 (3) SCALE 263] thus:

> "The Collector (LAO) is supposed to offer fair compensation by taking all relevant circumstances relating to market value into account. To safeguard the interests of the land-loser, the Act requires the collector to make the award before the land owner is dispossessed. The intention is that the land-loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice the Collectors (LAOs) seldom make reasonable offers. They tend to err on the `safer' side and invariably assess very low compensation. Such meagre awards force the land-loser to seek reference to civil court for increase in compensation in regard to almost every award made by the LAO. In fact, many a time, even the reference courts are conservative in estimating the market value and it requires further appeals by the land-loser to the High Court and Supreme Court to get just compensation for the land. We can take judicial notice of the fact that in several States the awards of the reference court or the judgments of the High Court and this court increasing the compensation, are not complied with

and the land-losers are again driven to courts to initiate time consuming execution process (which also involves considerable expense by way of lawyers fee) to recover what is justly due. Resultantly the land-losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the acquisition. The effect may be highlighted by the following illustration:

"A farmer owns 3 acres of land in a village, which is his sole means of livelihood. The land is acquired for some project in the year 1990. The true market value of the land was around Rs.1,50,000/- per acre in 1990. If he got the said price, that is, Rs. 4,50,000/- with solatium, additional amount and interest in the year 1991, he has a reasonable opportunity of purchasing some alternative land, so that he can eke out his livelihood and continue to live with dignity. But this rarely happens in practice. The final notification is made in 1992 and the LAO makes an award in the year 1993 offering Rs.50,000/- per acre. So the land-loser is constrained to seek a reference to the court. The reference court takes three to four years to decide the reference and increases the compensation to Rs. one lakh per acre in the year 1996. The increased amount is deposited in 1997-1998. The land-loser is constrained to file a further appeal to the High Court and the High Court takes another three to four years and increases the compensation to Rs.1.5 lakh per acre in the year 2000 and such increase is deposited in the year 2001-02. That is, the loser is forced to fight at least in two courts to get the compensation commensurate with the market value of Rs.1.5 lakhs per acre. To add to his woes, when the reference court or the High Court increases the compensation, the Government does not pay the increased amount immediately and drives him to execution proceedings also. This means that the land owner gets compensation piecemeal, that is, Rs. 50,000/- per acre in 1993, another Rs. 50,000/- per acre in 1997-98, and another Rs.50,000/- per acre in 2001-02. At every stage he has to incur expenses for litigation. As he does not get the full compensation in one lump sum, he is not in a position to purchase an alternative land. When the land is acquired, he loses his means of livelihood, as he knows no other type of work. The result is, he is forced to spend the compensation received in piecemeal, on sustenance of his family when he fights the legal battles for increasing the compensation and for recovering the increases granted, by levying execution. The result is that whatever compensation is received piecemeal, gets spent for the sustenance of the family, and litigation cost during the course of prolonged litigation. At the end of the legal battle, he is hardly left with any money to purchase alternative land and by then the prices of land would have also increased manifold, making it impossible to purchase even a fraction of the land which he originally possessed. Illiteracy, ignorance, and lack of counselling add to his woes and the piecemeal compensation is dissipated leaving him with neither land, nor money to buy alternative land, nor any means of livelihood. In short, he is stripped of his land and livelihood."

84. Frequent complaints and grievances in regard to the following five areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act,1894, requires the urgent

attention of the state governments and development authorities:

> (i) absence of proper or adequate survey and planning before embarking upon acquisition;
>
> (ii) indiscriminate use of emergency provisions in section 17 of the LA Act;
>
> (iii) notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions;
>
> (iv) offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases;
>
> (v) inordinate delay in payment of compensation; and
>
> (vi) absence of any rehabilitatory measures.

While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the plight of farmers affected by frequent acquisitions for urban development.

85. There are several avenues for providing rehabilitation and economic security to landlosers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories:

> (i) Acquisitions for the benefit of the general public or in national interest. This will include acquisitions for roads, bridges, water supply projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities.
>
> (ii) Acquisitions for economic development and industrial growth. This will include acquisitions for Industrial Layouts/Zones, corporations owned or controlled by the State, expansion of existing industries, and setting up Special Economic Zones.
>
> (iii) Acquisitions for planned development of urban areas. This will include acquisitions for formation of residential layouts and construction of apartment Blocks, for allotment to urban middle class and urban poor, rural poor etc.

86. In acquisitions falling under the first category, the general public are the direct beneficiaries. In the second category, the beneficiaries are industrial or business houses, though ultimately, there will be indirect benefit to the public by way of generation of employment and overall economic development. In the third category, the beneficiaries are individual members of public who, on

account of allotment of plots/flats, will be able to lead a better quality of life by having a shelter with comforts, apart from the fact that the planned development of cities and towns is itself in public interest. At present, irrespective of the purpose, in all cases of acquisition, the landloser gets only monetary compensation. Acquisitions of the first kind, does not normally create any resistance or hostility. But in acquisitions of the second kind, where the beneficiaries of acquisition are industries, business houses or private sector companies and in acquisitions of the third kind where the beneficiaries are private individuals, there is a general feeling among the land-losers that their lands are taken away, to benefit other classes of people; that these amount to robbing Peter to pay Paul; that their lands are given to others for exploitation or enjoyment, while they are denied their land and their source of livelihood. When this grievance and resentment remains unaddressed, it leads to unrest and agitations. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition.

87. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of landlosers, should be resorted. Let us consider the different types of benefits that will make acquisitions landloser-friendly.

87.1) In acquisitions of the first kind (for benefit of general public or in national interest) the question of providing any benefit other than what is presently provided in the Land Acquisition Act, 1894 may not be feasible. The State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival. 87.2) Where the acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of the protector of the land-losers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process.

87.3) Where the acquisition is of the third kind, that is, for urban development (either by formation of housing colonies by Development Authorities or by making bulk allotment to colonisers, developers or housing societies), there is no scope for providing benefits like employment or a share in the equity. But the landlosers can be given a share in the development itself, by making available a reasonable portion of the developed land to the landloser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. We may give by way of an illustration a model scheme for large scale acquisitions for planned urban development by forming residential layouts: Out of the total acquired area, 30% of the land area can be earmarked for roads

and footpaths; and 15% to 10% for parks, open spaces and civic amenities. Out of the remaining 55% to 60% area available for forming plots, the Development Authority can auction 10% area as plots, allot 15% area as plots to urban middle class and allot 15% area as plots to economically weaker sections (at cost or subsidised cost), and release the remaining 15% to 20% area in the form of plots to the land-losers whose lands have been acquired, in lieu of compensation. (The percentages mentioned above are merely illustrative and can vary from scheme to scheme depending upon the local conditions, relevant Bye- laws/Rules, value of the acquired land, the estimated cost of development etc.). Such a model makes the land-loser a stake-holder and direct beneficiary of the acquisition leading to co-operation for the urban development scheme.

88. In the preceding para, we have touched upon matters that may be considered to be in the realm of government policy. We have referred to them as acquisition of lands affect the vital rights of farmers and give rise to considerable litigations and agitations. Our suggestions and observations are intended to draw attention of the government and development Authorities to some probable solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners. It may be possible for the government and development authorities to come up with better solutions. There is also a need for the Law Commission and the Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not vice versa. We have come across Development Authorities which resort to `developmental activities' by acquiring lands and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in well formed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the development authority. Be that as it may.

89. When BDA prepares a development Scheme it is required to conduct an initial survey about the availability and suitability of the lands to be acquired. While acquiring 16 villages at a stretch, if in respect of any of the villages, about 30% area of the village is not included in the notification under section 4(1) though available for acquisition, and out of the remaining 70% area which is notified, more than half (that is about 40% of the village area) is deleted when final notification is issued, and the acquisition is only of 30% area which is non-contiguous, it means that there was no proper survey or application of mind when formulating the development scheme or that the deletions were for extraneous or arbitrary reasons. Inclusion of the land of a person in an acquisition notification, is a traumatic experience for the landowner, particularly if he was eking out his livelihood from that land. If large areas are notified and then large extents are to be deleted, it breeds corruption and nepotism among officials. It also creates hostility, mutual distrust and disharmony among the villagers, dividing them on the lines of `those who can influence and get their lands deleted' and `those who cannot'. Touts and middlemen flaunting political connections flourish, extracting money for getting lands deleted. Why subject a large number to citizens to such traumatic experience? Why not plan properly before embarking upon acquisition process? In this case, out of the four villages included at the final stages of finalising the development scheme, irregularities have been found at least in regard to three villages, thereby emphasising the need for proper planning and survey before embarking upon acquisition.

90. Where arbitrary and unexplained deletions and exclusions from acquisition, of large extents of notified lands, render the acquisitions meaningless, or totally unworkable, the court will have no alternative but to quash the entire acquisition. But where many landlosers have accepted the acquisition and received the compensation, and where possession of considerable portions of acquired lands has already been taken, and development activities have been carried out by laying plots and even making provisional or actual allotments, those factors have to be taken note of, while granting relief. The Division Bench has made an effort to protect the interests of all parties, on the fact and circumstances, by issuing detailed directions. But implementation of these directions may lead to further litigations and complications. To salvage the acquisition and to avoid hardships to BDA and its allottees and to avoid prolonged further round litigations emanating from the directions of the High Court, a more equitable way would be to uphold the decision of the division bench, but subject BDA's actions to certain corrective measures by requiring it to re-examine certain aspects and provide an option to the landlosers to secure some additional benefit, as an incentive to accept the acquisition. A direction to provide an option to the land-losers to seek allotment of developed plots in lieu of compensation or to provide for preferential allotment of some plots at the prevailing market price in addition to compensation will meet the ends of justice. Such directions will not be in conflict with the BDA (Allotment of sites) Rules, as they are intended to save the acquisitions. If the acquisitions are to be quashed in entirety by accepting the challenges to the acquisition on the ground of arbitrary deletions and exclusions, there may be no development scheme at all, thereby putting BDA to enormous loss. The directions of the High Court and this Court are warranted by the peculiar facts of the case and are not intended to be general directions applicable to regular acquisitions in accordance with law, without any irregularities. Conclusion

91. In view of the foregoing, we affirm the directions of the Division Bench subject to the following further directions and clarifications:

> (i) In regard to the acquisition of lands in Kempapura and Srirampura, BDA is directed to re-consider the objections to the acquisitions having regard to the fact that large areas were not initially notified for acquisition, and more than 50% of whatever that was proposed for acquisition was also subsequently deleted from acquisition. BDA has to consider whether in view of deletions to a large extent, whether development with respect to the balance of the acquired lands has become illogical and impractical, and if so, whether the balance area also should be deleted from acquisition. If BDA proposes to continue the acquisition, it shall file a report within four months before the High Court so that consequential orders could be passed.
>
> (ii) In regard to villages of Venkateshapura, Nagavara, Hennur and Challakere where there are several very small pockets of acquired lands surrounded by lands which were not acquired or which were deleted from the proposed acquisition, BDA may consider whether such small pockets should also be deleted if they are not suitable for forming self contained layouts. The acquisition thereof cannot be justified on the ground that these small islands of acquired land, could be used as a stand alone park or playground in regard to a layout formed in different unconnected lands in other

villages. Similar isolated pockets in other villages should also be dealt with in a similar manner.

(iii) BDA shall give an option to each writ petitioner whose land has been acquired for Arkavathy layout:

(a) to accept allotment of 15% (fifteen percent) of the land acquired from him, by way of developed plots, in lieu of compensation (any fractions in excess of 15% may be charged prevailing rates of allotment).

OR

(b) in cases where the extent of land acquired exceeds half an acre, to claim in addition to compensation (without prejudice to seek reference if he is not satisfied with the quantum), allotment of a plot measuring 30' x 40' for every half acre of land acquired at the prevailing allotment price.

(iv) Any allotment made by BDA, either by forming layouts or by way of bulk allotments, will be subject to the above.

The appeals are disposed of accordingly. All pending applications also stand disposed of.

.....CJI.

(K. G. Balakrishnan) .....J. (R. V. Raveendran) New Delhi; .....J. May 5, 2010. (D. K. Jain)